



HOUSE OF LORDS

SELECT COMMITTEE ON THE CONSTITUTION

INQUIRY INTO THE CONSTITUTIONAL IMPLICATIONS OF COALITION GOVERNMENT

Oral and written evidence

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Summary

This evidence is intended to offer a useful discussion to some of the principle points the Select Committee has asked be addressed. It demonstrates that coalitions are now more likely and argues that they should be regarded with similar legitimacy as majority governments. Contrary to some opinion, it can be observed that coalitions can support greater collectivism by requiring Cabinet discussion and mitigating against Prime Ministerial Presidentialism. Nonetheless, the evidence underlines the continued importance of maintaining collective responsibility which can be put under greater strain during a coalition. It recommends that the Ministerial Code is updated to reflect such circumstances. It draws a distinction between manifestos and coalition agreements, the latter being the source of collective responsibility but potentially also incentivising greater Parliamentary independence. While there is little reason for formal changes to future manifestos, parties might well communicate their intentions in the event of a hung parliament. The evidence highlights the importance of the incumbent remaining in office as a ‘caretaker’ during coalition negotiations, adjustments to the exercise of prerogative powers and suggests the Salisbury-Addison convention is outdated.

I. Overview of Response: Likelihood and Legitimacy

- I.1. This is a timely investigation into the constitutional implications of coalitions, the results of which could make for better governments in the future by highlighting good, constitutional practice and producing guidelines based on experience and theory.
- I.2. Even if the 2010 coalition emerged as something of a novelty and we are perhaps used to single party administrations, it is worth observing that non-majority governments are not historically unusual in Britain. One only has to go back to the latter stages of John Major’s administration before 1997 to see a government without a working majority. In the late 1970’s Jim Callaghan’s administration was maintained by the Lib/Lab pact. Between March and October 1974, Harold Wilson led a minority government. Winston Churchill headed the wartime coalition between 1940-45 before which there had been the National Government (1931-35-40). In the 1920s there were two short periods of Labour minority rule (1924, 1929) and then there had been the great Lloyd George peacetime coalition 1918-22 which had emerged from the coalition in place during the First World War. Nonetheless, it can be observed that historically hung parliaments tend to result in minority government rather than coalition. However, voting trends could see this change.
- I.3. While the next election could well see a return to a single party majority government, the longitudinal data suggests that coalitions are likely to become a more regular feature of British politics even without electoral reform. It is noteworthy that if one takes the 1955 general election as a starting point it can be seen that all but 3.9% of votes were cast for the Conservative or Labour parties and other than MPs belonging to those two, just 6 seats were won by the Liberals and 2

by Sinn Féin. Fifty years later in 2005 and a full 32% of the votes cast were for parties or candidates other than the ‘big two’. This has coincided with the rise of an increasingly credible third party, today in the form of the Liberal Democrats but the vote is broader than this encompassing minority parties and independents. Table I offers some comprehensive data for each of the 15 general elections between 1955-2010, from which there is undeniably a trend towards a sizable vote for alternative parties and candidates. Indeed by the 2010 election which resulted in coalition, just 65% of the electorate voted for Conservative or Labour candidates. More than this, despite the bias the electoral system has against candidates not supported by one of the main parties, the number of MPs not taking the Conservative or Labour Whip in the Commons has increased tenfold over fifty years making it that bit harder for leading parties to win a majority.

Table I: Erosion in Electoral Dominance for Conservative and Labour Parties

Election	% Vote for neither Cons or Lab	Seats not held by Cons or Lab	% Vote secured by winning party
1955	4%	8 (of 630)	49.7%
1959	7%	7 (of 630)	49.4%
1964	12%	9 (of 630)	44.1%
1966	10%	13 (of 630)	48.0%
1970	11%	12 (of 630)	46.40%
1974 (F)	25%	37 (of 635)	37.2%*
1974 (O)	25%	39 (of 635)	39.2%
1979	19%	27 (of 635)	43.9%
1983	30%	44 (of 650)	42.4%
1987	27%	45 (of 650)	42.2%
1992	24%	44 (of 651)	41.9%
1997	26%	76 (of 659)	43.2%
2001	28%	80 (of 659)	40.7%
2005	32%	78 (of 646)	35.2%
2010	35%	86 (of 650)	36.1%**

* Harold Wilson's Labour party won more seats and formed a minority government but the Conservatives won a marginally higher 37.9% of the vote

** The government was formed by the Conservatives in coalition with the Liberal Democrats who won 23% of the vote making a combined 59%

- I.4. It remains to be seen as to whether there is a trend towards a lower percentage of the vote for the ‘winning’ party other than the observation that the days of parties

achieving near half of the votes are long gone. The reduction in the number of marginal seats as is noted by several scholars (Curtis, 2010; Hodgeson et al, 2012) could well mean that the last two elections (where the vote for the leading party was in the mid 30% rather than above 40% as was the case 1979-2001) are not an aberration. Leaving aside the arguments of injustice about the disproportionality of the first past the post electoral system, it can further be observed that once the vote for the leading party falls much below 40%, the election results are somewhat capricious. Consequently, Tony Blair was able to form a government with a majority of 66 in 2005 on just 35.2% of the vote. Indeed this is the lowest ever share of the vote for a majority party and every principle opposition 1935 - 1979 (inclusive) won a higher percentage of the vote. Compare this to 2010 when David Cameron's Conservative party achieved a slightly higher 36.1% of votes cast but was 20 seats short of an overall majority.

- I.5. The question of legitimacy has been raised in respect of coalitions since the formation of a government comprising two or more parties, post-election, means that the electorate did not consciously vote for that specific combination of personnel or policy. Indeed had they known the outcome in advance, voting intentions might have changed. Furthermore, the Committee's call for evidence suggests a question of parliamentary legitimacy 'in that the Government's right to exercise executive authority stems from the confidence of the House of Commons, which in turn is a recognition of popular acceptance of the governing party's proposals as contained in its manifesto'. While such arguments are valid, they are perhaps not as strong as they might seem.
- I.6. Comparing the experience of the 2005 and 2010 elections, it is difficult to maintain the argument that Tony Blair's Labour party had a greater electoral mandate from its 35.2% of the vote in 2005 than David Cameron's Conservatives on 36.1% five years later. And yet few questioned the legitimacy of Blair's government when two thirds of the electorate had voted for parties other than the one which held office exclusively. While recognizing the limits of the arithmetic, the 2010 coalition represented a combined share of the vote of 59% (and the combined seats in the Commons being 306 plus 57 representing a proportional 58.4% of the House). Consequently, the formation of a coalition meant that Britain had a government which in some form represented more than half of votes cast at a general election for the first time in post-war history. The 'had I known' concern naturally weakens this case but the argument is inadequate since the electorate might vote in all sorts of different ways in hindsight (how many might have changed their vote in 2001 had they known about the Iraq war?). Furthermore, the alternative is majority governments on minority votes or minority governments which are unable to pursue their business.
- I.7. Parties and manifestos are, of course, recognized in the British constitution. Short and Cranborne money, for instance, is paid directly to parties rather than Members, though is intended to support the constitutional role of loyal opposition. The Salisbury-Addison convention acknowledges the mandate given to a governing party by the electorate voting for policies detailed in a manifesto. However, notwithstanding the argument put in I.6 above, the case that coalitions have less legitimacy to govern overlooks constitutional convention and practice. The link

between Members of Parliament and their constituencies is so valued that it always emerges as an objection to electoral reform. In Britain we elect candidates to office not parties and it is instructive that Liberal and Conservative parties emerged in the nineteenth century from groups within Parliament while Labour grew out of the Trade Union movement outside Westminster. Members hold the sovereign authority of their constituents for the duration of the parliament and are free to vote against their government, resign the whip or even cross the floor without the need for a by-election. In the Westminster system, a prime minister is able to form a government where he or she can command the confidence of Parliament and this is confirmed by votes of MPs notably in acceptance of the Queen's speech which details a government's proposed programme. Governments do not need to perpetually command the confidence of the electorate or else we would see many more frequent elections. Indeed the constitutional position of an MP is summed up in the famous address by Burke to his constituents when he told them: 'Your Representative owes you, not his industry only, but his judgement; and he betrays, instead of serving you, if he sacrifices it to your opinion'. Consequently, once elected Parliament can agree to the formation of whatever government it sees fit and vote for whatever legislation it decides is right. Members are held to account retrospectively at the ballot box at the next election.

- 1.8. All governments, it is often said, are coalitions drawn from competing ideological opinion (usually within a single party). The 2010 coalition is in many ways more ideologically comfortable than the divisions between the 'wets' and the 'drys' in the Thatcher government and more functional in their relationships than the personal tribal splits between the 'Blairite's and the 'Brownites' of the Blair administration. While there have been some public rows between the parties in the Cameron/Clegg coalition, the more serious disagreements have not been drawn on party lines but rather have been between the Treasury and spending departments (for example the MoD and Social Security) reflecting the tough public spending environment more than coalition.

2. The Constitutional Framework

2.1. To what extent are the UK's existing constitutional conventions and practices unsuitable in the context of a coalition government?

The British constitution is flexible, accommodating and indeed has supported previous coalitions. Needless to say, the electoral system has to a significant degree mitigated against coalitions by frequently delivering majority governments on minority votes. Indeed the last time a party secured more than 50% of votes cast was in 1931 when Stanley Baldwin's Conservatives secured a 55% share though ironically it was Ramsey MacDonald (whose National Labour had taken just 13 seats and 1.5% of votes) who remained prime minister in the resulting National Government. Here is an example of the constitution supporting not only coalition but factious parliamentary and government composition. Nonetheless, there are perhaps two significant areas where it is somewhat unsuitable in the context of coalitions. The first is the combative nature of Parliament and the second the prerogative powers assumed by the Prime Minister.

- 2.2. The Westminster system is confrontational in physical organisation and constitutional practice. After an election the party (or parties) which can command the confidence of Parliament forms a government with the remainder of Members taking to the opposition benches. There is a paid Leader of the Opposition whose job it is to legitimately oppose the government and together with a shadow cabinet act as an alternative government. This has the effect of not only being combative but also exaggerating differences between parties. It further facilitates the alternation of single party majority governments in office. It is perhaps somewhat unsuitable for the more consensual and discursive behaviour required to form and maintain coalitions (after all with regular coalitions, in successive elections the combinations of parties in office can alter). Whereas the Westminster system requires parties to identify (and amplify) differences in their programmes, coalition building requires parties to find similarities.
- 2.3. The British Prime Minister is able to exercise numerous prerogative powers including appointments, declarations of war and signing treaties. Irrespective of traditional criticism of the Royal Prerogative by the Prime Minister (or on occasion other Ministers), such powers exercised independently are counterproductive to the operation of a functioning coalition. This concept is discussed further below.

2.4. Constitutional Merits and Demerits of Coalitions

2010 was the first time in comparable history that a hung parliament has resulted in a coalition and offers a prism through which to view the merits and demerits of alternative scenarios. Previous occasions in the twentieth century, it should be noted, have led to minority rule whereas peacetime coalition arrangements were put in place prior to an election. Despite some fanciful counterfactuals, parliamentary arithmetic meant that any scenario other than David Cameron residing in Downing Street after polling day 2010 was very difficult to engineer. The alternatives then were independent minority government such as that led by Harold Wilson in March 1974; minority rule with the support of the Liberal Democrats by way of a supply and confidence arrangement perhaps comparable to the Lib/Lab pact; or full coalition with Liberal Democrat MPs taking Ministerial posts and shaping government policy.

- 2.5. Minority governments in the past have been short-lived and while they might be able to make quicker decisions in themselves represent fairly impotent administrations. A supply and confidence arrangement could secure the passage of a limited amount of relatively non-controversial legislation (including a Budget) but would not have offered the stability required given the weak state of the economy and could also have been expected to have been short-lived. Because of the data set out in 1.3 and 1.4 above, the prospect of another general election within say 12 months was no guarantee of achieving a majority in parliament for any single party. Under such circumstances, a coalition offered the best way of securing a stable government with a working majority for a full term in office and able to take decisions confidently, particularly in respect of the economy. Experience has shown some limitations to its ultimate adaptability though these would not appear to have been far reaching. If no overall control is a more likely outcome of elections, parties will have to get more used to working together at Westminster and coalitions can be seen to be a

more desirable way of securing stable government than simply calling more frequent elections. After all, whatever its faults, it is difficult to argue that the 2010 coalition has been afraid to take difficult and unpopular decisions or to be bold.

- 2.6. Perhaps a point of pedantry but the term 'hung' parliament, which according to Stuart Wilks-Heeg (2010) emerged only in the 1970s, is probably derived from a hung jury which of course would be dismissed. After the 2010 poll, 'balanced' was being used to describe the make-up of parliament and in the circumstances this seemed appropriate since a coalition was formed.
- 2.7. Space precludes a full discussion here and so I have limited my evidence. However, one lesson which can be learned from the practices of other parliamentary democracies is that coalitions can produce strong, stable government which can claim democratic legitimacy.

3. Collective Ministerial Responsibility

3.1. Adjusting the Doctrine of Collective Responsibility and Procedures for its Suspension

The doctrine of collective responsibility whereby all ministers are 'bound by the collective decision of Cabinet' is essential for any government to operate with any degree of effectiveness or confidence. After all, if a prime minister cannot command the votes of his own ministers, it is difficult to claim that he commands the confidence of Parliament and it is hard for Parliament to hold ministers to account if they do not speak for the government in a consistent fashion. The concept has been tested during the 2010 coalition as the two parties accommodate differing views within the confines of office. However, it is important not to exaggerate practices here or indeed to overstate their novelty. One only has to recall how Tony Benn would disassociate himself from collective decisions in the Wilson/Callaghan administration of 1974-79 or how there was open disagreement over industrial intervention policy and Europe in the Major government 1990-97 for instance between Peter Lilley and Michael Heseltine. Another example is Clare Short's public opposition to the Iraq war while still a member of Blair's Cabinet. Consequently, it is not so much the doctrine which requires adjustment in the modern era than the mechanisms which support it. Here it is worth discussing what might constitute a breach of collective responsibility or where collective responsibility might be suspended.

- 3.2. It is important to distinguish between genuine breaches or suspensions of collective responsibility and party posturing to demonstrate independence as a political force. In respect of the 2010 coalition, there is a suspicion that there have not necessarily been more disagreements as time has passed but rather that the party leaderships have deliberately let more light shine on the process for political reasons. While there is some potential overlap here (confidentiality is a principle of collective responsibility), it is worth trying to determine areas which are subject to collective responsibility and areas which are not. After all, practically all governments allow Ministers to express independent views on certain issues, usually defined as matters of conscience but can be motivated by maintaining harmony. And government

cannot be expected to hold a single view on an infinite array of subjects. Ministers appearing to disagree in public is not, therefore, necessarily a breach of collective responsibility. The Ministerial Code is also helpful here in connecting collective responsibility to 'decisions' made by government and the business of Cabinet and Cabinet Committees which would engage in 'major issues of public policy because they are of critical importance to the public' (Ministerial Code, 2010, 2.2). In coalition, there is a more explicit expression of differing views on a range of policy issues and these are detailed in the respective party manifestos. Consequently, it is impractical to expect collective responsibility to be maintained on a wide range of issues which do not ultimately result in Cabinet decisions since such an attempt could be much more farcical than some of the public disagreements to have taken place since 2010. Here the universe of collective responsibility must relate to the narrower programme of government and this is defined by the Coalition Agreement or other decisions which are subsequently brought to Cabinet to be taken collectively by Cabinet Ministers. For this reason, it is all the more essential that decisions made by individual Ministers which bind the government must be discussed collectively in cases of potential controversy.

- 3.3. One observation about coalitions is that there inevitably needs to be a degree of collectivism which should re-enforce collective responsibility. This contrasts, perhaps, with assessments of Thatcher and Blair administrations which are said to have been rather Presidential (the latter caricatured as 'sofa government'), precluding collective discussion and decision making. Potentially, therefore, coalitions can support collective government. This is explicitly referred to in the 2012 *Coalition Agreement for Stability and Reform* which, in re-affirming collective responsibility, requires 'an appropriate degree of consultation and discussion among Ministers to provide an opportunity to express their views frankly as decisions are reached'.
- 3.4. Before considering the procedure for suspending collective responsibility, it is worth sketching out and differentiating some potential circumstances. At its most acute, collective responsibility manifests itself within Parliament where there is a vote on a piece of legislation resulting (usually) from a government decision. Alternatively, it exists where there is an issue of collective responsibility relating to some major policy issue debated in the country. When it comes to suspending that collective responsibility, we also need to distinguish between strategic decisions intended to maintain functionality of a government (and therefore emerging from the leadership) and reactive or muddled suspensions in response to what looks like an inevitable parliamentary defeat or party split. In this sense too, one might distinguish between decisions to suspend collectivity made prior to the formation of a government and those which emerge during the course of a Parliament. Panicked reactive suspensions should be discouraged.
- 3.5. There are precedents for the suspension of collective responsibility, most recently under the (single party) government of Harold Wilson in 1975 when Cabinet Ministers were free to campaign on either side of the referendum on EEC membership and then again in 1977 under Callaghan in that same Parliament in respect of elections to the European Assembly. Before that, it is necessary to go back to the National Government when in 1932 Tariffs were the issue that required an agreement to differ. One might reasonably expect more suspensions from a coalition in order to facilitate a functioning government and the 2010 Coalition

Agreement, written before the formation of the government, explicitly set out areas which might arise during the course of the parliament but where the partners 'agreed to differ'. These included tuition fees, nuclear power and Trident. Most overtly was the plan to suspend collective responsibility during the referendum campaign on electoral reform, though legislating for that poll and the Alternative Vote system if approved, was a government decision which bound ministers collectively.

- 3.6. There have been occasions during the 2010 coalition, however, where the suspension of collective responsibility is less constitutionally conducive, putting the convention under severe pressure. When David Cameron was unable or unwilling to deliver sufficient Parliamentary votes to achieve House of Lords reform, Nick Clegg instructed his MPs to vote against boundary changes drafted within the Electoral Registration and Administration Bill. Both of these had been collective policy decisions of government. Clegg's justification was that the Conservatives had not honoured the agreement on bringing democracy to the Lords. While this is undoubtedly true, no Minister who voted against Lords reform remained in post so it is only on the boundary change vote that collective responsibility was breeched. Instructively, the BBC reported this as 'Conservatives lose boundary review vote' when the legislation was one of the government's as a whole. This reflects reality that coalitions are negotiated between parties but executives are formed by a more exclusive group. While there appears to have been some agreement between the prime minister and the deputy prime minister on this matter of suspending collective responsibility, the episode still involved some Ministers voting against a previously agreed decision of the government and being directed to do so by the leader of the junior coalition partner. The Leader of the House, Andrew Lansley, went so far as to describe it as 'an abuse of parliamentary process'. It is not the only example. While less of a threat to the stability of the coalition and more about maintaining harmony within the Conservative party, the acquiescence by the Prime Minister to allow Ministers to vote 'against' provisions in the Queen's Speech by way of an amendment regretting 'that an EU referendum bill was not included' (HC Deb 15/5/13, c749) is constitutionally more serious. This is because historically the vote on the 'Gracious Speech' is considered a confidence motion in the government. For Ministers to, even tacitly, express no confidence in the government of which they are members but retain their seals of office is a curious state of affairs. The Coalition Agreement makes no exception here demanding that 'in all circumstances, all members of both parties will be expected to support the Government on all matters of confidence' (5.2). A further instance, the separate responses of the Conservative and Liberal Democrat leaderships to the Leveson Report is at best a constitutional oddity given that the government collectively appointed the Commission. These episodes suggest a need to be clearer about the doctrine of collective responsibility in coalition and the process for setting it aside.
- 3.7. The fact remains, however, that these discrepancies happened and were allowed to happen without resignations while the government otherwise continued to function. Constitutional purists might well wince, but it means our conceptions of acceptable practice might need to be relaxed to accommodate the political realities of holding together a working coalition. After all, such difficulties did not fatally wound the coalition because they were both just small elements of an overall programme and the government continued to command the confidence of Parliament.

- 3.8. It appears generally agreed that the decision to suspend collective responsibility rests with the Prime Minister but in coalition (where not part of a coalition agreement) it has to be a decision taken collectively by the government and with the authority of at least the Prime Minister and the leader(s) of the coalition party who it will be assumed here will hold office¹. Collective responsibility cannot be suspended very frequently, impulsively or unilaterally. Decisions to suspend collective responsibility must be made formally by the Prime Minister and his or her deputy, ahead of a vote or campaign and formal notice given to Parliament which should have the opportunity to debate. Indeed, the Coalition Agreement explicitly states that 'they must be specifically agreed by the Coalition Committee and Cabinet.' (5.1) Such practice should be formalised and observed.

4. Democratic legitimacy and electoral mandates

4.1. Status of coalition agreements and party manifestos

The Coalition Agreement necessarily becomes an important document in the formation and sustainability of a government in such circumstances and for this reason it is crucial that it is drafted appropriately and there has been some opportunity for the Civil Service to advise. While it has no fundamental force, the Agreement becomes the basis of not only the policy programme – that is what is included and what is excluded – but is also the settlement from which collective responsibility is derived. While there is legitimate criticism that the electorate did not vote for the Coalition Agreement, it would be perverse if party manifestos were not the basis for negotiations and the government's programme. It should also be noted that there is nothing binding about a manifesto and many governments are accused of contradicting such pledges made at the previous general election. Once again it is in retrospect that voters hold governments to account by choosing to re-elect or dismiss them from office. Furthermore, manifestos as a legislative programme suffer the same weakness as Coalition Agreements in that contexts change during the course of a five year Parliament and there is a need to refresh objectives mid-term.

- 4.2. It is worth observing that the distinction between manifestos and the Coalition Agreement might be partially responsible for an increased sense of independence of Parliament since it weakens the powers of patronage enjoyed by a Prime Minister. It is perhaps no coincidence that the 2010 Parliament has been the most rebellious since 1945 (Cowley and Stuart, 2013) as government backbenchers can claim they were elected on their party manifestos not the Coalition Agreement against which they are being whipped.
- 4.3. There is little doubt that the increased prospect of coalition negotiations will incentivise all mainstream parties to consider that possibility in drafting manifestos.

¹ This is indeed an assumption as the leader of the party in coalition does not have to hold a government post. Paddy Ashdown suggested that had he formed a coalition as Lib Dem leader with Labour, he would have remained outside the government. When Labour leader Arthur Henderson resigned from Lloyd George's Cabinet in 1917 to be replaced by George Barnes, he continued to lead his party for a period while Barnes did not replace him as leader as Lloyd George had expected. Indeed it was William Adamson who took over in October of that year.

As such manifestos will have the dual role of representing a series of pledges to the electorate and act as a document for negotiating a programme of government with another party. The idea, however, that the format should change to highlight pledges open for negotiation and those that are not is rather farcical. The relative Parliamentary strength after an election is a much more powerful indicator of what can and cannot be agreed. Successful parties are rather good at communicating their principle objectives to the electorate during an election campaign and it can be seen that Conservative and Liberal Democrat manifesto priorities featured strongly in the Coalition Agreement. Nonetheless, these will be legitimate questions to be answered by party leaders at election time and it is conceivable that parties will wish to include in their manifestos a statement of their intentions in the event of a hung parliament.

- 4.4. Previous peacetime occasions in the twentieth century where there has been a coalition followed agreement between parties made prior to the general election (1918, 1931). One might also consider the negotiations between Paddy Ashdown and Tony Blair prior to the 1997 election which might have led to a coalition had the parliamentary arithmetic been different. In part this latter potential pact was as the result of the Liberal Democrats abandoning its strategic position of equidistance (Barber, 2005), something which would appear to have been reinstated in 2010 when Nick Clegg articulated the view that the largest party should have the first opportunity to attempt to form a government. It is an interesting discussion point as to whether Clegg has articulated any sort of constitutional precedent here. First past the post and the consequent Westminster system usually incentivise against pre-election agreements however desirable they might be. One can only speculate that any future pre-election agreement to form a coalition will be accompanied by a pledge to reform the electoral system itself.
- 4.5. In contrast to say the United States where a new President takes office some months after an election, the British system is rapid with majority governments being formed (often by exhausted politicians) hours after polls close. The five days taken to form the 2010 coalition was, therefore, an anomaly. Nevertheless, the period (much more efficient than the formation of many European coalitions) caused little consternation during an otherwise economically volatile time. Indeed a successful Gilt auction took place during the negotiations. Five days would seem a desirable target and, as 2010 showed, is plausible. However, some future coalitions might take longer to negotiate and time must be given as well as expert facilitation by the Civil Service if parties require. The important point here is that the country must have a government and the incumbent should remain in office while there is space for a successor government to be formed. This happened in 2010 when Gordon Brown remained in office (though not in London). The pressure that appeared to be put on him to resign, however, should not have happened and the idea of continuity should be communicated. There was a suggestion that the Cabinet Office should publish guidance for any 'caretaker' government and this might well be helpful (House of Lords, 2011). Notwithstanding the statement by Clegg in 2010 discussed above, constitutionally, the incumbent has the first opportunity to attempt to form a majority (as was the case with Edward Heath in February 1974). Whether or not this is possible, they must remain in office until such a time as they can advise the Queen that they or another leader can form a government.

- 4.6. The Salisbury–Addison convention which, since 1945 has come to mean that the House of Lords does not defeat the government on second or third reading of legislation pertaining to pledges made in a manifesto, is already under strain. Its modern origins lay in Attlee's landslide of 1945 and the under-representation of Labour peers in the Lords. However, since 1999 when all but 92 hereditary peers were removed from the Chamber and it can be observed that the House of Lords is actually more representative of votes cast at a general election than is the Commons, the purpose of the convention has waned. Peers would also reasonably question the convention when it comes to minority (or even majority) governments on minority shares of votes. After all, if only a third of the electorate has voted for a party with a particularly controversial manifesto commitment, there would not seem to be the same justification for the practice. In terms of a coalition, the context is further distorted since the settled programme is not contained in a single manifesto but rather in an agreement which the electorate has not directly approved. As such, the convention as is commonly understood is outdated and practice should perhaps revert to the original Salisbury convention of the nineteenth century when the Third Marquess argued that the Lords should intervene on contentious legislation where it believed the view of the Commons and the will of the people did not coincide. That being said, the programme of a coalition government which commands the confidence of the Commons is a legitimate programme and one must continue to accept the primacy of the lower house.

5. The Internal Organisation of the Government in a Coalition

5.1. Prerogative and Practices

The practices of the 2010 coalition government in terms of its organisation are not so much a constitutional blueprint to be followed in future so much as an instructive case study in how parties and politicians are incentivised to work together under such circumstances. Time, papers, memoirs and record in office will tell but on the whole the internal organisation of the 2010 coalition would seem to be at least as functional as recent comparable majority governments. There is more collectivism and discussion in decision making and less power assumed by the prime minister (and one suspects this usually means more due process). The coalition has organised itself with a quad system at the core executive comprising the Prime Minister, Deputy Prime Minister, the Chancellor and the Chief Secretary representing the two most senior members of each party. The Deputy Prime Minister also chairs many of the key Cabinet Committees.

- 5.2. There is no constitutional status of the office of Deputy Prime Minister in a coalition or any government. Indeed the leader of the minority party might take a different Cabinet post (Heath offered Thorpe the Home Office in 1974; Blair talked to Ashdown about being Foreign Secretary before 1997) or might even remain outside government (see n1). Nonetheless, the leader of the junior coalition partner is pivotal to the successful functioning of government and in a constitutional sense must have some strategic oversight of its programme, key decisions and day-to-day operation. It would be good practice to embed that role within the core executive and future coalitions might find some organised structure useful. Interestingly earlier DPMs in the shape of Willie Whitelaw and John Prescott have helped facilitate

smoother running of single party governments which might similarly be described as coalitions of opinion.

5.3. The exercise of Royal Prerogative powers by the Prime Minister is in many instances not conducive to a functioning coalition. It is inconceivable, to take an extreme example, that a Prime Minister could declare war independently and without agreement of a coalition partner. More routinely, while the Prime Minister retains ultimate power for appointing ministers, it can only be within the framework of what is agreed between the parties. The negotiations leading to a coalition, and informed by the relative strength of the parties, will have included the number of Cabinet and more junior ministers for the respective parties as well as the portfolios they occupy. Such portfolios, it would seem, are open to negotiation at periodic reshuffles though it is notable that none of the Cabinet jobs have changed parties and that Cameron has avoided the sort of routine reshuffle that bedevilled previous administrations. Interestingly, upon the formation of the government in May 2010, newly appointed ministers of both parties were met jointly by the Prime Minister and the Deputy Prime Minister. More tellingly, when Cabinet Minister Chris Huhne resigned in 2012, the announcement of his replacement was made by the Deputy Prime Minister from Whitehall suggesting that having negotiated portfolios, the respective party leaders were responsible for appointments from within their own parties. Nonetheless, the two Liberal Democrats who have left the Cabinet (Huhne and David Laws) each tendered their resignation to the Prime Minister alone as is customary.

5.4. There are historical examples of dysfunctional relationships between ministers in a department, sometimes for ideological reasons and sometimes because of their personality. On a positive note, early on in the coalition, Higher Education Minister David Willets made an interesting statement when he said:

‘We come from different backgrounds and different parties. However, we work together day in, day out and I actually think it improves the quality of decision taking. What you find is that you have to offer evidence; you are challenged and questioned by someone from a different political party... It leads to better, more open, more transparent decision taking and working together is what the British people expect us to do.’

To that extent departments with ministers drawn from different parties might produce better, more thought through, policy. Constitutionally, that ministers are drawn from different parties does not matter where the department is functional. However, relations which become less functional could give rise to issues. One is wary of gaming for instance where say a Prime Minister appoints junior ministers known to be hostile to a junior partner's Secretary of State in the hope of impeding policy. It can be argued, however, that this is a potential state of affairs not exclusive to a coalition and in a multi-party government there is the natural check on such prerogative powers as described in 5.3.

6. Key Recommendations

- 6.1. Evidence suggests coalitions are now more likely. As such Parliament and Whitehall should prepare more detailed guidelines and structures likely to facilitate stable and legitimate coalitions in the future.
- 6.2. The concept of collective responsibility remains essential and the Ministerial Code should be updated to consider coalitions more explicitly. This should cover its maintenance, procedure for suspension and communication in advance to Parliament. Reactive, last minute suspensions should be discouraged.
- 6.3. The continuity of government by the incumbent during coalition negotiations is important. The Cabinet Office should publish guidance to 'caretaker governments' and communicate their importance.
- 6.4. The Salisbury-Addison convention has become outdated and should be replaced by a more contemporary understanding of the role of the House of Lords in respect of both coalitions and majority governments.

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Dr Andrew Blick, King's College London—Written evidence

Summary

- This evidence, submitted on a personal basis, draws partly from a project being undertaken by the Centre for Political and Constitutional Studies, King's College London, into the UK Cabinet Manual, supported by the Nuffield Foundation.
- The constitutional ramifications of coalition government, which might become a more frequent occurrence in future, are great. One impact is upon the principle of collective Cabinet responsibility. Coalition government presents challenges to this traditional method of operation, particularly because of the allowance made for 'agreements to differ' between ministers. Such exemptions to collective responsibility should be used only as a last resort, and tightly regulated.
- Lessons can be learned from practices in foreign states and at devolved level in the UK. Parties could indicate their preferred coalition partners in advance of general elections, and their priorities for a coalition negotiation. The use of investiture votes in advance of the appointment of a Prime Minister could help prevent the perception or reality of inappropriate monarchical involvement in party politics around coalition formation.
- A system of English MPs having a specific role in voting on 'English' legislation could bring about even more complex considerations surrounding coalitions, if a single party commanded a majority amongst UK MPs but not amongst English MPs.
- The proper relationship between the House of Commons and the House of Lords during a coalition is difficult precisely to discern, as is the status of a coalition agreement as compared with a single party manifesto. Consideration should be given to establishing a committee of both houses to attempt to reach consensus over these issues.
- The Civil Service can play a useful – though constitutionally complicated – role in planning for possible future coalitions and supporting inter-party negotiations following an inconclusive General Election. Officials personally appointed by ministers under the present proposals for an 'Extended Ministerial Office' might lack the perceived impartiality required for such tasks. During periods of coalition government, more special advisers should be recruited to handle sensitive party political issues.
- The political parties should, well in advance of the next General Election, seek to reach agreement over the procedures to be followed in the event of a further inconclusive outcome. The *Cabinet Manual* could form a basis for this discussion.

Introduction

1. The following evidence, though submitted by myself on a personal basis, arises partially from a project being undertaken at the Centre for Political and Constitutional Studies, King's College London, into the constitutional status of the UK *Cabinet Manual*, supported by the Nuffield Foundation.
2. This inquiry by the House of Lords Select Committee on the Constitution is both appropriate and timely. The advent of a coalition government in the UK, the first since 1945, has already raised a number of important concerns of a constitutional nature, and is likely to

continue to do so. Furthermore, electoral trends in the UK, with declining overall levels of support for the two main parties, make it a plausible proposition that coalitions, which were a regular feature of UK politics in the first half of the twentieth century, could in coming decades become more common once again.

3. The re-appearance of coalition on the contemporary UK constitutional agenda intersects with another tendency that has developed in the time since the last coalition: the increased codification of government practices, through publicly available documents such as the *Ministerial Code* (first published as *Questions of Procedure for Ministers* in 1992, though existing internally since 1945²) and the *Cabinet Manual* (published in its first edition in 2011). These texts and their relevance to coalition merit close consideration.

Overview: the constitutional framework

1. To what extent are the UK's existing constitutional conventions and practices unsuitable in the context of a coalition government?

4. Coalitions should not be regarded as alien to the UK constitution. In earlier eras, when some of the features of the UK constitution considered in this submission – such as the collective responsibility of ministers and the existence of an impartial, permanent Civil Service – were already developing or fully formed, coalitions could be a common occurrence.³ For instance, at the turn of the nineteenth/twentieth centuries, a Conservative/Liberal Unionist coalition held office. Coalitions of various sorts existed for roughly twenty-one of the thirty years up to 1945. There is no reason to believe these arrangements were an insuperable challenge to the UK constitution, or inherently incompatible with it. However, some of the difficulties discussed in this paper may have come about partly because there had, before 2010, been a period of sixty-five years of single-party government. Consequently there was no first-hand memory amongst politicians, officials or others as to how coalitions could or should operate.

2. What are the constitutional merits and demerits of coalitions compared to other means of forming a government in a hung parliament, such as minority governments or supply and confidence arrangements?

5. No one method should be regarded as inherently better or more desirable than any other. All must conform to the fundamental principle of the need to possess the confidence of the House of Commons, a tenet that has now acquired a degree of statutory acknowledgement through the *Fixed-term Parliaments Act 2011* (see s. 2). Furthermore, the personalities involved will be important alongside the mechanisms devised or chosen.

6. However, it is possible to make certain observations about the qualities of these different approaches to parliaments with no single party majority in the Commons. Coalitions possibly provide more stability through locking the different groups into government around an agreed policy programme. On the other hand, they raise issues about the legitimacy of that agenda, as discussed below, and about how to maintain collective responsibility between ministers. Single party governments without a Commons majority

² See: Amy Baker, *Prime Ministers & The Rule Book* (Politico's: London, 2000).

³ See: David Butler (ed.) *Coalitions in British Politics* (Macmillan: London, 1978). For the present coalition, see: Robert Hazell and Ben Yong, *The Politics of Coalition: How the Conservative-Liberal Democrat Government Works* (Hart: Oxford, 2012). See also: Vernon Bogdanor, *The Coalition and the Constitution* (Hart: Oxford, 2011).

may be less secure than coalitions and more likely – even after the passing of the *Fixed-term Parliaments Act* – to lead to earlier general elections. If the single party holding office draws its policies from the manifesto on which it ran in the General Election, it arguably enjoys more democratic legitimacy. However, it could be argued that since the party failed to win the election, its manifesto does not possess a mandate. Collective responsibility may be easier to maintain under single party minority governments.

7. A further distinction between coalition and single party arrangements is that the former may tend to internalise inter-party discussions within government, giving a greater role to Cabinet machinery and the Civil Service in these processes. Under an arrangement where a party is providing support to a government but not participating in it, such discussions will presumably take place more on a party-to-party basis, with the machinery of government less important. Under a single party minority government, it might be possible to involve members of a party outside government in Cabinet committees. Precedent for such an approach could be found in Liberal Democrat participation in the Tony Blair government in constitutional reform issues from 1997 (though in this case, Labour had a large Commons majority).

8. It should also be noted that coalitions are not only a means of handling 'no overall majority' scenarios. They can be formed even in circumstances where there exists a single party majority in the House of Commons. For instance, following the General Election of 1895, the Conservatives had a small overall majority but Lord Salisbury chose to continue in coalition with the Liberal Unionists. As well as operating in parliaments both with and without a single party majority, the form of coalitions can vary in other ways. They may include two parties (such as the Conservative/Liberal Unionist coalition and the present government) or more (such as the Second World War arrangement). They may involve whole parties participating, as the present coalition does, but they may also include individuals or factions from within parties (as took place under David Lloyd George from 1916 and Ramsay MacDonald from 1931).

9. It is possible in future that considerations regarding the different options referred to in this question could become more complex. The present coalition is considering means by which English MPs can have a specific role in legislation deemed to be English. If plans along these lines are implemented, complications could arise in circumstances when a majority exists for a single party amongst UK MPs, but that party lacks a majority amongst English MPs. This party could have difficulty in securing its programme in key areas such as health and education. How precisely this tension could be resolved is unclear, but there may be a need for some kind of limited coalition deal, or a supply and confidence arrangement with affect only in certain areas, though whether this approach would be sustainable is open to question. Perhaps the party with a UK majority would opt for a full coalition, even though it did not strictly need it for all types of legislation.

3. What lessons can be learned from the practices of other parliamentary democracies, including the devolved administrations in Scotland and Wales?

10. Many countries other than the UK and the devolved territories within the UK use electoral systems that are more likely than that employed for the UK Parliament to produce parliaments with no overall majority. Consequently, they have had to develop sophisticated means of managing these circumstances. It may be that the UK is entering a period when single party majorities become less common, though it is of course impossible to predict

such a trend with certainty. If such a pattern did develop in the UK, it may be necessary for parties to learn from practices in countries such as Germany, where in advance of an election smaller parties may give a clear indication of their preferred coalition partner, and perhaps even their priorities for a coalition negotiation. Such an approach would give a clearer guide to voters and perhaps enhance the democratic legitimacy of any government formed.

11. A series of significant observations regarding foreign and devolved practices are possible in relation to the role of heads of state. In countries where the head of state is either directly (in France) or indirectly (for instance, Germany) elected it is more acceptable for them to play an active personal role in facilitating government formation. In monarchies, the head of state lacks democratic legitimacy, making such intervention more problematic.

12. The monarch in the UK possesses certain prerogative powers and rights which could in theory be deployed to utilise influence over coalition formation processes, or at least be perceived as having been used in this way. The *Cabinet Manual* notes, for instance, the possession by the monarch of 'reserve powers to dismiss a Prime Minister or to make a personal choice of successor', though which have not been used since 1834 (para. 2.9). The monarch also has regular access to senior politicians including the Prime Minister. In 1931 George V used his position to wield personal influence on the formation of the National coalition government. Today such a role would probably be more controversial.

13. The *Cabinet Manual* refers to a 'convention...that the Sovereign should not be drawn into party politics' (para. 2.9). At the same time, the *Cabinet Manual* describes the monarch as being 'entitled to be informed and consulted, and to advise, encourage and warn ministers', suggesting that influence of some kind is still permitted (para. 1.5). A possible risk of engagement in party politics emerges immediately following an inconclusive General Election, when the choice of Prime Minister is not immediately clear, and there is potential for discretion being used in the use of the power to appoint the Prime Minister. In such circumstances, the *Cabinet Manual* states that 'the Sovereign would not expect to become involved in any negotiations' between potential coalition partners. But the text does not specifically preclude engagement by the monarch; and refers to 'responsibilities on those involved in the process to keep the Palace informed' (para. 2.13). However, one feature of the prerogative which could have been used to deploy royal influence in a Commons with no overall control has now been abolished. Since the passing of the *Fixed-term Parliaments Act 2011* dissolutions now take place on a statutory basis, rather than under the prerogative (s. 3). Nonetheless, monarchical activism remains theoretically possible and if coalitions become a more regular feature of UK politics it may prove to be a temptation hard to resist; or at least suspicions may develop that interference is taking place.

14. A way of avoiding any difficulties involving the perception or reality of inappropriate royal engagement in party politics would be for an investiture vote in the Commons to precede the appointment of a Prime Minister. This practice is employed, amongst other places, in the Scottish Parliament for the selection of the First Minister, with a statutory foundation in s.46 of the *Scotland Act 1998*. The process whereby the monarch appoints a Prime Minister, who is then confirmed by a parliamentary vote, could thereby be reversed. The emphasis would shift to the elected chamber as the instigator of coalition formation, rather than the monarch. Appointing a Prime Minister before subjecting them to Commons approval arguably gives the individual involved an initiative which should be in the gift of elected representatives. A change to this approach might be achieved through the

development of a convention included in the *Cabinet Manual*, or through the standing orders of the Commons, or statute. If the UK at some point in the future adopted a written constitution, the investiture vote procedure for the Prime Minister could form part of it.

Collective ministerial responsibility

4. Does the doctrine of collective responsibility require adjustment in the modern era? If so, in what way?

15. As noted above, coalitions have in the past been a regular enough feature of UK politics to suggest that it is possible for them to co-exist with the convention of collective responsibility. However, they certainly present particular challenges to the maintenance of this convention. While all governments, both single party and coalition, can contain divisions and rival factions within them, cleavages are likely to be clearer in a coalition. The present coalition contains two parties that contested the last General Election on different programmes; and – since apparently no attempt has been made to establish an electoral pact – will be fighting each-other on rival manifestos at the next General Election. Consequently, while it is in their interests for the time being to carry on a coherent, effective government, there is at the same time another dynamic – the need to differentiate themselves publicly from each-other.

16. Consequently, the two key features of collective responsibility have become strained. Under this convention, significant decisions are supposed to be subject to collective discussion, either in full Cabinet or a Cabinet Committee; and once a decision is made, all government ministers – within or without the Cabinet – are to defend it when required, and not dissent from it. Violating this outward loyalty requirement is not compatible with continued membership of Cabinet, or the holding of a ministerial post outside Cabinet (see eg: *Cabinet Manual*, paras 4.1-4.4; *Ministerial Code* paras 2.1-2.4). There is a danger – which seems to be manifesting itself – that ministers of either party will seek to publicly indicate policy ideas that have not yet been subject to collective approval; or that they will disavow policies which have been subject to collective approval. Sometimes such action will fall into grey areas and be difficult conclusively to define as a violation of collective responsibility. But one example of a breach seems to be when Liberal Democrats, including the Deputy Prime Minister, Nick Clegg, forced the withdrawal of parts of the government package for changes to the National Health Service, which must have been previously subject to collective discussion. Even if such action is choreographed behind the scenes between the Prime Minister and Deputy Prime Minister, it serves to undermine the public coherence of collective government.

17. These problems have been compounded by the introduction into the 2010 edition of the *Ministerial Code* of a generalised provision for collective responsibility to be suspended. Paragraph 2.1, which introduces the principle of collective responsibility, includes a reference to the possibility that it may be 'explicitly set aside'. Conceptually, these suspensions can be difficult to disentangle from free votes, but up to 2010, there had been three such agreements to differ: in 1932 over tariff reform (under the National coalition government) in 1975 over the referendum on continued membership of the European Economic Community (under the Labour government of Harold Wilson) and in 1977-8 over direct elections to the European Parliament (under the Labour government of James Callaghan). Each of these suspensions was provided for specifically and not part of a broader allowance for public disagreement as now exists in the *Ministerial Code*. In the case of the first two

suspensions they were clearly, publicly announced, and all three instances they were treated as exceptional. Now there is permanent provision for such opt-outs, and it is not entirely clear since 2010 how many have been applied and to which subjects. Another difference seems to be that in the earlier cases, Cabinet made a decision from which ministers were permitted to dissent. Now, as in the case of the 2011 referendum on electoral reform, it seems possible for Cabinet not to make a decision at all, with its members going their own way, presumably on party lines. This arrangement could be seen as a weakening of Cabinet. Finally, it is not clear that ministers have been issued with comprehensive guidance as to how they should go about expressing their dissent. This position contrasts with earlier arrangements. In 1975, for instance, Harold Wilson placed a clear set of limitations upon ministers engaging in public debate, the gist of which was published. Ministers were under a requirement to 'avoid personalising, trivialising, or sensationalising the argument' in a divisive fashion. Whether the conduct of Cabinet members during the 2011 referendum would have complied with these earlier rules is open to question.

18. The possibility of an erosion of the convention of collective responsibility should be taken seriously by this Committee, since, for better or worse, it would amount to a major change to the UK constitution. In a coalition context it might mean in practice that genuine collective decision-making ceased, to be replaced by less formal inter-party negotiations. For many years observers have incorrectly argued that prime-ministerial government was supplanting collective Cabinet government. The real threat to Cabinet may come from an inability for it as a group to reach and stand by decisions. On each occasion Cabinet members choose to release themselves from the constraints of collective responsibility, they may obtain short-term political benefits, but they diminish the institution in which they participate.

5. How, if at all, does the doctrine need to be altered to allow Parliament to hold coalition governments properly to account?

19. Generally Parliament holds ministers to account individually for their policies and the administration of their departments. This position need not alter even if there are difficulties with the convention of collective responsibility. It is over more major issues, particularly those involving a confidence vote, that Parliament holds the government as a whole to account. Even if the Cabinet is experiencing difficulties in retaining its collective coherence, it is still possible for Parliament – and beyond that the electorate – to make judgements about its viability and act accordingly. Indeed, assessments of a government could be derived partly from its perceived unity or otherwise.

6. How does the doctrine interact with the Fixed-term Parliaments Act 2011? In particular, what is the impact of the reduction in potential confidence votes in the House of Commons?

20. The principle that the government of the day must possess the confidence of the Commons will remain. Its viability is not measured by the number of confidence votes that take place. If a coalition government lost this confidence, for instance because one or other of the parties in a coalition pulled out, it would still fall.

7. In what circumstances should the Government be able to suspend collective responsibility? When and how should such a suspension be announced? What should be the consequences of a suspension?

21. Suspensions of collective responsibility should be treated as exceptional. They should not be treated as though they are a permanently available option. If reference must be made to the possibility of an 'agreement to differ' in the *Ministerial Code*, its highly irregular nature should be stressed. If they are treated too lightly, the temptation to use such opt-outs will be strong. There is a real danger that suspensions of collective responsibility could come to be regarded as the easier alternative to difficult policy discussions. In such circumstances, referendums are also likely to become a more frequent occurrence, which in turn raise various other concerns previously considered by this Committee.

22. Consequently, suspensions should only be used when every other possible means of reaching collective agreement has been exhausted. They should be adopted by Cabinet as a whole, so that at least the departure from collective responsibility is in a sense a collective act. They should relate to policy issues of first order importance, over which there are fundamental disagreements. They should be negotiated individually; and announced only at the point that it becomes impossible to avoid any other course of action. Suspensions should be clearly time-limited; and ministers should register their position with the Prime Minister. Ideally, the arrangement should be that Cabinet takes a decision on a particular subject, from which those ministers who cannot support it then dissent, with the fact that they are dissenting publicly announced. If unavoidable, there should be no Cabinet decision on an issue, with ministers free to take positions around it until it is resolved. For the limited period during which suspensions apply, ministers should be bound by clear rules. They should not directly target individuals – particularly fellow ministers – with their comments, and should avoid becoming associated with such activities carried out by others; and they should not respond directly to statements made by fellow-ministers. It may be appropriate to adapt the stipulation of 1932 that ministers could dissent from the majority Cabinet position, but not 'carry their opposition to the point of conducting a campaign against' it, though this rule would be difficult to adhere to during a referendum. Ministers should always consider the need not to undermine the integrity of the government; and that there will have to be a successful resumption of full collective responsibility at the end of the opt-out period.

Democratic legitimacy and electoral mandates

8. What is the status of coalition agreements, and how do they interact with party manifestos?

23. The status of coalition agreements as a component of the UK constitution is at most in its early stages. However, it is possible that a variety of conventions, influenced by this document and its implementation, as well as future possible agreements, will develop. The present government appears to be of the view that the so-called Salisbury-Addison agreement applies to the coalition agreement. This agreement was first established to allow the programme on which the Labour government of 1945 was elected to pass without substantial resistance from the Lords. At first, then, it applied to the commitments contained in the manifesto of the single party which won the election (though it might be argued that the Liberal Party and its successor the Liberal Democrats were never party to it). Over time governments have come to claim that it applies to their whole legislative programme, not just the contents of their manifesto. In its *House of Lords Reform Draft Bill* paper of 2011, the coalition stated that 'the House of Lords should pass the legislative programme of the Government which commands the confidence of the House of Commons' and that 'whether or not a Bill has been included in a Manifesto, the House of Lords should think very carefully

about rejecting a Bill which the Commons has approved' (para. 8). However, a convention involving the relationship between the two Houses by definition must rest on some degree of consensus. The government alone cannot define it; and the Lords can take its own view on the validity of this claim.

9. How, if at all, should the format of manifestos be changed to reflect the likelihood of hung parliaments? In particular, is there a case for parties specifying in their manifestos which of their commitments are intended to be non-negotiable?

24. It would arguably be useful for the electorate if parties – and possibly in particular smaller parties – were to indicate what were their higher priorities on which they would be less willing to give ground in the event of coalition negotiations, especially if general elections not producing a single overall winner become more regular. Such a practice could help enhance the democratic legitimacy of coalition agreements and perhaps provide a more satisfactory basis for the extended application of Salisbury-Addison. However, parties may be reluctant to give away too much of their bargaining position in advance of negotiations. Moreover, if two parties seeking to form a coalition each have supposedly non-negotiable commitments that directly contradict each-other, then there will be a need for flexibility.

25. It should be noted that coalition negotiations may produce policies that were in none of the manifestos of the parties comprising the government. For instance, neither the Conservative nor the Liberal Democrats were committed to holding a referendum on whether to adopt the Alternative Vote for elections to the House of Commons, which was in fact a commitment in the Labour manifesto in 2010.

26. Furthermore, there are wider limitations on manifestos which apply in the case of coalitions and more generally. Many voters will be unaware of any given commitment which they are supposedly endorsing. Moreover, no government can operate solely on the basis of its manifesto. Such documents cannot give precise details of how a policy will be implemented; and it is not possible to anticipate every development to which a policy response will be necessary.

10. Should the main political parties seek to agree before a general election the processes they will follow in the event of a hung parliament? In particular, should the parties aim to agree on the length of time allowed for inter-party negotiations? If so, what should that length of time be?

27. If there is to be agreement it probably needs to be secured a substantial period before the likely date of the next general election, and be made publicly. One means of proceeding would be through the parties publicly confirming whether the arrangements provided for in the *Cabinet Manual* are in their view satisfactory, and if they are not, the ways in which they believe they should be altered or enhanced. There is no reason to suppose that the length of time negotiations took in May 2010 was a problem. It is better to establish a viable agreement than to rush into an arrangement that could create more instability in the long run.

11. What is the proper role for the civil service in the inter-party negotiations following a general election resulting in a hung parliament?

28. The *Cabinet Manual* stipulates that if the leaders of the parties taking part in coalition

negotiations request Civil Service assistance, it is to be arranged by the Cabinet Secretary, provided the Prime Minister approves. Any such support must be given on a basis of parity to all the parties taking part in negotiations, including the governing party (para. 2.14).

29. In May 2010, while the Civil Service did provide this support, it was seemingly only of a limited nature. But the practice does raise difficult questions involving to whom civil servants are accountable when assisting negotiations in this way, and how. Normally, officials answer to ministers who in turn are responsible to Parliament, but it is not immediately apparent how this principle would apply in this case. Another question is whether Freedom of Information requests are applicable to coalition negotiations, particularly when civil servants are involved.

30. Further observations regarding the role of civil servants in a coalition are possible. It seems clear that special advisers, given their close personal links to ministers and association with parties of government, have an important role to play in ensuring the smooth functioning of coalitions. Ideally, the present government probably would have employed more special advisers than it has, but it has felt politically restrained in doing so. This lack of partisan support, including at No. 10, may have contributed to present frustrations amongst ministers regarding the Civil Service, and encouraged the present plans to allow for a greater ministerial discretion in choosing key officials through the creation of an Extended Ministerial Office. Such a fundamental change does not seem to have been given sufficient consideration, and a better option might be simply to appoint more special advisers.

31. The proposal to introduce greater ministerial patronage to the Civil Service could raise difficulties in a future coalition negotiation. The ability of officials to support coalition negotiations rests on their being impartial and being seen as such. Any official who was perceived as closely associated with a particular minister who brought about their appointment might be regarded with suspicion by figures from other political parties, and therefore not deemed an appropriate person to help facilitate coalition formation.

32. A final Civil Service issue deserving consideration is that of pre-election contacts. The Prime Minister authorises contacts with opposition parties at some point in advance of a General Election (see *Cabinet Manual*, para. 2.21). This practice enables both officials and opposition leaders to prepare for a possible change of government. However, the position regarding coalitions is more complex. For instance, can one party in a coalition government hold discussions with civil servants covering the eventuality of it forming a single-party government after the next General Election? Or can the Civil Service involve itself in discussions involving the possibility of a different coalition between a party which is presently part of a government, and another party presently in opposition? Once again, the usefulness of civil servants perceived as too close to particular government ministers who secured their appointment would be limited in such activities.

12. How does the role of the House of Lords change when there is a coalition government?

33. Precise prescriptions are difficult in this area. The House of Lords may wish to balance competing considerations. The key issue is the democratic legitimacy associated with the Commons, the basis for its primacy over the Lords. As discussed elsewhere in this submission, particular policies of a coalition may not have the democratic mandate that is arguably conferred by their inclusion in the manifesto of a winning party. But at the same time the coalition as a whole may comprise parties which received combined support from

voters greater than that of a single party government, and in this sense greater democratic legitimacy. Ultimately it is a matter for the House of Lords to determine how it should behave and interpret the conventions governing its relationship with the House of Commons.

13. How (if at all) does the Salisbury–Addison convention apply in a hung parliament? How does the convention interact with manifestos and coalition agreements in these circumstances?

34. As discussed above, the present government has promoted the view that the House of Lords should not obstruct a government programme, even if its contents did not appear in a manifesto. If this argument is accepted, then the coalition agreement can be regarded as subject to Salisbury–Addison. If coalitions appear to become a more regular feature of UK politics, there could well be a need for the convening of a Joint Committee of both houses, which revisits the work of the Joint Committee on Conventions of 2006, and seeks to reach a consensus on these issues.

The internal organisation of the government in a coalition

14. What constitutional principles should govern the royal prerogative of appointing ministers, and the allocation of ministerial portfolios, under a coalition?

35. A feature of constitutional conventions is that they can change; and it is held that a strength of the UK constitution, of which conventions are an important component, is that it is able to adjust to shifting circumstances. Consequently, if we are entering (or returning) to a period when coalition governments are a regular occurrence, we can reasonably expect conventions to develop to accommodate this new reality. The present coalition has set what may prove to be an important precedent in setting out in a published document, the *Coalition Agreement for Stability and Reform*, the formula for dividing posts between the two parties; and stating that no decision can be made regarding appointments of Liberal Democrat ministers without ‘full consultation’ with the Deputy Prime Minister (para. 1.4). Each given coalition will probably want to determine precisely how it operates, but this idea could serve as a model for the future.

15. What is the constitutional status of the office of Deputy Prime Minister in a coalition? In particular, what formal and/or informal control should the Deputy Prime Minister exercise over those royal prerogatives conventionally exercised by the Prime Minister alone?

36. The post of Deputy Prime Minister has an uncertain constitutional existence. The precise functions that should be attached to it are unclear; and there is no absolute requirement that it should even exist. However, it is likely that, within a coalition, the leader of the party that is not allotted the premiership (or, in a multi-party coalition, the leader of the largest party not allotted the premiership) may well be given a special post with some kind of coordinating role, whether or not they are specifically labelled ‘Deputy Prime Minister’. In the Second World War, the Labour leader Clement Attlee – who had already been performing a coordinating function in the Winston Churchill coalition since 1940, with the post of Lord Privy Seal – became the first official holder of the Deputy Prime Minister title. Nick Clegg occupies the same post, for similar reasons, now. It should be noted that there is no absolute reason that the largest party in a coalition should provide the Prime Minister and a smaller party the Deputy Prime Minister or equivalent. In the David Lloyd

George coalition created in 1916, this position was reversed, with Lloyd George holding the premiership despite leading a group of MPs smaller than the Conservatives, the leader of which, Andrew Bonar Law, initially performed a 'Deputy Prime Minister'-type function, though without this specific title. In all circumstances, it is not only structures and job titles but the relationship between party leaders in a coalition that is important. This aspect of the present coalition seems to have been a success, notwithstanding other difficulties noted in this submission, with David Cameron and Nick Clegg operating together well.

16. What special considerations should be given to the cabinet committee system under a coalition?

37. In contemporary circumstances, any exercise of collective government, either in a coalition or single-party arrangement, will inevitably depend heavily upon Cabinet committees, with only the most important or contentious issues being considered in depth at full Cabinet. Cabinet committees should be used in a coalition to ensure as far as possible that all intra-governmental, party divisions (alongside other discussions) are internally resolved, avoiding the use of opt-outs from collective responsibility. The present approach, whereby each Cabinet committee has a chair from one party and a deputy chair from the other, seems appropriate. But whatever structures and mechanisms are deployed, they must be accompanied by the will amongst ministers to make a success of collective government. Whether this will exists is questionable.

38. The current government also established at the outset a Coalition Committee, with the Prime Minister and Deputy Prime Minister as co-chairs. The two coalition parties are represented in equal numbers on this Committee, which is responsible for oversight of the functioning of the coalition as a whole. It seemingly meets weekly, or more often as necessary. The chair or deputy chair of a Cabinet committee can refer disputes to the Coalition Committee.

39. In some ways the Coalition Committee seems to assume functions that might more traditionally be performed by the full Cabinet, such as overall strategy and handling major disagreements. It might be advisable for the Select Committee on the Constitution to probe how the Coalition Committee has worked in practice and its relationship with the full Cabinet. An interesting question is whether a Cabinet committee with equal numbers from both parties can take contentious decisions accepted as legitimate by the party with larger parliamentary representation and popular support.

17. What constitutional issues arise when there are ministers from different parties within an individual department?

40. If it is possible for two or more parties to work together in a coalition within the framework of collective Cabinet responsibility, then ministers of different parties should be able to occupy the same department. Indeed, the deliberate use of this practice across the board by the present coalition is to be welcomed, as a way of encouraging effective collaboration, and presenting unified proposals to Cabinet. Once again, personality will be important. The ministers must be able to work together.

10 August 2013

Professor Robert Hazell, Constitution Unit, UCL—Written evidence

Overview: the constitutional framework

There are three respects in which the constitutional framework could usefully be tightened up:

Duty on incumbent Prime Minister to remain in office

This was considered by the Lords Constitution Committee in their report on the draft Cabinet Manual (Twelfth Report, March 2011). In that report the Committee stated:

It is a matter of debate as to whether a Prime Minister has a duty to stay in office until it is clear who might command the confidence of the House of Commons. The Manual should distinguish between the right to remain in office and the duty to do so ... [and] state that there is a degree of uncertainty on this point (para 59).

The Cabinet Office accordingly redrafted the Cabinet Manual to read as follows:

... it remains a matter for the Prime Minister, as the Sovereign's principal adviser, to judge the appropriate time at which to resign ...¹ Recent examples suggest that previous Prime Ministers have not offered their resignations until there was a situation in which clear advice could be given to the Sovereign on who should be asked to form a government.¹³ It remains to be seen whether or not these examples will be regarded in future as having established a constitutional convention (para 2.10).

It would be helpful if the Committee could be less equivocal, and support the views of Lords Armstrong, Butler, Wilson and Turnbull that there is a duty on the Prime Minister to remain in office until it is clear who should be appointed in his place. After the last election Gordon Brown was denounced by the Sun for being a 'Squatter in No 10'. If the Cabinet Manual stated the position more clearly, it would make it easier for constitutional experts and election commentators to say more confidently that Prime Ministers in Brown's position are under a duty to remain in office until they can advise the Sovereign who should be appointed in their place.

Investiture vote

An alternative appointment process would be to have as the first item of business in the new Parliament (after swearing in) an investiture vote, whereby the new House of Commons elected the Prime Minister. This is the process followed in Scotland (under s46 of the Scotland Act 1998), whereby the Parliament chooses the First Minister, and the Monarch then appoints the person nominated by the Parliament.

That would have the merit of being more transparent, and clearly demonstrating that the Prime Minister commands the confidence of the new Parliament. It would require the incumbent Prime Minister to remain in office until the investiture vote. Given the 'removal van' attitude to Westminster elections, that might prove uncomfortable if it was clear that the opposition party or parties had won the election.

Caretaker convention

The Cabinet Manual has been greatly improved by recognising three separate contexts in which the incumbent government will be restricted in what it can do, because it no longer commands the confidence of Parliament. These are in the pre-election period, once Parliament has been dissolved; post-election, if there is doubt about who can command confidence in the new Parliament; and mid term, following a successful no confidence motion. But the Cabinet Office is unwilling to use the terms ‘caretaker government’ or caretaker convention, although these terms have been readily adopted in Australia and New Zealand.

This may in part be because Cabinet Office still tends to associate restrictions on government activity with restrictions on government publicity: the so-called ‘purdah’ rules. But the restrictions on government publicity apply during any election (local elections, devolved elections, European elections), in order to prevent the governing party from seeking unfair advantage by issuing good news stories from Westminster. The two sets of rules come together during a general election campaign. It would help to keep them conceptually and practically distinct if Cabinet Office could adopt the term ‘caretaker convention’ to describe the restrictions on government decision making. The ‘purdah’ rules describe the restrictions on government publicity, which apply during any election, even when the government has a majority.

We now answer the Committee’s specific questions.

1. To what extent are the UK’s existing constitutional conventions and practices unsuitable in the context of a coalition government?

The UK’s flexible constitution is easily adaptable. In practice, very little adaptation has been required for the circumstances of the current coalition. It enjoys a comfortable majority in the House of Commons, and governs in a majoritarian way.

2. What are the constitutional merits and demerits of coalitions compared to other means of forming a government in a hung parliament, such as minority governments or supply and confidence arrangements?

In a hung Parliament where no single party commands a majority, it will require co-operation between parties to get any legislation passed. Under a coalition that negotiation and co-operation takes place within the government. Under minority government, it takes place within Parliament, with a separate ‘mini-coalition’ of support being required for each bill. Coalition is generally more stable than minority government, because the parties can form a majority. But some coalitions are also minority governments: as has often happened in Denmark, and New Zealand.

3. What lessons can be learned from the practices of other parliamentary democracies, including the devolved administrations in Scotland and Wales?

See the last three of our publications listed above, which all draw heavily on the lessons from overseas. The secret of good coalition government in New Zealand has been summarised as ‘good faith and no surprises’. In the UK’s 2010 Coalition Agreement for Stability and Reform this was expanded to:

‘goodwill, mutual trust and agreed procedures which foster collective decision making and responsibility while respecting each party’s identity’.

Collective ministerial responsibility

4. Does the doctrine of collective responsibility require adjustment in the modern era? If so, in what way?

It is up to each administration to decide how much it wishes to observe collective responsibility. The Prime Minister will publish his government’s rules of collective discipline in the Ministerial Code, and now in the Cabinet Manual. There is also a separate section devoted to collective responsibility in the Coalition Agreement for Stability and Reform (section 2, 21 May 2010). In practice all modern governments observe a high degree of collective responsibility, because they will get punished in the media and by the electorate if they fail to do so. Media stories of party splits, and public perceptions of divisions and disloyalty, are very damaging to a party’s electoral fortunes.

Under coalition members of the government continue to support government decisions, but are free to acknowledge that the decision was a compromise between different points of view of the coalition partners. But our Whitehall interviews in 2011 found that differences of view were more frequent between ministers of the same party (eg between Ken Clarke and Theresa May, or Vince Cable and Chris Huhne) than between ministers from different parties.

5. How, if at all, does the doctrine need to be altered to allow Parliament to hold coalition governments properly to account?

The doctrine requires no alteration, because it allows for some flexibility. An example would be the four exceptions mentioned in the 2010 Programme for Government where the Conservatives and Liberal Democrats agreed to disagree. But there may need to be minor alterations in parliamentary practice. For example, at PMQs, the Liberal Democrats have lost visibility, because the supplementary question which used to be offered to the Liberal Democrat leader has now become an additional question for the Leader of the Opposition. Procedural difficulties have also arisen in the Lords about whose turn it is to speak next.

6. How does the doctrine interact with the Fixed-term Parliaments Act 2011?

In particular, what is the impact of the reduction in potential confidence votes in the House of Commons?

There has been no reduction in potential confidence motions. The rules for no confidence motions have not changed. A no confidence motion still requires a simple majority to be passed. What has changed is that if no new government is formed within 14 days which can command a majority, then Parliament is dissolved. The other change is that the House of Commons can vote for its own dissolution: but that requires a high threshold, of two thirds of the House.

7. In what circumstances should the Government be able to suspend collective

responsibility? When and how should such a suspension be announced? What should be the consequences of a suspension?

The government should be able to suspend collective responsibility whenever it wants. The Prime Minister can announce the suspension, its terms and its duration. The consequences of such a suspension were in evidence during the AV referendum in 2011, when the Conservatives and Lib Dems campaigned on opposite sides. The government retained collective responsibility on all other issues. The long term consequences for a government which suspends collective responsibility too frequently are political, and electoral: governments which are perceived to be excessively divided generally get punished at the polls.

Democratic legitimacy and electoral mandates

8. What is the status of coalition agreements, and how do they interact with party manifestos?

A coalition agreement is the programme for government agreed by the coalition parties. It is not necessary for them to publish such a programme, but it helps in terms of coalition planning and management, and the transparency and accountability of the government if they do so. The agreement combines elements from the coalition parties' respective manifestos: how much of each manifesto is reflected in the agreement will depend on the negotiating strength and skill of the parties.

In 2010 it was commonplace for critics to say 'But I didn't vote for the coalition', or 'I didn't vote for this coalition agreement'. One way to reinforce the status of the coalition agreement might be for the opening debate on the Queen's Speech to be one in which the House of Commons is invited to vote on the coalition agreement as the programme for the whole Parliament, and not just to approve the legislative programme of the first session.

9. How, if at all, should the format of manifestos be changed to reflect the likelihood of hung parliaments? In particular, is there a case for parties specifying in their manifestos which of their commitments are intended to be non-negotiable?

This is a matter for the political parties. Their manifesto writers are certainly likely to have half an eye on the possibility of negotiations following the election, whether for coalition or minority government. Some manifesto pledges may be drafted as non-negotiable; others as bargaining points. Mindful of the damage subsequently caused to the Lib Dems by their firm pledge in 2010 to abolish student tuition fees, parties will beware of making excessively firm commitments which might subsequently have to be modified. Another lesson from 2010 is to recognise the advantage that comes from a detailed manifesto with a lot of commitments. The 2010 Programme for Government was 75 per cent Conservative but only 40 per cent Lib Dem; one reason was that the Conservative manifesto had contained over 550 pledges, and the Lib Dem manifesto well over 300.

10. Should the main political parties seek to agree before a general election the processes they will follow in the event of a hung parliament? In particular, should the parties aim to agree on the length of time allowed for inter-party negotiations? If so, what should that length of time be?

The most important thing for the parties to plan in advance is the internal processes which they will follow, in terms of their negotiating team, its reporting lines, and how the party will be consulted and approve any coalition deal. The Labour party got this badly wrong in 2010. The Lib Dems consulted their party extensively, thanks to the 'triple lock' provision in their constitution.

In planning for possible negotiations, it would be helpful if the parties could agree some of the basic logistics in advance, so that the Cabinet Office can make the necessary preparations. For example, in 2010 three possible venues were prepared: Admiralty House, Cabinet Office and the House of Commons. If one venue could be agreed in advance, that would save unnecessary expenditure.

The 'five days in May' to negotiate the 2010 coalition agreement was exceptionally short by comparative standards. In most European countries it takes weeks, or even months. But in fact it took 14 days to negotiate the Conservative-Lib Dem Programme for Government, published on 20 May 2010. What was unusual was publication of an interim agreement. That initial coalition agreement of 12 May was 3000 words; the detailed Programme for Government was almost 16000 words. (To illustrate the difference, the initial agreement was silent about NHS reform, with a single pledge devoted to the health service; in the PfG, this expanded to 30 pledges). But there is a trade off between the duration and the momentum and secrecy of the negotiations: in 2010 the parties were able to maintain tight secrecy because the negotiations were so short. Another reason for the short negotiations in 2010 was the political arithmetic. If in 2015 the balance of parties is more even, with several plausible coalition options, the negotiations could take longer.

11. What is the proper role for the civil service in the inter-party negotiations following a general election resulting in a hung parliament?

The civil service stands ready to play any role which the parties want. In Scotland this has included being in the room, taking notes and providing summaries for the parties of the state of play. In 2010 it was the parties who decided they did not want that kind of support. The civil service could also provide advice to the parties upon request, about the cost or the feasibility or the timetable for implementing particular policies. That could help to avoid commitments in the programme for government which subsequently prove to be impracticable. But there would need to be a clear protocol about the terms on which such advice was provided, in terms of its availability (to all the negotiating parties?), confidentiality etc.

There is a separate issue about access to civil service advice before the election. Access to such advice for opposition parties is explained in para 2.21 of the Cabinet Manual. No such facility is offered to governing parties. They can use their position in government to ask the civil service for advice on policies which carry beyond the next election. But the Liberal Democrats feel disadvantaged. Conservative Secretaries of State can ask for briefings across the department's whole range of policies. Lib Dem junior ministers are limited to their own portfolios. So for example Jeremy Browne MP, as the Minister for Crime Prevention, cannot ask for briefings on immigration or police reform.

Whitehall has been considering a protocol whereby a Secretary of State could commission a private briefing for his or her eyes only, with the authorisation of the Permanent Secretary. And a junior Minister could commission a private briefing, with the authorisation of the

Secretary of State. But Lib Dem junior ministers might be understandably reluctant to disclose to a Conservative Secretary of State how their minds are working.

An alternative solution might be for all requests for pre-election briefing to be channelled down the same route as advice to opposition parties. In that way all the parties, whether in government or opposition, would be treated on the same footing. Election briefing Policy Units might be established in all departments, subject to a common protocol, which would be policed by the Permanent Secretary.

12. How does the role of the House of Lords change when there is a coalition government? The House of Lords is already a chamber in which the government does not have a majority, so it is used to the fact that the government has to construct a coalition of support for each bill. Since the advent of the Conservative-Lib Dem coalition, the government's task has become slightly easier, because the Liberal Democrats are now part of the government. Under the Labour government 1997-2010 the Liberal Democrats were the pivotal party in the Lords, and determined the outcome of most divisions: now it is the cross benchers who are the pivotal group. Under Labour the government lost roughly 1 in 3 divisions; under the coalition it has averaged 1 in 5.

13. How (if at all) does the Salisbury–Addison convention apply in a hung parliament? How does the convention interact with manifestos and coalition agreements in these circumstances?

The convention has come to apply to all government bills, not just to bills mentioned in manifestos.. The Joint Committee on Conventions said in 2006 that 'to reject Bills at Second Reading on a regular basis would be inconsistent with the Lords' role as a revising chamber'. In allowing government bills a Second Reading, the Lords are acknowledging the democratic legitimacy of the elected chamber.

The internal organisation of the government in a coalition

14. What constitutional principles should govern the royal prerogative of appointing ministers, and the allocation of ministerial portfolios, under a coalition?

Ministers are appointed by the Crown on the advice of the Prime Minister. The allocation of ministerial portfolios will be a matter for negotiation between the coalition parties. The starting point is usually that the number of ministerial posts allocated to each party should reflect their respective strengths in the House of Commons; but the smaller party often gets more than its proportionate share.

The smaller party faces a strategic choice: whether to go for depth or breadth. In 2010 the Liberal Democrats chose breadth, trying to spread their ministers across almost all Whitehall departments.

15. What is the constitutional status of the office of Deputy Prime Minister in a coalition? In particular, what formal and/or informal control should the Deputy Prime Minister exercise over those royal prerogatives conventionally exercised by the Prime Minister alone?

The office of DPM has no formal constitutional status. It is up to the PM and DPM to negotiate at the start of the coalition what role the DPM will play, as Cameron and Clegg did in 2010. The control of the DPM over the powers exercised by the PM is spelled out in the Coalition Agreement for Stability and Reform of 21 May 2010:

- The initial allocation of Cabinet, ministerial, Whip and Special Adviser appointments between the two parties was agreed between the PM and DPM
- Future allocations will similarly be agreed between the PM and DPM, including any changes to the allocation of portfolios between the parties
- No Liberal Democrat minister or Whip may be removed without full consultation with the DPM
- The appointment of Privy Counsellors will be made following full consultation with the DPM
- When the PM is consulted over the Budget, the DPM should also be consulted
- The establishment of Cabinet Committees, their members and terms of reference will be agreed with the DPM
- The DPM will serve on each Cabinet Committee and sub-Committee, or nominate another member of the government to do so
- The general principle will be that the PM and DPM should have a full and contemporaneous overview of the business of government. Each will have power to commission papers from the Cabinet Secretariat
- The Coalition Committee (the top Cabinet Committee) will be co-chaired by the PM and DPM
- The PM will consult with the DPM on all public appointments.

16. What special considerations should be given to the cabinet committee system under a coalition?

The Cabinet Committee system is the main mechanism whereby the coalition parties jointly sign off on all government policies, through meetings and through 'write rounds' to all the members of Cabinet Committees. Under the present coalition's procedural agreement of 21 May 2010 all Cabinet Committees have a chair from one party and deputy chair from the other. The chair and deputy chair must jointly agree the agenda for all meetings and the content of write rounds. In practice all important issues are negotiated informally first, in a variety of forums: the PM and DPM's weekly bilaterals, the Quad (PM and DPM plus Chancellor and Chief Secretary), regular meetings of Oliver Letwin and Danny Alexander, Ed Llewellyn and Jonny Oates, etc. So the joint agreement to a policy in Cabinet Committee is often the formal signing off on a series of informal discussions.

17. What constitutional issues arise when there are ministers from different parties within an individual department?

The Liberal Democrats have ministers spread across 15 Whitehall line departments. The most common pattern, found in a dozen departments, is for a Conservative Secretary of State to have one Liberal Democrat amongst his team of junior ministers. In addition to managing their own portfolio, these Lib Dem junior ministers are meant to maintain a watching brief across the whole department, and to ensure that all policies are 'coalitionised' within the department. In practice the extent to which each Secretary of State involves the junior ministers is a matter for them. Some junior ministers have been marginalised, denied

access to meetings and papers, and there has been nothing which No 10 or the ODPM can do to persuade a recalcitrant Secretary of State to be more inclusive. A second difficulty has been the imbalance of resources: junior ministers have small Private Offices, typically with a quarter of the support provided to a Secretary of State, and it is very hard to monitor the whole of a department's policies with such small capacity. This is why in autumn 2011 the Liberal Democrats were assigned an additional six Special Advisers, allocated so that there is roughly one supporting every two Lib Dem junior ministers.

2 October 2013

Dr Felicity Matthews, The University of Sheffield—Written evidence

Overview

1. The 2010 general election produced the first hung parliament in nearly forty years, and resulted in the first formal coalition government since 1940-5. This outcome challenged the conventional *expectations* of Westminster politics: that arithmetic of the simple plurality electoral system – combined with the structure of the party system and the parties' electoral support bases – would result in a decisive outcome rewarding a single party with the spoils of government.
2. Yet, it is important to note that coalition government is *unexceptional*. Constitutional reforms intended to realise a more consensual model of democracy were introduced throughout the twentieth century, and gathered pace from 1997 onwards. In particular, the process of devolution in Scotland and Wales has meant that minority and coalition politics is anything but exceptional. Moreover, coalitions at Westminster are not without historical precedence, with the Conservative and Liberal parties governing together in 1895, 1916 and 1931.
3. The experience of coalition and minority government in Scotland and Wales constitutes a fertile site of lesson-learning and good practice. In Scotland and Wales, non-majority governments have clearly been accepted as legitimate governing outcomes by parliamentarians and the public, reflected in the relative stability of their cabinets. The average duration of cabinets in both legislatures is 1,327 days for coalitions and 917 days for single party minorities, which significantly exceeds the respective European averages of 868 days and 552 days (1945-1999).
4. Undoubtedly, there are important constitutional and institutional differences between Westminster and its devolved counterparts. The Westminster system of government rests on the capacity of the executive to dominate the legislature, which is a source of in both governing *stability* and *strength*; whilst the institutional structures associated with devolution have been purposely calibrated to realise a more consensual form of governance. It is also important to note the different competencies of the devolved regions and Westminster, which have generated alternative governing imperatives. Nonetheless, these differences should not be overstated, as the devolved administrations and Westminster are 'most similar' owing to a shared constitutional history and culture; the cross-over of parties and individuals between the two levels; and the way in which the experiences of governing at each level reflect the continued shift towards greater 'modified majoritarianism'.

Collective ministerial responsibility

5. Coalition government runs counter to the expectations of a single-party majority cabinet, and is seen to challenge collective decision-making. Yet, such a simple read-off rests on an assumption that political parties are homogenous entities, and a more accurate and nuanced approach to political parties would be to view them as flexible umbrella organisations that span a range of factions and groupings. In reality, parliamentary parties are often heterogeneous, and in Westminster democracies politicians tend to face a number of conflicting loyalties to their constituents, their party and to Parliament. There is a long – indeed, often colourful – history of such schisms and divided being acted out within the arena of government.
6. There is therefore no automatic reason to assume that and coalition government undermines collective responsibility *within* Cabinet. Several mechanisms have been created to ensure greater

cohesion within Cabinet; and the relative infrequency of Cameron's ministerial re-shuffles has further prompted stability. There are also important pragmatic electoral incentives for cabinet stability.

7. However, it is clear that *beyond* Westminster, the binds of collective responsibility are weaker. Both parties acknowledge that coalition is a short-term arrangement; and as the 2015 general election approaches, each party has attempted to distinguish itself in terms of ideology and policy. This is known as the 'unity-distinctiveness dilemma'⁴, whereby coalition partners seek to simultaneously maximise governing coherency effectiveness whilst promoting their individual identities. The recent Eastleigh by-election witnessed fierce competition between the Conservatives and Liberal Democrats, the Secretary of State for Work and Pensions advising the Conservative candidate to continually remind voters that 'your last MP was a liar'. Similarly, at the Liberal Democrats' 2013 spring conference, the Deputy Prime Minister robustly criticised his Conservative colleagues for failing to deliver a fairer society.

8. A simple reading of Fixed-Term Parliaments Act 2011 would suggest that the fixing of parliaments, and the requirement of an extraordinary majority in the House for its dissolution, have altered the basis of Parliament's right to express its confidence in the government of the day. Nonetheless, the political reality is that the Act at best preserves the status quo and at worst further insulates government in terms of parliamentary accountability. In reality it is unimaginable that – should a Prime Minister deem it necessary – the decision to dissolve parliament early will be met with resistance within the House, thus risking a 'lame duck' government.

9. It is entirely compatible with constitutional tradition for any government to collectively agree to set aside collective responsibility. The current *Programme for Government*, contains provisos for the relaxation of collective responsibility around issues such as university tuition fees and electoral reform, and the Ministerial Code was revised in 2010 to allow collective responsibility to be relaxed 'where it is explicitly set aside.' Such 'agreements to differ' can also be seen as embedding important 'safety valves' into the system. However, it is crucial that either the specific issues (when known) for which collective responsibility will be set aside are clearly specified and agreed on in advance, or that broad principles for the setting aside of collective responsibility are delineated (e.g. in relation to issues of conscience). It is of crucial importance to have clear criteria, as this promotes both governing stability and governing transparency. Conversely, the ad hoc suspension of collective responsibility erodes stability, and risks the uncertainty and opacity of confidence-and-supply forms of governing.

Democratic legitimacy and electoral mandates

10. The average duration for coalition negotiations in Europe is twenty-three days, but in the UK a broad agreement was reached within five days, with the *Programme for Government* and the *Constitutional Agreement for Stability and Reform* being published nine days later. Yet, although a case can be made that in this instance, negotiations proceeded too quickly and without sufficient transparency, it would be unduly prescriptive to set a limit on their length. Negotiations will always be affected by a range of uncontrollable and highly variable electoral factors such as the distribution of seats and the ideological distance between potential partners.

11. During the coalition negotiations only limited civil service support was taken up, as parties preferred to talk directly without the presence of civil servants. There is the potential that the

⁴ Boston, J. and Bullock, D. (2009) 'Experiments in Executive Government under MMP in New Zealand: Contrasting Approaches to Multi-party Governance', *New Zealand Journal of Public and International Law*, 7 (1), 39-75.

involvement of the civil service could undermine its neutrality, and therefore the scope and nature of civil service support should be clearly delineated (e.g. in the Cabinet Manual). A further risk to impartiality is posed by any reforms that institute a more direct relationship between ministers and civil servants (e.g. through ministerial patronage), which will necessitate consideration in the event of their introduction.

12. Comparative research reveals that coalition agreements are generally accepted as binding, having an intrinsic enforcement value, particularly if made public.⁵ This logic therefore suggests that *Programme for Government* should assume the same status as a manifesto, and thus be subject to Salisbury-Addison Convention. The majority of commitments in the *Programme for Government* are derived from the coalition partners' manifestos, with around twenty percent of commitments being attributable to both parties. However, around fourteen percent of its commitments appeared in neither manifesto, thus lacking the (tacit) consent of the electorate. Whilst these commitments are the likely outcome of complex and highly political bargaining during the negotiations, democratic transparency should encourage parties to respect a rule of 'no surprises' with regards to content, especially if the status of coalition agreements is elevated to that of a publicly endorsed manifesto.

Conclusion

13. There are several scenarios for May 2015: an outright victory (most likely for Labour); the continuation of the current coalition on a jointly-elected platform; the continuation of the current coalition following post-hoc negotiations; or, the establishment of a new coalition between Labour and the Liberal Democrats. The least likely of these outcomes is the continuation of the current coalition on a joint platform endorsed by the electorate. Each partner has frequently reaffirmed the transitory, pragmatic nature of its relationship and have begun to assert their policy and ideological differences in increasingly robust terms.

14. Yet, whilst recent opinion polls place the Opposition ahead, evidence suggests that coalitions are likely to become an established feature of the British constitutional landscape. The critical factor that underpins non-majority outcomes is the existence of a system of multi-party politics, which is exactly what appears to be emerging in the UK. The 'number of effective parties'⁶ competing in general elections has steadily increased from 2.87 in 1979 to 3.72 in 2010; and the rise in issue-based voting has allowed new parties to rise in prominence, such as the UKIP who were the fourth largest party in 2010, securing 9.6% of the popular vote. At present, the impact of multi-party politics remains constrained by the first-past-the-post electoral system: whereas 3.72 effective parties competed in the 2010 general election, the number of effective parties returned to Westminster (i.e. in terms of seats won) stood at 2.58. The issue of electoral reform is beyond the scope of this inquiry, but it is important to note this tension, which will be further exacerbated if turnout continues to fall. What remains clear is that the two-party system – which has been the critical factor in the stable single-party government associated with Westminster politics– no longer functions, and that non-majority governments to become anything but exceptional.

30 August 2013

⁵ For a comparative analysis, see Strom, K. and Muller, W. (2007) 'The keys to togetherness: Coalition agreements in parliamentary democracies', *Journal of Legislative Studies*, 5 (4), 255-282.

⁶ This calculates the number of parties weighted by their relative strength, using a widely recognised formula. See Laakso, M. and Taagepera, R. (1979) 'The Effective Number of Parties: A Measure with Application to West Europe', *Comparative Political Studies*, 12 (1), 3-27.