



A Numbers Game

Parliament and Minority Government

June 2017

Acknowledgements

This report was produced by Ruth Fox, with assistance from Joel Blackwell and Brigid Fowler.

Copyright © Hansard Society 2017

Published by the Hansard Society
5th Floor, 9 King Street, London EC2V 8EA

Tel: 020 7710 6070

Email: contact@hansardsociety.org.uk

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form by any means, without the prior permission of the Hansard Society.

The Hansard Society is an independent, non-partisan political research and education society working in the UK and around the world to promote democracy and strengthen parliaments.

For more information about other Hansard Society publications please visit our website at [**www.hansardsociety.org.uk**](http://www.hansardsociety.org.uk)

CONTENTS

Introduction: Minority government in context	5
Historical comparisons and precedents	6
Part 1: Forming a government	8
What does ‘command confidence’ mean?	8
The incumbent Prime Minister: stay or go?	9
When will Parliament meet?	9
The State Opening of Parliament: will the Queen attend?	10
The Queen’s Speech debate: confidence of the House?	10
Will there be a second general election?	13
What difference does the Fixed Term Parliaments Act make?	14
Seats -vs- votes: what counts?	15
An alternative party leader/Prime Minister?	16
How long can be taken to form a government?	17
Part 2: Parliamentary procedure: help or hindrance?	18
Does it matter if votes are lost?	18
What about the House of Lords?	18
Will minority government mean less legislation?	19
Will the Speaker’s casting vote influence decisions?	20
Managing time: potential problems ahead	20
The establishment and composition of select committees	21
The fiscal maze	22
Delegated legislation: an increase in deferrals and withdrawals?	22
Accountability and transparency	23
Endnotes	26

INTRODUCTION

MINORITY GOVERNMENT IN CONTEXT

The fundamental principle at the heart of our parliamentary democracy is that the government must command the confidence of the House of Commons.

In any general election the people vote for who they wish to represent them in the House of Commons; it is then for those elected MPs to collectively determine the identity of the government.

If one party secures a majority the choice facing MPs is both clear and uncontroversial. But in the event of a hung Parliament – where no party secures an outright majority – the arithmetic presents politicians with a conundrum: who commands their confidence and should therefore govern?

The answer to that question will be determined through a complex nexus of constitutional conventions, laws and precedents, party political calculations and gauging of the public mood.

There is guidance and rules to resolve who should govern in the event of a hung Parliament including the Cabinet Manual and the Fixed Term Parliaments Act.

The Cabinet Manual is a government document, drawn up by the civil service, bringing together their understanding of the ‘laws, conventions and rules on the operation of government.’¹ It is authoritative but it has no legal force. In contrast the Fixed Term

Parliaments Act 2011 is legally binding.² MPs cannot ignore or depart from its requirements unless they are willing to break the law.

Drawing on these and other sources, this briefing paper addresses how, in the event of a hung Parliament at the 2017 general election, a government will be formed and then sustained in office. It plots a roadmap through the constitutional issues, sets the process in historical context, and highlights and explains key parliamentary dates and events that will shape the process of government formation.

Part two of the paper then looks at how a minority government might operate in Parliament, focusing on the impact it may have on parliamentary process and procedure. It sets out how the work of the House of Commons – in the chamber and committees – may change as a result of minority government.

HISTORICAL COMPARISONS AND PRECEDENTS

Since 1900 the UK has experienced 39 years of coalition or minority government.

Coalition government tends to emerge in response to a national crisis. In 1931 and 2010 a coalition was formed in response to a financial crisis. In 1915 and 1940 a coalition was formed in the interests of national unity amidst world war. They have all been formed, with the exception of that in 2010, prior to a general election not after it.

On six occasions – January 1910, December

1910, 1923, 1929, February 1974, and 2010 – a general election failed to produce outright victory for a single party.

On five of these occasions, minority government followed; the exception was the Conservative-Lib Dem coalition that took office in 2010.

In four of these five instances the identity of the government and Prime Minister was not immediately clear: 1923, 1929, February 1974 and 2010.

JAN 1910

Rejection of the 'people's budget' leads to election

DEC 1910

Liberal Party under Herbert Asquith forms government with the support of the Irish Nationalists

1923



The Conservatives lost their majority at the December general election but were still the largest party. Prime Minister Stanley Baldwin remained in office for six weeks, choosing to 'meet' Parliament in order to test whether his government could command the confidence of the House of Commons.

However, it became clear that it could not. An amendment to the motion on the King's Address was passed on 21 January 1924 declaring, 'it is our duty to respectfully submit to Your Majesty that Your Majesty's present advisers have not the confidence of this House'.³ Baldwin resigned and Labour formed a government under the leadership of Ramsay MacDonald (above) with the support of the Liberal Party. Nine months later MacDonald called another general election after he lost a vote on an issue of confidence. Baldwin's Conservatives were returned with 412 seats – an increase of 154; Labour lost 40 seats and the Liberals lost 118 seats. Baldwin's strategy of showing the country that it was the Liberals who had put Labour into office paid dividends.

1929

On this occasion the Labour Party won more seats but the Conservatives secured a larger share of the vote. The incumbent Prime Minister, Stanley Baldwin (below) resigned, and Labour formed a government with Liberal Party support. Baldwin declined to consider doing a deal with the Liberal Party himself, believing that Lloyd George's demands would be humiliating. The Labour government lasted two years until the global financial crisis prompted the creation of a government of national unity in August 1931.



MID-PARLIAMENT MINORITIES

Minority governments have also emerged mid-Parliament, following defections or by-election losses. In February 1997, for example, John Major's Conservative government lost its majority but limped on to the general election three months later. In April 1976 the Labour government lost its majority but continued in office until March 1979, sustained for an 18-month period between March 1977 and July 1978 by a formal pact with the Liberal Party.



APRIL 1976

James Callaghan's Labour government loses majority in House of Commons

FEB 1997

John Major's Conservative government loses majority in House of Commons

2010

David Cameron's Conservative Party forms coalition government with Liberal Democrats

1974

The incumbent Conservatives secured four fewer seats than Labour but a marginally greater share of the vote (0.8%). Labour was just 17 seats short of a majority, but none of the minor parties held the balance of power. The incumbent Conservative Prime Minister, Edward Heath, remained in Downing Street for four days seeking to put together a government that could command the confidence of the House of Commons. The idea of a government of national unity was broached but quickly dismissed. Talks were held with the Liberal leader Jeremy Thorpe but broke down on the issue of electoral reform; Heath's offer of a Speaker's Conference on the issue was deemed insufficient in light of the inequity of the Liberal's election result where six million votes secured only 14 seats. The Conservative Whip was offered to seven Ulster Unionist MPs but again talks collapsed when it became clear that they would only accept if the offer was extended to all 11 members of the United Ulster Unionist Council group, including the Rev Ian Paisley, which would have implied rejection of the recently established power-sharing executive in Northern Ireland. Unable to put a deal together, Heath resigned and Harold Wilson became Prime Minister, heading a minority Labour government. It went to the country nine months later in October 1974 winning a narrow majority of just three seats.



PART 1: FORMING A GOVERNMENT

WHAT DOES 'COMMAND CONFIDENCE' MEAN?

To enjoy the confidence of the House of Commons does not require that a government command the positive support of a majority in the House; merely that no combination of parties can form a majority against it.

In 2017, 650 MPs will be elected to Parliament. A simple majority will therefore require a party to secure 326 seats.

However, in practice, this number will not be needed as the Speaker and three Deputy Speakers will not vote (other than in the event a casting vote is needed to break a tie) and Sinn Fein's MPs will not take their seats.

Depending on how many Sinn Fein MPs are returned (there were four in the last Parliament), potentially a majority of just 322 may thus be enough.

In reality the arithmetical requirement will be even more fluid for over 70 seats will likely be taken by the Liberal Democrats, the Scottish National Party (SNP), Plaid Cymru, the Greens and the other parties from Northern Ireland.

A party could govern with the support of around 315 MPs – although the nearer they are to 320 and above the easier life will be for them in Parliament in the years ahead.

Everything will depend on the final arithmetic of the election result: the number of seats secured by each party and how those seats accumulate on the centre-left, centre-right axis.



In seeking to put together an administration that can command the confidence of the House, there will be several options at the disposal of the party leader concerned:

- To govern from a minority position without any arrangement with another party;
- To govern as a minority but on the basis of an informal agreement such as a 'pact' or 'confidence and supply agreement' with one or more of the other parties;
- To establish a formal coalition with one or more of the other parties.

THE INCUMBENT PRIME MINISTER: STAY OR GO?

If no party wins an outright majority, there is no constitutional obligation on a Prime Minister to resign.⁴

Indeed, if the outcome of the election is unclear the Prime Minister should remain in office – to ensure adherence to the constitutional principle that Her Majesty must never be without a constitutional adviser and a government – until such time as the Sovereign can be advised who can command the confidence of the House of Commons.

The incumbent Prime Minister is entitled to ‘meet’ Parliament and test the confidence of the House of Commons to see whether there is sufficient support to enable her to continue in office. The key parliamentary test is the votes on the Queen’s Speech.

As such, she has the right to try and form an administration but, as the Cabinet Manual states, is expected to resign ‘*if it becomes clear that it is unlikely to be able to command that confidence and there is a clear alternative*’.⁵

The point at which this moment of clarity is reached is *sui generis* – dependent on the party arithmetic and any inter-party negotiations – and is ultimately a matter for the Prime Minister’s judgement.

Following an election there is no modern example of a Prime Minister remaining in office to meet Parliament as the leader of the second largest party.

The last such example was the Conservative, Lord Salisbury in 1892. Then the Liberal Party secured more seats but Salisbury remained in office until his government was defeated on an amendment to the Queen’s Speech. His action had the political advantage of publicly demonstrating that the Liberals could form a government only with the support of the Irish Nationalists.

WHEN WILL PARLIAMENT MEET?

The Queen’s Speech is scheduled to take place on 19 June, less than a week after Parliament reassembles on 13 June.

At the start of a new Parliament a series of important procedures need to be implemented: the receipt of the White Book of returns to the writs confirming the election of all MPs; election of the Speaker of the House of Commons; the approval of the Speaker’s election and his laying claim, on behalf of all MPs, to the ‘ancient and undoubted rights and privileges’ of the House in a ceremony before the Lords Commissioners in the House of Lords; and the swearing in of all MPs.

The procedures initiating the election of the Speaker and his approval in office by the Monarch involve the exercise of the Sovereign’s prerogative powers. As such, any change to the process would require the Sovereign’s permission which would probably not be granted unless it was a joint request by the two main parties.

The process of swearing in MPs is usually conducted over several days but could be speeded up by swearing in Members

FORMING A GOVERNMENT

overnight. How it is done is a matter for the Speaker. However, by law no MP can speak or vote in the House unless and until they have taken the Oath and been sworn-in. Under the Parliamentary Oaths Act 1866 any MP that votes, or sits during any debate, but before they are sworn-in, will be subject to a £500 penalty, but more importantly their seat is vacated *'in the same manner as if he were dead'*.⁶

If the parties desired more time for negotiations and wished to delay the Queen's Speech they could do so in accordance with the 1867 Prorogation Act but this would require a further Royal Proclamation on the advice of the Privy Council.⁷

THE STATE OPENING OF PARLIAMENT: WILL THE QUEEN ATTEND?

In the event that inter-party negotiations are not complete and the outcome of the vote at the conclusion of the Queen's Speech remains in the balance, Her Majesty might be advised not to appear in person to deliver the Address and the State Opening ceremonial would thus be reduced.

However, in 1924, when the identity of the government remained uncertain at the time of the State Opening, King George V still attended and delivered the Address. Her Majesty the Queen has not attended the State Opening of Parliament on just two occasions during her reign: in 1959 (when she was expecting Prince Andrew) and 1963 (when she was expecting Prince Edward).



If the Queen does not attend in person the Address would be delivered by the Lords Commissioners, probably by the Leader of the House of Lords (Baroness Evans prior to the election). The Lords Commissioners – five of them in total – also presided over the procedure for the dissolution of Parliament in April, and will preside over the convening of the new Parliament on 13 June.

Robed and seated on the bench between the Throne and Woolsack, *'it not being convenient for Her Majesty to be personally present here this day'*, they are empowered by Letters Patent under the Great Seal of the Realm to *'do all things in Her Majesty's name, which are to be done on Her Majesty's part in this Parliament'*.

THE QUEEN'S SPEECH DEBATE: CONFIDENCE OF THE HOUSE?

The content of the Queen's Speech is a matter for the incumbent Prime Minister and government.

Rather than offering the traditional extensive outline of their proposed legislative programme the government could propose a very short

Address, even restricting it to a debate and vote on the formation of a government if they wished.

How many days are spent debating the Address is also a matter for the government. They control the Order Paper and will advise the Speaker how many days they wish to allocate for it.

In 2015 there were six days' debate on the Queen's Speech. Days 2-6 covered home affairs and justice; 'Britain in the world'; health and social care; devolution and growth across Britain; and the economy.

This year, the debate is scheduled to begin on 19 June and if it is a full Address may not conclude until 27 June. If the identity of the government is not clear before the Address it will, on this timetable, thus not be known until the end of June at the earliest.

However, the option remains open to the government to schedule no more than two days of debate on the Address so it could be despatched as early as 21 June if that was desired, and possibly in one day if there was agreement to suspend Standing Orders.

The House debates the Address on the following motion presented by the Government:

'That an humble Address be presented to Her Majesty, as follows: Most Gracious Sovereign, We, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Northern Ireland, in Parliament assembled, beg leave to

offer our humble thanks to Your Majesty for the Gracious Speech which Your Majesty has addressed to both Houses of Parliament.'

On the penultimate day of debate, under Standing Order 33,⁸ an Opposition motion is considered and voted upon. On the final day of debate, a further Opposition amendment is considered, although, time permitting, the Speaker has the power to permit a vote on two further amendments.⁹

Standing Order 33 was revised in 2014. As a consequence, the taking of an Opposition Motion on the *penultimate day*, which was previously observed as a convention, is now a rule. In practical terms this means that it may not be possible to debate and vote on the Address in just one day; a second day would be required in order to provide for a penultimate day vote. However, if the parties agreed it is possible that this Standing Order could be suspended in order to facilitate a debate and vote in just one day.

The votes test the durability of the administration. But of the four votes by far the most difficult is the final one on the government motion: it is easier for the opposition parties to come together to oppose this than it is for them to vote in favour of each other's amendments.

If the incumbent Prime Minister loses one of these votes it will not automatically lead to the resignation of the government or an election.

However, having met Parliament and proved unable to demonstrate support for its legislative programme, the government would have

demonstrably failed to command the confidence of the House. In such circumstances, *real politik* and constitutional convention suggest this should lead to the resignation of the government. But this is only a convention based on past precedent and accepted norms of behavior in previous circumstances. Compliance with a convention is voluntary; it is not legally enforceable.

If the Prime Minister resigns following a defeat on the Address

Upon her resignation the incumbent Prime Minister would advise the Queen to call the Leader of the next largest party to form the government.

This government would not have to put their own legislative programme forward for consideration in the form of a Queen's Speech. It would be for the recently installed government to decide whether to have a new Address: if it did so, it would be done without the attending ceremonial provisions that usually accompany the Address as part of the State Opening of Parliament. On those rare occasions when a government has been defeated on the Address (for example in 1886, 1892, and January 1924) the Monarch has never returned to Parliament to deliver a second Address.

In 1924, when the incumbent Prime Minister, Stanley Baldwin, resigned following the carrying of an amendment to the Address, Ramsay MacDonald became Prime Minister and there was no King's Speech by the Labour Party that Session. Rather the new Prime Minister outlined the key aspects of his

programme for government followed by several days of debate on it. There was no vote on it at the end. In 1892, however, the Leader of the House did propose a second Address, which was then accepted.

If the Prime Minister does not resign following a defeat on the Address

The Opposition would almost certainly lay a formal Motion of No Confidence in the government. When this would be debated would be a matter for the government as they control the allocation of parliamentary time but convention would require that it be considered at the earliest possible opportunity. If for any reason the government sought to delay consideration of it the Speaker could, if necessary, call it as an emergency debate under Standing Order 24. This would allow the issue to be aired but would not resolve the matter of confidence as it would not be held on a substantive motion.

But if a No Confidence motion is passed – explicitly stating '*That this House has no confidence in Her Majesty's Government*' – there will not be an immediate dissolution of Parliament and a general election, as would have been the case in the past.

Instead, under the 2011 Fixed Term Parliaments Act, there will be a 14-day 'cooling-off' period during which the parties will have to try and form a new government.¹⁰

This need not involve a transfer of power to another party. The incumbent government could reconstitute itself – perhaps under another leader – if it believed it could command

the confidence of the House in this way. In practice, however, this is probably the least likely outcome.

If by the end of the 14-day period a government has emerged and an explicit motion of confidence has been passed in it, then it will take over.

If no motion of confidence is passed, then there will be a second general election.

There is, however, a technical drafting error in the Act that may cause some difficulties and will have to be resolved by the parties in conjunction with the parliamentary authorities if this stage is ever reached. The wording of the Fixed Term Parliaments Act specifically requires that the following motion be passed by the end of the cooling off period: *'This House has confidence in Her Majesty's Government'*. No other wording is permitted. As such, a new government would need to be formed before its confidence was tested; if not, then the wording of the motion would imply that confidence was reposed in the incumbent government that had just been defeated on the earlier confidence motion rather than the

proposed alternative government that had not yet taken office.

A handover to a new government whose confidence was to be tested would therefore have to take place before the expiry of the 14th day. How this would work is unclear. It also risks the farcical possibility that, if it failed to win the confidence motion, there would then be a general election with an incumbent government in place that had taken office just a few days before.

WILL THERE BE A SECOND GENERAL ELECTION?

There are only three circumstances in which a second general election could be held, either later this year or at any point within the five year parliamentary term.

- 1) If an explicit motion of no confidence – *'That this House has no confidence in Her Majesty's Government'* – is passed in the House of Commons by a simple majority and if within 14 calendar days, no government has been formed and gained a motion of confidence from the House.
- 2) On an explicit motion – *'That there shall be an early parliamentary general election'* – the House of Commons votes, by a two-thirds majority of all MPs including vacant seats (so 434 out of 650) for an early general election.
- 3) The Act is amended, repealed or replaced.¹¹



It is currently a matter of debate in legal and parliamentary circles as to whether repeal of the Act would be sufficient. Some argue that it cannot simply be repealed, as there will, for example, be no legal provisions in existence to bring the current Parliament to an end as the Act repealed the previous legislation governing the end of a Parliament set out in the 1715 Septennial Act. However, others argue to the contrary that repeal would mean the previous position would be restored and no further legislation would be needed: the duty to request an election would automatically revert back to the Prime Minister, the Royal Prerogative would be reinstated having been in a state of suspension for the lifetime of the Act, and other changes such as those concerning the lifetime of a Parliament would be erased.¹²

Whatever the outcome of this debate it is likely to be contentious as the other parties are unlikely to want to restore the previous position which gave the Prime Minister the power to determine the date of a general election.

If there is to be a second general election this year, it will not be held quickly. The Electoral Registration and Administration Act 2013 made provision for lengthening the general election timetable from 17 to 25 days, not including weekends or bank holidays. Depending on the timing of the dissolution of Parliament an election will thus take place at a minimum five weeks later but possibly longer if there are intervening bank holidays.¹³

And a second general election may not necessarily resolve the political problem facing the parties. In October 1974, for example, Labour secured a majority of just three seats that it subsequently lost during the course of

the Parliament, returning it to minority government status.

Setting aside the timing and political obstacles, there will be little enthusiasm among the parties for a second election given the impact on their finances and volunteers. One or more of the major parties may be engaged in the process of electing a new leader, which may take some months.

WHAT DIFFERENCE DOES THE FIXED TERM PARLIAMENTS ACT MAKE?

The Act separates the issues of confidence and dissolution that had previously been linked.

Prior to 2011, the Prime Minister possessed the power to determine the date for the dissolution of Parliament for a general election. The Act removed this power and established that each Parliament would exist for a set five year period unless one of the two conditions outlined in the previous section was met, thus providing for an early election.

Further, prior to 2011 if a government was defeated on the Queen's Speech or on the Budget, such a defeat was regarded as a loss of confidence, the consequence of which would be the resignation of the Prime Minister and the calling of a general election.

However, the Act has changed this. Only a motion explicitly using the words set out in the Act – '*That this House has no confidence in Her Majesty's Government*' – is now a matter of confidence. As a consequence no other

vote, unless it includes these words, is a confidence issue and can bring about the downfall of the government.

This will make life easier for a minority government as it can lose a succession of votes on a range of issues – including its Budget – and its survival need not be threatened providing it can win should a confidence motion ever be tabled.

However, the Act does not prevent the Prime Minister choosing to treat an issue as a matter of confidence and resigning without a no confidence motion being tabled if she so wishes. If she concludes, from soundings around the House, that she has lost the confidence of the House on an issue she can choose to go. But in doing so it will not result in a general election; the convention is that the outgoing Prime Minister will advise the Queen to call the Leader of the Opposition to form a new government.

On the one hand the Act has reduced the Prime Minister's power in relation to the timing of a general election. But on the other hand it has served to strengthen the executive vis-à-vis Parliament as the outcome of votes in the House of Commons matters less today than it did previously. Lost votes on legislation or the Budget may sap authority but will not be terminal for a government.

It may also make the prospect of minority government rather than coalition less appealing in the future. Prior to the Act a party leader becoming Prime Minister at the head of a minority government – for example, Harold Wilson after the February 1974 general

election – could do so in the knowledge that after a short period of time they could call another election in order to try and gain a majority. This option is not so readily available to Prime Ministers today, although Theresa May's success in securing this election for 8 June 2017 demonstrates that of course it can be done if there is cross-party agreement.

SEATS –VS– VOTES: WHAT COUNTS?

An asymmetric result where one party secures more votes but the other more seats would not be unique.

This has happened on three occasions since 1900 – in 1929, 1951 and February 1974 – and on each occasion the party with the most seats, not the most votes, took office. In each case, however, the difference in vote share between the two main parties was just 1% or less.

If the 2017 election delivers a more distorted result in terms of the allocation of seats and votes then it will still be seats that count in the chamber of the House of Commons.

If it falls short of a majority, securing the greatest number of seats in the House of Commons does not advantage a party if there are sufficient MPs in other parties that are hostile to it.

A party may similarly secure a greater share of the national vote but if the vagaries of the First Past the Post electoral system deliver a greater share of seats to another party then the former cannot command the confidence of the House of Commons unless they can secure the

FORMING A GOVERNMENT

support of other parties sufficient to outnumber any support that the larger party may command.

In the public domain, and through the prism of media interpretation, one party may come to be perceived as having greater moral authority to govern than the other, but if it cannot command the confidence of the House it cannot govern. And if it cannot govern it has no legitimacy.

While a distorted election result will not alter the political arithmetic in the House of Commons chamber, it may significantly change the debate about our electoral system leading to strong calls for reform.

Politics in recent years has been more fragmented than in decades past. In 1929, 1951 and 1974, those voting for a party other than the main three (Conservative, Labour or Liberal (or their successors)) never exceeded 5.6%. At the 2010 general election 11.9% voted for the 'other' parties. The demise of the Liberal Democrats and the rise of the SNP have altered calculations, and polls during the 2017 campaign suggest the Conservatives and Labour could be on course to secure 80% of the vote between them for the first time since the 1970s.

While this would point to a return, however temporary, to a more binary approach to politics – Conservative v Labour – nonetheless in a hung Parliament a nuanced understanding of multi-party politics will be needed as the two main parties look to garner support from potential allies across the spectrum.

AN ALTERNATIVE PARTY LEADER / PRIME MINISTER?



It is possible that an alternative leader might be invited to form an administration if (s)he is thought better able to reach agreement with one of the other parties than the incumbent Prime Minister.

The Prime Minister of the day need not be his/her party's leader. However, there is no constitutional precedent for replacing a party leader following an election at the behest of another party and it would almost certainly be regarded as an unacceptable interference in a party's internal affairs.

Following the February 1974 general election the Liberals indicated that they would prefer to deal with a new Conservative leader such as Willie Whitelaw rather than Edward Heath who they regarded as discredited. However, the Conservative Cabinet rejected this outright.

But even if the incumbent party of government were to acquiesce, the choice of leader is circumscribed by a party's internal constitutional processes and the involvement of the wider party membership. Resolving the situation would take time to achieve that is

unlikely to be available in the context of post-election negotiations.

HOW LONG CAN BE TAKEN TO FORM A GOVERNMENT?

There are no rules that govern how long a party leader should be given to put together a government.

Until such time as the identity of the new, or reconstituted government is confirmed, the incumbent government continues in office. It continues to exercise the usual powers of a government: to advise the Monarch and take decisions as required. As during the pre-election 'purdah' period, it is expected to consult the Opposition and not to take politically controversial and long-term decisions if these can be deferred.¹⁴

Unhelpfully, although the Cabinet Manual states that 'many of the restrictions' of the purdah period would continue to apply it does not specify which ones would and which ones need not. This failure to more clearly distinguish between purdah and caretaker provisions could pose difficulties in the event that inter-party talks take some time to resolve.

In 2010 it took five days of inter-party negotiations before an outline coalition deal was struck between the Conservatives and Liberal Democrats.

Coalitions are difficult to manage within government but easier to manage in Parliament; but minority governments are the reverse.¹⁵ Parliament is the theatre in which the drama of minority government will play out.

Ministers will have to spend more time at Westminster tending the parliamentary trenches; not just in the chamber but in committees where the government will not have the usual in-built majority. Its control over the use of parliamentary time will also be much reduced with the Opposition utilising every procedural weapon available to prolong debate: the prospect of future late night sittings may loom once again.

Despite the difficulties, however, there will still be much that a minority government can achieve: it will control the right of legislative initiative for both primary and secondary legislation; it will have control of the budget process; it will retain the prerogative powers in areas such as foreign affairs, defence and national security, and it will have the power of patronage and public appointment.

PART 2: PARLIAMENTARY PROCEDURE: HELP OR HINDRANCE?

DOES IT MATTER IF VOTES ARE LOST?



Recent majority governments have frequently lost votes but continued in office; the same will apply to a minority government. For example, Tony Blair's Labour government lost a vote on tuition fees while David Cameron failed to win the vote on proposed military action against Syria in the 2010-15 Parliament.

Between the February and October elections in 1974 the minority Labour government lost 17 divisions but continued in office. Having won the election with a majority of just three in October 1974, it went on to lose a further 42 divisions prior to the general election in 1979.

No government will want to continually lose votes, sapping its strength and authority. What will really matter is losing a vote on a motion of no confidence, but even that need no longer be fatal for under the Fixed Term Parliaments Act it will open up a 14-day period during which confidence in the government might be reconfirmed.

Conversely, however, minority governments in the past have been able to restore their authority by calling a confidence motion with the threat of a general election looming if the vote was lost. Thus, in December 1978 when the Callaghan government was defeated (285 to 283) on a motion on its inflation strategy it called and won a confidence vote the following day (300 to 290). Similarly, in July 1993 John Major called and won a confidence vote by 339 to 229 despite having lost the vote on the social chapter of the Maastricht Treaty. But due to the Fixed Term Parliaments Act, a minority government will not have this weapon in its armoury to bring rebellious MPs back into line.

WHAT ABOUT THE HOUSE OF LORDS?

Debate about the identity of the government post-election is focused on who can command the confidence of the House of Commons. But in order to function a government also needs to get its legislative programme through the House of Lords.

There are currently around 800 members of the House of Lords¹⁶ of which 253 are Conservative peers, 201 Labour, 175 independent crossbenchers, and 102 Liberal Democrats. A further 30 are non-affiliated, and the Greens, UKIP, Plaid Cymru and the Democratic and Ulster Unionist parties share 14 seats between them.

Notably, the SNP does not have any peers. It opposes an unelected second chamber and

therefore does not take any seats. This means that it will not be able to help a minority government get its legislation through the Upper House. The party leadership may thus decide that it is now in their strategic interest to reverse their position and start accepting peerages. And if they are the third party in the House of Commons they could lay a strong claim to a considerable number of seats.

The Prime Minister has discretion in deciding how many peers to appoint to the House of Lords and there is no formula for determining how many appointments should be allocated to each party. However, every time there is a change in government there is a ratcheting up of appointments in order to address the problem of political balance; as a consequence the House has grown to an unacceptably large size.

In the context of a minority government – keen to ensure passage of its legislative programme – the issue of political balance in the House might become problematic. On current numbers a Labour minority government will not benefit from any support from the SNP in the Lords, likewise if the Liberal Democrats do not support a minority Conservative administration the Opposition would normally win votes in the Upper House.

Although David Cameron made many appointments to the House of Lords in the 2010 Parliament, the chamber was not rebalanced in line with the 2015 general election result. If the parties choose not to observe a self-denying ordinance and push for seats in proportion to their vote share after the election it will result in

a very significant number of appointments, putting at risk the reputation of the House.

As under the coalition, an important area where there may be difficulties is in relation to perceptions of the Salisbury Convention. This dictates that peers will not obstruct legislation linked to the manifesto commitments of the governing party. But, how this will apply to a minority government that may have to hedge and compromise on its commitments in order to secure the support of other parties for its programme remains unclear.

WILL MINORITY GOVERNMENT MEAN LESS LEGISLATION?

There is little reason to suppose that the number of bills will be reduced as a result of the government's status. The number of bills passed during periods of minority or small majority governments in the 1970s fluctuated considerably with no clear pattern.



What may happen is a further increase in the number of skeleton or framework bills where the legislation sets out in broad terms the intent of the policy initiative but leaves much of the detail off the face of the bill to be filled in at a later stage through delegated or secondary legislation, much of which is barely scrutinised

by Parliament. The less detail there is at the primary stage, the less that can be squabbled over and amended.

WILL THE SPEAKER'S CASTING VOTE INFLUENCE DECISIONS?

Minority government will likely result in a series of close votes on issue after issue but the number of tied votes will, dependent on the arithmetic, continue to be rare. In 1974, for example, there were only two tied votes. In the event of such a vote, however, procedures exist to resolve the outcome through the Speaker's casting vote.

The Speaker can, like any other Member, vote as he wishes in accordance with his conscience. However, in order to preserve his impartiality, it is usual for his vote to be cast in accordance with three key principles:

- To allow further debate if that is possible;
- Where no further discussion is possible, decisions require a majority;
- That on an amendment to a bill, the bill should be left in its original form.¹⁷

Similarly, if a vote in a legislative Public Bill Committee is tied, the chair has a casting vote and uses it in accordance with the same principles.

These principles favour the government as a tied vote on a hostile amendment would result in its rejection. The same applies to confidence

motions. However, a casting vote cannot be used to approve an affirmative Statutory Instrument (SI) or settle a motion concerning the Business of the House. These could thus be areas for procedural guerrilla warfare between the parties in the coming Parliament, particularly in the context of the Brexit process where SIs will play a particularly prominent role.

MANAGING TIME: POTENTIAL PROBLEMS AHEAD

Responsibility for arranging the use of parliamentary time largely lies with the government, buttressed by Standing Order 14 which dictates that government business has precedence at every sitting.¹⁸ In practice, however, the government negotiates with the opposition parties – primarily with the official Opposition – through what are known as the 'Usual Channels'. These are the '*series of meetings and discussions between the Leader of the House, the Chief Whip and parliamentary personnel in both the Commons and the Lords to decide how business will be arranged in each House*'.¹⁹ The management of parliamentary business is largely organised around the two main parties and the SNP as the second largest opposition party. In the context of minority government, however, the Usual Channels may come under increasing strain; the business managers – particularly the Chief Whip – will be key figures in the government and they will need to take much greater account of the needs and demands of the smaller parties upon whose votes they may need to rely.

For example, the amount of time that is spent on each stage of legislation is determined by a programming motion that sets the timetable for each bill at the start of its passage through the House. A minority government may lack support for its programming motions and will be at the mercy of all parties in the House who will be keen to extend the time available for scrutiny and amendment of legislation.

This will be compounded by the fact that it will not have a majority on the Public Bill Committees that will scrutinise its legislation. The prospect of heavy amendments emerging from committee stage, coupled with extended periods for further scrutiny and debate at report stage, will make the legislative process potentially lengthy and difficult and, over the course of a five year Parliament, utterly exhausting.

THE ESTABLISHMENT AND COMPOSITION OF SELECT COMMITTEES

There is no published formula for the allocation of committee chairmanships to parties; it is done according to proportionate party balance to reflect the composition of the House. Similarly the balance of membership is also based on party numbers and as such a minority government can only expect parity; it will not have a majority on committees.

However, in order to allocate chairs and seats on committees the identity of the government and opposition must be known; for example, the Chair of the Public Accounts Committee and the Standards Committee must be held by

a member of the official Opposition and the Chair of the Treasury Committee is usually held by a member of the governing party. The remainder are divided up between the parties through negotiations between the business managers via the Usual Channels.

The day after his election (14 June) the Speaker must communicate to the relevant party leaders the party proportions in the House for allocating chairs to parties.

The House then has to approve the allocation of chairs between the parties on the basis of a motion that should be tabled by the leaders of all the parties entitled to seats on committees within a week of the Queen's Speech. The election of the chairs should then take place a fortnight after this motion has been agreed.

However, if two weeks after the Queen's Speech a motion by the party leaders has not been laid, then on the following sitting day any Member of the House may lay a motion to allocate chairs and the Speaker will give precedence to its consideration.

In the context of minority government, the minor parties might use an increase in seats on select committees as a negotiating chip in their discussions with the government.

It is possible that in a minority government situation, attendance at select committees may actually be problematic. Select committee meetings often clash with other parliamentary business; if whipping is to be more robust because of the delicate parliamentary arithmetic then this whipped business will always take priority over non-whipped select

committee work. Similarly, it is possible that the consensual nature of select committee work may be difficult to maintain if and when parliamentary tempers flare amidst the heightened stress and strain of maintaining a government from vote to vote. Departmental select committees did not exist during the last period of minority government in the 1970s (excepting the brief period of minority government at the tail end of John Major's administration). As such the conduct and character of these committees in a minority government environment is uncharted territory.

THE FISCAL MAZE

Generally speaking, Parliament exercises very little influence over government proposals and priorities for tax and expenditure. The quality and extent of financial scrutiny is perfunctory and the time available for financial scrutiny work outside the confines of the Treasury and Public Accounts Committees is limited.

Only three days debate is set aside for consideration of government estimates – departmental spending plans – which limits the scope for significant intervention. Controversial spending measures – for example, renewal of Trident – need not be included as a specific line item in the estimates so it will be difficult for opposition MPs to vote against measures such as this unless they are willing to vote against the entire departmental estimate. obliged to give Parliament a vote on taking the programme forward.

Opposition MPs can seek to amend or defeat the government's tax and spending proposals, but they cannot amend them in such a way as

to impose a further charge on the public revenue if the proposal does not command the support of the government.²⁰

As with other committees, the government will not have a majority at the committee stage of the Finance Bill so this will open up opportunities for influence to be asserted. If MPs can attract sufficient support for their proposals they may find that the government is willing to adopt their proposed amendment directly rather than risk a divisive vote, and possible loss, on the issue.

Past history suggests that despite the constraints, creative reforms allied to clever use of procedure are possible and can reap important and long-lasting results. For example, during the Labour minority government in the late 1970s, two government backbenchers, Jeff Rooker and Audrey Wise, secured a rare amendment to the Finance Bill put forward by Chancellor Denis Healey. Their proposal – to link personal tax allowances to the rate of inflation – did not involve a charge to the public purse and was therefore permissible. Passed with support from the opposition Conservative Party, the amendment ensured in the long-term that people's non-taxable income was protected from erosion.

DELEGATED LEGISLATION: AN INCREASE IN DEFERRALS AND WITHDRAWALS?

Much of the detailed scrutiny of delegated legislation occurs in the House of Lords rather than the House of Commons but the lower House's scrutiny will not be entirely unaffected by minority government status.

Since 1950, of the 11 occasions a Statutory Instrument (SI) was rejected by the House of Commons, only one was during a period of minority government.²¹ While there may be an increase in the number of prayers laid against an SI, we are unlikely to see an increase in the number that are given time for consideration on the floor of the House or in committee if opposition to them is still tied to the Early Day Motion system.²²

As with legislative and select committees, membership of delegated legislation committees would be allocated on the basis of party balance. The government would thus lack a majority, possibly leading to more consideration votes being lost. And the Speaker's casting vote cannot be utilised in the event of a tie. However, the government has the option of withdrawing an Instrument prior to consideration if it believes it is likely to lose and rather than face the prospect of losing a vote on the floor of the House it could simply defer debate.

If an excessive number of SIs have to be deferred or withdrawn, however, this will quickly cause problems for management of the wider cross-government programme of delegated legislation. Most government departments do not effectively plan the production of SIs: a back up of instruments for consideration could thus rapidly result in problems with timely implementation and will almost certainly result in scrutiny capacity problems for parliamentary committees.

ACCOUNTABILITY AND TRANSPARENCY

In the event that a formal pact or confidence and supply agreement is reached between two or more parties to support a minority government, how that arrangement is held to account in Parliament will be a matter for consideration.

In March 1977, for example, the Liberal Party agreed, 'in pursuit of economic recovery' to ensure a minority Labour government was not defeated on a confidence motion in exchange for which they would be consulted on policy. This consultation took place at three levels:

- Between individual ministers and their Liberal shadows for each department;
- Through a Joint Consultative Committee (JCC) to consider issues where agreement could not be reached at the bilateral ministerial/shadow level;
- Between the Leaders – Prime Minister James Callaghan and Liberal leader David Steel – where the JCC could not resolve a dispute.

The Conservative opposition consequently demanded readjustment of Liberal representation on committees, the calling of Liberal MPs as government supporters rather than opposition spokesmen, and accountability at the despatch box for the JCC/Callaghan-Steel meetings.

However, all of the above was refused. Indeed, the Prime Minister, and Michael Foot in his capacity as Lord President of the Council refused to answer any questions relating to the negotiation and consultation process, invoking the 'no ministerial responsibility' rule by claiming the talks were inter-party and non-governmental and therefore not subject to parliamentary scrutiny by the opposition. However, all three layers of consultation were supported and resourced by the civil service, including a JCC secretariat situated in the Lord President's office.

Any similar deal in the future is unlikely to escape scrutiny, not least because of the proactive investigations of departmental select committees, bodies that did not exist at the time of the Lib-Lab Pact. Careful thought will thus need to be given by the parties and the opposition to how any such deals will be both transparent and accountable to Parliament.

ENDNOTES

¹ [The Cabinet Manual](#): a guide to the laws, conventions and rules on the operation of government, 1st Edition, October 2011.

² Fixed Term Parliaments Act 2011. [See http://www.legislation.gov.uk/ukpga/2011/14/contents/enacted](http://www.legislation.gov.uk/ukpga/2011/14/contents/enacted)

³ House of Commons Debates, 18 January 1924, Vol.169, col.397. <http://hansard.millbanksystems.com/lords/1924/jan/15/the-kings-speech>

⁴ Until the mid 19th century Prime Ministers, whatever the election outcome, customarily met Parliament in order to test the confidence of the House. The custom changed only in 1868 when Benjamin Disraeli chose not to meet Parliament, recognising that the Liberals – with a 40 seat majority – would command the confidence of the House not his own party.

⁵ The Cabinet Manual: a guide to the laws, conventions and rules on the operation of government, 1st Edition, October 2011, para 2.12

⁶ M.Jack (Ed.) (2011), *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 24th edition, (London: Lexis Nexis), p.155.

⁷ M.Jack (Ed.) (2011), *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 24th edition, (London: Lexis Nexis), p.146.

⁸ Addendum to the Standing Orders of the House of Commons Relating to Public Business, 11 June 2014 (London: The Stationery Office), Amendment to Standing Order No. 33 (Calling of amendments at the end of debate). www.publications.parliament.uk/pa/cm201415/cmstords/soadd1106.pdf

⁹ At least one of these would come from the Opposition, but the other could come from government backbenchers as happened in the final day debate on the Queen's speech in 2013 when the Speaker selected an amendment regarding an EU referendum laid by the Conservative MP John Baron and an amendment regarding a review of Trident laid by the SNP's Angus Robertson MP.

¹⁰ These are 14 calendar not working days.

¹¹ The Hansard Society's former chairman, Lord Grocott, brought forward a Private Members Bill in the last Parliament to repeal the Fixed Term Parliaments Act which would serve as a useful template for any repeal proposal.

¹² See for example, former Attorney General, Lord Morris of Aberavon, 'Parliament has trussed itself up like a chicken', *The Daily Telegraph*, 26 January 2015, www.telegraph.co.uk/news/general-election-2015/11366537/Parliament-has-trussed-itself-up-like-a-chicken.html

¹³ The provisions of the 2013 Act were brought into force via a Commencement Order - The Electoral Registration and Administration Act 2013 (Commencement No. 5 and Transitory Provisions) Order 2014 – which took effect on 6 April 2014.

¹⁴ The Cabinet Manual states that any action of 'a continuing or long-term character' means the 'deferral of activity such as: taking or announcing major policy decisions; entering into large/

contentious procurement contracts or significant long- term commitments; and making some senior public appointments and approving Senior Civil Service appointments, provided that such postponement would not be detrimental to the national interest or wasteful of public money. If decisions cannot wait they may be handled by temporary arrangements or following relevant consultation with the Opposition.’ See *The Cabinet Manual: a guide to the laws, conventions and rules on the operation of government*, 1st Edition, October 2011, para.2.29.

¹⁵ R. Hazell and P. Riddell, ‘Coalition or minority government in 2015?’, presentation at the Constitution Unit, UCL, 15 April 2015.

¹⁶ This excludes those Members (30) who have indicated that they plan to retire, have taken a leave of absence, are suspended or are disqualified from deliberations as members of the judiciary.

¹⁷ M.Jack (Ed.) (2011), *Erskine May’s Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 24th edition, (London: Lexis Nexis), p.420.

¹⁸ *Standing Orders of the House of Commons: Public Business*, 2013 (London: The Stationery Office).

¹⁹ M.Rush and C.Ettinghausen (2002), *Opening up the Usual Channels*, (London: Hansard Society), p.6.

²⁰ *Standing Orders of the House of Commons: Public Business*, 2013 (London: The Stationery Office), Standing Order 48.

²¹ The Draft Dock Labour Scheme 1978.

²² See R.Fox and J.Blackwell (2014), *The Devil is in the Detail: Parliament and Delegated Legislation*, (London: Hansard Society).

IMAGES

Pages 6 and 7 image credits: [Creative Commons CC BY-NC-ND 2.0](#)

Page 8 image credit: Number 10/Crown Copyright under [Creative Commons CC BY-NC-ND 2.0](#)

Page 10 image credit: Roger Harris under [Creative Commons CC BY-NC-ND 2.0](#)

Page 13 image credit: secretlondon123 under [Creative Commons CC BY-NC-ND 2.0](#)

Page 16 image credit: Tom Evans under [Creative Commons CC BY-NC-ND 2.0](#)

Page 18 image credit: Jessica Taylor under [Creative Commons CC BY-NC-ND 2.0](#)

Page 19 image credit: Jessica Taylor under [Creative Commons CC BY-NC-ND 2.0](#)

The **Hansard Society** believes that the health of representative democracy rests on the foundation of a strong Parliament and an informed and engaged citizenry. Founded in 1944, we are a charity working in the UK and around the world to promote democracy and strengthen parliaments. An independent, non-partisan political research and education Society, our work is devoted to:

Exploring the evolution of representative democracy: offering evidence-based ideas for reform of political and parliamentary institutions, processes and culture to help foster democratic renewal.

Educating citizens, particularly young people: so that they have the knowledge and confidence to play an active role in our democracy and be future leaders in civic and political life.

Connecting citizens with parliamentarians and policy-makers: through innovative on and offline initiatives to address the democratic deficit.

Convening debate on topical political issues: providing a non-partisan forum for the exchange of ideas about our democratic future.

Enquiries about membership or the work of the Hansard Society should be addressed to Dr Ruth Fox, Director and Head of Research, Hansard Society, 5th Floor, 9 King Street, London EC2V 8EA, by email to contact@hansardsociety.org.uk, or visit the website at www.hansardsociety.org.uk.

Stay ahead of Great Repeal Bill delegated
legislation with

The Statutory Instrument Tracker



The only weekly tracker to help you monitor all UK statutory
instruments as they make their way through Parliament

Stay ahead of the curve

For more information contact: joel.blackwell@hansardsociety.org.uk

The Hansard Society is an independent, non-partisan
political research and education society working in the UK
and around the world to promote democracy and
strengthen parliaments.

www.hansardsociety.org.uk

