



## Political and Constitutional Reform Committee

Oral evidence: [Government formation post-election](#), HC 1023

Monday 23 February 2015

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Written evidence from witnesses:

- [Professor Robert Hazell](#)
- [Institute for Government](#)

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Members present: Mr Graham Allen (Chair); Mark Durkan; Paul Flynn; Duncan Hames; Fabian Hamilton; Mr Andrew Turner

Questions 1 – 31

### Examination of Witnesses

*Witnesses:* **Professor Robert Hazell**, Constitution Unit, University College London, and **Dr Catherine Haddon**, Institute for Government, gave evidence.

**Q1 Chair:** Catherine, Robert, welcome. Sorry to put you straight into the hot seat. I am keen to move us on fairly quickly because I know, Robert, you have to disappear at 6.00 pm and there may be votes. We had a very embarrassing experience when we had to adjourn the Committee on about three occasions within an hour or so, so I am keen to move on. Catherine, since you have had the luxury of sitting outside for two or three minutes at least to draw breath, did you want to say anything to start or are you happy to jump into questions?

**Dr Haddon:** I am happy to go on, but just to say obviously my appreciation for the fact that you have put this inquiry on and that we are getting a decent public hearing for these issues. We have looked at them a few times. It is good now, while minds are focused, to be having another look at them all.

**Chair:** Absolutely. We have had a little bit of press interest on this already and I framed it as let us get some information out there to the electors as well as the people who will be marching up and down Whitehall should there be a coalition, give them a little bit of a user's guide as to what is going on after 7 May, if indeed that is the way it goes. If we may, we will jump straight into questions.

**Q2 Duncan Hames:** May I start by asking about timetables? We are familiar with what happened in 2015, which saw a Prime Minister appointed on 11 May.

**Professor Hazell:** 2010.

**Duncan Hames:** Sorry, 2010, yes, and a Queen's Speech delivered by 25 May. What factors do you see that could affect the length of the negotiating period were we not to have a clear majority for one party after the 2015 election?

**Professor Hazell:** Can I briefly go first?

**Dr Haddon:** Yes.

**Professor Hazell:** I think there are three reasons why it is very likely to take longer than five days before the negotiations are concluded. Number one: there are likely to be more players in the game this time round. Last time, there were only the three major parties in contention, Labour, the Conservatives, and the Liberal Democrats. This time it is quite possible that the SNP will be a player in the game. It is quite possible, depending on the numbers, that other nationalist or minor parties might also be players in the game. So, more players is the first reason.

The second reason is I think it is very likely that the parliamentary parties will take a closer interest and will expect to be consulted more closely before they allow their party leaders to sign up to any deal. We have already had strong indications, for example, from Graham Brady, speaking for the 1922 Committee, that the 22 will expect to be more fully consulted in 2015 than they were in 2010. We know in 2010 that the LibDem's parliamentary group met three times and on the third occasion they were shown the text of the draft coalition agreement, whereas I think it is correct that the 1922 Committee were given the headlines by their party leader but were not shown the text. I think it is very likely next time that all parliamentary parties will insist on closer consultation.

The third reason is we forget that in 2010 the agreement reached after five days was not formally the coalition agreement that became the programme for Government. The programme for Government is the formal coalition agreement and Cath can help me on the dates. I think it was 19 May.

**Dr Haddon:** It was 13 days after the election.

**Professor Hazell:** Yes, 13 days after the election. If you accept my second reason that the parties will insist on closer consultation because they will be concerned about the detail, I think it is unlikely that any deal can be signed until all the detail has been negotiated and it is likely, therefore, that any agreement next time will be more like the programme for Government that was reached after almost two weeks than the initial coalition agreement that was reached after only five days.

**Q3 Duncan Hames:** Thank you. There were riots in certain European capitals at the time in 2010. There was a lot of interest in how the markets would respond when they opened on Monday 10 May. Do you see particular risks associated with the longer timetable that you have outlined?

**Dr Haddon:** Sure. Just to add a few points to what Robert has just said, I agree with all of that and also I think what he is getting at partly is it would be better for the negotiations in a sense, if one goes to a full coalition negotiation, if there is a bit more of an expectation that they can take a bit longer and that one can go through that process. We also have a belief that expectations may have changed and that partly goes to your point there that perhaps certainly media and political expectations and the public's expectations may now have changed to allow for a bit of a longer period than the pressure we saw last time round.

As well as that, we should also remember that this will all come down to the results. We know from last time round that the exit poll was not what we were expecting entirely from the polls in the run-up to it and the coalition agreement was not as well. Momentum and the actual arithmetic may affect whether we go into these full negotiations or whether the parties have thought more in advance and they may find reason for having not necessarily a speedier process but perhaps with a bit more experience than they had last time round.

However, going to your question more particularly, I think we should not be too concerned about the fact it takes a bit longer. We do have a Government in place. We do have an experienced political class in this area now and we do have more understanding of the rules and conventions around how the incumbent Government should act, what kinds of issues might come up and what might be the best way to act on it. We also with the Fixed-term Parliaments Act have seen an opportunity for the Government and the civil service to be able to prepare in advance thinking about what kinds of issues might come up, what policy areas, and so forth. I do not think we are immediately in any period of great concern if it goes on a bit longer than last time round. I think your question is gets to the point of how long is too long a period of time. It is very difficult for us to speculate on that. We are not, I do not think, looking at Belgium or other places that have taken many months. The question is whether or not we go into a second week, whether it takes a bit longer, and what we need to think about in terms of the parliamentary calendar rather than perhaps those sorts of issues.

**Q4 Duncan Hames:** Just on that very point, in 2010 after the election the House first met on Tuesday, 18 May, which was before the date you just gave for the publication of the actual coalition agreement. Given what you have been describing, do you think there would be a case for deferring the date at which the House first meets after the 2015 election in these circumstances?

**Professor Hazell:** The date will be set by a proclamation when the House is dissolved. We do not yet know. My guess is the proclamation will probably set the date for the first meeting of Parliament 12 days after the election, as happened in 2010, but it is possible by a subsequent proclamation to defer that date. If the parties are involved very closely in negotiations and they signal that they do not think it will be sensible for Parliament to meet so quickly, a further proclamation can be made. Equally, there is stuff that can be done in the first days of a new Parliament: the swearing in of new Members, the election of a new Speaker, and so on. Things to some extent can happen in parallel as well.

**Dr Haddon:** Yes. We have to remember last time round there was a delay to the Queen's Speech of an additional few days because of the swearing in of new Members with the number of new Members last time round. Again, the date of the Queen's Speech will be set on dissolution but can also be moved in this case, though, slightly more easily than the actual return of Parliament. That will be the point at which obviously one would expect, certainly if it is going to full coalition, those sorts of negotiations to have continued. If it is not that kind of agreement, though, we have to remember that if it is a minority Government or if there is some other kind of agreement, those sorts of negotiations do carry on well into a new Parliament and, indeed, throughout a new Parliament. We may see a period of formal negotiation, depending on what the parties want to do and what the result is, but you will then see other kinds of negotiations, including, should the circumstances arise, to get through the Queen's Speech itself.

**Q5 Chair:** Could I just ask why there is an assumption that Members of Parliament themselves are incapable of participating effectively in this process the day after a general election? They have just been elected. Parliament has been refreshed. Why is there this sense that the chaps have to sort this out for us and present us with a deal, however long it takes? Can't we have parties meeting,

the Conservative Party, the Labour Party, the Liberal Democrats and many others, throughout two weeks if necessary, having an interaction with their leaders rather than leaders really carving this up?

**Professor Hazell:** Chairman, that is up to the political parties.

**Dr Haddon:** Yes.

**Professor Hazell:** If you want to convene a meeting of the parliamentary Labour Party the day after the election—

**Chair:** I wish.

**Dr Haddon:** But it also goes to what Robert has just said about the fact that you can have these going on in parallel. Obviously, the Queen's Speech is the point at which a new Government will or will not be confirmed, so it, in effect, bookmarks the end of that period of formal negotiations, but for those other processes there is no reason in terms of the mechanics of the negotiations why they could not be going on in parallel.

**Q6 Chair:** It seems that the Government or the leaders are quite frightened about political parties actually doing what political parties should do, having a discussion and doing it sensibly and maturely, as if we are going to go wild with this responsibility of deciding who the Government should be.

**Professor Hazell:** Chairman, as you will know, the different political parties have their own traditions and in 2010 the Liberal Democrats were required by their constitution and by the famous "triple lock" to consult very extensively with the party, but it is a matter for the parties.

**Q7 Duncan Hames:** I could share lots of what happened to us but maybe now is not the place. If I might turn to the business of government and the operation of what is sometimes termed a caretaker Government. Professor Hazell, I think you expressed some frustration that the Cabinet Office seems to avoid that term. Can you tell us what advantages you would see in terms of clarifying the conventions in these circumstances of wider use of that term by the civil service?

**Professor Hazell:** Yes. There are three terms I would like to see enter into common use: the caretaker convention, a caretaker Government, and a caretaker period. It would be much clearer, I think, both for people within Government, in Whitehall, in Parliament, and outside if that terminology could enter into common use. I hope the Committee in its report might feel able to recommend that.

One reason why I think the terminology at the moment is confused and confusing is because in the Cabinet Manual this is overlaid, mixed in, with the guidance about the restrictions on Government publicity, which are referred to as the purdah rules. Those rules apply even when a Government is not a caretaker Government but has a full working majority and commands the confidence of Parliament. For example, we have had it in the course of this Parliament during the European elections or, indeed, during local government elections. The purdah rules say to the incumbent Government when there is an election on, even if it is not a general election, you should not use the Government publicity machine to generate good news stories for your party. That is the rationale for purdah.

The rationale for the caretaker convention is completely different. A caretaker Government is one that is in office. It is the Government. It has the lawful authority to govern, but it no longer has full political authority because it no longer commands the confidence of Parliament. That can happen in one of three circumstances: first, after a general election has been called. After the dissolution at the end of March, the present Government will continue in office but as a caretaker Government. If there are negotiations after the election of the kind that we have just been discussing, the present

Government will continue further in office, but as a caretaker Government. If at some point in the future a Government is the subject of a successful no confidence motion, it then becomes a caretaker Government because it has lost the confidence of Parliament and, as you will know, the Fixed-term Parliaments Act then provides a 14-day period in which Parliament can see whether a new Government can be formed that can command confidence.

Those are the three contexts in which there is a caretaker period and there is a caretaker Government. They have nothing to do with purdah or the restrictions on Government publicity.

**Dr Haddon:** I would slightly differ from Robert. He is absolutely right about the differentiation between the two, particularly for the reasons that they exist: on the one hand to restrict Government activity in the civil service in terms of how the machine may be used in terms of campaigning; in the second case because that Government may or may not have legitimacy at that time. Therefore, I do agree that in the UK case there is a reason for thinking of the two periods in different ways.

It is worth noting, though, that in Australia they refer to both as the caretaker period and from what I have read of it and what I understand of it, it is partly because they see it as a restriction that is in place because Parliament is not sitting and, therefore, cannot provide the scrutiny of what Government is doing during both of those periods. They have slightly different approaches to it.

However, going back to this point about caretaker Government and whether or not to call it that, I think Robert is right about the difficulties in this country that certainly have existed in using that phrase. Part of the reason is also because of the tradition, certainly in the post-election period wherever we have seen it or in the case of a Government that has lost a vote of confidence, that these are by and large by convention. It is down to Ministers of the day to accept that convention and to adhere to it. On the part of the civil service, the rules are more clear cut and, therefore, there is clearer guidance to them about how they should act if they feel that the Government is acting in contravention of these. But that does not entirely exist in the case of Ministers. Ultimately, it is down to the Prime Minister as to how and in what ways he feels that his Government should adhere to these.

After the last election, we did see a slight firming up of them in the Cabinet Manual and, therefore, one assumes in terms of people's interpretation of it. I think Alistair Darling in his memoirs referred to it as not effectively an official convention but rather something that he chose to do when he consulted his opposite numbers over going to the ECOFIN meeting on that May weekend. In the Cabinet Manual now it is emphasised more strongly that incumbent Governments should consult their opposite numbers in these kinds of cases. It is a slight firming up around those rules that I think is worth noting.

**Professor Hazell:** May I add one thing? The essence of the caretaker convention is that a caretaker Government should try to do nothing that will tie the hands of a future Government because it may not be the future Government. Ideally, it should not make any major public appointments. It should not let any important Government contracts. It should not embark on any new policy. That is the essence of the caretaker convention. If it has to make a decision, as Alistair Darling thought he might have to when he went to the ECOFIN meeting on 10 May, then the default position, as Catherine has described, is to consult the Opposition parties and to try to clear your lines with them.

**Q8 Duncan Hames:** Thank you. Finally from me, if we could look at the question of the leadership of the caretaker Government, I think there would be quite widespread dismay among parliamentarians at the thought of a technocratic leader of Government, as we have sometimes seen in some European countries. In other countries, there is an obligation on the outgoing Prime Minister to

stay in office for the duration of the caretaker Government until their successor can be appointed. Do you think that this is essentially incumbent on the British Prime Minister?

**Professor Hazell:** Yes, I feel very strongly that there is a duty on the incumbent Prime Minister to remain in office until it is clear who can command confidence in his place. The Prime Minister should not go to see the Queen and say, “Ma’am, I wish to resign” unless he can confidently advise her whom to appoint who can command confidence—let us suppose this is after an election—in the new Parliament. I think the Committee has received evidence from Dr Petra Schleiter of Oxford saying in terms that in many continental European countries it is accepted that a caretaker Government cannot resign. She is, in effect, saying the same thing in equally strong words, that a caretaker Prime Minister cannot or should not resign unless and until he can advise the Monarch whom to appoint in his place.

**Dr Haddon:** There are two separate issues there. One is this issue about who stays in the role of leadership and this idea of a technocratic Government. That goes back to the previous issue about why ultimately the caretaker Government and the adherence to the caretaker rules lies with the Prime Minister and the right of Ministers to act because of that reason. Ultimately, we need a Prime Minister and that Prime Minister comes from that tradition.

On the other issue, it is important to understand, though, that while Robert is absolutely right in how he has articulated why we need to have a Prime Minister remain in place during this period, the difficulty we still have in this country is knowing at what point it is clear who can command confidence when in some cases it is about speculation of who is likely to if there has been no firm coalition agreement. It is all about an expectation about what might happen when Parliament meets for the first time and has a Queen’s Speech debate. In some of those other countries that have a clearer convention in terms of the caretaker Government staying in place until that process has been completed, they also have a clearer process for when that moment has passed. We still do not have either in the Cabinet Manual or in our own popular understanding of it that clear moment when we think, yes, this is clear, except for the Queen’s Speech and that can often be well after a Government has officially been formed.

**Q9 Mr Turner:** The current Prime Minister remains in post until somebody else turns up. The Liberal Democrats may, like the Labour Party, be not in that group; in other words, they may not support that. So he could lead us to the Queen’s Speech, although he recognises that he does not have a majority.

**Dr Haddon:** Yes. We have been referring a lot in the last few weeks, since January really, to the 1923-24 six-week period when Stanley Baldwin decided to attempt a Queen’s Speech. It took six weeks, partly because of the Christmas period, before he was then defeated. It is, in fact, the last time a Government was defeated at the then King’s Speech. Ultimately, though, in terms of 2010 it is not that an incumbent Government has the first right to negotiate with the parties. However, because of their incumbent status they will have the first opportunity, if they wanted to, to stay in Government and to go to a Queen’s Speech and to try to command the support of the Commons in that way. It does give them that first opportunity to test the Commons through whichever kind of negotiation they wish to do to gain that support to be able to pass a Queen’s Speech.

**Q10 Mr Turner:** Who decides when Parliament will be recalled? Given that they have announced they want it to be recalled on such and such a date but then Parliament is dissolved, at what point does that reassembly actually take place?

**Professor Hazell:** At the time of dissolution, a proclamation will be issued giving the date of meeting of the new Parliament.

**Dr Haddon:** And the date of the new Queen's Speech. Unless the Government, when it returned, then was able to change the Queen's Speech date—

**Q11 Mr Turner:** What would solve that? Who decides when the Queen's Speech will be?

**Dr Haddon:** Ultimately, the Government.

**Professor Hazell:** Yes, it is the Prime Minister.

**Q12 Mr Turner:** Although he does not have a majority, he could put off for six months the Queen's Speech?

**Professor Hazell:** Well, let's get real politically.

**Mr Turner:** Okay, three weeks.

**Professor Hazell:** Before I come to this, could I just go back? The Chairman at the beginning said it is really important that the public have a better understanding of the rules and what will happen in practice. We have been discussing the duty of the incumbent Prime Minister to remain in office and you will remember that in 2010 there were outrageous headlines in some newspapers over the weekend, "Squatter in No. 10", trying to put pressure on the then Prime Minister to resign early. I think they were outrageous and that Gordon Brown, the then Prime Minister, was doing his public duty in remaining in office as the incumbent Prime Minister until the negotiations had been sufficiently concluded that he could advise the Queen whom to appoint in his place. If after the 2015 elections there are any similar headlines suggesting that David Cameron is squatting in No. 10, I shall be equally forceful in saying, "No, he is not, he is doing his public duty as the incumbent Prime Minister to remain in office as a caretaker until he can advise the Queen who should form the new Government".

I am now coming to what I think is your question. If the negotiations between the parties do not lead to a clear outcome, in the unlikely event that there is not a winning combination that emerges from those negotiations then the default position is that the incumbent Prime Minister has the right to meet the new Parliament and to present a Queen's Speech as his programme for Government to test whether that can command confidence. That was what happened, as Catherine has described, in 1924, and the Conservatives in round numbers in that 1924 Parliament had 260 seats. The Liberals had 160 and Labour had 190. When Baldwin was defeated on the Queen's Speech, it was a Labour minority Government that was formed with only 190 seats. This is the other thing that people need to be aware of and we need to prepare the public in terms of their expectation that it is not necessarily the largest single party that forms the new Government.

**Q13 Mr Turner:** That satisfies me because I would be in a difficulty if I felt that period was going on and on and on with no evidence of end, but I can see what you are proposing. It could be that the Labour Party could not agree with the SNP, for example, but one of those parties, probably the Labour Party, would be the larger of those two parties and that would give the Prime Minister the opportunity to test himself against both other parties who could agree on that, even though they would not want to create a coalition of the parties.

**Professor Hazell:** This is again another very important part of preparing public expectations that in a hung Parliament a minority Government is also perfectly possible and feasible. One might even have a minority coalition, which when we have been briefing the broadcasters they regarded as something rather exotic and rare. Again, in other countries, in Denmark, in New Zealand, it is quite common to have a minority coalition.

**Dr Haddon:** In the case that you are talking about, as Robert has implied, the passing of a Queen's Speech is not just about being able to get all the support together to display publicly how many parties are on your side. It is also about the Opposition parties failing to get together a majority to defeat the Government, whether a minority Government or in any other circumstances. It is that kind of process of whipping, of gathering support, of negotiations behind the scenes and so forth in that case.

**Q14 Chair:** Of course, it is a fixed five-year term and, therefore, it may well be that the Government you start with at the beginning of the five years is not necessarily the Government that you will have all the way through. There could be a re-coalescence of various parties to take Government forward to the end of the term.

**Dr Haddon:** Yes. Indeed, in 1977 we had a vote of no confidence against the then Callaghan minority Government and he gathered together Liberal support and was able to put together what we call the Lib-Lab pact of support. I think it was confidence and supply or was it not formal?

**Professor Hazell:** In effect, it was a confidence and supply agreement, yes.

**Dr Haddon:** It was in effect confidence and supply. That passed then through a period of time. It is also entirely possible that you could start with a minority Government that then decides to be a coalition Government at a later stage in its life. There are all sorts of possibilities that may happen over the period.

**Chair:** Including a grand coalition of the two main parties with the smaller parties out in the cold?

**Dr Haddon:** Indeed, yes.

**Professor Hazell:** I see the Conservative members of your Committee smiling, Chairman.

**Chair:** No idea why. Andrew, back to you.

**Q15 Mr Turner:** I do not share the implication of this question but I should ask: should there be a way for the House to demonstrate support to a Prime Minister and Administration as soon as possible after he is appointed?

**Professor Hazell:** This goes to the dilemma that we have been discussing that the negotiations may take some weeks and it may not immediately be clear whether a new Government can command confidence. As you know, the traditional way of testing that is to present a Queen's Speech and then to have a debate that lasts for five or six days with a vote on the last day of the debate. I think I gave the dates in my written submission. In 2010, the formal vote at the end of the Queen's Speech debate was not until 8 June, so about five weeks after the date of the election. At this stage, we are exploring possibilities of ways in which if it is felt important to try to establish whether the new Government can command confidence in the new Parliament to do so earlier. One possibility would be not to leave the formal vote until five or six days after the Queen's Speech but to hold it, for example, immediately after the Queen's Speech. My understanding from initial discussions with the clerks is that that would be procedurally possible.

Another more radical procedure would be to hold what in Scotland is called a nomination vote. In the Scottish Parliament, after electing the Presiding Officer, their Speaker, the first piece of business is to nominate the First Minister. They hold a series of votes in which typically the parties vote pretty much in their party blocs supporting their candidate, and the person who wins the series of votes is then nominated and appointed as First Minister by the Queen. That is a very clear, early way of the Parliament deciding who shall form the Government, deciding who shall be the head of the new Government. It is a way of cutting through the possible period of uncertainty if it is not



clear that a Government might be able to carry a Queen's Speech or not. As I say, at the moment these are simply possibilities that we are exploring. We are not yet strongly advocating these things.

**Q16 Mark Durkan:** There are a couple of questions and some of them will touch on points already raised. Coming from an Irish background, I am conscious that the Irish constitution in the English language version provides that the Taoiseach, the Government, will carry on, is the actual language used, which of course throws up the sense of a carry-on Government. I am quite sure that you would not wish that language to be brought in here. In the Irish situation, it is quite clear there is a very different date set, a very specific date set, for the convening of the next Dáil, and it usually means that there is something like about a month between the general election and the approval of the Government. I know that is a long period where a Government remains in office even though it may well have lost the confidence of the country. The protocols and conventions that you say would need to attach to a caretaker period have not always been observed in the Irish Government situation and various public appointments and all the rest that have been made in that period. There have been bad last orders habits that have taken place. Do you think there could be a marriage between the protocols and standards that you have said and the clear space that is left in the Irish system to leave very good room and comfortable time in which programmes for Government can be negotiated without too much speculative stress on the parties involved?

**Professor Hazell:** There is an English translation of the Irish carry-on Government and it is an old maxim and, again, it is the rationale of the caretaker convention. It is that the Queen's business must be carried on. The Queen must never be without responsible advisers. That is what lies at the root of the caretaker convention.

You mentioned possible abuses of it in Ireland. The Cabinet Manual in this respect is quite strong in seeking to uphold the caretaker convention in that it has a paragraph that encourages permanent secretaries who feel that a Minister is at risk of breaching the convention—for example, in making an important public appointment and thus tying the hands of a future Government when there is an alternative course of action open—to seek a ministerial direction. Now, normally a permanent secretary will do so as accounting officer because he is concerned that a Minister wants to make a decision that involves the improper use of public money or possibly even the illegal use of public money. He can then formally seek a direction, which is a permanent secretary's way of waving a red flag in front of the Minister and saying, "I formally advise you that what you are planning to do is wrong and I am seeking a formal written instruction that you are instructing me to do this". The Cabinet Manual goes on to make arrangements for publicising that ministerial direction so that it becomes public knowledge.

The last thing I want to say before handing on to Cath—and she is the expert on this—is that it is not necessarily a bad thing to have longer periods of transition. Catherine, together with Peter Riddell, did a really important study about transitions and the transition period in other countries.

**Dr Haddon:** Yes, that was exactly the point I was going to make. It is a separate issue: should we have a more delayed handover? We are remarkably unique in the idea of a day after change of Government the removal vans come in, all of that, and it has produced wonderful drama but if one is looking at it from the point of view of effective Government, effective politicians, it does not entirely make sense and it is not what the tradition is in other countries, even those that have very comparable systems to our own.

It would be difficult to change, though, partly because we have become so used to it, the idea of another Government staying on after it has effectively lost office, if we are then talking about a more clear-cut change of Government under a majority, but there are good reasons for it. That is a separate issue from this other one, which is about the caretaker convention and what the rules

should be around it, and also the process of scrutiny and effectively the restriction, the governance of it, shall we say? It is worth noting that even in those countries that we usually refer to that have caretaker conventions—Australia and New Zealand in particular; the New Zealand caretaker convention is one model that was looked at in great detail here before we developed the Cabinet Manual—they explicitly say that you can have no hard and fast rules on every eventuality that it might cover. In Australia, there is a very good book that was out recently by Anne Tiernan on caretaker conventions in Australasia in particular, which talks about a range of controversies from the very minor to the much more significant that they have suffered and continue to in terms of how the caretaker convention is interpreted, how political parties will either use it or at least certainly make clear when they feel it has been abused or has been broken, shall we say? It is always a difficult process even in those circumstances.

The then Cabinet Secretary Gus O'Donnell, talking before the last election when we were developing the draft Cabinet Manual guidance on all of this, talked about this issue and was pushed quite hard on how you can in certain circumstances decide what is and is not a breach. He referred back to the fact that it is very difficult to have hard and fast rules on every eventuality. In the end, it needs some kind of judgment and, as with all things political in this space, it will come down to the political judgment not only of the incumbent Government, of the civil service, their own judgment about whether or not it has breached those rules that would require a ministerial directive, but also of the public, of politicians more widely, Parliament when it returns, and of the media. There is a form of accountability with a lower case “a” that will exist around it. The more familiar we are with it, the more experience we have of it if circumstances arise in which it needs to be used, the more we will be able to judge what circumstances constitute a breach.

**Q17 Mark Durkan:** The sort of consultation that might take place, say it was an ECOFIN meeting or something else sensitive on the EU or broader international horizon—it may be that there is a key meeting of the G8 or something like that—would that consultation be on the pre-election channel basis or would it be specifically informed by the figures that the election had thrown up?

**Dr Haddon:** No, it tends to be specifically from the incumbent Minister. The classic case we have of 2010 was, as I said, Alistair Darling going to an ECOFIN meeting to talk about the bailout of Greece. It is the specific Minister, in that case the Chancellor.

**Q18 Mark Durkan:** Yes, but who does this specific Minister consult?

**Dr Haddon:** His opposite numbers. In his case, he consulted with Vince Cable and George Osborne so it was his opposite numbers. The difficulty we have is what one understands by the term “to consult”. For some, consulting is just telling them. For others, consulting is obviously seeking their views. For others, it is making sure that you listen to and adhere to what they have asked you to do. We have the account from Alistair Darling. George Osborne has spoken about it a few times since as well. In his memoirs, Darling says that he rang them both up, consulted them and explained his positioning on it. In particular, the issue was whether or not the UK would vote in favour of the bailout and the size of the bailout. He says that both agreed with him that there could only be one Chancellor and, therefore, ultimately the decision was his. There were differences of views, certainly I think more with George Osborne about a particular part of the deal and whether it should be voted for, but in the end the reason why it is not so much of an issue was that the vote was under qualified majority voting, so the UK would not have had a veto. If Darling had voted against it, it would not have prevented the move. If it had been under different circumstances, if the UK had a veto, it goes back to the point that Robert made earlier about whether you are in a position where an incumbent Government has effectively forced the hand or made a decision on the part of a future Government.

It is a scenario we have not had and not tested. We have seen it in other countries. New Zealand had a classic case where an incumbent Government, against very vocal protest from not only its civil service but also the Opposition Members, refused to devalue at a time of currency crisis but was ultimately made to understand that this was a breach of the convention, a very serious one, and they subsequently changed some of the wording in the conventions around that in order to deal with that. It is a precedent we have not experienced yet, but we can look to others for experience.

**Q19 Mark Durkan:** If there was a longer period, if we are talking about some big decisions and if there is confusion, particularly if there are significant new numbers, almost new parties perhaps, to be consulted in parliamentary terms, would the fact of that consultation and these conventions discharge any requirement for parliamentary scrutiny, either in real time or close to real time or subsequently?

**Professor Hazell:** No.

**Dr Haddon:** No. I think in those circumstances if Parliament is not there it is difficult for them to be doing it. There is no formal scrutiny that they can do. I would find it very strange to think that if something like that happened Parliament would not find a very good reason for doing a subsequent study, inquiry, scrutiny of whatever kind it can on it.

**Chair:** Ad hoc.

**Dr Haddon:** Yes, exactly.

**Professor Hazell:** Yes, as most parliamentary scrutiny is.

**Q20 Chair:** Unfortunately. The answer then is to amend the proclamation on 30 March to ensure that Parliament returns immediately after the general election rather than at a time when the Executive chooses?

**Professor Hazell:** Well, Chairman, I would only say talk to some of the parliamentary clerks and they will explain to you why there is a lot of business that has to be done when a new Parliament first meets. They strongly supported in 2010—let me get my dates right—that the Queen’s Speech should not be until 12 days after, whereas before then it had been quicker.

**Dr Haddon:** I think Parliament first meets to elect the Speaker the Wednesday after the Thursday election and then there is usually about three days of swearing in of new Members, which is itself quite a tight schedule. One is looking at then the following week, so it is almost two weeks afterwards inevitably when the Queen’s Speech—

**Q21 Chair:** I was thinking more of Parliament meeting the day after a general election so there can be an open discussion without a vote and that Parliament then adjourns until such time as it needs to do, frankly, trivial bureaucratic things like swearing Members in. Surely, we are not going to select a Government on the basis that it is for the convenience of the parliamentary clerks.

**Dr Haddon:** Yes. Your understanding may be better, but I think there is a requirement that Members are sworn in before they are able to vote on such matters.

**Q22 Chair:** I am sure, since we are doing by this convention, we could have a system whereby everyone stands and raises their hand if they so wish at one time rather than take three days. Surely not three days. If the country is in some sort of crisis the argument that we are going to take three days to swear the Members in cannot possibly hold sway.

**Dr Haddon:** I do not know enough about the process. I think it is something, as Robert said, you will have to take up with the clerks and it will be a matter for your Committee to recommend.

**Professor Hazell:** Chairman, I struggle, I am afraid, to get my head around the idea that Parliament might meet the day after the election when you have all been out campaigning for four to five weeks.

**Chair:** Are we too tired to make the decision?

**Professor Hazell:** You have been up the whole night for the election count.

**Chair:** Someone needs to help us out.

**Professor Hazell:** You are completely exhausted. I suspect you might find yourself on your own.

**Q23 Chair:** That is a threat the country may quake at the thought of, but let's be serious. Not the day after, have a little bit of a rest the day after. We are talking about the country having not made a clear decision when the country needs to be governed and the role of newly elected Members of Parliament. It is as if we are a fleeting electoral college and we cannot wait to get rid of Parliament and hand power back to the Executive. We seem to be not thinking of a different way to do this.

**Professor Hazell:** Chairman, there is a negotiation that takes place between political parties. It seems to me lying behind your complaint is possibly a lack of democratic processes within political parties. That is a matter that only the political parties can resolve. The negotiations I think have to take place largely in secret because deals are being done, compromises are being struck. Again, if you want to be a member of Labour's negotiating team, I am sure there are channels within the Labour Party for you to apply. But, I am sorry, I cannot seriously believe that the negotiations can take place on the floor of the House of Commons.

**Chair:** No, I am not suggesting that. What I am suggesting is proper involvement of those that the British people have just elected and that proper involvement can be consultation and regular discussions on a day-by-day basis as negotiations unfold. I think, Robert, you are hitting the nail on the head. This is not a matter for parliamentary procedure so much as the will of the leaders of the political party to share power with those who have been newly elected. Mark, please continue.

**Q24 Mark Durkan:** Obviously, because of the nature of the British constitution you seem to be accepting that there cannot be a standard confirmation vote whereby Parliament, in essence, votes in or ratifies the Prime Minister as Prime Minister, as happens in many other places. Do you accept, therefore, that the confirmation vote on a Government should remain the Queen's Speech or would there be some other proxy confirmation vote that might be used—for instance, whether or not the House of Commons actually elects a leader of the House of Commons—and it would be the person who would be nominated by the person who is prospectively the Prime Minister, it is their nomination as leader of the House of Commons that would be the test vote on the formation of a Government, and then the Queen's Speech can take its course subsequently?

**Professor Hazell:** Yes. Forgive me, I think we have already gone over this ground. I am not saying that it is not possible in the British constitution to have what you are calling a confirmation vote whereby the new House of Commons, in effect, elects or nominates the Prime Minister. I have said that we are exploring the feasibility of doing that. We are not yet advocating it because we are not yet completely confident about how feasible it would be. It would be a much more transparent process for the voting public because they would then understand that a general election is a parliamentary election in which the people elect a Parliament and then, in the second stage of the process, Parliament decides who shall form the Government. The most transparent and obvious way in which that could be done, that second stage, is if Parliament itself elects, nominates, through a series of votes who is going to be the Prime Minister and the Queen then appoints that person as

Prime Minister. That is the principled argument, if you like, for trying to find a way towards having a nomination procedure as the first major item of business in a new Parliament.

**Q25 Mark Durkan:** Parliament would take the decision first rather than the sovereign appearing to take that decision on whoever's advice, whoever happens to arrive at the palace?

*Professor Hazell:* Yes.

**Q26 Mark Durkan:** If people decided that constitutional history and other sensitivities meant that Parliament could not be seen to appoint the Prime Minister rather than the sovereign, would there be other proxy confirmation votes that we could look for?

*Professor Hazell:* Well, forgive me, I think again we have gone over this ground because in terms of earlier votes there is the debate on the Queen's Speech and I have mentioned the possibility of having a vote immediately after the Queen's Speech. I suppose there could be a motion simply that this House has confidence in Her Majesty's Government of a formal kind even without a Queen's Speech.

**Q27 Chair:** There could surely be an advisory motion from the House to Her Majesty, which is a way to couch it, that the House recommends to Her Majesty the acceptance of Mr Cameron or Mr Miliband or whatever as the Prime Minister?

*Professor Hazell:* In effect, that is the wording that goes from the Scottish Parliament.

**Q28 Mark Durkan:** It is one thing for there to be a clear majority in the context of there being a coalition and people are, therefore, committed and locked in on that basis so people know then that is the intended Government that people have committed to between them provide a working majority. It would be a different situation in the event of confidence and supply. There would probably be a clear agreement, a programme for Government, a coalition agreement in the first position. It may be less clear in the second. There may not be one single document. Some of the parties who are named as being likely to provide confidence and supply might provide very different language around their terms of providing confidence and supply than the Government or the would-be Government are intending, and that can create a lot of uncertainty both politically and in terms of the market. Therefore, in that situation, do you think there is an added reason for there to be some clearer confirmatory vote that indicates the likely intended support pattern in that Parliament? I know in the Irish context that has generally happened around the vote on the Taoiseach whereby independents have either conveniently abstained or sided in the formation and that has indicated that they are in a working Dáil around a Government that provides a degree of confidence. That might be less available here.

*Professor Hazell:* We are now getting into the detail of the procedure if there were a nomination process as the first major item of business. One concern is that if motions were moved, for example, that this House nominate Mr David Cameron as Prime Minister, such a motion might be amendable and a minor party might then seek to attach conditions by moving an amendment and so on. That is why I pointed towards the procedure in Scotland because there it is very straightforward. There is no possibility of motions or amendments. They have a straightforward nomination process and then they have a series of votes on the nominees.

**Mark Durkan:** Which was the intention in the Good Friday Agreement as well.

**Chair:** Robert, I know you need to go. I am going to ask Fabian if he has anything particularly pertinent for Robert.

*Professor Hazell:* Chairman, I can stay for another five or 10 minutes.

**Chair:** Excellent. In that case, Fabian, you can go on as planned.

**Q29 Fabian Hamilton:** I will try to be as brief as possible, Robert and Catherine. In both Scotland and Wales, the civil service have provided greater levels of support in negotiations for the formation of a Government than has been provided at Westminster. I think that is pretty clear. I wondered if you would advocate greater involvement of the civil service in negotiations on forming a United Kingdom Government than is currently the position. Do you think that the civil service should be involved in providing more than simply factual information to any negotiations?

**Professor Hazell:** The first point to make is that it is up to the parties to decide how much support to accept or to ask from the civil service. We know that in 2010 the civil service, for example, offered to provide note takers for the negotiations and the parties rejected that offer. It is up to the parties to decide whether they want civil service help or not.

In terms of whether the civil service should be able to offer factual information and possibly advice, I said in my written submission that I thought that they should be able to offer both. Again, it is up to the parties to decide whether to take up that offer. Why do I want the civil service to be so closely involved? Because I think it is in the public interest that the negotiators be as fully informed as possible about the different issues that they are negotiating on. Again, let's get real. Each negotiating team—let us suppose this is a negotiation between two parties—is likely only to be four or five a side. Those people are not going to be super men and women who know every area of policy in their own manifesto let alone the other party's, and they are not going to be master of every subject area. Issues will arise where the negotiators want to ask: what will this cost? How long will this take? Will we run into legal difficulties? Those sound like factual questions and they can be put in that way but, as I said in my submission, to get sensible answers, the answers will come, I hope, couched with a bit of advice.

**Dr Haddon:** It is also worth revisiting some of the issues that surround the guidance that we currently have for how this was set up last time round. The Cabinet Office published the guidance it sent round to civil servants in the expectation that this might occur. Obviously, it did not then or at least it was not used as fully as it might have been able to.

First, one thing that we did not have trouble with last time round is that both parties involved in the primary negotiations—the Conservatives and the Liberal Democrats, not the Liberal-Labour ones—turned down this idea of having civil servants in the room. They did take up the offer of logistic support and I think they also took some help in terms of factual information but not extensively so. I wonder what situation you would get to where one party did want the support of the civil service and the other party did not or, if you have an incumbent Government that wants the support of its civil service, is that automatically through this process or is it through the normal dealings that Ministers might have with civil servants? Is there a restriction there? There are still a lot of questions to answer around that.

The other ones are there in the guidance. It sets out what should happen in the event that one party asks for a piece of factual information on policy X. If another party does not ask for that same piece of information, it does not get it, nor does it even know that the first party has asked for it. If both do ask for it, they get the same piece of advice, supposedly. There is clearly an expectation there that they would have quite strict convention and guidance around what constitutes advice.

**Q30 Fabian Hamilton:** Sorry to interrupt you. Therefore, should that information be provided as a matter of course to all parties irrespective of whether they ask for it?

**Dr Haddon:** Yes. This is the question.

**Fabian Hamilton:** Okay. What would your answer be?

**Dr Haddon:** In Scotland, in the run-up to the election, not in this particular process that we are talking about, because they had two coalition parties in Government together in the run-up to an election, they were very clear to make sure that both parties got the same kind of information but in what was called separate space. They both had the freedom and the opportunity to be able to develop their ideas with civil service support. That was separate from how you would use the civil service in a negotiation period, but it does beg a very interesting question about what would constitute the right kind of even-handedness. The guidance says all parties must be treated equally. It does not imply that the incumbent should be treated in any different way from the parties of opposition who may also be in negotiation. It then goes on to state very unequivocally that there will be this difference of factual information if one asks for it and another does not.

**Fabian Hamilton:** Okay. Anything to add, Robert? I know you have to go.

**Professor Hazell:** I have nothing to add.

**Q31 Chair:** Paul, I realise we did not include you because you were the last one in. Are you okay?

**Paul Flynn:** I usually sit here and think a lot, as you know, and do not talk too much.

**Chair:** Absolutely, very rarely speak.

**Paul Flynn:** I find it very educational.

**Chair:** That is a good moment. Robert, Catherine, thank you very much. I think this is something that is going to be, unusually for us, a matter of quite topical interest very shortly. The concept of allowing the public or even Members of Parliament into this secret society that we have created around the transition I think is a really healthy one for our democracy and you have added greatly to our understanding of that this afternoon. Thank you so much.

**Professor Hazell:** Your Committee has a very important role, so thank you for the inquiry.

**Dr Haddon:** Thank you.

**Chair:** Thank you so much. Thank you, colleagues, for attending.