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1. This submission responds to the first three questions in the inquiry's terms of reference.

The principles governing Civil Service support to the leaders of political parties involved in discussions over the formation of a new administration

2. The civil service have a very important role, as guardians of the transition if there is a change of government. They are guardians of the whole process of one government succeeding another. So they support the incumbent government as a caretaker government, and they then give full support to the incoming government to enable it to get up and running as soon as possible. It would be helpful if the committee could recognise this role of the civil service as guardians of a smooth and effective transition, and approve it. Some MPs have unfairly sniped at the civil service ‘taking over’ after an election. They do not: they continue to do their duty, ensuring the smooth running of the government, and seamlessly transferring their loyalties from one government to another.

3. With the consent of the Prime Minister, the civil service can provide support to the political parties involved in negotiations over the formation of a new government. The key principles governing such support are impartiality and confidentiality. The civil servants must support all the negotiating teams on equal terms. To maintain a Chinese wall between the bulk of the civil service who continue to serve the incumbent government, and the small cadre of civil servants supporting the negotiations, separate teams should be established. Their loyalty will be to the negotiating parties, and they must keep the negotiations completely confidential.

4. The support offered by the civil service could include:

- Provision of accommodation and refreshments
- Note takers, who can summarise the issues which have been agreed, and what remains outstanding
- the provision of factual information
- the provision of advice.

5. The parties are not obliged to accept any of these things. The last item is controversial: most commentators would prefer the civil service not to go beyond answering requests for factual information. I believe that it is an artificial distinction to suppose that they can provide factual information, without also offering advice. (Suppose, for example, that the parties in 2015 wanted to know ‘If we mothball Trident in 2016, is that in breach of our international obligations?’ Or ‘if we increase public spending by ½ per cent, what will be the impact on the deficit by 2019-20?’ Or ‘If we decide to cancel Universal Credit, how soon can that be done?’ Sensible answers to these questions all contain assumptions which include elements of advice). The key safeguard is that any information or advice is supplied to all the parties involved in that set of negotiations; and that the parties know when they request the information that it will be shared on that basis.
Operation of the ‘caretaker convention’ restricting government activity following an election with no overall majority

6. The Cabinet Manual has been greatly improved by recognising three separate contexts in which the incumbent government will be restricted in what it can do, because it no longer commands the confidence of Parliament (paras 2.27 to 2.31). These are in the pre-election period, once Parliament has been dissolved; post-election, if there is doubt about who can command confidence in the new Parliament; and mid term, following a successful no confidence motion. There are three further respects in which the caretaker convention could usefully be clarified and strengthened.

7. The first would be to use the terms caretaker convention, and caretaker government. The Cabinet Office is strangely reluctant to use these terms, although they have been readily adopted in Australia and New Zealand. The Cabinet Office appears to think ‘caretaker government’ is a pejorative term, implying a weak government. It is not; it is a technical term, implying a government which has full lawful authority to govern, but has lost (or has yet to acquire) full political authority. In that sense a caretaker government is weaker and more restricted in its decision making than a government which has established the confidence of Parliament; and rightly so.

8. The second improvement would be to explain the rationale for the caretaker convention, and to separate it from the restrictions on government publicity: the so-called ‘purdah’ rules. Restrictions on government publicity apply during any election (local elections, devolved elections, European elections), and have a different rationale: to prevent the governing party from seeking unfair advantage by issuing good news stories from Westminster. The two sets of rules come together during a general election campaign. It would help to keep them conceptually and practically distinct if Cabinet Office could adopt the term ‘caretaker convention’ to describe the restrictions on government decision making. The ‘purdah’ rules describe the restrictions on government publicity, which apply during any election, even when the government has a majority.

9. Thirdly, the Cabinet Manual is vague about when the caretaker convention ends. It says ‘The point at which restrictions on financial or other commitments should come to an end depends upon circumstances, but may often be either when a new Prime Minister is appointed by the Sovereign or where a government’s ability to command the confidence of the Commons has been tested in the House of Commons’ (Cabinet Manual, para 2.30). This is not satisfactory, especially if the post election negotiations take some weeks. It should always be clear to politicians, Whitehall, the media and the public whether a government is a caretaker government or not. The situation would be clearer if, instead of the debate on the Queen’s Speech being the first test of confidence in the new Parliament, there were a nomination vote as happens in Scotland and Wales: see paras 10-12 below.

Arrangements to demonstrate whether a Prime Minister forming a new administration commands the support of the House of Commons

10. Traditionally the first item of business in a newly elected Parliament at Westminster (after election of the Speaker) is the debate on the Queen’s Speech. This finishes with a vote to approve the government’s programme which is the first formal test of confidence in the
new government. In 2010 after the election on 6 May the Queen’s Speech was delivered on 25 May, there were then six days of debate, and (with the Whitsun recess) the formal confidence vote approving the new government’s programme was not held until 8 June. David Cameron had been Prime Minister for four weeks before it was established that he could command confidence in the new Parliament.

11. One way of reducing the uncertainty and speeding things up would be to hold the confidence vote at the beginning of the Queen’s Speech debate instead of at the end. In 2010 this would have meant holding the vote on 25 May, two weeks after Cameron had been appointed Prime Minister. But it would still not offer any guidance as to whom the Queen should invite to be Prime Minister if it is not clear who is likely to be able to command confidence in the new Parliament. That dilemma might happen in 2015 if both major parties win roughly equal numbers of seats and the new House of Commons contains different combinations of parties with credible claims to form a new government. In that circumstance the default rule is that the incumbent Prime Minister has the right to meet the new Parliament to test whether he can still command confidence, as Baldwin did in 1924.

12. An alternative would be for the first item of business to be a nomination vote to select the new Prime Minister. This might be seen as more democratic, more transparent and more comprehensible for the public. The people would have elected a Parliament, and they would then be able to see the Parliament decide in a transparent process who should form the government. Scotland provides a good example. At Holyrood the first item of post-election business after electing the Presiding Officer is a series of votes to establish which party leader can command confidence in the new Parliament. In the first round of voting, a candidate must win an overall majority. If no candidate achieves an overall majority, there is a second round run-off, in which a simple majority is sufficient. Candidates are voted on in alphabetical order. For an example, see the record of the voting procedure in the ‘parliament of minorities’ in 2007, when the SNP had 47 seats, Labour 46, the Liberal Democrats 16 and the Conservatives 16 (at 
http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=4723&mode=pdf). Alex Salmond won the nomination with 49 votes (with support from two Green MSPs): not an overall majority, but three more votes than Labour’s nominee who received 46 votes. The Presiding Officer then submitted Salmond’s name to the Queen, who appointed him as First Minister.

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