

The Conservative-Liberal Democrat Agenda for Constitutional and Political Reform

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Foreword

The new Conservative– Liberal Democrat coalition government announced on 11 May 2010 has a very ambitious and wide ranging agenda for political and constitutional reform. It was first unveiled on 12 May, when David Cameron and Nick Clegg published the outline coalition agreement which had been negotiated between the Conservatives and Liberal Democrats in the preceding four days. The agreement cont

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Devolution

The Calman plans for fiscal autonomy in Scotland cannot properly be delivered without a multilateral commission to devise a needs-based formula for all the territories of the UK. It makes no sense to allow Northern Ireland to vary the rate of corporation tax.

It will be very tight to hold a referendum on primary legislative powers for Wales in October, as the Welsh Assembly hope. If not held in October, it may be deferred to March.

Commission on the West Lothian Question

The government must decide in the terms of reference whether this commission is simply to work up a scheme for English votes on English laws, or look at wider solutions to the West Lothian Question, such as PR. It should be an all party parliamentary committee, chaired by a Conservative MP, with representation from Scotland, Wales and Northern Ireland.

Europe

It is difficult to entrench a referendum requirement for future EU treaties, because a future Parliament could repeal it. At most the requirement would be politically entrenched. The courts would hold it to be non-justiciable.

1 Coalition government and how it will operate

1.1 Coalition Government: Lessons from overseas

In 2002 the Constitution Unit published *Coalition Government in Britain: Lessons from Overseas*, a detailed report by Ben Seyd based upon two years' research

22% of the 23 seats in Cabinet, and 19%

1.4 Ministerial lead on political reforms

When the coalition was formed it was made clear that Nick Clegg would lead on constitutional and political reform. On 2 June the Prime Minister announced the following transfer of responsibilities to give effect to this:

2 Fixed term Parliaments

and a five year cycle for the House of Commons. Dates in italics indicate a combination of a UK general election and European parliamentary election on the same date; dates in bold indicate a clash between a general election and

It will not

3 Referendum on electoral reform, and smaller House of Commons

Coalition commitment

We will bring forward a Referendum Bill on electoral reform, which includes provision for the introduction of the Alternative Vote in the event of a positive result in the referendum, as well as for the creation of fewer and more equal sized constituencies.

educate people about the difference between FPTP and AV, because the difference is slight and the impact on the overall result is small. Many voters may wonder what the fuss is about.

Reformers tend to take it for granted that a referendum would be carried. That is by no means a foregone conclusion, especially if the governing parties campaign on opposite sides. Some electoral reformers may also campaign against, on the basis that AV is not enough. Others will claim (incorrectly, but plausibly) that a vote for AV is a vote for perpetually hung parliaments. Others will use the vote simply to kick against the government. If voters are confused, they are likely to cling to what they have (FPTP), or just stay away.

In Canada, British Columbia and Ontario have both recently had governments committed to electoral reform. They established Citizens' Assemblies to decide on a new voting

to foster a more open debate about the electoral system for the House of Commons and the House of Lords; and it would encourage reformers to think more seriously about how they wish to be more pro-

Westminster is a system that works because the two chambers are completely different roles and have different composition. Many reformers want PR for the House of Commons, and PR for an elected House of Lords. The Liberal Democrats are a good example: their ideal

3.3.1 Streamlining parliamentary boundary reviews

The

The body in overall charge: should this be the Ministry of Justice, or the Electoral Commission?

The leaders of the Boundary Commissions. Should they continue to be serving judges?

The electoral quota: will it be the same across the UK? Will Wales or Northern Ireland be allowed to preserve their existing quotas? Or will there be a devolution discount and proportionately larger constituencies in Scotland, Wales and Northern Ireland?

The rules of the different commissions (which have diverged in their interpretation): will they be harmonised? (Butler 1992; Rossiter, Johnston and Pattie 1999)

Parity. At the last review, 87% of the constituencies in England and Wales came within 10% of the electoral quota. How far should the commissions go to override natural and local boundaries in the quest for parity?

The building blocks for the exercise: if parity prevails, the commissions may need to cross many more local authority boundaries, and go smaller than wards and down to polling districts. In that case they

Date	Activity
2010	General Election
May	Establish Cabinet Committee to plan policy and legislation
July	White Paper
November	Bill introduced, Second Reading
2011	
July	Royal Assent
Sept	Boundary Commissions start reviews
2012	
April	Provisional

Questions may also be raised about who is in overall charge of boundary

4 Reform of the House of Lords

Coalition commitment

We will establish a committee to bring forward proposals for a wholly or mainly elected upper chamber on the basis of proportional representation. The committee will come forward with a draft motion by December 2010. It is likely that this will advocate single long terms of office. It is also likely there will be a grandfathering

4.2 The issues to be decided for an elected upper chamber

4.2.1 Size of the House, and appointed element

All parties want the second chamber to be much smaller than the present House, which has over 700 members. In the cross-party group Labour proposed a House of 400-450 members, while the Conservatives wanted only 250-300 members. If the non party crossbenchers are to be preserved, they have to be appointed, not elected. So those who wish to retain the crossbenchers must vote for 80%

changed to four years, it would be 12. There is also agreement on elections to the second chamber being staggered, with one third of the elected members being replaced at each election.

The 2008 white paper proposed a bar on appointed members of the second chamber standing for election, and vice versa. It also proposed a five year bar on members standing for election to the Commons, to prevent it being used as a launch pad for a political career there after leaving the second chamber. And it

A fourth difficulty is resistance in the House of Lords itself. Unthinking critics assume that this is the only or the most important obstacle.

justified by their vote share from the 2005 election. And it was short sighted of the Conservatives and Liberal Democrats to oppose the retirement provisions in the Constitutional Reform and Governance Bill, which would have made it easier to replenish the numbers in the Lords without continuously adding to the cumulative total.

4.4.1 Rebalancing the numbers of Conservative and Liberal Democrat peers

Having had relatively few appointments in recent years compared to the other parties, the Conservative group has become older, and being older has a lower average attendance than the other party groups. Enabling peers to retire would enable a rejuvenation of the Conservative group, as well as helping to control overall numbers. But the figures above suggest that the Lib Dems have a stronger case to increase their numbers, if the policy is for the size of party groups to

There are other reasons for proceeding gradually. First, Cameron

government is defeated in the Lords. Contrary to what might be supposed from the nominal

5 Reform of the House of Commons

Coalition commitments

We will bring forward the proposals of the Wright Committee for reform to the House of Commons in full – starting with the proposed committee for management of backbench business. A House Business Committee, to consider government business, will be established by the third year of the Parliament.

We will ensure that any petition that

5.2 Public involvement in setting the parliamentary agenda

With the limited time available to them, the Wright Committee made only modest proposals for public initiation of parliamentary business. They backed existing proposals to establish a Petitions Committee, suggesting that this role be given on an experimental basis to the Procedure Committee. The coalition government have gone much further, building on Conservative proposals to enable the public directly to influence the parliamentary agenda. The Conservatives had proposed that a petition signed by 100,000 voters would trigger a formal debate, and a petition of one million electors could require Parliament to consider a bill (Cameron and Herbert, 2008; Cameron, 2009a).

This would introduce a significant element of direct democracy into our system of representative democracy. The hope is that giving citizens the initiative in this way would enable people to re-engage with politics, over which they feel they have little influence. The risk is that if Parliament repeatedly rejects petitions, it may reinforce people's sense of powerlessness.

This is not the same as a referendum; this is a right of citizens' initiative. A referendum is generally held at

The best forum to determine serious

6 Devolution

Coalition commitments

We will implement the proposals of the Calman Commission and introduce a referendum on further Welsh devolution.

We recognise the concerns expressed by the Holtham Commission on the system of devolution funding. However, at this time, the priority must be to reduce the deficit and therefore any change to the system must await the stabilisation of the public finances. Depending on the outcome of the forthcoming referendum, we will establish a process similar to the Calman Commission for the Welsh Assembly.

We will continue to promote peace, stability, and economic prosperity in Northern Ireland, standing firmly behind the agreements negotiated and institutions they establish. We will work to bring Northern Ireland back into the mainstream of UK politics, including producing a government paper examining potential mechanisms for changing the corporation tax rate in Northern Ireland.

We will review the control and use of accumulated and future revenues from the Fossil Fuel Levy in Scotland.

We will establish a commission to consider the 'West Lothian question'.

6.1 Devolution finance

The thread running through a lot of these commitments is growing tensions over devolution finance. The big cuts in public spending will inevitably lead to cuts in the budgets of the devolved administrations; but there has been a growing realisation that the current system for funding devolution is unsustainable. The Scottish, Welsh and Northern Irish governments are funded by single block grants, with an annual adjustment by a population-based formula (the Barnett formula) to reflect changes in equivalent spending in England. The formula was meant to deliver convergence on English spending levels (the 'Barnett squeeze'), but has not done so. Its demise has long been predicted, but the difficulty has been

become increasingly underfunded relative to its needs, creating an urgent requirement to reform

government, which could levy additional tax if it wanted to maintain additional service standards.

Crucial to

and profits from the rest of the UK, and the fact that this would be subject to a lower rate of corporation tax, mean that a reduced rate of corporation tax for Northern Ireland would certainly come at a long-term cost in reduced resources to be shared by the UK regions or in the financing of public services. The policy would result in a net cost of about £2.2 billion over ten years, with no prospect of full cost recovery over the long run (Varney, 2007).

Varney is gently saying that the proposal makes no sense. It certainly makes little sense in terms of the economics of fiscal federalism. It would only work if there were no circumstances in which Northern Ireland could get a bail-out if corporation tax revenues under-delivered, when all previous experience of the begging bowl politics of Northern Ireland suggests that is unlikely. The Scottish government would use it as a precedent for the devolution of corporation tax rates in Scotland. At that point, macro-economic management of the UK economy would become significantly more difficult.

6.1.4 Devolution finance and Intergovernmental relations

The tensions and complications of devolution finance all lend support to a recommendation of the Calman Commission that Labour dropped: to establish a new committee as part of the ministerial structure underpinning intergovernmental relations, namely a Joint Ministerial Committee (Finance). The UK Government could call an early meeting of devolved finance ministers with the Chancellor and Chief Secretary to the Treasury to discuss the UK emergency budget, while those plans are still being formulated, to engage the devolved administrations in the process. One of the few benefits of David Laws' replacement as Chief Secretary by Danny Alexander is that the Treasury might become more devolution-sensitive: they should capitalise on Alexander's devolution expertise.

6.2 Referendum in Wales on primary legislative powers

The draft Order is approved by the Welsh Assembly, again by two thirds majority. The Welsh Assembly held its 'trigger vote' to start the process on 9 February, approving the resolution by 53 votes to 0. The First Minister sent notice in writing of the resolution on 17 February. To prevent the UK government dragging its feet, the Act then allows 120 days for the draft Order to be laid before Parliament. That period will expire on 17

6.3 Commission on the

Democracy Task Force, in their 2008 report on the West Lothian Question. All these bodies developed outline schemes for

6.3.3 Terms of reference for the Commission

Much will depend on the terms of reference of the commission on the West Lothian question, its members and its chair. If the government wants it to focus on the Conservative agenda, it should be directed to devise a workable scheme for English votes on English laws in the House of Commons, and to ignore any wider solutions. It might also be sensible to make it a parliamentary commission, like the Wright committee, with parliamentary clerks able to advise on all the complications of parliamentary procedure; and Parliamentary Counsel to advise on what counts as an 'English law'. The chair should be a Conservative MP, committed to devising a workable solution. The committee needs to be all-party, and needs to include MPs from Scotland, Wales and Northern Ireland, because of the knock-on consequences of English legislation for the other parts of the UK (for example, an increase in student tuition fees).⁴ The committee should not be frightened of compromise solutions, and experimental or pilot phases to test

7 Europe: Treaties, Referendums and Sovereignty

Coalition commitments

We will ensure there is no further transfer of sovereignty or powers over the course of the next Parliament.

We will amend the 1972 European Communities Act so that any proposed future treaty that transferred areas of power, or competences, would be subject to a referendum on that treaty – a ‘referendum lock’. We will amend the 1972 European Communities Act so that the use of any *passerelle* would require primary legislation.

We will examine the case for a UK Sovereignty Bill to make it clear that ultimate authority remains with Parliament.

7.1 Referendum requirement for future EU Treaties

The

7.1.2 Will the new law be effective?

by the referendum requirement. In practice, the powers of the EU have also grown through decisions of the ECJ, and through 'creeping competence'. These jurisprudential and incremental increases in the power of the EU would not be caught by the referendum requirement.

At its strongest, the transfer of power would mean conferring fresh powers in an area where previously the EU has had no competence. But in some cases the transfer of power may be relatively insignificant: does this justify holding a referendum? It may not be easy to define which treaties 'transfer power or competences to the EU' so as to require a referendum. And the government will be asked, who will decide? Will it be left ultimately to the courts to determine whether a Treaty comes into the defined category? Or will it be for ministers to certify: and can a ministerial certificate be put beyond challenge?

7.1.4 Restriction of *passerelle*

The coalition agreement also aims to prohibit the use of any *passerelle* as a bridge for the subsequent transfer of powers without further primary legislation. This

7.2.2 What would a Sovereignty Bill say?

Drafting concentrates the mind. Is the objective something like the following, declaring to the courts that Parliament can if it wishes direct them not to apply EU law?

This Act recognises the Queen in Parliament to be the primary source of law in the UK, and the ultimate source of all legal authority.

If at any time Parliament decides to legislate in a way which is incompatible with EU law, and expressly so decla

Internal Whitehall review, reporting to the Cabinet Committee on Europe
Parliamentary review, by the EU Committee in the Commons or the Lords
Independent review by a group of experts.

William Hague as Foreign Secretary is in the lead on this policy commitment. Which option to choose depends on what he and the government hope to achieve. The safest option is an internal Whitehall review, but that

8 Electoral administration and regulation of political parties

8.1 Individual voter registration

The Conservatives have long supported individual electoral registration (IER) as a means

8.2 Funding of political parties

The continuing reliance of the political parties on big donors can be seen from the latest declarations made by the parties to the Electoral Commission. In the first quarter of 2010 the Conservative party reported receiving donations totalling £12m, the Labour party £4m and the Liberal Democrats £2m. Almost 40 per cent of the Conservative party's donations came from companies, and 70 per cent of Labour's from trade unions. The Labour party reported loans outstanding of £10m, the Conservatives £3m and the Lib Dems £0.4m.

The big imbalance in the finances of the political parties is a serious impediment to reaching agreement. Five years ago, when the Conservatives were much weaker financially as well as electorally, they were more willing to engage in talks about party funding. At that time there were three reviews of the funding of political parties: by the Electoral Commission (2004), the Constitutional Affairs Select Committee (2006), and Sir Hayden Phillips (2007). Building on the p7.08 58

The current system of Short Money does not account for the complexity of situations where there is not a majority government. We are looking to ... ensure that, as the smaller of the two coalition parties, the Liberal Democrats are able to maintain their operational independence in parliament.

But when he was asked about this at Business Questions on 3 June, the Leader of the House Sir George Young stated simply 'Short money is available to Opposition parties; it is not available to Government parties' (Hansard 3 June 2010 col 591).

8.3 Increasing party primaries

This proposal comes from the Conservative interest in using 'open primaries' to engage non-party members in the selection of party candidates. The Conservative policy is summarised in Figure 8.1 below. They pioneered the first open primary in Totnes in July 2009, when a local GP Dr Sarah Wollaston was selected, defeating a Conservative councillor and an elected Conservative mayor. She has since become an MP. From over 100 applicants the Conservative constituency association short listed three, and then all 68,000 voters in Totnes were sent postal ballot papers to select the candidate. 17,000 ballot papers were returned, half of them for Dr Wollaston. The primary cost £38,000, spent on distributing the ballot papers and paying an independent firm to

Figure 8.1 Conservative policy on all postal primaries
(Conservative party, 2010)

We will fund 200 all postal primaries over the next Parliament. These funds will be allocated to all political parties with seats in Parliament that they take up, in proportion to their share of the total vote in the last General Election. At an estimated cost of £40,000 per primary, this gives a total cost of £8 million, or £1.6 million a year over the course of a five year Parliament. To allow for differences in parties' timing, any money not used in the first year will be rolled over into the next year's pot. It would, of course, be up to the parties which constituencies they chose to use their allocation of primaries in.

Here the American precedent is the new federal website

This information would include:

the names of the individuals carrying out lobbying activity and of any organisation employing or hiring them, whether consultancy, law firm, corporation or campaigning organisation.

in the case of multi-client consultancies, the names of their clients.

information about any public office previously held by individual lobbyist

a list of the interests of decision makers in public service (Ministers and senior public servants) and summaries of their

10 British Bill of Rights

Coalition commitment

We will establish a commission to investigate the creation of a British Bill of Rights that incorporates and builds on all our obligations under the European Convention on Human Rights, ensures that these rights continue to be enshrined in British law, and protects and extends British liberties. We will seek to promote a better understanding of the true scope

10.2.2 Social

nationalists, who will stand by the commitment in the Belfast Agreement that Northern Ireland have its own Bill of Rights.

10.4 British bill of rights: Entrenchment

The HRA is not entrenched, save for the obligation to interpret all legislation, including future legislation, compatibly with Convention rights. It thus entrenches

Date	Stage in Process	Comments
2010	Decide	

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