

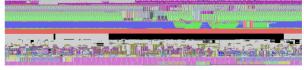


Forming a government in the event of a hung parliament

The UK's recognition rules in comparative **c** e

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Executive summary

This paper considers government formation in a hung parliament, in which more than one potential government is viable. In such situations, constitutional rules and conventions, which are referred to in the academic literature as *recognition rules*, guide which actors will be asked to form the government (i.e. to act as the *formateur*) and in what order.

The academic literature identifies six possible recognition rules to guide who should be asked to form a government. These are the majority principle, the continuation rule, and the gravitational, plurality, fault and plebiscitary principles.

Recognition rules have political consequences. They may influence which parties form the government, and what policies are then implemented. To protect the monarchy and its political impartiality, the recognition rules need to be clear, democratic and effective.

In the past the UK has applied a range of different conventions and principles which are potentially contradictory, and do not all follow an equally democratic logic. This can jeopardise the Monarch'

commands an outright legislative majority and the Prime Minister is directly identified by the election result so that no choice is required on the part of the Monarch and her advisers. However, if the election returns a hung parliament, the task of naming an appropriate government *formateur* often involves political choices, which can crucially influence the nature of the government that is then formed. In this situation it is desirable that the procedure for government formation separates the political choices from the formal and ceremonial aspects of government formation in order to protect the Monarch from political controversy. This is not currently the case in the UK.

This paper reviews the UK's constitutional conventions and past precedents in *formateur* selection and places them in the context of six principles that other parliamentary democracies use to guide actors outside parliament, who have a role in government formation negotiations. We show that, in the past, the UK has applied five of these six principles in selecting *formateurs*, and that these principles are potentially contradictory. Moreover, not all of these principles follow an equally evident democratic logic. A lack of clear and democratically robust guidance is problematic because it can spark controversy and call into question the Monarch's role in the government formation process. Box 1 illustrates this risk, drawing on the example of Queen Beatrix of the Netherlands.

Box 1: Risks to the Monarch, the example of Queen Beatrix of the Netherlands

In 2010 charges that the Monarch's political impartiality had been compromised entangled Queen Beatrix of the Netherlands, and ultimately contributed to the decision of the Dutch parliament in 2012 to end the Queen's involvement in the government formation process. Following the 2010 elections, the Queen tasked several party leaders, in succession, to explore the options of forming a coalition, but government formation proved difficult, contentious and protracted. Controversy erupted when the Queen was accused of (i) exercising discretion in her choice of party leaders tasked with exploring the coalition options, and (ii) seeking to prevent the third largest party, the right wing anti-immigrant Party for Freedom of Geert Wilders (PVV), which had won substantial gains in the elections, from entering the government. In 2012 the law was changed so that the party with a plurality of votes is responsible for taking soundings of the other parties, and then reporting to parliament on who should be appointed as informateur.

Given the long-term changes in electoral behaviour, which are rendering hung parliaments more likely, there is a case for resolving the contradictions in the conventions and precedents that guide government formation. We outline options to address the problem and argue that the most appropriate mechanism to nominate a *formateur* is a vote in parliament (in the form of a recommendation to the Monarch). This would protect the monarchy and its political impartiality by separating the *political choice of a formateur*, made by parliament, from the *formal act of appointing a formateur*, made by the Monarch. We also discuss how parliament might best choose a *formateur*, and suggest the need for rules to address the possibility of an unsuccessful and gridlocked government formation process.

Two government formations which followed

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Box 3: George V and the formation of the National government in 1931

In the context of the Great Depression in the early 1930s, for instance, George V felt pushed to play a personal role in government formation after the split and collapse of the minority Labour government in 1931. Fearing the disruption of an election and the possibility that Britain might be forced off the gold standard, he repeatedly refused to accept the resignation of the incumbent Prime Minister, Ramsay McDonald, and pressed

Six recognition principles

Comparative studies in political science identify six principles that are applied to select a *formateur* when an actor other than parliament itself is involved in that choice.¹⁰ Five of these principles have at some point been invoked in the UK. Three of them are reflected in the 2011 Cabinet Manual, which is currently the most comprehensive guide to the laws, conventions and rules on the operation of government.

1. The majority principle

The principle that is most frequently applied in the UK is the *majority principle*. It is regarded as a clear constitutional convention. As the Cabinet Manual states, governments that retain their parliamentary majority in an election normally continue in office. Moreover, '[i]f the election results in an overall majority for a different party, the incumbent Prime Minister and government will immediately resign and the Sovereign will invite the leader of the party that has won the election to form a government' (Cabinet Manual 2011, § 2.11).

2. The continuation rule

When no party achieves an overall majority, the majority principle cannot apply so alternative conventions must be invoked. At this point the distinction between informal negotiations and the formal recognition rules becomes important. Informally, any party can negotiate with any other party about government formation in a hung parliament. But the formal recognition rules determine which actor has the 'first right' to attempt to form a government after those negotiations and to test whether it has the confidence of the legislature. The Cabinet Manual seeks to establish that the formal principle which applies in a no-majority situation is the *continuation rule* (Cabinet Manual 2011, § 2.12), which was appealed to by Heath and Wilson in 1974. This principle stipulates that the 'incu

government. But as the 'squatter in Downing Street' episode following the 2010 elections illustrates, that choice might

comparative context, parliamentary selection of the *formateur* is common. Within the UK, it is current practice in the Welsh Assembly and the Scottish Parliament.¹⁷ Internationally, the Irish, Japanese, Swedish and Dutch (since 2012) parliaments, amongst others, choose *formateurs* themselves.

This reform proposal also offers an answer to the second question outlined above - how best to protect the Monarch

Models: the procedure in other European countries, and in Scotland,

Realising reform

This reform could be implemented on the basis of a cross-party agreement before an election; with draft standing orders prepared or even adopted. After an election, it is too late to introduce a nomination vote as the first item of business. The challenge now lies with politicians to acknowledge the risks presented by hung parliaments and to reform the government formation procedures before we have another election resulting in a hung parliament, and the risk of a messy and contested process of government formation.

Summary of recommendations

- In the past, the UK has applied a range of potentially contradictory conventions and principles to determine who should be invited to form a government. These rules can provide insufficient guidance when parliament's composition is complex and can place the Monarch in an awkward position.
- To provide clear guidance to the Monarch, there should be a vote in parliament to determine who should be appointed as Prime Minister (in the form of a recommendation to the Monarch), as is the case in Scotland.
- On a fast track timetable, this nomination vote could be held within a week of the election. If more time is required, the date could be adjourned.
- There ought to be a provision to terminate gridlocked government formation processes after general elections as well as after a mid-term loss of parliamentary confidence in the government. One option could be to impose a time limit of 28 days on the formation of a new government,

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