

**A draft Caretaker Convention for the UK
Modelled on that in Australia and New Zealand**

Supplementary Memorandum by Robert Hazell and Peter Riddell, 21
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This supplementary Memorandum is submitted to make the case for having a proper caretaker convention in the UK. The Cabinet Office might be encouraged to do so if the Committee expressed its support for a stronger convention.

The current guidance is as follows:

“During an Election campaign the Government retains its responsibility to govern and Ministers remain in charge of their Departments. Essential business must be carried on. However, it is customary for Ministers to observe discretion in initiating any action of a continuing or long-term character. Decisions on matters of policy, and other issues such as large and/or contentious procurement contracts, on which a new Government might be expected to want the opportunity to take a different view from the present Government should be postponed until after the Election, provided that such postponement would not be detrimental to the national interest or wasteful of public money.” (Cabinet Office General Election Guide 2005, Guidance Note G).

The guidance is deficient in three respects:

- It applies only during election periods
- It offers detailed guidance about public appointments (in the next four paragraphs), but no further guidance about government contracts
- It contains no guidance about how to consult the opposition parties, if that is required.

In Australia and New Zealand the caretaker convention also applies after an election, until a new government is sworn in. The underlying principle is that a government derives its political authority to govern from commanding the confidence of Parliament. If the government does not enjoy that confidence, it should be careful not to take any decisions which might tie the hands of a prospective government which does enjoy confidence. As the Australians put it, ‘A caretaker government has legal but not political legitimacy. Its role is to ensure the ordinary business of government continues until the outcome of the electoral contest is clear’ (Davis *et al* 2001).

The text of the New Zealand caretaker convention is at pp 28-31 of our original submission. In essence it can be distilled into the following principles:

Caretaker convention

- The caretaker convention applies after an election, until a new government is sworn in; and mid term, if a government loses the confidence of Parliament.
- The incumbent government is still the lawful executive authority, with all the powers and responsibilities that go with executive office. It is likely to state that it is operating as a caretaker government.

- If decisions are required on significant or controversial issues, such decisions should: be deferred, if possible; handled by a temporary arrangement (eg extending a board appointment, or rolling over a contract for a short period); or made only after consultation with other political parties.
- Such decisions will be referred to the Minister, who must consult the Prime Minister in cases of doubt, or before approaching other political parties.

The immediate need in the UK is to develop an understanding that a caretaker convention should apply after an election, if it is not clear who can command confidence in the new Parliament, until that becomes clear and a new government is sworn in. This period is likely to last only for a few days, but it could possibly last weeks, if recent experience of parliaments in Australia, New Zealand, Scotland and Wales is any guide. In that circumstance it is desirable to have a shared understanding that the incumbent government continues to govern, but subject to a caretaker convention.

This is not just a matter of constitutional nicety, but could be vital to public policy, especially in a financial crisis. In New Zealand the outgoing National party Prime Minister Robert Muldoon faced a financial crisis after the 1984 election. He was urged to devalue the NZ dollar in line with the incoming Labour government's policies. He refused, and since he was legally Prime Minister, Labour were unable to prevail. It was only after three days of political and constitutional wrangling (during which Muldoon's own colleagues went to see the Governor General to urge his dismissal) that Muldoon relented and agreed to devalue. The result of Muldoon's refusal to devalue was later estimated at NZ\$800 million: over 2% of NZ's GDP in 1984.

It was after that crisis that New Zealand developed a proper caretaker convention. We do not want to wait for a similar crisis before we are forced to develop a caretaker convention here. Far better to put the convention in place so that everyone knows the procedure just in case we face a financial or other crisis at the start of a hung parliament. If the Committee gave its cross party support to that principle, the Cabinet Office could work out the details by developing a proper caretaker convention. The convention needs to apply after the election until a new government is sworn in; to cover government contracts and matters such as financial policy; and to explain the procedures for consulting the opposition parties.

References

Davis *et al*, 2001. Davis G, Scales B, Lyn A and Wilkins R, 'Rethinking Caretaker Conventions for Australian Governments' *Australian Journal of Public Administration* 60:3, 11-26 Sept 2001.