



## Pre-election contacts between civil servants and opposition parties

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By convention, opposition parties are entitled to enter into confidential discussions with senior civil servants in the run-up to a general election. Such discussions must be sanctioned by the Prime Minister of the day. They are intended primarily to allow opposition spokespersons to familiarise themselves with aspects of departmental organisation, and to inform civil servants of likely changes to the machinery of government in the event of a change of government.

In April 2014, it became known that the current Prime Minister had written to the Leader of the Opposition to inform him that pre-election contacts between the opposition and the Civil Service would be authorised from October 2014, 6 months prior to the May 2015 general election. This note outlines the current arrangements and also provides a brief history of the convention. It notes recommendations for change from the Political and Constitutional Reform Select Committee and the Institute for Government, made in May 2014.

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## 1 Current arrangements

The principles governing pre-election contacts between the civil service and opposition parties are set out in the first edition of the Cabinet Manual published in October 2011 available from the Cabinet Office website.<sup>1</sup> The relevant section begins as follows:-

### **Pre-election contact with opposition parties**

2.21 At an appropriate time towards the end of any Parliament, as the next general election approaches, the Prime Minister writes to the leaders of the main opposition parties to authorise pre-election contacts with the Civil Service.<sup>18</sup> The meetings take place on a confidential basis, without ministers being present or receiving a report of discussions. The Cabinet Secretary has overall responsibility for co-ordinating this process once a request has been made and authorised by the Prime Minister. These discussions are designed to allow the Opposition's shadow ministers to ask questions about departmental organisation and to inform civil servants of any organisational changes likely to take place in the event of a change of government. Senior civil servants may ask questions about the implications of opposition parties' policy statements, although they would not normally comment on or give advice about policies.<sup>2</sup>

The 'opposition parties' in question are not specified in the guidance, and the existence of a peacetime coalition government for the first time since the 1930s may mean some changes in the operation of the convention for the planned general election of 2015. In evidence to the Public Administration Select Committee Oliver Letwin confirmed that the Prime Minister, David Cameron, had written to the Leader of the Opposition, Ed Miliband, to confirm that pre-election contacts would begin from October 2014.<sup>3</sup>

Previous guidance was contained in Cabinet Office: Directory of Civil Service Guidance, Part 2.<sup>4</sup> The original guidance noted that it was for the leaders of the opposition parties, and not the Prime Minister, to trigger pre-election contacts: "The initiative for arranging such contacts lies with the Party Leaders to approach the Prime Minister in the first instance".<sup>5</sup>

## 2 History of the convention

The convention is sometimes referred to as the "Douglas-Home rules"<sup>6</sup> since the talks authorised by that Prime Minister prior to the 1964 general election were referred to in the first public statement on the matter by Harold Wilson in 1970. A memorandum, dated October 1993, which was submitted by the Cabinet Office to the Treasury and Civil Service Committee, sketches out the following history:-

5. The convention dates back several decades, but the first full public statement of it appears to have been made in 1970 in a full statement to the House of Commons by the Prime Minister, Mr Harold Wilson, on 21 April (HC Debs 21 April 1970 cols 244-254). In his statement, Mr Wilson said that: "The only instruction in force was given by

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/60641/cabinet-manual.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/60641/cabinet-manual.pdf)  
Previously the guidance was in Cabinet Office, *Directory of civil service guidance*, 2000, volume 2

<sup>2</sup> *Directory of Civil Service Guidance* 2000, volume 2, p18, para 2

<sup>3</sup> Public Administration Select Committee [Fixed- term Parliaments: the final year of a Parliament](#) 2013-14 para 62

<sup>4</sup> *Directory of Civil Service Guidance* 2000, volume 2, 2000

<sup>5</sup> *Directory of Civil Service Guidance* Vol 2, p18, para 3

<sup>6</sup> In, for example, Peter Hennessy's *Whitehall*, Secker & Warburg, 1989, p183

me orally to the Head of the Civil Service and it is that the practice of our predecessors in these matters should be followed.”

6. Mr Wilson added that: “It has always been the case, and no change has been made by this Administration, that Members of Parliament, including Opposition leaders, are given normal facilities for briefing when going abroad. There have always been special arrangements in force so far as defence briefing is concerned and these have continued.” Later he said that “there has always been an understanding, I think, that where the leading Opposition representatives themselves – and this applies to more than one Opposition party – seek to have information which will help to clarify their views and formulate their policies, this should be made available.” Mr Wilson also referred to discussions which he had had with senior civil servants as Leader of the Opposition before the 1964 General Election.

7. Following that statement, Mr Heath, the then Leader of the Opposition, wrote to Mr Wilson who subsequently authorised discussions with the Head of the Home Civil Service and other civil servants on machinery of government matters in the lead up to the 1970 General Election.

8. In evidence to the Treasury and Civil Service Select Committee on 27 November 1985, Sir Robert Armstrong, the then Head of the Home Civil Service, said in reply to a question on what contacts he would be having with the Opposition parties in the run up to the next election:

“It would be dependent on the Leader of the Opposition of the day and I suppose in a situation where there might be more than two outcomes to an election, shall we say, that would be extended to leaders of other parties. In the run-up to an election, and if the Parliament runs its full course in the last six months of the Parliament, it is understood that the Leader of the Opposition may seek the Prime Minister’s agreement, that he or members of his Shadow Cabinet may talk to Permanent Secretaries, particularly on questions of organisation, so as to be able to discuss questions of organisation that might arise in the event of a change of government but the initiative for that would come, as I say, from the politician and not from the civil servants, and each contact would have to have been cleared with the Leader of the Opposition and, no doubt, with the Prime Minister of the day.”

9. Sir Robert went on to explain that the purpose of the contacts would not be to clarify policies but would instead be related to questions of organisation. These conversations would be regarded as confidential with the member of the Shadow Cabinet concerned.<sup>7</sup>

Alan Watkins wrote in the *Independent on Sunday* that, while the 1964 discussions were the first to be documented, there must have been “preliminary discussions” before previous general elections.<sup>8</sup> Peter Hennessy has said that the civil service “does what it can to find out what an Opposition is up to” but that “formal contacts were taboo” until the talks of 1964.<sup>9</sup>

### **3 The Kinnock/Major reform – extending the period for pre-election contacts**

As stated above, contacts between senior civil servants and opposition spokesmen were originally allowed to begin in the last six months of a five year parliament. The memorandum

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<sup>7</sup> “Contacts between senior civil servants and opposition parties” in Treasury and Civil Service Committee, *The role of the civil service*, HC 27 1993/94, Vol. 2, pp 29-30

<sup>8</sup> Alan Watkins, “There is defeat and there is crushing defeat”, *Independent on Sunday*, 4 January 2009

<sup>9</sup> Peter Hennessy, Whitehall, Secker & Warburg, 1989, p283

notes that no contacts took place before the election periods of 1983 and 1987, and this was because neither parliament had been allowed to run its full course. There were extensive contacts in 1992 but, after that election, the then Leader of the Opposition, Neil Kinnock, proposed and the then Prime Minister, John Major, agreed that the timetable should be relaxed and that consultation between civil servants and opposition politicians should be allowed to begin earlier.

A letter from the Chancellor of the Duchy of Lancaster, dated 11 April 1994, submitted in evidence to the Treasury and Civil Service Committee inquiry cited above stated that such contacts would be authorised “at any time in the last year of the Parliament if the Leader of the Opposition wishes it.”<sup>10</sup> However, a parliamentary answer from the Prime Minister in November 1995 stated that he had indicated his willingness to authorise such exchanges from January 1996, some sixteen months before that parliament was due to end:

**Mr. Alfred Morris:** To ask the Prime Minister what are the conventions whereby civil service Departments take steps to consult the Opposition about their policies towards the end of a Parliament; and when such steps are planned to be taken before the end of the current Parliament. [40883]

**The Prime Minister:** The convention has been that, by authority of the Prime Minister, towards the end of a Parliament or when a general election has been called, Opposition parties may arrange, with the authority of their party leaders and through the head of the civil service, contacts with senior civil servants. These arrangements are designed to allow briefing on factual questions on departmental organisational changes which Opposition parties have in mind or which may result from Opposition party policies. Any exchanges would be confidential. Following the last general election, I told the leader of the Opposition that I would be content to authorise confidential exchanges between senior civil servants and Opposition spokesmen from January 1996.<sup>11</sup>

On 24 January 1996, the Prime Minister duly indicated in another parliamentary answer that he had authorised the commencement of pre-election contacts following a request from the Leader of the Opposition (Tony Blair).<sup>12</sup>

#### **4 Elections since 1997**

After the general election of 1 June 1997, the new Prime Minister, Tony Blair, indicated that the arrangements agreed by previous administrations would continue:-

**Mr. Salmond:** To ask the Prime Minister (1) what changes have been made to the arrangements for pre-election contacts between senior civil servants and opposition parties since the evidence by the then Head of the Civil Service to the Treasury and Civil Service Committee on 27 November 1985; [57954]

(2) if the contacts between senior civil servants in the Treasury and the then shadow Chancellor before the 1997 General Election were directed exclusively to questions of organisation. [57955]

**The Prime Minister:** The current arrangements for pre-election contacts between senior civil servants and Opposition parties do not differ significantly from those in

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<sup>10</sup> See letter from the Chancellor of the Duchy of Lancaster, dated 11 April 1994, published in evidence to the Treasury and Civil Service Committee – *op cit*, vol 2, pp 186

<sup>11</sup> HC Deb 3 November 1995 cc477-8W

<sup>12</sup> HC Deb 24 January 1996 c225W

place in 1985. The only substantial change since 1985 was agreed after the 1992 General Election to take account of the fact that, under our electoral arrangements, it is only the last possible date for the next General Election that is known in advance. At the suggestion of the then Leader of the Opposition, the then Prime Minister agreed that it should be possible for such contacts to take place from 16 months before the 1992 Parliament would complete its maximum five-year term. Previously, contacts had been allowed to begin in the last six months of a five-year Parliament, an arrangement which was considered to have precluded effective contacts before the 1983 and 1987 General Elections.

The format for such contacts remains essentially the same as that set out by the then Head of the Home Civil Service in 1985. The purpose of the meetings is to allow Opposition parties to inform themselves of factual questions of departmental organisation and to inform senior civil servants of any organisational change of Government. Such meetings are confidential on both sides. These were the arrangements governing all contacts in the run-up to the 1997 Election.<sup>13</sup>

Election guidance published by the Cabinet Office in 2001 indicated that Mr Blair had sanctioned pre-election contacts from January 2001:

The Prime Minister authorised pre-election contacts with Opposition leaders from 1 January 2001. The confidential nature of these contacts, which are designed to allow Opposition spokesmen to inform themselves of factual questions of Departmental organisation and to inform civil servants of any organisational changes likely in the event of a change of Government, continues to apply.<sup>14</sup>

Prior to the 2005 general election, the Prime Minister wrote to the two main opposition parties, that is, the Conservatives and the Liberal Democrats, stating that he would be agreeable to such contacts taking places from January 2005.<sup>15</sup> In December 2008, the Prime Minister reportedly agreed to a request from David Cameron, the Conservative Leader, for discussions to take place from January 2009.<sup>16</sup> Additionally, press reports indicated that the Liberal Democrats would take part in similar talks with senior civil servants.<sup>17</sup> Further press reports in March 2009 indicated that talks between opposition parties and civil servants had begun.<sup>18</sup> An Institute of Government report in May 2014 has further details of these pre-election contacts, following interviews with relevant civil servants who took part.<sup>19</sup>

## 5 Political and Constitutional Reform Committee Select Committee reports

The Political and Constitutional Reform Committee issued a report in January 2011 [Lessons from the process of government formation after 2010](#)<sup>20</sup> which included a recommendation on pre-election contacts. The [Government response](#) noted the recommendation without formally accepting it:

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<sup>13</sup> HC Deb 3 November 1998 c474W

<sup>14</sup> Cabinet Office, *2001 General election guidance*, May 2001, Guidance note C

<sup>15</sup> Information supplied by the Propriety and Ethics Team of the Cabinet Office. Cabinet Office, *General election guidance 2005*, April 2005, Guidance note C

<sup>16</sup> "Pre-election talks", *The Times*, 20 December 2008, p27; "Tories warned on civil service briefing leaks", *Guardian*, 20 December 2008, p4.

<sup>17</sup> "Whitehall prepares for hung parliament with Lib Dem talks", *Guardian*, 1 January 2009, p1;

<sup>18</sup> "Civil service prepares for Tory rule", *Daily Telegraph*, 7 March 2009, p12

<sup>19</sup> [Pre-election contact between the civil service and the parties](#). Institute for Government May 2014

<sup>20</sup> HC 528 2010-12

## PRE-ELECTION CONTACT BETWEEN THE CIVIL SERVICE AND OPPOSITION POLITICIANS

32. Recommendation Fourteen: It is for the Prime Minister to determine when contact between civil servants and opposition parties can take place. There is no reason, however, why the authorisation for such contact could not be given in advance, as a matter of course, soon after a general election, rather than at a time when speculation about the future of an incumbent government may inhibit a decision. (Paragraph 85)

The Committee published [\*Fixed-term Parliaments: the final year of a Parliament\*](#) on 1 May 2014. This report recommended:

63. Pre-election contacts between the Civil Service and Opposition are essential to ensure that both the Civil Service and any parties that might be involved in forming a Government after a general election are prepared for the possibility of a change in Government. Now that the Fixed-term Parliaments Act 2011 has abolished the Prime Minister's prerogative to call an election, there is no reason that the authority to decide when, to whom, and in what way these contacts are conducted should be retained by the Prime Minister. It is disappointing that the Prime Minister has decided to limit pre-election contacts to the final seven months of this Parliament, and that he did not wait to consider either our views, or those of the Institute for Government, before coming to this decision.

64. In light of the greater certainty provided by the Fixed-term Parliaments Act 2011 about the date of the next general election, we recommend that the arrangements for pre-election contacts between the Civil Service and Opposition ahead of a general election be formalised. After 2015 these contacts should be permitted automatically in the last year of a Parliament, and the Cabinet Manual should be updated to this effect. Ahead of the 2015 general election, we suggest that further consideration be given to the possibility of allowing pre-election contacts to begin immediately after the European and local elections in May.<sup>21</sup>

## 6 Lords Constitution Committee report on coalition government

The Lords Constitution Committee published a report in February 2014 on the constitutional implications of coalition government. This covered pre-election contacts and recommended the following:

109. We recommend that ministers should be able to commission confidential briefings from officials within their departments for the purpose of developing policy for the next Parliament without those briefings being disclosed to ministers from their coalition partners. Arrangements should be put in place in those departments where one party has no ministers to allow for briefing to that party. The Official Opposition should be granted pre-election contact with the civil service in the normal way. These arrangements should be added to the next edition of the Cabinet Manual.<sup>22</sup>

## 7 Institute for Government recommendations for reform

A detailed analysis of preparations for changes in administration was published by the Institute for Government in October 2009.<sup>23</sup> The report reviewed policy preparations prior to

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<sup>21</sup> [\*Fixed-term Parliaments: the final year of a Parliament\*](#) HC 971 2013-14

<sup>22</sup> [\*Constitutional implications of coalition government\*](#) Lords Constitution Committee HL Paper 132 2013-14

<sup>23</sup> Peter Riddell and Catherine Haddon, *Transitions: preparing for changes of government*, Institute for Government, October 2009, <http://www.instituteforgovernment.org.uk/pdfs/Transitions%20-%20preparing%20for%20changes%20to%20government.pdf>

most of the general elections since the 1960s, and it set out case studies covering the years 1979 (Conservative public expenditure plans) and 1997 (The Treasury, Education and Employment, Home Office and constitutional reform). It also considered the situation in devolved administrations and in other countries, concluding that “the Westminster model of Opposition preparation and contact with the Civil Service leading up to an immediate handover of power is highly unusual.”<sup>24</sup>

The report advocated a phased post-election handover period with a delayed Queen’s Speech. Some of the report’s recommendations concerned pre-election preparations that might profitably be taken by opposition politicians and by the civil service. And it recommended updating the guidelines on contacts between opposition parties and civil servants. The recommendations pre-dated the *Fixed-term Parliaments Act 2011* :

Among the main points should be:

- Greater clarity on the timing of the start of contacts. In view of the uncertainties produced by the absence of fixed term parliaments, discussions should be permitted three and a half years after the previous general election. This would allow at least six months even if the parliament lasts only four years.
- Both the timing and the process should be under the control of the Cabinet Secretary, rather than the Prime Minister of the day. The Cabinet Office should also take a more active role in co-ordinating, but not controlling, the Whitehall approach on issues cutting across several departments, though this should allow room for flexibility and initiative by departments. This has begun to happen as the lead on transition issues is being taken by a Permanent Secretary in the Cabinet Office.
- Permanent Secretaries should supervise contacts but not be the exclusive channel. Small units should be set up within departments during the formal period of contacts to seek confidential clarification about the plans of Opposition spokesmen. There also needs to be explicit recognition of the important role of non-departmental public bodies, and they should be permitted to hold talks with Opposition spokesmen on the same basis as their sponsoring departments.<sup>25</sup>

The rephrased guidance in the Cabinet Manual published in 2011 takes note of some of these points, clarifying that the Cabinet Secretary has a key role. However no more detailed guidance is currently available in public than in the Cabinet Manual discussed above.

The Institute for Government also published [Making Policy in Opposition: lessons for effective Government](#) as well as some case studies of policy development in opposition.<sup>26</sup> The report noted some of the changes since 2010:

## 6. Looking to 2015

With fixed term parliaments, oppositions for the first time can plan on the realistic expectation of when the general election will be called (7 May 2015). This will mean a change to the process of allowing pre-election access contacts between civil servants and opposition spokespeople to discuss the machinery implications of important policy proposals.<sup>12</sup> In the past, not knowing when the election would be, these contacts often

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<sup>24</sup> *Ibid*, p49

<sup>25</sup> *Ibid*, p6

Jill Rutter, Sam Sims, Edward Marshall, *The S Factors: Lessons from IFG's policy success reunions* Institute for Government, 2012



began up to 16 months before the election, meaning they would lose momentum and coherence. There is a much greater opportunity for these contacts to be more meaningful, better organised and more focused on ensuring an effective transition in the event of a change of government.

The Coalition will also mean a change in how the Civil Service prepares for the election. They 'will have to prepare an analysis of the policy proposals of both the governing parties in the same manner as they have been doing for the Opposition parties', meaning it will have to be much more formal to ensure all parties are treated in a comparable way. Being aware of how the Civil Service will think through an opposition parties' policies can help that opposition think about how their policies might transfer into government. How the two forms of preparation meet can have a big effect on how quickly and effective a new government gets going. Often, new governments have discovered that manifesto promises that were not real priorities had been interpreted as such by the Civil Service and other policies that were a priority, but not so publicly discussed, were not known about or were misinterpreted. Redressing those misconceptions can take up valuable time.<sup>27</sup>

In May 2014 the Institute published a final report [Pre-election contact between the civil service and the parties](#). The summary recommended:

1. The decision for the start of the pre-election contacts is now settled. Permanent secretaries and opposition shadows (but also both coalition parties) should now focus on making the best of them and start to consider how they will approach them in October 2014.
2. In future the process of initiating the pre-election contacts should not be at the discretion of the Prime Minister but should be an automatic process in a fixed-term parliament occurring a year or 10 months before the general election and overseen by the Cabinet Secretary.
3. Guidance for the Civil Service on how to achieve good engagement should, as well as propriety, be about how to maximise their value as well as recognising the limits of them
4. The formal guidance to permanent secretaries issued when talks begin should empower permanent secretaries to advise their department's ALBs on how to approach engagement with the opposition during this period
5. Permanent secretaries should consider consulting their ALBs about the pre-election contacts in advance
6. The formal guidance to permanent secretaries issued when the talks are officially agreed to begin should be changed to reflect the inclusion of discussion of implementation issues
7. The guidance should be published and the Cabinet manual changed after the election to reflect the new position
8. The engagement and insight-sharing across departments that occurred in 2010 should be repeated in a more structured fashion and working with departments to establish what is best for them

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<sup>27</sup> [Making Policy in Opposition: lessons for effective Government](#) Institute for Government 2012

9. The political parties need to be sensitive to the process of intervention if contacts are not going well and Party leaders should establish early on with the Cabinet Secretary how to respond if this does occur
10. The Cabinet Office and Treasury should consider how best to think across the policy agenda and should emphasise the value of doing so in their initial contacts with party leaders
11. Political parties should consider how best to prepare those undertaking the contacts for what they might involve, how to get the best out of them, and how they relate to a department's readiness to implement an agenda post-election
12. Political parties should also actively try and combat the silo culture of working between different opposition spokespeople
13. The party leadership should recognise the discontinuity in policy that can occur when a shadow (or in this case incumbent minister) does not take up the equivalent post in government and consider how the policy agenda can be shared
14. Equal treatment of the parties undertaking pre-election contacts should occur, though it remains up to individual shadows and ministers whether they wish to take it up.<sup>28</sup>

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<sup>28</sup> [Pre-election contact between the civil service and the parties](#) Institute for Government May 2014