

V2

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Constitutional Crisis



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the powers and responsibilities that go with executive office. However, governments in this situation have traditionally constrained their actions until the political situation is resolved, in accordance with what is known as the convention on caretaker government.

- 6.17 There are two circumstances in which the government would see itself bound by the caretaker convention:
- (a) **After a general election**, one of the two arms of the caretaker convention applies until a new administration is sworn in. (See paragraph 6.19.)
 - (b) **If the government has clearly lost the confidence of the House**, the caretaker convention guides the government's actions until a new administration takes office, following either negotiations between the parties represented in the current Parliament or a general election.
- 6.18 In both situations the government is likely to state explicitly that it is to operate as a caretaker government until the political situation is resolved.

Principles of the caretaker convention

Two arms of the convention

- 6.19 There are two arms to the caretaker convention:
- (a) where it is not clear who will form the next government (see paragraphs 6.20 – 6.23);
 - (b) where it is clear who will form the next government, but they have not yet taken office (see paragraphs 6.24 – 6.25).

The principles that apply in each situation are set out below.

Unclear outcome

- 6.20 Where it is not clear which party or parties will form the next government following a general election or mid-term loss of confidence in the government, the following principles apply to government business (at every level).
- (a) In general terms, the normal business of government and the day-to-day administration of departments and other agencies in the state sector may continue during the caretaker period.
 - (b) Decisions taken and specific policy determined before the start of the caretaker period may be implemented by a caretaker government (subject to paragraph 6.21).
 - (c) Matters may arise, however, that would usually require decisions, such as those concerning:
 - significant or potentially controversial issues;
 - issues with long-term implications that would be likely to limit the freedom of action of an incoming government (such as signing a major contract or making a significant appointment);

- new policy initiatives;
- changes to existing policy.

(d) Decisions relating to those matters should:

- be deferred, if possible, until the political situation is resolved; or
- if deferral is not possible (or is no longer possible), be handled by way of temporary or holding arrangements that do not commit the government in the longer term (for example, by extending a board appointment or by rolling over a contract for a short period); or
- if neither deferral nor temporary arrangements are possible, be made only after consultation with other political parties, to establish whether the proposed action has the support of a majority of the House. The level of consultation might vary according to such factors as the complexity, urgency, and confidentiality of the issue. (See also paragraph 6.32.)

6.21 Occasionally a significant policy decision that was made before a caretaker period will need to be implemented during the caretaker period. Usually the implementation of such decisions can proceed during a caretaker period. If the proposed action would be difficult or impossible to reverse, however, it may be appropriate to consult with other political parties about it.

6.22 The caretaker convention colours the whole conduct of government, and requires careful judgement by Ministers, public servants, Crown entities, and other state sector agencies as to whether particular decisions are affected.

6.23 No hard and fast rules are possible. Ministers may need to take into account various considerations (including political considerations), both on whether it is appropriate or necessary to proceed on a matter and on how the matter should be handled. Decisions will also be considered against the background that the incumbent caretaker government has lawful executive authority, until replaced or confirmed in office.

Clear outcome

6.24 Where it is clear which party or parties will form the next government but Ministers have not yet been sworn in, the outgoing government should:

- (a) undertake no new policy initiatives; and
- (b) act on the advice of the incoming government on any matter of such constitutional, economic or other significance that it cannot be delayed until the new government formally takes office – even if the outgoing government disagrees with the course of action proposed.

6.25 Situations of this kind are likely to be relatively short-lived, as the Constitution Act 1986 enables a swift transition between administrations once the composition of the new government has been confirmed.