

General Election 2019—hung parliaments

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Public Law analysis: What options does a UK political party have if they fail to win sufficient seats to command a majority in the House of Commons? Alexander Campbell, barrister at Field Court Chambers, examines the law and requirements around hung parliaments in the UK recalling the Liberal Democrat-Conservative coalition of 2010.

What are the possible outcomes of a hung parliament in a general election? In what circumstances can a party attempt to form a coalition under the UK electoral system?

In order to command a majority in the House of Commons, the governing party needs 326 MPs. If the party with the most MPs falls short of that number, a number of options arise:

- to try to govern alone as a minority government, having to win support from opposition MPs on an issue-by-issue basis in order to get legislation passed by a majority of the House of Commons
- to enter into a formal coalition, as did David Cameron’s Conservatives and Nick Clegg’s Liberal Democrats after the 2010 general election
- to govern as a minority government but with a ‘confidence and supply’ arrangement with a smaller party, meaning that the smaller party undertakes to vote with the government on any motions of confidence in the government and on budget motions, as did Theresa May’s Conservatives and the Democratic Unionist Party after the 2017 general election

For a formal coalition to be formed, two parties have to reach agreement about what their agreed programme for governing will be. After the 2010 general election, this required days of negotiation between the Conservatives and the Liberal Democrats as they hammered out the details of what their agreed policies will be, requiring compromises on both sides.

Do hung Parliaments bring with them any legal problems? To what extent can these be planned for and avoided by the parties?

A hung Parliament has the same powers as a Parliament in which one party has a clear majority. The problems faced by a hung Parliament are more practical in nature—the largest party can struggle to get legislation passed through the House of Commons and more extreme elements of

all parties can find that they wield an unprecedented amount of power and influence since it can take just a few votes to defeat otherwise popular measures from being passed into law.

Whenever an election is looming which may result in a hung Parliament, political parties can best prepare by giving serious thought to what other parties they could potentially work with, either in a formal coalition or in a looser confidence and supply arrangement and by considering what policies they would be willing to compromise on as the price of reaching such arrangements. Informal talks between parties can help with this process so that the country is not left in a constitutional limbo after the election for days or even weeks while the various parties negotiate with one another.

Do some electoral systems create more hung parliaments than others? Are there any advantages to a hung Parliament?

Whatever its faults, one of the strengths of the UK's voting system for general elections (first past the post) is that it tends to result in majority governments. Other electoral systems result much more often in outcomes where no one party can command a majority. Most strikingly of all, a system of pure proportional representation, in which the allocation of seats is based on the percentage of votes nationwide which each party received, rarely results in any one party having an outright majority. In systems which use proportional representation, it is the norm after an election for there to be lengthy negotiations between parties to try to form coalitions and it is not unusual for such coalitions to collapse as parties find themselves unable to work together any longer.

After the 2010 general election, when the UK was faced with its first hung Parliament for decades, some predicted that a hung Parliament would have the advantage of forcing parties to work together in a spirit of cooperation and compromise which is not always a feature of our adversarial Parliamentary system. In reality, while the coalition which was formed did compel the two parties involved to work closely together, it did not alter the nature of our political system overall.

Are coalitions purely a political negotiation? What is needed in order to create a functioning coalition in the event of a hung Parliament?

For a functioning and stable coalition to be formed, the parties involved have to be able to work together and, effectively, to cease party political hostilities for the duration of the coalition. However, there is a legal element to forming a coalition as well—two or more parties which stood for election on different manifestos and with different priorities have to be able to agree a single legislative programme for government, being able to agree what bills they intend to bring before Parliament and with what aims. In order to preserve the stability of any coalition, this can best be done by negotiating a written, agreed programme for the coalition government.

After the 2010 general election, the Conservatives and Liberal Democrats negotiated the details for a coalition agreement setting out an agreed programme for what the coalition would do over the following five years. In this way, both parties were clear as to what they had signed up for and what legislation they intended to bring forwards.

How many parties need to be involved for a coalition to secure a working majority in the House of Commons?

For a coalition to be formed, the crucial figure is to have the support of 326 MPs so that the coalition consists of a majority of the House of Commons (although, in practice, the number of MPs needed is slightly lower than this because a small number of MPs do not vote in the House of Commons: the Speaker, as well as Sinn Fein MPs who abstain from taking their seats).

As long as a coalition comprises a majority of MPs, it could be formed of two parties (as was the case after the 2010 general election) or it could consist of a multitude of parties. Indeed, in the run-up to the 2019 general election, there was talk by some politicians of the idea of a 'remain coalition' being formed involving a host of opposition parties supporting the idea of a second EU referendum (which would likely have consisted of Labour, the Liberal Democrats, the SNP, Plaid Cymru and the Green Party).

Interviewed by Samantha Gilbert.

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