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3 July 1986

Dear Nigel,

PROCEDURE FOR GENERAL ELECTIONS

In my letter of 26 June 1985 to Robin Butler I undertook to report as soon as I heard from the Home Office about the coming into force of the provisions of the Representation of the People Act 1985 which affect the relationship between dissolution and polling day.

2. I enclose a copy of a letter I have now had from Richard Clayton, from which you will see that the provisions in question will apply to any election in respect of which the notice of election is published on or after 16 February 1987. Unfortunately, the way in which Article 4(4) of the (as yet unprinted) Commencement No.3 Order is drafted might cause difficulty if (rather improbably) it were decided to have polling day on ~~Thursday~~ day 5th March 1987.

3. Under the timetable in rule 1 of the Parliamentary Elections Rules in ROPA 1983 Sch.1, the notice of election in any given constituency has to be published not later than 4 pm on the second (reckonable) day after the day on which the writ for

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that constituency is received. The writs are posted at around 3 pm on the day on which the proclamation summoning the new Parliament is made and can be expected to arrive next day, though some may arrive later. But even if they all arrive next day - and a ~~fortiori~~ if some do not - the difficulty is there.

4. Under the existing timetable, if polling day is to be on 5th March 1987, the proclamation would have to be issued on Wednesday 11 February, making polling day the sixteenth reckonable day thereafter. If a writ posted on 11 February were to arrive on Thursday 12 February, it would be open to the returning officer for that constituency to issue the notice of election at any time up to 4 pm on Monday 16 February. Thus even if all writs arrived on 12 February, some notices of election might be issued before, and others on 16 February. In these circumstances it would be impossible to say whether the provisions brought into force on that date by the Commencement No. 3 Order did or did not apply to the general election in question, and it would therefore be unsafe to treat 5 March as polling day unless every single notice of election had in fact been published before 16 February.

5. I conclude that for this reason an election with polling day on 5 March is ruled out on technical grounds - unless, that is, the Commencement No. 3 Order is amended, which as a matter of law it could be. Politically, however, this would inevitably be taken to mean that an election on 5 March 1987 was in contemplation; so the practical upshot is that an election with polling day on that date will have to be avoided.

— 6. I enclose a paper setting out afresh the asterisked textual amendments suggested in my letter to Robin dated 30 May 1985. The amendments themselves are unaltered, but I have updated the paragraph and line numbers to fit the sixth edition

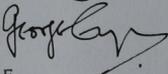
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of the handbook. An election before next February being unlikely, I suggest that you might re-issue pages 1, 2 and 14 in the form appropriate to an election on or after 12 March, with a note to the effect that the replaced pages should be retained for possible use in the event of an election before that date. For the reasons I have given, the last practicable date for polling day under the existing timetable is Thursday 26 February, and the first practicable date for polling day under the amended timetable is Thursday 12 March.

7. On the question whether the actual date of dissolution can be later than the date of the proclamation providing for the dissolution of the existing Parliament and summoning a new one (see paragraph 7 of my letter to Robin of 30 May 1985, the last paragraph of his reply of 17 June, and the third paragraph of my reply of 26 June), Derek Oulton has written to the Law Officers' Department, but has not yet received a reply. I will write about this once the legal position is clear.

Yours sincerely


GEORGE ENGLE

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Our reference
Your reference



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Sir George Engle, KCB, QC
First Parliamentary Counsel
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25 June 1986

Dear George,

Representation of the People Act 1985: paragraph 73 of Schedule 4

I promised to let you know when paragraph 73 of Schedule 4 to the Representation of the People Act 1985 (c.50) (which alters the timetable for parliamentary elections) is to be brought into force. By Article 3 of the Representation of the People Act 1985 (Commencement No 3) Order 1986, which was made today, it comes into force on 16th February 1987 but (under Article 4(4)) does not have effect for the purposes of an election in respect of which the notice of election is published before that date. Section 19(5) of the 1985 Act (which amends the rule about computation of time at parliamentary elections) is also brought into force on 16th February 1987, subject to the same proviso.

Yours sincerely
Richard Clayton

R J Clayton
Legal Adviser's Branch

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PROCEDURE FOR GENERAL ELECTIONS

Changes suggested by First Parliamentary CounselChoice of date

Page 1, para 3.2. In the second line, for "22 days" substitute "23 days". ✓

Page 1, para 3.3. The words "this period of just over three weeks" were written when the normal interval was 22 days. But they seem apt enough for a normal interval of 23 days. ✓

Page 1, footnote. This should now read-

"*(Part I of Schedule 1 to the Representation of the People Act 1983, as amended by paragraph 73 of Schedule 4 to the Representation of the People Act 1985)". ✓

Page 2, para 4. In the second and sixth lines, for "22 days" substitute "23 days". ✓

Page 2, para 5.1. The first three lines should read-

"5.1 The rules in Part I of Schedule 1 to the 1983 Act (as amended by section 19(5) of, and paragraph 73 of Schedule 4 to, the 1985 Act) provide that polling day must be on the eleventh day". ✓

Page 2, para 5.1. In the ninth line, for "16th day" substitute "17th day"; and in the last line, for "22nd day" substitute "23rd day".

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Page 2, para 5.2 should read as follows-

A 5.2. The "abnormal" intervals occur where there is a Bank Holiday anywhere in the United Kingdom - including Northern Ireland - within the three weeks prior to polling day. Until 1969 any such Bank Holiday was - like a Sunday - ignored for the purposes of computing the interval between dissolution and polling day. Between 1969 and the coming into force of the relevant provisions of the 1985 Act it was necessary to allow not just for the single day's holiday but, in many cases, for a "holiday break" of several days*. Now, however, thanks to the changes made by the 1985 Act, the only days that have to be allowed for, apart from the Bank Holiday itself, are Christmas Eve, Christmas Day, Maundy Thursday (ie the day before Good Friday) and Good Friday.* A

Page 2, insert footnote as follows-

B *These "holiday breaks" were-

- (a) the Easter break - ie the period beginning with the Thursday before and ending with the Tuesday after Easter Day;
- (b) the Christmas break - ie the period beginning with the last weekday before, and ending with the first ordinary day after, Christmas Day;
- (c) in the case of a Bank Holiday such as the Spring Bank Holiday, the period from Friday to Tuesday inclusive.* B

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Page 14, para 33. The normal interval between dissolution and polling is to become 23 days (see para 5.1, last sentence, as amended), which means that dissolution will normally occur on a Tuesday for a Thursday polling day. So the parenthesis which begins in the eighth line should read-

"(normally a Tuesday because of the customary choice of Thursday for polling day and the normal twenty-three day ^vinterval between dissolution and polling)".

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1943 Election

5/13





10 DOWNING STREET

From the Principal Private Secretary

15 July 1986

PROCEDURE FOR GENERAL ELECTIONS

Thank you for your letter of 3 July.

BF

I will shortly circulate revisions to the relevant pages to the handbook. But before so doing, I should be glad to know that my interpretation of the amendment to paragraph 5.1 on page 2 is right. You ask that the first three lines should read:

"5.1 The rules in Part 1 of Schedule 1 to the 1983 Act (as amended by section 19(5) of, and paragraph 73 of Schedule 4 to, the 1985 Act) provide that polling day must be on the eleventh day".

In the existing version of the paragraph the first three lines read:

"5.1 The rules in Part 1 of Schedule 1 of the 1983 Act provide that polling day must be on the tenth day after the last day for the delivery of nomina-".

I take it that the whole of the first sentence of paragraph 5.1 should now read:

"5.1 The rules in Part 1 of Schedule 1 of the 1983 Act (as amended by section 19(5) of, and paragraph 73 of Schedule 4 to the 1985 Act) provide that polling day must be on the eleventh day after the last day for delivery of nomination papers, and that the last day for the delivery of nomination papers must be the sixth day after the date of the Proclamation summoning the new Parliament".

If my understanding is right, a word from your secretary to the Duty Clerk here would suffice.

So confirmed 6 July
Duty Clerk. NW
16.7

(N.L. WICKS)

DA

Sir George Engle, K.C.B., Q.C.

MSJCFW

1 CHOICE OF DATE

1. The decision to ask The Queen to dissolve Parliament and to arrange for the Election of a new Parliament on a particular day is obviously one of the decisions most personal to a Prime Minister, and will turn mainly on his judgement both of the broad public interest and of the balance of political advantage to his Party.

2. The Prime Minister may seek or require guidance from the Private Office on two aspects:

- (A) the timing of the announcement and dissolution in relation to particular poll dates;
- (B) factors affecting the choice of particular poll dates.

(A) Relationship between the dates of announcement, dissolution and polling

3.1 It is important to bear in mind that the decision to hold a General Election should normally be taken over a month before polling day.

3.2 Briefly, the length of time between dissolution and polling day is governed by statute* and normally works out at ⁽²³⁾ 22 days, while the length of time between the date of announcement and dissolution is governed merely by convention and practical convenience. For the five General Elections in 1959, 1964, 1966, 1970 and 1983 the announcement was made exactly a month before polling day.

3.3 So long as the interval between dissolution and polling is governed by the present statutory arrangements, this period of just over three weeks is an irreducible minimum. For May 1979, the interval between announcement and polling day was five weeks. Following the defeat of the Government in the Commons, a further week of Parliamentary time was required to complete legislation, including a simple Budget, with Opposition co-operation: the period between dissolution and polling also had to be lengthened to take account of the Easter holiday (see paragraph 5 below). (Dates for every General Election from 1922 onwards are given in Annex A.)

/Interval between dissolution and polling

* (Part I of Schedule 1 of the Representation of the People Act 1983)

as amended by paragraph 73 of Schedule 4 to the Representation of the People Act 1985).

Interval between dissolution and polling

23

4. In certain circumstances however the length of time between dissolution and polling day is greater than ~~28~~ days. When there is any indication that the Prime Minister is considering possible dates for a General Election, the Private Office should be aware of those dates where the interval between dissolution and polling is longer than ~~28~~ days and be ready to warn the Prime Minister, in case options are closed by the passage of time without his realising it. First Parliamentary Counsel alone may be consulted: if possible, he should be asked to draw up on a contingent basis the statutory timetables for all possible polling dates within the period which the Prime Minister is considering.

23

(as amended by section 19(5)g, and paragraph 73 of Schedule 4 to the 1985 Act)

5.1 The rules in Part I of ^{element} Schedule 1 of the 1983 Act provide that polling day must be on the ~~tenth~~ day after the last day for delivery of nomination papers, and that the last day for the delivery of nomination papers must be the sixth day after the date of the Proclamation summoning the new Parliament. However, in computing these dates, certain days are disregarded, i.e. Saturdays, Sundays and Bank Holidays. If there are no Bank Holidays falling within the three weeks prior to a date which is being considered for polling day, the interval between dissolution and polling day is "normal", i.e. polling day is the ~~26~~ day after the Proclamation, not counting Saturdays and Sundays, and this works out at the ~~22~~nd day.

23

5.2 The "abnormal" intervals occur when there is a Bank Holiday anywhere in the United Kingdom - including Northern Ireland - within the three weeks prior to polling day. Until 1969 any such Bank Holiday was - like a Sunday - ignored for the purposes of computing the interval between dissolution and polling day. Thus in 1966 dissolution had to be 21, not 20, days before polling day because March 17th, St. Patrick's Day, is a Bank Holiday in Northern Ireland (this was before the changes in the 1981 Act, and the "normal" interval between dissolution and polling day then worked out at 20 days). But since the 1969 Act it has become necessary to allow not just for the single day's holiday, but, in many cases, for a "holiday break" as defined in the Act. Thus:

AA

- (a) in the case of Easter it is necessary to ignore in the computation the whole "Easter Break" as defined in the Act, i.e. "the period beginning with the Thursday before and ending with the Tuesday after Easter Day".
- (b) "The Christmas Break" means the period beginning with the last weekday before, and ending with the first ordinary day after, Christmas Day.
- (c) In the case of a Bank Holiday, such as the Spring Bank Holiday, the period to be ignored is the period from Friday to Tuesday inclusive.
- (d) In the case of any Bank Holiday which is not a Bank Holiday in England and Wales - e.g., St. Patrick's Day in Northern Ireland - ~~the old provision for allowing just for the single day continues.~~

5.3 The timing rules are very relevant to any spring or early summer General Election and there is no substitute for preparing and clearing with First Parliamentary Counsel a chart on which Bank Holidays in all parts of the United Kingdom are marked and then working out the dissolution dates for all polling dates which are likely to be under consideration.

BB as footnote

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whether or not it was necessary to have Prorogation before dissolution

Thus, notwithstanding the views recorded in paragraphs 29 and 30 above, the position appears to be, following the events of 1979, that the Prime Minister can recommend dissolution without Prorogation and no constitutional impropriety is deemed to have occurred.

32. In other recent cases, the decision to prorogue before dissolving gave rise to no inconvenience. In 1966 and in February 1974 both Houses were sitting at the time. In 1970, neither House would have been sitting at the time of dissolution, but it was in any case necessary to ensure that they were sitting during the days preceding dissolution so as to dispose of essential and other financial business. In all these cases prorogation may not have been strictly necessary according to constitutional doctrine, but there was no disadvantage in it, and it enabled the Government, in the prorogation speech, to give a convenient summary of their work during the previous Parliamentary session. A note of the timing of the Privy Council meeting for prorogation in relation to the meeting for dissolution is at Annex F.

33. The Prorogation Order contains two dates - the date from which Parliament is to be prorogued, which is normally the same date as the dissolution date, and the date to which Parliament is to be prorogued. It seems that it is immaterial what date is chosen for the latter, provided that it is later than the date of dissolution. In recent years it seems to have become customary, when Parliament has been prorogued prior to dissolution later that day (normally a ~~Wednesday~~ because of the customary choice of Thursday for polling and the normal 22) day interval between dissolution and polling), for Parliament to be prorogued until the Tuesday of the following week. This was raised by 10 Downing Street at the time of the 1970 dissolution both with the Clerk of the Council and with the Private Secretaries to the Chief Whip, the Leader of the House of Commons and the Leader of the House of Lords. No-one knew the reason for the conventional choice of Tuesday. Thus in 1970 when prorogation occurred on Friday, 29 May, Parliament was prorogued until Tuesday, 2 June. During the prorogation ceremony the choice of this date puzzled some members of the Lords and also the press who thought it was a mistake for 2 July, the proposed date for the State Opening. But it was explained to them that the choice of date ceases to have any significance once Parliament is dissolved.

Tuesday
Twenty
three

(b) Recall of Parliament and arrangement of remaining Parliamentary business

34. If Parliament is sitting at the time when the decision to ask for a dissolution is made and will remain sitting until dissolution (as for example in 1966 and in February 1974), no problem of recall arises. It is then merely a matter of rearranging the existing time-table of Parliamentary business so that essential business is completed before dissolution. If Parliament stands prorogued as in 1950 but is prorogued until a day earlier than the proposed date for dissolution, it is merely necessary, as on that occasion, for the period of prorogation to be extended by Royal Proclamation until after the proposed date for dissolution. There can in such circumstances be no Parliamentary business requiring completion.

Enc. Wickes to Engle 15/4/86

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amended 18/7/86
(old pages retained
until 12/3/86)

"PROCEDURE FOR GENERAL ELECTION"

The coming into force of the provisions of the Representation of the People Act 1985 which affect the relationship between dissolution and polling day make it necessary to amend pages 1, 2 and 14 of the guidebook. I therefore enclose revised additions of these pages. Please could recipients note that the changes to pages 1, 2 and 14 are appropriate to an election only on or after 12 March 1987. It is important that the replaced pages should be retained for possible use in the event of an election before that date.

N.L.W.

(N. L. WICKS)
16 July 1986