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23 September 1986

Dear Nigel,

PROCEDURE FOR GENERAL ELECTIONS

I hope to send you soon a revised text of the updated version of Stainton's note but am waiting to hear from Sainty and Bradshaw before I finally print it out.

2. I enclose, as promised, a list of suggested amendments of Procedure for General Elections designed to reflect the fact that dissolution can (as we now know) be later than the date of issue of the proclamation (which governs the date of polling day). You will need to work through PGE to decide whether my suggestions are sensible, and whether any other changes need to be made. I have (GE and OE, so to speak) deliberately left unaltered the references to dissolution in all places where I have not suggested a change. In particular, I think we should stick to the term "Dissolution Council".

3. In order to fit in my new para.11, I have suggested renumbering the existing paras.8 to 11.

4. For my money, 'proclamation' should be spelt without a capital letter throughout.

5. I'm not sure what to do about the headings to columns 1 and 2 in Annex A. I think they had best stay as they are, at least until we have an instance of dissolution on a date later than that of the proclamation.

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6. Lastly (a suggestion unconnected with the above) would it help to amplify para.38 by adding at the end the following sentence -

P

✓ Since no business can be transacted in Parliament until after the Queen's Speech, the day after that of the Queen's Speech is the first day on which Bills can be presented - Notice of Presentation having been handed in on the day of the Queen's Speech or an earlier day (starting with the day of the first meeting). P

Yours ever  
George

GEORGE ENGLE

P.S. On my retirement at the end of this year I will hand over my copy of PGE to Henry de Wasse unless you tell me not to.

GE.

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## SUGGESTED AMENDMENTS OF PGE

NOTE: In this list "D" and "P" stand for "dissolution" and "proclamation" respectively (with or without a capital letter, as the context requires).

### ✓ CONTENTS

✓ 1 (A) After "announcement," insert "proclamation,". ✓

### CHECKLISTS

✓ Page I, paras. 9 and 10. For D read P. ✓

✓ Page III, para. 4. After second sentence add "The possibility of providing  
✓ in the proclamation for dissolution on a future date should not  
be overlooked (paragraph 11)."

Choice of Date and onwards (references to post-12.3.87 pages where applicable)

### Para.

✓ 2. Line 7, after "announcement," insert "proclamation,". ✓

✓ 3.2 Substitute attached revise (Annex 1) ✓

✓ 3.3 Lines 1 and 8, for D read P. ✓

✓ 4. Heading, for D read P. ✓

✓ Line 2, for D read "the date of the proclamation summoning a new  
Parliament".

✓ Line 6, for D read P. ✓

✓ 5.1 Line 6, i.e. for P. ✓

✓ Line 8, for "i.e." read "notably".

✓ Line 11, for D read P. ✓

✓ Line 11, for "Sunday" read "Sundays".

✓ 5.2 Line 5, for D read P. ✓

✓ 5.3 Line 5, for D read P. ✓

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Para.

7. ✓ ✓ Heading, for D read P.

✓ ✓ Line 2, for D read "the proclamation".

✓ ✓ Line 5, for D read P.

✓ ✓ Line 13, for D read "a proclamation (providing for immediate dissolution)".

✓ ✓ 8. Line 1, for "8" substitute "8.1".

Line 4, after "dissolution." insert "(In this connection, the possibility of providing in the proclamation for dissolution on a future date should not be overlooked: see paragraph 11)" - or perhaps make this a footnote.

✓ ✓ 9. ✓ Line 1, for "9" substitute "8.2".

✓ ✓ ✓ Line 4, "Opposition".

✓ ✓ 10. ✓ Line 1, for "10" substitute "9".

✓ ✓ ✓ Line 4, for D read P.

✓ ✓ 11. ✓ Line 1, for "11" substitute "10".

✓ ✓ ✓ Line 15, for D read P.

✓ ✓ ✓ At end, insert attached new paragraph 11 (*Annex 2*).

✓ ✓ 22. ✓ Line 4, for D read P.

✓ ✓ 25. ✓ Lines 4 and 11, for D read P.

✓ ✓ 26. ✓ Line 3, for D read P.

✓ ✓ Line 9, for "of dissolution, although" read "dictated by the choice of polling day, although the proclamation can dissolve Parliament on a future day and,".

✓ ✓ ✓ Line 10, insert comma after "prorogation".

✓ ✓ 27. ✓ Line 7, after "complication" insert "; and".

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Annex 1

3.2 Briefly, the length of time between the date of issue of the proclamation summoning a new Parliament and polling day is governed by statute and normally works out at 23 days. The proclamation habitually dissolves the existing Parliament immediately; but it is possible for it to provide for dissolution on a future date. (This has occurred once only, in 1900.) The length of time between the date of announcement and the issue of the proclamation 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.

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Annex 2.

B

11. Though it has not been done since 1900, it is possible for the proclamation to dissolve Parliament on a future date, thus providing more time for the completion of essential Parliamentary business. Since keeping the existing Parliament in being beyond the date of the proclamation would increase the time during the election campaign in which Members seeking re-election can campaign as sitting Members, the Prime Minister is unlikely to want to request this without the prior agreement of all parties. (See paragraph 11)

4 of Proceedings leading up to a  
General Election in Annex G  
B

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ELECTION 1953 Election May 53





10 DOWNING STREET

*From the Principal Private Secretary*

21 October 1986

PROCEDURE FOR GENERAL ELECTIONS

Apologies for not responding before now to your letters of 23 September and 7 October on Procedure for General Elections. I agree with all your amendments. But I have not yet circulated revised sheets because we are in the process here of transcribing the whole of Procedure for General Elections on to discs in our word processing system. The typing and checking required will take a little time, which I think we have.

N.L. Wicks

Sir George Engle, KCB, QC.

BM



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7 October 1986

Dear Nigel,

PROCEEDINGS LEADING UP TO A GENERAL ELECTION

John Sainty has now written to say that he and Kenneth Bradshaw agree with the legal position as set out in my new paragraph 4, and have no comments to make. I therefore enclose a fully up-dated text of the note for inclusion as an annex to Procedure for General Elections. I leave it to you to insert a suitable reference to it in section 1. It might be helpful to add a reference to paragraph 4 of the note at the end of the new paragraph 11 which I sent you on 23 September.

2. You will no doubt wish to amplify the index to PGE so as to cover the note. I suggest the following entries (in which Z stands for the letter assigned to the annex containing the note):-

- ✓ Summer adjournment; general election in: ANNEX Z, para 1.
- ✓ Prorogation; instead of adjournment if general election is to follow summer or Christmas break: ANNEX Z, paras 2-3. law about: ANNEX Z, para 6.
- ✓ Dissolution; on a future date: 11, ANNEX Z, para 4.
- ✓ Opening of Parliament; [in entry "deferment of date: 41", add ", ANNEX Z, para 5]
- ✓ Proclamation; to bring forward meeting of Parliament when both Houses are adjourned: ANNEX Z, para 7.

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3. In view of the amendments suggested in the list which I sent you on 23 September, I suggest the following amendments of the index.

- ✓ (a) In the entry "Dissolution", for "date: 3-5" read "date of proclamation: 3-5".
- ✓ (b) In the first line of the entry "Parliamentary Counsel", for "dissolution date" read "date of dissolution proclamation".

And if my suggested renumbering of paras 8-11 is adopted, the references to those paragraphs in the entries on Crown Office, Election Campaign, General Election 1974, Recall of Parliament, Whips and Writs will need altering.

Yours ever

George

GEORGE ENGLE

Enc.

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77a etc.

Amanc G.

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PROCEEDINGS LEADING UP TO A GENERAL ELECTION

1. A general election in the summer adjournment.
2. Prorogation instead of adjournment.
3. Disposal of further business before a general election.
4. Dissolution of existing Parliament on a future date (i.e. on a date later than that of the proclamation summoning a new Parliament).
5. Postponement of meeting of new Parliament.
6. The law about prorogation.
7. The Meeting of Parliament Act 1799.

## PROCEEDINGS LEADING UP TO A GENERAL ELECTION

### A general election in the summer adjournment

1. It is possible that there might be a general election in the summer when Parliament is not sitting. There are recent precedents for dissolving Parliament when not sitting (and not prorogued) - the dissolutions of September 1964, September 1974 and May 1983.

### Prorogation instead of adjournment

2. If the Government have decided on a general election round about the end of the summer break, or perhaps the Christmas break, without recalling Parliament, and wish to keep the exact date open, there may be a case for proroguing, rather than adjourning, in July or, as the case may be, December. Prorogation, of course, terminates the Session, and so a decision to prorogue may virtually commit the Government to a general election, but it has the advantage that the length of the recess is entirely in their hands. Proclamations can be issued under the Prorogation Act 1867 (c.81) from time to time to postpone, or further postpone, the time fixed by the prorogation for the meeting of Parliament, and Parliament can be dissolved at any time during the recess (or of course later). By contrast, the date to which either House is adjourned is a matter for the House (and something which the Government may not be able to dictate) and there is no way of postponing the date for either House to meet.

### Disposal of further business before general election

3. Neither adjournment nor prorogation in the circumstances discussed above would prevent further business being transacted before the general election, although of course prorogation will have terminated the previous Session. If the Houses have been adjourned, there is power to



accelerate their meeting under Commons S.O. No.143 and Lords S.O. No.14 and there is also power by proclamation to accelerate their meeting, subject to certain time limits, under the Meeting of Parliament Act 1799. The Standing Orders require the Speaker and the Lord Chancellor to be satisfied that recall is in the public interest, and there may be circumstances where this cannot be taken for granted.

If Parliament has been prorogued there is power to bring forward the date of meeting by proclamation under section 1 of the Meeting of Parliament Act 1797 (c.127).

These powers would allow, for instance, unexpected proceedings under the Emergency Powers Act 1920 to be disposed of prior to the election. In these circumstances Parliament would, after the business had been disposed of, be adjourned and subsequently dissolved, it being no longer the practice to prorogue in cases where dissolution is intended shortly.

4. Dissolution of existing Parliament on a future date (i.e. on a date later than that of the proclamation summoning a new Parliament)

The dissolution of an existing Parliament and the summoning of a new one are effected by a single proclamation, which is normally worded ("We ... do hereby dissolve the said Parliament") so as to effect the dissolution at the moment when the proclamation is issued by being passed under the Great Seal. But the proclamation can, if desired, dissolve the existing Parliament on a future date. (In 1986, in response to an enquiry by the Clerk of the Crown in Chancery, the Law Officers confirmed that this is so, and advised that a new Parliament may be summoned, and the writs for it may issue, at a time when the existing Parliament is still in being.)

Since the time-table in the parliamentary elections rules in Part I of Schedule 1 to the Representation of the People Act 1983 runs from the date of the proclamation and not from the date of the dissolution (see the first and third entries in the time-table in paragraph 1), it is possible to dissolve the existing Parliament on a future date without affecting the date of polling day. There are two situations in which advantage could be taken of this possibility; but since keeping the old Parliament in being during the period of the election campaign means that Members seeking re-election will be campaigning as sitting Members, it seems unlikely that the Prime Minister would wish to bring about such a situation otherwise than with the agreement of all parties. The two situations are-

(A) Where extra time is needed for the conclusion of Parliamentary business.

In 1983, the choice of Thursday 9 June as polling day meant that the proclamation had to be issued on Friday 13 May. The announcement that Parliament would be dissolved on that date was made on Monday 9 May, leaving only the remaining 4 days of that week for the conclusion of outstanding Parliamentary business. Had it been agreed to prolong the life of the old Parliament by a few more days for that purpose, this could have been achieved by dissolving it from, say, midnight on Wednesday 18 May.

(B) Where in exceptional circumstances it is desired, in the first part of the election campaign, to be able to recall the old Parliament.

If the proclamation dissolves Parliament from a future date, Parliament can meet in the interval between the issue of the proclamation and the moment of dissolution. If, where this is done, Parliament has been prorogued to a date after the dissolution, the date of meeting can be accelerated under section 1 of this Meeting of Parliament Act 1797; and if it has not been prorogued, the two Houses could be recalled under their Standing Orders (assuming - see paragraph 3 above - that the public interest requires this).



#### Postponement of meeting of new Parliament

5. When Parliament sat less frequently than it does now, the date of meeting of a new Parliament was sometimes postponed by prorogation, notably on occasions when the election ended before the usual time for Parliament to meet. There is power to prorogue for this purpose in the Prorogation Act 1867, but the date to which the meeting is postponed must be more than fourteen days after the date of the proclamation. It is unlikely that the power would be needed today just to prolong the summer break, or some other break in parliamentary business, but it is possible that the power would be useful in case the election did not produce a clear majority. In such a case it cannot be assumed that each House will agree with the Government on a suitable adjournment and, because of the time limit of fourteen days, any decision to prorogue may have to be taken quickly.

The Prorogation Act 1867 did not supersede the earlier power of proroguing in the same circumstances by writ, but this procedure is now moribund and would probably be difficult to resuscitate. The difference is that the earlier power to prorogue by writ was not subject to any time limit.

#### The law about prorogation

6. The law about prorogation is not easy. The familiar procedure is prorogation by Royal Commission to terminate a Session and fix a meeting of Parliament to begin a new Session. Until recently, by convention, if not by law, a Parliament was prorogued before being dissolved; but the practice is now to dissolve when both Houses are adjourned, as happened in 1964, in September 1974 and in 1983 - unless, of course, prorogation has already occurred.

It is very doubtful whether Parliament can be prorogued when both Houses, or either, are adjourned.

Once the date for the meeting of Parliament at the beginning of a new Session has been fixed by prorogation, the date can be brought forward, or postponed on one or more occasions, by proclamation. It can be brought forward under section 1 of the Meeting of Parliament Act 1797 (c.127) as amended by section 34 of the Parliament (Elections and Meeting) Act 1943 (c.48) to any day after the date of the proclamation. It can be postponed under the Prorogation Act 1867 (c.81) to any date more than fourteen days after the date of the proclamation, and the postponement can be repeated subject to the same time limit.

The Acts of 1797 and 1867 have given rise to doubts. The Act of 1797 has been thought to authorise postponement, as well as acceleration, but this is almost certainly wrong. And it does not authorise acceleration of the meeting of either House where both or either Houses are adjourned.

The Act of 1867 does not apply so as to authorise the termination of a Session by proclamation (whether Parliament is sitting or adjourned); and this is borne out both by the terms of section 1 and by section 2 which perhaps adds nothing to section 1. It is possible to read section 1 as making the time limit of fourteen days run not from the date of proclamation but from the previous date fixed for the meeting of Parliament, but this construction is almost certainly wrong. In 1878 the time limit was overlooked, though the error was not observed at the time.



As noted above, the Act of 1867 also authorises a proclamation to postpone the date of meeting of a new Parliament fixed by the proclamation dissolving the previous Parliament.

The Meeting of Parliament Act 1799

7. This Act (1799 c.14) as amended by section 2 of the Meeting of Parliament Act 1870 (c.81) authorises a proclamation bringing forward the date of meeting of Parliament when both Houses are adjourned. The power is subject to two time limits. First there must be fourteen days between the date of the proclamation and the dates to which each House stands adjourned. Secondly, the new date of meeting must be not less than six days from the date of proclamation. (Note that the text of section 1 of the 1799 Act as currently published in Statutes in Force wrongly shows the second time limit as fourteen days instead of six. The text in vol.24 of Halsbury's Statutes, 3rd ed, is correct.)

There is no power, by Act or otherwise, to prolong an adjournment.

G.E.

PARLIAMENTARY COUNSEL OFFICE

October 1986

