

Cabinet Secretary Speech on the Cabinet Manual: Constitution Unit Event

Introduction

I'm very pleased to have been asked to speak at tonight's event and discuss the draft Cabinet Manual with such a distinguished audience.

It is fitting that this event is a collaboration between UCL's Constitution Unit and the Institute for Government: both organisations have helped get us this far, and I would particularly like to thank Robert Hazell, Peter Riddell and Andrew Adonis for making tonight possible.

I'm also very grateful to others who have contributed to the draft over the past year or so, including a number of constitutional experts as well as my predecessors.

Compiling this draft has been an interesting experience. It's fair to say that it has attracted a lot of interest – although it is equally true that this is largely from a relatively small, if important, group. Parliament is taking a very close look at the draft with three Select Committees holding inquiries. But I have to admit that it's not something I'm often asked about down the pub, and I'd be surprised if you were either.

But I hope its "final" version will help the public better understand how our democracy works. I want it to bring the inner workings of government out in the open and shed more light on how government relates to the other branches of state.

I hope we might use tonight to talk about some issues it raises. I hope to dispel some myths, reflect on how the draft stood up to the events of May last year, and then set out what will happen after the consultation closes on 8th March.

And I will leave plenty of time for discussion. Some important questions remain genuinely open, and this is your chance to help shape the Manual and how it will be used.

Status of the Manual

Let me start by explaining some basics about what the draft Cabinet Manual is and what it is not.

Last February in a speech about the broader question of a written constitution, the previous PM said (and I quote):

"I have asked the Cabinet Secretary to lead work to consolidate the existing unwritten, piecemeal conventions that govern much of the way central government operates under our existing constitution into a single written document"

There are two crucial points to note here:

First, it is about the operation of central Government, not the whole of the UK constitution;

Second, it is bringing together and writing down our understanding of existing practices, not starting from scratch or changing what we have.

Although we would like to take the credit, this was not a new idea. A Cabinet Manual has been an important part of government operation in New Zealand for some years. In the 2008 Edition of New Zealand's Cabinet Manual, the Secretary to their Cabinet says, and I quote:

"Successive governments have recognised the need for guidance to provide the basis on which they will conduct themselves while in office. The *Cabinet Manual* fulfils this need."

And that is what our draft aims to do.

It is written primarily to provide a users' guide for Government, but I hope that it will also be a useful reference tool for everyone else.

Because we wrote it for this purpose, from the perspective of the executive, it has quite a lot of detail on the internal workings of Government. But it is intended to be a high-level summary rather than an exhaustive description, although we are considering how best to link to where detailed guidance can be found.

The draft Manual also describes the Government's relationship with Parliament, the Judiciary, devolved administrations and so on. But I should stress it is not trying to be a comprehensive guide to those bodies. It doesn't attempt to say everything there is to say about how parliament works – for that you can read Erskine May¹.

Finally on its purpose: the Cabinet Manual is intended to be exactly what it says in the front cover, that is: "A guide to laws, conventions and rules on the operation of government". It is to guide but not to direct. It will have no formal legal status and it is not meant to be legally binding.

In practice of course we recognise that people may want to quote it in support of a particular argument, and it is not inconceivable that it may even be referred to in court. But this is already true of other pieces of guidance that we publish. It should not prevent us from setting out - as clearly as possible - guidance on how things work.

Clarifying some myths / criticisms

It is not intended to be a written constitution. I have to agree with our host Lord Adonis on this when he said a written constitution would only "marginally overlap" with the Cabinet Manual.

Neither is this an attempt by the Civil Service to rewrite the rules for Ministers or Parliament. As I said in the foreword to the draft Manual, it is "a statement of the arrangements as they are on the day of publication" and "it will be a record of incremental changes rather than a driver of change".

If Parliament legislates on any issue in the future – as it has just done on constituencies and voting systems and is considering doing on parliamentary terms – then we will have to change the manual to reflect the new arrangements. We are not seeking to change laws and conventions. We simply want the existing rules to be understood.

And that is why I believe it is right for the Executive to own the Manual. The government is entitled to set out, for itself, a guide on how the government works within the legislative framework defined by Parliament. Of course it is right to give Parliament and others an opportunity to comment – as we are doing – but as my predecessor Lord Butler said to the Lords Constitution Committee it is in the end "by the Executive for the Executive".

¹ It has been suggested that the manual would be enhanced by adding footnotes showing where further guidance can be found. This is being considered.

Looking to the future, the manual needs to work for *successive governments*. A close parallel most experts appear to be comfortable with is the Ministerial Code. In theory parts of it can be rewritten by a new Government – it could be done away with entirely – but, in reality, the vast majority of it does not change from government to government.

So I am delighted that the draft Manual survived its first big test: the 2010 election and formation of the Coalition Government. I'm grateful to both the current Prime Minister and Deputy Prime Minister for their support in the development of a Manual that was of course commissioned by the previous Prime Minister.

2010 Election

The Manual made its first public appearance on this very day one year ago, when we published a skeleton structure and a draft chapter on elections and Government formation. The Prime Minister at the time sanctioned this, and the House of Commons Justice Committee held a short inquiry.

Looking back, I am clear that there was considerable value in doing this. It helped develop an understanding of the conventions that apply where there is a 'hung Parliament'.

But it has been suggested that the publication of this draft chapter had some kind of improper influence over the events that followed.

Depending on who you listen to this could be:

forcing parties into a coalition and either speeding up or slowing down their negotiations;

making the Prime Minister stay in office for too long, or forcing him to resign too early.

Clearly it would be impossible for all these claims to be true. In fact there is no reason to believe that any of them are.

The evidence from those involved – whether in evidence to the various Select Committees, or in one of the many books about the election – is clear. The draft chapter was a useful, modest piece of guidance, but all the key players made their decisions themselves.

For me, the real conclusion from May 2010 is that the civil service is fully able to respond to the challenges of such an unusual situation. We provided the support that the political parties wanted and needed, while continuing to serve the government of the day – for example in relation to Ecofin meetings in Brussels – and upholding our principles of honesty, integrity, impartiality and objectivity.

Of course we learnt some lessons - for example about the practicalities of enabling negotiations to take place over the weekend with a huge media scrum outside the Cabinet Office's front door – but I won't go into that now.

The draft manual

As you will have seen, there is far more to the Manual than just the Chapter on hung Parliaments. The chapter on Ministers and the law is another good example of how it the Manual consolidates existing laws, conventions and rules. It brings together a range of sources in an accessible way, including the relevant parts of the Ministerial Code, court procedures, common law and statutes such as the Human Rights Act and the Constitutional Reform Act. The draft also includes a chapter on relations with the Devolved Administrations and Local Government which I hope will prove useful.

We published the remaining ten chapters of the draft manual in December, giving people until 8 March to comment. So far we have received comments from as far away as Canada,

and on topics ranging from the status of Magna Carta to the position of the Isle of Man in the WTO.

While a few comments have been negative, the majority of respondents have made detailed and constructive suggestions.

We are grateful for everyone's input, all of which will be considered for the final version. As I said earlier, various Parliamentary committees are considering the draft manual and I look forward to their reports. We will publish a summary of the issues raised and will naturally respond to the Select Committee reports in the normal way.

The aim is for Home Affairs Committee and ultimately Cabinet to endorse this final version later this year. When finalised, it will be sent to all Ministers and their Private Offices, and it will be available on our website for anyone else with an interest.

As is the case in New Zealand, I expect the Cabinet Manual to be updated as required and then endorsed by each new Cabinet after a General Election.

And the future will throw up further challenges. Some we can anticipate, others we may not, and some issues will fall entirely outside the scope of this Manual. But I hope the Manual will be comprehensive and adaptable enough to guide this Government and its successors through most circumstances. The best way to insure against every eventuality is to learn from the lessons of the past and keep thinking about what lies ahead. I will be doing this. I hope the Institute for Government and the Constitution Unit will be doing this, and would invite all of you to do so as well.

To conclude:

Will the Cabinet Manual be seen in future to be as important as Magna Carta? The answer is No. Nor should it be.

At the other end of the spectrum, will it be (in the words of my former close colleague Lord Powell of Bayswater) "a bit of a Janet and John guide to the Queen and so on"? Well, I hope it will be rather more than that.

I would like it to be exactly what it is intended to be: namely, a work of reference that guides those of us who work in or with government. I will be satisfied when people stop arguing about whether or not we should have a manual and simply follow the plan that Lord Butler of Brockwell set out to the Lords Constitution Committee:

"I shall put it on my bookshelf and when I want to remember what the conventions are, for use in Parliament or other ways, I shall look at it".

That is exactly what it is for.

And I hope, for some outside government, it will serve one other important function. No, it is not a constitutional innovation. Its ambitions are modest. But, if I might paraphrase Lord Hennessy, it is "a prime piece of photo reconnaissance of the official mind", and now it's out there for all to see.