



**Government Response to the House of Lords Constitution
Committee, Political and Constitutional Reform Committee and
Public Administration Select Committee on the Cabinet Manual
Committee Reports of Session 2010-12**

Presented to Parliament
by the Prime Minister
by Command of Her Majesty

October 2011

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Introduction

This document sets out the Government's response to the recommendations and conclusions included in the reports on the draft Cabinet Manual produced by the House of Lords Constitution Committee,¹ the House of Commons Political and Constitutional Reform Committee,² and the Public Administration Select Committee.³

The Government welcomes the valuable input of all three Select Committees, which has assisted in the finalisation of the Cabinet Manual.

In order to provide a consistent and coherent response to the three Select Committees, this one response considers the three reports in turn. It should be read in conjunction with the Government's summary of responses and the revised Cabinet Manual which can be found at: www.cabinetoffice.gov.uk/resource-library/cabinet-manual.

Background

In February 2010, the then Prime Minister, the Rt Hon Gordon Brown MP, asked the Cabinet Secretary to lead work to produce a Cabinet Manual. A draft chapter on elections and government formation was published that month, and considered by the House of Commons Justice Committee.⁴ The draft chapter helped as a

¹ House of Lords Select Committee on the Constitution, *The Cabinet Manual*, 12th Report of Session 2010-11

² House of Commons Political and Constitutional Reform Committee, *Constitutional Implications of the Cabinet Manual*, 6th Report of Session 2010-11, Vol. I

³ House of Commons Public Administration Select Committee, *Cabinet Manual*, 8th Report of Session 2010-11

⁴ House of Commons Justice Committee, *Constitutional Processes Following a General Election*, 5th Report of Session 2009-10

guide through the process of supporting the formation of a new government after the 2010 General Election.

Following the 2010 General Election, the Prime Minister, the Rt Hon David Cameron MP, and Deputy Prime Minister, the Rt Hon Nick Clegg MP, endorsed the principle of the Cabinet Manual and the Cabinet Office published a draft Cabinet Manual on 14 December 2010.

The period for comments closed on 8 March 2011 and 52 responses were received.

The House of Lords Constitution Committee published its report on 7 March 2011. The Political and Constitutional Reform Committee published its report on 29 March 2011. The Public Administration Select Committee published its report on 1 April 2011.

As requested by the House of Lords Constitution Committee and the Public Administration Select Committee, the Government provided an interim response to their reports. The interim responses can be found on the Parliament website⁵. The Political and Constitutional Reform Committee was content to await the final publication of the Cabinet Manual before receiving a Government response.

Overview

Following consideration of the points made on the draft Cabinet Manual, the Government is of the view that:

- the Cabinet Manual is a document written by the Executive, for the Executive. It represents the Executive's best understanding of the laws,

⁵ The Government's interim response to the Public Administration Committee's report can be found at: www.publications.parliament.uk/pa/cm201012/cmselect/cmpublicadm/1127/1127.pdf
The Government's interim response to the Lords Constitution Committee's report can be found at: www.parliament.uk/documents/lords-committees/constitution/cabinetmanual/Gvtres270511.pdf

conventions and rules which govern the conduct of the Executive's business;

- the Cabinet Manual is primarily for Ministers and the Civil Servants that advise them. However, publishing the document will help aid good government and increase transparency;
- Cabinet should own and endorse the text. It would not be appropriate for the Civil Service to own the Cabinet Manual;
- the Cabinet Manual should be appropriately referenced;
- the Government is of the view that Parliament should not endorse the Cabinet Manual.

Report of the House of Lords Constitution Committee, The Cabinet Manual, Twelfth Report 2010 - 11HL

We consider that a better title for the Manual would be “The Cabinet Office Manual” (paragraph 9)

As set out in the Government’s interim response, the title of the Manual should reflect the ownership of the document.

Following careful consideration of the points raised by the House of Lords Constitution Committee, the Public Administration Select Committee and others on ownership, the Government has decided to retain the title *Cabinet Manual*. It is the Government’s view that it would be inappropriate for a document which sets out existing rules, laws and conventions which apply to Ministers to be owned by the Civil Service and published without Ministerial approval. The title Cabinet Office Manual could also suggest that it only applies to the Cabinet Office, when it will be relevant to all members of the government and their officials. (See below for more on ownership.)

As a guide for ministers and civil servants the Manual has some value as a work of reference. This added value must, however, be weighed against drawbacks and concerns otherwise raised by the Manual’s publication or content (paragraph 15).

The Committee’s view is noted. The Government believes that bringing together in one place the guidance contained in the Cabinet Manual will aid good government and that the value of doing so outweighs the potential drawbacks identified.

The Manual will bring greater transparency to certain aspects of the operation of government. This is particularly so in relation to Chapter Two on elections and government formation and Chapter Four on collective

Cabinet decision-making. However, the further the draft Manual moves from the operation of government the less useful it becomes. The Cabinet Office should give consideration to deleting material which does not form part of the laws, conventions and rules on the operation of government.

We welcome the Committee's view that the Manual will result in greater transparency. The Cabinet Manual has been reviewed and where appropriate material has been deleted or focused on the laws, conventions and rules which relate to the operation of government.

In particular, the Government has responded to the concerns expressed in relation to Chapter 9 on the European Union and other international institutions. That chapter, has been significantly restructured so that it now focuses on the role of Ministers, collective agreement and the impact of international organisations on the decisions of the Executive, for example in relation to defence. Much of the detail of how the international organisations are structured and operate has been removed as we agree with the Committee that these are largely not matters for the UK Executive. However, the Government remains of the view that it is important for the Cabinet Manual to include material beyond the core of Cabinet Committees in order to set out the Executive's view of how it interacts with other parts of our democratic system.

The appropriate function for the Manual is to record rules and practices, not to be the source of any rule. This needs to be stated in the text of the Manual. The Manual should be descriptive and not prescriptive. We are concerned that the current draft does not achieve this distinction (paragraph 27).

The Cabinet Office should ensure that the text is written in such a way that it cannot be misinterpreted as itself prescribing what ministers or others should do (paragraph 29).

We agree that the function of the Manual is to record rules and practices, not to be the source of any rule and that it should be descriptive rather than prescriptive.

The Cabinet Manual has been reviewed to ensure that it achieves this goal. The language is largely descriptive rather than prescriptive, although there are a number of examples where it says Ministers or Civil Servants “should” or “must” behave in a particular way where a requirement is already set out in guidance, such as the *Ministerial Code* or the *Guide to Cabinet and Cabinet Committees*, or where the Manual reflects statute. These circumstances are referenced in the text.

The Government is clear that the Cabinet Manual is not intended to prescribe what others outside the Executive may do and has amended the text accordingly to make this clear. For example, paragraph 2.13 now says “Where a range of different administrations could potentially be formed, political parties may wish to hold discussions to establish who is best able to command the confidence of the Commons and should form the next government”. This previously said that discussions “will take place”.

We agree that ministers should be entitled to depart from the provisions of the Manual (where this would not otherwise be illegal or unconstitutional), and that the Manual should not set existing practice in stone. The Manual should not prevent a government from changing an existing practice where such a change could be made at present (paragraph 33).

The Cabinet Manual is not binding on Ministers, although it sets out certain existing requirements, for example those in law. Where it sets out guidance or best practice, it will be for Ministers to determine whether to abide by the provisions. The Cabinet Manual will not prevent a government from changing existing practices where they can do so at present.

The content of the Manual should not be formally endorsed by the Cabinet. It follows that, although the political parties may be included in any consultation of the Manual's content, there should be no formal process by

which the official Opposition and other parties should endorse the Manual (paragraph 36).

The Government has carefully considered the arguments made by the House of Lords Constitution Committee, Public Administration Select Committee and others in relationship to ownership of the *Cabinet Manual* but is not persuaded that it would be right for the Manual to be produced and owned by the Civil Service without reference to Ministers in Cabinet.

It is the Government's view that the Cabinet Manual, which is primarily for Ministers and the Civil Servants that advise them, should be developed in a similar way to the *Ministerial Code*, which is owned by the Prime Minister but drafted by civil servants on behalf of the Cabinet Secretary. This model of ownership reflects the fundamental principle, as set out in paragraph 1 of the *Civil Service Code*⁶ that "Civil servants are accountable to Ministers, who in turn are accountable to Parliament".

It is our view that that the legal risks associated with Cabinet endorsement or Civil Service ownership are broadly similar. Irrespective of ownership, the Cabinet Manual would set out the expected norms of executive behaviour, in much the same way as existing government guidance in the public domain already does. However, as the preface makes clear, the Cabinet Manual is not intended to be legally binding. As recognised above, where it sets out guidance or best practice, it will be for Ministers to determine whether and how to act in response to the provisions.

Cabinet endorsement of the Cabinet Manual is also consistent with the New Zealand model, which is the best developed and most successful example of such guidance in a Westminster-style system.

⁶ Civil Service, *Civil Service Code*, 2010, para 1

The Government agrees that there should not be a formal process through which the official Opposition and other parties should endorse the Manual. However, it is noted that the idea of a Cabinet Manual was first set out by the Prime Minister under a previous administration.

We are strongly opposed to any suggestion that the Cabinet Manual be formally approved by Parliament or by any of its Committees (paragraph 40).

The Government notes that the Committees have different views on the role that Parliament should play in relation to the Cabinet Manual. The Committee's view on this point has been considered along with the reports of the Public Administration Select Committee and the Political and Constitutional Reform Committee, and with consultation responses on this issue.

The Government is of the view that whilst the Committees' comments on the draft have been valuable in developing the text, the Cabinet Manual is an executive document primarily for Ministers and the Civil Servants that advise them, and therefore, should not be approved by Parliament.

The Manual is an official guide primarily for ministers and civil servants and has some value as a reference work in illuminating the operation of government. It is, and should be, no more than that. In drafting the final version of the Manual, the Cabinet Office must be careful to bear this in mind (paragraph 41).

We agree that the Cabinet Manual has value as a reference work for use by ministers and civil servants and we are content that the text is consistent with this objective.

We agree that the risk of legal proceedings being brought on the sole basis of the Manual is low, but there is a risk that it may be relied on or cited as evidence in judicial review or other legal proceedings. This is another

reason why the Cabinet must ensure that the text does not itself prescribe what the government should do, but merely describes existing rules and practices and why the Manual should not be formally endorsed by the Cabinet or approved by Parliament. (paragraph 45)

We note the Committee's view on the legal risks associated with the Cabinet Manual. The Government believes that any potential legal risks are outweighed by the value of bringing together the guidance in the Manual. As set out above, it is the Government's view that the legal risks associated with Cabinet endorsement or Civil Service ownership are broadly similar. In addition, as the preface makes clear, the Cabinet Manual is not intended to be legally binding.

We agree that the Manual is not the first step towards a written constitution (paragraph 47).

We note the Committee's view. As previously stated, the Cabinet Manual is intended to be a source of information and guidance, not a written constitution.

It is necessary for the Manual to set out relevant conventions. It must, however, state clearly where a particular statement is based upon convention and what the extent of that convention is. Furthermore, where no convention exists, or there is doubt as to its extent, this should be stated. As a description of the current constitutional position, it is better for the Manual to be open about areas of debate than to resort to potentially ambiguous wording in order to cloud the issue (paragraph 52).

The Cabinet Manual has been reviewed to ensure that, where practicable, it is stated where a particular statement is based on convention rather than statute or guidance. Where different views have been expressed in relation to a convention, the Cabinet Manual either makes clear that there is no consensus or states the Executive's own understanding of the position. As set out above, the Cabinet

Manual is not binding and others are entitled to take a different view on the operation or extent of a particular convention.

It is a matter of debate as to whether a Prime Minister has a duty to stay in office until it is clear who might command the confidence of the House of Commons. The Manual should distinguish between the right to remain in office and the duty to do so. Following our earlier conclusion concerning areas of doubt as to the extent of particular conventions, the Manual should state that there is a degree of uncertainty on this point (paragraph 59).

We conclude that an Incumbent Prime Minister has no duty to remain in office following an inconclusive general election until it is clear what form any alternative government might take (paragraph 61).

We note the Committee's view on this point and that other Committees have also made recommendations in relation to the rights and duties of a Prime Minister following a general election or when there is uncertainty about who might command the confidence of the House of Commons.

The relevant text has been reviewed and states the Executive's own understanding on whether there is a right to remain in office or a duty to do so. It is clear that it is for the Prime Minister personally to decide whether to resign and when to do so, and the Cabinet Manual provides examples of how those decisions have been made in the past, rather than imposing any obligations. The Cabinet Manual is not binding and others are entitled to take a different view on the operation or extent of a particular convention.

We agree that the statement contained in the footnote to paragraph 49 of the draft Manual does not reflect the current constitutional position on which party has the first right to seek to govern. The footnote should therefore be removed (paragraph 63).

The footnote at paragraph 49 of the draft Cabinet Manual was included in the draft to provide some context following the general election last year. The footnote has not been included in the final version of the Cabinet Manual.

It is important for ministers and civil servants to be aware of the Salisbury-Addison convention (and of other conventions governing the relationship between the two Houses) since it is more difficult to plan the Government's business without a proper understanding of the powers of each House. However, it is not the place of the Cabinet Office to seek to define a convention which is itself the subject of much debate. In order to inform the reader, the Manual should set out, without making further comment, the conclusions of the Joint Committee on Conventions (paragraph 70).

We agree that the conventions on the relationship between the two Houses, including the Salisbury-Addison convention, are important to understanding of the powers of each House and that the Cabinet Manual should include a reference to the 2006 Report of the Joint Committee on Conventions, which was endorsed by both Houses. This reference has now been included at paragraph 5.2 of the Cabinet Manual.

The Manual should, as in paragraph 206, clearly state relevant government commitments which have been made to Parliament (paragraph 75).

It would be helpful for ministers and civil servants to know what Parliament and its committees expect of them. The Manual should set out the conclusions of relevant parliamentary reports which specify the standards to be expected of government in taking bills through Parliament, particularly those debated in either House (paragraph 76).

We agree that it would be helpful for the Cabinet Manual to include references to relevant commitments that have been made by Government and to Parliamentary decisions or reports of Select Committees.

On commitments to Parliament, we have now included the standards which Parliament expects of the government in taking bills through Parliament, which are set out in detail in the Cabinet Office's *Guide to Making Legislation*. A reference to the Guide has been inserted into the Manual at paragraph 5.23.

We agree that it would be sensible for the Cabinet Manual to reference relevant Parliamentary reports. Having reviewed the text, the Government has included Select Committees' and Parliament's views where it considers it necessary to do so. For example, Chapter 5 includes relevant references to the report of the Joint Committee on Conventions 2005-2006; the reports of the Delegated Powers and Regulatory Reform Committee in relation to what is expected in relation to Henry VIII powers and those of the Constitution Committee on the use of Henry VIII powers in Bills; and resolutions of the House of Commons relating to the Backbench Business Committee. A reference to the Liaison Committee's report on pre-appointment hearings in paragraph 5.39 is also included.

Should Parliament consider that there are other Government commitments or expectations that should be included, they can be considered for future editions of the Cabinet Manual.

The Manual cannot affect the freedom of Parliament to determine its own procedures and practices and should make no attempt to do so. It should note concerns raised by the two Houses of Parliament and by parliamentary committees without prescribing what ministers must do (paragraph 76).

The Cabinet Manual does not, and could not, affect Parliament's freedom to determine its own procedures and practices. As set out above, the Cabinet Manual refers to the relevant Select Committee reports in relation to a number of relevant areas.

The Cabinet Manual must be revised to reflect appropriately the roles and procedures of the two Houses of Parliament (paragraph 80).

We agree that the Cabinet Manual should accurately reflect the distinct roles of the two Houses of Parliament. The Government has given consideration to the specific points raised by the Committee at Appendix 3 of their report and the Cabinet Manual has been amended accordingly.

The Manual must be fully referenced throughout. This includes the need for appropriate cross-references to assist the reader in finding more detailed information. Moreover, in the light of our conclusion that the Manual should be descriptive and not prescriptive, it must also provide explicit authority for every proposition stated (paragraph 87).

The Government agrees that references are useful in directing the reader to more detailed information and establishing the status of the different elements of the Cabinet Manual. It is also important that the Manual remains a readable document and that it will be used in practice. The text that therefore been fully reviewed and references included, where the Government considers it helpful and appropriate to do so.

Additional cross-references have been included so that readers are easily sign-posted to other relevant information, and a glossary has been added to explain technical terms. Statutory provisions and text drawn directly from other documents, such as the *Ministerial Code*, have been referenced. Where statements have not been referenced they reflect decisions that have been made by the Executive and have been endorsed by the Cabinet.

The process by which the final version of the Manual will be produced and agreed should be publicly and clearly set out (paragraph 89)

We agree that the online version of the Manual should be updated as revisions are made. The Cabinet Office should publish, at regular intervals, a summary of the revisions made.

The publication of each new printed edition should follow the making of major revisions, rather than be tied to the political calendar. This will help to preserve the status of the Manual simply as a guide to the operation of government and avoid each edition being linked too closely to a particular administration.

We note the Committee's view. As recognised in the Cabinet Secretary's preface to the updated Cabinet Manual, the issues covered in the Cabinet Manual will evolve over time with the passage of new legislation, evolution of conventions or changes to internal procedures of Government. The current intention is to make periodic updates to the Manual as and when appropriate. However we do not believe the Government should at this stage set out precisely when and how this should happen. The Government believes that the right approach is to allow the timing of and process for any future updates to the Manual to be considered in light of experience.

Political and Constitutional Reform Committee: Constitutional implications of the Cabinet Manual, Sixth Report of Session 2010 -11, HC 734

Where there is the potential for disagreement or uncertainty, as there so often is in the meaning of unwritten constitutional conventions, it is important that the Cabinet Manual should signal the existence of this uncertainty. (Paragraph 22)

Where there are different views expressed in relation to a convention, the Cabinet Manual makes this clear or states the Executive's own understanding of the position. The Cabinet Manual is not binding and others are entitled to take a different view on the operation or extent of a particular convention.

Vague language—'usually this' and 'normally that'—probably indicates a shorthand way of avoiding long and detailed explanations of complex situations, but it risks limiting the Manual's usefulness as a practical tool, unless the Manual also makes clear where the more detailed explanations are available. (Paragraph 25)

The Cabinet Manual has been reviewed to remove unnecessary uses of "normally" or "usually", although it will always be the case that there may be exceptional cases that do not follow the guidance that applies more generally, or where the available precedents do not point conclusively to an unvarying rule. The increased use of referencing will make clearer where readers can access further information on particular issues.

An index should be added to the Cabinet Manual so that it can be more easily used as a point of reference. Sources of related information, both published and unpublished, should be listed at the beginning of each chapter to make clear to readers the range of other guidance that exists. (Paragraph 28)

We agree with the House of Lords Constitution Committee that the Manual should “be fully referenced throughout”. (Paragraph 30)

We agree with the Committee about the importance of the Cabinet Manual as a source of reference and agree that references are useful in directing the reader to more detailed information and establishing the status of the different elements of the Cabinet Manual. It is also important that the Manual remains a readable document that it will be used in practice. The text has therefore been fully reviewed and references included, where the Government considers it helpful and appropriate to do so.

Additional cross-references have been included so that readers are easily sign-posted to other relevant information, and a glossary has been added to explain technical terms. Statutory provisions and text drawn directly from other documents, such as the *Ministerial Code*, have been referenced. Where statements have not been referenced they generally set out the Executive’s view of the current position. A list of key reference documents has also now been added to direct readers to further sources of information.

We appreciate that the ‘precedent book’ may contain within it information that is personally sensitive, but believe there is a strong case for the publication, at the earliest practical time, of a redacted version of the ‘precedent book’, providing those outside the Executive with a more informed opportunity to judge whether constitutional conventions are accurately reflected in the draft. It would also make a more general contribution to public understanding of the British constitution as a whole. (Paragraph 32)

The 1954 version of the Precedent Book was placed in The National Archives in 2006. The Cabinet Office is reviewing more recent versions and will consider whether there should be a further release to The National Archives.

It seems unlikely to us that the Cabinet Manual will feature extensively in court proceedings. However, in a constitution based on the rule of law judicial interpretation is always possible. This is simply a further reason for the Executive and Legislature to do all they can to ensure that the Manual is accurate, does not mislead and is subject to due process. (Paragraph 34)

We note the Committee's view. We agree that the Cabinet Manual should accurately reflect the current laws, conventions and rules, and are satisfied that the updated version of the Manual achieves this.

The foreword to the draft suggests that the Cabinet Manual is a document of limited ambition, which is not intended to "set issues in stone" or to "resolve or move forward" matters of public debate. Despite these intentions, there is scope for the constitutional impact of the Cabinet Manual to be greater than this. This becomes particularly true where the Cabinet Manual's content extends beyond matters that are purely for the Executive. (Paragraph 36)

The Committee's view is noted on the potential impact of the Cabinet Manual. The Government believes that the Cabinet Manual can play a role in providing greater transparency about the operation of the Executive and its interactions with other parts of our democratic system, but it is primarily guidance for Ministers and the Civil Servants that advise them.

Whether or not the Cabinet Manual should be open to amendment and decision by Parliament depends in our view on what the Cabinet Manual is or might become. If it is simply a document by the Executive, about the Executive and for the Executive, then for Parliament to decide on its content would give it a status it should not have. (Paragraph 40)

The Manual, however, seems in part to be intended as—or might become, whatever the intention—the basis for a shared understanding beyond the Executive of important parts of the United Kingdom’s previously uncodified constitution. Parliamentary intervention would be entirely appropriate in such circumstances. An official document, approved by the Cabinet, will have a status unlike that of existing academic texts on the same subject. We intend to monitor closely how the Cabinet Manual develops, and how it is used both within and beyond Government during the life of this Parliament. (Paragraph 41).

The Cabinet Manual is drafted by the Executive, for the Executive. It sets out the Executive’s understanding of laws, conventions and rules on the operation of government. The Government considers that it would not be appropriate for Parliament to decide its content.

Whatever the status of the Cabinet Manual as a document, it covers ground which is significant enough to merit regular debate in the House. We therefore propose that, soon after the Cabinet Manual is finalised, the House should have the opportunity to debate it as a whole and should seek the Government’s assurance that such a debate should become an annual fixture in the parliamentary calendar. Alternatively, the debate could occur twice during the course of a five-year Parliament – the first debate within 30 months of the start of a fixed term five-year Parliament, and the second debate within 30 months of the election concluding the Parliament. Before each one, the Government should publish a list of changes made to the Manual since the previous debate. The Government should publish a list of changes made to the Manual during the preceding year to inform this debate. As the Manual is largely about the conduct of the Executive, we would expect this debate to take place in Government time. (Paragraph 42)

The Government notes that the Select Committees have different views on the role that Parliament should play in relation to the Cabinet Manual.

Parliament's engagement on the *Draft Cabinet Manual* has been valuable in developing the revised text. However, the Cabinet Manual is an executive document primarily for Ministers and the Civil Servants that advise them. We do not intend to schedule a debate in Government Parliamentary time. It is a matter for the Backbench Business Committee to consider whether Parliament wishes to schedule a debate on the Cabinet Manual.

The Cabinet Manual is not a written constitution. It has, however, considerable overlap in content with what might be expected of a constitution. The Cabinet Secretary has suggested to us that it would be likely to be a starting point for any attempt to produce such a constitution. By bringing together and publishing the Government's interpretation of existing constitutional rules and conventions, the Government has already begun to spark debate about both the nature of these rules and conventions, and if and how they should be written down. This is a debate in which Parliament needs to play a full part. (Paragraph 54)

As previously stated, the Cabinet Manual is intended to be a source of information and guidance, not a written constitution.

The chapter of the Cabinet Manual on Ministers and Parliament should focus on the role and responsibilities of central Government. Conventions which rely on the Government to take the initiative need to be included: a salient example—and a surprising omission from the draft—is the convention, acknowledged by the Government, that Parliament should have the opportunity to debate decisions to commit troops to armed conflict, and that the debate should take place before the troops are committed, except in emergency situations. This convention, as the Executive understands it, should be included in the revised Manual. We also intend to inquire separately into whether the Government's understanding of the existing

convention is correct and complete—and whether it goes far enough to ensure appropriate parliamentary involvement in any future decisions to go to war. (Paragraph 61)

As recommended by a number of Select Committees, Chapter 5 of the Cabinet Manual has been revised so that it includes more on the ways in which the Executive relates to Parliament. In particular, the Government agrees with the Committee that the Cabinet Manual should include information on Parliamentary processes in relation to military action, and notes that this is the subject of ongoing consideration within Government and Parliament. Paragraphs 5.36 to 5.38 of the Cabinet Manual summarise previous parliamentary involvement in relation to military action and note that the Government has recently acknowledged that a convention had developed in the Parliament that the House of Commons should have an opportunity to debate a decision to commit troops, and that the Government proposes to observe that convention except when there was an emergency and such action would not be appropriate.

As the Committee is aware, the Government is currently exploring options for formalising the existing convention on debating military intervention in the House of Commons.

Descriptions of Parliament's expectations of Government, where it is appropriate to include them, need to be based on evidence, such as resolutions of either House, and the Manual should be amended to reflect this evidence. (Paragraph 63)

The Government agrees with this recommendation and the Cabinet Manual references in a number of places the views of Parliament, for example as expressed in Select Committee reports. In particular, paragraph 5.6 on Ministerial accountability has been amended so that it does not assume Parliament's view. Instead the paragraph refers to the Ministerial Code which clearly sets out the

principles of Ministerial accountability to Parliament and reflects the relevant Parliamentary resolution on ministerial accountability.

We do not agree with the view that any part of the Cabinet Manual represents an attempt to bias the political process. The draft may, however, be misleading in some places, probably as a result of an understandable desire for a degree of clarity that does not exist. (Paragraph 68)

The Government welcomes the Committee's conclusion that the Cabinet Manual does not attempt to bias the political process. As stated elsewhere in this response a number of changes have been made to ensure that the text is not misleading, including through the addition of references where appropriate.

The evidence indicates that there is a continuing dispute over the extent to which a Prime Minister has a duty to remain in office when it is unclear who else might be best placed to lead an alternative government. The Cabinet Manual needs to give clarity to the extent of this uncertainty, rather than to attempt to resolve the argument. (Paragraph 74)

Where there are different views expressed in relation to a convention, the Cabinet Manual makes this clear or states the Executive's own understanding of the position. The Cabinet Manual is not binding and others are entitled to take a different view on the operation or extent of a particular convention. The text relating to the position of the Prime Minister when it is unclear who else might be best placed to lead an alternative government has been amended following careful consideration of the recommendations of all three Select Committee reports.

There appears to be widespread agreement that the footnote to paragraph 49 represents a political negotiating position adopted in 2010 rather than a statement of an existing constitutional convention or practice. It should be deleted from the Manual. (Paragraph 79)

The footnote at paragraph 49 of the draft Cabinet Manual was included in the draft to provide some context following the general election last year. The footnote has not been included in the final version of the Cabinet Manual.

There needs to be a clear and published process, agreed with us, for updating the Cabinet Manual once it has been finalised. This process should be as open as possible, to allow for the consideration of comments and concerns about proposed changes before they are included. (Paragraph 90)

As recognised in the Cabinet Secretary's preface to the updated Cabinet Manual, the issues covered in the Cabinet Manual will evolve over time with the passage of new legislation, evolution of conventions or changes to internal procedures of Government. The current intention is to make periodic updates to the Manual as and when appropriate. However we do not believe the Government should at this stage set out precisely when and how this should happen. The Government believes that the right approach is to allow the timing of and process for any future updates to the Manual to be considered in light of experience.

Our inquiry has revealed a fair measure of doubt and disagreement about the purpose and content of the draft Cabinet Manual. The next version of the Manual should be considerably improved as a result of the consultation that has been undertaken, and as a result of parliamentary scrutiny. It need not be perfect, however, provided that there are future opportunities to refine it, as it has been refined in New Zealand over the years. (Paragraph 92)

The Government considers that the Cabinet Manual has developed as a result of the helpful comments received by Select Committees and others with an interest.

The New Zealand Manual has developed over decades and it is agreed that the Cabinet Manual will also need to evolve over time and be adjusted to reflect changes in laws, conventions and practice.

We welcome the Cabinet Manual and the transparency it brings to the workings of government, and we look forward to future involvement in its development. (Paragraph 93)

The Government welcomes the Committee's support for the Cabinet Manual and agrees that its publication will aid transparency.

Public Administration Select Committee report: Cabinet Manual, Eight Report of Session 2010-11, HC 900

The draft Manual sets out to chronicle current procedure in government based on statute, convention and other rules and practices. No objective analysis can construe this document to be the start of a written constitution (paragraph 7).

The Government agrees that the Cabinet Manual is not a first step towards a written constitution. As has been previously stated, the Cabinet Manual is intended to be a source of information and guidance.

We recommend that the Cabinet Office should explore the possibility of disaggregating these three elements within the Manual in a way which will demarcate the particular functions of each section. The Cabinet Manual should be focussed on becoming a comprehensive and authoritative reference work for civil servants to advise their ministers. The educative and polemical elements should be an incidental consideration (paragraph 12).

As previously stated, the primary audience for the Cabinet Manual is Ministers and Civil Servants. The text has been reviewed to ensure that it meets those aims, including whether some material needs to be removed or refocused. In particular, Chapter 9 has been significantly redrafted so that it now focuses on the role of Ministers, collective clearance and the impact of international organisations on executive decisions.

However, by virtue of publishing a guide for Ministers and Civil Servants, the Cabinet Manual will increase transparency of the laws, conventions and rules on the operation of Government, which may benefit the public.

The name Cabinet Manual, in the context of what is primarily intended to be a consolidation of guidance materials for the Executive, is potentially misleading and certainly a misnomer. Its title should be changed to better reflect its contents and objectives (paragraph 14).

As set out in the Government's interim response, the title of the Manual should reflect ownership of the document.

Following careful consideration of the points raised by the House of Lords Constitution Committee, the Public Administration Select Committee and others on ownership, the Government has decided to retain the title *Cabinet Manual*. It is the Government's views that it would be inappropriate for a document which sets out existing rules, laws and conventions which apply to Ministers to be owned by the Civil Service and published without Ministerial endorsement. The Government does not believe that the title of the document will cause confusion and that it will be understood that it is "a guide to laws, conventions and rules on the operation of government" as stated in the sub-title.

We recognise that personal information about individuals should not be subject to publication; particularly where there is no longer an overriding public interest in its disclosure. However, given that Cabinet Secretaries have gone on to draw lessons to inform current practice from this information we see a strong case for an appropriately edited or redacted version of the Precedent Book to be made publicly available. At a minimum we recommend that the draft Cabinet Manual should credit material which derives from the Precedent Book (paragraph 21).

The 1954 version of the Precedent Book was placed in The National Archives in 2006. The Cabinet Office is reviewing more recent versions and will consider whether there should be a further release to The National Archives.

If the Cabinet Manual is to achieve its stated ambition to be an authoritative guide to how government works it will have to properly reference its sources of authority (paragraph 28).

The Government agrees that references are useful in directing the reader to more detailed information and establishing the status of the different elements of the Cabinet Manual. It is also important that the Manual remains a readable document that it will be used in practice. The text has therefore been fully reviewed and references included, where the Government considers it helpful and appropriate to do so.

Additional cross-references have been included so that readers are sign-posted to other relevant information, and a glossary has been added to explain technical terms. Statutory provisions and text drawn directly from other documents, such as the *Ministerial Code*, have been referenced. Where statements have not been referenced they generally set out the Executive's view of the current position.

We recommend that the Cabinet Manual should be accompanied by a second volume modelled on the Directory of Civil Service Guidance or the Precedent Book which, progressively, should come to consolidate conventions, guidance and other rules and practices in a more comprehensive and detailed fashion as a functional handbook for civil servants (paragraph 30).

The Government does not believe that a second volume would add value to the high-level summary set out in the Cabinet Manual and the range of guidance which is already available to Civil Servants. The addition of appropriate references enables readers to find more detailed guidance where necessary.

Large parts of the Manual rest on conventions and other practices which have no statutory basis. However, a significant minority of the draft Manual is based on statute and common law of some kind. To that extent, the

practice described in the draft Manual will be prescriptive. We recommend that the Cabinet Manual should distinguish more clearly between the different categories of information which are contained in the text. This will make explicit the fact that its various provisions are not in any way endowed with equivalent political, constitutional or legal equivalence (paragraph 33).

The Government agrees that the Cabinet Manual should, where practicable, distinguish between conventions, practice, statute or common law. This has now largely been achieved through referencing where relevant and indications in the text of what is a matter of convention.

The Manual should be more explicit about new practices introduced by an incumbent administration. If it does not do so there is a risk that the Manual will level out the status and value of established conventions as distinct from new practices and endow them with equal status (paragraph 37).

The Government agrees that the Cabinet Manual should, where practicable, indicate which parts of the Manual reflect decisions of the Executive, including new practices. This has largely been achieved through referencing or including signposts in the text, for example, Chapter 4 indicates that the arrangements for Cabinet Committees are a matter for the Executive and indicates where specific arrangements have been made in relation to the Coalition. Also, paragraphs 10.17 to 10.20 on Departmental Boards have been amended to make clear that they reflect the current arrangements and the new guidance is referenced. However, the Cabinet Manual is intended to be a statement of the current position and therefore the emphasis is on what is relevant now rather than what is new. Any future updates to the Cabinet Manual will need to be revised to reflect new executive decisions.

Excluding elements which are in some way contested would diminish the scope and value of the draft Manual. However, it should not be assumed that inclusion in the Manual should also be taken to mean that it represents

settled practice. It will be particularly important for officials to be alerted to possible controversy in particular areas. The Cabinet Manual should ensure that conventions and practices which do or may give rise to contention in their application should be appropriately flagged in the document (paragraph 42).

The Government agrees that the Cabinet Manual needs to cover important areas relating to the operation of government including some where there is disagreement about the exact position. The text has been reviewed, and where different views have been expressed in relation to a convention, the Cabinet Manual either makes this clear or states the Executive's own understanding of the position. As set out above, the Cabinet Manual is not binding and others are entitled to take a different view on the operation or extent of a particular convention.

We expect the UK version of the Cabinet Manual will evolve in form and content over time. As the New Zealand precedent shows, guidance becomes more useful in times of political uncertainty or controversy. The draft chapter on the formation of government has amply demonstrated that in this country. We would expect that in future other events may call into question different parts of the Cabinet Manual which will need to be tested against the circumstances prevailing at that time and adjusted accordingly (paragraph 45).

The New Zealand Manual has developed over decades and it is agreed that the Cabinet Manual will also need to evolve over time and be adjusted to reflect changes in laws, conventions and practice.

In our view a major revision of the Cabinet Manual will inevitably have to follow a general election as a result of re-issue of the Ministerial Code, machinery of government changes and related questions about the organisation of government. A revised hard copy edition at this point is

likely to coincide with the most significant period of reform to government practices during the lifetime of a Parliament (paragraph 48).

As recognised in the Cabinet Secretary's preface to the updated Cabinet Manual, the issues covered in the Cabinet Manual will evolve over time with the passage of new legislation, evolution of conventions or changes to internal procedures of Government. The current intention is to make periodic updates to the Manual as and when appropriate. However we do not believe the Government should at this stage set out precisely when and how this should happen. The Government believes that the right approach is to allow the timing of and process for any future updates to the Manual to be considered in light of experience.

The Cabinet Manual as a guide to government practice, should be left to officials to update and to review at regular intervals as chroniclers and record keepers-subject to proper and regular consultation. It should not be for the Cabinet to approve or endorse it but it will be for ministers to decide how far they can and should take account of the precedents in the Manual (paragraph 52).

The Government has carefully considered the arguments made by the House of Lords Constitution Committee, Public Administration Select Committee and others in relationship to ownership of the *Cabinet Manual* but is not persuaded that it would be right for the Manual should be produced and owned by the Civil Service without reference to Ministers in Cabinet.

It is the Government's view that the Cabinet Manual, which is primarily for Ministers and the Civil Servants that advise them, should be developed in a similar way to the *Ministerial Code* which is owned by the Prime Minister but drafted by civil servants on behalf of the Cabinet Secretary. This model of ownership reflects the fundamental principle, as set out in paragraph 1 of the *Civil Service Code*⁷ that

⁷ Civil Service, *Civil Service Code*, 2010, para 1

“Civil servants are accountable to Ministers, who in turn are accountable to Parliament”.

We welcome the dialogue through which the Cabinet Secretary has sought to engage the relevant select committees of Parliament in his consultation over the draft Cabinet Manual. It is a dialogue we wish to see continue as the document evolves. It will also provide Parliament with a useful means by which to scrutinise good practice and the standard of our public administration. However, we do not consider that it is appropriate for Parliament to seek to endorse what is a guidance document for ministers and civil servants (paragraph 54).

The Government welcomes the comments that have been received from the Parliamentary Select Committees and is pleased that the Committee views the Cabinet Manual as an aid to scrutiny.

The Government notes that the Select Committees have different views on the role that Parliament should play in relation to the Cabinet Manual. The Committee’s view on this point has been considered along with other responses received on the role of Parliament, particularly those of the House of Lords Constitution Committee and the Political and Constitutional Reform Committee.

The Government is of the view that, whilst Parliament’s comments on the draft have been valuable in developing the text, the *Cabinet Manual* is an executive document primarily for Ministers and the Civil Servants that advise them, and therefore that it should not be approved by Parliament.



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