

# Why fears the Cabinet Manual is a step towards a written constitution are unfounded

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The publication of the draft Cabinet Manual is a welcome and important development in opening up and explaining how government operates. Its 148 pages cover everything from the role of the Sovereign – placed first ahead of elections—to the roles of the Cabinet, Parliament, the civil service and the law, and relations with the devolved institutions.

The draft is intended to be descriptive rather than innovatory or normative, but it may turn out to be more controversial: both over whether it represents a step towards a written constitution and over its status.

Very much the personal initiative of Sir Gus O'Donnell, the Cabinet Secretary, it is modelled on New Zealand's Cabinet Manual- the other main Westminster style system like the UK without a codified constitution. As such it is intended as a source of information and guidance. Sir Gus stresses in his foreword how: "It is written from the perspective of the executive branch of government. It is not intended to have any legal effect or set issues in stone. It is intended to guide, not to direct".

But merely by writing down the official view of current practice, the draft may be seen, wrongly, as a step towards a written constitution. It is not. Its authors expect, or perhaps hope, that the draft will not be used by the courts, and nothing in the report looks obviously justiciable. A written or codified constitution raises far wider questions about the role of judges which are not remotely near being addressed, let alone resolved.

A more pertinent question is that many of the issues covered in the Manual are both evolving and in dispute. The draft has been developed by the civil service, after discussion with Buckingham Palace and with constitutional commentators, including the Institute for Government. The role of elected politicians has been indirect, approving the idea of Manual, making comments when discussed by the Cabinet's Home Affairs Committee and yesterday endorsed for publication in draft by the full Cabinet. There will now be three months of consultation and probably detailed scrutiny by parliamentary committees. But it will remain the executive's document, not Parliament's.

The greatest interest has been on the chapter on elections and government formation which was published in an earlier draft form last February. The guidance then about the conventions about what would happen in a hung parliament provided clarity to both the media and financial markets during and after the election, but have fuelled some ridiculous conspiracy theories from eccentric academics and excitable journalists about an establishment plot to create a coalition. That is ridiculous. Sir Gus is not in the coup business.

The guidance is straightforward: "where an election does not result in an overall majority for a single party, the incumbent government remains in office unless and until the Prime Minister tenders his or her resignation and the Government's resignation to the Sovereign". However, following the events of May, the draft now includes a new sentence: "The incumbent Prime Minister is not expected to resign until it is clear that there is someone else who should be asked to form a government because they are better placed to command the confidence of the House of Commons and that information has been communicated to the

Sovereign". In other words, there always has to be a Prime Minister and it is up to the politicians, not the Palace, to decide who that is.

Nonetheless, ambiguities remain about when that moment is reached. Last May, Gordon Brown correctly resigned when it was clear that David Cameron, and not he, could command a Commons majority, but before the Conservatives and the Liberal Democrats had reached agreement on a coalition.

Similarly, it is unclear what happens when a Government loses a vote of no-confidence. The draft states that: "If a government is defeated on a motion of confidence in the House of Commons, the Prime Minister is expected to tender the Government's resignation, unless circumstances allow him or her to opt instead to request dissolution. If it is clear who should form an alternative administration, such a resignation should take place immediately". After losing a no confidence vote in March 1979, the late James Callaghan immediately announced that he would seek a dissolution of parliament as soon as possible, and did not resign until after Labour lost the subsequent election. But should he have quit immediately and Margaret Thatcher become Prime Minister before the election.

This is among the issues in the draft which will be affected by important pieces of legislation now going through Parliament: in particular, the fixed term Parliament bill which would change both the terms on which a dissolution could occur before five years and the role of confidence motions. The draft would also be affected by current bills requiring a referendum on any future transfer of power or competence from the UK to the European Union and the bill granting greater fiscal devolution to Scotland. Several other proposed changes, including a referendum on the voting system, will also have far-reaching consequences.

The draft provides welcome clarification of the conventions on restricting government activity and avoidable financial and other commitments in pre and post-election periods: distinguishing between the announcement of an election and polling day; following an election if there is no overall majority; and following the loss of a vote of confidence. The draft also clarifies the position of civil servants in these periods; notably when a Permanent Secretary objects to a proposed course of action and can seek a formal direction from a minister, which would then be published immediately.

Much of the rest of the draft Manual is uncontroversial, but there is an illuminating section on which issues should be considered by the full Cabinet: notably the Government's legislative priorities; issues of a constitutional nature, including matters relating to the Monarchy, reform of Parliament and changes to the devolution settlements; the most significant domestic policy issues, European or international business; issues that impact on every member of Cabinet; national emergencies, including terrorism; and any decision to take military action.

Of course, you can exaggerate process and procedure. What matters ultimately is political judgement. But having open and agreed procedures lifts the veil on any remaining mysteries about how governments operate.

### Further reading

- [\*Making Minority Government Work: Hung Parliaments and the Challenges for Westminster and Whitehall\*](#), December 2009, edited by Robert Hazell and Akash Paun, published by the Constitution Unit and the Institute for Government

- [\*Transitions: Preparing for Changes of Government\*](#), November 2009, by Peter Riddell and Catherine Haddon, published by the Institute for Government
- [\*Constitutional process following a general election\*](#), House of Commons Justice Committee, Fifth Report of Session 2009-10
- [\*Written evidence submitted by the Institute to the Political and Constitutional Reform Committee\*](#)