



# THE UK CABINET MANUAL

Prepared by The Constitution Society  
On behalf of the APPG on the constitution.

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# 1 UK Manual: Role and content

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## Current situation

Many areas of executive behaviour are guided by conventions, some of which are recorded by various sources, including the Ministerial Code and the Cabinet Office website. There is no single source outlining the expected behaviour of Government.

## The role of a Cabinet Manual

- To record (in a single source) conventions relating to the functioning of the executive, including its relations with the Sovereign, Parliament, the judiciary, international organisations, the Devolved Administrations and local government.
- To function as a best practise manual for ministerial behaviour.

## Contents of the UK Draft Manual

### Foreword, *Sir Gus O'Donnell*

- Binary aims of Manual: guide members of Cabinet; improve transparency through better public information.
- Principle of having a UK Cabinet Manual endorsed by Prime Minister and Deputy Prime Minister.
- The Manual records existing practise, it does not drive change and it has no legal status.
- Policies currently under debate in Parliament are not anticipated in the Draft, though their likely impact, were they to be introduced in their proposed form, is discussed.

### Introduction

- Broad description of the UK as a parliamentary democracy, the nature of its Constitution, the role of Parliament, the Sovereign, ministers and the judiciary, and the position of international law.

## 1 The Sovereign

- The duties of the Sovereign in relation to government. The functions of the Privy Council and the position of the Established Church.

## 2 Elections and Government formation

- The processes of calling and holding a general election, government formation and the dissolution of Parliament.

## 3 The Executive – the Prime Minister, ministers and the structure of government

- Ministerial appointments, powers and conduct. Limitations on ministerial numbers and salaries.

## 4 Collective Cabinet decision- making

- Principles of Cabinet government, procedures of Cabinet, role of Cabinet Secretariat.

<http://www.re-constitution.org.uk>

**5 Ministers and Parliament**

- Relationship between ministers and Parliament; includes parliamentary scrutiny and role of ministers in passage of legislation.

**6 Ministers and the law**

- The role of the Law Officers and the Lord Chancellor, relations with the judiciary, litigation involving ministers, legal advice and legal professional privilege. Human Rights Act 1998 and public inquiries.

**7 Ministers and the Civil Service**

- The role of officials and their relationship with ministers, the Civil Service Code, the Constitutional Reform and Governance Act 2010, appearance of civil servants before Select Committees and public appointments.

**8 Relations with the Devolved Administrations and local government**

- The legislative competence and funding of the Devolved Administrations. The role of the Devolution Guidance Notes, the Joint Ministerial Committee and the British-Irish Council. The structure and funding of local government in England.

**9 Relations with the European Union and other international institutions**

- The structure of the EU, the implementation and scrutiny of EU law in the UK, the coordination of EU policy by the UK Government. The Council of Europe, the European Convention of Human Rights, NATO, the UN, the Commonwealth and international economic and financial organisations.

**10 Government finance and expenditure**

- The role of Parliament in approving and scrutinising finance and public expenditure. The structure of departmental governance.

**11 Official information**

- Maintaining official records, publishing data, dealing with leaks of information. Publishing ministerial memoirs.

## 2 Development of UK Manual

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2.1 The Constitution Unit, *Making minority government work*, 2009, recommended the New Zealand Cabinet Manual as a helpful model for the UK, highlighting;

“The importance of having a clear set of rules to guide the behaviour of ministers and officials”<sup>1</sup>

2.2 Gordon Brown, then Prime Minister, *Towards a new politics*, 2<sup>nd</sup> February 2010:

“There is a wider issue - the question of a written constitution [...]

I can announce today that 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.”<sup>2</sup>

2.3 Draft chapter (*Elections and government formation*) published February 2010 by Sir Gus O’Donnell as part of evidence given to the House of Commons Justice Committee.<sup>3</sup>

2.4 Draft Manual published 14<sup>th</sup> December 2010.

2.4.1 Aims of draft:

a) Achieve consensus on points of controversy.

b) “To check that the draft covers the issues which need to be covered... and that it does so in a way which is easy for the intended audience to follow”.<sup>4</sup>

2.4.2 Process of consultation:

a) Public comment on the Draft ending Tuesday 8 March 2011. Summary of comments will be published with final version.

b) Political and Constitutional Reform Select Committee inquiry; *constitutional implications of the Cabinet Manual*.

c) David Cameron has said;

“The House of Commons can decide to debate the draft manual if it wishes.”<sup>5</sup>

2.5 Planned publication date of final version: Spring 2011.

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<sup>1</sup> The Constitution Unit, *Making minority government work*, 2009, pp 73  
<http://www.ucl.ac.uk/constitution-unit/research/research-archive/archive-projects/minority-government>

<sup>2</sup> [www.ippr.org.uk/uploadedFiles/events/gordon\\_brown\\_ippr\\_feb\\_10.pdf](http://www.ippr.org.uk/uploadedFiles/events/gordon_brown_ippr_feb_10.pdf)

<sup>3</sup> <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/396/396we02.htm>

<sup>4</sup> Draft UK Cabinet Manual pp 6

<sup>5</sup> David Cameron in response to a written question from David Blunkett, 21<sup>st</sup> December 2010.

### 3 Some issues for debate

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#### 3.1 A step towards a written constitution?

##### 3.1.1 Yes:

- a) The codification of constitutional conventions is inevitably a step towards a written constitution. Professor Bogdanor argues;

“It’s the first step and a pretty big step towards a written constitution.”<sup>6</sup>

- b) The Manual could gain legal status in the future, albeit unintentionally.

##### 3.1.2 No:

- a) Professor Hazell argues that the Manual is only;

“A really useful guide to how the British constitution actually works... [a written constitution is]... a far bigger step, for which there is little public or political demand”.<sup>7</sup>

- b) It has no legal status and as such is nothing more than a best practise manual:

“It is not intended to have any legal effect or set issues in stone.”<sup>8</sup>

- c) The experience of the Cabinet Manual in New Zealand is that it has little constitutional significance. Professor Wilson argues;

“The Cabinet Manual isn’t really anything to do with a written constitution.”<sup>9</sup>

#### 3.2 Cabinet Manuals only relevant in times of coalition or minority government?

3.2.1 The UK Manual was developed as a reaction to uncertainties over Government formation in the instance of hung parliaments but developed from this single chapter into a much broader project.

3.2.2 Professor Margaret Wilson refutes the claim, instead arguing that the Cabinet Manual is only *more* useful in times of political uncertainty.

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<sup>6</sup> Professor Vernon Bogdanor, *Why we have a Cabinet Manual in the UK*.

[http://www.re-constitution.org.uk/talking-heads/speaker/31\\_Bogdanor-Professor-Vernon/](http://www.re-constitution.org.uk/talking-heads/speaker/31_Bogdanor-Professor-Vernon/)

<sup>7</sup> The Constitution Unit press notice; “*Constitution Unit welcomes new Cabinet Manual*”, 14<sup>th</sup> December 2010.

<sup>8</sup> UK Draft Cabinet Manual, pp 3

<sup>9</sup> Professor Margaret Wilson, *The Cabinet Manual: a step towards a written Constitution?*

[http://www.re-constitution.org.uk/talking-heads/speaker/30\\_Wilson-Professor-Margaret/](http://www.re-constitution.org.uk/talking-heads/speaker/30_Wilson-Professor-Margaret/)

### 3.3 The process by which the Manual has been developed.

#### 3.3.1 Criticisms:

- a) The UK Manual was developed with no public debate of its merit. In contrast, its New Zealand antecedent was drafted as part of the broad acceptance of a need for change in government practise following the decision to change the voting system.
- b) The process has afforded unelected officials too much authority in controlling political practise.
- c) As an executive document, there is little place for parliamentary comment on the Draft.

#### 3.3.2 Refutations:

- a) Independent experts are those best placed to produce the Draft, which nonetheless requires executive endorsement.
- b) Widespread political debate or public consultation is not a prerequisite for drawing together existing conventions.

### 3.4 Keeping the Manual up to date.

#### 3.4.1 Concern that the Manual may become out of date:

An updated hard copy of the Manual will be published at the start of each new Parliament. Given the possible introduction of five-year fixed terms, this could leave the Manual out of date in the interim:

“The Cabinet Manual is a statement of the arrangements as they are on the date of publication.”<sup>10</sup>

#### 3.4.2 Refutation:

Substantial changes could be recorded on the Cabinet Office website.

“After the final version of the Cabinet Manual has been published, it will be regularly reviewed to reflect the continuing evolution of the way in which Parliament and government operate.”<sup>11</sup>

### 3.5 The normative effect of description

#### 3.5.1 Concern:

In any system based on unwritten convention, written codification has an unavoidably normative effect. It will not be long before politicians and academics start quoting the Cabinet Manual as an authoritative source: once this happens the document ceases to be purely descriptive.

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<sup>10</sup> UK Draft Cabinet Manual, pp 3

<sup>11</sup> UK Draft Cabinet Manual, pp 7

## 3.5.2 Refutation:

a) Sir Gus O'Donnell writes;

“Some areas of the Manual continue to be subject to public debate. The Manual, however, **does not seek to resolve or move forward those debates**, but is instead **a factual description of the situation today**. In other words, it will be a record of incremental changes rather than a driver of change.”<sup>12</sup>

b) The publication of the Manual in draft should ensure that the final document reflects;

“An agreed position on important constitutional conventions.”<sup>13</sup>

## 4 Useful References

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### The Draft Cabinet Manual

<http://www.cabinetoffice.gov.uk/resource-library/cabinet-manual>

### Expert opinion:

- **Professor Margaret Wilson**

[http://www.re-constitution.org.uk/talking-heads/speaker/30\\_Wilson-Professor-Margaret/](http://www.re-constitution.org.uk/talking-heads/speaker/30_Wilson-Professor-Margaret/)

- **Professor Vernon Bogdanor**

[http://www.re-constitution.org.uk/talking-heads/speaker/31\\_Bogdanor-Professor-Vernon/](http://www.re-constitution.org.uk/talking-heads/speaker/31_Bogdanor-Professor-Vernon/)

- **Professor Robert Hazell**

[http://www.re-constitution.org.uk/talking-heads/speaker/32\\_Hazell-Professor-Robert/](http://www.re-constitution.org.uk/talking-heads/speaker/32_Hazell-Professor-Robert/)

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<sup>12</sup> Cabinet Manual, pp. 3

<sup>13</sup> Cabinet Manual, pp. 6