

# The Cabinet Manual is constitutionally problematic because it expresses only the Executive's views

By Democratic Audit

*In 2010, the then-Government published the Cabinet Manual, which was at the time seen as a first step towards the formal codification of the British constitution. While its introduction is likely to have a significant impact on the influence of convention in Government, the domination of the production of the manual and a number of similar documents by the UK executive is constitutionally problematic, argues **Andrew Blick**.*

A process currently underway in the UK has important implications for the way we are governed, raising difficult questions about the democratic legitimacy of the system itself. The [Cabinet Manual](#), first published in October 2011, exemplifies this tendency.

Conventions – defined here as rules that are not legally enacted – are important to any constitution. But they seem to have exceptional prominence within the ‘unwritten’ arrangements of the UK. Some of the principles most fundamental to our democracy exist in this potentially nebulous form. They include the understandings that if a party wins an outright majority in the House of Commons its leader becomes Prime Minister; that senior ministers take major decisions collectively in Cabinet; that they are responsible individually to Parliament for the exercise of their particular powers; and that the monarch should avoid involvement in party political controversy. Any change in the nature of conventions, therefore, matters. It is taking place presently.

In recent years, a practice has developed for the publication of official texts setting out operational rules and principles of government, including conventions, which often previously existed only in a more vague, unwritten state. For instance, the *Armstrong Memorandum* appeared in 1985, defining the core values of the Civil Service (subsequently supplemented by the *Civil Service Code*). *Questions of Procedure for Ministers* (since 1997 known as the *Ministerial Code*), comprising guidance on procedure and propriety for ministers, became public in 1992. Following the introduction of devolution from the late 1990s, concordats have appeared dealing with the format of relations between the centre and the devolved administrations. An important instalment in this codification process came with the *Cabinet Manual*.

Impetus for the production of the manual came from three sources. The first was the desire of Gordon Brown, when Prime Minister, to instigate a process that might lead to a full written constitution for the UK. What became the manual was intended to set out the details of the present system for discussion purposes. The second motive was a judgement formed within Whitehall during 2009 that the next General Election might not yield an outright single party victor. To this end a draft of the section from the manual dealing with how governments should form in this eventuality was published early, in advance of the poll of May 2010. It helped inform insiders and the public of the principles that would guide the construction of a government. A third inspiration for the manual was a desire to imitate a UK version of the New Zealand Cabinet Manual, a text in existence in various editions since 1979. The New Zealand text sets out some of the key features of one of the few constitutions other than that of the UK that is unwritten. While Brown initiated the manual, the project continued under the Conservative-Liberal Democrat coalition formed under David Cameron in May 2010, which issued the document later the following year. The stated intention of the government is periodically to issue revised versions of the manual, presumably in each Parliament.

The manual describes itself as a ‘guide to the laws, conventions and rules on the operation of government’. It provides accounts of a number of arrangements it is reasonable to regard as conventions, and which have never previously been encapsulated in such a formal fashion. The text contains descriptions of the proper constitutional position of the Cabinet, the Prime Minister, and the monarch; the relationship between Parliament and the government; between devolved and central government; and many other matters. In my recent [Parliamentary Affairs article](#), ‘The Cabinet Manual and the Codification of Conventions’, I draw a series of conclusions about the manual and its implications.

The setting out in writing of constitutional conventions is a complex task, since they can be difficult to define with precision. A text such as the manual is likely, in the process of encapsulating these understandings, to alter them. It may encourage the adoption of particular views of what they are. Codification can also place a brake on the development of constitutional conventions over time, through freezing them in a particular form. It may also indirectly undermine the force of those rules which are not chosen for inclusion in an official document, since they may be overlooked or judged relatively less important than those that are referred to in a code. The manual seems in some cases to have contributed to the creation of conventions that did not previously exist. However, the invention of conventions can only take place if there is at least tacit consent from the different relevant players.

It is best to view the manual and other codes like it as coming within a category known as 'soft law': a means of inducing particular kinds of conduct and advancing specific versions of what is appropriate behaviour, but not directly enforceable by the courts. The ability to issue texts such as the Cabinet Manual does not provide unrestrained potential to determine conventions, but it does supply some influence in shaping their existence. While it is not the same as 'hard' legislation, the process of codification that the manual represents may enhance the chances of constitutional conventions playing a part in judicial review, perhaps in a consideration of the appropriateness of the actions of ministers. In this sense, the principles of the unwritten UK constitution might acquire a more formal status than previously through their inclusion in the manual or a similar text.

This judicial development is at present, speculative. Nonetheless, codification already carries with it the potential for significant impact on the perceptions and in the turn realities of how we are governed. This tendency raises difficulties because one player – namely the executive – was preeminent in the creation of the Cabinet Manual, producing drafts and making the final decisions about the full first edition (though a public consultation took place). A practice with important constitutional implications should surely be more inclusive than it was in the case of the manual.

However, there are limits to how aggressively the executive could utilise its power to issue documents like the manual without producing a negative reaction that hindered the government in achieving its objectives. Nonetheless, it is advisable to give attention to possible changes in the way conventions are codified. One issue meriting attention is whether some kind of system of parliamentary assent for a text is advisable. Perhaps Parliament or its committees could issue codes of its own; and more meaningful forms of engagement in production processes are needed. Yet however it is managed in future, the powerful drive to introduce greater clarity into constitutional conventions is manifest. Whether it might lead on in time to a full written constitution remains to be seen.

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*Note: this piece represents the views of the author and not those of Democratic Audit or the LSE. Please read our [comments policy](#) before posting. The shortened URL for this post is: <http://buff.ly/1f9UUJM>*

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