



Political and Constitutional Reform Committee

Oral evidence: [Revisiting the Cabinet Manual](#), HC 233

Thursday 12 June 2014

Ordered by the House of Commons to be published on 12 June 2014.

Written evidence from witness:

– [Professor Ian Cram](#)

[Watch the meeting](#)

Members present: Mr Graham Allen (Chair); Mr Jeremy Browne; Mr Christopher Chope; Tracey Crouch; Mark Durkan; Paul Flynn; Fabian Hamilton; David Morris; Robert Neill; Chris Ruane; Mr Andrew Turner

Questions 1 - 36

Witness: Professor Ian Cram, University of Leeds, gave evidence.

Q1 Chair: Ian, welcome. Just as an adjunct, may I thank you for the work you have been doing as part of the King's college effort to help us on the codification—or not—of a constitution? We really appreciate that.

I think you know why we are here, Ian. We are trying to keep the ball rolling and the momentum going on our breakthrough, really, on the Cabinet manual. Colleagues around the table will be very interested to hear your views on how we do that. Would you like to start with an opening statement, or do you want to go straight into questions?

Professor Cram: I am happy to make an introductory remark if that helps set the tone.

As I said in my written submission to the Committee, the fundamental issue around this document is ownership. Once a view is taken on the ownership of this document, that frames and helps determine responses to other questions. If, for example, it is decided that this document is jointly owned by the Executive and the legislature, consequences flow in terms of the revision process, the scheduling of revisions and the input of Parliament to the contents of the document, whereas if ownership is retained purely in the Executive, the Executive clearly continues to control the contents and the timing of reform. A lot of things hinge on the issue of ownership.

Q2 Paul Flynn: You said in your evidence that the code is Janus-faced—facing inwardly towards the civil service and “outwardly towards the public”. How successful is this?

Professor Cram: I do not think that is very successful within a single document. For example, you could argue that it contains too much detail at times in terms of what an interested member of the public might want to see. There are details, for example, on Cabinet Committee structures that seem to be way in excess of what might be needed if you were an interested member of the public. The document, I think, currently extends to over 100 pages, and it is asking an awful lot of ordinary members of the public, in their busy lives, to find the time to go through that.

At the same time, important levels of detail are obviously needed for civil servants and Government Ministers, which, to some extent, are reflected in this document. I realise that, following the initial draft, the Cabinet Secretary made some amendments to the October 2011 version of the document.

Q3 Paul Flynn: Sir Nicholas Macpherson recently published himself—directly—the advice he gave the Chancellor on the fiscal situation following a yes vote on independence in Scotland. That is a fairly rare event—there are precedents for it, although they are rare—but there is hardly any precedent for a civil servant to be in the headlines in last Sunday’s Scottish newspapers, as Sir Nicholas Macpherson was, as a personality in his own right, not as an independent, neutral civil servant. He took a stridently partial line on this. Do you think that that is a precedent for the European referendum when it comes? Can we expect civil servants to be issuing their own personal views in an unprecedented way?

Chair: And there is the issue of how that impacts on the code.

Q4 Paul Flynn: Indeed. The code is clear on it. It seems to be something that is very rare and a possible breach of the code, which is very clear on impartiality and the role of the civil servant in the background producing the advice and allowing the Minister to make a public presentation.

Professor Cram: That is absolutely right. There are clear dangers for the neutrality of the civil service if civil servants go down the route of publicly identifying themselves on positions of political controversy, because after all they are supposed to remain in place regardless of which Government is in power. I think that there are problems there. It would very possibly be a breach of an understanding of the civil servant’s role.

Q5 Paul Flynn: Do you envisage that the Scottish problem as it is, with the advice being published, would be magnified in the European referendum, if there is one, severalfold? Do you think that there is a need for revision of the code to make it either more permissive or more restrictive?

Professor Cram: That is an aspect of the code that I would want to go back to and look at more closely before committing myself publicly on it, but I would restate the general position. I think that what you have described to me—I was not following that particular civil servant’s actions—does raise some difficult constitutional questions.

Paul Flynn: I am grateful to you.

Q6 Fabian Hamilton: As a Leeds MP, I am delighted to see a professor from Leeds University here. To what extent and for what purposes do you think that the public are using the Cabinet manual?

Professor Cram: I am not sure that it has a very high level of visibility in the public domain. I did a search of various media organisations' websites—*The Guardian*, *The Independent* and *The Telegraph*—to see how the Cabinet manual is referenced, and it comes up very rarely indeed. What features more is the ministerial code, which you probably would expect, because it has been out there in the public domain. It is being referenced more. The Cabinet manual, by contrast, does not have that level of visibility.

As a constitutional law teacher—I have been teaching constitutional law for a number of years—I teach the ministerial code, but I haven't got round to talking about the details of the Cabinet manual. As a result of my experience here, I think I will flag it up to my students, but an interesting question is this. How far among constitutional law students and politics students going through university is the Cabinet manual being discussed? The answer, I suspect, is "Not very much".

Q7 Fabian Hamilton: As I suspected. You suggest in your evidence: "It should not be beyond the capacity of the drafters to produce two versions of the CM to reflect the very different needs (and background knowledge)"—as you have already suggested—"of these two distinct audiences." What do you think would be the disadvantages and advantages of having two versions of the Cabinet manual? I guess one would be what we call an executive summary.

Professor Cram: The clear advantage of having two versions is that you get the right level of detailed information to the right audience. You might get more public engagement with the project. There is a particular point to make on timing. Next year, 2015, is the 800th anniversary of Magna Carta, when you would expect there to be more discussion about the nature of our constitution. It seems to me that here is an opportunity to produce a document that will build on that hopefully greater public profile for constitutional discussion more generally. That is a positive.

On the negative side, obviously it entails more work for whoever has the ownership and editorship of the documents concerned, so my proposal involves adding to a body of persons' workloads.

Q8 Chair: It is not really in the interests of those who currently hold power to have more people interested in how power is held and how people are held to account, or not, so is part of the lack of interest due to the fact that the key power holders in British politics are the Executive and the media and they are happy with the embrace of death in which they grip each other? If we were to understand a little more about how the civil service worked and how Parliament worked, would that actually, to an extent, lead to more questioning of the over-centralisation of power in this country?

Professor Cram: Yes. I am sure that once you start explaining the fundamentals of the constitution, the criticism that a number of academics and others have about the extent of executive control over things such as, for example, the parliamentary timetable and what things get to be debated in Parliament would be better understood by the public at large, and then you would expect greater pressure for doing something about that. After all, the Government is supposed to work for us at the end of the day.

Q9 Chair: In the old days, you might have argued that if it ain't broke, we don't need to fix it. I don't know that there are many people around currently who feel that about our politics—if it ain't broke, it is enduring huge stress fractures, so perhaps we should be thinking about this.

Professor Cram: There is a task of restoring trust in the political class and the political environment more generally, after a series of scandals and difficulties. In a way, the more information and debate there is about constitutional matters, the better. We have moved from the Sir Humphrey Appleby nature of government, if I can call it that, to what I as someone who studies the US constitution would call more of a James Madison position. The Humphrey Appleby position is that you can be open or you can have government, whereas the James Madison position is that you cannot have popular government without popular information or a means of acquiring that. In a way, that is what a modern democracy should be about: ensuring maximum information and an engaged citizenry that debates the main issues of the day.

Q10 Fabian Hamilton: Let me follow on from what the Chair said, because I wonder what your view would be of a complete split between executive and legislative powers in the American style—a completely separately elected Executive, and a legislature in which there is no career structure for people who get elected to Parliament and so no conflict between the Executive's demands and the needs of the legislature and its democratic accountability.

Professor Cram: Clearly in our constitution that is not going to happen. We do not have that degree of separation of power.

Q11 Fabian Hamilton: We don't, but should we—would that be the solution?

Professor Cram: Not necessarily, but then I think the focus must be on ensuring that the Executive, which has a dominant position within our legislature, is subject to sufficient forms of control, scrutiny and accountability. You could argue that there are weaknesses in the current system and in our constitution. I do not think that you have to go as far as throwing out our existing constitution—it is not feasible, anyway—and starting from scratch. The American constitution came into existence because there was a revolution that threw out the colonial power. They got the chance to redesign their constitution and they wanted to avoid some of the problems of the overlap between Executive and legislature that they saw as a feature of the British constitution that they had rejected.

Q12 Fabian Hamilton: But many of the problems that are caused by over-centralisation would be resolved by a separation of powers, wouldn't they?

Professor Cram: They would, yes, but then there would be fresh issues to discuss in terms of the new relations between the Executive and the legislature, and the elections of the Executive, and so on and so forth.

Fabian Hamilton: Let me go back to the Cabinet manual—I am sure the Chair would like me to.

Chair: I found that very interesting.

Q13 Fabian Hamilton: Yes, it was very interesting, actually. The draft version of the Cabinet manual was criticised for failing to acknowledge sufficiently that some conventions were the subject of disagreement or were ambiguous, and for use of language that was sometimes vague—often, deliberately. Do you think there are any remaining problems of that sort in the revised Cabinet manual?

Professor Cram: That is a good question. I would start by noting the improvements in the revised version of the Cabinet manual—the facing up to matters of ambiguity or difficulty and the removal of some material that was deemed to be simply wrong. One example was the inclusion in the original of the view of the leader of the Liberal Democrats that in a hung Parliament the party with the most votes and the most seats should have the first go at forming the Administration. That now has been put to rest, after the raising of queries, academic commentaries and other comments.

The other thing that has been done is greater referencing of points of disagreement. The Cabinet Secretary and others took on board the criticism that where there were differences of opinion it was right to say, “Here is an area of disagreement among the scholars and politicians,” with a footnote reference to this view and that view. That happens in several places through the manual.

Are there still outstanding areas? I would say that we have moved to a better, more accurate document, reflecting, and within the framework of, an executive understanding of the constitution. I still have concerns over omissions in the document, which I refer to when I talk about suggested amendments at the end. I do not know whether we will come to that later.

Q14 Fabian Hamilton: Would those amendments put the document right? It is never going to be perfect, but would they correct that imbalance sufficiently?

Professor Cram: I would obviously say that it would be a move in the right direction. There will be others with their own suggestions. It is interesting that there was no reference to, or no stressing, the fact that our constitution is under the rule of law and an attempt to define what we understand the rule of law to mean. That seems a fairly fundamental aspect of the British constitution and that is not there.

There is another thing that comes back to the issue that the document is in the sole authorship of the Executive. There are some omissions, for example, the convention that there be no public criticism of judges’ decisions. If you consult a range of constitutional lawyers, they will tell you that they understand that Ministers and others are under a duty not to criticise publicly individual decisions. I can understand why that might be omitted because, from time to time, the relationship between Governments and judges can become strained. There were obvious instances under previous Labour and Conservative Administrations. If you are committed to the idea of the rule of law and the independence of the judiciary—there is a reference in chapter 6 of the manual to the duty of MPs and Ministers to uphold the independence of the judiciary—you could make reference to that convention.

Fabian Hamilton: That is a very good point. Thank you, Professor Cram.

Q15 David Morris: In your evidence you raise the possibility that the Cabinet Manual might feature in legal proceedings. How likely do you think that is? Why do you think it has not happened to date?

Professor Cram: Large sections of the manual relate to what a lawyer would say are non-justiciable issues—the kind of topics that a court would in no way want to become involved in, such as the appointment of Ministers, ministerial accountability, formations of Government. You cannot ever see a court becoming involved in those sorts of things, for obvious reasons.

However, there are two main points I want to make in this area. The first relates to what administrative lawyers refer to as the doctrine of legitimate expectations. That in essence encapsulates the idea that where you have an official statement about how things are done, how Government business is conducted and what procedures are followed, it can give rise to an expectation that is enforced by courts when a party that has been adversely affected by a decision is able to point to a failure to follow that procedure.

I have an example from the Cabinet Manual at paragraph 6.6, which also appears in the ministerial code at paragraph 2.10. That refers to the issue of prior advice given by Government law officers before the Government are committed to critical decisions involving legal considerations. There is an expectation that Government law officers will be consulted by Ministers before the Government are committed to critical decisions. You can imagine a scenario in which there was a failure to consult with law officers in good time. An individual who was able to establish that in a court of law might have a basis for arguing that the decision had failed to follow that particular procedure. That could lead to a quashing of the decision and it having to be taken again. So there is the general thing about legitimate expectations.

The other thing I did in my written evidence was look at what has happened to the New Zealand Cabinet Manual, which has been out for longer than ours, and whether that has featured in legal proceedings. When I did a search on a New Zealand legal database, I came up with a number of instances in which the Cabinet Manual was cited by the courts. The question then becomes: in what way is it cited by the courts?

In one case, there was a criminal prosecution against a former Government Minister. It was alleged that he had accepted free or low-cost labour from persons he had helped with immigration issues. In finding that the Minister should clearly have known that what he was doing was wrong, the judge pointed out that that was in the Cabinet Manual as improper conduct and something that the Minister should have been alerted to right at the beginning. In some ways it was used to bolster a prosecution argument that the Minister should have been aware that what he was doing was unlawful.

In a number of circumstances, the Cabinet Manual has been used in New Zealand to confirm the court's understanding of various constitutional arrangements. For example, it has been used to back up the court's view of how political parties function in the New Zealand constitution. It is used by the courts to ascertain what Government decision-making procedures are where there is legislative drafting. So the manual features in that way. Once it is cited in a legal decision, that seems to give the document a higher status. Although it has not been legally enforced as such, it has been judicially recognised and it has, therefore, almost a seal of judicial approval. That can only have the effect of raising the status of the manual as an authoritative statement of how the constitution works. And it is not far-fetched to suggest that, in time, we might find our Cabinet Manual being prayed in support of a judicial decision that in some way engages constitutional issues.

Q16 David Morris: It sounds like they have passed the process. The fact that the norms and standards set out in the UK Cabinet Manual may secure greater judicial recognition and approval seems to argue in favour of democratic input by Members of Parliament in the drafting, amending and

approval of the Cabinet Manual. To what extent is the possible use of the manual in court proceedings also an argument for ensuring that it is regularly updated?

Professor Cram: Clearly, when the manual is referred to in court proceedings, one wants it to reflect the latest understanding of the constitution. I would agree that that would require regular updates.

Q17 David Morris: We have no written constitution. If Members of Parliament and the Cabinet Manual have been taken into consideration in the unwritten constitution and in the courts, will that not cause some sort of a schism in our legal proceedings?

Professor Cram: Let us start with the proposition that we do not have a written constitution. The response, I suppose, is to say that the constitution is written down in a variety of places. One of the great services that this Cabinet Manual has done is to bring conventional understanding out into the open to force the drafters of the manual to think what the terms are, provoke a debate with Committees such as yours and allow academics and others to have their say. So the very process of writing conventions down is valuable in terms of prompting a debate. The Cabinet Manual could then be seen as yet another document, or a piece in the jigsaw, that goes towards the description of the British constitution.

Q18 Chair: You will be aware, Ian, of the work of King's college in preparation for our report on having a written constitution or not. They propose that there are a number of steps towards a written constitution. I know that Mark is going to come to the question of the role of Parliament but, as a prelude to that, do you see this as one of the stepping-stones? Even in its own right, does it not make sense, if not to put the Cabinet Manual in law because it is all we have if we have not got a written constitution, for it to have some sort of parliamentary approval?

Professor Cram: Yes I do. You can see this document as an end in itself, which, if owned by the Government and the legislature, will have a greater status. Coming back to the issue of legal recognition, it seems to me that where there is legal recognition, you want the legislature to have played its part in the formation of the terms of that document. The Cabinet Manual can be self-standing as yet another part of the description of the constitution but, equally, it can be used as a stepping-stone or a building block towards a discussion of what a written constitution would look like. Clearly, it does not go far enough in terms of the sort of things you would expect to find in a written constitution but it certainly contains the core of materials that if a written constitution did not have, it would be seriously lacking.

Q19 Mark Durkan: Further to some of the questions about the legal issues—before I come to the other issues around precedent and Parliament—have you tracked the situation in Northern Ireland at all? The Ministerial Code there, in effect, wraps up what would pass as the Ministerial Code here and what would pass for the Cabinet Manual here; they are all in one. That has been the subject of a number of court cases—Ministers taking other Ministers to court and, in some cases, citizens, although people believe that many of those cases have been politically driven, with party interests. The judiciary in Northern Ireland has now found itself adjudicating several times on the area of the Ministerial Code. Have you tracked that and do you think Whitehall would use that developing situation as a reason not to go too far with the Cabinet Manual; otherwise we will get into those difficulties?

Professor Cram: I have to confess I was not aware and have not followed those developments in Northern Ireland, so I am at a disadvantage in commenting. I would be interested to know how the judiciary were taking up the code—what they were doing with it and what level of involvement they were looking at. It seems to me that, especially in Northern Ireland, which is a highly politicised environment, in general terms judges tend to run a mile from cases that would be seen to involve highly political considerations. They just would not want to do it. They would leave it to the political actors in the constitution to get on with it, sort it out and fight among themselves.

Q20 Mark Durkan: There is an element of the judiciary, at least at the start, sniffing and keeping their distance but the nature of the cases has meant that they have not always been able to do that and they have ended up having to adjudicate or determine.

Back to the Committee's previous report on the draft Cabinet Manual, where the recommendation was that the Government should publish a redacted version of the precedent book. Why do you think the Government would be reluctant to do that?

Professor Cram: What I read at the time suggested that the Government thought there might be personally sensitive information in the document but, it seems to me, you get round that by the process of redaction. Whether there is any other confidential material or material with national security or defence considerations, I am not sure.

I do not know how to explain the Government's attitude, except to point out the historical context. If you think about the origins of the Ministerial Code, the basis for that was "Questions of Procedure for Ministers". Now, it seems that "Questions of Procedure for Ministers" was in existence for a number of decades. The Attlee Government is referred to as an occasion; when Attlee came to power the Ministers in that Government were issued, on a confidential basis, this "Questions of Procedure for Ministers". It took 50 odd years from there to get to the point where it sees the light of day as the Ministerial Code and may be said to reflect that culture of secrecy that still exists. We can't know, I think is the answer, until we get to see what is in the document, but it doesn't aid transparency and it may give rise to suspicions that Government's understanding of conventions is not widely shared or is controversial. You end up thinking that there are not so good motives for withholding that information. After all, they have made a series of statements about how they understand the constitution to work already. What is it about these other areas that make them not suitable for publication? I am not sure, other than the personally sensitive and otherwise confidential information.

Q21 Mark Durkan: You said that publication would allow for wider debate about the accuracy of the conventions that are relevant and to which reference is made. Is that the only benefit of publication, the main benefit or are there others?

Professor Cram: The main benefit is clearly to have that debate and that information in the public domain that leads to debate. If you think about the process with what we already have from the Cabinet Manual, it has led to clarification. It has also led to a sharpening of the focus of points of disagreement or contestation, which I think is healthy in a democracy—that these come out into the open and we at least understand what it is that there are different views on. Then you can begin to assess the arguments for different positions.

Q22 Mark Durkan: So you would contend that the failure to publish has implications for the interpretation and status?

Professor Cram: Yes. The worry is that Government is acting on its own, non-published understandings of the constitution. It seems to me, in the 21st century, that it is legitimate for the citizens and you, the elected representatives of the people, to ask Government to come clean on its understanding of how the constitution works.

Q23 Mark Durkan: In your written evidence you said that “Sole executive ownership of the document could pose an additional, separate risk of conferring a party political advantage on an incumbent Administration.” Can you colour that in for us?

Professor Cram: Yes. I was going back to the document to see just how it was possible for party political advantage to be gained through sole ownership by the incumbent Administration and I came up with a few things. I don’t think this is an exclusive list, but I have a couple of paragraphs in this document that I think could be manipulated in ways to favour the party in power. For example, paragraphs 2.28 and 2.29, which deals with Government activity between the start of an election period and polling day. It says that Ministers should defer from “announcing major policy decisions; entering into large/contentious procurement contracts or significant long-term commitments.” It seems to me that if the Government is the sole editor of this document, what is to stop it removing that constraint on its action as it goes into an election and therefore binding a successor Administration to a long-term contract that it knows its likely successors would object to and would not have signed up to? So there was that provision.

I also looked at paragraph 2.14, which is about Government formation after a general election with no overall majority for a single party. Paragraph 2.14 says that civil service support for party leaders involved in negotiations requires the Prime Minister’s consent. Where that consent is given, it is to be provided upon an equal basis to all the parties involved. Again, if the Government of the day has the sole ownership of this document, what is to stop a change of emphasis in that part of the document to deny, or rather, simply say that support for the parties involved is at the Prime Minister’s discretion? That would be a more open-ended power on the part of the Prime Minister rather than a sense of an equal entitlement on the part of the parties involved in the negotiation, which could have an impact on the ultimate formation of Government. It seems to me that there is a potential for something pretty important like that, if left solely in the hands of Government, to be used—I am not saying it would—in a partisan way to favour the incumbent Administration.

Q24 Mark Durkan: In your written evidence, you make a number of arguments for co-ownership or a shared authorship of the Cabinet Manual between Government and Parliament. Can you tease out for us how you think that might work, in practice?

Professor Cram: I was thinking that the Government might refuse to play ball at all with this. The Government might say, “No. We are sticking to our line.” After all, it is something that has been raised before, not just by this Committee in relation to this document. I noticed that in debates on the Ministerial Code, when that first came out, you have the Public Administration Select Committee in 2000 saying, “We think there should be joint ownership of parts of the Ministerial Code because it reflects on the relationship between Government and Parliament.” That has not changed, and the Government are clearly still the sole author of that document.

One scenario is that the Government refuse to play ball and the document continues to be in their sole ownership. Alternatively, the Government do play ball and say, “Okay. We are prepared to sit down and talk to Parliament via the Select Committees and see if we can agree something,” but there is then a failure to reach agreement and we are back at square one. Or, an agreement is

reached but there are fudges; there is a papering over of cracks, vague language and, in a way, more obscurity than light at the end of that process.

In some ways, where the Government refuse to play ball and say, “No. We are continuing to insist on our sole ownership of this document,” I think the precedent from the Ministerial Code is interesting. If you recall, after the Scott report into the Iraq inquiry, the House of Commons went ahead and produced its own resolution understanding of ministerial responsibility in the light of what it perceived to be failings on the part of the Government to address those concerns. It seems to me that there is nothing to prevent the House of Commons and the House of Lords, perhaps via this Committee and others, taking their own view on their understanding of aspects of the Cabinet Manual and asserting their position. In some ways, if the Government refuse to play ball, it seems to me that you always have an option in Parliament to say, “This is where we agree with Government and this is where we disagree. We have these differences which we haven’t been able to settle.”

Q25 Chair: I have just written in the last day or so to Sir Jeremy Heywood, the Cabinet Secretary. This follows on from Mark’s question about the progress that has been made on the Government’s undertaking in October 2011, in their response to reports by my Committee and others on the draft text of the Cabinet Manual, and in relation to an updated version on the precedent book—with redactions, if necessary. We do not want to breach national security. The Government stated on page 19: “The 1954 version”—you are absolutely right, that was a little after Attlee but nonetheless in the same sort of era—“was placed in the National Archives in 2006.” Even by the glacial standards of British parliamentary democracy, that is pushing it a bit. They stated that “The Cabinet Office is reviewing more recent versions and will consider whether there should be a further release to the National Archives.” So I have written to the Cabinet Secretary, asking him to let us know the present situation and the status of the more recent versions of the precedent book. I do not know whether you and colleagues would feel that is a helpful thing to have done.

Professor Cram: Yes, I think it is. I would support you asking for that.

Chair: You are young enough to be around long enough to see the outcome of that, but some of us will not be. Get the ouija board out.

Q26 Chris Ruane: Are you concerned that the Cabinet Manual has not been updated since its initial publication in 2011?

Professor Cram: Yes, I am. I think the Government made a commitment around the time of discussions about Parliament’s role in military interventions, for example—this being I think quite a key area that does require updating, certainly after events around August last year.

The House of Commons’s consent for military intervention in Syria was sought in advance by the Executive, was not granted and therefore no military intervention was engaged. It seems to me that that represents a development of the convention that Parliament be consulted in advance to perhaps a new position, which is that Parliament—or at least the House of Commons—give its consent in advance to the committing of British troops abroad. This is a very important aspect of what was formerly, or still quite formerly, the royal prerogative and is part of the original Cabinet Manual. There needs to be a revision to reflect an updated understanding of the current position—that is something worrying.

Q27 Chris Ruane: Why do you think the Government is reluctant to commit to outlining a schedule and process for updating the manual?

Professor Cram: That is a good question.

Chris Ruane: Have you got a good answer?

Professor Cram: No, I don't. I think you would have to ask them, is my response. It is more work. That is right, the Government's position is that they intend to update it "as and when required" but they are not prepared to commit to a schedule of revision. It seems to me quite a simple task for a Government to say—once at the start of a parliamentary session, or at some point during a parliamentary session— "This is where we think we are with the manual, it has had these changes or it has had no changes." Where it has had changes, then you would expect there to be some political debate around whether the Government has accurately reflected those changes or not.

Chris Ruane: In your written evidence, you argue that at the start of each parliamentary session the Government could produce a list of changes to the Cabinet Manual and allocate time for parliamentary debate and approval.

Professor Cram: Yes.

Chris Ruane: Other witnesses, Professor Robert Hazell and Dr Ben Yong have argued that the manual should be updated once a Parliament. What considerations should be used to determine how often the manual is updated? We have a fixed-term Parliament now, should we have a fixed-term review?

Professor Cram: You could have a fixed-term review, but I think Professor Hazell's position leaves open the kind of difficulty that we have just talked about, there having been, I think, a fairly major constitutional development in terms of an enhanced role for the Commons at times of committing military forces abroad. However, Professor Hazell's view is that nothing would happen in the manual until the next Parliament. It seems to me that where you have significant constitutional change it is important that the manual is updated, on an ad hoc basis, to reflect that change.

Chair: A fascinating immediate precedent, really. The Committee tries not to be that topical, because we are trying to do stuff that lasts for ever. However, with recent events in Iraq in the last couple of days, Iraq was a moment when it was not accepted that there should be a debate and a vote in Parliament before an armed conflict. Now, people say, "That was a precedent, it will always happen like that," but in living memory, as a longstanding Member of the House, that was not always the case. I think that was an excellent point, Ian. We need to be able to move quite quickly on this. I can imagine that had Iraq not happened, the House would not have had the ability to make the decision as it did on Syria last year. The Prime Minister commendably responded immediately to something that was the view of the House. So making sure the manual is up to date is pretty important.

Professor Cram: That's right. There is also the more general point that conventions evolve all the time and understandings of political practice change all the time. Quite a lot of us subscribe to John Griffith's view, that the constitution is what happens, in a way at times. I think it suggests the need for keeping on top of things because there will always be fresh developments in a constitutional sphere that the manual should reflect.

Chair: And with referenda, or a referendum in this case coming up, there may be cause to move fairly quickly thereafter on that occasion too.

Professor Cram: Yes, exactly.

Q28 David Morris: Professor Hazell and Dr Yong told us, “Our general view is that any changes to the manual should be limited: a document which is subject to too many changes will lack authority as an enduring record of the rules and practices of government.” Do you agree with that statement?

Professor Cram: I think the problem is with the word “enduring” because, as I say, my view is that the constitution is updated, changes and evolves all the time, so I disagree with Professor Hazell. Down the line, when we start to see the manual being referred to in legal proceedings, you would want an updated version of it to be before the courts in the event that it was afforded some kind of legal recognition. But, more generally, it can inform the political actors here and the wider public about current constitutional understandings.

Q29 David Morris: You suggested three additions to the next edition of the Cabinet Manual: the concept of the rule of law; the convention requiring Ministers not to criticise judicial decisions or sentences in particular cases; and the enhanced role of the House of Commons in giving advanced approval for military action proposed by the Executive. Could you run through why each of these measures is worth including?

Professor Cram: Yes. I may have done that briefly at the beginning, but I am happy to explain. On the rule of law issue, all the constitutional law textbooks and all constitutional lawyers point to the rule of law as a main pillar of our constitution. It seems to me that that is not given sufficient prominence in the Cabinet Manual. I can understand that there might be reasons for that, and the meaning of the rule of law is subject to academic debate, but there is a core around which I think people are generally agreed, which entails the independence of the judiciary. It means that Government has to act according to law and that there has to be a legal basis for Government actions. It should not be too difficult to introduce those elements, particularly in chapter 6, which talks about the role of the judiciary in the constitution, but also in the introduction as one of the pillars, alongside the doctrine of parliamentary sovereignty and so forth.

On the second one, the convention requiring Ministers not to criticise in public judicial decisions, I pointed to this as something that I thought was an unfortunate omission, given the tensions that understandably arise between the Executive and the judiciary at times when judges give rulings that the Government are unhappy about. It is important, none the less, for the impartiality and the standing of the judiciary for Ministers not to appear in public to criticise them. That reference was missing in the Cabinet Manual, and I think it is something that, even though it is inconvenient for Ministers, it is important to reassert.

Thirdly, on the one we have just been talking about—the enhanced role of the House of Commons—there is a statement at the moment in the manual about there being parliamentary debate, but I think we have moved beyond parliamentary debate to parliamentary approval in advance of military action, so there is a need to update the manual in that sense.

Q30 David Morris: Professor Hazell and Dr Yong suggested including the ministerial code as an appendix to the Cabinet Manual. What is your view of that suggestion?

Professor Cram: The ministerial code is referred to at various points in the document and it is referred to in the references, so I can understand that and would support it. However, if I am

consistent and keep to my position of saying there should be two versions of this document, we would be looking at an edited version for the one that is available to the public, or is recommended to the public as a primer on the constitution. I think the ministerial code should be referred to there, but not in the full detail that you would expect in the Cabinet Manual.

David Morris: Thank you.

Chair: Thank you, David, for soldiering on. Ian, we are coming to the end of our questions, so I am going to give you a nice, juicy half volley to let you conclude. How do you see the Cabinet Manual developing in future, and what is your own view about how it could better serve the public in this country?

Professor Cram: The Cabinet Manual has an important role to play in making aspects of our constitution more visible than they have previously been, and in that way informing a wider public debate about how the Government and the country are run, so it is valuable in that sense. The challenge is to take the debate beyond, if you like, the confines of Westminster and academia and to try to engage the wider public.

As I referred to earlier, the opportunity is there in 2015, with the undoubted plans to celebrate the Magna Carta, to have people have discussions about what kind of constitution we live in, in this country. You would hope, at some point, that people are going to be referring to this document as, “Well, here is something where you can find a statement of some of our core principles and ideas”. So I would hope that this would be something that figured in those wider public debates, but I don’t see it being done in the 108 or 109 pages that are there at the moment, certainly in terms of a public debate; I don’t think that would work.

Q31 Mark Durkan: Again, it has come back to the devolution experience and some of the future prospects, particularly if there is going to be a rebalancing, with possibly more powers, or blurs of powers, being transferred to different devolved areas.

Previously, when I was a Minister in Northern Ireland, which was at the outset of devolution, there was the concept developed then of joint ministerial committees in Whitehall, so that the devolved Ministers could sit along Whitehall Ministers in what, at times, were treated as sort of semi-detached Cabinet sub-committees. As a devolved Minister, you were told that some of these things were being done according to Cabinet Manual standard, although you did not have sight, as a devolved Minister, of the Cabinet Manual. At other times, it was unclear just as to what the status of the joint ministerial committees was, in terms of the status of agreements or understandings reached there.

So, in terms of the Chairman’s question, regarding the future of the Cabinet Manual and future adjustments, do you see that as an area, and the whole relationship with devolution, as one of the reasons why there needs to be more transparency and openness around what is in the Cabinet Manual and where things begin and end?

Professor Cram: Yes, I think that is absolutely right. In terms of facilitating clearer understandings between different parts of the United Kingdom and those in the Executive in different parts of the United Kingdom, that would be a desirable thing.

Q32 Mark Durkan: Because we have Ministers making commitments here, in which they sometimes say that they have consulted with devolved interests, and then those devolved interests say that they weren’t, or that there was a mere passing conversation. Often, Parliament is faced with Bills

where it is told that there will be legislative consent coming from devolved interests before those devolved Assemblies have even been given notice of the issue of legislative consent.

Professor Cram: Yes. So in terms of, in a way, clarifying procedures, practices and consultation processes, the manual could have a role to play. I absolutely agree.

Q33 Chair: Ian, thank you very much. I was just trying to check out whether I had heard this right. I went to Leeds university and did my MA there. I understand that you have a lot redevelopment going on there. Has there been quite a lot of building?

Professor Cram: Yes. In the school of law we have a wonderful new building—state of the art. This is a bit of an advertisement for Leeds law school: it is a fantastic new building we have there. But generally, I think that the previous vice-chancellor committed to a big capital programme, and there is quite a lot of work going on.

Chair: I hope colleagues will forgive me; I should have reported this in the little briefing we had before 10 o'clock: we had a really superb day in Sheffield. Instead of coming to the Westminster bubble, we went to the university and the 50 or so randomly selected people who talked about voter engagement, and then a more formal evidence session. Fabian was there.

Fabian Hamilton: I was, and I thought it was one of the best things we have done.
[Interruption.]

Chair: Exactly. I may submit a special pleading. Going back to Leeds for me, I guess.

Fabian Hamilton: I would support that.

Chair: That is amazing. We only need Leeds also to support that.

Professor Cram: Yes.

Chair: I can feel a trip across the water coming on for Mark. We will be in your patch, too. Perhaps that is something for the next time we do that.

Professor Cram: Yes. If I could help in facilitating that, I would be happy to be involved.

Chair: Tremendous. I am sorry that that was not by way of a question. It will probably appear on the record now. I will finish by saying thank you so much.

Professor Cram: Not at all.

Q34 Chair: You have offered clear and sage advice on something that we want to continue. Just for the record, this exercise was one of the first things we did as a brand-new, baby Committee of the Select Committee structure in 2010-11, and I am very proud of my members. We have a rigour to come back and see how things are going. It is not quite post-legislative scrutiny, but it is proper scrutiny to ensure that, even though we have done it and ticked the box, we can come back and say that there are still a few things to do and to follow up. I hope that we have that reputation as a Select Committee.

Professor Cram: I noticed that in March this year you produced that report on Syria, so you are continuing to follow things through.

Chair: Thank you, Ian. Thank you for your time and your attendance.