

Professor Matthew Flinders – written evidence (RCM0001)

House of Lords Constitution Committee Inquiry into Revision of the Cabinet Manual

1. The main argument of this submission is that **the Cabinet Manual should be updated**. It is now ten years since the document was first published and the then Cabinet Secretary's preface clearly stated that 'it will need to be updated periodically' to reflect changes in the nature of British governance. Possibly the most obvious reason to update the Cabinet Manual is that Chapter Nine is explicitly based upon the United Kingdom's membership of the European Union. Brexit makes the document untenable in its current form.
2. **The Cabinet Manual plays little role as a public facing document**. It is essentially an accessible 'user guide' that seeks to set down and explain a number of constitutional relationships. In many ways it reveals 'the hidden wiring' of the British constitution but as the document emphasises 'The Cabinet Manual records rules and practices, but it is not intended to be the source of any rule'. The significance of the document stems from its delineation of expected 'rules and practices' which can then be used to assess and evaluate the behaviour, lines of accountability or decision-making processes within government.
3. In terms of thinking about the Cabinet Manual and *if, how* and *why* it might need updating, it might be worth the committee seeking to **distinguish between two dimensions of potential revision**. The first dimension is fairly obvious and relates to structural or institutional change, with Brexit being the most obvious example. The second dimension, however, relates to what might be termed behavioural or cultural change. When it comes to thinking about public trust and confidence in political institutions, political processes and politicians it is arguably this latter behavioural/cultural dimension that needs to be considered when thinking about revising the Cabinet Manual. Put slightly differently, if there is a problem with the Cabinet Manual it is not simply that the document needs to be updated to reflect institutional changes but also that *the theory of cabinet government* set out within the pages of the document no longer appears to match *the day-to-day realities of cabinet government*.
4. What is immediately obvious from even the most cursory reading of the Cabinet Manual is just how much power is invested in the position of the Prime Minister. What is also very clear is that **there are actually very few formal 'hard' restrictions or restraints vis-à-vis how the prime minister uses those powers**.
5. The Cabinet Manual is really little more than a broad guidance document that outlines the existence of a number of, for the most part, non-statutory conventions. This reflects not only the British constitution's traditional majoritarian power-hoarding logic, but also the existence of what Lord Hennessy has termed 'the good chaps theory of government'. That is, a deep cultural confidence that the prime minister will adopt a self-denying ordinance whereby they voluntarily yield to the expectations placed upon them by convention. But as Lord Hennessy's recent report (co-authored with Andrew Blick) *Good Chaps No More? Safeguarding the Constitution in Stressful Times* argued, whether the current government is willing to abide by such 'soft' convention-based rules is

questionable. Since the publication of this report in November 2019 **there is mounting evidence that the current government is not in fact willing to abide by many of the Cabinet Manual's expectations and conventions.** This is to some extent reflected in the Committee on Standards in Public Life's current inquiry into the landscape for ethical regulation, and in broader concerns about the emergence of a 'Post-Nolan' age of public service where the original seven principles of public life appear to have been diluted.

6. In terms of where current government practice appears to demand significant revisions to the Cabinet Manual the following areas appear to reflect growing concern:

Section 3.39 'Role of the courts in scrutinising the exercise of government power' – In light of the March 2021 government-commissioned review of judicial review and subsequent public consultation.

the Section 3.46 'The Ministerial Code...sets out the principles underpinning standards of conduct expected by ministers' – In light of the resignation of the Prime Minister's ethics adviser in November 2020.

Section 3.52 'Arm's-length bodies' – after the controversy surrounding the performance of Public Health England, its subsequent abolition, the emergence of blame games and the appointment of the Conservative Peer Baroness Harding as Chair of the new National Institute for Health Protection.

regarding Section 4.13 'National emergencies' – after wide-ranging concerns pandemic resilience and the alleged non-attendance of the Prime Minister. One short paragraph seems woefully insufficient.

after Chapter 5 – 'The House of Commons and House of Lords' – no mention of appointment procedures to the House of Lords. This is now necessary the Prime Minister's recent decision to overrule the advice of the independent House of Lords Appointments Commission over a specific political nomination.

to Section 5.6 'Core principles...ministers have a duty to account to parliament, and to be held to account' – in light of the Prime Minister's refusal to appear before the Liaison Committee until his preferred candidate was appointed to chair the committee (even though that person was no longer a select committee chair).

Section 5.14 'Evidence to select committees' – the recent reforms to select committees in the House of Lords arguably need an explicit statement of their relationship to members of the government. The Lords scrutiny committees are no far more domestically focused given in light of the abolition of the EU Committee. [See HL 167, 2020, para13; HL 398, 1999, Q.142-143]

been Section 5.39 'Public appointments' – widespread concerns about have raised about the illegitimate nature of recent appointments and the rolling-back of measures introduced over the last two decades. The appointment of the Conservative Peer (and the Prime Minister's former Campaign Manager) Lord Wharton as Chair of the Office for Students, for example, demands close reflection; as do the various comments from the Commissioner for Public Appointments regarding his belief that 'some at the centre of government want not only to have the final say but to tilt the competition system in their favour to appoint their allies' (letter to Lord Evans, 7 October 2020).

Section 9.1 'European and other international organisations' – in light of Brexit.

7. This is clearly not an exhaustive list but hopefully it provides a sense of: (i) the need for the Cabinet Manual to be revised; and (ii) the nature of the behavioural or cultural changes which have occurred and are a sense of increasing concern. There is little point having a document which claims to set out 'the internal rules and procedures under which the government operates' if those rules and procedures are increasingly either structurally outdated or increasingly 'honoured in the breach'.
8. There are a range of options that could be considered in terms of supporting the Government to keep the Cabinet Manual up to date. These options should be selected on the basis of the following principles: *regularity* (i.e. the need for an agreed and formal timetable for regular review); *independence* (i.e. the injection of a degree of constructive distance and political neutrality into that regular review); and *legitimacy* (i.e. a process that achieves cross-party support through a credible and public process). With these three principles in mind the following elements might form a basic and balanced framework: (i) a quinquennial review process; (ii), undertaken with the assistance of an independent advisory board (iii) and approved via some method of parliamentary confirmation.
9. The benefit of this framework for regular review and revision is that it would recognise that the Cabinet Manual is a governmental document while at the same time recognising its broader constitutional and public relevance. The five-year review process would, in effect, build a constitutional buckle or link between the executive and legislature which respects established constitutional relationships. It would be a proportional and balanced step-forward towards the ambition of shedding 'light on how Government interacts with other parts of our democratic system' which David Cameron promoted when first publishing the Cabinet Manual.

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