



Law Society  
of Scotland

# Law Society Scotland Response

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

April 2021



## Introduction

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The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Constitutional Law Sub-committee welcomes the opportunity to consider and respond to the House of Lords Constitution Committee Inquiry into the Revision of the Cabinet Manual. The sub-committee has the following comments to put forward for consideration.

## General Comments

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### 1. What role does, and should, the Cabinet Manual play as a public facing document?

The cabinet manual is principally a guide for officials and ministers when considering constitutional issues. It has been used by Parliament and parliamentary committees as an authoritative guide to constitutional matters. We do not have empirical evidence of the level of public knowledge about the manual but in our view it is not often referred to in public facing documents. It enjoys greatest visibility when it is being reviewed. For example, the Government's analysis of the responses to the consultation on the draft manual which took place in December 2010 discloses a total of 52 written responses were received. 38% were from members of the public, 20% from academics, 13% from local and devolved administrations, and the remainder from not-for-profit organisations, public office holders and other interested individuals:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/60642/govres-comments-received-draft-cabinet-manual.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/60642/govres-comments-received-draft-cabinet-manual.PDF)

The Committee's question touches on the precise function of the manual. Is the purpose of the manual primarily for officials and ministers (and academia and other specialist users) when considering constitutional issues or is it to explain the constitution to the general public? If the current manual is to be re-purposed to have a more public role in explaining how the constitution works, it would need significant revision to make it more user friendly. However, if Government wishes to retain the current manual for its current purpose but also undertake more public education about the constitution it should explore different approaches to engage the public in information about the constitution. A new approach by Government to education about the constitution by enlisting independent experts to supply content made public through social media, and other educational tools would be a more effective approach.

## 2. Should the Cabinet Manual be updated and, if so, what changes are required?

The constitution is an evolving and developing construct through statutory changes and interpretations by the courts in significant cases. Accordingly, we could suggest that:

- a. paragraph 5 in the Introduction could be updated to reflect withdrawal from the European Union and recent important cases such as R (On the application of Miller and another) v Secretary of State for Exiting the European Union [2017] UKSC 5 <https://www.supremecourt.uk/cases/uksc-2016-0196.html>. This observation applies to numerous mentions of the EU and EU law throughout the manual including Chapter 9. There also requires to be reflection of the creation of Retained EU Law, the European Union (Withdrawal) Act 2018, the European Union (Withdrawal Agreement) Act 2020 and the European Union (Future Relationship) Act 2020.
- b. chapter 3 paragraph 3.46 could be re-drafted to emphasise the obligation to comply with the law including international obligations, paragraph 3.47 could be updated to reflect the Transparency of Lobbying, Non-party campaigning and Trade Union Administration Act 2014.
- c. Chapter 6 paragraph 6.4 could make reference to the role which the Law Officers play in connection with devolved legislation.
- d. Chapter 8 requires revision in respect of recent amendments to the Scotland Act 1998 flowing from the Scotland Acts 2012 and 2016. For example, paragraph 8.8 needs updating regarding the tax raising powers of the Scottish Parliament. Paragraphs 8.17-8.25 require revision to take account of developments such as Common Frameworks.

## 3. What approach should the Government adopt to ensuring the Cabinet Manual is kept up to date?

The Government should establish a cabinet manual revision panel which is obliged to revise the manual at the beginning of each new Parliament. This revision must be subject to public consultation and Parliamentary approval as detailed in the answer to question 4.

## 4. Recognising the Cabinet Manual is an Executive document, what role, if any, should Parliament have regarding its revision?

We recognise that the manual is an Executive document and that it is relied on by Ministers and officials as an authoritative statement of the constitution as it applies at any given time. The Manual is, however, referred to as an executive document, but is also relied on as an authoritative statement of relevant constitutional rules which have much broader implications – see for example after the 2010 General Election, when the statement in the Cabinet Manual that the incumbent PM was entitled to remain in office following a hung parliament rather than to resign immediately was treated as decisive. This is in effect a form of executive rule-making which requires to be subject to proper Parliamentary scrutiny. Accordingly, any proposed amendments to the Cabinet Manual should be subject to public consultation and Parliamentary scrutiny and approval.

Parliament also ought to be able to recommend that the manual take account of amendments to the law or significant changes in policy. Both these functions should be brought within the remit of the Public Administration and Constitutional Affairs committee in the House of Commons and the Constitution committee in the House of Lords.

**5. Can any lessons be learned, or adopted, from other jurisdictions without a codified constitution?**

We have no comments to make.



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