



House of Commons  
Public Administration  
and Constitutional Affairs  
Committee

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**Ensuring Proper Process  
for Key Government  
Decisions: Lessons Still  
to be Learned from the  
Chilcot Report**

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**Fourth Report of Session 2017–19**





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# Ensuring Proper Process for Key Government Decisions: Lessons Still to be Learned from the Chilcot Report

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**Fourth Report of Session 2017–19**

*Report, together with formal minutes relating  
to the report*

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## Public Administration and Constitutional Affairs

The Public Administration and Constitutional Affairs Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith; to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service; and to consider constitutional affairs.

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The committee is a select committee, the powers of which are set out in House of Commons Standing Orders, principally in SO No 146. These are available on the internet via [www.parliament.uk](http://www.parliament.uk).

### Publication

Committee reports are published on the Committee's website at [www.parliament.uk/pacac](http://www.parliament.uk/pacac) and in print by Order of the House.

Evidence relating to this report is published on the [inquiry publications page](#) of the Committee's website.

### Committee staff

The current staff of the Committee are Dr Rebecca Davies (Clerk), Libby Kuriem (Clerk), Ian Bradshaw (Second Clerk), Dr Patrick Thomas (Committee Specialist), Dr Philip Larkin (Committee Specialist), Makka Habre (Committee Specialist), Henry Midgley (Committee Specialist), Gabrielle Hill (Senior Committee Assistant), Iwona Hankin (Committee Assistant), and Mr Alex Paterson (Media Officer).

### Contacts

All correspondence should be addressed to the Clerk of the Public Administration and Constitutional Affairs Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 3268; the Committee's email address is [pacac@parliament.uk](mailto:pacac@parliament.uk).

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## Introduction

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1. “I will be with you, whatever”; this was how Prime Minister Tony Blair began his note to President George Bush on 28 July 2002 regarding the United Kingdom Government’s position on the United States Government’s policy towards Iraq, which would precipitate the invasion of 2003.<sup>1</sup> Thus, without any discussion in Cabinet, the UK was, in effect, committed to military action in Iraq if the US Government decided to carry out its intention to invade; the Iraq Inquiry chaired by Sir John Chilcot (the Chilcot Inquiry) concluded that:

Mr Blair’s Note, *which had not been discussed or agreed with his colleagues*, [emphasis added] set the UK on a path leading to... the possibility of participation in military action in a way that would make it very difficult for the UK subsequently to withdraw its support for the US.<sup>2</sup>

2. At the end of the last Parliament our predecessor Committee published a report on the *Lessons still to be learned from the Chilcot Inquiry*.<sup>3</sup> It included recommendations intended to strengthen the ability of the Cabinet Secretary and other senior civil servants to insist that Ministers follow the proper processes for making important policy decisions. Specifically, the report recommended that:

There should be a mechanism of written Ministerial direction, similar to that used by Departmental Accounting Officers, reflecting the responsibility of the Cabinet Secretary and other senior officials to ensure that proper procedure is followed as set out in the Cabinet Manual.<sup>4</sup>

3. The Committee’s recommendation reflected the Chilcot Inquiry’s findings that, in the run up to the decision to join the US led invasion of Iraq, Prime Minister Tony Blair circumvented the normal conventions of Cabinet Government.<sup>5</sup> As a result, according to the Chilcot Inquiry, opportunities were lost both to “probe and challenge” decisions before they were taken and to ensure that proper contingency planning had occurred for the period after the initial invasion.<sup>6</sup> The report sets out the resulting failures of the UK Government’s policy in relation to Iraq from 2002 to 2009, and the significant damage and loss of life that resulted.

4. The mechanism of a Ministerial Direction on collective decision-making our predecessors recommended would allow the Cabinet Secretary to formally ask the Prime Minister for a written instruction to circumvent the normal process for Cabinet decision making despite the Cabinet Secretary’s advice.<sup>7</sup> This direction, and the Cabinet Secretary’s

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1 Tony Blair to President G W Bush, 28 July 28 2002, quoted in The Iraq Inquiry; [“The Report of the Iraq Inquiry: Report of a Committee of Privy Counsellors”](#), HC 264, 6 July 2016, executive summary para 94

2 *ibid.* executive summary para 801

3 PACAC Tenth Report of Session 2016–17 [“Lessons still to be learned from the Chilcot Inquiry”](#), HC 656, 16 March 2017

4 *ibid.*, para 57

5 [“The Report of the Iraq Inquiry”](#)

6 *ibid.*, Executive Summary, para 410

7 This is analogous to the right of departmental accounting officers, who are personally accountable to Parliament for their department’s use of public money, to ask for a ministerial direction if they are asked to take an action that they consider is contrary to the policies set out in the Treasury’s guidance *Managing Public Money*. The role and accountabilities of accounting officers, and how they operate in practice, are summarised in National Audit Office, [“Accountability for Public Money”](#) HC 849, published 23 February 2016, pp 12–40

reasons for requesting it would then, normally, be made available to Parliament. This would mean a future Prime Minister could still decide to act in a similar manner to Mr Blair in 2003 if they felt it necessary. However, they would have to account publicly for their actions, providing an incentive not to lightly set aside normal Cabinet decision-making procedures and the probing and challenging of decisions it involves.

5. We published the Government's response to our predecessor Committee's report on 10 January 2018.<sup>8</sup> We reported to the House our concern "about the Government's failure to accept the case for stronger safeguards to ensure proper collective consideration by the Cabinet on decisions of national importance".<sup>9</sup> We subsequently announced, on 8 February 2018, a further inquiry to look at the issue in more detail, in particular how a power of direction might work in practice; who should be able to exercise it; and whether the guidance in the Cabinet Manual is sufficiently precise to allow it to be used for such a purpose.<sup>10</sup> In response, the Committee received written evidence from the Better Government Initiative, the Constitution Society and the Iraq War Families Campaign Group. We thank those who gave written evidence to this inquiry.

6. We concluded that given the strong public interest in ensuring that decisions that directly affect the lives of thousands of people are taken after proper consideration, which the Chilcot Report vividly illustrates, safeguards to ensure proper process for key Government decisions, similar to the one our Predecessor Committee recommended in 2016, are still required.

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8 PACAC, Third Special Report of Session 2017–19 "[Lessons still to be learned from the Chilcot Inquiry: Government Response to the Committee's Tenth Report of Session 2016–17](#)" HC 708, 10 January 2018

9 *ibid*

10 PACAC "[Submissions wanted on government decision-making safeguards](#)" 08 February 2018

# 1 Cabinet and collective agreement

7. The Cabinet Manual is the Government’s “guide to the laws, conventions and rules on the operation of Government”.<sup>11</sup> It states that the “Cabinet is the ultimate decision-making body of government”, and it and its committees “provides a framework for ministers to consider and make collective decisions on policy issues”.<sup>12</sup> The Ministerial Code defines the issues that should be decided by Cabinet or a Cabinet Committee as being:<sup>13</sup>

- a) questions which significantly engage the collective responsibility of the Government because they raise major issues of policy or because they are of critical importance to the public;
- b) questions on which there is an unresolved argument between departments.

8. The Cabinet works on the principle of collective responsibility; that Ministers must support all Government decisions in public, once they have been agreed collectively by the Cabinet in private.<sup>14</sup> It is intended to allow Ministers to be consulted on all fundamental matters of policy and to debate them in private, whilst binding them to the final decision and allowing for clear accountability to Parliament.<sup>15</sup> The Ministerial Code requires Ministers “to ensure decisions agreed in Cabinet and Cabinet Committees... are implemented”.<sup>16</sup>

9. The Cabinet Manual prescribes that before Cabinet or one of its committees takes a decision it should normally be provided with a paper or presentation that:

... should include any information that is needed for ministers to make an informed decision. They should be concise and should set out the benefits, disadvantages and risks associated with the proposed policy.<sup>17</sup>

10. Departments are also expected to have consulted other Departments, including the Treasury, with an interest in a decision prior to asking for collective agreement, and normally to have agreed the factual underpinning and analysis contained in any papers with them.<sup>18</sup> Cross government “Officials” committees can be convened to scrutinise and test draft proposals to ensure all relevant issues, facts and arguments are brought to Ministers’ attention.<sup>19</sup>

11. The Cabinet Secretariats, based in the Cabinet Office, headed by the Cabinet Secretary, support the operation of the Cabinet and its committees and their chairs to ensure “that government business is conducted in an effective and timely way and that proper collective consideration takes place”.<sup>20</sup>

11 Cabinet Office “[The Cabinet Manual: A guide to the laws, conventions and rules on the operation of Government](#)” October 2011

12 *ibid* para 4.1

13 Cabinet Office “[Ministerial Code](#)” January 2018, para 2.2

14 The principle is explored in Michael Everett, “Collective Responsibility” House of Commons Library, [CBP 7755](#), 14 November 2016

15 *ibid*

16 “[Ministerial Code](#)” para 2.3

17 Cabinet Manual, para 4.30

18 *ibid* para 4.32

19 *ibid* para 4.14, officials committees are usually referred to as O committees as in NSC(O) the officials committee supporting the National Security Council (NSC)

20 *ibid* para 4.51

12. The Government stated in its response to our predecessor Committee's report on *Lessons still to be learned from the Chilcot Inquiry* that:

... the Cabinet Secretary's role is to ensure that Cabinet Committees provide effective collective Government and are not bypassed, and that sub-committees are set up to deal with issues that require a more intensive focus... [and] the Cabinet Secretary has responsibility for making sure that Cabinet Government is working properly, that Cabinet Committees meet with the right people in them to take key decisions, and that issues are dealt with in a proper way.<sup>21</sup>

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21 [PACAC, Third Special Report of Session 2017–19 “Lessons still to be learned from the Chilcot Inquiry: Government Response to the Committee’s Tenth Report of Session 2016–17”](#) HC 708, 10 January 2018

## 2 The risks of not using proper processes

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13. The Chilcot Inquiry into the Iraq War demonstrated the damage that can follow a failure to follow proper decision-making processes.<sup>22</sup> It identified 11 “decision points” between December 2001 and March 2003 in the development of the UK’s eventual policy to support the US invasion of Iraq that should have been subject to a formal Cabinet Committee discussion, with all relevant Ministers present and on the basis of inter-departmental advice agreed between senior officials.<sup>23</sup> The Chilcot Inquiry concluded that:

In addition to providing a mechanism to probe and challenge the implications of proposals before decisions were taken, a Cabinet Committee... might have identified some of the wider implications and risks... It might also have offered the opportunity to remedy some of the deficiencies in planning [for the post conflict period identified in] the Report. There will, of course, be other policy issues which would benefit from the same approach.<sup>24</sup>

14. Key decisions were taken essentially alone by the then Prime Minister, and an “inner circle... [of] three special advisers, the heads of the Secret Intelligence Service, the chairman of the Joint Intelligence Committee (JIC) and one senior diplomat”.<sup>25</sup> The Foreign and Defence Secretaries and other Ministers with a policy interest and potentially different information or perspective to add to the decisions were only engaged bilaterally or trilaterally, if at all.<sup>26</sup>

15. Proper scrutiny and debate of decisions is not only relevant in extreme cases such as a decision to go to war. The Institute for Government (IfG) has highlighted how the routine lack of scrutiny of Budget and tax measures within government can lead to poor quality policy.<sup>27</sup> Unlike other major policy announcements, the Budget is not subject, even nominally, to advanced collective scrutiny.<sup>28</sup> In modern times, the Cabinet has first seen, and then been expected to approve, the full Budget on the morning it is given, after it has gone to the printers. This prevents Ministers who have not been engaged in bilateral discussions with the Treasury, and their civil servants, from being able to effectively scrutinise policy decisions even where they may have a direct interest or information to contribute.<sup>29</sup> In the IfG’s judgement, drawing on the work of the NAO and Public Accounts Committee this, “means that many ideas make it into Budgets that appear to offer very poor value for money compared with departmental spending programmes”.<sup>30</sup>

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22 [“The Report of the Iraq Inquiry”](#)

23 *ibid*, Executive Summary, para 409

24 *ibid*, Executive Summary, para 410

25 SGD 2 para 4

26 *ibid*

27 Institute for Government [“Better Budgets: Making Tax Policy Better”](#) January 2017, pp28–30

28 “The Cabinet Manual” para 4.23

29 IfG “Better Budgets”

30 *ibid*

**16. A proper process does not prevent poor decision making, but it makes it less likely. The Prime Minister and Cabinet have recognised this through the rules and procedures set out in the Ministerial Code and the Cabinet Manual for the operation of the Cabinet and Cabinet Committee system.**

**17. The Chilcot Report demonstrates the strong public interest in ensuring that decisions that directly affect the lives of thousands of people are taken after proper consideration, involving all interested departments, and based on the best available evidence.**

### 3 The role of the Cabinet Secretary

18. The Government stated in its response to our predecessor Committee's report on *Lessons still to be learned from the Chilcot Inquiry* that:

... the Cabinet Secretary's role is to ensure that Cabinet Committees provide effective collective Government and are not bypassed, and that sub-committees are set up to deal with issues that require a more intensive focus... [and] the Cabinet Secretary has responsibility for making sure that Cabinet Government is working properly, that Cabinet Committees meet with the right people in them to take key decisions, and that issues are dealt with in a proper way.<sup>31</sup>

19. In his evidence in 2016 to our predecessor Committee, the Cabinet Secretary, Sir Jeremy Heywood, advised that "under our current constitution" if his advice was ignored and the Prime Minister decided on a course of action that undermined effective collective government, the Cabinet Secretary had no other levers other than to resign.<sup>32</sup>

20. In 2016, the Better Government Initiative (BGI) drew the comparison between the Cabinet Secretary's personal "guardianship role" in support of collective government and proper decision making" and the personal responsibility of civil servants who are accounting officers and, therefore, personally accountable to Parliament for the proper use of public money.<sup>33</sup> An accounting officer's accountability includes ensuring that there are processes in place to ensure proper "control" arrangements over decision making within their Department.<sup>34</sup>

21. Accounting officers have a duty to ask for a written direction from their Ministers when they believe they are being asked to act in a way contrary to the published Government guidance, *Managing Public Money*.<sup>35</sup> Such a direction is then shared with the Comptroller & Auditor General, (and through him Parliament) and usually published.<sup>36</sup> According to work by the Institute for Government, 55 directions were issued between 1990 and July 2015.<sup>37</sup> Once a direction has been made the accounting officer is required to implement the Minister's decision "without further ado".<sup>38</sup>

22. Accounting officer directions therefore maintain the right of Ministers to ultimately make decisions and have them executed. But directions also provide a check on actions that may put public money at risk, and empower accounting officers to ensure proper consideration is given to important financial decisions. For example, our predecessor Committee's inquiry into *The Collapse of Kids Company* explored how Cabinet Office

31 PACAC, Third Special Report of Session 2017–19

32 PACAC Oral Evidence "[Chilcot Inquiry: Lessons for the Machinery of Government](#)" HC 656, 14 September 2016, Q59

33 Better Government Initiative, '[The Chilcot Report: Lessons for the Machinery of Government](#)', September 2016, p 3

34 SGD 02. The role and accountabilities of accounting officers, and how they operate in practice, are summarised in National Audit Office, "[Accountability for Public Money](#)" HC 849, published 23 February 2016, pp 12–40

35 HM Treasury, "[Managing Public Money](#)" July 2013, paras 3.4.3–5

36 *ibid*

37 Gavin Freeguard "[A Sense of Direction: When Permanent Secretaries object to Ministerial Decisions](#)" Institute for Government, 6 July 2015

38 "[Managing Public Money](#)" paras 3.4.5

Ministers decided to provide £3m to the charity shortly before it collapsed despite their officials' advice, resulting in the Cabinet Office's accounting officer seeking such a direction before the payment was made.<sup>39</sup>

23. The Public Accounts Committee regularly questions accounting officers on how they have used their powers to ask for a direction to influence ministerial decision making, and has criticised Permanent Secretaries for not doing so when it was warranted.<sup>40</sup>

24. The BGI therefore suggested that the Cabinet Secretary, and potentially other senior officials, should have an equivalent right to ask the Prime Minister for a formal direction if Ministers wish to depart from the procedures for collective decision making set out in the Cabinet Manual.<sup>41</sup> If the Government wished "to conduct business in another way" to the current agreed processes, it could transparently amend the published Cabinet Manual, and account for those changes to Parliament.<sup>42</sup>

25. Our predecessor Committee endorsed the BGI's recommendation in our previous report on *Lessons still to be learned from the Chilcot Inquiry* and further recommended that "if a senior official requests such a direction, it should be at his or her discretion whether this direction should be made immediately known to Parliament, through PACAC or the relevant Select Committee, or placed in the public archive for delayed release. As an alternative, the official should also be able to notify Privy Counsellors."<sup>43</sup>

26. In evidence to this inquiry the BGI suggested that rather than a new, parallel, process of direction on collective decision making, ensuring that proper collective decision-making processes are followed could be a part of an accounting officer's accountability.<sup>44</sup> In effect the requirement for accounting officers to ensure proper governance and control within their department, would extend to ensuring proper governance in relation to collective decisions made affecting their departments.<sup>45</sup> If this approach was taken, the Cabinet Secretary would need to be formally designated as an accounting officer.<sup>46</sup>

27. The BGI did not explain how if, as is usual for controversial decisions, an issue touched on the interests of more than one department, which accounting officer would be personally accountable for seeking a direction if one were needed, or if all would be. Currently several accounting officers may, individually, seek a direction from their Secretary of State to implement a Government decision that impacts on several departments, but only to cover the specific impact on the accounting officer's own department.<sup>47</sup>

39 Public Administration and Constitutional Affairs Committee, Fourth Report of Session 2015–16, "[The Collapse of Kids Company: lessons for charity trustees, professional firms, the Charity Commission and Whitehall](#)" HC 433, 1 February 2016, paras 174 to 184

40 A number of these are summarised in NAO, "Accountability for Public Money"

41 BGI "The Chilcot Report" p 3

42 *ibid*

43 PACAC Tenth Report of Session 2016–17 "[Lessons still to be learned from the Chilcot Inquiry](#)", HC 656, 16 March 2017, para 57

44 SGD 02

45 *ibid*

46 The Cabinet Secretary is traditionally the accounting officer for the Security and Intelligence Agencies, but this is not automatic, and was not the case at the time of the invasion of Iraq (See "The Report of the Iraq Inquiry"). The current Cabinet Secretary does not act as the Permanent Secretary for the Cabinet Office nor as its principle accounting officer. Cabinet Office "[Annual Report and Accounts 2016–17](#)" HC 2, 14 September 2017

47 See, for instance, the separate directions sought by the Permanent Secretaries for the then Department for Communities and Local Government and the then Department for Business Innovation and Skills to cover each department's exposure to the purchase of leisure assets, including Blackpool Tower, using funds provided by the North West Regional Development Agency. Josh Harris "[Following the Pound: The Accounting Officer in Central Government](#)" Institute for Government, 03 September 2013 p 33

28. The current Cabinet Secretary, in evidence to our predecessor Committee's inquiry in 2016 into the lessons learned from the Chilcot Inquiry, argued that such a power is not needed "at the moment" given how the current Prime Minister and her predecessor had acted.<sup>48</sup>

29. The process of agreeing the Government's policy towards the negotiations for our exit of the European Union and the UK's future relationship with the EU has reportedly involved numerous Cabinet Committee discussions.<sup>49</sup> These have apparently involved detailed, and often robust, discussion of Ministers' different preferred policy solutions to specific problems.<sup>50</sup> This would suggest that the current Prime Minister is proactively using the collective agreement process to come to, and then bind-in, Ministers to a shared decision on matters where there are significant differences of view within the Government.

### ***The Government's response***

30. In its response to the Committee's report, the Government rejected the Committee's recommendation that a ministerial direction to strengthen collective decision-making should be introduced because: "In the case of policy, the role of officials is to provide advice and for the politicians to take decisions and be accountable to Parliament for them", whilst "in the case of Ministerial direction for financial decisions, Permanent Secretaries (as accounting officers for their departments) have a clear personal responsibility for the propriety and value for money of the public finances for which they are responsible."<sup>51</sup> The Government further argued that the development of the National Security Council (NSC), and the continuing evolution of its supporting structures, addressed the weakness in the decision-making process in the run up to the Iraq War that the Chilcot report identified.<sup>52</sup>

31. The BGI stated that the Government's response "completely misrepresents" the BGI's core proposal on directions, confusing an official's advice on policy, which Ministers could properly ignore, and senior officials' concerns about ensuring the process for taking decisions laid down in the Ministerial Code and Cabinet Manual were followed.<sup>53</sup>

32. The BGI also argued that the development of the NSC since 2010 provided limited reassurance. There was similar machinery, through the Defence and Overseas Policy Committee and the supporting Cabinet Office secretariat, in place in the run up to the Iraq War.<sup>54</sup> The then Prime Minister simply chose to ignore it. In the BGI's view there would be nothing to stop a future Prime Minister acting in a similar way towards the NSC if his or her Cabinet colleagues were willing to let them.<sup>55</sup>

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48 PACAC Oral Evidence "[Chilcot Inquiry: Lessons for the Machinery of Government](#)", HC 656, 2016–17

49 See for example, George Parker, "Crunch Brexit talks hint at compromise within Conservative factions" *Financial Times*, 23 February 2018

50 Francis Elliott "[Theresa May splits up squabblers as Brexit customs deal eludes cabinet](#)" *The Times*, 11 May 2018

51 PACAC, Third Special Report 2017–19

52 PACAC, Third Special Report 2017–19

53 SGD 02 para 8

54 SGD 02

55 *ibid*

33. The Government is right that it is for Ministers to account to Parliament for their decisions about matters of policy. However, our Predecessor Committee's recommendation was about process, not policy: that the Cabinet Secretary should have recourse to ask for a formal written direction if Ministers were departing from the accepted process for collective decision making set out in the Cabinet Manual. The Government is clear that the Cabinet Secretary is responsible for making sure that Cabinet Government is working properly. It has not presented any argument that suggests how this responsibility is not similar to the personal responsibility of accounting officers in respect to public money. No Cabinet Secretary, as the current post holder described it, should be left with the stark choice: either obey or resign

34. This responsibility for ensuring proper process is equivalent to the role of accounting officer. Permanent Secretaries are ultimately accountable to their individual Secretary of State for the running of their Department, and personally to Parliament for the money voted to their individual department or agency. Making collective decision-making part of the accounting officer role would be a fundamental change in the role of Permanent Secretary. Currently the Government is clear that personal accountability for the proper operation of the Cabinet falls on the person who is the Cabinet Secretary. Therefore, any power to ask for a direction should be for the Cabinet Secretary, whether or not he or she is formally an accounting officer. As with accounting officer directions we would expect such a power to be rarely used in practice.

35. It would remain open to the Prime Minister, if she or he thought the current processes were not effective, to amend the Cabinet Manual and the Ministerial Code. However, they would need to do so in a transparent manner, and account to Parliament for why the changes were necessary.

*36. We reiterate our predecessor Committee's conclusion that new safeguards for proper process on decision-making are required. The time to implement these is now, when it appears that proper process is being respected, not after another failure such as that described in the Chilcot Report. There should be a mechanism for written Prime Ministerial direction, similar to that open to accounting officers, reflecting the responsibility of the Cabinet Secretary to ensure that proper procedure is followed as set out in the Cabinet Manual. If the Cabinet Secretary asks for such a direction, it should be at his or her discretion whether this direction should be made immediately known to Parliament, or, in matters relating to national security, notified to nominated independent Privy Counsellors and released to Parliament later. Such a mechanism would dispel any doubt about the Cabinet Secretary's duty to ensure proper decision making. Furthermore, it would make clear to Ministers the importance the Prime Minister and Cabinet place on following proper procedure, and of taking proper advice on matters of procedure.*

*37. Parliament would hold a Cabinet Secretary to account for a failure to use this power in the event of a breakdown in Cabinet Government of the sort described by the Chilcot Report.*

## 4 The status of the Cabinet Manual

38. In his preface to the Cabinet Manual in 2011 the then Cabinet Secretary Sir Gus (now Lord) O'Donnell described its purpose as:

... primarily a guide for those working in government, recording the current position rather than driving change. It is not intended to be legally binding or to set issues in stone. The Cabinet Manual records rules and practices, but is not intended to be the source of any rule.<sup>56</sup>

39. Parliament regards the Manual in the same way. It has been explicit that the Manual is not to be regarded as being an authoritative statement of the constitution, in particular the sections relating to the relationship and between the Government and Parliament.<sup>57</sup> The relevant Select Committees in both Houses concluded that the draft manual should have been agreed by Parliament prior to it being finalised.<sup>58</sup>

40. However, it was endorsed by the Cabinet in 2011 as an “authoritative guide for *ministers and officials*” [emphasis added] with the then Prime Minister stating in his foreword that, “I expect everyone working in government to be mindful of the guidance it contains”.<sup>59</sup>

41. The Constitution Society and the Iraq War Families Campaign Group argued that any effective system for enforcing collective decision making would require statutory underpinnings and should, ultimately, be justiciable in the Courts.<sup>60</sup> They believed that a reliance on an informal system of convention, with the Prime Minister able to amend the rules if they wished, would not provide sufficient safeguards. The Iraq War Families Campaign Group further argued that individuals found to have been involved in decisions that contravened the guidelines should be subject to ‘redress’.<sup>61</sup>

42. However, the system of accounting officer directions, and the guidance in *Managing Public Money* that underpins them, has no statutory basis. Its development has been a matter of negotiation between the Treasury, Parliament (through the Public Accounts Committee) and Comptroller and Auditor General of an evolving set of conventions.<sup>62</sup> Amendments have been made to the guidance to reflect learning, for instance the insertion in 2011 of the requirement for accounting officers to consider the real-world feasibility of a proposed course of action after extra costs were incurred as a result of delaying defence procurements because the Ministry of Defence had overcommitted its budget.<sup>63</sup>

56 Cabinet Manual, p iv

57 See House of Lords, Twelfth Report of the Select Committee on the Constitution, Session 2010–11 “[The Cabinet Manual](#)” HL 107, 7 March 2011; and House of Commons, Political and Constitutional Reform Committee, Sixth Report of Session 2010–12, “[Constitutional Implications of the Cabinet Manual](#)”, HC 734, 29 March 2011.

58 *ibid*

59 Cabinet Manual, p iii

60 SGD 03 & 04

61 SGD 03 para 9

62 See for example the “PAC Concordat” of 1932 that sets out the requirement that departments have specific legislative approval for spending, Josh Harris “Following the Pound” p 10

63 NAO “Accountability for Taxpayers Money” para 1.19

43. **There is no case for the rules on collective decision-making in the Cabinet Manual being placed on a statutory footing. The system and guidance on accounting officer directions is established without any statutory basis and is accepted by both the Government and Parliament. It allows for amendments to be made easily to reflect learning or wider evolutions in policy making. It is also right that Ministers, and ultimately the Prime Minister, should be accountable to Parliament and not the Courts for their political decisions. If a future Prime Minister decided to abuse his or her discretion it would be open to Parliament to hold them to account, or to put statutory safeguards in place.**

44. Both the Constitution Society and the BGI highlighted that the Cabinet Manual has not been revised since its original publication in 2011. This is despite Gus O'Donnell's preface that warned that the set of conventions, laws, and policies the Manual described were "not static" and therefore it would "need to be updated periodically".<sup>64</sup> The current edition contains references to coalition Government and the devolution settlements that are now out of date.<sup>65</sup> Several sections will soon need major revisions to reflect the UK's exit from the European Union.<sup>66</sup>

45. The UK Government's Cabinet Manual is expressly modelled on the New Zealand example.<sup>67</sup> This has been regularly updated since it was first collated in 1979 and published publicly in 1996, with the latest edition published in June 2017.<sup>68</sup> Updates required to the Manual between formal editions are now made to the online version.<sup>69</sup>

46. As the BGI point out, the New Zealand Cabinet Manual contains a clear list of matters that should and should not be brought to Cabinet or its Committees.<sup>70</sup> The UK Cabinet Manual, however, states that "no definitive criteria can be given for issues that engage collective responsibility", although a number of issues, for example decisions to engage in military action or decisions that affect the whole of the Government that would normally be brought to Cabinet are then listed.<sup>71</sup> The current edition of the Ministerial Code, published in 2018, sets the high-level tests for matters that should be brought to a Cabinet Committee (and then if they cannot be decided, Cabinet) as:

- a) questions which significantly engage the collective responsibility of the Government because they raise major issues of policy or because they are of critical importance to the public;
- b) questions on which there is an unresolved argument between departments.<sup>72</sup>

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64 Cabinet Manual, p vi

65 See, for example, *ibid* paras 4.17 and 8.9–12

66 *ibid* Ch 9

67 *ibid* p vi. Department of the Prime Minister and Cabinet, "[Cabinet Manual: The authoritative guide to central government decision making for Ministers, their offices, and those working within government](#)" New Zealand Government, June 2017

68 Grant Duncan "New Zealand's Cabinet Manual: How Does it Shape Constitutional Conventions?" *Parliamentary Affairs* vol 68 (2015) pp 737–756

69 Department of the Prime Minister and Cabinet "[Cabinet Manual: Publishing Information](#)" accessed 24/04/2018

70 SGD 02, New Zealand Cabinet Manual, paras 5.12 and 5.13

71 UK Cabinet Manual, para 4.17

72 Ministerial Code, para 2.2

47. The Ministerial Code reserves the right of the Prime Minister to decide what matters should be brought to Cabinet or one of its committees.<sup>73</sup> The current Cabinet Manual reflects an earlier version of the Ministerial Code, including the need to refer matters touching on the Coalition Agreement of 2010.<sup>74</sup>

48. The Constitution Society also highlighted that the guidance that the UK Cabinet Secretary might draw on in providing advice to a Prime Minister on Cabinet procedure is spread across a number of documents, not just the Cabinet Manual, such as the Civil Service Code and the Code of Conduct for Special Advisers.<sup>75</sup> However, in the analogous case of accounting officers, although the system rests on the principles set out in *Managing Public Money* the Treasury publish a number of more detailed guides for accounting officers on matters of detail.<sup>76</sup>

**49. The Cabinet Manual has not been updated since its original publication in 2011. It is clear some sections are out of date and further changes will be required to reflect the UK's withdrawal from the European Union and other developments since 2011.**

**50. The Ministerial Code is too vague, especially if the Cabinet Secretary is to be held to account for failing to insist on his advice on proper process. Ultimately no set of criteria would be exhaustive, but, as the New Zealand example shows, it is possible to summarise a list of matters that would normally be subject to collective agreement**

***51. We therefore recommend that the Government reviews and updates the Cabinet Manual. This should include expanding on the principles of what requires collective agreement, so it is clear how Parliament can hold the Cabinet Secretary for his or her advice on their application. Where substantive amendments are proposed, there should be prior consultation with Parliament and the public.***

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73 *ibid* para 2.4

74 UK Cabinet Manual, para 4.17

75 SGD 05

76 See for example HM Treasury, "[Regularity, Propriety and Value for Money](#)" November 2004

## Conclusions and recommendations

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### The risks of not using proper processes

1. A proper process does not prevent poor decision making, but it makes it less likely. The Prime Minister and Cabinet have recognised this through the rules and procedures set out in the Ministerial Code and the Cabinet Manual for the operation of the Cabinet and Cabinet Committee system. (Paragraph 16)
2. The Chilcot Report demonstrates the strong public interest in ensuring that decisions that directly affect the lives of thousands of people are taken after proper consideration, involving all interested departments, and based on the best available evidence. (Paragraph 17)

### The role of the Cabinet Secretary

3. The Government is right that it is for Ministers to account to Parliament for their decisions about matters of policy. However, our Predecessor Committee's recommendation was about process, not policy: that the Cabinet Secretary should have recourse to ask for a formal written direction if Ministers were departing from the accepted process for collective decision making set out in the Cabinet Manual. The Government is clear that the Cabinet Secretary is responsible for making sure that Cabinet Government is working properly. It has not presented any argument that suggests how this responsibility is not similar to the personal responsibility of accounting officers in respect to public money. No Cabinet Secretary, as the current post holder described it, should be left with the stark choice: either obey or resign (Paragraph 33)
4. This responsibility for ensuring proper process is equivalent to the role of accounting officer. Permanent Secretaries are ultimately accountable to their individual Secretary of State for the running of their Department, and personally to Parliament for the money voted to their individual department or agency. Making collective decision-making part of the accounting officer role would be a fundamental change in the role of Permanent Secretary. Currently the Government is clear that personal accountability for the proper operation of the Cabinet falls on the person who is the Cabinet Secretary. Therefore, any power to ask for a direction should be for the Cabinet Secretary, whether or not he or she is formally an accounting officer. As with accounting officer directions we would expect such a power to be rarely used in practice. (Paragraph 34)
5. It would remain open to the Prime Minister, if she or he thought the current processes were not effective, to amend the Cabinet Manual and the Ministerial Code. However, they would need to do so in a transparent manner, and account to Parliament for why the changes were necessary. (Paragraph 35)

6. *We reiterate our predecessor Committee's conclusion that new safeguards for proper process on decision-making are required. The time to implement these is now, when it appears that proper process is being respected, not after another failure such as that described in the Chilcot Report. There should be a mechanism for written Prime Ministerial direction, similar to that open to accounting officers, reflecting the responsibility of the Cabinet Secretary to ensure that proper procedure is followed as set out in the Cabinet Manual. If the Cabinet Secretary asks for such a direction, it should be at his or her discretion whether this direction should be made immediately known to Parliament, or, in matters relating to national security, notified to nominated independent Privy Counsellors and released to Parliament later. Such a mechanism would dispel any doubt about the Cabinet Secretary's duty to ensure proper decision making. Furthermore, it would make clear to Ministers the importance the Prime Minister and Cabinet place on following proper procedure, and of taking proper advice on matters of procedure. (Paragraph 36)*
7. *Parliament would hold a Cabinet Secretary to account for a failure to use this power in the event of a breakdown in Cabinet Government of the sort described by the Chilcot Report. (Paragraph 37)*

### The status of the Cabinet Manual

8. There is no case for the rules on collective decision-making in the Cabinet Manual being placed on a statutory footing. The system and guidance on accounting officer directions is established without any statutory basis and is accepted by both the Government and Parliament. It allows for amendments to be made easily to reflect learning or wider evolutions in policy making. It is also right that Ministers, and ultimately the Prime Minister, should be accountable to Parliament and not the Courts for their political decisions. If a future Prime Minister decided to abuse his or her discretion it would be open to Parliament to hold them to account, or to put statutory safeguards in place. (Paragraph 43)
9. The Cabinet Manual has not been updated since its original publication in 2011. It is clear some sections are out of date and further changes will be required to reflect the UK's withdrawal from the European Union and other developments since 2011. (Paragraph 49)
10. The Ministerial Code is too vague, especially if the Cabinet Secretary is to be held to account for failing to insist on his advice on proper process. Ultimately no set of criteria would be exhaustive, but, as the New Zealand example shows, it is possible to summarise a list of matters that would normally be subject to collective agreement (Paragraph 50)
11. *We therefore recommend that the Government reviews and updates the Cabinet Manual. This should include expanding on the principles of what requires collective agreement, so it is clear how Parliament can hold the Cabinet Secretary for his or her advice on their application. Where substantive amendments are proposed, there should be prior consultation with Parliament and the public. (Paragraph 51)*

## Formal minutes

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**Tuesday 22 May 2018**

Members present:

Mr Bernard Jenkin, in the Chair

Ronnie Cowan

Dr Rupa Huq

Mr Marcus Fysh

Mr David Jones

Kelvin Hopkins

Draft Report (*Ensuring Proper Process for Key Government Decisions: Lessons Still to be Learned from the Chilcot Inquiry*), proposed by the Chair, brought up, and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 51 read and agreed to.

*Resolved*, That the Report be the Fourth Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned until 4 June 2018 at 09.30am

## Published written evidence

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The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

SGD numbers are generated by the evidence processing system and so may not be complete.

- 1 Better Government Initiative ([SGD0002](#))
- 2 Iraq War Families Campaign Group ([SGD0004](#))
- 3 The Constitution Society ([SGD0005](#))

## List of Reports from the Committee during the current Parliament

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All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

### Session 2017–19

First Report	Devolution and Exiting the EU and Clause 11 of the European Union (Withdrawal) Bill: Issues for Consideration	HC 484
Second Report	Parliamentary Boundary Reviews: What Next?	HC 559 (HC 1072)
Third Report	PHSO Annual Scrutiny 2016–17	HC 492
First Special Report	Will the NHS never learn? Follow-up to PHSO report 'Learning from Mistakes' on the NHS in England: Government Response to the Committee's Seventh Report of Session 2016–17	HC 441
Second Special Report	The Future of the Union, part two: Inter-institutional relations in the UK: Government Response to the Sixth Report from the Committee, Session 2016–17	HC 442
Third Special Report	Lessons still to be learned from the Chilcot inquiry: Government Response to the Committee's Tenth Report of Session 2016–17	HC 708
Fourth Special Report	Government Response to the Committee's Thirteenth Report of Session 2016–7: Managing Ministers' and officials' conflicts of interest: time for clearer values, principles and action	HC 731
Fifth Special Report	Parliamentary Boundary Reviews: What Next?: Government Response to the Committee's Second Report	HC 1072