What is the UK constitution made of? Exposing the ‘hidden wiring’

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Late last year, the Cabinet Office published in draft form a document called the Cabinet Manual. Subtitled ‘A guide to laws, conventions, and rules on the operation of government’, it was initially intended by Gordon Brown, when instigating it as Prime Minister, as a possible first step towards a written constitution for the UK. This plan has subsequently been dropped, but the manual has survived. ***Andrew Blick*** *discusses what has become the most comprehensive statement of Britain’s constitution hitherto published.*

In a pamphlet co-authored by Peter Hennessy and myself, published this week by the Institute for Public Policy Research, we analyse the significance and content of this document, and come to the conclusion that it is the fullest publicly available, official statement of the UK constitution ever to have been produced, but it should not be confused with a full codified constitution.

One notable feature of the arrangements described in the manual is the diverse sources of authority upon which they draw, which can be divided into two broad groupings: law and convention.

The law with which the manual is concerned falls into various different categories: statute law, such as acts of Parliament providing for devolution; common law, such as the Carltona principle (under which junior ministers and officials may exercise the powers of ministers at the head of their department); and international law, such as UK participation in supranational organisations as provided for by treaties.

Some of the legal authority the manual outlines is exercised under the Royal Prerogative, such as the power to appoint the Prime Minister, theoretically still a personal prerogative of the Monarch, and the power to appoint ministers, in practice exercised on the advice of the Prime Minister.

Conventions – broadly defined as non-legal understandings, excluding parliamentary rules – covered in the manual are mainly concerned with the domestic operation of the UK system of governance (such as the functioning of Cabinet) but also include some which work internationally, that is, informal arrangements not covered by treaties (such as the G8 and G20 groups).

A further, more anomalous category is that of parliamentary rules (which, for instance, provide a basis for the select

committees referred to in the manual) – these may not be classifiable as ‘law’ but perhaps should be seen as something firmer than convention.

Based on this assessment, it is clear that convention is the largest of the manual’s different categories of content. An initial calculation suggests that, of the 409 paragraphs in the main text of the manual, around 60 per cent refer to conventions of some kind.

Around 20 per cent refer specifically to statute law of some kind. (There is some overlap, with certain paragraphs dealing with both statute and convention, as there is between a number of the various categories considered here.)

Of the remainder, paragraphs deal with (all figures approximate):

- International law – 10 per cent;
- Matters regulated using the royal prerogative – seven per cent;
- Common law – five per cent;
- Rules with a basis in statute (three per cent), such as those contained in the Civil Service Code (with a basis in the Constitutional Reform and Governance Act 2010);
- Parliamentary rules, such as Commons standing orders (one per cent);
- International conventions (one per cent).

These figures are very much provisional, and there are difficulties in identifying precisely the type of authority the manual is referring to in each case. And how one authority in particular, parliamentary sovereignty, should be categorised, is a subject of controversy. For the purposes of this calculation, it has been treated as common law.

What does this delineation of the contents of the manual tell us about the way our system of democratic governance operates?

First, that, within our unwritten constitution, there are myriad sources of authority, rather than the basic source of a constitutional text that might exist in other countries.

Second, that there is no consensus about what is the source of perhaps the most important doctrine to the UK constitution, parliamentary sovereignty.

Third, that despite a period since the 1997 in which the UK constitution has been placed increasingly on a statutory basis, a crucial role is still played by conventions – understandings which are not only difficult to define, but have no direct legal basis and are impossible to enforce.

It could therefore be said that the manual has helped clarify the UK constitution by confirming just how nebulous it is.

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