



House of Commons

Political and Constitutional Reform Committee

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# Role and powers of the Prime Minister

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## Written Evidence

*Only those submissions written specifically for the Committee and accepted by the Committee as evidence for the inquiry Role and powers of the Prime Minister are included.*

*Ordered to be published 3, 10, 31 March, 28 April, 12 May, 9 June and 7 July 2011*

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**Written evidence submitted by Paul Webb, Professor of Politics, University of Sussex**

This submission comes in response to an invitation from the Committee. Specifically, I wish to address the final question set out in the document *Issues and Questions: Prime Minister, Prerogative and Power*.<sup>1</sup>

**Should the Prime Minister be directly elected by the British people?**

I would answer 'emphatically not'.

First, it is hard to see what problem of the British political system such a reform might be intended to rectify: a prominent recent example of just such a reform is provided by Israel, where the dual intention was to enhance the power of the Prime Minister within the executive and to reduce the number of parties represented in the Knesset. Neither objective was achieved, in fact, as I shall shortly explain, but in any case it is hard to imagine that any serious analysis of the British case would currently perceive the need for a stronger British Prime Minister or for fewer parties in the House of Commons. To the contrary, it is common for critics to argue the precise opposite of these things – that the Prime Minister is too easily able to dominate the Cabinet, or that the workings of the electoral system prevent greater parliamentary representation for minor parties. So why should the Prime Minister be directly elected by the people?

Perhaps a directly elected Prime Minister would be somehow more easily held to account by the people? In principle, a directly elected head of the executive might appear to be more accountable in the sense that he or she could be removed from office by popular vote. However, although it is formally true that under the present arrangement the executive and Prime Minister are only indirectly accountable via elections to the House of Commons, few would deny that this mechanism already provides a high degree of *de facto* accountability. Indeed, it is an often claimed virtue of First Past The Post that it enables voters to 'throw the rascals out' if they are dissatisfied with an incumbent government and Prime Minister. There is in fact a significant body of evidence to suggest that one of the considerations that voters have uppermost in mind when visiting the polling station is the relative attraction of rival party leaders: who would make the best Prime Minister? This is in part a cause and in part a consequence of election campaigns that focus a great deal of attention on these individual politicians. Parties generally place their leaders front and centre of their campaigns, the media focus relentlessly on the leaders, and the advent of televised leaders' debates only serves to further entrench this tendency. It is small wonder then that voters often think in terms of who would make the best Prime Minister.<sup>2</sup> Given that this is the reality of the situation, it surely has to be conceded that incumbent premiers are obliged to consider each general election a popular referendum on their own performance in government.

To repeat, it is therefore hard to see what rationale there could be for the introduction of a directly

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<sup>1</sup> <http://www.parliament.uk/business/committees/committees-a-z/commons-select/political-and-constitutional-reform-committee/news/pm-powers-inquiry/discussion-paper-pm-powers/>.

<sup>2</sup> H. Clarke, D. Sanders, M. Stewart & P. Whiteley (2004) *Political Choice in Britain* (Oxford University Press); Foley, M (2000) *The Rise of the British Presidency* (Manchester: Manchester University Press); Kavanagh, D (1995) *Election Campaigning: The New Marketing of Politics* (Oxford: Basil Blackwell); Mughan, A (2000) *The Presidentialization of Elections in Britain* (Basingstoke: Palgrave); Graetz, B & McAllister, I (1987) 'Party leaders and election outcomes in Britain, 1974-1983' *Comparative Political Studies*; Rosenbaum, M (1997) *From Soapbox to Soundbite: Party Political Campaigning in Britain Since 1945* (Basingstoke: Macmillan).

elected prime minister in the UK. In practical terms, it is unlikely to enhance the accountability of the head of the executive, and there is no great clamour for a yet stronger Prime Minister or a less fragmented party system in the House of Commons. However, lest there should be any doubt about the potential consequences of such an innovation in this country, we should learn the lessons of the Israeli experience. A law passed by the Knesset in 1992 introduced direct elections for the Prime Minister and three such elections actually took place (in 1996, 1999 and 2001 when Benjamin Netanyahu, Ehud Barak and Ariel Sharon were the respective victors.) After the last of these contests, the law was repealed. Why? Because, against all prior expectations, the reform only served to *decrease* the power of the Prime Minister and *increase* the fragmentation of the party system in the legislature, thereby rendering the country less governable than hitherto.

### **The direct election of the Prime Minister in Israel, 1996-2001.<sup>3</sup>**

Under parliamentarism, the executive emerges from and is responsible to the legislature – a fusion of powers – whereas under presidentialism, there is a separation of executive origin and survival from the legislature. With the direct election of the Israeli Prime Minister in 1996, however, the head of the executive no longer emerged from the legislature but was separately elected. Israel thus no longer belonged to the parliamentary regimes category, yet neither did it fully cross into the presidential category, because while the Prime Minister was elected separately, he continued to be responsible to the Knesset; the Prime Minister could still be removed from office by a simple majority vote in the legislature. This generated a situation in which Israel had none of the advantages of either system; the executive lacked autonomy from the legislature as under a presidential separation of powers, but without enjoying the support of a disciplined parliamentary following that generally typifies parliamentarism.

For the record, Israel was not even a ‘semi-presidential’ system like the French Fifth Republic. Semi-presidentialism,<sup>4</sup> is a regime in which a directly elected president coexists with a government headed by a premier who rests on parliamentary confidence. Under this dual executive system, when the directly elected President has the support of the legislature, power rests in the hands of the President. However, when the President is faced with a hostile legislative majority, the Prime Minister can take control of the reins of power.

This flexible and intermediate type of regime was not exactly the case in Israel, though. When the legislative and executive majorities coincided – the results of the 1996 and 1999 elections – Israel’s political system functioned much like the French system does when the President has a supportive legislature. But, when the legislative and executive majorities did not coincide, there was no parliamentary-supported premier in Israel to lead a government backed by the legislature. In Israel, it was the directly elected Prime Minister himself who headed the government and rested on parliamentary confidence. So in this case, the Israeli Prime Minister, and the entire executive branch, found themselves confronting a hostile legislature, akin to the situation of divided majorities in a

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3 Much of what follows draws on R. Hazan 'The failure of presidential parliamentarism: Constitutional versus structural presidentialization in Israel's parliamentary democracy' in T. Poguntke & P. Webb (ed's) *The Presidentialization of Politics: A Comparative Study of Modern Democracies* (Oxford University Press, 2005).

4 Duverger, Maurice (1980). 'A New Political System Model: Semi-Presidential Government.' *European Journal of Political Research* 8:2.

presidential regime - with the important difference, however, that presidents cannot be removed from power by a hostile legislature. In the event, when the directly elected Prime Ministers saw their legislative majorities collapse, their response was not to continue governing in a presidential manner – by, for example, building ad hoc legislative coalitions on particular issues – but either to support early elections for both Prime Minister and Parliament (as Netanyahu did in 1998) or to resign and hold new elections for only the Prime Minister (as Barak did in 2000).

In addition, there were a number of unanticipated negative effects of the directly elected premierships in Israel:

- Israeli electors took to split-ticket voting – using their prime ministerial votes to opt for the main candidates from the largest parties, and their legislative votes to 'express' their sympathy for particular causes. This actually served to weaken Labour and Likud in the Knesset and increase the multiparty fragmentation of the legislature. In other words, the electoral reform not only failed to attack the problem for which it was designed, but actually made it worse.
- The implications for governability in light of major party decline and party system fragmentation were clear. Holding together stable coalitions became an even more precarious business than it had been hitherto. The efforts of the government to pass its own legislation, or to thwart the opposition's popular and costly bills, largely failed. The annual budgets, for example, were revised by the coalition members in the Finance Committee – at times with the cooperation of the opposition – to an extent that was previously unknown in Israel.
- One of the results of the increasingly apparent negative consequences of the electoral reform was that public support for the new system deteriorated decisively during the years it was applied. In a 1992 survey, before it was implemented, three out of four Israelis thought the direct election of the Prime Minister would be a better system of government. By the time it was repealed in 2001, only one out of four thought it was a better system of government.

### **What would happen if the UK directly elected its Prime Minister?**

Of course, the UK is not Israel, and while it is important to be aware of what happened in this particular case, we should be careful not to read the experience as a straightforward analog of what might happen if a directly elected premier was introduced here. I would offer the following thoughts and speculations, though.

First, one thing that Britain most probably would emulate Israel in is a degree of split-ticket voting. There is already evidence that voters across the UK are more than capable of distinguishing the way that they use their votes for different offices (eg, voters in Scotland and Wales do not all choose the same parties for devolved and Westminster elections), even when obliged to make those choices simultaneously (eg, when local and Westminster elections are held on the same day). As in Israel, many would probably be tempted to split their tickets, not least in those occasional situations where one major party is less popular than the other, but it nevertheless has the more popular leader. Evidence

suggests this was true in 1970, for instance, when Harold Wilson was personally more popular than Ted Heath – but the Conservatives were the more popular party and won the election. If there had been a directly elected premier, would Wilson have been returned to Number 10, only to be faced with a hostile majority in the Commons? And if, as in Israel, voters were inclined to use their choice of MP as an 'expressive' vote, would it generate more support for minor parties, thereby perhaps increasing the multi-party nature of the Commons and generating a need for more coalition-building? Some might see this as a welcome development, but inevitably many others would regard this as a threat to 'strong' government.

Second, if the UK were to have directly elected Prime Ministers, should it also follow the Israeli example of making the premier accountable to the legislature, or should it introduce presidential-style separation of powers? One obvious problem with the Israeli model whereby parliament can remove the premier is that this undermines the direct line of accountability which flows from Prime Minister to the electorate. If the head of the executive is directly elected by the people, who but the people should have the right to remove him or her? In terms of democratic theory, it is surely logical and desirable either to have a directly elected Prime Minister who can only be brought down by a direct vote of the people, or to retain the current situation: the people elect the legislature; the executive emerges from the legislature; the executive is therefore answerable to the legislature and can legitimately be removed from office by it. A directly elected premier who can be voted down by the legislature only muddies the waters from the point of view of clear democratic accountability, however.

To this extent, then, presidential-style separation of powers seems preferable. However, while the Prime Minister would be secure in office until the next election under such a system, we should not assume that this would necessarily make him or her more politically dominant or enhance the governability of the country. A Prime Minister could find himself in a position akin to that of the US President under 'divided government' – ie, when confronted by a Congress in which his political opponents are in the majority. In general terms, the separation of powers tends to expand the independence, not the compliance, of the legislature.<sup>5</sup> When backbench parliamentarians do not feel fear to bring down the executive by voting against their leader's wishes, they are more likely to feel free to rebel. While some might regard such a development as healthy for democracy, it should be remembered that there is a price to be paid; governments can find it harder to pilot their legislative programmes through Parliament, a situation which may lead to allegations of ungovernability and 'gridlock'. In the long run, voters are unlikely to be impressed by such developments. Therefore, while the expectation is that a directly elected premier under 'divided government' should seek to build legislative coalitions on an issue-by-issue basis, as the US President does, it would probably be advisable to furnish the head of the executive with the right to dissolve Parliament and call fresh elections, in order to avoid the risk of political immobilism.

## Conclusion

To summarise, there is little in the current situation at Westminster which suggests the need for a directly elected prime minister, and nothing in the empirical experience of the one country that has attempted such a reform in recent times to commend it. If introduced, it would probably weaken the position of the head of the executive, and generate a greater prospect of coalitional or even minority governments. Neither of these scenarios is necessarily disastrous – they are far from uncommon across

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<sup>5</sup> Laver, Michael and Kenneth A. Shepsle (1994). *Cabinet Ministers and Parliamentary Government* (Cambridge University Press).

Europe – but they would constitute a significant shift in the way that politics has been conducted at Westminster, and may not be to the taste of the electorate. If directly elected Prime Ministers were to be introduced, I would recommend combining this with separation of powers and the continuing right of the premier to dissolve Parliament. Overall, however, I cannot see a compelling case for changing from the present more orthodox form of parliamentary government that the UK operates with.

*18 February 2011*



**Written evidence submitted by Professor the Lord Hennessy of Nympsfield, FBA**

Professor the Lord Hennessy of Nympsfield, FBA, Attlee Professor of Contemporary History, School of History, Queen Mary, University of London.

When preparing my study of *The Prime Minister: The Office and Its Holders since 1945*, I used a Cabinet Office paper on 'Function of the Prime Minister and his Staff' prepared in 1947. (It can be found at The National Archives in CAB 21/1638). As far as I could discover this analysis was not shown to Clement Attlee or any of his successors and that the exercise had never been replicated.

In 1995 I attempted to update it. And, for the purposes of your inquiry into the premiership, I have had another stab. So, as an offering to your examination, here are my cartographies of the British prime ministers' functions as Head of Government (they do not include party leader responsibilities).

*21 February 2011*

Prime Minister's functions 1947

- 1: Managing the relationship between the Monarch and the government as a whole.
- 2: Hiring and firing ministers.
3. Chairing the Cabinet and its most important committees.
4. Arranging other 'Cabinet business', i.e., the chairmanships of other committees, their memberships and agendas.
5. Overall control of the Civil Service as First Lord of the Treasury.
6. The allocation of functions between departments; their creation and abolition.
7. Relationships with other heads of government.
8. An especially close involvement in foreign policy and defence matters.
9. Top Civil Service appointments.
10. Top appointments to many institutions of 'a national character'.
11. 'Certain scholastical and ecclesiastical appointments.'
12. The handling of 'precedent and procedure'.

## Prime Minister's functions 1995

### **Constitutional and procedural**

- 1: Managing the relationship between government and the Monarch.
- 2: Managing the relationship between government and Opposition on a Privy Counsellor basis.
- 3: Establishing the order of precedence in Cabinet.
- 4: The establishment and interpretation of procedural guidelines for both ministers and civil servants.
- 5: Oversight of changes to Civil Service recruitment practices.
- 6: Classification levels and secrecy procedures for official information.
- 7: Requesting the Sovereign to grant a dissolution of Parliament.

### **Appointments**

(Made in the name of the Sovereign but chosen by the Prime Minister).

- 1: Appointment and dismissal of ministers (final approval of their parliamentary private secretaries and special advisers).
- 2: Headships of the intelligence and security services.
- 3: Top appointments to the Home Civil Service and in collaboration with the Foreign Secretary to the Diplomatic Service and in collaboration with the Defence Secretary to the Armed Forces.
- 4: Senior appointments to the armed forces.
- 5: Top ecclesiastical appointments plus regius professorships and the Mastership of Trinity College, Cambridge.
- 6: Top public sector appointments and appointments to royal commissions.
- 7: Award of peerages and honours (except for those in the gift of the Sovereign).

### **Conduct of cabinet and parliamentary business**

- 1: Calling meetings of Cabinet and its committees. Fixing their agenda.
- 2: The calling of 'Political Cabinets' with no officials present.
- 3: Deciding issues where Cabinet or Cabinet committees are unable to agree.
- 4: Granting ministers permission to miss Cabinet meetings or to leave the country.

5: Ultimate responsibility with the Leaders of the Houses for the government's legislative programme and the use of government time in Parliament.

6: Answering questions twice a week in the House of Commons on nearly the whole range of government activities.

### **Organisational and efficiency questions**

1: Organisation and senior staffing of No. 10 and the Cabinet Office.

2: Size of the Cabinet; workload on ministers and the Civil Service; the overall efficiency of government.

3: The overall efficiency of the secret services; their operations and their oversight.

4: The creation, abolition and merger of government departments and executive agencies.

5: Preparation of the 'War Book'.

6: Contingency planning on the civil side with the Home Secretary eg. for industrial action that threatens essential services or for counter-terrorism.

7: Overall efficiency of the government's media strategy.

### **Budgets and market-sensitive decisions**

1: Determining, with the Chancellor of the Exchequer, the detailed contents of the Budget. By tradition, the full Cabinet is only apprised of the full contents of the Budget Statement the morning before it is delivered.

2: Determining which ministers (in addition to the Chancellor) will be involved and in which fora in the taking of especially market-sensitive economic decisions such as the level of interest rates.

### **Special foreign and defence functions**

1: Relationships with heads of government (eg. the nuclear and intelligence aspects of the US-UK 'special relationship').

2: Representing the UK at 'summits' of all kinds.

3: With the Defence Secretary the use of the royal prerogative to deploy Her Majesty's armed forces in action.

4: With the Foreign Secretary the use of the royal prerogative to sign or annul treaties, recognise or derecognise countries.

5: The launching of a UK nuclear strike (with elaborate and highly secret fallback arrangements in case

the Prime Minister and Cabinet are wiped out by a bolt-from-the-blue pre-emptive strike).

## Prime Minister's functions 2011

### **Constitutional and procedural**

- 1: Managing the relationship between the Government and the Monarch and the Heir to the Throne.
- 2: Managing the relationship between the Government and the Opposition on a Privy Counsellor basis.
- 3: Managing the relationships between UK Central Government and devolved administrations in Scotland, Wales and Northern Ireland.
- 4: Establishing order of precedence in Cabinet.
- 5: Interpretation and content of procedural and conduct guidelines for ministers as outlined in the *Ministerial Code* and the draft *Cabinet Manual*.
- 6: Oversight, with the Cabinet Secretary advising, of the *Civil Service Code* as enshrined in the Constitutional Reform and Governance Act 2010.
- 7: Decisions, with the Justice Secretary, on whether and when to use the ministerial override on disclosure under the Freedom of Information Act 2000.
- 8: Requesting the Sovereign to grant a dissolution of Parliament (unless and until Parliament passes the Fixed-Term Parliament Bill.)
- 9: Authorising the Cabinet Secretary to facilitate negotiations between the political parties in the event of a 'hung' General Election result.
- 10: Managing intra-Coalition relationships with the Deputy Prime Minister.

### **Appointments**

(Made in the name of the Sovereign but chosen by the Prime Minister).

- 1: Appointment and dismissal of ministers (final approval of their parliamentary private secretaries and special advisers) in consultation with the Deputy Prime Minister for Liberal Democrat appointments and the appointment of the Law Officers.
- 2: Top appointments to the headships of the Security Service, the Secret Intelligence Service and the Government Communications Headquarters.
- 3: Top appointments to the Home Civil Service; and, in collaboration with the Foreign Secretary to the Diplomatic Service; and, with the Defence Secretary, to the Armed Forces.
- 4: Top ecclesiastical appointments (though since Gordon Brown's premierships, the Prime Minister has conveyed the preference of the Church of England's selectors to the Monarch without interference).
- 5: Residual academic appointments: the Mastership of Trinity College, Cambridge; the Principalship of

King's College, London; a small number of regius professorships in Oxford and Cambridge (the First Minister in Edinburgh is responsible for the Scottish regius chairs). Since the Blair premiership the No 10 practice has been to convey the wishes of the institutions to the Queen without interference.

6: Top public sector appointments and regulators (with some informal parliamentary oversight).

7: Appointments to committees of inquiry and royal commissions.

8: The award of party political honours.

9: Party political appointments to the House of Lords (independent crossbench peers are selected by the House of Lords Appointments Commission and the Prime Minister conveys the recommendations to the Monarch without interference).

### **Conduct of cabinet and parliamentary business**

1: Calling meetings of Cabinet and its committees. Fixing their agenda and, in the case of committees their membership in consultation with the Deputy Prime Minister.

2: The calling of 'Political Cabinets' with no officials present.

3: Deciding issues where Cabinet or Cabinet committees are unable to agree.

4: Deciding, with the Deputy Prime Minister, when the Cabinet is allowed an 'opt out' on collective responsibility and subsequent whipping arrangements in Parliament.

5: Granting ministers permission to miss Cabinet meetings or leave the country.

6: Ultimate responsibility (with the Deputy Prime Minister and the leaders of the House of Commons and the House of Lords) for the government's legislative programme and the use of government time in the chambers of both Houses.

7: Answering questions for 30 minutes on Wednesdays when the House of Commons is sitting on nearly the whole range of government activity.

8: Appearing twice a year to give evidence before the House of Commons Liaison Committee.

### **Policy strategy and communications**

1: Keeper, with the Deputy Prime Minister, of the Coalition's overall Political Strategy.

2: Oversight of No 10 Communications Strategy and work of the Government Communication Network.

3: Pursuit and promulgation of special overarching policies particularly associated with the Prime Minister eg. the 'Big Society.'

### **Organisational and efficiency questions**

1: Organisation and Staffing of No 10 and the Cabinet Office (including the Prime Minister's relationship with the Deputy Prime Minister and the two senior Cabinet Office ministers dealing with policy strategy and public service reform).

2: Size of Cabinet, workload on ministers and the Civil Service.

3: The creation and merger of government departments and executive agencies.

### **Budget and market-sensitive decisions**

1: Determining with the Chancellor of the Exchequer, the Deputy Prime Minister and the Chief Secretary of the Treasury the detailed contents of the Budget. By tradition, the full Cabinet is only apprised of the full contents the morning before the Budget statement is delivered.

2: Interest rates are now set by the Monetary Policy Committee of the Bank of England. The Prime Minister and the Chancellor of the Exchequer possess an override under the Bank of England Act 1998 if the 'public interest' requires and 'by extreme economic circumstances' but this has never been used.

### **National security**

1: Chairing the weekly meetings of the National Security Council (which also serves, when needed, as a 'War Cabinet').

2: Oversight of the production and implementation of the National Security Strategy.

3: Oversight of counter-terrorist policies and arrangements.

4: Overall efficiency of the secret agencies, their operations, budgets and oversight and the intelligence assessments process in the Cabinet Office.

5: Preparation of the 'War Book'.

6: Contingency planning to cope with threats to essential services and national health from whatever sources.

7: With the Foreign and Defence Secretaries the use of the royal prerogative to deploy Her Majesty's Forces in action (with Parliament, by convention, being consulted if time allows).

8: With the Foreign Secretary the use of the royal prerogative to ratify or annul treaties, to recognise or derecognise countries (though in certain circumstances, the House of Commons can block treaty ratification under the Constitutional Reform and Governance Act 2010).

### **Special personal responsibilities**

1: Representing the UK at a range of international meetings and 'summits.'

2: The maintenance of the special intelligence and nuclear relationships with the US President under the terms of the 1946 Communications Agreement, the 1958 Agreement for Co-operation on the Uses



of Atomic Energy for Mutual Defence Purposes and the 1963 Polaris Sales Agreement.

3: The decision to shoot down a hijacked aircraft or an unidentified civil aircraft which responds neither to radio contact nor the signals of RAF interceptor jets, before it reaches a conurbation or a key target on UK territory (plus the appointment of two or three deputies for this purpose).

4: Authorisation of the use of UK nuclear weapons including the preparation of four 'last resort' letters for installation in the inner safes of each Royal Navy Trident submarine and the appointment, on a personal basis rather than the Cabinet's order of precedence, of the 'nuclear deputies' lest the Prime Minister should be out of reach or indisposed during an emergency.

**Written evidence submitted by Emeritus Professor George Jones, London School of Economics and Political Science**

**Q1. Is there sufficient clarity as to the Prime Minister's role and powers?**

1. The primary role of the Prime Minister is to exercise public leadership. But the nature of this role and the powers associated with it have always been characterised by amorphous informality. The book by Andrew Blick and George Jones, *Premiership: the development, nature and power of the office of the British Prime Minister* (Academic Imprint: Exeter, 2010) showed that, although the office of Prime Minister began developing in the early eighteenth century, there was only a gradual process of recognition of the post and institution of the premiership:

- *The Times* began regularly referring to this specific title in the early nineteenth century [Blick & Jones, pp.111-112];
- The list of ministers printed in Hansard began using the title 'Prime Minister' in 1885 [B&J, p.113];
- In the minutes for the first meeting of the Committee of Imperial Defence in 1902, the 'Prime Minister' was referred to as being present [B&J, p.113];
- The *Imperial Calendar* (the predecessor to the *Civil Service Yearbook*) referred to the 'Prime Minister' for the first time in its 1904 edition [B&J, p. 114];
- The Prime Minister was given a position in the order of precedence in 1905 [B&J, p.114];
- The first mention of the Prime Minister in statute came with the *Chequers Estate Act 1917* [B&J, p.114];
- Reference to an explicitly labelled 'Prime Minister's Office' in the *Civil Service Yearbook* did not take place until the appearance of the 1977 edition [B&J, pp.114-115].

2. At present much of the prime-ministerial role, including being the most senior adviser to the monarch and chair of the Cabinet, remains defined in convention and is often exercised under the Royal Prerogative. While some of the powers of the office – mainly about public appointments – exist under statute, the premiership has a slimmer statutory existence than many other offices of state. As of 2010, there were 92 pieces of primary legislation and 422 of secondary legislation referring specifically to the 'Prime Minister' (there are other references to the 'First Lord of the Treasury' and the 'Minister for the Civil Service'). By contrast, the respective totals for the Secretary of State for Health were 662 and 7,205; and for the Business Secretary 577 and 2,221 [B&J, pp.116-117].

3. While detailed codification of the role of the Prime Minister has been slow and remains incomplete, there is a well-established, long-standing general principle that the Prime Minister does not primarily perform his or her public-leadership role by direct involvement in specific policy portfolios, but operates through facilitating collective decision-making by senior ministers as the chair of Cabinet.

4. This principle is given satisfactory expression in the draft *Cabinet Manual*, an excerpt from which follows:

*Principles of collective Cabinet government*

*133. Cabinet is the ultimate decision-making body of government. The purpose of Cabinet and its committees is to provide a framework for ministers to consider and make collective decisions on policy issues.*

*134. The Cabinet system of government is based on the principle of collective responsibility. All government ministers are bound by the collective decisions of Cabinet, save where it is explicitly set aside, and carry joint responsibility for all the Government's policies and decisions.*

*135. In practice, this means that a decision of Cabinet or one of its committees is binding on all members of the Government, regardless of whether they were present when the decision was taken or their personal views. Before a decision is made, ministers are given the opportunity to debate the issue, with a view to reaching an agreed position. It is for the Prime Minister, as Chair of Cabinet, or the relevant Cabinet committee chair to summarise what the collective decision is, and this is recorded in the minutes by the Cabinet Secretariat.*

5. Yet if these principles are to work in practice, they require both commitment from those who participate in government, and institutional support which traditionally has been provided by the Cabinet Office. An examination of the Cabinet Office Departmental Business Plan for 2011-15 suggests that both these essential components to Cabinet government may be lacking.

6. 'Support effective cabinet government' is described as only one of a number of 'major responsibilities' of the Cabinet Office; and the section dealing with this particular function makes no reference to Cabinet or collective government, and instead refers to supporting the Prime Minister, Deputy Prime Minister, other Cabinet Office ministers and programmes.

7. A considerable part of the Business Plan is concerned with the pursuit of specific policy agendas by the Prime Minister and Deputy Prime Minister. Much attention is devoted to the Prime Minister's objective of 'helping to build the Big Society', and the Deputy Prime Minister's plans to 'rebalance power and accountability between state, communities and the citizen, and increase civil liberties'.

8. There is a lack of congruence between the role of the Prime Minister and the support provided by the Cabinet Office. Although the primary role of the Prime Minister is to exercise leadership through the facilitation of collective government, support for this role is not provided for by the Cabinet Office, which appears more as a means of providing No.10 with support for specific policy portfolios. This incompatibility is aggravated because many of the activities that No.10 engages in, with the support of the Cabinet Office, involve encroaching on areas for which departmental ministers possess legal responsibility, and for which they are held accountable by Parliament. Such interventions reach beyond Whitehall as well, into the remit of democratically-elected local government, creating further confusion.

**Q1a. Should the Prime Minister's role and powers be codified in statute or otherwise?**

9. One possible means of addressing this lack of congruence would be through codifying the roles of Prime Minister and Cabinet more clearly in a single document that took priority over other documents. For instance, the *Cabinet Manual* could state explicitly that prime ministers exercise their leadership role primarily as chairs of Cabinet, and that normally other ministers are held legally responsible and

accountable to Parliament in most significant policy areas (see below). At present the draft *Cabinet Manual* makes the unsatisfactorily vague statement that (para.77):

*The Prime Minister has few statutory functions but will usually take the lead on significant matters of state.*

With a strengthened statement in the *Cabinet Manual*, institutional arrangements and descriptions of them, such as those in business plans or their future equivalents – would then be required to conform to such statements of principle.

10. How conformity with such a codification of roles could be secured requires further consideration. It does not seem appropriate for the courts to become involved in ruling on such political issues, but there may be some means of securing political accountability through Parliament, by possibly a joint committee of the two Houses. One approach may be to follow my written and oral evidence to your inquiry into the *Prospects for codifying the relationship between central and local government*, where I suggested that a statement of principles about the relationship between central and local government 'should be given a degree of permanency in a statute and protected by a Joint Committee of Parliament'. A statement of principles about the relationship between the Prime Minister and Cabinet could be treated in the same way.

## **Q2. How has the role of the Prime Minister changed in recent years?**

11. The disjuncture described above between the supposed collective nature of government and the unwillingness of those who drafted the terms of reference of the Cabinet Office to provide for its institutional support had already developed under the previous Labour government. It can be seen as the more formal recognition of a tendency for No.10 to commandeer sections of the Cabinet Office to support the Prime Minister's personal policies, a trend that can be traced back further still, with such events as the relocation of the Cabinet Office to a building adjoining Downing Street in 1963, and the merging of the roles of Head of the Home Civil Service and Cabinet Secretary in the early 1980s.

12. The December 1998 Public Service Agreement (PSA) stated that an aim of the Cabinet Office was to help the Prime Minister and ministers collectively in making and implementing decisions, yet in 2000 reference to 'collective decision making' was dropped from the Cabinet Office's terms of reference as included in its PSA. In July 2002, 'Support the Prime Minister in leading the government' was installed as the number-one objective of the Cabinet Office.

13. There followed a slight shift towards more traditional approaches. By 2006 'Supporting the Cabinet' was once again described as a purpose of the Cabinet Office; and 'Supporting the Prime Minister' was listed without the words 'in leading the government' afterwards.

14. The neglect in the Cabinet Office Business Plan of the need to facilitate collective government suggests that the tendency formally to define the Cabinet Office as less an office for the Cabinet and more a vehicle for individual leadership by the Prime Minister has continued.

15. The Business Plan provides further evidence that the office of Prime Minister has moved into a new, third, historical phase. Phase one came from the initial emergence of the role from the early eighteenth century and ran until roughly the mid-nineteenth century. During this period, the Prime

Minister was normally directly responsible for the Treasury and in this sense a departmental minister with a clear policy portfolio.

16. In the second phase, beginning in the mid-nineteenth century, the Prime Minister was normally supported by only a relatively small staff, and played more of a coordinating role, as chair of Cabinet, than a direct policy role.

17. In the third phase that has arguably emerged since around the turn of the twentieth/twenty-first centuries, the Prime Minister has once more assumed more of a departmental, direct policy role, expanding the numbers and scope of staff serving the Prime Minister at No 10 Downing Street and utilising the Cabinet Office to pursue such initiatives as public service ‘delivery’ (under Tony Blair), and the ‘Big Society’ (under David Cameron). But it remains possible that the development of a third phase, though appearing to take hold, could be reversed.

### **Q2a. How has this process of change been brought about and controlled?**

18. The recent drafting and redrafting of the Cabinet Office’s terms of reference, formalising its developing status as a vehicle for direct prime-ministerial policy initiatives, has been executed unilaterally by the Prime Minister, presumably drawing on the authority of the Royal Prerogative. Though substantial constitutional issues have been involved, there has been no part played by Parliament or any other democratic process. Yet it should be noted that the ability of prime ministers to initiate and take advantage of these new arrangements is dependent upon the tacit consent of other members of Cabinet, who retain between them the ability to block No.10, should they be disposed to do so.

### **Q3. What is the impact of coalition government on the role and powers of the Prime Minister?**

19. Changes to both the style and substance of the premiership are frequent. For instance, one tendency towards fluctuation in style – ‘zigzag’ – involves an exceptionally domineering prime minister being succeeded by a premier who is notably collegiate, and vice versa (for instance: James Callaghan to Margaret Thatcher; or Winston Churchill to Clement Attlee). Substantive development – ‘institutional fission and fusion’ – involves the extent to which particular organisations, personnel and functions move towards and away from the remit of the premiership, or in some cases are newly created or abolished. The formation and maintenance of the Coalition has entailed both significant stylistic shifts and substantive change of an unprecedented nature.

20. It is never entirely possible for prime ministers to operate without concern for political considerations such as the views of other Cabinet members, their party within and beyond Parliament, and public opinion. The way they function is determined not only by their own disposition and personal qualities, but the broader political environment. Coalition was once relatively commonplace in Britain; and prime ministers with reputations for being some of the most domineering – notably David Lloyd George and Winston Churchill – headed governments composed of more than one party.

21. Yet coalition imposes a particular set of considerations that can hamper prime ministers in their style of operation: they must work with one or more parties other than their own. What is seemingly unique about this Coalition is that the Prime Minister has formally accepted a set of *substantive* changes, involving the formal sharing of powers, laid down in a publicly-available document, entitled *Coalition Agreement for Stability and Reform* (May 2010). The status and ownership of this paper are not entirely clear, but it appears on the Cabinet Office website, suggesting some kind of official existence. It stipulates that:

- allocations of ministerial posts must be in proportion to the parliamentary representation of the two Coalition parties [1.2].
- The Prime Minister will make nominations for the appointment of ministers ‘following consultation with the Deputy Prime Minister’ [1.2].
- The Prime Minister will nominate Conservative Party Ministers and the Deputy Prime Minister will nominate Liberal Democrat Ministers [1.2].
- Any changes to the allocation of portfolios between the Parliamentary Parties during the lifetime of the Coalition will be agreed between the Prime Minister and the Deputy Prime Minister [1.3].
- No Liberal Democrat Minister or Whip may be removed on the recommendation of the Prime Minister without full consultation with the Deputy Prime Minister [1.4].
- The establishment of Cabinet Committees, appointment of members and determination of their terms of reference by the Prime Minister has been and will continue to be agreed with the Deputy Prime Minister. The Deputy Prime Minister will serve, or nominate another member of the administration to serve, on each Cabinet Committee and sub-committee. The existence and composition of Cabinet Committees and sub-committees will be published [3.1].
- The general principle will be that the Prime Minister and Deputy Prime Minister should have a full and contemporaneous overview of the business of Government. Each will have the power to commission papers from the Cabinet Secretariat [3.3].
- The Prime Minister, with the agreement of the Deputy Prime Minister, has established a Coalition Committee which will oversee the operation of the Coalition, supported by the Cabinet Secretariat. It will be co-chaired by the Prime Minister and the Deputy Prime Minister, with equal numbers of members drawn from the two Coalition Parties [3.4].

22. This *Coalition Agreement* formally requires the Prime Minister to share with the Deputy Prime Minister and the Liberal Democrat component of the Coalition powers which, by convention, prime ministers have previously wielded themselves, though subject to political realities and the personal style of the occupant of No.10.

23. Thus while the development of an entity akin to a department of the Prime Minister may suggest a move towards unilateral, prime-ministerial government, wider political realities – such as the emergence of a Coalition following an inconclusive General Election – can create a countervailing tendency.

24. Prime ministers would be able to function better if they accepted that British government – founded on parliamentary, and in particular House of Commons, confidence and the principle of collective responsibility - cannot operate effectively on the basis of dominance from No.10. Administrative structures should be readjusted to reflect this reality, with the Cabinet Office returned to its traditional role of facilitating collective government, and supporting the Prime Minister only in his or her role as chair of the Cabinet. As presently configured the Cabinet Office does not assist the Prime Minister sufficiently in the crucial task of managing collective processes. Instead, it facilitates and even encourages micro-level social intervention – such as the ‘Big Society’ initiative – which will serve to

distract the Prime Minister from other more important tasks, and drain resources such as time, staff and political capital.

**Q4. Are there sufficient checks and balances on the powers of the Prime Minister?**

**Q4a. If no, what additional or improved checks and balances are required?**

**Q4b. Is any further change required with regard to specific powers currently exercised under the royal prerogative, by transferring them to statute or otherwise?**

**Q5. Is the Prime Minister sufficiently accountable personally to the electorate, to Parliament, and otherwise?**

**Q5a. If no, how should his accountability be improved?**

**Q6. Are structures of power beneath the Prime Minister sufficiently clear and accountable?**

**Q6a. If no, how should this clarity and accountability be improved?**

**Q7. Should the Prime Minister be directly elected by the British people?**

25. Questions 4 – 7 are dealt with together. The primary problem of checks, balances, accountability and structures of power is that prime ministers and their staff have increasingly taken on a direct role in policy, yet Parliament primarily holds to account individual ministers, in whom statutory and other responsibilities are vested for particular policy areas. Consequently there is a lack of clear democratic accountability.

26. In the last Parliament the House of Lords Constitution Committee recognised this problem in its report (*The Cabinet Office and the Centre of Government* (2009-2010, HL 30). However, rather than concluding that there should be a substantial prime-ministerial withdrawal from direct policy roles and a restoration of the clear ministerial responsibility that is essential to parliamentary accountability, the Committee argued that (paragraph 97):

*“structures of accountability should mirror structures of power. Greater prominence in the role of the Prime Minister should be mirrored by increased transparency and more effective accountability. Whilst we welcome the biannual appearance by the Prime Minister before the House of Commons Liaison Committee, we do not believe that this goes far enough in securing the parliamentary accountability of the Prime Minister’s Office.”*

27. The Committee did not explain how this ‘more effective accountability’ was to be achieved. While the UK continues to have a system of parliamentary government and an underlying doctrine of ministerial responsibility, there are limits to how far a Prime Minister – who possesses few legal policy responsibilities – can be held individually accountable for policy interventions.

28. If the recent development in the direction of a quasi-departmental premiership is regarded as irreversible and/or desirable, then the clearest means of ensuring effective democratic accountability for the Prime Minister is for Westminster to abandon the Westminster system and introduce direct elections for the premiership. The head of government would then draw his or her authority from the electorate, not from Parliament. If this approach were favoured a variety of other decisions would need to be made

about the precise constitutional structure to be adopted, taking into account varying models of 'presidency' such as the French and that of the United States of America.

29. But a preferable option would be based on the principle that collective government is more effective than the dominance of one person, and that the Prime Minister should return to being what was once termed 'first among equals' or *primus inter pares*. There are some tensions between the idea of *collective* government and *individual* ministerial responsibility. But these dual doctrines, when functioning properly with a prime minister enabling group decision-making, provide Parliament with a clear line of accountability, something which is lacking when prime ministers become excessively involved in the business of departments.

30. For this reason the most appropriate means of restoring accountability would be through the renewal of collective government, which could be enshrined in and to some extent brought about by codification of the sort mentioned in paragraph 10 above.

*21 February 2011*



**Written evidence submitted by Dr Nicholas Allen, Department of Politics and International Relations, Royal Holloway, University of London**

The Committee's inquiry into the role and powers of the prime minister is to be welcomed. Before setting out my answers to the Committee's questions, I offer a few general thoughts, none of which is wholly original but all of which are meant to provoke further discussion.

**Some general thoughts**

- (1) The Committee should be clearer in recognising two considerations in its inquiry: (i) how does the prime minister's role and powers affect the quality of British democracy; and (ii) how does the prime minister's role and powers affect the quality of British government? The issues of good democracy and good government are distinct, and the Committee should be explicit about their distinctiveness.
- (2) The prime minister operates in a system built on two contradictory norms: (i) the norm of collegiality or collective decision making; and (ii) the norm of prime ministerial authority. Commentators and practitioners sometimes give the impression that the latter is the only legitimate principle guiding British government. Yet, prime ministerial authority—in the fields of appointments, government organisation and, to some extent, general policy—has been just as much a feature of British government as collegiality. Prime ministerial authority is sometimes grumbled about, but it is an accepted part of the political system. Needless to say, there is inevitable tension between the two norms. Indeed, Britain's core executive stands over a fault line.
- (3) The tension between collegiality and prime ministerial authority is manifested differently in different arenas. In the formal, institutional arena, as embodied in the practice and power structures of cabinet government, collegiality probably trumps prime ministerial authority. In the party political and public realm, as reflected in the popular, media and occasionally elite preoccupation with individual leadership, prime ministerial authority is at least as important, if not more so. The asymmetric tension in different arenas risks creating expectations gaps and public disappointment.<sup>6</sup>
- (4) The manifestations of collegiality are in just as much need of evaluation as prime ministerial authority. Indeed, the two cannot be understood in isolation. In many respects, the historic expansion in the size of government—measured by the numbers of ministers—raises more important questions about both the quality of British democracy and governance than the role and powers of the prime minister. The existence of so many ministers gives the executive more votes in the House of Commons, it creates considerable ministerial activity that may not be strictly necessary, and it raises questions about whether the Commons is a sufficiently large talent pool for filling all these posts.
- (5) It is important that the Committee considers fully the nature of the party system and the characteristics of British political parties. As others have pointed out, party politics are often more important in shaping a prime minister's influence and power than the customary, legal or institutional powers that he or she may be able to exercise in theory. For example, a recent survey of prime ministers in seventeen European countries found that the British and Spanish prime

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<sup>6</sup> See Matthew Flinders and Alexandra Kelso, 'Mind the Gap: Political Analysis, Public Expectations and the Parliamentary Decline Thesis', *The British Journal of Politics and International Relations* (forthcoming).

ministers were the strongest, partly because of their institutional powers and partly because of the party system (the survey assumed ‘normal’ single-party government in Britain).<sup>7</sup> In the sample, the German chancellor and Spanish prime minister had more institutional powers; but the British prime minister was blessed with a more conducive party system.

- (6) Any changes to individual prime ministerial powers may have unintended consequences on the prime minister’s overall power and status in government.

### **Answers to specific questions**

#### **1. Is there sufficient clarity as to the Prime Minister’s role and powers?**

There is probably insufficient clarity about the prime minister’s role, in part a reflection of the tension between prime ministerial authority and collegiality. The formalities do not always accord with the functional realities. For example, Chapter 3 of the current draft Cabinet Manual refers to the ‘Prime Minister’s unique position of authority’ but it does not go as far as it might in capturing fully the prime minister’s practical or potential authority over general policy guidelines.<sup>8</sup> In Chapter 4, the Manual notes that: ‘Cabinet is the ultimate decision-making body of government’; it may be formally, of course, but it is not, in every instance, functionally. Moreover, the Manual fails to note that it is the prime minister who is ultimately responsible, politically at any rate, for the decisions of his or her government.

##### **1a. Should the Prime Minister’s role and powers be codified in statute or otherwise?**

I am against detailed statutory codification because there needs to be some flexibility in the prime minister’s role and powers. The role of the prime minister necessarily varies according to the context and ‘events, dear boy, events’. For instance, the previous prime minister had to spend much of his time responding to global financial crises; the current prime minister almost certainly has to spend a greater proportion of time managing inter- and intra-party relations.

If the Committee sought a vehicle for codification in some form, the draft Cabinet Manual is one potential candidate, although the content would need some revision. Alternatively, the Cabinet Office, or your Committee, could draft a shorter document that focuses on the principles embracing all aspects of British government. However, there may be uncertainty about such a document’s status.

#### **2. How has the role of the Prime Minister changed in recent years?**

The role of the prime minister has always been plastic and the extent of change should not be overstated. For example, changes in the nature of media coverage have enhanced this mode of political accountability and emphasised the prime minister’s role as his or her government’s chief political spokesperson, yet prime ministers have always performed this role to some extent and been held to account in this way. Alternatively, in the past year, the prime minister has had to manage an inter-party coalition (in addition to managing an intra-party coalition), yet even this role has historical precedents.

<sup>7</sup> See Torbjörn Bergman, Wolfgang C. Müller, Kaare Strøm and Magnus Blomgren, ‘Democratic Delegation and Accountability: Cross-national Patterns’, in Kaare Strøm, Wolfgang C. Müller and Torbjörn Bergman, eds, *Delegation and Accountability in Parliamentary Democracies* (Oxford: Oxford University Press, 2000), pp. 190–2.

<sup>8</sup> Cabinet Office, *The Cabinet Manual – Draft: A guide to laws, conventions, and rules on the operation of government* (London: Cabinet Office, December 2010).

Finally, prime ministers today are perhaps expected to be more active in their role, bringing their own policy vision, but their activism cannot be all-embracing, and, of course, there have always been prime ministers with an agenda, whether it be ‘pacifying Ireland’, rolling back the frontiers of the state or creating a ‘Big Society’.

It is also important not to overstate change in terms of the functions the prime minister performs. Beyond the obvious governmental roles—chairing cabinet, appointing and dismissing ministers, meeting the Queen, managing the government, and so on—all prime ministers in recent years have had to spend considerable time abroad dealing with other governments. They have had to make speeches up and down the country and deal with journalists and the media. They have had to manage their own office or ‘prime ministerial branch’. They have had to perform in Parliament, and they have had to function as constituency MPs. They have had to lead their party in government, in Parliament and in the country. Above all, prime ministers have had to be on constant call to provide public leadership and respond to crises (military, financial, political, international and environmental) as and when they arise.

None of this is to say that there has been no change in the prime ministerial role. The nature of the job has changed as prime ministers have had to alter the amount of time and energy they routinely devote to specific tasks. For example, prime ministers spend less time in the House of Commons answering PMQs, they now have to submit to monthly prime-ministerial news conferences, and they probably spend more time abroad. Such changes have almost certainly increased the perceived importance of the principle of prime ministerial authority in the public arena.

## **2a. How has this process of change been brought about and controlled?**

Insofar as there has been change, it has probably been a consequence of prime ministers choosing to act in a more activist way and finding it easier to do so because of changing expectations—among colleagues, in the media, in the political parties and in the public.

## **3. What is the impact of coalition government on the role and powers of the Prime Minister?**

The impact of coalition government is potentially very great. On the basis of Bergman et al.’s comparative framework (see note 3), we might suppose the prime minister’s power to be greatly reduced. For example, the needs of coalition management have curtailed the prime minister’s power of appointment and dismissal; they have effectively been delegated to the deputy prime minister when it comes to filling posts allocated to the junior coalition partner. Needless to say, it will require a few more years before we can accurately gauge the full impact of coalition politics.

## **4. Are there sufficient checks and balances on the powers of the Prime Minister?**

Whether you think there are sufficient checks and balances on the powers of the prime minister depends on whether you think the prime minister is too powerful or not. It also depends on the role you think he or she should perform. Given that the British prime minister has ultimate responsibility for the conduct of his or her government—at least in political and democratic terms—it is only reasonable that he or she should have sufficient powers to carry that responsibility.

Most of the prime minister’s important day-to-day powers—those that impact upon the quality of government as well those that relate to ‘big’ democratic questions—are essentially political i.e. the power of appointment and dismissal, the control over the organisation of government, the chairmanship

of cabinet and its committees and the control over its agenda, the ability to appoint senior civil servants and the ability to act as Britain's overseas agent. Most of the effective checks on these powers are also political. At risk of being complacent, political checks ebb and flow, but their political nature has not made the prime minister tyrannical. There is little evidence that the prime minister is too powerful.

### **5. Is the Prime Minister sufficiently accountable personally to the electorate, to Parliament, and otherwise?**

British democracy in practice rests on voters being able to exercise retrospective and prospective judgements about the governmental performance of one political party vis-à-vis another. The weight of electoral-survey evidence highlights the importance of party leaders, as well as evaluations of parties' past and anticipated performance, in individual voters' choices.<sup>9</sup> Whatever the legal formalities, individuals do not vote for a House of Commons that then chooses a cabinet that then chooses a prime minister. Rather, voters choose between party-leadership teams to form a government, and the composition of the Commons is a consequence of this choice. The reality of democracy does not fit neatly with legal textbooks (or draft Cabinet Manuals).

Given that the prime minister leads a team of party politicians that stand for re-election every four or five years, there is, I think, sufficient electoral accountability. The government is not a one-man band, no matter how influential the prime minister is within the government, and it would be absurd to have the prime minister personally accountable when he or she lacks the legal and political authority to dictate what government does.

Because British voters choose a government and prime minister at each general election, and because the composition of Parliament is a by-product of this collective choice, it would seem odd to alter fundamentally the relationship between government and Parliament on democratic grounds. For this reason, I am unconvinced of the need for a parliamentary constructive vote ahead of any new government being formed. That said, there are good democratic and governmental reasons for having a Parliament that is able to oversee government as a whole, not just the prime minister. However, empowering Parliament—both institutionally and culturally—is somewhat beyond the scope of this inquiry.

### **6. Are structures of power beneath the Prime Minister sufficiently clear and accountable?**

I find it very difficult to keep track of the changing roles of the Cabinet Office and Number Ten! In many ways, the fluctuating structures of power, as institutionalised in Number Ten's relationship with the Cabinet Office, reflect the ebb and flow between the norms of collegiality and prime ministerial authority. I suspect the muddle will continue so long as people remain committed to the ideal of genuine collective decision making.

#### **6a. If no, how should this clarity and accountability be improved?**

I am genuinely unsure. If a full-blown Prime Minister's Department were to be created, akin, perhaps, to the German Chancellery, then this would amount to a major rebalancing between collegial government and prime ministerial authority, in favour of the latter. Perhaps it is time to abandon an anachronistic commitment to full-blown cabinet government, but that is something beyond the scope of the present inquiry!

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<sup>9</sup> Harold D. Clarke, David Sanders, Marianne Stewart and Paul Whiteley, *Performance Politics and the British Voter* (Cambridge: Cambridge University Press, 2009).

Assuming the current system is maintained, with government co-ordination being performed in practice by prime minister and cabinet, or perhaps more accurately by prime minister with and sometimes through cabinet, then it would probably be unwise to create a large and distinct Prime Minister's Department. An organisationally distinct and much larger Number Ten would not necessarily even be good for an activist prime minister.

### **7. Should the Prime Minister be directly elected by the British people?**

No, not unless a good case can be made for Britain adopting an entirely different model of democratic government. Were the prime minister to be directly elected, Britain would have a *de facto* presidential system. This change would require a major rethink of how heads of departments i.e. ministers are held accountable. It would also signal the ultimate rejection of collegiality from the British political system and a profound change in the country's constitution.

*22 February 2011*

**Written evidence submitted by Dr Eoin O'Malley, School of Law and Government, Dublin City University**

My responses to these questions are mainly guided by my own research, which is comparative in nature, and less by my knowledge of the UK system, which is more limited.

**1. Is there sufficient clarity as to the Prime Minister's role and powers?  
1a. Should the Prime Minister's role and powers be codified in statute or otherwise?**

While in most countries the powers of the prime minister are set out in the constitution, it is comparatively unusual to have the role codified in statute. In most countries these powers are codified in the constitution or some basic laws and further limits are placed on powers granted in different statutes. These tend to deal with the architecture of government, which affects how the day-to-day job of prime minister is run, but they do not set out what a prime minister will do in his or her day-to-day life. In general the role and powers of the prime minister are guided by the circumstances, and the ability to use prerogative powers can vary even though the constitution doesn't. There is remarkably little variation across countries in the constitutional prerogatives granted prime ministers – which are often limited – but much greater variation in the effective power over policy-making over time and across countries.

While it might be legally pretty to have some codification of the prime ministers' powers, the reality is that prime ministers are constrained not so much by the limited powers granted them (the UK prime minister's prerogative powers may be more extensive), but by political factors. That is not to say the constitution and statute are unimportant, but when a political actor who has the legal right to make a decision is told by a powerful prime minister to do something, the legal right to say no might come to nothing.

So one can set down rules that decisions must be made in cabinet but in effect they may be merely ratified there. How decisions are actually made will be determined by the most powerful members. One can put in place more formal rules but as high-level government decisions are necessarily made in secret and the relationships between the main actors are unequal it will be difficult to ensure that those rules are followed or have any effect. One could not see a minister take a case against a prime minister for having cabinet discussions leaked to the media. It seems to me that a constitutionally guaranteed role for the senior civil service might be a good place to start.

**2. How has the role of the Prime Minister changed in recent years?  
2a. How has this process of change been brought about and controlled?**

The main role of the prime minister is to oversee, organise and direct the business of government. Prime ministers set legislative and policy priorities; co-ordinate and direct the government, chair government meetings and organise the taking of decisions. This general role has remained, but the relative influence of prime ministers varies over time.

It is commonly asserted that prime ministers have become more prominent in the last number of decades. This is probably most pronounced in the UK, which since the 1960s has seen the prime minister become the principal spokesperson for the party and government (though this is not sufficiently established empirically). The causes given are usually that TV and newer media allow the party leader reach much further into the electorate, and that a core decision in selecting a party leader (who can then become prime minister) is that s/he will be an effective communicator.

The second issue thought to have contributed to the dominance of the prime minister is the increased importance of international decision-making bodies. This ‘summitry’ means that decision-making functions are necessarily delegated to leaders, allowing them return to their country with the ‘deal’ negotiated and offering it as a ‘take-it-or-leave-it’ proposal.

The problem with the assertion that these factors have led to increased prominence and increased power of prime ministers is that it has happened throughout Europe, yet many prime ministers are still very weak figures.

I suspect the media and summitry have contributed to an increased prominence of UK party leaders and prime ministers, but it is because an underlying institutional framework was in place to enable it.

### **3. What is the impact of coalition government on the role and powers of the Prime Minister?**

Coalition government probably will have a greater impact on the position of the prime minister than any other factor or event. While prime ministers always have had to be mindful of what could pass in the Commons, prime ministers in single party governments had important levers to keep the party in check (patronage powers, institutional (agenda setting) powers, informational powers). In a coalition government there is a more formal need to get the approval of the other party which is almost by definition organised and capable of delivering a Commons defeat.

If one thinks back to John Major’s governments, the factions in his party meant his position was weak. However, he was able to split those factions at times by giving them tough choices, such as the one to defeat Maastricht and cause an election, or to accept Maastricht. A more unified block could have let Major know that he would be defeated and then made it less likely that he would have made such an offer.

In coalition there are usually arrangements in place to make the meeting of the party leaders in advance of cabinet which can smooth potential problems and agree outcomes. The relationship between the party leaders becomes very important, and cabinet might be thought to become less relevant.

Because you have parties which are electoral competitors forced to agree policy, there will be further tensions. Coalition essentially adds another veto player in the system which has at times both the incentive and the opportunity to use that veto. Coalition can, if the parties are ideologically distinct, place a major check on the power of the prime minister.

### **4. Are there sufficient checks and balances on the powers of the Prime Minister?**

#### **4a. If no, what additional or improved checks and balances are required?**

There are a number of checks on a prime minister in this system. Coalition obviously adds an extra check on the powers of the prime minister. The cabinet is presumably free (here my knowledge of the exact prerogative powers given the UK PM might be lacking) to prevent a prime minister doing exactly what s/he wants and the Commons can also do this. In practice it is thought these institutions are supine. But presumably they would be able to stand up to a prime minister with a policy proposal that had widespread and intense opposition. I suppose it needs to be shown that these checks failed in some serious way at times. The rush to war in Iraq and (to a lesser extent) the decision to abolish the post of Lord Chancellor were ones which were later questioned but which arguably went through cabinet without sufficient scrutiny. We might ask what could have prevented these things from taking place.

One of the most obviously important aspects of particularly the former decision was the control the prime minister had of information. So the intelligence and legal advice was restricted to certain groups even though the decision was formally taken by a much wider group of people.

In redesigning an institutional architecture to prevent I would be wary of imposing too many more checks on the government. There is a line between putting in checks on excessive power and imposing a system liable to deadlock – though one might say deadlock could be preferable to poor policy. A more effective system might be to ensure that those who can exercise checks on executive power can act from a position of full information. This will obviously be difficult in the case of issues of national security, but in other areas such as the monopoly of financial data held by the Treasury moves can and I believe have been put in place to reduce executive dominance.

A principle guiding any institutional redesign would be that not too many veto players can put stops in the system, but that those who have veto power are more likely to be talented and have the requisite information.

**5. Is the Prime Minister sufficiently accountable personally to the electorate, to Parliament, and otherwise?**

**5a. If no, how should his accountability be improved?**

An argument might be made that if power is personalised into a single figure then accountability should be personalised into that figure. The electorate has no way of holding a prime minister directly accountable, but it can hold the government to account through parliamentary elections. The prime minister is not personally responsible to parliament, as s/he is appointed by the Monarch. But in effect the prime minister needs the support of his or her party and we can see that a prime minister who ceases to have that support can be removed through the party. There may have been a constitutional crisis had say Margaret Thatcher refused to resign as PM when her party lost confidence in her. It might be best to prevent potential constitutional crises by formalising the PM's reliance on parliamentary support, and by giving parliament the role of nominating and declaring no confidence in a prime minister which the Monarch could then formally ratify.

I suspect one does not want to remove the ability to take decisions from the executive rather to ensure that when it does, it does so for the right reasons, of if there are nefarious intentions these can be exposed. To repeat what I say above this might be better achieved by increasing access to information and opportunities to interrogate government policy. Other methods of accountability should be considered whereby prime ministers can be summoned to and forced to answer detailed policy questions in committees might offer greater levels of accountability. In general the problem, as I see it, is that there are few opportunities to question a prime minister except on their terms. PMQs exist, but these generate more heat than light. Perhaps one debate each parliamentary session should be devoted to detailed scrutiny of government policy.

**6. Are structures of power beneath the Prime Minister sufficiently clear and accountable?**

**6a. If no, how should this clarity and accountability be improved?**

The main structure of accountability is through the doctrine of ministerial responsibility. This expects that the government as a whole and ministers individually are accountable to parliament through the requirement that government retains its confidence. But it is unclear as to how the doctrine of ministerial responsibility should be operationalised. Individual ministerial responsibility is difficult to pin down.



Ministers are responsible to parliament, but their positions are in the hands of the prime minister. So parliament could not fire a minister. In practice a minister who the parliament thought unsuitable for the job probably wouldn't retain the post, but that parliament cannot directly do so.

More serious problems are that fewer decisions are now taken by ministers than before. More decisions are made at non-departmental level and it is implausible that we expect ministers to be personally (as opposed to being formally) responsible for the decisions taken in a department. Increasing the importance of parliament and its ability to summon, question and if necessary reprimand civil and public servants might be one means to increase the accountability of the executive.

## **7. Should the Prime Minister be directly elected by the British people?**

The means by which the prime minister is selected in the UK is not as unusual as is perhaps thought. A prime minister is the head of government whose term of office is linked to that of the parliament, and whose government must retain the confidence of parliament. The relationship between the executive and legislature often extends beyond that, in that the prime minister or the government is elected or nominated by the parliament. In a number of countries including Britain the Head of State has a role. But even where this does happen, it is usually the case that the government chosen is the one who would have had the support of a majority in parliament had this been explicitly required.<sup>10</sup>

Some (including the committee chair) have expressed fears that because the prime minister is such a powerful figure that s/he should be directly elected. Prime ministers have no popular mandate and therefore there is potentially an accountability deficit. One possible solution is to have the prime minister elected directly by the people. One would need to think how this would happen, but it could be a major constitutional shift to a presidential system. A directly elected prime minister within a parliamentary system occurred in Israel and has been debated in Italy and the Netherlands (countries that had been dogged by weak executives) but in Israel it actually weakened the prime ministers and there were good reasons why we could have predicted that this would happen. I would not recommend it.

8. If one considers that the problem is over-powerful prime ministers with too few checks on their power, then directly electing them won't solve the problem but might increase the demand to centralise power further.

*22 February 2011*

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<sup>10</sup> The example of Gough Whitlam might make one consider that it would be wise to formalise rules.

**Written evidence submitted by Dr Mark Bennister, Lecturer in Politics, Canterbury Christ Church University**

1. I am grateful for this opportunity to provide written evidence to the Political and Constitutional Reform Committee inquiry into the role and powers of the Prime Minister. I have written on the Prime Minister from a comparative and single country perspective.<sup>11</sup> My evidence will concentrate on the areas of inquiry in which I have a particular interest.

**Role of the Prime Minister**

2. We still know relatively little about what Prime Ministers do, how they do it and indeed why. We know they are dependent on others. We know they are constrained by the environment they work in. We also know that they are powerful, influential actors. Clarity regarding the role and function of the Prime Minister is lacking, but necessarily so. The role depends on a combination of factors located in executive functions and political leadership. It remains that the Prime Minister has the potential to make of the job what they want. The formal expectations are minimal, the informal almost limitless. There is a difference between what we think the Prime Minister should do and what the Prime Minister actually does. Codification of the role of the Prime Minister would need to distinguish between the two and would not in itself limit or constrain a Prime Minister. Codification in statute would need to relate to the executive functions as separate from the leadership functions. Some countries (Germany) with written constitutions list functions and powers; others (Australia) do not. The role has evolved over time, expanded into new areas and withdrawn from others. Codifying all aspects of the prime ministerial role would be problematic.

**Power of the Prime Minister**

3. It is important to consider the contingent nature of the Prime Minister. Power resources are not fixed but dependent on circumstance, context and electoral reality. The premiership is flexible and depends on agency (the incumbent Prime Minister) and structural (institutional constraints) factors. Power varies from one Prime Minister to another and fluctuates within a Prime Minister's period of office. The key to power and predominance lies in the discharge of informal resources, and the management of dependency relationships alongside formal structural resources. Personal power resources include: reputation, skill and ability; association with actual or anticipated political success; public popularity; and high standing in his or her party. Institutional power resources include: being the legal head of the government; agenda setting through leadership of the cabinet and cabinet committee system and Whitehall; strengthening Downing Street and the Cabinet Office (the centre); agenda setting through news media management.<sup>12</sup>
4. The executive resources available to a prime minister tend to be related to prerogative, patronage and the power to set the government's agenda. Formal powers can include the power to: appoint and dismiss ministers; summon, prorogue and dissolve parliament; appoint and regulate the civil service; allocate and reallocate portfolios; regulate government business; create cabinet committees; reorganise central government; confer honours; make treaties; declare war; deploy armed forces on operations overseas. The British Prime Minister is free to exercise these conventional powers and

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<sup>11</sup> Bennister, M: 'Tony Blair as Prime Minister' in *The Blair Legacy: Politics, Policy, Governance, and Foreign Affairs*, (ed T. Casey), Palgrave 2009; 'Blair and Howard: Predominant Prime Ministers Compared' in *Parliamentary Affairs* 2008 61 (2) April pp334-355; 'Tony Blair and John Howard: Comparative Predominance and Institutional Stretch in Britain and Australia', *British Journal of Politics and International Relations* 2007 9 (3) pp327-345.

<sup>12</sup> Heffernan, R. (2003). 'Prime ministerial predominance? Core executive politics in the UK.' *British Journal of Politics and International Relations* 5(3), 347-372.

prerogatives with limited parliamentary accountability (Prime Minister's Questions in the Commons once a week, written parliamentary questions to the Prime Minister and appearances before the Liaison Select Committee). There is a strong case for more of the prerogative powers to be transferred to statute, giving greater reference to parliament on matters of national significance (such as war making powers).

### **Structures of Power**

5. A Prime Minister has considerable formal power resources, concentrated in a private office, advisory structures, the Cabinet committee system and other formalised support. Structures in support of the Prime Minister have fluctuated and stretched over time. The desire (and need) to develop a stronger centre since 1997 has been well documented.<sup>13</sup> Such support will naturally evolve over time and in response to particular external and internal demands. The Department of Prime Minister and Cabinet in Australia has shown that a formal department (as opposed to a department 'in all but name' in the UK) can be compatible with collective responsibility and functioning cabinet government.<sup>14</sup> Prime Ministers require flexibility, but also need formal recognition of the resources needed to carry out their duties. There is a case for formalising the structures around the Prime Minister (into a formal Prime Minister's Department), but the ability to let structures evolve should not be replaced by institutional rigidity.

### **The Impact of Coalition Government**

6. It is not obvious that a Prime Minister is greatly constrained by coalition arrangements. The Prime Minister may appear to be limited in his ability to appoint ministers under the Coalition Agreement, having now to consult the Deputy Prime Minister.<sup>15</sup> Fixed-term parliaments would also remove a traditional power resource for the Prime Minister, although as with Gordon Brown's non-election in 2007 and Jim Callaghan's in 1978, this power is not always so helpful. The Prime Minister remains the resource-rich actor in the executive; he has 175 staff at his disposal in the Prime Minister's Office in contrast to the Deputy Prime Minister's Office of 13 and a Constitutional and Political Reform Directorate of 60.<sup>16</sup> Also, an increased emphasis on collective cabinet government has been evident, with collective cabinet responsibility formally written into the Coalition Agreement.
7. Liberal Democrat ministers are but another group of actors to be part of the elaborate resource exchange mechanisms around the Prime Minister. Prime Ministers are in any case required to manage party relationships within the governing party; coalition transfers this necessity to managing the relationship across parties. Formal and informal structures have grown to support the new relationship (unified whipping, cabinet committees, and less formal bilateral arrangements). Prime ministerial power has always been contingent on the parliamentary arithmetic. Analysis of minority governments in similar systems has demonstrated that the personality and leadership style of the Prime Minister sets the tone. In New Zealand, Helen Clark remained a predominant Prime Minister for 9 years as head of a minority government. In Canada Stephen Harper tried to run as majoritarian leader and a less consensual approach led to dysfunctional government.<sup>17</sup> Coalition

<sup>13</sup> Blick A and Jones G *Premiership: The Development, Nature and Power of the Office of the British Prime Minister* 2010; House of Lords Select Committee Report 'The Cabinet Office and the Centre of Government' January 2010

<sup>14</sup> Weller, P 'Evidence to House of Lords Select Committee Report 'The Cabinet Office and the Centre of Government' January 2010

<sup>15</sup> Coalition Agreement for Stability and Reform, May 2010

<sup>16</sup> <http://transparency.number10.gov.uk/resources/cabinetoffice-chart.pdf> October 2010. Blick and Jones (2010) note that if you include those in the Cabinet Office, supporting the prime minister, the number of staff rises to over 700.

<sup>17</sup> 'Making Minority Government Work' *Institute for Government* December 2009

government may shape the behaviour of a Prime Minister, but he remains the resource-rich actor and merely has another relationship to manage. Personal political skill in managing this relationship to the Prime Minister's advantage is the key.

### **Direct Elections of Prime Ministers**

8. The available evidence for studying direct prime ministerial elections is extremely limited. Israel is the only country to experiment with direct prime ministerial elections in 1996, only to revert back in 2001. Direct prime ministerial elections have been discussed in Italy, the Netherlands and Japan primarily to address the high level of prime ministerial and government turnover in these countries. O'Malley concluded that direct elections of prime ministers are unlikely to assist 'governability' or increase the power of the Prime Minister in the cases.<sup>18</sup> Although party leaders increasingly appeal directly to electorates through personalised mandates, the case for formalising this relationship into direct elections is weak. There would be many unintended consequences of change and the necessity of direct elections in the British case is not obvious. Strengthening accountability measures through the legislature should be addressed first.

*25 February 2011*

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<sup>18</sup> O'Malley E 'Investigating the Effects of Directly Electing the Prime Minister' *Government and Opposition*, Vol. 41, No. 2, pp. 137–162, 2006.

**Written evidence submitted by Dr Richard Heffernan, Reader in Government, The Open University**

Thank you for the opportunity to contribute to the committee's inquiry. Not wishing to expend more words than I have already, I have not responded to questions 6 and 6a.

**1 Is there sufficient clarity as to the Prime Minister's role and powers?**

**1a. Should the Prime Minister's role and powers be codified in statute or otherwise?**

The role of prime minister is largely determined by custom and convention and can sometimes be incrementally reformed by the whim of a powerful incumbent. It may be highly desirable to formalize the prime minister's 'job description', but it would be a considerable challenge to do so. It would not be possible to do this by statute. Parliament and others should cast further light on the prime minister's role and functions, but it would be extremely difficult, sadly, to codify the entirety of his or her powers.

**2 How has the role of the Prime Minister changed in recent years?**

**2a. How has this process of change been brought about and controlled?**

The notion that the prime minister is powerful and authoritative- that any party leader ought be powerful and authoritative- is now a central feature of British politics. Some suggested, when Tony Blair was at his strongest, that the power of the prime minister meant he or she had essentially become a president. This notion, presidentialization, usefully illuminates many functional changes in the prime minister's political environment, but it ultimately misleads. It was forever undone by the confirmation in recent ministerial (and prime ministerial) memoirs that infighting between Blair and Gordon Brown meant Brown often prevented Blair from pursuing his chosen agenda. No US president, it need not be said, would have to tolerate such disloyalty from his clearly subordinate Treasury Secretary. The fact remains that prime ministers are more powerful than presidents; no US president, unlike the prime minister, can use a partisan majority to successfully lead their legislature; however no prime minister ever has the total control the US president has over his or her executive<sup>19</sup>.

The expansion in the role of prime minister owes much to the fact that political parties assume they must be built around their party leader and that this leader should be powerful and authoritative. This is largely a response to (1) the ongoing personalisation of politics which places party leaders ever more centre stage, something prompted by the pathologies of news media reportage and (2) the ongoing decline in the electorate's ties to parties, something which makes parties 'sell' themselves by emphasising their leadership and the policy presented by that leadership. These- and other factors- have helped further root a leader-centric imperative within British politics. Parties have always had a pyramidal structure, but now more than ever they reflect a strict parliamentary hierarchy of leader, other senior leaders, frontbenchers and backbenchers. This has helped reinforce the long established centrality of the prime minister. It is now assumed he or she will be more than 'primus inter pares' and will have more authority, influence and power than any other governmental actor.

The prime minister, by virtue of occupying the office, is powerful by having automatic possession of the following institutional power resources:

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<sup>19</sup> Heffernan, R (2005) 'Why the Prime Minister Cannot Be A President: Comparing Institutional Imperatives in Britain and the US', *Parliamentary Affairs*, Volume 58 No 1 pp53-70.

- Being the legal head of the government, having the right of proposal and veto, to appoint and delegate responsibilities to ministers and departments through the use of Crown prerogatives, and having the right to be consulted, either directly or indirectly, about all significant matters relating to government policy;
- Helping set the policy agenda through leadership of the government, bilateral negotiations with individual ministers, management of the cabinet and cabinet committee system and exerting influence over the Whitehall apparatus;
- Heading up a de facto prime ministerial department in Downing Street and the Cabinet Office; and
- Being able, through his or her party and the news media, to set the government's political agenda.

These resources make any prime minister, even when leading a coalition, a unique, powerful Whitehall actor. The prime minister will, however, be 'predominant', the 'stronger or main element' within the party, parliament and government, when he or she can make best use of these institutional power resources by possessing- and wisely making use of- the following personal power resources:

- Reputation, skill and ability;
- Association with actual or anticipated political success;
- Electoral popularity; and
- Having a high standing in his or her parliamentary party (less so the extra-parliamentary party)<sup>20</sup>

These resources empower the prime minister within both their party and government. Within parliament their ability to lead a partisan Commons majority considerably advantages them; within the government ministers, whatever their career trajectory, are more likely to work to or otherwise defer to a prime minister who is *electorally popular* and considered *politically successful*. This gives the prime minister a less fettered hand in the running of their government. Blair, in his pre 2003 heyday, possessed such power resources in abundance. He was, Brown's ability to often stymie him in some (not all) policy areas notwithstanding, mostly predominant as a result. Of course, these prime ministerial personal resources are contingent and contextual. They come and go, are acquired and squandered, won and lost. The better resourced, the more powerful and predominant the prime minister; the poorer resourced, the less powerful and predominant.

The prime minister is, inevitably, always constrained by public and parliamentary opinion, the temporality of their power resources, the obligations of collegiality, and by limitations such as time, information and expertise; some prime ministers are more or less constrained than others. As Brown ensured, Blair's prime ministerial predominance never became omnipotence. But, while all prime ministers are preminent, most will also be predominant. Predominance, which owes much to the leader being electorally popular and to hold out the promise of political success, lies at the root of prime ministerial power and it contributes to the weakness of ministerial collegiality and parliamentary

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<sup>20</sup> Heffernan, R (2005) 'Exploring (and Explaining) the Prime Minister', *British Journal of Politics and International Relations*, Volume 7 Number 4 pp 605-620; Heffernan, R (2003) 'Prime Ministerial Predominance? Core Executive Politics in the UK', *British Journal of Politics and International Relations*, Volume 5 No 3 pp347-372.

oversight.

### **3. What is the impact of coalition government on the role and powers of the Prime Minister?**

A prime minister leading a coalition is, in both theory and practice, less authoritative than one leading a single party government. In the present prime minister's case, the fourth institutional power resource listed above, the ability to use the party to set the political agenda, is qualified by his having to work alongside- necessarily sometimes to compromise with- the Liberal Democrat leader, Nick Clegg. The coalition, as happened in Churchill's wartime coalition in 1940-45, has established- but has also now formalised- the position of deputy prime minister. This necessarily qualifies the power of the prime minister. Previously, under single party government, the position was- or was not- gifted by the prime minister to a ministerial colleague for party political considerations (for instance William Whitelaw, Michael Heseltine or John Prescott). There is a strong case, now it has again been formalised, for the deputy prime minister to be permanently established.

### **4. Are there sufficient checks and balances on the powers of the Prime Minister?**

#### **4a. If no, what additional or improved checks and balances are required?**

No. The power of the prime minister, for reasons I argued above, owes much to his or her informal, personal power resources. These enable him or her to make the most of their institutional powers. Such resources, which derive from the political environment, are largely beyond the direct control of parliament. No chief executive, parliamentary or presidential, predominant or less predominant, ever possesses a freehold on their position. A prime minister, unlike a president, does not even have the temporary leasehold on the premiership. Ultimately he or she has only 'squatter's rights'; they are able to remain prime minister for so long, but only for so long, as they can oblige their party to retain them as party leader (Thatcher; Blair), or have the electorate bestow their party- or, in the case of the present prime minister, the coalition parties- with a Commons majority (Callaghan; Major; Brown).

It is the prime minister's personal and institutional power resources that enables him or her to enforce – and make most of- their aforementioned 'squatter's rights'. This is because partisan politics ensures there are presently numerous *theoretical* checks and balances on the prime minister, but far fewer *practical* ones. In theory the government's Commons majority could unseat the prime minister at any time by a vote of no confidence; the cabinet or the parliamentary party could remove him or her at a moment's notice. Of course this never happens. This is (even when, in the case of Gordon Brown, many Labour ministers and MPs wanted to remove him) because of the partisan disposition that animates British executive and legislative politics. It is hard, then, to see how more formal or improved checks and balances would make much practical difference to the prime minister's power.

The present power of the prime minister results from a number of political factors. Foremost among these is the willingness of the majority (or largest) party in a single party (or coalition) government to empower the party leader as prime minister. Institutional reforms cannot easily resolve this problem. Only a set of radical changes in political culture- for example (1) the assertion by ministers of their existing individual rights and the collective rights of the cabinet or (2) the refusal of the prime minister's parliamentary majority to endlessly prefer to supply and support the government rather than check and balance it- could significantly clip the prime minister's wings in between elections. Until then informal checks and balances remain the major restriction on any prime minister's powers. It will continue to fall to (1) the occasional individually powerful minister, (2) the serious possibility of a

Commons defeat at the hands of rebel MPs, (3) the electorate, by threatening to evict the prime minister at some future date, and (4) the news media, by reporting (and occasionally inventing) political and personal failings and transgressions, to provide some form of 'last ditch' prime ministerial check and balance. It ought to additionally fall to most ministers and MPs, by using the powers they presently collectively have, perhaps by more often saying 'no, prime minister', to exert the more significant day to day check and balance.

Of course, as argued below, short of such a radical (and unlikely) reworking of Britain's parliamentary culture, some of the prime minister's role and powers could be made subject to formal parliamentary scrutiny and review. Having the prime minister be statutorily required to better engage with parliament, to have him or her formally account for their role, as well as explain their policy beyond the partisan point scoring of PMQs, would better hold accountable the prime minister, expand the purchase of parliament and empower the citizenry who elect the House of Commons.

**4b. Is any further change required with regard to specific powers currently exercised under the royal prerogative, by transferring them to statute or otherwise?**

Certain powers- especially of (1) ministerial appointment and, crucially, (2) of making changes to the machinery of government/ reorganizing departments- should be codified and made subject to parliamentary oversight. In the case of prime ministerial changes to the machinery of government asserting significant parliamentary control would be extremely useful. It would also be highly desirable for (3) the appointment of the prime minister to be subject to a formal recorded vote of the House of Commons at the beginning of each parliamentary session (or, should the party leader be changed in the middle of a parliamentary session, at that time too). This would impinge on the Sovereign's present prerogative, but it would empower the House of Commons vis a vis the prime minister by formally demonstrating that he or she only serves at the behest of the Commons. The Sovereign could then appoint the prime minister once the Commons had nominated him or her. This could also, following a change of government at an election, have the agreeable effect of improving our hasty, improvised means of transition by extending the period of governmental handover by creating the temporary posts of acting prime minister (the outgoing one) and prime minister designate (the incoming one).

**5. Is the Prime Minister sufficiently accountable personally to the electorate, to Parliament, and otherwise?**

**5a. If no, how should his accountability be improved?**

The prime minister already has too big a political footprint. Elections are increasingly fought out between parties led by party leaders, so for parties to themselves significantly reduce the purchase of the individual party leader over their programme and campaign pitch would be an essential step in reducing- certainly help qualify- the prime minister's power in government. Even if this would not significantly empower government backbenchers, it could significantly empower frontbenchers vis a vis the prime minister. This is not only unlikely to happen in the near future, but, as the party leader's debates at the last election portend, the purchase of the party leader is likely to increase, not decrease in the future.

The accountability of the prime minister to parliament could be improved by taking the three steps set out in my answer to question 4b. Other reforms could improve the quality of parliamentary accountability. For instance (1) PMQ's could be extended to an hour each week with MPs entitled to



ask follow up questions and not confine themselves to their own particular question; and (2) the prime minister could be formally required to appear before the Liaison Committee three or four times per year and members of the committee could solicit and deploy questions from other MPs at these meetings.

### **7. Should the Prime Minister be directly elected by the British people?**

No. It is the parliamentary system that grants the prime minister his or her power and it is only the Commons (and the cabinet) which can, largely through the prime minister's own parliamentary party, exert some check and balance on that power. Would that the prime minister's power and influence could be limited by separating his or her election from that of an empowered Commons which would then be infinitely more independent of a more presidentialised executive.....

Failing that, in order to assert their ultimate 'ownership' of him, the Commons ought formally elect the prime minister at the beginning of each parliamentary session (five times in a five year parliament), rather than have him or her 'emerge' following a general election or a leadership election.

*25 February 2011*

### **Written evidence from Mr Elfyn Llwyd MP, Parliamentary Leader of Plaid Cymru**

1. As the UK has an unwritten constitution and relies heavily on precedent, or perceived precedent, then there is ambiguity in the roles and responsibilities undertaken by the Prime Minister. This provides a certain freedom to those in the role to determine their own priorities dependent upon the prevailing circumstances. We welcome the decision by the Prime Minister to give up the historical ability to choose an election date and replace this with a fixed term parliament.

1a. Plaid Cymru believe that we should have a fully codified written constitution in one single document which would outline the role and responsibilities of Ministers, including the Prime Minister, and Government. This would provide objective criterion for the work carried out by the Prime Minister within the constitution, rather than allowing the Prime Minister to determine their own role as they see fit. Executive powers, such as the ability to commit armed forces, should not be exercised without agreement of the legislature. We believe that power should reside with the people and not the Monarch and therefore Welsh, UK and international power structures should reflect that sovereignty.

2. We believe that the role of the Prime Minister has become more presidential in recent years, leading to a greater concentration of (media) interest in the one person rather than in the cabinet as a whole. This has had a negative impact upon politics as a whole as it has promoted personality politics rather than discussion of policy detail.

2a. The change in the media landscape has been responsible for some of this change, with the advent of additional mediaspots and 24 hour news programming, including the broadcasting of parliament and Prime Minister's Questions in particular. An example of this concentration upon personality was the pre-election debates in which three general election candidates were given heightened profiles. It could be argued that this gave electors the opportunity to choose the most suitable Prime Minister, but this does not easily co-exist with our selection of a constituency Member of Parliament and that the Prime Minister is chosen from within those MPs. We believe was unfair to candidates standing against the three selected and particularly against smaller parties who were denied such a voice.

3. Coalition government involves working alongside representatives of other parties to agree and then implement policy. A coalition therefore involves working outside the structures of the one party. In some respects this might add to the transparency of politics if debate and discussion take place on a more public level, especially the agreement of policy, but many are of the belief that coalitions lead to backroom deals, rather than transparency. A greater familiarity with successful coalitions, such as the One Wales coalition between Plaid Cymru and Labour in Wales, would allow media commentators and the public better opportunity to understand how coalition government operates. It is typically Westminster-centric to now discuss coalitions as if they are not operated at all levels of government, including power-sharing on the Northern Ireland Executive, the Welsh Government and very many local authorities.

4. As noted above, the Prime Minister's role is uncodified and therefore allows the incumbent the freedom to develop their own role without an objective criterion for their actions. The role of the Prime Minister should be codified within a single written constitutional document.

4a. and 4b. See response to q.1a

5. Prime Minister's Questions does not provide enough opportunity for scrutiny of government policy, largely due to its gladiatorial and media opportunity. In many respects it is a parody of its stated purpose – the opportunity for the opposition and backbench Members to scrutinise the work of the Prime Minister on a range of issues. Ordinary members of the public are given little opportunity to offer an opinion,

5a. The Parliamentary Voting and Constituencies Act removes 50 Members from the legislature without ensuring a commensurate reduction in members of the executive. This means that there are fewer people to hold the government of the day, including the Prime Minister, to account. Patronage should be removed from the whips as far as possible, with safeguards for smaller parties. A Single Transferable Vote system should be introduced for all elections which will give Members greater freedom to hold the Prime Minister and government to account without being concerned for their political future as the threat of party de-selection will not be so great in multi-member constituencies. We would like to see greater opportunities, outside of Prime Minister's questions, where the Prime Minister might be held to account by Members. It appears at present as if the media have greater access to question the Prime Minister than Members of the House. We believe that the Houses of Parliament should follow the pre-existing examples of the Scottish Parliament and National Assembly for Wales and introduce a petitions committee to discuss issue raised by members of the public, including debates on the floor of the House. This, and other, measures, might not act directly upon the power of the Prime Minister, but curtail the power of the executive of which the Prime Minister is head.

6. and 6a. See response to q.1a.

7. Changing the election method of the Prime Minister would be a radical change in UK politics and should not be undertaken without significant consultation. This mandate would significantly alter the relationship between the Prime Minister, the executive branch of Parliament and the legislature.

*28 February 2011*

**Written evidence submitted by Professor Kevin Theakston and Dr Timothy Heppell, School of Politics and International Studies, University of Leeds**

1. There is no constitutional definition of the British Prime Minister's role or any authoritative specification of the office's functions, powers and responsibilities. They are a matter of convention and usage, not statute, and are thus to a large degree flexible and subject to variation and change over time. The extent to which the job bears the imprint of personality and circumstances is well understood. Functions, responsibilities and demands on the office and its holders have expanded over time but that brings overload as much as extra 'power' in any straightforward sense. The PM is by tradition First Lord of the Treasury and usually also Minister for the Civil Service but does not normally now take charge of any government department – though in the past PMs sometimes combined the role with holding office as Foreign Secretary, Chancellor of the Exchequer, or other posts.
  
2. Official guidance on the Prime Minister's role is limited. The draft *Cabinet Manual* describes the PM as head of the government, chief adviser to the Sovereign, and chair of the Cabinet. The PM is thus responsible for appointing/dismissing ministers, orchestrating the Cabinet committee system, and the overall organization of the executive and allocation of functions between ministers and departments (this latter role also noted in the *Ministerial Code*). The Cabinet is described in the *Cabinet Manual* as 'the ultimate decision-making body of the UK Executive', while the PM is said to 'usually take the lead on significant matters of state.'
  
3. In contrast to the position in Westminster, the offices of the Scottish, Welsh and Northern Ireland First Ministers do have a statutory basis but the relevant legislation deals mainly with procedures for their nomination and appointment, and with their own role in appointing ministers in their administrations, rather than with their policy and administrative roles. The German *Basic Law* states that the Federal Chancellor 'shall determine and be responsible for the general guidelines of policy', while Japan's *Cabinet Law* describes the PM there as the head of the Cabinet, with the power to 'propose items including the basic principles concerning the important policies of the Cabinet', and as exercising 'control and supervision over the administrative branches' of the government. New Zealand's *Cabinet Manual* describes the PM as responsible for 'coordinating the government' and 'overseeing the government's general policy direction.'
  
4. Greater definition of the British prime ministership would not weaken the office and nor, we believe, would it strengthen it unless it was done in such a way as to write the Cabinet's role out of the equation, based as it is upon the key constitutional principle of collective responsibility. The attempt to define the Prime Minister's office, role and functions in Mr Graham Allen's November 2001 Bill would, arguably, have had that effect – his proposal not actually referring to the Cabinet and the Prime Minister's role as its head at all. In our view, the Prime Minister's role and powers cannot and should not be considered as separate from the role of the Cabinet in our system of government. Including in the *Cabinet Manual* or in some other code wording similar to the New Zealand case about the PM's general policy and coordinating role (and 'overseeing' policy direction would be a better term than 'determining') may bring a bit more clarity but, realistically, will not alter the underlying realities.
  
5. Around the world in parliamentary systems Prime Ministers formally enter or take up office in a number of different ways. In the 'Westminster model' systems (including the UK, Australia, Canada and New Zealand) the head of state – Monarch or Governor-General – formally appoints the Prime Minister under the Royal Prerogative without direct reference to parliament or a parliamentary vote,

though it is understood that the ability to command the confidence of the parliament is the key political factor in the appointment. In other systems the mechanics of the process are different: the head of state may appoint the PM after the parliament nominates a candidate (as in the Republic of Ireland); or the head of state may nominate a candidate for the position of head of government who is then approved by the parliament in a vote (as in Spain and Germany); or the head of state may appoint a PM who then must obtain a vote of confidence from the parliament (as in Italy). The Queen on the nomination of the respective devolved assemblies appoints the First Ministers of Scotland and Wales. Only in Israel, between 1996 and 2001, was the Prime Minister directly elected by the popular vote, an experiment that did not work out as planned and was subsequently abandoned.

6. Direct election of the British Prime Minister would be a major constitutional change in itself and would bring in its wake far-reaching political and constitutional changes in other parts of our system. It would change the British system into a hybrid parliamentary-presidential one. Whatever the pros and cons of such a development, it seems at the moment far beyond the range of feasible or practicable constitutional and political reforms. The immediate focus, in our view, should be on parliament's role - more properly, the House of Commons' role - in the appointment of Prime Ministers. It is striking that in the fifteen mid-term successions - changes of Prime Minister mid-parliament - since 1902 in only one case (that of Churchill succeeding Chamberlain in 1940) was there an immediate confidence vote in the House on the formation of the new government. We would support the introduction of the practice of a formal Commons investiture vote for Prime Ministers following a general election and on a mid-term succession in Number 10. The Monarch's prerogative power to appoint the Prime Minister would remain, but the House of Commons would nominate or recommend who should be appointed. This change may have some practical advantages in the context of hung parliaments and party negotiations on coalitions or the terms of support for minority governments. But even in the case of clear single-party majority governments, explicitly demonstrating that governments and Prime Ministers hold office by virtue of commanding the confidence of the House would be of great symbolic importance.

7. The advent of coalition government in May 2010 has certainly impacted on powers and responsibilities normally regarded as belonging to the Prime Minister alone. Under the *Coalition Agreement for Stability and Reform* the Prime Minister is obliged to consult and agree with the Deputy Prime Minister over the appointment, reshuffling and sacking of ministers. The PM hires and fires but must fully consult, and the allocation of posts between the parties in the coalition is expected to operate on a 'one-in, one-out' rule to maintain the agreed balance between the two coalition partners. The premier's patronage power in all governments is subject in practice to political constraints but - so long as the coalition lasts - this is a new formal limitation. A similar limitation on the PM's normal discretion is in relation to the establishment of Cabinet Committees, the appointment of their members, and the framing of their terms of reference, which have to be agreed between the PM and the DPM. Principles and expectations are also spelt out about the functioning of government, including requirements for consultation and discussion among ministers, and clearing certain issues if necessary through the Coalition Committee to ensure both parties agree.

8. Mr Cameron had declared before the general election that he wanted a more collective Cabinet government style of policy-making and decision taking. The imperatives and dynamics of coalition make that a necessity. That does not mean, however, that a detached 'chairman' style of premiership is called for or likely to be successful. Effective and successful Cabinet government needs a strong Prime Minister (and in the coalition context a strong Deputy Prime Minister too) to set the tone and provide a sense of direction and overall strategy. If a single-party government were to be formed in the future we

would expect a reassertion of formal prime-ministerial powers over ministerial appointments and the composition of Cabinet Committees.

9. That Prime Ministers have at their disposal the power to reconfigure Whitehall departments can be seen as helping the administration secure their long-term policy goals. There is, however, a concern about the motivations behind such machinery of government changes, as well as the mismatch between the ability of the PM to initiate change and the capacity of parliament to effectively consider the merits of such change. Providing parliament with information on the process of departmental restructuring after the process has commenced by placing a Transfer of Functions order before it makes such changes a *fait accompli*. Moreover, departmental restructurings often occur with insufficient planning and a lack of time for implementation, and historically it is clear that they are tied up with ministerial reshuffles. Here the motivation of the PM may not primarily be effective administration and policy implementation but short-term political factors about party management. To ensure that this power is exercised in a more considered way it may be advisable to limit the likelihood of restructurings being tied to ministerial reshuffles. One way to do this would be to require parliament to be informed of the intention to initiate a departmental restructuring. With built in consultation periods, parliament should then have the time and capacity to vote on the merits of a proposed change. Requiring a parliamentary resolution to approve a proposed departmental restructuring would ensure that the Prime Minister and government have to clearly identify the justification and rationale for machinery of government change. Through more advanced cost-benefit analysis and increased lead-in time for the implementation of reorganization, this would aid the implementation of that process. With parliamentary approval such changes could also claim to have greater legitimacy. Significantly, this may make departmental restructurings occur less often, which may in itself be no bad thing.

10. Halting and if possible reversing the long-term decline in prime-ministerial activity in the House of Commons - a trend that has been well documented and which long predated the premiership of Tony Blair, who devoted even less time to parliament than his predecessors, rarely participating in debates and having a poor voting record - is central to strengthening the direct accountability of the prime minister to MPs and to parliament. Realistically, there can be no return to the pre-second world war days when Prime Ministers were also Leaders of the House and so more continuously involved in its business than in recent decades. But because of the importance of the issues, and without pre-empting the responsibilities of their Cabinet colleagues, Prime Ministers should certainly be expected to introduce (or at least speak on) major constitutional measures in the House of Commons, something that was usual practice before Mr Blair's premiership (he left other ministers to open and close the second reading debates on his government's constitutional legislation).

11. Prime Minister's Question Time is a central feature of prime-ministerial accountability to parliament but it not the immutable part of our constitution that the textbooks and tourist guides pretend. Its form, routines, place in parliamentary proceedings and culture have developed over time. PMQs has the advantage of subjecting the Prime Minister to questioning for about two hours a month compared to the one hour per month questioning of most other ministers. The modern media spotlight contributes to the extremely adversarial and gladiatorial nature of the confrontations. As a test of nerve, personality-under-pressure, and verbal dexterity it could hardly be bettered. But the political theatre and knock-about carries a price in terms of substance and questioning in depth. More genuine accountability requires a move away from what Speaker Bercow has called 'scrutiny by screech' and 'abuse masquerading as inquiry'. Proposals to lengthen PMQs to 45 or 60 minutes, perhaps to return to two sessions a week, and to make it more of a backbench institution would be worth serious consideration. The Liaison Committee's evidence sessions with the Prime Minister, introduced in 2002,

have allowed discussion of domestic and international policy issues at greater length and in more detail than at PMQs. Some journalists have mocked them as ‘bore-a-thons’ that do not leave ‘blood on the carpet’, but that is almost the point and it makes for productive and informative exchanges. But these are only twice-yearly events and it is arguable that more frequent sessions would be of value. If the Prime Minister were also to face questioning by an equivalent Lords select committee, an extra dimension of accountability and expert scrutiny might be added.

*28 February 2011*

**Written evidence submitted by Professor Martin Smith and Professor David Richards,  
Department of Politics, University of Sheffield**

**Formal and Informal Powers of the Prime Minister**

*Theory: Haldane V Wilson*

The core issue here is that the constitutional convention that acts as one of the cornerstones of the British system of government is the principle of indivisibility and mutual dependence between the key actors – prime minister, ministers and civil servants. This was established by two key constitutional documents, the *1918 Report of the Machinery of Government: Ministry of Reconstruction* [forthwith referred to as the Haldane Model] and the *Carltona Doctrine* (1943). In terms of the former, Lord Haldane's report affirmed a principle already established by Northcote-Trevelyan that the relationship between ministers, including the prime minister and officials should be intrinsically linked:

The Government of the country [cannot] be carried out without the aid of an efficient body of permanent officers, occupying a position duly subordinate to that of the ministers who are directly responsible to the Crown and to Parliament, yet possessing sufficient independence, character, ability and experience to be able to advise, assist, and to some extent, influence those who are from time to time set over them. (The Northcote-Trevelyan report reprinted in Cmnd 3638:1968, pp.108-119)

On this basis, it has been argued **the British system of government embodies a system not of formally codified rules but instead advice** - determined by the constitutional principle that [prime] ministers act as advisers to the sovereign, having in turn been advised by civil servants. This is based on the convention that officials are in a position to advise a minister on a subject [free from the threat of fear or favour] and, as such, there is no requirement for the separation of power between the political and administrative class. This is the antithesis of the US 'Wilsonian model' or many other European models of government that are premised on more pluralistic sentiments and with this the separation of powers. Constitutionally then, the Haldane model does not recognise any separation in the personality of prime ministers, ministers and their officials. The principles of both indivisibility and mutual dependence within the UK system are seen as providing both a practical and constitutional constraint to protect against the arbitrary (ab)use of power.

*Practice: The Contingency of Prime Ministerial Power*

What this means in practice is that Britain's Westminster model differs from presidential systems of government because of the interdependence that exists between prime ministers, ministers and civil servants in making policy. Interdependence is an ever-present feature in the British system but it is contingent on context, as Lord Wilson's recent evidence to the House of Lords Select Committee on the Constitution made clear:

Prime ministers are only as powerful as their colleagues allow them to be. You may have times, we have had times, when prime ministers have been so strong that their colleagues accepted anything that they wanted to do; they had a parliamentary back bench which was supportive of whatever they did; public opinion was happy; the economy was going well. Their ability to get their way was therefore unparalleled, but that does not alter the fundamental fact that if circumstances are different and a prime minister is in a weak position, his cabinet colleagues are debating issues strongly, it is not possible for the prime minister to have his way and we are not in a country where the prime minister as a president can just say "This is what happens and this is what goes". We are always fundamentally in position where if cabinet ministers wish to assert themselves then the power of the prime minister will be



checked and balanced in that way. [House of Lords Select Committee on the Constitution 2010: 12]

The paradox of the British political system is that whilst the Prime Minister is often identified as the most powerful figure in British Government, constitutionally the post has very few formal powers ascribed to it. As the recent Cabinet Office publication, *The Cabinet Manual – Draft*, states: ‘The Prime Minister has few statutory functions but will usually take the lead on significant matters of state. The Prime Minister has certain prerogatives, for example recommending the appointment of ministers and determining the membership of Cabinet and Cabinet committees’ (Cabinet Office 2010: 36). Within the Manual it is maintained that: ‘Cabinet is the ultimate decision-making body of government’ (ibid: 53).

Within the British political system, **formal powers in relation to policy making are located within Departments**. Consequently the power of the Prime Minister is contingent to a large extent on informal powers and authority. The Prime Minister’s Office has always been smaller than most comparators. Traditionally, British prime ministers have lacked institutional mechanisms for developing and implementing policy, and their **power has been based on what can be referred to as ‘personalism’**. They have had power to the extent that they are able to persuade their colleagues to undertake specific policy goals and consequently their power relies greatly on their personal authority. Contingency can also be seen when, for example, they have a high level of authority, allowing them to intervene in policy areas of their choosing. However, this is not a systematic process. The contingent nature of authority means it is both partial and subject to change overtime and cannot therefore be regarded as a consistent and effective mechanism. Prime ministerial activism only lasts as long as prime minister remains focussed on a particular issue and ministers are prepared to allow the premiers intervention. Without an institutional framework, Prime Ministers lacked the capacity for systematic intervention across a range of policy areas.

As a consequence of this lack of policy capacity we have seen over the past few years an attempt to institutionalise the power of the Prime Minister through developing mechanisms to support Prime Ministerial intervention in policy making. This has been in order to allow the Prime Minister more control over what goes on in government. Prime Ministers have tried to develop influence by working in bilateral relationships with ministers in order to see that policy is developed in a way that accords with the Prime Ministerial agenda. More importantly has been a continual move to increase policy capacity within Number 10.

### **Institutionalising the Power of the Prime Minister 1997-2007**

The period since 1979 in particular has seen the growing development of Prime Ministerial capacity. Margaret Thatcher increased the number of personal advisors and increased the size of the Policy Unit. However it has been the period since 1997 that has seen a real growth in the Prime Minister’s policy capacity. When Tony Blair came into office, he expanded the size of the Policy Unit (now the Policy Directorate) almost doubling the personnel compared to the Major years (see Kavanagh and Seldon 2000). Crucially, the role of the Policy Directorate became one not so much of making policy but ensuring that departments were aware of the Prime Minister’s agenda and so were delivering policy in line with Number Ten’s wishes. Blair reinforced this policy steer through regular bilateral meetings with ministers to ensure that they and the Prime Minister agreed on policy objectives. This is an important development because it means that there is an institutional relationship between departments and Number Ten. Also, Prime Ministerial policy activism does not rely on the whim or attention span of the Prime Minister. During the last Government, Number Ten developed capabilities to direct

departments, based on special advisers within Number Ten overseeing and commenting on the policy proposals coming from departments. Again, this is an important change in the patterns of dependency between departments and the Prime Minister, with departments becoming more dependent on the Prime Minister for policy initiatives.

Whilst the role of the Policy Directorate was largely oversight, strategic policy capability was provided by the Strategy Unit created in 2002. The stated aim of the Strategy Unit was to: ‘improve Government's capacity to address strategic, cross-cutting issues and promote innovation in the development of policy and the delivery of the Government's objectives’ (see <http://www.strategy.gov.uk/output/page82.asp>). When the Unit was established, it brought together the Performance and Innovation Unit (PIU), the Prime Minister's Forward Strategy Unit (FSU), and parts of the Centre for Management and Policy Studies (CMPS). The Unit has three main roles: ‘to provide strategy and policy advice, to carry out occasional strategic audits and to help build departments' strategic capability (see <http://www.strategy.gov.uk/output/page82.asp>). Again, this can be seen as an attempt to consolidate control over the policy process at Number Ten, with the Unit reporting to the Prime Minister through the Chancellor of the Duchy of Lancaster and the Cabinet Secretary.

The most important development of the last Labour government was the creation of the Prime Minister's Delivery Unit [PMDU] located originally in Number Ten, but subsequently relocated to the Treasury during the Brown Government. This was a crucial second term innovation intended to overcome what was seen as the core failure of the first term, the inability to deliver on promises. The Unit set up by Michael Barber, was intended to focus on ensuring the delivery of the Prime Ministers core objective by focussing directly on what Whitehall departments were doing in terms of actually achieving government goals on the ground. The PMDU provided the Prime Minister with the ability to oversee and push departments in terms of delivery of policy and so created a level of institutional power much greater than had existed hitherto.

### **Prime Ministerial Power Under the Coalition**

There are some important points to note about the power of the Prime Minister under coalition: Coalition means that the power of the Prime Minister is separated from party leadership in a way that is not normally the case. As a consequence the Prime Minister has appeared to some degree ‘above party’.

David Cameron once in office seemed to signal a move back to Cabinet Government abolishing the Strategy Unit and reducing the number of advisors in Number 10. However, it quickly became clear that without that capacity, Departments were able to determine the direction of policy and Number Ten was left in a position of reaction. Consequently in February 2011 there has been a reorganisation of Number Ten with the appointment of new policy advisors. There were suggestions that David Cameron's desire to reduce the power of the Prime Minister's Office and see decision making move back to departments led to policy developing in ways that did not fit with overall government strategy. As a consequence, there now appears to be an attempt to re-institutionalise power within Number Ten. Parallels here can be drawn with the early stages of the last Labour Government, with initial rhetorical appeals to the notion of devolving power away from the centre, followed by the subsequent emergence of a programme based on institutionalising Number Ten's power (as outlined above).

Nevertheless, the Prime Minister never was, nor never can be a ubiquitous all powerful actor. Since the late 1970s, Prime Minister's have increasingly been seen to be answerable for the actions of all elements of their government's work, driven mainly by their becoming the dominant focal point on which the majority of the political media feed-off. The different dynamics of Coalition Government

did present David Cameron with an opportunity to more regularly deferring questions beyond his direct compass to the relevant Cabinet minister, so helping cement the cohesion of the Coalition. But this opportunity may now already have been missed, in the desire for Number Ten to assert control across Whitehall. It is somewhat ironic then, that in order for the Coalition to sustain itself for a full Parliamentary term, requires a continual reassertion of a core characteristic of the Westminster model, that of collective Cabinet or ministerial government.

### **Personalism and the Prime Minister's Position**

The nature of the British constitution and the Parliamentary system means that it is almost impossible to formalise the powers of the Prime Minister. Currently, the position of the prime minister in Britain is not based on any formal powers. In other words, it depends very much on the particular actions and decisions of the Prime Minister. To some degree it depends on the personal relations with key ministers (which of course varies across time) and it depends on how the prime minister configures Number 10. Prime Ministers are able to develop and build up their capacity and use their authority to intervene in policy areas they choose. Consequently, as no Prime Minister can do everything, policy intervention tends to be on the areas which the Prime Minister regards as strategically important.

However, whilst Prime Ministers are constrained by time and policy capacity, they can also be constrained by their particular relationships with key ministers. So whilst both Margaret Thatcher and Tony Blair were seen as strong Prime Ministers who were highly activist, in terms of policy both had limited forays into economic policy because of the strength of their Chancellors. For example, when Nigel Lawson was Chancellor he ensured that the value of sterling shadowed the Deutschmark against the direct wishes of Margaret Thatcher. Likewise during the Labour Government, Gordon Brown had considerable autonomy over economic policy and was effectively able to veto Britain joining the euro zone.

So whilst the Prime Minister in Britain is in a powerful position, the nature of the power s/he wields remains predominantly uncoded and contingent. It depends very much on the particular circumstances and choices of the Prime Minister and his/her particular and variable relationships within the core executive. Whilst then formal Cabinet Government may not in practice be the effective site of decision-making, the Prime Minister remains severely constrained if she/he does not have the support of key Cabinet Ministers.

Nevertheless, moves towards the greater codification of the Prime Minister's power may make the Prime Minister more powerful by undermining the need for the Prime Minister to retain the support of senior colleagues. The separate election of a Prime Minister would not be possible without completely transforming the nature of the political systems in Britain. Such a move would signal the death knell of the Haldane principles of interdependence and indivisibility in the shared personality of the prime minister, ministers and civil servants. In so doing, it would require the creation of a new system of checks and balances to ensure against the abuse of power, so establishing a totally different set of accountability mechanisms to those found within the existing Westminster model.

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*1 March 2011*

**Written evidence submitted by Sir Gus O'Donnell KCB, Cabinet Secretary and Head of the Home Civil Service**

Thank you for your letter of 24 January, drawing my attention to the Political and Constitutional Reform Committee's inquiry into the role and powers of the Prime Minister. I have read your issues and questions paper with interest, and hope the following submission is useful to the Committee in its inquiry.

The Government agrees with the description of the role and powers of the Prime Minister in the draft Cabinet Manual<sup>21</sup>, published in December 2010.

You asked for some **information on the role and functions of the Prime Minister's office**. I attach a copy of our business plan for 2010/11 which provides information on the structure and role of the Prime Minister's office. A business plan for 2011/12 is currently in preparation across the Cabinet Office, including the Prime Minister's office, which will include any changes to the role and functions of that office.

You also asked about the **number and grades of civil servants working in the Prime Minister's office**. I have attached an organisation chart for your information, which gives details of the numbers and grades of civil servants working in the Prime Minister's office<sup>22</sup>. An updated version of this organisation chart will be published in April and our intention is to update this information regularly.

The issue of placing the **issue and governance of passports** on a statutory footing is subject to regular review by the Identity and Passport Service (IPS). Their consideration has focused on determining any additional public benefits that would accrue from the passport regime being placed on a statutory footing. Legislation would of course increase Parliamentary scrutiny of the passport process, including the withdrawal of passports from individuals but there has been no real public or parliamentary pressure to legislate in this area. It is difficult to point to any public benefits in introducing a Passport Bill. IPS will continue to monitor the position but at this stage, removing the exercise of the prerogative in this area is not a legislative priority for the Government

The Government believes that it is apparent that since the events leading up to the deployment of troops in Iraq, a convention exists that Parliament will be given the opportunity to debate the decision to commit troops to armed conflict and, except in emergency situations, that debate would take place before they are committed.

*2 March 2011*

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<sup>21</sup> <http://www.cabinetoffice.gov.uk/resource-library/cabinet-manual>

<sup>22</sup> <http://transparency.number10.gov.uk/resources/cabinetoffice-chart.pdf>

**Supplementary written evidence submitted by Sir Gus O'Donnell KCB, Cabinet Secretary and Head of the Home Civil Service**

Further to my letter of 1 March in response to yours of 24 January, I am writing with a minor correction and some additional detail on the Prime Minister's Office (PMO) which I hope the Committee will find helpful. I also attach a note which sets out a response to the questions on the role of the Prime Minister posed in your paper.

In answer to your questions on structure and staffing in PMO:

It is important to remember that PMO remains a part of the Cabinet Office, not its own department, and as such does not have a separate business plan. The Committee has previously been sent the private, internal management plan for PMO. The Cabinet Office business plan for 2011-2015 was published in November 2010 and can be found at:

<http://www.number10.gov.uk/wp-content/uploads/Cabinet-Office-Final-Business-Plan.pdf>

A structure chart for the Cabinet Office, including the Prime Minister's Office, was published in October 2010 and can be found here:

<http://www.cabinetoffice.gov.uk/resource-library/structure-charts-cabinet-office>

The latter document will be revised later this year and will become a regular, six-monthly publication. Since this document was published, the overall head count of PMO has dropped to 175 (as of today). The principal changes are as follows:

The Strategy Unit in the CO has been disbanded. Some of the resource has been transferred to PMO, where we have strengthened the Policy Unit and created an Analytics team working jointly to the DPM and PM. This has been achieved at no additional cost or headcount to the Cabinet Office as a whole.

Paul Kirby has joined PMO as Director, Head of Policy Development and joint head of Policy and Implementation Unit with Kris Murrin (Director, Head of Implementation).

The PM has a military adviser who sits in the private office.

A revised list of special advisers, including those within the Prime Minister's Office, is due to be published shortly and will be available here: <http://www.cabinetoffice.gov.uk/resource-library/special-adviser-data-releases>

The role of the Chief Operating Officer of PMO covers (as described on the Cabinet Office website): Corporate Governance, Finance (inc. budgeting & business planning), Information, Communications & Technology Services, Downing Street switchboard, Direct Communications Unit, Security, Facilities Management, Human Resources, Business Continuity, Programmes and Projects.

*9 March 2011*

**Written evidence submitted by Professor Ludger Helms, Chair of Comparative Politics,  
University of Innsbruck**

**1. Is there sufficient clarity as to the Prime Minister's role and powers?**

**1a. Should the Prime Minister's role and powers be codified in statute or otherwise?**

Yes, I think there is sufficient clarity as to the Prime Minister's role and powers – at least among those, who have a more than superficial or casual interest in the subject, that is, politicians and academic experts as well as most journalists. Of course, some voters may have certain ideas about what a prime minister can/should or cannot/should not do, which may be more or less far away both from political reality and reasonable normative definitions of prime ministerial power. But a codification of the Prime Minister's role and powers would not appear to be of any use in terms of providing voters with a more reliable yardstick for evaluating the political performance of a prime minister.

Comparative inquiries also suggest that in most countries the executive territory is the arena with the largest number, and the greatest political relevance, of informal rules which are characteristically not codified anywhere. In countries known for their particularly detailed set of written rules concerning the head of government's role and powers, such as Germany, the tension between formal legal stipulations and the living constitution has been particularly marked.

A brief additional remark to the statement from p. 1 introducing this question:

“The Prime Minister's role is peculiarly British in two ways. The first is that as the Head of Government, he must control the House of Commons to remain in office, but he is not chosen by the House or directly elected by the British people as a whole.” – This combination is less peculiarly British than it may seem. The indirect election of the head of government is a structural characteristic of any truly parliamentary system of which there are more than a dozen in Western Europe alone. In some countries the prime minister is formally elected by the parliament before being appointed by the head of state (for example in Ireland or Germany), but this marks an exception rather than the rule. In other countries, prime ministers and their newly formed governments need to secure a formal approval by parliament after the prime minister and the other ministers have assumed office (for example in Italy). Yet there are countries where parliament is not in any way formally involved in the process of creating a government (for example in Scandinavia). Political scientists refer to this latter category of cases as ‘negative parliamentarism’ (that is prime ministers and their governments can stay in office as long as parliament makes no move to remove them from office.)

Apart from this, *any* head of government in a parliamentary system must control the parliament, that is, he or she must be politically in command of a given parliamentary majority or must at least enjoy the general trust and support of this majority in order to be able to govern effectively. Also, in *any* parliamentary system governments can be ousted from office by a no-confidence vote, which has to be carried by an absolute parliamentary majority. In some countries (including Germany, Spain and Belgium) there is a ‘constructive vote of no-confidence’ (that is, a majority seeking to topple the head of government must agree on a direct replacement candidate, which makes it considerably more difficult for a split opposition to unseat the Prime Minister). But this is not more than a variation of the general rule that prime ministers and their governments can be ousted from office by even the smallest possible absolute parliamentary majority.

The real British peculiarity rather relates to the requirement that, by constitutional convention, a candidate for the office of prime minister must be chosen from the pool of members of the House of

Commons. However, even this aspect is less peculiarly British, if one looks at the constitutional practice in different parliamentary democracies. Whereas many prime ministers outside Britain lack the long parliamentary experience of most British Prime Ministers, many candidates do have a parliamentary track record or seek to secure a parliamentary seat when entering the race for the office of head of government.

## **2. How has the role of the Prime Minister changed in recent years?**

### **2a. How has this process of change been brought about and controlled?**

In many countries, the mediatisation of politics (the ubiquity of personality-focused mass media in the political arena and the encroachment of media logics on politics) and the rise of international summitry (EU summits, G-8 etc) have significantly increased the public visibility of political 'chief executives'. This has been considered an important new power resource of presidents and prime ministers even in the domestic arena. Given the traditionally exposed position of the British Prime Minister, change at this level has remained more moderate in Britain than elsewhere.

A related recent development concerns the role of prime ministers as party leaders. The relationship between prime ministers and their parties is of course a flexible one that is re-defined with every new incumbent (and again often during an incumbent's term). This said, there have been marked differences not only at the level of individual prime ministers / party leaders, but also between countries. In Britain the relationship between prime ministers and their parties has traditionally been exceptionally close. Still, even in the UK, there have been signs of what some scholars have labeled 'presidentialisation': more recent prime ministers (such as Tony Blair in particular) have tried to govern 'past their parties' rather than 'through their parties'. From that perspective, it would appear that the prime minister's role as party leader has changed, and probably become somewhat less central than it has been in the past.

One other element of change that has been more conspicuous in Britain than in many other parliamentary systems is the decreasing role of prime ministers as legislative leaders or executive leaders in the parliamentary arena (which is to some extent just a reflection of the traditionally strong parliamentary anchoring of prime ministerial power). Early signs of 'de-parliamentarisation' can be traced back to the Callaghan premiership, but change has not been confined to the political behavior of different incumbents, but also been driven (or at least accompanied) by several institutional reforms, such as the introduction of the Prime Minister's regularly held press conferences in 2002. In the course of these developments, the mass media have gained much of the power to check the executive that has traditionally rested with Parliament, and recent prime ministers have responded to this challenge by a host of media-related activities. As in many other parliamentary democracies, 'managing the media' has become an important new task of prime ministers seeking to keep control of the public agenda to the greatest possible extent.

The increasing 'personalisation' of British general elections (the 2010 general election was the first one in which leaders were exactly as important as policies in how people voted, according to Ipsos MORI) has also contributed to important changes within the executive territory. The virtually enhanced personal mandate of prime ministers has provided them with more power and greater leeway, as there is a broad understanding among their fellows that the party's electoral performance (which usually means the party's electoral success) is to a significant and increasing extent influenced by the personal electoral appeal of the Prime Minister / Prime Ministerial candidate. (However, it should not be overlooked that this enhanced room for maneuver of 'highly personalized prime ministers' has to be paid for by an increased electoral vulnerability – which marks perhaps the single most substantive



aspect of the so-called ‘presidentialisation’ phenomenon.)

There have been also growing expectations that the Prime Minister should provide more policy leadership from the centre (in contrast to just ‘keeping things together’ and securing the government’s general political capacity to act). The institutional basis for an increased policy-making role of the Prime Minister has been developed since the premiership of Harold Wilson, and while there has been no strictly linear trend, more recent prime ministers have had considerably more institutional resources at their disposal than prime ministers before the 1970s.

The general trend towards centralization of power at the centre of the governing machine can, however, only in part be attributed to public pressures (or in some cases personal ambitions of recent prime ministers). There are important other structural reasons, perhaps the single most important of which is the changing nature of many government policies that increasingly tend to cut across departmental portfolios and are in need of co-ordination from the centre.

One last observation largely follows from the developments described above: Whereas the classic role of the Prime Minister as the natural leader of the Cabinet has not been challenged, the Cabinet itself (or at least the full Cabinet) has lost ground to other actors within and outside the core executive territory. That said, coalition government may, possibly work to revitalise more traditional forms of cabinet government. Evidence from comparative analysis of coalition governance would suggest, though, that informal decision-making bodies (such as coalition rounds or committees) are more natural arenas of intra-executive decision-making in coalition governments than cabinets.

### **3. What is the impact of coalition government on the role and powers of the Prime Minister?**

Coalition government obviously tends to constrain the room for maneuver of a prime minister, as it adds one crucial political constraint on prime ministerial power. This already starts with the Cabinet-building process and successive reshuffles (where it clearly limits the patronage and decision-making power of the Prime Minister), but effectively overshadows most of the governing process. Yet, comparative inquiries suggest that there are both constraints and positive resources involved in coalition governance from the Prime Minister’s point of view. In particular, prime ministers may (try to) justify obvious diversions from their party’s electoral manifestoes with the unwillingness of the coalition partner to support their original agenda – even in those cases where backbenchers from the Prime Minister’s own party are chiefly responsible for not letting have a prime minister his or her way. Also, the existence of coalition government may make it easier for prime ministers to keep their own troops together.

It would also appear worth noting in this context that there are several examples of prime ministers from different West European countries opting in favor of forming a coalition government even though they and their parties would have enjoyed a parliamentary majority sufficiently large to form a single-party government. One of the key reasons for this has been the desire to expand the government’s political basis for large-scale constitutional and other major policy reforms.

All other things being equal, coalition government unquestionably puts greater emphasis on the Prime Minister’s role as inter-party consensus-builder. It should be noted however that consensus-building (if not within a coalition, but within the Prime Minister’s own party) has always been one of the key tasks of many British Prime Ministers. In fact, dealing with intra-party quarrels may to some extent be considered a functional equivalent to leading a coalition government.

**4. Are there sufficient checks and balances on the powers of the Prime Minister?**

**4a. If no, what additional or improved checks and balances are required?**

**4b. Is any further change required with regard to specific powers currently exercised under the royal prerogative, by transferring them to statute or otherwise?**

Yes, I think there are sufficient checks and balances, even though such a positive and unqualified assessment is probably tenable only for a country like Britain. A similar construction of the office of prime minister would have to be considered highly problematic in countries with a less mature political culture than the British. Apart from that, it should be noted that some recent developments will effectively be limiting the Prime Minister's power. The Fixed-term Parliaments Bill will bereave the Prime Minister of his important resource of calling a snap election in the mid of a parliament (which has been considered by many foreign observers a critical office power both in terms of punishing the opposition parties and disciplining the Prime Minister's own troops).

**5. Is the Prime Minister sufficiently accountable personally to the electorate, to Parliament, and otherwise?**

**5a. If no, how should his accountability be improved?**

In terms of accountability of the political 'chief executive', Britain has long been considered a role-model with a particularly great amount of personal accountability of the Prime Minister to Parliament and the electorate. In fact, few parliaments have an institutional device quite like the Prime Minister's Question Time. The British Prime Minister's personal accountability to the electorate has traditionally been secured through the two-party system – a mechanism that could and would be significantly weakened by a more complex party system and hung parliaments. But even this would only introduce standards that have been considered normal in most other parliamentary democracies with coalition government where the decision about the candidate for the office of head of government is made by the parties only after the election, and usually behind closed doors.

**6. Are structures of power beneath the Prime Minister sufficiently clear and accountable?**

**6a. If no, how should this clarity and accountability be improved?**

I am afraid I am not qualified to answer this question.

**7. Should the Prime Minister be directly elected by the British people?**

No, definitely not. There is limited but clear-cut empirical evidence (from Israel) demonstrating what devastating effects a direct election of the Prime Minister in a parliamentary democracy may have. It would introduce a structural danger of divided government and deadlock at the very heart of government that is hitherto unknown in British politics. Given the centrality of the parties' top candidates for the office of prime minister in electoral campaigns, much of what supporters of this idea usually hope for (a greater say of the voters in choosing the 'chief executive') has effectively long been the case in Britain. Thus, there would appear to be much to lose and little to be gained from such a reform.

As mentioned under point 5, this traditional pattern may of course be challenged by developments at the level of the party system (a further and permanent departure from the two-party system). However, political solutions, such as pre-electoral coalition statements of the parties including a pledge for a particular prime ministerial candidate, would appear to be more appropriate a response to

this than such institutional reforms as a direct election of the Prime Minister by the British people.

*3 March 2011*

## Written evidence submitted by the Green Party of England and Wales

### Introduction

On 24 January 2011 the Green Party of England and Wales was invited to submit evidence to the Political and Constitutional Reform Committee of the House of Commons. The invitation included an ‘Issues and Questions’ paper, which set out some general observations and some specific questions. This response follows the same format.

### The Role and Powers of the Prime Minister

The Committee’s paper sums up many of the concerns around the lack of clarity about the roles and powers of the Prime Minister and of the Prime Minister’s Office. The current position is in effect that “...the roles, including the exercise of power under the Royal prerogative, have evolved over many years, drawing on convention and usage, and it is not possible precisely to define them. The Government has no plans to introduce legislation in this area.” (Tony Blair MP, written answer, 15 October 2001).

The position of the Green Party is that this situation, while convenient to successive Prime Ministers, is deeply harmful to the way the United Kingdom is governed. It is no coincidence that in the same year that Tony Blair stated his opposition to codifying or limited Prime Ministerial power, he also used the Royal prerogative to take the UK to war in Iraq: a decision he took alone and against the advice of senior Cabinet colleagues and the government’s legal advisers.

The Royal prerogative gives rise to many concerns: the power to declare war is the most far-reaching, but there are ‘secondary’ powers such as the ability to restructure government departments without consultation (and which can lead to the efficiency and accountability of Departments being sacrificed to the whims of ministerial colleagues, as with the creation of the Office of the Deputy Prime Minister in 2001). But it is the cumulative effect of concentrating so much power in the hands of one individual that is most damaging to good governance, particularly when linked to the growing capacity of the Prime Minister’s Office to intervene across Whitehall and the potential for the politicisation of the civil service or the undermining of its capacity and willingness to provide impartial advice.

Further, the dangers in the concentration of powers in the hands of one individual – the Prime Minister – are made worse by other failings in the UK’s political structures. They are:

**Centralisation:** the more that power is concentrated in Westminster and Whitehall, the more scope for the Prime Minister to use power unwisely and with greater consequences.

**Disenfranchisement:** the unrepresentative electoral system means that governments and Prime Ministers can stay in power with the support of relatively narrow sections of the population (above all, swing voters in marginal constituencies)

**Patronage:** the power of patronage inside and outside Parliament, including the ability to reward followers and supporters financially or with status or access, adds to the Prime Minister’s powers and the scope for corruption.

**Accountability:** the Prime Minister’s power has become more pervasive through the increase in the size of the Prime Minister’s Office; but without an equivalent extension of scrutiny or accountability over how staff are recruited or how they act in post.

**Constitution:** the flexibility of an unwritten constitution was traditionally balanced by a

presumption that governments would avoid using a simple Parliamentary majority to change the constitution but instead seek a wider consensus; but this convention has itself been undermined by recent Prime Ministers, so that many checks and balances on the Prime Minister's powers are becoming ineffective.

In terms of remedies, we would highlight:

The ending of the **Royal prerogative**: the reasons produced by the last government to excuse inaction and cited in the issues paper are entirely unconvincing.

A clear **definition of the Prime Minister's powers** to prevent their creeping extension (such as the chilling suggestion that prerogative powers could be used "...to tackle exceptional urgency or disruption outside the framework of the Civil Contingencies Act").

Reducing as far as possible the Prime Minister's role in **patronage** (for example, appointments of the House of Lords) and widening the role of Parliament in ratifying senior appointments to public bodies

Ending the Prime Minister's role as head of the **Civil Service**.

Reforming the **Prime Minister's Office**, to make its role clearer and more accountable and to ensure it operates according to the values and traditions of the civil service.

Exploring the potential for more **radical reforms**, such as separating the Prime Minister's role of Chair of Cabinet from the role of head of Government, with the former exercised in rotation by cabinet colleagues.

### Specific Questions

**1. Is there sufficient clarity as to the Prime Minister's role and powers?**

No. The roles themselves lack clarity and there is not sufficient understanding of how powers interact or the cumulative effect of the growing concentration of powers.

**Should the Prime Minister's role and powers be codified?**

Yes, ideally as part of a written constitution, but as a minimum in a clear and binding statement of their nature and boundaries.

**2. How has the role of the Prime Minister changed in recent years?**

The most significant change is probably the way Prime Ministers have become more interventionist in the running of Departments and their individual policies. Rather than intervening only on major issues of policy or strategy, or where Departments were in disagreement, the Prime Minister (or those acting in his or her name) routinely comment on or change policies that are solely matters for a single Department. Several units have been set up over the years to carry out intervention and scrutiny in different forms (Policy Unit, Delivery Unit, Strategic Communications Unit, and so on) but these remain unaccountable, overlap with the Cabinet Office and Treasury and collectively risk undermining the effectiveness of individual Departments.

Another significant change has been the growing willingness under successive Prime Ministers to use a majority in the House of Commons to over-ride checks and balances established by constitutional convention; for example, successive moves to curtail the independence of local

government since the 1980s, or changes to civil liberties such as detention without trial. This links to the UK's lack of a written constitution: such fundamental changes can be carried by a simple majority in the Commons, while countries with a written constitution would usually require a higher threshold for 'constitutional' changes. Combined with the extreme concentration of power in the hands of the Prime Minister, this creates the risk – and in some cases the reality – of a dictatorship of the majority.

A further change has been the role of the Prime Minister in party fund-raising, particularly from major donors, as elections have become more expensive and income from 'rank and file' members has become a smaller proportion of the total. Though hard to measure (for obvious reasons), it appears that this role has become more significant since the 1980s and could perhaps be compared to the situation prior to the Honours (Prevention of Abuses) Act 1925. The risk of this development is that the decisions of the Prime Minister are, or are seen to be, influenced by donors.

**3. What is the impact of coalition government on the role and powers of the Prime Minister?**  
Though it is too early to be certain, the effects appear to be minor and temporary.

**4. Are there sufficient checks and balances on the powers of the Prime Minister?**  
No, and those that exist – notably constitutional convention or judicial review - are weak.

**If no, what additional or improved checks and balances are required?**

As a minimum, the role and powers of the Prime Minister should be defined in statute; the Royal prerogative should be ended; and the Prime Minister and his or her Office should be open to greater scrutiny and accountability.

**Is any further change required with regard to specific powers currently exercised under the royal prerogative, by transferring them to statute or otherwise?**

Yes. All powers exercised under the Royal prerogative should be transferred to statute or extinguished. Specifically, the power to wage war should be Parliament's responsibility. If the Prime Minister or Cabinet is empowered by Parliament to declare war in the case of an attack on the UK, this should still require immediate ratification by Parliament. The power of a single individual to declare war on another country, as happened in Iraq, should be ended.

**5. Is the Prime Minister sufficiently accountable personally to the electorate, to Parliament, and otherwise?**

No. The electoral system currently used in the UK means that a Prime Minister is neither elected by a majority of the people or selected by MPs representing a majority of the people. (This would remain the case even under the Alternative Vote electoral system). This reduces the legitimacy of the Prime Minister, makes it easier for a Prime Minister to rule by favouring one or other section of the public rather than for the nation as a whole, and can free the Prime Minister from the necessity to take strong negative impacts on minority interests into account.

*9 March 2011*

**Written evidence submitted by Rt Hon Carwyn Jones AM, First Minister for Wales,  
Welsh Assembly Government**

## Introduction

1. This memorandum is submitted in response to the House of Commons Political and Constitutional Reform Committee's Inquiry into the role and powers of the Prime Minister. It draws on experience of operating within the statutory framework within the Government of Wales Act (GOWA) 2006 governing the role of First Minister and highlights how the advent of devolution has impacted upon the role of the Prime Minister.

## Operating as First Minister within a statutory framework

2. GOWA 2006 sets out the process governing the appointment of the First Minister and provides a framework for the First Minister's role as head of, and part of, the Welsh Assembly Government. Under GOWA 2006 the framework for the First Minister's role is as follows:

- The First Minister of Wales is appointed by Her Majesty after nomination by Assembly members in accordance with section 47, GOWA 2006.
- The First Minister may, with the approval of Her Majesty, appoint Welsh Ministers from among the Assembly members. No more than twelve persons are to hold a relevant Welsh Ministerial office at any time.
- The Counsel General is to be appointed by Her Majesty on the recommendation of the First Minister. No such recommendation can be made without the approval of the Assembly.
- The First Minister may, with the approval of Her Majesty, appoint Deputy Welsh Ministers from among the Assembly members to assist the First Minister, a Welsh Minister or the Counsel General in the exercise of functions.
- The First Minister, a Welsh Minister and Counsel General, on appointment must take the official oath.

3. GOWA 2006 also makes provision for the First Minister, Welsh Ministers, Deputy Welsh Ministers and the Counsel General to continue to hold office while the Assembly is dissolved, thus providing for continuity of Ministerial authority up to and through an election period until new appointments are made. The Act sets limits on the time within which the Assembly must nominate a new First Minister and defines the circumstances in which such a nomination must be made. The First Minister has no power to cause an election to be held: dates of Assembly elections are fixed by the Act, although section 3 of GOWA 2006 provides that the Assembly may trigger an extraordinary election if a resolution is approved by at least two thirds of all Assembly Members.

4. GOWA 2006 provides for a basket of statutory powers intended to confer broad statutory functions upon the First Minister. The First Minister may exercise any of the functions conferred on "the Welsh Ministers", which is the collective term for the First Minister and the Welsh Ministers appointed by the First Minister. Functions may also be conferred specifically on the First Minister.

Specific functions conferred on the First Minister include those relating to the civil service; freedom of information; remuneration and civil contingencies.

5. There are features of the executive role of the First Minister that are not dealt with in legislation. GOWA 2006 does not state in terms that the First Minister is head of the Welsh Assembly Government (although that is perhaps implicit in the title of the office); in effect, he or she is head of the Welsh Assembly Government by acceptance and convention. However the formal executive role of both the Prime Minister and the First Minister of Wales is broadly similar. Both are responsible for the organisation of government and the allocation of functions between Ministers as well as making changes to the machinery of government as necessary.

#### The role of the Prime Minister in UK Government relations with the Devolved Administrations

6. Devolution within the UK has added a new dimension to the role of Prime Minister of ensuring the effective management of the territorial structure and the positive relationships between administrations across the UK.

7. The Prime Minister has a leading role on promoting openness and transparency in how the UK Government works with the devolved administrations; promoting through his Cabinet colleagues and UK Government Departments the need for, and benefits of, building and maintaining good relations with the devolved administrations; ensuring the effectiveness of mechanisms to support those relationships and working arrangements between UK Government and the devolved administrations individually and collectively; and supporting those improvements needed to make relations with the devolved administrations more effective. The Prime Minister must also be responsible for fostering and maintaining the relationship with devolved administrations bilaterally and collectively at a head of government level.

8. The Joint Ministerial Committee (JMC) established under the Memorandum of Understanding (MoU) between the UK Government and devolved administrations is a vital forum within which the political leaders of the UK Government and the devolved administrations can discuss matters of common interest, review the workings of devolution and discuss and seek to resolve differences, disagreements and disputes that may arise between administrations. The importance that the present Prime Minister has placed on the JMC, signalled by his personally taking on the role as chair of the Committee in plenary format ( a role that has been delegated to other UK Ministers in the past), is welcomed.

9. It is essential that the role of the Prime Minister as head of the JMC continues, to ensure that there is visible engagement in devolution at the highest political level. It provides a signal that the Prime Minister is making every effort to understand the consequences of devolution and attaches importance to having good relationships with the devolved administrations. It also provides a message across UK Government of the commitment to devolution at the highest level; and the cascade effect that this has on officials at every level to invest time in dealing with devolution issues and working with the devolved administrations.

10. The advent of devolution has resulted in a divergence of policy approaches between each of the devolved administrations and the UK Government. On occasion this may result in differences, disagreements or disputes arising between administrations. The dispute avoidance and resolution protocol developed within the Memorandum of Understanding and implemented through the JMC



needs to provide confidence to all involved. As chair of the JMC, the Prime Minister must help to ensure that there is respect between administrations in the conduct of their wider governmental relationships and that confidence is maintained in the dispute process. The future success of devolution will be more easily achieved as a result of the value given to this process by the Prime Minister's recognition and personal commitment to this.

#### Role of the Prime Minister on International issues

11. The responsibility within Wales for the relationships with the rest of the United Kingdom, Europe and internationally lies with the First Minister and mirrors the Prime Minister's responsibilities for the UK's relationships with Europe and internationally. Although the First Minister and Prime Minister may have different political viewpoints it is important that both the First Minister of Wales and the Prime Minister should be publicly perceived as acting in the best interests of the public in Wales and across the UK on international and domestic headline issues.

12. It is often the case that the UK Government acting as the EU member state takes forward discussion on issues that touch on the responsibilities of the devolved administrations. The Prime Minister should demonstrate clear commitment, and ensure it is cascaded through his UK Government Ministers and officials, to take the measures necessary to ensure that this context is clearly understood. This highlights the importance that progress in improving relations is maintained across both domestic and European issues, given close links between them. Effective use of the JMC machinery assists in securing this.

#### Conclusion

13. The fact that the First Minister of Wales operates within a statutory framework has not in itself proved an obstacle, in part because GOWA 2006 contains supplementary powers. There are statutory obligations and constraints placed on the Welsh Ministers as a whole – and indeed on the Assembly – but these are not unique to the First Minister.

14. The advent of devolution across the UK has necessitated a change in the role of the Prime Minister to include understanding and managing how devolution impacts on the development and delivery of policy and public services across the UK. The Prime Minister is in a unique position to foster a constructive relationship between the different administrations within the UK.

15. Devolution now permeates government policy making and delivery at official and ministerial levels. The distinction between the role of the Prime Minister as the Prime Minister of the United Kingdom, and his or her role in overseeing domestic policies as they are exercised in England, needs to be more clearly understood and recognised, although the failure to recognise that distinction appears to be endemic to devolution, rather than a misunderstanding of the Prime Minister's particular role.

**Written evidence submitted by Rt Hon Alex Salmond MSP, First Minister of Scotland**

Thank you for your letter of 24 January inviting the Scottish Government to submit written evidence to your inquiry into the role and powers of the Prime Minister. I am happy to contribute some thoughts from a Scottish perspective.

The question of whether the role and powers of the Prime Minister of the United Kingdom should be set down in statute is ultimately a matter for the UK Parliament. In terms of general principle, however, I have no hesitation in commending to the committee the codified approach already taken by Westminster in the Scotland Act 1998.

As the attached paper indicates, the extent to which the functions of the First Minister are defined in the 1998 Act is not exhaustive. The First Minister has a wide range of responsibilities. Many of these have a statutory basis, but some relate to prerogative powers or otherwise exist by convention. Nonetheless, the office of First Minister is one which has a clear statutory basis and this in turn has enabled much of the broader structural framework – within which the Scottish Government as a whole functions – to be set out transparently and accessibly in a single constitutional document.

That reflects what I would regard as a necessary feature of constitutional arrangements in a modern European democracy. It is certainly in keeping with the founding principles of the Scottish Parliament, developed by the Consultative Steering Group. These emphasise the fundamental importance of access and power-sharing as parliamentary and constitutional values. By extension, the sharing of power between the institutions of the state and the ordinary citizen necessarily implies a willingness on the part of such institutions to expose and disseminate information about their own internal structures and rules. A system which operates solely or principally on the basis of unwritten and informal conventions, accessible only to insiders, must inevitably risk failing that important democratic test.

By way of example, I suspect most impartial observers would consider it surprising for system-critical rules surrounding the government formation process to be defined by civil service guidance shortly in advance of a closely-fought general election. Yet this is precisely what happened in 2010, with the Cabinet Office finding itself in the unenviable position of setting out the constitutional arrangements which would apply in the event of a hung parliament. That observation in no way calls into question the quality of the work done by the Civil Service in clarifying an important matter, and in doing so in an important environment of public uncertainty and media speculation. But it is surely unacceptable for the constitution to be generated, or at least written down, in what is essentially an ad-hoc manner and without wider consultation. Citizens deserve rather better.

That example, to which your committee has itself referred in its recent report *Lessons from the process of Government formation after the 2010 General Election* (HC 528), provides a helpful illustration of the advantages of codification and transparency. A comparable difficulty would not arise in the Scottish context because the rules are explicitly defined in the Scotland Act. The manner and circumstances in which a First Minister is nominated and appointed to office, and in which he or she may leave or be removed from office, are not in any doubt. The formation of the government is similarly transparent, with statutory provision governing the appointment and functions of government ministers.

To that extent it is reasonable to think Scotland as having a largely-codified constitution, which happens to be expressed in the form of an Act of the UK Parliament (and which my Government, as you know, believes should be repatriated). The other devolution settlements operate on a similar basis.

In fact, within the UK, only the Westminster system continues to function on an essentially non-codified basis. As you know, that puts the UK very much in the minority in an international context. There has of course been a greater willingness at Westminster in recent years to consider opportunities for codification and the adoption of a more transparent approach. To some extent the previous Labour administration explored this territory as part of its *Governance of Britain* agenda. The current Conservative-led government is seeking to institute fixed-term parliaments.

In that context I cannot avoid remarking that it is simultaneously ironic, inexplicable and deeply regrettable that in seeking to codify this particular aspect of the constitution the UK Government appears to have had no regard to the pre-existence of constitutional provisions regulating the electoral cycle in the devolved jurisdictions. That failure to take account of, or to respect, established constitutional arrangements is suggestive of the persistence of an ad-hoc and uncoordinated approach to constitutional development. That is something which I hope your own committee will monitor closely, with its work providing a stimulus to rather better practice in future.

As I have indicated, not all aspects of governmental, parliamentary and constitutional activity in Scotland are fully-codified. The Scottish Government continues to operate within a wider UK context and some aspects of governmental activity remain uncoded. Thus, for example, one of my functions as First Minister is to advise Her Majesty in relation to the making of appointments and the exercise of the Royal prerogative. Certain of those functions are referenced directly by the Scotland Act, or have a statutory basis elsewhere, whilst others have not been formally codified. In that sense, Scotland continues to retain some of the flavour of Westminster tradition.

That is, incidentally, also true of some familiar features of governmental structures, such as Cabinet and the doctrine of collective responsibility, both of which exist by established convention but are not formal components of the machinery of government specified in statute. The important point I would want to make, however, is that, once again, such non-codified activity is facilitated and made more transparent because it can be located clearly within the overarching codified structures provided by the Scotland Act.

The attached paper provides some further detail in relation to some of the functions of the First Minister, including in particular those which are not explicit in the Scotland Act. I trust this will prove of assistance to your committee in taking forward its deliberations.

21 March 2011

## **Written evidence submitted by Professor Michael Foley**

### **Questions**

#### **1. Is there sufficient clarity as to the Prime Minister's role and powers?**

##### **1a. Should the Prime Minister's role and powers be codified in statute or otherwise?**

The constitutional and textbook depiction of the prime minister's powers remains minimal at best and in that regard the descriptors are seen both as representative of a mercurial and even anomalous position, and at the same time a metaphor for a condition of genuine ambivalence within the architecture of the political order. Given the UK's attachment to the properties of an 'unwritten constitution' as well as to the

doctrines of parliamentary sovereignty - and thereby to a *de facto* position of 'political constitutionalism' - it might be argued that the present situation of strategic ambiguity is comparable to those systems where executive power is documented but simultaneously transcended through practice, precedents and propositions of justified exceptionalism.

That said, I believe an attempt should be made to have recourse to some kind of framework of stipulated or conventional powers in order to offer at least an element of transparency in respect to prime ministerial authority. A clear public disclosure or summation of powers along these lines would provide a frame of reference against which prime ministerial actions, choices and decisions might be measured, evaluated and possibly challenged in respect to jurisdictional criteria. The claims of prerogative powers on the part of executive authority would still be propounded but they would have to be made against a background where the traction of the arguments could be seen to prevail over and against other considerations.

## **2. How has the role of the Prime Minister changed in recent years?**

### **2a. How has this process of change been brought about and controlled?**

Prime ministers have been at the heart of an adaptive process in British politics and government that has over the past thirty years had far-reaching effects not just upon the configuration of British governance but on the public's overall perspective of political activity and on its wider relationship with public and civic life. Those who have acquired the premiership and those who aspire to it have been instrumental in transfiguring the role of political leadership within the UK system into an altogether more prominent and innovative medium of political projection, exchange and analysis. At the same time, the leading players also constitute a supportive chorus that responds to shifting demands and expectations in the profile of audience dynamics. The net effect of these active and responsive properties has resulted in the generation of new resources, strategies, incentives and bases of authority for British political leaders.

Discussion and debate over the contemporary development of the British premiership have increasingly been characterised by allusions to the emergence of a presidential dimension. It has been used to convey the scale and significance of a series of changes in institutional dynamics, organizational conventions and cultural landscapes that have had the cumulative effect of altering the substance and tenor of leadership politics in the UK. Recent work in the field has attempted to rescue the value of the presidential allusion from the restraints of constitutional formalism and capricious political usage (Allen 2003a Allen 2003b; Foley 1993; Foley 2000; Foley 2004; Hargrove; Helms; Heffernan and Webb; Norton; Poguntke and Webb; Webb and Poguntke). It has sought to demonstrate the pertinence of the analogy as an analytical technique and to reveal the substantive nature of the comparison. The conclusions drawn from these studies offer a more discriminatory perspective on the usage of the presidential analogy. They show that the properties and concepts associated with the US presidency in particular have a deep associative and explanatory resonance with the contemporary evolution of the British premiership. In essence, both offices can be seen to be moving along parallel lines of development

The presidential argument is an attempt to adjust to the rapid developments in leadership politics. As it generates new or altered contexts of leadership projection, British political leaders find that while they inhabit established institutional structures, they increasingly operate in a world that is quite different from the traditional patterns of political interaction and evaluation. None more so

than the prime minister.

The central claim of this perspective is that the forms and devices of presidential politics bear a strong resemblance to the trends that are discernible in the nature of what has become an advanced and sophisticated politics of competitive leadership operating at the heart of the British system. In some cases, these shifts can be seen as occurring within the normal range of the adaptive developments of a parliamentary order and in accordance with the evolutionary spirit of the British constitution. In other respects, these changes can be viewed as transcending the customary patterns of British politics and ushering in an alternative infrastructure of political behaviour, representation and mediation.

In the spirit of the British constitution, the premiership is undergoing change through the force of practice and convention. The result is not a pure derivative of institutional authority or established arrangements of power so much as an adaptive shift in form and interior substance that transcends the formal infrastructure of Britain's political system. The conclusion that can be drawn is that the prime minister is embedded in a long term process within the British political structure that is transforming the office in line with many aspects of presidential politics.

What is important to note is that significant changes have been, and are continuing to be, made to the job specifications and personal requirements of a British prime minister. For example, British political leaders have increasingly become high profile public commodities. Their contemporary roles demand that they project themselves into the public sphere not merely as representatives of their respective organizations but as expressions of wider notions of social consciousness and cultural identity. In effect, prime ministers are expected to have an ability to connect visibly and even intimately with individual concerns and national moods. In doing so, they are expected to demonstrate the responsiveness of governing processes, to reveal an understanding of populist impulses and to affirm a personal accessibility to the wider public. This leads to prime ministers having to be adept at embedding themselves in the national consciousness, ensuring a high level of news management skills, mastering techniques of popular communication, and associating themselves directly with such themes as 'the public interest', 'the people' and 'the nation'. Like presidents, modern prime ministers can generate different political resources through these different roles and the techniques required by them. At the same time and in similar fashion to presidential politics, prime ministers are increasingly monitored and assessed according to criteria that are quite different to those experienced by senior colleagues.

Also noteworthy is the way that ideas concerning public leadership translate into a natural emphasis upon the individual office holder. To a growing extent, prime ministers are expected to be not merely public transmission points for their governments but to be highly visible political personalities in their own right. It is not enough to be the public face of an administration. British premiers now have to project themselves actively and consistently as individuals engaging in modes of personalised leadership. Prime ministers must now not merely arouse interest in a political agenda; they have to ensure that the agenda bears the personal stamp of the premier. Moreover, it is becoming increasingly commonplace for prime ministers and aspiring premiers both to possess and to convey an individual sense of vision for their respective parties and for the nation as a whole. Such a vision is seen as important in creating a brand image that will lend coherence to an individual's claim to leadership. The personalised nature of a leader's political vision is usually underlined by the way that it is declared to be sourced from the individual's

unique background and formative experiences. Such publicly stated personal visions are important both for shaping agendas but also for creating the impression of a leadership drive behind them.

These constituent themes and messages relate closely to what might be termed the consumption patterns of the kind of leadership politics that has come to characterise the British premiership. Just as leaders and their organizations go to considerable lengths to market their leadership credentials to as wide a constituency as possible, so the citizenry has become increasingly conditioned to expect leaders to dominate the media's coverage of politics, to shape news agendas and to define the issues of the day. Given the resources that are devoted by leaders to popular outreach and given the mass media's own predisposition to project political issues around the theme of leadership competition, the public's construction of politics becomes ever more oriented towards the abilities and reputations of leaders set within a context of a what has become known as the 'permanent campaign'.

No area of private life is now immune to what is regarded as a legitimate subject of public interest. No sector or medium is foreclosed to leadership appearances and engagement. As the state of the parties, their programmes, reputations and organizational competence are increasingly refracted through the lens of leadership figures, the terminology of political debate and opinion formation becomes ever more permeated with references to leadership. The net effect is an audience increasingly accustomed to political issues being made digestible through the continual exposure to a medium in which leaders act as the vehicles of popular issues, social anxieties and private impulses. As programmes and agendas become increasingly clustered in a crowded centre, the strategic and electoral challenge for leaders is to differentiate their parties through their own leadership styles and visions. Parties and governments have been complicit in the progressive tolerance and active promotion of leaders into these more exposed roles. Just as party leaders have risen to, and been propelled into, positions of greater prominence by the security imperatives of institutions and organizations, so personal considerations and leadership appraisals influence the public's estimation of a party's fitness for government.

These changes in context and operation have become a central and sustained feature of the premiership. It is also noteworthy that they not only come to condition the exercise of power but also to shape the nature and course of its decline. The strategies and techniques associated with this kind of high exposure leadership politics entails the emergence of new vulnerabilities and the onset of complex political risks. The more that prime ministers engage in public outreach, populist politics, media engagement, visceral symbolism and abstracted depictions of social cohesion, the more they lay themselves open either to damaging changes in the terms of political trade or to serious deficiencies in the demanding skill sets demanded by such an onerous role (Foley 2008; Foley 2009)

### **3. What is the impact of coalition government on the role and powers of the Prime Minister?**

It is too early to make a measured assessment. What is highly probable is that whatever strains and tensions may exist – or come to exist – they will have a disproportionately disruptive effect on the prime minister's strategic element of focused responsibility for political management and on the officeholder's ascribed roles of central agenda setter, chief interpreter of issues, and the main explainer of government positions. In this way, the likely dissonance that will arise as a result of the current arrangements will

interact upon each other so that the cause and consequence of the strains will be seen to be rooted in the same set of conditions.

#### **4. Are there sufficient checks and balances on the powers of the Prime Minister?**

##### **4a. If no, what additional or improved checks and balances are required?**

##### **4b. Is any further change required with regard to specific powers currently exercised under the royal prerogative, by transferring them to statute or otherwise?**

There are checks and balances but the operative term of 'sufficiency' raises difficult questions. Not the least of these relate to issues of political will. As noted above, substantial party-based interests are closely connected to many of the developments that have been instrumental in the increased profile of prime ministers and in the relative detachment from more traditionally sourced constraints. On some occasions, the prime minister will be seen as acting in ways that could have benefited from the need to engage with a greater array of points of advice, consultation, deliberation and debate. On other occasions, if prime ministerial leadership is seen to be excessively or unreasonably constrained by lesser figures (depicted disparagingly as 'politicians') then this might very well be construed as frustrating effective and practical governance.

Checks and balances can be a volatile political instrument where populist energies can shift quickly from one side to the other. A rigorous system of checks and balances involves the formation and usage of a particular political grammar. It is one thing to possess – or to set in place – a series of checks. It is quite another to make them operational in the right way and at appropriate times.

Having noted both the foundational dimension of a 'political constitution' and the operational dependency upon activated political forces in enforcing its rationale, it is nevertheless the case that there is no assurance that even mobilised checks will achieve and sustain a condition of satisfactory equilibrium. The market precepts of self-regulating balances may be current in the neo-liberal orthodoxies of the political economy but there are signs in the constitutional sphere that dominant prime ministerial figures carry inferences of unbalanced and disproportionate positional influence. Possible forms of corrective rebalancing might include:

- Expediting more opportunities for legal / constitutional challenges to the uses of prime ministerial powers.
- Higher profile Parliamentary committee hearings / investigations.
- Regular press conferences and 'meet the press' platforms.
- More intrusive legislative and public oversight of the intelligence and security services.
- Greater latitude for free votes and 'no risk' censure motions in the House of Commons on constitutionally related matters.
- Restorative justice measures in cases of alleged abuses of power or in cases of serious misjudgements.

These are of course institutional measures but it is noteworthy that the medium of contemporary leadership politics embraces a far wider remit of contexts, interest, elites, actors, commentators, analysts, participants and practitioners set within a polycentric matrix. Corrective institutional counterweights, therefore, would not in themselves satisfy the requirements of balance. These

and similar devices would need to be enfolded into this wider field of leadership-centred political engagement.

**5. Is the Prime Minister sufficiently accountable personally to the electorate, to Parliament, and otherwise?**

**5a. If no, how should his accountability be improved?**

A case might be made that the prime minister is already satisfactorily accountable. Prime ministers now operate in a context that is described as a 'permanent campaign' with all the marketing, outreach, promotional, public relations and media exposure that that involves. As such, the office-holder is continually propelled into high profile positions and thereby into arguably a form of accountability on daily basis. This perspective carries some weight but it can privilege day-to-day micro agendas over more serious macro dimensional issues and over more long-term critiques concerning government policy and priorities. Much depends on what meaning and value are conferred on the term 'accountability' – i.e. accountability can be devised as substantive or symbolic; current or retrospective; instructive or retributive; organizational or personal; political or criminal. The question raises important issues over what kind of accountability is feasible or desirable.

**6. Are structures of power beneath the Prime Minister sufficiently clear and accountable?**

**6a. If no, how should this clarity and accountability be improved?**

The structures of power beneath the Prime Minister are utterly opaque. It is understood that they are variable in content and organization, and that they often staffed by individuals on forms of temporary secondment, operating within systems that are fluid in status and purpose. As the role and operation of these structures are difficult to discern, they might be regarded as notable forms of governing obfuscation and ambiguity. On the other hand, they can be seen as signifiers of increasingly complex forms of multi-level and multi-partnership governance where accountability becomes ever more mercurial in nature.

**7. Should the Prime Minister be directly elected by the British people?**

Leaving to one side the extent to which general elections can be interpreted as *de facto* competitive encounters between leadership teams, the question raises the issue of a far more direct form of power transfer.

In some respects the question can be answered in the affirmative. The facility of a direct election would

- rationalise and clarify the authority base for the office and its expansive roles and responsibilities;
- strengthen and satisfy the logics of democratic governance;
- stimulate higher turnouts;
- and offer the prospect of a resolution to the current or emergent problems associated with legitimacy, accountability, agency and the distribution of power.

At the same time, the question opens up a set of highly problematic dimensions relating to the conflation of democracy and leadership set within a context of leadership politics within a functioning democracy. An instructive way to engage with these issues is to examine the main properties and arguments associated with the claims and counterclaims advanced in respect to the differing interpretations and assessments of the current trends in this area.

**Positive**



In defence, it can be said that current focus upon leadership within a democratic polity allows for a continuing political engagement between the citizenry and key decision-makers so that policy choices are not only informed by, but positively shaped by the expressed concerns of a politically active public.

The competition between leaders for their own targeted constituency of public support allows for a high quality of principled debate, a sustained drive for political education, and a popular interest in the high profile interaction between the president and notable political players and potential leaders within an enriched public sphere.

It can be claimed that democratic leaders offer a source of order, direction and coherence to an otherwise diffuse set of government agencies – and increasingly to a segmented cluster of specialised networks of regulation and adjudication.

In the same way that leadership politics can offer a readily accessible medium of public connectedness to high politics, so it can offer a basis of a collective identity with the contemporary currents of political debate as they are refracted through the lens of leadership disputes. By establishing a focal point of political attention:

- leaders are able to maintain public interest in politics;
- to offer a sense of vision or message in an increasingly crowded public square;
- to provide an important source of political motivation and mobilisation in a post ideological age of dealigned and disoriented voters;
- and to make an increasingly significant contribution towards satisfying the classic criteria of choice, consent, control and responsible government within contemporary democracy.

### **Negative**

On the negative side, this kind of high exposure leadership can be said to generate a state of permanent campaigning in which governing responsibilities are subordinated to the drive to maintain public support and to the need for leaders to remain within the parameters of current popular opinion. Far from offering a leading sense of direction, this kind of political leadership is arguably too political in character - shaped, presented and projected as it is by a continual process of market testing and message engineering dominated by teams of political advisors, media consultants, market strategists, focus groups and public relations experts.

From this perspective the critique is one in which leaders are regarded as a distraction from authentic democratic politics. In essence, the claim is that this kind of modern leadership politics does not amount to an effective countervailing force against the conditions of a marginalised democracy and civic diffusion. If anything, it can be said to divert attention away from the manifold shifts towards the conditions of what is termed a 'post-electoral democracy'.

While leaders appear to be the main instruments and agents of a permanent election, government action in fact becomes more disconnected from the outcomes of actual elections. Whether it is global governance, regional integration, regulatory regimes, policy networks, judicial decisions, budgetary inertia or other forms of structural incrementalism, government actions have become only marginally related to the outcomes of elections.

The other main critique is that the cultural emphasis upon leadership politics is in fact a serious

and even dangerous development. The argument here is that the permanent campaign of competing leaderships and the high recognition centrality of the president in particular act not just as a viable alternative to the normal interplay of politics but amount to an effective substitute for the traditional processes of democratic governance. It can be claimed that the heightened levels of political communication, can lead to volatile forms of populist politics with its attendant spasms of selective issue preoccupations and unstable political agendas.

## Conclusion

The dynamics of modern leadership politics within the structures of a purportedly advanced democratic system reveal new challenges not merely to the processes of government, but in a wider sense - to the contemporary role of political leadership in respect to the relation between the state and society, and especially between the depiction of high politics and the flatter implications of an increasingly diverse, multi-sectored, deinstitutionalised and sceptical public base. Against such mutable backdrop, the issue of a direct election is not quite the solution to a key in modern governance that it might at first appear to be. On the contrary, it might well be claimed that something approaching the current condition of leadership politics represents the very adaptive transformation that an electoral solution is purported to achieve.

26 April 2011

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Written evidence submitted by Sue Pryce, Associate Professor,  
School of Politics & IR, University of Nottingham

**My credentials:**

I have written extensively on the issue of the role and powers of the modern Prime Minister (see: Sue Pryce, *Presidentializing the Premiership*, Basingstoke: Macmillan, 1997,etc) .

**General View**

The role and powers of the Prime Minister have evolved so much that they need to be written down and agreed, not least so that any additional accretion of powers can be properly scrutinized and authorized by Parliament.

**Answers to your questions:**

**Question 1 – ‘Is there sufficient clarity as to the Prime Minister’s role and powers?’**

The clear answer is ‘no’.

The *Cabinet Manual*, recently published in draft form and into which this Committee has inquired, demonstrates how vague is the official position of the Prime Minister.

The Cabinet Manual probably amounts to the most detailed official attempt yet to define the role of the Prime Minister, whose powers are spread across various statutes, conventions and codes. Yet it mainly serves to demonstrate just how imprecise the position is.

For instance, paragraph 77 states that:

The Prime Minister has few statutory functions but will usually take the lead on significant matters of state. The Prime Minister has certain prerogatives, for example recommending the appointment of ministers and determining the membership of Cabinet and Cabinet committees. However, in some circumstances the Prime Minister may agree to consult others before exercising those prerogatives.

The effect of stipulations of this sort means that the Prime Minister has great flexibility in how he or she exercises the role and with whom he or she may consult in the exercise of the highly malleable powers he or she possesses.

### 1a. Should the Prime Minister's role and powers be codified in statute or otherwise?

There is a clear need to codify the role and powers of the Prime Minister, preferably in statute, both to ensure democratic transparency, and to recognise how the office has changed in recent decades, as discussed below. (For an example of a proposal for statutory codification see eg: *The Prime Ministership Bill 2001*, introduced by the chair of this Committee, Graham Allen MP).

This statute would set out:

- a) How the Prime Minister is appointed, and the respective roles of Parliament and the electorate in this process
- b) The term of office served by the Prime Minister
- c) The functions of the Prime Minister, including those presently often exercised in practice by the premier under the Royal Prerogative, which would be placed on a statutory basis for the first time, and placed under full parliamentary control, including measures for their exercise to be subjective to votes on substantive motions in the Commons. They include:
  - the ability to enter into armed conflict;
  - the right to appoint ministers;
  - the right to make Orders in Council;
  - the right to sign or ratify treaties (though some degree of statutory provision for parliamentary oversight has been introduced here, there remains scope for improvement)
  - to recognise foreign governments.
- d) It would provide the Prime Minister with support for a publicly funded team of staff sufficient for his/ her needs.

### 2. How has the role of the Prime Minister changed in recent years?

The office of Prime Minister, particularly since the time of Harold Wilson in the 1960s, has developed to take on 'presidential' characteristics, with the premier behaving more like the single head of government than the collegiate chair of Cabinet. The prime minister has become a president in the eyes of the electorate but remains a prime minister according to the constitution. This change has led in particular to prime ministers gathering around themselves a presidential-style team of advisers at No.10 and the Cabinet Office. These staff are required to bridge the gap that has opened up between the political and constitutional position of the prime minister (see my own book: Sue Pryce 1997, *Presidentializing the Premiership*, Basingstoke: Macmillan).

The British people at a general election no longer choose an individual MP for the constituency (which itself incidentally creates legitimacy problems for them which I won't go into here). The general election has become a proxy for the election of a national leader. The Presidentialization of this process has become ever more obvious,

at the last general election the electorate could view several Presidential debates, but not yet vote directly for the candidate of their choice. This –unusually for a western democracy-turns the local election process effectively into the election of a Member of an electoral college to select a Prime Minister, rather than the direct election of a Member to the Legislature.

**2a. How has this process of change been brought about and controlled?**

The main driver of this process has been the rise of personalised electoral politics, which have in turn required prime ministers to recruit a larger number of advisers able to furnish them with party political advice that traditionally is not on offer from the permanent Civil Service. This process of change has evolved. I don't believe it has been conscious or deliberate, but it is no less real for that. The lack of any statute, code or constitution has meant there has been no test to overcome to properly question or check further accumulation of power. The accumulation of power has therefore not been controlled by anything built into the structure of British democracy, beyond the self restraint of the incumbent.

**4. Are there sufficient checks and balances on the powers of the Prime Minister?**

No. Constitutional checks and balances in the UK are designed around the Prime Minister as chair of a Cabinet of equals; not a government that is in practice a presidency. Under such circumstances, the existing checks and balances would seem to be inadequate.

**4a. What additional or improved checks and balances are required?**

See 7.

**4b. Is any further change required with regard to specific powers currently exercised under the royal prerogative, by transferring them to statute or otherwise?**

See 1a above.

**7. Should the Prime Minister be directly elected by the British people?**

Yes. Given the reality of a presidential prime minister – albeit not yet officially acknowledged – the most satisfactory outcome from the point of view of democratic accountability would be the direct election of the head of the UK executive.

This arrangement would have the dual benefits of creating transparency and accountability for the UK executive, and breaking the link of patronage between the UK executive and legislature, enabling the latter to assume its proper role as an independent partner of the executive. Once local people are enabled to use their vote in a general election to vote for a local MP, and separately to vote for the person they wish to be Prime Minister, then both local MPs and the Prime Minister will have separate authority and legitimacy.

I would be more than happy to expand upon any of these points in writing or to give verbal evidence to the select committee if that was felt appropriate.

*May 2011*

Written evidence submitted by Dan Corry  
(FTI Consulting but writing in a personal capacity)

Thank you for asking me for my thoughts on your inquiry.

Below I make a few brief points based largely on my experience in government. This includes working in Downing Street 2007-2010 as head of the Policy Unit and then Senior Adviser on the Economy; in HMT as Chair of the Council of Economic Advisers 2006-7; and working as special adviser for Secretaries of State at Education (2005-6), DTI (1997-2001) and DTLR (2001-2). I was also a civil servant in the 1980s including at the Treasury, and a member of the FDA National Executive.

### **1. The PM and Cabinet**

My experience suggests that the Cabinet do act as a sort of accountability check on the power of the PM. I discuss the limitations on the PM's control of Cabinet in a forthcoming article for *Political Quarterly*, a copy of which I attach<sup>23</sup>.

In short, and depending on the PM's personal position in the Party and Government at the time, the PM has to keep a close eye on what the Cabinet will and will not wash. That does not mean that issues are brought forward for a bold and open discussion and a vote at Cabinet. This occurred rarely in the days when I worked at Number 10 and I suspect rarely ever happens. But it does mean that the PM does not in any way have untrammelled powers.

As several people have pointed out, the events that led to Mrs Thatcher being rejected by her Cabinet, leading to her fall from power, show the pitfalls of not making sure that you are in step with your Cabinet.

Some make quite a fetish of the issue of Cabinet collective responsibility. Personally I am not convinced that a vote of the set of ministers that happen to make up the Cabinet is in some way always the best way of making decisions. It is right that decisions are widely discussed and are usually better for having been so. Therefore it is not advisable for the PM and a small group of advisers to decide policies without wider discussion amongst at least a core group of relevant and informed ministers (not always the Secretary of State). But that is different from saying that the world would be a better place if *every* decision was taken, after full discussion, at full Cabinet.

The case for collective consideration is surely more that it allows all departmental positions to be sensibly taken account of. In general most decision are taken like that (through the Cabinet Committee and White Paper and other collective clearance systems).

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<sup>23</sup> "Power at the Centre: is the National Economic Council a Model of a New Way of Organising Things?", *Political Quarterly*, forthcoming

## 2. How can Cabinet be better informed?

Cabinet ministers often do not have detailed knowledge outside their own departmental subject areas and certainly do not get briefed by their Department on much for Cabinet or Cabinet Committees except on how things affect their departmental brief. (An exception is when a government has been around for a while: in the Brown Cabinet for instance many members had experience of the Education department which made debates on education policy livelier and more informed than in some other areas.)

The Cabinet Office does produce and commission papers for Cabinet Committees to give background, pros and cons and so on. Perhaps these could be fuller – and perhaps there could be better papers for Cabinet itself. That in turn would be aided if agendas for Cabinet were decided well in advance and people were alerted to them. But life often moves too fast at the centre to allow this and circulating papers showing massive difference amongst colleagues is – I fear – a recipe for leaks.

## 3. Accountability of the PM and No 10

The Liaison Committee is potentially a great innovation. Certainly in my experience the PM takes it very seriously, spending some time getting briefed up on a whole range of issues.

However, usually the PM is well able to handle the actual meetings as there are too many topics and questioners to really allow detailed follow-up of particular issues. In one way or another this needs to be resolved if the Committee is to be more effective in holding the PM to account.

In addition it is perhaps surprising that the Permanent Secretary for No 10 is not asked to give evidence to Select Committees more often – just as all the other Permanent Secretaries are. Perhaps that is a role for this Committee.

Some believe that special advisers should also give evidence. There is a case for that but it would certainly raise some important issues about who is really accountable. Since special advisers do not take decisions, but only advise, it might confuse, not enhance accountability.

## 4. Accountability to MPs

It is often said that MPs have no real influence over the PM and over legislation. In my experience that is not really the case. No 10 has to keep a very keen eye on how MPs (especially its own) are feeling and to amend its approach if it thinks that what is ideally wanted would never get through the Houses. Examples in my time included the Education Bill of 2005/6.

This does not of course mean that MPs are able to *initiate* much legislation – our system is not built like that. EDMs, Private Member Bills and the like can be useful in flagging up something that members care a lot about and can lead to legislation as a result.

MPs would get more of a say if the government did not control the agenda and timetable of Parliament to such an extent – but then it is not clear that the government would be able to get its programme through.

## **5. Pre investiture vote on PM**

Some have argued that to show that it is MPs that decide who is the PM, not the public, and to emphasise that it is to Parliament that they owe their position, there should be a Parliamentary vote as to who should be PM after an election.

I think that that ship has passed. If the public, having watched leader debates, seen many posters featuring the party leaders and so on, then discover that though they have voted for X as PM (even if in fact voting for their own local MP) they might be faced with a different character as PM, they would go wild. This may be a shame, but the media and public reaction to PM Brown not having been voted in by the public (when in fact he did not have to be), shows where we stand on this in reality.

## **6. Role of the PM as Party Leader**

One of the more complex issues of accountability is that the PM is invariably also the leader of their Party. On the Labour side this task takes up a lot of time and offers a separate set of people that the PM needs to keep on board with – and who try to hold her/him to account. It tends to give an incentive to the PM to not want the Party criticising the government in Conferences, publications or manifestos. It also give some extra power to the PM over MPs since they are to different degrees supported by the party machine and if they step out of line can be ‘punished’ through the party machine.

However it also weakens the PM since rivals in Cabinet or big beasts who have returned to the back benches can use the Party in different way to undermine a PM who is deviating too much from what they want.

May 2011



**Written evidence submitted by Mark Harper MP, Minister for Political and Constitutional Reform**

Thank you for your letter of 3 May which you wrote to the Cabinet Secretary and has since been brought to my attention.

I have read with interest the list of Prime Minister's functions that Lord Hennessy has submitted to your inquiry. What Lord Hennessy's work clearly demonstrates is that the exact role of the Prime Minister varies over time depending on the political and constitutional context and the decisions of the incumbent Prime Minister whilst they are in office.

It is for that reason that the Government's preferred approach is that of the draft Cabinet Manual, on which the Committee has helpfully provided comments, which sets out at a high level the role of the Prime Minister as head of the Government and adviser to the Sovereign.

I look forward to your report on this inquiry in due course.

*7 June 2011*

**Written evidence submitted by Rt Hon Alex Salmond MSP, First Minister of Scotland**

Thank you for your letter of 24 January inviting the Scottish Government to submit written evidence to your inquiry into the role and powers of the Prime Minister. I am happy to contribute some thoughts from a Scottish perspective.

The question of whether the role and powers of the Prime Minister of the United Kingdom should be set down in statute is ultimately a matter for the UK Parliament. In terms of general principle, however, I have no hesitation in commending to the committee the codified approach already taken by Westminster in the Scotland Act 1998.

As the attached paper indicates, the extent to which the functions of the First Minister are defined in the 1998 Act is not exhaustive. The First Minister has a wide range of responsibilities. Many of these have a statutory basis, but some relate to prerogative powers or otherwise exist by convention. Nonetheless, the office of First Minister is one which has a clear statutory basis and this in turn has enabled much of the broader structural framework – within which the Scottish Government as a whole functions – to be set out transparently and accessibly in a single constitutional document.

That reflects what I would regard as a necessary feature of constitutional arrangements in a modern European democracy. It is certainly in keeping with the founding principles of the Scottish Parliament, developed by the Consultative Steering Group. These emphasise the fundamental importance of access and power-sharing as parliamentary and constitutional values. By extension, the sharing of power between the institutions of the state and the ordinary citizen necessarily implies a willingness on the part of such institutions to expose and disseminate information about their own internal structures and rules. A system which operates solely or principally on the basis of unwritten and informal conventions, accessible only to insiders, must inevitably risk failing that important democratic test.

By way of example, I suspect most impartial observers would consider it surprising for system-critical

rules surrounding the government formation process to be defined by civil service guidance shortly in advance of a closely-fought general election. Yet this is precisely what happened in 2010, with the Cabinet Office finding itself in the unenviable position of setting out the constitutional arrangements which would apply in the event of a hung parliament. That observation in no way calls into question the quality of the work done by the Civil Service in clarifying an important matter, and in doing so in an important environment of public uncertainty and media speculation. But it is surely unacceptable for the constitution to be generated, or at least written down, in what is essentially an ad-hoc manner and without wider consultation. Citizens deserve rather better.

That example, to which your committee has itself referred in its recent report *Lessons from the process of Government formation after the 2010 General Election* (HC 528), provides a helpful illustration of the advantages of codification and transparency. A comparable difficulty would not arise in the Scottish context because the rules are explicitly defined in the Scotland Act. The manner and circumstances in which a First Minister is nominated and appointed to office, and in which he or she may leave or be removed from office, are not in any doubt. The formation of the government is similarly transparent, with statutory provision governing the appointment and functions of government ministers.

To that extent it is reasonable to think Scotland as having a largely-codified constitution, which happens to be expressed in the form of an Act of the UK Parliament (and which my Government, as you know, believes should be repatriated). The other devolution settlements operate on a similar basis. In fact, within the UK, only the Westminster system continues to function on an essentially non-codified basis. As you know, that puts the UK very much in the minority in an international context. There has of course been a greater willingness at Westminster in recent years to consider opportunities for codification and the adoption of a more transparent approach. To some extent the previous Labour administration explored this territory as part of its *Governance of Britain* agenda. The current Conservative-led government is seeking to institute fixed-term parliaments.

In that context I cannot avoid remarking that it is simultaneously ironic, inexplicable and deeply regrettable that in seeking to codify this particular aspect of the constitution the UK Government appears to have had no regard to the pre-existence of constitutional provisions regulating the electoral cycle in the devolved jurisdictions. That failure to take account of, or to respect, established constitutional arrangements is suggestive of the persistence of an ad-hoc and uncoordinated approach to constitutional development. That is something which I hope your own committee will monitor closely, with its work providing a stimulus to rather better practice in future.

As I have indicated, not all aspects of governmental, parliamentary and constitutional activity in Scotland are fully-codified. The Scottish Government continues to operate within a wider UK context and some aspects of governmental activity remain uncoded. Thus, for example, one of my functions as First Minister is to advise Her Majesty in relation to the making of appointments and the exercise of the Royal prerogative. Certain of those functions are referenced directly by the Scotland Act, or have a statutory basis elsewhere, whilst others have not been formally codified. In that sense, Scotland continues to retain some of the flavour of Westminster tradition.

That is, incidentally, also true of some familiar features of governmental structures, such as Cabinet and the doctrine of collective responsibility, both of which exist by established convention but are not formal components of the machinery of government specified in statute. The important point I would want to make, however, is that, once again, such non-codified activity is facilitated and made more transparent because it can be located clearly within the overarching codified structures provided by the

Scotland Act.

The attached paper provides some further detail in relation to some of the functions of the First Minister, including in particular those which are not explicit in the Scotland Act. I trust this will prove of assistance to your committee in taking forward its deliberations.

*21 March 2011*

### **Further written evidence submitted by the Scottish Government**

#### Introduction

This paper responds to the Committee's request for evidence in connection with its inquiry into the role and powers of the Prime Minister.

The Scottish Government does not offer any direct commentary on the role and powers of the Prime Minister. That is ultimately a matter for the UK Parliament. However, this paper provides the Committee with some factual background on the role and powers of the First Minister of Scotland and the degree to which statute impacts upon those activities.

#### Functions of the First Minister - Summary

The Scotland Act 1998 makes the principal provision regarding the role and responsibilities of the First Minister. Additional statutory responsibilities are contained in other statutes. Further provision is also made in the Standing Orders of the Scottish Parliament in relation to matters such as the nomination of the First Minister and the appointment of ministers. In addition, First Ministerial activities may be founded on convention (e.g. chairing the Scottish Cabinet).

Accordingly, no single document sets out the entire extent of the First Ministerial role, although the principal elements of the constitutional framework defining the role and functions of the office are contained in the Scotland Act – which represents, in effect, a largely-codified Scottish Constitution. Information annexed to this paper provides further background on roles and powers which are not to be found in the Scotland Act.

#### The Scotland Act 1998

The key provisions of the 1998 Act as regards the office of the First Minister include:

**Section 44:** Defines membership of the Scottish Government, with the First Minister as one of the three core members required in order to constitute a government (alongside the Lord Advocate and the Solicitor General).

**Section 45:** Provides for the appointment of the First Minister by Her Majesty. It makes provision for the First Minister's term of office, resignation, and for the First Minister's functions to be undertaken by a designated member of the Scottish Parliament if the office of the First Minister is vacant or if the First Minister is unable to act.

Section 46: Makes provision about the way in which a person is chosen for appointment as First Minister. Unlike the Prime Minister, the First Minister is chosen directly by members of the Parliament (in accordance with the Standing Orders of the Parliament). The Parliament's nominee is recommended to Her Majesty by the Presiding Officer. There is no role for Her Majesty in inviting the leader of a political party to form a government and, consequently, no possibility that she might be drawn into political controversy in the event of finely-balanced or disputed election result.

Section 52(5)(a): Normally functions are conferred upon the Scottish Ministers and can be exercised by any of them (see section 52(3) of the Act). However, statutory functions can also be conferred upon the First Minister alone (see below) and, if so, they are not exercisable by any other Minister nor is any responsibility for their exercise transferred to any other Minister (see section 52(5)(a)).

#### Miscellaneous statutory responsibilities of the First Minister

- Appointment, with the approval of Her Majesty, of Scottish Ministers and Junior Scottish Ministers [sections 47 and 49 of the Scotland Act 1998].
- Recommending to Her Majesty that the Lord Advocate or Solicitor General should be appointed or removed, subject to the agreement of the Parliament [section 48 of the Scotland Act 1998]
- Various functions relating to the appointment and removal of judges [section 95 of the Scotland Act 1998].
- Functions relating to the four ancient universities of Scotland (the First Minister is an ex-officio member of the Scottish Universities Committee of the Privy Council) [section 9 of the Universities (Scotland) Act 1889 and the Royal Charter of the Carnegie Trust for the Universities of Scotland 1978].
- Functions relating to reports made by the Interception of Communications Commissioner and Intelligence Services Commissioner [Sections 58 and 60 of the Regulation of Investigatory Powers Act 2000].
- Civil Service management functions in relation to staff of the Scottish Administration [section 1 of the Civil Service (Management Functions) Act 1992, as read with section 51 of the Scotland Act 1998].
- Keeper of the Scottish Seal [Section 45(7) of the Scotland Act]. The First Minister can also direct how Wafer Scottish Seals are to be kept and how they are to be taken [section 38(4) & 38(5)(b) of the Scotland Act].
- Consultee on selections for membership of the UK Supreme Court [Sections 27 & 28 of the Constitutional Reform Act 2005].
- To approve the issuing of certificates confirming that evidence cannot be supplied to the Scottish Public Services Ombudsman as it relates to proceedings of the Scottish Cabinet or any committee of the Scottish Cabinet . [Section 13(8) of the Scottish Public Services Ombudsman Act 2002].
- Issuing of certain certificates under the devolved Freedom of Information legislation [Section 52 of the Freedom of Information (Scotland) Act 2002]
- In respect of the exercise of functions during vacancies in the offices of Lord President of the Court of Session and Lord Justice Clerk and the incapacity of the holders of those offices [Senior Judiciary (Vacancies and Incapacity)(Scotland) Act 2006].
- Action in relation to recommendations made by the Standards Commission or Chief Investigating Officer in respect of Crown Appointments [Section 23 of the Ethical Standards in Public Life etc (Scotland) Act 2000].

The First Minister also has certain statutory responsibilities in respect of his or her membership of the Privy Council, as explained in a PQ answered by the Prime Minister on 30 June 1999. The text of that PQ and an accompanying paper referred to in the answer is offered in the Annex to this paper.

#### Responsibilities specific to First Minister by convention

- Allocation of Ministerial functions and titles
- Chairing Cabinet
- Appointment of Special Advisers and Parliamentary Liaison Officers
- Scottish Ministerial Code (including dealing with complaints against Ministers)
- Minister in attendance on Her Majesty
- Honours recommendations to Her Majesty
- Signing of Royal Warrants en route to Her Majesty
- Acting as Purse-bearer when Her Majesty is at the General Assembly
- Advising the Prime Minister about candidates for appointment as Lord Lieutenant
- Representing the Scottish Government at important events and engagements
- Approving the movement of restricted patients
- Taking the salute at the Edinburgh Military Tattoo
- Approve Ministerial Hospitality Programme and Expenditure

#### Responsibilities as Head of the Scottish Government

The First Minister has responsibility as head of the Scottish Government, including responsibility for development, implementation and presentation of Government policy and for promoting and representing Scotland at home and abroad.

Many responsibilities relate to the internal operation of Government (leading the Ministerial team, chairing the Scottish Cabinet etc.). The First Minister is also accountable to Parliament in his or her capacity as the Head of the Scottish Government, including by taking First Minister's Questions each week in the Parliament and when announcing the Government's forthcoming legislative programme (normally in September).

#### Accountability

The Committee has asked specifically about accountability. The First Minister is accountable to the Scottish Parliament in the normal way and is required to tender his or her resignation (along with all ministers) if defeated on a vote of confidence.

As is the case with the UK Prime Minister, the First Minister of Scotland is not directly accountable to the electorate. The system is parliamentary in nature, rather than presidential. However, the founding principles of the Scottish Parliament, developed by the Consultative Steering Group, emphasise that both the executive and the legislature should be accountable to, and share power with, the people. As the head of the Government, the First Minister consequently has an element of convention-based political accountability to the nation, on behalf of the Government, that is not directly paralleled at Westminster.

Scottish Government  
February 2011

## ANNEX

### FIRST MINISTERIAL FUNCTIONS AS PRIVY COUNCILLOR

PRIME MINISTER  
Devolution (Scotland)  
30 June 1999

Mr. Maxton: To ask the Prime Minister if he will make a statement regarding the giving of advice by the First Minister to Her Majesty on the exercise of her functions in connection with the implementation of the Scotland Act 1998. [89358]

The Prime Minister: In a number of situations advice is by convention, given by a Minister of the Crown to Her Majesty in respect of the exercise of her functions. The majority of Her Majesty's functions in respect of which she receives advice from a Minister of the Crown in this way relate to the making of appointments and the use of the Royal prerogative.

As a consequence of the new constitutional arrangements under the Scotland Act 1998, it is proposed that in some of those situations the First Minister instead of a Minister of the Crown will give advice, by convention, to Her Majesty after 1 July in respect of her functions. No formal order is required to give effect to these transfers, which will be carried out by administrative arrangement. In this context "Her Majesty's functions" refer to her statutory functions and cases where Her Majesty acts under her prerogative or common law powers. It concerns only those functions of Her Majesty which she exercises personally and not those which are exercised on her behalf by a Minister of the Crown. It deals only with circumstances in which a Minister of the Crown provides advice to Her Majesty by convention and it does not deal with circumstances in which a Minister of the Crown exercises a statutory function of advising Her Majesty. Where appropriate, provision has been made in the Scotland Act, or in subordinate legislation under the Scotland Act, to transfer these statutory advice-giving functions from the Minister of the Crown to the First Minister.

In cases where Her Majesty exercises a function which is exercisable within devolved competence for the purposes of the Scotland Act 1998 and she is, by convention, advised by a Minister of the Crown about the exercise of that function, then after 1 July she will be advised by the First Minister instead of by a Minister of the Crown.

For example, Her Majesty exercises the Royal prerogative of mercy and appoints regius professors of the ancient Scottish universities in this way. A list of further examples of circumstances in which Her Majesty will in future be advised by the First Minister instead of by the Secretary of State in relation to the exercise of her functions which relate in whole or in part to a devolved matter has been placed in the Library.

There are some matters in respect of which the Prime Minister gives advice to Her Majesty on the exercise of her functions and on which it would be appropriate for the Prime Minister to consult or to take advice from the First Minister. These matters include recommendations of Scottish candidates for honours and dignities, which are a reserved matter, and advice on the appointment of Lords Lieutenants

in Scotland, the Lord High Commissioner to the General Assembly of the Church of Scotland and members of the Royal Commission on Environmental Pollution and the Forestry Commission. There are also matters where a Minister of the Crown gives advice to Her Majesty and where it also would be appropriate for the First Minister to be consulted by or to give advice to that Minister of the Crown.

The Scotland Act 1998 confers upon the First Minister various functions of advising Her Majesty either directly or through the Prime Minister. This includes seeking Her Majesty's approval to the appointment of Scottish Ministers and recommending to Her Majesty persons for appointment as Scottish Law Officers. Section 95 of the Act sets out in detail the arrangements for the First Minister to nominate persons for appointment as Lord President of the Court of Session and Lord Justice Clerk to the Prime Minister, who in turn makes recommendations on those appointments to Her Majesty. It also provides for the First Minister to recommend to Her Majesty the appointment of other judges.

In a number of other situations, Her Majesty is advised in relation to the exercise of her functions by the Privy Council rather than by a Minister of the Crown. The Privy Council deals with various items of Scottish business, both prerogative business and statutory matters, such as the grant of Royal Charters and Privy Council appointments. I have placed a paper [see directly below] in the Libraries of both Houses that briefly describes the circumstances in which the First Minister will, from 1 July, contribute to Privy Council business in the same manner as the Secretary of State for Scotland has done.

#### SCOTLAND ACT 1998: SCOTTISH BUSINESS OF THE PRIVY COUNCIL

1. This paper describes how the First Minister will from 1 July 1999 contribute, in the same manner as the Secretary of State for Scotland has done, to the Privy Council's Scottish business which dates to non-reserved matters for the purposes of the Scotland Act 1998.
2. The First Minister will be a Privy Counsellor and the Lord Advocate will continue to be a Privy Counsellor.
3. Advice in relation to Privy Council matter, such as the grant and amendment of Royal Charters, appointments and the making of Orders in Council, is given to Her Majesty by the Privy Council. Advice about a particular matter is offered to Her Majesty by the members of the Privy Council who are in attendance at the meeting of the Privy Council at which the matter is dealt with, rather than by specific members of the Privy Council. However, the advice in relation to a particular matter which the Privy Council offers to Her Majesty is in many instances based, either by virtue of statutory provision but more often by convention, on advice or information provided to the Privy Council by one or more particular Ministers of the Crown as the Privy Counsellor with the principal interest in that matter.
4. Where the Secretary of State for Scotland, as the Privy Counsellor with the principal interest, is currently responsible for providing advice or information in relation to the Privy Council's Scottish business then his role will pass to the First Minister from 1 July 1999 in relation to non-reserved matters for the purposes of the Scotland Act 1998 (the 1998 Act). Where the Secretary of State for Scotland's role in providing advice to Privy Council is a statutory function, then a consequential amendment to the relevant enactment will be required to change the reference to the Secretary of State for Scotland to the First Minister. This will be provided for in the 1998 Act itself or in the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999 to be made under section 105 of the Scotland

Act 1998. In cases where the Secretary of State's role is to provide advice by convention then legislation is not required to transfer this role to the First Minister. The Lord Advocate, as the Scottish Law Officer to the UK Government and a Privy Counsellor, also currently provides information and legal advice in relation to the Privy Council's Scottish business and he will continue to do so in relation to non-reserved matters after he has become a member of the Scottish Executive.

5. One of the main functions of Her Majesty in Council is to make Orders in Council on the advice of the Privy Council. The Privy Council also makes Orders of Council. In respect of Orders in Council and Orders of Council made under powers within devolved competence to make, confirm or approve subordinate legislation, the 'responsible authority' for the drafting of the subordinate legislation will be a member of the Scottish Executive, with the exception of Orders in Council under section 1 of the United Nations Act 1946. This is provided for in the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (SI 1999/1096) made under section 129 of the Scotland Act 1998. Where appropriate, any additional information or advice about such subordinate legislation which has been drafted by a member of the Scottish Executive will be provided to the Privy Council by the First Minister.

6. The Privy Council also has responsibility for the following matters of Scottish Business, which may be divided into prerogative matters and statutory matters.

7. The prerogative matters primarily relate to Royal Charters. These include the grant and amendment of Royal Charters, and Byelaws and Statutes, for Scottish Chartered Bodies. Scottish Chartered bodies include the Scottish Sports Council, the Scottish Society for Prevention of Cruelty to Children, the Arts Council for Scotland and the four Scottish Chartered universities, (Heriot-Watt, Strathclyde, Dundee and Stirling). They also include Privy Council appointments made under Royal Charters.

8. The role of the Secretary of State for Scotland or another Minister of the Crown in providing advice or information to the Privy Council for the Privy Council then to offer to Her Majesty in relation to Scottish Royal Charter matters will pass to the First Minister where it relates to matters within devolved competence. Where a Chartered body or a body applying for a Charter has functions which relate to both reserved and devolved matters, then the First Minister will provide advice to the Privy Council in relation to the devolved part of the body's functions. After 1 July the appropriate Minister of the Crown will provide advice or information in relation to Scottish Privy Council business relating to reserved matters. Administrative arrangements will be put in place so that the first Minister and Minister of Crown will jointly agree and provide advice to the Privy Council in relation to such 'mixed' bodies.

9. In a few circumstances, the Scottish Ministers will have an interest in a Scottish element of a Chartered body whose functions relate to reserved matters. Where appropriate, administrative arrangements will be put in place to provide for consultation with the Scottish Ministers by the Minister of the Crown before advice is provided by the Minister of the Crown to the Privy Council. For example, the Secretary of State for Culture, Media and Sport will consult the Scottish Ministers about the appointment of the National Governor for Scotland of the British Broadcasting Corporation under the BBC's Royal Charter.

10. The Privy Council's Scottish business in relation to statutory matters includes education matters, the alteration of statutory bank holidays, Privy Council appointments made under statute and the



approval of courses leading to state registration for professions supplementary to medicine.

11. The Universities (Scotland) Act 1889 (the 1889 Act) established the Scottish Universities Committee of the Privy Council, whose members include the Secretary of State and the Lord Advocate. The Universities (Scotland) Act 1966 provides that no ordinance of the universities of St Andrews, Glasgow, Aberdeen and Edinburgh (the 'ancient' universities) shall come into effect until it has been approved by Her Majesty in Council, and Her Majesty in Council may refer the ordinance to the Scottish Universities Committee who shall report to Her Majesty thereon. In practice, the secretary of State and the Lord Advocate advise Privy Council on ordinances. The secretary of state's role as a member of the Committee will be transferred to the First Minister on 1 July, by means of a consequential modification of the 1889 Act, and the Lord advocate will continue to be a member of the Committee. The Secretary of State's current role in advising Privy Council on other higher education matters, such as applications for degree awarding powers and for consent to changes of institutional governance orders under the Further and Higher Education (Scotland) Act 1992 will pass to the First Minister, as will his role in relation to applications by Scottish institutions under the Company and Business Names legislation to use the word 'university' as part of their names. The First Minister will also provide advice to the Privy Council in respect of the appointment by Her Majesty of Inspectors of Schools under section 135 of the Education (Scotland) Act 1980 (the 1980 Act). The Committee also approves amendments to certain educational endowments under the 1980 Act.

12. Section 1 of the Banking and Financial Dealings Act 1971 provides for the alteration of statutory bank holidays in Scotland or making a special day a bank holiday in any given year. This is done by means of a Proclamation by her Majesty in Council and the Secretary of State for Scotland's role in relation to providing advice to the Privy Council on this matter will pass to the First Minister.

13. Under the Professions Supplementary to Medicine Act 1960, the Privy Council makes a determination approving courses and qualifications for state registration purposes in the fields of professions supplementary to medicine. By convention, the Secretary of State for Scotland is one of the 3 Privy Counsellors required by the Act to approve courses run by Scottish institutions. The role of the Secretary of State for Scotland in relation to such courses will pass to the First Minister.

14. Finally, the Secretary of State for Scotland has a role in relation to nominating Privy Council appointments of Scottish representatives to various statutory bodies relating to the health professions such as the General Medical Council, the General Dental Council and the General Optical Council. The First Minister will take over the Secretary of State for Scotland's role in nominating Privy Council appointments of Scottish representatives to these bodies. Advice and nominations for the other Privy Council appointments to these bodies will come from the Secretary of State for Health. Administrative arrangements will be put in place to provide for mutual consultation between the Scottish Ministers and the Secretary of State for Health before either party puts forward nominations to the Privy Council.

Table of Examples of cases where Her Majesty exercises a function which is exercisable within devolved competence for the purposes of the Scotland Act 1998 and she is, by convention, advised by a Minister of the Crown about the exercise of that function and where after 1 July 1999 She will be advised by the First Minister instead of a Minister of the Crown.

Function	Statutory basis (where relevant)
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Appointment of the Lord Lyon and the Lyon Clerk	Lyon King of Arms Act 1867, sections 3 and 5
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Appointment of Regius Professor of Plant Science at the University of Edinburgh	Edinburgh
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University (Transfer of Patronage) Act 1897, section 1

Appointment of 5 of the 32 Board of Trustees of the National Library of Scotland.

By convention advice is also given on which member should be chairman Paragraph 2 of the Schedule to National Library of Scotland Act 1925, as substituted by the National Heritage (Scotland) Act 1985, section 18(5)

Appointment of HM Inspector of Fire Services Fire Services Act 1947, section 24

Limitation in respect of age or tenure of office in relation to appointment or nominations made by the Crown Universities (Scotland) Act 1966, Schedule 2, Part II, paragraph 7

Appointment of HM Inspector of Constabulary Police (Scotland) Act 1967, section 33(1)

Appointments to Mental Welfare Commission Mental Health (Scotland) Act 1984, section 2(4)

Appointment of Regius Keeper of the Royal Botanic Garden, Edinburgh National Heritage (Scotland) Act 1985, Schedule 1, Part II, paragraph 14

Appointment of HM Chief Inspector of Prisons Prisons (Scotland) Act 1989, section 7

Appointment of Chairman and members of the Scottish Land Court Scottish Land Court Act 1993, section 1(2)

Appointment of members and chairman to the Scottish Criminal Cases Review Commission.

Removal of person from office as member of Scottish Criminal Cases Review Commission.

Acceptance of resignation of person from office as member of Scottish Criminal Cases Review Commission

Use of Royal Prerogative including the use of Royal Names and Royal Patronage .

Receipt of and response to the submission of Loyal Addresses to Her Majesty from Churches and individuals in Scotland

Issue of Royal messages and congratulations such as those for 100th and succeeding birthdays and 60th and succeeding wedding anniversaries

Response to a Petition submitted to Her Majesty

Royal Prerogative of Mercy

Signature of Diplomas in respect of persons elected to the Royal Scottish Academy

Appointments to the Royal Fine Art Commission for Scotland

Appointment of Commissioners and Chairman to the Royal Commission on the Ancient and Historical Monuments of Scotland

Appointment of Her Majesty's Sculptor in Ordinary in Scotland

Appointment of Her Majesty's Painter and Limner in Scotland

Appointment of Regius Professors to Ancient Universities

Appointment of Astronomer Royal for Scotland

Appointment of Historiographer Royal in Scotland

Appointment of Keeper of Dumbarton Castle

*21 March 2011*