

**Written Evidence from the Better Government Initiative to
the Political and Constitutional Reform Select Committee's
consultation on "A New Magna Carta"**

1. The Better Government Initiative (BGI) is an informal body made up of people with practical experience in government at a very senior level who have no links to particular political parties (www.bettergovernmentinitiative.co.uk).

2. The BGI is concerned with the processes of government rather than with the political choices associated with individual policy initiatives or programmes. We have therefore refrained from commenting on the substantial political and policy issues that would need to be resolved in framing a constitutional document. A number of our procedural recommendations are however of potential relevance to those framing such a document. The reports in which these are set out are listed in the annex.

3. In commenting on the Committee's report, we are conscious that it was prepared before the developments following the referendum on Scottish independence; the proposals for further devolution to Wales and Northern Ireland as well as the suggestion of "English Votes for English Laws"; the proposals from the Labour Party to replace the House of Lords with an elected Senate and the proposed devolution to local government. These proposals come on the back of an active period of constitutional change and proposals for change, like Fixed Term parliaments, and the creation of the Supreme Court, as well as the failed proposals on electoral reform and the redrawing of parliamentary constituencies.

4. The Committee's report gives a balanced account of the arguments both for and against a written constitution. The BGI takes the view that the volume and scale of recent and proposed changes to constitutional arrangements goes beyond the capacity of an evolutionary "unwritten constitution" to manage. The present arrangements are open to manipulation by the governing party of the day through their temporary control of Parliament and offer no protection to important minority interests: the devolved administrations, the English regions or local government for example. There seems to be a substantial case for identifying the main body of constitutional rules - whether in legislation or convention - and affording them some protection from change without an appropriate process. It is the management of the change process, rather than the codification of the existing position, which seems to us to be the crucial missing element in our present arrangements.

5. The level of protection could range from simply making clear when a proposed measure or change was a constitutional one requiring different scrutiny or consultation procedures, to requiring enhanced or qualified majorities in Parliamentary votes or referenda. The degree of protection need not be the same for all changes but should be proportional to their significance for the future governance of the country.

6. The BGI has long argued for improved legislation and for Parliament to adopt and apply a set of legislative standards. We were grateful for the endorsement of this Committee for our proposals and disappointed that, currently, the Government does not propose to take them up. Nevertheless we continue to believe that the government of the UK would benefit from such standards and that the arguments for these apply even more strongly to constitutional legislation. The process for changing constitutional provisions should provide for a clear statement of objectives, an evaluation of impacts, and appropriate consultation.

7. Although we accept the case for a more codified constitution, we are not convinced that the conditions for the successful generation of a new written constitution, which are well described in the Committee's report, exist. We believe that any efforts would be most usefully focused on a combination of generating a constitutional code and the consolidation of existing legislation i.e. the first two options considered in the report.

8. As noted above, our published reports identify a range of practical issues concerned with the way the UK is governed and which might be appropriate for inclusion in future constitutional documents in some form. At this stage of the debate we are not pressing most of those matters, but two items do seem to us to need addressing:

- We are approaching the end of the first significant post war period of coalition government and, at the time of writing, a second coalition remains one possible outcome of the 2015 general election. While the coalition, particularly in its early phases, has generally worked well, the experience has suggested the need for some ground rules. These should cover the management of the interregnum, especially if coalition negotiations become more extensive as they are in other European countries; a revision to the doctrine of collective responsibility which has ceased to operate in its traditional form; arrangements to cover the provision of advice to ministers of different parties where there are policy disagreements within the coalition; and some clarification of the position of civil servants in those circumstances.
- Any new constitutional arrangement should preserve the provisions of the Constitutional Reform and Governance Act 2010 which provides for the appointment of civil servants on merit and a civil service code which enshrines the key civil service values of integrity, honesty, objectivity and impartiality: one of the few safeguards within our constitutional arrangements against the use of the machinery of the state to personal or party political advantage.

Better Government Initiative

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List of relevant Better Government Initiative Publications

Good Government: Reforming Parliament and the Executive (Jan 2010)

<http://www.bettergovernmentinitiative.co.uk/reports-and-papers/good-government-2/>

Good Government: Mid-Term Review (Nov 2012)

<http://www.bettergovernmentinitiative.co.uk/reports-and-papers/good-government/>

Civil Service Reform: Hidden Dangers (Sept 2013)

<http://www.bettergovernmentinitiative.co.uk/reports-and-papers/civil-service-reform-hidden-dangers/>

Evidence to the Liaison Committee: *Follow-up to the 2012 report into the powers and effectiveness of Select Committees* (Dec 2013)

<http://www.bettergovernmentinitiative.co.uk/reports-and-papers/evidence-to-the-liaison-committee/>

Evidence to the PASC: *Inquiry into civil service impartiality and referendums* (April 2014)

<http://www.bettergovernmentinitiative.co.uk/reports-and-papers/evidence-to-the-public-administration-select-committee/>

Coalition Government (Sept 2014)

<http://www.bettergovernmentinitiative.co.uk/reports-and-papers/coalition-government/>