

HOUSE OF LORDS

Select Committee on the Constitution

5th Report of Session 2017–19

The Salisbury- Addison Convention

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Select Committee on the Constitution

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The Salisbury-Addison Convention

1. In 2014, we considered the Salisbury–Addison convention as part of our report on the *Constitutional implications of coalition government*. We observed that the convention was that “bills foreshadowed in a government’s manifesto are given a second reading in the Lords, are not subject to wrecking amendments and are passed in reasonable time.”¹
2. We concluded that the Salisbury–Addison convention “does not, strictly speaking, apply to measures in a coalition agreement. This is because a coalition agreement cannot be said to have a mandate from the electorate in the way that a manifesto can.”² However, “if all parties in a coalition made the same or a substantially similar commitment in their manifestos, then they should be entitled to the benefit of the Salisbury–Addison convention in respect of that commitment.”³ We also recognised that “a practice has evolved that the House of Lords does not normally block government bills, whether they are in a manifesto or not. There is no reason why this practice should not apply when there is a coalition government.”⁴
3. The 2017 general election resulted in a Conservative minority government, supported by a confidence and supply agreement with the Democratic Unionist Party. This raised questions about the applicability of the Salisbury–Addison convention when there is a minority government.⁵ To inform this debate, we sought the views of the Leader of the House of Lords, the Shadow Leader of the House of Lords, the Leader of the Liberal Democrats in the House of Lords, the Convenor of the Crossbench Peers, and others, on the Salisbury–Addison convention. Copies of this correspondence are in the appendices to this report. We are grateful to them for their contributions.
4. We may return to this subject in the future, but we believe it is valuable to publish these submissions to aid understanding of the Salisbury–Addison convention.

1 Constitution Committee, *Constitutional implications of coalition government* (5th Report, Session 2013–14, HL Paper 130), para 98

2 *Ibid.*

3 Constitution Committee, *Constitutional implications of coalition government*, para 99

4 Constitution Committee, *Constitutional implications of coalition government*, para 100

5 House of Lords Library, Salisbury Convention in a Hung Parliament, Library Briefing, [LLN-2017-0030](#), 20 June 2017

APPENDIX 1: WRITTEN EVIDENCE

Baroness Evans of Bowes Park, Leader of the House of Lords

Thank you for your letter of 20 July, informing me that the Constitution Committee intends to produce a short report of the Salisbury-Addison Convention. I am happy to set out the Government's view on why this continues to apply.

I believe it would be helpful if I respond to your questions in the order that they were asked.

What is the Government's understanding of the Salisbury-Addison Convention?

The Salisbury-Addison Convention is a parliamentary convention to which the House of Lords has adhered since 1945, notwithstanding major changes to its composition and ways of working. The Convention is a parliamentary one so in that sense it is not for the Government to assert the Convention, but rather for the House itself to follow it as it feels it should. The last time the Convention was considered by a body of Parliament was by the 2006 Joint Committee on Conventions, the report of which was noted with approval by both Houses. The Government's understanding of the Convention, as set out in the Cabinet Manual, is taken from that Committee's report:

The House of Lords should not reject at second reading any government legislation that has been passed by the House of Commons and that carries out a manifesto commitment. In the House of Lords, a manifesto bill:

- is accorded a second reading;
- is not subject to 'wrecking amendments' which change the Government's manifesto intention as proposed in the bill; and
- is passed and sent (or returned) to the House of Commons, so that they have the opportunity, in reasonable time, to consider the bill or any amendments which the House of Lords may wish to propose.

The Joint Committee also considered that the convention applied to manifesto bills introduced to either House.

How does the Salisbury-Addison Convention differ from the general presumption, noted by the Joint Committee on Conventions in 2006, that the House of Lords does not refuse to give a second reading to any government bills?

The Government highly values the work of the House of Lords as a revising and scrutinising chamber which itself respects the primacy of the elected House of Commons. This primacy, reflected by the Parliament Acts, forms the basis of the general presumption, as recognised by the Joint Committee on Conventions, that the House of Lords does not refuse any government bill a second reading.

The Salisbury Convention refers specifically to policies which have been put before the electorate and voted on directly and as such are perceived to have a form of direct democratic legitimacy.

To what extent, if at all, does the Salisbury-Addison Convention apply to minority governments?

The Government is clear that the Salisbury-Addison convention - that the House of Lords should not seek to prevent the Government from implementing manifesto pledges in legislation - continues to apply.

We share the view of previous Governments on this point. As was noted in 1974 in a debate on the Queen's Speech by Lord Shepherd (Leader of the House of Lords): "I hope that there will be a recognition that if we have a democracy the Government of any Party must be sustained by the elected Assembly ... I would consider it unlikely - perhaps inconceivable - that it [the Lords] would now act contrary to the declared wishes of the elected Parliament".⁶ The last Labour Government told the Joint Committee on Conventions that the Salisbury Convention applied to minority governments. Jack Straw, then Leader of the House of Commons, said that: "If any coalition or arrangement as in 1977 gains the support of the democratically elected House and endorsed by a motion of confidence then the programme for which they gain that endorsement should be respected by this House [of Lords]".⁷ Following the 2017 general election, this Government's Queen Speech was voted through with a majority by the House of Commons in June 2017. The Conservative Government's legislative programme thus commands the support of the elected Chamber.

Is a confidence and supply agreement different from a coalition agreement when considering the applicability of the Salisbury-Addison Convention?

The Salisbury Convention applies to the manifesto commitments of the Government, whether that is a majority government, coalition or minority government. It does not apply to the manifesto commitments of a party providing confidence and supply to the Government. Notwithstanding, this Government's legislative agenda and priorities will reflect the terms of the Confidence and Supply Agreement.

How specific does the wording of a manifesto commitment need to be to engage the Salisbury-Addison Convention? Are general statements of intention sufficient?

The Government does not intend to define a manifesto bill as it is clear in most cases from the subject matter of the bill and the debate in Parliament which legislation stems from manifesto commitments.

The Government is mindful that the Joint Committee on Conventions looked into the Salisbury Convention in 2006. The report did "not recommend any attempt to define a manifesto Bill".

Is there a case for enshrining the Salisbury-Addison Convention in statute?

The Government has no current plans to put the Salisbury-Addison Convention in statutory form. In its 2006 report, the Joint Committee on Conventions did not recommend codifying conventions. An underlying principle of not codifying conventions is to ensure their flexibility.

⁶ HL Deb, 13 March 1974, [col. 48](#)

⁷ Joint Committee on Conventions, *Conventions of the UK Parliament* (First Report, Session 2005–06, HL 265-I, HC 1212); [Q 7](#) (Jack Straw, Leader of the House of Commons, referenced in the main report in para 108)

In relation to primary legislation, the Parliament Acts provide for the will of the elected House to prevail. The Government otherwise continues to rely on the self-regulation of the House of Lords and its respect of the principle of the supremacy of the elected House.

I am confident that the House understands its constitutional role, and will accordingly continue to respect the Salisbury-Addison Convention without the need for a statutory mechanism.

October 2017

Baroness Smith of Basildon, Shadow Leader of the House of Lords

I have numbered the responses in line with the number of the bullet in the Committee's call for evidence. I have made further observations after these points.

1. Our understanding of the convention is in line with that of the Cunningham Committee Report of 2006, namely that:

"99. The Convention which has evolved is that: In the House of Lords:

- A manifesto Bill is accorded a Second Reading;
- A manifesto Bill is not subject to 'wrecking amendments' which change the Government's manifesto intention as proposed in the Bill; and
- A manifesto Bill is passed and sent (or returned) to the House of Commons, so that they have the opportunity, in reasonable time, to consider the Bill or any amendments the Lords may wish to propose."

Although the Salisbury Addison convention was in response to specific circumstances, those principles have remained as above and the House of Lords normally gives a Second Reading to any government Bill, whether based on the manifesto or not.

The Salisbury Addison convention followed the 1945 General Election with the endorsement of the Government's manifesto, giving Labour a massive majority in the House of Commons yet just a handful of Peers. This should be seen in contrast to the more recent near rejections of the governing party's manifestos. The majority Labour government of 1945, with its clearly defined programme, was right to insist that its policies, supported by the elected House, should not be blocked, diminished or thwarted by an overwhelmingly Conservative house.

Critically, the Cunningham Report identifies that the current loose arrangement is now largely supported by all the major parties, unlike the original agreement of 1945.

2. The position since 2006 does not differ greatly since then other than in one key respect.

The coalition government of 2010 had no formal manifesto cover for their programme as the Coalition Agreement was only drafted following the election and was never put before the electorate.

Following that election Labour benches proposed and voted on an amendment to the Second Reading of the 2012 Health & Social Care Bill, that would have rejected the Bill. Ironically, this would have been in keeping with 2010 Conservative manifesto of having no top-down re-organisation of the NHS.

The only time the convention has arguably been broken since 2006 was in 2007 when the Conservatives and Lib Dems joined to pass a wrecking motion at 2nd reading to delay the Fraud (Trials without a Jury) Bill by 6 months, effectively killing it. This was despite the general commitment to reform of jury trials in Labour's 2005 manifesto.

However, in both cases there are other factors to be taken into account. In 2012, there was no real expectation that the Labour Party could win the vote, but the unusual step of challenging a Second Reading was taken because there was a clear constitutional justification for doing so, and the principles on which the Bill were founded were very divisive.

In the Fraud (Trials without a Jury) Bill, the justification given was that the Manifesto Commitment was vague and that the intention of the Bill went beyond expectations from the Manifesto.

But perhaps the key point here, is that both examples are exceptional and only one succeeded.

3. It is far from clear that the Salisbury Addison convention was ever intended to apply to minority Governments.

To be confident of forming a government, the party of government has to have a majority, or be able to rely on support from other parties either formally or informally.

Such arrangements clearly have implications for a party's manifesto commitments, as inevitably commitments are jettisoned, 'forgotten' or diluted, either as part of any deal or because the Government party cannot rely on the support of all its own MPs. This is without any reference to the electorate.

We've already seen signs of this from the Conservative Party manifesto and further speculation on a number of commitments, following the pact with the DUP.

This is in clear contrast to the reason that the Convention was established in 1945.

However, there is a clear and fundamental constitutional relationship between the elected House of Commons and the unelected House of Lords. The House of Lords is keenly aware of the balance of power in this relationship. While there may be a residual case for the Lords to *in extremis* reject a bill at Second Reading, it is not in keeping with our constitutional role and I detect no appetite or serious interest in changing that.

It is only by the House of Lords giving a Bill a Second Reading that it can undertake its role to scrutinise and amend legislation. Any changes from the Lords are sent to the House of Commons for the elected house to have the final say—as it should—in whether they accept or reject the Lords' amendments.

The Commons retains its clear and unchallenged primacy.

4. A confidence and supply arrangement, such as the current one between the Conservative Party and the DUP, does not materially change the Convention, as again the Convention is clear that primacy lies with the Commons in Parliament, not the government or the executive.

Whether the Government achieves numerical majority through confidence and supply is simply a case of strengthening the Government's position in the Commons. It does not follow that there is sufficient public support for any changes made to manifesto commitments—either in new policies (as seen in the Health and Social Care Act) or by abandoning others.

Again, the key constitutional aspect here is the primacy of the House of Commons, not of the executive.

There is an interesting implication of the primacy of the Commons rather than the executive that is worth considering in the current situation of supply and confidence. Should an amendment be passed in the House of Commons that is against the Government's intentions, the Government cannot try to exploit the Convention in an attempt to overturn that defeat.

5. **Where a manifesto commitment is unambiguous and clear; and the elected Government has a Commons majority then it is clear that will be respected by the House of Lords.** The tradition of upholding the balance in the British constitution runs deep. With no Government or Opposition party having an overall majority in the Lords, it is hard to imagine any circumstances where that would be successfully challenged.

The Lords would also have regard to a general statement in a manifesto, but perhaps less so than a specific commitment. This was perhaps the case in the voting down of the Second Reading by the opposition parties in 2007.

6. **I am instinctively against enshrining the convention in law and no case has been made to do so.** Any disagreement between the two Houses is resolved by them, with respect to Commons primacy. The involvement of a court as an arbitrator would be highly undesirable intrusion to Parliamentary sovereignty and could be seen as an attempt to weaken the Commons.

Further comments

The House of Lords has continually and consistently acted within the conventions. Challenge and scrutiny isn't always welcomed by Governments which is why the conventions and the recognition of Commons primacy are so important. Whilst there are some specific votes that have been criticised by Government's on rare occasions, there is no real evidence that the House of Lords does not abide by and respect the conventions.

However, the Government also has to accept the conventions and our role.

There have been a number of recent incidents where the House of Lords, as a Parliamentary institution, has faced unwarranted and unjustified threats when undertaking its proper constitutional role. This may be the first Conservative administration in history that has not had an automatic majority in the Lords but it cannot justify resentment towards the Lords' revising and scrutiny role.

There are examples in both primary and secondary legislation, at times through misunderstanding of the constitutional position (as with tax credits) and at other times because the Government has opposed amendments suggested by the Second Chamber.

In autumn 2015, the Lords voted to ask the Government to re-examine and seek transitional measures for those affected by cuts to tax credits. Under the procedure used—a Statutory Instrument—the government seeks approval from both Houses

separately and individually. As the Lords considered the issue the Second Chamber was threatened with suspension, abolition and, rather ridiculously, one hundred and fifty new Conservative Peers. The criticism was along the lines that the Commons had passed the SI, so the Lords must do so automatically, and although not a Finance Bill, it was a ‘financial measure’. Despite the House of Lords acting within its constitutional and historical role, the Strathclyde Report that followed sought to portray this as a power struggle between both Houses, which it was not. The Lords asked the Government to reconsider, not the Commons.

The Commons does not have primacy in relation to SIs, nor does the Salisbury Addison convention apply, other than the Lords respects the right of the government to get its legislation; and that SIs should only threaten to be defeated in clearly exceptional circumstances, as outlined in the Report of the Joint Committee in 2006. **We continue to recognise and accept this convention.**

In relation to primary legislation, the Government was clearly concerned about the amendments proposed to Article 50 Bill to trigger Brexit. Prior to the debate, the House of Lords stood accused of all kind of constitutional horrors and again further threats of more government Peers including this time, quite ridiculously, a thousand - for daring to support two amendments to the Bill. These amendments were rejected by the Commons.

Following the passing of that Bill, when the Prime Minister called the 2017 General Election one of the key reasons she gave for doing so was to gain resounding mandate for Brexit—and she claimed that this was necessary because of the ‘unelected members of the House of Lords’.

Yet, at all times the House of Lords did act within its constitutional role and within the conventions and the Government legislation was passed unamended.

Final comment

Our view is that the Lords will continue to operate within our clear constitutional limits as we always do: examining and debating legislation - including that on Brexit and the use of Henry VIII powers. Where necessary we will seek amendments for the elected House to consider and, at times, reconsider.

October 2017

Lord Newby, Leader of the Liberal Democrats, House of Lords

I welcome the opportunity on behalf of my party to comment on the Salisbury-Addison Convention as part of your committee’s short investigation into this matter.

Before answering your specific questions, I feel it is important to set out my party’s view in principle of the Convention. We also set out below our understanding of the rationale for why the Convention exists—the basis on which it was agreed and by whom it was agreed.

We believe that the position today is now very different from when the Salisbury-Addison Convention was agreed, and as such, the Convention is now largely redundant. Our views on the democratic reform of this House are well known, and as such we respect the views of the democratically elected House of Commons but believe that the scrutinising and revising role of the House of Lords is invaluable. Therefore, we will consider every proposal brought forward by any government on its merits and whether it is in the public interest.

Why does the Convention exist?

The Salisbury-Addison Convention was an agreement between the Labour Leader of the House of Lords in 1945, Viscount Addison, and the Conservative Leader in the Lords, Viscount Cranborne (the Marquess of Salisbury) to deal with the relationship between a Labour Government and a House of Lords with an overwhelmingly large and hereditary Conservative Opposition. It did not involve either the Liberal or unaligned Peers. Therefore we have not felt bound by this convention.

The Convention also came about in a time which is very different from the current circumstances. In 1945 the Labour party had a majority in the Commons of 146, and had gained the support of 36% of the entire electorate (nearly 48% of the vote on a near 73% turnout). With this considerable popular mandate, the Labour party faced a wholly unrepresentative House of Lords, with an inbuilt Conservative majority brought about by virtue of the wholly hereditary Peerage. The Conservatives at that time had 400 members in the House of Lords, compared to Labour's 16 and the Liberals' 63. This was in the very clear light of a Labour manifesto which listed specifically an industrial programme for nationalisation.

The context in which the agreement was made in 1945 was therefore very different to the circumstances today, where there are a number of smaller parties and more complex and much less precise manifestos.

Further, the power of the Government has increased in recent years and, with the advent of Brexit, the uncertainty and lack of clarity of how powers returned to the UK will be exercised and the proposed use of Statutory Instruments by the Government, it is perhaps time to look afresh at the wider relationship between the Executive and Parliament as a whole. **We believe there should be a shared political understanding of the legislative process, the role of proper scrutiny and the right of the revising chamber to do its job.**

1. **What is your understanding of the Salisbury-Addison Convention?**

The Salisbury-Addison Convention refers to an agreement between the Leaders of the Conservative and Labour parties in the House of Lords in 1945. Broadly speaking, the understanding between these two parties was that anything promised in the governing Labour party's manifesto would eventually be passed by the Conservative-dominated House of Lords. At the time Viscount Cranborne said:

“Whatever our personal views, we should frankly recognize that these proposals were put before the country at the recent General Election and that the people of this country, with full knowledge of these proposals, returned the Labour Party to power. The Government may, therefore, I think, fairly claim that they have a mandate to introduce these proposals. I believe that it would be constitutionally wrong, when the country has so recently expressed its view, for this House to oppose proposals which have been definitely put before the electorate.”⁸

We believe it is important to make clear that the principle at the root of this Convention should be that it rests on the primacy of election over heredity or appointment.

Our position on this matter has not substantively changed since we presented our evidence to the Joint Committee on the Conventions. We feel bound to restate that this agreement existed only between the Conservative and Labour parties because and on the assumption that the Conservatives were the dominant force in the House of Lords. It did not involve either the Liberals or unaligned Peers. **We therefore reiterate that we have not felt bound by this convention, as we were not party to it.**

We remain of the view that this lends credence to the contention of Rogers and Walters (then Clerks in the Commons and the Lords respectively) that:

“the Salisbury convention is perhaps more a code of behaviour for the Conservative Party when in opposition in the Lords than a convention of the House.”⁹

2. How does the Salisbury-Addison Convention differ from the general presumption, noted by the Joint Committee on Conventions in 2006, that the House of Lords does not refuse to give a second reading to any government bills?

The Salisbury-Addison Convention was an agreement between the Conservative and Labour parties, as described above. However, we recognise that in practice the Convention has evolved into an understanding that the Lords should not oppose the Second Reading or Third Reading of a manifesto Bill which has been foreshadowed in the governing party’s most recent manifesto, and passed by the House of Commons. By virtue of the numbers involved since the partial reform of the Lords in 1999, if both the Government and the largest Opposition party support a bill’s second reading, it will pass.

Yet this is not an exact science, and again it is not something that Liberal Democrats necessarily feel entirely bound by. We see a difference between our actions as a party that was not part of the original agreement, and the actions of the House as a whole. We agree with Lord Strathclyde’s evidence to the Joint Committee on the Conventions when he said:

“Equally, where a government is trying to push through some very unpopular measure with a very, very small majority, with a substantial government rebellion, I think it is a clear signal for the House of Lords to take extra special care in examining that measure.”¹⁰

Indeed, it is worth noting that, although the House of Lords endorsed the report from the Joint Committee on Conventions on 16th January 2007, on 20th March 2007 the House rejected the second reading of the then-Labour Government’s Fraud (Trials without a Jury) Bill. So it is clear that this new formulation remains a guide, and does not totally restrict the ability of the House to act where it believes that there is not a clear endorsement of a majority Government’s manifesto and legislative programme—or specific legislative proposal - by the electorate. We do agree, though, with the Joint Committee that “*to reject Bills at Second Reading on a regular basis would be inconsistent with the Lords’ role as the revising chamber.*”¹¹

9 Robert Rogers and Rhodri Walters, *How Parliament Works*, 5th edition (London: Longman, 2004), p 222 quoted in House of Commons Library, House of Lords: Conventions, Library Note, [PC/4016](#), 5 May 2006 [updated 8 January 2007], p 4

10 Oral evidence taken before the Joint Committee on the Conventions, Q 57, quoted in *Conventions of the UK Parliament* (Report of Session 2005-06, HL Paper 265-II), p Ev50

11 Joint Committee on the Conventions, *Conventions of the UK Parliament*, para 100

We must also make it clear that we continue to believe that the Lords is entitled to propose amendments to any legislation, and to insist on those amendments, in particular where there are constitutional issues at stake.

Another interesting question is how the Lords should behave in a situation where a Bill might pass through the Commons on the vote of the principle opposition party with a majority of government backbenchers opposed to that measure. In those circumstances it is arguable that the Lords has an unfettered right to vote on that measure and to express a view, if it so determines.

3. To what extent, if at all, does the Salisbury-Addison Convention apply to minority governments?

To all intents and purposes, we view the current Conservative Government as a minority government as its confidence and supply agreement with the DUP only applies to certain measures, namely motions of confidence, the Queen's speech, the Budget, money bills, supply and appropriations legislation, Estimates, and legislation pertaining to the UK's exit from the EU and pertaining to national security. There are huge swathes of very important policy issues that are not covered by this agreement.

We believe that a minority government does not have the right to expect that the House of Lords will abide by the Salisbury-Addison convention. Not only will such a government not have secured the support of the majority of people in the country, it will demonstrably not have achieved enough support to win the majority of seats in the Commons. Under this situation a minority government cannot possibly claim to have popular support for its manifesto policies, and so would not have the mandate to expect that the House of Lords should abide by the Salisbury-Addison Convention, or subsequent conventions which have replaced it.

In these circumstances we would need to look at how the minority government managed to get its manifesto legislation through the House of Commons. It seems that this would inevitably require a degree of negotiation and compromise which is not necessary when a government has a substantial majority and it can then push things through without co-operation from other parties or needing to make concessions. As such, the circumstances in every case will determine the role of the House of Lords, although we repeat that we agree with the Joint Committee on the Conventions that the Lords should not reject Bills at Second Reading on a regular basis.

4. Is a confidence and supply agreement different from a coalition agreement when considering the applicability of the Salisbury-Addison Convention?

We believe that there are fundamental differences between a coalition agreement and a confidence and supply arrangement. A coalition government is likely to have a clear coalition programme for government, with a detailed programme of legislation on which the two (or more) parties to the coalition agree. It is likely that a coalition government will have more popular support than a single-party government with a very small majority.

Again, one should look to the way in which a coalition government is able to get its legislative programme through the House of Commons, and how members of the parties involved in that coalition in both chambers co-operate with each other.

A confidence and supply agreement is different in the sense that there would not necessarily be a detailed programme between the parties involved that one could point to and say “These are the bills which we agree on and therefore to which the Salisbury-Addison Convention applies”.

Yet again, we would need to look at how the larger party in the confidence and supply arrangement gets its legislation through the House of Commons. There may be circumstances where the other party in the confidence and supply arrangement does not agree to a particular bill, but that bill is sufficiently supported by another opposition party to allow it to pass through the Commons. How should the House of Lords behave in those circumstances?

In considering minority governments, coalitions and confidence and supply arrangements, our approach is that where there is a clearly expressed view in the Commons then the House of Lords should have regard to it, but that the Lords must never shirk from its responsibility to scrutinise thoroughly the legislation that is brought before it, to propose revisions to that legislation and on occasion to insist on amendments.

5. How specific does the wording of a manifesto commitment need to be to engage the Salisbury-Addison Convention? Are general statements of intention sufficient?

It is our belief that legislation now cannot easily be identified—either positively or negatively—as a direct transposition from a manifesto. Manifestos have changed out of all recognition since the Salisbury-Addison Convention’s inception in 1945. We suggest that the detail now put before the electorate cannot, after a given election, constitute matters on which the country has expressed firm, deliberate and sustained convictions. This stands in stark contrast to the very clear polarisation of political opinion that occurred on the issues of nationalisation in the immediate aftermath of the Second World War.

Equally, manifestos are not—and in our view, can never be—detailed *enough* to constitute a reliable, still less a justiciable basis on which to draft legislation.

Again, we look to the conclusions of the Joint Committee on Conventions. We recognise that both Houses have endorsed its report which suggests that in practice “*the House of Lords will usually [emphasis ours] give a second reading to any government Bill, whether based on the manifesto or not.*”¹² Although as we have already noted above, this has not prevented the House from refusing to give a second reading to a government Bill. Indeed, during the second reading debate of the Fraud (Trials without a Jury) bill, the Government argued that it was a manifesto bill based on the line in Labour’s 2005 manifesto to “overhaul laws on fraud and the way that fraud trials are conducted to update them for the 21st century and make them quicker and more effective”.¹³ ¹⁴ The Lords still determined that the way in which the then-Government was implementing the changes was wrong, and rejected the bill at second reading.

It is also worth noting that the Joint Committee recommended that no attempt should be made to define a manifesto Bill.¹⁵ We agree that this is a sensible approach.

12 Joint Committee on the Conventions, *Conventions of the UK Parliament*, para 100

13 HL Deb, 20 March 2007, [col. 1150](#) (Lord Goldsmith)

14 Labour Party manifesto 2005

15 Joint Committee on the Conventions, *Conventions of the UK Parliament*, para 113

An inflated status for the detail of manifestos could, in any event, raise serious and difficult questions for any government about circumstances under which they chose *not* to implement a given commitment, or in some way to contradict such a commitment. It is not unheard of for governments to change their minds.

6. Is there a case for enshrining the Salisbury-Addison Convention in statute?

No. We do not think that the Salisbury-Addison Convention is amenable to being put into statute.

We do not think that the relationship between the two Houses should be fixed when the relationship between Government and both Houses is so changeable. Flexibility is an essential feature of the relationship between the two Houses, and between Government and Parliament.

Indeed, it is worth noting again the conclusions of the Joint Committee on the Conventions, endorsed by both Houses, which effectively declared that the Salisbury-Addison Convention as was is now redundant, given that current practice has seen the Convention evolve beyond its original state. Therefore any argument for enshrining the Salisbury-Addison Convention in statute would be equally redundant.

Adding into law the principles of the Salisbury-Addison Convention would not just be complex, but riven with difficulty; it would require Parliament, and in particular the Lords, to legislate to restrict itself at a moment when Members on all sides and in both Houses recognise that power is accruing in ever greater measure to the Executive, not least through the use of Secondary Legislation, and is anticipated further by Brexit.

In any case, it is hard to see how consensus could be found on how to enshrine in statute a convention whose interpretation is so subjective. Manifestos are now typically couched in general terms to provide vision and direction. In our view, a legislative programme envisioned in such a tentative and deliberately non-legal document cannot be taken as the incontrovertible basis for fully transcribed legislation drafted at a later date.

Given the problems associated with defining the vague aspirations of a manifesto document as commitments to specific and detailed legislation, who would oversee and how would they enforce any codification of the Salisbury-Addison Convention in statute? The answer seems to be that any description of the convention that is placed in legislation would embroil the higher courts in the powers of the Commons in relation to the Lords. As Lord Carter warned in 2003, codification of the Lords' conventions into law:

“could result in the ultimate irony of disputes over the respective powers of the elected House of Commons [and a reformed House of Lords] being finally decided by unelected judges.”¹⁶

We believe this would be a grave error.

September 2017

¹⁶ Denis Carter, ‘The Powers and Conventions of the house of Lords’ in *Political Quarterly*, Vol 74(3), (2003), p 321

Lord Hope of Craighead, Convenor of the Crossbench Peers, House of Lords

1. What is your understanding of the Salisbury-Addison Convention?

I agree with the view of the Joint Committee on Conventions in its report of 3 November 2006 that the effect of the Salisbury Convention is that bills implementing a manifesto commitment by the Government are not blocked by the House of Lords at second reading, are not subjected to wrecking amendments and are passed and sent or returned to the House of Commons in reasonable time to consider any amendments that the House of Lords may propose.

2. How does the Salisbury-Addison Convention differ from the general presumption, noted by the Joint Committee on Conventions in 2006, that the House of Lords does not refuse to give a second reading to any government bills?

The essential point is that a Convention, which is based upon a consensus across the House, carries more weight than a general presumption. The House of Lords has never denied a second reading to a manifesto bill. As for a government bill that does not constitute a manifesto bill, the Joint Committee noted in 2006 that in practice the House usually does not refuse to give such a bill a second reading. But there have been occasions when this has not been the case (in the case of the War Crimes Act 1991, for example, which the House refused to pass in disagreement with the House of Commons and was enacted under the Parliaments Acts). It has also been argued that what constitutes a manifesto bill is not always clear, and that drawing this distinction becomes more challenging later in the life of a Parliament.

3. To what extent, if at all, does the Salisbury-Addison Convention apply to minority governments?

As the basis for the Salisbury Convention is a shared understanding about the respect to be given to a manifesto commitment which has been approved by the electorate at a General Election, it is hard to see why it should apply to a minority government which has not achieved a majority at the Election. But it would seem that the practice which has evolved of the Lords not blocking government bills to which the presumption gives effect should apply to minority governments as well as those which have a majority. This is because it is based on a recognition that any government which can command the support of the House of Commons is entitled to get its business through. So minority governments, which by definition have that support, can expect to have the benefit of the presumption. It is worth noting that the view of the Constitution Committee, in its report of 2014 on the constitutional implications of coalition government, was that strictly speaking the Salisbury Convention does not apply to coalition governments. This was because a coalition agreement will not by definition be implementing one party's manifesto. Minority or coalition governments have been the exception since the Convention was established, so there are limited examples on which one can draw. But the Coalition Government of 2010–15 was not defeated at second reading on any government bill, although motions to that effect were voted on.

4. Is a confidence and supply agreement different from a coalition agreement when considering the applicability of the Salisbury-Addison Convention?

A confidence and supply agreement is a cross-party arrangement, which does not differ in principle from a coalition as to whether the Salisbury Convention applies. Here too guidance as to how the House should treat government bills is to be found in the presumption referred to above. This means that, once a programme for government has been endorsed by a Queen's Speech which has been approved by the House of Commons, the Lords should think very carefully before opposing legislation that gives effect to it.

5. How specific does the wording of a manifesto commitment need to be to engage the Salisbury-Addison Convention? Are general statements of intention sufficient?

A precise match between the wording of a manifesto and the wording of a Bill is not to be expected. There is room for some latitude. A broad statement of intention which is sufficient to indicate the policy objective will do. But it is worth noting that historically manifestos were shorter than they are today, and over time bills have grown in length, complexity and in the number of issues they address. So there is not always a straightforward transfer from a manifesto commitment to a piece of legislation. Further, where a bill covers multiple policy areas, the position is unlikely to be clear-cut. In practice the Government will in such cases have to rely on the presumption that the House does not block government bills.

6. Is there a case for enshrining the Salisbury-Addison Convention in statute?

I do not think that there is. One of the virtues of a convention is that it can be moulded to the circumstances as they emerge over time. So the rigidity that would result from enshrining the Convention in statute is undesirable. Furthermore, it is hard to see what this would achieve. The UK Supreme Court made it clear in *Miller and another v Secretary of State for Exiting the EU* [2017] UKSC 5 that the validity of a convention and the manner of its operation raise political issues which do not lie within the remit of the judiciary. They cannot be the subject of proceedings in a court of law.

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Thank you for inviting me to contribute my thoughts on the Salisbury-Addison Convention. I very much welcome your Committee's focus on this topic, which is fairly ill-understood outside parliament, and where recent developments have led to considerable blurring of understanding inside parliament as well. A short clarificatory report from the Committee could be very helpful.

The history and some of the key arguments surrounding the Convention were well summarised in the report from the Joint Committee on Conventions in 2006.¹⁷ But in the intervening years new questions have arisen about the Convention's interpretation, particularly in the context of both coalition and minority government.

¹⁷ Joint Committee on Conventions, *Conventions of the UK Parliament*

As also documented in my book of 2013, the origins of the Convention can be traced to the ‘mandate doctrine’ espoused by the third Marquess of Salisbury in the late 19th century, and it can today be summarised as meaning that the House of Lords ‘should not block measures which had appeared in the governing party’s election manifesto... meaning that the chamber should not vote down bills implementing such measures at second or third reading, or pass “wrecking” amendments to them’.¹⁸ Despite the relative clarity of this statement, which is consistent with the elaboration provided by the Joint Committee on Conventions, a convention along these lines is today problematic in several respects.

First, even in times of single-party majority government, it can be questioned whether there is really a ‘mandate’ for all policies contained within a manifesto. This was well articulated by the Royal Commission on the Reform of the House of Lords (the ‘Wakeham Commission’), as summarised in paragraph 73 of the Joint Committee on Conventions report, and further elaborated by that Committee itself in and around paragraph 107.

Second, as also discussed by the Joint Committee on Conventions, it is not always possible to define in precise terms when a government proposal qualifies as a ‘manifesto bill’. For example, manifesto commitments themselves can be quite general and/or open to interpretation.

Third, in the circumstances of a coalition government a convention in this form cannot, in my view, be considered to apply. No one party in the coalition can claim to have an electoral ‘mandate’ (assuming, at least, that no one party won a majority of Commons seats), while it is implausible to claim a mandate for a post-election coalition agreement upon which the public have had no opportunity to vote. There was some debate on this matter in the aftermath of the 2010 general election, during which the then Leader of the House of Lords, Lord Strathclyde, commented that the convention would ‘of course’ still apply.¹⁹ I am far more inclined to agree with his then ministerial colleague Mark Harper MP, who told the House of Commons that the new circumstances meant that ‘the Salisbury-Addison convention does not operate in the same way, if at all’.²⁰

Fourth, some similar questions arise in our current situation of minority government. At this point it is worth remembering the circumstances in which the original Salisbury-Addison Convention was proposed in 1945. Not only was there a single-party majority government (while the House of Lords was an almost entirely hereditary one, in which the governing party held only a handful of seats), but that government had just won a landslide Commons majority. Even if it were justified to consider that a similar government today, facing a rather different House of Lords, could claim a mandate for a statement in a manifesto that few had probably read, it is hard to see how a minority government can rightfully claim such authority. One can only speculate about what Lord Salisbury might have said had that occurred in 1945.

There is relatively little evidence available on public attitudes to the Salisbury-Addison Convention, but that which exists is a product of my research. In 2005 the Constitution Unit (as part of a project funded by the Economic and Social Research Council), commissioned the polling company MORI to question a representative sample of the public about the powers and legitimacy of the House of Lords. The questions used mirrored some of those administered at the same

18 Meg Russell, *The Contemporary House of Lords: Westminster Bicameralism Revived* (Oxford: Oxford University Press, 2013), p 25, p 83

19 HL Deb, 25 May 2010, [col 22](#)

20 HC Deb, 27 June 2011, [col 724](#)

time in surveys of MPs and peers. One of these was designed specifically to test attitudes to the convention, and this question and responses to it are reproduced below (numbers represent % of respondents; in the original survey ‘always’ and ‘often’ were separate options):

Do you believe the House of Lords is justified in blocking a government bill to implement...			
	always/often	sometimes	never
A manifesto measure			
- with strong public support?	22	26	52
- with little public support?	29	38	34
- which many government MPs have voted against?	32	39	30
A non-manifesto measure			
- with strong public support?	26	29	46
- with little public support?	31	33	36
- which many government MPs have voted against?	32	36	32

One of the most striking features of this analysis (clearly visible from the ‘never’ column) is the lack of distinction drawn among the public between appropriate behaviour on manifesto and non-manifesto bills. What matters more to voters is whether the measure in question has public support. In broad terms, around two-thirds of respondents felt that there were circumstances in which it was justified for the Lords to block a bill which lacked public support, but only around half considered it justified for the Lords to block measures enjoying such support. Members of the public were also relatively more sympathetic to blocking behaviour by the Lords on measures where government MPs had rebelled.

In this regard public opinion is largely in line with actual House of Lords behaviour. As the Joint Committee on Conventions noted (paragraph 95), it is extremely unusual for the House of Lords to block any government measure in its entirety. The most important political factor is not whether a measure was in the government’s manifesto, but the broader context that applies to all bills of the risks of an unelected House of Lords challenging decisions of the elected House of Commons. On this members of the Lords are very sensitive to public opinion and opinion among MPs. As well as being respectful of the House of Commons’ primacy, peers remain naturally mindful of any possible media and public backlash. The concept of ‘mandate’ is thus both more subtle, and more wide-ranging, than the question of whether a measure was in a governing party’s manifesto.

In my professional experience the emphasis on the Salisbury-Addison Convention, narrowly conceived, is unhelpful to public understanding of the House of Lords and the conventions governing its behaviour. It leads to disproportionate journalistic interest in whether measures are manifesto policies or not (and coincidentally may encourage ever-longer manifestos), while detracting attention from the fact that the Lords almost always exercises restraint on all government measures. I hence tend to see reference to the Salisbury-Addison Convention largely as a ‘red herring’, since in practice all government bills are given time, and the House of Commons’ primacy is respected almost without exception. In my view it would greatly aid public understanding to emphasise instead the de facto modern-day convention that the House of Lords does not block any government bill at second or third reading, or subject such bills to ‘wrecking’ amendments, although ‘in exceptional circumstances it may be appropriate to do so’ (to borrow from the Joint Committee on Conventions’ phrase regarding secondary legislation). Although more wide-ranging than the Salisbury-Addison Convention this would in practice place no new restrictions on the Lords, and would be both considerably more accurate and transparent.

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