



## Salisbury Convention: A Decade of Developments

### Summary

The Salisbury Convention is commonly understood to mean the House of Lords gives a second reading to government bills that seek to implement manifesto commitments, does not subject them to wrecking amendments and returns them to the Commons in reasonable time. It is also sometimes called the Salisbury-Addison Convention.

The convention arose from an understanding between the leaders of the Labour and Conservative parties in the House of Lords after the 1945 general election. At that time, Labour had a majority in the House of Commons but the Conservatives had a majority in the Lords. The modern expression of the convention was set out by the Joint Committee on Conventions in 2006.

The Salisbury Convention relates to a government's manifesto bills. This is based on the idea that manifesto bills have a special form of democratic legitimacy as they have been voted for by the electorate. There is a recognition that it is not always straightforward to identify which bills should be classed as manifesto bills, especially as modern manifestos tend to be more complex than in 1945 when the convention originated. However, it has also been pointed out that in practice the Lords does not usually block any government bill, regardless of whether it is a manifesto bill.

The 2010 and 2017 general elections both produced hung parliaments. This gave rise to questions about whether the Salisbury Convention applies to a coalition or minority government.

In 2017, the minority Conservative Government argued the Salisbury Convention should apply to its manifesto pledges. Other parties in the Lords were not convinced of this argument but acknowledged the Lords would be mindful of the balance of power between the two Houses. During the 2017–19 parliament, Brexit supporters claimed that Lords amendments to the European Union (Withdrawal) Bill and the Data Protection Bill were 'wrecking amendments' that violated the Salisbury Convention. Others argued that in making these amendments, the Lords was fulfilling its constitutional role by asking the Commons to think again.

In 2010, the Conservative-Liberal Democrat coalition government initially asserted the convention still applied, although others across the House felt it was not so clear-cut. In 2011, the Government acknowledged the convention did not operate in the same way with the advent of a coalition government. Two parliamentary committees both concluded that a coalition agreement made after an election had produced a hung parliament did not have the same status as a manifesto. During the period of the Coalition Government, there were attempts to block three government bills at second reading in the Lords, all of which failed.

Nicola Newson | 13 December 2019

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## 1. What is the Salisbury Convention?

The Salisbury Convention is commonly understood to mean that the House of Lords gives a second reading to government bills that seek to implement manifesto commitments, does not subject manifesto bills to wrecking amendments and returns manifesto bills to the Commons in reasonable time. The convention is also referred to as the Salisbury-Addison Convention.

It is named after an understanding between Viscount Addison, the Leader of the House of Lords, and Viscount Cranborne, the Leader of the Opposition in the House of Lords, during the Labour Government of 1945–51.<sup>1</sup> Viscount Cranborne became the fifth Marquess of Salisbury in 1947.

## 2. Development of the Convention

The understanding between Viscount Addison and Viscount Cranborne arose out of the difference in the balance of power in the two Houses of Parliament after the 1945 general election. The election gave Labour a majority of 146 in the House of Commons, but in 1945 the Conservatives had an absolute majority of 41 in the House of Lords and a majority of 321 over the other political parties in the Lords.<sup>2</sup>

In his response to the King's Speech of 1945, Viscount Cranborne argued the election result gave the Labour Government a mandate for the proposals on which the electorate had voted.<sup>3</sup> He said it would therefore 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". He later recalled that during this period, the Opposition in the Lords passed Labour's manifesto bills at second reading "although we cordially disliked them" and did its best to "improve them and make them more workable at committee stage".<sup>4</sup> However, for bills which had not featured in Labour's manifesto, the Opposition "reserved full liberty of action".

Nick Besly and Tom Goldsmith observe in *How Parliament Works* that the origins of the convention date further back to the nineteenth century, when the third Marquess of Salisbury developed the doctrine of the mandate:

He argued that the will of the people and the view of the House of Commons did not necessarily coincide and that the Lords had a duty to reject—and hence refer back to the electorate at a general election—contentious bills, particularly those with constitutional implications.<sup>5</sup>

The operation and understanding of the convention have changed over time and with differing political perspectives. Besly and Goldsmith suggest 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

<sup>1</sup> House of Lords Library, [The Salisbury Doctrine](#), 30 June 2006, p 1.

<sup>2</sup> David Butler and Gareth Butler, *British Political Facts*, 2010, pp 267 and 254. There were 280 members of the House of Lords in 1945 who were not a member of either the Conservatives, Labour or the Liberals.

<sup>3</sup> [HL Hansard, 16 August 1945, col 47](#).

<sup>4</sup> [HL Hansard, 4 November 1964, col 66](#). By this time, Viscount Cranborne had become Marquess of Salisbury.

<sup>5</sup> Nick Besly and Tom Goldsmith, *How Parliament Works*, 2018, p 225. This history is explored more fully in House of Lords Library, [The Salisbury Doctrine](#) (30 June 2006).

House”.<sup>6</sup> They note that the Liberal Party was not privy to the 1945 agreement, and their successors, the Liberal Democrats, “have not considered themselves to be bound by it”.

The implementation of the House of Lords Act 1999 and the removal of most hereditary peers represented a major change in the composition of the House. The Conservative Party lost its inbuilt majority over Labour and the Liberal Democrats, changing the political representation within the House significantly from when the Salisbury Convention was first developed.

In May 2006, a Joint Committee on Conventions was established to consider “the practicality of codifying the key conventions on the relationship between the two Houses of Parliament which affect the consideration of legislation”.<sup>7</sup> As part of this inquiry, the joint committee examined the Salisbury Convention and presented its own understanding of how it worked. The joint committee acknowledged that the convention had changed over time:

We are persuaded by the strength of the argument that the Salisbury-Addison Convention has changed since 1945, and particularly since 1999. Indeed, this was tacitly admitted by the Government which said, in written evidence, “For a convention to work properly, however, there must be a shared understanding of what it means. A contested convention is not a convention at all.” The continued validity of the original Salisbury-Addison Convention is clearly contested by the Liberal Democrats.<sup>8</sup>

In the joint committee’s view, the convention applied to manifesto bills introduced to either House and was now recognised “by the whole House, unlike the original Salisbury-Addison Convention which existed only between two parties”.<sup>9</sup> The joint committee also noted evidence of “the emergence in recent years of a practice that the House of Lords will usually give a second reading to any government bill, whether based on the manifesto or not”.<sup>10</sup> The joint committee said in its view the convention could be expressed in the following terms:

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.

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.<sup>11</sup>

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<sup>6</sup> Nick Besly and Tom Goldsmith, *How Parliament Works*, 2018, p 225.

<sup>7</sup> Joint Committee on Conventions, [Conventions of the UK Parliament](#), 3 November 2006, HL Paper 265-I of session 2005–06, p 3.

<sup>8</sup> *ibid*, pp 31–2.

<sup>9</sup> *ibid*, p 32.

<sup>10</sup> *ibid*, p 77.

<sup>11</sup> *ibid*, p 76.

The joint committee's remit was to consider whether to codify certain conventions. Its report recommended against any form of codification that would “turn conventions into rules, remove flexibility, exclude exceptions and inhibit evolution in response to political circumstances”.<sup>12</sup> It emphasised that conventions, including the Salisbury Convention, were not enforceable rules:

[...] all recommendations for the formulation or codification of conventions are subject to the current understanding that conventions as such are flexible and unenforceable, particularly in the self-regulating environment of the House of Lords. Nothing in these recommendations would alter the present right of the House of Lords, in exceptional circumstances, to vote against the second reading or passing of any bill [...].<sup>13</sup>

However, the joint committee offered “no definition of situations in which an attempt to reject a bill at second reading might be appropriate, save that they would include free votes”.<sup>14</sup> It also concluded that “to reject bills at second reading on a regular basis would be inconsistent with the Lords’ role as the revising chamber”.<sup>15</sup>

On 16 January 2007, the House of Lords agreed the motion that “this House takes note with approval of the report of the Joint Committee on Conventions of the UK Parliament”.<sup>16</sup>

The *Cabinet Manual*, published in 2011, uses the same three-pronged definition of the Salisbury Convention as the one set out by the joint committee.<sup>17</sup> While the joint committee put forward this definition as a description of the way it believed the convention worked in practice, the *Cabinet Manual* puts it forward as a normative definition. It states that the House of Lords “should not” reject at second reading any government legislation that has been passed by the House of Commons and which implements a manifesto commitment.

In October 2017, Baroness Evans of Bowes Park, Leader of the House of Lords, told the House of Lords Constitution Committee that the Government had no plans to enshrine the convention in statute.<sup>18</sup> The leaders of Labour and the Liberal Democrats in the Lords and the Convenor of the Crossbenchers all agreed that there was no case for doing so.<sup>19</sup>

### 3. Identifying Manifesto Bills

The Salisbury Convention relates to a government’s manifesto bills. Underpinning the convention is the idea that such bills enjoy a special form of democratic legitimacy as they have been voted for by the electorate.

<sup>12</sup> Joint Committee on Conventions, [Conventions of the UK Parliament](#), 3 November 2006, HL Paper 265-I of session 2005–06, pp 4–5.

<sup>13</sup> *ibid*, p 74.

<sup>14</sup> *ibid*, p 32.

<sup>15</sup> *ibid*.

<sup>16</sup> [HL Hansard, 16 January 2007, cols 573–638](#).

<sup>17</sup> Cabinet Office, [The Cabinet Manual](#), October 2011, p 104.

<sup>18</sup> House of Lords Constitution Committee, [The Salisbury-Addison Convention](#), 20 October 2017, HL Paper 28 of session 2017–19, p 3.

<sup>19</sup> *ibid*, pp 6, 12 and 14.

Mark Elliott, professor of public law at the University of Cambridge, has summed this up as follows:

The convention, in effect, acknowledges that bills implementing manifesto commitments enjoy democratic credentials over and above bills that are merely endorsed by the House of Commons—because manifesto bills have a form of democratic legitimacy that can be traced back not just to the *elected chamber* but to the *electorate* itself.<sup>20</sup>

However, there is a recognition that it is not always straightforward to identify which bills should be classed as manifesto bills.

The Joint Committee on Conventions noted that there could be difficulties in defining a ‘manifesto bill’, acknowledging that “legislation often cannot easily be identified as a direct transportation from a manifesto”.<sup>21</sup> However, it did not believe that such difficulties were “so substantial that they would prevent Parliament from articulating a convention concerning the House of Lords’ practice in relation to manifesto bills”.<sup>22</sup> Rather, the joint committee expected that “it will be as possible to deal pragmatically with any problems which may arise in the future as it has been in the past”.<sup>23</sup> The joint committee did not recommend any attempt to define a manifesto bill.

Writing in 2017, Baroness Evans of Bowes Park, the Leader of the House of Lords, argued that “it is clear in most cases from the subject matter of the bill and the debate in Parliament which legislation stems from manifesto commitments”.<sup>24</sup> However, the leaders of the other parties and groups in the Lords did not necessarily agree. Lord Newby, Leader of the Liberal Democrats, said he believed that “legislation now cannot easily be identified—either positively or negatively—as a direct transplanted from a manifesto”.<sup>25</sup> He argued that manifestos have “changed out of all recognition since the Salisbury-Addison Convention’s inception in 1945” and were “now typically couched in general terms to provide vision and direction”.<sup>26</sup>

Lord Hope of Craighead, then Convenor of the Crossbenchers, agreed:

[...] 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.<sup>27</sup>

Baroness Smith of Basildon, the Leader of the Opposition in the Lords, said the Lords would respect manifesto commitments that were “unambiguous and clear”, but would perhaps have less regard to a

<sup>20</sup> Mark Elliott, ‘[Does the Salisbury Convention Apply During a Hung Parliament?](#)’, Public Law for Everyone Blog, 10 June 2017.

<sup>21</sup> Joint Committee on Conventions, [Conventions of the UK Parliament](#), 3 November 2006, HL Paper 265-I of session 2005–06, pp 32–3.

<sup>22</sup> *ibid*, p 34.

<sup>23</sup> *ibid*, p 35.

<sup>24</sup> House of Lords Constitution Committee, [The Salisbury-Addison Convention](#), 20 October 2017, HL Paper 28 of session 2017–19, p 3.

<sup>25</sup> *ibid*, p 11.

<sup>26</sup> *ibid*, pp 11 and 12.

<sup>27</sup> *ibid*, p 14.

general statement in a manifesto than a specific commitment.<sup>28</sup>

Professor Meg Russell, director of the Constitution Unit at University College London, argued that in practice, whether a bill is a manifesto commitment to which the Salisbury Convention applies may not be the most significant political consideration. Rather, she argued that the House of Lords typically acts in a way that respects the primacy of the Commons:

[...] 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.<sup>29</sup>

Professor Russell explained that she tended to see reference to the convention as “largely a ‘red herring’, since in practice all government bills are given time, and the House of Commons’ primacy is respected almost without exception”.<sup>30</sup>

#### 4. Minority Government: 2017–19

Questions about the application of the Salisbury Convention arose after the 2017 general election. The Conservatives won the largest number of seats but did not secure an overall majority. They formed a minority government, bolstered by a confidence and supply agreement with the Democratic Unionist Party (DUP). There was some debate about how the convention applied in these circumstances, and indeed whether it should apply at all.

The Joint Committee on Conventions had considered the “potential difficulty” of applying the Salisbury Convention under a minority government during its 2006 inquiry.<sup>31</sup> It noted that witnesses expressed different opinions on this point but did not offer any conclusions of its own.<sup>32</sup>

To inform the debate about the applicability of the Salisbury Convention under a minority government, in October 2017 the House of Lords Constitution Committee sought the views of the leaders of the political parties in the Lords and the Convenor of the Crossbenchers.

Baroness Evans of Bowes Park, Leader of the House of Lords, said the Government was “clear” that the Salisbury Convention continued to apply to its manifesto pledges.<sup>33</sup> She noted that previous Labour governments had held the same view about minority governments. She also pointed out that the Queen’s Speech had been voted through with a majority by the House of Commons in June 2017. She said this demonstrated the Government’s legislative programme commanded the support of the elected chamber. However, she said the convention did not apply to the manifesto commitments of a

<sup>28</sup> House of Lords Constitution Committee, [The Salisbury-Addison Convention](#), 20 October 2017, HL Paper 28 of session 2017–19, p 6.

<sup>29</sup> *ibid*, p 16.

<sup>30</sup> *ibid*, p 17.

<sup>31</sup> Joint Committee on Conventions, [Conventions of the UK Parliament](#), 3 November 2006, HL Paper 265-I of session 2005–06, p 33.

<sup>32</sup> *ibid*, pp 33–4.

<sup>33</sup> House of Lords Constitution Committee, [The Salisbury-Addison Convention](#), 20 October 2017, HL Paper 28 of session 2017–19, p 3.

confidence and supply partner.

In contrast, the other leaders were not convinced the Salisbury Convention applied to a minority government. At the same time, they acknowledged that the House of Lords did not normally reject any government bill.

Baroness Smith of Basildon, Leader of the Opposition in the Lords, said it was “far from clear that the Salisbury-Addison Convention was ever intended to apply to minority governments”.<sup>34</sup> However, she also observed that the House of Lords was mindful of the balance of power between the two Houses and would not usually reject bills at second reading:

[...] 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.<sup>35</sup>

In her view, the Lords would fulfil its role by scrutinising and amending legislation and returning it to the Commons “for the elected House to have the final say—as it should—in whether they accept or reject the Lords’ amendments”.

Lord Newby, Leader of the Liberal Democrats in the Lords, was more categorical, stating his party’s belief that “a minority government does not have the right to expect that the House of Lords will abide by the Salisbury Convention”.<sup>36</sup> He argued that a minority government would “demonstrably not have achieved enough support to win the majority of seats in the Commons” and “cannot possibly claim to have popular support for its manifesto policies”.

Lord Newby reiterated that the Liberal Democrats did not consider themselves bound by the convention as they were not party to it in 1945.<sup>37</sup> He maintained that the formulation of the Salisbury Convention put forward by the joint committee in 2006 and agreed on by the House in 2007 “remains a guide”. However, he said it “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”. The Liberal Democrats agreed it would be “inconsistent” with the Lords’ constitutional role to reject bills at second reading on a regular basis. He also emphasised the Liberal Democrats’ view that the Lords was “entitled to propose amendments to any legislation, and to insist on those amendments, in particular where there are constitutional issues at stake”.<sup>38</sup>

Lord Hope of Craighead, then Convenor of the Crossbenchers, thought it was “hard to see why [the convention] should apply to a minority government which has not achieved a majority at the

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<sup>34</sup> House of Lords Constitution Committee, [The Salisbury-Addison Convention](#), 20 October 2017, HL Paper 28 of session 2017–19, p 5.

<sup>35</sup> *ibid.*

<sup>36</sup> *ibid.*, p 10.

<sup>37</sup> *ibid.*, p 9.

<sup>38</sup> *ibid.*, p 10.

election”.<sup>39</sup> However, he argued there was “a recognition that any government which can command the support of the House of Commons is entitled to get its business through”. In practice, therefore, he thought minority governments would benefit from the presumption the Lords would not block government bills. He concluded that if the Commons had endorsed any government’s programme by approving the Queen’s Speech, “the Lords should think very carefully before opposing legislation that gives effect to it”.

Academics also considered the question of whether the Salisbury Convention should apply to the manifesto bills of a minority government.

In a blog post written shortly after the 2017 general election, Mark Elliott, professor of public law at the University of Cambridge, argued that if “manifesto bills can make a special claim to democratic legitimacy because they enjoy the support of a majority as refracted through the electoral system”, then a minority government “has no such ‘mandate’ for its manifesto commitments—suggesting that the Salisbury Convention does not apply to them”.<sup>40</sup> He reasoned that “the very notion of a ‘manifesto bill’ loses coherence if the manifesto in question did not secure majority endorsement via the electoral process”.

He set out competing arguments as to whether it followed that the Salisbury Convention would apply to government bills under a confidence and supply agreement:

If [the Salisbury Convention’s] basis consists in the special democratic claim that can be asserted by a bill with majority electoral support, then there is no reason why the Convention should not extend to manifesto commitments that have such support because they appear—in sufficiently similar terms—in the manifestos of two or more parties that together command more than half of the seats in the House of Commons. That suggests that a commitment common to the Conservative Party and the DUP—or, for that matter, a commitment common to the Conservative Party and any other party with a combined electoral majority—would fall within the Salisbury Convention.

However, the Salisbury Convention might instead be understood as acknowledging the special democratic claim that can be made by a government that itself secured a mandate for its manifesto commitments, such that the Convention bites only upon bills implementing the manifesto commitments of a government with such a mandate. On that view, shared Conservative-DUP manifesto commitments would acquire no special status for the purpose of the Salisbury Convention, since the government would remain a minority Conservative administration, the DUP being no part of the administration itself under a confidence-and-supply deal.

Professor Elliott believed “[n]ormative arguments can be made in support of either of these views”, but in the end “the governing criterion is ultimately what members of the relevant political community think”. As the Conservatives won a majority of seats in England, he also suggested it was “at least arguable that the Conservative Party’s England-only manifesto commitments should be treated as

<sup>39</sup> House of Lords Constitution Committee, [The Salisbury-Addison Convention](#), 20 October 2017, HL Paper 28 of session 2017–19, p 13.

<sup>40</sup> Mark Elliott, [‘Does the Salisbury Convention Apply During a Hung Parliament?’](#), Public Law for Everyone Blog, 10 June 2017. Professor Elliott also acts as a legal adviser to the House of Lords Constitution Committee, although the blog was not written in that capacity.

having a relevant form of majority support so as to signify a mandate for the purpose of the Salisbury Convention". The same point would also apply to England and Wales-only manifesto commitments.

In conclusion, Professor Elliott thought the better view was that "constitutional principle does not require bills implementing Conservative Party manifesto commitments to be singled out for the sort of special treatment normally accorded under the Salisbury Convention for manifesto bills". However, he also suggested the House of Lords should "think very carefully before pressing that point, given the risks that are inevitably invited by an unelected chamber that may be perceived by others to be throwing its weight around".

Professor Meg Russell, writing in October 2017, also doubted the Salisbury Convention could be said to apply under a minority government. She recalled that the original convention of 1945 came about when there was a single-party majority government with a "landslide Commons majority" and "the House of Lords was an almost entirely hereditary one, in which the governing party held only a handful of seats".<sup>41</sup> In her view:

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.

## **Brexit**

Following the 2017 general election, some academics argued that the issue of whether the Salisbury Convention applied to a minority government had particular relevance to the Government's plans to legislate for Brexit. In the view of Steve Peers, professor of EU, human rights and trade law at the University of Essex, writing in June 2017, it was "arguable whether this convention applies when there is a minority government".<sup>42</sup> He contended this was particularly so in reference to Brexit, because the Government had failed to win a majority for its key policy:

[...] the Prime Minister explicitly requested votes for a bigger Commons majority to combat the hypothetical prospect of the Lords voting against her Brexit agenda. In effect, she asked voters: "Give me a big majority so the Lords don't meddle with my Brexit plans". And the voters answered: "No". In the circumstances, if the Lords block any government Brexit bills, they would not be frustrating the popular vote—but rather giving effect to it.

Albert Weale, emeritus professor of political theory and public policy at University College London, argued that with a minority government in office, the House of Lords need not feel "inhibited in voting against elements of the Great Repeal Bill" where it had "serious concern" about the way the Government wanted to use delegated powers.<sup>43</sup>

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<sup>41</sup> House of Lords Constitution Committee, [The Salisbury-Addison Convention](#), 20 October 2017, HL Paper 28 of session 2017–19, p 15.

<sup>42</sup> Steve Peers, '[The Gamble that Failed: The Brexit Election and What Happens Next](#)', EU Law Analysis Blog, 13 June 2017.

<sup>43</sup> Albert Weale, '[Why Democrats Should Welcome a Hung Parliament](#)', Constitution Unit Blog, 12 June 2017. The 'Great Repeal Bill' is a reference to the bill that became the European Union (Withdrawal) Act 2018.

Some supporters of Brexit claimed that the House of Lords breached the Salisbury Convention during the 2017–19 parliament by passing ‘wrecking amendments’ to the Government’s Brexit legislation.

The Government was defeated in 15 votes in the House of Lords during the passage of the European Union (Withdrawal) Act 2018.<sup>44</sup> This Act was previously also referred to informally as the ‘Great Repeal Bill’. The Act contains measures to prepare the UK’s statute book for Brexit, such as repealing the European Communities Act 1972 on exit day and ensuring EU-derived laws would continue to function after Brexit.

Sir Bill Cash (Conservative MP for Stone) described several of the Lords’ amendments to the bill as “disreputable wrecking amendments” passed “in defiance of the Salisbury Convention”.<sup>45</sup>

Similarly, Sir John Redwood (Conservative MP for Wokingham) said it was “difficult to interpret” some of the amendments made to the bill in the Lords as “not designed to prevent Brexit”.<sup>46</sup> Without using the term specifically, he implied they were wrecking amendments supported by members of the Lords who “have made no secret of their opposition to the whole policy of Brexit”. He argued that the Salisbury Convention should apply to the European Union (Withdrawal) Bill because it was a central manifesto bill of both the Conservatives and the DUP. He also claimed the bill was in the Labour manifesto for the 2017 general election, “so an overwhelming majority of MPs were elected on the pledge to carry through the necessary legislation for our exit”. Labour’s 2017 manifesto said the party accepted the referendum result, but specifically said it would “drop the Conservatives’ Great Repeal Bill”.<sup>47</sup>

Likewise, Viscount Ridley (Conservative) also objected to some of the Lords’ amendments to the bill. He argued that “in adding off-piste clauses”, the Lords had “effectively torn up the Salisbury Convention”.<sup>48</sup>

Writing in response to this line of reasoning, Sir David Beamish, former Clerk of the Parliaments, did not agree that the House of Lords had broken the Salisbury Convention.<sup>49</sup> He suggested that the non-government amendments agreed by the Lords “may all be regarded as an exercise of the House of Lords’ time-honoured role of inviting the Commons to think again; putting forward amendments designed to improve the bill, but without any implied threat of blocking progress if the Commons does not accept them”. In Sir David’s view, if the Commons rejected the amendments but the Lords went on to insist on them, thereby delaying the enactment of the bill, it “might well be seen as a wrecking tactic”. However, he thought it unlikely that such a tactic would command majority support in the Lords. He therefore felt it was “clear that talk of ‘tearing up the Salisbury Convention’ is premature”.

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<sup>44</sup> See: House of Lords Library, [European Union \(Withdrawal\) Bill: Summary of Lords Amendments](#), 18 May 2018.

<sup>45</sup> Sir Bill Cash, [‘Failure to Reverse the Wrexiteers’ Changes to the EU Withdrawal Bill would Undermine Trust in Democracy Itself](#), Brexit Central, 18 May 2018.

<sup>46</sup> Sir John Redwood, [‘The Role of the House of Lords’](#), John Redwood’s Diary (Blog), 16 May 2018.

<sup>47</sup> Labour Party, [Labour Party Manifesto 2017](#), May 2017, pp 24–5.

<sup>48</sup> Matt Ridley, [‘May Must Get Tough with Lords to Stop the Brexit Meddling’](#), *Times* (£), 16 May 2018.

<sup>49</sup> Sir David Beamish, [‘What is the Salisbury Convention, and Have the Lords Broken It Over Brexit?’](#), Constitution Unit Blog, 12 June 2018.

In the event, the Lords did not insist on any of the amendments that Sir Bill Cash had described as “wrecking amendments” that violated the Salisbury Convention:

- The Commons rejected two of the amendments outright, one on retaining the Charter of Fundamental Rights after Brexit, one on removing the date of exit day from the face of the bill.<sup>50</sup> The Lords did not insist further.
- The Commons made further amendments to a Lords amendment on North-South cooperation and the prevention of new border arrangements in Northern Ireland.<sup>51</sup> The Commons amendments were agreed to by the Lords.
- The Commons disagreed with Lords amendments that would have prevented the Government from repealing the European Communities Act 1972 unless it outlined what steps it had taken towards negotiating the UK’s continued participation in a customs union with the EU.<sup>52</sup> The Commons passed amendments in lieu requiring the Government to make a statement on its progress towards negotiating a customs arrangement with the EU. The Lords agreed to the amendments in lieu.
- The Commons disagreed with a Lords amendment to give Parliament a ‘meaningful vote’ on the Brexit deal.<sup>53</sup> The Commons passed an amendment in lieu. The Lords agreed to the Commons amendment in lieu but made some further amendments to it. In turn, the Commons agreed to this, but made yet further amendments to the clause. In a final round of parliamentary ping-pong, the Lords agreed.<sup>54</sup>

Speaking at the end of the proceedings on the bill, Baroness Hayter of Kentish Town, then Shadow Spokesperson for Exiting the European Union, implied the House of Lords had fulfilled its constitutional role. She said:

[...] with the catalogue of changes to the bill [...] I hope even the Government will recognise the vital role played by your Lordships’ House, and that our detractors, particularly in parts of the press, will realise that it is our role to ask the Government, and the Commons, to think again. We have done that, and to quite a large extent we have been heard.<sup>55</sup>

Baroness Evans of Bowes Park, Leader of the House of Lords, said she thought the Lords’ scrutiny “has seen improvements made to this bill”.<sup>56</sup> She said that while there were a number of issues on which the Government did not agree, she was “pleased that we have been able to find solutions and compromises to most of the concerns raised”.

### **Press Regulation**

Similar claims were made that the Lords were breaching the Salisbury Convention over amendments to the Data Protection Bill to do with press regulation. Key votes in the Lords on the Data Protection Bill and the European Union (Withdrawal) Bill took place in the Lords in the same week in May 2018.

<sup>50</sup> House of Commons Library, [European Union \(Withdrawal\) Bill 2017–19: Ping Pong](#), 18 June 2018, pp 15 and 18.

<sup>51</sup> *ibid*, pp 17–18.

<sup>52</sup> *ibid*, p 13.

<sup>53</sup> *ibid*, pp 5–9.

<sup>54</sup> [HL Hansard, 20 June 2018, cols 2082–92](#).

<sup>55</sup> *ibid*, col 2087.

<sup>56</sup> *ibid*, col 2092.

Sir John Redwood wrote that by “again [...] pressing for a second reconsideration of the Conservative manifesto pledge on press freedom”, the Lords “broke their Salisbury Convention pledge”.<sup>57</sup> Viscount Ridley said that “in voting against the Commons on the Leveson Two proposal to investigate the press”, the Lords had “effectively torn up the Salisbury Convention”.<sup>58</sup> The *Times* columnist Iain Martin claimed that a Lords vote on the Data Protection Bill was “the worst illustration” yet that “the Lords isn’t working”.<sup>59</sup> He criticised the Lords for having “another go” on the question of press freedom, “voting down the government, in breach of the convention that bills which enact manifesto commitments should be passed by the Lords”, after “the Commons thought that it had settled the question”.

The matter centred on amendments made by the Lords to the Data Protection Bill that were seen as contrary to commitments in the Conservatives’ 2017 manifesto. On press regulation, the manifesto pledged:

- Not to proceed with the second stage of the Leveson Inquiry into the culture, practice and ethics of the press.<sup>60</sup> It had been proposed that part two of the Leveson Inquiry would look at relationships between newspaper organisations and the police, politicians, prosecuting authorities and relevant regulatory bodies during the ‘phone hacking’ scandal of 2002–11, as well as failures of corporate governance at newspaper groups.<sup>61</sup>
- To repeal section 40 of the Crime and Courts Act 2013.<sup>62</sup> Section 40 was enacted in response to part one of the Leveson Inquiry. It would make it easier for the public to challenge illegality by news publishers who chose not to subscribe to an approved press regulator because it would mean publishers having to pay both sides’ legal costs.<sup>63</sup>

At report stage of the Data Protection Bill in January 2018, the Lords voted in favour of:<sup>64</sup>

- An amendment moved by Baroness Hollins (Crossbench) to require an inquiry to take place with terms of reference broadly similar to those of part two of the Leveson Inquiry.
- An amendment moved by Earl Attlee (Conservative) to incentivise media operators to sign up to an independent press regulator in respect of data protection claims. This would be achieved in a similar way to section 40 of the Crime and Courts Act 2013.

This bill was a Lords starter. When it went to the Commons, the Commons voted at committee stage to remove the clauses inserted by these Lords amendments. Then at Commons report stage, Labour tabled a new clause requiring an inquiry to take place into allegations of data protection breaches by the media; this was defeated on division. Labour also tabled new clauses along the lines of section 40, but these were not put to a vote. The Commons voted in favour of government amendments giving the Information Commissioner’s Office (ICO) new powers and duties in relation

<sup>57</sup> Sir John Redwood, ‘[The Role of the House of Lords](#)’, John Redwood’s Diary (Blog), 16 May 2018.

<sup>58</sup> Matt Ridley, ‘[May Must Get Tough with Lords to Stop the Brexit Meddling](#)’, *Times* (£), 16 May 2018.

<sup>59</sup> Iain Martin, ‘[The House of Lords Has Cooked Its Goose](#)’, *Times* (£), 17 May 2018.

<sup>60</sup> Conservative Party, [The Conservative and Unionist Party Manifesto 2017](#), May 2017, p 80.

<sup>61</sup> House of Commons Library, [Press Regulation after Leveson](#), 27 July 2018, p 5.

<sup>62</sup> Conservative Party, [The Conservative and Unionist Party Manifesto 2017](#), May 2017, p 80.

<sup>63</sup> House of Commons Library, [Press Regulation after Leveson](#), 27 July 2018, p 5.

<sup>64</sup> For a detailed account of the bill’s passage through both Houses see: House of Commons Library, [Press Regulation after Leveson](#), 27 July 2018, pp 18–24.

to data protection for the purposes of journalism.

When the bill returned to the Lords, Baroness Hollins proposed the Lords should agree to the Commons decision to remove her original amendment from the bill but should also put forward an alternative new clause. Her new amendment set out a revised proposal for an inquiry. She said she had “made some adjustments to the amendment which I believe will help the other place to reconsider it”, “made after listening carefully to the debate in the other place”.<sup>65</sup> The Lords voted in favour of Baroness Hollins’ new proposal. It was this vote that prompted the criticisms the Lords had breached the Salisbury Convention.

The bill returned to the Commons for the next round of ping-pong. The Government tabled amendments disagreeing with Baroness Hollins’ amendment and proposing amendments to the new clause added by the Commons at report stage requiring the ICO to carry out a review of the processing of personal data for the purposes of journalism.<sup>66</sup> The Commons voted in favour of the government amendments.

When the bill went back again to the Lords, Baroness Hollins said that although she was “disappointed”, she would “reluctantly accept the decision of the other place that it does not wish to proceed with and complete a public inquiry”.<sup>67</sup>

Lord McNally (Liberal Democrat) proposed a further amendment to the latest government amendment approved by the Commons. He argued that a review of the effectiveness of the media dispute resolution process should be carried out by an independent body rather than by the Government.<sup>68</sup> He argued that the Salisbury Convention should not stop the Lords asking the Commons to reconsider a matter more than once:

[...] let us be clear: the Salisbury Convention promises that this house will give a second reading to a manifesto bill; it does not protect that bill from scrutiny or amendment—nor is there anything wrong in asking the Commons more than once to consider this [...]

We know what ping-pong means—by its very name it means “more than once”. What it does not do is to make it into a kind of madrigal, whereby we know the House of Lords is going to give up. I have said more than once that the House of Lords must retain its right to say no because, once it loses that right, it becomes a debating society, not a House of Parliament.<sup>69</sup>

For the Government, Lord Keen of Elie, Spokesperson for the Ministry of Justice, said that he understood why Baroness Hollins had “maintained the need to bring these matters before the House on a number of occasions”, and that he did “not seek to imply any criticism of her in that regard”.<sup>70</sup> He reminded the House of the need to pass the bill within three days, as it was implementing legislation for the EU’s General Data Protection Regulation that was shortly due to come into force.<sup>71</sup>

<sup>65</sup> [HL Hansard, 14 May 2018, col 437.](#)

<sup>66</sup> House of Commons Library, [Press Regulation after Leveson](#), 27 July 2018, p 23.

<sup>67</sup> [HL Hansard, 21 May 2018, col 887.](#)

<sup>68</sup> *ibid*, col 883.

<sup>69</sup> *ibid*, col 884.

<sup>70</sup> *ibid*, col 893.

<sup>71</sup> *ibid*, col 882.

Lord McNally withdrew his amendment after debate, explaining that: “We never wanted to stop the bill coming into law”.<sup>72</sup> The Lords agreed without division to the final government amendments made in the Commons, and the bill received royal assent on 23 May 2018.

## 5. Coalition Government: 2010–15

Questions about the applicability of the Salisbury Convention also arose after the 2010 general election, which had also produced a hung parliament. When the Conservatives and Liberal Democrats formed a coalition government, there were debates about whether the Salisbury Convention applied, since the two parties had campaigned on different manifestos, and the coalition agreement in which they set out their programme for government was not drawn up until after the election.

The Conservative and Liberal Democrats initially asserted that the convention still held. Lord Strathclyde (Conservative), then Leader of the House of Lords, said in May 2010: “Of course, the Salisbury Convention will apply. There is no difficulty there”.<sup>73</sup> Lord McNally (Liberal Democrat), then Deputy Leader of the House of Lords, said in June 2010 that: “As far as I am concerned, the Salisbury Convention and the Cunningham Conventions [ie the Conventions set out in the Joint Committee on Conventions’ report] will still be operated in this House”.<sup>74</sup>

However, others across the House felt the situation was not so clear cut. Writing in November 2010, Baroness D’Souza, then Convenor of the Crossbenchers, suggested that there were three possibilities for the operation (or not) of the Salisbury Convention under the Coalition Government:

1. The Salisbury-Addison Convention cannot and does not apply since no one voted for the coalition agreement.
2. The convention does not apply strictly but since the electorate by its votes ensured a hung Parliament and that therefore a coalition was more than likely, the agreement forged between the two parties should count as a manifesto.
3. The Lords should respect only those policies which were put forward in the manifestos of both the Tories and the Lib Dems and are therefore similar.<sup>75</sup>

She maintained that:

[...] the most sensible compromise—which some might see as weaselly—is to observe the spirit of the convention [...] Conventions should be sufficiently flexible to develop according to circumstances.

Lord Adonis (Labour), who was then director of the Institute for Government, argued in October 2010 that although a coalition agreement was not a manifesto, if it commanded the confidence of the House of Commons, it should be accorded “a significant status”.<sup>76</sup>

<sup>72</sup> [HL Hansard, 21 May 2018, col 894.](#)

<sup>73</sup> [HL Hansard, 25 May 2010, col 22.](#)

<sup>74</sup> [HL Hansard, 29 June 2010, col 1784.](#)

<sup>75</sup> Baroness D’Souza, ‘[Is the Coalition Agreement a Manifesto?](#)’, Lords of the Blog, 17 November 2010.

<sup>76</sup> House of Commons Political and Constitutional Reform Committee, [Lessons from the Process of Government Formation After the 2010 General Election](#), 28 January 2011, HC 528 of session 2010–12, Ev 13, Q53.

However, he believed that left the Salisbury Convention in “uncharted waters”:

[...] parts of the coalition agreement were not in the manifesto of either of the coalition parties, [and] there is very little in it that was in the manifesto of both of the coalition parties. So the House of Lords will have to exercise its judgment with discretion and wisdom, as it always does in my experience.

In June 2011, Mark Harper, the then Minister for Political and Constitutional Reform, acknowledged that “with the advent of a coalition government [...] the Salisbury-Addison Convention does not operate in the same way, if at all”.<sup>77</sup>

Two parliamentary committees considering the implications of coalition government both concluded that a coalition agreement made after an election had produced a hung parliament did not have the same status as a manifesto.

The House of Commons Political and Constitutional Reform Committee (PCRC) stated:

A coalition government’s programme, drawn up after an election, cannot have the same mandate as a party manifesto which is available to the people before they vote. A possible consequence is that Members of the House of Lords may not feel bound by the Salisbury-Addison Convention.<sup>78</sup>

The PCRC noted there were a range of views about what this meant for how the House of Lords should treat government bills:

It is for individual Members of the House of Lords to decide whether to apply this convention to bills which originate from the coalition Government’s programme for government. We have sought views on this matter of the Leaders of the main political parties in the House of Lords, as well as the Convenor of the independent Crossbench Peers. However, we received a range of opinions from a number of witnesses and no definitive consensus has emerged.<sup>79</sup>

The House of Lords Constitution Committee concluded in 2014 that the Salisbury Convention “does not, strictly speaking, apply to measures in a coalition agreement”, as such an agreement “cannot be said to have a mandate from the electorate in the way that a manifesto can”.<sup>80</sup> However, the committee argued that “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”.<sup>81</sup>

Writing in 2015, Lord Lisvane (who was Clerk of the House of Commons until 2014) and Rhodri Walters (Reading Clerk of the House of Lords until 2014) quipped that “at present, the Salisbury

<sup>77</sup> [HC Hansard, 27 June 2011, col 724.](#)

<sup>78</sup> House of Commons Political and Constitutional Reform Committee, [Lessons from the Process of Government Formation After the 2010 General Election](#), 28 January 2011, HC 528 of session 2010–12, p 3.

<sup>79</sup> *ibid*, p 18.

<sup>80</sup> House of Lords Constitution Committee, [Constitutional Implications of Coalition Government](#), 12 February 2014, HL Paper 130 of session 2013–14, para 98.

<sup>81</sup> *ibid*, para 99.

Convention as originally conceived is a very dead duck indeed”.<sup>82</sup> They argued that of “greater significance by far is the broad acceptance that government bills will usually be given a second reading and dealt with in reasonable time”.

During the period of the Coalition Government, there were attempts on three occasions to block a government bill at second reading, all of which failed.

In October 2011, Lord Rea (Labour) moved an amendment to the second reading motion of the Health and Social Care Bill. Lord Rea’s amendment declined to give the bill a second reading “in the light of the statement in the coalition agreement that ‘we will stop the top-down reorganisations of the NHS that have got in the way of patient care’”.<sup>83</sup> Measures in the bill included creating clinical commissioning groups, creating an independent NHS Commissioning Board, and abolishing primary care trusts and strategic health authorities.<sup>84</sup> Lord Rea argued that the coalition agreement “contain[ed] no words to suggest that this enormous bill was in the pipeline” and he said that it was not mentioned in either the Conservative or Liberal Democrat manifestos.<sup>85</sup> He therefore asserted that if the Salisbury Convention could be understood to apply during a coalition government, in the case of this bill, it “applie[d] in a reverse direction. If we allow the bill to pass, we will be voting directly against the words of the coalition agreement”.<sup>86</sup>

However, Earl Howe, the then Parliamentary Under Secretary of State at the Department of Health, contested this interpretation:

A number of speakers questioned what they call the democratic mandate for this bill claiming that the bill’s proposals were not in manifestos or the coalition agreement. Both these claims are untrue, as any quick read of these documents will show.<sup>87</sup>

In response to this statement, the Earl of Clancarty later requested the Government to pinpoint “the wording used in those documents to that effect” and to confirm “whether they consider that they have a democratic mandate for the expansion of the external market in the National Health Service”.<sup>88</sup> In response, Earl Howe said that: “Both coalition parties, within their manifestos as well as the coalition agreement, committed to giving patients access to the best care available by securing services from the best provider whether from the public, private or voluntary sector”.<sup>89</sup>

Lord Rea’s amendment was defeated by 354 votes to 220 and the bill received its second reading.<sup>90</sup> The bill was also opposed at third reading in the House of Lords, when Lord Owen (Crossbench) moved to delay third reading, and Baroness Thornton (Labour) moved an amendment to decline to let the bill pass.<sup>91</sup> Both of these were defeated, and the bill received royal assent on 27 March 2012.

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<sup>82</sup> Robert Rogers and Rhodri Walters, *How Parliament Works*, 2015, p 212.

<sup>83</sup> [HL Hansard, 11 October 2011, col 1476.](#)

<sup>84</sup> House of Commons Library, [Health and Social Care Bill](#), 27 January 2011.

<sup>85</sup> [HL Hansard, 11 October 2011, col 1476.](#)

<sup>86</sup> *ibid.*

<sup>87</sup> [HL Hansard, 12 October 2011, col 1708.](#)

<sup>88</sup> [HL Hansard, 27 October 2011, col WA179.](#)

<sup>89</sup> *ibid.*

<sup>90</sup> [HL Hansard, 12 October 2011, cols 1712–15.](#)

<sup>91</sup> [HL Hansard, 19 March 2012, cols 634–717.](#)

In June 2013, Lord Dear (Crossbench) moved an amendment to the second reading motion of the Marriage (Same Sex Couples) Bill, declining to give the bill a second reading.<sup>92</sup> Lord Dear's amendment was defeated by 390 votes to 148 and the bill received its second reading.<sup>93</sup> Same-sex marriage was not mentioned in the coalition agreement or the manifestos of either the Conservatives or the Liberal Democrats for the 2010 general election. However, the Conservatives had launched a *Contract for Equalities* a few days before the election, setting out the party's plans for equalities issues if they won the election.<sup>94</sup> This document stated: "We will also consider the case for changing the law to allow civil partnerships to be called and classified as marriage".

In November 2014, Lord Lloyd of Berwick (Crossbench) moved an amendment to the second reading motion of the Social Action, Responsibility and Heroism Bill.<sup>95</sup> Lord Lloyd's amendment declined to give the bill a second reading on the grounds that it was "unnecessary" as the subject matter was already covered in existing legislation. The bill was intended to "provide reassurance that if something goes wrong when people are acting for the benefit of society or intervening to help someone in an emergency, the courts will take into account the context of their actions in the event they are sued".<sup>96</sup> The Ministry of Justice said in a factsheet about the bill that it would "support the Government's broader aims of encouraging and enabling people to volunteer and to play a more active role in civil society".<sup>97</sup> The factsheet recalled the specific commitment in the coalition agreement to "take a range of measures to encourage volunteering and involvement in social action". However, the coalition agreement itself had not mentioned introducing a bill to support these measures. Following debate, Lord Lloyd withdrew his amendment and the bill received its second reading.

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<sup>92</sup> [HL Hansard, 3 June 2013, col 942.](#)

<sup>93</sup> [HL Hansard, 4 June 2013, cols 110–13.](#)

<sup>94</sup> House of Commons Library, [Marriage \(Same Sex Couples\) Bill](#), 31 January 2013, p 15.

<sup>95</sup> [HL Hansard, 4 November 2014, col 1548.](#)

<sup>96</sup> Ministry of Justice, [Social Action, Responsibility and Heroism Bill: Fact Sheet](#), 13 June 2014.

<sup>97</sup> *ibid.*