

M O N I T O R

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Rights Unleashed?

The Human Rights Act 1998 comes into full force on 2 October.

Two years ago, the new Labour government presented the passage of the Human Rights Act (HRA) as a cornerstone of its constitutional reform and modernisation agendas. But opposition has since been building, feeding off the flames of contentious human rights cases in Strasbourg and Scotland. In recent weeks the Act has been accused of becoming a 'gold mine for lawyers' (Lord McCluskey) or a 'step too far' foisted on us by the rest of Europe (Anne Widdecombe). The government has been slow to mount a defence against these charges.

The government is not ill prepared for what lies ahead. It has worked hard to 'inoculate' its policies, procedures and laws against successful challenge under the HRA and European Convention on Human Rights (ECHR).

Important changes have already been made, including the new procedural requirement for magistrates to give reasons for decisions, and the statutory provision made for authorising covert surveillance in the Regulation of Investigatory

Powers Bill. But for the most part, departments have given themselves a clean bill of health or had their lawyers mix the infusions to fight off the expected onset of 'Conventionitis' in the courts.

There is quiet and growing confidence inside government that it has got its own house in order just in time for October. But it is less sanguine about the state of preparations in public authorities and the large number of other bodies fulfilling public functions. And it is deeply alarmed at the sceptical and increasingly hostile view forming in some parts of the media over the potential use of the Act which is now spilling over into the party political arena.

So what will happen after October? All lawyers agree that there will be an explosion of court cases, and nearly all agree that the overwhelming majority of these cases will fail. But what issues might spur the judges to act? Will they be the widely expected test cases on such matters as the use of stop and search powers, reversing the burden of proof or the use of evidence obtained in breach of Convention rights?

Special lawyers' groups within the government have already

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examined these and other 'red-light' issues identified through the Home Office's 'traffic light' review process, and armed prosecutors with lines to take to cover a top twenty of expected challenges in whatever courtroom or case they might arise. (cont. p.2)

Rights Unleashed cont from p.1

How will the judges respond to the Human Rights Act? The Act invites them to develop a distinctive common law human rights jurisdiction for the UK. Judges will want to take matters out of the hands of Strasbourg; recent rulings of the Strasbourg court, for example on the liability of public authorities for failing to deliver public services, have caused deep concern among the Law Lords. Scotland's experience under the devolution legislation and cases in England and Wales where judges have 'jumped the gun' in applying Convention principles before October, demonstrate that there are breaches of Convention rights still to be rectified. Few expect this to be done through 'declarations of incompatibility' and remedial orders. Judges will find most of the latitude they need through the interpretation and 'reading down' of legislation in ways compatible with the Convention. And this is the practice that is likely to cause the government the most concern and difficulty in the months ahead.

Parties Gear Up for the Election

It is the party conference season. As the parties prepare for the next election, what are their manifestos likely to say on constitutional issues? Labour convened its National Policy Forum in Exeter in July, to agree documents to be sent to this month's conference. The policy document on Democracy and Citizenship contains a weakened commitment to electoral reform. The pledge to a referendum still remains, but with no timetable; and the alternative option could be the Alternative Vote (AV) rather than the more proportional AV-plus recommended by the Jenkins Commission. The party agreed that the referendum should only take place once the new voting systems for the new Scottish, Welsh and London assemblies and the European Parliament could be assessed. But it is not clear what more can be gleaned from these contests, given the low turnout for the European and London elections, and the fact that detailed analysis of the Scottish and Welsh contests has already been published by the Constitution Unit and CREST (details available on the Unit's website).

On Lords reform the party conference will be offered two options to choose between. One of these accepts the principles set down by the Wakeham Commission on House of Lords reform, including a proportion of elected members 'not less than that contained in the options outlined in the Royal Commission's report' (the proportions in the report being 12%, 16% or 35%). The other option would commit the party to a majority-elected upper house. On regional government in England, there is a commitment to move to directly elected regional government 'where and when there is a clear demand for it', with a statement that the party recognises 'the legitimate aspirations of the English regions and believes that the creation of elected regional assemblies is the essential next step in our programme of renewing the constitution and empowering our citizens'. A new government would publish a Green or White Paper on regional governance; but this should not result in adding a new tier, and so would require a move to a predominantly unitary system of local government.

The Liberal Democrats have the most detailed policies for constitutional reform, in *Reforming Governance in the UK* (Policy Paper 40, July 2000). The working group chaired by Bob Maclennan proposes replacing the Lords with an elected Senate, cutting the Commons to around 450, cutting the number of ministers, and allowing junior ministers to be appointed from outside parliament. There would be referenda on regional assemblies in England, on the basis of a minimum set of core powers; with the possibility of further devolution of powers, and boundary changes to allow smaller regions, after a subsequent referendum. A Finance Commission would be charged with devising a new revenue distribution formula to the nations and regions. There would be a referendum on the Jenkins recommendation on the voting system, as 'a first step towards our ultimate goal of STV'.

The Conservatives' draft manifesto *Believing in Britain* was launched on 5 September. Its centrepiece was a pledge to introduce legislation to protect British sovereignty against further encroachments by the EU in fields such as defence, direct taxation, education and health. On

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devolution, the party seeks to work to ensure this succeeds in Scotland and Wales, whilst pledging to scrap Regional Development Agencies in England. Party leader William Hague confirmed his proposal that Westminster should be reformed so that 'only English MPs should be able to take part in the decisive stages of legislation on questions that affect only England'. The party would have a long-term aim of reducing the size of the House of Commons, partly in response to devolution, and also pledged to cut the number of ministers. These proposals reflected those made in the Norton report on Strengthening Parliament (see Parliamentary Reform, page 6).

New Poll on Constitution

A MORI poll for *The Times* newspaper (25 August) shows that overall satisfaction with the British constitution has grown. The poll, based on interviews with 1,014 adults across Britain found that 45% were 'satisfied' with the way the constitution is working, compared with 29% in a similar poll in 1995. Satisfaction with parliament has also increased, from 34% to 43%, and with the House of Lords from 28% to 32% (with 29% saying they were 'dissatisfied'). The opposite trend was, however, found with respect to the courts, with 47% saying they were dissatisfied - up from 35% in 1995.

Devolution

Wales

The main party political event of the quarter was Dafydd Wigley's resignation as Plaid Cymru President and party leader at the end of June. Although Wigley (57) had been unwell for some time, his resignation still came as a shock. Ieuan Wyn Jones, the Anglesey AM and MP was immediately the frontrunner to be new leader, and won the contest in August. He was challenged by Helen Mary Jones, AM for Llanelli, and Rhondda-based Jill Evans MEP. There were few ideological differences between the candidates, with all eschewing the word 'independence' in the context of a rapidly integrating EU. Wyn Jones' formulation sought to 'secure full national status within the European Union' for Wales. His appointment was followed by a shadow cabinet reshuffle.

First Secretary Rhodri Morgan's announcement in July that there would be a review of how devolution is working in Wales over the coming year sparked a fundamental debate about the

effectiveness of the National Assembly's secondary legislative powers and its relationship with Westminster. Earlier, in a wide-ranging speech to the Institute of Welsh Politics at Aberystwyth (8 July) on the issues to be grappled with, the Presiding Officer Lord Elis-Thomas asked the loaded question, 'To what extent is the body over which I have the duty of presiding really the National Assembly for Wales?'

The immediate core issue is the extent to which the Assembly can influence primary legislation affecting Wales that is passed at Westminster. In a lecture given to the Law Society at the National Eisteddfod at Llanelli in August the Labour Peer, Lord Gwilym Prys Davies, concluded, 'It is here that I see the main threat to the Welsh devolution model'. The 22 parliamentary bills that refer to Wales published during 1999-2000 have followed no consistent pattern. That is to say, some clearly delineate areas of competence devolved to the National Assembly, while others lack clear definition or retain control with the Whitehall department concerned. The Department of the Environment, Transport and the Regions proved the most controlling in this respect with the Department of Health more relaxed.

A major clash over powers arose over the issue of performance-related pay for teachers, in particular linking pay levels with examination results, which provoked the most serious legal test in the life of the Assembly thus far. The dispute revolved around whether the Assembly possessed transferred powers to decide the issue for itself, through secondary legislation. It also led to a clash between the Pre-16 Education Committee and the Executive over the desirability of Wales being allowed to operate a different system from England. Two Acts of Parliament potentially allowed competence in the field, the 1986 Education (no. 2) Act (under which powers are transferred) and the 1991 School Teachers' Pay and Conditions Act (under which they are not).

This was part of the background to a legal test case in which the National Union of Teachers sought judicial review of regulations issued by the Department for Education and Employment. In his judgement on the case on 14 July Mr Justice Jackson found against the DfEE since, he said, it had illegally by-passed both Acts in issuing its regulations on performance-related pay. In relation to the 1986 Act he added, 'This may be because the Welsh Assembly would not be prepared to make similar regulations governing teachers in Wales ...'.

Northern Ireland

The period covered by this report was another nail-biter in Northern Ireland. There were several positive developments. After devolution in December 1999, and de-devolution in February 2000, there was re-devolution in late May on foot of the IRA's commitment eventually to put weapons 'beyond use'. The four-party Executive Committee was re-established and three of the four (the Ulster Unionists, the SDLP and Sinn Fein) withstood the challenge of the Democratic Unionist Party, which not only boycotted the executive but rotated its two ministers.

There was agreement in late June on an interim 'Agenda for Government' to tide the executive over till next April, while work continued on the Programme for Government. And the latest stand-off at Drumcree in Co Armagh in July was a failure for the Orangemen seeking to bring down the agreement.

Moreover, the financial arrangements for devolution were finally, if nominally, brought under Assembly control, and important EU funds secured. And the north-south structures proceeded in a technocratic and non-threatening fashion. Yet on the key, neuralgic issues in Northern Ireland, tensions remained - indeed, they distinctly escalated. Decommissioning was no done deal, as it was clear that what republicans (and Dublin) saw as a distraction removed was for unionists (and London) only the beginning of a process.

Policing - in particular the status of the name of the transforming Royal Ulster Constabulary - remained hugely divisive, leading to a bizarre exchange of competing resignation claims by the First and Deputy First Ministers. There is every prospect when the Commons resumes that the government will be faced with a choice between sustaining David Trimble's leadership of the UUP or the IRA's engagement with the international arms inspectors and the decommissioning body.

Flags are also of great symbolic significance. Sinn Fein ministers' refusal to allow the Union flag to be flown over their departments provoked a mass of flag (and paramilitary insignia) flying in predominantly Protestant areas. But the deadlock is set to continue.

Mr Trimble secured a wafer-thin majority in May for restoration of the executive, including Sinn Fein, at a postponed meeting of the Ulster Unionist Council. But he only won through because of expectations, fed in a letter from the Northern Ireland Secretary, Peter Mandelson,

that unionism would prevail on policing and flags. Moreover, the mood on the ground is darkening, with anger over the triumphalism associated with the last batch of IRA prisoner releases and a rising tide of sectarian attacks.

Scotland

The Scottish Parliament went into recess on 7 July, a year after its formal opening. The period was marked by numerous analyses of the first year, most of which could be summed up as 'Reasonable/ shaky start... could do better'. Iain MacWhirter writing in the *Sunday Herald* was more upbeat than most with a grudging optimism: 'It has been a painful birth, and there are growing pains ahead. But the infant Scottish democracy is starting to discover itself. Yet... it may have to crawl for a couple of years, before it learns to walk.' Cardinal Thomas Winning, leader of the Catholic Church in Scotland and a vociferous critic of the government over the decision to repeal 'Section 28' (the ban on promoting homosexuality in schools) was perhaps the most dismissive, condemning the parliament as 'an utter failure'.

At the same time, a number of opinion polls revealed large levels of ignorance or indifference after one year of devolution. One poll for Scottish TV at the end of June revealed that nearly 80% thought devolution had made no difference; and one in four were not able to name Scotland's First Minister.

That puts into perspective the political stories of the summer, one of which has been Donald Dewar's gradual return to work. He was pictured using a laptop and described as having turned to surfing the net for interest during his convalescence - which gave encouragement to those still waiting for the 'new Scotland' to materialise. He was also called in to intervene in an unseemly public row between Health Minister Susan Deacon and Finance Minister Jack McConnell. McConnell announced that money underspent on last year's budget would be reallocated (pre-devolution it would have simply returned to the Treasury). Deacon came under pressure when it became clear that the NHS had underspent by £34m and launched a public campaign to 'get her money back'. This won her few friends in cabinet. She will be relieved that the focus has now switched to Education Minister Sam Galbraith who is resisting calls for his resignation over a failure in the Scottish

Qualifications Authority to handle the Higher examination process this summer.

Finally, the biggest political news of the recess was the resignation of Scottish National Party Leader Alex Salmond, on 17 July. Although Salmond had been the subject of much criticism in the last year, few had expected his resignation. The leadership will be decided at the SNP conference in Inverness on 23 September. The main contenders are John Swinney, the deputy leader of the party and clear favourite; and Alex Neil, who is regarded as being on the left of the party and more in touch with the grassroots. Swinney is shrewd and far-sighted and clearly wants to put the issue of 'independence' into perspective so that his party can concentrate more on winning a mandate to govern a devolved Scotland. But it is the difficulty and frustration of playing that hand that finally persuaded his mentor Salmond to leave.

English Regions

This quarter has seen potentially significant developments in the English regions. Labour's National Policy Forum in July agreed a strong commitment to regionalism (see *Parties Gear Up*, on page 2). The New Local Government Network have, however, issued a report by Alan Harding calling for government to focus on urban and sub-regional bodies on the basis that there is no demonstrated demand for regions throughout most of England. The New Local Government Network is thought to be close to the government, so this episode suggests the debate on English devolution is by no means resolved yet.

In June the government launched a national consultation document, *The Regional Development Agencies as Strategic Drivers of Economic Development*, which proposes a stronger economic development role for the RDAs. The government's confidence in RDAs was endorsed in July with the announcement of £500 million additional budget by 2003/4 in the Comprehensive Spending Review. Significantly, RDAs are also to have greater flexibility over how to spend their budgets as their funding will be brought together in a single cross-departmental budget to which the DETR, DTI and DfEE will commit funds (DETR press release 21/07/00). RDAs will thus be more powerful bodies than they were in their first year.

The Centre

When the Chancellor announced his spending plans for the next three years on 18 July, the devolved governments benefited from the same

largesse as Whitehall departments, thanks to the Barnett formula. But Wales got a bonus of 1% more than the spending settlement for Scotland which involved a breach of the formula. Exceptionally the Treasury agreed to award significant extra sums (£272m over 3 years) outside the Barnett formula, to provide the PES cover needed for the match funding to ensure receipt of the EU funding under the new Objective 1 programme for West Wales and the Valleys.

The Disqualifications Bill was revived after lying dormant for six months, and had its Second Reading in the Lords on 28 July, the day before the summer recess. The government claimed it was a modest bill, removing the last major inconsistency in the way UK electoral law applies to Commonwealth and Irish citizens. The bill will allow members of the Irish parliament to serve as members of the House of Commons. Peers objected that the bill was being rushed through as a sop to Sinn Fein: while it was permissible to hold a dual mandate between Westminster and a devolved legislature or the European Parliament, it was wrong to allow dual membership in two sovereign parliaments.

On 28 June Labour backbencher Frank Field introduced the House of Commons (Reserved Matters) Bill. This would have answered the 'West Lothian Question' by barring Scottish or Northern Irish members of parliament from speaking or voting, except on reserved matters. It would also have precluded such members from becoming UK ministers, except in posts relating to reserved matters. Frank Field acknowledged that the main purpose of the bill was to raise the debate, and it was defeated by 190 votes to 131.

1 September saw the first plenary meeting of the Joint Ministerial Committee on Devolution, held in Edinburgh. The JMC has met six times since December 1999, with three meetings chaired by Gordon Brown (on Poverty, and the Knowledge Economy) and three chaired by the Prime Minister (in Cardiff, London and Glasgow) on Health. The September plenary is the first convened largely at the request of the devolved governments. Attended by the Prime Minister and all the First Ministers and their deputies, the JMC initiated a review of the workings of devolution, with recommendations to be brought back to ministers by the year end.

Parliamentary Reform

House of Lords Reform

The House of Commons finally debated the Royal Commission's report on reform of the House of Lords on 19 June, five months after its publication. Opening the debate, Leader of the House Margaret Beckett reiterated the position presented by Margaret Jay in the Lords debate on 7 March. 'The government' she said 'are minded to accept the broad outlines of the Royal Commission report; that is, we agree that the second chamber should be largely nominated, with a minority elected element with a particular remit to represent the regions, and that there should be a statutory Appointments Commission'. Conservative constitutional spokesman Sir George Young joined her in welcoming the Commission's report, but stated that the Conservatives 'are likely to end up favouring a higher percentage of elected members than model C, which had 195 members in a house of about 550'. Model C was the Commission's maximalist elected option. George Young also pressed the government to go further in its commitment to a statutory Appointments Commission, by accepting the proposals in Lord Kingsland's Life Peerages (Appointments Commission) Bill. This private member's bill would put the current Commission on a statutory basis, require it to maintain crossbench numbers in the chamber and report annually on party balance. The bill was approved by the House of Lords on 7 July and passed to the Commons. Although the government has accepted the principle of a statutory Commission it has not, as yet, expressed a view on the Royal Commission's proposal that such a Commission would take over all appointments from the Prime Minister.

The debate also saw Margaret Beckett commit to establishment of a Joint Committee of both houses to 'examine the parliamentary aspects of [the Royal Commission's] proposals'. The membership, timetable and terms of reference for the committee are yet to be agreed, although in a written answer on 6 July Baroness Jay stated that government believes 'the Joint Committee would not include consideration of the composition of the second chamber, which has already been fully considered by the Royal Commission'.

Progress has been made towards implementing some of the proposals made by the Royal Commission which do not require legislation. On 17 July the House of Lords agreed to establish a Constitutional Committee, which would 'examine the constitutional implications of all public bills...and...keep under review the operation of the constitution'. The decision on whether to establish a committee on international treaties, also

proposed by the Commission, will follow a related House of Commons Procedure Committee inquiry. The Law Lords also responded on 22 June to the Commission's proposal that they should publish a statement of principles on how to manage the conflict between their legislative and judicial roles. (see 'The Courts', p.8).

The future direction of Lords reform will continue to be the subject of debate amongst the parties between now and the general election. Labour, in particular, will debate the principles of the chamber's composition at its conference this month (see Parties Gear Up, on page 2). Meanwhile, the legislative logjam predicted in the last *Monitor* has begun to mount up, with much legislation still to be agreed, including the Criminal Justice (Mode of Trial) Bill, Freedom of Information Bill and Political Parties, Elections and Referendums Bill. As a result the Lords will return on 27 September, a month before the House of Commons. The Queen's Speech may also be delayed until December.

Strengthening Parliament

There has been considerable focus in the last quarter on parliamentary procedure, particularly in the House of Commons. On 5 July the Modernisation Committee published a report on Programming of Legislation and Timing of Votes. This proposed more programming of business, and reducing late nights by delaying some votes to the subsequent Wednesday afternoon. On 10 July the Commission to Strengthen Parliament, established by Conservative leader William Hague and chaired by Lord Norton of Louth, published its report, Strengthening Parliament. This was a significant piece of work, with wide-ranging recommendations, including:

- allowing 'carry over' for all public bills from one session to the next, and publishing most bills in draft;
- strengthening select committees, with better research support, substantial salaries for their chairs, debating reports weekly in the chamber, and the Prime Minister appearing before the Liaison Committee (made up of committee chairs) twice annually;
- reforming question time, for example requiring less notice of questions and experimenting with 'unstarred' questions as used in the House of Lords;
- responding to devolution by new procedures whereby scrutiny of English or English and Welsh bills is carried out by MPs from those territories;

- restricting the size of the cabinet to 20, junior ministers to 50 and parliamentary private secretaries to one per department, with a staggered reduction in the size of the Commons.

William Hague immediately accepted two of the Commission's proposals: to return Prime Minister's Questions to a twice-weekly slot, and to remove select committee appointments from the power of the whips. The latter was previously proposed by the Liaison Committee (see *Monitor* 11), and has since attracted support of 237 MPs in EDM 476, sponsored by Labour's Gordon Prentice. Hague also proposed to use the Norton report as a 'route map' to further parliamentary reform. The report was discussed at an opposition day debate in the Commons on 13 July, opened by Mr Hague and the Prime Minister. In the debate the government gave assurances that both the Modernisation Committee report and the Liaison Committee report will be debated after the summer recess, with reform proposals put to a free vote.

Draft Regulatory Reform Bill

This draft Bill, published in April (Cm 4713) will be a crucial test of where the boundaries should be drawn between what may be legislated by order or regulation and what must be left for Act of Parliament. Many committees have recommended much tighter procedures for sifting and scrutinising secondary legislation: most recently the Wakeham Commission on Lords Reform, and the Norton Commission (see page 6). Both recommended a 'super affirmative' procedure for major statutory instruments. The Regulatory Reform Bill might provide another vehicle for using secondary legislation to achieve major changes to the law, but doubts have been expressed about possible abuse: see the report from the House of Lords Committee (HL Paper 61, 9 May 2000), and two reports from the Commons (HC 488, 18 May 2000; HC 705, 17 July).

House of Commons Speaker

Betty Boothroyd MP announced her retirement as Speaker of the House of Commons in July after eight years service, making an official statement to the House on 26 July. She will also stand down as an MP in the autumn. No clear successor has yet emerged. The number of potential candidates has led some, including ex-Speaker Lord Weatherill, to propose a change to procedure for the election of the new Speaker. It allows MPs to

vote for a maximum of two candidates at any one time. Some have suggested that elections be delayed upon parliament's return to allow for a review of procedure. Early Day Motion 1034, sponsored by Peter Bradley MP, calls for such a review.

Elections and parties

Party Funding

There is serious concern about the passage of the electoral regulation legislation, the Political Parties, Elections and Referendums Bill. The Bill is currently at Committee stage in the Lords, and its passage before the end of the session is by no means guaranteed. Even if passed, it is not clear that the Electoral Commission – whose members are currently being recruited, and which the government hopes will be in place by November – will have sufficient time to prepare for a spring election. There is also confusion over the time limit that will be imposed for the purpose of measuring election spending. The Bill allows for time limits to be set by the Home Secretary although, as an alternative, the SNP has suggested the use of a voluntary code, of the kind agreed between the parties prior to last year's Scottish Parliament elections.

Electoral Systems

The Labour Party's commitment to electoral reform for Westminster appears to have weakened, (see *Parties Gear Up*, on page 2). The case for AV, rather than the more proportional AC-plus was boosted by a speech by Peter Mandelson to the Make Votes Count lobby group in June. In his remarks, Mandelson made clear his preference for AV as a means of institutionalising co-operation between parties, rather than formal coalitions.

Reform of the electoral system in Scottish local government has come a step closer with the publication in June of the Renewing Local Democracy Working Group, chaired by Richard Kerley (see *Websites*, page 12). As widely predicted, the Kerley committee recommended the introduction of the Single Transferable Vote (STV) system in 3-5 seat constituencies. The report is now being considered by a cabinet sub-committee chaired by Donald Dewar. The next local government elections are due in May 2002, but the Local Government Bill is scheduled for introduction in the Scottish Parliament only in September 2001, so there is concern that the timetable for introducing any new electoral system may be too tight.

Meanwhile electoral reformers will be looking at the plans of Lewisham council to introduce PR for its next elections in 2002. Under plans drawn up by electoral experts Helen Margetts, Simon Bastow (both UCL School of Public Policy) and Patrick Dunleavy (LSE), Lewisham's council would be elected by the Additional Member System, with the mayor elected by the Supplementary Vote (a combination used for the Greater London Authority elections this May).

Local Government

The Local Government Bill received Royal Assent on 28 July. The main concession made by the government was to exempt councils with fewer than 85,000 electors from a requirement to shift away from the committee system. The concession was made to gain the support of the Liberal Democrats in the Lords, in the debate over the repeal of Section 28.

Analyses of the new voting schemes piloted in 37 local authorities in the May local elections have been published by the Home Office. The reports show that only postal voting gave a consistent boost to turnout (see Websites, page 12).

The Courts

Law Lords' Statement

On 22 June the Law Lords issued their response to the recommendation of the Royal Commission on House of Lords reform that they 'publish a statement of principles which they intend to observe when participating in debates and votes in the second chamber and when considering their eligibility to sit on related cases.' In the wake of Lord Hoffman's exclusion from adjudicating on the *Pinochet* case and the judgement of the European Court of Human Rights in the *McGonnell* case (see paper by R. Cornes, New Publications, p.12) it appeared that the time had come for a re-evaluation of the circumstances in which judges should sit on cases relating to their private interests, or where they have previously expressed a public opinion.

Despite this, the statement contains little more than a cursory restatement of the status quo. It states that the Law Lords would not participate in matters which contain a 'strong element of party political controversy' and would be mindful of expressing opinions on matters which they may later be called to adjudicate on. In addition their Lordships cited the recent case of *Locabail v Bayfield Properties [2000] 1 All ER 65*, which underlined the rule against judicial bias and the

principle that justice should not only be done, it should be seen to be done.

Freedom of Information

The FoI Bill had still not started its committee stage in the House of Lords when parliament broke up for the summer. Business announced for the first 10 days after the chamber returns in September did not include the bill - which may be in trouble if it does not make progress soon thereafter. Over 200 amendments have been tabled, with the government amendments going down on 31 July. These include restrictions to the ministerial veto, removing it from local authorities and confining it to cabinet ministers; and a small change to the exemption for policy advice, removing statistical information.

The government has bowed to pressure about the greater secrecy which may accompany moves to cabinet-style arrangements in local government. In late June government amendments were tabled to the Local Government Bill which would require councils to open up meetings that involve 'two or more members' making 'key decisions'. These are defined in the draft Executive Arrangements (Decisions, Documents and Meetings) (England) Regulations.

In July the Lord Chancellor published his draft Code of Practice on the Management of Records under Freedom of Information (Websites, p. 12).

Overseas News

New Zealand Studies its Electoral System

A special committee of the New Zealand parliament has begun a hearing into the country's proportional electoral system, used for the first time in 1996, and again in the 1999 national elections. The committee was established under the terms of the 1993 Act that provided for a change in the electoral system, from single member plurality to Mixed Member Proportional (MMP). The committee has a wide ranging brief to examine MMP, and could even propose a return to first past the post. However, it is more likely that its recommendations will seek to improve the operation of MMP, rather than replace it. The committee is due to report by July 2002 (for details see Websites, page 12).

French Presidential Term

The French are set to embark on a significant piece of constitutional re-engineering. Voters are likely, in early October, to be given their say on a proposal to reduce the presidential term of office to five years from the current seven. This move has been interpreted as a ploy by the ageing

current President, Jacques Chirac, to increase his chances of being re-elected in 2002. The move would have wider implications, principally by bringing into line presidential and parliamentary terms, thus reducing the likelihood of 'cohabitation', whereby a Prime Minister and President of different parties govern side by side. However, for those who see cohabitation as a useful check, the move to align terms is seen as a dangerous method of increasing presidential power. It remains to be seen how supportive, or interested, are France's voters.

People on the Move

Donald Dewar returned to work on 21 August after several months off following his heart operation. **Alex Salmond** announced his resignation as SNP leader. **Dafydd Wigley** resigned as Plaid Cymru leader, to be replaced by **Ieuan Wyn Jones**. **Lord Neill** steps down as chairman of the Committee on Standards in Public Life at the end of September - no successor has yet been announced. The new Permanent

Secretary at the Cabinet Office is Mavis McDonald, following Brian Bender's move to be Permanent Secretary at MAFF.

Welsh First Secretary Rhodri Morgan replaced his Agriculture Secretary **Christine Gwyther** with her deputy, Bridgend AM **Carwyn Jones**. The position of Deputy Agriculture Secretary was filled by the newest AM in the Assembly, **Delyth Evans** who succeeded **Alun Michael** after he resigned from the Assembly. Meanwhile National Assembly Clerk **John Lloyd**, responsible for the Office of the Presiding Officer, is to retire. In a departure from past practice his post, described as 'A unique UK Civil Service appointment', was advertised at £100K. A new Cabinet Executive, incorporating the Cabinet Secretariat, the Central Policy and Strategic Planning Unit, and the Communication Directorate, is being created in the Assembly administration to be headed by **Bryan Mitchell**.

On the academic front **Professor Charlie Jeffery** of University of Birmingham has become Director of the ESRC Devolution and Constitutional Change Programme. **Prof Brigid Hadfield** has moved from Queen's University Belfast to Essex University; **Prof James Mitchell** has moved from Sheffield University back to Strathclyde University; **Prof Gerry Stoker** is moving from Strathclyde University to Manchester University.

Constitution Unit News

Hail and Farewell

This autumn sees big staff changes at the Unit. We say farewell to four of our Research Fellows, and welcome a new Research Assistant. **Richard Cornes** is leaving us in September to become a Lecturer in the Law Faculty at Essex University; but he will maintain his close links with the Unit, completing the ESRC top courts study and his study of the devolved assemblies. **Dylan Griffiths** who was our Devolution Research Fellow left us in August. **Andrea Loux**, who has been with us on secondment conducting a comparative study of the research and support needs of the higher courts, returns to the Edinburgh Law Faculty at the end of September. And **Elizabeth Haggett**, who has given a strong start to our work on Health and Human Rights, returns to the Department of Health to join their Legal Adviser's Branch in October.

The new arrival is **Jo Murkens**. Jo is a lawyer from Queen Mary and Westfield College who will be conducting a 12-month study of Scottish independence, looking at the process and the machinery which would be needed to negotiate independence, and at Scotland's place in the world post-independence. The study is funded by the Esmée Fairbairn Charitable Trust.

Vacancies at the Unit: New ESRC Grants

We are looking for a new Devolution Research Fellow to lead our study of how the law helps to shape the devolution settlement (see the job advertisement enclosed with this mailing). This is a three year research project funded by the ESRC, in which the Unit's research partners are Prof Terence Daintith, Prof Brigid Hadfield, Prof Alan Page, and Rick Rawlings. Another ESRC grant will help to strengthen the network of monitoring partners who produce our quarterly devolution reports from Scotland, Wales and N Ireland; and add a new team led by John Tomaney (Newcastle) to monitor developments in the English regions. We are also looking for a Research Fellow to work on a third ESRC-funded project on Devolution and Whitehall, led by Prof James Mitchell. The latter would be particularly suited to any recently retired or mid-career break civil servants out there who would like to interview some of their former colleagues. *Enquiries: Robert Hazell*

Receive our Devolution Reports by Email

The Unit publishes detailed quarterly reports on the state of devolution in Scotland, Wales and Northern Ireland; and from November on the English regions. If you want to have these reports emailed to you as soon as they are published, instead of looking for them on our website, contact Gareth Lewes (g.lewes@ucl.ac.uk).

Searching for Sponsors

We are looking for sponsors for *The Monitor*, and for the annual State of the Nations lecture (see events flyer). Offers or ideas please to Rebecca Blackwell (rebecca.blackwell@ucl.ac.uk).

Project Reports

Whitehall and the Human Rights Act

The first stage of this project examining the government's preparations and expectations for the coming into force of the Human Rights Act has been completed. It has documented the very substantial efforts made to eliminate potential breaches of Convention rights and to mainstream respect for human rights in every branch and activity of government. The preparation process has not been flawless. Central government is reasonably well prepared but other public authorities and private bodies performing public functions are less so. Areas for improvement have been identified. Nevertheless, expectations in Whitehall are that the government machine will bend but not break under the expected explosion of human rights cases after October. The second stage of the project will see whether such perceptions are borne out by the Act's first year.

The first briefing will be available in early October (see publication list for details). *Contact: Jeremy Croft (020 7679 4979, jeremy.croft@ucl.ac.uk).*

Women's Representation in Politics

This project looked at the legal situation surrounding the use of 'positive action' (quotas) by UK political parties to promote women's representation in elected office. Ever since the Labour Party lost an industrial tribunal case in January 1996 over its 'all women shortlists' policy, there has been doubt about the legality of pursuing positive action. Consequently the parties have proceeded cautiously, and where there has been action taken - for example 'twinning' by the Labour Party for the Scottish and Welsh elections - there have been threats of legal action from members. Meanwhile there have been doubts raised about the possibility of changing UK law to explicitly allow positive action, for fear of falling foul of the European Equal Treatment Directive or the European Convention on Human Rights.

The project included interviews with senior lawyers who have contributed to the debate, as well as with political parties - in the UK and elsewhere in Europe - over their positive action policies. Since the 1996 ruling the law has been clarified to confirm that candidate selection is covered by the terms of the Sex Discrimination Act, which makes certain forms of positive action unlawful.

However, it appears unlikely that government would face a difficulty if this obstacle were to be removed. Many other European parties operate quotas, within a framework where candidate selection is generally considered to be a constitutional, rather than an employment, matter. This approach would be likely to be followed by the European Court of Justice should a case arise. The ECHR, meanwhile, allows positive action which is for justified means, and 'proportionate'. The report suggests five options for the future, the most attractive of which appears to be a short electoral law for the UK explicitly permitting positive action for selection to political office.

The report is now available (see publication list for details). *Contact: Meg Russell (020 7679 4974, email: meg.russell@ucl.ac.uk).*

Parliamentary Scrutiny of Draft Bills

In recent years the government has been publishing many more bills in draft, exposing them to public consultation and pre-legislative scrutiny in parliament. No systematic study has been conducted of the value added by this additional stage in the legislative process, and the best practice lessons to be learned to make it more efficient and effective. In a joint project with the Hansard Society Greg Power (Director of their Parliament and Government Programme) and Wilfred Hyde have conducted an initial study of four draft bills: on Food Standards, Pension Sharing on Divorce, Limited Liability Partnerships and Freedom of Information.

The study sets out the advantages and disadvantages of publishing bills in draft, and of parliament conducting pre-legislative scrutiny hearings. There has been no standard pattern of which bills have been selected for publication in draft, nor of which parliamentary committees have scrutinised them. All the committees have complained of tight time pressures. Generally the process seems to have no guardian: no individual or department which feels responsible for draft bills and pre-legislative scrutiny, for promoting them, clarifying their objectives, advising bill teams and parliamentary committees, and systematically improving the process - either in Whitehall or Westminster.

The briefing is now available (see publication list for details). *Contact: Robert Hazell (020 7679 4971)*

email: r.hazell@ucl.ac.uk), or Greg Power (020 7955 7459 email: hansard@hansard.lse.ac.uk).

out a subscription please complete and return the Unit's order form or alternatively, contact Gareth Lewes on: 020 7679 4977
email: constitution@ucl.ac.uk

ESRC Devolution Programme

In July the ESRC announced 18 research grants in the first round of their Devolution and Constitutional Change programme. Apart from the three involving the Unit (see p.9) the other projects are:

- Martin Burch (Manchester): 'Asymmetric' Devolution and European Policy Making in the UK
- Prof A Cole (Cardiff): Devolution and Decentralisation in Wales and Brittany
- Helen Fawcett (Strathclyde): Social Exclusion in Scotland and the UK
- Prof M Goodwin (Aberystwyth): Constitutional Change and Economic Governance
- David Heald (Aberdeen): The Financial Arrangements for Devolved Government
- Prof Anthony Heath (Oxford): National Identity and Constitutional Change in England
- Prof Michael Keating (Aberdeen): Devolution and Public Policy - Divergence or Convergence?
- Dr R McGinty (Lancaster): Public attitudes to Devolution and National Identity in Northern Ireland
- Dr F Mackay (Edinburgh): Gender and Constitutional Change
- Alison Park (NCSR): Devolution, Identity and Public Opinion in Scotland
- Richard Parry (Edinburgh): The Home Civil Service as an Integrative Force Post-Devolution
- Dr R Phillips British Island Stories: History, Identity and Nationhood
- Prof A Tickell (Southampton): Devolution and England's South East
- Dr D Valler (Sheffield): Devolution and the Politics of Business Representation
- Richard Wyn Jones (Aberystwyth): Welsh Electoral Surveys 2001/2003

Further details from the Programme Director Prof Charlie Jeffery (C.A.Jeffery@bham.ac.uk).

Subscribe and Save Money

Subscribe to the Unit's publications to save time and money. For a subscription of just £100 for institutions and £60 for individuals you will receive all the Unit's briefing papers published over a 12 month period. If you would like to take

Publications received

Reforming Governance in the UK: Policies for Constitutional Reform, Policy Paper 40, Liberal Democrats.

Strengthening Parliament, report of the Commission to Strengthen Parliament (chaired by Lord Norton), Conservative Party, July 2000.

Mr Blair's Poodle: An Agenda for Reviving the House of Commons, by Andrew Tyrie MP, Centre for Policy Studies, £10.

Systematic Scrutiny: Reforming the Select Committees, by Alex Brazier, Hansard Society, £7.50.

The Changing Constitution, edited by J. Jowell and D. Oliver (Oxford University Press, 2000) ISBN 0-19-876573-8, £22.99.

Unlocking democracy, Charter 88, June 2000.

Votes for All - Compulsory Participation in Elections, by T. Watson & M. Tami, Fabian Society, £7.50.

Hung Authorities, Elected Mayors and Cabinet Government: Political Behaviour under Proportional Representation, by S. Leach & C. Game, Joseph Rowntree Foundation, £12.50.

Building the Constitution, edited by C. James, Institute of Policy Studies, Wellington, New Zealand (Brebner Print, 2000) ISBN 0-908935-48-X.

The Quebec Session Reference: The Rule of Law and the Position of the Attorney General of Canada, by Warren J. Newman (York University, Canada, 1999) ISBN 1-55014-384-0, \$19.95.

Is there a 'Missing Middle' In English Governance? by Prof. Alan Harding, New Local Government Network, June 2000, ISBN 0953490394, £20 (£5 discount to *Monitor* readers, quote ref: MSE) tel: 020 7357 0051/ anna@nlgn.org.uk.

Who Runs the North East ... Now? A Review & Assessment of Governance in North East England, F. Robinson et al., University of Durham, June 2000, ISBN 0 903593 16 5, £25/£10.

Losing Out Locally: Women and Local Government, by Becky Gill, Fawcett Society, June 2000, £5.

If you would like us to mention a publication, website or forthcoming event in the next issue of

the Monitor (Dec) please send your details to:
constitution@ucl.ac.uk, or fax: 020 7679 4978.

Bulletin Board

Forthcoming Unit Events

To book a free place at Unit events, please return the events flyer enclosed. A location map for the Constitution Unit can be found at: www.ucl.ac.uk/constitution-unit/logos/find.htm

Seminar: The Human Rights Act and Parliamentary Accountability

Lord Lester of Herne Hill, QC
10 October, 6.00p.m. UCL Law Faculty

Seminar: How is the New House of Lords different from the Old?

Earl Russell, Prof of History, KCL
Viscount Tenby, House of Lords
15 November, 6.00p.m., Constitution Unit

Lecture: State of the Nations Review

Donald Dewar MP MSP
11 December, 6.00 p.m. One Great George Street

Further events in the Autumn are listed on the eves flier enclosed, and on the Unit's website.

Call for papers

"Multi Level Governance: Interdisciplinary Perspectives" University of Sheffield

The Political Economy Research Centre at the University of Sheffield is holding a conference on 28 - 30 June 2001. Abstracts to be received by 1st Dec 2000. More details from: <http://www.shef.ac.uk/~perc/mlgc/> or contact Sylvia McColm: s.mccolm@shef.ac.uk. PERC, Uni. of Sheffield, Elmfield Lodge, Northumberland Road, Sheffield S10 2TY.

Future Events

UCL Faculty of Laws & Brick Court Chambers Judicial Review in the New Administrative Court

A series of 3 seminars: 10 & 25 Oct, 8 Nov
see: www.ucl.ac.uk/laws for further details
contact: Lisa Penfold, tel: 020 7679 1514
email: lisa.penfold@ucl.ac.uk

British Council and British Embassy in Spain Conference: Polycentric Europe - Approaches to self-government and devolution in an enlarging and integrating European Union

30-31 October 2000, Valencia
contact: tel 0034 91337 3559/64/58 fax: 0034 91337 3573
international.projects@es.britcoun.org
www.britishcouncil.org/germany/e/governance/adhoc

Local Government Information Unit Conference: Quangos and Community Governance - Strengthening the Democratic Element

7 December, RIBA
contact: 020 7554 2800/ www.lgiu.gov.uk

New Publications by the Unit

Please refer to the Unit's order form for further details:

- *What Do the Top Courts do?*, by Andrew le Sueur and Richard Cornes (June 2000) £5.
- *Regional Government in France and Spain*, by Prof. Paul Heywood and Andy Smith, Unit briefing with the Joseph Rowntree Foundation (Sept 2000) £5.
- *Parliamentary Scrutiny of Draft Legislation 1997-99*, by Greg Power (Aug 2000) £10.
- *Women's Representation in UK Politics: What can be done within the Law?*, by Meg Russell (June 2000) £10.
- *Whitehall and the Human Rights Act 1998*, by Jeremy Croft (Oct 2000) £10.
- 'McGonnell v. United Kingdom, the Lord Chancellor and the Law Lords', Richard Cornes, *Public Law* 166 (2000).
- 'Hearing a 'Different Voice': Third Party Intervention in Criminal Proceedings', by Andrea Loux, *Current Legal Problems* (forthcoming Oct 2000).
- 'Writing Wrongs: Third Party Interventions and the Human Rights Act', by Andrea Loux, in *Human Rights and Scots Law*, ed. A.Loux (Oxford: Hart Publishing, forthcoming Oct 2000).
- 'Losing the Battle, Winning the War: Litigation Strategy and Pressure Group Organisation in the Era of Incorporation', by Andrea Loux, *King's College Law Journal* (June 2000).

Useful Websites

Peter Mandelson speech on electoral reform:

www.makevotescount.org.uk/sumlect.shtml

Kerley committee report on electoral reform in Scottish local government: www.scotland.gov.uk/library2/doc16/rldw-00.asp

Analyses of new electoral arrangements piloted in May 2000:
www.homeoffice.gov.uk/ccpd/cnu/evalcont.htm

Lord Chancellor's draft Code of Practice on Management of Records under FoI: www.pro.gov.uk/recordsmanagement/

Review of New Zealand electoral system:
www.clerk.parliament.govt.nz/programme/committees/pressrelease.html

Neill Committee - including evidence in the current inquiry on standards in the House of Lords:
www.public-standards.gov.uk

Public Service Management Journal and Wired-GOV
www.sourceUK.net

