

M O N I T O R

Issue 14

The Constitution Unit Bulletin

March 2001

Labour's second term agenda

Labour's constitutional reform programme was the major achievement of their first term. But the constitutional reform programme is not complete. Ahead of the election, the Constitution Unit has produced three briefings which cover Labour's second term agenda. And over the page is a summary of William Hague's most recent commitments (p. 2).

The first briefing *Unfinished Business* summarises Labour's commitments to constitutional reforms in the second term. It takes as its starting point Labour's known commitments on the second stage of Lords reform; regional government in England; electoral reform for the House of Commons; and the referendum on the Euro. The briefing then analyses how and when these reforms can be implemented.

The referendum on the Euro is the biggest change, and the one to which the government will give priority. If the referendum is held in summer or autumn 2002, and is carried, Euro notes and coins could be introduced in 2004/5, in advance of the next election.

Giving priority to the referendum on the Euro rules out any referendum on the voting system. This would have to be held in the first year of the new parliament in order to introduce a new voting system in time for the 2005/6 election. The government will not want to risk the diversion of a divisive referendum in advance of the referendum on the Euro.

On Lords reform, the government will need to introduce legislation in the first or second session of the new Parliament if the first elections to the second chamber are to be synchronised with the next European Parliament elections in 2004.

On regional government, Labour Party conference agreed last year 'as soon as practicable, to move to directly elected regional government where and when there is a clear demand for it'. With strong commitment, the new government could establish regional assemblies by 2004, if it followed the 3-year timescale used to establish the Greater London Authority. A more gradualist approach could see legislation first to give

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statutory powers to indirectly elected Regional Chambers, followed by legislation in the next Parliament (2005-2010) for directly elected Regional Assemblies. cont. p. 2

Devolution Monitoring Reports



The March 2000 quarterly reports are now available covering devolution in Scotland, Wales and Northern Ireland and 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).

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Labour's Second Term, cont p.1

Entitled *Three into One Won't Go*, the second briefing looks at the future of the territorial Secretaries of State. It forecasts a merger of the Offices of Scottish and Welsh Secretary; if not now, then once the Welsh Assembly has been granted legislative powers. A combined Scottish and Welsh Secretary could take a more strategic and forward looking view, and lead government thinking on the unresolved issues of devolution: finance, representation at Westminster and the English Question.

The third briefing, *Lessons from Britain's PR Elections*, follows up Labour's commitment to study the new voting systems before deciding on further proposals for voting reform. The briefing draws on research conducted by the Constitution Unit, John Curtice (Strathclyde) and Phil Cowley/Stephen Lochore (Hull). It reports on public attitudes to the PR elections in Scotland and Wales in 1999. It also examines the impact of PR on the behaviour of electors, in particular the incidence of tactical voting and more complex preferential voting, and of elected members, in particular the behaviour of MSPs elected under the two parts of the AMS ballot.

See the back page, or publications list enclosed for further details of the briefings.

Hague cuts size of Cabinet

In pre-election briefings with Sir Richard Wilson, William Hague has said he would reduce the Cabinet by three Ministers, taking it down from 23 members to 20. The Scottish and Welsh Secretaries might be amongst those to go. He would also remove at least one junior Minister from most Whitehall departments; and halve the number of Special Advisers to their pre-1997 level of around 40 (*The Guardian, The Financial Times, 2 March 2001*).

Devolution

Wales

The National Assembly's Administration faced its first major policy crisis in early 2001 when mounting redundancies in the Welsh manufacturing sector were led by the Corus steel announcement of the loss of more than 2,500 jobs. Efforts to come up with a package of £20 million to persuade Corus to stave off its closure programme was doomed to failure set against the £226 million loss the company made in the

first half of the current financial year. A leaked memo from the Assembly's Director of Economic Affairs Derek Jones suggested there would be no additional support from the Treasury.

Meanwhile, led by the Labour AM Ron Davies, the Economic Development Committee refused to endorse the Administration's Economic Development Strategy which was criticised for being unfocused and lacking realistic targets. Another important policy document, the new *Welsh Health Strategy*, advocating abolition of the five Welsh health Authorities by April 2003, ran counter to the Coalition Partnership Agreement which committed to seeking 'a period of organisational stability within the health services in Wales'.

The Assembly's Operational Review got underway in early January. Whilst it is intended to get to grips with such practical questions as the running of the Committees, attention quickly focused on the more fundamental matter of the Assembly's ability to influence primary legislation at Westminster. Taking a longer view, First Minister Rhodri Morgan drew attention to the next EU inter-governmental conference in 2004, declaring, 'Its timing could not be better, considering that the Partnership Agreement document plans a review of the Assembly's powers, which will report back to the Assembly after the next Assembly elections in May 2003. This will be just in time for the 2004 inter-governmental conference on the respective roles of the Regional, Nation State and European tiers of government' (*Assembly Record, 19 Dec 2000*).

Plaid Cymru has launched a consultation on its constitutional aims which attempts to address the conundrum that while the party aspires to 'full national status' for Wales within the EU on a par with Denmark or Ireland, it has an ideological aversion to the term 'independence'. However, such rarefied questions were rapidly overtaken in the New Year when the party became engulfed in controversy over English people moving into Wales. A Plaid Cymru councillor in Gwynedd, Simon Glyn, claimed they were a mortal threat to Welsh speaking communities. In turn Labour accused the Plaid of being racist. On BBC's *Question Time* Plaid's leader Ieuan Wyn Jones came off worse for wear in a clash on the issue with Labour MEP Glenys Kinnock. A General Election is plainly in the offing.

Northern Ireland

Talks between the Northern Ireland parties and the London and Dublin Governments on the (final) implementation of the Belfast agreement have laboured to no particular conclusion. This despite a huge investment by the outgoing US president, Bill Clinton, seeking to secure his place in history. The 'dreary steeples' of decommissioning, policing and security normalisation remained stubbornly erect.

Not only were moves towards a more peaceful environment thus stymied; even more troublingly, Catholics faced an increasingly vicious campaign of sectarian attacks. And the deadlock disrupted the work of the intergovernmental institutions, the North/South Ministerial Council - even though here useful work was quietly done - and the British-Irish Council.

More successful than the US president's trip was that by the first and deputy first minister to meet the French president, Jacques Chirac. Their planned meeting with the German chancellor, Gerhard Schröder, was, however, another victim of the impasse.

Hillsborough Castle meanwhile saw a huge coming and going, as John Reid replaced the 'discredited' Peter Mandelson, who received rather warm political obituaries in Belfast.

In many ways, however, it was 'business as usual' at Stormont. The Assembly agreed the first 'home-grown' budget - though not without complaints about consultation. Twelve Bills were laid, though mainly to preserve 'parity' with Britain. The committees groaned under a mounting burden of legislative as well as administrative scrutiny, but still flexed muscles with ministers amid evidence of mandarin unease at their probing.

The unwieldy nature of the four-party Stormont executive revealed itself during the quarter, as the Democratic Unionist Party and Sinn Féin opposed in the Assembly - notably on the budget - positions notionally agreed with their ministerial colleagues from the Ulster Unionist Party and the SDLP. And there was a spat between the DUP and the other executive parties over credit for introducing free travel for pensioners.

Important policy changes were nonetheless initiated. These included a contested package on student finance, abolition of school 'league

tables', a new single economic development body, a public health strategy and a children's commissioner.

Public attitudes were, however, turning sourer. Evidence emerged not only of continuing erosion of Protestant support for the agreement but of confidence across the board in its future. And the UUP leader, David Trimble, was not encouraged by the selection of predominantly 'no' party candidates for the forthcoming Westminster election - nor by the departure from the fray of his weather-vane deputy, John Taylor.

Scotland

The four months since Donald Dewar's death in October last year have been a fractious and testing time in Scottish politics. The moment of succession was always going to be a big test for devolution, whatever the circumstances. In the event Henry McLeish has had a torrid few months managing this difficult transition.

One issue can be taken to illustrate most of the features of this period: the debate on the funding of long term care. The Scottish Executive rejected Sir Stewart Sutherland's proposals for state funding for long term care on 5 October on the grounds that they were too expensive and the resources could be better used if targeted rather than provided as a universal benefit.

When McLeish took office he promised to review the Sutherland decision. This quickly became identified as the test of McLeish's commitment to be his own man and to stand up to London. The pressure on him to reverse the Executive's earlier position mounted. The Parliament's Health Committee issued a report calling for 'full implementation of Sutherland' - a phrase that had now entered the public and political debate as a short hand, with few people aware any longer what it might actually mean in practice. The Health Minister tried to close the matter by offering a more generous package short of 'full implementation'. That was not enough. So the very next day, in order to avoid losing a vote in the Parliament, the Executive had to state its commitment to the Sutherland proposals and set up a development group to report by August 2001 on how to implement them.

This confusing story illustrates a number of points. One is the power of the desire to be different from England once it is given its head in the political process. This became the issue

with Sutherland, not the merits of the proposal. Hence the Conservatives came out in favour of full implementation, in contradiction to their Westminster colleagues.

The weakness of the coalition was also revealed: Jim Wallace the Lib Dem leader supported the earlier Executive decision to reject Sutherland, but could not deliver his party once the issue became live again. Now he supports full implementation – but his health spokesperson has resigned because he does not believe the Executive will deliver. For Labour, the issue also became a choice between new Labour pragmatism (London) and old Labour principle (Scotland) – a tussle also being played out in other arenas, notably local government where Glasgow City Council has just withdrawn from the Convention of Scottish Local Authorities to raise its own banner.

Commentators are beginning to wonder whether the ‘tartan tax’ will have to be invoked to pay for Sutherland and other commitments entered into during these few months in which the Executive appeared to lose the plot. Small wonder that McLeish has given the impression of a man stuck between a rock and several hard places – and has now gone quiet.

English Regions

In barely three months, the case for a degree of regional governance to overlay new administrative structures has moved from the political sidelines towards the top of the government's second-term agenda. The English Question is now exercising the most senior ministerial minds in a way few could have predicted even at the turn of the year. Last year, the Deputy Prime Minister, John Prescott, appeared to be a lone voice in the Cabinet calling for a form of English devolution. No longer.

Ministers (Stephen Byers, David Blunkett, and most notably Chancellor Gordon Brown) now seem to be queuing up to stress their regional credentials and acknowledging that greater efforts must be made to bridge regional disparities. Mr Byers talked of a ‘winners circle’ emerging in the south, with other regions ‘slipping further behind.’ Mr Brown took the debate onto a more philosophical plain, connecting it to broader constitutional questions, with remarks interpreted as a thinly veiled hint in favour of regional government.

And John Prescott has promised a green paper on regional government under a re-elected Labour government, although whether this commitment will be in the first Queen's Speech of the next term remains a matter of intense debate within the government.

On the ground, the various Constitutional Conventions are growing in voice. The North-West CC is moving towards a formal launch. The West Midlands and South-West Constitutional Conventions hold their launches in March and May respectively. An initial meeting in the East Midlands took place in January. And umbrella organisation CFER has obtained substantial campaign and research funding.

Meanwhile, the present regional structures are gradually extending their capabilities. Many Regional Assemblies / Chambers now have substantial budgets and several full-time staff, and most are seeking a wider influence over regional policy. There is no sign, however, of government funding for their work in the near future. April 2001 will see the beginning of interim financial arrangements for the eight Regional Development Agencies, before moving to a ‘single pot’ in April 2002, with total spending power hitting £1.7bn by 2003. But there is evidence of growing frustration – among ministers as well as among RDA chairman – over Whitehall ‘hostility’ and inflexibility in giving the agencies the freedom they say they need.

The Greater London Authority has begun to take halting steps into the devolutionary unknown. It has used its right to do anything improving the welfare of Londoners by following the Welsh and Irish examples in appointing a Children's Commissioner. Mayor Ken Livingstone and transport commissioner Robert Kiley were able to persuade John Prescott to negotiate over the Public-Private Partnership for the London Underground – perhaps representing London's ‘first day of devolution’. With the boot on the other foot, the London Assembly rejected the Mayor's initial budget (via the combined votes of the Conservative and Labour groups), and has negotiated it down by £23 million.

Directly elected mayors, recently talked about as rivals for the political space of regional government, appear to have lost momentum. The cabinet-leader model has proved more popular with local councillors, many doubtless afraid of losing power. Though Newcastle, Bristol, Watford, Birmingham, and

Hammersmith & Fulham are all considering a scheme, the only local authorities committed to referendums are Lewisham, Brighton and Hove, and Berwick-on-Tweed. Berwick is the only district council and the only local authority where a petition from 5% of the population triggered the reform proposal. However, regulations permitting the referendums have not yet been laid down by the Secretary of State: if this is not done before a May 2001 election the process will be further delayed. The new structures must be in place by April 2002.

Devolution and the Centre

The Ulster Unionist MPs Ken Maginnis and John Taylor have announced that they will not contest their Westminster seats at the forthcoming general election. This brings the number of dual-mandate MPs to resign their Westminster seats to 18. Assuming that he retains his Banff and Buchan seat, Alex Salmond will be the only remaining dual-mandate MP following the general election.

In the wake of Peter Mandelson's resignation from the post of Northern Ireland Secretary, Dr John Reid has been named as his successor. Dr Reid has in turn been replaced as Secretary of State for Scotland by Helen Liddell. Ms Liddell's new department came under fire following the aborted visit of the Irish Taoiseach to Scotland during January. The Labour MP Frank Roy resigned his position as Parliamentary Private Secretary to Ms Liddell following his recommendation that the visit be postponed due to fears of sectarian violence.

A new House of Lords Select Committee on the Constitution has been established under the chairmanship of Lord Norton of Louth (see Parliamentary Reform below). It is likely that the committee will play a vital role in scrutinising relations between Westminster and the devolved Parliament and Assemblies.

Parliamentary Reform

Lords Constitution Committee Established

The establishment of a Lords Constitution Committee was recommended by the Royal Commission on House of Lords reform, and agreed by the House in July 2000. On 8 February the membership of the committee was agreed. It will be chaired by Professor Lord Philip Norton of Louth with other members including Viscount

Cranborne (former Conservative Leader of the House of Lords) and Lord Weatherill (former Speaker of the House of Commons and convenor of the crossbench peers). Its terms of reference are 'to examine the constitutional implications of all public Bills coming before the House; and to keep under review the operation of the constitution'. The scope of its work was debated in the House on 12 February. Lord Carter, for the government, stated that 'the terms of reference have deliberately been widely drawn to enable the committee to develop its role as it sees fit'. He conceded that the committee might examine the relationships between parliament and the devolved institutions, but was more cautious about consideration of the relationship between parliament and the executive. In particular he warned that 'we must be careful that the undoubted expertise of the members of the committee does not lead the House to assume that as a whole it has a greater standing in constitutional matters than [the House of Commons]'

Powers of the House of Lords

The relationship between the two chambers has been subject to several debates in the last three months, and two private peers' Bills. On 19 February the chamber debated the Parliament Acts (Amendment) Bill moved by former Law Lord, Lord Donaldson of Lynton. This Bill would clarify the authority of the Parliament Acts, but also extend the House of Lords' absolute veto. Currently this applies only to Bills to extend the life of a parliament but the Bill would extend it to cover future legislation 'to vary the constitution or powers of the House of Lords' (a measure proposed by the Royal Commission), and would require Bills rejected by the Lords to be 'fully discussed and considered' in the House of Commons before being passed for Royal Assent under the Acts. This followed the controversy over the Sexual Offences (Amendment) Bill being passed last year, without the Commons debating Lords amendments. The government expressed hostility to Lord Donaldson's Bill, but granted a second reading.

The balance between the chambers was debated again on 24 January at the initiative of the crossbenchers. Attention focused on the powers of the House now it is 'more legitimate'. Doubts were expressed from all sides of the House about the continuance of the Salisbury convention.

The Parliamentary Referendum Bill, moved by Lord Campbell of Alloway (Conservative) would give the Lords an additional power, to call a referendum on constitutional Bills. Such a reform – which has previously been proposed by the Liberal Democrats – would give the chamber constitutional guardian powers similar to many other second chambers. Under the terms of this Bill a referendum would require the consent of the House of Commons, but if this were withheld the Lords would have the power to block the Bill, with the Constitution Committee advising on which Bills were constitutional. Government felt the Bill was ‘unnecessary and inappropriate’ but its second reading was agreed on 31 January.

Future Lords Reform

Attention has focused on what Labour’s manifesto will say on stage two reform. Government support for only 80-90 elected members – consistent with ‘option B’ of the Royal Commission’s report – is rumoured (*The Times*, 6 February). Meanwhile the Labour-Liberal Democrat committee to discuss the issue has broken down. One point of contention was the role of the long-awaited joint committee on Lords reform, approved by the House in July. The Liberal Democrats and Conservatives, who both support a greater elected element, have continued pressing for the joint committee to be able to consider issues of composition, rather than simply the ‘parliamentary aspects’ of the Royal Commission’s proposals.

Regulatory Reform Bill

The Regulatory Reform Bill [HL] completed its passage in the Lords on 19 February. It considerably widens the power to legislate by order originally created in the Deregulation and Contracting Out Act 1994. The Lords Select Committee on Delegated Powers has warned that the Bill ‘raises matters of fundamental constitutional importance’, and in three reports has called for special safeguards because the new order-making power is potentially very wide. The government has given undertakings not to use the new procedure for politically controversial measures, constitutional change, changes to the judicial system, changes to the structure and organisation of local government, or changes to the Ombudsmen.

End of Parliamentary Session

Against expectations, the government secured passage of all its remaining legislation at the end of the session. A compromise was found over the Transport Bill following two defeats (over the part-privatisation of the air traffic control service). Likewise the Disqualifications Bill, allowing Irish Dáil members to sit at Westminster, was passed. In all, the government suffered 36 defeats in the Lords in the 1999-2000 session. Considering the change in membership of the House at the start of the session, this represented a modest increase from the 1998-9 total of 31.

Election of Speaker

Following widespread criticism of the procedure for election of the new Speaker last October, when 11 candidates stood, the Procedure Committee has been conducting an inquiry into the rules. The present system dates from 1972, and was put in place following a review by the Procedure Committee. In 1996 the Committee recommended no further change. It now accepts the system of electing the Speaker is ‘fundamentally flawed’, and proposes instead to elect the Speaker by an ‘exhaustive’ secret ballot. Candidates will need to be nominated by 12 other MPs, three of whom must come from another party. The House will vote on the Procedure Committee’s new proposals.

Priests

The House of Commons (Removal of Clergy Disqualification) Bill will remove a ban on Catholic priests and former priests being elected to Parliament. If, as expected, it becomes law before the election, it would enable former priest David Cairns to be elected for the safe Labour seat of Greenock and Inverclyde. The Bill repeals early 19th century provisions which disqualify from the House of Commons clergy in the Churches of England and Ireland (but not Wales), ministers in the Church of Scotland, and Roman Catholic priests. There are no disqualifications for ministers of other religions.

Elections and parties

Party Funding

Amidst the brouhaha over large donations to Labour and the Tories, the Electoral Commission, responsible for overseeing party

donations and election spending, has started work. Its six members, of whom only the Chairman is full time, were approved by the Commons on 10 January, for varying terms of between 4-6 years. Whittled down from 223 applications, the six are: Sam Younger (Chairman), Pamela Gordon, Sir Neil McIntosh, Glyn Mathias, Karamjit Singh and Graham Zellick. The Chief Executive is Roger Creedon, seconded from the Home Office. The rules covering party and election funding came into force on 16 February, but with an election likely in early May, the Commission has little time in which to put in place effective monitoring procedures. An important early issue for the Commission is to issue guidelines over 'in kind' benefits, and how these benefits should be costed.

The Commons debate on the Commission on 8/9 January predictably focused on the background and ideological leanings of the commissioners. But MPs also raised concerns over the Commission's accountability, and in particular the role of the promised Speaker's Committee. The Committee's members were later confirmed as: the Speaker, Home Secretary, Chair of the Home Affairs Select Committee and Hilary Armstrong, with five members chosen by the Speaker: Alan Beith, Angela Browning, Barry Jones, Humfrey Malins and Peter Viggers. The first meeting of the Speaker's Committee was held in February, to review the Commission's budget.

Following consultations with the other parties, the government announced on 30 January the spending limits for the next election if held less than 365 days after the introduction of the regulations on 16 February. If the election is held on 3 May (i.e. less than 3 months having elapsed), any party contesting all 659 parliamentary constituencies would be allowed to spend £14.8 million.

In the longer term, the debate over increased state funding for political parties is likely to be reopened. Sam Younger has indicated that the Commission will examine the issue after the election, while Labour's General Secretary, Margaret McDonagh, was reported as having indicated support for greater state funding. The Commons Home Affairs Select Committee may also hold an enquiry into party funding after the election. Under the terms of the Political Parties, Elections and Referendums Act, the parties are to share in £2m of funds for policy development,

with details due to be announced by the Electoral Commission in July. The parties have also received £0.7m to enable them to comply with the new reporting requirements of the Act.

Electoral Reform

Amidst continued speculation over whether Labour's manifesto will promise a referendum on electoral reform for Westminster, a recent poll found clear support for such a commitment. The poll, for the pro-PR group Make Votes Count, found 67% supporting a referendum, with 26% against. Asked what their preference would be should a referendum be held, 35% supported the status quo, with 50% preferring a more proportional voting system.

See: www.makevotescount.org.uk.

Local Government

The movement for greater plebiscitary democracy in local government took a knock in February when voters in Bristol rejected the council's recommendation of an increase in the council tax level, by supporting the continuation of a freeze. The referendum turnout, at 40%, was lower than the hoped for 50%, but above the 33% level for the last council elections. Croydon council also held a referendum on its council tax in February, giving voters the choice of three increases in the tax level. On a turnout of 35%, marginally below that for the last municipal elections, voters chose the lowest percentage increase offered to them. Over 90% of respondents voted by post; just 3% used the internet.

Following an initial pilot of alternative voting methods in last year's local council elections, a further five pilots have been selected for this May's contests. Four of the five will experiment with all-postal ballots, the only method found in the initial pilots to boost turnout. The fifth pilot will use electronic methods of counting votes.

As a Ministerial Working Group of the Scottish Executive continues its consideration of the Kerley Committee's recommendation of STV for local elections in Scotland, a new lobby group - Fairshare - has been formed to press for the change. See: www.fairsharevoting.org.

Human Rights

Joint Committee on Human Rights

Membership of the Joint Committee on Human Rights was finalised in January with Jean

Corston MP in the chair. The first tasks set by the Committee are to explore the initial impact of the Human Rights Act; scrutinise the human rights aspects of government Bills starting with a case study on the Criminal Justice and Police Bill; and to prepare the ground for an inquiry into the case for a UK Human Rights Commission. The committee aims to publish a consultation document on the Human Rights Commission before the end of March.

Human Rights Act

The Human Rights Act continues to have a modest impact on the work of the courts and government machinery. There is a growing sense of relief and satisfaction within government over its ability to withstand challenges under the Act. Arrangements for the identification and handling of critical criminal cases and, where necessary, the fast tracking of appeals are considered to be working well. Some changes have been necessary, however, for the handling of civil cases to ensure that critical cases are picked up and co-ordinated promptly. 'Lines to take' for civil issues are now being prepared as done earlier and published for criminal matters in the form of 'Points for Prosecutors'.

Statistics published by the Home Office, for the period October to December 2000, indicated that, of the 60 cases analysed, the Human Rights Act had influenced the reasoning in 25 of these cases with 11 claims under the Act upheld.

Most significant among the claims upheld was the first 'declaration of incompatibility' that the powers of the Environment Secretary to make and review planning decisions were considered by the High Court to be incompatible with the fair hearing provisions contained in Article 6 of the ECHR. The four test cases involved were leapfrogged for an appeal directly to the House of Lords starting on 26 February.

The development of a right to privacy in English law drew nearer. First, with the ruling that Article 8 of the ECHR required that the boundaries of confidence be extended to provide adequate protection of privacy (*Douglas, Zeta Jones v Hello Ltd* - 21 December 2000). Second, through the Family Division's use of the law of confidence and Article 8 (8 January 2001) to grant injunctions preventing the identification of the killers of Jamie Bulger in the event of their release from detention.

The Courts

Women Judges

During February the first all-woman Court of Appeal sat comprising Dame Elizabeth Butler-Sloss, head of the Family Division, with Lady Justice Hale and Lady Justice Arden. In addition the first female judge has sat as a member of the Judicial Committee of the Privy Council. Dame Sian Elias, Chief Justice of New Zealand, who at 50 is also the youngest person to have sat on the Judicial Committee, sat with Lords Nichols, Steyn, Hoffman and Millett to hear a New Zealand tax case.

Lord Chancellor

Following the controversy caused by Lord Irvine of Lairg's involvement with a dinner held to raise funds for the Labour party, renewed calls have been made for reform of the office of Lord Chancellor and the establishment of an independent judicial appointments committee. Following the case of *McGonnell v UK* there has been increased scrutiny of the dual role of the Lord Chancellor as a Cabinet Minister and Head of the Judiciary. Amid warnings that the Lord Chancellor sitting as a judge may contravene the right to a fair trial under Article 6(1) of the ECHR the Lord Chancellor has withdrawn from the Appellate Committee due to hear the case of *Lister v Helsey Hall* in the House of Lords in March. A special cabinet meeting was cited as the reason for his withdrawal (*The Daily Telegraph*, 21 February). Lord Irvine has not sat as a member of the Appellate Committee of the House of Lords since December 1999.

Judicial Appointments

A judicial appointments commissioner is due to be appointed in March 2001, but such an appointment, as observed by David Pannick QC, 'is a poor substitute for transferring decision-making to an independent body' (*The Times*, 22 February). Lord Irvine has claimed that he has 'never excluded the possibility of a judicial appointments commission' (House of Lords Debates, 21 February) but has so far resisted calls for change. And so despite a Labour party manifesto commitment in 1992 (supported by a similar statement in the party's 1997 document on constitutional reform) and support from Jack Straw, Lord Falconer and the Attorney-General, Lord Williams of Mostyn, it would appear that a fully independent judicial appointments

commission is not to be expected in the near future.

Freedom of Information

Publication Schemes

The Freedom of Information Act 2000 became law on 30 November. In March the Home Office will announce the implementation timetable. First in line are government departments, who have just over a year to prepare.

Their first task is to prepare publication schemes, which set out all the information which the authority will publish or make available as a matter of course. These must be approved by the new Information Commissioner, Liz France. Jim Amos and Dick Baxter from the Constitution Unit are working with her staff and pilot public authorities in producing model publication schemes. See: www.dataprotection.gov.uk.

Handling FOI Requests

The second task is to put in place systems for handling requests. The Home Office FOI Unit has produced a draft Code of Practice giving guidance on how to advise requesters; transfer of requests; consultation with third parties; inclusion of disclosure clauses in public sector contracts; and procedures for handling complaints. See: www.homeoffice.gov.uk/foi.

The Unit has produced its own *Practical Guide to the FOI Act*, full of practical tips and advice. On 25 April is the first of a series of FOI training conferences organised with CAPITA: see the flyer enclosed with this mailing.

FOI in Scotland

The Scottish Executive has published a draft Freedom of Information Bill. Consultation ends on 25 May. Copies from Sarah Corcoran, tel. 0131 244 4615, or see: <http://www.scotland.gov.uk/consultations/government/dfib-00.asp>.

European News

European Constitution

Europe's constitution was back on the agenda at the Nice summit last December. Even though the immanent decisions related to the weighting of votes in the Council and the allocation of seats in the European Parliament post-enlargement, the real question was how the EU is to be run in the future. Germany is widely regarded as advocating a federal structure for the EU, mainly

because of Foreign Minister Joschka Fischer's visionary speech in the spring of 2000. But Germany also has to take the demands of its own *Länder* into account that do not want to hand over regional rights to Brussels.

Germany will thus be outlining a new 'European architecture' at the next intergovernmental conference in 2004. That should clarify the competencies of the EU institutions, the Member States, and the regions; the future status of the EU's Charter of Fundamental Rights; the terms of the treaties; and the role of national parliaments. The weighting of votes in the Council and the reform of the Commission remain contested issues and will doubtless reappear in 2004. The Commission's President Romano Prodi wants to extend qualified majority voting to more areas to facilitate decision-making in an enlarged Union. However, the debate whether or not the catalogue of competencies resembles a constitution will continue.

People on the Move

The departure of **Peter Mandelson** from the cabinet has resulted in a minor government reshuffle. Mandelson was replaced as Northern Ireland secretary by **John Reid**, formerly Scottish Secretary. Reid, in turn, was replaced by **Helen Liddell**, bringing the number of women in the cabinet to a historic six.

Sir Nigel Wicks, second permanent secretary at the Treasury, is the first Whitehall mandarin to be appointed as the chairman of the committee on standards in public life. **Sir David Omand** has retired as permanent secretary at the Home Office due to ill health. **Sir Michael Bichard** has announced that he will step down as permanent secretary at the DfEE from May.

Paul Silk, Clerk to the House of Commons Foreign Affairs Committee, has been appointed as the new Clerk of the National Assembly for Wales. The New Regional Director of the Government Office for London is **Liz Meek**, formerly in charge of the legislation creating the London Mayor and Assembly.

Constitution Unit Reports

Constitution Unit News

New Faces

Welcome to **Alan Trench**. Alan joined us in February 2001 to lead our work on the law and devolution. Alan will work on a new ESRC-funded project on how the law and devolution disputes shape the devolution settlement, and a related project on intergovernmental relations between the UK government and the devolved administrations. We have also recruited a new researcher to work on Devolution and Health. **Scott Greer** is an American PhD student, currently working in Spain on a comparative study of health services. He hopes to join us in May 2001.

New Electoral Systems Seminar

The Constitution Unit and Make Votes Count held a Westminster seminar in January to brief MPs and journalists on the new electoral systems used in Scotland, Wales, London and for the European Parliament. The catalyst was Labour's decision to hold an electoral reform referendum only once the consequences of the new systems were clear. While these effects may take time to become apparent, research around the devolved and European elections provides us with many early lessons. The seminar was addressed by Prof. John Curtice (Strathclyde University), Philip Cowley (Hull University) and Ben Seyd (Constitution Unit). The presentations are being written up into a Unit briefing, available in March.

Support Rebecca and Arthritis Research Campaign

The Constitution Unit's administrator, Rebecca Blackwell, is running the 2001 Flora London Marathon to raise money for the Arthritis Research Campaign. Over 8 million people in the UK suffer from arthritis, including one child in every thousand. If you can help in any way, or would like to make a donation towards her sponsorship, please contact Rebecca on 020 7679 4902, or email: rebecca.blackwell@ucl.ac.uk.

The Commons: Reform or Modernisation

This new briefing, by Commons Clerk Andrew Kennon, looks back at reform over the Labour government's first term. The new government came to power having made many commitments to radically reform parliament and make it more effective. The Modernisation Committee - including both the Leader and Shadow Leader of the House - was in a potentially powerful position to push through such change. The Committee's first report made far reaching proposals about the reform of the legislative process. But despite initial cross-party support the proposals were not implemented. Why? It appears that government lost the inclination for reform after the report was published, as it became preoccupied with getting its legislative programme through. And although reform is strictly a 'matter for the House', it will falter without the support of government and its majority. Reform of sitting hours has similarly proved difficult, due to the conflicting demands of MPs from different parts of the UK. Some changes have been made in both areas but these have been minimalist and piecemeal. The

briefing concludes that 'there was a unique opportunity in 1997 to improve parliamentary government in the UK and that opportunity was not taken'. The issue of Commons reform has slipped down the constitutional agenda.

The briefing is now available (see publications list for details). Contact: *Meg Russell*, 020 7679 4974, meg.russell@ucl.ac.uk, or *Andrew Kennon*, kennonar@parliament.uk.

The Future of the Territorial Secretaries of State

Devolution has left some loose ends at the centre. One is the continuation of three Secretaries of State for Scotland, Wales and Northern Ireland. This new briefing asks, are they still needed?

The Scottish Secretary is the most obviously redundant. The Welsh Secretary is required to promote primary legislation at Westminster; while the Northern Ireland Secretary will remain so long as the security situation and British-Irish relations warrant it. This suggests an initial merger of the Offices of Scottish and Welsh

Secretary: if not now, then once the Welsh Assembly has been granted legislative powers. Northern Ireland is likely to remain a special case, requiring a separate Minister.

A merged 'Secretary of State for the Union' could take a more strategic and forward looking view, and lead government thinking on the unresolved issues of devolution: including finance, representation at Westminster and the English Question. A combined Minister could also be a 'constitutional reform supremo' with overall responsibility for the constitution, taking a synoptic and strategic view, while still leaving the policy lead with individual Whitehall departments.

The briefing is now available (see publications list for details). Contact: *Robert Hazell, 020 7679 4971, r.hazell@ucl.ac.uk.*

A Parliament to be Proud of?

The first audit of the Scottish Parliament, in the Unit's *Breaking the Westminster Mould* project, will be published shortly. *Realising the Vision: A Parliament to be Proud of?* has been written by Barry Winetrobe, who was a senior researcher in parliamentary and constitutional issues at the House of Commons Research Service. In 1999 he was seconded to Edinburgh to work with the Scottish Parliament prior to its establishment and during its first year of operation. The report examines the founding vision of the Parliament as set out in the work of the Scottish Constitutional Convention and the Scottish Office's Consultative Steering Group, and how this vision was expressed in the devolution legislation, and in the CSG principles and proposals for the Parliament's Standing Orders. It assesses the new Parliament's first year of working life, a unique period when it both had to breathe life into the 'job specification' it was presented with, and, at the same time, start to apply it as a functioning parliament. It concludes by considering the coherence and robustness of the initial vision, and of the detailed proposals which flowed from it, and by making some proposals for realising that vision in future years.

The briefing will be available in late April 2001 (see publications list for details). Contact: *Robert Hazell, 020 7679 4971, r.hazell@ucl.ac.uk.*

Scotland's Place in Europe

The Unit is carrying out a study of Scottish Independence, funded by a grant from the

Esmée Fairbairn Charitable Trust: how Scotland might gain independence, and the consequences for Scotland and the rest of the UK if it did. As part of this study we have examined the place of an independent Scotland in Europe. Would Scotland remain a member of the EU?

The SNP claims that an independent Scotland would automatically succeed to the United Kingdom's treaty rights and obligations, including membership of the European Union. But this begs the question whether there is an automatic right to membership of the European Union. Would continued membership be possible without the approval of all Member States?

This paper analyses the SNP's claim not just from a legal perspective but also from a political perspective. Realistically, Scotland can expect negotiations for EU membership to begin before independence is gained. The changes that would have to be made at EU level (to accommodate an independent Scotland) are addressed in light of EU enlargement, which also has an impact on the Structural Funds.

The briefing is now available (see publications list for details). Contact: *Jo Murkens, 020 7679 4973, j.murkens@ucl.ac.uk.*

A Practical Guide to the FOI Act 2000

The Unit has drawn on the combined expertise of Robert Hazell, Jim Amos, Dick Baxter and Jeremy Croft to prepare an introduction and guide to the new Freedom of Information Act for public officials who will be involved in handling requests under the Act. The guide focuses on the practical aspects of handling requests, drawing in relevant experience from overseas and offering helpful practical tips for implementing an effective freedom of information regime. It will complement the more detailed official advice being made available by the Home Office and Information Commissioner.

The guide will be available from the end of March (see publications list for details). Contact: *Jim Amos, 020 8287 6924, jwamos@compuserve.com.*

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: What Works and Doesn't Work in London's New Assembly?

Trevor Phillips: Chair of the Greater London Assembly
16 March 2001, 1.00-2.30 p.m., The Constitution Unit,
(sandwiches available from 12.30)

CAPITA and the Constitution Unit

Conference: The Challenge of Freedom of Information: Are You Prepared?

25 April 2001: central London venue
Contact: Elizabeth Moyle, (CAPITA), tel: 020 7222 4952,
email: moylee@capitagroup.co.uk.

Seminar: The Ways Forward for Regional Government in England

Lord Dearing: Chairman of the LGA Hearing on the Regions
20 April 2001, 1.00-2.30 p.m., The Constitution Unit,
(sandwiches available from 12.30)

Seminar: Challenges facing the UK's new Electoral Commission: Lessons from Overseas

Dr Jeremy Mitchell: Department of Government, Open University
18 May 2001, 1.00-2.30 p.m., The Constitution Unit,
(sandwiches available from 12.30)

Future Events

Political Economy Research Centre

Conference: Multi-level Governance: An Interdisciplinary Perspective

28-30 June 2000, University of Sheffield
contact: Sylvia McColm, PERC, University of Sheffield,
+44 (0)114 222 0660, S.McColm@sheffield.ac.uk

Useful Websites

Electoral Commission:

www.electoralcommission.gov.uk

Information Commissioner:

www.dataprotection.gov.uk

Home Office FOI Code of Practice:

www.homeoffice.gov.uk/foi

FOI Records Management:

www.pro.gov.uk/recordsmanagement

Daily Bulletin: www.ePolitix.com

New Publications by the Unit

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

- *Three into One Won't Go: The Future of the Territorial Secretaries of State*, by Robert Hazell, Constitution Unit briefing (March 2001) £5.
- *Unfinished Business: Labour's Constitutional Agenda for the Second Term*, by Robert Hazell, Constitution Unit briefing (Mar 2001) £5.
- *Lessons from Britain's PR Elections* by Ben Seyd, John Curtice, Phil Cowley and Stephen Lochore, Constitution Unit (April 2001) £5.
- *A Guide for Business to the FOI Act 2000* (update) by Jim Amos and Gordon Innes, in association with Lovells, Constitution Unit briefing (Jan 2001) £5.
- *A Practical Guide to the Freedom of Information Act 2000*, by Jim Amos, Dick Baxter, Jeremy Croft and Robert Hazell, Constitution Unit briefing (Jan 2001) £5.
- 'Reforming the Constitution' by Robert Hazell, in *Political Quarterly*, 72:1 Jan 2001.
- *The Commons: Reform or Modernisation*, by Andrew Kennon, Constitution Unit briefing (Jan 2001) £5.
- *Realising the Vision: A Parliament to be Proud of?* by Barry Winetrobe, Constitution Unit report (Apr 2001) £10.
- *Scotland's Place in Europe*, by Jo Murkens, Constitution Unit briefing (Feb 2001) £5.

Publications Received

- *Policing, Ethics and Human Rights* by Peter Neyroud and Alan Beckley, Willan Publishing: 2001, ISBN 1-903240-15-8.
- *The EU Charter of Fundamental Rights* ed. by Kim Feus, Kogan Page: 2000, ISBN 1-903403-04-9, £16.95.
- *Something Must be Done: South Wales v. Whitehall 1921-1951*, by Ted Rowlands MP, TTC Books: 2000, ISBN 0-9539376-1-5, £14.99.
- *New Frontiers for Reform [of the House of Lords]* by Lord Strathclyde, Centre for Policy Studies: Jan 2001, £7.50
- *Blair's Britain, England's Europe - A View from Ireland*, ed. Paul Gillespie, Institute of European Affairs: 2001, ISBN 1-874109-54-0, £13.
- *Where is Worcester Woman: Women's Voting Intentions and Political Priorities 2001*, by Becky Gill, Fawcett Society: 2001, ISBN 0-901890-19-7, £5.
- *The Ministerial Code: Improving the Rule Book*, report by Select Committee on Public Administration, The Stationery Office: No. 235, Feb 2001, 020 7219 3284.
- *Inclusive Government and Party Management: The National Assembly for Wales and the Work of its Committees*, ed. Barry Jones & John Osmond, IWA: 2001
- *The Road to Home Rule: Images of Scotland's Cause*, by C. Harvie & P. Jones, Polygon: 2000, ISBN: 1-902930-10-X.

