

M O N I T O R

Issue 16

The Constitution Unit Bulletin

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Whitehall's constitutional duo

The June *Monitor* included a supplement about the initial changes in Whitehall following the general election. Three months on, we offer a brief update.

First, it is worth noting the things which have not changed. Despite press speculation about a possible merger, we still have separate Secretaries of State for Scotland, Wales and Northern Ireland. And despite the much lower priority given to constitutional matters in the second term, Tony Blair has recreated five Cabinet committees responsible for different aspects of the constitutional reform programme.

In terms of what has changed, the most interesting development is the way that the Government has moved toward having a constitutional 'supremo', as the Constitution Unit has long called for. There are in fact two supremos. The Lord Chancellor Lord Irvine has taken responsibility for a wide range of constitutional matters transferred from the Home Office - human rights, freedom of information and data protection, as well as Church

and State, the monarchy, and the Channel Islands and Isle of Man. Lord Irvine successfully fought off a move to transfer the courts to the Home Office in return (see p. 9). He will be jointly responsible for deciding policy on Lords reform, together with Lord Williams. And he takes over from the Prime Minister as chair of the Cabinet's main Constitutional Reform Policy Committee (CRP), as well as continuing to chair the sub-committees concerned with the specific issues of human rights, freedom of information and Lords reform.

At the same time, John Prescott has acquired overall responsibility for devolution, as chair of the new Cabinet Committee on Nations and Regions (CNR), replacing the former Devolution Policy committee, which was chaired by Lord Irvine. Prescott will be responsible for producing the White Paper on regional government in England, now promised in early 2002, and replaces the Prime Minister as UK chair of the British-Irish Council. Prescott is supported by junior Minister Barbara Roche MP, and the new

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Nations and Regions Division of the Cabinet Office. This includes the small devolution team from the old Constitution Secretariat, and the much larger numbers in the Government Offices for the Regions and the Regional Coordination Unit, transferred

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New Job Vacancies



The Constitution Unit has vacancies for four new posts - further details and descriptions can be found at:

<http://www.ucl.ac.uk/constitution-unit/page/job.htm>

SCHOOL of PUBLIC POLICY
29/30 Tavistock Square,
London WC1H 9QU
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tel: 020 7679 4902 fax: 020 7679 4978

from the former DETR. The division is to be headed by Peter Unwin, who had worked as Prescott's Principal Private Secretary at DETR.

The Constitution Secretariat has been wound up, and the officials dealing with Lords reform, human rights etc. have moved to the new constitutional side of LCD. The LCD has become more recognisably a Ministry of Justice, with only elections (transferred from the Home Office to DTLR) missing from its constitutional portfolio.

This means that the UK is moving towards dealing with constitutional matters in a more coherent way. Two senior Ministers have overall responsibility for constitutional matters. Lord Irvine's constitutional role is strengthened. John Prescott still has to establish the nature of his role. What is his position vis-a-vis the territorial Secretaries of State? Is he their devolution overlord? And what will be his role in introducing regional government in England, alongside the DTLR and DTI? The White Paper will be the first test of whether Prescott is fully in charge of regional policy; but not the last.

Devolution

Wales

Amid mounting press and media coverage and Opposition demands for his resignation, the Deputy First Minister Mike German 'stood aside' from the Cabinet in early July while a police investigation continued into his tenure as Head of the Welsh Joint Education Committee's European Unit during the mid 1990s. Culture Minister Jenny Randerson took his place as Acting Deputy First Minister, while First Minister Rhodri Morgan assumed temporary responsibility for his Economic Development portfolio.

Other problems for the Assembly included a heightening of the foot and mouth outbreak with a mass sheep cull on the Brecon Beacons; a row with the internationally acclaimed architect Richard Rogers over the costs of his design for the new Assembly Chamber; and an escalating dispute over the issue of English in-migration into rural Wales threatening the integrity of Welsh-speaking communities. This last dispute invaded the National Eisteddfod, held this year in Denbigh in the first week of August, and overshadowed much of the Assembly's activities.

Midway through the Assembly's first four-year term the question is frequently asked, 'What has the Assembly done for you?'. First Minister Rhodri Morgan uses every opportunity to respond as follows: 'Free school milk for infants, money for improved school buildings, free prescription charges for under-25s, bus passes for the elderly, and free admission to museums and galleries.'

The media has a different agenda, however. And it was one that the establishment figure John Elfed Jones knew he could stimulate by likening the impact of English in-migration into rural Wales to the effects of foot-and-mouth disease. This re-ignited a heated and ill-tempered language debate in and around the Assembly that had been simmering since the general election. Inside the Chamber it had been prompted by a submission made to the Education Committee by a leading academic, Dafydd Glyn Jones, on the case for a Welsh-medium College within the University of Wales. This provoked such fundamental questions as claims of censorship around submissions made to the National Assembly, and allegations of anti-English sentiment and racism. The ensuing debate exposed widely differing views on the nature of Wales and Welsh identity held by the Labour and Plaid Cymru members of the Committee.

The death of the Labour AM and Chair of the Economic Development Committee Val Feld in July provided a rare moment of truce and consensus between the parties. She had been a popular figure and reminded AMs of the optimism and sense of hope that had accompanied the inauguration of the National Assembly. The forthcoming by-election in Swansea East, expected to be held on 4 October, will be a test for the Coalition Administration and for the challengers, Plaid Cymru. If Labour fail to hold the seat it will place an added strain on the Administration already destabilised by the Mike German affair. If Plaid Cymru fail to do well it will accentuate a *Western Mail*-led debate about the calibre of their leader Ieuan Wyn Jones who was severely tested and, for some in the party, found wanting during the General Election campaign.

Northern Ireland

This was not a good period for Northern Ireland's dwindling band of optimists. The

underlying story was of widening inter-communal division and increasing violence.

In sharp contrast to the rest of the UK, turnout in the Westminster elections in Northern Ireland (and accompanying local elections) was high, as effectively two separate electorates mobilised one against another. Within the 'two communities', this meant significant gains for the Democratic Unionist Party and Sinn Féin against the more moderate Ulster Unionists and the SDLP.

The viability of power-sharing thus became increasingly difficult, with the first minister, David Trimble, effecting his promised resignation in the absence of the start to the decommissioning of IRA weapons he had understood to have been pledged a year earlier.

Assembly business continued with remarkable consensus—though with considerable concern expressed about Northern Ireland's financial position—but that broke down when Mr Trimble's resignation was debated. And with the political élite distracted by constitutional matters, little executive policy activity took place.

Talks at Weston Park organised by London and Dublin were unable to secure agreement. The UUP leader was unable to keep business to his one-item decommissioning agenda; SF, meanwhile, refused to make any clear commitments in return for promised gains on policing and 'demilitarisation'.

A 'take it or leave it' package published by the two governments was thus long on the latter two items and very short on the former; calls for 'clarification' inevitably followed. Unionists were unmoved, awaiting movement by the IRA, but when it came it focused on the modality of decommissioning rather than when it might start.

As the six weeks available after the Trimble resignation to elect a new first and deputy first minister ticked away, the Northern Ireland secretary effected a one-day suspension of the institutions to buy another six weeks time. Outraged republicans withdrew their 'historic' offer.

While this undermined the credibility of the IRA's commitment, the arrest of three IRA suspects in Colombia, apparently having been assisting the FARC guerrillas, placed a huge question-mark against republican *bona fides*,

critically in the United States. Dublin became distinctly cooler towards SF, backing a revised British policing implementation plan which sought also to woo the SDLP.

There was continued activity on the north-south front, particularly with regard to EU matters. But there was a strong sense as summer ended that devolution to Northern Ireland was becoming less and less real.

Scotland

The first post-devolution UK General Election campaign and its aftermath have dominated the agenda of Scottish politics. Both the Parliament and Executive were quieter than normal during the campaign. There were marked tensions in each of Scotland's political parties, reflecting the fact that each was finding its feet about the dynamics of campaigning in a devolution environment in what is best considered a transitional election.

The outcome of the election was marked more by continuity than change – only one Scottish seat changed hands (Galloway and Upper Nithsdale Conservative gain from the SNP). Labour held all of its Scottish seats despite a 2% drop in support. It remained Scotland's dominant party winning 43.2 per cent of the vote and 55 of the 72 seats. Though the share of the vote for each party fell, Labour's ability to hold onto seats will have satisfied party strategists.

The SNP confirmed its position as Scotland's second party with 20.1 per cent of the vote though only five seats and the Liberal Democrats overtook the Conservatives for third place winning 16.4 per cent and ten seats while the Conservatives on 15.6 per cent now have one Scottish MP. The Scottish Socialist Party contested all of Scotland's 72 constituencies winning 3.1 per cent of the vote. Overall the two coalition partners (Labour and Liberal Democrats) fared well with the SNP and Conservatives generally perceived to have fallen short of their own targets. Turnout in Scotland fell by 13.2 per cent in Scotland compared with 1997 (slightly higher than the fall across Britain as a whole).

Evaluations and 'report cards' marking the second anniversary of the establishment of the Scottish Parliament have tended to be kinder than last year's critical one-year assessments. The Parliament is showing visible signs of

maturity including seeing the first bill ever to be introduced by a subject committee in the Parliament. The media have begun to differentiate the Parliament's performance from the Scottish Executive. The Executive continues to be criticised both at a personal level (the performance of ministers) as well as at a broader level - its lack of impact on substantive policy outputs (never mind outcomes) to date. With the 2003 Election now moving more sharply into focus the aim for the Executive in the next two years is to demonstrate its impact on substantive policy outcomes post-devolution.

English Regions

In a speech in Wakefield, prior to the General Election the Deputy Prime Minister, John Prescott, following earlier promises of a Green Paper, announced that the Government would produce a White Paper on Regional Government after the election. However, the Queen's Speech contained no proposals for the English regions, although Stephen Byers, the new Secretary of State for Transport, Local Government and the Regions, has predicted the Queen's Speech 2002 will contain legislation on regional government.

The major post-General Election reorganisation of Government departments (see lead story) has had significant implications for the governance of the English regions. A new Office of the Deputy Prime Minister has been created in the Cabinet Office. Among its responsibilities are Government Offices and the Regional Co-ordination Unit. The Department of Environment, Transport and the Regions (DETR) has been broken up but not as thoroughly as predicted. A new Department of Transport Local Government and the Regions retains responsibility for the constitutional aspects of regional policy. The former DETR's environmental responsibilities have been transferred to a new Department of Environment, Food and Rural Affairs. Responsibility for RDAs has been transferred to the Department of Trade and Industry.

The new Secretary of State for Trade and Industry, Patricia Hewitt, announced further details concerning RDA performance outcomes. RDA chairs remain concerned about the degree of freedom they will be accorded in practice.

Meanwhile the Government has confirmed that £15 million will be available to Regional

Chambers to support their scrutiny role. Chambers are beginning to assert their roles in the policy-making processes within regions. However, the Government over-ruled the wishes the South East England Regional Assembly and South East England Regional Development Agency and rejected the case for two new bypasses at Hastings. Civic regionalism continues to grow: the South West and West Midlands' Constitutional Conventions saw their official launches raising the profile of devolution issues in their respective regions.

Elsewhere, the forces of centralisation asserted themselves. The Arts Council of England brought forward revised proposals for the future of arts provision in the regions. These still involve the demise of Regional Arts Boards, a move unpopular in the regions. Also, the chairman of the ITC has called on ITV companies to make firmer commitments to regional programming.

There are signs that the Government may face a rougher ride on the regional issue in its second term, than it faced in its first. A raft of ex-ministers, especially from the North East, liberated by the post-election reshuffle, made swift interventions in favour of action on regional government. At the same time Ken Livingstone made the case for more resources for London, sparking a reaction in the English regions. These events may pre-figure the shape of the debate to come.

The Centre

The Judicial Committee of the Privy Council has heard the first challenge to the legality of an Act of the Scottish Parliament. The case of *Anderson, Reid and Doherty v. The Scottish Ministers and Advocate General for Scotland* was heard during the week beginning 9 July 2001. Judgement is awaited. Lawyers for the applicants sought to argue that the provisions of the Mental Health (Public Safety and Appeals) (Scotland) Act 1999 fell outside the competence of the Scottish Parliament. The Act had been passed by the Holyrood Parliament in September 1999 after a lacuna had allowed the convicted killer, Noel Ruddle, to be released from Carstairs.

Parliamentary Reform

HoL Select Committee on the Constitution

The new House of Lords Committee on the Constitution issued its first report in July 2001 (HL 11, 11 July 2001). The committee was appointed in February 2001 following a recommendation of the Royal Commission on Reform of the House of Lords. It was re-appointed after the election in June with the same members: the chairman is Lord Norton of Louth.

The new committee has wide terms of reference: 'to examine the constitutional implications of all public bills coming before the House; and to keep under review the operation of the constitution'. It decided in its first report to set some boundaries and to offer some thoughts about working methods and relations with other parliamentary committees. The report offers a working definition of a constitution ('the set of laws, rules and practices that create the basic institutions of the state and its component parts'), and five basic tenets of the British constitution. The committee plans to devote more time to its proactive role than to scrutiny of constitutional bills. Its first two substantive inquiries will be into the Process of Constitutional Change (autumn 2001) and Inter-Institutional Relations in the light of Devolution (spring 2002). Written evidence for the first inquiry is invited by 1 October. The committee has a particular interest in how the Government prepares constitutional legislation; which ministers and departments are involved; and how they are co-ordinated.

Hansard Report on Scrutiny Role of Parliament

In September 1999 the Hansard Society established a Commission on the Scrutiny Role of Parliament chaired by Lord Newton, former Leader of the House of Commons, with Robert Hazell and Peter Riddell as vice-chairmen. The commission's report *The Challenge for Parliament: Making Government Accountable* (Vacher Dod, £35) was published in June. Its central finding is that Parliament has been left behind by far-reaching changes to the constitution, government and society in the past two decades. This has left serious gaps and weaknesses in the working of accountability, with scrutiny of government by MPs and peers being neither systematic nor rigorous.

The report sets out a vision of how a reformed Parliament might work. Its central theme is that Parliament should be at the apex of a system of accountability - drawing more effectively on the

investigations of outside regulators, commissions and inspectors, providing a framework for their activity and using their investigations as the basis for holding ministers to account. Scrutiny should be an integral part of the work of every MP, balancing party loyalty with their duty to scrutinise the executive. Select Committees should play a more influential role, with each committee adopting a set of core objectives and agreeing a more systematic programme of work. Financial scrutiny should be central to the work of all committees, and not just left to the Public Accounts Committee.

The report recommends that the chamber also needs reform to improve attendance and public interest, with more short debates and opportunities to question ministers on recent select committee reports. To engage public interest, Parliament needs to adapt its procedures and hours to improve media coverage and make parliamentary business more media- and voter-friendly.

Robin Cook's agenda for parliamentary reform

At a conference to launch the Hansard Society report on 12 July, Robin Cook set out his agenda for parliamentary reform in his first major speech as Leader of the House. He will chair the Modernisation Committee, and intends that it should take evidence from the public, to hold up a mirror to Parliament of how it is perceived outside. In September he plans to visit the Scottish Parliament to see what lessons it can offer to Westminster.

Dispelling earlier concerns from the new Parliament First group about delay in setting up Select Committees, Cook said that the new committees were set up within three weeks of the Queen's Speech: the fastest in any parliament. They have also been given important new freedoms, with a general right for all Select Committees to appoint sub-committees, and joint committees with other Select Committees. Other possible reforms which Cook singled out for mention were weekly half hour debates for topical Select Committee reports, and referring the idea of enhanced salaries for Select Committee chairmen to the Senior Salaries Review Body. The legislative programme should be planned on a pipeline basis, with a two-year rolling programme instead of a tidal wave each session, and more bills carried over from one session to the next.

The week after Cook's speech MPs rebelled over the Whips' effective control of appointments to Select Committees. In a free vote on 16 July over 100 Labour backbenchers rebelled against the exclusion of previous committee chairs Gwyneth Dunwoody and Donald Anderson from the nomination lists for the new Select Committees. Robin Cook promised to review the appointments process and bring forward proposals in the autumn.

The Queen's Speech

The legislative programme for the 2001-02 session will contain two constitutional items: legislation to implement the second phase of Lords reform; and preparation of a bill to allow the political parties to make positive moves to increase the representation of women. The Lords reform bill will be introduced following consultation, and may need to be carried over to the next session. The bill to increase women's representation builds on the Constitution Unit's work in the past year to analyse the legal obstacles and find ways round them (see page 10 below for details of Meg Russell's final report on this subject). Notable by its absence from the Queen's Speech was any mention of regional government in England.

Reform of the House of Lords

The Lords devoted their first day of debate on the Queen's Speech to constitutional affairs (21 June). The focus was mainly on Lords reform. The Lord Chancellor said that the second stage would implement the conclusions of the Wakeham report; this would include removing the remaining 92 hereditary peers and putting the new Appointments Commission on a statutory basis. The new Leader of the House Lord Williams of Mostyn explained that the government had dropped from its 2001 manifesto the earlier commitment to set up a Joint Committee of both Houses as a vehicle for consultation, because the government wanted the committee to consider the parliamentary aspects, and the opposition parties wanted to be able to discuss composition. Both Conservatives and Liberal Democrats favour a bigger proportion of elected members than the government from Wakeham's menu of 12, 16 or 35 per cent elected members.

House of Lords Appointments Commission

The grant of a peerage to Sally Morgan, the Downing Street adviser who was made a

Cabinet Office Minister, has been criticised for bypassing the new Appointments Commission. As well as nominating new cross-benchers, the Commission is meant to vet all nominations for the House of Lords, including those from the political parties, to ensure propriety. Lib Dem peer Lord Oakeshott tabled a series of parliamentary questions in July about the appointment, and is also preparing a Private Peer's bill to put the commission on a statutory footing (*The Independent*, 12 July 2001). It has also emerged that three holders of high public office can expect automatically to receive peerages on retirement without being nominated by the Appointments Commission. The debates on the next stage of Lords reform will expose the underlying difficulty, of whether the grant of a peerage confers a job or an honour.

Elections and parties

2001 election

The June general election was the first in the UK to have been overseen by a dedicated body responsible for the administration of the poll and the funding of the campaigns. The Electoral Commission is also responsible for reform of our electoral law and administration, and for voter education. Given this wide remit, it is not surprising that a large part of its official election report (*Election 2001: The Official Results*, Politico's July 2001, £25) focuses on the low turnout.

The Commission's analysis is based primarily on the results of a two wave panel of over 1,000 people, conducted immediately before and after the election by MORI (available at: <http://www.electoralcommission.gov.uk>).

A number of causal explanations for the low turnout are explored although, as the results are only reported in headline format, they are suggestive rather than categorical. The data cast doubt on at least two explanations for the low turnout proffered by many commentators after 9th June. First, there is little relationship between people's interest in politics and abstention. Of those indicating no interest in politics, 53% still claimed to have voted, while including in the group those who are not particularly interested in politics boosts this figure to 68%. Nor do the headline figures suggest that representative institutions are in decline. Asked to respond to the statement that 'I don't think voting is very important', 90% of the whole sample disagreed,

while 80% disagreed that voting does not make much difference.

Among those who claimed not to have voted, the personal cost of casting a ballot was the most popular explanation. Thus, one fifth of non-voters said that the inconvenience of getting to the polling station was the factor that prevented them voting. Only 10% mentioned a lack of interest in politics as the main factor behind their abstention. The Commission's report also pinpoints the negative role of the election campaigns, with two thirds disagreeing with the statement that 'the campaign was interesting'. The Commission concludes by saying that 'declining turnout is not a function of declining interest in politics or elections but rather a failure of the campaign to connect with the electorate'.

Given this cautious assessment, it is surprising to find the report suggesting later on 'there also appears to be a growing disconnection between the electorate and the *electoral process*' (italics added). This is surely what the report suggests is not the case - although, to be fair, the Commission makes clear that the main burden in remedying the decline in turnout must be borne by the political parties, via more relevant and engaging political campaigns and debates.

The Commission's report does, however, canvass various options that might aid turnout, by reducing the personal cost of voting. The surveys explored the popularity of various reforms to the process of casting a ballot, with telephone voting (36%) gaining the most support, followed by voting in supermarkets (27%) and, perhaps surprisingly in third place, internet voting (21%). Overall, while a bare majority would support such reforms, a sizeable minority (34%) indicated their opposition. The figure just quoted is not the only indication in the report that calls into question the supposedly inexorable trend towards 'electronic elections'. The report also shows that only 13% of people use the internet to obtain information about politics. Asked what is their main source of information on politics, well over three-quarters cite television and newspapers, with a meagre 1% citing the internet.

The Commission's core role is to oversee the new regulations governing election spending by the parties and third party groups. Given that, by election day, 148 parties had registered with the Commission, the task of examining spending and donation returns will be a major task. The

main parties have been given six months to file their final spending returns with the Commission, whose report on the election regulations will not be issued until next year.

In the meantime, the Commission has set itself a challenging work programme, consisting of short and medium term projects. Among the former, to be completed by summer 2003, are reviews of voter registration, an examination of the voting process (including e-voting options) and the regulatory regime (in particular the burden on smaller parties and the rules covering third party groups). Longer-term projects include exploring an increase in the state funding of parties, the case for fixed term parliaments and the design of the ballot paper.

Electoral reform

The balance of power in the debate over electoral reform for Westminster appears to have shifted towards the antis. In June, prior to the election, Tony Blair strengthened his supposedly sceptical stance towards voting reform by saying that PR was unfair in delivering undue power to small parties holding the balance of power in coalition governments. Perhaps in recognition of the Prime Minister's lukewarm attitude, reformers have suggested that any move towards 'AV Plus', the recommendation of the Jenkins Commission, be introduced in two phases. The first stage would move towards the preferential AV system, and could easily be introduced prior to the next election. The introduction of top-up seats to induce greater proportionality could follow later. This suggestion has already been made by Lord Jenkins himself, and supported by Martin Linton MP. Linton suggests a further twist, arguing that the referendum be a two stage process, allowing voters to have their say, first, on the principle of a preferential system and, second, on the principle of a top-up system. Following the controversy over the selection of leadership candidates in Wales and London, Labour has indicated it may introduce new rules giving party members greater say. The proposals, to be put to the party's autumn conference, provide for 'one member one vote', and will apply to the selection of the party's leaders in the Scottish Parliament and Welsh Assembly and its candidates in mayoral and European Parliament elections.

There are also indications that the Labour government will abandon plans to reduce the number of constituency seats in the Scottish Parliament following the forthcoming review of

Westminster constituency boundaries in Scotland. Under the Scotland Act, the ratio between the two is fixed, so that a cut in the number of Westminster constituencies would trigger a cut in the number of Holyrood constituencies. But the government is now considering retaining the current 72 constituencies for the Scottish Parliament, while shifting from a regional allocation of top-up seats to a pan-Scotland system.

In spite of concerns over alleged fraud in the use of postal ballots at the general election, the government has confirmed that postal voting is here to stay. The Electoral Commission reported in its review of the election that around 3% of the electorate had used postal votes. In a Private Members' Debate on electoral law on 4th July, the Parliamentary Under Secretary of State at the DTLR, Alan Whitehead, acknowledged the concerns over fraud, but warned of the difficulty of introducing additional safeguards. The alternative, of ceasing to use postal ballots, was rejected. The desire to increase voting accessibility has trumped concerns over the integrity of postal ballots.

The Chairman of the Electoral Commission, Sam Younger, will be speaking at a Constitution Unit seminar on 29 October. See 'Events' flyer for details.

Local government

Elected mayors

On 13 July, Watford Borough Council became the first local authority to vote in favour of a directly-elected mayor under the Local Government Act 2000. The vote was extremely close: 7,636 to 7,140, which represented a turnout of 24.5%. Moreover, there were 883 rejected ballot papers – almost twice the majority of 496.

This very narrow endorsement followed defeats in the previous three mayoral referendums. Berwick-upon-Tweed District Council was the first, rejecting by 10,212 votes to 3,697. This referendum took place on the same day as the General Election, which accounts for the turnout of over 50%. The two referendums in Cheltenham and Gloucester, on 28 June, both rejected the mayoral option by approximately two votes to one, on turnouts of around 30%.

The Watford result is likely to have been influenced by the local council and press being firmly behind the scheme. This was not the case

in any of the three other referendums. The Berwick referendum was triggered by a petition from 5% of the electorate, initiated by a single independent councillor: the ruling Liberal Democrat group was opposed to the move.

Human Rights

Human rights move house

Responsibility for human rights issues has been transferred from the Home Office to the Lord Chancellor's Department and will figure less prominently in the Cabinet Office agenda with the dismantling of its Constitution Secretariat. In a separate exercise, the work of the Cabinet Office Human Rights Legal Sub-group and the ECHR Civil Issues Co-ordinating group is being combined in order to obtain a firmer grasp on human rights and civil matters.

First use of remedial order

Following the court decision in March 2001, removing the burden of proof resting on patients to convince Mental Health Review Tribunals that their detention is no longer warranted, the Department of Health has made first use of the expedited Remedial Order process to propose amendments to the relevant sections of the Mental Health Act 1983 found to be incompatible with Articles 5(1) and 5(4) of the ECHR. The practicalities of doing this are proving a somewhat testing learning experience for both the department and Joint Parliamentary Committee on Human Rights.

Joint Parliamentary Committee on HR

In July, Jean Corston was reselected as chair of the committee. Over 50 submissions have been received in response to the committee's call for views on the need for a Human Rights Commission. The majority favour the establishment of such a Commission. The committee is likely to invite oral evidence and conduct hearings towards the end of the year.

Human rights cases

On 24 July the Privy Council added a new twist to the temporary sheriff story in Scotland (*Starrs v Ruxton* 2000 JC 208) finding that other criminal prosecutions conducted before temporary sheriffs between 20 May and 11 November 1999

were also in breach of Article 6(1) of the ECHR. Some 9,000 trials are estimated to be involved.

Following mounting confusion in some northern England courts, over what constituted an unreasonable delay in the hearing of criminal charges for the purposes of Article 6(1), the Attorney General has sought clarification of the relevant sections of the Criminal Justice Act 1972 (Attorney General Reference 2/2001). Judgement delivered by the Court of Appeal, in *R v J* (2 July), accepts that criminal proceedings should normally only be stayed where there has been an unreasonable delay which has prejudiced the defence. However, the 'delay' may be calculated not just from the time of being charged but from any point in an investigation where something may have happened to the detriment of the defendant. This latter view is a cause of some concern for regulatory bodies conducting criminal investigations.

On 5 July, the House of Lords concluded in *R v Lambert* that a defendant could not challenge a judge's summing up as a breach of Article 6(2) of the ECHR when this had taken place before the Human Rights Act had come into force on 2 October 2000. The decision establishes that the Act does not have retrospective effect.

The Courts

Support for supreme court proposal

The Senior Law Lord, Lord Bingham of Cornhill, has suggested that there are many arguments in favour of reforming the Appellate Committee of the House of Lords and Judicial Committee of the Privy Council into a new Supreme Court. In an interview with *The Times* (16 July 2001) Lord Bingham said, 'the time will come when it will be increasingly perceived as anomalous to have what is in effect a supreme court as a committee of one House of the legislature.' He added, 'I think there is a very strong case for having a supreme court that is in the same position constitutionally as supreme courts in every other country in the world, whether the United States, Canada, Australia, India or France.'

Lord Bingham's comments came in the same week as the publication by The Constitution Unit of a major report on *The Future of the United Kingdom's Highest Courts* written by Professor Andrew Le Sueur and Richard Cornes (see publication form enclosed for details).

Who should run the courts?

Meanwhile the Lord Chief Justice, Lord Woolf, has voiced his concern over suggestions that the Lord Chancellor should relinquish control over the Court Service for England and Wales to the Home Secretary ('Hands off courts, says Woolf', *The Times*, 19 July 2001). Lord Woolf warned that, 'it is because [the Lord Chancellor] is head of the judiciary that the judiciary can and do work in such close partnership with the Court Service. If any other minister were to be put in charge of the Court Service, this would certainly be a misfortune and probably a calamity.' Lord Woolf added that such a move may lead to the Government being able to select which judge heard a specific case.

Scottish Law Lords

By convention two of the 12 Law Lords are from Scotland. The Lord Chancellor has stated that in advising the Prime Minister on potential successors to the post he will consult the Secretary of State for Scotland, Helen Liddell MP, the Scottish Justice Minister, Jim Wallace MSP, and the Lord President of the Court of Session, Lord Rodger of Earlsferry (Press Notice, Lord Chancellor's Department, 25 June 2001). Following the advice of the Lord Chancellor the Prime Minister will then make a recommendation to the Queen.

Freedom of Information

FOI Update

As reported in the June *Monitor*, the Home Office timetable for implementation of the FOI Act failed to obtain collective approval by Ministers before the election was called. After the election responsibility for freedom of information and data protection was transferred to the Lord Chancellor, and to his Parliamentary Secretary Michael Wills MP. The new implementation timetable is unlikely to be announced until after Parliament reconvenes on 15 October.

European News

On 8 June 2001 the people of the Republic of Ireland rejected the EU's plans to expand in a referendum on the Treaty of Nice. The Treaty provides for the enlargement of the EU with the addition of up to 12 new member states. It also reduces the scope for national vetoes and

Constitution Unit News

July seminars

The Unit held three seminars in July. The first was to launch the Unit's new report on elected Regional Assemblies in England, *Unexplored Territory*, by Mark Sandford and Paul McQuail. They spoke together with Peter Hetherington of *The Guardian* and Peter Mandelson MP. On 18 July Lord Stevenson, chairman of the House of Lords Appointments Commission, spoke about the Commission's work in searching for new peers to sit on the cross-benches. Finally on 20 and 23 July Andrew Le Sueur and Richard Cornes held two all day seminars, in London and then in Edinburgh, to launch the Unit's report *The Future of the UK's Highest Courts*. These two seminars were funded by the ESRC's Future Governance Programme.

Staff changes

Three people have left the Unit during the summer. Meg Russell has gone on secondment to work as Special Adviser to Robin Cook, the new Leader of the House. Jo Murkens has left to do a PhD at the European University Institute in Florence. His study of Scottish independence should be published in the autumn. And Clare Delap has completed her systematic review of public participation in policy making, which will also be published in the autumn.

The Unit is looking for four new members of staff. The first is a new Research Fellow in Parliamentary Reform, to continue Meg Russell's work on Lords reform and the impact of devolution on Westminster. The second is a new post to develop our growing interest in the conduct of elections, electoral systems, referendums and political parties. The third is another new post, to respond to the increasing demands we are receiving for training and consultancy in freedom of information and data protection. The fourth is an Administrator to look after our website and publications, to replace Gareth Lewes who is leaving in the Autumn. Advertisements for all four posts are enclosed as a flyer in this mailing.

extends the circumstances in which qualified majority voting can be used. Opponents of the Treaty have argued that Ireland would lose substantial EU subsidies if some of the poorer Eastern European States admitted.

The turnout in the Irish vote was a disappointing 32.9%, with 54% voting against ratification and 46% for. The outcome of the Irish referendum will clearly delay implementation of the EU plans as implementation of the Treaty of Nice cannot go ahead until it has been ratified by all member states.

People on the Move

Sir Michael Jay, British Ambassador in Paris, will succeed Sir John Kerr as head of the diplomatic service early next year. **Lord Clyde**, Lord of Appeal in Ordinary since 1996, will step down with effect from 1 October 2001.

Constitution Unit Reports

Women's Representation Bill

Meg Russell's report, *The Women's Representation Bill: Making it Happen*, sets out the options for changing the law now that the Government has announced it will prepare legislation to allow political parties to apply positive action in selecting candidates. The Government will need to act quickly if it is to influence selection procedures for the next general election; it is almost certainly too late for the next Scottish and Welsh elections in 2003. This is because the parties in turn need to debate and introduce their own rule changes. A key issue is the extent to which the candidate selection process should be regulated by law, versus the extent to which this should be left to the internal democracy of the political parties.

The current legal difficulties result from the interpretation of the Sex Discrimination Act

1975, which has been found to cover candidate selection. The report identifies three broad options for changing the law, and favours creating a new body of law covering the candidate selection process, which disallows discrimination but allows positive action. It would acknowledge that candidate selection is a democratic (not an employment) process. Cases would be taken out of employment tribunals, and probably be sent to Election Courts.

The Women's Representation Bill: Making it Happen, is available from the Constitution Unit. See publication list for further details.

Contact: *Robert Hazell*, r.hazell@ucl.ac.uk, tel: 020 7679 4971.

Devolution and Health

What has devolution meant to health policy in Northern Ireland, Scotland, and Wales; and what could it mean in England? The Devolution and Health project is running studies intended to answer both questions that should bear fruit in the coming months.

In the devolved administrations, responses obtained from a large survey of NHS policymakers are being analysed to understand what devolution has meant for accountability, governance, and policymaking. Building on this, researcher Scott Greer will begin in-depth interviews in order to present a full analysis of the impact of devolution on health so far as a complement to the project's quarterly monitoring reports. At the same time, an overview and analysis of trends in the four UK health systems since 1997 will be published shortly.

Meanwhile, we are bringing to term a study of the current nature of regional health policy in England and its implications for the regionalisation of English health. The Unit will publish online an in-depth study of public health collaboration and regional networks in the East Midlands in September. It will be building on this work with a briefing paper by Greer and Mark Sandford on the lessons of London and the East Midlands and the possible roles for English regions in public health.

Divergence and Devolution: A comparison of the health policies of England, Northern Ireland, Wales and Scotland since 1974, by Scott Greer is funded by the Nuffield Trust and the Leverhulme Trust. *The Real Regional Health Agenda: Networks, Soft Money, and Public Health in the East Midlands*, by

Scott Greer, and *Regions and Public Health*, by Scott Greer and Mark Sandford will be available from the Constitution Unit - see publication list for details.

Contact: *Scott Greer*, s.greer@ucl.ac.uk, tel: 020 7679 4922.

Practical Guide to the Data Protection Act

Following the success of our *Practical Guide to the FOI Act*, we are publishing a similar guide to the Data Protection Act. Written by John Woulds, until July Deputy Data Protection Commissioner, the guide is a mine of practical information on a very complex piece of legislation. It will be launched on 24 October, the day the new Act comes fully into force, at a conference organised jointly by the Unit and CAPITA. For details, see the conference flyer enclosed with this mailing.

A Practical Guide to the Data Protection Act will be available from the Constitution Unit in October 2001 - see publication list for details.

Contact: *Robert Hazell*, r.hazell@ucl.ac.uk, tel: 020 7679 4971.

Publications Received

- *Reviving Local Democracy: New Labour, new politics?* by Nirmala Rao, Policy Press, 2000. ISBN 1-86134-218-7.
- *The Modalities of European Union Governance: New Institutional Explanations of Agri-Environmental Policy*, by Alun Jones and Julian Clark, OUP, 2001. ISBN 0-19-924112-0.
- *From Votes to Seats: The operation of the UK electoral system since 1945*, by Johnston, Pattie, Dorling and Rossiter, MUP, 2001. ISBN 0-7190-5852-X, £12.99
- *The Law Lords: An account of the workings of Britain's Highest Judicial body and the men who preside over it*, by Maxwell Barrett, MacMillan, 2001. ISBN 0-333-72519-0.
- *The Office of the Lord Chancellor*, by Diana Woodhouse, Hart Publishing, 2001. ISBN 1-84113-021-1.

Bulletin Board

Forthcoming Unit Events

To book a free place at Unit events, please contact Gareth Lewes on 020 7679 4977. A location map for the Constitution Unit can be found at: www.ucl.ac.uk/constitution-unit/logos/find.htm

D-Day for Data Protection: Get Ready for Freedom of Information

The Constitution Unit and CAPITA Conference
24 October 2002, Central London venue
Contact: Elizabeth Moyle, tel: 020 7960 7722 or see enclosed flyer.

Seminar: Future Challenges facing the Electoral Commission

Sam Younger: Chairman, The Electoral Commission
29 October 2001, 6 p.m., The Constitution Unit

Conference: Freedom of Information

Joint conference with the Local Government Association and the Constitution Unit
Date: 21 November 2001, Local Government House Conference Centre, London.

State of the Union Annual Lecture

10 December 2001, 6 p.m.
Cruciform Lecture Theatre, UCL with reception to follow in North Cloisters.

Seminar: The Work of the new Constitution Committee in the House of Lords

Professor the Lord Norton of Louth: Professor of Government, University of Hull
29th January 2002, 6 p.m., The Constitution Unit

Forthcoming Events

Lecture: Reform of Parliament, Constitution & Citizenship Associate Parliamentary Group
Speaker: **Robin Cook**, Leader of the House of Commons,
Chair: **Dr Tony Wright MP**
24th October 2001 6-7pm, Grimond Room, Portcullis House, Westminster, contact: Andrew Holden, Charter88 tel: 020 8880 6084, andrew@charter88.org.uk

Conference - Transparency on the Agenda:

The Agenda of Transparency
European Institute of Public Administration (EIPA)
8 - 9 October 2001, Maastricht
Contact: Ms Joyce Groneschild, j.groneschild@eipa-nl.com,
Tel.: +31.43.3296 357

Conference: Procuring Best Value Outcomes

30 October 2001, Central London venue

Conference: Learning from Partnerships in Education

8 November 2001, Central London venue
Contact: Nikki - tel.: 020 8542 8223, rosa@nlgn.org.uk

New Publications by the Unit

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

- *Unexplored Territory: Elected Regional Assemblies in England*, by Mark Sandford, Constitution Unit Report, June 2001, £10.
- *The Future of the United Kingdom's Highest Courts* by Prof. Andrew Le Sueur and Richard Cornes, Constitution Unit Report, July 2001, £15.
- *The Women's Representation Bill: Making it Happen*, by Meg Russell, Constitution Unit briefing, July 2001, £10.
- *Nations and Regions Monitoring Reports*, August 2001 - reports from Scotland, Wales, Northern Ireland, English regions and the Centre available on the Constitution Unit website, funded by the ESRC and The Leverhulme Trust.
- *A Practical Guide to the Data Protection Act*, by John Woulds, Constitution Unit briefing, due October 2001, £10.
- *The Real Regional Health Agenda: Networks, Soft Money, and Public Health in the East Midlands*, by Scott Greer, avail. from the Constitution Unit, late Sept 2001. £5
- *Divergence and Devolution: A comparison of the health policies of England, Northern Ireland, Wales and Scotland since 1974*, by Scott Greer. Funded by the Nuffield Trust and the Leverhulme Trust.
- *Regions and Public Health*, by Scott Greer and Mark Sandford, Constitution Unit briefing, due Nov 2001, £8.
- Jeremy Croft, 'Whitehall and the Human Rights Act 1998', *European Human Rights Law Review*, Issue 4/2001.

Useful websites

<http://www.beagle.org.uk>
(access to over 400 human rights court cases)

<http://www.electoralcommission.gov.uk> (Electoral Commission's analysis of 2001 election results)

<http://www.law.ed.ac.uk/sln/index.htm>
(Scots law news)