



MONITOR

Lords Reform Ends in Shambles

Parliament was the ultimate loser in the shambolic votes on Lords reform on 4 February 2003. Although depicted in some papers as a snub for Blair, the Prime Minister will have achieved his objective of scuppering Lords reform. Only the previous week he had come out in favour of an all appointed House, contrary to his own Government's previous policy. Following this cue, the Commons rejected all seven options for reform presented by the Joint Parliamentary Committee, while the Lords voted by three to one to remain an all-appointed House.

The Government's manifesto policy had been to implement the report of the Wakeham Royal Commission. Wakeham had recommended introducing an elected element into the second chamber to represent the nations and regions, ranging from 12–35%. The Lord Chancellor's White Paper *Completing the Reform* (November 2001) proposed 20% elected. This was roundly criticised in the press and by the Commons Public Administration Select Committee as being too timid. Instead of agreeing to increase the elected element, the Lord Chancellor went into reverse, and

in the Lords debate in January declared that a part elected, part appointed House was a hybrid solution which would prove unworkable. The Prime Minister then followed his lead.

The Joint Committee made the shambles worse by the peculiar voting system they recommended, in which both Houses were invited to vote successively on seven options ranging from 0–100% elected. The Committee ignored suggestions that they should use an exhaustive ballot (as the Commons recently agreed to do when electing the Speaker), or the Alternative Vote to ascertain which option commanded majority support.

There is not much the Committee can retrieve from the shambles. Some of its members want to propose indirect instead of direct election. The Chairman, Jack Cunningham, wanted an incremental approach, looking first at removing the Bishops and law lords, then considering putting the Appointments Commission on a statutory basis before considering the feasibility of indirect election. But most members of the Committee feel this is

Results of Votes of 4 February				
	COMMONS		LORDS	
	For	Against	For	Against
Abolition	172	392		
100% elected	272	289	106	329
80% elected	281	284	93	339
60% elected	253	316	91	318
100% appointed	245	323	335	110
80% appointed	No vote	No vote	39	376
60% appointed	No vote	No vote	60	359
50:50	No Vote	No vote	84	322

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playing at the margins. With their task pre-empted by the Prime Minister, they want to hand the problem back to the Government after delivering a final report in March or April.

On the Government side Lords reform looks dead for a long time. The Prime Minister has lost interest, and any legislation would need to be introduced by the Lord Chancellor, who retains the policy lead within government. Now these two senior figures have come out in favour of an all-appointed House, the spotlight will shift back to the appointments system. The Prime Minister says he wants to give up his power of patronage, but shows little sign of doing so. The Government White Paper emasculated the Appointments Commission proposed by Wakeham, and proposed in its place a Commission which would appoint only the independent cross benchers.

Party nominees will always be liable to be criticised as 'Tony's cronies'. The prototype Appointments Commission has not fared much better. The first and only list of cross benchers put up by Lord Stevenson's new Appointments Commission in April 2001 was mocked in the press as being little different from previous lists of the great and the good. It was not the list of 'People's Peers' and hairdressers which No 10 had led the press to expect.

The Government may be tempted to find a new chairman, or to put the Appointments Commission on a statutory basis simply to give it a fresh start. But that would re-open the whole issue of appointment versus election. It would also expose the awkward issue of how, simply through a process of appointment, the House of Lords can be made more 'democratic and representative', which Labour promised in their manifestos of 1997 and 2001.

Parliament

Inquiry on the Royal Prerogative and the honours system

The Public Administration Committee announced this latest examination of prerogative powers on 12 February and it is due to report later in 2003.

Parliamentary allowances

The Speaker of the House of Commons has announced that details of individual MPs' expenditure on parliamentary allowances will be made public from 2004. This will bring the Commons into line with practice in the Scottish Parliament and the Northern Ireland Assembly, which have already published details of individual allowances. (The Assembly in Wales has concerns about data protection, which should be resolved after the May elections). The Commons will be publishing information retrospectively, back to 2001-2. MPs and staff have a year to prepare, but the system is already under examination following the Standards Commissioner enquiry into Michael Trend MP's claims for allowance in February 2003. Sir Philip Mawer's report (HC435) made clear that the payment of allowances is not covered by parliamentary privilege, so serious abuses could end in criminal prosecutions. It also suggested that the Commons authorities could do more to offer advice and make more effective checks on payments to MPs.

By-election for hereditary peers

Details of the by-election to replace the deceased Lord Oxfuird, one of the 15 hereditary peers elected in 1999 to serve as a Deputy Speaker were announced in February, with the result due on 27 March 2003. The electorate is the whole House, but the candidates are confined to those hereditary peers who have registered as willing to stand and are not currently members of the Lords. At the time of the passage of the House of Lords Act, the Government did not expect to have a transitional house still in existence one session after the first following a general election, and so were not unduly concerned about the likelihood of by-elections for hereditaries which would only start in the 2002-3 session of Parliament. But time marches on, and the Government now has no alternative. Lord Weatherill introduced the House of Lords (Amendment) Bill (HL 32) on 11 February 2003 which would put a stop to the system of by-elections, reducing the numbers of hereditary peers slowly by attrition.

Project for the Audit Committee, Scottish Parliament

Senior Research Fellows Oonagh Gay and Barry Winetrobe completed a comparative report for the Audit Committee, designed to examine good practice in six comparator states. The report is due

to be published as part of the Legacy Report planned by the Committee to land on to their successors in the next parliament. The report concentrated on the added value to public audit of the parliamentary audit function, and used Unit contacts in the UK, Canada, Australia, New Zealand, Denmark and Ireland to provide indicators for a more robust framework for evaluating the Committee's performance and effectiveness. The report should be available from the Scottish Parliament website shortly.

Select Committee on the Lord Chancellor's Department

The new committee was established on 28 January 2003 and is chaired, as expected, by Alan Beith MP, who has stood down as Liberal Democrat deputy leader. The SNP forced a debate on membership to highlight its belief that minor parties are not well served by the allocation of places on select committees and that they should have representation on the Liaison Committee (of select committee chairmen). The subject of the first enquiry looks set to be the Lord Chancellor himself.

The Commons has waited over 20 years for a select committee to examine this department—Lord Hailsham was said to have blocked a separate committee for this ancient office back in 1979—so an examination is overdue, and given added fuel by Lord Irvine's role in House of Lords reform.

House of Lords debate on the constitution

In a debate tabled by Lord Norton of Louth on 18 December 2002 Lord Norton suggested that in recent years the constitution had undergone fundamental change, but this had taken place in 'piecemeal fashion' and was not 'rooted in any particular view of constitutional change.' The current Government had embarked upon a series of reforms without paying any attention to the 'sort of constitution they are trying to achieve.' Lord Norton commented that 'because we have no view of the whole, we have no way of seeing how each part fits with the other parts.' In his response the Lord Chancellor, Lord Irvine said that the Government had rejected the 'purism' espoused by Lord Norton in favour of 'pragmatism based on principle, without the need for an all embracing theory.'

New Director of the Hansard Society

Clare Ettinghausen was appointed Director of the Hansard Society on 24 January 2003. Clare was previously Director of the Hansard Society's Parliament and Government Programme.

Devolution

The State of the Nations 2003 Scotland

The Unit's comprehensive annual review of devolution was launched in Edinburgh's City Chambers on 29 January 2003. The event was a great success and 150 people attended to hear Sir David Steel's State of the Nations lecture. *The State of the Nations 2003* analyses the latest developments in devolution and looks ahead to the devolved elections in May. It also focuses on the growing policy divergence taking place as a result of devolution. Copies of the book and of David Steel's lecture are available from the Unit: see back page.

The fire strike claimed a Ministerial scalp during the last quarter and caused much anguish within the Scottish Executive, creating tensions between Edinburgh and London. Richard Simpson, junior Justice Minister, was forced to stand down after he described the strikers as 'fascist bastards' in a private comment reported in the press. In a bizarre twist, Simpson acknowledged that he was the Minister accused of having made the comment but insisted that he had made no such comment. First Minister Jack McConnell made it clear that the Minister had to resign. He was replaced by junior Social Justice Minister Hugh Henry who, in turn, was replaced by Des McNulty, Finance Committee convenor.

This event was only one manifestation of difficulties created by the dispute. Education Minister Cathy Jamieson was criticised for not being 'on message' but the relations between London and Edinburgh on the fire dispute and the crisis in the Scottish fishing industry proved a running sore during the quarter. Calls were made for the Scottish Executive to negotiate a separate pay agreement with the Fire Brigades Union. An attempt by the Executive to quietly pass an amendment to 1947 legislation which would have empowered it to close fire stations was defeated when Cathy Craigie, a Labour whip abstained 'by mistake'. John Prescott's statement at Westminster that London might impose a settlement provoked criticisms of the Executive for failing to differ with this policy and raised questions about the degree to which London had consulted Edinburgh prior to Prescott's announcement. The UK negotiating position on European fisheries policy and the Scottish Executive's input also came under scrutiny. Temperatures were raised given that the Scottish fishing industry faces collapse as a consequence of decisions made in Brussels. The Scottish Executive's involvement in this had been marginal.

Both the fire dispute and fishing highlight tensions in London-Edinburgh relations which are particularly sensitive in the months leading up to elections in May. The added prospect of war with Iraq only highlights the inability to isolate devolved and retained matters especially in the context of an election campaign.

Wales

Top-up fees for students attending University are set to cause the biggest stand off between Cardiff and Westminster since devolution, threatening the National Assembly's budget and highlighting tensions over its limited powers. The Assembly controls higher education spending and in theory could prevent the introduction of the top-up fees of up to £3,000 a year proposed by the English Education Secretary Charles Clarke in his White Paper at the end of January. However, the Assembly does not control student support. It is estimated that refusing to impose top-up fees could cost it around £80 million a year, half of which could be a subsidy to English students studying in Wales.

It had been widely trailed ahead of the White Paper that powers would be devolved to allow Cardiff to go its own way on the question. Instead, however, the issue was left unresolved following an inter-departmental argument in which the Wales Office

under the new Secretary of State Peter Hain sided with the Education Department, in arguing the case for Welsh discretion with the Office of the Deputy Prime Minister, and the Treasury. Clarke declared that no decision had been made on the "complex" negotiations. However, Welsh First Minister Rhodri Morgan was more forthright. "We've got the drains up at the moment," he said in early February. "Any solution has to find the extra cash Cardiff in particular would need to compete for the best academic staff against fee-charging Bristol and Bath just across the Bristol Channel. It's going to be a major test of how well we can work with Westminster. It is an issue of huge significance."

Welsh Education Minister Jane Davidson AM is on record as favouring a graduate tax. But before deciding a definitive policy the Assembly Government is awaiting the outcome of a European legal test case on the Scottish Parliament's abolition of top-up fees for Scottish students.

The issue is sure to play into the forthcoming Assembly election on 1 May 2003. It is giving Welsh Labour an opportunity to distance itself from the Blair government, perceived as becoming increasingly unpopular in Wales.

Northern Ireland

It was another quarter of 'logjam' and 'impasse' talk in Northern Ireland as the fourth suspension of the Assembly stretched to four months—the longest since power was transferred in December 1999. The crisp 'act of completion' (aka IRA disbandment) demanded from republicans by the Prime Minister in October, to restore plummeting Protestant confidence in the Belfast agreement, blurred into the further 'inch by inch negotiations' with Sinn Féin—other parties now reduced to onlookers—Mr Blair had abjured.

A new *de facto* 'deadline' (in the loose, Northern Ireland, sense) of St Patrick's Day was set for a deal which would allow the institutions to be restored and the assembly election to take place on 1 May 2003. The anticipated beneficiaries, the Democratic Unionist Party and SF, unsurprisingly insisted that the election go ahead anyway.

The suspension did not prove as debilitating to intergovernmental relations as had been expected. The British-Irish Council continued its (episodic) business as usual. And, to unionist chagrin, the north-south institutions in Ireland were effectively placed on an 'east-west' basis by London and Dublin to

ensure they would not atrophy. But poll data showed regret, particularly among Catholics, at the loss of self-government.

Direct-rule ministers, while wishing to be out of business at the earliest opportunity, kept the policy process ticking over, taking over planned legislation at Westminster and revising the draft Programme for Government. Indeed, the impatience of the junior minister Des Browne with the pace of movement under devolution was reflected in a desire to push ahead, particularly on the critical 'community relations' review. A consultation paper for the first time officially conceded that sectarian divisions were widening and urged acceptance of a vision of Northern Ireland as a 'shared' and 'pluralist' society.

As for 'normal' politics, this quarter saw the direct-rule team move on the launch of the public-investment programme made possible by the borrowing facility signalled by the chancellor in May 2002, allied to public-private partnerships. A decision was faced in principle to introduce water charges, which it is unlikely the devolved administration would have made any time soon.

On education, a rearguard unionist action at Westminster to reverse the decision by the SF former minister, Martin McGuinness, that selection at 11 be abolished was rebutted. Meanwhile, there was movement to bring finally to a close the protracted consultations engaged in by his health counterpart, Bairbre de Brún, on acute and maternity hospitals.

England

The last quarter was dominated by the passage of the Regional Assemblies (Preparations) Bill through the Commons. The Bill completed its Third Reading on 23 January 2003 and now faces a rough ride through the Lords. With the government and country preoccupied by the prospect of war, the fire strike and the ailing economy, the Bill generated barely any attention outside Westminster.

Conservative and Liberal Democrat MPs placed numerous amendments in nine meetings of the Standing Committee, focusing mainly on the questions of boundary definition, local government reform and the wording of the referendum question. Virtually all of these were rejected by the Government, which, in the face of opposition criticism, guillotined the Bill's Third Reading.

The Electoral Commission questioned the 'intelligibility' of the Bill's proposed referendum, and this may prove to be one area where the Act will be amended.

The potential of the Government's proposal for local government reform to be a source of dissension was demonstrated by the outbreak of hostilities between the North West Regional Assembly and Lancashire County Council. The former attacked the latter for rejecting the government's proposal for single tier local government, while the latter accused the former of exaggerating support for regional government in the North West.

The Government commenced its 'soundings exercise' to assess the degree of support for holding referendums. Durham County Council surveyed 32,000 residents, of whom 22.4% responded. 67% of those responding favoured holding a referendum, but the survey also showed low levels of awareness of the government's proposals, with few people even bothering to indicate their support or otherwise for an elected assembly. Other councils consulted citizen panels and focus groups before preparing their responses.

'No' campaigners in the North East complained to the District Auditor that the North East Assembly had been contravening government guidelines designed to place limits on local authority campaigning.

The Government introduced its Planning Bill which, among other things, proposes the transfer of planning powers from the county level to the regional level.

The Government introduced its 'Sustainable Communities' proposals, which provides for additional housing investment in the South and regeneration in the North. David Davis, for the Conservatives, condemned it as a plan to 'concrete the south and bulldoze the north'. As well as sparking a new debate about the North/South divide, it also proposed the creation of 'regional housing boards' to oversee housing investment.

The Centre

Helen Liddell, Secretary of State for Scotland, announced the decision to maintain the current number of MSPs at 129, in the outcome of the consultation into the size of the Scottish Parliament. This means that the number of MSPs will not be reduced in line with the forthcoming reduction of

Westminster MPs, and the Scotland Act will have to be amended. The necessary amendments will be made when parliamentary time becomes available. The move will end coterminosity between MSPs and MPs, with the Boundary Commission set to submit its report on a revision of Westminster boundaries before 2006. An independent commission will be established to address any difficulties that arise from having different boundaries for Westminster and Holyrood.

The Finance Minister of the Welsh Assembly, Edwina Hart AM, caused a storm when she accused Whitehall of arrogance in their treatment of the Assembly. She said that 'we are like some sort of large local authority that is a nuisance to consult.' She singled out the Home Office as the worst offender, where she said that 'real problems at the heart of the system' existed.

On 30 January 2003 the Joint Ministerial Council (Europe) met in London to discuss the Greek Presidency of the EU and Europe and the Regions. The meeting was chaired by Peter Hain in Jack Straw's absence. Rhodri Morgan attended from the Welsh Assembly, while Nicol Stephen represented the Scottish Executive. No communiqué was issued.

The British-Irish Council has had a burst of energy this quarter, meeting for a Summit in New Lanark on 22 November 2002 which was chaired by Jack McConnell. The meeting was attended by the Irish Taoiseach, Bertie Ahern TD, UK Cabinet Ministers, Robin Cook and Paul Murphy, and Rhodri Morgan represented the Welsh Assembly. The summit focused on the issue of social inclusion. In addition the BIC's Environment Group and Drugs Misuse Group met on 16 January 2003 and 7 February 2003 respectively.

Constitution Committee Report on Intergovernmental Relations in the UK

The House of Lords Constitution Committee published their report *Devolution: Inter-Institutional Relations in the United Kingdom* (HL147) on 15 January 2003. The report is the first substantive review of intergovernmental relations since devolution. It broadly welcomes the arrangements for intergovernmental relations but raises concerns that such relations are too reliant on 'goodwill' and informal networks. Such relations are likely to come under increasing pressure as policy divergence increases, and more fundamentally, when

governments of different political complexions have to deal with each other. The report recommends that the working relationship between the UK Government and the devolved bodies should be strengthened by making greater use of formal mechanisms, in order to ensure the future success of devolution.

Most media coverage focused on the recommendation that the Government should consider merging the positions of the Scottish and Welsh Secretaries of State into one Cabinet post with responsibility for intergovernmental relations. The Committee believed that they had not been offered any 'cogent explanation' for the difference in the size of the Scotland Office and the Wales Office.

The report stressed the need to strengthen the centre in anticipation of entering uncharted territory as governments of different political persuasion came to power. The proposal to have one Cabinet minister was accompanied by a recommendation to bring together the existing devolution and the regions team (currently residing in ODPM) and the teams responsible for intergovernmental relations in the territorial offices in order to provide better co-ordination from the centre.

The Committee rightly picked up on the need for better parliamentary scrutiny of intergovernmental relations, recommending that they should be reviewed at least once during every Parliament, and that this would best be done by a Joint Committee of both Houses.

Whilst the Committee avoided getting into the detail of the financial settlement underpinning devolution, they did acknowledge that this gave the Treasury significant leverage over the devolved bodies. In particular they felt that payments awarded outside the Barnett formula should be overseen by an independent body, thereby curbing the control of the Treasury in such matters. As for Barnett, they concluded that a workable alternative had not yet materialised, instead preferring to improve the transparency of how changes in public spending levels affected the amount awarded to the devolved bodies via the formula. They did however, suggest that when the Barnett formula is reviewed it should be conducted by an independent body and not central government.

Finally the report suggested ways to improve Westminster legislation affecting the National Assembly for Wales. It called on Westminster to show more consistency in how it legislates for Wales and to provide more information on how a bill is

likely to affect the Assembly and its functions. There should be a greater role for the Welsh Affairs Committee to carry out inquiries into bills that affect Wales, including taking evidence from AMs, and it also suggested that the Welsh Grand Committee might be used for the Committee stage of such Bills.

Constitution Unit News

Ben Seyd returns to the Unit on 3 March, after a year's sabbatical in Melbourne.

Alan Trench also returns after 3 months leave of absence.

Meredith Cook has spent six weeks on a study trip to Australia and New Zealand, funded by the Nuffield Foundation, where she has been looking at training and support materials for FOI and data protection.

London

Fixing London

The Constitution Unit has published a new briefing, *Fixing London*, by Scott Greer and Mark Sandford. The briefing analyses the institutional capacity of the Greater London Authority to address issues of transport, economic development, infrastructure and modernisation. It argues that the tight financial limits on the GLA, added to the peculiar institutional structure under which the London Assembly and

the four 'functional bodies' work, are detrimental to the effectiveness of a strategic, enabling government. It recommends that the GLA should be permitted to issue bonds against future revenue, and that it should have greater power to switch funding between the functional bodies. This would enable more radical surgery to the transport and infrastructure of London without the need for transferring further functions from central government.

Civil service and Government

Big changes at the Lord Chancellor's Department

After the 2001 election we said the Lord Chancellor's department had become a Department of Justice and Constitutional Affairs in all but name. Now it has adopted the name. From January 2003 it has restyled itself the Department for Justice, Rights and the Constitution. It is the lead department on human rights, elections and referendums, electoral reform, Lords reform, freedom of information, the Crown, and Church and State. In recognition of its lead constitutional role, Andrew McDonald has been

appointed to head a new Constitution Directorate.

The department also looks set to take on tribunals, currently spread among several Whitehall departments. Along with its takeover of the magistrates' courts service, this will increase its total staff from the current 12,000 to around 25,000, and the department's budget is now £3 billion. In February the House of Commons established a new Select Committee on the Lord Chancellor's Department, chaired by Alan Beith MP (see Parliament section above).

People on the move

Robert Behrens, formerly Director of the International Public Service Group in the Cabinet Office, succeeded Sarah Tyerman as Secretary of the Committee on Standards in Public Life on 24 February 2003.

Andrew McDonald has been appointed Director of Constitutional Affairs in the Lord Chancellor's Department, from 3 March 2003.

Elections and Parties

Candidate selection for the 2003 and 2004 elections

The parties have now completed their process of candidate selection for the 2003 Scottish Parliament and National Assembly for Wales elections and the 2004 European and GLA elections. Selection mechanisms have changed over the years with most parties decentralising the process to include membership ballots and others engaging in positive discrimination to encourage female and ethnic minority candidates.

The detail of the selection process is too lengthy to go into here. So, as an example, Labour's European Parliament selection process is outlined.

For 2004, constituencies first operated a 'trigger ballot' for incumbent re-selection. 24 out of 28 incumbents have been re-selected (i.e. a majority of constituency parties in their region supported their re-nomination) with four standing down. The list order of incumbents was then decided on by a separate postal ballot of all party members in the region. Other candidates went through a process of self nomination, interview by a regional panel (set up by the regional board) and placement on a long-list. Their position on the list was also decided by the postal ballot. The process began in July 2002 and the counts were complete by the end of October.

Positive discrimination measures were taken. In the case of incumbents, a woman had to be in 1st or 2nd place. In Wales the two incumbent MEPs were women and topped the Labour list. It was also mandated that a woman had to be at the top of the list for all new candidates, after which the male/female order is zipped.

Independent Commission on Proportional Representation

The Independent Commission on PR will publish its interim report in early April. This comprises a review of the existing evidence on the effects of PR systems and the additional member system (as used in Scotland, Wales and London) in particular. Copies can be obtained from the Constitution Unit. The ICPR website can be found at: www.prcommission.org

Scottish Local Government Elections Bill

The draft Local Governance (Scotland) Bill was unveiled on 4 February 2003 by Deputy Minister for Finance and Public Services, Peter Peacock. It proposes replacing the current first-past-the-post (FPTP) voting system with a single-transferable-vote (STV) regime. Most Labour councillors oppose PR and the Scottish party's ruling executive committee voted to reject electoral reform last July. The draft bill also contains plans to encourage more diversity among councillors, including a reduction in the lower age limit on eligibility for elections to 18. There are also plans to improve financial rewards for councillors and tie pay more closely to responsibility.

Electoral Commission consultations

The Electoral Commission continues to publish a stream of consultation papers. They need rapid feedback because they hope for legislation in 2003-04, to enable changes in electoral law to be in place in time for the next general election.

Consultation papers issued by the Electoral Commission since the last edition of the Monitor are:

- Equal access: A review of access to electoral procedures in the UK (February 2003)
- Review of the Political Parties, Elections and Referendums Act 2000 (January 2003)
- Review of nomination procedures for candidates at elections in the United Kingdom (January 2003)
- Review of ballot paper design (January 2003)
- Election timetables in the UK (January 2003).

Further details are available from the Electoral Commission website
www.electoralcommission.org.uk

Human Rights

Equality legislation

On 14 January 2003 Lord Lester introduced his Equality Bill [HL 19 2003/03] in the House of Lords. The Bill is designed to pull together existing equalities legislation and to establish an Equality Commission for Great Britain to enforce implementation. The Bill proposes requirements that public bodies and employers take measures with a view to making progress towards achieving the goals of the promotion of equality of opportunity, the elimination of discrimination and the promotion of good relations between members of different racial groups. No date has yet been announced for the Bill's second reading.

Consultation on the Government's proposals for changes in equality laws ended on 14 February 2003 (on structural options) and 20 January 2003 (on legislative proposals). Updates on the Department of Trade and Industry's progress on reforms can be found at www.dti.gov.uk/er/equality.

Derogation from Article 3 of the ECHR raised by Blair

On 26 January 2003, speaking on the BBC's *Breakfast with Frost* programme, the Prime Minister raised the real possibility of Britain derogating from its commitment to the European Convention on

Human Rights (ECHR) in order to keep the numbers of people seeking asylum down. He stated that if current measures don't work, then 'we will have to consider further measures, including fundamentally looking at the obligations we have under the convention of human rights'. Article 3 bars the deportation of people to a country where they may suffer inhumane or degrading treatment, or torture. Under the Convention it is impossible to derogate from Article 3 as it is an absolute right, but some lawyers argue that Britain could withdraw from the ECHR completely and then re-enter with a clause attached to Article 3 allowing deportation when the nation was under threat.

EU accuses UK of human rights abuses

The UK was criticised in the European Union's annual report on the state of human rights in the EU (13 January 2003) for the Anti-Terrorism, Crime and Security Act 2001 under which it is possible for non-UK-nationals to be held in indefinite administrative detention without being charged or prosecuted and without access to an appeal in law. It also criticised UK prisons stating that 'sanitary facilities are far below standard'. The report was drafted by Dutch socialist Joke Swiebel with the support of the European Parliament's citizens' rights committee.

Freedom of Information

Consultation on entitlement cards ends

The Home Office consultation on entitlement cards ended on 31 January 2003. The Entitlement Cards Unit is now in the process of analysing the responses received.

The Information Commissioner published his response to the consultation on 13 February 2003. The Commissioner raised a concern about 'function creep', for legislation to 'include stronger effective restrictions against inappropriate demands on an individual to produce their card for inspection by others.' He also stated that any scheme and register should not be administered by a government department but by 'a new independent statutory

body accountable to Parliament for the conduct of its functions'. Richard Thomas concluded that although he is of the view that 'it is not appropriate to take the stance that an entitlement card scheme should never be proceeded with on the grounds that there will always be insurmountable privacy and data protection obstacles... However, [I am] not satisfied that the current proposals would lead to establishing a data protection compliant scheme.'

Unit's first annual Access to Information Conference

The Constitution Unit, in association with Capita, is holding its first Annual Conference on Access to Information for the Public Sector on 14 May 2003. The keynote address will be given by Richard

Thomas, Information Commissioner. For more information on the conference please visit www.ucl.ac.uk/constitution-unit/foidp/index.htm.

Publication schemes

Ten central government organisations failed to meet the deadline of the Freedom of Information Act which required central government departments to put forward Publication Schemes by September 2002.

The programme for introducing publication schemes across all public authorities rolls on. Submissions from the police and prosecuting bodies have been accepted from 1 February 2003, with the final deadline of 30 April 2003. The scheme will go active for these bodies in June 2003.

Constitution & Citizenship Associate Parliamentary Group Events

'Cronyism' with Dame Rennie Fritchie, Commissioner for Public Appointments, and Professor Stuart Weir, Director of Democratic Audit.

Tuesday 8 April, 2003, 18:00, Boothroyd Room, Portcullis House

'Citizenship Education: One Year On' with the Rt Hon Charles Clarke MP, Secretary of State for Education and Skills.

Tuesday 20 May, 2003, 18:00, Boothroyd Room, Portcullis House

'Prime Ministers and Prerogative' with Professor Peter Hennessy, Attlee Professor of British History at Queen Mary, University of London.

Tuesday 8 July, 2003, 18:00, Boothroyd Room, Portcullis House

For further information please contact Tony Wright MP, 020 7219 5583

European News

Convention on the Future of Europe

Drafts of the first 16 articles of the proposed constitution for the EU were published on 6 February. The draft articles, produced by the president of the convention Giscard d'Estaing and his 12 member inner praesidium, deal with the EU's aims, values and powers. However, Peter Hain MP, the UK minister on the convention, was quick to criticise the draft articles, which he insisted contradicted the views of the 105-strong convention. The UK objected to the federal emphasis, while others complained that they had only eight days to table amendments to the draft articles. The convention is expected to produce a full draft in time for the June EU summit in Greece

Project Report—Effective Scrutiny

The Constitution Unit's work on Effective Scrutiny is entering an important phase, with fieldwork being carried out in the National Assembly for Wales, Scottish Parliament and Northern Ireland Assembly during March and April. This work will result in a number of briefings being produced in late spring to early summer examining the committee structure in each body, which will be launched following the May 2003 elections. In the summer, the Unit will be working with selected local authorities on their scrutiny function.

The Unit is also producing a comprehensive bibliography of existing publications on effective scrutiny at all levels of government. The bibliography includes notes on each publication's contents and uses: it will be published in March-April. An in-depth review of literature is also nearing completion.

Useful Recent Publications

Birkinshaw P, *European Public Law*, London, Butterworths LexisNexis, 2003

Blackburn R and Kennon A, *Griffith and Ryle on Parliament*, Andover, Sweet and Maxwell, 2002.

Mitchell J, *The British State and Scottish Politics*, Basingstoke, Palgrave, 2002.

Seidle L, *Electoral System Reform in Canada—Objectives, Advocacy and Implications for Governance*, CPRN, 2002, www.cprn.com/docs/family/esr_e.pdf.

Publication review

Parliament at the Apex

This pamphlet from the Hansard Society aims to take forward a theme developed in the Society's Commission on the Scrutiny Role of Parliament.

An array of independent regulators, commissions and inspectors are responsible for scrutinising the delivery of public services. Parliament is composed of generalist politicians who should be at the apex of this system of scrutiny and should be using their investigations as the basis on which to hold ministers to account.

The pamphlet is timely, since the House of Lords Constitution Committee has begun an enquiry into the accountability of regulators to citizens and Parliament.

There are two important aspects to consider:

- the extent to which regulators are accountable to Parliament, so their administration and activity is scrutinised;
- the extent to which Parliament uses the investigations and evidence published by regulators to hold the Government to account.

The pamphlet follows a seminar held in the summer of 2002 which offered an opportunity to regulators to discuss their often inadequate relationship with Parliament. Some are never asked to give evidence to select committees, and some never have their annual reports acknowledged. The media and pressure groups often appear to be more effective at exploiting the work of regulators than Parliament.

Many public bodies experience difficulties in communicating with Parliament. A comprehensive list of bodies which are required to report to Parliament is not available in Parliament. It is now a core task of select committees to 'take evidence from independent regulators and inspectors', but the committees are still allowed considerable latitude to determine their own work programmes. There are examples of good practice, in that the Treasury Committee has a statutory and formal role in holding the Financial Services Authority accountable, following parliamentary input into the draft legislation. But this was achieved despite Treasury opposition. The report calls for Parliament to take a much more systematic look at regulators.

The Society's main recommendation will remain unimplemented, unless committees of both Houses are prepared to work on a co-ordinated basis. Select committees are already facing heavy workloads and are often failing to scrutinise Non-Departmental Public Bodies within their remit. Since the number of members is finite, extra resources in the form of staff are necessary to help committees reach their objectives.

The pamphlet is short on detail about how to ensure systematic regulation. Gwyneth Dunwoody floated the possibility of an equivalent to the US Government Accounting Office at the pamphlet's launch. Committees cannot 'up their game' simply with specialist advisers, even with the new scrutiny unit in operation. The Public Accounts Committee is effective because it has the resource of the National Audit Office staff behind it. Committees need more access to expert assistance to process information relating to both the structure and work of regulators.

The Constitution Unit is researching the work of a sub-group of regulators—constitutional watchdogs. We are finding a confusing set of ad hoc arrangements, where the role of Parliament has not been properly considered. Many of the newer bodies created after the Nolan report of 1995 are independent in nature, but are staffed by civil servants and have no reporting relationship with Parliament, only to the Government. It is vital for this sub-set of regulators to establish formal accountability mechanisms. This does not mean that Parliament would direct their work programme, or sack unsatisfactory Commissioners. It would give constitutional watchdogs a forum in which to air their concerns and publicise their work. The history of the Comptroller and Auditor General provides some reassurance that a formal relationship with Parliament need not involve submitting to political pressure. New Zealand has a parliamentary committee whose remit is to ensure that its constitutional Officers of Parliament are recognised as independent, but yet subject to scrutiny. It is time to take stock and produce equivalent arrangements for the UK.

Brazier, A, *Parliament at the Apex: Parliamentary Scrutiny and Regulatory Bodies*, Hansard Society, 2003, ISBN 0 900432 96 9, £7.50. Available from the Hansard Society, hansard@hansard.lse.ac.uk

Bulletin Board

Forthcoming Unit Events

For a free place at unit events, please contact Matthew Butt on 020 7679 4977. Unless indicated, all events take place at The Constitution Unit, 29–30 Tavistock Square, London, WC1H 9QU. A location map can be found at www.ucl.ac.uk/constitution-unit/map

Seminar: Lords Reform—the task now facing the Joint Committee on Reform of the House of Lords

Chris Bryant MP Lab: Rhondda, and member of the Joint Committee
Monday 7 April, 2003, 13:00

Seminar: Directly Elected Mayors—One Year On

Professor Gerry Stoker University of Manchester

Steve Bullock Mayor of Lewisham
Monday 12 May, 2003, 13:00

Seminar: What future is there for the European Parliament?

Nick Clegg MEP
Thursday 12 June, 2003, 13:00

Seminar: The new constitutional role of the Lord Chancellor's Department

Sir Hayden Phillips GCB Permanent Secretary, Lord Chancellor's Department
Monday 14 July, 2003, 18:00

Access to Information Conference 2003

Wednesday 14 May, 2003, Copthorne Tara Hotel, London

Contact: Penny Creed at Capita:
peeny.creed@capita.co.uk
www.ucl.ac.uk/constitution-unit/foidp
www.capitaconferences.co.uk

New Unit Publications

For a full list of Constitution Unit publications please see the unit's order form, or phone 020 7679 4977.

Cook M, *The Public Interest Test in Section 2 of the Freedom of Information Act 2000*, London, The Constitution Unit, 2003, ISBN 1 903903 20 3, £15

Greer S and Sandford M, *Fixing London*, London, The Constitution Unit, 2003, ISBN 1 903903 17 3, £5

Hazell R ed., *The State of the Nations 2003*, Thorverton, Imprint Academic, 2003, ISBN 0 907845 49 5, £15

King S, *Regulation of the Civil Service*, London, The Constitution Unit, 2003, ISBN 1 903903 21 1, £8

Sir David Steel, *Achievements of the Scottish Parliament: The State of the Nations Annual Lecture*, London, The Constitution Unit, 2003, ISBN 1 903903 19 X, £5

Devolution: Conference on the Next Four Years

On 1 May the Scottish Parliament and National Assembly for Wales go to the polls. A month after the elections the Unit is planning to hold a one-day conference to look ahead at the agenda in Scotland and Wales over the whole of the devolved assemblies' second term, from 2003 to 2007.

We are planning the conference in Cardiff in conjunction with the Institute for Welsh Affairs, and in Edinburgh with the Scottish Council Foundation and the Hansard Society.

For further details please contact m.butt@ucl.ac.uk.

www.ucl.ac.uk/constitution-unit

SCHOOL of PUBLIC POLICY
29–30 Tavistock Square
London WC1H 9QU



constitution@ucl.ac.uk
phone 020 7679 4977
fax 020 7679 4978