

Constitutional Battles Ahead

The Queen's Speech on 26 November included two constitutional bills from the Department for Constitutional Affairs: one on the next stage of Lords reform, and the second to establish a new Supreme Court and Judicial Appointments Commission, and abolish the office of Lord Chancellor. Unlike the Labour government's previous constitutional reform measures, both these bills face a difficult passage.

The Lords Reform Bill will remove the remaining 92 hereditary peers, and creating a statutory Appointments Commission (see page 2). The new Commission would in future appoint all members of the House of Lords, although the majority would be nominated by the political parties. In the Commons the opposition will focus mainly on the absence of an elected element: the shambolic votes in February 2003 showed that a preponderance of MPs favour an elected element, even though none of the individual options commanded a majority.

In the Lords the focus will be on the hereditary peers, who were left in place under the Cranborne/Irvine bargain in 1999. Irvine promised at the time that they 'will go when stage two has taken place and their presence is a guarantee that stage two will take place'. As the current reforms do not amount to stage two, the accusation will be that the hostages are now being shot. This accounts for the very rare event of the House of Lords voting for an amended motion on the Queen's Speech. The contribution of the remaining hereditaries is particularly valued in the Lords, especially on the cross benches, and as chairmen of committees.

The Bill on the Supreme Court and judicial appointments should have an easier passage, but it has aroused a lot of concern amongst the judges. This is reflected in the responses of the law lords and the Judges' Council (see **Supreme Court Faces Fight**, page 5). Many judges would prefer the Executive to have no involvement in the appointment of senior judges. Others would severely curtail ministers' discretion, by requiring the Judicial Appointments Commission to submit a shortlist of one.

The Judicial Appointments Commission and House of Lords Appointments Commission will be important new constitutional watchdogs. There is a naïve belief amongst some that these constitutional guardians can somehow be detached from the political process. They cannot, and should not. The senior judges and members of the House of Lords wield significant political power. The body which appoints them must itself be made properly accountable. The government recognised that, in proposing that the Lords Appointments Commission should be directly accountable to Parliament. The Constitution Unit has made detailed suggestions how that could work in practice (see new publication below).

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Unit Publication: Next Steps in Lords Reform

Russell M & Hazell R. *Next Steps in Lords Reform: Response to the September 2003 White Paper*. 2003, Constitution Unit, London. ISBN 1 903903 25 4, £8

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Constitutional Bills in the Queen's Speech 2003

Bill	Purpose
Constitutional Reform Bill	To abolish Lord Chancellor and establish Supreme Court and Judicial Appointments Commission
European Union Bill	To permit ratification of the proposed EU constitution
European Parliamentary and Local Elections (Pilots) Bill	To permit voting innovations in the 2004 European and local elections
House of Lords Bill	To remove final hereditary peers from House of Lords
Justice (Northern Ireland) Bill	To establish a Judicial Appointments Commission for Northern Ireland
Public Audit Wales Bill	To establish a single public audit body for Wales
Scottish Parliament (Constituencies) Bill	To keep the same number of MSPs in the Scottish Parliament
Draft Single Currency (Referendums) Bill	A draft bill to permit a referendum on the UK joining the Euro
Draft Identity Cards Bill	To create a national register and powers to introduce compulsory ID cards

Parliament

Next Steps in Lords Reform

On 18 September 2003 the Department for Constitutional Affairs published a new white paper (the government's third) on Lords reform: *Constitutional Reform: Next Steps for the House of Lords* (CP 14/03). This set out proposals to remove the remaining hereditary peers and create a statutory Appointments Commission.

Although the intention to cement the all appointed House had already been made clear, the paper included some surprising elements of conservatism. In particular it assumed that upper house members would continue to be peers appointed for life, whereas previous proposals had envisaged breaking the link with the peerage and introducing fixed terms. The Appointments Commission will be statutorily required to take account of the most recent general election results when allocating seats between the parties, and will have control over the size of the House. This represents a significant diminution of Prime Ministerial patronage. However, as The Constitution Unit's new briefing points out, difficulties will arise unless the detail of this is clearly thought through. In particular, the suggestion in the White Paper that some account might be taken of number of seats won in the Commons (as

well as votes cast) would not be manageable in practice: the strain between containing the size of the House and achieving party balance would simply be too great. It is also important that the arrangements for accountability of the Appointments Commission are correctly managed, if it is to win public respect. And the crossbenchers will need to be compensated for the loss of their hereditaries—who make up half of their most active members in terms of votes.

The politics of the situation are interesting. The White Paper received a cool reception in both Houses. Undoubtedly one of the motivating factors for evicting the hereditaries is to reduce the proportion of Conservatives in the House, particularly given the difficult passage of some flagship bills at the end of the 2002–3 session. But negotiations will be hard, and one price paid may be that most of them are offered life peerages. One likely site for negotiation is a renewed Joint Committee on House of Lords Reform, as the previous one expired at the end of the session. An exchange of letters between its chair and the Lord Chancellor suggested that a new committee will be created, and may be given the task of considering the bill in draft.

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Changes to Lords Membership

On 20 September 2003 the Leader of the House, Gareth Williams, died suddenly aged 62. Lord Williams was well liked and respected in the House and the shock of his death was felt around Westminster. He was replaced as Leader by Baroness Amos, previously International Development Secretary.

The death of hereditary peer Lord Milner of Leeds led to the second by-election amongst hereditary members, as laid down in the House of Lords Act 1999. This drew even more ridicule than the last such event (see *Monitor* 22). Lord Milner sat on the Labour benches, so the electorate for his replacement comprised the other Labour hereditaries, a group of just three members. The chosen successor was Lord Grantchester, by 2 votes to 1: there were eleven candidates. Another first was the appointment of Dame Brenda Hale as a new Law Lord, the first woman ever to hold the position.

The Prime Minister has indicated to the Appointments Commission that he would like them to propose a ‘small number’ of new independent peers. Only one such group has been appointed so far—to much controversy—in April 2001. Far more controversial, however, is the rumour circulating Westminster that there is soon to be a new batch of political peers. Although there is a long list of potential Lords in waiting, the prospect of new political appointments whilst the new House of Lords Bill is under consideration would clearly conflict with the spirit of the Government’s proposals to end prime ministerial patronage.

Commons Committee on Constitutional Affairs

Following the establishment of the new Department for Constitutional Affairs, the Lord Chancellor’s Department Committee has been renamed the Constitutional Affairs Committee. This was a very new committee, having been established in January 2003. Given the Department’s responsibility for ‘overall government policy on devolution’, it is noteworthy that all the committee’s members represent constituencies in England. On 16 September 2003 the committee took evidence from the Lord Chancellor about his role and that

of the new department. In autumn 2003 it launched an inquiry into the government’s plans for a new Supreme Court and Judicial Appointments Commission.

Salaries for Select Committee Chairs

On 30 October the House of Commons voted to recognise the work of select committee chairs by paying them an additional salary of £12,500 on top of their standard MPs’ pay. This followed an in principle vote in May 2002 that the matter should be referred to the Senior Salaries’ Review Body (SSRB). The change comes into force from the start of the 2003–4 session.

Various groups, including the Hansard Society Commission on Parliamentary Scrutiny, had proposed that select committee chairs should be paid a salary, in order to create a different career path and set of incentives for MPs through parliamentary work. This was one of the central arguments of those supporting the reform. However, the change was contested, with the select committee chairs themselves split over the issue. One of the main criticisms in debate was that the original package had included a new system of nomination for select committee members that would have taken these appointments out of the gift of the whips. Payment of salaries without this other reform, it was argued, simply increased the whips’ patronage.

Another difficult question is where the line is drawn between those who should receive additional salaries and those who should not. The Modernisation Committee had argued that salaries should apply to departmental scrutiny committees and selected other committees, but not domestic committees. The SSRB followed this lead, but omitted the Procedure Committee chair. Many members argued that the members of the Chairman’s Panel (who chair standing committees) are unsung heroes and need incentives far more than do select committee chairs, whilst others argued the case for shadow ministers. It seems that the reform has opened the way for many future debates on differential salaries at Westminster, and difficult questions about the value of different parliamentary duties.

The Speakership of the House of Lords

The Speakership of the House of Lords Committee published its first report on 18 November 2003. The Committee was established to consider future arrangements for the Speakership of the House, following the government's announcement that it intended to abolish the position of Lord Chancellor.

The committee recommended that the speaker should be elected by means of the alternative vote for five year renewable terms. Once elected, the speaker should "give up party politics for life". They recommended that the title of the speaker should be 'the Lord Speaker' as it is now, rejecting suggestions that the title 'Lord Chancellor' should be revived for this position.

The committee believed that the House should continue with 'self-regulation' whereby the Lord Speaker has no power to rule on matters of order. However, the committee recommended that some of the powers held by the Leader of the House should be transferred to the Lord Speaker, such as the decision to allow Private Notice Questions.

Supreme Court Faces Fight

The senior judges are gearing up for a battle over the government's plans for a new Supreme Court and Judicial Appointments Commission. Only four of the twelve law lords—Lord Bingham (the senior law lord), and Lords Steyn, Saville and Walker—support the new Supreme Court. Six of them (Lords Nicholls, Hoffman, Hope, Hutton, Millet and Rodger) have come out against. They argue that having the top judges sitting in the House of Lords is of benefit to the judges and to the legislature. The House of Lords has a fine reputation internationally, and "the cost of the change would be wholly out of proportion to the benefit".

The law lords in favour support Lord Bingham in maintaining that "the functional separation of the judiciary at all levels from the legislature and the executive as a cardinal feature of a modern, liberal, democratic state governed by the rule of law". The division of views will become evenly balanced at 5:5 when Dame Brenda Hale succeeds Lord Millet in January 2004 (with the two remaining law lords undeclared).

The Judges' Council, headed by Lord Woolf, the Lord Chief Justice, support the creation of an independent Commission to replace the Lord Chancellor's role in appointing judges, but want to remove ministers from the process altogether. They are particularly concerned at the abrupt decision to abolish the office of Lord Chancellor, whom they regarded as their main bulwark against political interference. Their demands include putting all government ministers (and not just Lord Falconer) under a duty to safeguard judicial independence; leaving training, discipline and transfer of judges to the judiciary; and keeping the right for four senior judges (the heads of division) to speak in the House of Lords.

Safeguarding the Civil Service

The government has rejected several core recommendations from the Committee on Standards in Public Life (chair Sir Nigel Wicks) in their April 2003 report on *Defining the Boundaries within the Executive* (Ninth Report, Cm 5775). In their response (Cm 5964, September 2003) the government rejected setting a limit on the number of Special Advisers, and rejected defining Special Advisers as a new category of government servant distinct from the Civil Service. The Wicks Committee signalled special concern that some of the government's proposed amendments to the Code of Conduct for Special Advisers would actually increase the power of Special Advisers over civil servants.

The government appear to favour giving ministers the selection decision in the

People on the Move

A minor reshuffle followed the death of **Lord (Gareth) Williams**, leader of the House of Lords (see page 3). **Baroness (Valerie) Amos** replaced Lord Williams as leader, with **Hilary Benn** promoted to the Cabinet to take Baroness Amos's place at the Department for International Development.

Dame Brenda Hale has been appointed as the first ever female Law Lord, to take up her position in January 2004.

A replacement is being recruited for **Professor David Feldman**, legal adviser to the Joint Committee on Human Rights, who is returning to academic work.

recruitment of senior civil servants by open competition, which ministers currently have when there is an internal trawl. This is to be discussed with the Civil Service Commissioners. It was one of the main topics addressed at a half day conference organised by the Constitution Unit on 29 October 2003, in conjunction with the Wicks Committee, the Civil Service Commissioners, the Public Administration Select Committee and the First Division Association (the trade union for senior

civil servants). The conference was addressed by Sir Andrew Turnbull, Head of the Home Civil Service. Baroness Prashar, First Civil Service Commissioner, and Sir Nigel Wicks both expressed concerns about the risks of politicisation of the civil service. The talks given at the conference can be found at www.parliament.uk/parliamentary_committees/public_administration_select_committee.cfm

Devolution

Scotland

The policy agenda for the last quarter in Scotland was distinct from that south of the border. However, there was some overlap: matters such as identity cards and foundation hospitals are figuring prominently north of the border. In health, differences exist also in terms of rhetoric—with the Health Minister refusing to refer to patients as ‘customers’. This suggests divergence without major disputes in devolutionary politics. An issue which has caused problems across Britain and was of significance this quarter was the provision of accommodation for asylum seekers as well as the education of their children. Though asylum is a reserved matter, the issue has a devolutionary dimension as education is a devolved matter.

The other significant event was the challenge to John Swinney’s leadership of the Scottish National Party. A relatively unknown party activist challenged Swinney resulting in a drawn-out campaign over the summer which culminated in a massive victory for Swinney at the SNP’s annual conference. In the event, the effort to undermine Swinney, which might have led to a more serious challenge him next year, proved to strengthen his leadership. However, the SNP leader’s position may again be questioned depending on how well his party performs at next year’s European Parliament elections.

Wales

The fragility of Welsh Labour’s majority in the Assembly was demonstrated at the end of November 2003 when it failed to secure backing for its plans to improve health and social care. Due to the illness of Carl Sergeant AM (Alyn & Deeside) and the opposition of the

Deputy Presiding Officer (independent John Marek), the Assembly tied 29 to 29 on a government motion to approve the plans. The Presiding Officer, Lord Elis-Thomas, then used his casting vote to oppose the motion, acting in accordance with standing orders.

Though the issue will be brought back to the Assembly as soon as Labour can be sure of its majority, this episode was a further sign that the Welsh Assembly Government is losing its grip on health policy, the biggest and most important function for which it is responsible. Faced with mounting problems it is falling back on good intentions around long term plans rather than facing up to immediate problems. Most pressing is waiting lists—more than 12,000 people waiting more than a year for treatment in Wales compared with only a handful for the whole of England.

Welsh Labour MPs at Westminster are losing patience. During the Assembly’s first term they held back criticism, wanting to give the Labour administration in Cardiff a fair wind. Now, however, they are giving voice to mounting concern. Gareth Thomas MP (Clwyd West) declared, “For the sake of political correctness, the Assembly has set its face against initiatives which are being used in England quite successfully, such as private finance and, in time, Foundation Hospitals. People are going to realise the health service in England is improving much faster than the health service in Wales.”

These comments came in the week the Assembly Government published its response to a wide-ranging examination of the Welsh health service’s problems which it had commissioned from its own civil servants. They were advised by Derek Wanless, the

business and finance expert who earlier had produced a report on NHS spending needs for the Chancellor Gordon Brown. The Welsh ‘Wanless’ report found that excessive emergency admissions to Welsh acute hospitals are clogging up bed space and directly causing the lengthening waiting lists. At the other end of the process patients are not being transferred quickly enough out of acute hospitals into social care.

Health Minister Jane Hutt’s response, published in November, was immediately criticised. As the Cardiff Central Labour MP, Jon Owen Jones, put it, “There are very few clear commitments to action. Incredibly the clearest evidence of problems in delivery, the waiting times, are not mentioned in the response.... The Welsh Assembly may find itself forced by the courts into this action unless it takes it willingly. The Health Service in Wales may be approaching the point where it becomes legally unsustainable.”

Northern Ireland

In more optimistic, post-Belfast-agreement, times, Seamus Heaney wrote lyrically of the ‘rhyme’ of ‘hope and history’. More like ‘hype and history’, said the wags, after the latest, much-flagged ‘historic’ day in Northern Ireland collapsed in failure to end the year-long suspension of devolution arising from the mistrust between most Ulster Protestants and the IRA.

A ‘choreography’ of statements and events involving the Ulster Unionist leader, David Trimble, the Sinn Féin president, Gerry Adams, the IRA, the Independent International Commission on Decommissioning, and the governments in London and Dublin was meant to roll out on 21 October 2003, to renew power-sharing embracing republicans.

Downing Street announced the election date of 26 November, and there were further warm words from Mr Adams, echoed by the IRA. But the cold steel put ‘beyond use’ by the latter was shrouded in uncertainty, with a lacklustre report by the IICD head, Sir John de Chastelain. Despite a dozen prior meetings having taken place between Messrs Trimble and Adams, the former declared himself unsatisfied with the scenario as it unfolded. Tony Blair and his counterpart, Bertie Ahern, found themselves

limiting the damage rather than trumpeting their achievement.

The hard-line Democratic Unionist Party was left able to present Mr Trimble as a credulous patsy. SF was allowed to take over representation of Northern Ireland’s Catholics without a vote being cast. The SDLP was enraged, while the non-sectarian parties were marginalised once again.

The UK government had insisted all along that an election without a deal allowing renewed devolution would be pointless. The *Irish Times*’ London editor cynically suggested that the prime minister had ensured, by insisting the election would still go ahead, that if it was a mess it would be ‘the people’s mess’.

The UUP leader tacked to his ‘no’ camp to present a nominally united front to anxious Protestant voters: a ‘charter’ for all candidates moved the party into a ‘non-agreement’ position. The SDLP went beyond the agreement to compete with the more nationalistic SF, demanding a vote (however unwinnable) on a united Ireland in the next assembly term. The long-anticipated review of the agreement loomed, having been targeted for December by the two governments.

Project News: Nations and Regions: the dynamics of devolution

The Unit’s five-year research programme on devolution, ‘Nations and Regions’, funded by the Leverhulme Trust, is entering its final year. The main programme outputs will be three edited books, available in late 2004 and 2005. The first book will focus on inter-governmental relations in the UK (edited by Alan Trench), the second on the place of England in a devolved system (edited by Robert Hazell) and the third on elite and mass level attitudes and identities (edited by John Curtice and Ben Seyd). In addition, the programme is also planning conferences and seminars in 2004 to report the research findings. Further details will be set out in the next Monitor, and will be available on the programme website: <http://www.ucl.ac.uk/constitution-unit/leverh/index.htm>

Stop press: Northern Ireland election report

The Northern Ireland elections, held on 26 November, produced the anticipated stalemate, with big gains for the DUP and Sinn Féin. The anti-agreement Democratic Unionist Party picked up 30 seats, with the Ulster Unionist Party down one at 27. Sinn Féin eclipsed the SDLP, their nationalist rivals, with 24 seats to the SDLP's 18. The Alliance Party retained its six seats, with two small unionist parties and one independent taking the remaining three.

The DUP immediately signalled its intention not to form a government with Sinn Féin as long as the IRA retains arms. The Good Friday Agreement requires that the First and Deputy First Minister be drawn from the largest unionist and nationalist parties (DUP and Sinn Féin). At the time of writing the DUP leadership had begun negotiations with the Secretary of State for Northern Ireland on issues around the Agreement.

English Regions

The government launched its information campaign at the beginning of November 2003, designed to raise public awareness of its proposals for elected regional assemblies. At events across the three northern regions, the Deputy Prime Minister dubbed 2004 the year of the Great North Vote. Fleet Street had one of its occasional spasms of interest in the English regions, but expressed almost universal disdain for the proposals.

Yes and No campaigns continued to take shape across the North. The No campaigns in the North West and Yorkshire will be led by former Conservative MPs, Sir David Trippier and John Watson respectively. No figure of equivalent stature has emerged in the North East, where the main No voice continues to be self styled 'metric martyr', Neil Herron. The North West Yes campaign already counts the support of Sir Alex Ferguson, but senior Labour MPs there have declared their opposition to an assembly.

The National Audit Office issued a report on the activities of Regional Development Agencies (RDAs), which, among other things, suggested that too many Whitehall targets were

hampering the ability of RDAs to deliver genuine regional strategies.

Sir Michael Lyons, who is undertaking a review of the relocation of public sector activities in London and the South East to other parts of the UK, published his interim report. Although chiefly concerned to find cost savings for central government, Sir Michael indicated his intention to find ways for his review to add to the governance capacity of regions and to avoid a narrow focus on the relocation of back office jobs.

The Boundary Committee for England has completed its review of local government structures in two tier areas in the three northern regions. In each region, one of the options was a pattern of unitary counties. Three options were offered in Lancashire, Cheshire and Durham, and four in North Yorkshire. Most other options consisted of amalgamations of district councils, though some of the options in Lancashire provided for expansion of existing unitary authorities in Wigan, Sefton, Blackburn and Blackpool.

Although the legislation of the Regional Assemblies (Preparations) Act means that in theory a No in any of the northern regions would end the process of local government reform, the appetite for it across the north appears to be growing. Those involved in the current process appear to believe that the case for local government reform may become unstoppable, irrespective of the debate about regional assemblies.

State of the Nations Annual Lecture

27 January 2004, 18:00, Church House, Westminster

Speaker: Peter Hain MP: Leader of the House of Commons and Secretary of State for Wales

The Annual Lecture will launch the Unit's annual edited volume, ed. Alan Trench, *Has Devolution made a difference? The State of the Nations 2004*, Imprint Academic, Exeter, 2004

For an outline of the book, see page 11.

The Centre

In the Queen's Speech the government announced plans to introduce the Scottish Parliament (Constituencies) Bill which will legislate for the retention of 129 MSPs in the Scottish Parliament (see table, page 2). Combined with the government's commitment to reduce the number of Scottish MPs at Westminster, this decision means that the current link between Westminster and Holyrood constituencies will be broken. Such a move will have implications for electoral politics in Scotland prompting the Scottish Affairs Committee at Westminster to launch an inquiry into the issue.

The West Lothian Question surfaced over the government's controversial plans for foundation hospitals. The proposals only extend to England, although technically the Bill is an 'England and Wales Bill' (but one provision applies to the whole of the UK). The government defeated an amendment against foundation hospitals by 17 votes on 19 November. 44 Labour MPs from Scotland and 24 Labour MPs from Wales supported the

Events outside the Unit

Robert Hazell, 'Has Devolution Made a Difference?', Public Management and Policy Association Lecture 2004, 4 March 2004, at 3 Robert Street, London.

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government. The Conservatives complained that if only MPs representing English constituencies had voted the government would have lost the division by 17 votes.

In preparation for the forthcoming plenary session of the Joint Ministerial Committee (JMC), the Heads and Permanent Secretaries of the devolved administrations and heads of the territorial offices in Whitehall met on 31 October. JMC (Europe) met on 4 October. The Finance Ministers of the UK Government and the devolved administrations also met on 24 October to discuss economic performance, development agencies, PSA targets, EU Structural Funds, the 2004 Spending Review and the Public Sector Borrowing Requirement. The British-Irish Council held its fifth Summit meeting on 28 November in Cardiff.

On 9 September, the Scottish Secretary, Alistair Darling announced plans to reorganise the Scotland Office. 31 jobs are being lost, along with Scotland Office accommodation in Glasgow, amounting to £1.7 million savings to running costs.

People on the Move

Belinda Crowe has replaced **Mark Taylor** as Divisional Manager at the Devolution Policy Unit in the new Department for Constitutional Affairs.

The East Midlands Assembly has a new chief executive, with **Nigel Rudd** taking over from **Barry Horne** in August 2003.

Elections and Parties

Shadow Cabinet breaks with tradition

The new Conservative leader, Michael Howard, was confirmed as the winner of a one-candidate race on 6 November 2003. This followed the events of the evening of 29 October, when the previous leader, Iain Duncan Smith, lost a vote of confidence by 90 votes to 75. A number of senior party members, who had been expected to challenge for the leadership, ruled themselves out at an early stage, leaving the road free for Howard.

The most surprising facet of the new leadership was Michael Howard's decision to appoint a slimmed-down shadow cabinet of

only 12 members. The majority of the new shadow cabinet are familiar names, with David Curry the only new addition. Howard stated that he did not believe that the Shadow Cabinet needed to exactly mirror the Government's shape.

On constitutional affairs, David Davis has been appointed to shadow both the Department for Constitutional Affairs and the Home Office, with Alan Duncan as the shadow Secretary of State for Constitutional Affairs. Elsewhere, David Curry has taken on the portfolio of 'Local and Devolved Government', shadowing the Office of the Deputy Prime Minister and the former Scotland and Wales Offices. His deputies are Eric Pickles (local government), Bernard

Jenkin (regions), David Lidington (Northern Ireland), Peter Duncan (Scotland), and Bill Wiggin (Wales).

Political parties

The Commission on Candidate Selection, hosted by the Electoral Reform Society, has issued its report. Written by the Commission's Chair, Peter Riddell of the *Times*, the report documents the unrepresentative nature of elected representatives in local and central government. The Commission recommends a basket of measures to improve the situation, including financial help to cover the cost of training aspiring candidates, a code of good practice for the parties and more permissive legislation to allow for positive discrimination. The Commission also raised the possibility of a more legalistic route, via the imposition of quotas, although it preferred to focus on voluntary mechanisms for the time being.

One option considered by the Commission to strengthen the legitimacy of election candidates was the use of primaries. The Conservatives are already experimenting with primary elections to choose their parliamentary candidates. An 'open' primary was held in mid-November in Warrington, in which all local voters were allowed to participate. 350 voters turned up to hear the three shortlisted candidates speak at a hustings, and then cast their ballot; roughly half of these are believed to be non-party members. A further primary will be held shortly in Reading East, although only those people who express support for the party

will be eligible to vote. Other constituency associations are currently toying with the use of primaries.

See www.electoral-reform.org.uk and www.prcommission.org

Electoral administration

The government is pressing ahead with further pilots of new voting schemes in next year's European Parliament and local elections (see table, page 2). The legislation currently before Parliament would allow for further trials of all-postal and electronic voting. The aim of the pilots—which began in spring 2002—is to allow for new methods of voting to be used at Westminster elections, sometime after 2006.

Local Governance (Scotland) Bill

This Bill, which will introduce the Single Transferable Vote system (STV) for Scottish local government, is likely to be published by the Scottish Executive in December 2003. The draft Bill proposes that the number of councillors per ward should be limited to 3 or 4. The Bill is expected to become law by the 2004 summer recess.

The Scottish Executive has recently published the responses to the public consultation on the Bill. Out of 187 submissions 85 (45%) advocated keeping first-past-the-post whilst 71 (38%) advocated STV. Many also commented that the proposed number of members per ward would not work in rural areas and therefore advocated a more flexible system.

Freedom of Information and Data Protection

Meeting the 2005 deadline

Work on preparing for January 2005 intensified in the last quarter of 2003.

Many public authorities are still focused on preparing publication schemes for the rolling deadlines between now and January 2005. Health Sector publication schemes were approved by the Information Commissioner in October 2003, and the Education Sector and "other bodies" (NDPBs not covered by the Open Government Code and publicly owned companies) are preparing for schemes to go live in February 2004.

Agencies with lead responsibility for implementing freedom of information have increased efforts to make guidance available to the public sector.

The Information Commissioner's Office (ICO) published guidance on the request process and has promised that guidance is forthcoming on sections 40 (personal information), 41 (in confidence exemption), and 42 (legal professional privilege) of the FOI Act. The ICO has finally launched its new website. The Office has begun detailed work on a case management system and ICO staff have visited Australia to observe FOI in practice.

The Department for Constitutional Affairs has established a project board to oversee the next crucial 12 months in the lead up to January 2005. Robert Hazell is a member of the board, which will oversee the monitoring of the progress of key tasks related to the implementation of the Act. Work continues slowly on the development of guidance on exemptions, including guidance on commercially sensitive information and the public interest test.

The Local Government Association has contracted the Constitution Unit to rewrite the 2001 practical guide to FOI for local authorities. The LGA and the Unit are working with local authority representatives and the guide will be completed in January 2004. See www.ucl.ac.uk/constitution-unit/foidp

Identity Cards and the creation of a National Identity Register

On 11 November 2003 the Home Secretary announced to Parliament that the Government has decided in principle to introduce a national identity card scheme following the consultation paper published in July 2002. Draft legislation will be introduced to lay foundations for the scheme. The government has stated that it wishes to proceed incrementally. Phase one would include issuing biometric identifiers through the renewal of passport and driving licences. As soon as a database is available, identity cards will be issued to EU and foreign nationals seeking to remain in the country. The cards will include basic personal information, a digital photo and a 'biometric' which could include facial recognition, iris scans or fingerprints.

If the conditions are right, this first phase could then be followed by a move to a compulsory card scheme in which it would be compulsory to have a card, though not to carry one, and to produce a card to access public services in ways defined by those services. The legislation will allow the cards scheme to be used by any service, public or private, to establish identity with the consent of the cardholder, but with strict limits on the information available. Only Parliament would be able to change the statutory purposes of the scheme.

The cards will be linked to a national secure database which will contain the data from the card and be able to use the biometric data to confirm identity. The database would be built from scratch as people are issued with identity cards and would not rely solely on other sources of data which may have historical or other errors. However, before an entry is confirmed, it would be checked against other databases such as passports, driving licences and immigration records. Data held on the National Identity Register will be basic identity information such as name, address, date of birth, gender, immigration status and a confirmed biometric. The police and other organisations will not have routine access to data stored on the National Identity Register.

For more information on the Government's proposals see www.homeoffice.gov.uk/comrace/identitycards/index.html

People on the Move

Andrew Ecclestone, FOI Implementation Officer in the Department for Constitutional Affairs, is leaving to study in New Zealand.

Constitution Unit News

Hayden Thomas joined the Unit on 27 October 2003. Hayden will be working with Meredith Cook and Lucinda Maer supporting the team's work on Freedom of Information and Data Protection.

On 20 September **Lucy Scott** and **Emma Wild**, both part-time administrators, left the Constitution Unit.

Barry Winetrobe, the Unit's part-time Senior Research Fellow on devolution and the law, has been offered a lectureship in Public Law at the University of Glasgow, beginning in January 2004. Barry will continue to be involved as a partner on several of the Unit's projects.

The Constitution Unit ran its first ever internship programme over the summer of 2003. Seven interns were taken on for between one and three months to assist on a variety of projects, including House of Lords reform, devolution, and effective scrutiny.

Publications

Has Devolution made a difference? The State of the Nations 2004

This year's State of the Nations marks a departure from previous volumes. Instead of providing a chronology and analysis of the last year, it attempts to evaluate the overall impact of devolution given the completion of the first full term of the devolved institutions. In asking 'has devolution made a difference?' the book looks at how devolution has affected the politics and the constitution in Scotland, Wales and Northern Ireland. Importantly it also looks at how devolution has affected public policy in the UK, showing how policy divergence is becoming a part of UK politics.

It also looks at the impact of devolution on Westminster and Whitehall—assessing how they have responded to devolution and how their responses have affected the devolved institutions. The book also tackles the issue of devolution within England, with a chapter assessing the impact of devolution to London in the form of the GLA, and one looking at the

debate on English regionalism, asking where England fits in with the wider arrangements for devolution in the UK. It also examines how public opinion has changed over the course of the first full term in Scotland, Wales and the UK as a whole.

Unit Project: Effective Scrutiny

The Effective Scrutiny project is producing a number of outputs. A report on scrutiny in the devolved institutions, *Scrutiny Under Devolution*, was launched in Cardiff on 5 November 2003, and was well received by an audience of some 60 policy-makers, Assembly Members, and committee clerks. The findings of the project's research on local authorities will be launched in February 2004.

Sandford M & Maer L. *Scrutiny under Devolution: committees in Scotland, Wales and Northern Ireland*. 2003, London, The Constitution Unit. ISBN 1 903903 24 6

Useful Recent Publications

Banner C & Deane A. *Off with their Wigs! judicial revolution in modern Britain*. 2003, Exeter, Imprint Academic. ISBN 0 907845 84 3

Blacksheild T & Williams G. *Australian Constitutional Law and Theory: commentary and materials (Third Edition)*. 2002, Sydney, The Federation Press. ISBN 1 86287 422 0

Centre for Public Scrutiny. *The Scrutiny Map*. 2003, London, IdeA. ISBN 0 7488 9285 8

Goodhart W & Tyler P. *Britain's Democratic Deficit: constitutional reform—unfinished business*. 2003, London, Centre for Reform. ISBN 1 902622 45 6

Keating M, Loughlin S, Deschouwer K, *Culture, Institutions and Economic Development*. 2003, Cheltenham, Edward Elgar. ISBN 1 84064 701 9

McLean I & McMillan A. *New Localism, New Finance*. 2003, London, New Local Government Network

Political Quarterly 74:4: special issue on *Welfare and Devolution: Constitutional Reform and Public Policy-making*. 2003, Oxford, Blackwell

Travers T. *The Politics of London*, Palgrave, Basingstoke, 2004, ISBN 0 333 96099 8

Williams G. *A Bill of Rights for Australia*. 2000, Sydney, University of New South Wales Press. ISBN 0 86840 610 4

Williams G. *Human Rights under the Australian Constitution*. 2002, Melbourne, OUP. ISBN 0 19 554111 1

BulletinBoard

Useful Websites

New Department for Constitutional Affairs website www.dca.gov.uk

New Information Commissioner's Office (ICO) website www.informationcommissioner.gov.uk

New Centre for Public Scrutiny website www.cfps.org.uk

New Federal Trust website www.fedtrust.co.uk

Campaign for a positive vote in the referendum on a North-East Regional Assembly www.yes4thenortheast.com

Constitution Unit Events

Unless otherwise indicated these events are at the unit. Places are free and can be booked on line at www.ucl.ac.uk/constitution-unit/events or by contacting Matthew Butt, m.butt@ucl.ac.uk, 020 7679 4977

Joint Seminar with Democratic Dialogue

Is STV in Northern Ireland Part of the Problem? What would be a better voting system?

Dr Sydney Elliott, Queen's University Belfast, Prof David Farrell, University of Manchester, Prof Donald Horowitz, Duke University, USA, Dr Benjamin Reilly, Australian National University
10am, Monday 19 January

The State of the Nations Annual Lecture

Rt Hon Peter Hain MP, Leader of the House of Commons and Secretary of State for Wales
6pm, Tuesday 27 January, Church House, Westminster

The Constitution Unit Seminar Series

Reforming the Lords: will the Bill pass?

Rt Hon Robin Cook MP and Lord Oakeshott of Seagrove Bay
6.15pm, Monday 9 February

Designing a New Constitution for Europe

Rt Hon Denis MacShane MP, Minister of State, Foreign and Commonwealth Office
1pm, Tuesday 30 March

Does the Welsh Assembly Need More Powers?

Lord Richard: Chair of the Commission
1pm, Wednesday 21 April

The Benefits of Freedom of Information

Judge Anand Satyanand, New Zealand Ombudsman
6.15pm, Wednesday 19 May

The Future of the Law Lords

Rt Hon Dame Brenda Hale
6.15pm, Thursday 10 June

London Votes: For What? The challenges facing the new GLA

Tony Travers, Director, Greater London Group, London School of Economics
6.15pm, Wednesday 30 June

FOI Annual Conference

The Constitution Unit and Capita are holding the second annual Freedom of Information conference on 12 May 2004. There will be a range of international speakers and practical workshops.

For more information about the programme as it becomes available contact Sam Boyle at Capita: samantha.boyle@capita.co.uk.

Unit Publications

Trench A. *Intergovernmental Relations in Canada: Lessons for the UK?* 2003, London, The Constitution Unit, 1 903903 23 8

Sandford M & Maer L. *Scrutiny under Devolution: committees in Scotland, Wales and Northern Ireland.* 2003, London, The Constitution Unit. ISBN 1 903903 24 6

Russell M & Hazell R. *Next Steps in Lords Reform: Response to the September 2003 White Paper.* 2003, Constitution Unit, London. ISBN 1 903903 25 4, £8

Osmond J ed. *Second Term Challenge: can the Welsh Assembly Government hold its course?* 2003 Cardiff, IWA. ISBN 1 871726 16 6

Forthcoming: Trench A ed. *Has Devolution Made a Difference? The State of the Nations 2004.* 2004, Exeter, Imprint Academic.