

MONITOR

PARLIAMENT BITES BACK

Anyone who thought parliament's ability to restrain the executive had disappeared needs to start to revise their assumptions. Not only has the Blair government continued to be regularly defeated in the House of Lords, but in November it was defeated for the first time on a whipped vote in the House of Commons – over the Terrorism Bill.

The current House of Commons is a rather different place to that which Prime Minister Blair had become accustomed. In 1997 and 2001 Labour's majority exceeded 165, but in May 2005 it fell to 66. In historical terms this might look comfortable, but backbench rebellion is now a regular habit. It takes only 36 Labour rebels to vote with the opposition for the government to be defeated – a figure exceeded regularly since 1997. Some suggested that the smaller majority might 'concentrate minds', but this now looks like whips' wishful thinking. The government's refusal to compromise on the Terrorism Bill resulted in 51 members rebelling on an amendment moved by Labour's David Winnick to restrict the period for which suspects could be held without charge (for details, see www.revolt.co.uk). And more trouble lies ahead. A total of 58 Labour MPs and peers sponsored an alternative to the controversial education white paper in December, and ministers may seek help from David Cameron's Conservatives to get their proposals through. Such issues may also result in the re-emergence of the 'West Lothian Question' if the government has to depend on the votes of Scottish MPs (see 'Westminster and the English Question' in the publications section on page 8).

Defeats in the Commons are, thus far, rare. But in the Lords there have been over 350 since 1997, and the chamber seems to be gaining confidence to challenge government policy. As a result, old conventions about the chamber's powers are breaking down. This year Liberal Democrat leaders declared the 'Salisbury convention' (whereby government manifesto bills are not rejected) to be dead. Their justification for this was the weakness of Labour's mandate – having been elected on just 35 per cent of the vote. There have also been two recent threats to use the Lords' veto power over secondary legislation – once over implementation of the Licensing Bill,

where the government narrowly escaped, and later over restricting jury trial, where it chose to back down. The House has already rejected key elements in the ID Cards Bill and Racial and Religious Hatred Bill. The outcomes on these and the Terrorism Bill are still awaited.

All this points to a strengthening of parliament with respect to the executive. And the general public seem happy with that. Research published by the Constitution Unit in December found that most people back the House of Lords (unelected as it remains) to block government bills that are unpopular. And more surprisingly, Labour MPs agree. The era of the supine parliament – if indeed it existed – certainly seems to be coming to an end.

- The Constitution Unit website will soon include regular updates on Lords defeats. For details of this and our research findings on Lords legitimacy and power, see page 7.

FIVE YEARS OF THE HUMAN RIGHTS ACT

2005 marked the fifth anniversary of the Human Rights Act, which came into force in October 2000. It was a troubled fifth year. *The Sun* and *Daily Mail* have consistently portrayed the Act as a rogues' charter for travellers, prisoners, illegal immigrants and terrorists. (In October Strasbourg ruled against the UK in favour of granting voting rights to convicted prisoners). Michael Howard announced during the election campaign that the Conservatives would review the operation of the Act, and in the aftermath of the 7 July bombings the Prime Minister proposed changing the law so that judges would have to give more weight to national security in terrorism cases.

In fact the judges have trodden a careful line in the first five years. The courts have exercised their section 3 power to reinterpret statutes so as to make them human rights compliant in just over 10 cases; and they have made 17 declarations of incompatibility under section 4 (of which five were overturned on appeal, and two appeals are still pending). In response the government has taken remedial action in every case, by repealing or amending the offending provision. (*continued overleaf*).

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Implementation of the HRA has involved a partnership and dialogue between all three branches of government. The parliamentary Joint Committee on Human Rights has played a central role, producing over 90 reports. In 2007 it will be joined by the new Equalities and Human Rights Commission, being created under the Equality Bill. Scotland is also legislating for a new Human Rights Commissioner.

JUDICIARY

On 13 October the House of Lords gave the final judgement on the hunting ban, which had become a constitutional case about the powers of parliament. The Countryside Alliance had argued that the 1949 Parliament Act was invalid, since it was itself forced through under the 1911 Parliament Act. The Administrative Court, the Court of Appeal and the law lords all disagreed. But outgoing Chief Justice Lord Woolf in the Court of Appeal had sought to limit big constitutional changes (especially in the relationship between the two Houses) from the scope of the Parliament Acts. Lord Bingham (the senior law lord) ruled that this had 'no support in the language of the Act, in principle or in the historical record'.

Tensions continue between government and judiciary. The new Lord Chief Justice Lord Phillips warned that politicians should not attempt to browbeat the judiciary. Judges are concerned that some of the roles proposed for them in reviewing control orders to detain terrorist suspects risk co-opting them into executive functions and undermining the separation of powers. Judges are also concerned at the impact on their pensions of new Treasury proposals to tax individuals' pension funds above £1.5m. Judges want their pension funds (from their practice as barristers) to be exempt. The Lord Chancellor had promised a bill to exempt judges' pension funds from the new tax regime. If it is dropped, judges want to see a 20 per cent increase in their salaries.

In April the new Lord Chief Justice will take over as head of the judiciary from the Lord Chancellor under the separation of powers introduced by the Constitutional Reform Act 2005. His staff will increase from 12 to 60.

This reflects his new responsibilities, which will include representing the views of the judiciary to government and parliament, overseeing the welfare and training of judges, managing their deployment and caseloads, and chairing the Judges Council and Sentencing Guidelines Council.

PARLIAMENT

Lords Reform

Lords reform remains on the government's agenda, but it is hard to see how this is going to progress. As reported in the September 2005 Monitor, the Queen's Speech didn't promise a bill immediately, and the first task was to establish a new parliamentary joint committee. However, even this has not occurred, due to disagreement between the parties about its terms of reference. The government wants it to focus on the Lords' powers and procedures, whilst opposition parties believe it should also consider composition. A similar impasse in the 1997 parliament prevented such a committee ever being set up.

The government has also promised to hold another free vote on Lords composition. Rumours suggest that this could be held in spring 2006. The Lord Chancellor has then promised that a bill will be included in the 2006–07 parliamentary session. Progress on all of this will depend on agreement within Labour ranks and on the position of the Conservatives. Last time parliament voted, in February 2003, both parties were split. David Cameron supported an 80 per cent elected upper house – which was then the official position of his party – but only half his Conservative colleagues did the same. One of Cameron's first acts as leader was to appoint Ken Clarke, an outspoken supporter of a largely elected house, as coordinator of a 'democracy taskforce'. If the promised vote were held and the Tories were more united, Tony Blair could be faced with legislating for a largely elected house that he clearly doesn't want. This seems an unlikely situation to invite.

Lords Membership

Whilst major reform remains stalled, the Lords continues to develop through changes in membership.

All parties seem increasingly interested in the chamber, which is increasingly representative in party terms, and potentially more influential. The SNP had a vigorous debate at its conference in September over whether to end its boycott of Lords seats but ultimately decided on no change. A similar debate is taking place in Plaid Cymru. The DUP has apparently won its argument for Lords seats, and the same is said of the Green Party (which currently has one peer who defected from the Liberal Democrats). The Greens however faced difficulties when the party's chairman nominated himself for a peerage without permission of their executive. His nomination was subsequently withdrawn, and the party balloted members on a replacement.

A complete list of proposed new peers was leaked in November, but these were delayed by the Appointments Commission, amidst press allegations of impropriety over some Labour donors. Labour also lost two peers in unfortunate circumstances: Mike Watson was imprisoned for arson, and Chris Haskins expelled from the party following a donation to a Liberal Democrat general election candidate. Both remain peers but have left the Labour benches.

- See pages 7 and 8 for details of new Unit publications on the House of Lords.

Parliament and War Making Powers

Clare Short's Private Member's Bill (PMB), discussed in the September 2005 Monitor, came before parliament on 21 October. The Armed Forces (Parliamentary Approval for Participation in Armed Conflict) Bill would have required parliament's approval before, or in special cases after, deployment of troops in armed conflict. It had the support of a large majority of the MPs in the chamber, but not enough were present to force the question to a vote and give the bill its second reading. Short's 'closure' motion was supported by 91 votes to 12, but Standing Orders require at least 100 votes in favour for the motion to be effective. The Leader of the House, Geoff Hoon, was therefore able to 'talk out' the bill, by speaking until the close of business at 2.30pm. Debate was technically adjourned until 10 March, but in practice has no chance of getting more parliamentary time and so is effectively dead.

While the fate of the bill illustrates the difficulties of steering a PMB through parliament, the issue of whether the power to make war should be left in the hands of the Prime Minister remains a live one. The influential House of Lords Constitution Committee has recently commenced an inquiry into War Making Powers and is likely to recommend some limitation on the prerogative powers of the Prime Minister to authorise military action. With Gordon Brown recently again indicating his support for enhancing parliament's role in this area some reform to the constitutional status quo is looking increasingly likely.

Parliamentary Inquiry into Constitutional Watchdogs

The Commons Public Administration Select Committee has launched several inquiries in the new session. One is into relations between ministers and civil servants, in which the committee asks whether civil servants should not be more political, more committed to the programme of the government of the day; and whether politicians should not have more say over the appointment of senior public servants. (The government shows little interest in promoting the draft Civil Service Bill: see Lords Oral Questions 27 Oct 2005 col 1302).

PASC's second inquiry is into constitutional watchdogs. These have mushroomed in recent years, with bodies such as the Electoral Commission, new Judicial Appointments Commission and Information Commissioner being created as a product of wider constitutional reforms. They are a hotchpotch, with some being firmly based in statute, and others being essentially creatures of the executive. In Scotland a different model has emerged, with watchdogs having a closer relationship with the parliament. PASC will look at the independence and accountability of these ethical regulators, and whether the time has come for some rationalisation. The Political Honours Scrutiny Committee was merged with the House of Lords Appointments Commission in April 2005. In PASC's sights will be a possible merger of the Commissioner for Public Appointments with the Civil Service Commissioners, and possibly the Advisory Committee on Business Appointments. Issues and Questions papers for both these inquiries are on PASC's pages of the www.parliament.uk website.

Robert Hazell has been appointed as Specialist Adviser for this inquiry, together with Barry Winetrobe of Napier University, co-author of the Unit's 2003 report on Officers of Parliament, with Oonagh Gay.

DEVOLUTION

Scotland

The autumn was dominated by the resignation of David McLetchie MSP as Scottish Conservative leader who fell victim to the relatively liberal Scottish freedom of information (FOI) laws. Journalists took an interest in McLetchie after he hounded Henry McLeish into resigning as First Minister in 2001. They used FOI laws to unearth details of his £11,500 taxi bill, the highest of any MSP for the first five years of the parliament. While insisting he had done nothing wrong, McLetchie resigned on 31 October to stop a constant flow of damaging stories. His deputy, Annabel Goldie MSP, 55, emerged as the sole nominee as leader on 8 November, as did Murdo Fraser MSP, 40, as deputy leader.

There were two footnotes. First, Brian Monteith MSP resigned from the Conservative Party after it emerged he had e-mailed 'McLetchie must go' messages to a newspaper editor. And second, in December, the parliament's authorities published an avalanche of detail regarding MSP expense claims rather than wade through a torrent of FOI MSP expense requests from journalists. The Scottish Freedom of Information regime is further discussed on page 6.

A busy legislative programme of 22 bills was announced by First Minister Jack McConnell on 6 September. Mainly in response to public concern, it was top heavy with law and order measures. Judges are to get sentencing guidelines and are to give greater weight to public safety than the rights of accused people in granting bail. Banning orders on football hooligans are to be introduced and the penalty for knife carrying doubled from two years. A surprise announcement of a reduction in the business rate poundage to parity with England over two years, a move long sought by business organisations, prompted some credit-seeking jostling between McConnell and Nicol Stephen, the LibDem leader and enterprise minister.

Lord (Mike) Watson, a Labour MSP, resigned his Glasgow Cathcart seat on 1 September after pleading guilty and being jailed for 16 months for wilful fire-raising – setting fire to hotel curtains – at a political awards dinner the previous year (continued overleaf). Labour held the seat at the subsequent by-election on September 29 despite a strong challenge from the SNP.

McConnell extended his foreign policy ambit by welcoming the President of Malawi, Bingu wa Mutharika, to a four-day visit in November. Scotland and Malawi have historic ties through Church of Scotland missionary work, notably by David Livingstone. A cooperation agreement was signed and aid pledged, reportedly causing some concern in Whitehall.

Wales

Devolution in Wales during the latter part of 2005 was dominated less by the present than by considerations of the future. Specifically, the looming parliamentary process of the Government of Wales Bill has been the major issue since the publication of the government white paper, *Better Government for Wales*, in June 2005. Thus, paradoxically, the focus of much attention with regard to devolution in Wales continues to be the Westminster parliament!

The Government of Wales Bill is a highly complex piece of legislation. In significant part this reflects the unwieldy nature of the 1998 settlement, to which the bill provides for a substantial number of changes including, *inter alia*, the legal separation of the National Assembly from Assembly Government; the enhancement of the legislative powers of the Assembly through, most particularly, greater use of framework legislation at Westminster; and changes to the electoral system. Perhaps most extraordinarily of all, the bill seeks to make provision now for a further stage of devolution to be potentially enacted at some stage in the future: primary law-making powers for the Assembly subject to a referendum in Wales.

Hearings by the House of Commons Welsh Affairs Committee in autumn 2005 brought out much of the complexity of the bill's provisions on legislative powers. (continued overleaf).

DEVOLUTION

They also indicated that the proposed changes to the electoral arrangements (to prohibit candidates standing in both constituency and list contests) are and are likely to remain controversial: the final committee report saw the government's changes approved by the committee on a straight party-line vote, with all opposition members voting against. Both the legislative provisions of the bill and the proposed electoral arrangements appear likely to face some difficulty in the House of Lords.

Politics in the National Assembly in the latter part of 2005 continued to be dominated by the consequences of the Labour Party having lost its majority (after Peter Law resigned from the Labour party to fight – and win – the Blaenau Gwent seat at the May general election as an independent). Law's willingness to join with the opposition parties in voting against Labour business motions and other proposals saw the freedom of movement of the now-minority Rhodri Morgan government limited significantly. A notable consequence was the delay of the Assembly Government budget for several months, before a cross-party compromise saw it finally win approval in late November. However, while willing to cooperate in wounding Labour, the opposition parties did not, as of end-2005, seem willing to join together in an alternative coalition with the May 2007 Assembly elections now looming ever larger.

Northern Ireland

Northern Ireland continues to demonstrate its capacity to generate 'historic' events to engage the world's media and yet be mired down in its own history at the same time. On one hand, the (near-)completion of IRA weapons decommissioning suggested a chapter was being closed on the region's still-recent 'troubles'. On the other, London's anxiety to propitiate Sinn Féin, contrasting with equal determination in Dublin to rubbish it as a party of government, engendered such antipathy in the Protestant community as to render any early renewal of power-sharing devolution impossible.

The lightning conductor was the Northern Ireland Offences Bill. This originated as a measure, negotiated by SF in the talks at Weston Park in 2001, to ensure IRA 'on the runs' could return freely to Northern Ireland.

But the much further-reaching bill would indemnify anyone – paramilitary, policeman or soldier – who had committed a crime related to the political situation since 1968. The bill would not even require beneficiaries to face their victims in court, never mind serve a day in jail.

All parties at Westminster, bar Labour, opposed it, as did all parties, bar SF, in Northern Ireland. Before Christmas, the government was preparing a tactical retreat.

The rerouting of an Orange Order parade in west Belfast in September had been the pretext for the worst loyalist rioting for years, with widespread disruption and shots fired at the police. Yet government's response was a range of initiatives to sweeten the Democratic Unionist Party. These included introducing on to the Parades Commission two individuals from the order.

Responding to the review of public administration initiated by the devolved government in 2002, the government proposed reducing the number of district councils from 26 to 7, with their boundaries such as to ensure three dominated by nationalists and three by unionists. All parties, bar SF, rejected what they saw as a sectarian stitch-up.

What was not in evidence in this politics of Dutch auction was any coherent strategy to promote 'a shared future' – the title of the key policy framework to tackle Northern Ireland's yawning communal divisions, and arguably the *sine qua non* of renewed, and this time stable, devolution.

It was, paradoxically, to be the tragic death of a '60s icon, George Best – given almost a state funeral – which demonstrated the public yearning in Northern Ireland for more hopeful times, when sectarian labelling looked like it was becoming a thing of the past.

English Regions

The administrative regionalisation of England continues to proceed apace, despite the end of the government's plans for elected regional assemblies in November 2004. Strategic Health Authorities are likely to be reorganised on to a largely regional basis, as are many police authorities and ambulance trusts.

The new Natural England quango will provide a powerful policy and delivery capacity largely located at regional level. Regional fire management boards are on their way, and regional housing boards will shortly merge with Regional Assemblies. There have also been indications that the possibility of unitary local government is once again being considered within ODPM.

None of this indicates a commitment to the principle of regionalism, however, with Government Offices likely to be slimmed down considerably over the next year as Local Area Agreements are rolled out across England. The appointment of David Miliband as Minister for Communities also indicates a degree of indifference towards the progress of the regional agenda. Miliband is cool towards regional governance and has concentrated much of his attention on the economic potential of cities, without developing this into a distinct agenda for city-regional governance.

The two opposition parties, the Conservatives and Liberal Democrats, are searching for a new animating idea following the North-East debacle. Warm words about localism have come from both parties, without leading to anything more concrete. The Liberal Democrats' current policy review, and future developments under the leadership of David Cameron for the Conservatives, may change this in the near future.

Mention of regions and regionalisation in parliament is increasingly coalescing around the impact of the new Regional Spatial Strategies and their implications for new housing targets. These issues are at their thorniest in the South-East, where the Regional Assembly is developing into a coherent lobby group for lower new build numbers than desired by the government. The Conservative domination of the assembly adds political needle, and the way forward for the government is not clear.

London

The stock of the Mayor of London, Ken Livingstone, has risen yet again in the past year following the winning of the 2012 Olympic Games for London and his response to the terrorist attacks of the following day, 7 July.

Livingstone's success and influence in his role has led to renewed speculation about further devolution of power to the London city-region's government. Surprisingly, the Labour manifesto for the 2005 election contained a commitment to review the powers of the Greater London Authority.

The Mayor signalled his intentions through six scoping papers published in September 2005, calling for extra powers over the Learning and Skills Council, waste disposal, housing capital investment, and various planning powers including the right to participate in Section 106 agreements. The Mayor did not address other issues such as culture, environment and health which are covered by his current responsibilities to write strategy documents.

This review was launched in November 2005 with a consultation paper published by ODPM. The ODPM paper largely followed the agenda set by the Mayor, though it indicated a coolness towards offering powers over skills and training to him. It proposed to make the Mayor chair of the Metropolitan Police Authority, and to adjust the powers of the London Assembly to reject Mayoral strategies on a two-thirds majority.

The Assembly's Commission on London Governance has also produced two documents, *Capital Life* and *Making London Work Better*, which suggest devolution of public health, culture, sport, and skills to the Mayor. It also attacked the Government Office for London, stating that many of its programmes should be devolved to borough management, and called for greater Assembly representation on functional body boards.

Devolution and the Centre

The UK Government continues to show little interest in developing a coherent approach to devolution as a single, integrated settlement. The Cabinet Committee dedicated to devolution policy was wound up after the May 2005 election, and the Joint Ministerial Committee (designed as the principal forum for the management of intergovernmental relations in the UK) continues to lie disused.

Meanwhile, the Department for Constitutional Affairs (DCA), which has overall responsibility for the devolution settlement, plays second fiddle to the three territorial offices in setting policy relating to the devolved institutions and managing relations with them. Regional governance in England, for its part, is now discussed less as a constitutional matter and more in terms of policy delivery.

Within this decentralised system of managing devolution in Whitehall some significant developments are taking place. Most notably, in December the Government published the Government of Wales Bill, which is to reform the powers, structure and electoral system of the National Assembly for Wales. The bill makes provision for the Assembly to draft its own primary legislation in the shape of Orders in Council. However, Westminster and Whitehall will retain an important role in the process as both Houses of Parliament and the Secretary of State for Wales will be able to veto the Orders. Welsh Secretary Peter Hain also recently indicated that the Commons Welsh Affairs Committee would be given responsibility for scrutinising Orders in Council before they are taken on the floors of the two Houses.

Acts of the Scottish Parliament do not face any such Westminster hurdles, but Westminster does continue to legislate for Scotland via the Sewel convention. There are currently seven government bills passing through Westminster that legislate in devolved areas and consequently require the consent of the Scottish Parliament. The operation of the Sewel convention has increasingly attracted criticism on the grounds that it is being used excessively, inconsistently and without sufficient scrutiny from the two parliaments. A recent Scottish Parliament Procedures Committee report recommended that Westminster bills subject to the Sewel convention be clearly labelled and that the results of any Sewel votes in Holyrood should be formally conveyed to the two Houses of Parliament. Having not previously taken much of an interest in constitutional matters, the Common Scottish Affairs Committee has itself launched an inquiry into the same subject from the Westminster perspective.

It is an interesting example of inter-parliamentary collaboration and should the two committees find themselves in agreement there will be significant pressure on the two executives to reform how the convention operates.

FREEDOM OF INFORMATION

The Freedom of Information Act 2000 has been fully in force for a year. The Act has received a significant amount of publicity in the media, through stories about its implementation and articles written using information obtained via the FOIA. But how has the public sector been coping with requests? Information Commissioner Richard Thomas' verdict of the first year, delivered at a Constitution Unit seminar on 29 November, was that the Act has been 'neither a damp squib nor a tidal wave disaster'.

Through 30 September (the latest date for which figures are available), central government departments, whose FOI request numbers are monitored by the Department for Constitutional Affairs, received a total of 29,500 requests, 13,600 of which arrived in the first quarter of the year. Of the total requests 87 per cent (averaged over the three quarters) were reported as having been answered within the statutory time limit of 20 working days, while an average of 61 per cent of requests were granted in full between 1 January and 30 September. 993 requests were referred for internal review in the first nine months of 2005.

The Information Commissioner's Office (ICO) had received 2,000 complaints by the end of September 2005. Of these, 848 cases had yet to be opened (as of 29 November) and 720 were underway; 90 decision notices were announced in the first nine months of the year. As these figures suggest, there is an approximate delay of three months in opening new cases. Requests to central government account for around one quarter of all complaints to the ICO. Section 1 ('general right of access to information held by public authorities') and Section 10 ('time for compliance with request') of the Act have been most frequently cited in the decision notices published by the ICO. *(continued overleaf)*.

FREEDOM OF INFORMATION

The Information Tribunal, the third step on the FOI complaints ladder – after internal review and the ICO – has received 20 appeals against decisions made by the Information Commissioner. The Tribunal has ruled in three of these cases and 16 appeals were pending as of 15 December.

In Scotland, 379 cases were being reviewed by Scottish Information Commissioner Kevin Dunion as of 31 October and 69 decisions had been published by 15 December. The Freedom of Information (Scotland) Act 2002, which came into force on 1 January 2005, covers 10,000 public bodies, which is approximately 10 per cent of the number of bodies covered by the Freedom of Information Act 2000. In contrast to other nations, political journalists in Scotland were heavy users of the Act, with more than half of requests to the Scottish Executive coming from the media. This is somewhat skewed, however, as 60 per cent of these requests were made by a single journalist (Paul Hutcheon of the Sunday Herald). Scotland also saw the first big political ‘scalp’ to be taken as a result of an FOI request with the resignation of David McLetchie, the Leader of Scottish Conservative Party, after the release of information about his taxi expenses.

ELECTIONS AND VOTING

Autumn is not a season normally associated with reform but this autumn has seen a flurry of activity on electoral matters. The first wave of academic reflections on the general election have been published, and the Electoral Commission’s report on the 2005 general election campaign (more about which in the next issue of the Monitor). Yet, there is an air of unfinished business about the 2005 election. A number of recent developments suggest a delay in returning to the usual post-election torpor. Principal among these is the Electoral Administration Bill (EAB). Published in October, it sets out a number of proposals to reform electoral registration, tackle electoral fraud, and improve regulation of donations to political parties. The bill does not, however, make any changes to the postal voting system or introduce provisions for individual rather than household registration, issues that created a great deal of controversy during the election campaign.

It is widely believed that the government was concerned that a full individual system might lead to a decline in voter registration.

The EAB also contains provisions to reduce the age at which people can stand for election from 21 to 18. However, the government has resisted pressure to lower the voting age to 16, which proponents recently attempted first by means of an amendment to the EAB and then via a private member’s bill. This latter attempt, by Stephen Williams (LD), was thwarted on division in the Commons by 136 to 128, despite the fact that 73 of the 98 Labour MPs who voted were in favour.

A further development has been the Electoral Choice Bill, introduced in November by Labour MP David Chaytor, with the backing of fellow Labour MP, John Denham, the Liberal Democrat MP, David Heath, and Charter 88 and the Electoral Reform Society. The bill would enable a petition of 5 per cent of the electorate to initiate either a nationwide referendum on the Westminster electoral system or a local referendum on the system to elect local councillors. The bill will be presented to parliament under the ten minute rule but without government support – unlikely given the shelving of the Jenkins Report on electoral reform – the bill is likely to sink without trace. The importance of this bill, however, does not lie in its chances of reaching the statute book, but, rather that it suggests a resurgence of interest in electoral reform. The re-election of the current government on the lowest share of the vote in modern times with one of the smallest turnouts is undoubtedly of concern. Whether a more proportional electoral system would raise turnout and produce governments with a greater share of the popular vote is debatable. Finally, there has been some controversy over the post-election list of new peers. Several of them gave generously to the main parties in the run-up to the 2005 general elections. Again, this has led to the resurrection of the debate about state funding of political parties. It remains to be seen whether any of these developments result in substantial reform. But, the odds look better than they did after the last election.

Compulsory Voting

The Leader of the House of Commons, Geoff Hoon, has floated the possibility of making voting compulsory in order to increase turnout in elections.

Turnout in the May 2005 general election increased slightly (from 59 per cent in 2001) to 61.5 per cent but remained nearly 10 per cent down on the level recorded in 1997. Hoon supports a system similar to Australia where those who do not vote are fined but are given the option to express a ‘none of the above’ preference. The Leader of the Commons has expressed concern not only with the low levels of turnout but also that ‘deliberate non-voters’ are becoming prevalent across all age groups except older voters, and are particularly common amongst younger voters and those from deprived backgrounds. This attitudinal shift, he argues, may threaten the long-term legitimacy of the political system. The Electoral Reform Society has criticised the plans saying that there is little point in making voting compulsory when the electoral system remains so disproportional in translating votes into seats in Parliament. The proposals are not official government policy but represent an attempt to gauge public opinion and form part of the government’s wider interest in democratic renewal.

PEOPLE ON THE MOVE

Lord Phillips has become Lord Chief Justice in succession to **Lord Woolf**, who has joined UCL’s Law Faculty. **Lord Mance** has become a Lord of Appeal in succession to **Lord Steyn**. **Lord Steyn** is now chairman of JUSTICE. **Baroness Prashar** is to be chair of the new Judicial Appointments Commission. **Andrew Dismore MP** is the new chairman of the parliamentary Joint Committee on Human Rights.

In Whitehall the new Cabinet Secretary **Sir Gus O’Donnell** has reshuffled a lot of Permanent Secretaries. **David Normington** succeeds **Sir John Gieve** at the Home Office. At the Northern Ireland Office **Sir Joe Pilling** is succeeded by **Jonathan Phillips**. **Sir Richard Mottram**, formerly at DWP, has become the Prime Minister’s Security and Intelligence Co-ordinator. Meanwhile, **Lord Birt**, the controversial 10 Downing Street Special Adviser and ‘blue skies thinker’, left government for a job in the city.

CONSTITUTION UNIT NEWS

Process of Constitutional Change

With help from four interns, Robert Hazell has been reviewing the convention that 'first class' constitutional measures take their committee stage on the floor of the House of Commons. The project examined 55 constitutional bills passed between 1997 and 2005, and identified 20 bills that were categorised as 'first class'. The project questions the value of the convention, finding that more effective scrutiny now takes place in specialist committees, and in the House of Lords. Its findings are to be published in a Unit briefing, and an article in Public Law.

Dynamism of Constitutional Reform

Robert Hazell gave public lectures in November to the David Hume Institute in Edinburgh and the annual lecture of the Institute of Welsh Politics in Aberystwyth. The text is published by the Unit as The Continuing Dynamism of Constitutional Reform and will appear in Prospect and Parliamentary Affairs.

The English Question

March sees publication of the first of three thematic books from the Unit's Leverhulme-funded research programme into the Dynamics of Devolution. The English Question is edited by Robert Hazell, with help from Scott Greer and Akash Paun, and includes chapters by other Unit researchers and academics across the UK. The book discusses the constitutional implications for England of devolution to the other parts the UK. Peter Riddell of The Times writes on the back cover 'The English Question punctures many myths and should be read by any politician or commentator who thinks there are easy answers, either in an English parliament or "English votes on English laws". Both ideas are flawed. The book rightly sees the only way forward as a further attempt at decentralisation'.

One aspect of the English Question is the controversy over Scottish MPs voting on legislation not affecting Scotland. Now Labour's majority in the Commons is reduced, such controversies may appear more often. A new Unit briefing, Westminster and the English Question, looks at these debates, and takes a historical perspective to consider how the current conundrums might be resolved.

Devolution Monitoring Programme

In January 2006, the Constitution Unit-led Devolution Monitoring Programme recommences. Three times a year, five teams of researchers across the UK – Scotland, Wales, Northern Ireland, English Regions, Devolution and the Centre – will produce detailed reports on institutional and policy developments in the field of devolution. To receive these reports by email on the day of publication contact Akash Paun on a.paun@ucl.ac.uk. The reports will also be posted on the devolution section of our website shortly after publication. The Constitution Unit has also recently published the 103 monitoring reports produced between 1999 and 2005 as a searchable CD-ROM.

Freedom of Information in local authorities

A study conducted by the Constitution Unit on behalf of the Improvement & Development Agency discovered that local authorities received approximately 35,000 FOI requests in the first six months alone. The study was comprised of a survey completed by over half all local councils and in-depth telephone interviews with several FOI practitioners. The report is available at: www.ucl.ac.uk/constitution-unit/foidp/.

House of Lords research

The Unit's ESRC-funded project on the House of Lords has produced its first publications. A briefing on the House of Lords in 2005 is published in January, arguing that the post-1999 chamber appears to be becoming both more representative and more influential. Events in the year included the marathon argument with the government over the Prevention of Terrorism Bill, and the statements by the Liberal Democrats that the 'Salisbury convention' is dead. The briefing will appear as a chapter in the Palgrave Review of British Politics in spring 2006, but is available for order from the Unit now.

A seminar in the House of Lords in December presented Unit research on public, MPs' and peers' attitudes to the Lords' powers and legitimacy. A summary of the results may be found on the project website, at www.ucl.ac.uk/constitution-unit/research/parliament/house-of-lords.html.

This will in future also include regular updates of government defeats in the House of Lords.

The Governance of Parliament

The Unit is conducting a project looking at how the House of Commons runs itself, and whether there are changes that could be made to make it more independent of the executive. Issues being considered include how the parliamentary agenda is set, how time in the chamber is allocated and how committee members and chairs are chosen. We will seek to learn lessons from a number of other parliamentary chambers (the House of Lords, Scottish Parliament, German Bundestag, New Zealand Parliament and Australian upper and lower house) for how the Commons might be reformed.

An 'Issues and Questions' paper is published in January, inviting comments and suggestions on the topics within the project's scope. To find out more about the project, and to download a copy of the paper, go to: www.ucl.ac.uk/constitution-unit/research/parliament.

Constitution Unit Website

As part of the broader UCL rebranding exercise, the Constitution Unit website has been re-designed. The new site is easier to navigate and will be regularly updated with details of Constitution Unit research, events and publications. In particular note that the Unit's guide to constitutional reform, Constitutional Update, is back on-line. To see for yourself, go to: www.ucl.ac.uk/constitution-unit.

Constitution Unit Personnel Changes

The Unit's Freedom of Information team has recruited Craig MacDonald as new Research Assistant. Farewell to Craig's predecessor John Lucas. The Unit has also played host to a steady stream of new interns. Many thanks to the autumn contingent of Mark Wainwright, Laura Venning, Becky Seale, Grace Kwok, Andrea Marie and to Mark Glover and Karen Thomas who joined us in January.

And finally...

Congratulations to Robert Hazell, Director of the Constitution Unit, for his recognition in the New Year Honours List. Robert is to receive a CBE for 'services to constitutional reform'.

BULLETIN BOARD

CONSTITUTION UNIT PUBLICATIONS

- Robert Hazell (ed.), *The English Question* (Manchester: Manchester University Press, 2006). This edited volume examines the constitutional history and status of England, 'the gaping hole in the devolution settlement' and assesses the various possible answers to the English Question.
- Scott Greer (ed.), *Territory, Democracy and Justice: Federalism and Regionalism in Western Democracies* (Houndmills: Palgrave Macmillan, 2005).
- Mark Sandford, *The New Governance of the English Regions* (Houndmills: Palgrave Macmillan, 2005).
- Robert Hazell, *The Continuing Dynamism of Constitutional Reform*, 28-page Constitution Unit Briefing, £10.
- Robert Hazell, *What are the answers to the English Question?*, 23-page Constitution Unit Briefing, £10.
- Meg Russell and Guy Lodge, *Westminster and the English Question*, 29-page Constitution Unit Briefing, £10.
- Meg Russell and Maria Sciarra, *The House of Lords in 2005: A more representative and assertive chamber?*, Constitution Unit Briefing, £10.
- Mark Sandford, *From Strategy to delivery: the future development of the Greater London Authority*, 23-page Constitution Unit Briefing, £10.
- *Monitoring Devolution CD-ROM*. This CD contains all 103 devolution monitoring reports published by the Unit between 1999 and 2005 in searchable PDF format. £15.

For full details of all Constitution Unit publications or to make a purchase, visit our website at: www.ucl.ac.uk/constitution-unit/publications or contact Philip on p.diamond@ucl.ac.uk or 020 7679 4972.

EVENTS

- The **Constitution Unit** is in the process of finalising its **2006 seminar series**. Seminar topics include the Welsh devolution proposals, the electoral system for the Scottish Parliament, and the Commission on London Governance. For further details, see the enclosed flyer and the events section of our website.
- The Constitution Unit and the Department for Constitutional Affairs are jointly holding a seminar on **Political (dis)engagement and the media** on Thursday **19 January 2006** (1–2pm). John Lloyd (Financial Times) will be speaking at this event at Selborne House, 54/60 Victoria Street, London SW1E 6QW. Call 020 7210 1383 to book a place.
- The **ESRC Devolution and Constitutional Change Programme** comes to an end on **10 March 2006** with a **Final Conference** at the QEII Conference Centre in Westminster. Speakers (TBC) include Andrew Marr, Lord (Neil) Kinnock, David Trimble and Professor Robert Hazell of the Constitution Unit.
- **Citizenship Education event, London, April 16 2006**. The Hansard Society Citizenship Education Unit, in partnership with Save the Children, will be facilitating a committee-style event in parliament where young asylum seekers will be given an opportunity to give evidence to MPs on issues of importance to them. Email citizenship@hansard.lse.ac.uk for further information.
- The Constitution Unit, Department for Constitutional Affairs and Information Commissioner's Office will hold the **Fourth Annual Information Conference for the Public Sector: FOI LIVE 2006** on **25 May 2006** at the Millennium Conference Centre in London. Those interested in information rights issues, including FOI, data protection, Environmental Information Regulations and public sector information, are encouraged to attend. Information at: www.foilive.com.

PUBLICATIONS RECEIVED

- Alexander, Wendy (ed.), *Donald Dewar: Scotland's first First Minister* (Edinburgh: Mainstream, 2005), ISBN: 1 84596 038 6.
- Bowers, Paul and Oonagh Gay, *The Government of Wales Bill 2005*, Research Paper 05/90 (London: The House of Commons Library, 2005).
- The Electoral Commission, *Election 2005: engaging the public in Great Britain – An analysis of campaigns and media coverage* (London: The Electoral Commission, 2005), ISBN: 1-904363-75-X.
- *European Constitutional Law Review* (EuConst): a new journal published by Cambridge University Press, details at www.cambridge.org/journals.
- Healey, John (MP), Mark Gill & Declan McHugh, *MPs and politics in our time* (London: Dod's, 2005), ISBN: 0 905702 60 3.
- Office of the Deputy Prime Minister, *The Greater London Authority: The Government's proposals for additional powers and responsibilities for the Mayor and Assembly – Consultation Paper* (London: ODPM, 2005).
- Ogier, Darryl, *The Government and Law of Guernsey* (Guernsey: States of Guernsey, 2005), ISBN: 0-9549775-0-5.
- Miller, William (ed.), *Anglo-Scottish Relations from 1900 to devolution and beyond* (Oxford: OUP, 2005), ISBN: 0-19-726331-3.



The Constitution Unit