

MONITOR

THE 'CONSTITUTIONAL RENEWAL' AGENDA MOVES FORWARD

In March the government published its plans for legislation (Cm 7342) to take forward the *Governance of Britain* agenda first announced in July 2007. The draft Bill is accompanied by a White Paper and analysis of the responses to the five consultation exercises launched last year. Despite the weight of the three volumes of Cm 7342 and the detail they contain, the overall effect is underwhelming. This can be gathered from their disparate subject matter, which covers: managing protest around Parliament, the Attorney General, judicial appointments, treaties, the civil service, war powers, and flying flags on government buildings.

It is hard to weave a strong narrative around a series of mainly minor and rather technical changes. The bill is the product of work in progress: these are the things which can be legislated for now. Other, bigger reforms are in preparation, but in slower time, because they are politically more difficult and need more consultation. The government is planning a further White Paper on Lords reform, a consultation paper on a British bill of rights, and a wide ranging participatory exercise on a British statement of values. Further announcements on these can be expected in the spring and summer.

The main theme connecting the disparate items in the Constitutional Renewal Bill is reforming the Royal Prerogative and strengthening Parliament. It might more suitably have been called the Strengthening Parliament Bill; or the Prerogative Powers and Miscellaneous Provisions Bill. It contains a small number of relatively modest reforms, all worthwhile, but none of them justifying the overarching ambition of the bill's title. In order of importance, the proposed changes are as follows:

- *Civil Service*: placing the Civil Service on a statutory footing by enshrining in statute the core values of the Civil Service, and giving the Civil Service Commissioners a statutory basis (see page 2).
- *Role of the Attorney General*: abolition of the Attorney General's general power to halt a trial on indictment. Narrowing the Attorney's power to direct the prosecuting authorities in individual cases to grounds of national security. Requiring the Attorney General to submit an annual report to Parliament.
- *War Powers*: the Government will propose a House of Commons resolution which sets out in detail the processes Parliament should follow in order to approve any commitment of Armed Forces into armed conflict.

- *Judicial Appointments*: reducing the role played by the Lord Chancellor in judicial appointments below the High Court. Removing the Prime Minister from the process for appointing Supreme Court judges.
- *Church Appointments*: reducing the role played by the Prime Minister in the appointment of bishops and senior church appointments.
- *Treaties*: formalising the present procedure to ensure a treaty cannot be ratified unless a copy of it is laid before Parliament for a defined period of 21 sitting days.

The draft bill is expected to be the subject of pre-legislative scrutiny, probably by a joint committee of both Houses. The main Select Committees which have an interest are the Justice Committee and Public Administration Committee in the Commons, and the Constitution Committee in the Lords. In addition, the Foreign Affairs Committee and Defence Committee will be interested in treaties and war powers. The government will want pre-legislative scrutiny to take place over the summer, so that the bill can be introduced in the next session beginning in the autumn.

GOLDSMITH REVIEW OF CITIZENSHIP

In March Lord Goldsmith QC published the report of his citizenship review, available at www.justice.gov.uk/reviews/citizenship.htm. It explains how the history of legislation on citizenship and nationality has led to a complex scheme lacking both overall coherence and a clear and self-contained statement of the rights and responsibilities of citizens. There remain six different categories of citizenship, whose differences and whose rights and privileges can only be discovered by careful analysis of a patchwork of legislation. Lord Goldsmith recommends abolition of the residual categories of citizenship and granting the fullest rights of political participation only to full citizens. Consequently, the right to vote in general elections of Commonwealth and Irish citizens resident in the UK would be phased out.

The report sets out in detail the legal rights and responsibilities of citizenship. In summary, the legal rights are the right of abode and freedom of movement in the UK; the right to a British passport, and to diplomatic protection and consular assistance when abroad; the right to vote, stand in elections, and donate to a political party; and access to state benefits and services such as healthcare and education. The legal responsibilities are the duty of allegiance to the Crown, duty to obey the law, to undertake jury service, and to pay taxes and national insurance contributions.

IN THIS ISSUE

THE EXECUTIVE	2
.....	
PARLIAMENT	2
.....	
EU REFORM TREATY	4
.....	
CHURCH AND STATE	4
.....	
DEVOLUTION	4
.....	
INFORMATION POLICY	5
.....	
INTERNATIONAL FOCUS	6
.....	
PEOPLE ON THE MOVE	6
.....	
CONSTITUTION UNIT NEWS	7
.....	
BULLETIN BOARD	8
.....	

39

The Constitution Unit
 UCL Department of Political Science
Director: Professor Robert Hazell CBE
www.ucl.ac.uk/constitution-unit
 Email: constitution@ucl.ac.uk
 Phone: +44 (0) 20 7679 4977
 Fax: +44 (0) 20 7679 4978

GOLDSMITH REVIEW OF CITIZENSHIP

The report considers possible changes that would make the legal status of citizenship clearer, including changes to the right to vote and the category of permanent residence. But it goes on to discuss the shared bond of citizenship in social terms as well, proposing a range of practical measures to enhance citizens' sense of shared belonging. One of these (citizenship ceremonies for school leavers) was leaked and distorted by the press, who ignored the other recommendations of a wide ranging and important review. The challenge for government is how to take forward the recommendations when several departments (Justice, Home Office, Communities and Local Government) all have an interest, and there is no obvious ministerial champion.

EXECUTIVE

Civil Service Legislation

There has long been talk of Civil Service legislation. In 1997 The Labour and Liberal Democrat Joint Consultative Committee on Constitutional Reform agreed there should be a Civil Service Act. The Lords Select Committee on Public Service recommended one in 1998, as did the Committee on Standards in Public Life in 2000 and 2002. However, the proposals tended to get lost among 'other priorities'. In January 2004, the Public Administration Select Committee (PASC) took the unusual step of publishing a draft Civil Service Bill, prompting the government to publish its own draft Bill for consultation in November of the same year. Although the consultation had left open the question of *whether* as well as *how* to proceed with civil service legislation, the government has now committed – in the recent White Paper and draft Constitutional Renewal Bill – to go down the statutory route. How does the proposed legislation measure up?

The main bases of the Civil Service Code, Special Advisers, and the Civil Service Commission (more on which below) are all covered. The Civil Service Code will be laid before Parliament and become part of the Civil Service's terms and conditions of employment. The Bill sets out the minimum requirements for the contents of the Code as follows: Civil Servants must work with integrity, honesty, objectivity and impartiality; and must be allowed to take complaints to the Civil Service Commission, who will also ensure that recruitment is based on merit. PASC's specifications for acting 'without fear or favour' and for sympathetic and efficient dealings with the public are omitted.

Special advisers are exempted from working with impartiality and objectivity and there is no

cap on their numbers, rejecting a suggestion made by PASC. That said, SpAds retain their own Code, which will also be laid before Parliament, and the Minister for the Civil Service will produce an annual report on the numbers and cost of special advisers (information currently obtained through Parliamentary Questions or FOI requests).

What will be the impact of the legislation? Perhaps this is not the right question: the legislation is not supposed to change much in practice, but rather to 'enshrine' the current procedures and ensure they cannot be changed in future without Parliamentary scrutiny.

Changes in Watchdog Governance

The governance structures of both the National Audit Office (NAO) and the Civil Service Commission (CSC) are set to change in the Constitutional Renewal Bill. The NAO's head, the Comptroller and Auditor General (C&AG), has been seen as a model for independence from government. Will the reforms affect this? How does the Civil Service Commission fare in comparison?

The Public Accounts Commission recommended some changes based on John Tiner's *Review of the National Audit Office's Corporate Governance* (HC 328), which it commissioned following the departure of Sir John Bourne, the previous C&AG. These have been accepted by the government. In its response, the Commission stated that the primacy given to the C&AG's complete independence had come at the expense of the systems of governance and control. How have they attempted to increase the latter without impinging on the former?

There are some changes to the post of C&AG. Its unlimited tenure has become a ten-year non-renewable term, with a ban on subsequently taking up posts at places audited by the NAO. The C&AG's salary will be pegged to that of the Treasury Permanent Secretary rather than to that of a High Court Judge. More profound, though, is the creation of an NAO board with a one-day-a-week Chairman, with the C&AG becoming the Chief Executive of the NAO. To maintain the C&AG's independence, the chair and board will not influence the audit decisions or resource allocation of the C&AG, nor take responsibility for them, but they will set the NAO's strategy and the amount of non-statutory work it bids for. Of the board's seven members, four will be non-executive, to constructively challenge the C&AG. The Chairman of the NAO board will have access to the Public Accounts Commission, as will the chair of the NAO's Audit Committee, which oversees the C&AG's expenses. The Chairman of the Audit Commission will attend board meetings as an observer.

- The C&AG is appointed by the Crown on an address from the Commons; the CSCs by the Crown on the recommendation of the Minister for the Civil Service after consultation with leaders of the opposition parties and of the devolved administrations;
- The C&AG can be dismissed by the Crown on a resolution of both Houses; the CSCs by the Crown on a recommendation from the Minister for Civil Service;
- Terms: ten years non-renewable for the C&AG; five years non-renewable for the CSCs;
- The NAO is funded from the Consolidated Fund; the CSCs by a Cabinet Office departmental vote. The Minister for the Civil Service can impose conditions on how the funds are spent;
- Unlike the NAO, and contrary to PASC's recommendations, the CSCs have no powers to initiate their own inquiries;
- The NAO is accountable to the House of Commons Public Accounts Committee and the Public Accounts Commission. Previously the CSCs could be invited to give evidence to the Commons Public Administration Committee, whereas now they will lay an annual report before Parliament.

PARLIAMENT

House of Lords Developments

One policy noticeably missing from the government's White Paper (see page 1) was House of Lords reform. This was no surprise, given that it was also excluded from the Green Paper last year. The government's strategy continues to be cross-party talks followed by a separate White Paper on the issue, which is now promised 'before the summer recess'. Unattributed briefings to the press emanating from the talks have suggested that the recommendation could be for a 400-strong wholly elected Senate (see e.g. *Daily Telegraph*, 22 March). However, this would prove very difficult to deliver politically, so may be wishful thinking on the part of the briefer.

In a written statement to the Commons on 24 January Michael Wills (Minister for Constitutional Renewal) explicitly linked the government's plans for Lords reform to electoral reform for the Commons. Marking publication of the government's review of electoral systems (see page 3), he suggested that 'it would be premature to seek to reform the electoral system for the Commons while the voting system for the reformed and

and substantially or fully elected House of Lords is still to be determined' (col. 62WS). This understandably frustrated electoral reformers, given the slow pace to date on Lords reform, but is something that the Constitution Unit has been saying for some time. The system for one chamber cannot be seen in isolation from the other. Resolving this, however, requires policy to be more joined-up, as otherwise inaction in each area can be in turn a perpetual excuse for inaction in the other.

Following Lord Steel's bill, which was effectively talked out in committee, there has been another attempt at piecemeal reform by a Liberal Democrat peer. Lord Oakeshott's House of Lords (Members' Taxation Status) Bill would require peers to be resident in the UK for tax purposes following the recent controversy over Lord Laidlaw. However, it has little chance of becoming law.

The passage of the Lisbon Treaty brought Lords questions to the fore, with the Conservatives claiming that they would 'turn the Salisbury Convention on its head' by forcing the government to honour its manifesto commitment on a referendum. The prospect of a Liberal Democrat abstention (as happened in the Commons) put the Crossbenchers, unusually, in a potentially pivotal role. However the Lib Dems ultimately chose to oppose the referendum, justified by Lord McNally's observation that 'the arithmetic of the Commons and the arithmetic of the Lords are different' (Lords Hansard, 1 April 2008, Col. 871). New Crossbench Convenor Baroness D'Souza has meanwhile achieved major change, with a 56 per cent increase in the group's budget announced in March. At £61,000 this still falls well short of allowances to the political parties.

Losses to the Lords since January notably included Lord Beaumont of Whitley, who died in April. A member of the Lords since 1967, he was the only (ever) Green member of the British parliament (though Cynog Dafis was elected to the Commons in 1992 on a joint Plaid Cymru-Green ticket). This increases pressure on Gordon Brown to appoint new Green peers following the party's election of nominees last year. Plaid Cymru has also now elected three nominees: Dafydd Wigley, Janet Davies and Eurfyl ap Gwilym, and similarly awaits an opportunity for them to be appointed. Three new independent peers were announced by the Appointment Commission in April: Elizabeth Manningham-Buller, John Mogg and Robert Smith. Finally, we have seen the first of the Commission's independent appointees 'defect' to a party, with Lord Patel of Bradford switching to the Labour benches in February.

House of Commons Developments

A number of recent publications have set out proposals for reform of the House of Commons. These pertain to various aspects of the Commons' role, but all relate to one or both of the government's objectives of strengthening parliament and boosting public participation in the political process.

Most notably, the government's White Paper and draft Bill on 'constitutional renewal' set out plans for greater parliamentary oversight of the exercise of the Royal Prerogative (Cm 7342, see also page 1). Building on existing precedent, future deployments of British armed forces will be subject to a vote of MPs, though this will be set out in a parliamentary resolution rather than in legislation. The Commons will also gain statutory rights to scrutinise treaties before ratification, replacing the informal 'Ponsonby rule'. In both cases flexibility will be built in to allow for exceptions in times of urgency. In addition, the White Paper confirmed plans for non-binding committee hearings to scrutinise key public appointments, while progress towards giving MPs a say over the dissolution and recall during recess of parliament will await the findings of a recently-launched Modernisation Committee inquiry. Plans to place the civil service on a statutory footing for the first time are discussed on page 2.

Two recent publications also proposed ways of improving the legislative aspect of parliament's work. Firstly, in January 2008, the Modernisation Committee published the findings of its inquiry into last year's experiment of publishing a Draft Legislative Programme (DLP) in July (HC 81). The committee welcomed this innovation, though called for future DLPs to be published before Easter, so as to maximise the opportunity for MPs and the public to influence the contents of the following November's Queen's Speech. The Leader of the House of Commons, Harriet Harman, subsequently announced in the House (on 20 March) that the DLP for 2008 will be published at the end of May, adding some six weeks to the time for scrutiny and debate.

Secondly, a March report saw the government making a strong commitment to post-legislative scrutiny, which numerous reviews have identified as an area in need of serious improvement (*Post-legislative Scrutiny – The Government's Approach*, Cm 7320). The government agreed that most Acts of Parliament should undergo a formal process some time after implementation to assess how successful the legislation has been. The plan is for the government to kick off the process, three to five years after enactment,

by publishing a brief Memorandum on each Act, after which the appropriate departmental select committee, or alternatively a Lords or Joint committee, could undertake more detailed scrutiny. Such a system would necessitate greater clarity as to the objectives of legislation at the time of its passage, which the government recognises as a beneficial reform in its own right.

Finally, a Procedure Committee report paves the way for reform of the Commons' petitions system (*e-Petitions*, HC 136). For the first time, if the proposals are carried, parliament will accept electronically-submitted petitions from the public (as Downing Street has done for some time). The committee also proposes that three 90-minute slots per year be set aside in Westminster Hall for the consideration of popular or important petitions. The government would be expected to respond to all substantive petitions within two months, and select committees encouraged to consider some petitions. More radical ideas – such as the creation of a dedicated petitions committee and the establishment of rights for non-Members to present petitions to parliament – were not backed.

Electoral Reform Back on the Table?

Prior to his speech introducing the draft Constitutional Reform Bill in March 2008, electoral reform sceptic and Justice Secretary Jack Straw was reported as backing a switch to the Alternative Vote (AV) system for elections to the House of Commons.

The AV system is designed to ensure the elected candidate receives a majority of the votes cast. Voters rank candidates in order of preference. If no candidate receives an overall majority on the first preference, the candidate with the lowest number of votes is disregarded and their second preference votes taken into account. This process is repeated until one candidate has an overall majority. The advantages of AV are that it preserves the historic constituency link whilst increasing voters' freedom to cast their ballots according to conscience rather than tactical calculations. Ensuring that victorious candidates receive an overall majority might also deliver greater legitimacy and higher turnouts.

However, AV in its pure form does not necessarily deliver more proportional results than the existing 'first past the post' system (FPTP). Indeed, the government's recently-published (and long-delayed) *Review of Voting Systems* points out that AV (as used in elections to the Australian lower house) can deliver even less proportionate results than FPTP (Cm 7304, p.154). Consequently, any attempt to move to AV would receive scant

PARLIAMENT

support among committed electoral reformers such as the Liberal Democrats and the Electoral Reform Society, both of which favour the Single Transferable Vote (STV) system. The most likely viable compromise remains some variant of the 'AV-Plus' system recommended by the Jenkins Commission in 1998, and subsequently ignored by the government in breach of its 1997 manifesto commitment. However, with both major parties sceptical, at best, of electoral reform, change is likely to come onto the agenda only in the case of a hung parliament, or in the context of debates about the electoral system for a future fully or partly-elected House of Lords (see also page 2).

EU REFORM TREATY AND THE BRITISH CONSTITUTION

In a magisterial report, the Lords Constitution Committee has cut through the obsessions over the treaty's status to conclude that while parliamentary sovereignty will not be infringed, that by no means is the end of the matter. The committee wishes to stiffen the details of the enabling Bill, which improve parliamentary scrutiny and prevent further EU changes slipping through the back door.

For instance, *passerelles* (amending procedures) allow certain future voting and other changes to be made without reference to the Council of Ministers, though the Bill requires a parliamentary debate in each case. While it is accepted that the Treaty actually limits the range of EU competences, these will be defined by the European Court of Justice, a situation that gives cold comfort to sceptics. The vaunted British 'red line' against encroachment by the Charter of Fundamental Rights is 'not an opt-out but merely a clarification' and may not protect the UK against future alterations. Furthermore, the UK has five years to decide whether to opt in en bloc, case by case or not at all to the Freedom, Security and Justice pillar, which will in the meantime considerably shape the hot issues of immigration, asylum and extradition policy and even some family law.

On these topics and others, the Lords Committee's remedy is to strengthen parliamentary accountability further than is provided for so far in the Reform Treaty Bill.

Opting in to EU justice arrangements would entail constitutional change and the Bill should be amended to provide for Commons parliamentary approval in each case. While the Court of Justice's decisions are not part of British law, they can be invoked in our judgments. The Government should therefore make an annual report to Parliament on the

impact on the Court's decisions. It is noted that Parliament will be given six months to react to any major new Council decisions. However, the Treaty's suggested period of eight weeks is too short for the proposed major initiative of pre-legislative scrutiny of Commission legislation.

To allow better accountability procedures to develop, the Lords Committee makes a heartfelt appeal for a period of EU 'institutional stability', while recognising that the Treaty offers no constitutional finality. The British parliamentary debate is therefore being encouraged to shift from the 'theology' of the EU to the practical issues of governance.

CHURCH AND STATE

In pursuit of its study of Church/State relations, the Unit last month published papers from its 2006 seminar on the subject – *Church and State: Some Reflections on Church Establishment in England* (see page 8 for ordering information). These demonstrate the range of opposition – religious and secular – to establishment, some of the confusion that arises within the Church and from government in their responses to social and political changes, and concludes with a view of its position from the Church of England itself.

In an online comment article on 18 March, Constitution Unit researcher Bob Morris analysed the consequences of the new arrangements (first put forward in the *Governance of Britain – Cm 7170*) for appointing bishops and other senior Church of England clergy. The withdrawal of the Prime Minister from active involvement in the process has created a situation where the Church of England itself now in effect directly appoints 26 members of the House of Lords. This calls into question both the principle of episcopal membership of the Lords and the position of the Queen as Supreme Governor. Whilst the changes further undermine the argument for the bishops staying in the Lords, the Unit has suggested ways in which implied challenges to the Queen's position may be accommodated within the current architecture of establishment. However, that accommodation will be a fragile thing, and a future Unit study will deal with the larger questions of Church/State relations. This will anatomise the nature of establishment in England and in Scotland, look at how some broadly comparable – especially Scandinavian – countries manage, analyse the character and extent of current Christian belief in Britain, assess its political consequences and constitutional implications before, finally, examining what the options for adjustment may be and which should be preferred.

DEVOLUTION

Scotland: Towards a multi-option referendum?

Scotland could be heading towards a multi-option referendum, with voters given the chance to opt for independence, for enhanced devolution or for the status quo. The announcement came at the launch of the second phase of the SNP government's 'national conversation' on Scotland's constitutional future at an event held at the University of Edinburgh in March.

Under such a scenario, voters would be invited to cast their votes in order of preference. The least popular constitutional option would be eliminated and the second preferences of those voters redistributed between the remaining two options. An advantage of a multi-option referendum is that it can better reflect the complexity of views held. However, it also implies that independence, should it emerge as the most popular option, could be negotiated without having secured over 50 per cent of first preference votes. Critics have suggested that the SNP is trying to find a 'back door' route to independence. Questions might also be raised about the mandate and negotiating strength an SNP government would have if a multi-option referendum produced a majority in favour of independence only after the redistribution of second preferences.

Although portrayed in the media as a 'bombshell announcement' (*Scotsman*, 27 March 2008), and apparently greeted with surprise as well as scorn by political opponents, the idea of a multi-option referendum was implicit in the SNP government's White Paper *Choosing Scotland's Future*. The conclusion of the White Paper (para.6.6) 'foresees a choice facing Scotland of:

- continuing with the current constitutional settlement with no or minimal change;
- extending devolved responsibilities to Scotland in areas identified during the national conversation; or
- taking the steps to allow Scotland to become a fully independent country.'

The SNP and others have also championed a multi-option referendum in the past. The SNP tabled amendments to the 1997 devolution referendum bill seeking a three-way contest with independence on the ballot paper. The cross-party home rule pressure group, Scotland United, founded in the wake of the 1992 General Election, had a multi-option referendum as its central aim.

The politics of the issue are different this time. The SNP is leading the debate from a position of power but lacks a majority in the Scottish Parliament to press ahead with any constitutional referendum. The First Minister has indicated that a straightforward independence referendum is his preferred choice. The multi-option referendum is presented as a compromise, inviting the opposition parties engaged in setting up the Scottish Constitutional Commission to have its recommendations on revising the devolution settlement presented on a ballot paper alongside independence and the status quo. Despite this, the opposition parties have so far rejected a need to seek popular approval for revising the powers of the Scottish Parliament. Should they refuse to support the SNP government's referendum bill – expected to be tabled in 2010 – the SNP would enter the 2011 Scottish Parliament election accusing their opponents of denying Scots the right to determine their own future.

Dr Nicola McEwen, University of Edinburgh

Northern Ireland

As the tenth anniversary of the Belfast agreement passed in April, the final brick in the architecture, as seen in London and Dublin – the proposed devolution of policing and justice powers in May – remained stubbornly detached. The NIO published a draft bill to make the point and Sinn Féin stood by the target date, whereas the Democratic Unionist Party reiterated that it had secured a veto, though an officially commissioned poll found that even its supporters were in favour of the transfer.

Northern Ireland's 'troubles' continue to overhang. A debate in the assembly on dealing with the past saw vicious exchanges, with a unionist MLA suggesting that a no-holds-barred 'war' – one suggested label for the conflict – would have denuded the Sinn Féin benches of some of its members. The SF deputy first minister, Martin McGuinness, meanwhile volunteered that he would have killed every British soldier he could after Bloody Sunday. He and the DUP first minister, Rev Ian Paisley, having for months been unable to agree on the appointment of a victims' commissioner, decided to appoint four.

Mr Paisley has persuaded himself that he did 'smash' SF, as he had pledged in the past to do, but a by-election in staunchly Protestant territory demonstrated that his smiling double act with Mr McGuinness, as if the 'troubles' had never happened, was going down very badly with DUP voters. Embarrassed too by the clientilistic behaviour with regard

to a party-member property developer of his son and junior minister, Ian Paisley Jr, which occasioned the latter's resignation, he announced he would step down too after a US investment conference in May. Peter Robinson, long Mr Paisley's deputy, stepped forward to fill his party and political offices.

SF had its own problems with its 'base'. The lately marginal party leader, Gerry Adams, was subjected to unprecedented criticism by a columnist in a republican newspaper in west Belfast over the anomie in his constituency, which remains hugely disadvantaged despite, or in part because of, decades of 'republican struggle'.

Meanwhile, the party's education minister, Caitriona Ruane, appeared ever more embattled on an issue key to Northern Ireland's future. Following a stormy debate, the assembly called on her to provide detailed proposals on the abolition of the '11-plus', due after this school year, amid mounting anxiety among parents of primary children. She and her DUP shadow as education committee chair, Sammy Wilson, accused each other of living 'in cloud-cuckoo land'.

The Programme for Government of the devolved administration was agreed, but only after the SDLP, minus its minister, voted with Alliance against it and SF had submitted a response to the draft it had helped to write: a do-little programme which allowed the regional rate to be frozen in his budget. Following criticism of the shelving of the anti-sectarian policy, *A Shared Future* – the executive having substituted an economic emphasis on 'a better future' – the revised programme promised in tortuous prose 'a shared and better future'. A draft of a new policy on 'community relations', *Cohesion, Sharing and Integration*, was a pale shadow of its direct-rule predecessor.

While the London media marked the agreement anniversary with much uncritical space for the self-congratulatory account of the 'peace process' by the former Downing Street chief of staff, Jonathan Powell, at home the coverage was much more downbeat. The day after he had announced his own resignation – precipitated by chaotic admixing over the years of his personal and political finances – the taoiseach, Bertie Ahern, said that 'the scourge of sectarianism is still all too evident' and that the 'peace walls' represented 'an affront to our aspiration for a peaceful democratic society'. The walls in the head were still in evidence at Stormont as well.

Robin Wilson, Queen's University Belfast

Cabinet Minutes Decision

In February, the Information Commissioner's Office (ICO) instructed the Cabinet Office to disclose the minutes of Cabinet meetings relating to the legality of the war in Iraq. The ICO took the view that, owing to the importance of the issue, the public interest in disclosure outweighed the section 35 exemption, which excludes information relating to the formulation of government policy. However, the ICO pointed out that the case was exceptional and it is unlikely that the ruling will lead to Cabinet papers being released in the future. Moreover, it is likely that the Cabinet Office will appeal the case.

MPs' Expenses

A series of rulings from the ICO and Information Tribunal are opening up details of MPs' expenses, travel allowances and other cost allowances. The Information Tribunal ordered the disclosure of details of MPs' expenses and the ICO took the view that the House should also release a range of information relating to travel, staffing, IT provision and the additional cost allowance. The rulings have been made alongside an ongoing review into MPs' expenses by a Commons' committee, to be released in the summer. Although the subject of media controversy, the increased access to more details of expenses can be viewed as part of a 'falling into line' by MPs with other officials and heads of public bodies, who are increasingly publishing such information.

Data Protection

The strengthening of the penalty for breach of the Data Protection Act and data theft has been subject to a last minute compromise. Although stronger sanctions, including jail, are now going to be enshrined in law, the implementation of the sanctions will be suspended. This followed lobbying from sections of the media who felt the change would curb investigative journalism. The government also responded to the Justice Committee report on the Protection of Private Data by agreeing that the ICO would benefit from stronger powers and more funding. A report by the Joint Committee on Human Rights into data protection also recommended expanding the ICO's power and funding, claiming that the recent data protection losses were indicative of government's failure to take data protection seriously.

Environmental Information Regulations

The ruling by the Information Tribunal to disclose information from the Exports Credits Guarantee Department was upheld by the

INFORMATION POLICY

PEOPLE ON THE MOVE

High Court. The information, requested by Friends of the Earth, relates to oil extraction projects. The ICO originally supported the department's decision not to disclose but this decision was then overturned by the Information Tribunal. The government's appeal to the High Court was then dismissed, as the decision of the Tribunal was correct in law.

For further details on the above and more information rights related stories, please consult the Constitution Unit's monthly updates available at: www.ucl.ac.uk/constitution-unit/foidp/monthly-updates.

Lord Phillips, the Lord Chief Justice, to be senior law lord when Lord Bingham retires in September. He will be the first President of the new Supreme Court when it opens in October 2009.

Dame Gill Morgan, chief executive of the NHS Confederation, has succeeded Sir Jon Shortridge as Permanent Secretary of the Welsh Assembly Government.

William Chapman, the Prime Minister's Appointments Secretary who handled ecclesiastical appointments, has left No 10 to become Policy Director of Tony Blair's new Faith Foundation.

Jill Pay joined the House of Commons as the first ever female Sergeant at Arms in February.

INTERNATIONAL FOCUS: AUSTRALIA AND CANADA

The new Australian Prime Minister Kevin Rudd has ambitious plans to reform the constitution. His election commitments include referendums on fixed four-year terms for the federal Parliament, an Australian republic, recognising local government and restoring cooperation in federal-state relations. These are bold plans, as it is notoriously difficult to amend the Australian constitution. An amendment must first be passed by the federal Parliament. It then needs to be supported at a referendum by an overall majority of the people, and by a majority of states. This process has been invoked 44 times, with only eight of the proposals succeeding. The last time a Labor government succeeded in amending the constitution was in 1946. Since then Labor has made 13 attempts at constitutional reform, all of which failed; as did the 1999 referendum on Australia becoming a republic.

Kevin Rudd might draw some comfort from Canada, where the Conservative Prime Minister Stephen Harper has succeeded in introducing fixed four-year terms for the Canadian Parliament. But Harper is struggling with his proposals to reform the Canadian Senate. This is also notoriously difficult. Like the House of Lords, the Senate is all-appointed, and Senators once appointed serve until the age of 75. The Harper government seeks to make the Senate more democratically accountable by including direct elections in the selection process, as well as limiting the terms of Senators to eight years.

Senate reform is difficult to achieve because of the formal requirements for amending the Canadian constitution, and because past attempts at Senate reform were often included within broader constitutional initiatives (the Meech Lake and Charlottetown Accords being two examples). This linked Senate reform to federal and provincial agreement on other (often more contentious) constitutional issues, such as Quebec's place in Canada. In contrast, the Harper government seeks to bypass any constitutional wrangling by proposing limited reforms that would not require Constitutional amendment or, in the worst case, only require constitutional approval at the federal level (the House of Commons, the Senate, and the Governor General). However, the federal government's view of what does or does not count as a constitutional amendment is challenged by many of the Canadian provinces.

CONSTITUTION UNIT NEWS

Annual Lecture Report

On 5 March 2008 Michael Wills, Minister of State in the Ministry of Justice, delivered the Constitution Unit's annual lecture, under the title 'Kickstarting a National Debate on a British Bill of Rights and Duties'.

Mr Wills stressed that constitutional reform remains of fundamental importance to our society, with the distribution of power determining how every other question in public life is answered.

He expressed satisfaction with the constitutional progress made by the Labour Government, arguing that in addition to devolving powers to regional bodies, it has transformed the relationship between the state and the individual with the Human Rights Act and Freedom of Information Act.

The *Governance of Britain* programme would, he said, build on this work.

The Government would proceed cautiously, he promised, stating that we cannot eliminate tensions between constitutional institutions designed to balance the exercise of power by each other.

He outlined proposals that instead attempt to manage tensions by enhancing the legitimacy of institutions: new limits on executive power in the Constitutional Renewal Bill; a new Bill of Rights and Responsibilities articulating Britain's democratic principles to its citizens; and new processes of democratic engagement to augment representative democracy.

A transcript and an audio recording of this lecture can be found at: www.ucl.ac.uk/constitution-unit/events/2008/annuallecture.htm.

Seminar Reports

The Unit held three public seminars in the first four months of 2008, with a further two scheduled before the summer break.

On 23 January, Richard Wilson, the director of Involve, spoke on the challenges of increasing overall public political participation. Wilson began by outlining the reasons for a significant decline in public involvement in politics, as evidenced by low turnouts in recent elections. He went on to discuss the approaches to public involvement taken by the three main political parties, the challenges that must be resolved if greater participation is to be achieved, and the range of different initiatives that could be used to encourage and stimulate public interest.

On 13 February, Sir Christopher Foster, chairman of the Better Government Initiative, along with several of his colleagues, led a seminar on ways in which government and parliament can better govern and make policy for the country. The speakers discussed the recommendations of their recent report, *Governing Well*, which can be viewed at: www.bettergovernmentinitiative.co.uk/sitedata/Misc/Governing-Well.pdf.

On 3 April, Lord Goldsmith QC spoke on what it means to be a British citizen and the ways in which the bonds of citizenship could be enhanced, following the publication of his Citizenship Review, which was undertaken at the behest of the government. Lord Goldsmith found that the different legal forms of British citizenship create an unnecessarily complex system, making it more difficult for the public to fully understand the rights and responsibilities of citizenship. Lord Goldsmith suggested a number of ways in which to improve the situation, including initiatives during school years to foster a culture of citizenship and continuing such measures throughout adulthood.

House of Lords Project News

Senior Research Fellow Meg Russell has won a major award from the ESRC. This takes the shape of a three-year full-time Research Fellowship, which will start in October. The funding will support continued work on the House of Lords, new work on the wider policy impact of Parliament, and some exploratory work in political psychology.

Devolution Project News

The latest set of Devolution Monitoring Reports was published in January 2008, with the Institute of Governance at Edinburgh University producing the Scotland report for the first time. Further sets of reports are due to be published in May and September 2008, and we are seeking funding to continue the project beyond that date. The latest volume of the *State of the Nations* series, edited by Alan Trench, is also in production and due to be published by Imprint Academic Press in the next couple of months.

Inside Devolution 2008, the Constitution Unit's second annual conference on devolution, takes place at the British Academy in London on 22 May bringing together speakers from government, the media and academia. The event will offer the first major opportunity for officials and commentators to discuss how British territorial politics has been transformed since May 2007 by the entrance of nationalists into government in Edinburgh, Cardiff and

Belfast, and of Gordon Brown into 10 Downing St. Note that this event is now **sold out**.

More information on the Unit's devolution work can be found at: www.ucl.ac.uk/constitution-unit/research/devolution/index.htm.

Freedom of Information Project News

As part of its ongoing project entitled 'Evaluating the Impact of Freedom of Information in the UK', the FOI team has started two streams of data collection: interviews and surveys of requesters. The interviews aim to understand the impact of FOI on Whitehall. The surveys of requesters aim to uncover the world of FOI requests that take place outside the media spotlight. If you or your department would like to help out with either of these, please contact the FOI Research Associate, Ben Worthy (b.worthy@ucl.ac.uk, 020 7679 4974).

Freedom of Information Conference

With increasing pressures for both transparency and privacy, getting to grips with complex information policy and legislation is a must. You can gain practical insights into how to do this at FOI Live 2008, the largest information rights conference for practitioners, organised by the Constitution Unit in conjunction with the Ministry of Justice and Information Commissioner's Office. Taking place on 3 June 2008 at Victoria Park Plaza, the event covers key issues including: good practice and case law developments; how to weigh up the public interest test; the interface of Freedom of Information and Data Protection; and the security of electronic communications. Keynote speeches will be given by Richard Thomas, Information Commissioner; Michael Wills MP, Minister of State for Constitutional Renewal; Maurice Frankel, Director of the Campaign for Freedom of Information; and the Constitution Unit. Visit www.foilive.com to book now and stay ahead of the information policy curve.

Unit Personnel News

The Constitution Unit has appointed Selina Uddin as its new part-time administrator. Selina, who already works in the School of Public Policy, will spend two mornings a week with the Unit from April 2008. The Unit has also recruited eleven new interns, in two tranches, in the New Year. Thanks are due to James Baker, Daniel Broadbent, Ed Calow, Richard Carr, Fred Cowell, Tommaso Giordani, Steve Gummer, Daniel Lawrence, Kerem Nisancioglu, Sarah Renfrew and Martha Spurrier.

BULLETIN BOARD

CU PUBLICATIONS

- Hazell, Robert, 'Measures of Success for Freedom of Information', paper presented to 5th International Conference of Information Commissioners, 29 November 2007, available at www.ucl.ac.uk/constitution-unit/foidp/research/Evaluation/Publications.htm
- Hazell, Robert, 'The Acts of Union: The next thirty years', Sunningdale Accountability Lecture, 29th January 2008, available at www.ucl.ac.uk/constitution-unit/files/staff/Accountability_Lecture.pdf
- Morris, R.M., *Church and State Some Reflections on Church Establishment in England*, (March 2008). 82-page report available to purchase from the Unit for £15.
- Paun, Akash, 'The Calm Before the Storm: Territorial politics in the third term of British Devolution', conference paper delivered at Université du Sud – Toulon Var, 8 February 2008.
- Russell, Meg and Akash Paun, *The House Rules? International lessons for enhancing the autonomy of the House of Commons*, (October 2007). 93-page report available to purchase from the Unit for £20. Summary of recommendations available at www.ucl.ac.uk/constitution-unit/files/publications/HouseRulesRecommendations.pdf
- Trench, Alan (ed.), *Devolution and Power in the United Kingdom* (Manchester: Manchester University Press, 2007) Available as e-book at www.manchesteruniversitypress.co.uk/catalogue/book.asp?id=1070
- Trench, Alan (ed.), *The State of the Nations 2008: Into the Third Term of Devolution* (Exeter: Imprint Academic Press, forthcoming 2008).
- Worthy, Benjamin, 'The Future of Freedom of Information in the United Kingdom', *The Political Quarterly*, 79 (1), (January 2008).

Further details on Constitution Unit publications, including free PDF versions of our back catalogue, can be found at www.ucl.ac.uk/constitution-unit/publications

FORTHCOMING EVENTS

Constitution Unit Seminars

- Ben Bradshaw MP (Minister of State for Health & Government Minister for the South West Region), Monday 19th May, 1pm, *The Role of Regional Ministers in England*
- Ann Abraham (Parliamentary Ombudsman), Tuesday 17th June, 6pm, *Good Administration: Why we need it more than ever*

Constitution Unit & MoJ Seminar Series

- Professor Francois du Bois, *Transformative Constitutionalism*, Thursday 22nd May, 1pm.
- Tony Wright MP, *Taming the Prerogative*, Wednesday 25th June, 1pm.

Constitution Unit Conferences

- *The House Magazine*, in association with the Constitution Unit, is holding a one-day conference on Wednesday 21st May entitled **The Governance of Britain: The Next Steps in Constitutional Renewal**. Speakers include Michael Wills MP, Jonathan Jones (Director General, Attorney General's Office) and Roger Smith (Director, JUSTICE). Info at www.westminster-explained.com/constitutional-renewal.html
- Developments since 2007 in the UK's devolution arrangements will be discussed at the Constitution Unit's **Inside Devolution 2008** conference on Thursday 22nd May 2008, with speakers from the media, academia and government. Further information can be found at: www.ucl.ac.uk/constitution-unit/events/insidedevolution08.htm, but note that this event is now **sold out**.
- Delegates have a unique chance to meet with a range of people involved and interested in information rights at the Constitution Unit's **FOI Live 2008** conference on Tuesday 3rd June. Confirmed speakers include Michael Wills MP (Ministry of Justice), Richard Thomas (Information Commissioner), Maurice Frankel (Head of the Campaign for Freedom of Information) and Robert Hazell (The Constitution Unit). Full details at: www.foilive.com

Full info on all events at: www.ucl.ac.uk/constitution-unit/events

PUBLICATIONS RECEIVED

- Bell, Mark and Alasdair Murray (ed.), *In the Balance: Coalition and minority government in Britain and abroad*, (CentreForum, 2007)
- Brazier, Alex and Susanna Kalitowski (ed.), *No Overall Control: The impact of a 'hung parliament' on British politics*, (Hansard Society, 2008)
- Curtice, John, *Where Stands the Union Now? Lessons from the 2007 Scottish Parliament election*, (London/Newcastle: Institute for Public Policy Research, February 2008)
- House of Commons Justice Committee, *Protection of Private Data*, Session 2007-8, HC 154 (London, House of Commons, 3rd January 2008)
- House of Lords and House of Commons Joint Committee on Human Rights, *Data Protection and Human Rights*, Session 2007-8, HL 72/HC 132 (London, House of Commons and House of Lords, 14th March 2008)
- Kelly, Richard and Lucinda Maer, *Parliamentary Pay, Allowances and Pensions*, Research Paper 08/31 (London: House of Commons Library, 31st March 2008)
- Kenny, Michael, Richard English and Richard Hayton, *Beyond the Constitution? Englishness in a post-devolved Britain*, (London/Newcastle: Institute for Public Policy Research, February 2008)
- Ministry of Justice, *Constitutional Renewal White Paper*, Cm 7342 (London: The Stationery Office: March 2008)
- Ministry of Justice, *Review of Voting Systems: the experience of new voting systems in the United Kingdom since 1997*, Cm 7304 (London, The Stationery Office, January 2008)
- Office of the Leader of the House, *Post-legislative Scrutiny – The Government's Approach*, Cm 7320 (London: The Stationery Office, March 2008)