

# MONITOR

## GOVERNANCE OF BRITAIN ONE YEAR ON

The government's authority may be waning, but it is continuing to press ahead with the constitutional renewal agenda first outlined in the *Governance of Britain* green paper (Cm 7170) in July 2007. Over the summer there was a flurry of further reports from government and from Parliament.

On 3 July the Ministry of Justice published its progress report, *Governance of Britain: One Year On*. It provides a detailed checklist of progress on all the different items in the constitutional renewal agenda. It also illustrates the government's presentational difficulty, that these are disparate items with no strong central theme. That was one of the main criticisms of the parliamentary Joint Committee which reported on the draft Constitutional Renewal Bill on 31 July.

The draft bill had also been scrutinised in the Commons by the Justice Committee and by PASC, and in the Lords by the Constitution Committee. The Justice Committee continued to press its radical view that the legal and political roles of the Attorney General should be separated, but found no support from the other parliamentary committees.

The Joint Committee was critical of certain aspects of the bill, and of its grandiose title. In some of its criticisms the committee wanted to rein the government back from going too far in its reforming zeal. On the powers of the Attorney General, the committee recommended that she should retain power to stop a prosecution in all cases, not simply national security. And on judicial appointments, the committee opposed removing the Lord Chancellor's discretion in relation to appointments below the High Court. It was too soon to propose significant reforms only two years after the Judicial Appointments Commission had come into being.

In other respects the committee wanted the government to go further. The Civil Service Commissioners should have power to initiate investigations; and ideally the civil service provisions should be in a separate Civil Service Act. The committee also recommended a new parliamentary Joint Committee on Treaties, to sift all the treaties laid before Parliament, and to scrutinise other treaty-like documents.

The committee recognised that the draft bill is the first step in a much wider programme of reforms. These were listed in *The Governance of Britain: One Year On*, which records progress in the government's other initiatives to strengthen Parliament. These include pre-appointment scrutiny hearings (see page 2); control over the war making power, and the dissolution and recall of parliament; more

effective scrutiny of government expenditure; debates on departmental objectives and annual reports; debating the draft legislative programme; strengthening the Intelligence and Security Committee. These initiatives can all be progressed without legislation. As a result they have been largely ignored by the media.

In June the Ministry of Justice published *Election Day: Weekend Voting* (CP 13/08). It seeks views on the merits of moving polling day from Thursday to the weekend. Later in 2008 a citizens' summit will be convened to consider the issue in detail and make a recommendation to Parliament. This links to the MoJ's next publication, *A national framework for citizen engagement*. The government wants to increase public participation by experiments with new forms of direct and deliberative democracy. The machinery discussed in the consultation paper includes referendums, citizens' juries, citizens' summits, and e-petitions to Parliament. *The Governance of Britain* website is seeking to develop a dialogue on the sorts of issues which should be referred to citizens' juries, and the criteria for judging their success.

*Further details about the Governance of Britain programme on the website of the Ministry of Justice at: <http://governance.justice.gov.uk/>*

*The Constitution Unit's commentary on the draft Constitutional Renewal Bill can be found at: <http://tinyurl.com/6chnzl>*

## LORDS REFORM WHITE PAPER

In July the Ministry of Justice published *An Elected Second Chamber: Further reform of the House of Lords* (Cm 7438). It is the fifth white paper on Lords reform since 1997, and it reports on the conclusions of the cross-party group which has been meeting for the last two years under the chairmanship of the Lord Chancellor. The group's starting point was the votes in the House of Commons in March 2007 in favour of a wholly elected second chamber (337 to 224) and for an 80% elected chamber (305 to 267).

The white paper sets out different models for moving to a wholly or largely elected second chamber. The cross-party group agreed on some fundamental principles, but disagreed on important details. There was agreement that members of the second chamber should be elected on a completely different basis from the House of Commons. They should serve long, non-renewable terms of office of 12-15 years, with elections in thirds; but there was no agreement on size of the new second chamber, the electoral system, or the timing of elections.

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## LORDS REFORM (CONT'D)

The Conservatives would like a chamber of 250-300 members, elected by first past the post; the Liberal Democrats favour STV or open lists. The government proposes a house of 400-450 members, and invites views on whether the voting system should be FPTP, STV, AV or a list system. The government and Conservatives would like to hold elections at the same time as elections for the House of Commons; the Lib Dems would prefer elections at the same time as devolved and local elections.

Appointed members would be 20 per cent of the House, plus the Bishops (although the Lib Dems would like the Bishops removed). The Conservatives would leave the Appointments Commission on a non-statutory basis, and allow certain public servants (eg retiring Cabinet Secretaries) to be considered automatically for appointment.

The white paper discloses some important advances in government thinking. It repeatedly states that the government welcomes a stronger and more assertive House of Lords. It acknowledges that an elected second chamber is no threat to the primacy of the House of Commons. And it concludes that there should be no change to the powers of a reformed second chamber. But this is combined with some interesting omissions. There is no mention of the current convention that no political party should seek an overall majority in the House of Lords; and no discussion of the merits of a part time versus a full time House. The assumption is that in future all members will be full time, whether elected or appointed.

There are some small contradictions with the government's earlier response to PASC's report on Propriety and Peerages (Cm 7374). There the government does acknowledge the 'widely accepted assumption that in future, no political party will have an overall majority in the House'. And while the White Paper proposes that a statutory Appointments Commission should be accountable to the Prime Minister, the response to PASC suggests that it should be independent of government and accountable to Parliament.

## BRITISH BILL OF RIGHTS

The government's long awaited consultation paper failed to appear before the summer recess. There were difficulties with the devolved governments, and with other Whitehall departments. The ground has now been cut from under the government's feet by a long and thorough report from the parliamentary Joint Committee on Human Rights, *A Bill of Rights for the UK?* (HL Paper 165-I, HC 150-I), which was published on 11 August.

The JCHR recommends that the UK should adopt a Bill of Rights and Freedoms. It should be aspirational in nature, as well as protecting those human rights which already exist. The aspirational rights should initially include rights to education, health, housing and an adequate standard of living. These rights would be non-justiciable, but government would have a duty to progress towards them, and to report on that progress to Parliament. Additional rights could include the right to trial by jury, administrative justice, and international rights not yet incorporated into UK law. The courts should not have power to strike down legislation, maintaining the balance established under the HRA.

The JCHR has little time for linking rights to responsibilities; but the language of responsibilities could figure in the preamble to the bill. Likewise with a statement of values. The preamble should set out the purpose for adopting a bill of rights, and the values considered to be fundamental in the UK. These might include liberty, democracy, fairness, civic duty and the rule of law.

*Link to JCHR report: [www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/165/16502.htm](http://www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/165/16502.htm)*

## PARLIAMENT

## Parliamentary scrutiny of appointments

In its July 2007 *Governance of Britain* green paper, the Brown government proposed that certain high-profile public appointments should be subject to pre-appointment scrutiny by parliamentary select committees. The government and the Liaison Committee, after several exchanges, have agreed on a list of 60 posts that could be subject to pre-appointment hearings. Parliament will not have a veto power over appointments, but it will be able to express its reservations in a committee report.

Thus far four hearings have been conducted on a pilot basis. These were for the posts of the head of the UK Statistics Authority, the head of the Care Quality Commission, the High Commissioner to Malawi and the chair of the House of Lords Appointments Commission. All of the appointees were approved for their posts following hearings by four different select committees.

The Constitution Unit is planning to investigate the full implications of introducing pre-appointment hearings. The research project would explore what value the hearings add to the public appointments process, and what risks are involved (eg in deterring good candidates or jeopardising

the integrity of the process). The study would focus on the 15 appointments that are due to expire in 2008 and 2009.

## Lords Constitution Committee Reports

*Pre-Legislative Scrutiny*

In June the Lords Constitution Committee (LCC) published the government response to its earlier report on pre-legislative scrutiny.

The LCC report of January 2008 had noted 'with concern' the decline in the number and proportion of bills being published in draft: the ratio of draft to government bills having fallen from 1:3 (2003-04) to 1:9 (2006-07). The LCC also criticised the government for late publication of draft bills, which created an 'excessively tight timescale', and for the 'extremely bad practice' of conducting fresh consultation on matters still being looked at in committee. The LCC recommended 'twelve weeks for scrutiny at the very minimum' and a Government commitment 'to increase the number of draft bills published per session to at least the 2003-04 level'.

In its reply the government echoed the LCC's disappointment at recent trends, but refused to undertake to publish most bills in draft or regularly to achieve the 2003-04 benchmark in future. Similarly, while the government reaffirmed its commitment to ensuring ideally at least twelve weeks for scrutiny, it drew attention to how timing considerations may require 'a choice between publication late in the session or not publishing in draft at all'.

*Counter-Terrorism Bill*

In July the LCC reported on the Government's Counter-Terrorism Bill, criticising the proposed involvement of Parliament in the legal process relating to terror suspects.

Under the provisions of the Bill, Parliament would play a role in any decision to place a suspected terrorist under pre-charge detention for more than 28 days, and up to the new limit of 42 days. The bill would also allow ministers to order that an inquest be held without a jury, and sets out a requirement for the government to share the specific security information which led to the decision to extend pre-charge detention with the chairs of certain parliamentary committees, which the LCC fears would subvert the 'consensual ethos' of the committee system.

The proposal for a parliamentary vote on extension of detention periods is an attempt to assuage concerns about the potential abuse of executive power to detain suspected terrorists. However, the LCC

argues that the bill is 'ill advised' in that it 'risks conflating the roles of Parliament and the judiciary', and highlights the difficulties that would arise from a judge having to rule on an application for such a detention very shortly after it had been hotly debated in Parliament.

## PARTIES AND ELECTIONS

### Party Finance White Paper

The government's response to the Phillips review on party funding, entitled *Party finance and expenditure in the United Kingdom* (Cm 7329), was published in June 2008. A bill is now before Parliament. The Government does not propose introducing key aspects of the Phillips recommendations (for example a short-term commitment to caps on contributions or enhanced state funding) at the present time. The White Paper contains four specific proposals.

Firstly, the White Paper calls for a re-examination of national campaign spending. It argues that the definition of campaign expenditure is not clear, and that existing legislation does not adequately cover all the items of campaign expenditure. It therefore proposes a re-examination of the qualifying expenses. Coupled with that, it echoes the Phillips report in calling for a reduction of national campaign expenditure – a possible upper limit of £15 million being cited, or £23,000 per constituency contested compared with the current £30,000. Such a change would be fairly small. The sum per constituency contested has not been adjusted for inflation since the introduction of the Political Parties, Elections & Referendums Act (PPERA) in 2001. Thus, in real terms, that figure now represents around £24,700.

Secondly, as in the Phillips report, the White Paper calls for even greater transparency in respect of party contributions. This particularly concerns unincorporated associations, whose increasing number of contributions has threatened PPERA's spirit of transparency.

Thirdly, the White Paper endorses the recommendations of the Phillips report as well as CASC and CSPL concerning reform of the Electoral Commission. It proposes a wider range of sanctions to promote more pro-active regulation; reductions in qualifying periods for staff that have been previously politically active, and importantly, the introduction of Electoral Commissioners who represent the parties.

Finally, and most controversially, the Government proposes the reintroduction of 'triggering' in respect of candidate election expenses. Prior to PPERA, campaign spending was 'triggered' by the naming of a candidate. PPERA replaced 'triggering' with a system that defined the beginning of a candidate's campaign spending period as the date of dissolution. Its proposed re-introduction is a response to claims that Conservative challengers at the 2005 election performed notably well where there had been significant pre-campaign spending in their constituency. This proposal is controversial both because it could be seen as a partisan move, and because the legal uncertainty surrounding 'triggering' has led the Electoral Commission to question whether it will be able to provide helpful guidance to candidates. It is this practical matter of implementation which is likely to generate most attention as the bill passes through Parliament.

*Justin Fisher, Brunel University*

### Electoral policy

The Electoral Commission published two consultation papers on electoral administration: one for the UK and one for Scotland, recommending a more co-ordinated approach, with regional Electoral Management Boards to promote consistent approaches to registration and conduct of elections. This follows the Gould report into the Scottish 2007 elections. One key recommendation is that there should be no legislative changes within 6 months of an election. This may have an impact on the forthcoming Political Parties and Elections Bill, due for a second reading in October.

Following Gordon Brown's announcement of a new Speaker's Conference on 3 September 2007, the conference is due to begin work in the autumn, to concentrate on representation of women and ethnic minorities. Unlike previous conferences, it will operate as a Commons select committee, reporting to the House rather than the Prime Minister. In this sense, Speaker's Conferences have caught up with modern notions of accountability.

The Ministry of Justice has launched another consultation on moving polling day to the weekend. The increased costs associated with opening on Saturday and/or Sunday may again defeat the initiative. The paper can find no firm evidence that an increase in turnout would result.

## THE UK RATIFIES THE LISBON TREATY

In June, the United Kingdom completed its parliamentary ratification of the Lisbon Treaty. Until the final votes and beyond, opponents of the Treaty continued to assert that the Treaty was a matter of high constitutional significance, which should be submitted to a referendum. Most of the Treaty's supporters disputed this analysis, arguing in particular that the constitutional implications of the Lisbon Treaty were considerably fewer than those of its predecessor, the European Constitutional Treaty, on which the British government had indeed undertaken to hold a referendum.

Two attempts were made in the British courts to block the ratification, one by William Cash MP and the other by the businessman Stuart Wheeler. Mr Cash urged that British ratification of the Treaty should be postponed until the new situation produced by the Irish referendum had been clarified. Mr Wheeler asked that the government be legally compelled to hold a referendum on the Lisbon Treaty, in accordance with what he believed to be the government's promise in its manifesto at the General Election of 2005. Neither case was successful, the courts upholding their traditional reluctance either to constrain the procedures of parliament or to sit in judgement on a British government's implementation of its electoral manifesto.

June's ratification of the Lisbon Treaty may not, however, be the end of the controversy in this country. The Conservative Party has said it will suspend British ratification of the Treaty if it enters into government before all its European partners have completed their ratification of the Treaty. The timetable for any further Irish attempts to ratify the Treaty is unclear, as is the date of the next British General Election. The earlier the date of the British General Election, the more likely it is that the future of the Lisbon Treaty will still be a live issue for an incoming Conservative government.

*Brendan Donnelly, Federal Trust*

## DEVOLUTION

### Devolution and the Centre

Gordon Brown's initial emphasis on constitutional reform as his government's 'big idea' appears largely to have vanished beneath the waves of economic bad news. But with devolution policy the reverse is the case, with events pushing the issue onto the agenda despite the government's own lack of interest.

## DEVOLUTION (CONT'D)

In Scotland, spurred by the SNP's electoral success, the three unionist parties established the Commission on Scottish Devolution (Calman Commission) to examine the case for devolution of further powers, particularly over taxation. The Commission started work in April 2008 and will publish an interim report before the end of the year.

Reform of devolution finance is also a live issue in Wales following the creation of the Assembly Commission on Funding and Finance under economist Gerald Holtham. This initiative – part of the Labour-Plaid 2007 coalition deal – starts work in September and is likely to cause further concern in Whitehall, where the Treasury prefers to keep tight control over devolution finance.

This instinct is likely to be reinforced as the next general election approaches and attention shifts to the crucial electoral battlegrounds in England, where talk of a new funding settlement risks stirring up resentment at higher public spending in the devolved territories. In this context, a reluctance to rethink the Barnett Formula is understandable. However, this approach may be undermined by the work of the two commissions and the SNP's 'national conversation'. If competing demands for additional resources and/or fiscal powers are made by the various territories, including England, it will surely be the British government that has to act as deal-maker.

Under Gordon Brown, there have been some indications that the need for a coherent and active devolution strategy is taken seriously. After initial scepticism, the PM not only agreed to support Calman with funding and staffing, but also revealed a new open mind on fiscal devolution to the Scottish CBI in September. This followed last year's appointment of a Director General of Devolution, and June's meeting – the first in over five years – of the plenary Joint Ministerial Committee (JMC), bringing together the leaders of the three devolved administrations and senior Cabinet ministers. Issues discussed included funding tensions over SNP plans to abolish council tax in Scotland and Olympic regeneration spending in London (which does not generate extra funds for the devolved governments).

A further meeting of the JMC is expected this autumn, while rumours circulate that the Scotland and Wales Offices are to be incorporated into a new Department of Nations and Regions. This would be a significant step towards ending the fragmentation of responsibility for devolution that undermines joined-up thinking. However, machinery of government changes can only do so much. Crafting a mutually acceptable new financial settlement for the UK in a

worsening economic climate will be a taller order for the weakened Brown administration, and it may ultimately be an incoming Conservative government that grasps this particular nettle.

### Scotland

Scotland's relationships with the rest of the UK took on a new tone over the summer months. The constitutional debate was suddenly overshadowed by Westminster politics in Scotland. The catalyst was David Marshall's resignation as Labour MP for Glasgow East on 28 June. Though Glasgow East was one of its 'heartland' seats, Labour was edged out by the SNP in the by-election that followed on 25 July. The SNP's candidate, John Mason, a local councillor, boosted the SNP vote by over 26% to win by 365 votes over Margaret Curran on 25 July.

The SNP victory confirmed that the SNP's highly professional electoral machine, allied with good local organisation, could challenge Labour for its core vote. Labour's electoral machine performed lamentably, with even the most basic canvassing records absent. This appeared to reveal an ingrained complacency in the Labour Party about the loyalty of its supposedly 'heartland' voters and raised questions about its ability to hold off the SNP challenge at the next Westminster election.

This was all the more significant, given the mythology that Gordon Brown had the Scottish Labour Party in a vice-like grip. The SNP tried, with some success, to set up Glasgow East as a referendum on the performances of Holyrood and Westminster. Holyrood, and the SNP, won on Brown's own turf, revealing the organisational inadequacies of Labour in the process.

The result was to personalise Labour's defeat as Brown's defeat. That had two further consequences. First it sharpened doubts about Brown's ability as Labour leader and Prime Minister, and opened up the prospect for a UK-level leadership challenge. Second, it prompted fuller debate in the Scottish Labour Party about its relationship to the UK party, with all the candidates to succeed Wendy Alexander as leader championing a more robust and a more Scottish approach to relations with the UK party.

All these issues were brought back into focus by the death of the Labour MP for Glenrothes in Fife, John MacDougall, on 12 August. MacDougall's seat is next door to Brown's. Its counterpart Scottish parliament seat was won at the 2007 Scottish Parliament elections by the SNP, building again on an impressive local SNP party organisation. Should the

SNP win the bye-election, not only in Brown's fiefdom, but on his doorstep, then all the questions about his leadership at the UK level, and about Scottish Labour's relations with UK Labour, will return with all the more force. And should the SNP win again, then it will have a real prospect of ramping up its Westminster representation in Scotland come the next UK election, opening up scope for UK-level power-broking in support of its aim of moving towards Scottish independence.

*Charlie Jeffery, University of Edinburgh*

### Wales

Notwithstanding Labour's problems in Wales, the extent of the party's travails at the British level are such that the Welsh Labour leader could be the most senior governing Labour politician in the UK by the summer of 2010. Despite this, and despite the fact that Rhodri Morgan's planned departure (in 2009) has been preannounced for so long, potential replacements have conspicuously failed to show themselves. Thus far, only Carwyn Jones has displayed any serious intent. Indeed it is entirely possible that Jones could become Labour leader without facing a serious challenge – or even any challenge at all. Given the party's recent experiences with non-contested leadership elections at both British and Scottish levels, it is hard to imagine that such an outcome would benefit the party over the longer run. Granted, leadership elections are hardly conducive to new thinking. Given the composition of the electoral college that will elect a successor, it will be a brave candidate who deviates from the formula of praising the unions while avoiding the proverbial elephants on the doorstep that divide opinion (the future of devolution, in particular). Yet, the need for debate about the future direction of the party has been widely acknowledged by Labour supporters. And if a leadership election cannot generate some kind of debate then what other forum or process will?

Given the state of the opinion polls as well as the nature of Wales's devolutionary dispensation, more significant than this may be the internal process currently taking place within the Welsh Conservatives to try to agree a position on the future of Welsh devolution, a process headed by Lord Roberts of Conwy. Party divisions over the issue have been highlighted by the decision of David T.C. Davies MP to launch a No campaign, arguing that a move to legislative powers would inevitably lead to independence and resulting 'Soviet style poverty'. By contrast, the majority of the party's Assembly group support primary legislative powers. This division is mirrored at all levels of the party with many still unreconciled

with the very principle of devolution. In such a context Roberts must surely be tempted to split the difference and recommend that the Tories continue to support the status quo. But while expedient in the short term, would this really be a sensible strategy for the longer term? The provisions of the Government of Wales Act 2006 – and in particular of Part Three, conferring Measure-making powers – make the UK government a veto-player in the day to day operation of the National Assembly. If this system is maintained then the recurrent conflicts almost certain to arise between a Conservative administration in London and any conceivable coalition in Cardiff are unlikely to benefit either the party or the Union which it supports. Despite his many years of service, the Roberts report may yet prove to be the most important contribution that this grand old man of Welsh politics will have made to his nation's public life.

*Richard Wyn Jones & Roger Scully,  
Institute of Welsh Politics*

### Northern Ireland

It was like watching a car crash taking place in slow motion. With the Northern Ireland power-sharing executive unable even to meet from mid-June, with relationships between ministers variously reported as 'dour and dire' and characterised by 'personal loathing', and with Sinn Féin threatening to pull out of the government in response to serial sectarian vetoing by the Democratic Unionist Party, the real possibility loomed that the devolved arrangements renewed after four and a half years in May 2007 could yet collapse once more.

The giggling routine of the Rev Ian Paisley of the DUP and Martin McGuinness of SF was brought sharply to an end when the unsmiling Peter Robinson succeeded Mr Paisley as party leader and first minister. Deadlocks were cemented on a date for the devolution of policing and justice, legislation on the Irish language, the abolition of selection at age 11, the future of the Maze prison and so on. An all-too-familiar pattern re-emerged, of party leaders beating on the door of Downing Street to bend the prime minister's ear against their adversary – behaviour which met a cooler welcome from the embattled No. 10 incumbent than his emollient predecessor.

Another, even more disturbing, pattern was also reappearing. Against the backdrop of public attitudes evidence showing that sympathy for the reasons given by republican paramilitaries for their violence had doubled in the decade since the Belfast agreement, 'dissident' republicans were able to exploit the

discomfiture of their 'mainstream' counterparts to escalate their activities. Most dispiriting of all was research showing that there were now fully 83 'peace walls' in Belfast at working-class communal interfaces – twice the officially recognised figure and far more than when the paramilitaries declared their ceasefires in 1994.

Ministers on both sides made clear in their speeches their awareness that the devolved executive had yet to 'deliver'. An exasperated former editor of the *Belfast Telegraph* attacked in an open letter this 'dithering' government, 'dominated by two of the most authoritarian and dogmatic parties in Europe' – the DUP chair of the health committee at Stormont appalled international opinion with homophobic attacks she defended as 'the word of God'.

Yet as Northern Ireland's large umbra of non-employed and penumbra of low-paid were hit hard by the credit crunch and soaring food and fuel prices, a paper on the anti-poverty strategy shelved since direct rule was among 24 stuck in the executive's pending tray. And in August, when the heavens opened over the city, the absence of departmental co-ordination built into the Belfast agreement to spare the politicians' sectarian blushes meant there was not even an emergency helpline for inundated households to call.

*Robin Wilson, Queen's University Belfast*

### Regions

This monitoring period has seen the media continue to focus upon the growing likelihood and potential impact of a national economic recession. The Government's favourite urban guru, Prof. Michael Parkinson, has been asked to report on the implications of the credit crunch for regeneration. Whilst the storm clouds gather, though, Gordon Brown's government has also continued to reshape the context in which spatial policy-making and sub-national institutions will operate in the future. Most of the new developments arise from last year's Sub-national Review although some are informed by the 'empowerment agenda' that is taking shape under new Communities and Local Government Secretary, Hazel Blears.

A new Regeneration Framework document was published in July, which aims to clarify the Government's philosophy for regeneration and consult on proposals to 'shape the way that regeneration is carried out in future in England'. The document indicates that Government is determined to make regeneration practice focus more squarely on tackling worklessness and prioritising

local economic development whilst setting sub-national agencies' efforts within a more decentralised and permissive framework. For example, July saw the conclusion of negotiations between Government and seven sub-regional partnerships who signed off Multi-Area Agreements. MAAs pave the way for groups of local authorities to co-operate on a range of issues – including transport, skills, housing and environment – that cross local authority boundaries.

The Empowerment White Paper (Cm 7427), launched around the same time, is also broadly decentralist in intent. It focuses upon reviving democratic engagement by strengthening the ability of individuals and community groups to be involved in the running of local affairs. The big test of this 'hands off' approach, of course, will be the extent to which aspirations become entrenched in legislation and thence actual practice.

Aspects of the Sub-National Review and Empowerment White Paper that require legislative change are to be included in a Community Empowerment, Housing and Economic Regeneration Bill which will, for example, give local authorities a statutory duty to promote economic development. As the current phase of the Devolution Monitoring Programme comes to an end, the Government's attempt to fashion a new, decentralised approach to 'place shaping' in England out of the ruins of the abortive move to elected regional assemblies is reaching its most active and critical phase.

*James Rees, Alan Harding, & Martin Burch,  
University of Manchester*

## INFORMATION POLICY

### Freedom of Information

#### *FOI and MPs' expenses*

FOI use related to MPs' expenses has triggered swift reform of the Act itself, and a more stop-start reform of the expenses system.

The amendment to the FOI Act followed concern among MPs (manifested in an Early Day Motion) at the Information Tribunal's decision to order disclosure of information on their use of the additional costs allowance (ACA) and their addresses. The new *Freedom of Information (Parliament and National Assembly for Wales) Order 2008* excludes MPs' addresses, security and travel arrangements but not, as explained in the explanatory note, 'the total amount of expenditure claimed made by a Member for regular travel for a particular month'.

INFORMATION POLICY (CONT'D)

Less incisive has been the attempt to amend the expenses system. Recommendations from a Members Estimates Committee report (HC 578-I) were debated but not accepted. Harriet Harman, Leader of the House, then pledged to carry out a consultation, now published, which aims to be finished before the autumn publication of the revised 'Green Book' which sets out MPs' entitlement to allowances.

*Trends in FOI*

Trends from FOI's first three years (2005 to 2007) start to emerge in the MoJ's annual round up of FOI statistics published in June. In most areas the overall picture is of stability: for example in per cent of responses dealt with 'in time' (77% in 2005, 84% in 2006 and 2007) and of requests disclosed in full (66%, 62%, 63%).

But there are surprises. The number of appeals to the ICO fell from 384 in 2006 to 222 in 2007. Are authorities' decisions increasingly respected by the requester, or are the delays at the ICO too offputting? Referrals to the central Clearing House fell sharply, from 2,843 in 2006 to 1,538 in 2007. This points to an early success for the Clearing House transformation, which lets departments process requests more autonomously.

Most interesting is that the total number of FOI requests continues to fall – from 38,108 in 2005 to 32,978 in 2007. Although it might be stabilising (the fall from 2005 to 2006 was 12% but only 2% from 2006 to 2007), it means the UK is still anomalous internationally: the number of requests elsewhere has tended to increase after implementation – unless fees are introduced.

**Data Protection**

The recent losses of personal data by public authorities have been well publicised. As well as pushing Data Protection (DP) – and information policy in general – higher up the agenda, the slew of subsequent reports is leading to concrete implications.

PASC used an evidence session with Sir Gus O'Donnell, Cabinet Secretary, and Ed Miliband, Cabinet Office Minister, on the data losses (HC 948-i) to push for greater accountability of officials for the ownership of personal data. The committee wanted to know 'who shall carry the can?', be they board-level Senior Information Owners or Information

Asset Owners lower down. Sir Gus noted that the Statement of Internal Control from the Permanent Secretary (as Accounting Officer) on financial requirements will now also contain data requirements. The next big data loss may well lead to the ultimate form of accountability, exemplified by the resignation of Paul Gray as head of HMRC.

The Information Commissioner is also likely to get more powers and resources on the DP side, as recommended in Richard Thomas and Dr Mark Walport's Data Sharing Review and taken up in the MoJ consultation on the subject (CP (L) 15/08). On the cards, among other ideas, are fines for breaches of DP principles and allowing the ICO power to gain entry to premises under warrant. The consultation is in favour of increasing powers, stating that 'Events in recent months have demonstrated the pressing need for the Commissioner to acquire new powers to discharge his data protection functions'.

INTERNATIONAL CONSTITUTIONAL FOCUS: FRANCE

With one vote to spare, President Nicolas Sarkozy secured the required three-fifths majority in the combined Assembly and Senate to bring about the largest reform of France's constitution since its conception in 1958.

Intended to increase the power of Parliament, the bill establishes a presidential term limit of two five year periods, gives Parliament a veto on some presidential appointments, abolishes government control over the committee system, allows Parliament to set its own agenda, and ends the President's right of collective pardon. There is also a provision to allow the President to formally address Parliament, prohibited since 1875. Other provisions include the requirement to obtain Parliamentary consent for any military operation lasting longer than four months, and controversially, the provision for a national referendum on new members seeking acceptance to the EU.

Dissenters, mainly in the opposition Parti Socialiste, say the bill does not go far enough in curbing the 'hyperpower of the president'.

PEOPLE ON THE MOVE

**Lord (Michael) Jay** is the new chair of the House of Lords Appointments Commission, in succession to Lord Stevenson. The new Secretary of HoLAC, and of the Civil Service Commissioners, is **Richard Jarvis**.

**Keir Starmer QC** to be Director of Public Prosecutions.

**Oliver Heald MP, Sir Derek Morris and Dame Denise Platt** to be members of the Committee on Standards in Public Life. The new Secretary of CSPL is **Ruth Alaile**.

**Rowena Collins-Rice** is the new Director General, Democracy, Constitution and Law in the Ministry of Justice. **Clare Moriarty**, the Constitution Director has left the Ministry of Justice to return to the Department of Health.

**Sir Michael Bichard** is to be director of the new Institute for Government, funded by Lord Sainsbury. He is succeeded as chair of the Legal Services Commission by **Sir Bill Callaghan**.

**Rod Clark** is the new head of the National School of Government.

**Dr Robert Chilton** has succeeded Sir Anthony Holland as chair of the Standards Board for England.

**Ray Shostak** is the new head of the Prime Minister's Delivery Unit.

**Jonathan Rees** to be the first Director General of the government's Equalities Office.

**Liz Meek** is leaving her role as director of the Government Office for London to become Regional Director of the Government Office for the North West.

**Patrick Layden QC** has become a Scottish Law Commissioner.

## CONSTITUTION UNIT NEWS

### Constitutional Futures Revisited

The constitution is in a period of flux. Past changes have unfinished business, and there are more changes still to come – whatever the political hue of future governments. With this in mind, the Constitution Unit has been working with other experts to forecast the outcomes of these changes and their impact on the UK's key institutions and the constitution as a whole.

The project has been funded by the Nuffield Foundation, and the resulting book, *Constitutional Futures Revisited: Britain's Constitution to 2020*, will be published by Palgrave in November 2008. The book is novel in that it uses 'futures studies' techniques to create clear scenarios, and it describes how the constitution is likely to change, rather than how it should change.

Key questions addressed include: will devolution lead to Scottish independence and the break up of the UK? Will a British bill of rights lead to yet more power for the judges? Will there be electoral reform at Westminster? And will this mean more power for Parliament, or less?

The book will be launched at a conference in November, when experts will debate the scenarios and conclusions, asking whether the forecasts are well founded, which scenarios are most likely, whether these developments are desirable and, if undesirable, how they can be avoided.

More details at: [www.ucl.ac.uk/constitution-unit/research/constitutional-futures-revisited](http://www.ucl.ac.uk/constitution-unit/research/constitutional-futures-revisited)

### Constitution Unit Seminars

In May, Ben Bradshaw, minister for the South West described the work of England's nine regional ministers. Mr Bradshaw said that regional governance had unfinished business, with some agencies still inadequately scrutinised, and that regional ministers with their various roles form one part of the solution.

June saw Parliamentary and Health Service Ombudsman Ann Abraham present her views on the importance of good administration, and the need for a focus on positive principles rather than 'catalogues of vice' in the search for a 'humanised state bureaucracy'.

Prof Francesca Klug (LSE) and Roger Smith (Director, JUSTICE), probed all the tough questions in the Bill of Rights debate in

the July seminar. This panel is likely to be reassembled to discuss a Bill of Rights Green Paper, if and when it appears.

More details at: [www.ucl.ac.uk/constitution-unit/events/2008/seminars/seminars2008.htm](http://www.ucl.ac.uk/constitution-unit/events/2008/seminars/seminars2008.htm)

### Inside Devolution 2008

On 22 May, the Constitution Unit held its second annual devolution conference, *Inside Devolution 2008*, bringing together over 90 officials, academics and journalists from across the UK and overseas. The keynote lecture was given by Prof Robert Hazell, who addressed the 'The Future of the Union'. In other sessions, panels of experts explored topics including devolution finance and devolution and the EU policy-making. A final session brought Labour and Scottish National Party politicians face-to-face to discuss their rival visions for the future of Scotland, with other commentary from experts on Welsh devolution and Westminster.

Full details, including audio files, at: [www.ucl.ac.uk/constitution-unit/events/insiddevolution08.htm](http://www.ucl.ac.uk/constitution-unit/events/insiddevolution08.htm)

### Other Devolution News

In July Akash Paun conducted a review of the first (near)-decade of devolution on behalf of the Commission on Scottish Devolution (the Calman Commission). The final report, which draws upon the Unit's devolution monitoring report series, as well as primary sources such as parliamentary transcripts and media reports, will shortly be published on the Constitution Unit and Calman Commission websites.

Autumn 2008 will see the publication of the final set of reports from the current Devolution Monitoring Programme, as well as the latest in the *State of the Nations* series of books on devolution. Funding permitting, the monitoring programme will be relaunched in early 2009.

### FOI Live

FOI Live 2008, the FOI and information rights conference jointly organised by the Unit, MOJ and ICO took place in June. Information Commissioner Richard Thomas, Minister Michael Wills MP, Director of Campaign for Freedom of Information Maurice Frankel all gave keynote speeches, while parallel sessions covered a range of information rights topics, from the FOI/DP interface to EIRs and electronic privacy. For the first time, it also included a 'catch up' session for those new to

FOI, as well as an insightful perspective from Sean Garvey, Senior Investigator at the Irish Information Commissioner's.

Presentations and recordings at: [www.ucl.ac.uk/constitution-unit/foidp/events/foilive2008.html](http://www.ucl.ac.uk/constitution-unit/foidp/events/foilive2008.html)

### Evaluating the impact of FOI: Project update

The data collection for the Unit's ESRC-funded study of the impact of FOI is progressing well. The project, which aims to evaluate whether FOI has achieved its objectives or changed the way Whitehall works, is using three main methods: interviews with officials, a survey of FOI requesters and analysis of media articles about or using FOI.

Over 40 interviews have already been conducted in three case study departments, with five more departments to follow. The online survey is being rolled out across departments and other selected websites. The media analysis is nearly a third of the way through. The project will be complete in June 2009.

More details at: [www.ucl.ac.uk/constitution-unit/foidp/research/Evaluation](http://www.ucl.ac.uk/constitution-unit/foidp/research/Evaluation)

### Personnel News: Plaudits and partings

Congratulations to Meg Russell, the Unit's Senior Research Fellow. As well as being promoted to Reader in the Department of Political Science, Meg has obtained a prestigious three-year ESRC fellowship, starting in October. The fellowship will allow her to continue her work on the House of Lords, as well as expanding her research interests into the policy impact of parliament and the social psychology of political elites.

The Unit must bid a fond farewell to Research Associate Akash Paun. Akash has made a huge contribution to the Unit's work on devolution and on parliament since his arrival in 2004. He has led the Devolution Monitoring Programme, organised the Unit's devolution conferences and co-authored reports on the governance of parliament – not to mention, of course, his editorship of *The Monitor*. We wish him all the best as a Senior Researcher at the new Institute for Government.

The Constitution Unit continues to rely on the valuable support of its interns. Thanks go to Gary Klaukka, David Parker, James Dobias, Simon Kaye, Richard Murray and Jules Norton Selzer for their work over the summer months.

# BULLETIN BOARD

## RECENT UNIT PUBLICATIONS

- Hazell, Robert (ed.), *Constitutional Futures Revisited: Britain's Constitution to 2020* (Basingstoke: Palgrave MacMillan, forthcoming).
- Hazell, Robert & Akash Paun, 'Centralised Power and Decentralised Politics in the Devolved UK', paper delivered at International Association of Centres for Federal Studies Conference, Barcelona, 20 September 2008.
- James, Simon, *Kosovo's Declaration of Independence: The Lessons for Scotland*. Available at [www.ucl.ac.uk/constitution-unit/files/media/articles/2008/Kosovo08.pdf](http://www.ucl.ac.uk/constitution-unit/files/media/articles/2008/Kosovo08.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 at £15.00.
- Paun, Akash, *Towards a New Settlement? A review of experience from the first decade of Scottish Devolution*, July 2008. A report to the Commission on Scottish Devolution. Shortly to be available on the Unit's website.
- Russell, Meg, *Explaining Parliamentary Party Cohesion: Can Psychology Help?* A Paper for the International Society of Political Psychology Conference, Paris, July 2008.
- Trench, Alan (ed.), *Devolution and Power in the United Kingdom* (Manchester: Manchester University Press, 2007).
- Trench, Alan (ed.), *The State of the Nations 2008: Into the Third Term of Devolution* (Exeter: Imprint Academic Press, forthcoming 2008).
- Various authors, *Devolution Monitoring Reports September 2008 (Scotland, Wales, Northern Ireland, English Regions, and Devolution & The Centre)* Available at [www.ucl.ac.uk/constitution-unit/research/devolution/devo-monitoring-programme.html](http://www.ucl.ac.uk/constitution-unit/research/devolution/devo-monitoring-programme.html)

**Further details on Constitution Unit publications can be found at [www.ucl.ac.uk/constitution-unit/publications](http://www.ucl.ac.uk/constitution-unit/publications).**

## FORTHCOMING EVENTS

### Constitution Unit Seminars

- Peter Thompson (Head of Governance of Britain Division, Ministry of Justice) Tuesday 28th October, 1pm, *A British Statement of Values* (title tbc).
- Alan Beith MP (Chair, Justice Select Committee), Thursday 13th November, 1pm, *Devolution: A Decade On*.
- Oonagh Gay (House of Commons Library) and Barry Winetrobe (Constitution Unit), Thursday 11th December, 1pm, *Parliaments and Constitutional Watchdogs: Continuing the Debate*.

### Constitution Unit & Ministry of Justice Seminar Series

- Baroness Ashton, Thursday 23 October, 1pm, *Managing Government Business in the House of Lords*.
- Rt Hon Peter Robinson MLA MP (DUP – Finance Minister) and Conor Murphy MLA MP, SF (Regional Development Minister), Wednesday 26 November, 1-2pm, *Governing A Devolved Northern Ireland*.

### Government Policy Information Seminars (subscription only)

- Kevin Dunion (Scottish Information Commissioner), Wednesday 17th September, 6.15pm, *What's Different About Scotland?*
- Robert Hazell, Ben Worthy, and Mark Glover (Constitution Unit), Wednesday 19th November, 6.15pm, *The Impact of FOI: The Evidence*.

- Richard Thomas (Information Commissioner) Wednesday 17th December, 6.15pm, *Updating Data Protection Law and Practice*.

### Conference and Book Launch

- *Constitutional Futures Revisited* Launch. Date and Venue to be announced

**Full information on all events at: [www.ucl.ac.uk/constitution-unit/events/index.html](http://www.ucl.ac.uk/constitution-unit/events/index.html)**

## PUBLICATIONS RECEIVED

- Barnett, Anthony & Peter Carty, *The Athenian Option: Radical Reform of the House of Lords*, (Exeter: Imprint Academic, 2008).
- Brazier, Alex, Susanna Kalitowski, Gemma Rosenblatt, and Matt Korris, *Law in the Making*, (London: Hansard Society, July 2008).
- Brazier, Rodney, *Constitutional Reform: Reshaping the British Political System*, (Oxford: OUP, February 2008).
- Dowlen, Oliver, *The Political Potential for Sortition: A study of the random selection of citizens for public office* (Exeter: Imprint Academic, 2008).
- Fraser, Douglas, *Nation Speaking Unto Nation: Does the media create cultural distance between England and Scotland?* (London: IPPR, 2008).
- Joint Committee on the Draft Constitutional Renewal Bill, *Draft Constitutional Renewal Bill First Report* (London: Houses of Parliament, July 2008).
- Joint Committee on Human Rights, *A Bill of Rights for the UK?*, Twenty-Ninth Report of Session 2007-08 (London: Houses of Parliament, August 2008).
- McGarvey, Neil & Paul Cairney *Scottish Politics: An Introduction* (Hampshire: Palgrave MacMillan 2008).
- Mclean, Iain, Guy Lodge and Katie Schmuecker, *Fair Shares? Barnett and the politics of public expenditure* (London; IPPR 2008).
- Ministry of Justice, *An Elected Second Chamber: Further Reform of the House of Lords*, Cm 7438 (London: The Stationery Office, July 2008).
- Ministry of Justice, *Party Funding and Expenditure: The Government's Proposals* (London: Stationery Office, June 2008).
- Sutherland, Keith, *A People's Parliament* (Exeter: Imprint Academic 2008).



The Constitution Unit