

M O N I T O R

The Constitution Unit Bulletin

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Unit wins £1m grant for devolution programme

In August the Unit was awarded a £1.1m grant by the Leverhulme Trust for a five-year research programme on devolution to the nations and regions. Twenty-six institutions originally bid for programme funding, and the joint winners with grants of £1m each are the Constitution Unit and Edinburgh University. The Unit's programme will cover the whole of the UK, including Northern Ireland and the English regions.

To achieve in-depth coverage in the different nations and regions the Unit has teamed up with research partners in 11 other universities. The programme will explore the factors that define the nations and regions of the UK; the extent to which the constitutional changes improve governance and command legitimacy; and the coherence of the devolution reforms, in particular the stability of the 'asymmetrical' model. Individual projects will explore changes in identity, attitudes towards the Union, the new structures in the English regions, intergovernmental relations and financing devolution.

The research programme will be underpinned by an ongoing

exercise to monitor the introduction of devolution in Scotland, Wales and Northern Ireland. The leaders of our monitoring networks are Graham Leicester, Director of the Scottish Council Foundation in Edinburgh; John Osmond, Director of the Institute of Welsh Affairs in Cardiff; and Robin Wilson, Director of Democratic Dialogue in Belfast. They will produce regular reports on the progress of devolution in each country: see their first reports on page 2.

At the end of the year we will bring together the monitoring reports and research findings into an annual *State of the Nations Review*. This will be accompanied by an annual State of the Nations lecture: the first, to be given next autumn, will be delivered by Donald Dewar, First Minister of the Scottish Parliament. We are also setting up dedicated pages for the Nations and Regions programme within the Unit's website. Full details of our research partners and of the individual projects can be found at the website address below. For a summary of the programme see inside on page 9.

Contents	Pg
Devolution:	
Wales	2
Northern Ireland	2
Scotland	2
England	2
	3
Changes at the Centre	4
Parliamentary Reform	4
Freedom of Information	5
Elections & Party Funding	6
Human Rights	7
Constitution Unit Projects	9
Constitution Unit Reports	10
Publications	11
Bulletin Board	12

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Wanted - New Research Fellow, p9

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Devolution: The First Few Months

Wales by John Osmond

For its first few months, the National Assembly of Wales, which assumed its powers from the Welsh Office on 1 July, has been in a state of phoney war. It has spent much of the time coming to terms with the outcome of the opening salvo in May when the elections caused what has become known as 'the quiet electoral earthquake' in Welsh politics. The result, in which Labour emerged as the largest party with 28 of the 60 seats but with no overall control, has shaped the course of events ever since.

Plaid Cymru was the main beneficiary, trebling its support to 30 per cent compared with the 1997 election and emerging with 17 seats and the position as the main opposition force within the Assembly. The Conservatives trailed third with 9 seats and the Liberal Democrats fourth with 6.

Labour resolved to govern as a minority administration, but quickly had to come to terms with what the lack of a majority meant. With Plaid Cymru it had to trade the position of the veteran nationalist Lord Dafydd Elis Thomas as Presiding Officer in return for Alun Michael being elected unopposed as First Minister. Labour then attempted to move a motion that would have handed wide-ranging discretionary decision-making power to the First Minister and his Cabinet. This was opposed by the other parties as not reflecting the realities of power within the Assembly, and being out of tune with Labour's own call for a new inclusive politics. It was quietly withdrawn.

The political balance has handed an unexpected potential for influence to the six Subject Committees in the Assembly covering Economic Development, Health and Social Services, Agriculture, the Environment, Education Pre-16, and Education Post-16. In particular the Chairs of these Committees have emerged as power-brokers, with Labour chairing only two, Plaid Cymru two and the Liberal Democrats and Conservatives one each.

The crunch issues in the coming months will be 'match funding' for EU aid programmes in Wales, closely followed by whether the Assembly can find an autonomous way of addressing the serious problems affecting Welsh farming, and dealing with

a health budget that threatens to spiral out of control. The phoney war is unlikely to last long.

John Osmond is Director of the Institute of Wales Affairs and has just published 'Welsh Politics in the New Millennium', available from the IWA, at £5 plus £1.50 p+p (Tel. 01222 575511; wales@iwa.org.uk)

Northern Ireland by Robin Wilson

At the time of writing, the Good Friday agreement is in the balance. The former US Senate majority leader, George Mitchell, who steered the talks to agreement in 1998, has been invited back to Belfast by the British and Irish governments to chair a review of its implementation, beginning on September 6th, to break the impasse over devolution and arms decommissioning. The prime minister, Tony Blair, had hoped that a June 30th deadline for a resolution would establish a pressure for agreement, with power transferring to Edinburgh and Cardiff the next day.

Despite Northern Ireland's long-recognised 'democratic deficit', no such pressure materialised, evidence of the even more durable insulation of its politics. In July, the British Government abortively attempted to form the 10-member Executive Committee, to be proportionately drawn from the 108-member Northern Ireland Assembly (Ulster Unionists 3, Social Democratic and Labour Party 3, Democratic Unionist Party 2, Sinn Fein 2). The empty Assembly chair of the UUP First Minister designate, David Trimble, was broadcast around the world, while his deputy, Seamus Mallon of the SDLP, resigned.

The political architecture of the agreement - the Assembly, the Executive Committee, the North-South Ministerial Council and the British Irish Council - was thus placed in cold storage. Other arrangements - the Equality Commission, the Human Rights Commission - remain, however. The report of the Commission on Policing was leaked before its September publication: it reportedly said the Protestant-dominated Royal Ulster Constabulary should become a representative Policing Service of Northern Ireland, its unionist trappings replaced by a neutral ethos.

Robin Wilson is Director of Democratic Dialogue.

Scotland by Graham Leicester

Many of the uncertainties about how the devolution structures would operate in practice have been resolved in the few months since the May election.

There is a formal coalition government, with the cabinet looking very like the old Scottish Office ministerial team with the addition of a Finance Minister, a Minister for Rural Affairs and a Whip. Scottish Office departments have been renamed to match the new ministerial portfolios.

The Parliament has established one committee per department, plus a number of others recommended by the Consultative Steering Group (eg. audit, equal opportunities, the EU). The first legislative programme was announced in June, and included eight Bills: three on aspects of land reform and one each on local government standards, incapable adults, transport, education and finance/audit. However, there is an undercurrent of confusion and disappointment. The legislative programme is seen as lacking in substance, the two month summer recess has dissipated momentum, and the initial debates on pay, allowances and accommodation left a bad taste. People are also confused about the role of the Secretary of State, with the danger that this post becomes the single channel through which relations between Edinburgh and London are conducted.

Graham Leicester is Director of the Scottish Council Foundation.

Changes in the Scottish and Welsh Executive

In June we listed in the Monitor the newly-appointed members of the Executive in Scotland and Wales. This issue highlights the main organisational changes in each administration, and some of the lead officials. In Scotland the Permanent Secretary continues to be Muir Russell. The Education and Industry Dept is split into two. The old Dept for Agriculture, Environment and Fisheries is renamed the Dept for Rural Affairs, and the Home Dept becomes the Justice Dept. The Executive Secretariat, headed by Robert Gordon, is responsible for parliamentary liaison, coordination with the UK Government and Europe, and servicing the Scottish Cabinet.

In Wales, the Permanent Secretary is Jon Shortridge, supported by four senior posts, two of them completely new. John Lloyd is the Clerk to the Assembly, and its Counsel General is Winston Roddick QC, from the Bar. The Cabinet Secretariat is headed by Laurence Conway. The rest of the administration is divided into three Directorates: Economic Affairs, Transport, Planning and Environment; Health; and Social Policy and Local Government.

In August the Scottish Executive published a Scottish Ministerial Code, and a Guide to Collective Decision

Making in the Scottish Executive. Both underline the need for collective responsibility and a free flow of information within the coalition government.

High Court in Wales

On 30 June the Lord Chief Justice issued a Practice Direction on the devolution of court work to Wales. Judicial review cases brought against the National Assembly and other public bodies in Wales may now be heard in Wales instead of London. The law lords may also sit for the first time in Wales in the Privy Council, as the final court of appeal on devolution issues.

Devolution in England

Downing Street has hardened its line against regional assemblies in England (*Daily Mail*, 3 August). The Prime Minister was said to be wary after the election results in Scotland and Wales, and the difficulty of finding a New Labour candidate for London's Mayor. John Prescott lost his Minister for the Regions, Dick Caborn, in the July reshuffle (see page 8).

At the grassroots level, the Campaign for the English Regions (CFER) was formally launched in Newcastle on 20 July. CFER brings together lobby groups from the North East, Yorkshire and Humberside and the West Midlands; the North West is currently an associate member. The primary aim of the CFER is to campaign for an elected tier of regional government in England. It is based at the offices of the North East Constitutional Convention in Newcastle, with a part-time lobbyist in London. Further information about the CFER can be obtained from: Don Price, Co-ordinator, North East Constitutional Convention. Tel: 0191 245 0825. Email: don.price@newcastle.gov.uk

Candidates for London

Candidate selection is underway for next May's elections to the London Assembly and Mayor. So far, only the Liberal Democrats have selected their mayoral candidate, Susan Kramer, after a postal ballot of members. The party's Assembly candidates will be chosen by members in October. The Conservatives are to announce their mayoral candidate on 1st October, following a postal ballot of members. Their Assembly candidates will be chosen in two stages: 14 constituencies will select their candidates between mid-October and late November, with the top up candidates being selected in Feb/March next year. Labour's nomination for the mayor will be decided by the end of the year. The

party has announced its candidates for the Assembly constituency seats, following a ballot which attracted a 33% response from members. The candidates for the top up section will be chosen before the year end.

Devolution at the centre

William Hague, speaking to the Centre for Policy Studies on 15th July, argued that the Government, having devolved power, must now turn to the anomalies affecting England: "It is our duty to find a way through that strengthens the Union after devolution. I believe the answer lies in giving a voice to England; in English votes under English laws." Hague's proposals do not entail a the creation of an English Parliament, but a restriction of the rights of Scottish MPs so that they could no longer vote on matters that affect England only.

In July, the Speaker issued a statement in the House of Commons clarifying the matters on which the Secretaries of State for Scotland and Wales can be questioned following devolution: "Where matters have been clearly devolved to the Scottish Parliament or to the Welsh Assembly, questions on the details of policy or expenditure would not be in order. Where Secretaries of State have a residual, limited or shared role, questions should relate to that role." (HC Deb, 12 July, cols 21-2)

At the end of July, Dafydd Wigley asked a series of questions of Ministers in all Departments (eg 23 July 1999, col 687) about the progress of the concordats, the written documents which will set out the relationship between Whitehall and the devolved administrations. It was originally expected that the concordats would be published before the Scottish and Welsh elections, but it now seems likely that they will be published late this year.

Changes at the Centre

Government reshuffle

The Ministerial changes announced on 29 July affect a number of departments involved in the constitutional reform programme. In the Cabinet, Alun Michael stepped down as Secretary of State for Wales now that he is First Secretary of the Welsh Assembly, and is replaced by Paul Murphy, formerly Minister of State in the Northern Ireland Office. Murphy is now supported by just one Parliamentary Under-Secretary, David Hanson. The Scottish Office also goes down to just two Ministers: the Scottish Secretary, John Reid, and Minister of State, Brian

Wilson. Previously the Welsh Office had two Ministers and the Scottish Office had five.

Lord Williams of Mostyn replaces John Morris as Attorney-General. As the Government's chief Law Officer he will decide whether to bring proceedings against the devolved governments if they overstep the mark, either in terms of the devolution legislation or the Human Rights Act. He is replaced at the Home Office by the Parliamentary Under-Secretary, Mike O'Brien, who now takes charge of the draft Freedom of Information Bill and implementation of the 1998 Data Protection Act. As the junior Minister for constitutional issues, O'Brien is also responsible for elections, referendums and controls on party funding.

At the DETR, John Prescott has lost his Minister for the Regions, Dick Caborn, who is transferred to the DTI. Responsibility for regional government is subsumed by Hilary Armstrong. Although retitled Minister for Local Government and Regions, she is unlikely to be as strong an advocate for regional government as was Caborn.

Cabinet committees on the constitution

The Cabinet continues to have a large number of committees on the constitution, six in all (out of 30 Cabinet Committees *in toto*). The Prime Minister chairs CRP, the Committee on the Constitutional Reform Programme, and JCC, the Joint Committee with the Liberal Democrats. The rest are chaired by the Lord Chancellor: CRP(EC), on incorporation of the ECHR; CRP(FOI), on freedom of information; CRP (HL), on Lords reform; and DP, on Devolution Policy. The committees on devolution, the ECHR and FOI are all large, each having more than 20 members.

Parliamentary Reform

House of Lords Bill

The House of Lords Bill - to remove the hereditary peers from the upper house - has been subject to three more government defeats in the House of Lords. In each case the Government has indicated its intention to overturn the amendments when the Bill returns to the House of Commons in the autumn.

The first amendment would make the proposed new Appointments Commission a statutory body. The establishment of the Commission - to make appointments to the reformed chamber - has been delayed, but is now promised by the New Year. The

second amendment aimed to protect the Upper House's absolute veto over bills to extend the life of a parliament, by preventing peers appointed since the last election voting on the issue. This, it was suggested, would prevent a government packing the House to gain support for such a bill. The third amendment referred the Bill to the Privileges Committee for enquiry, on the matter of whether peers can be lawfully removed from the House before the next general election. The hearing will take place in October.

However, it is still anticipated that the Bill will pass before the end of this parliamentary session. The Government have again threatened that continued attempts by the peers to disrupt the Bill will result in the agreed compromise, of some hereditary peers remaining in the House, being dropped.

Meanwhile the arrangements for implementing this compromise have been agreed. A total of 92 hereditary peers will remain, including 42 Conservatives, 28 crossbenchers, three Liberal Democrats and two Labour peers. Ballots will be held in October for these positions, in party groups, and amongst the whole House for 15 additional office holders. A system of by-elections, to replace hereditary peers who die, was also agreed.

The delay to the establishment of the Appointments Commission was partly due to the Government wishing to create new peers in order to level out party numbers. In June, 36 new life peers were created: 22 Labour, four Conservative, seven Liberal Democrat, two Ulster Unionist and one crossbencher. The Government's attempt to dispel the notion that appointments are abused for political ends was, however, damaged by the appointment to the Lords of defence minister George Robertson MP in August. His appointment, before taking up a position as NATO Secretary General, was used to facilitate a by-election in his constituency which could otherwise not have been called during a parliamentary recess.

The Royal Commission

The Royal Commission on Reform of the House of Lords has continued to receive evidence, and held its last public meeting in July. Its report is due by the end of the year. The other parties have now submitted evidence to the Commission, besides that submitted previously by Labour and the Conservatives. The Liberal Democrats provided a very detailed response, suggesting a directly elected chamber, using the single transferable vote, to represent the nations and regions. The chamber would retain its current power over ordinary bills,

have a veto over constitutional change, and have new responsibilities relating to human rights, international treaties and public appointments. The party also proposed the removal of government ministers, bishops, and law lords, from the House.

The Scottish National Party's submission called for abolition of the Upper House or, failing that, a wholly elected chamber. They did not consider it appropriate for the upper chamber to create a link between the nations and regions. Plaid Cymru, in contrast, proposed that this should be one of the central functions of a reformed chamber, which should ideally be directly elected. They were also prepared to envisage inclusion of some indirectly elected members, including members of the Welsh Assembly.

Enquiry into Commons Select Committees

The Liaison Committee, which consists of the Chairmen of all Select Committees, is to conduct an enquiry into ways of making the committees more effective. The enquiry will consider issues such as the powers of Select Committees, how their members are appointed and membership made more attractive and how to sharpen their scrutiny of public spending, the security services, and senior public appointments.

Hansard Society Commission on the scrutiny role of Parliament

Following its successful Commission on the Legislative Process (*Making the Law*, 1992) the Hansard Society has launched a new enquiry into Parliament's Role in Scrutinising the Executive. The Commission is chaired by Lord Newton, former Conservative Leader of the Commons. The Vice-Chairmen are Peter Riddell and Robert Hazell. The Commission aims to report by March 2000. Further details from the Commission's Secretary, Greg Power, at the Hansard Society, tel 0171 955 7478.

On 29 July the Conservative Party announced a Commission to Strengthen Parliament, chaired by Lord Norton of Louth. It will report during 2000. Its other members are Lord Forsyth, Lord Waldegrave, Peter Brooke MP, Professor Gillian Peele and Matthew Parris.

Freedom of Information

The draft FOI Bill was the subject of pre-legislative scrutiny by Select Committees in the House of Commons and the House of Lords in June and July.

In the Commons it was the first enquiry presided over by the Public Administration Committee's new chairman, Tony Wright MP. The Lords established an *ad hoc* Select Committee chaired by Lord Archer of Sandwell. Robert Hazell acted as Specialist Adviser to the Commons Committee.

Both Committees were strongly critical of the draft Bill. The Commons report (HC 570, 28 July) recommended six key improvements:

- a purpose clause stating a clear presumption in favour of disclosure
- less emphasis on discretionary disclosure
- review of the public interest test by the Information Commissioner
- narrow and precise exemptions
- a statutory duty to help requesters
- a duty to consult third party suppliers of information, and a right of appeal for them against disclosure.

The Committee accepted the need for a class exemption for Cabinet papers, and to protect the work of the security and intelligence services. But it rejected the draft Bill's class exemption for policy advice, and the breadth of the exemption for commercial information. The Committee also proposed a general statutory duty to give reasons upon request for administrative decisions.

The Government is unlikely to give much ground in its response to the Select Committee. No 10 is taking a close interest, and in the Home Office the junior Minister, Mike O'Brien, is new, following the departure of Lord Williams to become Attorney-General. The leader of the Bill team is Lee Hughes in the Home Office Constitutional Unit. The Bill is likely to be introduced in the next session, but we will not know for certain until the Queen's Speech.

Meanwhile in Scotland, the Scottish Executive introduced its own Code of Practice on Access to Information on 1 July. Jim Wallace (Minister of Justice) has promised that Scotland will have its own Freedom of Information Bill. A consultation paper is to be issued in the autumn, with legislation as soon as possible thereafter. It is being prepared not by the Dept of Justice but by a small team in Corporate Services, Michael Lugton and Keith Connal.

Elections & Party Funding

New rules on electoral funding

The Government has announced the largest shake-up of electoral law for a century. In a White Paper and draft Bill (Cm 4413) published in July, the Home Secretary agreed to virtually all the recommendations made by the Neill Committee in its October 1998 report. The overall themes of the White Paper are more open disclosure of funding sources, limits on election spending, a qualified extension of state support for parties and a strong independent body to police parties and elections.

The first part of the package relates to the disclosure of party funding. Henceforth, parties will have to disclose donations higher than £5,000 (or £1,000 if to a constituency branch). Disclosure will be made four times per year, to the Electoral Commission, except during general elections, when parties will have to report every seven days. The second part of the package works from the opposite end: restricting electoral spending. The Government adopts Neill's recommendation of a £20m limit on each party for general elections (spending by Labour and the Conservatives at the 1997 election was £26m and £28m respectively). The limit will be lower for elections to the European Parliament and devolved assemblies. The time limits will apply for the 365 days prior to a general election, and the four months prior to other elections.

The sweetener for the parties comes in the form of an extension of state support for their activities. The opposition parties will receive more 'Short money' for their parliamentary activities. Both the governing and opposition parties will also be able to claim resources to help policy development from an annual pot of £2m. But the Government rejected Neill's recommendation of tax relief for small donations. The reasons for this decision - that the relief would amount to state aid, and the estimated annual cost of £4-5m - look odd, however, when set against the increase in public support of £5m per year contained elsewhere in the White Paper.

Overseeing the new rules and reporting requirements will be an Electoral Commission, responsible for overseeing party donations and spending. It will also incorporate the functions of the Parliamentary Boundary Commission and Local Government Commission, although not until 2005. Given the need for the new regulatory regime to be in place before the next election, the Electoral Commission will have its work cut out in equipping itself to receive the parties' disclosures and monitor their spending. Importantly, though, the Commission will be accountable to Parliament, not to the Home Office. Its membership, of between 5 and 9, will be

the subject of inter-party consultations, and its budget and strategy overseen by a new Speaker's Committee. Both in the intention and execution, the Commission will operate as a powerful and independent body.

The area where the Government diverges most from Neill concerns referendums. It rejected Neill's recommendation that it refrain from participating in a referendum, agreeing only to a moratorium on public information in the 28 days prior to the poll. It also overrode Neill's objections to spending caps, by suggesting limits for umbrella groups and the parties of £5m and for other individuals and groups of £0.5m. The spending caps have raised concern, since they will severely restrict the resources available to the anti-EMU group at the referendum on the single currency.

The draft Bill (which can be viewed at: <http://www.homeoffice.gov.uk/>) is out for consultation until 15th October, with the Government expected to introduce legislation in the next session.

Scottish Election Commission

The UK-wide Electoral Commission was given a trial run in Scotland prior to the elections in May. Professor Anthony King served as Convenor of the Scottish Election Commission (SEC), alongside two other commissioners. The SEC's role was to oversee spending limits and disclosure of donations in relation to the parties and third groups. The SEC indicated that the parties had complied with the disclosure and spending rules, although its non-statutory status and tight resources meant it could not regulate third party spending.

Electoral reform for local government in Scotland

The report of the Commission on Local Government and the Scottish Parliament was released on 22 June. Chaired by Neil McIntosh, the Commission examined the accountability and responsiveness of local councils, as well as their relations with the Parliament.

Among the recommendations of the Commission were:

- a move to a proportional electoral system, to be introduced by 2002. The options suggested for consideration were AMS, STV and AV Top Up;
- a move to executive models in local government. Although the Commission suggested that councils choose models to fit their own circumstances, it gave particular support to a cabinet system;

- councils to review their working practices, to create a more visible and accountable political leadership.

The Scottish Executive responded by launching a working party to examine the electoral options. MSPs debated the Commission's report on 2 July. The Commission's recommendation to move to a proportional electoral system appears to be popular among the public. According to a System Three poll in July, 54% of voters support PR for council voting, with 21% opposing it.

Commons debate on PR

An Opposition day debate on electoral change was held on 23 June. Leading for the Conservatives, Sir George Young opposed the extension of PR to Westminster elections, and urged the Government to take a decision on the voting system for the lower House before the issue is considered in relation to the Lords. The Home Secretary replied for the Government, confirming that no decision had yet been taken on the referendum's timing. However, as one reason for the delay was to allow the Government to assess the results from the Scottish, Welsh and European Parliament elections, there will be mounting pressure on ministers to announce a decision soon. They may, however, choose to wait for the results of the review, commissioned from NOP, of voters' reaction to the list system used in the European Parliament elections.

Voting gets a make-over

The Working Group on Electoral Procedures, chaired by ex-Home Office Minister George Howarth, issued its interim conclusions on 13th July. The review was established following concern about falling voter turnout, and was asked to consider ways in which the electoral process could be modernised. Its main recommendations are:

- a continuously updated, or 'rolling', register to replace the current one, updated once each year;
- enabling legislation to allow pilots of new voting approaches (eg. variations in polling hours);
- a looser regime to cover absent voting, so that this option becomes more widely used.

The Working Group is due to deliver its final report in the early autumn.

Human Rights

The Human Rights Task Force goes live

The Home Office Human Rights Unit now has a web page, with information on the Human Rights Task Force's work and the Human Rights Act (www.homeoffice.gov.uk/hract/hramenu.htm). The Human Rights Unit also published *Putting rights into public service*, an introduction to the Human Rights Act for public authorities (23 Aug), and the first edition of the Human Rights Task Force newsletter (20 Aug), both available on the website.

The Task Force's Chair is the new Minister, Mike O'Brien MP. When the Task Force resumes its meetings in September, it will be considering the progress which Whitehall has made in preparing for implementation of the Act.

Parliament and the Executive

The Disability Rights Commission Act, the Access to Justice Act and the Youth Justice and Criminal Evidence Act all received their Royal Assent on 27 July. Whilst the first Act establishes a body mandated to improve the human rights of the disabled, questions still remain as to whether or not elements of the latter will withstand challenge under the Human Rights Act.

Two recently published Home Office proposals - for legislative measures on fingerprints, footprints and DNA samples, and proposals for managing dangerous people with severe personality disorders - also raise concerns about the impact the proposals will have on protected rights. The Interception of Communications Consultation Document, addressing the *Halford* decision on unlawful tapping of telephone conversations at work has also been made available for comment.

Age of consent case before European Court of Human Rights

In response to the Government's undertaking to reintroduce the Sexual Offences (Amendment) Bill in the forthcoming parliamentary session, *Sutherland v UK* (challenging the different of age of consent for homosexual and heterosexual sex), scheduled for hearing on 8 September, was postponed. The Government have said that, following the defeat of the Bill in April in the Lords, it will invoke the Parliament Acts to ensure the Bill becomes law if necessary. Significantly the Lord Advocate in Scotland could already face a legal challenge should he seek to prosecute men for engaging in homosexual sex between the ages of 16 and 18.

Forthcoming cases in the ECHR

Scheduled for hearings before the Court are:

T and V v UK (15 Sept) challenging the right to a fair trial for juveniles and the Secretary of State's power to interfere with their sentencing.

McGonnell v UK (28 Sept) challenging the independence and impartiality of the Baliff of Guernsey on the basis that he is a member of the Executive. The judgement will have far reaching implications for the role of the Lord Chancellor and the Law Lords.

Khan v. UK (26 Oct): Following its high profile appearance in the Lords, this case challenges the use of surveillance equipment and the capacity of the Police Complaints Authority to provide an adequate remedy.

UK Courts

In advance of October 2000, the UK Courts are already using the ECHR widely. For example, on 17 June, in *Barrett v London Borough of Enfield*, the House of Lords ruled that local authorities could be sued in negligence following the reasoning of the European Court of Human Rights in *Osman v UK* on access to the Court. On 8 July in *R v Home Secretary ex parte Simms*, the House of Lords granted declarations that the Home Secretary's current restrictive policy on prisoners' right to meet with journalists is unlawful in light of the right to freedom of expression protected by Article 10.

Since June, the Crown Court has handed down 12 judgements raising Convention arguments, the Civil division of the Court of Appeal 10 judgements and the Criminal division 4.

Human rights and devolution

As of 1 July, Scotland and Wales became subject directly to the ECHR. The Welsh Assembly and Scottish Parliament, and the executives, are now bound in law to act in accordance with the terms of the Human Rights Act (HRA). The HRA has been binding on the Lord Advocate in Scotland since his appointment on May 20th. The Scottish courts have also been quick to explain the implications of the Executive's human rights obligations. In a recent - failed - petition to punish a journalist and editor for contempt of court the Court emphasised that the Lord Advocate cannot move the court to grant any remedy that is incompatible with the ECHR (*Lord Advocate v Scottish Media Newspapers*, judgement of 08/06/99).

The Convention is also being widely cited in criminal cases. In a case on warrant for arrest and detention, the Court stated that the revisions the

Crown had made to the form of such petitions, strengthened the role of the sheriff and "provides an additional safeguard against arbitrary arrest and detention". (H.M.A. v Selfridge and Bain judgement 04/08/99).

Early indications are that the implementation of the HRA in Scotland may lead to the development of a distinctive Scottish human rights regime. Justice Minister Jim Wallace is proposing distinctive Scots solutions to the issues of freedom of information and detention of those with mental disorders. He has also announced that he is in favour of a Scottish Human Rights Commission.

Irish Human Rights Commission

On 8 July the Irish Human Rights Commission Bill, to establish a Human Rights Commission in the Republic of Ireland, was published. This implements the obligations of the Good Friday Agreement. The Commission will co-operate in a Joint Committee of Representatives with members of the Northern Ireland Human Rights Commission. It will also be able to provide legal assistance to those wishing to take legal action, to appear before the High Court or the Supreme Court as *amicus curiae* and to take cases in its own right.

Constitution Unit Projects

Programme on devolution to the Nations and Regions

The Unit has been awarded a £1.1m grant by the Leverhulme Trust to lead a major programme of research over the next five years into devolution. The programme is built around 11 projects grouped under three overarching themes:

National and regional identities and attitudes

1. The dynamics of regional and national identities (Prof John Loughlin, Cardiff, and Prof Michael Keating, Aberdeen)
2. The impact of devolution on public attitudes (Prof John Curtice, Strathclyde, Prof Roger Jowell, National Centre for Social Research, and Ben Seyd, Constitution Unit)
3. Attitudes towards the Union (Prof Iain McLean, Nuffield College, Oxford)

The English Question

4. Regional attitudes and structures: a comparative study of the North East, the West Midlands and East Anglia (John Tomaney, Newcastle)

5. Business attitudes towards regional structures (Prof John Mawson and Mike Tricker, Aston Business School)
6. Westminster as the English Parliament (the Unit with advice from Prof Philip Norton, Hull)

Intergovernmental Relations

7. Intergovernmental relations within a devolved UK (Richard Cornes, Constitution Unit)
8. Intergovernmental relations and the EU (Prof Charlie Jeffery, Birmingham)
9. Multi-level electoral politics within a decentralised system of government (Prof Charlie Jeffery)
10. Funding a decentralised system of governance (Prof David Bell, Stirling and Prof James Mitchell, Sheffield)
11. Policy making under devolution: case study of health policy (Paul Jervis and William Plowden, Visiting Fellows, The Constitution Unit).

Underpinning this research programme will be a monitoring exercise conducted by small teams of experts in Scotland, Wales and Northern Ireland. They will regularly monitor and report on the devolved governments, the assemblies, finance, media reporting of the new institutions, intergovernmental relations, political parties and elections, and changes in public attitudes. Their reports will be edited by the Unit into an annual *State of the Nations Review*, which will also publicise the main findings from the individual research projects.

The Unit is very pleased to be working with so many other experts on this programme. If other researchers want to collaborate on part of the programme, or to publicise their own findings through the *Review*, please contact Robert Hazell or Ben Seyd.

VACANCY!

Senior Research Fellow in Devolution

The Unit is to appoint a Senior Research Fellow to work on devolution. The main task will be to help manage the programme of research on 'Nation and Regions'. Specific research areas include intergovernmental relations and English regional government.

Further details: Heather Bateman (0171 504 4969) or: spp@ucl.ac.uk. Closing date: 8th Oct.

The legitimacy of government

The Unit, in partnership with the Centre for Research into Elections and Social Trends, has been awarded a grant under the ESRC's 'Democracy and Participation' programme. The project will enable us

to test the Government's claim that its constitutional reforms will 'reconnect' politics and voters, by exploring what impact the reforms (in particular, devolution and electoral system change) have on levels of trust in the political system and people's participation in the political process. We will conduct two surveys, in 2000 and 2002, which will enable us to measure immediate as well as longer term effects.

Contact: Ben Seyd

Improving women's representation in politics

The 1997 general election saw a large increase in the number of women in the House of Commons. High levels of women's representation have also been achieved in the Scottish Parliament and Welsh Assembly. This has largely been the result of positive action measures by the parties, particularly Labour. The legal situation regarding such measures remains unclear, and Labour's 'all-women shortlists' policy was dropped after an industrial tribunal in 1996. A new study by the Unit, funded by the Nuffield Foundation, will survey the legal views on this matter. The project, which begins in December 1999, will also review examples of positive action measures used in other countries which operate electoral systems recently introduced in the UK. Any offers of help, including legal contacts, are very welcome.

Contact: Meg Russell.

Devolved assemblies: Breaking the Westminster mould

Will the new legislatures in Edinburgh, Cardiff, and hopefully in time, Belfast, be models of a new type of democratic institution in the UK? Will they break from the perceived weaknesses of Westminster? This project, funded by the Gatsby Charitable Foundation, aims to answer these questions. A research paper to be published in October will introduce the project, outlining its basic assumptions and setting out the methodology for public comment. The methodology draws on the concept of a democratic audit, pioneered in this country by Stuart Weir and David Beetham of the Democratic Audit. It will involve devising a method of measuring the performance of the new institutions in their first year against their aspirations to break from the Westminster mould. The research paper will set out the criteria against which the new assemblies will be measured. Contact: Richard Cornes

Does the UK need a Supreme Court?

The Unit has been funded by the ESRC to conduct a research project on whether the UK requires a supreme, or constitutional, court. The project will consider three basic issues: what the function of a second level appeal is within the legal system, how a final level appellate court is best designed (including the choice of a separate constitutional court), and the role supreme or constitutional courts play in establishing new constitutional settlements. The work will involve a comparative analysis of courts in the USA, Canada, Australia, Spain and Germany. There will be a briefing published before the end of this year and a public lecture in early 2000 given by the principal researchers, Richard Cornes and Andrew Le Sueur (Reader, UCL Faculty of Laws). The lecture will focus on the first research question, i.e. 'what does the court of final appeal do?' and form the basis for the later research into the operation of the other courts to be studied.

Contact: Richard Cornes

Constitution Unit Reports

Representing the Nations and Regions in a New Upper House

A classic function of second chambers is to represent states and regions; this role is the commonest form of representation in second chambers around the world. In Britain the House of Lords is being reformed alongside a programme of devolution, opening up the possibility of a 'territorial' upper chamber. The Unit has published a briefing which looks at the possible options, drawing on experience from Australia, Canada, France, Germany, Italy and Spain.

One question is how members of the upper house should be chosen. A directly elected chamber would be democratically accountable, but would have no automatic link with devolved assemblies or governments. An indirectly elected chamber would be more likely to provide these links, but members who already hold positions in a devolved assembly or government would be unlikely to have time to attend Westminster regularly.

The German and Spanish systems provide some ideas of how links could be built between the two levels, without the problems caused by dual mandates. Examples include the right for upper house members to speak in the devolved assembly in their area, the right of assembly members to question them, and the right of devolved assemblies or governments to address the upper chamber.

Contact: Meg Russell.

A Human Rights Committee for Westminster

On 26 July 1999, the Government confirmed that it will invite both Houses of Parliament to appoint a joint committee on human rights. The Unit's briefing on a Human Rights Committee for Westminster identifies the issues which will need to be considered if

the committee is to be effective. Key factors are:

- the ability of the committee to subject Bills to a human rights impact assessment;
- adequate support from, and access to, legal advisers and human rights experts;
- its own dedicated staff rather than being dependent on part-time staff loaned by both Houses;
- firm priorities amongst the many tasks it will be entrusted with, and extending its reach through co-operation with other committees;
- a capacity to operate in a robust and non-partisan fashion, without the government automatically seeking a majority. Membership of the committee should also include non-lawyers, and be representative of the territories of the UK.

Contact: Aisling Reidy

Goodbye to Unit researcher

The lure of the corporate world has proved too much for the Unit's devolution research fellow, David Sinclair. He leaves us at the end of this month, to join McKinsey's. This probably means David will go on to either the Director General-ship of the CBI, or leader of the Conservative Party! We wish David all the best, and are looking for a successor (see p10).

Publications

New Publications by the Unit

[A Human Rights Committee for Westminster](#) by Aisling Reidy (July 1999) £5.

[Representing the Nations & Regions in a New Upper House](#) by Meg Russell (July 1999) £5

Publications Received

[An Electoral System for Scottish Local Government: Modelling Some Alternatives](#) by Prof. John Curtice (Scottish Office publication, available from The Stationery Office Bookshop, Tel: 0131 228 4181 Fax: 0131 622 7017) £5.00

[Starting to Modernise: The Change Agenda for Local Government](#)

by Geoffrey Filkin.

ISBN 0953490300 (New Local Government Network for the Joseph Rowntree Foundation)
Tel. 0171 357 0051 Fax. 0171 357 0404
Email: newlog@localgovnet.demon.co.uk

[Proportional Representation and Local Government: Testing Public Opinion](#)

by Gerry Stoker ISBN 095349031X
(New Local Government Network)
Tel. 0171 357 0051 Fax. 0171 357 0404
Email: newlog@localgovnet.demon.co.uk

[Proportional Representation for Local Government: An Analysis](#)

by Patrick Dunleavy & Helen Margetts,
ISBN 1899987975, £13.95
(Joseph Rowntree Foundation 1999)

[The Boundary Commissions: Redrawing the UK's map of Parliamentary constituencies](#)

by D.J. Rossiter, R.J. Johnston and C.J. Pattie
ISBN 07190 50839 hb (Manchester University Press, April 1999) £45.

[The Scottish Parliament's relations with Westminster](#)

at http://www.scottish.parliament.uk/whats_happening/research/rp995-00.htm

[Making a Modern Senate: A New and Democratic Second Chamber for Britain](#)

Democratic Audit Paper no.17 ISBN 187331 45 1 £5.50

[Welsh Politics in the New Millennium](#)

by John Osmond, IWA Discussion Paper No.11, August 1999 £5.

[Freedom of Information Draft Bill](#) 3rd Report, Select Committee on Public Administration,

28 July 1999, £15.90.

[Reforming Government in the UK](#)

Liberal Democrat Federal Policy Consultation Paper No. 44, (August 1999) ISBN 1 85187 416 X £2.00

[Towards a Constitutional Bill of Rights for the United Kingdom](#)

by Robert Blackburn, ISBN 1 85567 529 3
(Cassell, September 1999) HB £100.00

Useful Websites

Scottish Parliament

<http://www.scottish.parliament.uk/>

Scottish Executive

<http://www.scotland.gov.uk>

Welsh Assembly

<http://www.wales.gov.uk/assembly.dbs>

Northern Ireland Assembly

<http://www.ni-assembly.gov.uk/>

Bulletin Board

Forthcoming Unit Events

Sponsored by

CLIFFORD CHANCE

Thursday 23 September, 8:30am - 5pm

Legal Aspects of Devolution

Conference speakers include, Ann Nelson (Legal Adviser to the Scottish Parliament), Winston Roddick QC (Counsel General to the National Assembly for Wales), Brigid Hadfield (Prof. of Public Law, Queens University Belfast) and Prof. Diana Woodhouse (Department of Law, Oxford Brookes University).

Venue: Large Pension Room, Gray's Inn, Holborn, London WC1

To Book: contact Lisa Fretton on 0171 391 1514

Wednesday 13 October, 6 to 7.30pm

The UK and Spain:

Devolution and State Building

by Prof Paul Heywood, University of Nottingham

Venue: The Council Room, School of Public Policy, 29 Tavistock Square, London, WC1

To Book: Fax the Constitution Unit Administrator on 0171 504 4978 with names & numbers of those wishing to attend

Monday 8 November, 12.30 to 2pm

Scottish Parliament:

Views from Inside and Out

by Barry Winetrobe & Keith Aitken

Venue: Keeton Room, UCL Faculty of Laws, Bentham House, Endsleigh Gardens, WC1

To Book: Fax the Constitution Unit Administrator on 0171 504 4978 with names & numbers of those wishing to attend

If you would like us to mention a publication, website or forthcoming event in the next issue of the Monitor (December), send details by the end of November to the Unit Administrator by Fax: 0171 504 4978 or by Email: constitution@ucl.ac.uk.

Constitution Unit Annual Lecture

Sponsored by

LINKLATERS & ALLIANCE

Wednesday 27 October, 6pm

Citizens, corporations, parties and government: rights and responsibilities

in the new democracy

by Rt. Hon. Jack Straw MP

Venue: Church House Conference Centre, Great Smith Street, Westminster, London SW1

To Book: contact Alison Tingey by fax on 0171 456 2397 or email atingey@linklaters.com

Seminars on Intergovernmental Relations

The Unit is running a series of 6 seminars on intergovernmental relations, aimed at UK policy makers and practitioners. The aim is to introduce key concepts and techniques of intergovernmental relations by reference to relevant overseas comparisons. Seminar topics include:

Formal Structures of Intergovernmental

Relations (20 Oct 1999)

Finance (6 Dec 1999)

Dispute Resolution (Mar 2000)

Speakers are confirmed for the first two seminars. **To Book:** contact Richard Cornes on 0171 504 4975.

Seminars on Democratic Reform

The Unit is hosting two events for the 'Westminster seminars on Democratic Reform in International Perspective', organised by the British Academy and Centre for the Study of Democracy.

Managing a coalition government:

The Swedish experience

Prof Olof Ruin, University of Sweden

Is there a constitutional route to independence?

Prof Neil McCormick, University of Edinburgh

The seminars will be held in December/January.
Details will be available from
www.wmin.ac.uk/csd

Constitution Unit Website

<http://www.ucl.ac.uk/constitution-unit/>