

Monitor 46

Constitution Unit Newsletter

October 2010

Government haste puts flagship bills at risk

On 22 July the government introduced two important parliamentary reform bills: one for fixed term parliaments; the second to reduce the size of the House of Commons, and hold a referendum on AV. The bills were introduced with no consultation, no Green or White Paper, and the government plans to push them through Parliament at equally rapid speed. The new Political and Constitutional Reform Committee chaired by Graham Allen MP has already protested vigorously at the lack of time for proper scrutiny. It has warned at the risk of delay to the AV referendum if either House wants to amend the legislation, and criticised the government's failure to seek cross-party agreement for its plans to reduce and equalise House of Commons constituencies.

Fixed Term Parliaments

The Fixed Term Parliaments Bill provides for the next election to take place in May 2015, with fixed five year terms thereafter. The bill ends the Prime Minister's power to decide the date of the next election, and the Monarch's prerogative power to dissolve Parliament on the advice of the Prime Minister. The key issues in the bill are the length of the fixed term; and how to allow for mid term dissolution.

The Lords Constitution Committee is conducting an inquiry into fixed term parliaments, and the Unit published a detailed report in August which has been submitted to that inquiry. It argues that the fixed term should be four years, not five. The norm in other Westminster parliaments with fixed terms is four years; as it is in Europe. To avoid clashes with devolved or European elections, the report suggests that general elections should be held in October, with the next one scheduled for October 2014.

The bill provides for mid term dissolution only if the government loses a confidence motion, and no alternative government is confirmed by the House within 14 days; or if more than two thirds of MPs vote for an early election. This high threshold for a government-initiated dissolution is aimed mainly at majority governments, making it impossible for them to call an early election without significant cross-party support. Even if it is sometimes circumvented by engineered no confidence motions, it should help to establish a new norm.

Referendum on AV

The Parliamentary Voting Systems and Constituencies Bill provides for the referendum on AV to be held next May, when 39m of the UK's 45m voters go to the polls in Scotland, Wales and Northern Ireland, and for local government elections in England (see page 4). The government hopes the bill will be passed by the end of January. The timing is tight, and the bill may be delayed in the Lords.

Comparative research shows that turnout is increased when referendums are combined with elections, but the referendum issues tend to get drowned in the wider election campaign. The AV referendum is likely to be lost, because voters know nothing about electoral systems, the difference between first past the post and AV

is relatively slight and hard to explain, and voters will be confused by the conflicting signals coming from the political parties.

The Electoral Commission has advised that the referendum question should be: At present, the UK uses the 'first past the post' system to elect MPs to the House of Commons. Should the 'alternative vote' system be used instead?. The No campaign, led by Matthew Elliott of the Taxpayers' Alliance, have started strongly. The Yes campaign led by the Electoral Reform Society and Unlock Democracy are moving more slowly. Electoral reformers might welcome the bill being delayed, giving them more time, and forcing the government to consider a standalone referendum. Turnout would be lower, but Yes voters might be more likely to turn out than No voters.

Continued overleaf

Labour's new team

Ed Miliband was elected the new leader of the Labour Party on 25 September. In his speech to the Labour Party conference three days later he emphasised his support for AV for the House of Commons and elections to the House of Lords. Both of these pronouncements may have been a relief to reformers, particularly Liberal Democrats, on the government side, but will almost certainly face some resistance on the Labour side. Elections to the shadow cabinet took place the following week (for the first time since Labour was last in opposition in 1996). **Sadiq Khan** is the new Shadow Justice Secretary, **Hilary Benn** is Shadow Leader of the Commons, and **Rosie Winterton** is Shadow Chief Whip. **Baroness Royall** and **Lord Bassam** (elected separately, by Labour peers) remain Shadow Leader and Chief Whip respectively in the Lords.

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The Constitution Unit

Reducing the number of MPs

Another reason why the bill might be delayed is its proposals to reduce the House of Commons from 650 to 600 MPs. The boundary commissions are to complete comprehensive boundary reviews by October 2013 to achieve this, applying a uniform electoral quota with maximum variation of only 5 per cent. This rule is to have primacy over local boundaries and community ties. Local inquiries are to be abolished, and replaced by a written consultation period of 12 weeks.

Academic experts have been critical of local inquiries as largely a waste of time. But the Opposition will accuse the government of gerrymandering the system. The Conservatives believe that equal sized constituencies will eliminate the disadvantage they currently suffer in the way the system works against them. In fact unequal sized constituencies account for only around one third of that disadvantage.

Parliament: Commons

Backbench Business Committee

The last *Monitor* reported that the recommendations from the 'Wright committee' (Select Committee on Reform of the House of Commons) were agreed only in part before the election (see *Monitor* 45). Its recommendation on electing select committee chairs and members went through (see below), but the proposal of a Backbench Business Committee proved more contentious. Though the principle was agreed, the previous government failed to make time for approval of the necessary standing order to set the committee up.

Though some feared that this would prove a permanent setback, the coalition agreement promised to implement the Wright committee recommendations 'in full'. Accordingly, on 15 June the Commons debated and agreed standing orders to establish the Backbench Business Committee. The committee has responsibility for choosing the subjects of debate for 35 days per session, at least 27 of which will be in the main chamber. It therefore hands significant responsibility to backbench MPs for scheduling time in their own chamber, accordingly reducing the power of party whips. On 22 June Natascha Engel (Lab) was elected chair of the committee in an all-House secret ballot against former Deputy Speaker Sir Alan Haselhurst (Con). Like the committee's seven other members (4 Con, 2 Lab, 1 LD) she is a backbencher. The committee has a webpage, and has issued a consultation paper on its method of working (HC 334, 21 July). It has scheduled three days of debate to date: on ministerial statements, Afghanistan, and contaminated blood. Its biggest challenge is how to consult widely and fairly with backbenchers, and sift the innumerable competing claims for debating time. If it succeeds this could mark a major milestone in the creation of a more independent Commons (and also a major achievement for the Constitution Unit: which first proposed such a reform in 2007). In the first instance, however, the committee has been established for only one parliamentary session, so it must work hard to prove its worth.

Elected Committee Chairs

The other main recommendation of the Wright committee was brought into effect early in the new parliament. Elections were held for chairs of 24 select committees on 10 June. Of these, eight were uncontested, but the others were contested (by six candidates, in the case of the Public Accounts Committee). An allocation of chairs to parties had already taken place, and the election was run on a House-wide secret

ballot using the Alternative Vote for each committee. Elections for members were held within parties using secret ballot arrangements shortly afterwards, and resulted in a remarkable number of newly-elected MPs winning seats. For example the Business Innovation and Skills committee includes nine members, all but the chair elected for the first time in 2010. The Wright committee proposals have certainly shaken up the system.

Elected Labour Chief Whip

Less widely noticed was a reform within the Parliamentary Labour Party, itself in line with this breakout of elections in the Commons. Prior to the election of its new frontbench (see front page) the PLP changed its rules so that the Chief Whip will now be chosen in an election, rather than appointed by the party leader. On this occasion there was only one candidate (Rosie Winterton) so the position was uncontested. But this new arrangement shifts accountability in a significant way: meaning the Chief Whip represents the members to the leader rather than the other way around. A similar arrangement exists in some other parliaments, and over time could further shift the dynamic in the Commons towards greater backbench control.

Political and Constitutional Reform Committee

Amongst the select committees elected in June was a hastily-constructed Political and Constitutional Reform Committee to shadow the work of Deputy Prime Minister Nick Clegg. The elected chair of the committee was Graham Allen (Lab), and it has begun its work by looking at the government's plans for an AV referendum, changes to Westminster boundaries and fixed term parliaments.

Parliament: Lords

New Peers

In May David Cameron announced the creation of 56 new members of the House of Lords: the biggest single batch of appointments since Tony Blair created 57 peers in August 1997. Yet this was not the 'rebalancing' towards the coalition that many had expected: 29 of those appointed were Labour, 16 Conservatives and nine Liberal Democrats. Many were therefore effectively Gordon Brown's resignation honours. They bring Lords numbers to by far their highest point since the chamber was reformed in 1999. Then it had 666 members, by October 2010 it had 744 members (plus another 33 on leave of absence or temporarily disqualified). If coalition appointments follow they will therefore cause major numbers problems. In October the House of Lords Appointments Commission announced the creation of two further Crossbench peers, among them constitutional historian Professor Peter Hennessy.

Lords Working Practices, and Retirements

The problem with Lords numbers was one trigger for Lord Strathclyde to establish two new 'Leader's Groups' before the summer recess, to deliberate on reform issues. The first of these, chaired by former Conservative minister Lord Hunt of Wirral, is required 'to identify options for allowing Members to leave the House of Lords permanently'. The Labour government had (see *Monitor* 43) included provisions on retirement from the Lords in its Constitutional Reform and Governance Bill, but these provisions were blocked in the pre-election 'wash up' (primarily, it seems, by the Conservatives). Such proposals had earlier been pressed in private peers' bills by Lord

Steel, and seem increasingly necessary. However, given that they could not be agreed pre-election even at the end of Labour's term, it is difficult to see how they will easily be agreed now. Lord Hunt and his colleagues face the complication that their questions are very different depending whether Nick Clegg's wholesale reform of the chamber (see below) goes ahead. The Group is expected to report to broadly the same timetable, of the end of the year.

The second Leader's Group is charged with looking at Lord's 'working practices', and is chaired by another former Conservative minister, Lord Goodlad. This follows an interesting initiative facilitated by the Hansard Society, where three working groups of peers looked at scrutiny of legislation, non-legislative procedure and governance and accountability in the Lords respectively (with papers published in March this year). Ideas floated in these papers included evidence taking on bills, more use of the Grand Committee process, a Joint Committee on Post Legislative Review, election of some key officeholders, and a weekly question time for the Leader of the House over scheduling of business. A review of the wearing of robes at State Opening was also proposed. Particularly post-election there has also been pressure for the Lord Speaker to be given more control over proceedings in the chamber, which has been unusually rowdy. All of these issues may be considered by Lord Goodlad's group, which has been likened to a Wright Committee for the Lords. It is likely to work to a longer timetable than Lord Hunt's group, and report sometime in 2011.

Lords Reform: Coalition Plans

The coalition of course has a commitment to larger-scale Lords reform. To this end, it was announced on 7 June that an all-party committee would be created chaired by Deputy Prime Minister (and Liberal Democrat leader) Nick Clegg. The other members are the responsible frontbenchers from the three main parties in both chambers: Lords Strathclyde (Con) and McNally (LD) plus Baroness Royall (Lab) from the Lords, alongside Jack Straw and Rosie Winterton (Lab: presumably to be replaced by Sadiq Khan and Hilary Benn), Mark Harper and George Young (Con) from the Commons. The task of the committee is to draw up a draft bill on reform by the end of the year, to implement the coalition commitment to 'bring forward proposals for a wholly or mainly elected upper chamber on the basis of proportional representation'. After it has reported, a joint committee of both Houses is promised to scrutinise the proposals.

There are indications of differences in the urgency with which different parts of the coalition view these proposals. Clegg himself is no doubt fully committed to proceeding as quickly as possible. However, in a debate in the Lords on 29 June Lord Strathclyde took a distinctly more relaxed approach: emphasising that the present committee is just 'the start of the process' and that 'what comes out of this committee at the end of the year is not where we will be at the end of the day'. There was much protest in the Lords that there is no Crossbencher and no Bishop on the government committee, and also that it includes no backbenchers, though Lord Strathclyde emphasised that these voices would be heard on the joint committee. Labour's early response was that it believed any reform proposals should, like AV for the Commons, be subject to a referendum. This provides a further potential source of delay, but the new shadow cabinet's position is not yet clear.

Lord Standards

The provisions of the Constitutional Reform and Governance Bill requiring peers to be registered in the UK for tax purposes came into force on 6 July. This saw five peers - Lord (Norman) Foster of Thames Bank, Lord Laidlaw, Baroness Dunn, Lord McAlpine of West Green,

Lord Bagri of Regent's Park - depart the House permanently. In a further development, the first Commissioner for House of Lords Standards - Paul Kernaghan, a former police chief constable - was appointed on 2 June.

Lords Defeats

Much attention will focus on whether the Lords continues to be a serious source of resistance to the government, as it has been in recent years, now that the coalition parties comfortably outnumber Labour. Any notion that the new Lords would be a complete pussycat was dispelled when the chamber inflicted three defeats on the government before the summer recess (one of them on House of Lords reform: see Unit website for details). Whether this pattern will continue, however, remains to be seen.

Executive

In June the Unit published a report on *The Conservative-Liberal Democrat Agenda for Constitutional and Political Reform*, with 10 chapters covering each of the new government's main commitments. The AV referendum and fixed term parliaments are covered elsewhere. Most recently, the Foreign Secretary William Hague announced at the Conservative Conference that he would seek to enact a European Union bill, which would include a 'sovereignty clause' enshrining British sovereignty in UK law; and a requirement for a referendum before any treaties transfer powers from the UK to the EU. The Unit's report noted that a referendum requirement might be unenforceable; and might raise practical difficulties (which treaties would be subject to referendum? When would the referendums be held?) Similarly, a sovereignty clause is superfluous, but will raise concerns about what legal effect, if any, it is intended to have.

The government is understandably moving more slowly on most of the other items. The cross-party committee on Lords reform will not report by its target date of December. No commissions have yet been established on the West Lothian Question, or a British bill of rights; there are no early plans to introduce a right of recall, or right to petition Parliament; and party funding is being looked at by the Committee on Standards in Public Life.

The Unit's report also recommended additional resources for the Deputy Prime Minister to support him in managing the coalition alongside the PM. These arrangements suffered an early blow when Danny Alexander, Clegg's coalition manager, had to be moved to replace David Laws as Chief Secretary to the Treasury. In a September report *United We Stand* the Institute for Government suggested that Nick Clegg's office should be significantly strengthened, with a Permanent Secretary head. They also suggested additional special advisers to support the (mainly Lib Dem) junior ministers in departments where the Secretary of State comes from the other party.

The Institute's report also recommends a mid term review of the Programme for Government and the governance arrangements underpinning it. Until now Coalition Ministers do not appear to have felt limited by the Programme for Government, with the announcement of several policy initiatives which did not feature in the original programme. These include Cameron's plans to curb the universality of child benefit; and Andrew Lansley's plans for a further reorganisation of the NHS. A leaked list of public bodies to be abolished included several legal bodies. Cuts in the Court Service and the budget of the Supreme Court make increased tensions with the judiciary almost inevitable.

Parties, Elections and Referendums

Referendum on the UK Parliamentary Voting System

There has only ever been one UK wide referendum. In 1975 the electorate voted in favour of remaining in the European Community. If Parliament gives the go ahead there will be a referendum on 5 May next year on the UK Parliamentary voting system, alongside scheduled elections in Northern Ireland, Scotland, Wales and to local authorities in England. So, what will be different about how this referendum is run?

The Political Parties, Elections and Referendums Act 2000 (PPERA) sets out the overall framework for UK wide and certain other referendums. The Parliamentary Voting System and Constituency (PVSC) Bill, currently before Parliament, contains the specific provisions for the referendum next year.

Unlike elections, where Returning Officers are independently accountable for polls in their area, for referendums as Chair of the Commission I would be the Chief Counting Officer, responsible for its conduct and ensuring the accuracy of the overall result.

From the outset we've said that all those involved in running the polls on 5 May should approach them from the point of view of voters, many of whom will be casting their votes in elections as well as referendums. To ensure this happens we are chairing the planning group attended by those who will become Regional Counting Officers and recommended that the legislation makes provision for formal combination of the referendum with scheduled elections. And of course it will be important for sufficient funding to be available to support the delivery of both polls, and the rules for their conduct to be clear from six months in advance.

Under PPERA the Commission is required to assess the intelligibility of the proposed referendum question, to ensure that people can understand the question they will be voting on. We completed our research with voters in September and have recommended to Parliament a redrafted question that should enable people to cast their vote with confidence.

The framework for making party funding transparent established by PPERA also created particular rules about campaign expenditure in referendums. When the referendum period starts, on the first day the PVSC Bill receives Royal Assent, the Commission will start to register those who intend to spend more than £10,000 campaigning. Once registered, campaigners can also apply to become the lead campaign group, known as the 'designated organisation' for one side of the debate. Designated organisations qualify for an expenditure limit of £5 million UK wide and for certain publicly funded assistance, including TV campaign broadcasts and grants up to £600,000. We will either designate lead campaigning organisations on both sides of the referendum, or none at all.

And finally, how will voters know what they're voting for? Our research on the question found that people had a limited understanding of the voting systems they will be asked to choose between. So campaign groups and the media will have an important role to play in raising awareness. The Commission will also be providing every household in the UK with a booklet that sets out how they can vote and explains the consequences of their vote. But we'll leave it up to campaigners to make the arguments for and against each choice.

No doubt there will be lessons that we, Parliament and everyone else with an interest in how our democracy functions will need to learn from the experience of the next nine months. We will also have the experience of a referendum in Wales which will present its own challenges. I look forward to discussing these at a future Constitution Unit seminar.

By Jenny Watson, Chair of the Electoral Commission

For more information about the referendums and elections next year see the Commission's website: www.electoralcommission.org.uk

Devolution

Northern Ireland

As members of the Northern Ireland Assembly returned for business in September, they faced the troubling reality that their activities were proving increasingly irrelevant to events on the ground.

The summer had been disfigured by violence which continued for days in north Belfast, sparked by an Orange Order parade on 12 July. With the reformed Police Service of Northern Ireland bearing the brunt, an assistant chief constable openly challenged the first and deputy first ministers, Peter Robinson of the Democratic Unionist Party and Martin McGuinness of Sinn Féin, to give 'joined up' leadership.

The incidence of bombings and shootings in Northern Ireland was greater at the end of the first period of devolution (1999-2002) than at the beginning. Having fallen during renewed direct rule, violence has risen once again following the restoration of devolution in 2007.

A few weeks after the riots, the Office of the First Minister and Deputy First Minister finally issued a consultation document, *Cohesion, Sharing and Integration*, to succeed the policy to address sectarian division, *A Shared Future*, issued in 2005 and shelved when devolution was re-established. But whereas *A Shared Future* had, albeit tentatively, pointed Northern Ireland towards a future as a 'normal' civic society, the *Cohesion, Sharing and Integration* stressed instead 'respect' for the region's inherited polarised identities. It was widely seen as reflecting the vested interests of the DUP and SF in maintaining separate communal clienteles. One serving and one former senior official, involved for years with the issue, were dismissive of its content.

But growing joblessness and insecurity were of most concern on the ground. The 2008 Programme for Government affirmed that the economy was the administration's priority but, following an independent review, the consequent establishment of an economic advisory group and then of a ministerial sub-committee, the enterprise minister, Arlene Foster (DUP), announced that no actual economic policy would emerge before 2011—which will mean after the May assembly election. Unemployment has more than doubled since devolution was re-established.

Northern Ireland is not only the UK region with the lowest employment rate but the most dependent on public expenditure, and so is likely to suffer most severely not only from the cuts themselves but their deflationary multiplier effects on business and household spending. Yet squabbling between the DUP and SF—with SF ministers refusing to present contingency proposals on savings to the DUP finance minister, Sammy Wilson—meant that at the time of writing it appeared

that the 20 October statement from the chancellor on the four-year Spending Review would be followed, at best, by a one-year budgetary plan in Northern Ireland.

Ministers have meanwhile still to agree on the introduction of water charges—also discussed under the first period of devolution—despite the annual £200 million cost to the public purse. And they have also failed to act upon a study commissioned under direct rule into the costs of sectarian division. In September a report from Oxford Economics highlighted again the unsustainability of the region's denominationally divided education system.

Robin Wilson, Queen's University Belfast

Scotland

Things seem rather quiet in Scotland. Perhaps it reflects the calm before the storm in May 2011 (and the electioneering before it), but it also reflects the often-peripheral position of Scotland within British politics. Scottish Labour leader Iain Gray's advice to Ed Miliband and his colleagues ('don't forget Scotland') may become important next year (when the Scottish Parliament becomes Labour's best chance of office), but it was not high on anyone's agenda during leadership campaign. Similarly, the Scottish Government may have a different idea about how to deal with the economic crisis and the need to cut spending, but the UK Coalition Government clearly has its own agenda and is not in the mood for policy learning. It also seems to be unwilling to change its stance on the date for the referendum on the Alternative Vote, which will take place on the same day as the devolved assembly elections. The latter may have boosted the SNP's fortunes during its campaign for a 'yes' vote on independence, but its preferred referendum will not take place. Instead, the SNP will argue that it is being obstructed by the other main parties and that the only chance for a referendum after 2011 will be if the SNP remains the largest party with a larger share of Scottish Parliament seats. This task will not be easy, particularly since it (unlike Labour) will struggle to present a complete rejection of the Conservative party: since it formed a government in 2007 the two parties have voted together over 70% of the time (figures provided by Steven MacGregor).

Since it is only seven months until the next election, this is usually the time that the Scottish Government seeks to ensure that its legislative backlog is cleared. In the past, this process contributed to an image of a legislative 'sausage machine', in which the Scottish Parliament's role was to become a venue for the passage of legislation rather than an actor able to scrutinise it effectively. Unlike at Westminster, the end of session process did not give opposition parties an unusual degree of influence (partly because there is no second chamber). Things are different in this session. While the Scottish Government will still seek to pass its legislative programme, the programme itself is relatively slim and restricted largely to issues that it can pass with the support of at least another party. Further, the progress of its flagship policy is still in doubt. The alcohol bill will likely pass, but the SNP's hopes for a minimum price on alcohol are fading fast (following their rejection at committee stage). Minimum pricing represents one of those issues that is not served well by the current constitutional settlement because a better option (for the government, not the sellers of alcohol) might be to raise alcohol taxation to ensure a minimum price – something that only the UK government can do and the EU Commission might object to.

Paul Cairney, University of Aberdeen

Wales

The last few months in Wales have largely been a process of waiting. First, there was the referendum on extending the National Assembly's legislative powers. This had been held up by the lack of any work on the wording of a question before the UK general election. The Electoral Commission published its report on 2 September, and the Secretary of State promptly announced she accepted the Commission's revised wording. The Commission also pointed out that there was widespread public misunderstanding both of how devolution presently worked, and of what would change if the Assembly were to have primary legislative powers. However, the order formally calling the referendum had still not been made by late October, and while there was a wide expectation that the date would be 3 March 2011, that had not been confirmed.

Second, there was the wait for the start of the referendum campaigns. 'True Wales', a campaign group opposed to devolution generally, announced it would seek to be the approved 'No' campaign. Who would be the 'Yes' campaign remained less clear.

Third, there was the wait for action regarding the Holtham Commission's final report, published in July. This was a subtle and sophisticated piece of work, which called for the block grant to be based on Wales's relative need (which would have increased the Assembly's funds by £300 million in 2009-10), the introduction of a 'Barnett floor' to limit the impact of convergence in any event, and a form of fiscal devolution broadly similar to that recommended by the Calman Commission for Scotland. The reaction of politicians across the political spectrum was to support the 'fair funding' aspect of the report, but to show much less interest in the idea of having a measure of fiscal responsibility.

Fourth, there was the wait for the expected bad news of the Comprehensive Spending Review. It is too early for a detailed analysis of the CSR or its implications, but the cuts the Review imposes on both capital and current spending in Wales until 2015, are worse than those in Scotland or Northern Ireland – although they are generously funded by the present arrangements, and Wales is not. There is good reason for a sense of grievance about these changes as a result.

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<http://devolutionmatters.wordpress.com/>*

Information Policy

Opening up our town halls? FOI and local government in England

Although Freedom of Information is traditionally associated with central government local government in England has been a focus of more than two thirds of all FOI requests since the Act came into force in 2005. Our annual surveys of FOI officers seem to show that requests are continuing to rise steeply year on year. It is estimated that request numbers have more than doubled from 60,000 in 2005 to nearly 120,000 in 2009. With transparency and openness high on the Coalition's agenda, it is important we examine how FOI really works.

Our project is almost at the halfway point, now 12 months into a 28 month project. It looks at whether FOI has met its objectives. We ask whether FOI has made local government more transparent or more accountable, improved its decision-making or increased public understanding, public participation and trust in local government. We are also exploring how FOI interacts with wider local government reforms.

Another area of interest is the media. As so few people ever make an FOI request the media are not only key users but also help disseminate information and shape public perceptions.

Our research up until now indicates that FOI has made local government more transparent and accountable. Requesters are now using FOI to find out more about a whole range of topics from parking to potholes and speed cameras to spending on council newsletters. The exact impact on local authorities may depend on the individual authority's attitude towards FOI and its experiences: different local authorities do FOI in different ways. A number of officials pointed to the fact that local authorities are already open and have allowed, for example, access to minutes and attendance at full council meetings for many years.

It appears to have had less impact on decision-making, where recent reforms from the committee system to a cabinet based system have had far more effect. On the difficult issue of trust the evidence points in several different directions. Local politicians are often more trusted than central politicians though all have been hit by the fallout from the MPs' expenses scandal. Use of FOI by the national media for stories about 'fat cat' officials, alleged local wasteful spending and misuse of surveillance powers appears to have had a negative effect. Yet some requesters and local media reports are positive about FOI's benefits and feel their trust has increased. Another group of officials and requesters seem to feel that FOI is not the proper tool for increasing trust: increasing trust is about being visible and responsive rather than open.

In terms of use at the local level, FOI is not only being used to access information about local government activities but also to find out about central government policy (such as the issuing of ASBOs at local level), other public bodies (schools, libraries) and private bodies (bus companies working with local authorities, restaurant inspection reports).

It is not clear why requests have risen so much. It may be an increased awareness of FOI due to MPs' expenses or increased use by particular groups such as campaigners, business or the media. There may be a knock on effect from national issues with a surge in requests for details of members' allowances in 2009.

The media seem to use FOI in different ways. The national media rarely use it to obtain stories at local level. The majority of stories they do write are based on so-called 'round robin' requests sent to all authorities asking, for example, for statistics on salaries, violence in schools or sick days taken by staff. By contrast, local media use it for issues of local interests alongside traditional methods such as attending council meetings or consulting documents.

Business appears to be another heavy user of FOI which contrasts with the lack of use at central government level. The Act provides an opportunity to research tender information as well as access commercially valuable information relating, for example, to the costs or specifications of IT systems. There also appears to have been more creative use with solicitors using FOI to obtain details of those who have died without heirs.

We are also examining any unintended consequences of FOI. Does it, for example, cause a 'chilling effect' where decisions are not recorded or sanitised because of fear of future release? Few officials feel it has done so up until now. While recording may change this is more often down to use of email, fear of leaks and the general tendency for 'politics' to stay off the record. The exception appears to be in difficult political situations or controversial issues where the flow of paper or written record may be limited.

The future of FOI is tied up with the future of local government and the rise of online transparency. The coalition has asked all local authorities to publish details of all spending over £500 by next January and more than 40 authorities are already doing so. Salary information for senior officials is now published in greater detail. As well as the official 'Spotlight on spend' site there are now independent websites such as 'openly local' which collate a range of information disclosed by local government.

Yet such transparency may be in turn undermined by budget cuts that will hit FOI resources. The continual rise in requests may have resource implications for shrinking budgets. With requests constantly increasing a few frustrated local authorities have suggested unilaterally imposing application fees or even 'naming and shaming' serial FOI requesters.

We have spoken to selected officials in 6 local authorities and have surveyed requesters who use FOI and local journalists. We are also examining articles in the national and local press and appeal decisions.

To find out more about our project and see our survey data visit: http://www.ucl.ac.uk/constitution-unit/research/foi/projects/local_government.htm or email b.worthy@ucl.ac.uk

International Focus

The 2010 Australian Federal Election

In August 2010, Australia's federal election resulted in a hung parliament for the first time in over 70 years. Predictions of a close election had proved correct: Labor and the Liberal-National Coalition won 72 seats each under the AV electoral system, short of the 76 seats needed for a majority in the House of Representatives. Commentators pointed to the poor performance of both major parties; but the result also reflected the decline of the two party system and voter disaffection.

Negotiations with the six independent MPs began immediately. Australians feared a 75-75 tie, which would have necessitated another election, but this did not happen. Gillard, a canny negotiator with the advantage of incumbency, outmanoeuvred coalition leader Tony Abbot by acceding to many of the independents' demands, which included agreeing not to call an early election, the establishment of an independent parliamentary budget office, an independent speaker, pairing arrangements, greater pre-legislative scrutiny, and greater time set aside for private members' bills.

After 17 days of negotiations, Labor's Gillard emerged as the leader of a minority government with a very slim majority of 76-75 on confidence and supply matters. The Labor Government will need to negotiate on almost everything; and not just in the House of Representatives, but also in the Senate, which remains permanently without a single party majority. As Paul Kelly has pointed out, good government is not just stable government, but effective government. Will Gillard and her government be able to 'deliver' on their promises?

People On The Move

Sir John Dyson was appointed a Justice of the Supreme Court in March, in succession to **Lord Neuberger**. **Lord Saville**, after completing the Bloody Sunday Inquiry, announced he would retire from the Supreme Court. **Baroness Prashar** stepped down as chair of the Judicial Appointments Commission in October. **Lord Adonis** is the new Director of the Institute for Government, in succession to **Sir Michael Bichard**. **David Halpern** has been seconded from the Institute for Government to the Cabinet Office to head up the Behavioural Insight Team. He will remain with the IfG as a Senior Fellow. **Peter Riddell** has retired as the Chief Political Correspondent of the Times to spend more time as Senior Fellow at the IfG. **Nick Bowles** MP has become a Political Fellow at the IfG. **Sir John Elvidge** has retired as Permanent Secretary to the Scottish Government. He was succeeded by **Peter Housden**, former Permanent Secretary at the Department of Communities and Local Government. **Clive Porro** is the new Clerk of the Public Administration Select Committee. **Professor Peter Hennessy** and **Professor Sheila Hollins** have been appointed to sit on the crossbenches in the House of Lords. **Georgia Hutchinson** is the new Secretary of the Committee on Standards in Public Life.

Constitution Unit News

Judicial Independence grant

The Constitution Unit has been awarded a grant of £1/2m by the AHRC for a detailed study of the Politics of Judicial Independence. The project will be led by Robert Hazell, working with Prof Kate Maleson of Queen Mary and Graham Gee of Birmingham University. It will run for three years starting in January 2011.

The background to the project is that the courts have a lot more power than they used to, which has heightened tension between politicians and the judges. That in turn has triggered a growing debate about judicial independence, and judicial accountability. The judges are institutionally more independent, with a separate Supreme Court, and the Lord Chief Justice as head of the judiciary in place of the Lord Chancellor. But they still feel uneasy. At their insistence, the Constitutional Reform Act 2005 placed a statutory duty on Ministers to uphold judicial independence.

The Act does not define judicial independence. If it is to be upheld, it must be clearly understood by all the actors who are required to protect it. So two questions addressed by the project are:

- What is the meaning of judicial independence, and its proper limits?
- How is it best protected, and by whom?

The new arrangements also raise questions about accountability. The Lord Chancellor was politically accountable for the whole judicial system. It is now not clear exactly where accountability lies and what it entails. So a third question is:

- Who is now accountable for the courts and judiciary, and to whom?

We intend to examine not just high profile clashes, but the day to day decisions on the budget and management of the court service, judicial pay and pensions, complaints and discipline, appraisal and training. In the process we hope to identify all the 'hidden guardians' within the executive, parliament and the judiciary whose everyday decisions

define how judicial independence and accountability are interpreted in the UK.

There will be a series of high level practitioner seminars running throughout the project; public lectures; a website and blog; articles for the press, and for legal and political magazines. If you are interested in any aspect of the project contact: r.hazell@ucl.ac.uk.

We are currently recruiting a full time Research Associate for this project, with the deadline for applications 9.00am Monday 1 November.

See the Unit website for details:

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

New website

We are pleased to present a brand new Constitution Unit website. We've been developing the site over the last few months to make our information more accessible to users. It's a big improvement and we hope you enjoy exploring it.

We have redesigned the interface with navigation buttons across the top of the screen and related links down the right hand sidebar. The breadcrumb trail will also help with navigation so getting round the site is straightforward and logical. We have also included many more images and made it more interactive with video content so it's also a little easier on the eye!

The content is similar to our previous site with current research projects listed and previous ones in an archive. Quicklinks to individual projects are available within the bottom panel. We have, however, included some new content you might be interested in:

- The policy impact of the Constitution Unit: How the Unit has influenced particular government policy
- What is the UK constitution? An introduction to the main aspects of the UK constitution with links to further study
- The Unit is on Facebook! So please join us to keep up with what we're doing

The new website has taken a good few months to develop, and the Unit would like to thank Stephen Thomson in particular and for his knowledge and patience. His help is greatly appreciated.

In Memory of Lord Bingham of Cornhill

The Unit is sad to note the passing of Lord Bingham of Cornhill. Regarded by many as the greatest English judge since the second world war, Tom was also a very valued member of the Constitution Unit Council and worked with us on a number of project advisory boards. He will be greatly missed.

New Staff

Simon Kaye joined the Unit in August, as a Research Assistant working with Meg Russell. He provides support for Meg and is working on the Select Committees project.

Interns

As always, the Unit is grateful for the hard work and diligence of our interns: Ian Jordan, Ruchi Parekh, Jessica Carter, Antti Halonen, Ashley Wright, Yael Reiss, Adam Cadoo, and Ceri Lloyd-Hughes.

Bulletin Board Constitution Unit Newsletter

Forthcoming Events

These seminars are funded by her family in memory of Barbara Farbey, late of UCL, who greatly enjoyed them and who died in 2009.

- Monday 18 October, 1.00pm. Prof Robert Blackburn (KCL) speaking on Fixed Term Parliaments
Venue: Thatcher Room, Portcullis House (Public Seminar Series, free and open to all)
- Tuesday 26 October, 6.15pm. Ben Worthy & Gabrielle Bourke (Constitution Unit) talking about their project on FOI & Local Government
Venue: Council Room, The Constitution Unit (FOI Seminar Series, subscription only)
- Thursday 4 November, 1.15pm. Prof Robert Hazell delivers one of UCL's Lunch Hour Lectures, asking the question: Doomed to Fail? The Challenges of Coalition Government for Westminster & Whitehall
Venue: Darwin Lecture Theatre, UCL, Gower Street (free and open to all)
- Wednesday 17 November, 1.00pm. Natascha Engel MP as Chair of the Backbench Business Committee will talk about her role and the work of the Committee
Venue: Council Room, The Constitution Unit (Public Seminar Series, free and open to all)
- Wednesday 1 December, 6.00pm. Sir Gus O'Donnell (Cabinet Secretary) will discuss the new UK Cabinet Manual and its role in the 2010 general election
Venue: Council Room, The Constitution Unit (Public Seminar Series, free and open to all)
- Tuesday 7 December, 6.15pm. Chris Graham (Information Commissioner) holds a Q&A session
Venue: Council Room, The Constitution Unit (FOI Seminar Series, subscription only)
- Monday 28 March, 6pm. Prof Dame Hazel Genn, Dean of UCL Laws, will talk about judicial diversity in England and Wales
Venue: Council Room, The Constitution Unit (Public Seminar Series, free and open to all)
- Wednesday 13 April, 6pm. Prof Tony Travers (LSE) will discuss the emergence of the New Localism in England and Wales
Venue: Council Room, The Constitution Unit (Public Seminar Series, free and open to all)
- Wednesday 15 June, 1pm. Jenny Watson, Chair of the Electoral Commission, will talk about issues relating to the AV referendum
Venue: Council Room, The Constitution Unit (Public Seminar Series, free and open to all)
- Wednesday 6 July, 6pm. Prof Justin Fisher (Brunel University) discusses reforming the current system of party funding
Venue: Council Room, The Constitution Unit (Public Seminar Series, free and open to all)

Sign up for all our events on our website, and find videos and presentations from previous seminars.

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

Constitution Unit Publications

- Hazell, R. *The Conservative-Liberal Democrat Agenda for Constitutional and Political Reform* (June 2010)
- Hazell, R. *Fixed Term Parliaments* (August 2010)
- Hazell, R., Worthy, B., and Glover M. *Does FOI Work? The Impact of the Freedom of Information Act on Central Government in the UK* (London: Palgrave Macmillan, 2010)
- Worthy, B. (2010) More Open But not More Trusted? The Effect of the Freedom of Information Act 2000 on the United Kingdom Central Government. *Governance* 23 (4), 561-582
- Hazell, R. and Worthy, B. (2010) Assessing the Performance of Freedom of Information. *Government Information Quarterly* 27 (4), 352-359

All of our publications are available online on the Unit website at:

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

Publications Received

- Goodman, P. *What do we want our MPs to be?* Robert McIlveen (ed.) (London: Policy Exchange, 2010)
- Hockman, S., and Bogdanor V. (2010) Towards a Codified Constitution. *Justice Journal* 7 (1), 74 – 87
- Rozenberg, J. (2010) Does the UK need a comprehensive constitutional framework. *Law Society Gazette*
- Williams, G., and Hume, D. *People power: The history and the future of the referendum in Australia* (Sydney: University of New South Wales Press, 2010)



The Constitution Unit