

The Reshuffle in Perspective

Now the dust has settled after the media hue and cry over the botched reshuffle in June, the outlines of the new Department for Constitutional Affairs (DCA) are beginning to take shape. The main thing to note is that relatively little has changed so far as Scotland and Wales are concerned. The only substantive change is that the Scottish Secretary and Welsh Secretary are now part time, combining those functions with other Cabinet posts. Alistair Darling is very part time, devoting the bulk of his time to Transport, and only 10–15% to Scotland. Peter Hain divides his time more equally, and still seeks a high profile in Wales. Scotland seemed quite relaxed about the loss of their full time Secretary of State, while Peter Hain was at pains to reassure the people of Wales that the Welsh Secretary and Wales Office would still exist. Little had changed and for Wales it was business as usual.

Officials in the Scotland Office and Wales Office continue to report direct to the Scottish Secretary and Welsh Secretary, and are part of the Department for Constitutional Affairs only for pay and rations purposes. Lord Falconer is described as being responsible for the overall devolution settlements and government policy on devolution, but in the House of Lords he spelt out the limitations on his role: “I do not have the ability to override the Secretaries of State for Wales and Scotland. Not one part of their powers has been transferred to my department. All that has happened is that their officials have moved there...”.

What has been lost is the opportunity to take a more synoptic view of devolution, by bringing together in a single post responsibility for devolution in Scotland and Wales, as recommended by the Lords Select Committee on the Constitution in their January 2003 report on Devolution. Whitehall still has four separate centres handling devolution, for Scotland, Wales, Northern Ireland and the English regions. And in one respect the fragmentation has grown slightly worse. Whereas after the 2001 election a single cabinet committee was created responsible for the Nations and Regions (CNR), since the reshuffle that has been split into two separate committees, one on Devolution Policy (PD), chaired by Lord Falconer, and the other on English Regional Policy (ERP), chaired by John Prescott. (For details of the new Cabinet Committees, see page 7).

On the justice side of the new department, officials moved swiftly to publish impressively thorough consultation papers on the new Supreme Court and Judicial Appointments Commission (for details see page 9). For September is promised a consultation paper on the abolition of the office of Lord Chancellor. The real mischief was the Lord Chancellor wearing too many different hats, as a member of the government, head of the judiciary and speaker of the House of Lords. Once those different hats have been removed, it is not clear why the office has to go also.

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Regional Government— Timetable for Boundary Reviews

The Boundary Committee for England has been charged with the job of recommending new forms of unitary local government structure in the three northern regions (North-East, North-West, Yorkshire & Humber) which will vote for or against elected regional assemblies. Authorities have the option of submitting proposals for a unitary pattern of authorities by 8 September.

It is likely that, if all councils in a given area can agree on a unitary pattern, the Boundary Committee will consider that pattern favourably. The Committee is also obliged to take into account the results of the recent Comprehensive Performance Assessment, though it is not clear as yet how this should be done: nor is it clear how much influence the boundaries of other public bodies, such as Local Strategic Partnerships or Primary Care Trusts, will be taken into account in drawing new unitary authority boundaries. These bodies often exist at a scale between the county and district council at present.

The Committee must publish at least two options in each region; its draft recommendations will be published on 1 December 2003. There will then be a consultation period until 23 February 2004, and the final recommendations must be published on 25 May 2004. The Committee will be able to recommend the absorption of parts of two-tier areas by existing unitary authorities if it wishes, but not to 'subtract' from existing unitary authorities' territory. Referendum voters, in each region, who live in two-tier areas will have the opportunity to choose between two options of unitary local government.

The Boundary Committee must also draw up the constituencies for the new elected regional assembly members. There is no timetable in place for this, as it will undoubtedly be delayed until after the results of the referendums.

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Lords Reform Gets Perilous

A chapter in the Lords reform saga has ended, and another looks set to begin. After years of debate about what proportion of the second chamber should be elected (dating to the Royal Commission's report in 2000), the Government has declared there will be no such elections. Despite its manifesto commitment to a "more representative and democratic" upper house, its reply to the Joint Parliamentary Committee on House of Lords Reform (see page 3) states that "there is no consensus about introducing any elected element in the House of Lords". This effectively closes the door to elections, at least within this parliament.

The bluntness of the government's reply is surprising. Not only does it signal the abandonment of a manifesto commitment, it also looks set to stoke further rows at Westminster. The first casualty is likely to be the Joint Committee itself, as the Liberal Democrats have issued a statement saying they must "consider whether we should play any further part in its proceedings". If they withdraw the committee will collapse, and cannot be recreated without their co-operation. The suggestion that there is 'no consensus' on introducing elections also disregards the fact that a majority of MPs voted in February for

a largely elected House, whilst a clear majority—325 to 247—rejected the all-appointed option preferred by the Prime Minister. Yet that is what we are now left with.

Indeed it appears the government wishes to cement this arrangement. The reply restates the commitment to remove the remaining 92 hereditary peers from the chamber, and promises a consultation on reforming the appointments process. Rumours at Westminster are that there will be a bill in the Queen's Speech to achieve these ends. Such a move could prove perilous for the Government.

The Conservatives and Liberal Democrats have declared themselves opposed to a bill to remove the hereditaries. Without their support such a bill cannot get through the House of Lords. Labour reformers (notably Robin Cook) have also declared themselves opposed, meaning it would not get through the Commons without a fight. It would allow the opposition parties to claim the high ground, seeking to amend the bill to include elections—an attractive prospect to many Labour backbenchers. They would also remind the government that the hereditaries were effectively hostages, kept in the chamber on the promise of stage two reform. What

the government is now seeking to do is shoot the hostages. It's true there was a manifesto commitment to remove them, but linked to creating a 'representative and democratic' house.

Reforming appointments is the other side of the plan. If elections are now deferred appointments will be necessary—Lords membership is ageing and Labour is underrepresented. Tony Blair has stated that "prime ministerial patronage should go" (House of Commons Hansard, 29 January 2003, col. 877). Reformers should seize on the promised consultation to remind him of this, insisting he gives up his power to decide when and how many appointments are made, and most importantly the party balance

Parliament

Government announcements on the Lords

On 16 July 2003 the Government's response to the Parliamentary Joint Committee on House of Lords Reform (HC 1027) was published. (See front page story for more details.)

On 17 July the government also announced that it was extending the life of the House of Lords Appointments Commission, whose three year term had come to an end. The letter from Tony Blair to chair Denis Stevenson stated that the Prime Minister will "be inviting the Commission to recommend a small number of non-party-political peers, while discussion on the reform of the Lords continues". The commission has made just one batch of appointments so far, which received a very hostile press. But no changes have been made to its membership, chair or terms of reference. The decision to reappoint the commission seems peculiar, given the announcement of an imminent review of the appointments process.

A new speaker for the Lords

The reforms announced in the June 2003 reshuffle have important implications for the House of Lords, where the Lord Chancellor acts as presiding officer. Abolition of this position requires the House to make new arrangements. This factor was initially overlooked, and Lord Falconer's reluctant appearance on the woolsack after 'abolition' was announced was an early sign that reform is more complex than government had hoped.

There have been several exchanges in the House about the new arrangements. Initially the Leader of the House, Lord Williams, appeared to hope that unofficial 'soundings' would demonstrate a consensus and reform could happen quickly. However, this

between them. An appointments commission could be instructed to base the balance on votes cast at the last general election (which would boost Labour's numbers significantly) and to ensure a fair gender, ethnic and regional mix. This would remove the worst controversies around appointments and be a good news story for the Government. Yet, like other recent reforms of appointments it could be done without legislation, thus avoiding a parliamentary row and leaving the door open to elections in the future. Given this, it is perplexing why government is considering a bill at all.

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proved not to be the case. On 9 July it was agreed that an 11-member committee on the new arrangements would be established, chaired by Law Lord Lord Lloyd of Berwick, to report by the end of the session. Two issues the committee will clearly discuss are the powers of the presiding officer, and the title given to the position. Indications from debate are that the House will want to keep its self regulating ethos and light touch chairing, rather than adopting a more powerful Speaker as in the House of Commons. Several members have also expressed a preference for keeping the title 'Lord Chancellor' for their presiding officer.

Salaries for select committee chairs

In July 2003 the Senior Salaries Review Board (SSRB) published its long awaited report on pay for select committee chairs (Cm 5673). This proposal, backed by many who want to see an alternative career structure to ministerial office develop in parliament, was put to the House by the Modernisation Committee as part of the package on committee reform in May 2002. The decision to refer the matter to the SSRB passed the House by 199 votes to 158. The report proposes that chairs of departmental and cross-cutting select committees (but not domestic committees) should receive a payment of £12,500 per year. However, implementation of any change will require a further motion to be agreed by the Commons itself.

Leaders' offices and Privy Council

The reshuffle brought a small and largely unnoticed change to the administration of the Privy Council. Previously the position of President of the Privy Council was held by the Leader of the House of Commons, requiring attendance at monthly Privy

Council meetings with the Queen and associated administrative duties. With Peter Hain's dual roles this was considered too burdensome, and the role of President has been passed to Gareth Williams, Leader of the House of Lords. Peter Hain takes on the position of Lord Privy Seal, previously held by

the Lords leader. One of the President's more onerous duties is adjudicating disputes at various universities—something the Government has promised to transfer to the Department for Education in the forthcoming further education bill.

Devolution

Scotland

Following the election, Labour and Liberal Democrats reached agreement on a new coalition. The key issue was agreement on electoral reform for local government. This is likely to create tensions within the Labour Party including amongst Labour MSPs. That apart, this has been a quiet quarter following the excitement of the election campaign.

The other main matter affecting Scotland was the establishment of the Department of Constitutional Affairs, incorporating the Scotland Office in Whitehall. The First Minister's comment that the Scottish Parliament should not worry about 'bureaucratic' matters such as its relations with London suggests that the neglect of the importance of the link with the political centre which preceded devolution remains an enduring feature of territorial politics that would not be found elsewhere.

Wales

The creation of a 'part-time' Secretary of State for Wales and the merger of the Wales Office with the new Department for Constitutional Affairs in Westminster sparked renewed debate over the Assembly's powers. Deputy Health Minister, John Griffiths AM, said the down-grading of the Secretary of State "greatly strengthens the case for primary law making powers." However, evidence to the Richard Commission from Welsh MPs at Westminster opposed any change. As the ten-strong North Wales Group of Labour MPs put it: "We do not believe that the case for major change at present has been made, but even if it had, it would require specific endorsement by the people of Wales through a further referendum."

A confrontational atmosphere soon developed within the Assembly chamber following the May elections when the Labour administration refused to give way to Opposition demands to bring forward a programme for government for the second term. The result was a break down in relations in the Business Committee. The Government's Business Statement was opposed on ten separate occasions between May and the summer recess in July. On 3 June the vote was 29 to 29 on an Opposition motion

opposing the Business Statement, which was then defeated on the casting vote of the Presiding Officer, Lord Elis-Thomas. Throughout this period the Opposition parties refused to pair with the Government side, creating inconvenience for the Administration. On one occasion Rural Affairs Minister Carwyn Jones was prevented from going to Brussels as Wales' representative on discussions over reforms to the Common Agriculture Policy.

Meanwhile, Plaid Cymru was engulfed in leadership struggles, both for the presidency and for who was to head up the 12-strong group in the Assembly. Folk-singer and protest leader Dafydd Iwan is vying with the former Mid and West Wales AM Cynog Dafis for the presidency. In the Assembly the contest is between Helen Mary Jones AM. Rhodri Glyn Thomas AM and Ieuan Wyn Jones AM who unexpectedly threw his hat back in the ring after resigning following Plaid's disappointing May election result.

People on the move

The first Counsel General for the National Assembly for Wales, Winston Roddick QC, announced in July that he would not be renewing his five-year contract. He will leave his post in October to return to private practice.

Northern Ireland

The prime minister, Tony Blair, may worry that Northern Ireland is 'too fragile' but its citizens seem to have come to a more relaxed conclusion. Talks have failed, devolution has been suspended, the assembly election has been postponed, paramilitary violence grinds on...and yet the roof has not fallen in. A determination to get on with life amid widespread political apathy appears to have taken hold.

Indeed, analysis of data available this quarter from the 2002 Northern Ireland Life and Times Survey, carried out in the wake of the collapse of the devolved institutions, indicates—after years of decline since the Belfast agreement—a modest upturn in confidence about 'community relations'. Other opinion data appearing this quarter found a median 'no

change' view of public services over the past five years.

The postponement of the election due in May had been expected to lead to a 'political vacuum', heralded to be 'filled' with violence. In fact, a merely meteorologically hot summer followed. The region's 'marching season' of (almost entirely Protestant) parades passed off remarkably peacefully, with just 2,800 Orangemen turning out for the main 'Twelfth' demonstration. And the efforts of Sinn Féin to mobilise Catholic public opinion behind 'Democracy Denied' rallies met not only incomprehension from seasoned observers but a wider yawn.

By far the greatest political activity took place in the normally somnolent Ulster Unionist Party. This was of a wholly destructive character, as what looked like the final throes of the internal battle for control of this fast-devaluing organisation were played out, once more in public—a "never-ending soap opera" as one newspaper called it. More professionally, or more dishonestly, the republican movement addressed behind closed doors the shock posed by the charge that a man who for decades had been crucial to its 'internal security' had been a British agent.

With suspension stretching to nearly a year, civil servants were diverted from the assembly and ministers floated the idea of reviving the Civic Forum. Indeed ministerial activism suggested a commitment to firm government under direct rule. On a wider intergovernmental front, despite the tension between London and Dublin over when the assembly election should go ahead, the other axes of the Belfast agreement remained unaffected by suspension.

While further inter-party talks were envisaged in the autumn, eyes were increasingly turning to the review of the working of the agreement, due before the end of the year.

England

On 16 June 2003 the Deputy Prime Minister announced that referendums on regional assemblies are to be held in three regions, the North East, Yorkshire and the North West. It is expected the referendums will be held in October 2004, all things being equal. The announcement followed the results of a 'soundings exercise', which tested the degree of support for the holding of a referendum in each region of England. David Davis, the Conservative spokesperson on the regions, predicted defeat for the proposition and that the government would be 'deeply embarrassed'.

The national media gave the announcement scant attention, but where it did greeted the proposals with almost universal hostility.

Simultaneously, Mr Prescott announced that the Boundary Committee for England would begin reviewing the structure of local government in the three nominated regions in order to make two recommendations for unitary local authorities in each area currently governed by a county council. Voters in areas currently governed by county councils (but not elsewhere) will then choose which option they prefer when they vote in the referendum. The Boundary Committee's initial consultation process was officially concluded on July 31st. The Committee's draft recommendations are due by the end of November. (See page 2)

In the week following the announcement, campaigners in the North East of England announced the launch of 'Yes' campaign—'Yes4thenortheast'—to be based in Durham, with initial funding from trade unions and reform trusts. Similar announcements are expected in Yorkshire and the North West. In Yorkshire and the North West the 'No' campaigns announced themselves. In the North West the No campaign is to be co-chaired by a Labour MP.

The soundings exercise presented the range of evidence that had been gathered on the state of public opinion in the regions. An analysis of the results by Birmingham University suggested that affirmative votes were likely in the three northern regions, but with turnouts of about 30%. It looks likely that consideration will be given to postal voting as a means of boosting turnout.

In Parliament and Whitehall attention will now turn to preparation of the draft bill outlining the potential shape of elected assemblies, with the Liberal Democrats determined to boost the powers of the proposed assemblies. In the regions battle is about to commence.

Conference: Regional governance in England

The Constitution Unit and Capita are holding a conference entitled "Regional Governance in England: how to engage with an influencing assembly". The conference will be held in Leeds (venue tbc) on Tuesday 28 October. The keynote speaker is Philip Wood, former deputy secretary with responsibility for local and regional government at the Office of the Deputy Prime Minister. For more information please visit www.capitaconferences.co.uk.

The Centre

The June reshuffle saw the end of full time Cabinet positions for the Scottish and Welsh Secretaries. Peter Hain retained the post of Secretary of State for Wales, combining it with his new responsibilities as Leader of the House, while Alistair Darling was appointed Secretary of State for Scotland in addition to being Transport Secretary. Scottish and Welsh questions will go on as before, and there will continue to be separate Scottish and Welsh Affairs Select Committees.

The Government defended the move insisting that since devolution had bedded down successfully there was "no longer a requirement for full-time Cabinet ministers to conduct the remaining Scottish and Welsh business within Parliament and the UK government." The Government rejected the idea of merging the territorial Secretaries of State under a Department for the Nations and Regions, as some had advocated, arguing that this would deprive Scotland and Wales of adequate representation at Cabinet level.

Despite initial confusion surrounding their future it emerged that the Scotland and Wales Offices had not been abolished but had instead been relocated within the newly created Department for Constitutional Affairs (DCA). Here they will "retain their identities" but cease to exist as "free-standing departments." Scotland and Wales Office officials will continue to report directly to their respective Secretaries of State, but for the purpose of "pay and rations", they will come under Sir Hayden Phillips, the Permanent Secretary at the DCA. Alison Jackson and David Crawley continue as Head of the Wales and

Scotland Office respectively. At the ministerial level the Parliamentary Under-Secretaries will look after the day to day running of the offices, Anne McGuire MP for Scotland and Don Touhig MP for Wales.

The Government rebutted claims that this represented a diminution of their roles and defended the move on the grounds that with part-time Secretaries of State it made sense for their officials to have a permanent home within the DCA "so as to ensure that they do not move should the Cabinet members change."

The Devolution and Constitutional Division previously located in the Office of the Deputy Prime Minister (ODPM) also moved to the DCA where it will be co-located with the Scotland Office. They will assist Lord Falconer, in his responsibility for overseeing the overall devolution settlement. However, policy responsibility for the English regions remains in the ODPM, which Falconer argued made more sense given its "close link with issues of local government."

Lecture: Intergovernmental Relations in Canada and the UK

The Constitution Unit will be hosting a lecture by Stéphane Dion, Minister for Intergovernmental Affairs in the Government of Canada at 6 pm on 15 October 2003. Professor Dion will consider how Canada has dealt with nationalist demands over the last decade and the lessons that might hold for the UK. Contact Matthew Butt on 020 7679 4977/ m.butt@ucl.ac.uk.

Civil Service and Government

Who does what in the Department for Constitutional Affairs

The new Department has three junior Ministers. Lord (Geoffrey) Filkin leads on freedom of information; data protection, data sharing and privacy; devolution issues and regional policy; and National Archives (as the Public Record Office is now called). Christopher Leslie MP is responsible for electoral matters: the Electoral Commission, electoral law, referendums and party funding; and supports Lord Falconer on developing plans for the new Judicial Appointments Commission and Supreme Court. David Lammy MP is responsible for human rights, the Channel Islands and the Isle of Man, and the Law Commission.

All three are Parliamentary Under-Secretaries (the lowest ministerial rank), and none has been in the

government for very long. Unlike in other Whitehall departments, Lord Falconer has no Ministers of State, and no experienced junior ministers to support him. This may prove to be a difficulty when the department is introducing major legislation in the Commons, such as the bill to modernise electoral law, and the bill to introduce the new Supreme Court and Judicial Appointments Commission.

The Constitution Directorate headed by Andrew McDonald has ten divisions or units. Edward Adams leads on freedom of information and data protection, and data sharing and privacy; John Sills is head of electoral policy; Judith Simpson is responsible for constitutional policy and Lords reform; Mark de Pulford leads on human rights; Mark Taylor on Devolution Policy, Channel Islands and Isle of Man; Steve Humphreys on Supreme Court policy; David

Watts on reforming the office of Lord Chancellor; Belinda Crowe on gender recognition. The last three are bill teams which will be disbanded in due course. The Scotland Office and Wales Office are also nominally attached to the Directorate, but their heads both report direct to Sir Hayden Phillips, the Permanent Secretary.

In its first year the Directorate promises to be exceptionally busy. It is planning to introduce bills on electoral law, Lords reform, abolishing the office of Lord Chancellor, and gender recognition. In the near term its agenda includes the EU charter of fundamental rights, party funding, pilots of new voting methods, and full implementation of the Freedom of Information Act in 2005. The Directorate hopes over time to articulate its role of sustaining, explaining and developing the constitution, and to have as two of its core themes trust in public authorities and democratic renewal, focusing on rebuilding the relationship between the citizen and the state.

New Cabinet Committees

Following the June 2003 reshuffle, the government has published a new list of Cabinet committees. There are two new committees on devolution, and one on electoral policy. The old Committee on the Nations and Regions is split into two, with a new committee on English Regional Policy (ERP), chaired by John Prescott; and a separate committee on Devolution Policy (PD) for Scotland, Wales and Northern Ireland, chaired by Lord Falconer. The new committee on Electoral Policy (MISC24), chaired by Peter Hain, is to consider the Electoral Commission's proposals for modernisation of electoral law and practice. In time it might also pick up the 2001 Labour manifesto commitment to review Britain's experience of new voting systems before holding a referendum on the voting system for the House of Commons, if the government want to fulfil that commitment before the next election.

Peter Hain also chairs the committee on Parliamentary Modernisation (MISC21), and on the Legislative Programme (LP): LP is not chaired by Lord Williams of Mostyn, as we wrongly reported in the June 2003 *Monitor*. Lord Falconer chairs the overarching committee on Constitutional Reform Policy (CRP), and the sub-committee on House of Lords Reform (CRP(HL)). Left in being is the Joint Committee with the Liberal Democrats (JCC): although it has been suspended since September 2001, following a boycott by the Liberal Democrats, "it remains available to resume its work if further constitutional items become ready for discussion".

Civil service reform and values

In 2003 three constitutional watchdogs have voiced concern about the growing threats to the impartiality and integrity of the Civil Service. The Wicks Committee on Standards in Public in its Ninth Report (Cm 5775, April 2003) called for new arrangements to regulate ministerial conflicts of interest, a stronger role for the Civil Service Commissioners, and for Special Advisers to be a new category of government servant distinct from the civil service. The Civil Service Commissioners (June 2003) have warned of the risk of core civil service values being eroded at a time of rapid change and greater outside recruitment. The Public Administration Committee has called for a Civil Service Act, to give Parliament a role in protecting civil service values, and limit the number of special advisers.

In the annual report of the Civil Service Commissioners (June 2003) Baroness Prashar fired a warning shot against further politicisation of the civil service. She said that ministers should not be able to pick departmental press officers or senior civil servants, if the principles of appointment on merit and civil service impartiality are not to be eroded. In evidence to Bob Phillis' review of the Government Information and Communication Service, Baroness Prashar said that Alastair Campbell should no longer give orders to press officers outside Downing Street. That was also a recommendation of the Wicks Committee. The government's response to Wicks' ninth report is expected in September.

Conference: Reforming the Civil Service while Safeguarding its Values

The Constitution Unit is organising a conference on Reforming the Civil Service while Safeguarding its Values on 29 October from 2-5 pm in Portcullis House, Westminster. The conference is being organised jointly with the Wicks Committee, the Civil Service Commissioners, the Public Administration Committee and the First Division Association. See separate flyer for details.

Public Administration Select Committee: Opening up the Patronage State

PASC's latest report on Government Appointments was published on 10 July (HC 165). It has two objectives: to ensure that any remaining taint of cronyism and patronage is removed from the system, and to open up the world of public appointments to a wider range of people.

To remove the taint of patronage, the report proposes removing ministers from routine appointments to public bodies, and giving these to a Public Appointments Commission, accountable to Parliament. ‘Depoliticisation’ of public appointments has already happened in the NHS, which now has an independent appointments commission. Ministers could still have the final say in relation to key appointments, such as the chairman of the BBC. Here the committee propose confirmation hearings by the relevant parliamentary select committee, to provide a safeguard against the abuse of ministerial patronage and strengthen public confidence in the system.

The appointments commission would also bring greater professionalism and focus within government for recruiting people to public bodies. The report criticises Whitehall for its unimaginative approach to public appointments, and its narrow recruitment base: what Dame Rennie Fritchie has characterised as ‘male, stale and pale’. The committee believe that there need be no conflict between merit and diversity, if there is a new competency-based approach to capture the full mix of skills and experience that are required on public bodies.

People on the Move

Alastair Campbell announced his resignation as Director of Communications at Number 10 on Friday 29 August. His replacement is David Hill although he will not have the same powers over civil servants as his predecessor. Instead, a new post of permanent secretary with responsibility for “communications across government” will be created.

Other changes in Number 10 were announced on Tuesday 3 September. Geoff Mulgan, former head of the Strategy Unit is to be the new Downing Street head of the Policy Unit. Andrew Adonis, former head of the Policy Unit is to be the Prime Minister’s senior adviser on education, public services and constitutional reform. Matthew Taylor, Director of the IPPR, will join the Policy Directorate on secondment to take responsibility for the next manifesto.

Steve Bundred, head of the Local Government Improvement and Development Agency, to be Controller of the Audit Commission, in succession to Sir Andrew Foster.

Changes in the Shadow Cabinet: David Cameron MP is the new Shadow Deputy Leader of the House of Commons; Bill Cash MP is Shadow Attorney General and Shadow Minister for Constitutional Affairs in the House of Commons; Patrick Mercer MP is Shadow Minister for Homeland Security, a new shadow cabinet post with no equivalent in the Government.

Elections and Parties

Party funding

The Electoral Commission has published a review of the *Political Parties, Elections and Referendums Act 2000* (PPERA), the legislation that provides for the regulation of party funding. The review examined the case for reducing the legislation’s administrative burden; Labour’s annual accounts for 2002 suggested the regulations were discouraging local party volunteers. The Commission recommended that not all parties (of which nearly 300 are now registered) should be subject to the full terms of PERA; those that contest only local elections should be covered by more minimal rules. While the Commission also recommended that certain reporting requirements be loosened, it also called for greater enforcement powers, in particular the ability to levy fines for breaches of the rules.

The substance of PERA will be considered by the Commission as part of its imminent study into the

state funding of political parties, due to report in 2004. The Commission will also review election spending limits, although not until after the next Commons election.

Electoral administration

The Electoral Commission is currently consulting on whether to change the minimum age for voting (currently 18) and standing as a candidate (21). The main question is whether to reduce the minimum voting age to 16. The Commission is also consulting on local government election cycles, particularly whether the current varied arrangements for local elections—the frequency of elections differs considerably across the country—should be standardised. Submissions to both consultations are required by early October.

All the reports and consultation papers can be read on line at: www.electoralcommission.org.uk

North Tyneside mayoral by-election

A by-election for the elected mayor of North Tyneside took place on 12 June 2003, following the resignation of Conservative mayor Chris Morgan after he was accused of child pornography-related offences. The by-election returned roughly the same

result as the first election a year earlier. Linda Arkley won for the Conservatives with an increased majority of 4,800 votes, ahead of Labour candidate Gordon Adam (who may have lost some popularity due to already being an MEP). The British National Party came fourth with some 2,500 votes. Turnout was around the local government average at 31%.

Freedom of Information & Data Protection

Frustration with the Open Government Code

Ann Abraham, the new Parliamentary Ombudsman, published her first report on investigations under the Open Government Code on 10 July 2003. In the report she is critical of the Government's continuing non-compliance with the Code and non co-operation with her during investigations. She has even considered whether to withdraw from her role of monitoring the Code. In an attempt to resolve these difficulties, the Ombudsman has now agreed a Memorandum of Understanding with the Cabinet Office and that will be circulated to all government departments reminding departments of their obligations under the Code.

The Information Commissioner's Office has also published a project plan for work on awareness guidance on issues such as information provided in confidence, personal data and the public interest. Introductory guidance on the FoI Act was issued in June 2003. This introductory guidance and the work programme can be found on the Commissioner's website at www.dataprotection.gov.uk/dpr/foi.nsf.

New from the Information Commissioner's Office

The Information Commissioner Richard Thomas laid his first annual report before Parliament in July 2003. He outlines the achievements of the past year including involvement in a wide range of policy issues and internal restructuring. He sees the central challenge for the year ahead as "to deploy a strategic approach which will bring about a culture change—in both public and private sectors—where data protection and freedom of information are seen as natural, beneficial and ultimately essential working disciplines." The full document is available at www.dataprotection.gov.uk/dpr/dpdoc.nsf.

Freedom of Information in Scotland

Full implementation of the Freedom of Information (Scotland) Act 2002 will take place by 1 January 2005, one year earlier than is set out in legislation. This was announced, together with a timetable for implementation, in June 2003. The full timetable can be found on line within the Minister's report to the Scottish Parliament on progress on implementation of the Act at www.scotland.gov.uk/government/foi/reportprogressfoi.pdf.

Conference: Access to Information in Local Government

The Constitution Unit and Capita are holding a conference on Access to Information in Local Government on 15 October 2003 in Central London. The Keynote Address will be given by Graham Smith, Deputy Information Commissioner. For more information please visit www.ucl.ac.uk/constitution-unit/foidp/index.htm.

The Courts

The UK gets a Supreme Court...

On 14 July 2003 the new Department for Constitutional Affairs launched its consultation exercise on the introduction of a Supreme Court. (CP 11/03 July 2003 *Constitutional reform: a Supreme Court for the United Kingdom*. Available at www.lcd.gov.uk/constitution/constitpol.htm) This was triggered by the June reshuffle and the abolition of the office of Lord Chancellor, and marks another major step in reforming the UK's constitution.

While the new court will be a separate entity and its establishment will bring the judicial function of House of Lords to an end, in most other respects the Supreme Court will resemble the present Appellate Committee. It will have similar composition (perhaps with a few more judges), a similar power to control its own caseload, and most importantly similar jurisdiction. Unlike supreme courts in the US or some continental countries, the court will not have to increase the existing powers of the House of Lords to revoke legislation for being in breach of the constitution.

Perhaps the biggest issue raised in the consultation exercise is whether the jurisdiction of the Judicial Committee of the Privy Council to hear cases involving devolution issues should also be transferred to the court. The speed with which the proposals for the new court was announced meant that there was no opportunity to consult the devolved administrations about this issue beforehand. If the new court is to claim to be a supreme court for the whole of the UK it would be absurd for the devolution jurisdiction to remain with the Privy Council. However, the impartiality of a court that acquires that jurisdiction principally because of issues that concern the UK Government and not the devolved administrations may be open to question. If the supreme court is get the devolution jurisdiction, it must be in a way that ensures the devolved institutions are happy with the outcome.

European Union News

The European Parliament (Representation) Act

The *European Parliament (Representation) Act* secured Royal Assent on 8 May 2003 and was required so that the UK could meet two separate legal obligations.

Under the terms of the *Treaty of Nice*, the number of European Parliament seats will be reduced to accommodate the accession countries. Part 1 of the Act enables the UK to adjust the number of MEPs as and when required. It is expected that the number of UK seats will fall from 87 to 72.

In 1999 the European Court of Human Rights found the UK to be in breach of the European Convention

Overseas News

Electoral Quotas for Women in Italy

The Italian parliament has passed a constitutional change which will allow measures to be taken to improve women's representation in elected office. Italy, where women's representation in parliament still stands at only 9.2%, passed laws in 1993 to require equal representation for women on electoral lists for local government and for parliament. However, these were struck down by the Constitutional Court in 1995 for breaching art. 51 of the constitution, requiring equal access to elected office. It is this article

...And tidies up some other legal business

The new Department for Constitutional Affairs launched two other major consultation exercises on 14 July. One will look at the way judicial appointments are made. The other is the (long-announced) review of whether the rank of Queen's Counsel should be retained and if so how it should operate in the future. (CP 10/03 July 2003 *Constitutional reform: a new way of appointing judges* and CP 08/03 *Constitutional reform: the future of Queen's Counsel*. Both are also available at www.lcd.gov.uk/constitution/constitpol.htm) The key issue regarding the judiciary is whether a judicial appointments commission should have the power to make appointments or merely to advise on them (or perhaps to make more junior appointments and advise on more senior ones). There is also the issue of exactly how independent of government it should be.

All three DCA consultation exercises close on 7 November 2003.

on Human Rights for excluding Gibraltar from elections to the European Parliament. Part 2 of the Act enfranchises Gibraltar by allowing it to become part of a UK 'combined-region' for European Parliament elections. In August 2003 the Electoral Commission announced that Gibraltar will be in a 'combined region' with the South West.

Useful Website

The fifth issue of the EU Constitution Project Newsletter, produced by the Federal Trust, is available on their website at: www.fedtrust.co.uk/constit_main.htm#newsletter

which has now been amended. The move follows similar actions in recent years in various other countries including France and the UK.

People on the Move

Professor Diamandouros of Greece is the new European Ombudsman replacing Jacob Söderman.

Emily O'Reilly is the new Ombudsman in Ireland.

Publications

Review: Dawn Oliver, *Constitutional Reform in the UK*

Oxford University Press, 2003, 424 pp

This is Dawn Oliver's biggest and most important book so far. She is that rare animal, a constitutional lawyer with a serious interest in political science, and she has written a book of equal interest to lawyers and students of politics alike. It is really three books in one: a constitutional law textbook; a detailed account of the constitutional reforms of the last 20 years; and a careful analysis of the impact of those reforms. The analysis is particularly impressive for its sheer range, with a huge amount packed into the book's 20 chapters; for its rigorous and systematic approach, brought together in a 10 page chart in the concluding chapter; and for the combination of scholarly expertise and practical political wisdom.

A central theme running through the book is that the UK is moving from a politically regulated constitution to a more law-based constitution. Contrary to what one might expect, Oliver is not necessarily in favour of this development. "If, as I expect, our politicians are not able to improve the political mechanisms for holding politicians to account and thus maintain the political Constitution, the role of the judiciary will increase, and the move to a law-based system will accelerate. I do not myself think that this is as desirable as a properly functioning political system would be, but in the absence of a properly functioning po-

litical system a judicialised system based on constitutionalism is essential, and it is already developing".

Oliver is particularly strong on the consequences of these developments for the law and the courts. She describes how the Westminster system has traditionally relied heavily on mutual trust and respect between institutions, especially between the courts on the one hand and government and Parliament on the other. "Comity is a delicate relationship. If it breaks down—if self-denial and self-restraint are abandoned—relations between institutions may not only become acrimonious, but they may become judicialised". She explains how the cumulative changes brought by the incursion of European law, the Human Rights Act and now devolution are all inevitably going to draw the courts more into the political arena, creating greater tensions between politicians and the judges. The chapter on the judiciary is one of the best in the book, and beautifully anticipates subsequent developments in modernising the office of Lord Chancellor, and establishing a Judicial Appointments Commission and independent Supreme Court.

Robert Hazell

Other recent useful publications

Kumar, K. *The Making of English National Identity*, 2003, Cambridge, Cambridge University Press, ISBN 0 521 77736 4.

Unit News

Unit Project: Effective Scrutiny

A guide to scrutiny processes in the devolved institutions Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly will be produced in September. It is expected that a launch event will take place in Cardiff on 22 October 2003 (negotiations are still underway over venue). A review of scrutiny processes across the different institutions is also about to be published. Interviews with local government councillors and committee secretariats have just concluded, and will be written up into a report on local government scrutiny to be produced in October/November. For more information please visit our website at www.ucl.ac.uk/constitution-unit/scrutiny/index.htm

Journal Articles

Meg Russell, 'Is the House of Lords Already Reformed?', *Political Quarterly*, vol. 74, no.3, July 2003, pp.311-318.

Meg Russell, 'None of the above: The UK House of Commons votes on reforming the House of Lords', (with Iain McLean and Arthur Spirling), *Political Quarterly*, vol. 74, no.3, July 2003, pp.298-310.

Meg Russell, 'Positive Action to Promote Women in Politics: Some European Comparisons' (with Colm O'Conneide), *International and Comparative Law Quarterly*, vol. 52, July 2003, pp.587-614.

BulletinBoard

Constitution Unit Seminar Series

'Changes to Electoral Law and Voter Turnout'

Sam Younger, Chair, The Electoral Commission

18:00, Tuesday 16 September

'What would a Supreme Court for the UK look like?'

Professor Andrew Le Sueur

18:15, Monday 13 October

'The Royal Prerogative'

Tony Wright MP and Professor Rodney Brazier

13:00, Tuesday 4 November

'A Judicial Appointments Commission'

Dr Kate Malleson and Sir Colin Campbell (or other Judicial Appointments Commissioner tbc)

13:00, Wednesday 26 November

'The future of the Monarchy'

David Bean QC, Chair, Fabian Commission on the Future of the Monarchy

18:00, Wednesday 10 December.

These events all take place in the Council Room, School of Public Policy, UCL

Contact: Matthew Butt: m.butt@ucl.ac.uk/ 020 7679 4977.

Constitution Unit/Capita Conferences

'Access to Information in Local Government'

Wednesday 15 October 2003, Central London

'Regional Governance in England: How to engage with an 'influencing assembly''

Tuesday 28 October 2003, Leeds

Contact: Penny Creed at Capita: penny.creed@capita.co.uk/
www.capitaconferences.co.uk

Lecture on Intergovernmental Relations

'How to Deal with Secessionist Demands in Democracies'

Stéphane Dion, Minister for Intergovernmental Affairs, Government of Canada

Council Room, School of Public Policy, UCL

18:00, Wednesday 15 October

Contact: Matthew Butt: m.butt@ucl.ac.uk/
020 7679 4977

The Constitution Unit/Faculty of Laws Lecture

'Where are we Heading with Constitutional Reform?'

Speaker: Matthias Kelly, Chair, Bar Council

Respondent: Alan Beith MP, Chair, Select Committee on the Lord Chancellor's Department

17:30, Tuesday 18 November

Gustave Tuck Lecture Theatre, UCL

Contact: Lisa Penfold: lisa.penfold@ucl.ac.uk/
020 7679 1514

Constitution & Citizenship Associate Parliamentary Group

'The Constitution Now'

Professor Vernon Bogdanor

17:30, Tuesday 18 November

Boothroyd Room, Portcullis House, House of Commons

Contact: Tony Wright MP: 020 7219 5583

House Magazine Events

'The impact of the Freedom of Information Act on the Civil Service and the wider public sector'

Two one day seminars: Thursday 30 October and Thursday 4 December.

Speakers for 30 October include: Lord Filkin (Minister with responsibility for FoI), Maurice Frankel (Director, Campaign for Freedom of Information) and Meredith Cook and Lucinda Maer (Constitution Unit).

Contact: House Magazine "Westminster Explained" seminar department: 020 7227 3080