

# MONITOR

## LORDS REFORM: PROGRESS AT LAST?

**Following a long period of inaction, Lords reform has livened up. The long-awaited White Paper was published in February, and in March both chambers voted on a series of composition options. Real reform, however, seems as far away as ever.**

As expected, the White Paper (Cm 7027), managed by Leader of the Commons Jack Straw, recommended a mixed House with 50 per cent of members elected and 50 per cent appointed. Elections would be by 'partially open' party lists in regional constituencies. The Appointments Commission would become statutory and might choose political nominees from longlists provided by the parties, as well as independent members who would continue to form 20 per cent of the House. All members would serve 15 year terms. The remaining hereditaries would go, and life peers would be free to retire but with no forced expulsion.

Despite the recommendation there were also to be free votes on various composition options. To avoid the débâcle of 2003, when no option was agreed by the Commons, Jack Straw announced that there would be a preferential paper ballot. This idea was hastily withdrawn, however, following fierce hostility from the Conservatives and from many Labour backbenchers. Instead voting took place in the lobbies in the usual way, in the Commons on 7 March and the Lords a week later, in both cases following lengthy debates.

Debate was lively, with heavyweight intervention against elections coming from former Commons Speaker Baroness Boothroyd, and more surprisingly from former Liberal leader Lord Steel. On the day of the Lords votes Lord Steel introduced an alternative bill (with no immediate chance of becoming law) to simply create a statutory appointments commission, remove the hereditary peers and allow members to retire.

The main focus of attention was however, understandably, the Commons. Here the Conservatives, despite their inclusion in the all-party talks preceding the White Paper, were highly critical of its conclusions which Shadow Leader of the House Theresa May described as 'a messy compromise that would weaken Parliament'. The official Liberal Democrat line was more positive, but countenanced no less than an 80 per cent elected House. In the lobbies, the prediction in the September 2006 *Monitor* that the 50/50 proposal 'could prove to be a compromise that suits nobody' turned out to be wholly accurate. It was the least popular option in both chambers, being rejected in the Commons by 418 votes to 155, despite the support of both Jack Straw and Tony Blair. In the Commons an all-appointed,

20 per cent elected, 40 per cent or 60 per cent elected chamber were all also rejected, as was the abolition of the Lords. An 80 per cent elected chamber was approved by 38 votes but, to great surprise, an all-elected chamber proved most popular. This was backed by 337 votes to 224. In the Lords all options were rejected except an all-appointed House, which passed by 361 to 121.

The Commons result appeared decisive, but further examination is necessary. The division lists showed that numerous known opponents of upper house elections supported the all-elected option. This was a wrecking tactic to present the government with a dilemma and to maximise conflict with the expected result in the Lords. While an 80 per cent elected chamber seems feasible (albeit unattractive to many in government) an all-elected chamber is far more difficult. This would require the expulsion of the Bishops and the near-ending of non-party representation. It would also be far more likely to lead to challenges to the primacy of the Commons. All this provides an unpalatable prospect to a future Prime Minister. Add to it that many on Labour's benches oppose such a move, a majority of Conservatives also opposed it, and any in-principle support from the Conservative side would probably dissolve if Parliament was presented with a bill. The likeliest outcome appears to be more all-party talks, more consultation, and probably the fifth white paper on the subject since Labour came to power.

## ELECTIONS IN SCOTLAND AND WALES

The UK constitution is an issue over which the Scottish Parliament and National Assembly for Wales have no legislative authority. Even the 'domestic' constitutions of Scotland and Wales – issues such as the electoral system for devolved elections – are predominantly under the control of Westminster. Nonetheless, when Scottish and Welsh voters take to the polls on 3 May, how they cast their ballots could have a significant impact on the future constitutional development of the UK.

The most headline-grabbing constitutional issue at stake is Scottish independence. As discussed in the last *Monitor*, the SNP faces a number of hurdles to achieve its aim even if it emerges as the largest party on 4 May. The more probable outcome is for a revisiting of the devolution settlement with further legislative and fiscal powers devolved to Edinburgh, possibly following a second constitutional convention. This is the preference of the Liberal Democrats, likely kingmakers in post election government formation negotiations. Labour stands opposed to reopening the devolution settlement preferring to 'use the

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

## DEVOLVED ELECTIONS (CONT'D)

flexibility in the Scotland Act' to strengthen the Scottish Parliament where necessary (Scottish Labour manifesto, p97). The Tories, for their part, have made various positive noises about fiscal devolution – which could prove popular with critics of the Barnett formula among the party's English supporters – but their 'overriding priority is to make better use of the current powers to benefit the people of Scotland' (Scottish Conservative manifesto, p17).

The debate in Wales is somewhat different in that independence features in the Plaid Cymru agenda as a long-term aspiration rather than a policy priority. In the mean time, Plaid pledges to push for a 'proper parliament for Wales' (Plaid Cymru manifesto, p36), by holding a referendum on full primary legislative powers for the Assembly as set out in Part 3 of the Government of Wales Act 2006 (GOWA). In moving swiftly to full primary devolution – which would require a two-thirds majority in the Assembly, plus the consent of Westminster – Plaid has the explicit backing of the Liberal Democrats but not the Conservatives or Labour. As set out in GOWA, until such a referendum is held and won, the Assembly will be granted legislative competence on an issue-by-issue basis by the UK Parliament. This form of incremental constitutional development will proceed whichever parties are in government in Cardiff and Westminster. What is unclear is how fast and how contested this process will be. If Plaid and the LibDems get their way, for instance, the Assembly will request powers to introduce proportional representation for local elections, which Labour is expected to block.

The Single Transferable Vote (STV) has already been introduced by the Scottish Parliament in time for May's council elections. STV is also favoured for elections to the Scottish Parliament and National Assembly by LibDems and nationalists, but appears unlikely in the face of Labour and Conservative hostility at Westminster, where any such reform would have to be implemented. The same goes for changes to the size of the Welsh Assembly, which Plaid and the LibDems want to increase. In Scotland, meanwhile, the Tories back a reduction in the number of MSPs to 108, reinstating the original Scotland Act provisions for the number of Scottish Parliament and Westminster constituencies to be the same.

Finally, the devolved elections may have a constitutional impact in two less direct ways. First, a resurgence of nationalism in the Celtic fringe might give added impetus to its English counterpart, by sparking debate on issues such as the West Lothian Question and Barnett formula. Second, if relations between

UK and devolved administrations deteriorate, there may be a need for institutional reforms in Whitehall and Westminster to develop a more structured approach for inter-institutional relations – as both the SNP and Scottish Liberal Democrat manifestos call for (p17 and p86). To counter the development of centrifugal forces in such circumstances, the incoming Prime Minister may find it all the more pressing to develop a coherent narrative of 'Britishness', and to revive the intergovernmental machinery for devolution which Tony Blair has allowed to fall into disuse.

## PARLIAMENT

## Major defeats in the Lords

While debate over Lords reform continues (see page 1), the 'unreformed' chamber has been flexing its muscles. At time of writing there had been 15 government defeats in the chamber since the start of the parliamentary session. That in itself is standard enough, but in March the chamber defied convention in two different ways. First the second reading of the Fraud (Trials without a Jury) Bill was postponed for six months – effectively killing the bill in this session. The Lords has repeatedly blocked restrictions on jury trials, and the government has again stated a commitment to press ahead, possibly using the Parliament Acts. Second, the Lords narrowly defeated a statutory instrument on establishment of casinos – only the second such defeat since 1968. Despite the Conservatives holding a free vote, opponents defeated the government by three votes. Such Lords activism may help discourage some from introducing elections – as these would be likely to make the chamber more assertive still. Ironically it is the Liberal Democrats who both most ardently want reform and are also pushing the boundaries of convention hardest.

The Unit's research on the Lords shows that government defeats there have a significant impact on policy – see page 7. Details of all Lords defeats can also be found in the Parliament section of the Unit website.

## Compositional changes

There have also been further small changes to the Lords' composition in the early months of 2007. In January it was announced that a UKIP group was forming, made up of two peers (Lord Pearson of Rannoch and Lord Willoughby de Broke). Both were former Conservatives who had the whip removed in 2004. There are now seven parties represented in the Lords. In February the

Appointments Commission announced the selection of six new non-party peers. This makes the Crossbench group larger than the Conservatives, and the second largest group in the House.

## PASC report on Ethics and Standards

The Commons Public Administration Committee (PASC) published this report at the end of April. The committee recommended that constitutional watchdogs should have a closer relationship with Parliament, and develop more collegiate relationships with each other. The recommendations are to be discussed at a private seminar with the watchdogs to be held in June.

*Ethics and Standards: the Regulation of Conduct in Public Life* (April 2007, HC 121-I)

## New Parliamentary Group

A new All Party Parliamentary Group for Legal and Constitutional Affairs is being launched in May, to be chaired by Lord Brennan QC.

## THE EXECUTIVE

## Ministry of Justice

On 29 March the Prime Minister announced the establishment of a new Ministry of Justice from 9 May. The new department will inherit the functions of the Department for Constitutional Affairs and will take on prisons, probation, criminal law and sentencing from the Home Office. This leaves the Home Office in charge of police, counter-terrorism, immigration, passports and ID cards. There will thus be a split between the justice and order functions, leaving the Home Office in charge of internal security, and moving all the justice functions to the expanded DCA.

Departmental reorganisations can be very distracting, and it will be a big challenge for the DCA to absorb such major new functions alongside its responsibilities for the judiciary, court service and tribunals. The new Ministry of Justice will command more clout in Whitehall than did DCA or the old Lord Chancellor's Department, and it is expected that it will be led by a Minister from the Commons.

## Constitutional position of Attorney General

In December the Constitutional Affairs Select Committee (CASC) announced an inquiry into the constitutional position of the Attorney General. The terms of reference for the inquiry are:

'(1) To inquire into the constitutional role of Attorney General, in particular to consider what constitutional role the Attorney should play in relation to the upholding of the Rule of Law;

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- (2) To consider the interrelationship between the role of the Attorney General and the Lord Chancellor in that context;
- (3) To examine the functions of the Attorney vis-à-vis his role as superintending Minister for legal services provided in Government (including the Crown Prosecution Service) and whether such a role conflicts with his duties as a member of the Government.' (CASC Press Notice 3, session 2006-07)

In February the Committee took evidence from the present Attorney General, two former Attorneys and the Lord Chancellor. Lord Falconer posited three possible models:

1. The current model: combines ministerial and non-ministerial role, and serves as a politician in Parliament (either the Commons or Lords).
2. Similar to the position of the Lord Advocate in Scotland. The Attorney General is a member of the Commons or Lords, but is non-political.
3. The Attorney is not a politician or a member of either House, but provides legal advice, has superintendence of the prosecution role and has a propriety and public interest role.

The Committee is now seeking written evidence about the three potential options.

### Towards a new public service 'compact'?

In response to certain high-profile episodes, the Home Office has drawn up a Compact between Ministers and the Home Office Board. Ministers are to set overall strategy and policy, hold officials accountable for delivery, and account to Parliament and the public for policy and delivery. Officials, on the other hand, are responsible for advice and delivery, and 'increasingly answering externally for operational matters'.

PASC however, is sceptical as to whether the exercise will work. In *Politics and Administration: Ministers and Civil Servants* (HC 122-1), it finds that there are 'strains on the system', but that 'under our current constitutional arrangements, there will never be precise clarity about the boundaries of ministerial accountability'. Nevertheless, there could be more: 'there is a code for ministers; and a code for civil servants. What is lacking is a code for ministers and civil servants'. The committee finds scope for civil servants to become more visible: 'civil servants could be considerably more accountable to Parliament without threatening the doctrine of ministerial accountability'.

*An End to Sofa Government*, a report by the Conservative Democracy Task Force, has similar doubts about the status quo: 'the doctrine of ministerial responsibility clearly cannot be applied universally in the complex and large-scale operations of modern government'. And it proposes similar remedies: the Permanent Secretary should be accountable to Parliament for management issues, just as they answer to Parliament as Accounting Officer on financial matters.

The Democracy Task Force also advocates a strengthened Ministerial Code, independence for the Office of National Statistics, parliamentary approval to commit troops to areas of conflict and like PASC, a Civil Service Act.

### Privy Council Office

The Privy Council Office was abolished from 2 April. The Secretariat to the Privy Council and the office of the Judicial Committee moved to the Constitution Directorate of the DCA. The Privy Council Secretariat is responsible for Proclamations and Orders in Council, and for the affairs of chartered bodies, the 400 or so institutions which are incorporated by Royal Charter. The Judicial Committee provides a final court of appeal from small Commonwealth countries, and from medical and other professional disciplinary bodies in the UK. Both bodies retain their separate identity, and will continue to report to the Lord President of the Council, Baroness Amos. Her ministerial office moved to the Cabinet Office.

### Gordon Brown's constitutional agenda

Gordon Brown is likely to give fresh impetus to the constitutional reform agenda. His plans are likely to include a range of measures to restore trust, such as a revised Ministerial Code, a Civil Service Act, and a strengthening of constitutional watchdogs. To reduce prime ministerial patronage he might divest some of the prerogative powers, such as the appointment of bishops, and introduce tighter parliamentary regulation of the remainder, such as going to war. As part of his interest in Britishness he may set in train work towards a British bill of rights. Machinery of government changes could include strengthening the central government machinery to handle devolution, to help counter Scottish nationalism; and possibly the establishment of a constitutional convention to address other items of unfinished business such as reform of the House of Lords. These could be packaged as further steps towards a written constitution.

### Party Funding Review

Sir Hayden Phillips completed his review of the funding of political parties in March. After being granted an extension, Sir Hayden Phillips reported that a full agreement is 'within reach but not in our immediate grasp'.

The main points of contention were the idea of limits on donations to political parties and the means by which party expenditure may be reduced and controlled. On donations, the review suggested that a cap of £50,000 was reasonable – whether donated by an individual or an organisation. This is supported by the Conservatives and Liberal Democrats. The Labour Party is reluctant to agree to such a limit for fear of damaging its links with the trade unions. However the review suggested that such a cap need not challenge the Labour Party's constitutional relationship with the unions. So long as the decisions and donations made by trade union members to make payments to the party are transparent, and can be clearly traced to an individual, then it would be reasonable to regard such payments as individual donations. On reducing total party expenditure, the review recommended that spending by the two main political parties should be reduced by £20 million over the length of a full Parliament. However, the period and geographic scope over which campaign expenditure should be limited could not be agreed. The Conservatives are reluctant to move from the present 365-day campaign expenditure limits and strongly opposed any new limits to local campaign expenditure.

More specific recommendations were made on public funding; the review recommended an increase of £20-£25 million. Additional funding would be provided through a matched funding scheme and payments linked to performance at elections. Under Phillips' proposals, parties would receive 50p every year for each vote in the most recent general election and 25p for each vote in the most recent elections for the European Parliament or devolved bodies. The matched funding scheme would see the establishment of an on-line subscriber scheme in which donations of £5 or more would be matched with £5 of state funding.

The review also recommended changes required of the Electoral Commission, with new statutory powers of investigation and a more effective and graduated range of sanctions to penalise breaches. Such changes would require significant organisational change and resources, indeed Sir Hayden costed the changes at £3-4 million.

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Sir Hayden recognised that any agreement on party funding presents 'uncomfortable challenges' for the largest parties and that his review 'has done all that an independent third party can do in this area'. In May and June he is chairing talks between the three largest parties on the areas of dispute, with a deadline of end June to reach an overall agreement.

*Strengthening Democracy: Fair and Sustainable Funding of Political Parties, The Review of the Funding of Political Parties* (March 2007) at: [www.partyfundingreview.gov.uk/files/strengthening\\_democracy.pdf](http://www.partyfundingreview.gov.uk/files/strengthening_democracy.pdf)

### **Tougher regulation by the Electoral Commission but not quite yet and not too much...**

The Electoral Commission will raise its game from 'monitor' to more pro-active 'regulator' of electoral administration and party funding, in response to criticisms and suggestions from three heavyweight committees, the Commons Constitutional Affairs Select Committee (*Party Funding*, December 2006, HC 163-I), the Committee on Standards in Public Life (*Review of The Electoral Commission*, January 2007, Cm 7006) and the Phillips' review of party funding (see above).

The Commission was stung by charges of weakness and lack of leadership made by CSPL chairman Sir Alistair Graham over its regulatory stance, in particular over failing to have its warnings on postal voting fraud heeded, and its alleged 'passive approach' to administering party funding rules in the light of the cash for peerages controversy.

In a measured reply at a Constitution Unit seminar, Sam Younger, Electoral Commission chairman, announced a more 'risk based and pro-active' approach, involving financial penalties for irregularities such as late reporting of election spending, which up to now have received only a reprimand because of gaps in the Commission's powers.

The Commission's regionally-based compliance units have been conducting 'dip stick sampling' during elections in all parts of the UK over the past three months, and will report soon. But the Commission remains in a dilemma which only the government and the political parties can finally resolve. It is caught between general demands for tougher regulation, and the government's continuing resistance to particular measures such as individual voter registration for Great Britain, and the failure of the main parties to agree on how to implement the spending and funding caps recommended by Sir Hayden Phillips.

## DEVOLUTION

### **Labour Under Pressure in Scotland and Wales**

The first months of 2007 in Scotland and Wales were dominated by the approaching National Assembly and Scottish Parliament elections. The third devolved elections are expected to produce some change in the political balance in the two legislatures. In Wales, unlike in Scotland, Labour faces no serious challenge for the status of largest party, but is widely expected to lose ground nonetheless. The Welsh election will also produce a National Assembly that inherits the enhanced powers granted it in the 2006 Government of Wales Act.

In both Scotland and Wales, a Labour party on the defensive resorted to negative election campaign strategies, aimed at raising voters' fears. In Scotland, the SNP have played the role of bogeyman in chief, with Labour stoking fears that an SNP victory would lead to political instability and economic disaster. In Wales, by contrast, the potential turmoil of an independence referendum was not a plausible possibility. Instead, Welsh Labour focussed on the danger of a return to political power of the Conservative party. To this end, both Margaret Thatcher and John Redwood – out of office for well over a decade – received prominent mentions in the Labour manifesto, while Labour attempted to talk up both the Conservatives' electoral prospects and the likelihood of a post-election coalition deal between Plaid Cymru and the Conservatives. At time of writing it remained to be seen whether Labour's campaign strategies would pay dividends, just as it remained uncertain whether the main opposition parties would be able to make serious inroads into the electoral position of what has long been the dominant party in both devolved territories. With a week of campaigning to go, polls suggested that Labour would lose its largest party status in Scotland and fall back considerably from the 40 per cent of the vote the party received in 2003.

### **Devolution and the Centre**

The first quarter of 2007 has seen a flurry of debate on the future of the United Kingdom, brought about in particular by the 300th Anniversary of the Anglo-Scottish Treaty of Union in January and the election battle north of the border between Labour and the Scottish nationalists.

From the perspective of 'the centre', the key questions raised related to the place of England and the role of Westminster in a devolved United Kingdom. Polls conducted on these issues so far this year have found some

further evidence of English dissatisfaction with the constitutional status quo. For instance, two polls in January found 51 per cent and 61 per cent backing for a separate English parliament, and a third in April for St George's Day revealed 67 per cent support. But all three polls asked a somewhat loaded question with a simple yes/no choice rather than offering policy alternatives. The issue remains of low political salience, and with virtually no interest among MPs, Westminster – England's Parliament for over 700 years – seems unlikely to face a rival English legislature any time soon.

The secession of Scotland from the UK also remains improbable. Nonetheless, the UK government will view an SNP victory with concern, as it would herald an era of potentially stormier intergovernmental relations. The SNP manifesto pledges to block the construction of new nuclear power stations in Scotland, and to open negotiations with Westminster/Whitehall on control of oil and gas fields and on the creation of a separate Scottish civil service. Rows also loom over issues including the deployment of nuclear weapons in Scotland, and the budget implications of the SNP's planned abolition of council tax.

UK-Wales relations are also about to enter a new era. From May, the National Assembly will be able to request legislative powers from Westminster on a case by case basis by means of Orders in Council under the provisions of the Government of Wales Act 2006. Such powers can also be granted by Acts of Parliament. Extensive coordination between the institutions in London and Cardiff will be vital to keep this system running smoothly, particularly if Labour fails to retain power in Wales.

### **Northern Ireland**

Yet another 'final' Northern Ireland deadline came and went, but this time devolution looked set, at last, to be restored, 55 months after it collapsed in October 2002, following revelations of an IRA spy ring at Stormont.

It was evident that devolution would not return unless the ambiguous relationship between Sinn Féin and the rule of law was resolved. After the belated announcement of an end to the IRA campaign in 2005 and associated decommissioning, the remaining step was to endorse the new institutions of policing and justice in Northern Ireland. This duly took place at a special *ard fheis* (conference) called by SF in January 2007.

The ball was then in the court of the Democratic Unionist Party, whose electoral strength had advanced in lock-step with that of SF as Protestant insecurity grew since the ‘peace process’ began in the early 90s. A combination of inducements in the St Andrews agreement – notably provision for deadlocking vetoes and the separation of the conjoined first and deputy first minister – and the threat of joint British-Irish ‘stewardship’ over Northern Ireland impelled the DUP towards acceptance of a loveless marriage with SF.

The two parties duly prevailed in the assembly election on 7 March, eclipsing the former custodians of what passes for the centre ground in Northern Ireland, the UUP and the SDLP. A pre-election poll highlighted the sheer contempt of most Northern Ireland citizens for the politicians of the other ‘side’ and scepticism as to whether they could work together.

Despite the repeated insistence by ministers in London and Dublin that a devolved government must be formed by 26 March, or the assembly would be disbanded and MLAs put out of work, the DUP was able to spare its blushes and ease internal unrest by securing a postponement to 8 May. Meantime, however, there was another ‘historic’ Northern Ireland media moment to sustain momentum, with an appearance (almost) together at Stormont by the DUP leader, Rev Ian Paisley, and the SF president, Gerry Adams.

Soon thereafter, the parties indicatively divided the spoils by running the d’Hondt rule: the departments were distributed four to the DUP, three to SF, two to the Ulster Unionist Party and one to the SDLP. A bulging in-tray of controversial issues will confront the new ministers, including the future of academic selection, legislation on the Irish language and water charges.

The question remained as to whether the new leaders would become immersed in these practical problems and thrash out solutions together, or whether they would see them as trials of strength in the continuing ethnic power-struggle over their opposing ultimate constitutional goals.

*Agreement at St Andrews* (13 October 2006), at: [www.nio.gov.uk/st\\_andrews\\_agreement.pdf](http://www.nio.gov.uk/st_andrews_agreement.pdf)

## English Regions

The high profile debates and controversies that arose in respect of sub-national governance and policy in England during the last four months continued to point up significant differences in the attention focused upon the south eastern ‘core’ as against the rest of England. Headlines were variously grabbed in the popular and trade press by steep increases in the projected cost of the London Olympics, the further strengthening of the powers of London government and attempts by representatives of key, designated housing growth areas to inflate the price tag placed on delivery of the sustainable communities the Government wishes to see in the south east. By contrast, the one big story in England outside of the wider London ‘core’ regions revolved around the recommendation that east Manchester, rather than Greenwich or Blackpool, be given the opportunity to develop the country’s first super-casino, a plan that proved sufficiently controversial that it proceeded to stall at the first parliamentary hurdle, throwing the future of Government policy on casinos into doubt.

Away from the headlines describing how Government was controversially ‘delivering’ for the greater south east whilst failing, in a smaller way, to deliver for Manchester, the more serious work of rethinking the nature and purpose of the chaotic ‘middle’ of English governance took another step with the publication of the Communities and Local Government Select Committee report *Is there a future for regional government?* (March 2007, HC 352-I). Less publicised than Olympic overspending or the still-born Manchester casino was the evidence unearthed by the Committee that public spending in each of England’s strongest-performing regions – London, the South East and the East of England – has grown faster than in any other region during a period in which Government has been formally committed to reducing the gap in economic growth rates between the regions. Whilst the Committee was agreed that the Government should try harder on the issue of aligning its spending behaviour to its spatial development priorities, however, the evidence it received on the more specific issue of sub-national institutional performance and reform confirmed just how little consensus there is about the way in which governance between the national and the local level is best organised.

All of which means that the Government’s future approach to sub-national governance and policy in England still depends substantially on the completion of the ongoing sub-national review of economic development

and regeneration and the way its findings are dealt with in this autumn’s Comprehensive Spending Review.

## Local Government Bill

The Local Government and Public Involvement in Health Bill introduces new leadership arrangements and possible restructuring of local councils. All but smaller authorities must adopt one of three models: directly-elected mayor, directly-elected executive or indirectly-elected leader. Councils will be able to adopt ‘all-out elections’ every four years, and can opt for single-member wards. The government will be able to invite or direct local authorities to make proposals for establishing unitary authorities in two tier areas.

## FREEDOM OF INFORMATION

The government’s consultation on the proposal to amend the fees regime of the FOI Act 2000 ended on 8 March and attracted over 200 responses. If put in place, the new regulations would amend the ‘appropriate limit’ (the point at which requests can be refused on the grounds of cost) of replying to FOI requests to include ‘reading time’. In addition, the regulations would allow the cost of non-similar requests to be aggregated. Aggregating requests (over a three month period) would effectively preclude journalists from making any significant use of the Act as they or their organisation would quickly reach the £600 limit.

The government position seems to have softened somewhat since the draft regulations were published. It was expected that the regulations would be laid before Parliament shortly after the consultation closed; however, the government launched a supplementary consultation paper on 29 March, which is due to close on 21 June. Martin Rosenbaum of the BBC noted that Lord Falconer had hinted at a slight change in the government’s attitude in a memorial lecture for Lord Williams of Mostyn when he suggested that ‘genuinely different’ requests should not be aggregated. Campaigners and journalists have reacted strongly against the proposed regulations and a Commons early day motion about the new regulations has gained the support of more than 130 MPs.

In a special evidence session with the Constitutional Affairs Committee on 17 April, Information Commissioner Richard Thomas reaffirmed his concern about the proposals: ‘The amount of what I call genuinely public interest information that would be released

## EU CONSTITUTION REVIVAL

into the public domain will be significantly reduced'. The Commissioner said that freedom of information was not proving to be burdensome for public authorities and raised the question of why section 14 of the Act (for dealing with repeat and 'vexatious' requesters) had not been used more often if there was a problem with those type of requests, which the government's draft regulations are designed to counter.

In another attempt to limit the scope of the Freedom of Information Act, Conservative MP David Maclean has introduced a Private Member's Bill that would exempt Parliament from the provisions of the Act. As well as excluding both Houses from the scope of the Act, Maclean seeks to exempt communications between MPs and public authorities. The Freedom of Information (Amendment) Bill was introduced on 18 December 2006 and granted a Second Reading (19 January 2007) before proceeding unopposed to its Committee Stage (7 February). During the Report Stage on 20 April, several MPs who oppose Maclean's proposed bill blocked it through filibuster. However, the issue is not necessarily closed. It may go up for debate again on Friday 27 April. Opposition to the bill is being led by Norman Baker (Lib Dem).

The situation is somewhat different in Scotland where, after a thorough review of the FOI (Scotland) Act 2002, the Minister for Parliamentary Business announced that there was no conclusive evidence to justify any change to the fees regime. The minister gathered initial views on extending the Act to include some bodies which are not Scottish public authorities; a more detailed examination of this matter will begin in the summer. The Scottish Information Commissioner, Kevin Dunion, also published his annual report which showed that public awareness of FOI in Scotland had increased from 47 percent in 2005 to 72 percent in 2006. Two thirds of appeals to the Commissioner were made by ordinary members of the public.

Beyond the UK, the European Commission is to launch a consultation in spring 2007 on the regime for access to documents of the European institutions. The responses will be taken into account when drafting the proposal for the amendment of Regulation 1049/2001, which presently regulates access to information held by European institutions.

The EU Constitutional Treaty – designed for the enlarged Union but dormant since its rejection in French and Dutch referenda in 2005 – may spring back into life in reduced form. At his last EU Summit on June 21 and 22, Tony Blair will support German Chancellor Angela Merkel's revival plan by abandoning his pledge for a UK referendum, on condition that the treaty proposals are scaled down and the stalled Lisbon agenda for economic reform is adopted.

Blair's version of a shorter treaty not requiring a referendum would include a permanent EU President, a Foreign Minister, an extension of qualified majority voting, more subsidiarity to national parliaments and a slimmed down Commission. It would leave out constitutional characteristics such as a legal personality able to override national courts, a charter of fundamental rights and the incorporation of all previous treaties in a single document.

Although it is believed the referendum idea had first been urged on the Prime Minister by Gordon Brown and Jack Straw, it now appears that Cabinet reluctance on EU reform has been overcome. Blair insists he will go to Brussels with 'the position of the government', meaning that he will take the political heat personally for the highly controversial referendum U-turn, opening the way for his successor to negotiate the final details of a slimmed down treaty by the end of the year.

## PEOPLE ON THE MOVE

**Margaret Prosser, Kay Allen, Jane Campbell, Kay Carberry, Sally Greengross, Francesca Klug, Ziauddin Sardar, Ben Summerskill and Neil Wooding** are to be members of the new Commission for Equalities and Human Rights, chaired by **Trevor Phillips**.

**Sir Michael Aaronson, Mark Addison, Bernard Knight, Anthea Millett, Ranjit Sondhi, Elisabeth Watkins** and, for the second time, **James Boyle** have been appointed to the Civil Service Commission, which is headed by First Civil Service Commissioner Janet Paraskeva.

Former Constitution Unit researcher **Jo Murkens** takes up a post as a Lecturer in Public Law at the LSE from September.

## INTERNATIONAL CONSTITUTIONAL FOCUS: CANADA

The Quebec elections on 26 March produced an unexpected result, with the federalist Quebec Liberal Party coming first with 33 per cent of the vote (and 48 seats in the National Assembly), followed by 30 per cent and 41 seats for the 'autonomist' Action Démocratique du Québec and only 28 per cent and 36 seats for the Parti Québécois. The Liberals have formed a minority administration with support from the ADQ. The result appears to be a firm rebuttal for both the independence aspirations and social-democratic programme of the PQ, and an endorsement of an autonomous neo-liberal Quebec within Canada. Neither the Liberals nor the PQ were regarded as having fought good campaigns, which may also help to explain the strong ADQ showing.

The result was welcomed by the Conservative federal Prime Minister, Stephen Harper, whose minority government may itself go to the polls later this year. His main opponent will be Stéphane Dion, formerly Minister for Intergovernmental Relations and for the Environment, who was elected leader of the federal Liberal Party in December 2006 (defeating Michael Ignatieff and Bob Rae). Dion has been making a strongly environmentalist pitch, and recently reached an agreement with the leader of the Green Party for the two parties not to compete against each other in certain seats. Constitutional issues appear to have dropped a long way down the country's electoral priorities in the last few years.

## CONSTITUTION UNIT NEWS

### Devolution Conference

On 29 March, the Unit held a major conference at the British Academy on devolution. Entitled 'Into the Third Term', the conference looked forward to some of the key issues likely to arise in the four-year term following the Scottish and Welsh elections on 3 May. The keynote speaker for the event was political commentator **Peter Riddell**. He argued that while devolution has so far operated smoothly and without Westminster paying much attention, this may be set to change, not just because of the potential of non-Labour administrations in Edinburgh and Cardiff, but also because of the likely financial squeeze on the Scottish and Welsh budgets following this year's Comprehensive Spending Review. After the keynote address, panel discussions were held to discuss issues such as the financial arrangements for devolution, the mechanisms for intergovernmental relations, and policy issues likely to arise in the next term. The conference was attended by over 50 practitioners and academics. The Unit plans to make this an annual event.

### Director's Lecture on Constitutional Change

On 29 January 2007 Constitution Unit Director **Robert Hazell** gave a lecture to the Institute of Advanced Legal Studies on *Future Developments in Constitutional Change*, arguing that Blair's successor will need to adopt a new narrative to justify continuing reform, explaining better the need for greater devolution of power and more open and effective government.

### Unit Seminar Reports

On 30 January 2007, Labour peer **Lord Lipsey** and Conservative MP **Andrew Tyrie** spoke on *Reforming or Ruining the Lords*. Briefings and leaks ensured that the contents of Jack Straw's White Paper on the Lords were widely known. Lord Lipsey described as 'undemocratic' the proposal to elect half the House from regional lists (he would opt for STV). Tyrie was less dismissive of the White Paper, supporting a 60:40 elected element. In contrast to Lord Lipsey, Tyrie claimed that the present Lords was an effective check on government and dismissed the idea that a reformed chamber would undermine the Commons.

**Sam Younger**, of the Electoral Commission, spoke at the Unit on 13 February 2007 on *Parties in the pawnshop: the future of party*

*and election finance*. He outlined how delays in the Phillips report (see page 3) reflect the difficulties in reaching a consensus on capping donations. Parliament would need to think through the implications of the parties' proposals for four additional 'political' electoral commissioners, which could complicate enforcement decisions. There are, he noted, 'challenging times ahead' for the Electoral Commission.

On 7 March, **Ross Ferguson**, Hansard Society E-Democracy Director, and leading political blogger **Iain Dale** spoke on *Blogging and E-Democracy*. Ferguson described the history of blogging in four stages: we are currently in the 'transformation' phase involving multi-media and user-generated content. Dale listed blogging's strengths and noted the collaborative nature of blogging and how bloggers often covered stories that the mainstream media would not touch. Like Ferguson he recognised the contribution of the established media to the growth in blogging. Both speakers agreed that blogging had the potential to offer a more participative form of politics.

### Constitutional Futures 2

This book aims to forecast constitutional developments in the UK over the next ten years. At a two-day planning conference in Bristol, the contributors engaged in constitutional 'scenario-planning' with the help of outside experts to provide a framework for the book as a whole. Topics ranged from the minutiae of the Barnett formula to the mechanics of a Regency. An intense series of meetings over the summer should lead to production of the book by late autumn.

### Lords Project Update

Two Lords-related papers were presented by Unit members to the Political Studies Association conference in April. Meg Russell and Maria Sciara reported on the policy impact of government defeats in the Lords, showing that 40 per cent of all defeats result in significant policy change (i.e. are not overturned by the government), and that their combined impact is significant. It is therefore wrong to see the Lords as a weak parliamentary chamber. Meg Russell and Jeffrey Johns (a former intern) also presented a case study paper on the Identity Cards Bill, showing that there is significant joint working between the Lords and Commons over legislation, and between the opposition parties. Meanwhile Meg and Maria's paper

'Why Does the Government get Defeated in the House of Lords?' has been accepted for the journal *British Politics* and will be published later in the year. Meg has given evidence to a committee of the Canadian Senate considering Senate reform, and also gave a paper to a conference in Vancouver on lessons for Canada from Lords reform. All these papers can be found on the Parliament section of the Unit's website.

### Freedom of Information Projects

Work on the ESRC/DCA funded **Evaluation of FOI** has now begun in earnest. Sarah Holsen and Mark Glover delivered a paper on 'What is Freedom of Information for? An exploration of the objectives of the FOI Act 2000' at the PSA conference in April. The paper will go on to form the 'baseline' for the study and is a first draft of the planned book's opening chapter. In another part of the study, the Unit has recently published an article on 'Journalists' Use of the Freedom of Information Act' in the Open Government Journal, based on interviews with journalists and media content analysis. Next stop: data collection in the form of interviews and surveys of requesters.

Seminars given by John Angel of the Information Tribunal, Patrick Whelan of the Irish Information Commissioner's Office and James Fulton of ACPO as part of the **Government Information Policy Seminar Series** went down well with our subscribers; meanwhile the FOI team gears up for the main event in its calendar, **FOI Live 2007**, which takes place on 24 May at the Victoria Park Plaza.

### Unit Personnel Changes

The end of March saw the departure from the Constitution Unit of Craig MacDonald, research assistant on Freedom of Information. His responsibilities will be taken on by Mark Glover. The Constitution Unit is also delighted to welcome as an Honorary Senior Research Fellow Daniel J. Metcalfe, retired Founding Director of the Office of Information and Privacy in the United States Department of Justice. Finally, thanks are due to the five interns recruited to the team in the first trimester of 2007: Guy Aitchison-Cornish, Gregory Dale, Henry Groundes-Peace, Mathieu Razé, and Drew Swinerd.

# BULLETIN BOARD

## CONSTITUTION UNIT PUBLICATIONS

• Glover, Mark and Sarah Holsen, 'What is freedom of information for? An exploration of the objectives behind the FOI Act 2000', paper presented to PSA Conference (April 2007), at: [www.ucl.ac.uk/constitution-unit/foidp/research/Evaluation/Publications.htm](http://www.ucl.ac.uk/constitution-unit/foidp/research/Evaluation/Publications.htm)

• Hazell, Robert, *Time for a new Convention: Parliamentary Scrutiny of Constitutional Bills 1997-2005* (December 2006) £10.

• Lord Wilson of Denton, *Tomorrow's Government*, RSA Lecture (December 2006) £8.

• Russell, Meg and Jeffrey Johns, 'Bicameral Parliamentary Scrutiny of Government Bills: A Case Study of the Identity Cards Bill', paper presented to PSA Conference (April 2007)

• Russell, Meg and Maria Sciara, 'The House of Lords: Negotiating a Stronger Second Chamber', in M. Rush and P. Giddings (eds.) *The Palgrave Review of British Politics 2006*. Basingstoke: Palgrave Macmillan (2007).

• Russell, Meg and Maria Sciara, 'The Policy Impact of the House of Lords: 1999-2006', paper presented to PSA Conference (April 2007)

• Trench, Alan, *Old Wine in New Bottles? Wales-Whitehall Relations after the Government of Wales Act 2006* (December 2006) £10.

• Various authors, *Devolution Monitoring Reports on Scotland, Wales, Northern Ireland, English Regions, and the Centre* (January and April 2007). Published at: [www.ucl.ac.uk/constitution-unit/research/devolution/devo-monitoring-programme.html](http://www.ucl.ac.uk/constitution-unit/research/devolution/devo-monitoring-programme.html)

For full details of all Constitution Unit publications or to make a purchase, visit our website at: [www.ucl.ac.uk/constitution-unit/publications](http://www.ucl.ac.uk/constitution-unit/publications) or contact the unit on [constitution@ucl.ac.uk](mailto:constitution@ucl.ac.uk) or 020 7679 4977.

## EVENTS

### Constitution Unit Seminars

Info at: [www.ucl.ac.uk/constitution-unit/events](http://www.ucl.ac.uk/constitution-unit/events)

- Peter Jones (former political editor, The Scotsman) and Martin Shipton (Western Mail) 1.00pm Tuesday 22 May *Into the third term: the new governments in Scotland and Wales*
- Dr Meg Russell (The Constitution Unit) 6.00pm Monday 18 June *Lords a'leaping: the growing assertiveness of the House of Lords*
- Prof Guy Laforest and Prof James Mitchell (tbc) 4.00pm Monday 25 June *Options short of independence: Pushing the boundaries in Quebec and Scotland*
- Andrew Dismore MP (Chair of parliamentary Joint Committee on Human Rights) 6.45pm Thursday 19 July *Making Human Rights Matter*

### Constitution Unit & DCA Joint Seminars

- The Rt. Hon. the Baroness Hayman 1-2pm Wednesday 7 June *The Role of the new Speaker in the House of Lords*
- The Rt. Hon. the Lord Holme 1-2pm Wednesday 20 June 2007 *Controlling the War Making Power*
- Professor Phil Cowley 1-2pm Wednesday 25 July 2007 *Rebelliousness in the New Parliament*

### Freedom of Information Conference

- FOI Live 2007, Annual Conference at Victoria Park Plaza Thursday 24 May. Info at: [www.foilive.com](http://www.foilive.com)
- The Unit also hosts a regular series of Freedom of Information seminars. Info at: [www.ucl.ac.uk/constitution-unit/foidp](http://www.ucl.ac.uk/constitution-unit/foidp)

### External Events

- Prof Jeffrey Jowell, Prof Philip Joseph Monday 21 May, 5.15pm, UCL Constitutional Law Group seminar *Constitutionalism in common law jurisdictions* [www.ucl.ac.uk/laws/constitution-group](http://www.ucl.ac.uk/laws/constitution-group)
- Hazel Blears MP, Chair of the Labour Party Tuesday 29 May 2007, 6pm, New Local Government Network Debate *After Devolution: Building a new contract between citizen and state* Other speakers tbc. Contact: [info@nlgn.org.uk](mailto:info@nlgn.org.uk)
- Prof Jeffrey Jowell and Dr Joerg Fedtke Tuesday 5 June, 5.15pm UCL Constitutional Law Group seminar *Writing new constitutions. Absolutes, Relatives and Nons* [www.ucl.ac.uk/laws/constitution-group](http://www.ucl.ac.uk/laws/constitution-group)
- The Smith Institute and Hansard Society are holding a series of four seminars this summer under the title, *Towards a New Constitutional Settlement*. Contact [constitution@smith-institute.org.uk](mailto:constitution@smith-institute.org.uk)

## PUBLICATIONS RECEIVED

- Brown, Gordon, Douglas Alexander, *Stronger Together: The 21st century case for Scotland and Britain* (London: Fabian Society, 2007)
- Electoral Commission, *An audit of political engagement 4*, (The Electoral Commission) (London: Hansard Society, 2007)
- Gay, Oonagh, Isabel White, *Election timetables*, Parliament and Constitution Centre, (London: House of Commons Library, 2007)
- Justice, *A bill of Rights for Britain?*, (London: Justice, 2007)
- Leslie, Chris, Owen Dallison, *Redesigning Regionalism: Leadership and accountability in England's regions*, (London: New Local Government Network, 2007)
- Liberal Democrats, *Better Governance, Consultation Paper No. 85*, (London: Liberal Democrats, 2007)
- Parliamentary and Health Service Ombudsman, *Principles of Good Administration*, (London, Parliamentary and Health Service Ombudsman, 2007)
- Parvin, Philip, *Friend or Foe? Lobbying in British Democracy*, (London: Hansard Society, 2007)
- Review of the Funding of Political Parties, *Strengthening Democracy: Fair and Sustainable Funding of Political Parties*, (London: The Review of the Funding of Political Parties, 2007)
- Rush, Michael and Philip Giddings (eds.), *The Palgrave Review of British Politics 2006* (Basingstoke: Palgrave, 2007)
- The Committee on Standards in Public Life, *Review of the electoral Commission, Summary of Eleventh Report*, (London: The Committee on Standards in Public Life, 2007)
- Waterhouse, Tom, *Devolution in the United Kingdom: Answering the English Question*, (Northants: Campaigns for an English Parliament, 2007)
- Webb, Paul, *Democracy and Political Parties, Democracy Series*, (London, Hansard Society, 2007)



The Constitution Unit