CSPL INQUIRY INTO MPS’ EXPENSES

In late March, Sir Christopher Kelly’s Committee on Standards in Public Life (CSPL), the independent advisory body charged with monitoring ethical standards across the whole of British public life, announced that it was bringing forward its ‘wide-ranging review of MPs’ allowances’. The announcement followed a number of allegations that some MPs, including senior ministers, were abusing the House of Commons’ second-home allowance scheme (formerly the Additional Cost Allowance, now the Personal Additional Accommodation Expenditure).

An ‘Issues and Questions paper’, published in April, set out the CSPL’s overall objective: ‘to devise a set of arrangements which command a much greater degree of public confidence, which properly supports MPs in their important and difficult jobs, which allows them to claim for expenses properly incurred without creating suspicion that they are somehow obtaining personal advantage, which hold MPs properly to account, and which is enforceable and sustainable over the longer term.’

Realising that objective will not be easy. It is inherently difficult to devise a fair system for supporting MPs, whose job often requires the maintenance of two homes. Intelligent, well-meaning individuals can easily disagree over what should be done. The CSPL will also have to build media and public support for its proposals. As the CPSL recognises, it must be prepared to argue the case for increasing MPs’ pay as part of a comprehensive settlement. The CSPL has a unique moral authority in the political system; given the public’s current anti-politics mood, it may have to draw on this resource to the full.

Perhaps the biggest challenge facing the CSPL is winning over MPs. They can ultimately choose to reject any or all of its proposals. Their choices will be shaped by their own ideas about appropriate financial support – many MPs think their pay is neither commensurate with their responsibilities nor adequate to support a lifestyle split between London and the constituency – and by the media and public response to the CSPL’s report. A looming general election and party-political calculations will also be a consideration.

This review will be the CSPL’s fourth visit to the Commons. It first visited in 1994 when the newly created committee, chaired by Lord Nolan, examined arrangements for regulating MPs’ outside interests. The ensuing report led to the introduction of a Code of Conduct and the appointment of a Parliamentary Commissioner for Standards. The second visit was in 1999, when the CSPL reviewed the new arrangements, and the third was in 2002, when the CSPL made a number of recommendations following the House’s spat with the second Commissioner, Elizabeth Filkin.

This fourth visit should probably have been made a year ago. The CSPL must now strike a balance between haste and thoroughness. On the one hand, the CSPL must work speedily. It has promised a report by the end of the year, but sooner would be better. On the other hand, the issues raised deserve full public deliberation. Gordon Brown’s own proposals for reform, involving a flat-rate attendance allowance, lacked widespread support and illustrated the dangers of quick fixes.

Brown’s proposals also raised more general questions about the role of the CSPL. Up to now the committee has cleared its proposed inquiries with the Prime Minister of the day. When the Prime Minister subsequently sought to pre-empt the committee’s inquiry, the committee announced it was going ahead anyway. The inquiry is going to be a crucial test of the independence of CSPL from Parliament and from government. It appeared to lose its way during the interregnum before Kelly’s appointment as chairman. It will not be at all easy, but if CSPL manages to craft recommendations on MPs’ expenses which command general assent, it will have earned its place again as a central watchdog in the system of government.

THE FUTURE OF CHURCH AND STATE

Does it really matter that Roman Catholics cannot become British sovereigns or that heirs cannot succeed if they marry them? Should we be bothered that all sovereigns have to be ‘faithful Protestants’ and in communion with the Church of England? After all, the chances of a prospective heir becoming a Roman Catholic or marrying one seem remote. Having 26 Anglican bishops in the House of Lords adds colour to that institution, and we can overlook the fact that bishops are nowadays appointed by unaccountable Anglican committees according to criteria which do not include participation in the legislature.

The Constitution Unit’s new book Church and State in 21st Century Britain: The Future of Church Establishment (see page 7) argues that these things do matter – and not because of some polemical whim or secularising programme. Discrimination is not a peculiarly Roman Catholic problem. Rather it reflects a situation where Britain has religious freedom but not religious equality. The discrimination against Roman Catholics is also discrimination against all who cannot enter into communion with the Church of England -
In the Ministry of Justice published its long awaited consultation paper Rights and Responsibilities: developing our constitutional framework (Cm 7577). The Green Paper appeared a year later than originally planned because other government departments were strongly opposed to the creation of any new legal framework. So it is no surprise that the paper states the Government does not consider a new model of directly legally enforceable rights or responsibilities to be the most appropriate for a future Bill of Rights and Responsibilities. 

The paper offers a range of options on enforceability. At the lowest level, the bill of rights could be symbolic and cultural, empowering people by making them more aware of their rights and responsibilities. Or it could have political effect, placing new duties on government through a statement of principles to inform legislation and policy, with compliance monitored by Parliament. Or it could contain guidance from Parliament to the courts and public authorities as to how discretion should be exercised or the law developed, without giving rise to new causes of action.

There is a separate chapter on responsibilities. The government is clear that the rights and responsibilities developed by the ECHR cannot be legally contingent on responsibilities. But to draw away from the ‘me’ culture associated with human rights, the government wishes to bring together in one place the key responsibilities owed by members of society. Such responsibilities could include treating employees with respect or public sector worker with respect; safeguarding and promoting the wellbeing of children; living within our environmental limits; participating in the life of society through voting and jury service; assisting the police in reporting crimes; as well as general duties such as paying taxes and obeying the law.

Similarly with rights, there is no enthusiasm for creating legally enforceable social and economic rights. But the Green Paper suggests bringing together in one place a range of welfare entitlements, similar to those in the recent NHS constitution; and adding victims’ rights; equality duties; and administrators’ children’s wellbeing; as well as sustainable development in relation to the environment.

The Green Paper has three interesting omissions. There is no mention of a British statement of values, which Gordon Brown and Michael Wilts had promoted as a means of binding together a multi-cultural society; we may never see a separate consultation document in the summer. Unlike the JCHR’s 2008 report A Bill of Rights for the UK (HL 1651), there is no draft bill of rights attached, so that the government’s proposals seem particularly abstract and hypothetical. And there are no strong plans for consultation. The government merely invites responses to the consultation discussion paper. In the Government’s mind, there is no deadline. As the JCHR has pointed out, this is in keeping with the view that, where there is an independent committee has established to promote a national debate on an Australian Bill of Rights, the Government seems to have no commitment to the principles set out in the Constitution Bill on a statutory basis and limiting the number of special advisers, for instance.

Lord Tyler’s Bill goes significantly further than the government’s constitutional renewal bill in other respects. Picking up on a commitment from Labour’s 1992 manifesto, the Bill would create fixed parliamentary terms of four years. It would also, following a 1997 manifesto commitment, reserve the referendum on the voting system for the House of Commons. In a section on Conduct of Members of the Houses of Parliament, the Bill also allows for Peers who have committed certain offences to be disbarred from the Lords (see next item).
The SNP is remarkably popular for a mid-term government and still able to present an image of governing competence during difficult times. However, the political landscape appears to be more testing in 2008 than anything we have seen since 2007. For example, although Alex Salmond is still the most popular leader in the Scottish Parliament, the latest opinion poll suggests that Labour have taken the lead. This is partly explained by the SNP when it failed to pass its annual budget first time round, thus possibly underplaying legislation establishing a local income tax and appearing to be forced by the opposition parties to introduce new legislation (rather than use existing regulations) to further its aims on alcohol policy.

While these examples perhaps demonstrate the realisation of minority government, they do not represent a nail in its coffin. The failure of the budget reflected badly on all parties (rather than a success in their part to embrace the government), producing a scramble among Labour and the Liberal Democrats to find a way to accept a new bill that differed marginally from the old. Subsequently, it showed that a political system containing a minority government could deal well with a crisis (assuming that the opposition parties would not welcome an early election), passing a new budget within a week, rejecting the objections of the Opposition and creating potential for cross-party cooperation on alcohol policy; there is a lot of common ground between the SNP and Labour on intergovernmental power, in the fight against the economic crisis. The SNP and Labour have a shared enthusiasm and the SNP pledge, following a budget cooked up in secret between the two parties, to engage with the Calman Commission on this point. Perhaps the more important problem for the SNP is its public image during the policy process. The economic crisis has already damaged its hopes to appear to do a lot with limited powers, since Gordon Brown emerged as the leader most able to intervene and use the types of policy levers unavailable in Scotland.

Similarly, a succession of legislative failures presents the image of a government struggling to exorcise its past. The role of Jim Murphy as Labour's Secretary of State for Scotland in order may be to further this image. On the one hand the UK Government has accepted Scotland's veto on nuclear power. On the other, Murphy appears determined to block any formal meetings between First and Prime Minister that present the former with a sense of equal status. The strategy may be to equate Salmond with a person with Murphy and therefore less important than Brown.

Paul Cairney, University of Aberdeen

Wales

It is nearly two years since Wales's latest devolutionary settlement came into force. Part Three of the 2006 Government of Wales Act gives the National Assembly Measure-making powers on the basis of Legislative Competence Orders (LCOs) passed by Westminster. For its supporters, Part Three opened up the possibility of a de facto accumulation of legislative powers in Cardiff, allowing the National Assembly to build up the requisite expertise of enacting statutes (rather than any move to law-making powers proper, as envisaged by Part Four of the same Act). For its critics, however, Part Three was pregnant with the possibility of delay, obfuscation and complication. A particular point was that the National Assembly's legislative programme would be hostage to different bureaucratic and political priorities in London – a danger symbolised above all by the role of the Welsh Affairs Select Committee (WAASC) in undertaking pre-legislative scrutiny of LCOs. It is the sceptics who have been proven correct. A number of LCOs have become bogged down in seemingly endless ‘consultations’ with Whitehall. For example, it is now nearly two years since the Environmental Protection and Waste Management LCO entered the Whitehall labyrinth. There seems to be no prospect that it will emerge in the near future, let alone that the Measure itself will be laid before the National Assembly. Meanwhile, WAASC has become increasingly insistant that LCOs be very tightly drafted, constraining the National Assembly's room for legislative manoeuvre. WAASC also insists that the Welsh Government provide detailed accounts and justification of what precisely it intends to legislate for. Indeed, when reading the agenda of forthcoming WAASC meetings, it is hard not to conclude that it is seeking to usurp for itself the role of an ex ante revising chamber.

With the system so obviously failing, it is little surprise that one of this year's key achievements has been seeking ways to break the log-jam. But those solutions are proving equally problematic. In the current economic climate, the National Assembly will need to seek to progress the Affordable Housing LCO, an attempt that was made to write into the LCO the power to allow the Secretary of State to veto the Assembly's use of its proposed power to suspend right to buy legislation. This proposal had then to be withdrawn when Parliament's Joint Committee on Statutory Instruments suggested (in March) that the role proposed for the Secretary of State might not be legal under the terms of the 2005 Act.

Even more worrying for the longer term is the trend pointed to in an important new paper by Cardiff University's Michelle Navaro and David Lambert, who cite an increasing tendency to empower the Assembly Government directly, rather than transfer legal powers to the Assembly itself. If this tendency is not checked then executive dominance may well become the main story of the second decade of devolution in Wales.

Richard Wyn Jones, Wales Governance Centre, Cardiff University

Northern Ireland

It has been a time of jangled nerves in Northern Ireland, following the murder of two soldiers and the tension created by the emergence of ‘punishment' shootings, at the hands of ‘disident' republicans not reconciled to the renewal of power-sharing devolution in May 2007.

The murders were condemned not just by unionists but also, notably, by the Sinn Fein deputy first minister, Martin McGuinness, who denounced the ‘traitors’ responsibility. The UK government was keen to build on the changed relationship between SF and the state, and to lessen the threat of violence and justice – enabling legislation was rushed through Westminster. And the trade unions rediscovered the role they had played in Northern Ireland’s darkest days, mobilising thousands across the sectarian divide at peace rallies.

That was the good news. But the persistent exercise by the Democratic Unionist Party of the veto, and the political crisis in Northern Ireland, has made it more difficult to reconcile the apparently unrelated questions of devolution and the environment. The Fresh Start Agreement (October 2008), has engendered renewed alienation among a significant section of young Catholic males, and the fringe republican groups could easily paint Mr McGuinness as the real ‘traitor’ to the cause – indeed, the police were to warn him of a threat to his life.

In January, moreover, the visceral emotions that lie just below the surface in Northern Ireland have re-emerged, and controversy which surrounded the launch of a report into how to deal with the region’s ‘troubled’ past. And, looking to the future, the DUP has yet to agree how policing should be developed.

With the dominant executive parties having so little in common, only a trickle of devolved legislation was presented to the Assembly in recent months. But while the Ulster Unionist Party and the SDLP argued that the Ffion Programme for Government should be rewritten in the context of the galling economic crisis, the first minister was unmoved.

Perhaps most damaging, chaos loomed, in the form of the St Andrews Agreement, with both Catholic and ‘controlled’ (predominantly Protestant) community leaders using their feet to resist the plans by the SF education minister, Calhoun Ruane, to abolish academic selection by introducing tests of their own.

While the trade unions also brought their members on to the streets to protest against a catalogue of manufacturing job losses, the Northern Ireland middle class was thus organising too to protect its interest across the political spectrum. The international developed government looked disturbed like a spectator as events unfolded.

Robin Wilson, Queen’s University Belfast

Regions

The most recent monitoring period witnessed the onset of recession, with unemployment reaching 2 million and a sharp contraction in Q1 GDP. The government’s response was relatively badly hit, as were the larger cities in the north of the country that continue to be more reliant on manufacturing activity. A Government- commissioned report by Professor Michael Parkin argued that the credit crunch had made the predominant property and housing- related regression model defunct.

Against this background, Business Secretary Lord Mandelson sought to present Regional Development Agencies as a key part of the Government’s response to recession, claiming that they were a ‘vital antidote’. This aspiration, it quickly became apparent, would see an end to the commitment to require RDAs to delegate financial responsibility to local decision-making to localities and sub-regions. In some senses therefore RDAs are now the political battleground in sub-national governance. On one hand there has been a more extensive Devolution in Government policy. A report commissioned by the Government from PriceWaterhouseCoopers on the performance of RDAs was published in April and was largely positive, indicating that the net impact of RDAs was greater than the taxpayer contribution. But the report had apparently been delayed from the autumn because ministers wanted to again outline a clear ‘mission’ for RDAs.

The centralist tendencies shown by Lord Mandelson contrast with emerging Conservative party policy approaches to sub-national economic development and governance. The Conservatives’ intention to abolish some or all of the RDAs appears to be hardening, and in January the shadow Housing spokesman threatened also to scrap the Homes and Communities Agency if it cannot prove its worth within the next 18 months. In February the shadow Housing minister policy paper suggesting that local authority partnerships representing functional economic areas could take over funding and powers from RDAs. It is expected that RDAs would also lose their right to receive the proceeds of any sales. Part of the rationale is to enable the Department for Communities and Local Government to ensure that RDAs act as a catalyst for ‘coordinated regenerative strategies’ that are much more focused on localism, decentralisation and returning powers to local councils – a process it argues would not be possible under the current system.

Three further city-regional multi-area agreements were signed off in January, notably, Leeds and Manchester were also shortlisted for pilot status under phase 1 of the Government’s ‘Regional Growth Regeneration Zones’ initiative, which are intended to test the potential for new partnerships in the West Midlands, Leicester and Leicestershire, Three City-regional partnership groups – centred upon Manchester, Leeds, Birmingham, Middlesbrough, Bristol, Luton and Sheffield – were also shortlisted for the two or more statutory city-region pilot that would be announced by the Government towards the end of 2008. Leeds and Manchester were confirmed as the successful candidates in the regional growth fund in December but only £22 million has been voted through to the region. These in highly exceptional cases like this one. Two reasons were put forward by Jack Straw when issuing the veto. Disclosure of the minutes would impair the deliberation that takes place at executive level. The disclosure of the convention of collective cabinet responsibility. The second reason is of interest in understanding how the decision was reached, there is greater public interest in preventing disclosure, it is not clear why it has not already been proposed. Otherwise the government may continue to exercise the veto whenever it feels its ‘crown jewels’ are encroached upon.

Reduction in 30 Year Rule on the table

The independent review of the 30 Year Rule, which was set up after the Prime Minister’s Government came into office in May 2007, was published in January. The review team described the current set up as ‘anachronistic and unsustainable’. Currently records are also sent to the National Archives for release after 30 years, unless requested under FOI. The review favours halving the time to 15 years.

Despite the estimated cost of £75m over a 15 year period, the government’s initial response was favourable. A release from the Ministry
of Justice stated that the government ‘agrees that there should be a substantial reduction in the period after which official papers should generally be released to the public, and that this should be introduced on a phased basis’. A more detailed response is currently being worked on.

The review makes some other recommendations on government information policy. These include the suggestion that government ‘may wish to consider whether there is a case for enhanced protection of [some sensitive] categories of information’, and that the Civil Service Code be adjusted to contain an explicit jotison to keep complete and accurate records of government business.

Sir Joe Pilling gave a seminar on the 30 Year Rule at the Unit in February – see page 7

New Information Commissioner

Current Information Commissioner Richard Thomas stepped down in June after 7 years and two terms at the helm. He is to be succeeded by Christopher Graham, Director-General of the Advertising Standards Authority.

Christopher Graham was the Ministry of Justice’s preferred candidate, and was endorsed by the Justice Select Committee after their pre-appointment scrutiny. As part of this scrutiny the committee published a report on the Work of the Information Commissioner: appointment of a new commissioner (HC 146). In the report the Committee notes that on two previous occasions it has recommended that the Commissioner be responsible to and funded by Parliament, but it does not make an additional recommendation here. It does draw attention to the Commissioner’s backgound, recommending that the MOJ provide sufficient resources to resolve the backlog in a reasonable time. In its response the MOJ stated that additional funding has been provided for 2009-10 specifically to reduce the backlog, and that seven civil servants from government departments have been seconded to the ICO to work on the backlog. In his hearing, Christopher Graham recognised the problem of a backlog, stating ‘justice delayed is justice denied’.

Richard Thomas will be giving a valedictory seminar at the Constitution Unit on 7 July – see back page.
**RECENT UNIT PUBLICATIONS**

- Various authors, Devolution Monitoring Reports January 2009 (Scotland, Wales, Northern Ireland, English Regions, and Devolution & The Centre). Available at www.ucl.ac.uk/constitution-unit/research/devolution/devo-monitoring-programme.html.

**PUBLICATIONS RECEIVED**


**FORTHCOMING EVENTS**

**Constitution Unit Seminars**

- Launch of Church and State in 21st Britain: the Future of Church Establishment, Monday 15 June, 1pm. Speaker: Bob Morris (Constitution Unit, editor and main author of Church and State in 21st Century Britain). Respondent: William Pittal (Secretary General, General Synod of the Church of England).
- Jenny Watson (Chair, Electoral Commission), Tuesday 30 June, 6pm, Future plans for the Electoral Commission (provisional title).
- Richard Thomas (Information Commissioner), Tuesday 7 July, 6pm, Valedictory Dispatch (provisional title).
- Lord Jay of Ewelme (Chair, House of Lords Appointments Commission), Thursday 22 October, 1pm, The Work of the House of Lords Appointments Commission.

**Government Information Policy Seminar Series 2009 (subscription only)**

- Richard Allan (European Government Affairs Director, Cisco, and chair of Power of Information Taskforce), Wednesday 20 May, 6.15pm, Public Information and Public Participation.
- Belinda Lewis (Head of Information Policy Division, Ministry of Justice), Tuesday 8 September, 6.15pm, Information policy: where we’ve come from, where we’re going (provisional title).
- Professor John Angel (Chair, Information Tribunal), Tuesday 17 November, 6.15pm, Cases at the Information Tribunal.

**Full information on events at:** http://www.ucl.ac.uk/constitution-unit/events/index.html