

The **Constitution** Unit

Nations and Regions: The Dynamics of Devolution

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Devolution and the Centre

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Key Points:

- The controversial Disqualifications Bill was passed by Parliament at the end of the 1999-2000 Parliamentary Session.
- The number of dual-mandate MPs standing down from their seats at Westminster at the next general election has risen to 18.
- The voting and speaking rights of MPs representing Scottish constituencies continues to be a source of disquiet in the House of Commons and amongst commentators.
- The Territorial Select Committees are beginning to come to terms with their roles post-devolution.
- A new House of Lords Select Committee on the Constitution has been established under the chairmanship of Lord Norton of Louth.
- Ms Helen Liddell and Dr John Reid have been appointed to the posts of Secretary of State for Scotland and Secretary of State for Northern Ireland respectively.
- Options for future reform of the offices of the Territorial Secretaries of State are being tabled in the run-up to the general election.
- Court proceedings before the Judicial Committee of the Privy Council under the devolution acts continue to be limited to issues of human rights rather than *vires*.
- Meetings of the Intergovernmental Bodies have been limited over the last quarter with a number of cancellations due to the ongoing peace process.

Devolution and Westminster:

• **The Disqualifications Act 2000:**

The end of the Parliamentary session in December saw the Government successfully push all remaining bills through Parliament. Among the bills gaining Royal Assent shortly before the end of the session were the long-awaited Freedom of Information Bill, the Political Parties, Elections and Referendums Bill and the controversial Disqualifications Bill (now the Disqualifications Act 2000). The primary purpose of the latter was to remove the disqualification for membership of the House of Commons and the Northern Ireland Assembly of persons who are members of the legislature of Ireland (the Oireachtas). Previous government defeats of the bill in the Lords had prompted some commentators to suggest that the bill would be dropped in the face of opposition from Conservative and Crossbench peers.¹

Lord Falconer of Thoroton, presenting the bill on behalf of the government had previously stated that the purpose of the bill was to:

...enable members of the Irish legislature to stand for election to the House of Commons and the UK devolved legislatures, thereby giving them equal treatment with Members of Commonwealth legislatures and the same rights as other non-elected Irish citizens.²

He added:

It is a modest bill. It does not make any dramatic changes. It simply extends to the Irish legislature existing provisions which already permit members of a number of legislatures outside the UK to take seats in the House of Commons.³

Opponents of the bill criticised it as a sop to Sinn Fein, who would be its main beneficiaries. During the course of the Lords debates the bill was described as 'a constitutional monstrosity'⁴ and came under fire for lacking popular and parliamentary support, and for having no foundation in the Belfast agreement.⁵

Subsequent to the passing of the Act a number of Parliamentary questions have been tabled by Lord Laird asking where and when the support of the Irish Government for the Disqualifications Bill was gained⁶. Each received an equally elusive answer.

¹ See further: 'Ministers may sacrifice bill to aid Trimble', *The Guardian*, 22 November 2000; 'Labour to accept defeat over bill on Irish MPs', *Daily Telegraph*, 22 November 2000.

² House of Lords Debates, 27 July 2000, Col. 706.

³ Ibid, Col. 708.

⁴ House of Lords Debates, 6 November 2000, Col. 1254 (Lord Molyneaux of Killead).

⁵ House of Lords Debates, 27 July 2000, Col. 709 (Lord Rogan).

⁶ House of Lords Written Answers: 21 December 2000, WA 87; 19 February 2001, WA 84.

- **House of Commons:**

The Speaker of the House, Michael Martin MP, has told parliamentary clerks only to accept written questions bearing the correct title of the First Secretary of Wales after a number of questions had referred to Rhodri Morgan as the First Minister, the title he has adopted in Wales.⁷

Alex Salmond MP MSP, former leader of the Scottish National Party, in a surprising move announced that he will stand down as an Member of the Scottish Parliament⁸ to focus on a 'crucial general election campaigning role' for the SNP at Westminster.⁹ It had been widely anticipated that Mr Salmond would resign the Westminster seat of Banff and Buchan at the forthcoming general election (the SNP had gone as far as to name Stewart Stevenson as the prospective candidate for the Aberdeenshire constituency) and the announcement was greeted with some cynicism in the broadsheets:

...with perception being all in politics, [nationalists] may rapidly form the view that Mr Salmond may have helped gift them a new institution and a new relevancy in Scotland but was simply not prepared to put his back into the distinctly unglamorous work of helping it mature.¹⁰

It is likely therefore that after the next general election Salmond will be the only SNP member with experience of Westminster – a potentially important factor to the SNP group which he will be likely to lead.

Ken Maginnis, the Ulster Unionist MP who has represented Fermanagh and South Tyrone for the last 18 years, has announced that he will not stand at the next general election. A pro-agreement Unionist, Mr Maginnis has been seen as one of David Trimble's closest political allies and is likely to retain a high profile role as the UUP's security spokesman.

John Taylor, Ulster Unionist member for Strangford and deputy leader of the party, has also announced that he will stand down as a Westminster MP at the next general election.¹¹ Mr Taylor, who has represented the constituency since 1983, rejected claims made by the Democratic Unionist Party that he was standing down for fear of losing his seat at the next general election and stated that he had decided to dedicate more time to his roles as a member of the Northern Ireland Assembly and of the Council of Europe. The DUP have announced that their candidate to contest the seat will be Iris Robinson. The

⁷ House of Commons Debates, 15 November 2000, Col. 939.

⁸ 'Salmond opts for Westminster in change of heart', *The Guardian*, 11 January 2001.

⁹ 'Salmond defies Westminster critics', *The Herald*, 16 January 2001.

¹⁰ 'Alex Salmond opts for Westminster', *The Scotsman*, 15 January 2001; 'Salmond stands again for Westminster', *BBC News Online*, 15 January 2001.

¹¹ 'Senior Unionist to stand down', *The Times*, 30 January 2001.

UUP have not yet announced who will succeed Mr Taylor as their candidate. A selection meeting has been scheduled for 5 March.

These announcements bring the number of dual-mandate MPs standing down at the coming election to 18. Assuming that he retains his seat, Alex Salmond will be the only dual-mandate MP at Westminster following the election (but will only remain so until the next elections to the Scottish Parliament in 2003).

- **The Barnett Formula:**

In giving evidence to the Welsh Affairs Select Committee on 21 November 2000, the Secretary of State for Wales, Paul Murphy, effectively ruled out a re-appraisal of the Barnett formula in the near future. Before the Committee Mr Murphy stated that the Barnett formula had been approved as the correct method of allocating funds to Wales through the passing of the Government of Wales Act 1998. The *Western Mail* reported that Mr Murphy's comments caused 'outrage' quoting Elfyn Llwyd, Plaid Cymru MP for Meirionnydd Nant Conwy, as saying that the Welsh Secretary was 'reneging on previous promises to look at whether a different funding mechanism might now be more appropriate'¹². Shortly afterwards, Lord Barnett, inventor of the formula, was reported to have commented:

My own personal belief is that we will never see a change. While I am happy to have a formula named after myself, I think it is now very, very unfair.¹³

- **The English Question:**

The issues surrounding the English Question continue to arouse interest within Westminster and amongst commentators on the process of devolution. The question was most recently raised during the Second Reading in the Commons of the contentious Hunting Bill where the Home Secretary responded to suggestions that Scottish members should be prevented from participating in the discussions of the bill with a forceful reassertion of Westminster as not only the sovereign parliament, but also as the Parliament of the union:

Mr. Leigh [Con, Gainsborough]: The right hon. Gentleman has mentioned Wales. Hunting is a matter of deep controversy in our constituencies. We are expected to exercise our conscience because the issue affects our constituencies. Is it right or fair that when dealing with a matter of deep controversy, Scottish Members will be voting while we have no right to vote on the future of hunting in Scotland? Will the right hon. Gentleman do the decent thing and advise Scottish Members similarly to do the decent thing and abstain on any future votes on hunting?

¹² 'Outrage as Murphy backs Barnett set up', *The Western Mail*, 22 November 2000.

¹³ 'Barnett formula will never change', *The Times*, 30 November 2000.

Mr Straw: No, I will certainly not do so. The hon. Gentleman does not recognise the powers of this place and the other place in respect of Scotland. First, the powers of the Scottish Parliament derive entirely from the parliament of Westminster. The parliament of Westminster can at any stage, if it wishes – I do not advise this course – change the Scotland Act 1998. The Scottish Parliament is palpably and legally subordinate to the Westminster Parliament.

Secondly, I have never accepted the political arithmetic of the West Lothian question, despite my huge regard for my hon. Friend the Member for Linlithgow (Mr. Dalyell), as his constituency is now called. The best explanation, which I endorse, of why the seductive arithmetic does not add up is provided by the distinguished constitutionalist, Vernon Bogdanor, in an essay which he wrote two or three years ago. I understand the attraction of this advice to a party that has no representation in Scotland or Wales. However, if the Conservative party were in power, it would come to exactly the same grief as Gladstone did 130 years ago when he wrestled for many months with the so-called in-and-out question. As well as being intellectually impossible to solve, it caused his government to collapse.

I happen to believe in the sovereignty of the Parliament of the United Kingdom of England, Wales, Scotland and Northern Ireland and believe that every member elected to the Parliament has a right to legislate, subject to previous legislation, in respect of every part of the United Kingdom. I also make the partisan point that I do not remember such arguments being advanced when 16 Conservative and Unionist Members represented Northern Ireland here despite the existence of the Stormont Parliament, which had more powers than the Scottish Parliament.¹⁴

A comment piece in *The Financial Times* by Professor Vernon Bogdanor of Brasenose College, Oxford, sparked a succession of letters to the editor on the subject of English votes on English laws.¹⁵ Professor Bogdanor argued that under our constitution the government of the day is responsible to the House of Commons for all issues, whether domestic or non-domestic. By implementing Mr Hague's proposal of English votes on English legislation this principle of collective responsibility would be weakened by effectively removing the majority of any Labour government reliant on their members in Wales and Scotland for an overall majority in the Commons. In a letter sent to the editor shortly afterwards

¹⁴ House of Commons Debates, 20 December 2000, col 380-381.

¹⁵ 'West Lothian is not the question,' *Financial Times*, 21 November 2000.

Lord Hurd of Westwell suggested that perhaps the correct solution would be through an English Parliament or elected regional assemblies, although he noted that popular support for at least the former is currently lacking. As this is the case Lord Hurd suggested that Mr Hague's proposal would be the obvious and workable solution. Lord Hurd addressed Professor Bogdanor's fears surrounding a Government without a majority in England in the following terms:

There would be no need for the Government crisis that Vernon Bogdanor fears. The government of the United Kingdom would have to ensure that its English measures were acceptable to enough English MPs – or else not put them forward. There would be nothing unusual in this process: it is called politics.¹⁶

The Labour MP Frank Field (who, on 28 June 2000, had proposed the House of Commons (Reserved Matters) Bill under the 10 minute rule¹⁷) continued the debate stating that Professor Bogdanor's observations on the unjust nature of a Westminster government reducing public spending across the United Kingdom would be equally as unjust as the current situation in which the UK government can reduce public spending in England only as a result of its majority in Scotland and Wales. Mr Field also recognised the fact that the English question remains an unsolved problem:

The West Lothian question remains a sleeping giant in British politics. At the moment there is no great clamour for change but part of the job of politicians is to avert crises. Devolution is a Labour achievement. Completing the process with a settlement that heads off some of the potential unfairness in the system should be a goal for a second term.¹⁸

• **The Scottish, Welsh and Northern Ireland Committees:**

1: The Welsh Affairs Select Committee:

In the First Special Report of the Welsh Affairs Select Committee, *The Work of the Committee Since Devolution*,¹⁹ the Committee pointed out that since the transfer of functions from the old Welsh Office to the National Assembly it has been necessary to conduct a re-assessment of its work. Following the report of the Procedure Committee, *The Procedural Consequences of Devolution*,²⁰ the terms of reference under which the Welsh Affairs Committee meet were amended so that, although the Committee remains a 'select committee related to a government department', it is now empowered to 'examine the expenditure, administration and policy of the Welsh Office (Office of the Secretary of State for Wales

¹⁶ Letters to the Editor, 'English MPs should decide English matters', *Financial Times*, 24 November 2000.

¹⁷ See further M. Russell, R. Hazell, 'Devolution and Westminster: Tentative Steps towards a more Federal Parliament', pages 207-210, in R. Hazell (ed) *The State and the Nations: The First year of Devolution in the United Kingdom*.

¹⁸ Letters to the Editor, 'West Lothian giant will wake up one day', *Financial Times*, 28 November 2000.

¹⁹ HC 81, 21 December 2000, para 3.

²⁰ Fourth Report of the procedure Committee, Session 1998-1999, HC 185.

(including relations with the National Assembly for Wales)).²¹ As the Welsh Affairs Committee point out, this remit has been interpreted broadly as demonstrated by their subsequent inquiries into European Structural Funds, the impact of the Transport Bill in Wales, and social exclusion in Wales, all of which deal with the impact of UK government policies in Wales.²² Indeed the Committee believes that this broader approach to matters has helped to define their role post-devolution:

Unlike the position in Scotland, where a large measure of responsibility for primary legislation has been devolved, much of the primary legislation passed at Westminster affects Wales directly and we believe that we can play a useful role in taking up Assembly Members' concerns about matters which fall within the responsibility of the UK Parliament.²³

In addition to this expansion of the Committee's areas of interest meetings have taken place, both formally and informally, with representatives of the Assembly, a trend which the Committee would favour the continuation of in the future where appropriate.²⁴

In keeping with the expansion of the interests of the Welsh Affairs Committee it has announced that it will be conducting an inquiry into the 'way in which Welsh interests, including the interests of the National Assembly, are taken into account in the drafting of primary legislation and its passage through Parliament'²⁵. This topic was proposed by the Assembly's committee chairs at one of their regular meetings with the Welsh Affairs Committee. Provided that the Committee continues this course of inquiry after the General Election it will be running in conjunction with two reviews of the workings of the National Assembly currently underway in Cardiff.²⁶ Bearing in mind the spirit of co-operation which is emerging between the Welsh Affairs Committee and the national Assembly the former may provide the latter with a louder voice at Westminster with regard to any proposed reforms emanating from Cardiff. Any proposals made by the Committee will have to be afforded a formal UK government response.

The Committee is currently hearing evidence in the course of its inquiry into Wales in the World.

2: The Northern Ireland Affairs Select Committee:

²¹ Standing Order No. 152.

²² HC 81, 21 December 2000, para 10.

²³ HC 81, para 24.

²⁴ HC 81, paras 29-31.

²⁵ Welsh Affairs Committee, Press Notice No. 7 of Session 2000-01, 12 February 2001.

²⁶ See further: J. Osmond, 'The Assembly's Operational Review', Wales Monitoring Report, August 2000.

The Annual Report of the Northern Ireland Affairs Committee relating to the 1999-2000 Parliamentary session was published on 6 February 2001.²⁷ Dealing with the work of the Committee over the previous year the report drew attention to the Committee's relationship with the Northern Ireland Office. Relations between the two were described as 'generally good' with the Northern Ireland Office keeping the Committee 'adequately informed of general developments'²⁸. Similarly to the Welsh Affairs Committee, although in practice at a less advanced stage, relations between the Committee and the Northern Ireland Assembly were also high on the Committee's list of priorities and it was predicted that growing links between the two would yield benefits for accountability through the strengthening of 'parliamentary oversight of both Executives'²⁹.

Of particular note, bearing in mind the forthcoming Welsh Affairs Committee inquiry into the legislative process and its effect on Wales, were the Committee's observations with regard to the new procedure for legislation by way of Order in Council under the Northern Ireland Act 1998. Under s.85 of the Act a new procedure was introduced whereby proposed legislation on certain reserved matters would have the opportunity to go before the Commons and its Committees before its approval. The Northern Ireland Affairs Committee recommended that:

...there should be a presumption that each such proposal will in any event be debated in the Northern Ireland Grand Committee. We also recommend that consideration be given to introducing into the Northern Ireland Grand Committee, for use when considering proposals for draft Orders in Council, a procedure similar to that used in European Standing Committees, whereby Ministers of the Crown may make statements about the proposal and answer questions thereon for a period, before the Committee embarks on the debate. Use of such a procedure might make the Committee's scrutiny even more effective.³⁰

The Northern Ireland Affairs Committee has announced a new inquiry into the government's proposed plans to reform the legal aid system in Northern Ireland as outlined in the paper 'Legal Aid reform in Northern Ireland - The Way Ahead' released by the Northern Ireland Court Service.³¹ The Committee's inquiries into the Parades Commission and Relocation following Paramilitary Intimidation continue to take evidence.

²⁷ Northern Ireland Affairs Committee, Annual Report for Session 1999-2000, 6 February 2001, HC 148.

²⁸ Ibid, para 23.

²⁹ Ibid, para 31.

³⁰ Ibid, para 28.

³¹ Cm 4849 (see further: Northern Ireland Affairs Committee, Press Notice No. 1 of Session 2000-01, 7 December 2000).

3: *The Scottish Affairs Select Committee:*

On 13 December 2000 the government published its response to the Scottish Affairs Committee report into poverty in Scotland³². The Committee's inquiry into the drinks industry in Scotland is ongoing.

³² Session 2000-2001, HC 59-I.

4: The Grand Committees:

The Northern Ireland Grand Committee met on 29 November 2000 and discussed Juvenile Justice Centres in Northern Ireland. Neither the Scottish Grand nor the Welsh Grand have met during this quarter.

- **Westminster Hall:**

Nil return.

- **House of Lords:**

In its thirty-seventh report of the 1999-2000 Parliamentary Session the House of Lords Select Committee on Delegated powers and Deregulation recommended that the House consider the procedural consequences of devolution a 'high priority' issue.³³ The Committee considered this point so pressing as it pointed out that unlike the Commons the Lords has no 'obvious first port-of-call for relations with the Parliament and Assemblies'³⁴. Furthermore the Committee noted from its experiences discussing the Transport Bill (now the Transport Act 2000) that powers delegated to the Welsh Assembly in that bill were scattered throughout and it was therefore difficult to pin point them. Consequentially it recommended that all departments, when drafting the accompanying memoranda to bills, produce a supplementary list of all clauses which purport to delegate powers to the National Assembly.³⁵

On 8 February 2001 the membership of the new Constitution Committee of the House of Lords was announced. Under the Chairmanship of the Conservative peer Lord Norton of Louth the Committee's terms of reference are as follows:

...to examine the constitutional implications of all public bills coming before the house; and to keep under review the operation of the constitution.³⁶

The members of the Committee will be: Lord Acton, Viscount Cranborne, Lord Fellowes, Lord Holme of Cheltnam, Baroness Howells of St. Davids, Lord Lang of Monkton, the Earl of Mar and Kellie, Lord Morgan, Lord Norton of Louth, Lord Ponsonby of Shulbrede, Lord Weatherill and Baroness Young.

The debate over the future role of the Constitution Committee took place in the Lords on 13 February 2001. It was widely agreed that the Committee will play a vital role in scrutinising the workings of the Scottish Parliament and Assemblies

³³ Thirty-seventh report from the Select Committee on Delegated Powers and Deregulation, Session 1999-2000, HC 180, para 68.

³⁴ Ibid.

³⁵ Ibid, at paras 70 and 71.

³⁶ House of Lords Debates, 8 February 2001, Col. 1269.

in Wales and Northern Ireland³⁷ and in looking at 'relations between Holyrood and Westminster, the smooth functioning of which is vital to the survival of the United Kingdom.'³⁸

Devolution and Whitehall:

• Cabinet Reshuffle:

Perhaps the most significant event of the quarter was the redistribution of Cabinet posts in the wake of Peter Mandelson's resignation from the position of Secretary of State for Northern Ireland. Dr John Reid was moved into the position vacated by Mandelson whilst Helen Liddell was elevated to the post of Secretary of State for Scotland.

Helen Liddell, Member of Parliament for Airdrie and Shotts, was appointed Secretary of State for Scotland on 24 January 2001. Ms Liddell was previously Minister for Energy and Competitiveness in Europe at the DTI, and between 1995 and 1997 was the junior opposition spokeswoman on Scotland. Her first Scottish questions came within a week of her appointment and her performance was described by the political sketch writer of *The Scotsman* as a 'tour de force'.³⁹ Particular attention was drawn to her treatment of Alex Salmond:

Mrs Liddell: What a pleasure it is to see the hon. Gentleman back in his place. We have not seen him here for a long time. Indeed, when he last left he said he was going back to Holyrood because this place was – what was it? – an outdated irrelevance. Apparently we were soon to be extinct, but now the hon. Gentleman is coming back. Edinburgh is not big enough for him and his hon. Friend the Member for North Tayside (Mr. Swinney).⁴⁰

Dr John Reid was appointed to the position of Secretary of State for Northern Ireland on 24 January following the resignation of Peter Mandelson the previous day. Under the Blair administration Dr Reid has served as Minister of State for Defence, Minister for Transport and latterly Secretary of State for Scotland. A Roman Catholic, Dr Reid has been an MP since 1987, representing the constituencies of Motherwell North and Hamilton North and Bellshill since 1997. In his role as Secretary of State for Scotland Dr Reid was being increasingly seen as 'a Government trouble shooter'⁴¹ but his work in and for the Scotland Office has also been portrayed in a favourable light:

³⁷ See comments of Lord Goodhart: House of Lords Debates, 12 February 2001, Col. 95: '...it is a vital question to study how the devolution is working. Is the balance of devolved and reserved powers satisfactory? Is the partial system of devolution to Wales, which gives power over secondary but not primary legislation, workable?'

³⁸ House of Lords Debates, 12 February 2001, Col. 97 (*per* Lord Henley).

³⁹ 'You're the weakest link, Alex Salmond. Goodbye', *The Scotsman*, 31 January 2001.

⁴⁰ House of Commons Debates, 30 January 2001, Col. 157.

⁴¹ 'Reid takes over Ulster role', *The Times*, 25 January 2001.

...Reid's strategic achievement in Scotland has been to give the Scotland Office, denuded of actual power, the authority it has.⁴²

- **The Resignation of Frank Roy MP:**

The Labour MP Frank Roy resigned from his position as Parliamentary Private Secretary to Helen Liddell on 11 February 2001 in the wake of the aborted visit of the Irish Taoiseach, Bertie Ahern, to Lanarkshire. Mr Ahern had been due to unveil a memorial to victims of the Irish famine in Carfin but had cancelled the visit due to fears of sectarian unrest. Mr Roy's concerns had stemmed from the fact that the visit coincided with the Celtic-Rangers football match in Glasgow and he had written to the Irish Consul in Edinburgh to that effect. Despite claims that he was acting in his capacity as constituency MP rather than Private Secretary to the Secretary of State, and despite backing from both Ms Liddell and Mr Ahern, Mr Roy was forced to resign in the face of claims of 'stoking the fires of bigotry'⁴³.

- **Merging the Offices of the territorial Secretaries of State:**

In the words of Professor James Mitchell of Strathclyde University, 'What exactly does the Secretary of State for Scotland do?'⁴⁴ Since the transferral of powers from the old Scottish Office to the Executive in Edinburgh it has become increasingly unclear what the actual role of the Scottish Secretary is. The official position is that the Secretary of State remains to ensure the smooth implementation of the devolution arrangements and to oversee relations between Whitehall and Holyrood, and yet since devolution the office has undergone a more profound change. Mitchell has suggested that during the tenure of John Reid the office became the post of 'minister for spin' due to having more time on his hands than fellow cabinet members as a result of a lighter policy burden.⁴⁵

Of the three territorial Secretaries of State the office of Secretary of State for Scotland is the most obvious candidate for reform. With the ongoing peace process in Ireland and the need for the Welsh Secretary to represent the interests of the National Assembly in the legislative process at Westminster the office of Scottish Secretary seems *prima facie* the most redundant. The following have been suggested as possible changes in the machinery of government following the next election:⁴⁶

⁴² 'The Blairite bruiser', *The Independent*, 27 January 2001.

⁴³ Donald Gorrie MSP, quoted in 'Liddell backs MP's actions over Ahern trip', *The Herald*, 9 February 2001 (also see: 'MP quits as Irish crisis escalates', *The Scotsman*, 12 February 2001; 'Ahern row MP quits as aide', *BBC News Online*, 11 February 2001).

⁴⁴ 'Tell us again, what does the Scottish Secretary do?', *The Sunday Times* (Scotland edition), 28 January 2001.

⁴⁵ *Ibid.*

⁴⁶ T Hunt, *Remodelling Government*, IPPR, summarised in *The Times*, 16 December 2000.

- merging the Secretaries of State for Scotland, Wales and Northern Ireland
- shifting responsibility for regional government in England
- adding responsibility for local government in England
- adding responsibility for other constitutional reforms (Lords reform, electoral reform).

Devolution and the Courts:

• **The Judicial Committee of the Privy Council:**

The Judicial Committee of the Privy Council (comprising Lords Bingham, Hoffman, Hope, Clyde and Hutton) handed down judgment in the case of *Her Majesty's Advocate and Her Majesty's Advocate General for Scotland v McIntosh* on 5 February 2001. The Judicial Committee unanimously allowed the appeal from the decision of the High Court of Justiciary.⁴⁷ The Privy Council held that the procedure under s.3(2) of the Proceeds of Crime (Scotland) Act 1995 whereby assumptions can be made in relation to property acquired by the accused did not infringe the presumption of innocence under the European Convention of Human Rights 1950 (Article 6(2)).

A further devolution appeal (*Christopher John Kelly v Procurator Fiscal, Kirkcaldy*) is due to be heard by the Judicial Committee during the Hilary Term.⁴⁸

• ***Brown v Stott:***

The decision of the High Court of Justiciary in the case of *Brown v Stott*⁴⁹ came, somewhat belatedly, under fire in the Commons during questions to the Advocate-General, Dr Lynda Clark, on 19 December 2000.⁵⁰ The decision of Lords Rodger, Marnoch and Allanbridge sitting in Edinburgh as the High Court of Justiciary was described by John Bercow, Conservative MP for Buckingham, as 'perverse':

Will [The Advocate General] accept that, in the light of the passage of the pernicious Euro-inspired Human Rights Act 1998, it is essential that she should be able to offer us an assurance that there will be no repetition of such unjust, pernicious and untenable cases in Scotland in future?⁵¹

The Advocate-General offered her assurances that, in successfully arguing for the reversal of the decision before the Judicial Committee of the Privy Council, her

⁴⁷ *The Times*, 31 October 2000.

⁴⁸ On appeal from the decision of the High Court of Justiciary in *Clark v Kelly* [2000] *SLT* 379.

⁴⁹ For a report of the decision of the Judicial Committee of the Privy Council in the case of *Brown v Stott* see the Devolution and the Centre Monitoring Report No. 1 at: <http://www.ucl.ac.uk/constitution-unit/leverh/index.htm>

⁵⁰ The decision of the High Court of Justiciary was handed down on 4 February 2000 and reported at [2000] *SLT* 379. The decision of the Judicial Committee of the Privy Council, upholding the appeal of the Crown, was delivered on 5 December 2000 and is available at: <http://www.privacy-council.org.uk/judicial-committee/2000/judgements/index.htm>

⁵¹ House of Commons Debates, 19 December 2000, Col. 195.

arguments were based on logic and rationality rather than disgust or perniciousness.⁵²

- **Issues of *vires*:**

Thus far the Privy Council has not had to adjudicate on a devolution appeal concerning issues of *vires*, as the subject matter of cases arising under the devolution legislation has been limited to cases involving the human rights standards as implemented by the Scotland Act 1998. This issue was raised in the House of Commons by Dr Norman Godman:

Dr Godman: Is not there likely to be a build-up in the number of cases referred to the Judicial Committee, largely as a result of the incorporation of the European Convention on Human Rights into Scottish – and United Kingdom – law, and the establishment of a human rights commission for Scotland? Is the Judicial Committee the best means of resolving such issues, or should we reconsider setting up a constitutional court to deal with such matters?⁵³

Dr Godman’s question received an unhelpful reply from The Advocate General, Dr Lynda Clark:

The Advocate General: That matter and others were fully discussed recently in our long debates on the Scotland Act 1998. I agree that in the foreseeable future there is likely to be an increase in the number of cases. Indeed, in view of the fact that a new jurisdiction is involved that is inevitable. One reason for referring such cases to the Privy Council is to help clarify some difficult issues – I hope that this will happen.⁵⁴

Intergovernmental Relations:

- **The Joint Ministerial Committee on Devolution:**

The Joint Ministerial Committee on Devolution has not met, either in plenary or sectoral form, since the summit meeting which took place in Edinburgh on 1 September 2000.⁵⁵ A meeting of the JMC (Poverty) is due to meet in Edinburgh on 26 February.

- **The British-Irish Council:**

The Cabinet Office Minister Ian McCartney stated in a written answer to the Commons on 20 December 2000 that the Environment Ministers of the British-Irish Council met in London on 2 October and that on 19 December there was a meeting on transport in Belfast.⁵⁶ The 19 December meeting was concerned with

⁵² Ibid.

⁵³ House of Commons Debates, 14 November 2000, Col. 792.

⁵⁴ Ibid.

⁵⁵ See: Devolution and the Centre Monitoring Report No. 1 at: <http://www.ucl.ac.uk/constitution-unit/leverh/index.htm>

⁵⁶ House of Commons Debates (Written Answers), 20 December 2000, Col. 211W.

integrated and sustainable transport policy and was attended by David Trimble and Seamus Mallon from Stormont, Noel Dempsey and Mary O'Rourke from the government of the Republic of Ireland and Lord MacDonal the UK Transport Minister, as well as representatives from Scotland and Wales. No press releases were issued pursuant to either of these meetings.

Mr McCartney stated that whilst a date had not been set for the next summit meeting of the BIC such a meeting was likely to take place early in 2001 (the previous summit meeting of the British-Irish Council, scheduled originally for 31 October 2000, was cancelled following the death of Donald Dewar).⁵⁷ However, meetings scheduled to be held on 23 January and 5 February 2001 were postponed to allow bilateral talks over the peace process to continue. The postponements prompted Sinn Fein to claim that the British and Irish governments were 'providing a fig leaf' for David Trimble over his refusal to allow Barbre de Brun to attend the meetings.⁵⁸ At the time of reporting no further meeting of the British-Irish Council has been scheduled

The British-Irish Intergovernmental Conference:

Nil return.

The British-Irish Interparliamentary Body:

The British-Irish Interparliamentary body was established in 1990 with the aim of enhancing and promoting relations and understanding between members of the parliament at Westminster and the Oireachtas in Dublin. The Body currently consists of 25 members from each parliament (with another 20 Associate members who may stand in for full members at either plenary or committee meetings of the body) who broadly represent the division of the political parties in the two legislatures.

The Body normally meets in plenary twice a year and divides its meetings between London and Dublin. A constant feature of the agenda is the debate of topical political developments along with questions for a minister of the host country's government. Committees of the Body have been established under the following subject headings: Sovereign (East-West) Matters; European Affairs; Economic Affairs; and Environmental and Social Affairs. Committee chair and shadow-chair positions are distributed equally between members of the two parliaments.

The Body was referred to in Strand 3 of the Belfast Agreement which stated that:

⁵⁷ Ibid.

⁵⁸ 'Anger over British-Irish meeting delay', BBC News Online, 22 January 2001.

The elected institutions of the members will be encouraged to develop inter-parliamentary links, perhaps building on the British-Irish Interparliamentary Body.

Tentative steps towards establishing links with the devolved bodies have been made with observers Scotland, Wales and Northern Ireland attending recent plenary sessions.⁵⁹

A plenary meeting of the British-Irish Interparliamentary Body was held in Killarney at the end of February 2001.

⁵⁹ See further: www.biipb.org (particularly the paper 'The British-Irish Interparliamentary Body: The First Ten Years' by F. Cranmer and J. Roycroft (Joint Clerks to the Body)).