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Devolution and the Centre Monitoring Report

January 2008

Akash Paun (ed.) & Edward Turner

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The Devolution Monitoring Programme

From 1999 to 2005 the Constitution Unit at University College London managed a major research project monitoring devolution across the UK through a network of research teams. 103 reports were produced during this project, which was funded by the Economic and Social Research Council (grant number L 219 252 016) and the Leverhulme Nations and Regions Programme. Now, with further funding from the Economic and social research council and support from several government departments, the monitoring programme is continuing for a further three years from 2006 until the end of 2008.

Three times per year, the research network produces detailed reports covering developments in devolution in five areas: Scotland, Wales, Northern Ireland, the English Regions, and Devolution and the Centre. The overall monitoring project is managed by Professor Robert Hazell and Akash Paun at the Constitution Unit, UCL and the team leaders are as follows:

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Introduction

Never has the phrase that devolution is ‘a process not an event’ appeared so apt as during the four month period covered by this monitoring report (September – December 2007). In all three devolved territories there are almost no voices to be heard in favour of the constitutional status quo, and the debate is now about how rather than whether the powers and structures of the devolved bodies should be amended, and what future change to the territorial constitution will mean for the UK as a whole.

The SNP administration in Edinburgh and the Labour-Plaid coalition in Cardiff both have relatively clear visions for future constitutional reform. For its part, the British government appears to be struggling to define a coherent approach. Divisions within the Labour party are real, and perhaps widening, on issues such as whether the Scottish Parliament should gain additional powers or whether a referendum should be held by 2011 on devolving full primary legislative powers to Wales. As constitutional change can only be implemented at Westminster, at some point the British government will need to develop a clear policy on these and other burning questions. Gordon Brown’s Britishness agenda is unlikely to paper over the cracks. The Conservatives also face competing pressures, and are seeking a way to tap into English disquiet about the asymmetrical devolution settlement without undermining their cherished unionist credentials.

This publication, the third-from-last in the current series of reports, sets out to paint an up-to-date picture of devolution as viewed from the perspective of the centre of the United Kingdom. An overarching first chapter on ‘Monitoring the Union’ ties together the major developments of the period. The report then provides detailed discussions of devolution-related developments in the political parties, at Whitehall, in Westminster and in the interinstitutional linkages that underpin the functioning of the devolved UK.

*Akash Paun
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February 2008*

Chronology of Events: September to December 2007

2 September	Wales Office Annual Report published.
11 September	Ten year anniversary of Scottish devolution referendum.
16-20 September	Liberal Democrat conference held in Brighton
18 September	Ten year anniversary of Welsh devolution referendum marked by formal signing of <i>One Wales</i> coalition agreement by Labour First Minister Rhodri Morgan and deputy FM Ieuan Wyn Jones (Plaid Cymru).
23-27 September	Labour Party conference held in Bournemouth.
30 Sept-3 October	Conservative party conference held in Blackpool.
2 October	Joint Ministerial Committee (Europe) meeting held in London.
9 October	Treasury publishes <i>Pre-Budget Report and Comprehensive Spending Review</i> , setting out funding allocation for devolved governments, as well as Whitehall departments, for 2008-11 period.
23 October	Greater London Authority bill receives Royal Assent.
23 October	Publication of independent review of 2007 Scottish elections, commissioned by the Electoral Commission and compiled by Canadian elections expert Ron Gould.
30 October	Prorogation of parliament.
6 November	New parliamentary session opens. Queen's Speech sets out government's legislative programme for 2007-08.
6 November	Welsh Affairs Committee announces inquiry into the 'Provision of Cross Border Public Services for Wales'.
8 November	Northern Ireland Office (NIO) opens consultation process on the Draft Criminal Justice (NI) Order 2007.

- 13 November Scottish Affairs Committee takes evidence from the Electoral Commission and David Cairns, Minister of State, Scotland Office, as part of inquiry on 'The experience of the Scottish Elections'.
- 21 November House of Commons hold debate on the Barnett Formula in Westminster Hall.
- 30 November Scottish Affairs Committee publishes report on *Effects of tax increases on the oil industry*
- 4 December Lords Constitution Committee publishes report on *Scrutiny of Welsh Legislative Competence Orders*
- 6 December The three major UK-wide parties join forces in the Scottish Parliament, voting to create an independently-chaired Scottish Constitutional Commission to review devolution in Scotland.
- 7 December Welsh and Scottish First Ministers meet in Edinburgh, discussing the possibility of cooperative action.
- 12 December Northern Ireland Affairs Committee publishes report on *The Northern Ireland Prison Service*
- 13 December Welsh Affairs Committee announces inquiry into second proposed 'legislative competence order', which will devolve power to legislate in the area of domiciliary care.
- 17 December Welsh Affairs Committee publishes follow-up report on *Energy in Wales*
- 17 December Scottish Affairs Committee publishes report on *Poverty in Scotland*
- 17 December Publication of *Review of Tax Policy in Northern Ireland*
- 18 December Welsh Affairs Committee takes evidence from Secretary of State Peter Hain on *Wales Office Annual Report*.

- 21 December Welsh Affairs Committee publishes report on *Proposed Legislative Competence Orders in Council: Additional Learning Needs*.
- 23 December Media reports reveal that the leaders of the UK and Scottish governments have not spoken since August.
- 30 December First Minister Alex Salmond delivers his New Year's message and in it celebrates the fact that the Scottish government is no longer so dependent on Westminster 'to do things' for Scotland.

1. Monitoring the Union

As part of its commitment to constitutional reform the UK government continued, in the September to December 2007 period, to develop its interest in the themes of Britishness, citizenship, national identity and shared values, as set out in the *Governance of Britain* green paper in July.¹ In the autumn of 2007 the government confirmed plans for a Citizens' Summit to create a new British Statement of Values,² and a consultation process leading to a British Bill of Rights and Duties/Responsibilities,³ as well as setting up the promised Citizenship Review under Lord Goldsmith.⁴ The government's interest in this area reflects concerns about the rise in 'regional' nationalisms within the UK (particularly in Scotland), and the related potential for territorial conflict, as well as factors such as multiculturalism and political disengagement. The July green paper gave some insight into the government's motivations, speaking of 'a growing recognition of the need to clarify not just what it means to be British, but what it means to be the United Kingdom.'⁵

In December 2007, the Leader of the Opposition also weighed in to the debate as he sought to distance the Conservatives from English nationalism in favour of a rejuvenated unionist agenda. In this speech, David Cameron criticised Brown's Britishness approach: 'He [Gordon Brown] talks about values but Britishness isn't just about values – liberty, fair play, openness – are general, unspecific, almost universal'.⁶ Rather, 'Britishness is also about institutions, attachment to our monarchy, admiration for our armed forces, understanding of our history, recognising that our liberty is rooted in the rule of law and respect for parliament'.⁷

However, when it comes to concrete questions about reform of the institutional architecture of devolution, both major parties – at least at the UK level – have avoided making clear policy commitments. Despite the changed political configuration of the administrations in the devolved capitals, the British government has continued with politics as usual, thus far without any major hiccups. Thus,

¹ Ministry of Justice, *The Governance of Britain*, Cm 7170, July 2007, at: www.official-documents.gov.uk/document/cm71/7170/7170.pdf, especially chapter 4.

² See Gordon Brown, 'Speech to the National Council of Voluntary Organisations on politics', 3 September 2007, at: www.pm.gov.uk/output/Page13008.asp

³ See Jack Straw, 'Mackenzie-Stuart Lecture', 25 October 2007, at: www.justice.gov.uk/news/sp251007a.htm

⁴ Lord Goldsmith QC Citizenship Review, www.justice.gov.uk/reviews/citizenship.htm

⁵ Ministry of Justice, *The Governance of Britain*, op cit, para. 212.

⁶ David Cameron, 'Speech made outside Holyrood parliament', Edinburgh, 10 December 2007, at: www.scottishconservatives.com/news_press/news/david_cameron_speech.aspx

following the Queen's Speech on 6 November 2007 (see section 4), the first Sewel motion of the SNP era was passed, giving the Scottish Parliament's consent for Westminster to pass the Climate Change Bill. Three more bills in the Queen's Speech are expected to require Holyrood's consent, while eight will require the consent of the Northern Ireland Assembly. The gradual accretion of legislative competence by the National Assembly of Wales also continued, by means of two government bills and the first Legislative Competence Orders (LCOs). On 9 October, the government also published its Comprehensive Spending Review, setting out budget limits for the devolved administrations (and Whitehall departments) for the 2008-11 period (see section 3.2).

The spending review confirmed that public spending growth would slow, leading to inevitable criticisms from the devolved bodies (and particularly the nationalist administration in Edinburgh) about being 'squeezed' by Whitehall. And in all the devolved capitals, the future of the Barnett formula (used to determine the size of the devolved bodies' block grants) and the question of fiscal devolution is very much on the agenda. At Westminster too, tensions about the distribution of funds across the UK were laid bare, during a debate on the Barnett formula in Westminster Hall on 21 November (see section 3.2). Despite concerns on the backbenches of both main parties, however, neither Gordon Brown nor David Cameron committed to a review of the current arrangements.

Debates are also well under way on further reform of the constitutions of Scotland and Wales with the Scottish Government's 'national conversation' and the Welsh Assembly Government's 'All Wales Convention' being set up. Having made a splash with its August white paper, however, the SNP's national conversation has made limited impact, apparently because of funding difficulties and an understandable reluctance to divert resources from public services to pay for public consultation exercises and the like. The nationalists can, however, claim a significant victory in persuading the three unionist parties at Holyrood to unite behind Scottish Labour leader Wendy Alexander's call for an independently chaired commission to consider potential changes to the powers of the Scottish Parliament.⁸

⁷ David Cameron, 'Speech made outside Holyrood parliament', op cit.

⁸ Wendy Alexander, Motion S3M-976, 6 December 2007, see: <http://scottish.parliament.uk/business/businessBulletin/bb-07/bb-12-06a.htm>

Although the SNP opposed the motion – which explicitly ruled out the party’s desired goal of securing the position of Scotland outwith the United Kingdom – its amendment offered congratulations to the unionist parties for their changed position, which it suggested was a result of the national conversation having ‘reinvigorated the debate on Scotland’s constitutional future and caused the Labour, Conservative and Liberal Democrat parties to seek an agreement on more responsibilities for the Scottish Parliament’.⁹ The motion was passed by 76 votes to 46 and the commission is due to start work in the spring, and ‘will include the Westminster wing of the parties as well as private and public institutions’ in what Wendy Alexander believes is a ‘bold cross-party and cross-Border initiative to look again at how this place serves the interest of Scotland’.¹⁰ At Westminster, however, there remains a good deal of reluctance to countenance reform of the Scotland Act 1998.

In Wales, Labour and Plaid Cymru have been discussing the terms of reference for the All Wales Convention, which will be chaired by former diplomat Sir Emyr Jones Parry and is expected to set out the case for staging a referendum to turn the Assembly into a Welsh parliament. At Westminster the attitude of the Welsh Secretary has been ambivalent at best with Peter Hain saying he did not want to be ‘bounced into an early referendum’. He later clarified this, stating that ‘nothing has changed’ and that he was only concerned that ‘calling a premature referendum would produce a repeat of 1979’.¹¹ One factor bolstering calls for a referendum is public opinion. The Institute of Welsh Politics at the University of Wales, Aberystwyth found that popular support for a ‘Scottish-style parliament in Wales has nearly doubled in the 10 years since the country voted in favour of devolution’ from 23 per cent in 1997 to 43 per cent in September 2007.¹² The coalition in Cardiff is also committed to establishing an independent commission to ‘to review Assembly Funding and Finance, to include a study of the Barnett Formula, of tax-varying powers including borrowing powers’.¹³

⁹ Nicola Sturgeon Amendment S3M-976.2, 6 December 2007, see:

<http://scottish.parliament.uk/business/businessBulletin/bb-07/bb-12-06a.htm>

¹⁰ Louise Gray, ‘Parties join forces to bulldoze SNP’, *The Scotsman*, 7 December 2007, at:

<http://thescoatsman.scotsman.com/index.cfm?id=1908452007>

¹¹ Matt Withers, ‘Hain: I’m not polls apart’, *Western Mail*, 4 November 2007.

¹² Tomos Livingstone, ‘Parliament for Wales says poll’, *Western Mail*, 17 September 2007, at:

http://icwales.icnetwork.co.uk/news/politics-news/tm_headline=parliament-for-wales-says-poll&method=full&objectid=19800292&siteid=50082-name_page.html

¹³ Labour and Plaid Cymru, *One Wales: A progressive agenda for the government of Wales*, 27 June 2007, at: http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/27_06_07_oneyales.pdf, p. 6.

In Northern Ireland, the major piece of unfinished business relates to the devolution of police and criminal justice powers. Provision for the transfer of these sensitive policy areas was made in the St Andrews' Agreement (Northern Ireland) Act 2006, but while unionists remain unconvinced at the commitment of Sinn Fein to the criminal justice system, the transfer will not go ahead.

England remains the 'gaping hole' in the devolution settlement,¹⁴ with the government opposed to creating a separate English forum at Westminster (let alone a separate English Parliament). There are also no plans for to resurrect the vision of elected regional governance in England, outside of London (where further powers were transferred by means of the Greater London Authority Act 2007), which was rejected in the 2004 North East referendum. Despite firm commitments, the government has also yet to create regional select committees in the House of Commons. The Conservatives have continued to keep the West Lothian Question on the agenda, albeit in a low-key way. The latest proposals (discussed in section 2.2) are for an English Grand Committee to which 'England-only' legislation could be referred for part of the legislative process. The party leadership has yet to make concrete commitments however.

¹⁴ Robert Hazell, 'The English Question', *Publius*, Vol. 36 (2006), 37-56.

2. Political Parties

2.1 Labour

As discussed above, strengthening the Union and British national identity is a major theme of Gordon Brown's agenda. This was reiterated in his first party conference speech as Prime Minister in September, when he discussed the crises that marked the first months of his tenure:

As we saw again this summer there is no Scotland-only, no Wales-only, no England-only answer to the spread of disease or to terrorist attacks that can strike at any time, anywhere in any part of our country. And sharing this same small island, we will meet our environmental, economic and security challenges not by splitting apart but when we as Great Britain stand united together.¹⁵

This unionist rhetoric stands, to some extent, in contrast with the line taken by the Scottish and Welsh Labour Parties. In Edinburgh, new Labour leader Wendy Alexander was the driving force behind the move to create a Scottish Constitutional Commission to consider further devolution, including of fiscal powers. This move caused some consternation among the Labour leadership at Westminster – whose position has long been that the 1998 settlement should not be reopened¹⁶ – despite the careful phrasing of Alexander's parliamentary motion, which emphasised that cementing the Union would be an objective of the commission. According to the motion, the full remit of the new body would be:

To review the provisions of the Scotland Act 1998 in the light of experience and to recommend any changes to the present constitutional arrangements that would enable the Scottish Parliament to better serve the people of Scotland, that would improve the financial accountability of the Scottish Parliament and that would continue to secure the position of Scotland within the United Kingdom.¹⁷

The period covered by this report also revealed the continuing tensions in the Labour Party about Welsh devolution – and in particular on holding an early referendum on full primary legislative powers for the National Assembly for Wales. In late October,

¹⁵ See Gordon Brown's Labour party conference speech 2007, at: www.labour.org.uk/conference/brown_speech

¹⁶ In August 2007, for instance, Secretary of State for Scotland Des Browne argued that additional powers for the Scottish Parliament were unnecessary on the grounds that 'The majority of people in Scotland don't think it's a constitutional debate that Scotland needs, but politicians making the best of what they have.' In: Severin Carrell, 'Holyrood ploy by Brown to head off independence threat', *The Guardian*, 14 August 2007.

Welsh Secretary Peter Hain alarmed Assembly colleagues by publicly expressing his doubt about the need for a referendum and the likelihood of a yes vote. Indeed, Hain said that there was 'no consensus' on a vote and that he could not see it happening in 'this Assembly term'.¹⁸ This admission came at the same time as former UN ambassador Sir Emyr Jones Parry was appointed to head the All Wales Convention, which is tasked with laying the ground for a successful referendum. Peter Hain subsequently modified his comments after threats from Plaid Cymru to withdraw from the coalition by saying that 'we're proceeding as laid out in *One Wales* to convene a joint Labour Plaid MP and AM group to take forward preparations for a convention'.¹⁹ Following the Queen's speech in November, Hain was then at pains to underline the occasion as a 'coming of age for devolution' and a 'huge achievement' since the government's legislative programme would create 'nine new areas in which the Assembly Government will have full law-making powers' (discussed further in section 4.2).

Also at party conference, Secretary of State for Northern Ireland Shaun Woodward delivered a congratulatory record of how Labour has helped to bring about power-sharing in the province.²⁰ Woodward emphasised that devolution now had to move into a 'second stage', as agreed at the St Andrews Agreement, which meant devolving police and criminal justice to Stormont. Woodward painted an optimistic future as he said that steps were already under way in this process following Sinn Fein's decision to join the policing board, and First Minister Ian Paisley's conciliatory approach to relations with the Republic of Ireland.²¹

2.2 Conservatives

To coincide with the 300th anniversary of the Union the Conservative conference fringe held a debate on the 'State of the Union' where David Mundell MP, Nick Bourne AM and Malcolm Rifkind MP discussed possible solutions to the West Lothian Question. Rifkind – a former Scottish Secretary – used the occasion to set out his 'East Lothian Answer' (so-called because Rifkind hails from Edinburgh), according to which an English Grand Committee would be created to deal with

¹⁷ Wendy Alexander, Motion S3M-976, 6 December 2007, op cit.

¹⁸ See Tomos Livingstone, 'Early referendum for parliament would fail', *Western Mail*, 29 October 2007.

¹⁹ See Tomos Livingstone, 'Hain bounces back to weaken Plaid's pull out threat', *Western Mail*, 6 November 2007.

²⁰ See Shaun Woodward, Labour Party conference 2007 speech, at www.labour.org.uk/conference/shaun_woodward_speech

²¹ Ibid

English only affairs.²² This approach could avoid some of the critiques levelled at the 'English votes for English laws' idea as it would not formally undermine the principles of equality amongst all MPs and sovereignty of the House as a whole. Rather, it would rely on a convention developing that decisions of the new English body would not be overturned using non-English votes in the chamber as a whole. Serious problems remain, however, with the questions of whether English-only matters can in fact be distinguished without controversy, and how a government could continue in office if it was unable to pass legislation in key areas such as health and education.

At party conference Nick Herbert, Shadow Secretary State for Justice, made the case in favour of reform, criticising the devolution settlement for having 'fuelled the flames of nationalism' by not resolving the West Lothian Question. The answer, for Herbert, is to 're-balance our constitution to strengthen the Union by ensuring that English Members of Parliament have the decisive say over English laws.'²³

Party leader David Cameron, however, is cautious about the party being tarred with an English nationalist brush. In his December Edinburgh speech he vowed to fight the 'ugly strain of separation seeping through the Union flag' and ensure that 'the Union comes first' in the party.²⁴ Cameron believes that the 'future of the Union is looking more fragile, more threatened than at any time in recent history' because of SNP tactics that take the easy option and seek to 'blame your neighbours' thus stirring up English nationalism and endangering the Union. For Cameron 'what we should be doing is blaming Labour' because it is 'not because of the Union that you [Scotland] are being held back' rather 'it is because of the Labour government'.²⁵ David Cameron also stressed that 'when it comes to the rise of separatist sentiment, some would seek to blame constitutional and economic arrangements. I do not believe this represents an adequate explanation: after all, issues like the West Lothian question and the Barnett formula have been debated in one form or another for decades' before he added that 'it does not mean for one second that we can afford to ignore them today'.²⁶ The mixed messages emanating from the Tories suggest that a Conservative government would tread carefully, perhaps doing nothing more than creating an English 'talking shop' that takes no substantive

²² Conservative conference fringe programme 2007, at: www.conservatives.com/pdf/CCHbookFLMonday.pdf

²³ Nick Herbert, 'Time to repair our broken politics', Conservative Party conference 2007, 2 October, at: www.conservatives.com/tile.do?def=conference.2007.news.story.page&obj_id=139318&speeches=1

²⁴ David Cameron, 'Speech made outside Holyrood parliament', op cit.

²⁵ David Cameron, 'Speech made outside Holyrood parliament', op cit.

decisions. After all, an incoming Conservative administration would – unless Parliament was hung – enjoy a UK majority and therefore have little need to defend its English legislation against Scottish and Welsh interference.

Meanwhile, the deputy leader of the Conservatives in the Scottish Parliament, Murdo Fraser, submitted a cautionary piece on Conservativehome.com (a conservative supporter's website) warning that the current 'English backlash' against Scottish devolution is playing into the hands of the Scottish separatists.²⁷ Mr Fraser stated that 'a Conservative Party committed to the principle of localism must be a champion of devolution, and set itself the task of sorting out the mess that Labour have created' He suggested that the end point of this constitutional chess game could be a federal, or quasi-federal, United Kingdom.²⁸ Fraser's position appears to reflect the thinking of the Scottish Conservative group as a whole, given the party's support for Wendy Alexander's proposed commission to review devolution in Scotland.

2.3 Liberal Democrats

Despite the party's strong support for further reform of the devolution settlement little was said on the matter at the party's national conference, which was held from the 16-20 September in Brighton. However, then-leader Sir Menzies Campbell did reiterate his party's support for devolution of further powers to the Scottish Parliament;

In Scotland the Liberal Democrats have campaigned consistently for more powers for the Scottish Parliament. Just yesterday, Nicol Stephen met the Labour and Conservative leaders in Scotland to discuss how devolution might be strengthened. But how those powers would be used would – I can tell you – be a matter for vigorous debate between the parties.²⁹

As noted above, developments in the Conservative and Labour parties have raised the likelihood that these aspirations will be realised in the near future, though it also undermines the distinctiveness of the party's policy platform. Similarly, in Wales, the Liberal Democrats back the Labour-Plaid plan for a referendum on granting the Assembly primary legislative powers, but having ruled themselves out of government

²⁶ David Cameron, 'Speech made outside Holyrood parliament', op cit.

²⁷ Murdo Fraser MSP, 'We must not allow nationalists to drive England and Scotland apart', 27 October 2007, at: www.directdemocracy.co.uk/display_page.asp?section=analysis&id=13

²⁸ Murdo Fraser MSP, 'We must not allow nationalists to drive England and Scotland apart', op cit.

²⁹ Sir Menzies Campbell, speech made to Liberal Democrat conference 2007, Brighton, 21 September 2007, at: www.libdems.org.uk/conference/brighton-2007-menzies-campbell-leaders-speech-part-2-of-3.7750.html

they have little ability to influence the timing of this, nor the operation of the planned commission to investigate the funding of the Welsh Assembly.

At its conference, the party set out its vision for subnational governance in England. A motion by Liberal Democrat Communities and Local Government spokesperson Andrew Stunell committed the party to a scrapping of national targets for local councils, a move to proportional representation (in the form of STV) for local elections, and a greater involvement of residents in local decision-making. The party also kept alive the prospect of directly-elected regional assemblies ‘in those regions that want it’ as the assemblies would take powers and functions away from central government’.³⁰

Nick Clegg was elected party leader on 18 December after a leadership campaign contest with Chris Huhne during which both men set out their stall regarding constitutional reform. Huhne was the more vocal in addressing the West Lothian Question and although he did not back Tory proposals for an English Grand Committee at Westminster he did declare that ‘the “anomaly” that allows Scots MPs to vote on English matters — but not Scottish issues devolved to the Scottish Parliament — must be resolved’. Huhne, in line with his party's policy, believes that this anomaly should be tackled as part of a wider, constitutional settlement.³¹

³⁰ Liberal Democrat Conference 2007, ‘The Power to be Different’, Liberal Democrat conference September 2007; www.libdems.org.uk/news/whitehall-targets-for-local-government-should-be-scrapped-stunell.13162.html

³¹ James Kirkup, ‘Lib Dems in favour of excluding Scots MPs’, *The Daily Telegraph*, 30 October 2007, at: www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/10/30/ncameron230.xml

3. Devolution and Whitehall

3.1 Ministry of Justice

The new Ministry of Justice is the lead department for the government's programme of constitutional renewal as outlined in the *Governance of Britain* green paper, published in July 2007.³² This agenda does not directly address questions of subnational governance, with questions about the future development of devolution left largely to the three territorial departments.

Partly in response to the threat of emergent nationalism in the different territories of the UK, Gordon Brown has made the promotion of British values and citizenship a major theme of his premiership. In policy terms, this is expected to lead to a Citizens' Summit on a 'British statement of values' in Spring/Summer 2008. Further down the line the intention is to craft a fully-fledged British Bill of Rights to complement the existing Human Rights Act.

In front of the Liaison committee, the Prime Minister was questioned about the role of the Scottish Parliament in the process in the following exchange:

Q44 Mr Doran: Prime Minister, the Green Paper acknowledges the position of the devolved administrations and in some areas it is quite clear, for example, a Bill of Rights or new powers for local authorities, that in the case particularly of Scotland there would need to be legislation, so there would need to be agreement between the Westminster Parliament and the Scottish Parliament on some laws. Can you say a little bit more about the process that you envisage in that debate and, in particular, if we look at the situation at the moment, there is no guarantee that agreement could be reached. I may be wrong about that. Could you say a little about how your goal of a shared national purpose for all the people of the UK would look if we could not reach agreement with the Scottish Executive and people in some parts of the UK had different rights from people in other parts of the UK?

Mr Brown: This is a United Kingdom constitution and the powers that are devolved are powers that are actually devolved by Parliament to the Scottish Parliament and there are areas where it is the right of the Westminster Parliament to legislate and it is not within the power of the Scottish Parliament to legislate. I think sometimes people have

³² Akash Paun (ed) and Rene Holbach, *Devolution and the Centre Monitoring Report*, September 2007, at: www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Centre_Sept07.pdf

forgotten that this is devolution. It is not a form of federalism; it is a form of devolution.

Although somewhat vague, the PM's response implied that the devolved bodies would play no formal role in the process leading to a British statement of values or bill of rights, which might create an opportunity for debates to develop outside England about distinct Scottish or Welsh values and rights,³³ just as Northern Ireland is already on the path to its own Bill of Rights.³⁴

3.2 HM Treasury

Comprehensive Spending Review

On 9 October the Treasury published the *Pre-Budget Report and Comprehensive Spending Review*, setting out departmental budgets for the 2008-11 period.³⁵ Even before the details were released, Alex Salmond had attacked the new spending limits for Scotland as 'lousy', claiming that an 'increase of around 1.6 per cent a year would be a massive reduction compared with recent years'.³⁶ As it turned out the Scottish Parliament budget will rise by 1.8 per cent in real terms over the next three years. Thus the Treasury announced that 'spending will be higher than in 2007-08 by £1.2bn in 2008-09, £2.3bn in 2009-10 and £3.7bn in 2010-2011, a total increase of £7.2bn'.³⁷ There were also reports that the SNP administration had succeeded in negotiating the release of £1bn of Scottish funds which had been 'banked' with the Treasury as a result of underspending by the previous Labour-LibDem administration.³⁸

As for Wales, the Treasury announced that the funding allocation for its devolved institutions will rise at an annual rate of 2.4 per cent in real terms over the next three years: a total increase of £4.3bn.³⁹ And in Northern Ireland, Treasury figures indicate

³³ This point was made at a Constitution Unit seminar on 30 November 2007 in London. See: www.ucl.ac.uk/constitution-unit/news/report8.htm.

³⁴ See the Bill of Rights in Northern Ireland website at: www.borini.info.

³⁵ HM Treasury, 2007 Pre-Budget Report and Comprehensive Spending Review, 9 October 2007, at: www.hm-treasury.gov.uk/pbr_csr/report/pbr_csr07_repindex.cfm

³⁶ Eddie Barnes, SNP attacks 'lousy' grant to Scotland, *Scotland on Sunday*, 7 October 2007 at: <http://scotlandonsunday.scotsman.com/politics.cfm?id=1600982007>

³⁷ HM Treasury regional press notice for Scotland, '2007 Pre-Budget Report and Comprehensive Spending Review', 9 October 2007 at: www.hm-treasury.gov.uk/media/0/2/pbr_csr07_regionalpnscotland.pdf

³⁸ Eddie Barnes, SNP attacks 'lousy' grant to Scotland, *Scotland on Sunday*, 7 October 2007 at: <http://scotlandonsunday.scotsman.com/politics.cfm?id=1600982007>

³⁹ HM Treasury regional press notice for Wales, '2007 Pre-Budget Report and Comprehensive Spending Review', 9 October 2007 at: www.hm-treasury.gov.uk/media/3/4/pbr_csr07_regionalpnwales.pdf

annual spending growth of 1.7 per cent in real terms up until 2011, representing a total increase of £2.3bn.⁴⁰

Barnett Formula Debate

With developments in Edinburgh and Cardiff (discussed in section 1) opening up the Pandora's Box of territorial finance, a debate was held in Westminster Hall on 23 November 2007 on the Barnett formula, the basis on which the Treasury calculates the budgets of the devolved bodies in Scotland, Wales and Northern Ireland. In this debate, English concerns at the uneven distribution of public spending were laid bare, including on the government backbenches. Thus Graham Stringer, Labour MP for Manchester Blackley and the sponsor of the debate, stressed how the English regions suffer a 'double whammy' from the formula as 'first they do not get the same level of funding and, secondly, they have less immediate control over many of the services that the Welsh assembly and Scottish parliament control away from Westminster'.⁴¹ Stringer called for 'a fairer distribution of public money' from the centre.⁴² An example cited by Stringer of the unfairness of the system was that although transport is underfunded in the North of England, spending on the Cross Rail project in London will generate extra funding for the devolved governments (under the Barnett formula) rather than supporting tram projects in Leeds or Liverpool.⁴³

Another Labour MP, George Howarth, went one further than Stringer, describing a 'triple whammy' that also includes the fact that 'there are huge disparities between English regions'.⁴⁴ A third Labour MP representing a northern constituency, Hugh Bayley, underlined that the formula was 'a short term fix' from the mid 1970's which 'may have made sense since then but is no longer appropriate',⁴⁵ and one that had 'been disowned by Joel Barnett himself'.⁴⁶ Bayley then illustrated the unfairness of the formula by citing how his region suffers to the extent that 'people living in Yorkshire receive £1,400 less per year than people living in Scotland'.⁴⁷ Derek Wyatt,

⁴⁰ HM Treasury regional press notice for Northern Ireland, '2007 Pre-Budget Report and Comprehensive Spending Review', 9 October 2007 at: www.hm-treasury.gov.uk/media/2/D/pbr_csr07_regionalpnnorthernireland.pdf

⁴¹ HC Deb, 21 November 2007, Column 146 WH.

⁴² HC Deb, 21 November 2007, Column 145 WH.

⁴³ HC Deb, 21 November 2007, Column 147 WH.

⁴⁴ HC Deb, 21 November 2007, Column 147 WH.

⁴⁵ HC Deb, 21 November 2007, Column 155 WH.

⁴⁶ HC Deb, 21 November 2007, Column 155 WH.

⁴⁷ HC Deb, 21 November 2007, Column 155 WH.

meanwhile, reiterated his call (first made in 2001) for a cross party group of MPs and Lords to review the formula.⁴⁸

The Government's response came from the Treasury Minister, Angela Eagle MP, who admitted that 'no formula is perfect or above criticism'⁴⁹ but argued that 'the longevity of the Barnett formula is a tribute to its effectiveness', and that among its 'substantial advantages' were that it avoids the need for 'detailed, line by line negotiations between treasury ministers and their counterparts in Scotland, Wales, Northern Ireland during public spending reviews'. Eagle further asserted that

The Barnett formula has produced distributions of public funds over the period since it was introduced that have been perceived as generally fair and broadly acceptable.⁵⁰

In Prime Minister's Questions on the same day, Gordon Brown failed to shed any additional light on the government's position on devolution finance. Asked by Ronnie Campbell (Labour, Blyth Valley) why the Barnett formula could not be applied to the English regions, Brown responded:

The Barnett Formula is for the whole of the United Kingdom. It is not for one part of the UK. It covers all areas of the United Kingdom, and the formula is based on the needs of each different part.⁵¹

The Conservative line on Barnett reform also hardly shines with clarity. The Shadow Chief Secretary to the Treasury Philip Hammond explained that

We are not considering changes to the Barnett formula, but we recognise a growing body of opinion that questions the settlement...It is legitimate to ask whether the formula, which has served the UK well, is best suited to dealing with the distribution of public spending in the future.⁵²

In his Edinburgh speech, David Cameron also touched upon the issue, stating that the party would 'seek answers to any unfairness in the Union' but avoid leaping on the 'Barnett formula bandwagon' because to do so would be to 'exploit these matters and foster a sense of English nationalism'.⁵³

⁴⁸ HC Deb, 21 November 2007, Column 152 WH.

⁴⁹ HC Deb, 21 November 2007, Column 166-67 WH.

⁵⁰ HC Deb, 21 November 2007, Column 166-67 WH.

⁵¹ HC Deb, 21 November 2007, Column 1186.

⁵² HC Deb, 21 November 2007, Column 165WH.

⁵³ David Cameron, 'Speech made outside Holyrood parliament', op cit.

On behalf of the Liberal Democrats Lembit Opik advocated a fairer means of distributing funds to the devolved bodies by replacing the Barnett formula with a needs-based approach,⁵⁴ a position also supported by Plaid Cymru. The SNP, of course, favours full independence and holds to the position that Scotland does not receive a disproportionate share of public spending under the current arrangements.

Varney Review

The Treasury-commissioned Varney review of tax in Northern Ireland was published during this monitoring period. Sir David Varney had been asked by the government to investigate the case for reducing corporation tax in Northern Ireland to the lower level imposed in the Republic of Ireland. Varney concluded that 'on the basis of costs and benefits for Northern Ireland alone, there is no clear and unambiguous case to cut the corporation tax rate' and that for the UK as a whole, a differential corporation tax rate 'would run the risk of encouraging profit shifting from the rest of the UK to Northern Ireland' to the detriment of the public finances.⁵⁵

3.3 Scotland Office

The position of the Scottish Secretary for State, Des Browne, has come under fire following Gordon Brown's decision to appoint his near namesake Secretary of State for Defence as well as for Scotland. Thus Des Browne sits in cabinet with two titles and has attracted heavy criticism from Conservative leader David Cameron, who asked the Prime Minister 'why does he not start today by appointing a full-time Secretary of State for Defence?'.⁵⁶ Mr Cameron also backed a call by the five former chiefs of defence staff who want Browne to drop his dual role. Similarly, Alex Salmond has weighed in as he called for the post of Secretary of State to be scrapped as he said that 'having a part time Secretary of State combined with a UK department is clearly anomalous, and now is a good time to consider and bring forward improvements'.⁵⁷

The Scotland Office was forced to defend the Treasury's Pre-Budget Report and Comprehensive Spending Review against SNP claims of 'statistical jiggery-pokery'.⁵⁸

⁵⁴ HC Deb, 21 November, Column 149 WH.

⁵⁵ Sir David Varney, *Review of Tax Policy in Northern Ireland*, (London: The Stationery Office, December 2007), at: www.hm-treasury.gov.uk/media/1/3/varney171207.pdf, p. 3.

⁵⁶ HC Deb, 5 December 2007, Column 818.

⁵⁷ Jenny Percival, 'Growing pressure on Browne's role', *The Scotsman*, 25 November 2007, at: <http://news.scotsman.com/index.cfm?id+1849722007>

⁵⁸ Barnes, Eddie, 'SNP attacks 'lousy' grant to Scotland', *Scotland on Sunday*, 7 October 2007 at: <http://scotlandonsunday.scotsman.com/politics.cfm?id=1600982007>

In reply Des Browne issued a press release arguing that 'this is an unequivocally good settlement for Scotland. The Scottish Executive will be getting more money year-on-year with a total of £7.2bn extra available to them over the three years of this spending review period. By the end of the period, the money available to the Scottish Executive will reach £29bn - more than double the 1999 figure of £14bn'.⁵⁹ Junior minister David Cairns was more explicit as he publicly denied that the spending increases were fudged or that Scotland had got a raw deal from the Chancellor and instead suggested that Alex Salmond is 'desperate' because 'he's known since March his sums don't add up. But now he is flailing about trying to blame anyone but himself. He's got a budget of £30bn – doubled in eight years'.⁶⁰

The department was also dismissive of the SNP's aspiration to cut corporation tax below UK levels, citing Sir David Varney's report on tax policy in Northern Ireland (see section 3.2). A Scotland Office press release argued that:

The SNP is wedded to a policy that not only is ineffectual, but is also one that Scotland can ill afford. The Scottish Executive's own figures show that Scotland has a structural fiscal deficit of £11.2bn. Cutting Corporation Tax would add to this deficit by nearly £800 million next year.⁶¹

3.4 Wales Office

The department marked ten years since the Welsh people voted for devolution on the 18 September by hailing it as a 'historic' night and a decision that has been totally vindicated since.⁶² A few days after this landmark the Office concluded its 'drive to enable people to play a direct role in the policy-development processes' by closing its consultation on the government's draft legislative programme for Wales.⁶³ In the event Queen's speech, later in the autumn, included 11 bills containing Welsh provisions (see section 4.2), leading Secretary of State Peter Hain to herald a 'coming of age' for Welsh that would enable 'the Assembly to pass Measures and legislate in a record number of areas'.⁶⁴

⁵⁹ Scotland Office, Press release, 'Response to announcement of CSR & Pre-Budget Report', 9 October 2007, at: www.scotlandoffice.gov.uk/our-communications/release.php?id=3625

⁶⁰ Eddie Barnes, 'SNP attacks 'lousy' grant to Scotland', op cit.

⁶¹ Scotland Office, Press release, 'Reaction to Varney Report on Corporation Tax', 17 December 2007, at: www.scotlandoffice.gov.uk/our-communications/release.php?id=3648

⁶² Peter Hain, Wales Office Press release, 'Success of Welsh Assembly Vindicated 'yes' vote, says Peter Hain', 18 September 2007, at: www.walesoffice.gov.uk/2007/pn_20070918.html

⁶³ See Wales Office, 2007, at: www.walesoffice.gov.uk/Legislative.html

⁶⁴ Welsh Office, 'Peter Hain hails coming of age for devolution', 6 November 2007, at: www.walesoffice.gov.uk/2007/pn_20071106.html

Junior Minister Huw Irranca-Davies welcomed the first ever request by the Welsh Assembly for a Legislative Competence Order (on additional learning needs):

Today is a historic day for Welsh devolution. The Order in Council process was established to give the National Assembly for Wales a simpler and quicker process to achieve its legislative priorities and today we are starting to see that happen. By presenting this Order in Council for pre-legislative scrutiny we are starting to see how we can create more legislation that is truly 'made-in-Wales'.⁶⁵

3.5 Northern Ireland Office

As reported in previous monitoring reports, the Northern Ireland (St Andrew's Agreement) Act 2006 paved the way for the devolution of policing and criminal justice functions to the Northern Ireland Assembly.⁶⁶ Theoretically this could proceed as early as May 2008, but the lack of consensus on the issue among the political parties in Northern Ireland makes this highly unlikely.⁶⁷

The continuing divisions on this sensitive issue were also made evident at Westminster as Democratic Unionist MP David Simpson asked the Prime Minister:

Does the Prime Minister agree that following recent attempts on the lives of police officers by paramilitary organisations in the Province, there would be no public confidence in any early move to devolve policing and justice powers? Will he assure the House that there will be no attempt, either through the House or by back-door means, to push through such legislation on the Province?⁶⁸

Brown's reply was that 'this is a matter for continuing discussion between the Government and the Northern Ireland Administration, and I think that that is the proper way of moving this forward'.⁶⁹

In the mean time, the Northern Ireland Office retains policy responsibility for policing and justice in the six counties, though the Northern Assembly will be involved in scrutinising legislation in this area. The Northern Ireland Office exercised this responsibility by publishing a Draft Criminal Justice Order (Northern Ireland) and submitting it for consultation from 8 November 2007 to 31 January 2008. The

⁶⁵ Welsh Office, 'Devolution in Wales reaches new milestone with first ever order in Council', November 2007, at: www.walesoffice.gov.uk/2007/pn_20071107.html

⁶⁶ See Akash Paun (ed.) and Ernest Lau, *Devolution and the Centre Monitoring Report*, January 2007, at: www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Centre_Jan07.pdf, p 24.

⁶⁷ See Rick Wilford & Robin Wilson (eds.), *Northern Ireland Devolution Monitoring Report*, January 2008, p 69, at: www.ucl.ac.uk/constitution-unit/files/research/devolution/dmr/NI_Jan08.pdf

⁶⁸ HC Deb, 5 December 2007, Column 825.

⁶⁹ *Ibid.*

Northern Ireland Office believes that the draft order is 'the most comprehensive piece of legislation to be introduced into Northern Ireland in a generation'. It aims to 'strengthen the law in relation to knife crime, road traffic powers and confront anti-social behaviour with new measures to stop drinking in public'.⁷⁰ This piece of legislation is to be scrutinised by an ad hoc Assembly committee in Belfast.⁷¹

3.6 Department for Communities and Local Government

Plans to create new unitary authorities in place of existing two-tier council structures in parts of England were announced by the department. Local government minister John Healey announced the decision to create five new authorities in Cornwall, Durham, Northumberland, Shropshire and Wiltshire. According to the department's timetable the new bodies will be 'all up and running effectively on 1 April 2009'. The Government also remains 'minded' to implement Bedford Borough Council's proposal, and final decisions will be made once unitary proposals for the remainder of Bedfordshire have been received.⁷²

⁷⁰ Northern Ireland Media Office, 'Radical changes to Northern Ireland's Criminal Justice laws', 8 November 2007, at: www.nio.gov.uk/radical-changes-to-northern-irelands-criminal-justice-laws/media-detail.htm?newsID=14799

⁷¹ The Northern Ireland Assembly Business Committee, 13 November 2007, at: www.niassembly.gov.uk/businesscom/2007mandate/minutes/071113.htm

⁷² Department for Communities and Local government, press release, 'Green light for five flagship Unitary Councils', 5 December 2007, at: www.communities.gov.uk/news/corporate/575159

4. Territorial Legislation and Motions

4.1 Scotland

Following the announcement of the government's legislative programme in the Queen's Speech on 6 November, ministerial statements were published setting out the applicability of the 24 planned bills to the three devolved territories. In the case of Scotland, the government stated that 13 bills relate to reserved policy domains, 3 to England and Wales only, and 4 to England and Wales, but with some reserved provisions that extend to Scotland.⁷³ That left four bills that relate to *devolved* policy areas in Scotland and would therefore require the consent of the Scottish Parliament under the terms of the legislative consent (Sewel) convention. All four – the Climate Change Bill, the Dormant Bank and Building Society Accounts Bill, the Education and Skills Bill, and the Health and Social Care bill – were introduced to parliament before Christmas 2007. In line with the commitment to a more transparent operation of the convention,⁷⁴ the explanatory notes to each bill confirm that 'At Introduction this Bill contains provisions that trigger the Sewel Convention' before setting out precisely to which provisions this relates.

Under the previous Labour-Liberal Democrat administration in Scotland, the SNP frequently opposed legislative consent motions. In power, however, the party has thus far taken a more pragmatic approach. In December the first such motion was passed, relating to the Climate Change Bill. Further motions are expected in the New Year with no signs, as yet, that the SNP intends to oppose any of the UK government's planned legislation. Of course, as a minority administration, the Scottish Government could not in any case prevent the opposition parties from forcing through a legislative consent motion which may help to explain the SNP's approach.

4.2 Wales

In the ministerial statement on the 'Government's Legislative Programme (Application to Wales)', it was revealed that three of the planned 24 bills would contain 'framework powers' extending the legislative competence of the National Assembly for Wales.⁷⁵

⁷³ Des Browne, HC Deb, 7 November 2007, Columns. 11WS-13WS.

⁷⁴ This commitment was made in Scottish Affairs Committee, *The Sewel Convention: the Westminster perspective: Government Response to the Committee's Fourth Report of Session 2005-06*, Second Special Report of 2005-06 Session, HC 1634, paras. 4-6.

⁷⁵ Peter Hain, HC Deb, 7 November 2007, Cols. 13WS-14WS.

On introduction, only two of these – the Education and Skills Bill, and the Local Transport Bill (but not the Planning Bill) – contained such provisions, each adding one new ‘matter’ to the list of areas of devolved legislative competence set out in Schedule 5 of the Government of Wales Act 2006. Consequently, if the relevant provisions reach the statute book unamended, the Assembly will gain the power to legislate in the following areas:

“Matter 5.10A:

The inspection of education or training provided (whether or not at a school) for children who are not above compulsory school age.”

and

“Matter 10.1:

Provision for and in connection with—

(a) the making, operation and enforcement of schemes for imposing charges in respect of the use or keeping of motor vehicles on Welsh trunk roads;

(b) the application of the proceeds of charges imposed under such schemes towards purposes relating to transport.”

These bills also confer a number of new functions on the Welsh Ministers, as will at least eight other bills announced in the Queen’s Speech.

In addition, as discussed further in section 5.2 and 5.7 below (and also in the ‘Legislation’ chapter of the *Wales Devolution Monitoring Report* for January 2008), the first two draft Legislative Competence Orders (LCOs) for Wales have been introduced at Westminster, relating to the areas of ‘additional learning needs’ and ‘domiciliary care’ respectively. Unlike ‘framework powers’ in bills, these instruments begin their lives as proposals of the Welsh Assembly Government or other Assembly Members. In pre-legislative form they are then scrutinised by the Assembly and by committees of both Houses of Parliament. The Secretary of State for Wales and all three legislative chambers must then approve a final version before the Assembly can make use of its new powers to set policy for Wales.

Given its complexity, this process is hardly ideal from the perspective of transparency and public understanding.⁷⁶ It will be superseded by the devolution of ‘full primary

⁷⁶ As argued by House of Lords Select Committee on the Constitution, *Government of Wales Bill*, HL 142, para. 31.

legislative powers' if the Welsh Assembly Government fulfils its intention to hold and win a referendum on the issue by 2011.⁷⁷

4.3 Northern Ireland

The government stated that its legislative programme for 2007-08 would include eight bills for which the consent of the Northern Ireland Assembly would be required.⁷⁸

These are:

- Child Maintenance and Other Payments (Department of Work and Pensions)
- Climate Change (Department of Environment, Food and Rural Affairs)
- Dormant Bank and Building Society Accounts (HM Treasury)
- Education and Skills (Department for Children, Schools and Families)
- Energy (Department for Business, Enterprise and Regulatory Reform)
- Health and Social Care (Department of Health)
- Pensions (Department of Work and Pensions)
- Planning Reform (Department for Communities and Local Government)

4.4 London

The Greater London Authority Act 2007 (GLAA) passed into law in October after the House of Lords backed down on two amendments.⁷⁹ The first imposed a two-term limit upon the Mayor of London's tenure (effectively excluding current incumbent Ken Livingstone from standing in 2008). The second granted the London Assembly power to amend the Mayor's budget on the basis of a simple, rather than a two-thirds, majority. These amendments were rejected in the House of Commons, and the upper chamber eventually accepted the will of the lower.

The GLAA will give the Mayor a greater role in relation to health, planning, housing, the environment and culture. The Act also increased the powers of the Assembly allowing it to set its own budget on a two-thirds majority and to hold confirmation hearings for core appointments made by the Mayor.

⁷⁷ Labour and Plaid Cymru, *One Wales*, op cit., p.6.

⁷⁸ Shaun Woodward, HC Deb, 7 November 2007, Cols. 10WS-11WS.

⁷⁹ Greater London Authority Act 2007, Chapter 24, at: www.opsi.gov.uk/acts/acts2007/ukpga_20070024_en_1

4.5 Early Day Motions

- Michael Moore tabled EDM 59, which criticised Alex Salmond's decision to appeal to the Burmese government as part of the First Minister's efforts to gain observer status for Scotland at the United Nations. Mr Moore believes that some sort of prior agreement between the First Minister and the Foreign and Commonwealth Office could have avoided this situation. It was signed by 42 MPs.
- Phillip Davies tabled EDM 266, which called on the Prime Minister to disassociate himself from being a signatory to the ancient 'Scottish Claim of Right' in the interests of fairness to England, Wales and Northern Ireland, since the 1988 Claim of Right binds the Prime Minister to putting the people of Scotland first. It was signed by 11 MPs.
- Angus McNeil tabled EDM 539, which calls on the Home Office to follow the lead of the SNP administration in Scotland in awarding police officers a pay deal in line with the recommendation of the Police Arbitration Panel. It was signed by 12 MPs.
- Albert Owen tabled EDM 552, which called on the government at Westminster and the National Assembly to make St David's Day a national bank holiday in Wales. It was signed by 17 MPs.
- Albert Owen also tabled EDM 553, which call on the government to consult on changing the Union flag in order to incorporate Wales. It was signed by 9 MPs.
- Pete Wishart tabled EDM 611, which welcomes a TNS/System poll which showed that support for Scottish independence had risen from 35 per cent to 40 per cent. It was signed by 3 MPs.
- Greg Mulholland tabled EDM 509, which calls on the government to drop the final verse in the National Anthem because, as the former Attorney General, Lord Goldsmith pointed out, it makes reference to 'crushing rebellious Scots' and is therefore inappropriate for an inclusive Union. It was signed by 2 MPs.

5. Territorial Committees at Westminster

5.1 Scottish Affairs Select Committee⁸⁰

Scottish Elections Review

The Committee held a public evidence hearing on the 'The experience of the Scottish Elections' on 3 November following the publication of the Independent Review of the 3 May 2007 elections in Scotland.⁸¹ The review, commissioned by the Electoral Commission (and led by the former assistant chief electoral officer of Canada Ron Gould) was set up in the aftermath of the May 2007 Scottish Parliament and local council elections, whose results were marred by over 140,000 spoiled ballots and problems with the counting process. The Electoral Commission and the Minister of State for the Scotland Office, David Cairns MP, both gave evidence to the committee, chaired by Mohammad Sarwar MP.

Under questioning, the witnesses admitted to mistakes in the process and accepted Ron Gould's charge that 'the voter was treated as an afterthought by virtually all the other stakeholders' in planning the elections.⁸² David Cairns acknowledged that this was 'a fair assessment' and confirmed that the government was prepared to;

Accept five core recommendations right away: first, that we revert to manual counting for the Scottish Parliament; second, that we revert to separate ballot papers; third, that we extend the period of time between close of nominations and polling day; fourth, that we consolidate the legislation; and, fifth, we do not introduce any new electoral provisions within six months of the Scottish Parliament elections.⁸³

He also mentioned that the government would consider the 'recommendation of a chief returning officer and professional status for returning officers'.⁸⁴ The committee plans to continue this inquiry in 2008 and has announced that it will hear from Ron Gould at its next public evidence session on 15 January.

⁸⁰ Full details of all activities of the Scottish Affairs Committee can be found at: www.parliament.uk/parliamentary_committees/scottish_affairs_committee.cfm.

⁸¹ *Independent review of the Scottish Parliamentary and local government elections 3 May 2007* (Electoral Commission, 23 October 2007), at:

www.electoralcommission.org.uk/elections/scotelectionsreview.cfm

⁸² *Independent review of the Scottish Parliamentary and local government elections*, op cit, p. 120.

⁸³ Scottish Affairs Committee, *Experience of the Scottish Elections*, 13 November 2007, Q113.

⁸⁴ *Ibid.*

Poverty in Scotland

On 17 December, the Committee published the findings of its inquiry into poverty in Scotland. Among its conclusions were a call for better intergovernmental cooperation to tackle poverty:

Co-ordination with the Scottish Executive is needed to ensure that national policies are delivered effectively and 'join up' with devolved programmes. The Scotland Office has a key role in this process. Conversely, the Scottish Executive needs to ensure that its own programmes dovetail with national provision.⁸⁵

Noting the important role that local government can play in poverty reduction, the committee also found that:

We are particularly concerned by perceptions that the relationship between Scottish local government, the UK Government and Members of the UK Parliament has weakened since devolution. We urge all sides to work together to renew links.⁸⁶

In an accompanying press release Committee chair Mohammad Sarwar reiterated the recommendations, urging the government to 'work with the Scottish Executive and with local government in Scotland to formulate a clear and effective strategy to tackle this unacceptable situation'.⁸⁷

- At the start of the new parliamentary session, on 8 November, Jim McGovern (Labour) was discharged from the Scottish Affairs Committee to be replaced by David Hamilton (Labour).

5.2 Welsh Affairs Select Committee

On 6 November the Welsh Affairs Select Committee (WASC) announced an inquiry into the 'Provision of Cross Border Public Services for Wales', and will set out a programme of hearings early in 2008. The inquiry will 'examine the coordination, effectiveness and funding arrangements of cross-border provision of public services', and may involve joint working with committees of the Welsh Assembly.⁸⁸ Specific policy areas that this inquiry will touch upon include further and higher education, health, transport, civil service employment and broadcasting. The cross-departmental

⁸⁵ Scottish Affairs Committee, *Poverty in Scotland*, Second report, 2007-08 Session, 17 December 2007, at: www.publications.parliament.uk/pa/cm200708/cmselect/cmsscota/128/12810.htm, para. 27.

⁸⁶ Ibid, para. 28.

⁸⁷ Scottish Affairs Committee Press Notice, 17 December 2007, at: www.parliament.uk/parliamentary_committees/scottish_affairs_committee/sacpressnotice171207.cfm

⁸⁸ See the Welsh Affairs Committee website, Press notices, 2007, at:

www.parliament.uk/parliamentary_committees/welsh_affairs_committee/wacpn107_08.cfm

scope of this inquiry is an interesting sign of how the committee is seeking to reshape its role as the Wales Office – scrutiny of which is formally the main responsibility of WASC – shrinks as an active policy-making department.

December's publication of *Energy in Wales: Follow-up enquiry* marked the culmination of another WASC investigation that strayed beyond the narrow confines of the sphere of responsibility of the Wales Office. While noting the importance of tackling climate change and fostering renewable energy sources, a central conclusion of the report was that the British and Welsh governments should 'develop a more balanced energy mix which fully recognises the continuing importance of Welsh coal to the British electricity supply industry'.⁸⁹ The report did not touch upon the sensitive issue of nuclear power.

In a busy period for the committee, WASC also carried out, for the first time, its new function of conducting pre-legislative scrutiny of draft legislative competence orders (LCOs) which confer law-making power on the National Assembly for Wales. The committee published its report on the first proposed LCO, on additional learning needs, on 21 December. Although the committee agreed that the LCO should be proceeded with, a number of criticisms were levelled at the functioning of the new legislative process. One cause of dissatisfaction was that 'due to timetabling considerations it was not practicable to explore the possibility of working jointly with the Assembly Committee on the proposed Order'. It was further noted that two other draft LCOs were referred to Assembly committees before being laid before Parliament, rendering cooperation between members of the two legislatures difficult. Joint scrutiny remains the intention for future such inquiries.⁹⁰ The committee was also critical of the information given it about the intended use to which the powers transferred to Cardiff will be put. The explanatory memorandum provided by the Welsh Assembly Government was deemed not to demonstrate the 'identifiable need' for the LCO either 'effectively or convincingly'.⁹¹

- Two changes to the membership of the committee occurred in this monitoring period. On Thursday 8 November 2007 Wayne David MP was replaced by the former First Minister Alun Michael and on 17 December 2007 Welsh Tory

⁸⁹ Welsh Affairs Committee, *Energy in Wales: follow-up Inquiry*, First Report of Session 2007-08, p.20.

⁹⁰ See the Welsh Affairs Committee, *Proposed Legislative Competence Orders in Council: Additional Learning Needs*, Second Report of Session 2007-08, paras. 13-15.

⁹¹ *Ibid*, paras. 28-29.

Stephen Crabb was replaced by Mark Pritchard MP, who represents a seat in England (The Wrekin), albeit close to the Welsh border.

5.3 Northern Ireland Affairs Select Committee

On 22 November 2007 the Committee announced the launch of a new inquiry into 'Policing and Criminal Justice in Northern Ireland'. The inquiry will focus on the administration of policing and the criminal justice system in Northern Ireland and will initially hear evidence on two specific areas of current concern;

The financial and operational consequences for the Police Service Northern Ireland of servicing the various 'historic inquiries' into past events in Northern Ireland; and

The effect on the ability of the Police Service Northern Ireland to bring accused persons to trial of provisions in the Public Inquiries Act 2005 and in other legislation requiring the police to divulge information which might identify a covert source.⁹²

Depending on the evidence gathered the committee may then decide to extend the inquiry into a second phase.

- On Thursday 8 November 2007 Labour MP Stephen Pound was discharged from the Northern Ireland Affairs Committee, and replaced by his Belfast-born colleague Kate Hoey MP.

5.4 Regional Select Committees

No visible progress was made towards creating regional committees in the House of Commons since the appointment in June 2007 of nine new English regional ministers, whose functions they would scrutinise.⁹³ At the time, the government asserted that establishing select committees for the nine standard English regions 'would offer an important step forward in democratic accountability and scrutiny of the delivery of public services in the English regions'.⁹⁴ However, major unresolved issues about the proposed new bodies include their size, membership, party balance, work programme, relationship with local councils as well as questions about when and where the committees will meet.⁹⁵

⁹² See the Northern Ireland Affairs Committee press releases, 2007, at:

www.parliament.uk/parliamentary_committees/northern_ireland_affairs/niac_pn02_07_08_.cfm

⁹³ See the *Devolution and the Centre Monitoring Report*, September 2007, at:

www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Centre_Sept07.pdf

⁹⁴ Ministry of Justice, *The Governance of Britain*, Cm 7170, July 2007, para. 120.

⁹⁵ Lucinda Maer & K. Parry, 'The proposed regional select committees and the future of regional assemblies', Parliament and Constitution Centre, Standard Note: SN/PC/4411, 16 October 2007, at: www.parliament.uk/commons/lib/research/notes/snpc-04411.pdf

The government's answer to a written parliamentary question tabled by Conservative MP Phillip Hollobone in October 2007 failed to elucidate the issue:

Mr. Hollobone: To ask the Leader of the House what plans she has for the membership of the proposed regional select committees to reflect the composition of the House in respect of each such region.

Helen Goodman: The Government are considering how best to take forward the ideas in the Governance of Britain Green Paper for committees to reflect the English regions. Any proposals will be announced in due course.⁹⁶

The House of Commons Modernisation Committee is to address many of these issues following their announcement on 24 October to hold an inquiry into regional accountability.⁹⁷ The government expects to submit a memorandum to this inquiry.⁹⁸

5.5 Justice Committee

In accordance with the spring's machinery of government changes, the Constitutional Affairs Committee has been renamed, with a remit to 'examine the administration, expenditure and policy of the Ministry of Justice'.⁹⁹ The committee has since embarked on its inquiry on 'Devolution: A decade on', which, according to its chair, Alan Beith, will look at how devolution 'is functioning for the United Kingdom as a whole and of course additionally the questions that arise from the position of England'.¹⁰⁰

At the first evidence session, held on 13 November, MPs questioned three academic experts on devolution: Professors Robert Hazell (UCL), Charlie Jeffery (Edinburgh) and John Curtice (Strathclyde). One question posed was how 'the legislative process in Westminster has changed to accommodate devolution', to which Professor Hazell answered that 'the short answer is not enough' although it has 'got progressively a little bit better',¹⁰¹ a verdict echoed in past issues of the *Devolution and the Centre Monitoring Report*. Asked about arrangements in Whitehall, Professor Hazell stated

⁹⁶ Office of the Leader of House of Commons, 8 October 2007, at:

www.commonleader.gov.uk/output/page2103.asp

⁹⁷ House of Commons Select Committee on Modernisation of the House of Commons, Press release, 24 October 2007, at:

www.parliament.uk/parliamentary_committees/select_committee_on_modernisation_of_the_house_of_commons/modcompn241007.cfm

⁹⁸ Harriet Harman, HC Deb, 20 November 2007, Column 841W.

⁹⁹ House of Commons Justice Committee, 6 November 2007, at: www.parliament.uk/justicecom

¹⁰⁰ House of Commons Justice Committee, 13 November 2007, Oral evidence on Devolution: A Decade On, www.publications.parliament.uk/pa/cm200708/cmselect/cmjust/uc75-i/uc7501.htm

that in the 'medium to long term I would like there no longer to be three Secretaries of States. They are part of the pre-devolution structure' and do not need a 'place in Cabinet because the devolved institutions will represent the Secretaries of State's voice and interests enough'.¹⁰²

At the same hearing, Professor John Curtice informed the committee that 'it appears to be the case that England is beginning to feel more English than British' but also noted that 'we should not necessarily presume from that, as a result of that, there is developing a wellspring of political support for some form of devolution in England'.¹⁰³ Professor Curtice discussed the 'grumble in England' about the Barnett formula, which according to his public attitudes research is 'not as obviously a grumble or at least it is not as obviously salient a grumble as perhaps you might imagine'.¹⁰⁴ On English regional government the three academics were sceptical about reviving elected regional assemblies. However, Professor Hazell warned against 'writing off the idea...for ever' especially since the original Welsh devolution referendum (in 1979) produced a similar result (four-to-one against) as that in the North East in 2004 before '20 years later the people of Wales changed their minds'.¹⁰⁵ There was also scepticism about the feasibility of the 'English votes for English Laws' and English Parliament solutions to the West Lothian Question. Two partial solutions to the question advocated by Professor Hazell were electoral reform – to reduce the disproportionate dominance of Labour in Scotland and Wales – and a reduction in the number of Scottish and Welsh MPs.

5.6 Territorial Grand Committees

On 23 October the Northern Ireland Grand Committee met to debate Youth Offending in Northern Ireland. The Welsh Grand, Scottish Grand and Regional Affairs Committees did not meet during the timeframe of this report.

5.7 Lords Constitution Committee

The Lords Constitution Committee (LCC) has long taken an interest in the impact that devolution has had on the legislative process at Westminster.¹⁰⁶ As part of the new

¹⁰¹ Ibid., Q2.

¹⁰² Ibid., Q33

¹⁰³ Ibid., Q1

¹⁰⁴ Ibid., Q1

¹⁰⁵ Ibid., Q18

¹⁰⁶ See House of Lords Constitution Committee, *Devolution: Its Effect on the Practice of Legislation at Westminster*, 15th Report of Session 2003–04, HL 192; and House of Lords Constitution Committee, *Devolution: Interinstitutional relations in the United Kingdom*, 2nd Report of Session 2002–03, HL 28, Chapter 4.

Welsh Legislative Competence Orders (LCOs) process, the LCC has now taken on a formal role in pre-legislative scrutiny of draft LCOs, for a 12-month trial period. In a December report, the committee set out its chosen approach to this task:

The Constitution Committee will apply the usual yardstick of concerning itself with 'matters of principle affecting a principal part of the constitution'. The overarching question will be whether, from a constitutional point of view, the request for legislative competence is within the overall letter and spirit of the devolution settlement.¹⁰⁷

The first LCO considered by the LCC, the proposed National Assembly for Wales (Legislative Competence) Order 2007 (Additional Learning Needs) was not found to raise any matters of constitutional significance.¹⁰⁸ As discussed above (section 5.2), this LCO was also scrutinised by the House of Commons Welsh Affairs Committee.

¹⁰⁷ House of Lords Constitution Committee, *Scrutiny of Welsh Legislative Competence Orders*, 2nd Report of Session 2007–08, HL 17, para. 10.

¹⁰⁸ *Ibid*, para. 14.

6. Inter-Institutional Relations

6.1 Intergovernmental Structures

Despite requests from Scottish First Minister Alex Salmond, the British government has declined to resurrect the Joint Ministerial Committee (JMC) following the formation of new governments across the UK in 2007. The JMC ceased to hold annual plenary meetings in 2002. Salmond's campaign for a more formal approach to intergovernmental relations has received some support from the other devolved capitals. In November the First Minister of Wales, Rhodri Morgan, met with Salmond and argued that 'for Scotland, Wales and Northern Ireland there is a clear need to update the constitutional structures' and that greater cooperation between Scotland and Wales in negotiations with Westminster could be in the interests of both.¹⁰⁹ This followed even stronger statements in favour of joint action between the devolved bodies by Northern Ireland's First Minister Ian Paisley in May 2007.¹¹⁰

As discussed in this month's *Scotland Devolution Monitoring Report*, the Joint Ministerial Committee on Europe did meet in this monitoring period, on 2 October, at which meeting the SNP put the case for the Scottish Government to play a more active role in EU fisheries negotiations.¹¹¹

Aside from this meeting, relations between the Scottish and UK governments, at least at the top level, were apparently minimal, with reports suggesting that Gordon Brown gave Alex Salmond 'the cold shoulder' between their initial conversation in August 2007 and the end of the year.¹¹² In lieu of formal dialogue of the kind that Alex Salmond would prefer, the SNP instead resorted to making its case through the media. And as expected, tensions arose over a number of issues including: the budget allocation for the Scottish Parliament (see section 3.2); the British Government's nuclear weapons plans (which the SNP opposes)¹¹³; and the potential

¹⁰⁹ Louise Gray, 'Welsh agree to join SNP efforts to get best deal for UK regions', *The Scotsman*, 11 November 2007, at: <http://news.scotsman.com/latestnews/Welsh-agree-to-join-SNP.3588265.jp>

¹¹⁰ Devlin, K., 'Salmond and Paisley in bid to squeeze Brown', *The Daily Telegraph*, 19 May 2007, at: www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/05/18/nsalm18.xml.

¹¹¹ Peter Lynch, in Charlie Jeffery (ed.), *Scotland Devolution Monitoring Report*, January 2008, at: www.ucl.ac.uk/constitution-unit/files/research/devolution/dmr/Scotland_Jan08.pdf, p. 70.

¹¹² Tom Gordon, 'Brown gives Salmond the cold shoulder', *Sunday Times*, 23 December 2007.

¹¹³ Louise Gray, 'SNP Gathers forces to fight Trident replacement', *The Scotsman*, 23 October 2007, at: <http://news.scotsman.com/topics.cfm?tid=373>

transfer to Holyrood of responsibility for policy areas such as firearms regulations¹¹⁴ and electoral administration.¹¹⁵

6.2 Interparliamentary Relations

Formal links between Westminster and the devolved legislatures remain limited, although the new process for conferring powers on the Welsh Assembly, in particular, create a new incentive for MPs and AMs to develop closer relations. As noted above (section 5.2), the Welsh Affairs Committee plans to develop its formal links with the Assembly by holding joint meetings with Assembly committees in scrutinising draft LCOs, and also may do so as part of its new inquiry into cross-border provision of public services.

The introduction of the first ‘Sewel bills’ of the SNP era (see section 4.1) raises the possibility of changes in the relationship between the UK and Scottish Parliaments. Although there are no signs of this happening yet, the Scottish Parliament may at some point decline to give its consent to a Westminster bill that strays into devolved areas. In this scenario the UK Parliament would be expected to amend the bill either to take out the relevant provisions altogether or to rephrase them in a manner that is acceptable to the majority view at Holyrood. In such circumstances, a form of inter-legislative ‘dialogue’ may even develop.

¹¹⁴ ‘New firearm restrictions in force’, *BBC News*, 1 October 2007, at: http://news.bbc.co.uk/1/hi/scotland/glasgow_and_west/7021172.stm

¹¹⁵ James Kirkup and Kate Devlin, ‘Douglas Alexander in dock over election fiasco’, *Daily Telegraph*, 24 October 2007, at: www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/10/24/nfiasco124.xml

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Abbreviations and Acronyms

BERR	Department for Business, Enterprise and Regulatory Reform
BIC	British-Irish Council
DCLG	Department for Communities and Local Government
GOWA 2006	Government of Wales Act 2006
JMC	Joint Ministerial Committee
LCM	Legislative Consent Motion
LCO	Legislative Consent Order
MAA	Multi-Area Agreement
RDA	Regional Development Agency
SNP	Scottish National Party
SNR	Sub-national Economic Development and Regeneration Review
WAG	Welsh Assembly Government
WASC	Welsh Affairs Select Committee

Chronology of Events: January 2008 to May 2008

- 15 January Meeting of 'Scottish Six' of Labour, Conservative and Liberal Democrat figures to discuss the remit of a Scottish Constitutional Commission.
- 17 January Welsh Affairs Committee and the Welsh Assembly's Proposed Domiciliary Care LCO Committee hold a joint scrutiny session regarding the 'National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008'.
- 24 January Secretary of State for Wales, Peter Hain resigns his office to be replaced by Paul Murphy.
- 30 January Northern Ireland Affairs Committee publishes report on *The Work of the Committee in 2007*.
- 4 February Scottish Affairs Committee publishes *Child Poverty in Scotland* report.
- 8 February Scottish Affairs Committee publishes *Work of the Committee in 2007* report.
- 16 February Welsh Labour Conference held in Llandudno.
- 18 February Prime Minister backs Scottish Constitutional Commission.
- 21 February it is confirmed that Dame Gillian Morgan will replace Sir Jon Shortridge as Permanent Secretary to the Welsh Assembly Government in May.
- 21 February Welsh Affairs Committee publishes *Work of the Committee in 2007* report.
- 23 February Welsh Liberal Democrat Conference held in Llandudno.
- 29 February Welsh Affairs Select Committee publishes government response to report on *The proposed Legislative Competence Order in Council on additional learning needs*.

- 1 March Scottish Liberal Democrat leader Nicol Stephen uses his speech at their spring conference to announce the recall of the Steel Commission to look into further Scottish devolution.
- 29 February Scottish Affairs Committee publishes government response to report on *The effects of tax increases on the oil industry*.
- 1 March Welsh Conservative Conference held in Llandudno.
- 4 March Welsh Affairs Committee begins inquiry into cross-border provision of services.
- 5 March Gordon Brown confirms that his Chancellor of the Exchequer will produce a 'factual paper' on the Barnett Formula.
- 5 March Welsh Affairs Committee publishes report on *The proposed National Assembly for Wales (Legislative Competence) Order in the Field of social welfare 2008*.
- 5 March Northern Ireland Affairs Committee publishes government response to report on *The Northern Ireland Prison Service*
- 12 March Lord Goldsmith's review into citizenship published.
- 12 March The Chancellor of the Exchequer announces the 2008 Budget.
- 13 March Establishing Committee of the All Wales Convention publishes report on how the proposed All-Wales Convention should operate.
- 25 March *Draft Constitutional Renewal Bill* and accompanying white paper *The Governance of Britain: Constitutional Renewal* published by Ministry of Justice
- 27 March Welsh Affairs Committee publishes government response to *Energy in Wales - follow-up inquiry* report.
- 28 March Scottish Labour Conference held in Aviemore.

- 30 April Scottish Affairs Committee publishes UK and Scottish government responses to *Poverty in Scotland* and *Child Poverty in Scotland* reports.
- 1 May Local elections held across England and Wales.
- 4 May Scottish Labour leader Wendy Alexander makes controversial call for the SNP to 'bring on' an independence referendum, only to be overruled by the Prime Minister.
- 14 May The Government publishes its 2008-9 *Draft Legislative Programme*.

1. Introduction: Monitoring the Union

This latest report published as part of the Constitution Unit's Devolution Monitoring Programme covers developments in territorial politics at 'the centre' and across the UK as a whole from January to mid-May 2008.

The monitoring period includes the first anniversary of the elections and government changes of 2007 – which saw the SNP and Plaid Cymru entering government for the first time, devolution to Northern Ireland being re-established, and Gordon Brown becoming Prime Minister. Collectively, these developments have transformed the political landscape to such an extent that it is plausible to suggest that 2007 marked the beginning of a qualitatively new phase of territorial politics in the UK. In this new political environment almost all the major pillars of the 1998-99 devolution settlement are open for renegotiation, and the agenda is largely being set in 'the periphery' often despite the preferences of the UK Government.

In Scotland, the key event was the formal establishment of the cross-party Commission on Scottish Devolution (the Calman Commission), which is expected to lead to recommendations for additional powers to be devolved. There is clearly greater reluctance to 'reopen the Scotland Act' in such a manner in Whitehall and among many Labour MPs. But with all three unionist parties in Scotland signed up to the reform agenda, while the SNP's parallel 'national conversation' on independence gets under way and First Minister Alex Salmond continues to ride high in the polls, a continuation of the status quo appears less and less likely.

Similarly, while the Wales Office and many Welsh Labour MPs remain sceptical about devolving full legislative powers to the Welsh Assembly (effectively creating a Welsh Parliament), events at the devolved level are generating probably unstoppable momentum towards this outcome. The most recent reflection of this was the setting up of the All-Wales Convention by the Labour-Plaid coalition in Cardiff.

Crucially, the debates in both Scotland and Wales put the spotlight on the mechanisms for funding devolution, with voices defending the Barnett Formula status quo few and far between. English dissatisfaction with the constitutional and financial status quo continues to be expressed too, including by elements of all three UK-wide parties. Finally, the Northern Ireland Assembly is on course to gain control of policing

and justice functions, while many in the Assembly harbour hopes of gaining some fiscal powers as well.

In response to these centrifugal pressures, the UK Government of Gordon Brown has sought to emphasise values and institutions associated with 'Britishness' as opposed to any of its constituent nationalities. Progress on the major elements of this agenda – the planned new 'British Bill of Rights' and 'British Statement of Values', and any government proposals flowing from the recent Citizenship Review – awaits further announcements.

But whatever success these initiatives have in diffuse ways such as boosting British national identity and citizens' sense of affiliation with the UK state, it is hard to imagine them quelling the growing pressures for concrete reforms to the devolution settlement. Debates will continue on further powers for the Scottish, Welsh and Northern Irish bodies, on devolution finance, and on the English Question. And the centre will have to play an active role in all of these, setting out a coherent vision of how the devolved UK should work and acting as a broker between competing interests to ensure that all can live with the outcome. Recent decisions by the UK government, such as those to resurrect the Joint Ministerial Committee framework for managing intergovernmental relations and (eventually) to give support to the Calman Commission, are signs of improvement in this regard. But more in the way of strategic thinking may be needed, especially on the issue of devolution finance, on which the Treasury is due to produce a 'factual paper' later this year.

As devolved governance approaches its tenth anniversary, territorial politics in the UK has rarely felt as dynamic, with reform of so many aspects of the devolution settlement under active consideration. Whether the reform process is marked by consensus or conflict, what actual institutional changes it leads to, and how stable any renegotiated settlement turns out to be will be among the key questions for future monitoring reports to discuss.

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The Constitution Unit
June 2008

¹ This report was co-authored by Akash Paun and Edward Calow at the Constitution Unit between March and June 2008, with assistance from Daniel Broadbent and Stephen Gummer.

2. Political Parties

2.1 Labour

In the 1970s divisions on the issue of devolution wracked the Labour Party, eventually contributing directly to the demise of Jim Callaghan's government. Two decades later, as the party returned to power, devolution was enacted remarkably straightforwardly, thanks to Tony Blair's large parliamentary majority and his dominant personal position within the party. Today, as debates unfold about the next stages of the devolution processes in Scotland and Wales, latent tensions within the party are once again becoming tangible, adding another item to the government's catalogue of problems.

The most high-profile disputes have been between the Labour leaderships at Holyrood and Westminster over how best to respond to the nationalist challenge north of the border. Scottish Labour leader Wendy Alexander's proposal for a cross-party Constitutional Commission to discuss further powers for Holyrood had to overcome serious reservations from Scotland Minister David Cairns² and Gordon Brown himself³ before being launched by Scottish Secretary Des Browne on 25 March largely in the format originally proposed by Alexander. Certainly, the terms of reference for the Commission, to be chaired Professor Sir Kenneth Calman, remain identical in phrasing to Alexander's original motion. Significantly, these include a commitment to reviewing the 'financial accountability of the Scottish Parliament',⁴ opening the way for a consideration of fiscal devolution, about which many Labour MPs are deeply sceptical.⁵

The Commission is predominantly funded by the UK Government (via the Ministry of Justice), but is formally 'independent', not to mention cross-party, so it will be intriguing to observe how Labour at Westminster reacts to proposals for significant changes to the powers of the Scottish Parliament.

² MacDonnell, H., 'Devolution Review "may lead to loss of Holyrood powers"', *The Scotsman* (17 February 2008)

³ 'Brown lays down the law to Wendy: "I'm in control of Scotland's future', *Sunday Herald* (10 February 2008); 'Revealed: the leak that proves Brown opposes a constitutional commission', *Sunday Herald* (1 March 2008); Mitchell, J., 'Only Westminster can take devolution forward' *The Herald* (19 January 2008)

⁴ Commission on Scottish Devolution, 'About the Commission', at: www.commissiononscottishdevolution.org.uk/about/index.php

⁵ Swanson, I., 'Power struggle has barely begun', *The Scotsman* (31 January 2008) at: <http://tinyurl.com/5lxqfp>

On 4 May Alexander further antagonised many of her party colleagues – including the Prime Minister. Talking to BBC Scotland about the SNP's plans for a referendum on independence, she said, reversing years of party policy, 'I don't fear the verdict of the Scottish people. Bring it on'.⁶ At Prime Minister's Question Time three days later Gordon Brown flatly denied Conservative leader David Cameron's contention that 'Wendy Alexander says there should be a referendum now on Scottish independence'.⁷ Following that, Alexander reiterated in Scottish Parliament First Minister's Questions that 'Scotland deserves a choice sooner rather than later',⁸ generating a strong impression of a party in crisis on the issue. The immediate consequence of this debacle was a weakening of Wendy Alexander's position, but the longer term effect may be to pave the way for a deal on a 'multi-option referendum', in which independence and some sort of 'devolution-plus' option emanating from the Calman Commission are put to the Scottish people along with the choice of sticking with the status quo.

Regarding Wales, the Labour Government at Westminster continues to vacillate over Welsh Labour's pledge to One Wales coalition partner Plaid Cymru to hold 'a referendum on full lawmaking powers for the National Assembly before [the next Assembly elections in] 2011'.⁹ The All Wales Convention set up to gauge public opinion ahead of such a referendum will now not report until autumn 2009,¹⁰ while the appointment of Paul Murphy as Secretary of State for Wales has raised concerns of a new 'devo-sceptic' approach to Welsh devolution. Murphy has not gone out of his way to quell this, describing a vote by 2001 as unlikely.¹¹ His predecessor, Peter Hain, added: 'I do not believe the time is right for a further referendum in this Assembly term',¹² despite a BBC St David's Day poll showing a 7 per cent lead in favour of a Welsh Parliament.¹³ As for what would be on offer in a referendum, the Wales Office flatly rejected a Plaid claim from Adam Price MP that it is 'probable that Wales will get tax varying powers'¹⁴ in any new constitutional settlement. Meanwhile,

⁶ Davidson, L., 'Wendy Alexander isolated in breakaway vote crisis', *The Times* (8 May 2008)

⁷ David Cameron, House of Commons Hansard, 7 May 2008, col. 695

⁸ Wendy Alexander, Scottish Parliament Official Record, 8 May 2008, col. 8425

⁹ Labour and Plaid Cymru, *One Wales: A progressive agenda for the government of Wales*, 27 June 2007, at: http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/27_06_07_owales.pdf

¹⁰ Daily Post North Wales Tom Bodden

¹¹ Withers, M., 'Murphy rules out laws poll by 2011', *Wales on Sunday* (24 February 2008)

¹² Shipton, M., 'Referendum rift for Plaid and Labour', *Western Mail* (13 March 2008), at: <http://tinyurl.com/6bamsf>

¹³ 'Voters divided on assembly powers', *BBC News* (28 February 2008), at: <http://tinyurl.com/6fv8yv>

¹⁴ Lister, S., 'Unlikely Wales will raise its own taxes', *Daily Post* (20 February 2008)

Carwyn Jones AM, a likely heir to leader Rhodri Morgan, used Welsh Labour's Spring Conference to condemn 'anti-Welsh' sentiment within the party.¹⁵

As it seeks to reconcile its competing wings on devolution and territorial issues, the UK Labour Party under Gordon Brown continues to press ahead with a 'Britishness' agenda that is bold on rhetoric, strong on symbolism, but light on details. As discussed in section 3.1 below, the Ministry of Justice leads on this, with initiatives including changes to flag-flying regulations, the recent Citizenship Review, and planned consultations on a British Bill of Rights and Statement of Values.

2.2 Conservatives

As noted in the previous monitoring report, despite his party's flirtations with English nationalism, David Cameron has tried hard to emphasise the Conservatives' unionist traditions, warning of an 'ugly strain of separation seeping through the Union flag' and vowing to ensure that 'the Union comes first' in party policy.¹⁶ This suggests the continuation of a cautious approach to the 'English Question', which Ken Clarke MP's Democracy Taskforce has been considering for some time. Mr Clarke appears ready to reject a proposal by Sir Malcolm Rifkind MP for a Grand Committee to deal with English-only affairs, previously described as an 'elegant' solution by David Cameron. Giving evidence to the Justice Committee, Clarke also rejected an English Parliament as 'a threat to the Union'. However, the taskforce remains likely to propose a technical solution to the 'West Lothian Question', with Clarke stating a desire to resolve this 'niggle' with 'some sensible minor constitutional change'. He added: 'I do not believe that it is not possible to identify a comparatively small amount of legislation which is totally English in its consequences and content'.¹⁷

The Conservatives also appear in no hurry to review the Barnett Formula. Shadow Chancellor George Osborne said he was 'open-minded about change' but that he was unable to elaborate as Chancellor Alistair Darling is yet to commission 'a needs based assessment' of how much each part of the UK should get if there were changes for which Osborne had asked.¹⁸

¹⁵ Livingstone, T., 'Anti-Welsh Valleys "is costing votes in rural areas"', *Western Mail* (18 February 2008)

¹⁶ David Cameron, 'Speech made outside Holyrood parliament', Edinburgh, 10 December 2007, at: www.scottishconservatives.com/news_press/news/david_cameron_speech.aspx

¹⁷ House of Commons Justice Committee, 19 February, oral and uncorrected evidence, *Devolution: A Decade On*, Q115-130, at <http://tinyurl.com/4w7ocd>

¹⁸ Livingstone, T., 'Tories keep "open mind on future of the Barnett formula', *Western Mail* (28 April 2008)

At the Party's Welsh conference David Cameron attempted to subdue what the *Western Mail* described as 'bitter internal divisions over devolution'¹⁹ by announcing a review of the party's position, to be headed by Tory elder statesman Lord Wyn Roberts. The speech was greeted by opposition politicians as 'a huge embarrassment' for the Welsh Conservative Leader Nick Bourne AM, who had previously expressed firm backing for a Welsh Parliament.²⁰ Bourne later insisted he supported a review, adding that 'devolution for Wales – within a strong United Kingdom – is here to stay'.²¹ An interim report is promised by the summer.²²

Meanwhile, there is little emerging from the party leadership at Westminster to contradict Scottish leader Annabel's Goldie's professed wholehearted enthusiasm for the new Constitutional Commission, with David Cameron restricting himself to attacking Gordon Brown's position. On the purpose of the Commission, Goldie said:

What the majority wants is the representation we have in the Scottish Parliament, the majority of MSPs coming from parties that support the Union, and, there, what we have to do is address the desire of the majority view, which is to stick with devolution but make it work better.²³

On questions of English sub-national governance, Regional Development Agencies (RDAs) briefly emerged as a Conservative target at the turn of the year. Mark Prisk, Shadow Minister for the Regions, questioned whether 'the RDAs have a proper economic future' in the light of the growing north-south divide.²⁴

2.3 Liberal Democrats

The Liberal Democrats have the clearest position of the three major UK-wide parties on devolution issues, and this is unlikely to change under new leader Nick Clegg. The party remains strongly in favour of an early referendum on full law-making powers for the Welsh Assembly, additional powers including over taxation for the Scottish Parliament, and a strengthening of local government in England, which Clegg suggests is gasping in 'the iron grip of Whitehall'.²⁵

¹⁹ Williams, T., 'Lord Roberts to sort out party's devolution squabbles', *Western Mail* (3 March 2008)

²⁰ Withers, M. 'Cameron's devolution vow', *Wales on Sunday* (2 March 2008)

²¹ Bourne, N. 'New Ideas, New Wales: speech to the Welsh Conservative Party spring conference, Llandudno, 1 March 2008

²² Williams, T., 'Lord Roberts to sort out party's devolution squabbles', *Western Mail* (3 March 2008), at: <http://tinyurl.com/4wspdm>

²³ Fraser, D., 'Union allies plan agenda for change', *The Herald* (16 January 2008),

²⁴ Taylor, R., 'Do regional wings need clipping', *The Daily Telegraph* (3 January 2008)

²⁵ Livingstone, T., 'Clegg calls for talks on 'unbalanced' Britain', *Western Mail* (11 February 2008)

At the party's Scottish conference on 1 March, the new leader endorsed Scottish Liberal Democrat leader Nicol Stephen MSP's proposal to resurrect the Steel Commission that originally reported in March 2006. This report recommended 'fiscal federalism' with significant tax-raising powers for the Scottish Parliament.²⁶ The new study's findings will shape the Scottish Liberal Democrats' contribution to the cross-party Calman Commission to which they have also signed up.²⁷ Clegg said: 'I share Nicol Stephen's ambition to strengthen and deepen devolution...Why can't the Scottish Parliament raise more of its own money?'²⁸ Support for greater fiscal autonomy tallies with the party's backing for reforming the Barnett Formula, though possibly not with its enthusiasm for a move to needs-based funding. Nick Clegg said, before becoming leader in November 2007: 'We do need to review the outdated formula and, if necessary, replace it with a fairer need-based funding formula'.²⁹

With the Welsh Liberal Democrats supporting in principle the All Wales Convention headed by Sir Emyr Jones Parry but having no input into its terms of reference – which were drafted by a Labour-Plaid 'establishing committee' – the Liberal Democrats have struggled to impose themselves on the constitutional agenda in Wales as a referendum on full legislative powers inches closer. The party's position is clear, however, as confirmed by Nick Clegg on his first visit to the Assembly in January, when he said: 'I think we need to be at the forefront of those who are calling for that referendum'.³⁰

²⁶ Final report of the Steel Commission to the Scottish Liberal Democrat spring conference, March 2006, pp110-121, at: www.scotlibdems.org.uk/files/steelcommission.pdf

²⁷ Dinwoode, R., 'LibDems send for Steel to examine powers for Holyrood', *The Herald* (1 March 2008)

²⁸ Clegg, N., 'Speech to the Scottish Liberal Democrat Spring Conference in Aviemore, 29 February 2008, at: <http://tinyurl.com/6zt8r4>

²⁹ 'Time to review Barnett formula?', *The Journal* (16 November 2007)

³⁰ Williamson, D., 'Nick Clegg's support for law-making powers', *Western Mail* (1 February 2008)

3. Devolution and Whitehall

3.1 Ministry of Justice

The Ministry of Justice retains formal responsibility 'for the overall management of relations between the UK Government and the devolved administrations in Scotland, Wales and Northern Ireland.'³¹ In practice, however, responsibility for devolution in Whitehall is fragmented, with the three territorial departments leading on their respective devolution settlements, DCLG and BERR managing English sub-national governance, and the Treasury maintaining its grip on devolution finance. One sign of a desire to take a more coordinated approach to devolution was the appointment last summer of Dr Jim Gallagher – formerly head of the Scottish Executive Department of Justice – as Director General of Devolution. Dr Gallagher is also now head of the secretariat for the Scottish Constitutional Commission.³²

While it generally takes a back seat in debates about concrete institutional questions relating to devolved governance, the department leads on the Governance of Britain agenda, one of whose central intentions is 'To work with the British people to achieve a stronger sense of what it means to be British.'³³ The most recent development in this area was the publication on 25 March of the long-awaited Draft Constitutional Renewal Bill and accompanying White Paper, but these contribute little of substance to the Britishness debate, save for some trivial clauses on flag-flying regulations. Of greater relevance is likely to be the forthcoming white paper on a British Bill of Rights and the planned 'Citizens' Summit' leading to a British Statement of Values. While the purpose and probable content of these initiatives remains somewhat opaque, they are likely at least to spark debate about how the different nations and regions of the UK relate to one another.

According to Secretary of State for Justice Jack Straw, speaking in January 2008, the British Bill of Rights could be a 'mechanism for unifying the population' and, rather than a mere 'legal document', a text in which the people have a genuine 'emotional

³¹ Ministry of Justice, 'Devolution', at: www.justice.gov.uk/whatwedo/devolution.htm, accessed 1 June 2008.

³² As reported in Crichton, T., 'Who has the upper hand now? The Westminster view', *Sunday Herald* (17 February 2008)

³³ *The Governance of Britain – Constitutional Renewal White Paper*, Cm 7341-I, 25 March 2008, at: www.justice.gov.uk/docs/constitutional-renewal-white-paper.pdf

stake'.³⁴ Minister of State Michael Wills has similarly suggested that the mooted Statement of Values could 'bind the entire country together'.³⁵ However, while the UK government is committed to involving citizens from across the UK in these processes, it has been noted that it has seemingly 'rejected any role for the devolved institutions in formulating such a bill, even though it would (presumably) be binding upon them, on the ground that the constitution is a reserved matter'.³⁶ This raises the spectre of potential intergovernmental conflict – particularly with the Scottish Government – or of the devolved governments setting up rival projects on rights and values in their own 'national' contexts. Indeed there is already an ongoing effort to formulate a Northern Ireland Bill of Rights,³⁷ whose relationship to the UK initiative also remains to be clarified. A further sign of troubles on the horizon lay in the reaction to Lord Goldsmith's Citizenship Review. One proposal was for school-leavers to swear an oath of allegiance to encourage a sense of British citizenship. Among the critics were Scottish Enterprise Minister Jim Mather who said: 'We don't support it and neither do the vast majority...in Scotland'.³⁸

3.2 HM Treasury

After years of rapid public spending growth across the UK and peaceable relations between the Labour-led administrations in London, Edinburgh and Cardiff, the Treasury now has to negotiate some rather choppy economic and political waters in managing the territorial financial settlement.

2008 Budget

The 2008 Budget was presented to Parliament by Chancellor of the Exchequer Alistair Darling on 12 March. With the Chancellor warning of low growth in 2008 (of around 2 per cent per annum) and of high public debt (rising to over £40bn), he had little option but to define the Budget as one to 'maintain stability through the world economic slowdown'.³⁹ From a devolution perspective, these worrisome numbers confirm the message of last autumn's Comprehensive Spending Review;⁴⁰ that over

³⁴ E.g. Straw, J., 'Towards a British Bill of Rights and Responsibilities', Cambridge Faculty of Law, 21 January 2008, at: www.justice.gov.uk/news/sp210108a.htm

³⁵ Michael Wills MP, 'The Politics of Identity', speech at the Institute of Public Policy Research, 26 March 2008.

³⁶ Trench, A., 'Intergovernmental Relations', in Jeffery, C. (ed.), *Scotland Devolution Monitoring Report: January 2008*, p. 63, at: www.tinyurl.com/65a9sa8.

³⁷ See the Northern Ireland Bill of Rights Forum's final report *Recommendations to the Northern Ireland Human Rights Commission for a Bill of Rights in Northern Ireland*, at: www.tinyurl.com/5nj9td

³⁸ 'No support for "oath of allegiance"', *BBC News* (11 March 2008), at: www.tinyurl.com/5qhsh5

³⁹ Alistair Darling, Hansard House of Commons, 12 March 2008, col. 285-298

⁴⁰ 'Meeting the Aspirations of the British People: 2007 Pre-budget Report and Comprehensive Spending Review', Cm 7227, 9 October 2008, at: <http://tinyurl.com/25qegz>

the next few years the Scottish, Welsh and Northern Irish administrations will face their first public spending squeeze since devolution commenced in 1999.

According to the 'regional' press notices issued by the Treasury, the Barnett Formula's provisions meant that an additional £26m, £21m and £5m will be provided to the Scottish Executive, Northern Ireland Executive and Welsh Assembly Government respectively as a result of spending increases in England announced in the Budget.⁴¹

However, these relatively small spending increments did not deter Scottish and Welsh nationalists from attacking the Budget. Scottish First Minister Alex Salmond argued that the Budget would 'damage Scotland's economic interests', and that predictions of a decline in oil revenue were 'a desperate move from a desperate Chancellor determined to try anything to hold onto power in Scotland'.⁴² This followed deputy leader Nicola Sturgeon's earlier declaration that the result of the 'extremely tight settlement' announced by the Treasury is that 'We do have a Barnett squeeze'.⁴³ There was a further dispute between SNP Treasury spokesman Stewart Hosie and the Chancellor about the decision to increase the tax on a bottle of Whisky by 59p, which Hosie saw as a 'discriminatory tax on Scotland's vital whisky industry'. Plaid Cymru, for its part, criticised what it called 'a budget that yet again benefits the super rich, and does little to ease the lives of ordinary working people'.⁴⁴

Barnett Formula:

While for the moment the Treasury continues to operate within the strictures of the Barnett Formula in allocating money to the different territories of the UK, there is good cause to believe that this system will be revised over the next five or so years.

First of all, developments in both Scotland and Wales place devolution finance prominently on the political agenda. In Edinburgh, all parties are now committed to reform, or at least consideration of reform, following the decision of the three unionist parties in the Scottish Parliament to set up the Scottish Constitutional Commission,

⁴¹ See HM Treasury, 'What Budget 2008 means for your region: regional press notices', 12 March 2008, at: www.hm-treasury.gov.uk/budget/budget_08/press_notices/bud_bud08_pressregindex.cfm.

⁴² Lydall, R., 'Budget is the worst blow to whisky for 33 years, claims SNP', *The Scotsman* (14 March 2008)

⁴³ House of Commons Justice Committee, oral and uncorrected evidence, *Devolution: a decade on*, 26 February, Q301

⁴⁴ Plaid Cymru, 'Plaid disappointed at weak budget', 12 March 2008, at: www.plaidcymru.org/content.php?nID=14;ID=483;IID=1

whose remit includes the task of 'improv[ing] the financial accountability of the Scottish Parliament'.⁴⁵ Similarly, the Labour-Plaid Cymru coalition in Cardiff plans an 'independent Commission to review Assembly Funding and Finance'.⁴⁶

At Westminster too, however, there have been signs of disquiet, with Lord Barnett himself among the most prominent critics of the formula that bears his name. In evidence to the Justice Committee on 1 April (see also section 5.1), he criticised the system for its lack of any assessment of need. He has also recently been frustrated in his attempts to persuade the House of Lords to appoint an ad hoc select committee to consider alternative allocation systems,⁴⁷ with the Chair of Committees arguing that such a politicised subject was best left to the House of Commons for consideration.⁴⁸ In the Commons the Treasury Committee has thus far shown little interest in devolution finance, and it will be interesting to observe whether the Justice Committee strays out of its normal territory by making recommendations in this area at the conclusion of its current devolution inquiry.

The Treasury itself remains reluctant to keep shut the Pandora's Box of territorial finance for as long as it can. Lord Barnett made this point to the Justice Committee, saying: 'It has been crystal clear to me that the Treasury do not want to consider any change at all, because they fear upsetting people in different places'.⁴⁹ The Treasury has committed to publishing a paper later this year setting out how the formula works,⁵⁰ but this is unlikely to contain radical proposals for change. The position of the government as a whole was perhaps best summed up by Secretary of State for Scotland Des Browne on 29 January:

I think it [the Barnett Formula] has been transparent. People understand it. It lends itself to an incremental increase in a proportionate fashion. I think it is for those people who think we should change it to come up with an alternative.⁵¹

⁴⁵ Commission of Scottish Devolution, 'About the Commission', at:

www.commissiononscottishdevolution.org.uk/about.

⁴⁶ Welsh Labour and Plaid Cymru, *One Wales: A progressive agenda for the government of Wales*, July 2007, p. 6, at: http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/27_06_07_oneyales.pdf

⁴⁷ House of Commons Justice Committee, oral and uncorrected evidence, *Devolution: a decade on*, 1 April 2008, Q406

⁴⁸ Lord Brabazon of Tara, House of Lords Hansard, 7 February 2008, col. 1169

⁴⁹ House of Commons Justice Committee, oral and uncorrected evidence, *Devolution: a decade on*, Thursday 1 April 2008, Q450

⁵⁰ Robinson, N., 'Bye bye Barnett?', *BBC News* (26 March 2008), at:

www.bbc.co.uk/blogs/nickrobinson/2008/03/26/index.html

⁵¹ House of Commons Justice Committee, oral and uncorrected evidence, *Devolution: a decade on*, 29 January 2008, Q81, at: www.publications.parliament.uk/pa/cm200708/cmselect/cmjust/uc75-ii/uc7502.htm

The problem the government may face, however, is that the Scots, Welsh and perhaps elements of the English may indeed come up with their own mutually exclusive alternatives to the Barnett Formula. Without the involvement of the centre, it is questionable whether a workable compromise between these competing interests can be struck.

3.3 Scotland Office

As noted in January's Monitoring Report, the decision to give Defence Secretary Des Browne the additional mandate of Secretary of State for Scotland was criticised by opposition parties, parts of the media and the military.⁵² However, and somewhat ironically, while Browne is disparaged as a 'part-time Defence Secretary', the post of Scottish Secretary is often seen as a non-job, with the Scotland Office rendered obsolete by devolution.

SNP deputy leader Nicola Sturgeon, speaking to the Justice Committee on 26 February, was the most recent senior Scottish politician to call for its abolition, saying:

Although it is important that some of the functions of the Scotland Office continue to be carried out and it is important that reserved Government knows what devolved government is doing, I think that co-ordination could be carried out in different ways.⁵³

Meanwhile, SNP Westminster leader Angus Robertson branded the Office 'completely irrelevant'⁵⁴ in the wake of Scotland Minister David Cairns' unsuccessful rearguard campaign against Wendy Alexander's Constitutional Commission.⁵⁵ He also criticised their 'eerie silence' over Alexander's calls for an early referendum on Scottish independence.⁵⁶

In March, the Scotland Office formally responded to a freedom of information request for information on 'what the Secretary of State for Scotland has done to promote partnership between the Government and the Scottish Executive since the SNP took

⁵² Paun, A. (ed), *Devolution and the Centre Monitoring Report: January 2008*, at: www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Centre_Jan08.pdf

⁵³ House of Commons Justice Committee, oral and uncorrected evidence, *Devolution: a decade on*, 26 February 2008, Q288, at: <http://tinyurl.com/6ykvmc>

⁵⁴ Dinwoode, R. and M. Settle, 'Scotland Office rejects 'eerie silence' claim in row over call for referendum', *The Herald* (10 May 2008)

⁵⁵ Settle, M., 'We need to reclaim devolution at the heart of what we're doing', *The Herald* (12 February 2008)

⁵⁶ Dinwoode, R. and M. Settle, 'Scotland Office rejects 'eerie silence' claim in row over call for referendum', *The Herald* (10 May 2008)

charge in May 2007'.⁵⁷ In its response, the Scotland Office highlighted its responsibility for representing Scottish interests in Whitehall, overseeing the devolution settlement, and facilitating good relations between the two governments. It also noted its continuing role in the legislative process, particularly in relation to coordinating the passage of 'Sewel bills' (discussed in section 4.1 below) and delegated legislation under the Scotland Act 1998.

As guardian of the devolution settlement, the Scotland Office remains in charge of the running of Scottish Parliament elections, a row about which was kicked off by the problems of May 2007 and continues to rumble on. Chief Executive of the Electoral Reform Society Ken Ritchie has joined calls for responsibility for Holyrood elections to be transferred to the Parliament in Edinburgh. Ritchie said: 'We believe it would be an affront to democracy if the Westminster parliament...could impose its will...in this matter without having a very strong reason to do so'.⁵⁸ His comments echo the recommendations of the Gould Report into the administration of Scottish elections published last October⁵⁹ and those of Scottish Minister for Parliamentary Business Bruce Crawford MSP before the Justice Committee.⁶⁰ However, the Scottish Affairs Committee recently concluded that such a transfer of power was not justified.⁶¹ Meanwhile, the Scotland Office's is running its own consultation process on the electoral process before responding formally to the Gould report.⁶²

3.4 Wales Office

Wales Office Functions

The Wales Office retains a significant role in managing the Welsh devolution settlement, and in the Welsh law-making process, by virtue of the complex process through which additional legislative competences are conferred on the Welsh Assembly. Consequently the department has not faced such vociferous calls for its abolition as its Scottish counterpart.

⁵⁷ Scotland Office, FoI 100308 Partnership with Scottish Executive, 10 March 2008, at:

<http://tinyurl.com/4bposg>

⁵⁸ 'Scotland 'should run elections', BBC News (19 April 2008)

⁵⁹ Electoral Commission press release, 'Electoral Commission welcomes Ron Gould's Scottish elections report', 23 October 2007

⁶⁰ House of Commons Justice Committee, oral and uncorrected evidence, *Devolution: a decade on*, 26 February, Q243-244.

⁶¹ House of Commons Scottish Affairs Committee, *Experience of the Scottish Elections*, Fifth Report of Session 2007-08, HC 78, p.12, at: <http://tinyurl.com/6gvskn>

⁶² Scotland Office, *Sorting the Ballot: Improving the Elections to the Scottish Parliament, a consultation paper*, December 2007, at: <http://tinyurl.com/4twsmg>

In its legislative role, the Wales Office is responsible for liaising with other Whitehall Departments and the Welsh Assembly Government (WAG) over the transfer of legislative competence to the National Assembly via Legislative Competence Orders (LCOs) and primary legislation (see section 4.2 below). In addition, the department is running its own consultation exercise on the government's Draft Legislative Programme (DLP), which, somewhat surprisingly, does not ask any questions about the specific relevance of the DLP to Wales.⁶³

Wales Office Ministers

Following the resignation of Peter Hain MP in January 2008⁶⁴ Paul Murphy was appointed Secretary of State for Wales. Murphy, who previously occupied the position between 1999 and 2002, is known to lean towards the 'devo-sceptic' wing of Welsh Labour.⁶⁵ He originally opposed devolution altogether, and more recently expressed vocal opposition to the establishment of Labour's 'One Wales' governing coalition with Plaid Cymru. His appointment provoked some disquiet from other parties. The Welsh Liberal Democrat leader Mike German said: 'He comes with a bit of baggage. The Prime Minister has handed this man a veto over passing powers to the National Assembly. I think we are in for a bit of a sticky time'.⁶⁶

However, the new Secretary of State for Wales said that despite his prediction that there would be no referendum before 2011 he was not 'hostile' to devolution and that he was a 'realist who's got to make sure that the devolution settlement actually works for the people of Wales'.⁶⁷ In addition to his responsibility for managing the Welsh devolution settlement and legislative process, Murphy has been tasked with re-establishing the Joint Ministerial Committee structure for managing relations between the UK and three devolved governments, overseeing the British-Irish Council, and chairing the Cabinet Committee on Local Government and the Regions.⁶⁸ This set of

⁶³ Wales Office, 'Draft Legislative Programme', at: www.walesoffice.gov.uk/legislation/draft-legislative-programme, accessed on 1 May 2008.

⁶⁴ Peter Hain resigned from the Cabinet on 24 January after his belated declaration of £103,000 in donations to his campaign for the Labour Party deputy leadership was referred to the Metropolitan Police by the Electoral Commission. See 'Hain quits job to "clear name"', *BBC News* (24 January 2008) at: http://news.bbc.co.uk/1/hi/uk_politics/7206812.stm

⁶⁵ Withers, M., 'Paul Murphy's reality check for Welsh government', *Wales on Sunday* (24 February 2008)

⁶⁶ 'Lib Dem fears on Murphy return', *BBC News* (25 January 2008) at: <http://news.bbc.co.uk/go/pr/fr/-/1/hi/wales/7208459.stm>

⁶⁷ Withers, M., 'Paul Murphy's reality check for Welsh government', *Wales on Sunday* (24 February 2008)

⁶⁸ See Wales Office, *Annual Report 2008*, Cm 7404, p. 8, at: www.walesoffice.gov.uk/wp-content/uploads/2008/05/398692_cm-7404-english.pdf

responsibilities makes Murphy the closest thing in Whitehall to a Secretary of State for Devolution, a post which many believe should have been created years ago.⁶⁹

Murphy is supported in the Wales Office by parliamentary under-secretary Huw Irranca-Davies. In addition, Wayne David acts as Welsh whip in the Commons, and Baroness Morgan of Drefelin speaks on behalf of the Wales Office in the Lords.

St David's Day Debate

On 28 February the House of Commons conducted its annual St David's Day debate. It marked only the second time that Paul Murphy had spoken on the Commons floor as Secretary of State for Wales, since his reappointment to the post in January. In his contribution to the debate, the new Secretary of State emphasised the importance of the close relationship between Wales and the UK, and outlined his opposition to any reduction in Welsh MPs and also to any reduction in the status of Welsh MPs in Westminster. His speech signalled a staunch support for the status quo, in contrast to the desire of the Welsh Labour leader Rhodri Morgan to hold an early referendum on devolution of full legislative powers. He argued that 'there is nothing wrong in feeling comfortable with the current arrangements – comfortable with the fact that we can be British and Welsh.'⁷⁰ He also sought to move the debate away from constitutional questions and toward questions about the economy and public service provision.

3.5 Northern Ireland Office

With home rule in Northern Ireland successfully re-established, the major piece of unfinished business is the devolution of control of police and the justice system in the six counties to Stormont. As reported in the previous monitoring report, DUP MP David Simpson claimed in December that 'there would be no public confidence in any early move to devolve policing and justice powers'. However on 22 January the Millward Brown Ulster Survey was published, the results of which indicated significant public support from across the political spectrum for increased powers on policing and justice. The Secretary of State for Northern Ireland Shaun Woodward responded to the report by commenting that 'there are those who have been saying

⁶⁹ See Hazell, R., 'The Future of the Union'. Keynote Address to *Inside Devolution 2008* conference, 22 May 2008, p.5, at: www.ucl.ac.uk/constitution-unit/files/events/2008/Keynote_Address.pdf

⁷⁰ Paul Murphy, House of Commons Hansard, 28 February 2008. Col 1262-65.

there is no support for the transfer of powers – I am not sure what they are basing that on'.⁷¹

3 March saw the laying of the Draft Criminal Justice (Northern Ireland) Order 2008 before parliament. Consultation on the proposed draft order had begun on 8 November 2007. The Criminal Justice (NI) Order contains provisions for new sentencing powers for dangerous sexual and violent offenders, and would bring to an end automatic 50 per cent remission for all sentenced prisoners. It is hoped the order will be in the statute book by May 2008.

On 11 March the Northern Ireland Assembly's Assembly and Executive Review Committee report into the devolution of policing and criminal justice powers was published, titled *Devolving Policing and Justice in Northern Ireland: Indicative Legislative Proposals*. Shaun Woodward responded positively to this report:

Progress is being made on the devolution of policing and justice. Our polling makes it clear that the majority of people in Northern Ireland want this to happen and the Chief Constable, the person responsible for delivering policing on the ground, has also said that powers should be devolved...the people of Northern Ireland wish to see locally elected and accountable politicians taking decisions on policing and justice matters and the Government will fulfil its obligation to ensure that powers can be transferred as soon as the Assembly accepts responsibility for completing devolution.⁷²

Woodward reaffirmed his commitment to devolution of policing powers in a speech in New York on 14 March, saying: 'we know that the public feels increasingly confident, not only with the power-sharing Executive but also in their desire for politicians in Northern Ireland to take responsibility for law and order.'⁷³

On 5 March Minister of State Paul Goggins argued that a representation of 30 per cent Catholics in the Northern Ireland Police Service was achievable. He added 'The St Andrews Agreement makes it clear that the temporary 50:50 recruitment arrangements to the PSNI will lapse when the Government's target of 30% Catholic officers has been achieved. We are on course to reach this target by 2010/2011'.

⁷¹ Northern Ireland Office, 'Majority of public support devolution of policing and justice – Woodward', at: <http://tinyurl.com/5hfoeh>

⁷² Northern Ireland Office, 'Report on progress towards devolution of justice powers welcomed', 11 March 2008, at: <http://tinyurl.com/5ufntm>

⁷³ Northern Ireland Office, 'People want Policing powers devolved – Woodward', 14 March 2008, at: <http://tinyurl.com/5unxke>

- On 30 January the Lords ruled that the appointment of David Burrows to the Parades Commission in 2005 was unlawful.⁷⁴ On 18 March Shaun Woodward launched a competition to appoint a new Parades Commissioner in time for the summer parading season.
- On 5 March Shaun Woodward laid before parliament the third annual report of the operation of the Independent Monitoring Commission (IMC).

3.6 Department for Communities and Local Government

Hazel Blears' department will lead on the Community Empowerment, Housing and Economic Regeneration Bill outlined in May's DLP. The bill will build upon last year's publication of the Sub-national Economic Development and Regeneration Review (SNR);⁷⁵ and the department's ongoing consultation on the SNR in collaboration with the Department for Business, Enterprise and Regulatory Reform (BERR).

The DLP's proposals are designed to 'streamline regional governance' by changing the role of RDAs and to give citizens and local authorities limited new tools to engage with local issues and economic strategy respectively.⁷⁶ Specifically, RDAs would be empowered to become strategic planning bodies (an idea described in March's joint consultation document between the Department for Communities and Local Government (DCLG) and BERR as 'in line with devolved decision-making principles'). Citizens could gain some new rights including one 'to force a debate on specific local issues onto the council agenda'.⁷⁷ Local authorities could have to perform their own economic assessments and be required to sign off draft regional economic strategies⁷⁸. In addition, Multi-Area Agreements (MAAs) – produced by local councils to enable cooperation between them in the vacuum that followed the failure of elected regional assemblies – have been approved. The first formalisation of an MAA

⁷⁴ Northern Ireland Office, 'Statement by Shaun Woodward After Lords Ruling', 30 January 2008, at: <http://tinyurl.com/64hnp>

⁷⁵ *Review of Sub-national Economic Development and Regeneration*, 17 July 2007, at: www.tinyurl.com/4cup7g

⁷⁶ *Preparing Britain for the Future: The Government's Draft Legislative Programme 2008-9*, Cm 7372, 14 May 2008, pp. 66-67.

⁷⁷ Department for Communities and Local Government press release, 15 May 2008

⁷⁸ While the DLP refers only to 'ensuring local authorities and other partners help to shape priorities for the region', the first document of the joint consultation process with BERR that largely informs this proposed Bill states on page 6: 'A forum of local authority leaders, representing all local authorities in the region, would sign off the draft [regional economic] strategy'.

will occur in June. These issues are discussed in more detail in May 2008's *English Regions Devolution Monitoring Report*.⁷⁹

⁷⁹ See Burch, M., A. Harding and J. Rees, *Inching Towards a Solution to the Problem of England's 'Missing Middle': English Regions Devolution Monitoring Report: May 2008*, at: www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Regions_May08.pdf

4. Territorial Legislation and Motions

4.1 Scotland

Of the bills introduced by the UK government in the 2007-08 session, a total of nine stray into devolved areas in Scotland or amend the powers of the devolved institutions and therefore require the formal consent of the Scottish Parliament under the legislative consent ('Sewel') convention. Prior to their electoral victory of May 2007, the SNP had frequently expressed dissatisfaction with the use of legislative consent motions (LCMs) at Holyrood, suggesting that once in office the party might oppose any recourse to the convention. As recently as February 2007, the SNP Enterprise and Economy spokesperson Jim Mather explained his party's opposition to a particular LCM (relating to the Statistics and Registration Services Bill) in the following terms:

We oppose the motion on principle, on the basis that legislation that will materially affect Scotland should be scrutinised, debated and passed in Scotland, not at Westminster.⁸⁰

In practice the party never opposed all LCMs, many of which have only a minimal policy impact in devolved areas. And since entering office the nationalists have introduced or signalled an intent to introduce LCMs relating to all the nine bills where consent is required (with the SNP drawing somewhat ironic criticism from opposition [unionist] MSPs for excessive reliance on the 'mother parliament'.⁸¹) Although there has been some controversy in the Scottish Parliament about the new administration's use of the convention, at Westminster there has been little attention paid to the devolved elements of these bills.

The principal exception to this rule has been the Energy Bill. Although the Scottish Government agreed to move an LCM for the part of the bill that deals with offshore carbon dioxide storage, it refused the UK Government's request to extend to Scotland provisions relating to waste disposal from and decommissioning of new nuclear power plants, which ensure that companies which build nuclear plants bear these costs. This decision is in line with the SNP's opposition to the building of new nuclear power stations north of the border, and its intention to use devolved planning

⁸⁰ Jim Mather, Scottish Parliament Official Report, 1 February 2007, Col 31781

⁸¹ As discussed in Cairney, P., 'The Scottish Parliament', in McEwen, N. (ed), *Scotland Devolution Monitoring Report: May 2008*, section 2.6, at: www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Scotland_May08.pdf

powers to prevent this from occurring. UK Cabinet minister John Hutton told the House on 10 January that:

We invited Scottish Ministers to support a Sewel motion in the Scottish Parliament to facilitate the operation of the energy clauses of the Bill on a UK-wide basis. That would have been sensible, because the clauses are designed to ensure that there is no subsidy going into the costs of nuclear waste decommissioning and disposal. It is a missed opportunity.⁸²

During the second reading debates on the bill in the Houses of Commons (22 January) and Lords (21 May), regret was expressed by members of the Labour and Conservative parties that Scotland was to be left out of the relevant clauses of the bill, and, by implication, of plans for future nuclear power plant construction.⁸³ When pressed on the question, BERR Secretary John Hutton was unequivocal in stating that if the Scottish administration chose to oppose construction of such plants, "What will happen is that there will be no new nuclear power stations in Scotland."⁸⁴ Despite the suggestions that the Scottish Constitutional Commission process might be a 'two-way street'⁸⁵ – transferring powers from Holyrood to Westminster as well as vice versa – it appears that the UK government has ruled out any such move on this sensitive issue. No doubt there are some at Westminster who would favour amending the Scotland Act to remove the Scottish veto over nuclear power construction,⁸⁶ but the politician who would be happiest of all by such a move would surely be Alex Salmond, given the inevitable boost it would give to support for independence.

The full list of bills introduced in the 2007-08 session to which the legislative consent convention applies⁸⁷ is as follows:

- Climate Change Bill
- Criminal Justice and Immigration Bill
- Dormant Bank and Building Society Accounts Bill
- Education and Skills Bill
- Energy Bill

⁸² John Hutton, House of Commons Hansard, 10 January 2008, Col 524.

⁸³ See, inter alia, Adam Ingram, House of Commons Hansard, 22 January 2008, Cols 1388-91; and Baroness Carnegy, House of Lords Hansard, 21 May 2008, Cols 1501-03.

⁸⁴ John Hutton, House of Commons Hansard, 22 January 2008, Col 1374.

⁸⁵ 'PM backs Scottish powers review', *BBC News* (17 February), at: <http://tinyurl.com/5hsgn3>

⁸⁶ See Brady, B & E. Barnes, 'Labour MPs plot to strip Salmond of nuclear veto powers', *Scotland on Sunday* (27 May 2007)

- Health and Social Care Bill
- Housing and Regeneration Bill
- Pensions Bill
- Statute Law (Repeals) Bill [HL]

4.2 Wales⁸⁸

Legislative Competence Orders

The new system of Legislative Competence Orders (LCOs), through which WAG can petition Westminster for the devolution of specific legislative powers,⁸⁹ is in full swing. LCOs now operate in parallel with 'framework powers' in Acts of Parliament as means by which the powers of the Welsh Assembly can be extended.

This monitoring period saw the first ever LCO being passed, enabling the Welsh Assembly Government to introduce measures for educational provision for people with **additional learning needs**. The National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008 received Royal approval on 9 April. It was debated in the Commons by a delegated legislation committee on 16 March, leading to criticism from some Members that the 'historic' first LCO debate ought to have taken place on the floor of the House. David Jones (Conservative)⁹⁰ also drew attention to the dissatisfaction of the Welsh Affairs Committee about the information it had been provided by the Welsh Assembly Government about the case for an LCO and the use to which the new power would be put.⁹¹ On the other hand, there was cross-party support for the substance of the LCO, which enables WAG to introduce measures for special educational provision for people with additional learning needs. The order was approved without division by the committee, and then passed by the Commons without debate the following day. A debate on the LCO was also held in the Lords, with some discussion about the scope of the order and

⁸⁷ Full details of the legislative consent process and the current bills to which it applies can be found on the Scottish Parliament website at: www.scottish.parliament.uk/business/legConMem/index.htm.

⁸⁸ See also Navarro, M, 'The Legislative Process', in Wyn Jones, R. and R. Scully (eds.), *Wales Devolution Monitoring Report: May 2008*, at: www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Wales_May08.pdf

⁸⁹ While Assembly committees and ordinary Assembly Members may introduce draft LCOs to the Assembly, only the Welsh Assembly Government may put forward a proposal to be laid before Parliament.

⁹⁰ David Jones, Delegated Legislation Committee Debate on Draft National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008, 18 March 2008, Cols 6-8.

⁹¹ See Welsh Affairs Committee, *Proposed Legislative Competence Orders in Council: Additional Learning Needs*, Second Report of Session 2007-08.

definitions used. As in the Commons the passage of the LCO was supported by Members from across the House and the order was passed without a vote.

Parliament was considering three further LCOs as it went into its mid-May Whitsun break. The Welsh Affairs Committee published a report on the **non-residential social care** LCO in March, following its first joint meeting with an Assembly committee to discuss an LCO.⁹² This report, discussed further in section 5.3, highlighted the fact that although WAG is required to set out in advance its plans for legislation under the competence order, once competence is granted, the Assembly is free to legislate as it wishes. In this case, the committee noted that while competence over non-residential social care was being sought by WAG in order to create a 'fair and consistent approach to charging' by local authorities for domiciliary care, the proposed LCO would enable the Assembly to abolish charging altogether, or to mandate charging for all, including children. This 'Goldilocks' dilemma of ensuring that LCOs are drafted to be neither too restrictive nor too permissive (but 'just right') in terms of the power granted to the Assembly is likely to dog the LCO process until it is superseded by the devolution of full law-making powers, which WAG hopes will occur by 2011. The committee is expected to report shortly on two other LCOs referred to Parliament – on **affordable housing** and **vulnerable children**.

In addition, an **environmental protection and waste management LCO** is yet to be introduced at Westminster despite having completed the scrutiny process in the Assembly. As explained in the most recent Wales Devolution Monitoring Report, it is being 'redrafted to reduce its scope and remedy the legal uncertainties it would currently create.'⁹³

The delay in introducing this draft order to Parliament prevented simultaneous scrutiny by Westminster and the Assembly, which had been intended for all orders. This follows the Welsh Affairs Committee's criticism of the delayed introduction of the first proposed LCO (on additional learning needs): in its annual report, published on 5 February 2008, the committee expressed 'regret' that 'the process did not work as anticipated, ruling out the possibility of working jointly with a committee of the

⁹² House of Commons Welsh Affairs Committee, *The proposed National Assembly for Wales (Legislative Competence) Order in the field of social welfare*, HC 257, Fourth Report of Session 2007-8

⁹³ Navarro, M., 'The Legislative Process', in Wyn Jones, R. and R. Scully (eds.), *Wales Devolution Monitoring Report: May 2008*, p. 24, at: <http://tinyurl.com/5l9xyo>

National Assembly for Wales'.⁹⁴ Although simultaneous referral did occur for the proposal on social welfare, the committee's report maintained that 'the Wales Office, the Welsh Assembly Government and the National Assembly for Wales should seek to coordinate the procedures more effectively in future'.⁹⁵

Framework Powers

As noted above, the second route by which the legislative competence of the Welsh Assembly is by the passage of Acts of Parliament containing 'framework powers'. During this monitoring period there were three bills in progress containing such provisions. This mechanism is advantageous in that it allows for gradual expansion of the Assembly's competence without adding additional items to the cluttered timetables of Westminster and the Assembly. However, the drawback may be that consideration of such bills is dominated by English concerns, since the devolution elements are marginal from a Westminster perspective.

The capacity for effective scrutiny of framework provisions may also be hampered if the framework clauses are significantly amended during the course of the legislative process. This has happened with the **Education and Skills Bill**, which received its third reading from the Commons on 13 May. At introduction, the bill contained clauses adding a new Matter 5.10A to the list of areas of competence of the Assembly contained in Schedule 5 to the Government of Wales Act 2006 (GOWA 2006):

The inspection of education or training provided (whether or not at a school) for children who are not above compulsory school age'.⁹⁶

By the time the bill completed its passage through the Commons, this clause had been significantly amended, broadening the powers being devolved. The amendments combined the new inspection powers with existing powers over further education, so that if the bill passes in its present form the Assembly will have the powers over the inspection of schools, 'relevant independent educational institutions', further education colleges and teacher training colleges.⁹⁷

⁹⁴ House of Commons Welsh Affairs Committee, *Work of the Committee in 2007*, HC 325, Third Report of Session 2007-8, para. 19

⁹⁵ House of Commons Welsh Affairs Committee, *The proposed National Assembly for Wales (Legislative Competence) Order in the field of social welfare*, 26 February 2008, HC 257 para. 75

⁹⁶ Education and Skills Bill as Introduced, Bill 12 07-08, clause 132, at: www.publications.parliament.uk/pa/cm200708/cmbills/012/2008012.pdf

⁹⁷ See Education and Skills Bill as brought from the Commons, HL Bill 58 07-08, clause 133, at: www.publications.parliament.uk/pa/ld200708/ldbills/058/2008058.pdf.

The amended bill would also add Matter 5.4A to Schedule 5, further allowing for the regulation of the independent educational sector.⁹⁸ While the powers being devolved are generally uncontroversial, it is far from ideal, from an accountability perspective, for important decisions about the legislative competence of the Assembly to be subject to repeated amendments in this way. Similar problems arose in relation to the **Planning Bill**, which completed its committee stage in the Commons in February 2008. The bill, which was flagged by the ministerial statement on the 'Government's Legislative Programme' as containing new framework powers⁹⁹ but did not on introduction, was then amended so that it did so after all. The bill as amended includes a provision to introduce Matters 18.1, 18.2 and 18.3 to Field 18 of Schedule 5. Together, these:

give the Assembly power to pass Measures about plans of the Welsh Ministers and local planning authorities concerning the development and use of land, subject to an exception regarding the status of such plans, and the review by local planning authorities of matters affecting their area's development.¹⁰⁰

The rigour of the LCO scrutiny procedure sharply contrasts with the limited scrutiny that can be afforded to potentially wide-ranging framework powers if they derive from late amendments to parliamentary bills. Welsh Affairs Committee Member David Jones drew the attention of Welsh Secretary Paul Murphy to this 'paradox' at a Committee hearing on 11 March:

LCOs receive a great deal of scrutiny both at the Assembly and before us, whereas framework powers, most recently in the Planning Bill, can really have very perfunctory scrutiny indeed'.¹⁰¹

Former Welsh First Minister Alun Michael MP (Labour) expressed specific concerns about the bill's late amendment at the same hearing, saying:

The content of the amendments was fine...[but the] process left out Parliament...[It] did not give an opportunity for MPs on the Committee, never mind those not on the Committee, to really understand what propositions were coming forward when the Welsh planning system is different from that in England. That is an example where it seems to me that a very much improved way of dealing with things is essential.¹⁰²

⁹⁸ See 'Welsh Assembly Government explanatory memorandum on the framework provisions for the National Assembly for Wales', 6 June 2008, at: <http://tinyurl.com/6jnx48>

⁹⁹ Peter Hain, House of Commons Hansard, 7 November 2007, Cols. 13WS-14WS

¹⁰⁰ House of Commons Research Paper 08/24 *Planning Bill: The Committee Stage*, 7 March 2008, available at: www.parliament.uk/commons/lib/research/rp2008/rp08-024.pdf

¹⁰¹ House of Commons Welsh Affairs Committee, oral and uncorrected evidence on *Work of the Wales Office*, 11 March 2008, Q8

¹⁰² *Ibid* Q7

In response, Paul Murphy maintained that these were 'teething problems' due to 'getting used to a new system'. However, he conceded that these issues should be high on the agenda of 'a review in a few months' time'.¹⁰³

Finally, the **Local Transport Bill** proposes to add Matter 10.1, devolving the power to impose charges for users of major trunk roads in Wales.¹⁰⁴ By May 2008 the bill had completed its passage through the Lords and passed through the committee stage in the Commons. The framework provisions were unamended but did stir some controversy in committee, where the Conservatives voted against the new powers on the grounds that they granted tax-raising powers to the Assembly via the back door.¹⁰⁵

4.3 Northern Ireland

Seven bills from the Government's legislative programme of 2007-08 that require the consent of the Northern Ireland Assembly were at various stages of the legislative process by the end of the monitoring period: Westminster's Whitsun break.

The **Child Maintenance and Other Payments Bill** had passed through both Houses of Parliament by 7 May, and was expecting Royal Assent.¹⁰⁶ The Northern Ireland Executive Committee and the Assembly had also given their consent as required for Parliament to legislate to enable the exchange of information between the Northern Ireland Executive and the Child Maintenance and Enforcement Commission.¹⁰⁷

The **Dormant Bank and Building Society Accounts Bill** received its third reading in the House of Commons on 26 February and was introduced to the Lords the next day. As with Scotland the provisions subject to the legislative consent convention relate to the powers of the devolved executive to distribute sums released from dormant bank and building society accounts. It received legislative consent in principle from the Assembly in November 2007.¹⁰⁸

¹⁰³ Ibid Q7-8

¹⁰⁴ Local Transport Bill as brought from the Lords, 2008, HL Bill 67 07-08, clause 109, at:

www.publications.parliament.uk/pa/cm200708/cmbills/067/2008067.pdf

¹⁰⁵ Public Bill Committee transcript of evidence, Local Transport Bill [Lords], 8 May 2008, Cols 374-77.

¹⁰⁶ Child Maintenance and Other Payments Bill as amended in Grand Committee, HL Bill 35 07-08, at:

www.publications.parliament.uk/pa/ld200708/ldbills/035/2008035.pdf

¹⁰⁷ Northern Ireland Assembly, Motion 3.5 (22 October 2007)

¹⁰⁸ Northern Ireland Assembly, Motion 3.3 (27 November)

The **Climate Change Bill** received its third reading in the House of Lords on 31 March and was introduced to the Commons shortly thereafter. The bill confers a duty on the relevant Northern Ireland department to lay Government programmes promoting sustainable development before the Northern Ireland Assembly, setting out their objectives, proposals and time-scale for introduction. It received legislative consent in principle in December 2007.

The **Health and Social Care Bill** was read for the third time in the Commons on 18 February and reached committee stage in the Lords in April. The clauses relating to Northern Ireland deal with the work of the new Care Quality Commission in Northern Ireland; the regulation of health professions; the Health in Pregnancy Grant (including provision for making this grant an 'excepted matter' under the Northern Ireland Act 1998). It received consent in principle from the Assembly on 14 January.¹⁰⁹

The salient elements of the **Education and Skills Bill**, for which the consent of the Assembly was required and granted, relate to functions of the Qualifications and Curriculum Authority.¹¹⁰ It received its third reading in the Commons on 13 May.¹¹¹

The **Energy Bill** received its third reading in the Commons on 30 April, its second reading in the Lords on 21 May, and was endorsed in principle by the Assembly on 18 February.¹¹² When brought forward from the Commons it contained provisions relating to renewable obligations certificates in Northern Ireland and other related matters.¹¹³ Unlike in the case of Scotland (referred to in section 4.1 above), the Assembly gave its consent in principle to the bill's clauses relating to nuclear decommissioning.

The **Pensions Bill** was introduced to the Lords on 23 April having passed through the Commons.¹¹⁴ Parliament received consent in principle from the Assembly on 26 February to consider legislation in devolved fields to promote saving for retirement.¹¹⁵

¹⁰⁹ Northern Ireland Assembly, Motion 3.6 (10 December 2007)

¹¹⁰ Northern Ireland Assembly, Motion 2.2 (29 January)

¹¹¹ Education and Skills Bill as amended in Public Bill committee, Bill 81 07-08, at: www.publications.parliament.uk/pa/cm200708/cmbills/081/2008081.pdf

¹¹² Northern Ireland Assembly, Motion 2.2 (18 February)

¹¹³ The Energy Bill as brought from the Commons, HL Bill 52 54/3 (2 May), at: www.publications.parliament.uk/pa/ld200708/ldbills/052/2008052.pdf

¹¹⁴ The Pensions Bill as brought from the Commons, HL Bill 50 54/3 (23 April), at: www.publications.parliament.uk/pa/ld200708/ldbills/050/2008050.pdf

¹¹⁵ Northern Ireland Assembly, Motion 6.4 (26 February)

Meanwhile, the Assembly's own, unrelated Pensions Bill (Northern Ireland) became law on 11 February.

4.4 Early Day Motions

A number of Early Day Motions relating to devolution and territorial matters were tabled in this monitoring period, giving an indication of strength of feeling on the backbenches about particular issues. These included:

- Angus MacNeil (SNP) tabled EDM 887, which commended 'the spirit of cross-party consensus that has developed in the new Scotland since the national and local elections of May 2007'. It was signed by 6 MPs.
- Pete Wishart (SNP) tabled EDM 938, which called for negotiations 'between the Scottish and UK governments to secure Berwick-upon-Tweed's restoration as part of the nation of Scotland'. It was signed by 2 MPs.
- Angus MacNeil (SNP) tabled EDM 1085, which welcomed 'the abolition of the graduate endowment fee and the restoration of free education in Scotland', and called on the Westminster Government 'to follow the Scottish Government's example'. It was signed by 5 MPs.
- Nigel Evans (Conservative) tabled EDM 1135, which called on the Government 'to recognise the imbalance of prescription charges between Wales, Scotland and England, and to create the parity that ought to be present in a national health service'. It was signed by 23 MPs.
- Dawn Butler (Labour) tabled EDM 1196, which celebrated St. George's Day on 23 April and called on the Government to acknowledge the date. It was signed by 51 MPs. An amendment by Bob Spink calling for a national holiday was signed by 5 MPs.
- Andrew Rosindell (Conservative) tabled EDM 1253, which urged Members 'to support the campaign to establish 23 April as an annual public holiday' and the Government 'to mark the occasion by ensuring that the Cross of St. George flag is flown from all public buildings on this day'. The motion was signed by 41 MPs.

- Greg Mulholland (Liberal Democrat) tabled EDM 1429, which called for a specifically English National Anthem to be played before England matches during the forthcoming 2008 Rugby League World Cup. It was signed by 8 MPs.
- Ann McKechin (Labour) tabled EDM 1466, which expressed dismay over the decision by 'the SNP-led Scottish Executive, supported by the Tory group in the Scottish Parliament', not to fund school visits to the Holocaust Educational Trust using the £150,000 allocated to it by the Barnett Formula because of Westminster's financing of such visits. It was signed by 22 MPs. An amendment from Angus Robertson (SNP) defending the Scottish Government was signed by 7 MPs.

5. Territorial Committees at Westminster

5.1 Justice Committee

The Committee has continued hearing evidence in its inquiry on 'Devolution: A Decade On'. According to its chair, Alan Beith (Liberal Democrat), the aim is to examine 'how the system works as a whole, rather than in the individual countries in which devolved powers exist... [together with] questions around England'.¹¹⁶ This ambitious intention is reflected in the wide range of issues addressed in the seven evidence sessions held up till the end of April, the first of which was covered in the previous report.¹¹⁷

The second session, on 29 January, saw MPs question the Secretaries of State for Scotland and Wales (Des Browne and Paul Murphy respectively) as to how relevant their posts remained in the era of devolution. Des Browne said it was important that 'when issues at the high level of policy are discussed [in Cabinet] there is a Scottish representative there'. He also spoke of a role in bilateral relations between the Government and the Scottish administration, though Alan Beith was left 'wondering why they need you'.¹¹⁸

Paul Murphy echoed Des Browne on this issue, later specifying that the GOWA 2006 required that he maintain 'a good relationship in Wales with ministers' to ensure the smooth transfer of powers to the Assembly.¹¹⁹

Other subjects addressed included the Barnett Formula and the 'English Question', on neither of which issue did the two ministers concede that the current arrangements were of cause for concern.¹²⁰

In the third session, on 19 February, the Committee discussed the English Question in depth, with Kenneth Clarke MP, Lord Tyler and Professor Vernon Bogdanor, and

¹¹⁶ House of Commons Justice Committee, 26 February, oral and uncorrected evidence, *Devolution: A Decade On*, Q176, at <http://tinyurl.com/6ykvmc>

¹¹⁷ See Paun, A. (ed.), *Devolution and the Centre Monitoring Report: January 2008*, at: <http://tinyurl.com/3mt3el>

¹¹⁸ House of Commons Justice Committee, 29 January, oral and uncorrected evidence, *Devolution: A Decade On* Q57-59

¹¹⁹ *Ibid* Q94

¹²⁰ *Ibid* Q78-81

then with Michael Knowles (Campaign for an English Parliament) and Peter Facey (Unlock Democracy).

While Prof Bogdanor cautioned against zealously pursuing a constitutional solution, noting that the Union's survival requires 'English self-restraint', Kenneth Clarke insisted that English discontent must be addressed 'by some sensible constitutional minor change...to finish the business of devolution'.¹²¹

However, few proposed solutions attracted widespread support. Prof Bogdanor described an English Parliament as 'absurd', and both Lord Tyler and Prof Bogdanor were sceptical of the workability of the Conservatives' 'English votes on English laws' plans.¹²²

The fourth session, on 26 February, discussed whether the structure of intergovernmental relations met the needs of both the UK and the Scottish institutions. The process by which Westminster legislates for Scotland in devolved areas (the Sewel convention) was generally seen as operating smoothly, including by the SNP's Minister for Parliamentary Business Bruce Crawford.¹²³

Other witnesses cast doubt on the importance of the Scotland Office in managing bilateral relations. Sir John Elvidge (Permanent Secretary to the Scottish Executive) 'does not think of them as the key interlocutors' when approaching Whitehall to discuss the Scottish dimensions of proposed legislation. Nicola Sturgeon (Deputy First Minister, Scottish Government) described the Scotland Office as 'of a past era', claiming that its co-ordinating role could be better achieved by the Cabinet Office or through Joint Ministerial Committees (JMCs).¹²⁴

In the fifth session, on 13 March 2008, the committee addressed the issue of English local and regional governance arrangements. Professor John Mawson (Warwick Business School) argued that regional government could help to mitigate English resentment towards Scotland's constitutional position. Dr Sarah Ayres (University of Bristol) agreed, and said that there is no alternative 'to tackling the English Question [through] administrative decentralisation'. An alternative justification for regionalisation of governance was provided by Paul Watson, of Sunderland County

¹²¹ Ibid Q115-116

¹²² Ibid Q127-130

¹²³ Ibid Q179

¹²⁴ Ibid Q226 and Q288

Council, who argued that despite the failure of the North East Assembly referendum, there is consensus among councillors that 'there are some issues which can only sensibly be addressed on a regional [rather than local] basis'. He further argued for formalisation of existing loose regional cooperative arrangements among local authorities, as is occurring via the MAA process.¹²⁵

The sixth session, on 1 April, addressed the Barnett Formula. Giving evidence, Lord Barnett noted that the Formula is 'a population-based allocation of expenditure', and expressed exasperation with Gordon Brown, who 'for some strange reason thinks it is based on need'.¹²⁶

MPs suggested to Lord Barnett that the current grant system did have some redeeming qualities. Alun Michael spoke of 'some virtue in a simple formula', and Lord Barnett agreed. However, he rejected Dr Nick Palmer's contention that the discrepancy between Scottish and English spending will gradually diminish and disappear.¹²⁷

Lord Steel and Former Scottish First Minister Jack McConnell MSP were questioned in the seventh session. The committee asked whether fiscal devolution could be a solution to the shortcomings of the Barnett Formula. Lord Steel unambiguously thought it could, though he admitted: 'You are always going to have some equalising measure or accounting responsibility at a UK level for matters...[such as] foreign affairs [and] defence'.¹²⁸ McConnell, however, was wary of 'a position that effectively creates two different taxation regimes within the UK single market'.¹²⁹ The two witnesses similarly disagreed over whether responsibility for Holyrood elections should be devolved.¹³⁰

Further evidence sessions, including with the Secretary of State for Justice, are planned, and the Justice Committee aims to publish its final report before the summer recess.

¹²⁵ House of Commons Justice Committee, oral and uncorrected Evidence, *Devolution: a decade on*, 13 March 2008, Q310-336

¹²⁶ House of Commons Justice Committee, oral and uncorrected evidence, *Devolution: a decade on*, Thursday 1 April 2008, Q399-406

¹²⁷ Ibid Q453-455

¹²⁸ Q491

¹²⁹ Q523

¹³⁰ Q460 and Q510.

5.2 Scottish Affairs Select Committee¹³¹

Recent reports published by the committee demonstrate that it continues to interpret its remit to examine 'the expenditure, administration and policy of the Scotland Office'¹³² in a broad sense. In particular, the committee feels justified in conducting inquiries into primarily reserved policy areas such as defence, taxation and poverty reduction given the role of the Scotland Office in representing Scotland's interests in policy discussions and negotiations within the UK government.¹³³ The committee also has an understandable interest in intergovernmental relations, including a focus on what the effects of 'cohabitation' will be on the role of the Scotland Office and the committee itself. As noted in section 3, the Scotland Office may at some point be merged with the other territorial departments, which would presumably spell the demise of the Scottish Affairs Committee.

Child Poverty in Scotland

On 22 January the committee published a second report deriving from its major inquiry into poverty in Scotland, this one examining the success of measures to combat child poverty. It begins by noting that 'rates of child poverty in Scotland have reduced significantly' and that 'Scotland has performed better than the UK average in reducing child poverty', a success that it attributes both to 'unprecedented levels of investment and a strong political will that now appears to be shared by all'.¹³⁴

However, the committee was less convinced that the Scotland Office was maximising the benefits of this investment, questioning whether 'policy on poverty was "joined-up" either nationally or with the devolved administration in Scotland and Scottish local authorities'. It recommended that more needs to be done 'to ensure that policies [do] not conflict with each other'. The problems inherent in relying on the use of centralised, reserved powers in the absence of 'an integrated strategy' are demonstrated by the UK Government's current focus on providing tax credits and Welfare to Work programmes, which is argued to be 'more likely to benefit those just below the poverty line' than 'those families in the severest poverty'. In the same vein, 'the Government's efforts to raise incomes by making work pay' are being

¹³¹ Full details of all activities of the Scottish Affairs Committee can be found at: www.parliament.uk/parliamentary_committees/scottish_affairs_committee.cfm.

¹³² Scottish Affairs Committee, *Child Poverty in Scotland*, HC 277, Third Report of Session 2007-8, Preface

¹³³ Scottish Affairs Committee, *Work of the Committee in 2007*, HC 278, Fourth Report of Session 2007-8, p. 6 (para. 14)

¹³⁴ Scottish Affairs Committee, *Child Poverty in Scotland*, Third Report of Session 2007-8, HC 277 pp. 3-8 (para. 49, 81 and summary)

undermined by 'the high transitional costs experienced by parents entering the workplace', an area where devolved and local powers need to be used to solve problems such as 'inadequate childcare, lack of provision for disabilities or adverse employer attitudes'.¹³⁵

Government Response to Committee's Report on the Effects of Tax Increases on the Oil Industry

The Government's response to the committee's 2007 report on recent tax increases imposed upon the oil industry was published on 26 February 2008.

The earlier report had argued that while 'the fiscal regime is unlikely to be the most important factor driving investment decisions in major fields,... tax is clearly significant', and may be primarily a 'factor affecting investment in older, more marginal fields'. As such, 'there is a need to balance the return on investment and the return to the UK taxpayer'.¹³⁶ In response, the Government acknowledged there were 'twin objectives for the fiscal regime – to promote investment and production whilst striking the right balance between producers and consumers and ensuring a fair return for the UK taxpayer'.¹³⁷

The committee also stressed that any 'changes to the fiscal regime should aim to make the system simpler to administer'.¹³⁸ The Government response promised that the proposed package of reforms [set out in the December 2007 consultation document *Securing a sustainable future: a consultation on the North Sea fiscal regime*¹³⁹] 'will improve certainty and stability as well as helping to simplify the fiscal regime and reduce administrative burdens'.¹⁴⁰

5.3 Welsh Affairs Select Committee

As noted in previous monitoring reports, the Welsh Affairs Select Committee (WASC) is an unusual creature in Westminster terms in that it now combines classic select committee functions of holding government to account with a new responsibility for

¹³⁵ Ibid pp. 14-28 (para. 28, 38-39, 83)

¹³⁶ Scottish Affairs Committee, *Effects of Tax Increases on the Oil Industry*: First Report of Session 2007-8, HC 35, para.17-18

¹³⁷ Scottish Affairs Committee, *Effects of Tax Increases on the Oil Industry: Government Response to the Committee's First Report of Session 2007-8*: First Special Report of Session 2007-8, HC 376, para. 4

¹³⁸ Ibid para. 5

¹³⁹ Available at: www.hm-treasury.gov.uk/media/8/A/consult_northsea051207.pdf

¹⁴⁰ Scottish Affairs Committee, *Effects of tax increases on the oil industry: Government Response to the Committee's First Report of Session 2007-8*, First Special Report of Session 2007-8, HC 376, 26 February 2008, para. 5

scrutiny of one form of legislation – LCOs (discussed in section 4.2 above). Early 2008 saw WASC continue to actively pursue both these roles.

The committee's annual report noted that its 'role differs from that of many departmental select committees' in that the Wales Office, which it holds to account, is not a typical policy-making and spending department. Instead, the Wales Office plays a key role as intermediary between Whitehall and Cardiff, which is reflected in the committee's own remit which includes 'establishing and maintaining relations with the National Assembly for Wales on behalf of the House of Commons'. In addition, the committee asserts that 'scrutiny of Government policy is a core task', but interprets this broadly, such that their activities over the past year have covered the activities of the Home Office, DWP, BERR and the Border and Immigration Agency as well as the Wales Office.¹⁴¹

Legislative Scrutiny

On 5 March the committee published its report on 'The proposed National Assembly for Wales (Legislative Competence) Order in the Field of Social Welfare 2008'. The report deals with the second draft LCO to be put before Parliament, which will authorise the Assembly 'to legislate in respect of charges for non-residential social care provided or secured by local authorities', in order to set a maximum price for this service.¹⁴² The committee reached conclusions both on the content of the proposed LCO and the process by which it has been handled.

On the latter the committee was pleased to note that, unlike the Assembly's previous 'haphazard approach to processing proposals for LCOs', this latest draft LCO was sent to the Welsh Affairs Committee and the relevant National Assembly committee simultaneously, allowing the two to work together as intended on pre-legislative scrutiny. This included holding a joint meeting on 17 January. However, the committee noted with disappointment that Whitehall had yet to lay before Parliament other proposed LCOs that have already been scrutinised by the Assembly.¹⁴³

The committee expressed overall approval for the content of the proposal. It accepted that an LCO 'is the most appropriate way for the Welsh Assembly

¹⁴¹ Welsh Affairs Committee, *Work of the Committee in 2007*, HC 325, Third Report of Session 2007–08, pp. 3-4 (para. 3-6)

¹⁴² Welsh Affairs Committee, *The proposed National Assembly for Wales (Legislative Competence) Order in the Field of Social Welfare*, Fourth Report of Session 2007-8, HC 257, para. 11

¹⁴³ *Ibid* para. 8-10

Government to pursue its policy objectives', that the requested powers consistent and 'represent a "good fit" with existing and previously announced Welsh Government policy', and that it is consistent with the devolution settlement in so far as Excepted Matters 'will not impair upon its ability to enact the policies for which it seeks [these] powers'. As discussed in section 4.2, the committee also highlighted that the wording of the LCO meant that the Assembly would have the power to abolish or mandate charges for local authority care, as well as to set a maximum price, as it intends. This did not prevent the committee from giving its support to the LCO as it stood, though some amendments to the definitions used were recommended.¹⁴⁴

- This monitoring period also witnessed the publication of the brief government response to the committee's report on the first LCO on additional learning needs.¹⁴⁵ The committee's recommendation that the power devolved be extended to make provision for travel arrangements for people in higher education was accepted, though the proposal to use the World Health Organisation (WHO) definition of disability was not.
- As noted above, WASC has issued calls for evidence relating to the third and fourth LCOs to be referred to Parliament, relating to affordable housing and vulnerable children.

Executive and Policy Scrutiny

The two major inquiries being conducted by WASC during the period covered by this report are 'Globalisation and its Impact on Wales' and 'The Provision of Cross-Border Public Services for Wales'. Between January and May, the committee held a total of 11 evidence sessions as part of these inquiries.

The globalisation inquiry – which is structured around the four themes of employment, population, food and broadcasting – has now been running for 18 months, with a total of 29 evidence sessions held to date. The range of subjects touched upon includes: the promotion of investment into and trade from Wales; competition and supply chains in food production and retailing; the response of broadcasters to challenges arising from global media content proliferation; and Polish-Welsh relations. What

¹⁴⁴ Ibid para. 18-27, 77-92 and conclusions 1-16

¹⁴⁵ The committee's report is discussed in Paun, A (ed.), *Devolution and the Centre Monitoring Report: January 2008*, section 5.2.

useful or original conclusions the committee will be able to draw from the mass of evidence received remains to be seen.

The inquiry on cross-border issues, meanwhile, corresponds with the concern among some Welsh MPs that devolution may be leading to separatism, to the detriment of public services and voters in the border regions of both Wales and England. Hearings so far have uncovered evidence of problems near the border caused by diverging policies, particularly surrounding the Welsh Assembly's ambition to supply health care 'in-country', when, according to Tom Taylor (Chief Executive, Shrewsbury and Telford NHS Hospital Trust) 'Wales does not have the critical mass or geography for such an approach.'¹⁴⁶

The committee also held one meeting to discuss the 'Work of the Wales Office'. This session, held on 11 March, saw Paul Murphy (Secretary of State for Wales) questioned on his management of LCOs and framework powers, some key points of which debate were discussed in section 4.2 above. The minister also suggested that 'enlarging the work of the [dormant] Joint Ministerial Councils (JMCs)' would help, 'settle disputes' as territorial policies diverge since current mechanisms for relations between ministers were 'not sufficiently robust'.¹⁴⁷

Other topics raised at the hearing included David Jones MP's fear that 'the thrust of devolution at the moment...is to suck up powers from local government', Paul Murphy's defence of the Welsh Grand Committee, and a brief discussion on 'cross-border issues'. Paul Murphy said these should be dealt with using 'common sense and pragmatism' and that there was no 'reluctance on the part of the Welsh Assembly' to do so, despite David Jones' fears of about the Assembly government adopting an 'All Wales agenda'.¹⁴⁸

5.4 Northern Ireland Affairs Select Committee

In this monitoring period the Northern Ireland Affairs Select Committee has published two reports: the First Special Report into the *Northern Ireland Prison Service: Government Response to the Committees First Report of Session 2007-08*, and the Second Report into *The Work of the Committee in 2007*. In this second report the changing role of the committee is acknowledged:

¹⁴⁶ House of Commons Welsh Affairs Committee, oral and uncorrected evidence on *The Provision of Cross-Border Public Services*, Q81

¹⁴⁷ Ibid Q3-4

As a Committee we are of course delighted that responsibility for the majority of policy areas has been restored to a body which is directly accountable to the people of Northern Ireland. For us, however, this has meant a considerably reduced remit, with inevitable consequences for our ability to carry out the 'core tasks' set by the House for all departmentally related select committees.¹⁴⁹

An inquiry into *Policing and Criminal Justice in Northern Ireland* is still ongoing.

5.5 Regional Select Committees

Following the commitment to establish regional select committees in the Governance of Britain green paper in July 2007,¹⁵⁰ the detailed work on how to make this a reality was taken on by the Modernisation Committee. This committee held five oral evidence sessions on regional accountability between January and March, in which the merits of the establishment of regional select committees were discussed. In the fifth session, on 5 March, Hazel Blears, Secretary of State for Communities and Local Government, set out the case for regional committees, which is that there remains 'a fairly significant gap at regional level in terms of accountability...and scrutiny'. However, there remain many unresolved issues, including the form such bodies would take. Hazel Blears argued that 'some kind of hybrid that is a select committee with constraints' might be the way forward¹⁵¹.

5.6 Territorial Grand Committees

On 26 March the Welsh Grand Committee met to consider the budget statement, holding a wide-ranging four-hour debate formally on the motion 'That the Committee has considered the matter of the Budget Statement and its implications for Wales'. The main debate was preceded by a half-hour oral question time with Paul Murphy, Secretary of State for Wales, and junior minister Huw Irranca-Davies. Among the issues raised was the likelihood of changes to the powers of the Assembly in Cardiff. In response to a question from Plaid MP Adam Price, Paul Murphy poured cold water on the idea of tax-raising powers being devolved:

My view is that there is not a case for tax-raising powers in Wales for two reasons. First, I do not think that everybody wants them. Secondly, the resource base in Wales is inevitably lower than that in Scotland.¹⁵²

¹⁴⁸ Ibid Q16-24

¹⁴⁹ Northern Ireland Affairs Committee, *Work of the Committee in 2007*, Second Report of 2007-8 Session, HC 286, p3 (para.2), at: <http://tinyurl.com/5d8l49>

¹⁵⁰ *The Governance of Britain*, Cm 1710, Ministry of Justice, 3 July 2007, at: <http://tinyurl.com/2hr4z6>

¹⁵¹ House of Commons Modernisation Committee, uncorrected oral evidence on *Regional Accountability*, 5 March 2008, Q144-166, at: <http://tinyurl.com/5bxdal>

¹⁵² Paul Murphy, Welsh Grand Committee, 26 March 2008, Cols 11-12.

The minister further suggested that amending the Barnett formula would be risky from a Welsh perspective as it could lead to a drop in spending. He also defended the decision not to release correspondence between the UK and Welsh Governments about the legislative process to his shadow, Cheryl Gillan MP. Other issues raised in the question period included introducing a right to bilingual juries (which the government is apparently actively considering), affordable housing in Wales and the coal compensation scheme.

- The Scottish and Northern Ireland Grand Committees, and the Regional Affairs Committee did not meet during the timeframe of this report.

5.7 Lords Constitution Committee

On 28 January the committee published its *Annual Report 2006-7*. It noted that it had conducted pre-legislative scrutiny on two Legislative Competence Orders under Section 95 of the GOWA 2006, and had cleared both as not raising matters of constitutional significance.¹⁵³

¹⁵³ House of Lords Constitution Committee, *Annual Report 2006-7*, HL 44, para. 22-23

6. Inter-Institutional Relations

6.1 Intergovernmental Relations

Intergovernmental relations have become far more susceptible to conflict – and far more interesting from a research perspective – since the electoral victory of the SNP, the formation of the Labour-Plaid coalition, and the resumption of devolution to Northern Ireland. Disagreements have arisen in recent months between the UK and Scottish governments on: the issue of nuclear power (as discussed in section 4.1); the size of the block grant to Scotland (section 3.2); control of Scottish Parliamentary elections (section 3.3); and the question of whether the Treasury or the Scottish Government should keep money that will be saved from Council Tax Benefit payments if the SNP succeeds in introducing a local income tax.¹⁵⁴ All these issues relate entirely or in part to reserved matters – as has been the case with other disputes, such as those over the siting of nuclear weapons in Scotland,¹⁵⁵ and the role of Scottish ministers in EU negotiations¹⁵⁶ – demonstrating the SNP's willingness to push at the boundaries of the devolution settlement whenever possible.

Relations between the UK and Welsh Governments are more cordial – unsurprisingly, given Labour's leadership of both. Key ongoing issues to be negotiated are the gradual transfer of legislative competence to the Assembly in Cardiff (section 4.2), the timing of a referendum on full legislative devolution (section 2.1) and the planned establishment of a commission to examine the funding of the Assembly, which the Treasury is far from enthusiastic about (section 3.2). As far as Northern Ireland is concerned, the major piece of business to be resolved is the transfer of control of policing and criminal justice, which the UK Government is seeking to accelerate and the DUP to delay.

¹⁵⁴ See Scott, D., 'Relations with Local Government' in McEwen, N. (ed.) *Scotland Devolution Monitoring Report: May 2008*, section 7.1, at: www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Scotland_May08.pdf.

¹⁵⁵ Gray, L., 'SNP Gathers forces to fight Trident replacement', *The Scotsman* (23 October 2007), at: <http://news.scotsman.com/topics.cfm?tid=373>

¹⁵⁶ Lynch, P., 'European and International Affairs' in C. Jeffery (ed.), *Scotland Devolution Monitoring Report*, January 2008, at: www.ucl.ac.uk/constitution-unit/files/research/devolution/dmr/Scotland_Jan08.pdf, p. 70.

6.2 Intergovernmental Structures

Joint Ministerial Committee

More than five years since its last meeting, the Joint Ministerial Committee is finally expected to meet in June in plenary form, bringing together the First and Deputy First Ministers of the three devolved territories with senior members of the UK Cabinet. The decision to resurrect this body was taken by the Prime Minister after repeated requests by First Minister Alex Salmond,¹⁵⁷ and apparent support from his Welsh and Northern Irish counterparts.¹⁵⁸ Salmond's enthusiasm for utilising this multilateral, formal mechanism for intergovernmental relations contrasts with the position of his predecessor Jack McConnell MSP, who recently told the Justice Committee that in 2002 the JMC structures 'did not just wither on the vine; a conscious decision was made to stop the JMCs meeting in order to facilitate and encourage a much stronger bilateral relationship.' However, he recognised that the changed political environment since 2007 may justify their reinstatement.¹⁵⁹ Responsibility for coordinating the JMC has been handed to Welsh Secretary Paul Murphy, while Justice Secretary Jack Straw is expected to chair the first meeting.

British-Irish Council

In the absence of JMC meetings, the British-Irish Council (BIC) was for many years the only official forum in which the UK and devolved governments met on a multilateral basis, along with representatives of the Irish, Manx, Jersey and Guernsey administrations. The tenth BIC summit was held on 14 February in Dublin, hosted by the Irish Government, and with the British Government represented by Welsh Secretary Paul Murphy.

The BIC, created as part of the 1998 Belfast Agreement, has the rather grand purpose of seeking 'to promote the harmonious and mutually beneficial development

¹⁵⁷ Dinwoodie, R., 'Salmond welcomes return of devolution roundtable', *The Herald* (5 March 2008), at: www.theherald.co.uk/politics/news/display.var.2093239.0.Salmond_welcomes_return_of_devolution_roundtable.php

¹⁵⁸ Alex Salmond told the Scottish Parliament that during the 14 February British-Irish Council summit he held a trilateral meeting with the First Ministers of Northern Ireland and Wales in which they 'reached a clear collective view on the importance of the joint ministerial committee and other formal mechanisms and the reinstatement of mechanisms that have fallen into abeyance' - Alex Salmond, Scottish Parliament Official Record, 21 February, col. 6426-7

¹⁵⁹ House of Commons Justice Committee, 22 April, oral and uncorrected evidence, *Devolution: A Decade On*, Q506, at: <http://tinyurl.com/3nyjkg>

of the totality of relationships among the peoples of these islands'.¹⁶⁰ Although criticised as a talking shop, it has significant symbolic value in demonstrating the cooperative approach taken by the UK and Irish governments over the future of Northern Ireland.

At the Dublin summit, the Council received an interim report from the Strategic Review instigated by the previous plenary summit, in Belfast in July 2007. This approved the progress towards the establishment of a standing BIC secretariat, and in particular 'the consensus that it should be a single, co-located model'.¹⁶¹ Such a development will help to secure the future of the Council as a permanent intergovernmental institution.

As part of the review, the Council also examined the remit of its various subsidiary 'work sectors' that operate in specific policy areas, and considered proposals for new sectors. The First Ministers of Wales, Northern Ireland and Scotland proposed that the BIC expand its work to include the promotion of cooperation over early years, child protection and energy policy respectively.

Beyond the summits, the BIC's sectoral work has continued in a range of policy areas, and three of its groups held ministerial meetings during the timeframe of this report. At the Environment Sectoral group's eighth meeting on 1 February in Bangor, Northern Ireland, matters discussed included climate change and renewable fuels.¹⁶² On 31 March, the Demography Group held its first formal ministerial meeting since its November 2006 establishment on the initiative of Jack McConnell MSP's Scottish Executive, which had a strong interest in tackling Scotland's declining population.¹⁶³ Finally, the Social Inclusion Group used its second ministerial meeting on 20 May to discuss, in particular, child poverty.¹⁶⁴

6.3 Interparliamentary Relations

Formal linkages between Westminster and the devolved legislatures remain minimal. The limited cooperation that occurs is generally conducted by the respective territorial select committees:

¹⁶⁰ *The Agreement: Agreement reached in the multi-party negotiations* [The Belfast Agreement], 10 April 1998, at: <http://cain.ulst.ac.uk/events/peace/docs/agreement.htm>, Strand 3, para 1.

¹⁶¹ *Ibid*

¹⁶² 'Eighth meeting of the British-Irish Council (Environment Sectoral Group)', British-Irish Council communiqué, 1 February 2008

¹⁶³ 'Ministerial Meeting of the Demography Group', British-Irish Council communiqué, 31 March 2008.

¹⁶⁴ 'Ministerial Meeting of the Social Inclusion Group', British-Irish Council communiqué, 20 May 2008

- As noted in section 4.2 and 5.3 above, WASC and the National Assembly for Wales Domiciliary Care LCO Committee held a joint meeting on 17 January to consider the proposed LCO in the field of social care. Further such formal cooperation between the two legislatures is expected to take place when future LCOs are under consideration.
- The Scottish Affairs Committee is responsible for maintaining relations with the Scottish Parliament on behalf of the House of Commons, but has not been involved in any formal cooperation with MSPs or Holyrood Committees in recent months.
- As part of its inquiry into the Northern Ireland prison service, the Northern Ireland Affairs Committee met with the Northern Ireland Assembly Committee for Health, Social Services and Public Safety to discuss arrangements for transferring responsibility for prison health care to the Assembly from Westminster.¹⁶⁵

¹⁶⁵ As noted in Northern Ireland Affairs Committee, *The Work of the Committee in 2007*, Second Report of Session 2007–08, HC 286, p. 7 (para. 22)

DEVOLUTION
MONITORING
PROGRAMME
2006-08

Devolution and the Centre Monitoring Report
September 2008

Akash Paun (ed.) & Richard Murray

The Constitution Unit

www.ucl.ac.uk/constitution-unit



The Devolution Monitoring Programme

From 1999 to 2005 the Constitution Unit at University College London managed a major research project monitoring devolution across the UK through a network of research teams. 103 reports were produced during this project, which was funded by the Economic and Social Research Council (grant number L 219 252 016) and the Leverhulme Nations and Regions Programme. Now, with further funding from the Economic and social research council and support from several government departments, the monitoring programme is continuing for a further three years from 2006 until the end of 2008.

Three times per year, the research network produces detailed reports covering developments in devolution in five areas: Scotland, Wales, Northern Ireland, the English Regions, and Devolution and the Centre. The overall monitoring project is managed by Professor Robert Hazell and Akash Paun at the Constitution Unit, UCL and the team leaders are as follows:

Scotland:	Prof Charlie Jeffery & Dr Nicola McEwen Institute of Governance, University of Edinburgh
Wales:	Prof Richard Wyn Jones & Prof Roger Scully Institute of Welsh Politics, University of Wales, Aberystwyth
Northern Ireland:	Professor Rick Wilford & Robin Wilson Queen's University, Belfast
English Regions:	Prof Martin Burch, Prof Alan Harding & Dr James Rees IPEG, University of Manchester
The Centre:	Akash Paun , The Constitution Unit, UCL

The Constitution Unit and the rest of the research network is grateful to all the funders of the devolution monitoring programme.



All devolution monitoring reports are published at: www.ucl.ac.uk/constitution-unit/research/devolution. Contact Akash Paun on a.paun@ucl.ac.uk for further information.

Devolution and the Centre Monitoring Report

September 2008

Akash Paun (ed.) & Richard Murray

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1. Monitoring the Union

Gordon Brown's initial emphasis on constitutional reform as his government's 'big idea' appears largely to have vanished beneath the waves of economic bad news. But with devolution policy the reverse is the case, with events keeping the issue onto the agenda despite the government's own relative lack of interest.

In Scotland, spurred by the SNP's electoral success, the three unionist parties established the Commission on Scottish Devolution (Calman Commission) to examine the case for devolution of further powers, particularly over taxation. The Commission started work in April 2008 and will publish an interim report before the end of the year.

Reform of devolution finance is also a live issue in Wales following the creation of the Assembly Commission on Funding and Finance under economist Gerald Holtham. This initiative – part of the Labour-Plaid 2007 coalition deal – starts work in September and is likely to cause further concern in Whitehall, where the Treasury keeps a tight grip on devolution finance.

This instinct is likely to be reinforced as the next general election approaches and attention shifts to the crucial electoral battlegrounds in England, where talk of a new funding settlement risks stirring up resentment at higher public spending in the devolved territories. In this context, a reluctance to rethink the Barnett Formula is understandable. However, this approach may be undermined by the work of the two commissions and the SNP's 'national conversation'. If competing demands for additional resources and/or fiscal powers are made by the various territories, including England, it will surely be the British government that has to act as deal-maker.

Under Gordon Brown, there have been some indications that the need for a more active devolution strategy is taken seriously. After initial scepticism, the PM not only agreed to support Calman with funding and staffing, but also revealed a new open mind on fiscal devolution to the Scottish CBI in September. This followed last year's appointment of a Director General of Devolution, and June's meeting – the first in over five years – of the plenary Joint Ministerial Committee (JMC), bringing together the leaders of the three devolved administrations and senior Cabinet ministers. Issues discussed included funding tensions over SNP plans to abolish council tax in

Scotland and Olympic regeneration spending in London (which does not generate extra funds for the devolved governments). A further meeting of the JMC is expected this autumn, while rumours circulate that the Scotland and Wales Offices will at some point be incorporated into a new Department of Nations and Regions. This would be a significant step towards ending the fragmentation of responsibility for devolution that undermines joined-up thinking. However, machinery of government changes can only do so much. Crafting a mutually acceptable new financial settlement for the UK in a worsening economic climate will be a taller order for the weakened Brown administration, and it may ultimately be an incoming Conservative government that grasps this particular nettle.

Akash Paun

The Constitution Unit

September 2008

2. Political Parties

2.1 Labour

The Labour Party, dominant across the UK for over a decade, faces serious political and economic challenges in all corners of the country.¹ At the UK level, economic problems dominate, meaning that Gordon Brown's early commitment to constitutional reform, and to strengthening 'Britishness', has been wiped from the political agenda. In Scotland and Wales, however, constitutional debates continue but with Labour on the back foot, nationalist discourses threaten to dominate.

In Scotland, the SNP remains popular, and on 24 July delivered a crushing blow to Labour in the Glasgow East by-election, taking the seat on a 22.5 per cent swing.² Labour also lost its Scottish leader in this period, with Wendy Alexander resigning at the end of June after just nine months in the post, as a result of controversy about donations made to her leadership campaign by a Jersey-based businessman (who was therefore not a UK-registered voter with the right to make such donations).³

During the course of the leadership contest an interesting debate developed about the position of the party's Scottish leader. Tom McCabe MSP, the former Finance Minister, sparked this by suggesting that the holder of this post – who constitutionally-speaking is merely the leader of the Labour group at Holyrood, not head of the Scottish Party at large – should be given more autonomy from the London-based party leadership. McCabe contrasted Labour's restricted position to the freedom of the SNP: 'In policy terms they [SNP] can go from A to B unfettered with the result that they look and sound clear and sure-footed. Labour...have to deal with all those who have failed to grasp the political consequences of devolution'.⁴ Scottish Labour would perform better if it didn't have to concern itself with opposition in London, and that requires a leader with complete control of the organisation who can represent Scots 'no matter who it might upset', he argued.

¹ 'Gordon Brown's popularity at historic low amid Labour leadership speculation', *Daily Telegraph*, 1 August 2008, at: <http://tinyurl.com/58hksf>

² http://news.bbc.co.uk/1/hi/scotland/glasgow_and_west/7522153.stm

³ 'Wendy Alexander quits as Scots Labour Leader', *The Times*, 28 June 2008, at: <http://www.timesonline.co.uk/tol/news/uk/scotland/article4230569.ece>.

⁴ 'What do we in Scottish Labour need in our nation's new political landscape? A leader with guts to stand up to Westminster', *Sunday Herald*, 3 August 2008, at: <http://tinyurl.com/5lwu6v>

McCabe's suggestions unsurprisingly provoked a backlash among Labour MPs. Russell Brown (Dumfries and Galloway) and Jim Sheridan (Paisley and Renfrewshire) both rejected his proposal, and emphasised Gordon Brown's status as party leader in Scotland as well as nationally,⁵ while Secretary of the Scottish MPs Group, John Robertson, dismissed the ideas as 'the work of a man looking for a job'.⁶ However, although the constitutional position of the Scottish Labour leader may remain subordinate, in practice the Labour group at Holyrood already determines its own course in many important regards and will probably come to do so even more. Indeed the eventual victor of the leadership election – Iain Gray – himself argued during the campaign that the leadership post should be 'up-graded'.⁷ And like his two defeated rivals – Andy Kerr and Cathy Jamieson – Gray also signalled a willingness to consider replacing the council tax – a key SNP policy that up till now Labour had rejected. However, it remains to be seen whether Gray will be as open to enhancing the powers of the Scottish Parliament as his predecessor (who was instrumental in setting up the Commission on Scottish Devolution).

In Wales too, the devolved Labour Party is seen by some at Westminster as having moved too close to the nationalist agenda. In the Welsh case the accusation is strengthened by the fact that Labour and Plaid are in formal coalition. And to the concern of the more devo-sceptic wing of the party, two key pledges from the coalition agreement are now being implemented, with the All-Wales Convention under way and the Commission on Assembly Finance established under the chairmanship of Gerald Holtham.

The work of the Commission in Edinburgh and the Convention and Commission in Cardiff are all expected to report before the next general election. The cumulative impact of these developments will be significant, with the UK government forced to respond to proposals for reform of the Barnett formula and of the legislative powers of both devolved legislatures. Developing a coherent position on these issues is likely to be an uncomfortable process for Labour, given the continuing splits within the

⁵ Griffin, Tom 'Calls grow for Scottish Labour Autonomy' Open Democracy, 11 August 2008
<http://www.opendemocracy.net/blog/ourkingdom-theme/tom-griffin/2008/08/11/calls-grow-for-scottish-labour-autonomy>

⁶ 'Scottish Labour Leader must confront arrogant MPs, urges former minister', 4 August 2008
<http://www.timesonline.co.uk/tol/news/uk/scotland/article4454682.ece>

⁷ Telegraph 'Scottish Labour Leader: What's in a name?', 3 August 2008
<http://www.telegraph.co.uk/news/newstoppers/politics/labour/2494263/Scottish-Labour-leader-Whats-in-a-name.html>

party on devolution issues and the inherent difficulty of crafting a mutually acceptable new settlement in the zero-sum field of territorial finance.

2.2 Conservatives

'This is the broken society election. It comes in a place where the people are shouting 'Gordon Brown, wasn't Labour supposed to end this degrading poverty?'⁸. David Cameron delivered a confident presentation to his Glasgow audience in early July that earned him desirable publicity in the face of Labour's woes, and in spite of his party's non-existent prospects of winning the Glasgow East byelection.

However, the speech was more revealing for what it didn't say directly. Without mentioning the constitutional reform debates, Cameron emphasised that problems in Glasgow East were of nation-wide relevance: 'there is a thread that links us all together. The knife crime. The worklessness. The ill health. Above all, the wasted lives...a twenty-eight year-old woman stabbed in south London; a forty-eight year old woman dying from heart disease in Gallowgate'. The message was a clearly unionist one: the solution to social breakdown was not 'local solutions to local problems', but a nationwide change in cultural attitudes to morality, personal responsibility, and social virtue. 'We understand that the causes of a broken society lie not just in government policies but in national culture.' Further devolution of power under a Conservative government remains a possibility – in particular, greater fiscal autonomy would chime with Tory themes of budgetary responsibility – but this can be expected to occur as part of a broader unionist discourse.

That said, the Conservatives also face siren-like temptations from English nationalism. On 1 July, Ken Clarke MP's Democracy Task Force finally published its paper on the West Lothian Question. Rejecting elected regional assemblies and an English Parliament, the proposed solution was to directly address the constitutional anomaly that sees MPs from the devolved administrations voting on legislation that primarily affects applies only in England, through a form of 'English Votes for English Laws'. The proposal is that:

Bills that are certified as 'English' would pass through the normal Commons process as far as and including Second Reading...The Committee stage, however, would be undertaken by English MPs only, in proportion to English party strengths. At Report Stage, the Bill would similarly be voted on again by the English Members only.

However, at Third Reading the Bill would be voted on again by the whole House.⁹

The innovative aspect of this form of the English Votes idea is that it would permit English legislation to reach the statute book only if it received the support of a majority both of English members (who alone would vote during the amending stages), and of the House as a whole (at Second and Third Readings).

However, the critique of Professor Robert Hazell, Director of the Constitution Unit, still holds:

No one has yet satisfactorily defined how you identify an 'English' law. The territorial extent of most bills varies in different parts of a bill. Either bills will have to be drafted in a completely different way; or you will have legislative hokey cokey, with MPs being allowed to vote on some amendments but not on others.¹⁰

A further interesting element of the Conservatives' territorial agenda was revealed in late July in a joint article by party leader David Cameron and his UUP counterpart Sir Reg Empey announcing the establishment of a joint working group to explore deepening co-operation between the parties, 'leading to the creation of a new political and electoral force in Northern Ireland'.¹¹ Unification of the two parties would reverse the split that took place as a result of the Anglo-Irish Agreement of 1985. If successful, the Tories would become the only major party to be fully represented throughout the UK. A YouGov poll of Northern Ireland voters found that '45% would be Very Likely or Likely to vote Conservative at the next general election if given the opportunity'.¹²

In Wales, Paul Valerio was announced as the Conservative Party nominee on the executive committee of the All Wales Convention. Mr Valerio was on the Richard Commission and announced that he would keep an open mind on the devolution of full law making powers to the Welsh Assembly.¹³ The appointment of a member of

⁸ Conservative Party 'Fixing our Broken Society' Speech by David Cameron, Glasgow, 7 July 2008, http://www.conservatives.com/tile.do?def=news.story.page&obj_id=145626

⁹ Conservative Democracy Task Force, *Answering the Question: Devolution, the West Lothian Question and the Future of the Union* (London: Conservative Party, 2008), p.1.

¹⁰ Robert Hazell, 'Hokey cokey votes on English laws', *The Guardian*, letters page, 3 July 2008.

¹¹ Telegraph 'The Tories want to make a stand in Ulster' Sir Reg Empey and David Cameron 24 July 2008 <http://www.telegraph.co.uk/opinion/main.jhtml?xml=/opinion/2008/07/24/do2405.xml>

¹² <http://conservativehome.blogs.com/torydiary/2008/07/the-conservativ.html>

¹³ South Wales Evening Post 'Open Mind on powers for Wales' 8 July 2008 <http://www.highbeam.com/doc/1P2-16832419.html>

the party's pro-devolution wing raises the possibility of all-party consensus on full legislative devolution emerging over the next few years.

2.3 Liberal Democrats

On 26 August, Tavish Scott became the new leader of the Scottish Liberal Democrat party, being elected with 59 per cent (1,450) of the votes and beating rivals Ross Finnie and Mike Rumbles. His predecessor Nicol Stephen had unexpectedly resigned in July for family reasons. In his acceptance speech, Scott targeted Alex Salmond, stating that: 'what looks confident, sure-footed and wily today will be seen as arrogant, misguided and politically dishonest tomorrow.'¹⁴ He went on to confirm that he was in favour of further powers for the Scottish Parliament.

In Wales, Rob Humphreys, former Director for Wales at the National Institute of Adult Education, and current Director of the Open University in Wales, was chosen as the Liberal Democrat member of the All Wales Convention.

¹⁴ Brian Taylor, 'Tavish Scott takes to the leadership stage', BBC Online, 26 Aug 2008, at: <http://www.bbc.co.uk/blogs/thereporters/briantaylor/2008/08/26/index.html>

3. Devolution and Whitehall

3.1 Towards a single department for devolution?

The Prime Minister's Cabinet reshuffle, announced on 3 October 2008, left the three separate territorial offices intact, and indeed reverted to the situation of having full-time Secretaries of State for all three devolved nations. Prior to the reshuffle Des Browne had been Secretary of State for Defence as well as for Scotland. The new Scottish Secretary is Jim Murphy, while Paul Murphy and Shaun Woodward retain their roles at the head of the Wales and Northern Ireland Offices respectively.

In early August it had been reported that the Scotland, Wales and Northern Ireland Offices were to be merged. This would have created a single centre for devolution that is able to take a more 'joined-up' approach to territorial matters than has been the case so far.¹⁵ However, with economic problems dominating the government's horizons, it seems this was one disruption too many for the Prime Minister. In the long run, however, and particularly once policing and criminal justice functions have been transferred to Belfast, merging the three departments would be a sensible step. It would also make sense to hand a new 'Devolution Secretary' responsibility for managing relations with the devolved institutions (including via the resurrected Joint Ministerial Committee – see section 6).

3.2 Ministry of Justice

'An Elected Second Chamber: Further reform of the House of Lords'

In July 2008, the Ministry of Justice published its White Paper on Lords reform.¹⁶ Its vision is for the reformed Lords to be entirely or predominantly (80 per cent) elected, with 12-15-year non-renewable terms for members, a third of whom would be elected every 4 or 5 years. However, a number of unresolved issues remain, some of which relate to territorial political issues.

There have been suggestions made over the years that the reformed second chamber should become a house of the nations and regions, in the way that upper chambers in many federations represent the composite units of the country. This could happen to a limited extent if elections to the new upper chamber were

¹⁵ George Parker, 'PM set to axe 'part-time' Scottish role', *The Financial Times*, 4 August 2008.

¹⁶ Ministry of Justice, *An Elected Second Chamber: Further reform of the House of Lords*, CM 7438, 14 July 2008, at: www.justice.gov.uk/docs/elected-second-chamber.pdf.

synchronised with devolved elections (as favoured by the Liberal Democrats), as members from the devolved territories would be elected as part of campaigns that stressed territorially-specific rather than UK-wide issues. The government's view, however, is that this would be impractical, for instance because members would be elected part-way through the Westminster parliamentary year. Its preference (backed by the Conservatives) is that reformed upper chamber elections should coincide with UK general elections, making it more likely that the new body will be similar in outlook and composition to the Commons.

The voting system adopted will have an even bigger impact on the extent to which the upper chamber becomes a territorial chamber. In particular, 'first past the post' or similar plurality-based systems would make it more difficult for the nationalist parties to win seats. More proportional systems, on the other hand, would give a stronger voice to nationalist and other smaller parties, which might enable the reformed second chamber to play a role in resolving tensions between the nations.

Plans for new prison in Wales

On 6 August the Ministry of Justice published a shortlist of sites for construction of a new prison in Wales. Prisons are a non-devolved matter as far as Wales is concerned (in contrast to Scotland) but it is interesting to note that the Ministry of Justice does make a distinction between decisions relating to England and to Wales. In this particular case, a consultation process has been run involving various key actors in Wales, with the Welsh Assembly Government proposing that the prison should be sited in the Heads of the Valleys area to assist economic regeneration. Although the ultimate decision will be taken in Whitehall, the fact that such decisions are taken in a Welsh (rather than an England-and-Wales) policy context indicates that the foundation may already exist for the eventual devolution of powers in this area.¹⁷

3.3 HM Treasury

The system for financing devolution (centred on the Barnett Formula) looks increasingly under strain, although the Treasury itself remains tight-lipped about the possibility of reform. In Scotland the Calman Commission and in Wales the Holtham Commission are looking at the issue and expected to recommend changes to the

¹⁷ Ministry of Justice, *Shortlist of potential sites for new Welsh prison announced*, 6 August 2008, at: www.justice.gov.uk/docs/potential-welsh-prison-sites.pdf

system by which the devolved bodies are funded. The Treasury is committed to producing a 'factual paper' on how the Barnett Formula works, although in July the Chief Secretary, Yvette Cooper, revealed that 'No decision has been made yet on the date of publication',¹⁸ confirming that the Treasury's instinctive preference to keep this sensitive issue off the agenda remains live and well. However, the events elsewhere in the UK are likely eventually to force the Treasury's hand, requiring the centre to intervene in the debate to forge a new deal for territorial finance.

Even at Westminster, events are starting to unfold in this area. In the previous monitoring report,¹⁹ it was reported that the Liaison Committee had rejected a request from Lord Barnett to establish an ad hoc select committee to consider the future of the formula that bears his name. The grounds given were that under the terms of reference he proposed such a committee could stray into the divisive territory of the actual distribution of funding levels throughout the United Kingdom.

In response, Lord Barnett made a second request for a committee, this time with more tightly framed terms of reference, acceptance of which was confirmed by the Liaison Committee in their second report of 2007-08, published on 8 July. These terms of reference place the emphasis on establishing the 'purpose, methodology and application of the Barnett Formula as a means of determining funding', and the extent to which the formula achieves its intended purpose. They explicitly exclude from examination the 'overall system of funding the devolved administrations', 'other political aspects of the devolution settlements' and 'the distribution of funds within the different regions of the United Kingdom'. That said, they do leave the committee open to consider 'alternative mechanisms' to the Barnett Formula, so long as their conclusions steer clear of pronouncements on the political goals a funding mechanism should be aiming to achieve.²⁰

3.3 Scotland Office

On 24 June the Scotland Office published its response to the Gould Report on the Scottish elections of May 2007 (and the high number of spoiled ballots). It also

¹⁸ Yvette Cooper, House of Commons Hansard (Written Answers), 21 July 2008, Column 729W.

¹⁹ Akash Paun (ed.) and Edward Calow, *Devolution and the Centre Monitoring Report: May 2008*, at: www.ucl.ac.uk/constitution-unit/files/research/devolution/dmr/Centre_May08.pdf, p. 19.

²⁰ House of Lords Liaison Committee, 2nd Report of Session 2007-08, HL Paper 142, at: www.publications.parliament.uk/pa/ld200708/ldselect/ldliaisn/142/142.pdf

responded to the Scottish Affairs Committee on the same day, following the committee's inquiry into the same subject.²¹

3.4 Wales Office

In July the department succeeded in getting a second legislative competence order (LCO), on domiciliary care, onto the statute book. The Wales Office has also been guiding two LCOs – on vulnerable children and affordable housing – through the legislative process at Westminster. These legislative developments are discussed further in section 4.2 below.

In July a revised Devolution Guidance Note was published setting out how ministers in London and Cardiff should work together on legislation. The notes document a six stage process that should be followed in making a Legislative Competence Order – and re-emphasise that their purpose is to deepen, not widen, the devolution settlement.²²

3.5 Northern Ireland Office

The NIO remains focussed on the outstanding task of transferring control for the police and criminal justice system to the devolved administration in Belfast. This issue, for which the legislative ground has already been laid, is a longstanding obstacle blocking the path to political 'normalisation' in the six counties. The tensions around the issue threatened to spill over in August when Sinn Fein declared a willingness to pull the plug on the power-sharing executive. The party's leader in the Irish parliament stated:

If we are forced to conclude that change will not be forthcoming from the Executive then we will have no option but to pull out our ministers and seek to put pressure where responsibility ultimately lies, which is the British government in London.²³

This prompted the UUP leader, Sir Reg Empey to call on Sinn Fein's deputy first minister Martin McGuinness to distance himself from the remarks, to avoid a 'full blown crisis' from erupting.

²¹ BBC Online, 'Westminster rejects election move', 24 June 2008, at:

<http://news.bbc.co.uk/1/hi/scotland/7472077.stm>

²² Ministry of Justice Devolution Guidance Notes 'Orders in Council under section 95 of the Government of Wales Act 2006' <http://www.justice.gov.uk/docs/dgn16.pdf>

²³ Henry McDonald, 'Northern Ireland: Sinn Fein warns it may abandon power sharing in policing row', *The Guardian*, 26 August 2008.

As noted above, there are suggestions that the three territorial offices should all at some point be merged into a Department for Devolution. However, while devolving policing remains in the in-tray of the Northern Ireland Secretary it remains likely that the NIO at least will retain its separate existence, in order that this important piece of unfinished business receives sufficient political attention.

4. Territorial Legislation and Motions

4.1 Scotland

A legislative consent motion (LCM) relating to the UK **Energy Bill** was passed by the Scottish Parliament on 18 June 2008. This grants Scotland's approval to clauses of the bill that create a consistent UK-wide licensing arrangement for off-shore carbon storage. Scottish Ministers will undertake licensing authority functions for carbon storage schemes off the coast of Scotland. As previously reported, the Scottish Government did not allow Westminster to extend to Scotland provisions on nuclear waste disposal and decommissioning of future plants.²⁴ This took to nine the number of LCMs passed under the SNP administration.

In the next parliamentary session, starting in November 2008, the UK **Marine Bill** may cause some tensions between Edinburgh and London. A draft of the bill was published in April with the consultation period closing on 26 June. The government is proposing a UK- wide strategic marine planning system, among other changes to the management of fisheries, nature conservation, coasts and estuaries. But, reflecting the complex mix of reserved and devolved powers that affect management of seas and waters, the bill only extends in part to Scotland. For instance, the bill will require the government to publish a Marine Policy Statement with the devolved administrations of Wales and Northern Ireland only.

In mid-July the Scottish Government published a consultation document for its own Marine Bill. The Holyrood bill would create a local planning authority, called Marine Scotland, to implement a statutory marine management system – licensing off shore industries while conserving vulnerable areas of outstanding ecological importance.²⁵ The potential for confusion and conflict between competing frameworks for marine management was noted by the Joint Committee on the Draft Marine Bill, which stated that:

We regard the production of an agreed Marine Policy Statement that has consensus across the devolved administrations, including Scotland, as an imperative, and consider that the designation of

²⁴ *Devolution and the Centre Monitoring Report May 2008*: p.27

http://www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Centre_May08.pdf

²⁵ *The Times*, 'Marine Bill will try to balance conservation and industry' 14 July 2008

<http://www.timesonline.co.uk/tol/news/uk/scotland/article4333990.ece>

'Sustainable Seas for All' The Consultation on Scotland's First Marine Bill , available at <http://www.scotland.gov.uk/Resource/Doc/231463/0063135.pdf>

machinery to achieve this if at all possible should be placed on the face of the Bill.²⁶

4.2 Wales

Legislative Competence Orders

A steady stream of Legislative Competence Orders continues to flow from Cardiff to Westminster, though problems with the process continue. For instance, the LCO on **environmental protection and waste management** has still to be referred to Parliament for scrutiny, over a year after it was first proposed in the Assembly.

Meanwhile, the **vulnerable children** LCO has received the backing of the Welsh Affairs Committee, though the committee was critical of the lack of synchronisation in referring the order to Westminster and the Assembly, which prevented joined-up scrutiny (see section 5.3 below).²⁷

The scrutiny process for the **affordable housing** LCO has fallen foul of similar accusations from the relevant Assembly committee, which expressed concern that the draft presented to the Commons Welsh Affairs Committee and the Lords Constitution Committee was different from that they had reviewed. The situation was not a demonstration of 'good practice'.²⁸ The order was being considered at Westminster over the summer of 2008.

A more positive development was the completion of the scrutiny process for the LCO on **domiciliary care**. This order was approved by the Lords on 24 June, the Commons on 1 July, and became law on 9 July. As a result, the Assembly has gained the power to regulate charges levied by local authorities in respect of non-residential social care.

In July the Welsh Assembly Government proposed a new LCO, relating to the Red Meat Industry. Private members' LCOs proposed include orders relating to the **provision of mental health services** and **domestic fire safety**.

Framework Powers

²⁶ Joint Committee on the Draft Marine Bill, *Draft Marine Bill*, HL Paper 159-I HC 552, 30 July 2008, p. 42.

²⁷ House of Commons Welsh Affairs Committee, 'The Proposed Draft National Assembly for Wales (Legislative Competence) Order in the Field of Social Welfare' June 2008.

²⁸ National Assembly for Wales 'Report of the Proposed Affordable Housing LCO Committee July 2008 <http://tinyurl.com/5unjij>

Three major bills affecting the legislative competence of the Welsh Assembly continue to progress through the UK Parliament. The **Education and Skills Bill** completed its second reading in the House of Lords on 10 June before going to committee.

With respect to the provisions raising the education and training leaving age to 17 in 2013 and 18 in 2015, the minister, Lord Adonis, clarified that:

While the raising of the education and training age in the Bill applies directly to England only, at the request of my Welsh colleagues, I expect to move an amendment at a later stage to enable the National Assembly to apply similar provisions in Wales in future, should it so desire.²⁹

The **Planning Bill** received its second reading in the House of Lords in July and is being considered in committee in October. Jane Davidson, Welsh Minister for Environment, Sustainability and Housing updated the National Assembly for Wales on the progress of the bill, reassuring members that Wales had secured amendments that would ensure that whenever planning applications relating to the region were considered, a minimum of one member on the proposed Infrastructure Planning Commission could be nominated by Welsh Ministers. The Welsh Government is also actively seeking to secure a provision relating to the Development Control System, where a number of changes originally applicable only to England would be enacted under a 'power to apply' provision after consultation in Wales.³⁰

The **Local Transportation Bill** completed its House of Commons Committee stage in May, and the proposals to devolve the power to impose charges on truck road users remain in Part 7 of the latest draft of the bill in spite of Conservative opposition. Time would have to be found for Report stage before November's prorogation for the bill not to be lost.

4.3 Northern Ireland

The passage of several public bills affecting Northern Ireland continued to progress through Parliament. The **Dormant Bank and Building Society Accounts Bill** was passed in the House of Lords and is scheduled to return to the Commons for its second reading in early October. There have been no further developments in Northern Ireland as the bill has already received legislative consent.

²⁹ Lords Hansard, 10 June 2008, Col. 490.

The **Health and Social Care Bill**, which obtained consent from the Northern Ireland Assembly in January 2008, obtained Royal Assent on 21 July, but not without amendment in the Lords earlier in the month. Amendment 51 inserts a new clause mandating that where a private or voluntary sector care home provides services under agreement with a local authority or the Northern Ireland Executive, the care provider is required to act compatibly with the Human Rights Act. Amendment 77 will amend the Health Act 1999 to allow the conferral of functions on Northern Ireland Departments. This brings the legislation into line with similar procedures for Scottish and Welsh Ministers.³¹

The **Energy Bill** has completed its consideration in House of Lords committee. Contrary to the rest of the United Kingdom, proceedings for an alleged offence committed under the Act in a 'controlled place' may not be instituted in Northern Ireland, unless authorised by the Secretary of State or the Director of Public Prosecutions for Northern Ireland – reflecting the continuing sensitivities around loosening the centre's grip on policing and criminal justice in Northern Ireland.

The **Pensions Bill** is scheduled to begin Lords Report stage after the summer recess. Chapter 5 of the bill establishes a duty on the Secretary of State to establish a pension scheme, although it must correspond with any corresponding legislation in Northern Ireland.

4.4 Early Day Motions

A number of EDMs tabled in summer 2008 related to devolution:

- Alun Michael (Labour) tabled EDM 2090 commending the position of the Secretary of State for Environment, Food and Rural Affairs for opposing the widespread cull of badgers that would do nothing to prevent the spread of bovine tuberculosis. The Welsh Minister for Rural Affairs was encouraged to set aside her decision to allow the cull. It was signed by 42 MPs.
- Ian Davidson (Labour) tabled EDM 1908, referring to the report of the Scottish Affairs Committee into Employment and Skills for the Defence Industry. The

³⁰ Welsh Assembly Government Cabinet Statements 2008 'Planning Bill Update' 17 July 2008

³¹ Health and Social Care Bill, House of Lords Amendments Explanatory Notes 2 July 2008
<http://www.publications.parliament.uk/pa/cm200708/cmbills/132/en/2008132en.pdf>

motion argued that an independent Scotland would be unable to support the Scottish shipbuilding industry, and stated that 'No Union, No Yards' was an accurate description of the situation. It was signed by 28 MPs.

- Mohammad Sarwar (Labour) tabled EDM 1863 condemning the Scottish Government for cutting the funding of the Glasgow Science Centre from £1.7 million to £1.08 million, and called on the Secretary of State for Scotland to press Edinburgh to reconsider the decision. It was signed by 27 MPs.
- Nigel Griffiths (Labour) tabled EDM 1822 condemning the SNP's decision to cut £10 million from the free bus transport budget for disabled people and those over 60 years, on top of the 10 per cent fare increase enforced in Edinburgh and elsewhere. He deplored attempts to restrict the bus pass to those over 65. It was signed by 24 MPs.
- Angus Robertson (SNP) tabled EDM 1651 welcoming the results of the 2007 Scottish Social Attitudes Survey that found 71 per cent of the population now trusted the Scottish Government to act in the interests of Scotland always or most of the time, but that only 35 per cent trust the UK government to do the same. It was signed by 8 MPs.

5. Parliamentary Committees and Devolution

5.1 Justice Committee

Devolution: A decade on

The House of Commons Justice Committee has continued its inquiry on 'Devolution: A Decade On', holding a further three evidence sessions between May and July 2008.

- On 8 May the committee travelled to Cardiff to discuss devolution in Wales with the four party leaders in the Assembly, the Presiding Officer and two senior officials.³² One issue discussed was the complex procedures by which powers are devolved to the Assembly under the Government of Wales Act 2006 through legislative competence orders (LCO). Nicholas Bourne AM, Leader of the Welsh Conservatives, described this process as 'convoluted'³³, while his Liberal Democrat counterpart Mike German called it 'very cumbersome' and 'transitional'.³⁴ The Presiding Officer, Lord Elis-Thomas, was more sanguine, however, arguing: 'it does not make a difference how the powers come; the important thing is that they are here'.³⁵ First Minister Rhodri Morgan, for his part, suggested it was too early to make a judgement on the LCO system.
- On 13 May, the committee heard from Justice Secretary Jack Straw and the government's Director General for Devolution, Jim Gallagher on Whitehall's perspective on devolution.³⁶ Jack Straw argued that the Secretaries of State for Scotland and Wales retained an important role in maintaining the co-ordination of government business between Westminster and the devolved regions.³⁷ The Secretary of State also defended the success of devolution at protecting the Union, stating that there was:

no indication, notwithstanding the elections for the Scottish Parliament last year, [of] any strong sentiment in favour of independence in Scotland, and the British people as a whole believe that you can have multiple identities and that you can, in this case, have profound

³² House of Commons Justice Committee; Uncorrected Evidence, 'Devolution : A decade On', 8 May 2008, at: <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmjust/uc75-viii/uc7502.htm>

³³ Ibid, Q 572

³⁴ Ibid, Q 604

³⁵ Ibid, Q 550

³⁶ House of Commons Justice Committee (Sub- Committee) Uncorrected Evidence 'Devolution; A decade On' <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmjust/uc75-ix/uc7502.htm> 13 May 2008.

³⁷ Ibid, Q 651

loyalties to your nation and the culture of your nation as well as to the United Kingdom as a whole.³⁸

- Finally, on 8 July, former Mayor of London, Ken Livingstone, testified as to the lengthy delays he had experienced in achieving tasks as a result of difficult relations with ministers in the UK Government:

Jacqui Smith had just become Home Secretary, and I was at my second meeting with her when I realised most of the items on the agenda had been at my first meeting, seven years previously, with Jack Straw... I thought there was an unbelievable inability to get a decision out of government, even when it was not controversial.³⁹

5.2 Scottish Affairs Select Committee

- On 11 June, Sir Kenneth Calman gave evidence to the committee on the early work of the Commission on Scottish Devolution, which he chairs. The commission had asked over 200 organisations for their views on Scottish devolution and would also consult with interested parties outside Scotland.
- The committee's fifth report of the session, on the 'Experience of Scottish Elections',⁴⁰ was published in May. The committee expressed its 'deep concern' with the events of 3 May 2007, when over 140,000 ballots were declared invalid. The committee did not support Mr Gould's recommendation that responsibility for Scottish Parliament elections should be transferred to the Scottish Executive, but did suggest that better organisation procedures 'on the ground' in Scotland should be implemented. In light of the poor communication demonstrated between the Scottish Executive and the Electoral Commission, the committee recommended that the government consider the appointment of a Chief Returning Officer for Scotland to assume responsibility for several areas of electoral policy.

The Government's response was published in early July and agreed with a

³⁸ Ibid, Q. 661

³⁹ House of Commons Justice Committee (Sub-Committee) Uncorrected Evidence 'Devolution; A decade On' <http://www.parliament.the-stationery-office.co.uk/pa/cm200708/cmselect/cmjust/uc75-x/uc7502.htm>, 8 July 2008, Q. 701.

⁴⁰ House of Commons Scottish Affairs Committee 'Experience of the Scottish Elections' Fifth Report of Session 2007-08, 18 May 2008 <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmsscota/78/78.pdf>

majority of the recommendations made by the committee.⁴¹ It did not support the full transferal of electoral powers to the Scottish Executive, and will give the establishment of a Chief Returning Officer consideration.

- In July, the committee also announced that it will launch a substantial inquiry into Scotland's relationship with the European Union.⁴²

5.3 Welsh Affairs Select Committee

WASC continued its scrutiny of draft legislative competence orders (LCOs), publishing a report on the latest proposed LCO which relates to vulnerable children. The order will expand the legislative competence of the Assembly in three 'fields' of schedule 5 to the Government of Wales Act 2006: education and training; social welfare; and sport and recreation. It will allow the Welsh Assembly Government to deliver on its commitment to tackling child poverty. The committee supported the passage of the order but expressed concern that the process of scrutiny for the legislative order had been insufficient, and urged synchronisation of 'the publication and referral of a proposed Order to an Assembly Committee with its referral to Parliament by the Secretary of State'.⁴³

In June and July, the committee also conducted scrutiny of the draft legislative consent order on housing. If approved, the Order would give the Welsh Assembly Government the competence to suspend the 'right to buy' in order to ensure sufficient affordable housing is available to rent in areas of need.⁴⁴ A report is expected in the autumn.

- July saw the publication of an interim report on 'The Provision of Cross Border Health Services'. The committee's principal concern is to ensure that Welsh patients living close to the border (particularly in north-east Wales) are able to access healthcare services in England where necessary, rather than having to travel south within Wales. As such, the committee is sceptical of the Welsh health

⁴¹ House of Commons Scottish Affairs Committee 'Experience of the Scottish Elections: Government Response to the Committee's Fifth Report of Session 2007-08, 2 July 2008

<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmscotaf/830/830.pdf>

⁴² House of Commons Scottish Affairs Committee Press Notice 'New Inquiry - Scotland and the European Union', 21 July 2008

http://www.parliament.uk/parliamentary_committees/scottish_affairs_committee/sac210708.cfm

⁴³ House of Commons Welsh Affairs Committee, 'The Proposed Draft National Assembly for Wales (Legislative Competence) Order in the Field of Social Welfare', June 2008, p. 9

minister's aim 'to secure as many services as can be safely provided within Wales's boundaries...where the Welsh population base is sufficient to support an in-country service'.⁴⁵ There is hope on the committee that a joint protocol can be established between the Department of Health and the Welsh Assembly to ensure that patients receive the best care available closest to home, regardless of the side of the border they are on. A full report on the subject is expected in the autumn, and the committee is also taking evidence on cross-border education and transport services.

5.4 Northern Ireland Affairs Select Committee

In June the Northern Ireland Affairs Committee published a report on 'Policing and Criminal Justice in Northern Ireland: The Cost of Policing the Past'.⁴⁶ The inquiry leading to the report was held in response to concerns in the Police Service that the cost of holding enquiries into events during the Troubles (1968-98) – by the Historical Enquiries Team (HET) established in 2005 – was hampering the efforts of various agencies to counter present-day crime.

The committee was highly complimentary of the staff and work of HET. It also, however, recommended that HET seek to prioritise cases more in order to curb costs. Making it an independent agency was also considered, in order to reduce the burden on the PNSI and allow it to focus on its core responsibilities of policing the present day.

Related to HET is the Police Ombudsman for Northern Ireland, which investigates complaints made against the former Royal Ulster Constabulary. As of February 2008, there were 983 investigations – of which 116 were historical. The Ombudsman expressed serious concern to the committee about its ability to resource investigations into historic complaints, as it affected its ability to investigate current claims against the PSNI. Shifting the Ombudsman's responsibility to an independent HET is a likely solution.

⁴⁴ The Wales Office 'Pre-Legislative Scrutiny of the Proposed National Assembly for Wales (Legislative Competence Housing) Order 2008 http://www.walesoffice.gov.uk/wp-content/uploads/2008/05/cm-7379-wales-na_housing.pdf

⁴⁵ National Assembly for Wales, *Official Record*, 4 July 2007 in House of Commons Welsh Affairs Committee Interim Report: 'The Provision of Cross Border Health Services for Wales Sixth Report; 2007-08, pp 19.

⁴⁶ House of Commons Northern Ireland Affairs Committee 'Policing and Criminal Justice in Northern Ireland: the Cost of Policing the Past' Third Report 2007-08 <http://www.parliament.the-stationery-office.co.uk/pa/cm200708/cmselect/cmniaf/333/333.pdf>

The most urgent recommendation of the committee's report was that the Northern Ireland Office bring under control the currently unsustainable cost of statutory inquiries into historic events. The Saville Inquiry alone has cost £183 million and is still not complete. It advised that future inquiries should only be established with consent of the Northern Ireland Assembly, and measures should be taken to ensure that PSNI could fulfill its operational responsibilities while still helping with historical enquiries.

On other matters, the Northern Ireland Affairs Committee took evidence on 'Political Developments in Northern Ireland', at which hearing the Secretary of State described the situation in the region as 'robust'.⁴⁷ However, he made clear that long term stability depended on 'completing devolution' soon.⁴⁸ The DUP's Sammy Wilson MP described the Secretary as 'oblivious' to the situation in Northern Ireland, asking if now was the time for complete devolution, why did the Secretary of State continue to intervene, e.g. in the decisions to fund Irish language films and choosing the location for the national stadium.

On 16 July, the committee took evidence on the Northern Ireland Office Annual Report. Permanent Secretary Jonathan Phillips described the relationship between the NIO and the Executive as developing well, and expressed his hope that the transition of policing and justice to the devolved administration would take place sooner rather than later.⁴⁹

Finally, the committee announced the establishment of a new inquiry into Cross-Border Co-operation between Northern Ireland and the Republic of Ireland, especially between agencies charged with law enforcement responsibilities. Interested parties are invited to make submissions.⁵⁰

⁴⁷ House of Commons Northern Ireland Affairs Committee Uncorrected Oral Evidence on "Political Developments in Northern Ireland" <http://www.parliament.the-stationery-office.co.uk/pa/cm200708/cmselect/cmniaf/uc914-i/uc91402.htm> ;Q2

⁴⁸ Ibid, Q5.

⁴⁹ House of Commons Northern Ireland Affairs Committee 'Uncorrected Oral Evidence on NOI Department Annual Report, 16 July 2008, <http://www.parliament.the-stationery-office.co.uk/pa/cm200708/cmselect/cmniaf/uc1005-i/uc100502.htm>

⁵⁰ Northern Ireland Affairs Committee Press Notice 'New Inquiry Cross- Border Co-operation', 21 July 2008 http://www.parliament.uk/parliamentary_committees/northern_ireland_affairs/niac_pn19_07_08_.cfm

5.5 Regional Select Committees

On 10 July 2008, the Select Committee on Modernisation of the House of Commons ('Modernisation Committee') released its report on 'Regional Accountability', setting out proposals for new regional committees of MPs. The committee identified the presence of a two fold 'accountability gap' at the regional level, with a lack of adequate accountability of regional development agencies (RDAs) and other regional bodies both within the regions and also to Parliament. However, the select committee's remit extended only to considering the role of the House of Commons.

The committee had commenced its inquiry after the government signalled its support for the creation of dedicated parliamentary committees for each region⁵¹ to apply 'formal and consistent parliamentary scrutiny' to the work of regional bodies and the new regional ministers.⁵² It had been expected to choose between the select committee and the grand committee model but in the event – somewhat surprisingly – it opted for a combination of the two. Specifically, it was argued that 'the most effective way to strengthen regional accountability to Parliament would be to establish a system of regional select committees' [for the eight English regions outside London]. However, since these would 'offer only a minority of members in a given region the opportunity to exercise regular and detailed scrutiny', up to two grand committee meetings per session for each region would also be held. The select committees would exercise detailed scrutiny while grand committees would be forums for general debate and for questioning of regional ministers.

Conservative members of the Committee gave support for regional grand committees, but opposed regional select committees,⁵³ with Shadow Leader of the House Theresa May arguing that the latter would 'place intolerable burden on the resources of the House and would be likely to hamper the work of existing select committees',⁵⁴ as well as risk duplication, or 'scrutiny overload'. To minimise their adverse impact on the committee system, it was proposed that regional select committees should have no more than 10 members, and should meet less frequently than other committees. They would, however, be expected to travel frequently and to hold some of their

⁵¹ As previously recommended by Communities and Local Government Select Committee, *Is there a future for regional government?*, Fourth Report of Session 2006–07, HC 352, March 2007.

⁵² Ministry of Justice, *The Governance of Britain*, CM 7170, July 2007, at: <http://www.official-documents.gov.uk/document/cm71/7170/7170.pdf>, p. 38.

⁵³ L. Maer 'Regional Accountability at Westminster' Standard Note SN/PC/04411, 21 July 2008 <http://www.parliament.uk/commons/lib/research/notes/snpc-04411.pdf>

⁵⁴ Select Committee on Modernisation of the House of Commons- Formal Minutes, 2 July 2008, para 45

meetings in the respective regions. Committee chairs would be expected to ensure that unnecessary overlap with the work of departmental committees did not occur.

The Liberal Democrats backed the principle of regional select committees but opposed the final recommendations on the basis that the composition of these bodies ought to reflect the party balance in the region in question. However, the Labour members insisted that regional select committees should be representative of the House as a whole, meaning that Labour would have a majority on all eight. Although this is in line with practice for appointments to other select committees, such an approach may undermine the legitimacy of the committees in regions such as the South West and the South East, where Labour is in the minority.

- The total estimated cost for 8 regional select committees meeting 6 times per year and 8 regional grand committees meeting twice a year is £1,406,912; excluding various additional outlays such as venue cost and security.

5.6 Territorial Grand Committees

On 17 June the Northern Ireland Grand Committee held its first meeting of the parliamentary session, discussing the subject of 'Risk Assessment and Management of Sex Offenders', followed by an adjournment debate on 'Neighbourhood Policing'.

The Welsh Grand Committee also met in this period, holding a debate on 'The Future of Energy in Wales', and holding a brief oral question time with Wales Office ministers on 18 June.

6. Inter-Governmental Relations

On 25 June 2008, the first meeting since 2002 of the plenary Joint Ministerial Committee was held. Established as part of the Memorandum of Understanding between the UK and devolved administrations in 1999, the JMC framework was originally expected to play a significant role in resolving disputes and facilitating coordination between the different governments. However, it soon fell into disuse as the UK government came to find it simpler to negotiate with the devolved administrations informally, and on a bilateral basis. The changes in political complexion of the devolved governments, and in particular the entrance into power of the SNP, changed this, as the devolved governments all came to favour the use of more formal and multilateral mechanisms.

The 25 June meeting was held in London, chaired by the Secretary of State for Justice. In attendance were the Secretaries of State for Scotland, Wales and Northern Ireland, and the First Ministers and one other senior minister from each of the three devolved administrations. According to the joint statement issued subsequently, subjects discussed included renewable energy and the need for intergovernmental coordination in meeting the EU renewable energy target; and the Marine Bill (whose potential to lead to disputes was noted above in section 4.1. The Scottish and Welsh administrations both used the opportunity of these discussions to make a case for further devolution of powers.⁵⁵

The statement further noted that several matters relating to finance were discussed. Extra detail was given on this by Alex Salmond in First Minister's Question Time in the Scottish Parliament. He explained that Finance Minister John Swinney had highlighted the longstanding dispute over attendance allowance, the brewing row over council tax benefit or CTB (and what would happen to money saved from CTB payments to Scottish residents if the SNP succeeds in abolishing council tax), and the question of whether the rest of the UK should be granted 'Barnett consequentials' as a result of spending on the London Olympics. On this matter, the Scottish delegation apparently gained backing from the other two devolved administrations, suggesting that the JMC has already begun to change the dynamics of

⁵⁵ Joint Statement from the Joint Ministerial Committee, 25 June 2008, at: <http://www.scotlandoffice.gov.uk/our-communications/release.php?id=3676>

intergovernmental relations, by facilitating the formation of coalitions among the devolved governments in negotiations with London.⁵⁶

Agreement was also reached to look into what procedures could be set up to facilitate conflict resolution at the JMC. In addition, it was agreed to hold a further meeting of the JMC in the autumn, potentially in a new format entitled the JMC (Domestic). This forum would be chaired by Paul Murphy (as responsible minister for JMC issues) and would involve a shifting membership of ministers depending on the subject under consideration, akin to the European Council of Ministers.

⁵⁶ Scottish Parliament Official Report, 26 June 2008.