



The Constitution Unit

Nations and Regions: The Dynamics of Devolution

Quarterly Monitoring Programme

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1. Machinery of Government Changes and the June Reshuffle

1.1 Introduction

The June reshuffle sparked a reorganisation of Whitehall, leading to the creation of the Department for Constitutional Affairs, which Lord Falconer will head. While these reforms had several ramifications in relation to the wider constitutional reform agenda, (such as the proposals to establish a Supreme Court), for the purposes of this report the important thing to note is that they remodelled the devolution arrangements in place at the ‘centre.’ The focus, therefore, will be to describe and analyse the implications these reforms will have on the way Westminster and Whitehall organise themselves in the UK’s devolved context. The machinery of government reforms announced in June generated significant levels of controversy and confusion at the time, as Parliament and the press tried to get to the bottom of what the Prime Minister had actually announced. By the Government’s own admission, the reshuffle was poorly managed, but one of the positive outcomes was that discussions on ‘devolution and the centre’ issues took centre stage, albeit briefly. The wide array of parliamentary debates produced a wealth of interesting material on the subject from a variety of different perspectives. (See Appendix 1).

So what actually happened? Despite opposition accusations of a “botched” reshuffle, in terms of how the reforms impacted on the devolution settlement at Westminster, things were actually quite clear from the outset. A press statement issued by Downing Street on 12 June announced that the Scotland and Wales Offices were to be ‘subsumed’ within the newly created Department for Constitutional Affairs, and that the Government had decided to combine the Secretaries of State for Scotland and Wales with other Cabinet posts. The statement said:

“New arrangements will also be put in place for the conduct of Scottish and Welsh business. The devolved administrations have bedded down successfully, and there is no longer a requirement for full-time Cabinet ministers and freestanding departments to conduct the remaining Scottish and Welsh business within Parliament and the UK government. The Scotland and Wales Offices will henceforth be located with the new Department for Constitutional Affairs, together with the Parliamentary Under-

Secretaries of State for Scotland and Wales. At Cabinet level, responsibility for the conduct of Scottish and Welsh business, and lead responsibility for the representation of Wales and Scotland within the Government and Parliament, will lie with Alistair Darling (Scotland) and Peter Hain (Wales) respectively, supported by the staff located within the new Department. They will combine these important duties with their other Cabinet responsibilities.”¹

The next section looks at the various reforms in more detail and assesses what their likely impact will be on the devolution settlement at the centre.

1.2 Remodelling Devolution in Westminster and Whitehall

It is important to note that once the cloud of confusion hovering over Westminster had passed, it emerged that relatively little had changed in terms of the way that Scottish and Welsh business is managed at the centre.

1.3 Part-Time Secretaries of State

The most substantive decision taken was the abolition of full-time Cabinet positions for the Scottish and Welsh Secretaries of State. Scotland and Wales are now represented by ‘part-time’ Secretaries of State, who will combine the job with other Cabinet posts. Peter Hain retains the post of Secretary of State for Wales, combining it with his new responsibilities as Leader of the House of Commons, while Alistair Darling was appointed Secretary of State for Scotland, in addition to being Transport Secretary.² At the ministerial level they will be supported by the Parliamentary Under-Secretaries, Anne McGuire MP for Scotland and Don Touhig MP for Wales.³ They will be responsible for the day to day running of the Scotland and Wales Offices, now based in the Department for Constitutional Affairs.

¹ Downing Street press release June 12 – see <http://www.number-10.gov.uk/output/Page3894.asp>.

² Helen Liddell resigned from the Government as Scottish Secretary.

³ There is no change here. Both Anne McGuire and Don Touhig were Parliamentary Under-Secretaries in the Scotland and Wales Offices prior to the machinery of government changes.

This move to ‘part-time’ Secretaries of State was widely misinterpreted as meaning that the posts had been abolished,⁴ something the No 10 press office were keen to refute. Moreover, the Government wanted to make it clear that the changes did not imply that the roles had been downgraded. At a Downing Street press briefing the Prime Minister’s Official Spokesperson said:

“They have not been abolished and there was no diminution of those roles. What had changed was that as a result of the success of devolution, they were no longer separate jobs. But the ministers kept their responsibilities in addition to their other duties but the central point was that Wales and Scotland would be represented in the Commons and at Cabinet by a Secretary of State.”⁵

Throughout this process the Government were at pains to stress that the reforms to the ‘centre’ reflected and recognised the successful bedding down of devolution. Devolution meant that Scotland and Wales were administered by the Scottish Parliament and the National Assembly for Wales, Blair argued that the changes represented “essential acts of constitutional modernisation.”⁶ When he appeared before the Liaison Committee in July he reiterated his defence of combining the jobs with other Cabinet positions, saying it was a “natural consequence of devolution that there is a lesser requirement on the Secretaries of State for Scotland and Wales.” He also suggested that combining the posts with others would be more beneficial than any alternative arrangements - “I think it is to the advantage of Scotland and Wales to have Cabinet ministers of real rank within the Cabinet who are able to speak out for Scotland and Wales.”⁷

Lord Falconer gave a similar explanation on the thinking behind the reforms when he appeared before the Select Committee on the Lord Chancellor’s Department. Here he said that the government had decided to ‘preserve’ the posts, since, “both those

⁴ It should also be noted that had the Prime Minister sought to abolish the post of Secretary of State for Wales it would have required amending the Government of Wales Act, which explicitly refers to the post in certain sections. For example Sections 31, 49 and 76.

⁵ Downing Street press briefing 13 June AM: see <http://www.number-10.gov.uk/output/Page3916.asp>.

⁶ Blair statement to the House of Commons 18 June -

http://www.publications.parliament.uk/pa/cm200203/cmhsrd/cm030618/debttext/30618-04.htm#30618-04_head0.

⁷ See Blair’s evidence before the Liaison Committee on 8 July - <http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmselect/cmliaison/334-ii/3070809.htm>.

territories are entitled and should have a Cabinet minister speaking for them in the Cabinet on Welsh and Scottish issues.”⁸

Indeed the Government’s ‘central point’ behind the reforms was to maintain separate representation for Wales and Scotland in the Commons and the Cabinet, which is indicative of the wider Government view of how devolution should operate from the centre. While they accept that devolution has bedded down well, particularly following the successful second term elections in 2003, they still reject moves to merge the territorial Secretaries of State into a single Cabinet position for the Nations and Regions as many have suggested they do.⁹ This means that Scotland and Wales will be represented in Whitehall and Westminster in much the same way, as they were even before devolution.

During the debate on the *Changes to Government Departments*, the Liberal Democrat leader, Charles Kennedy asked the Prime Minister if it would not make more sense to merge the territorial Secretaries of State. Blair responded by saying:

“That is one possible avenue [a single Secretary of State for the Nations and Regions]. The reason I do not think it is the right one, however, is that it would be very odd then in circumstances where, let us say, my right hon. Friend the Leader of the House was Secretary of State for the nations and regions, to go up to Scotland as Secretary of State for Scotland, effectively speaking for Scotland – There is a debate to be had about those issues, but I think that the right hon. Gentleman can see that there would be anomalies in the position that he puts forward.”¹⁰

This reasoning can hardly be expected to satisfy the protagonists for change. The Lords Constitution Committee for one was disappointed that the Government had not used the reshuffle to create a genuinely ‘coherent and integrated’ centre that would be able to manage intergovernmental issues effectively. They advocated the setting up of

⁸ Committee on the Lord Chancellor’s Department, 30 June 2003 – see <http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmselect/cmlcd/uc903-i/uc90302.htm>.

⁹ See the House of Lords Constitution Committee’s report on, *Devolution: Inter-institutional relations in the United Kingdom*, HL28, 17 December 2002.

¹⁰ Blair statement to the House of Commons 18 June -

<http://www.publications.parliament.uk/pa/cm200203/cmhsrdsd/cm030618/debttext/30618-06.htm>.

Cabinet minister for intergovernmental relations as one way of doing this and so from their point of view the reshuffle represented a missed opportunity.

However, criticism from other quarters was less convincing. Opposition parties were quick to attack the reforms and accuse the government of diminishing the influence of Scotland and Wales at Westminster.

During an Opposition Debate on the *Government Reshuffle*, the Conservatives were keen to deride the changes to the Secretaries of State. The Leader of the Opposition, Iain Duncan Smith MP contended that the “Scots and Welsh are being treated like second-class citizens.”¹¹ The Conservatives announced that they would not be reshaping their shadow front bench to reflect the new arrangements. However, such a position opened the Conservatives up to accusations of political opportunism. The Government wasted no time in pointing out that the Conservatives had *themselves* made a commitment in their 2001 manifesto to combine the Scottish and Welsh Secretaries of State with other Cabinet posts.

Eric Forth MP’s, (shadow Leader of the House), view that “the separate and distinct voices of Scotland and Wales in the Cabinet have been utterly confused and downgraded”, proved difficult to reconcile 2001 manifesto Conservative manifesto which stated that:

"Scotland must be represented in Westminster and in the Cabinet. We will keep the position of Secretary of State for Scotland with the holder of that position also having an additional UK role within the Cabinet."

"To take account of the changed role of the Secretary of State for Wales the incoming Secretary of State for Wales [shall be given] an additional United Kingdom role within the Cabinet"¹²

¹¹ Conservative Party Press Release 13 June – see http://www.conervatives.com/news/article.cfm?obj_id=63941.

¹² The quote was taken from the House of Commons debate on 17 June. See <http://www.publications.parliament.uk/pa/cm200203/cmhsrd/cm030617/debtext/30617-11.htm>.

As such the Prime Minister was able to claim that he had “implemented Conservative party manifesto policy.”¹³ By being so eager to attack the government the Conservatives arguably missed a chance to advance a proper debate on how the centre should organise itself in relation to devolution. For instance they might have used it as an opportunity to raise issues relating to the largely unanswered English Question.

The Liberal Democrats were on better ground when they questioned the merit of treating Scotland and Wales in the same fashion, given that the Scottish settlement is quite distinct from the one operating in Wales. Lembit Opik MP, suggested that Blair had “lost the devolutionary plot because he doesn’t understand the differences between devolution in Scotland and Wales.”¹⁴ Opik argued that given Wales’ lack of primary legislative powers, there was still a need for a full time Secretary of State. Indeed, the move to a part-time post prompted calls in Wales for the UK government to grant the National Assembly for Wales primary legislative powers.

When appearing before the Liaison Committee, Martyn Jones MP, chair of the Welsh Affairs Select Committee, quizzed the Prime Minister on his decision to treat Scotland and Wales analogously. Blair accepted that the devolution context was different in Wales, but he added, “I do not think it is so fundamentally different that it is not sensible to make a change.”¹⁵

Yet it is quite clear from the various statements made by Peter Hain and Alistair Darling that they hold different views on what the ‘part-time’ job will involve and on how they will split their time between their territorial jobs and their other Cabinet positions. The different approach adopted by Hain and Darling, no doubt reflects the difference in the Scottish and Welsh devolution settlements.

1.4 Different Perspectives: Hain, Darling and the Centre

¹³ Tony Blair at Prime Minister’s Questions 18 June – see http://www.publications.parliament.uk/pa/cm200203/cmhsansrd/cm030618/debtext/30618-03.htm#30618-03_spmin6.

¹⁴ *The Guardian*, Welsh Reaction, 13 June 2003.

¹⁵ Liaison Committee, 8 July, 2003 – See <http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmselect/cmliaison/334-ii/3070809.htm>

The contrast in tone between Hain and Darling was present from the moment the reshuffle was announced. It was Hain who moved quickly to deny claims that either the Welsh Secretary or the Wales Office had been abolished. He even criticised Downing Street for the way they made the announcement – “the way those changes first came out gave an impression to many of a dilution of Welsh influence at Westminster. Nothing could be further from the truth.”¹⁶ Darling and the Scotland Office, on the other hand, seemed much more willing, indeed content, to take a lower profile. Clearly Hain attaches more significance to the post of Welsh Secretary than Alistair Darling does the position of Scottish Secretary.

Hain repeatedly stressed his ‘nothing has changed’ mantra, in relation to his duties as Welsh Secretary. Hain will still, in his words, be “Wales’ voice in Westminster and Westminster’s voice in Wales – responsible for taking Welsh legislation through the House of Commons, answering Welsh parliamentary questions, appearing before the Welsh Affairs Select Committee and attending the Welsh Grand Committee.” He added “so it is business as usual for the Wales Office, and business as usual for the strong partnership between the Government at Westminster and the Assembly.”¹⁷

Commenting on how he would combine the two roles, Hain said that he would have to cope with less sleep. He refused to concede that doing both jobs would reduce the time he had to spend on Welsh business. Appearing before the Welsh Affairs Select Committee, he said he had completed the “dress rehearsal” for his new position, having been both Welsh Secretary and the Government’s representative on the Convention on the Future of Europe.¹⁸ He also said that it was neither unusual nor unprecedented for Cabinet ministers to have more than one Cabinet job. That said, Hain did appoint an additional Parliamentary Private Secretary (PPS), Albert Owen MP, to help him with his workload.

Undoubtedly the job of Welsh Secretary is more demanding than that of the Scottish Secretary. Since Wales does not have primary legislative powers the Welsh Secretary

¹⁶ Peter Hain’s speech on *The Future Relationship between Wales, Whitehall and Westminster* to the Institute of Welsh Affairs, 7 July 2003 – see http://www.walesoffice.gov.uk/PH_7July.html.

¹⁷ Hain’s speech to the IWA – see above

is responsible for sponsoring and piloting legislation for the Assembly through Westminster. Wales is legislatively ‘dependent’ on Westminster, and therefore has a vested interest in being properly represented in Westminster (hence the initial outcry when it appeared that Wales had lost ‘their Secretary of State’). Also Hain is politically ambitious and is keen to use the position of Welsh Secretary to maintain a high profile, something he cannot easily achieve as Leader of the House, since this is not a major spending department. So it can be expected that Hain will divide his time much more equally between his two posts than will Darling.

By contrast Alistair Darling openly acknowledges that the position of Scottish Secretary has significantly diminished with the entrenchment of devolution in Scotland. Giving evidence to the Scottish Affairs Select Committee he said:

“There are very few people who would argue that the post and the job of Secretary of State for Scotland could have remained unchanged following devolution and certainly, since May 1 when the second Scottish Parliament was elected and the Scottish Executive is now starting its second term, the relationships, the job had all changed.”¹⁹

So while Hain intimated that the reforms had not produced any “substantial or material change”, Darling was painting an entirely different picture for Scotland. For him the job of Scottish Secretary will be “very different even from the one in the first Parliament.” Scottish devolution has continued to evolve, and consequently the role of the Scottish Secretary must change and adapt.

Moreover, Darling spoke of the “maturing of the relationship” between the Scottish Executive and the UK government, which would transform the role of the Scottish Secretary and the Scotland Office. Darling wants Scottish Executive ministers to deal directly with their counterparts in Whitehall, saying, “they do not need me or my colleagues to hold their hands.” Clearly this suggests a more residual role for the

¹⁸ Welsh Affairs Select Committee, 25 June 2003, uncorrected transcript HC 815-i – see <http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmselect/cmwelaf/uc883/uc88302.htm>.

¹⁹ Scottish Affairs Committee, 17 June 2003, uncorrected transcript, HC 815-i – See <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmscotaf/uc815-i/uc81502.htm>.

Scottish Secretary and the Scotland Office. For him, the role of the Scotland Office is to mediate and intervene, “where officials are not working with each other.”²⁰ With this new role in mind, Darling announced a review of the size and scope of the Scotland Office. (See Scotland and Wales Offices)

Darling’s emphasis on how the role of Scottish Secretary had become less demanding is partially explained by the fact he has, politically speaking, a very sensitive job as Transport Secretary. (Indeed his appointment as Scottish Secretary came on the back of some troubling announcements about rail delays.) He was well aware that he would have to contend with Opposition accusations that the transport brief had been downplayed.

Therefore Darling was keen to stress that he would not be “diverted from his central task”²¹ of improving the transport system, and that his role as Scottish Secretary would not encroach on these responsibilities. Darling said that much of the day to day running of the Scotland Office would be left to his Parliamentary Under-Secretary, Anne McGuire MP, freeing him up to concentrate on transport issues. In addition Darling also appointed a new Parliamentary Private Secretary, David Stewart MP (Inverness East), to assist him in his work as Secretary of State for Scotland. It is estimated that Darling will spend between 10-15% of his time on Scottish issues, devoting the rest to his Transport brief.²²

1.5 Conflicts of Interest?

Darling was also asked how he would cope with any potential conflicts of interest arising from his dual role as Transport and Scottish Secretary, particularly when it comes to expenditure decisions on reserved matters (such as railways) in Scotland. His response was that there wouldn’t be any conflicts, since when discussing transport expenditure, he would speak, as Transport Secretary, directly to his counterpart in the Scottish Executive. The Scotland Office, in his view, would not be involved in such

²⁰ The quotes are taken from Alistair Darling’s appearance before the Scottish Affairs Committee, 17 June 2003, uncorrected transcript, HC 815-i – See

<http://www.publications.parliament.uk/pa/cm200203/cmselect/cmscota/uc815-i/uc81502.htm>.

²¹ Darling giving evidence to the Scottish Affairs Select Committee, 17 June 2003 -

<http://www.publications.parliament.uk/pa/cm200203/cmselect/cmscota/uc815-i/uc81502.htm>.

negotiations. This is how it worked before he was made Scottish Secretary and he saw no reason for it to change.

When Peter Hain was asked whether he envisaged any conflicts of interest from his position as Leader of the House and Welsh Secretary, he suggested that holding both jobs would be to Wales' advantage. As Leader he will chair the Legislative Programme cabinet committee, which will mean he can "keep a beady eye on Wales's place in the list of priorities."²³

1.6 Arrangements at Westminster

The machinery of government changes did not lead to any changes to the territorial forums at Westminster. (Given that the reforms amounted to very little substantive change this is hardly surprising.) The Secretaries of State for Scotland and Wales will continue to respond to oral and written parliamentary questions in the same way as before. Just as Blair wanted to 'preserve' Scottish and Welsh representation at Cabinet level, he also wanted to preserve direct accountability of the territorial Secretaries of State to the House of Commons. The Scottish and Welsh Affairs Select Committees and the Scottish and Welsh Grand Committees were also left unchanged. So at Westminster the pre-devolution structures continue to operate. The Department for Constitutional Affairs will be scrutinised by the newly named Select Committee on Constitutional Affairs.²⁴ Standing Order 152 had to be amended to change the name, and interestingly it also stipulated that the committee would be excluded from looking at work of the Scotland and Wales Offices, despite the fact that both offices will now reside in the DCA.

1.7 Scotland and Wales Offices

Following the initial confusion surrounding their future, it emerged that the Scotland and Wales Offices have not been abolished or merged. Instead they have ceased to be

²² Constitution Unit, *The Monitor*, Sept 2003, p1.

²³ Hain giving evidence to the Welsh Affairs Select Committee, 25 June 2003 – see <http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmselect/cmwelaf/uc883/uc88302.htm>

²⁴ Previously called the Select Committee on the Lord Chancellor's Department. The Committee maintains the same membership, being chaired by Rt Hon Alan Beith MP.

“free-standing departments”, and have been absorbed within the newly created Department for Constitutional Affairs. The Government was at pains to stress that under the new arrangements the Offices will “retain their distinct identities”, only coming under the umbrella of the DCA for “pay and rations.” Scotland and Wales Office officials will continue to reside in Dover House (Scotland) and Gwydyr House (Wales). Here they will continue to report directly to their respective Secretaries of State, as will the junior ministers working there, Anne McGuire MP for Scotland and Don Touhig MP for Wales. Both the Scotland and Wales Offices will continue to publish their own annual reports and they will continue to have their own separate departmental objectives.²⁵

The ministerial chart published on the Downing Street website highlights the demarcations within the DCA. See Figure 1.

Figure 1 – The Department for Constitutional Affairs

²⁵ Ibid.

The Department of Constitutional Affairs

Secretary of State for Constitutional Affairs

The Rt. Hon Lord Falconer of Thoroton QC

Parliamentary Under-Secretaries

Christopher Leslie MP

David Lammy MP

The Lord Filkin CBE

Parliamentary Under-Secretary for Scotland Office (reporting to the Secretary of State for Scotland)

Anne McGuire MP

Parliamentary Under-Secretary for Wales Office (reporting to the Secretary of State for Wales)

Don Touhig MP

So for pay and rations, Scotland and Wales Office officials now come under the new Permanent Secretary at the DCA, Sir Hayden Phillips. Alison Jackson and David Crawley continue as Head of the Wales and Scotland Office respectively, and report directly to Peter Hain and Alistair Darling. It is still unclear how the Heads of the Wales and Scotland Offices will interact with Sir Hayden Phillips on staffing issues for the territorial offices. Peter Hain was adamant that any decision on the size and structure of the Wales Office rested with him as Secretary of State, and that decisions on staff appointments rested ultimately with Alison Jackson as Head of the Wales Office.²⁶ Jackson insisted that “as a matter of courtesy” any decisions taken on management issues would be done in consultation with Sir Hayden Philips.²⁷ When it comes to policy issues, however, Hain and Jackson stated that this was a matter entirely for them.²⁸

²⁶ Ibid

²⁷ Ibid

²⁸ Ibid

Hain argued that staff in the Wales and Scotland Offices would have greater opportunity and career prospects working within the larger Whitehall department. Officials will be allowed to be transferred from the territorial offices into the DCA.²⁹ He also confirmed that the changes would not affect the secondment arrangements for officials working in the Scotland and Wales Offices.³⁰

When asked why he had decided to split Scotland and Wales Office officials, at least in departmental terms, from their Secretaries of State, Blair defended the move on administrative grounds. With part-time Secretaries of State, he argued, it made sense for their officials to have a permanent home within the DCA, “so as to ensure that they do not move should the Cabinet Members change.”³¹ Chris Leslie, a junior minister in the DCA, pointed out that there existed precedents of splitting ministerial and official work, citing the example of the Minister for Women and the Women’s Unit. Here officials reside in the Cabinet Office but report directly to Patricia Hewitt in the DTI, who is both Secretary of State for Trade and Industry and Minister for Women.³² Thus Leslie did not accept that the new arrangements infringed on the doctrine of ministerial accountability, (a convention by which ministers are held to account for the work of their officials).

While the ministerial lines of accountability are relatively clear and straightforward, there is some confusion surrounding the financial implications of the changes. Although Sir Hayden Phillips is the Accounting Officer for the DCA, it is unclear how he will perform this role in relation to the Heads of the Scotland and Wales Offices, who were previously the Accounting Officers for their respective departments. The devolved administrations are allocated their block grant through the Secretaries of State for Scotland and Wales, who would ‘top-slice’ part of the budget to fund the Scotland and Wales Offices. This process was seen to convenient in

²⁹ There has already been one example of this. The lawyers in the Office of the Scottish Advocate General (numbering 35 officials) have been detached from the Scotland Office in the DCA.

³⁰ The vast majority of staff in the Scotland and Wales Offices are seconded from the Scottish Executive and the National Assembly for Wales. See Hain’s evidence to the Welsh Affairs Select Committee.

³¹ Blair’s statement on the Machinery of Government changes – see http://www.publications.parliament.uk/pa/cm200203/cmhsrd/cm030618/debttext/30618-04.htm#30618-04_head0.

³² See http://www.publications.parliament.uk/pa/cm200203/cmhsrd/cm030617/debttext/30617-25.htm#30617-25_spnew12.

administrative terms but now that there is a single Accounting Officer for the DCA it raises the issue of whether the devolved administrations should be funded directly from the Treasury.

Hain and Darling, once again, offered different views on the future of ‘top slicing.’ The Welsh Secretary argued that ‘nothing had changed’ or was likely to change in respect of funding arrangements.³³ Whereas, Darling hinted that since the Scotland Office was now part of a wider Whitehall department, there might be a case for funding the devolved administrations directly from the Treasury.³⁴

Another distinction made between the two came in relation to their approaches to their territorial offices. Appearing before the Welsh Affairs Select Committee, Peter Hain indicated that he had no intention of changing the structure of the Wales Office to reflect the machinery of government changes. Indeed, he defended and justified the increased size of the Wales Office. “I will say absolutely frankly I am proud of the fact that we are recruiting more staff in order to do the jobs the Wales Office needs to do.”³⁵

As mentioned above the Scottish Secretary, Alistair Darling announced his intention to conduct a review of the Scotland Office, looking at its size, structure and focus. “I want to have a good look at it to make sure [it] does the job it is intended for and to make sure we do not carry people we do not need to be carrying but carry enough.”³⁶ It is unclear when this review will be completed but one can expect it to advocate a slimmed down role for the Scotland Office.³⁷ Arguably we have seen the first sign of this with Darling’s decision to jettison his predecessor’s flagship *Friends of Scotland* initiative (for promoting Scotland overseas), which has been transferred to the Scottish Executive.³⁸ Darling also seemed to question the need for Scottish Office ministers to participate in so many Cabinet Committees.³⁹ Helen Liddell had always

³³ See Hain’s evidence to the Welsh Affairs Select Committee 25 June 2003, Q38.

³⁴ See Darling’s evidence to the Welsh Affairs Select Committee, 17 June 2003 – Q14.

³⁵ See Hain’s evidence to the Welsh Affairs Select Committee 25 June 2003, Q32.

³⁶ Darling giving evidence to the Scottish Affairs Select Committee, 17 June 2003 -

<http://www.publications.parliament.uk/pa/cm200203/cmselect/cmscotaf/uc815-i/uc81502.htm>.

³⁷ Ibid

³⁸ Ibid

³⁹ Ibid

defended the growth in Scotland Office staff on the grounds that she needed officials to brief her for work on Cabinet Committees. Darling said that the review would look closely at “what is required in relation to the Cabinet Committees.”⁴⁰

Under the old arrangements Scotland Office ministers sat on 22 Cabinet Committees⁴¹ and Wales Office Ministers on 25. The Cabinet Office now reveals that Scotland Office ministers will sit on 31, and Wales Office minister on 28.⁴² However, the new figures are misleading as they don’t distinguish between those committees that Hain and Darling sit on in their capacity as Leader of the House and Transport Secretary. But whatever formal ‘hat’ they are wearing it can be assumed that they will represent Scottish and Welsh interests when those arise.

1.8 Lord Falconer and the Part Time Secretaries of State

What is the relationship between Lord Falconer and the Welsh and Scottish Secretary under the new arrangements? Much was made about whether or not Lord Falconer was Peter Hain’s or Alistair Darling’s ‘boss’, since the Scotland and Wales Offices are now constituent parts of the DCA. Falconer refuted this, stressing, “Of course I am not their boss ... the officials work in my department, but politically those offices are led by Peter and Alistair.” When asked who has ultimate authority to decide policy directions in Scotland and Wales, he replied:

“I do not have the ability to override the Secretaries of State for Wales and Scotland. Not one part of their powers has been transferred to my department. All that has happened is that their officials have moved there...”⁴³

⁴⁰ Ibid

⁴¹ For Scotland see Anne McGuire MP’s evidence to the Scottish Affairs Select Committee, 17 June 2003, Q43. For Wales, see Don Touhig MP - http://www.publications.parliament.uk/pa/cm200203/cmhansrd/cm030617/debtext/30617-24.htm#30617-24_spnew8.

⁴² Clearly the explanation for such a large number lies in the fact that both Hain and Darling will sit on Cabinet Committees due to their other Cabinet positions. For details please see <http://www.cabinet-office.gov.uk/cabsec/index/index.htm>

⁴³ HL debate, 19 June 2003, col 061.

To reinforce this distinction between the Secretaries of State and Falconer, Hain made clear that the Parliamentary Under-Secretaries report “to no other Cabinet minister.”⁴⁴ Politically they are the responsibility of the Scottish and Welsh Secretary.

Neither Hain nor Darling are answerable to Lord Falconer, indeed they both come higher up the Cabinet rankings (Darling is ranked 7th, Hain 18th, and Falconer 21st - see Appendix 2 for the listing). Moreover, Falconer is expected to concentrate his efforts and energy on the legal dimensions of the DCA’s work, (notably the setting up of the new Supreme Court and the Judicial Appointments Commission), where he will be working with his three junior ministers.

The devolution work that will fall to Falconer will be in respect of managing the overall devolution settlement. He explained this in a House of Lords debate: “I am responsible for the overall devolution settlements and overall government policy on devolution previously with the Deputy Prime Minister, including the Memorandum of Understanding, the Joint Ministerial Committee and the British-Irish Council. The team of officials responsible for co-ordinating devolution issues has moved from the ODPM (Office of the Deputy Prime Minister) to my department, reporting to me.”⁴⁵

It has been suggested that this might be a source of conflict between Falconer and Hain and Darling. For instance will it be Falconer’s responsibility to respond the report of the Richard Commission or will it be Hain’s? Judging by Falconer’s stance so far he is not likely to play a leading role in such matters, preferring instead to leave this to the relevant Secretary of State.

1.9 A fragmented Centre?

One of the consequences of moving the Devolution and Constitutional Division from ODPM to the DCA is that devolution policy has been severed from English regional policy, which remains with Deputy Prime Minister, John Prescott. Falconer said that

⁴⁴ Hain appearing before the Welsh Affairs Select Committee – see <http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmselect/cmwelaf/uc883/uc88302.htm>.

⁴⁵ Lord Falconer in a House of Lord debate, 19 June 2003 – see <http://www.publications.parliament.uk/cgi-bin/>

it made more sense for regional policy to remain where it was because it has a “much closer link with issues of local government rather than with constitutional issues.”⁴⁶ (Of course the real reason is that John Prescott would not have allowed responsibility for one of his key policies to be moved to another department.)

With the separate Northern Ireland Office, this now means that there are four distinct devolution centres (each with their own Secretary of State) in Whitehall covering policy for Scotland, Wales, Northern Ireland and England; and a fifth in the Devolution and Constitution division of the DCA which is responsible for overall devolution policy and reports to Lord Falconer. Some commentators have noted that the government missed an opportunity with this reshuffle to create a more coherent centre, that allows for strategic thinking about ‘devolution in the round.’ As noted above, both Charles Kennedy and the Lords Constitution Committee were critical of the government for not having created a Department for the Nations and Regions.

At one level the fragmentation at the centre has actually got marginally worse.⁴⁷ Prior to the machinery of government changes there was a single Cabinet Committee responsible for the Nations and the Regions (CNR). After the reforms this Committee was disbanded and replaced by two separate Committees: one on Devolution Policy (PD), chaired by Lord Falconer, and one on English Regional Policy (ERP), chaired by John Prescott.⁴⁸

1.10 Business as a usual: A missed opportunity for the centre?

Those who had hoped for a more coherent centre will remain unsatisfied with these reforms. Overall they reflect the reluctance of the Blair government to think through the consequences of devolution for the centre. Despite some changes to the structures,

[bin/ukparl_hl?DB=ukparl&STEMMER=en&WORDS=joint+ministerial+committee+&COLOUR=Red&STYLE=s&URL=/pa/l1d199697/lhansrd/pdvn/lds03/text/30619-15.htm#30619-15_spmin1](http://ukparl.uk?DB=ukparl&STEMMER=en&WORDS=joint+ministerial+committee+&COLOUR=Red&STYLE=s&URL=/pa/l1d199697/lhansrd/pdvn/lds03/text/30619-15.htm#30619-15_spmin1).

⁴⁶Lord Falconer’s evidence to the Committee on the Lord Chancellor’s Department, 30 June 2003 – see http://www.publications.parliament.uk/cgi-bin/ukparl_hl?DB=ukparl&STEMMER=en&WORDS=joint+ministerial+committee+&COLOUR=Red&STYLE=s&URL=/pa/l1d199697/lhansrd/pdvn/lds03/text/30619-15.htm#30619-15_spmin1.

⁴⁷ Robert Hazell, ‘Merger: What Merger? Scotland, Wales and the new Department for Constitutional Affairs’, *Public Law* (forthcoming), winter, 2003.

⁴⁸ For further information on the Cabinet Committee see - <http://www.cabinet-office.gov.uk/cabsec/index/index.htm>.

the basic arrangements for dealing with territorial politics in the UK that existed pre-devolution remain in place. The arrangements in Whitehall and Westminster remain unchanged, with the exception of the move to part-time Secretaries of State and the absorption of the Scotland and Wales Offices into the DCA. Scotland and Wales have retained their various forums for representation leading some to suggest that they have managed to “have their devolution and eat it.”⁴⁹ The reforms failed to make any progress in terms of resolving other significant devolution issues, such as the future of the devolution funding arrangements, the territorial representative arrangements at Westminster and the English Question.⁵⁰

The one glimmer of hope is that Lord Falconer has the potential of performing his role of managing the overall devolution settlement more effectively than John Prescott, with the Scotland and Wales Offices now coming under a single department. Of course this all depends on how the DCA and the Scotland and Wales Offices will interact with each other in the future. Given that Hain and Darling clearly have different agendas for the Wales and Scotland Offices respectively, it has to be said that the signs are not all that positive. But the devolution process continues to evolve, so the reforms may form an interim staging post that will at some point be revisited.

1. A Supreme Court for the UK

The most significant proposal of reform to emerge from the June reshuffle, however, was the Government’s announcement to publish a consultation paper on proposals for a Supreme Court. If implemented the proposal could have a major impact on the legal system for handling devolution disputes, because the consultation paper proposes transferring devolution issues from the Judicial Committee of the Privy Council to the new Supreme Court, in order to avoid a dual apex in the UK legal system. For a detailed analysis of this proposal please see the Scotland Monitoring Report, August 2003 at http://www.ucl.ac.uk/constitution-unit/monrep/scotland/scotland_august_2003.pdf.

⁴⁹ Andrew Rawnsley, There’ll be whinging in the hillsides, *The Observer*, 29 June 2003.

⁵⁰ See Robert Hazell, ‘Merger: What Merger? Scotland, Wales and the new Department for Constitutional Affairs’, *Public Law* (forthcoming), winter, 2003.

2. A ‘Scottish’ Secretary of State?

The move to a part time Secretary of State for Scotland raised a series of questions about the post in the debates surrounding the reshuffle. Irene Adams MP, chair of the Scottish Affairs Select Committee, wondered whether the post was now dependent upon MPs representing Scottish constituencies, and whether they would already have to be a member of the Cabinet to be eligible for the post, given that it is now shared with other positions. In responding, the Prime Minister, said that such a situation was very unlikely to occur while he was PM given the size of the Labour Party in Scotland, but he accepted that in a post-devolution era these sorts of issues would be raised. The overall view given by Blair, and reiterated by Darling, is that it is better if there is a Scot doing the job, but that there is no constitutional convention to prevent someone who doesn’t represent a Scottish constituency doing it. Darling highlighted the fact that this was much more likely to be an issue for the Conservatives who have very little electoral support in Scotland or Wales. It should be remembered that John Redwood and William Hague as Conservative Secretaries of State for Wales represented English constituencies, and that the, the Conservative shadow Scottish Secretary, Jacqui Lait MP, and Welsh shadow Welsh Secretary, Nigel Evans MP, both sit for English seats.

It is interesting to consider the impact of devolution on the career paths of ambitious Scottish and Welsh politicians at Westminster. One view is that with devolution in place it would be wrong for Scottish and Welsh MPs to be appointed to departments that deal predominantly with ‘English-only’ matters, and that instead they should only be allowed to preside over ‘federal’ departments, which deal with reserved matters, such as the Ministry of Defence, the Treasury and the Foreign Office. In his June reshuffle, Blair took a very different view by appointing the Scottish MP, John Reid to the post of Health Secretary (See Section 4). The move was heavily criticised at the time by the press and members of the Opposition, so it will be interesting to see what the Opposition choose to make of this issue in the future. If they make a big deal of it, and it is deemed unacceptable by some (e.g. pressure from the press), then it might deter Scottish and Welsh politicians from coming to Westminster, if they have only the few ‘federal’ departments to aim for.

4. Scottish Minister in ‘English’ Departments

One of the main impetuses for the June reshuffle was the resignation of the Health Secretary, Alan Milburn. This left a significant vacancy in one of Blair’s most important domestic departments. The Prime Minister decided to give the job to the Scottish MP, John Reid. This proved to be controversial in the post-devolution political context, since it meant that a Scot would be in charge of a largely ‘English-only’ department. Health is one of the most extensively devolved policies under the terms of devolution. The predicament of whether or not a Scottish MP could therefore run a largely English department of state had long been anticipated. Unfortunately for Blair a comment made by the then Labour shadow Health Secretary, Robin Cook, in 1992, came back to haunt him while he was trying to temper the political storm that Reid’s appointment had caused. Cook had said that with the advent of devolution:

“Once we have a Scottish Parliament handling health affairs in Scotland it would not be possible for me to continue as Minister of Health, administering health in England.”⁵¹

Further fuel was added when two Labour members also criticised the decision to install Reid at Richmond House. Father of the House, Tam Dalyell MP, who represents a Scottish constituency, said, “It is an extraordinary piece of casting to put a Scot in charge of the English health service. Dr. Reid has no say whatsoever in health matters pertaining to those who sent him to the Commons.” While Andrew Mackinlay MP, offered a view from South of the border, when he said, “I am not happy that the health ministry, which is almost totally an English ministry, is headed up by a member of parliament representing a Scottish constituency.”⁵²

The Prime Minister’s Official Spokesman defended the decision saying that “the Prime Minister did not believe that [being an MP for a Scottish constituency’s] should preclude people from North of the border with talent from taking posts within the

⁵¹ Quoted in the House of Commons debate on *Changes to Government Departments*, 18 June 2003, col 361 – see

http://www.publications.parliament.uk/pa/cm200203/cmhsrd/cm030618/debtext/30618-05.htm#30618-05_spnew2.

Cabinet, which covered areas, which were devolved.”⁵³ In addition, when the Prime Minister came under attack from the Leader of the Opposition, Iain Duncan Smith, for making the appointment, he said

“As for the right hon. Gentleman's statement about how much he wants all Scottish affairs to be dealt with by Scotland and all English affairs to be dealt with by English Ministers, who is his shadow Secretary of State for Scotland? The hon. Lady in question sits for a constituency in the London borough of Bromley.”⁵⁴

And as *The Herald* newspaper argued, there is case for saying that a precedent already exists for appointing a Scot to an English department, in the form of the Transport Secretary. Although transport policy is nowhere near as exclusively devolved as health policy the point can still be made.⁵⁵

What really spiced up John Reid’s appointment was that one of his first tasks in the job was to pilot the Government’s Health and Social Care (Community Health and Standards) Bill through the Commons. Enshrined in this Bill were the extremely sensitive measures designed to create Foundation Hospitals, which both the Scottish Parliament and National Assembly for Wales have rejected. John Reid therefore found himself in a position where he was responsible for introducing a controversial policy that would apply to England constituencies but not to constituencies in Scotland or Wales, including his own Hamilton North and Bellshill.

5. ‘The West Lothian Question with a Vengeance’?

The ‘West Lothian Question’ (named after the constituency of Tam Dalyell MP, who first raised the issue in the devolution debates of the 1970s), refers to the anomalous

⁵² House of Commons debate, 17 June 2003, Col 224 – see <http://www.publications.parliament.uk/pa/cm200203/cmhsrd/cm030617/debttext/30617-08.htm>.

⁵³ 10 Downing Street Press Briefing, 13 June 2003 – see <http://www.number-10.gov.uk/output/Page3916.asp>.

⁵⁴ House of Commons debate, 18 Jun 2003, Col 363 – see http://www.publications.parliament.uk/pa/cm200203/cmhsrd/cm030618/debttext/30618-06.htm#30618-06_spmin0

⁵⁵ *The Herald. Tories attack Reid’s new health role*, 13 June 2003.

position that post-devolution, Scottish MPs are allowed to vote on English matters, while English MPs are not allowed to vote on issues devolved to a Scottish Parliament. This quarter, the Question moved from the political margins to the centre stage. Two factors accounted for this, firstly the appointment of John Reid and secondly, the vote on foundation hospitals.

The Government's policy on foundation hospitals was very nearly defeated by an amendment tabled by the Labour MP, David Hinchliffe, who opposes the plans. The amendment was defeated by 35 votes in the House of Commons, making it the Government's smallest majority in a division since coming to power. 286 MPs voted with the Government against the amendment, while 251 MPs voted in favour of it. But what triggered most debate was that if only English MPs had been allowed to vote for the proposals, (they only apply in England), then the Government would have lost the division by one vote. Figure 3 details the vote.

Figure 3

Division 280 on Foundation Hospitals – 8 July 2003		
Nation	For Government	Against Government
England	217	218
Scotland	42	17
Wales	25	9
Northern Ireland	2	7
Total	286	251

What this shows is that the Labour Government's flagship health policy would not have passed had it not been for the votes of MPs from non-English constituencies. The only technical defence the Government could make was that the Bill was an 'England and Wales' Bill, and therefore if you look at the votes of MPs representing English and Welsh constituencies, (See Figure 3), the amendment would have been defeated by 242 votes to 227. (But even this is dubious since for drafting reasons Bills

extend to ‘England and Wales’, even though in this instance the foundation hospital elements of the Bill will not be adopted in Wales. Figure 4, which breaks the vote down by party and nation, shows that 42 Labour MPs and 25 Labour MPs representing Scottish and Welsh constituencies respectively, voted with the Government. Importantly the West Lothian question does not concern itself with how MPs vote on a specific issue, it is simply interested in whether or not MPs voted on issues that will not have an impact on their constituencies. So when looking at the impact of the non-English vote on the outcome it is necessary to factor in the 17 Scottish MPs and 9 Welsh MPs who also voted but voted against the government, (something that didn’t seem to alarm the Labour rebels). Even after taking this into consideration the Scottish and Welsh Labour MPs who voted with the government gave them 44 crucial votes.⁵⁶

Figure 4 – Foundation Hospital Vote broken down by Party and Nation

Nation	Party	FOR Government	AGAINST Government
England	Conservatives	0	131
	Labour	217	53
	Lib Dem	0	32
	Other	0	2
	Total	217	218
Scotland	Conservative	0	0
	Labour	42	3
	Lib Dem	0	9
	SNP	0	5
	Other	0	0
	Total	42	17
Wales	Labour	25	4
	Lib Dem	0	1
	Plaid Cymru	0	4

⁵⁶ Calculated by adding the 25 and 42 Scottish and Welsh votes for the government together, and then subtracting the 17 Scottish and Welsh votes against the government.

	Total	25	9
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The controversy on foundation hospital vote was made worse by the fact that the Scottish Executive and National Assembly for Wales rejected the idea themselves.

Tam Dalyell MP said that the foundation hospital vote was “the West Lothian Question with a vengeance”, given that “this is the Scots imposing on the English something that is unacceptable in Scotland.”⁵⁷ So it wasn’t just the case that the measures will not be introduced in Scotland and Wales, it was also the fact that the Scottish and Welsh devolved bodies have explicitly rejected the idea.

David Hinchliffe MP, said “this is nothing to do with the Scots and Welsh, it’s about English hospitals and the English MPs should determine what happens.”⁵⁸ While Alice Mahon, another Labour MP, said that she felt “betrayed” by the decision of Scots to vote on English matters. Critics of the vote predicted that the issue would not go away in a hurry and that the “English public would be outraged.” The Prime Minister, they argued, needed to respond to the West Lothian anomaly quickly.⁵⁹

Blair offered an ‘answer’ to the West Lothian Question in a session before the Liaison Committee. He argued that if you only allowed English MPs to vote on English matters it would create a ‘two-tier’ class of MP. “We have a constitutional settlement and part of that constitutional settlement is that you do not have two classes of member. Yes, it is true that Scottish MPs will vote on exclusively English issues but there should not be two classes of MPs.” He went on to say, “[Devolution] has created a new situation for Scottish and Welsh Members … [Scottish and Welsh MPs] are UK MPs with the full powers of UK MPs. We should not divide ourselves up into classes of members because, as I say, of course you can point to the anomaly of Scottish and Welsh MPs voting on English matters but you point also to the anomaly of English MPs voting through all the spending in relation to Scotland.”⁶⁰

⁵⁷ BBC Website, Labour vote row reignites, 9 July.

⁵⁸ The Herald, Foundations rocked in Labour rebellion, 9 July 2003.

⁵⁹ The Scotsman, Fury over ‘lobby-fodder’ Scot MPs, 9 July 2003.

⁶⁰ Ibid Liaison Committee, 8 July 2003, Q281 & Q282.

Hain went further than Blair and said that if anything was done to ‘end the equality’ of all MPs in the UK Parliament, it would lead to the “dismembering the United Kingdom.”⁶¹

The Liberal Democrats, who have 10 Scottish MPs, have consistently defended their decision to vote on all legislation that comes before the House of Commons. John Thurso MP, Caithness and Sutherland, argued that a problem arose from there being a “fault in devolution because England has not been properly devolved.” What was less consistent was the decision by the SNP to vote. They traditionally abstain from voting on matters that do not affect Scotland, and so it was interesting to see them vote against the government. They defended the decision because they argued that foundation hospitals, if established, would have implications for the funding situation in Scotland. However, it is likely that all opposition parties were politically motivated to vote against the Government, as all knew that the vote would be very close.

6. Scottish Parliamentary Constituencies

Following the controversy on the Foundation Hospital vote, some commentators in the media suggested that Blair was contemplating ‘rewarding’ the loyalty of Scottish members by postponing a commitment to reduce the number of Scottish parliamentary constituencies from 72 to 59. Under the terms of the Scotland Act, the government must reduce the number of Scottish MPs to bring Scottish representation into line with the electoral quota for England. Despite hopes of an eleventh hour reprieve, the Prime Minister confirmed that the government had no plans to change the policy.⁶² In a meeting with Scottish Labour MPs, Alistair Darling, Secretary of State for Scotland, also said that the cut would be implemented in time for the next general election. The government await the final report of the Boundary Commission for Scotland, which is due to be published in early 2004. Alistair Darling MP, has said that as soon as he receives the report he will lay it before Parliament, together with an

⁶¹ HC debate, 17 July 2003, Col 442.

⁶² At Prime Minister’s Questions on 16 July the PM was asked by Hugo Swire MP whether he would “renege on his commitment to reduce the number of Scottish Members of Parliament at Westminster?” to which the Prime Minister said “No, we made that commitment clear and we will of course carry it through.” See

http://www.publications.parliament.uk/pa/cm200203/cmhsrd/cm030716/debtext/30716-03.htm#30716-03_wqn3.

order to give effect to its recommendations. This means that the number of Scottish MPs is likely to be reduced from 72 to 59 in time for the next general election. Darling's own constituency is one of those likely to go.⁶³

One of the affects of reducing the number of Scottish constituencies will be to end the coterminous boundaries that currently exist between Westminster and Holyrood constituencies. Irene Adams MP, chair of the Scottish Affairs Select Committee, asked the Prime Minister whether he thought that this would cause problems in Scotland, when he came before the Liaison Committee⁶⁴ on July 8. Blair accepted that it would cause problems, (critics are worried that it will confuse and alienate the Scottish electorate), but believed that the consequences could be overcome.

“We have to work through the consequences of it. It is manageable but I do understand people’s concerns.”⁶⁵

Blair also said that whilst he understood that it would cause difficulties in Scotland, it was also “important that we keep to the English side of the bargain”, a reference to the need to reduce Scottish over-representation at Westminster post-devolution. The previous Secretary of State for Scotland, Helen Liddell, announced that an independent commission will be established in 2007 to look at how the non-coterminous structure is working.

7. Ministerial changes at the Northern Ireland Office

In the June reshuffle, John Spellar MP was moved to the Northern Ireland Office from the Department of Transport. It was also announced that the Parliamentary Under-Secretaries in the department would be paid junior minister’s salaries.

⁶³ HC debate, 9 September 2003, col 153.

⁶⁴ The Liaison Committee is made up of all the chairs of the Parliamentary select committees, and meet to question the Prime Minister.

⁶⁵ For the full transcript of Blair’s evidence before the Liaison Committee please see <http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmselect/cmliaison/334-ii/3070801.htm>.

Figure 2 – The Northern Ireland Office

Rt Hon Paul Murphy MP	Secretary of State
Rt Hon John Spellar MP	Minister of State
Jane Kennedy MP	Minister of State
Ian Pearson MP	Parliamentary Under-Secretary
Angela Smith MP	Parliamentary Under-Secretary

8. ODPM Select Committee: Reducing Regional Disparities in Prosperity

On 4 July the Select Committee on the Office of the Deputy Prime Minister published their report, *Reducing Regional Disparities in Prosperity*. Although the report mainly dealt with the English regions some attention was paid to public spending and economic disparities in the UK. The Committee took the view that public expenditure was not being targeted to the less prosperous regions and called for a review of the system that allocated funds, including a review of the Barnett formula.

“Increased public funding to the less prosperous regions is a necessary condition to improve their prosperity. The allocation of public funding to the nations and regions of the UK does not reflect 21st century patterns of need across the country. We recommend that the government reviews the total allocation of funding to all parts of the UK, including the Barnett formula, as part of the post-devolution constitutional settlement.”⁶⁶

9. Territorial Select Committees

⁶⁶ The report can be viewed at
<http://www.publications.parliament.uk/pa/cm200203/cmselect/cmodpm/492/49202.htm>

The territorial Select Committees have been relatively quiet this quarter given that it coincides with the summer recess. The only significant developments to emerge relate to the work of the Welsh Affairs Select Committee,⁶⁷ which is outlined below.

9.1 The Welsh Affairs Select Committee

On 17 July the Committee published the government's response to their report on *The Primary Legislative Process as it affects Wales*. Although the Government welcomed the report, their response to some of the recommendations was non-committal and vague. Below is a summary of the Government's position in relation to the Committee's recommendations.⁶⁸

The Committee recommended that the Government confer powers directly on the National Assembly by new primary legislation rather than by the amendment of existing Acts or Orders. The Government accepted that conferring powers directly is most desirable, but said that occasions will arise in which the best approach will be to amend existing legislation.

In its report the Committee also made a series of recommendations and comments designed to make the legislative process at Westminster much clearer, most of which the Government welcomed. However, the Government rejected the Committee's proposal for a Consolidation Bill. It accepted the need for Welsh legislation to be clearly accessible, but did not accept that "consolidation would be the best way to achieve this."

On the issue of Explanatory Notes to Bills, the Government rejected the Committee's recommendation that they publish any assessments made of the Welsh impact of a Bill at the Cabinet Legislative Programme Committee.

⁶⁷ This section does not include the evidence sessions taken with the new Secretaries of State for Scotland and Wales, which is covered in Section 1.1 Remodelling Devolution at Westminster. The concern of this section is to details the publications of the territorial Select Committees.

⁶⁸ Both the report and the Government's response can be found at http://www.parliament.uk/parliamentary_committees/welsh_affairs_committee.cfm.

The Government welcomed the Committee's proposal to jointly scrutinise draft Bills with the relevant Committees in the National Assembly, saying that it would be "helpful" and they hoped that the House authorities could find a way of enabling such a move. In other instances where the Committee recommended closer working arrangements with the National Assembly, such as accommodating the views of AMs during the legislative process or in holding formal joint meetings between Westminster and Assembly Committees, the Government simply said that these were decisions for the House and the National Assembly.

The Government did not have the same view as the Committee on the use of Special Standing Committees. The Committee urged the Government to use the procedure for the next Wales only Bill, or for the Welsh Part of a significant Bill. The Committee argued that this would have the merit of giving the National Assembly the opportunity to formally present its views. In their response, the Government said that it preferred to publish Wales only Bills in draft and did not envisage subjecting a Bill to pre-legislative scrutiny and also sending it to a Special Standing Committee.

The Committee recommended that a Wales Part of a Bill should be sent to a separate Standing Committee to see how such a process works. However, the Government said it had no plans to divide Bills between Standing Committees.

The Welsh Affairs Select Committee also asked the Government to set out its views on the Rawlings Principles⁶⁹, something, which hitherto the UK Government had not done.

The Government's position on the Rawlings Principles⁷⁰

- 1. The Assembly should acquire any and all new powers in a Bill where these relate to its existing responsibilities.*

The Government agrees with this in general, but recognises that circumstances could arise

⁶⁹ The Rawlings Principles were devised by Professor Richard Rawlings, of the LSE, and are designed to introduce a degree of consistency with regard to how legislation relating to the National Assembly for Wales is formed.

⁷⁰ The information is taken directly from the *The Government Response to the Fourth Report of the Committee: The Primary Legislative Process as it affects Wales* (HC989)

where this was not the case; for example, the Assembly does not set teachers' pay and conditions.

2. Bills should only give a UK Minister powers which cover Wales if it is intended that the policy concerned is to be conducted on a single England and Wales / GB / UK basis.

The Government agrees with this in general, but recognises that circumstances could arise where this was not the case; for example, the Assembly's responsibility for public health in Wales would not compromise the efficient management of an epidemic which affected England and Wales

3. Bills should not confer functions specifically on the Secretary of State for Wales. Where functions need to be exercised separately in Wales, they should be conferred on the Assembly.

It is normal practice to confer functions on the Secretary of State at large rather than a named Secretary of State. Should there ever be a need to exercise non-transferred functions differently in Wales, the duty would be on the responsible Secretary of State. The question of a transfer of such functions to the Assembly would have to be considered on its merits.

4. A Bill should not reduce the Assembly's functions by giving concurrent functions to a UK Minister, imposing a requirement on the Assembly to act jointly or with UK Government / Parliamentary consent, or dealing with matters which were previously the subject of Assembly subordinate legislation.

The Government would not normally reduce the Assembly's functions, but does not accept that a requirement in a Bill to act concurrently or jointly or to obtain Government or Parliamentary consent would necessarily have that effect. However, the guidance in the annex to DGN 9 makes clear that a Bill should not normally impose a consent requirement.

5. Where a Bill gives the Assembly new functions, this should be in broad enough terms to allow the Assembly to develop its own policies flexibly. This may mean, where appropriate, giving the Assembly "enabling" subordinate legislative powers, different from those given to a Minister for exercise in England, and/or which proceed by reference to the subject-matter of

the Bill.

Each case is decided on its merits. However, in giving the Assembly such powers, Parliament will expect to be informed how the Assembly Government proposes to exercise them in the same way as it expects such information from the Government.

6. It should be permissible for a Bill to give the Assembly so-called "Henry VIII" powers (i.e. powers to amend primary legislation by subordinate legislation, or apply it differently) for defined purposes, the test being whether the particular powers are justified for the purpose of the effective implementation of the relevant policy. Where such powers are to be vested in a UK Minister for exercise in England, they should be vested in the Assembly for exercise in Wales.

Again, this is normal practice where the exercise of the Henry VIII powers does not change the intention of the primary legislation. However, secondary legislation made by the Secretary of State is subject to further Parliamentary scrutiny while secondary legislation made by the Assembly is not. A judgement needs to be made as to how wide a latitude Parliament should give the Assembly to amend primary legislation without further scrutiny. For that reason the Government cannot accept the final sentence of this point without that qualification.

7. Assembly to have power to bring into force (or "commence") all Bills or parts of Bills which relate to its responsibilities. Where the Minister is to have commencement powers in respect of England the Assembly should have the same powers in respect of Wales.

This is normal practice, as set out in the annex to DGN 9. Circumstances where it is not appropriate are likely to be exceptional.

The second report of interest published by the Welsh Affairs Select Committee is the *Draft Public Audit (Wales) Bill*.⁷¹ The Bill is the second draft Wales-only Bill that has gone before the Committee for them to examine. In the report the Committee welcome the aim of the Bill, which is to create a new Wales Audit Office under the Auditor General for Wales. The Committee made several recommendations on the

⁷¹ The report was published on 10 July and can be viewed at <http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmselect/cmwelaf/763/76302.htm>.

content of the Bill. For a more detailed analysis please see the Wales Monitoring Report, August 2003.⁷²

9.2 The Scottish Affairs Select Committee

The Committee published one report this quarter, on 19 June.

- 19 June *Response by the Government to the Committee's Report on Homeworkers in Scotland and the Minimum Wage.*⁷³ (HC 816)

9.3 The Northern Ireland Affairs Select Committee

The Committee published three reports this quarter, details of which are set out below.⁷⁴

- 9 July *Government Response to the Committee's Sixth Report on the Illegal Drugs Trade and Drug Culture in Northern Ireland: Interim Report on Cannabis* (HC 935)
- 26 June *Sixth Report Peace II* (HC 653-I)
- 9 June *Fifth Special Government Response to the Committee's Fifth Report on Forensic Science Northern Ireland* (HC 722)

10. The Grand Committees

10.1 Scottish Grand Committee

The Scottish Grand Committee has not met since 12 February, prompting the Conservative MP Peter Duncan to table an Early Day Motion (EDM), to call for the

⁷² For the Wales Monitoring Report please see http://www.ucl.ac.uk/constitution-unit/files/lh/mon_rep/wales_august_2003.pdf.

⁷³ The report can be viewed at <http://www.publications.parliament.uk/pa/cm/cmscotaf.htm>.

⁷⁴ All the Committee's publications can be viewed at <http://www.parliament.the-stationery-office.co.uk/pa/cm/cmniaf.htm>.

Committee to be reconvened so that it can be used as a forum for ‘scrutinising Government handling of the Scottish economy.’

10.2 Welsh Grand Committee

The Welsh Grand Committee met twice this quarter. On 24 June it held a debate on *The Economy in Wales*, and on 15 July it held a debate on the *Draft Public Audit (Wales) Bill*.⁷⁵ The debate on the Draft Public Audit (Wales) Bill constituted part of the pre-legislative scrutiny stage of the Parliamentary process that has been set aside for the Bill.

10.3 Northern Ireland Grand Committee

Three debates were held this quarter. On 8 July the Committee discussed the *Draft Employment (Northern Ireland) Order 2003*. On 3 July, the Committee debated *The Northern Ireland Grand Committee*, and on 9 June it met to debate the *Reinvestment and Reform Initiative*.⁷⁶

10.4 Standing Committee on Regional Affairs

The Committee did not meet this quarter. It last met on 3 April, where it debated the *Government Offices in the Regions*.

11. Intergovernmental Relations

The formal intergovernmental machinery has not been used this quarter – there have been no meetings of the Joint Ministerial Committees or of the British-Irish Council.

12. Devolution and the courts

⁷⁵ Both debates can be viewed on the Parliament website. Please see <http://www.publications.parliament.uk/pa/cm200203/cmstand/welshg/cmwelsh.htm>.

⁷⁶ All three debates can be viewed on the Parliament website. Please see <http://www.publications.parliament.uk/pa/cm200203/cmstand/nirelg/cmnirel.htm>.

There have been no new judgements issued during the past quarter.

Flynn, Mitchell, Meek and McMurray v. Lord Advocate

One new case has been received by the Judicial Committee, but no hearing date has yet been listed. It is an appeal by Patrick Flynn, Peter Mitchell Meek, John Gary Nicol and Peter McMurray against the Lord Advocate, concerning the incompatibility with the European Convention on Human Rights of legislation adopted by the Scottish Parliament (the Convention Rights (Compliance) (Scotland) Act 2001) which had the effect of imposing life sentences on the four retrospectively. Their appeals against sentence were unanimously dismissed by the High Court of Justiciary (sitting as an appellate court) in June 2003.

Appendix 1

Date	Commons	Lords
17 June	Scottish Affairs Select Committee – Alistair Darling and David Crawley	
17 June	Opposition Debate on ‘Government reshuffle.’	
18 June	Prime Minister’s Questions – focus on the machinery of government reforms	
18 June	Blair’s statement on ‘Changes to Government Departments.’	Debate on the ‘Changes to Government Departments.’
19 June		Debate on ‘Scottish and Welsh Affairs: Ministerial Responsibility.’
20 June		Debate on the Constitution Committee’s report on Devolution
19 June	Business Questions – Questions on the machinery of government changes	
24 June	Parliamentary Questions to the Scotland Office	
24 June	Parliamentary Questions to the DCA	
25 June	Welsh Affairs Select Committee – Peter Hain and Alison Jackson	
30 June	Lord Chancellors Select Committee – Lord Falconer, Sir Hayden Phillips	

2 July	Parliamentary Questions to the Wales Office	
3 July	Adjournment Debate – ‘The Scotland Office’	
8 July	Blair gives evidence to the Liaison Committee	
14 July	Statement on the consultations being launched by the DCA.	

Appendix 2 – List of the UK Cabinet in Ranking Order

Prime Minister, First Lord of the Treasury and Minister for the Civil Service
 The Rt Hon Tony Blair MP

Deputy Prime Minister
 The Rt Hon John Prescott MP

Chancellor of the Exchequer
 The Rt Hon Gordon Brown MP

Secretary of State for Foreign and Commonwealth Affairs
 The Rt Hon Jack Straw MP

Secretary of State for the Home Department
 The Rt Hon David Blunkett MP

Secretary of State for Environment, Food and Rural Affairs
 The Rt Hon Margaret Beckett MP

Secretary of State for Transport and Secretary of State for Scotland
 The Rt Hon Alistair Darling MP

Secretary of State for Health
The Rt Hon Dr John Reid MP

Secretary of State for Northern Ireland
The Rt Hon Paul Murphy MP

Secretary of State for Defence
The Rt Hon Geoff Hoon MP

Secretary of State for Work and Pensions
The Rt Hon Andrew Smith MP

Leader of the House of Lords
The Rt Hon The Lord Williams of Mostyn QC

Secretary of State for Trade and Industry and Minister for Women
The Rt Hon Patricia Hewitt MP

Secretary of State for Culture, Media and Sport
The Rt Hon Tessa Jowell MP

Parliamentary Secretary, Treasury and Chief Whip
The Rt Hon Hilary Armstrong MP

Secretary of State for Education and Skills
The Rt Hon Charles Clarke MP

Chief Secretary to the Treasury
The Rt Hon Paul Boateng MP

Leader of the House of Commons, Lord Privy Seal and Secretary of State for Wales
The Rt Hon Peter Hain MP

Minister without Portfolio and Party Chair

The Rt Hon Ian McCartney MP

Secretary of State for International Development

The Rt Hon Baroness Amos

Secretary of State for Constitutional Affairs and Lord Chancellor for the transitional period

The Rt Hon Lord Falconer of Thoroton QC