



The **Constitution** Unit

Nations and Regions: The Dynamics of Devolution

Quarterly Monitoring Programme

Devolution and the Centre

**Quarterly Report
May 2003**

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The Leverhulme Trust

The monitoring programme is jointly funded by the ESRC and the Leverhulme Trust

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Key Points

- UK Government publish 'A Modern Regional Policy for the United Kingdom'
- Lib Dems announce they would cut the number of Welsh MPs
- Hain gives evidence to the Richard Commission
- New concordats signed
- SNP criticise timing of the Budget
- Regional Assemblies (Preparations) Bill receives Royal Assent
- Joint Committee on House of Lords Reform reports
- Westminster MPs seek to amend electoral system in Scotland
- Helen Liddell sparks euro debate
- Convention on the Future of Europe publish a draft Constitution for Europe

1 Devolution and Westminster

Figure 1: Chronology of Events at Westminster (February - May'03)

12 February	Oral questions to the Wales Office
12 March	Oral Questions to the Northern Ireland Office
19 March	Oral questions to the Wales Office
3 April	Standing Committee on Regional Affairs meets
9 April	Oral Questions to the Northern Ireland Office
30 April	Oral questions to the Wales Office
11 March	Oral questions to the Scotland Office and the Advocate General
24 March	Welsh Affairs Select Committee publish – <i>The Primary Legislative Process as it affects Wales</i>
8 April	Oral questions to the Scotland Office and the Advocate General
9 May	Joint Committee on House of Lords Reform publish report
6 May	Oral Questions to the Northern Ireland Office
8 May	Regional Assemblies (Preparations) Bill receives Royal Assent
9 May	Joint Committee on House of Lords Reform publish their Second Report
20 May	Oral questions to the Scotland Office and the Advocate General

1.1 The Future of the Secretary of State for Wales and the Wales Office

Amid the speculation surrounding the summer re-shuffle an Early Day Motion (EDM) was issued by Kevin Brennan MP (Cardiff West) the Labour backbencher and former special adviser to Rhodri Morgan, First Minister of Wales, defending the role of the Secretary of State for Wales. Brennan said that he was reacting to a government source who had confirmed that discussions were taking place around the future of the post. The EDM is outlined below:

EDM 1148

OFFICE OF SECRETARY OF STATE FOR WALES 06.05.03

That this House believes that the Secretary of State for Wales performs a vital role in the government of the United Kingdom; and further believes that this office should be retained as an individual cabinet post as envisaged in the Government of Wales Act 1998.

1.2 Regional Assemblies (Preparations) Bill

The Regional Assemblies (Preparations) Bill received Royal Assent on 8 May. The Bill paves the way for the establishment of regional assemblies in England, subject to a yes vote in a referendum. A significant amendment was made to the Bill during its passage through the Lords. Voters living in areas currently governed by two tiers of local authorities will be given a choice over the type of single tier local government they would have in the event of a positive vote in a referendum on a regional assembly. It is widely accepted that the Bill would have fallen if this compromise amendment between the government and the Liberal Democrats had not been passed. For further details on this please see *the Devolution and the English Regions Monitoring Report* May 2003, at:

<http://www.ucl.ac.uk/constitutionunit/leverh/monitoring.htm>.

1.3 Standing Committee on Regional Affairs

The Regional Affairs Committee met on 3 April 2002 to discuss the *'Government Offices and the Regions.'* Alan Hurst MP chaired the session, while the Minister for Social Exclusion and Deputy Minister for Women, Barbara Roche MP, represented the government. For a transcript of the debate please see:

<http://www.publications.parliament.uk/pa/cm200203/cmstand/cmreg/st030403/30403s01.htm>.

1.4 The List system in the Devolved Administrations

On 8 April Helen Liddell was asked for her view on the List MSPs who sit in the Scottish Parliament:

John Robertson (Glasgow, Anniesland): One of the consequences of the Scotland Act is the list system and the deplorable way in which nationalist list Members do their work. Will my right hon. Friend ensure that we do away with the nationalist-type list Member and that we have list Members who do their work properly?

Mrs. Liddell: My hon. Friend makes a point about the list system. I am sure that the electors of Scotland will vote Labour on 1 May to ensure that there will be precious few SNP list Members in the new Scottish Parliament.¹

Labour MP, Wayne David, raised another issue relating to the list system in Wales. He tabled an EDM² criticising the way in which some candidates in the election to the National Assembly were elected on regional lists despite being rejected by the electorate in constituency seats. He argued that such a scenario “undermines the democratic process and gives a morally weak mandate to AMs.” He called on the Government to amend the Government of Wales Act 1998 to ensure that candidates stand for either a constituency seat or a regional seat but not both.

¹ See Scotland Office oral questions at

http://www.publications.parliament.uk/pa/cm200203/cmhansrd/cm030408/debtext/30408-01.htm#30408-01_spnew2.

² See <http://edm.ais.co.uk/weblink/html/motion.html/ref=1197>. On 30 May, over 200 MPs had signed the EDM.

1.5 The Work of the Territorial Select Committees

The Welsh Affairs Committee

On 24 March the Welsh Affairs Committee published its fourth report, '*The Primary Legislative Process as it affects Wales*'.³ The report called for greater consistency when additional powers are conferred on the National Assembly. This, it said, would enable better parliamentary scrutiny of any new powers. The Committee suggested that if the Government is going to confer further powers then it should do so through new primary legislation, rather than by amending existing orders.

The Committee also recommended a series of measures designed to improve the clarity of legislation affecting Wales. It argued that "Bills affecting Wales should have a separate Part setting out the law as it affects Wales."

Moreover, the Committee said that a comprehensive register of Welsh legislation should be a "requirement of the devolution settlement", and they called on the Government to introduce a Bill which formally consolidated the powers of the Assembly. The report also recommended the introduction of a "Wales statement in the Explanatory Notes to Bills."

The Committee called for better consultation between Westminster and the Assembly. For instance they recommended that Westminster should consult the Assembly on legislation in any of the devolved fields even if the legislation has no direct impact on the Assembly's powers.

The Committee also called for joint scrutiny of draft Bills by the Welsh Affairs Committee and the relevant committee of the National Assembly. They also suggested that AMs should be formally able to make their views known at Westminster on legislation that directly affects Wales. In addition they recommended that, "in the spirit of modernisation, [the Government] should

³ Welsh Affairs Committee, *The Primary Legislative Process as it Affects Wales*, HC 79. The report can be found at <http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmselect/cmwelaf/79/7902.htm>.

experiment with committing a Wales Part of a substantial Bill to a separate Standing Committee.

In addition to this the Welsh Affairs Committee is to conduct an inquiry into the draft Public Audit (Wales) Bill, which was published by the Wales Office on Thursday 3 April 2003. The draft Bill proposes to bring together the functions of the Auditor General in Wales and most of the functions of the audit Commission in Wales into a single audit body to be known as the Wales Audit Office.

The Scottish Affairs Committee

On 8 April the Scottish Affairs Committee published its Second Report *Homeworkers in Scotland and the Minimum Wage*⁴. And on 28 April the Committee launched an inquiry into *Customs Services in Scotland*. The inquiry will focus on the nature and level of the drug problem in Scotland.

The Northern Ireland Affairs Committee

The Northern Ireland Affairs Committee published the following reports this quarter:

- Sixth Report The Illegal Drugs Trade and Drug Culture in Northern Ireland (HC35)
- Fifth Report Forensic Science Northern Ireland (HC204)⁵

1.6 The Joint Committee on Lords Reform

Following the debacle over the vote on Lords reform in February, the Joint Committee on House of Lords reform published a report on 9 May⁷, asking the government to give them guidance on what direction the committee's future work should take. The report sets out a number of areas that the

⁴ For details about the work of the Scottish Affairs Committee please see http://www.parliament.uk/parliamentary_committees/scottish_affairs_committee.cfm.

⁵ For details about the work of the Northern Ireland Affairs Committee please see http://www.parliament.uk/parliamentary_committees/northern_ireland_affairs.cfm.

⁷ Second Report, House of Lords Reform, HL 97, Please see <http://www.parliament.the-stationery-office.co.uk/pa/jt/jtholref.htm>.

committee could look at given the absence of agreement on the main issue of composition. From a devolution perspective the most interesting issue that the Committee might look at is the possibility of indirect election. The Committee have asked the government to respond within two months.

1.7 Westminster unhappy with PR in Scottish local elections

The coalition deal struck between Labour and the Liberal Democrats in Scotland has been met with some opposition from Scottish MPs in Westminster. The Liberal Democrats negotiated a commitment from Labour that they would introduce PR in Scottish local elections, as part of the coalition deal following elections to the Scottish Parliament in May. This policy was always going to be controversial within the Scottish Labour Party, as many fear that PR will weaken the party's local electoral base.

Scotland on Sunday⁹ reports that Labour MPs are threatening to “table a raft of amendments to the Scotland Act which could see a cut in the number of MSPs and a new method of electing them.” They go on to describe it as the “biggest turf war between the London and Edinburgh institutions since Henry McLeish tried to rename the Scottish Executive the Scottish government.” Labour MP, Brian Donohoe, was quoted as saying, “if there is to be an emphasis on PR for local government there is a clear entitlement for Westminster to look at Holyrood's system.”

Glasgow MP, Ian Davidson, has suggested that, “if changes are to take place in the electoral system for local government it would make sense to have the Scottish Parliament system changed at the same time.” Among the options envisaged by MPs would be abolishing the PR element used to elect 56 MSPs.

However, what is clear is that the Scotland Act gives the Scottish Parliament the power to introduce PR into local elections, as all issues relating to local government are devolved. It remains to be seen whether or not the

⁹ Scotland on Sunday, *MPs threaten to wreck McConnell's PR deal*, Sunday 25 May 2003

disgruntled MPs will try to reform the electoral system for the Holyrood Parliament, which is a reserved matter. The Scottish Secretary, Helen Liddell, is committed to amending the Scotland Act in order to reduce the number of Westminster MPs¹⁰. There is some speculation that MPs will try and use this as an opportunity to review the Scottish Parliament electoral arrangements.

1.8 Sunday Trading (Scotland) Bill

Labour MP, David Cairns' Private Members Bill continues to make progress through Parliament. The Bill, which aims to extend to shop workers in Scotland the same rights as those enjoyed in England, Wales and Northern Ireland, stands a good chance of getting on the statute book as it has the backing of the government. The Bill is of interest not because there is any ambiguity over whether it encroaches on matters devolved to the Scottish Parliament, (employment law is a reserved matter), but because it is uncommon for Westminster to legislate on 'Scotland only' matters. Many commentators predicted that post-devolution Westminster would not legislate on Scotland only matters.

1.9 Lib Dems announce that they would cut the number of Welsh MPs

In giving evidence to the Richard Commission in February, Mike German AM indicated that the Liberal Democrats would reduce the number of Welsh MPs from 40 to 28. This proposal would form part of a wider policy of transferring more powers to the National Assembly. German said that the Liberal Democrats want to give the Assembly primary legislative powers and increase the number of AMs from 60 to 80. The extra 20 AMs would be used to improve the Assembly's ability to scrutinise the work of ministers. According to the Guardian, who covered the story, they would also replace the Barnett Formula, the financial mechanism currently in place, with a new needs-based formula. The paper also suggests that the Liberal Democrats want to abolish the Secretary of State for Wales Cabinet post, replacing it with a secretary of

¹⁰ For further details see the *Devolution and Centre Monitoring Report*, February 2003. It can be found at <http://www.ucl.ac.uk/constitution-unit/leverh/monitoring.htm>.

state for the nations and regions, which would represent all the devolved bodies.¹¹

1.10 Reid is pressed on the West Lothian question

On 8 May, the new Leader of the House of Commons, Dr John Reid MP, was asked whether he thought it was right that Scottish MPs could vote on English only legislation, in this case on the Health and Social Care (Community Health and Standards) Bill, but that English MPs could not vote on Scotland only matters since the advent of devolution.

Eric Forth MP, Shadow Leader of the House of Commons, asked:

The Government were effectively bailed out yesterday by Scottish Labour Members voting on an English matter: nothing less than the future of the English national health service. Why do those of us in England who effectively pay for the Scottish health service have to sit here and watch Scottish Members voting on the future of our health service although we have no say in what goes on north of the border? Is that devolution and new Labour justice? I think we need to know more about it.

Dr. Reid replied:

The right hon. Gentleman misunderstands if he thinks that he has more or fewer rights than me because I have no more right to vote on the Scottish Parliament's decisions on Scottish education than he has. The last thing that we want is the creation of three or four categories of Members with different rights according to the level of devolution that has been given to their areas. The level of devolution given to Scotland is different from that given to Wales, which is different from that given to Northern Ireland—when the Assembly is not suspended—which is different from that given to the Greater London Assembly, which might be different from that given to regional assemblies in

¹¹ The Guardian, *Lib Dem Plan to slash Welsh MPs*, 24 February 2003 - <http://politics.guardian.co.uk/wales/story/0,9061,902145,00.html>.

England. He is going down a very dangerous path if he is asking me to create different classes of MPs, and I shall stand against that as Leader of the House.¹²

1.11 Joint Committee on Human Rights calls for a Children's Commissioner for England

On 12 May the Joint Committee on Human Rights published its Ninth Report, on *The Case for a Children's Commissioner for England*¹³. The report welcomed the example set by the devolved administrations in pioneering children specific commissioners, and recommends the 'establishment of an independent champion of children's rights in England.' The report acknowledges the concerns of the government that a children's commissioner for England should not duplicate existing mechanisms for the protection of children, but maintains that:

"The existing arrangements for the promotion and protection of children's rights and interests are insufficiently independent from the Government to ensure that the rights and interests of all children in England are fully protected and promoted at all times. Independence is the key value that a children's commissioner would add to existing mechanisms."¹⁴

¹² He was asked at Business Questions – for a full transcript see http://www.publications.parliament.uk/pa/cm200203/cmhansrd/cm030508/debtext/30508-06.htm#30508-06_spm1.

¹³ See <http://www.publications.parliament.uk/pa/jt200203/jtselect/jtrights/96/9602.htm>.

¹⁴ Taken from the Press Release that was issued to mark the publication of the report. See http://www.parliament.uk/parliamentary_committees/joint_committee_on_human_rights/joint_committee_on_human_rights_press_notices.cfm.

2 Devolution and Whitehall

Figure 4: Chronology of Events in Whitehall (February – May'03)

6 March	UK Government publish, ' <i>A Modern Regional Policy for the United Kingdom</i> '
13 March	Hain gives evidence to the Richard Commission
14 March	Concordat between ODPM and Scottish Executive published
15 May	Concordat between ODPM and the National Assembly for Wales published
27 May	Convention on the Future of Europe publish draft Constitution

2.1 Helen Liddell is 'Bored' of her role as Scottish Secretary

On 27 April, Scotland on Sunday reported that Helen Liddell, the Scottish Secretary, has privately told Westminster colleagues that she is "bored" and "fed up" with the Cabinet post. The paper alleges that Liddell no longer wants a job that has been largely stripped of its powers since devolution. The story was made all the more embarrassing because it appeared during the election campaign in Scotland. A spokesperson for Scottish Labour vigorously denied that Liddell had made such remarks.¹⁵

2.2 The Nations and the Regions of the UK and the euro debate

The Chancellor is set to make an announcement on the 'five economic tests' in June, and it is widely believed that he will say that the tests have not been met, therefore delaying UK entry. Helen Liddell, the Secretary for State for Scotland, became the first Cabinet minister to criticise the Treasury's handling of the decision. In an interview with the Sunday Telegraph¹⁶ she said that such a "momentous decision" should be made by the whole Cabinet, adding,

¹⁵ Scotland on Sunday, '*Bored*' Liddell looks for new job, 27 April 2003. See <http://www.scotlandonsunday.com/>.

¹⁶ The Sunday Telegraph, *Cabinet Splits as minister attacks Brown on euro delay*, 11May 2003.

“it cannot simply be delivered to us by the Chancellor like the Budget.” Liddell also emphasised how important the decision was for Scotland, suggesting that not joining may adversely affect the Scottish economy and inward investment into Scotland. Liddell said that there should be a ‘sixth test’, on “what the opportunity cost of not going in is.”

The Scottish Secretary followed up these comments with a speech in Edinburgh on 12 May, entitled, ‘*Scotland and the New Europe.*’¹⁷ Here she stressed that the costs for Scotland staying out of the euro needed to be assessed.

On the back of Liddell’s intervention into the euro debate, SNP member, Angus Robertson, tabled an EDM which “calls on the Government to publish evidence and conclusions on euro membership specifically in relation to Scotland, and for other nations and the regions of the UK, prior to announcing any decision regarding UK membership of the euro.”¹⁸

2.3 Hain gives evidence to the Richard Commission

Peter Hain gave evidence to the Richard Commission on 13 March, when the Commission visited Westminster. Hain argued that if the Commission is to propose substantive reform to the powers of the Assembly then it must show that such reforms would be in the interest of the people of Wales. He urged them to apply a ‘practical delivery test’, which would demonstrate the practical improvements associated with any reforms and urged the Commission to ‘make the case for change.’ Reform for the sake of reform, in order to satisfy constitutional purists, would not, in Hain’s view, constitute such a case. Moreover, he insisted that any change to the current regime would have to have a democratic mandate. The current arrangement had two: a manifesto commitment to devolution and a victory in the referendum.

¹⁷ A transcript of the speech can be found at the Scotland Office website – see <http://www.scottishsecretary.gov.uk/speeches/lazospeech.htm>

¹⁸ See <http://edm.ais.co.uk/weblink/html/motion.html/ref=770>.

Hain said:

“Any major changes proposed would have to have a democratic mandate and you may wish to consider this. Any case for primary legislation amending the Welsh devolution settlement so soon after it was established would also have to demonstrate very clear, practical improvements in delivery of public services to the people of Wales.”

He added that once the Richard Commission had reported, “the Cabinet as a whole will need to make its decision on the basis of all the information available. This process is likely to take some time.”¹⁹

2.4 New Concordats

The Office of the Deputy Prime Minister has signed concordats with the Scottish Executive and the National Assembly for Wales this quarter. The concordat between ODPM and the Scottish Executive was published on 14 March, and the concordat between ODPM and the Assembly was published on 15 May. They can be downloaded from ODPM’s website. Please see:

<http://www.devolution.odpm.gov.uk/administrations/index.htm>.

2.5 Convention on the Future of Europe: Impact on the Regions

The Convention on the Future of Europe’s draft Constitution was published in late May.²⁰ Although little was made of the sections relating to the regions of Europe the draft did contain implications for sub-national governments. One relates to subsidiarity: the new subsidiarity provisions recognise the role of sub-national governments as well as the member states. A second relates to the Committee of the Regions, established by the Maastricht treaty and widely regarded as a disappointment. The Constitution provides for this to advise

¹⁹ Please see, *Opening Remarks to Evidence given before Richard Commission*, 13 March 2003, which can be found at http://www.walesoffice.gov.uk/sp_20030313.html. The Richard Commission plans to publish the oral and written evidence it has taken with its report. The Richard Commission expects to report sometime in late 2003 early 2004.

²⁰ The draft Constitution can be found at <http://european-convention.eu.int/>.

not only the Council but also the Parliament and the Commission. It will be also able to go the European Court where it considers the Union legislation does not comply with the principle of subsidiarity. A third is the creation of a new obligation for the Commission to take regional and local interests into account in consultations on proposed EU legislation.

The draft Constitution seeks to strengthen the role of national Parliaments in the Union's legislative process. It creates new procedures to improve the flow of information from the EU to member states' parliaments, whenever one of the EU institutions issues a formal paper or legislative proposals. And national parliaments should involve sub-national parliaments' views in their deliberations, where appropriate.

The likely impact on the devolved institutions in Scotland, Wales or Northern Ireland will be modest. The regions with legislative powers (a group including Scotland and Wales) failed to secure direct recognition of their role in the draft. But if implemented these provisions would create some new safeguards for the interests of regional or sub-national governments. Those will be particularly important in member states where (unlike the UK) the national government pays little heed to its regions when EU matters arise.

2.6 Hepatitis C – the View from the Centre

The dispute between the UK government and the Scottish Executive, over the decision by the Executive to provide compensation to anyone who contracted Hepatitis C on the NHS in the 1970s and 1980s as a result of contaminated blood, has continued this quarter. The Scottish Health Minister, Malcolm Chisholm, announced proposals for ex gratia payments in January 2003, but has had to concede that no payments will be made until the Scottish Executive resolves the issue with Westminster. The dispute centres on whether or not the Department for Work and Pensions will try and 'clawback' the money used by the Executive in compensation through the social security system. There is also a debate over whether the Executive actually has the power to make such payments.

In what many in Scotland have interpreted as a snub to the Scottish Parliament, Andrew Smith, the Secretary of State for Work and Pensions, has refused to appear before the Health Committee, which had invited him to give evidence on the issue.

The SNP have been keen to raise the issue at Westminster. On 21 May, Annabelle Ewing quizzed the Prime Minister on why no compensation had been made during questions to the Prime Minister.

Annabelle Ewing (SNP - Perth): The Prime Minister will be aware that the Scottish Parliament agreed at the beginning of this year to pay compensation to hepatitis C sufferers in Scotland who contracted the disease through contaminated NHS blood products. However, not a penny piece has yet been paid, as a result of dithering by Westminster over jurisdiction. Can I inject a sense of urgency into the debate and ask the Prime Minister to confirm today that Westminster will not frustrate the will of the Scottish Parliament to pay compensation under exemption from the benefits clawback regulations? Surely the Prime Minister would agree that the people involved have already waited far too long for justice.

The Prime Minister: I am aware of the Scottish Executive's decision to pay compensation to hepatitis C sufferers. I am not aware of the other particular problem to which the hon. Lady has just drawn attention. I shall look into it, and write to her about it.²¹

Annabelle Ewing also raised the issue on 20 May at Scotland Office questions in which Liddell suggests that a decision will be made after the elections in Scotland.

Annabelle Ewing : Surely the key issue is whether she will fight for the right of the Scottish Parliament to pay compensation and for a 100 per cent.

²¹http://www.publications.parliament.uk/pa/cm200203/cmhansrd/cm030521/debtext/30521-03.htm#30521-03_wqn5.

exemption from the benefit clawback rules. If she will not do that, will she explain to hepatitis C sufferers in Scotland why on earth Scottish taxpayers are paying £7 million for the running costs of her office?

Mrs. Liddell: There are serious legal and policy-based issues in relation to hepatitis C. There have been extensive discussions between the Scottish Executive and the Department for Work and Pensions, not least on whether payments should be taken into account as capital or income when someone claims income-related benefits. Those discussions could not continue because of the Scottish Parliament elections. As soon as the Minister for Health and Community Care is in place in the Scottish Parliament, those discussions will continue.²²

2.7 UK Government calls for a new EU regional policy

In March 2003 the UK Government published a consultation document, '*A Modern Regional Policy for the UK*',²³ which put forward a set of measures that if implemented would radically reform the EU's regional policy by returning key responsibilities back to the Member States. The UK Chancellor, Gordon Brown, announced the surprise change in policy in an article in the Times on 6 March.²⁴ Brown's plan would involve the 'repatriation' of regional spending, (which accounts for £20 billion of the EU's budget, making it the second biggest area of EU spending), from the Commission to the Member States and then on to the nations and regions of Europe.

²² http://www.publications.parliament.uk/pa/cm200203/cmhansrd/cm030520/debtext/30520-02.htm#30520-02_sbhd0

²³ '*A Modern Regional Policy for the United Kingdom*' can be downloaded from the Treasury website. Please see http://www.hm-treasury.gov.uk/consultations_and_legislation/modern_regional_policy/consult_regpolicy_index.cfm. HM Treasury, the Department for Trade and Industry and the Office of the Deputy Prime Minister jointly published the consultation paper. Although it should be noted that HM Treasury is clearly the lead department, indeed some commentators have questioned this, since responsibility for regional policy rests with ODPM and not with the Treasury.

²⁴ Gordon Brown, *As the EU expands, we must repatriate some of the power from Brussels*, The Times, 6 March 2003.

The proposal fuelled speculation that the Treasury had been motivated to act because of fears that, with the advent of enlargement, the UK's regions and nations stood to lose out on EU regional money. However, Brown insisted that "our case for change is not made just out of self-interest", and argued that "the best regional policy is now the most decentralised."

Brown dismissed the "recurrent theme in the European convention...that an enlarged Europe will work well only if it is a more centralised Europe." Instead he called for "greater economic decision-making from the EU to the regions and nations of our country." He said that "reversing the decades of centralisation" would be a significant challenge, but he maintained that, "instead of Westminster or Europe accumulating power, the way forward is for regional development agencies and devolved legislatures to have greater power and flexibility to decide their own priorities."

The proposals are undoubtedly radical in nature, and have been met with resistance from the European Commission, who stand to lose significant influence if Brown's plans are implemented. But it should be stressed that there is no guarantee that they will be accepted. There is a very long way to go and as it stands the consultation is only intended to establish the UK negotiating position. It remains to be seen what level of support the proposals will attract from other Member states. A report in the Times²⁵ suggested that Brown might be supported by Germany, who like the UK stand to receive less in regional grants once the EU expands to central and eastern Europe.

The proposals as set out in the consultation paper, suggest that under this new regime spending on regional policy would increase in the nations and regions of the UK. The document states, "the Government recognises that its proposal has implications for nations and regions of the UK who might otherwise have expected a continuation of support in the form of EU receipts...if the Government's proposed framework was agreed, we would guarantee that, by increasing UK government spending on regional policy,

²⁵ The Times, *Brown faces fight over attack on EU regional aid*, 6 March 2003.

nations and regions will receive a level of resources which ensures that they do not loose out.”

The devolved administrations were consulted by the UK Government when the proposals were being devised, and they now have until 4 July to respond to the plans.

2.8 SNP criticise the timing Budget

The Scottish National Party lobbied both the UK Cabinet Secretary and the Electoral Commission to seek a postponement of the Budget until after the Scottish Parliamentary elections. With Parliamentary debate dominated by the build up to war in Iraq, the UK Chancellor, Gordon Brown decided to delay the Budget by three weeks. Instead of taking place in March, the Budget was announced on 9 April. This move was heavily criticised by the SNP who felt that the delay contravened Government rules regarding the timing of political announcement during election campaigns. Having the Budget on 9 April meant that it fell within the formal period of campaigning for elections in Scotland and Wales.

However, the SNP accusations were rejected by the Treasury who insisted that no ‘rules’ were broken. Although the Electoral Commission’s remit does not enable them to make decisions on the timing of the Budgets, or other policy announcements, in a letter to the SNP’s Campaign Co-ordinator Nicola Sturgeon MSP, the chairman of the Electoral Commission, Sam Younger said:

“The Commission knows of no reason in law why a budget should not be presented during an election campaign, although by well-established convention significant government announcements are avoided during ‘purdah’ period running up to the general elections. April 9th is within the formal period for elections to the Scottish Parliament and the National

Assembly for Wales and it seems right that announcements relevant to those nations should be avoided.”²⁶

As it turned out the Chancellor was very cautious not to explicitly mention Scotland in his Budget announcement, in order to avoid accusations of trying to influence the campaign in Scotland.

²⁶ The letter can be found on the Electoral Commission’s website – see <http://www.electoralcommission.gov.uk/media-centre/newsreleasecorporate.cfm/news/183>.

3 Intergovernmental Relations

3.1 IGR

The formal intergovernmental machinery has not been used this quarter – there have been no meetings of the Joint Ministerial Committee’s or of the British-Irish Council. Part of the explanation for this lies in the fact that the devolved administrations have been busy gearing up for the May elections. Formal contact between the UK government and the devolved administrations is expected to resume in summer.

4. Devolution and the Law

4.1 The Judicial Committee of the Privy Council

On 11th February 2003 the Judicial Committee of the Privy Council delivered its decision in the case of *Hellen Clark (PF) v. Christopher John Kelly* (DRA No. 2 of 2002).¹ The case concerns the compatibility of arrangements for District Courts in Scotland. These are composed (like magistrates' courts in England and Wales) of lay people advised by a legally-qualified clerk. The issues were whether the clerk was a member of a tribunal so composed, and whether in any case the presence of a clerk who retired with the justices and gave advice to them in private was compatible with the obligation under Article 6 of the European Convention on Human Rights that a court must be an "independent and impartial tribunal". The Committee was divided on the issue of whether the clerk would be a member of such a court (with discussion of the decision of the European Court of Human Rights in *Mort v United Kingdom*) but was clear that the clerk's position did not undermine its impartiality. Lord Hope of Craighead suggested that the impartiality of the tribunal could be assured by any advice given in private by the clerk being regarded as provisional until repeated before the parties in open court and the parties given an opportunity to comment on it.

This decision is the last of the 'devolution issues' cases presently before the Committee. Even cases concerning Scottish criminal procedure and the European Convention on Human Rights have now dried up. While a number of matters presently before the Court of Session may find their way to the Judicial Committee in due course, none can be expected for several months.

¹ The full judgement is available from the Privy Council website, at <http://www.privycouncil.org.uk/output/Page331.asp>