



The **Constitution** Unit

Nations and Regions: The Dynamics of Devolution

Quarterly Monitoring Programme

Devolution and the Centre

**Quarterly Report
May 2004**

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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

- Scotland Parliament (Constituencies) Bill passes third reading
- Professor Sir John Arbuthnott to chair the Commission on Boundary Differences and Voting Systems
- The West Lothian Question arises for the second time on the Higher Education Bill
- Peter Duncan, shadow Scottish Secretary, outlines Conservative plans to strengthen devolution
- Richard Commission publishes its report on powers of the Welsh Assembly
- Second Wales-only Bill is published this session: Draft Transport (Wales) Bill
- Ministerial reshuffle at the Northern Ireland Office
- JMC Europe meets
- A row emerges over the Children's Commissioner for England
- Caroline Spelman MP replaces David Curry MP as shadow Local and Devolved Government Secretary

Devolution and the Centre

Figure 1: Chronology of Events at the Centre (March-May 2004)

March 9	SNP and Plaid Cymru Opposition Day
March 11	Peter Duncan, shadow Scottish Secretary, gives his <i>Making Devolution Work</i> speech
March 16	Oral Questions to the Secretary of State for Scotland and Advocate General
March 17	Oral questions to the Secretary of State for Northern Ireland The Budget
March 18	JMC Europe met
March 24	Oral questions to the Secretary of State for Wales
March 31	Third reading of the Higher Education Bill Richard Commission publish their report
April 21	Meeting of the British-Irish Intergovernmental conference
April 27	JMC Europe met Oral questions to the Secretary of State for Scotland and Advocate General
April 28	Oral questions to the Secretary of State for Northern Ireland
May 4	Committee stage and Third Reading of the Scottish Parliament (Constituencies) Bill
May 5	Oral questions to the Secretary of State for Wales
May 25	Oral Questions to the Secretary of State for Scotland and Advocate General
May 26	Oral questions to the Secretary of State for Northern Ireland
May 27	JMC Europe met
May 27	Wales Office publish Draft Transport (Wales) Bill

1. Devolution and Westminster

1.1 The Scottish Parliament (Constituencies) Bill

The Scottish Parliament (Constituencies) Bill passed its Third Reading by 326 to 104 votes on the 4 May without amendment.¹ The main purpose of the Bill is to remove the statutory link that currently exists in the Scotland Act 1998 between the number of Westminster seats and the number of constituency seats at Holyrood. The Scottish Parliament (Constituencies) Bill therefore breaks the link between Westminster and Holyrood constituencies and replaces Schedule 1 of the Scotland Act, with a new schedule, which preserves the size of the Scottish Parliament at its current level of 129 members.

Alistair Darling MP, the Scottish Secretary, reaffirmed his commitment to implementing the Boundary Commission for Scotland's recommendation to reduce the number of Scottish seats from 72 to 59. The Boundary Commission have already published their report on Westminster parliamentary boundaries but it has not yet presented its report to the Secretary of State to implement because under the terms of the Scotland Act, it was also committed to reviewing the constituency boundaries of the Scottish Parliament. Given that the Scottish Parliament (Constituencies) Bill stops this work it seems likely that the Commission will present their report to Darling once the current Bill receives Royal Assent. Speaking at Scottish Questions, Darling stated:

‘As I have said on many occasions—and at every Question Time that I can recall—as soon as I have received the report, I intend to lay it before the House with a view to implementation. I believe that all the Scottish political parties are preparing for that and proceeding on that basis’.²

1.2 The Commission on Boundary Differences and Voting Systems

¹ The Committee stage debates can be viewed at http://www.publications.parliament.uk/pa/cm200304/cmhansrd/cm040504/debtext/40504-10.htm#40504-10_head0. For a more detailed look at the Bill and its consequences see the February 2004, *Devolution and the Centre*, Monitoring Report. It can be viewed at http://www.ucl.ac.uk/constitution-unit/monrep/centre/centre_february_2004.pdf.

² HC Deb 27 April Col 733.

On 25 May, the Scottish Secretary, Alistair Darling MP, announced the appointment of Professor Sir John Arbuthnott as the Chair of the new Commission on Boundary Differences and Voting Systems. Professor Sir John Arbuthnott is an eminent microbiologist and an ex-Principal and Vice Chancellor of the Universities of Strathclyde and Glasgow. Commenting on his appointment, Arbuthnott, said that he wanted to ‘bring a fresh and independent view to the task and that he will seek to achieve the greatest level of consensus across Scotland’.³

The Commission will examine the consequences of having four different electoral systems in Scotland and the ending of coterminous constituency boundaries between the Westminster and Holyrood Parliaments.⁴ Responding to the Scottish Affairs Committee’s report on the *Coincidence of Parliamentary Constituency Boundaries in Scotland and the Consequences of Change*, the government said, referring to coterminosity, that it ‘has an open mind ... and would not wish to pre-judge the commission’s conclusions and recommendations’.⁵ Darling also confirmed that the Commission will not be looking at the issue of reducing the number of Scottish Westminster constituencies, which has proved to be an extremely sensitive issue for many Scottish MPs. He said:

‘What the commission will not be able to do is to reopen the question of whether there will be a reduction in the number of Members of Parliament representing Scottish constituencies’.⁶

In a press release the Scotland Office stated that it wanted the Commission to start work as soon as possible and expected it to take around 18 months to complete its work. It also said that details of the membership of the Commission would be announced shortly, and that candidates are being considered following consultation

³ *Professor Sir John Arbuthnott to Head up Voting Systems Commission*, Scotland Office press release 25 May 2004.

⁴ For background information on the setting up of the Commission on Boundary Differences and Voting Systems see the February 2004, *Devolution and the Centre*, Monitoring Report.

⁵ Scottish Affairs Committee, *Response by the Government to the First Report (Session 2003-04) on the Coincidence of Parliamentary Boundaries in Scotland and the Consequences of Change*, HC 514.

⁶ HC Deb 16 March 2004 Col 142. See

<http://www.publications.parliament.uk/pa/cm200304/cmhansrd/cm040316/debtext/40316-02.htm>.

with political parties in both Westminster and Holyrood. However, it has emerged that the Conservative Party will play no part in the Commission's proceedings.⁷ The Commission will make recommendations to the Secretary of State for Scotland and the First Minister, Jack McConnell MSP, after which the 'Secretary of State will then decide on the government's response, taking into account the Executive's views'.⁸

1.3 The West Lothian Question and the Higher Education Bill

The West Lothian Question, (which has come to refer to the post-devolution anomaly whereby Scottish MPs can vote on English matters at Westminster, while English MPs cannot vote on issues devolved to the Scottish Parliament), has continued to generate debate in Westminster as the government once again relied on the support of its Scottish MPs to pass its Higher Education Bill.⁹

The Bill, which contains the highly controversial measure to allow universities in England to charge variable tuition fees, had its third reading in the House of Commons on 31 March 2004. The tuition fee measures will not apply to Scotland as student finance is devolved to the Scottish Parliament. The Bill also exempts Northern Ireland from tuition fees.¹⁰ The situation is more complicated in Wales where the Bill allows for tuition fees to be introduced in Welsh Universities but at the same time transfers the responsibility for doing so to the National Assembly for Wales. It will therefore be up to the National Assembly to decide whether or not they want to

⁷ Speaking at Scottish Questions, Alistair Darling revealed that he had received a letter from the leader of the Conservative Party which said that while the Conservative Party supported the work of the commission it did not intend on playing any part in its proceedings. HC Deb 27 April 2004 Col. 734. See http://www.publications.parliament.uk/pa/cm200304/cmhansrd/cm040427/debtext/40427-01.htm#40427-01_sbhd0

⁸ *Professor Sir John Arbuthnott to Head up Voting Systems Commission*, Scotland Office press release 25 May 2004.

⁹ The Higher Education Bill only just passed its second reading, with the government winning the vote by 316 to 311. On this occasion 46 Scottish Labour MPs voted with the government. If only English MPs had voted the government would have lost the vote by 261 to 246. For an analysis of this vote see the February 2004, *Devolution and the Centre*, Monitoring Report at http://www.ucl.ac.uk/constitution-unit/monrep/centre/centre_february_2004.pdf.

¹⁰ Any decision on university funding and student grants lies with the Northern Ireland Department for Employment and Learning and the Northern Ireland Office ministers. Barry Gardiner MP, the minister with responsibility for the Department published a consultation paper in April 2004 looking at the option of introducing variable tuition fees in Northern Ireland. The paper, *Higher Education in NI: A Consultation on Proposals to Introduce Variable Deferred Fees, Access Agreements and a Review of the Student Complaints System*, can be viewed at http://www.delni.gov.uk/consultDebate/files/Higher%20Education%20_1.pdf.

introduce variable fees in Wales. The early indication from the Assembly is that they do not propose to do so.

The Bill passed its third reading by 309 to 248 votes. However, the crucial vote took place on an amendment tabled by the Labour MP, Dr Ian Gibson, which sought to remove the tuition fee element from the Bill. MPs voted by 316 to 288 to defeat this amendment thereby saving the principle of variability.

If only MPs from England had voted then the government would have been defeated, as 246 English MPs voted for the amendment, with 244 voting against. However, when Welsh MPs are factored in the picture changes. If only MPs from England and Wales had voted the amendment would have been defeated by 269 to 258. This differs from the second reading vote in which a majority of English and Welsh MPs (276 to 270) voted against the government. On this strict reading of the vote the West Lothian issue does not therefore arise. 47 Scottish Labour MPs voted against the amendment. 12 MPs from Northern Ireland voted against the government in favour of the amendment. Figures 2 and 3 below, give a breakdown of the vote.

Figure 2: Breakdown of Division 123 on 31 March 2004 on the Third Reading of the Higher Education Bill by Nation.¹¹

Nation	For Government	Against Government
England	244	246
Scotland	47	18
Wales	25	12
Northern Ireland	0	12
Total	316	288

Figure 3: Breakdown of Division 123 on the Third Reading of the Higher Education Bill by Party and Nation.

Nation	Party	For Government	Against Government
England	Conservatives	1	155
	Labour	243	47
	Lib Dem	0	42
	Other	0	2
	Total	246	244
Scotland	Conservatives	0	0
	Labour	47	2
	Lib Dem	0	10
	SNP	0	5
	Other	0	1
	Total	47	18
Wales	Labour	25	6
	Lib Dem	0	2
	Plaid Cymru	0	4
	Total	25	12
Northern Ireland	DUP	0	5
	SDLP	0	1
	Sinn Fein	0	0
	Ulster Unionist	0	6
	Total	0	12

This is the fourth occasion in which the government have relied on the support of its Scottish MPs to carry votes in the House of Commons on matters that do not apply in Scotland. Figure 4 summarises the four ‘West Lothian votes’. The fact that there have been any at all is surprising given the size of the government’s majority. Labour controls 323 of the 529 English seats. Under such parliamentary arithmetic, West

¹¹ I am indebted to Adam Mellows Facer of the House of Commons library, for providing the data for Figures 2 and 3.

Lothian votes were not expected to surface. The reason they have is because the government have pursued policies that have proved extremely controversial for its own backbenchers. Hence why the West Lothian votes have occurred on legislation relating to foundation hospitals and tuition fees – the two most controversial pieces of domestic legislation that the government have introduced in this parliament.

Figure 4: ‘West Lothian Votes’ under Blair¹²

Date	Bill	Breakdown of vote for all UK MPs For – Against Government	Breakdown of vote for English MPs only For – Against Government
08-07-03	Health and Social Care Bill (Division 280)	286 – 251	217 – 218
19-11-03	Health and Social Care Bill (Division 381)	302 – 285	234 – 251
27-01-04	Higher Education Bill (Division 38)	316 – 311	246 – 261
31-03-04	Higher Education Bill (Division 123)	316 – 288	244 – 246

The Conservatives have continued to voice their opposition to Scottish MPs voting on non-Scottish matters this quarter, though they remained silent on the issue in the debate itself.¹³ In a speech given on 11 March, entitled, *Making Devolution Work*,¹⁴ Peter Duncan, the Shadow Scottish Secretary, attacked the Labour government for failing to address the West Lothian anomaly. Duncan accused them of acting out of ‘naked political self interest’ given that they needed their Scottish members to get their legislation through the Commons. In failing to respond adequately, Duncan argued that the government were stirring up public resentment and ‘providing the biggest boost to English nationalism ever seen’. He said that the do-nothing approach of the government’s was unsustainable and threatened ‘the very existence of the United Kingdom’.

¹² Technically of course, the West Lothian question arises on any occasion in which Scottish MPs vote on non-Scottish matters, which they do regularly. However, the issue has attracted much more attention when Scottish votes have proved decisive in carrying a bill in which there is no majority among MPs representing English constituencies - which has been the case with these four examples.

¹³ The West Lothian question hardly surfaced during the third reading debate. The press did not really pick up on it either, which contrasted sharply with the coverage it received in the run-up to the debate at second reading.

‘There is no going back on devolution. But if we do not make it work, including answering the West Lothian question, the Union will suffer. The practice of Scottish MPs voting through unwanted English-only legislation is destabilising devolution and is playing into the hands of the separatists on both sides of the border’.

He went on to outline the Conservative ‘answer’ to the West Lothian question, which is in essence a policy of ‘English votes on English laws’. Under Conservative plans the Speaker will be empowered to certify the territorial extent of each Bill. Scottish MPs would be prohibited from voting (but not from speaking in debates) on those Bills that were designated English-only. Duncan argued that parliamentary precedents already exist for their plans, citing as an example the way the Speaker can certify those Bills that relate exclusively to Scotland. Critics of the Conservative solution often point out that it is very difficult to define the territorial extent of Bills as the same Bill will often contain provisions which apply only to some parts of the UK while having a different territorial extent for others. (The Higher Education Bill is a pertinent example of such a Bill)¹⁵. Duncan responded to this by saying that, ‘Speaker certification of Bills would get around this by requiring clearer territorial division of legislation introduced by the government ... where this is not possible, the Speaker would certificate on different parts of the Bill, identifying parts as devolved or not’.

Duncan said:

‘English-only or English and Welsh-only legislation answers the West Lothian question, rebalances the constitution and commands overwhelming public support in England and Scotland’.¹⁶

¹⁴ Peter Duncan, *Making Devolution Work*, Speech to Glasgow Caledonian University, 11 March 2004.

¹⁵ While the territorial extent of the Bill covers England and Wales, (including the proposals for variable tuition fees), Part 1 of the Bill provides for the establishment of the Arts and Humanities Research Council which extends to the whole of the UK.

¹⁶ *Conservatives answer ‘West Lothian Question’*, Conservative Party press release. See http://www.conservatives.com/news/article.cfm?obj_id=92576.

Speaking at the Scottish Conservative Conference in May, Michael Howard, Tory leader, confirmed that a Conservative government would ban Scottish MPs from voting on ‘English-only’ legislation at Westminster. He said:

‘... no Scottish MP should vote in Westminster on issues that are purely to with England and Wales ... when we get into Government we’ll ensure its the case for all parties’.¹⁷

However, it is clear that the government are not prepared to countenance any limitations on what Scottish MPs can vote on. They have consistently rejected calls to change the voting rights of MPs, arguing that all MPs are equal in a UK Parliament. They oppose Conservative plans which they believe will lead to the ‘Balkanisation of Britain’.¹⁸

1.4 Wales and the Higher Education Bill

The Higher Education Bill also highlighted another post-devolution issue of concern – parliamentary scrutiny of legislation affecting Wales. Speaking during the debate on the Higher Education Bill, the Labour MP for Cardiff Central, Jon Owen Jones, complained about the lack of debate that had been accorded to discussing how the Bill affects Wales. He said:

‘How can you help Members who represent Wales in the House, who, it is now clear, will have no opportunity to debate the important issues, which are currently non-devolved, about how the Bill affects Wales? In its ignorance or with its disinterest, the House is about to legislate on Wales without allowing any Member from Wales to speak on that issue.’¹⁹

He continued to say:

¹⁷ Michael Howard speech to the Scottish Conservative Party Conference 14-15 May 2004. See <http://www.scottishtories.org.uk/conf04-howardspeech.htm>.

¹⁸ Peter Hain in *The Guardian*, *The Balkanisation of Britain*, January 21 2004.

¹⁹ HC Deb 31 March 2004, Col 1624.

‘The Bill applies to England and Wales. Every piggyback Bill applying to England and Wales has had the same problem. Ministers and Members believe that it is not their responsibility to discuss Welsh issues.’²⁰

However, Alan Johnson, Minister for Higher Education refused to be drawn on the issue.

1.5 The Conservatives and *Making Devolution Work*

In his speech, entitled *Making Devolution Work*, and in an interview with *Holyrood Magazine*, Peter Duncan, the shadow Scottish Secretary, set out his case for how a Conservative government would strengthen the relationship between the Scottish Executive and the UK government.²¹ His starting point was that although devolution has been established relatively smoothly he did not believe that this stability would last. The big test for devolution would come when there was a change in the political composition of the UK government and the devolved administrations, from that which exists now where Labour are in power in London, Edinburgh and Cardiff. He echoed the view of the House of Lords Select Committee on the Constitution, and their report on *Inter-institutional relations in the United Kingdom*, which argued that the current system of intergovernmental relations relied too heavily on ‘goodwill’ and that this would be severely tested once different parties are in power.

Duncan argued that measures needed to be taken to formalise and strengthen the devolution settlement so that it could cope with a different political make-up, such as a Conservative government in Westminster and a Labour-Liberal coalition in Scotland. The Scotsman quoted Duncan as saying:

‘If we do not put in place measures for the effective co-operation between both parliaments, the Union will be threatened.’²²

²⁰ HC Deb 31 March 2004, Col 1696.

²¹ See Peter Duncan, *Making Devolution Work*, Speech to Glasgow Caledonian University, 11 March 2004 and Shadow Play, *Holyrood Magazine*, Issue 105, 8 March 2004.

²² Union is at risk if we win, warns Scots Tory, *The Scotsman*, 8 March 2004. See <http://news.scotsman.com/topics.cfm?tid=447&id=268712004>.

He called for a revision of the concordats which govern the relations between the devolved administrations and UK government as a way of codifying the relationship between the two. 'It is far from clear whether they even work at the moment within the Labour-Labour relationship,' he said. 'So in a Tory-Labour context, they would probably have to be revised and I think their voluntary nature would have to be revisited.'²³

Duncan called for a more 'enhanced role' for the Scottish Secretary. He said that he did not object to combining the post of Scottish Secretary with other Cabinet responsibilities – which Labour did in June 2003 by making Alistair Darling both Transport and Scottish Secretary – but instead suggested that the position of Scottish Secretary be combined with a 'less onerous additional role'. He felt that Darling had little time for Scotland while doing the job at Transport.

He also suggests that if Michael Howard became Prime Minister, Scottish Tory Leader David McLetchie MP would be a welcome member of the Cabinet. 'I don't see any reason why he could not sit in Cabinet when we move into Government. Because we are relaxed about devolution, we wouldn't see him sitting around the Cabinet table as a problem. It has merit.'²⁴

He suggested that another way of improving relations would be for there to be more interaction between Westminster and Holyrood politicians, thereby improving dialogue between the two. In particular he felt that UK ministers should attend the Scottish Parliament's committees. He was critical of how UK ministers have refused to give evidence in the past. He said, 'I would like to move towards a situation where UK ministers in a Tory Government would be held to account by committees at Holyrood as and when necessary.'²⁵

Finally he suggested that the First Minister should play a more active role in negotiating the financial settlement for Scotland. The Scottish Parliament is currently funded through the block grant which is automatically allocated via the Barnett formula. At present this regime provides for very little involvement from Scottish Executive ministers. Duncan questioned this:

²³ Shadow Play, *Holyrood Magazine*, Issue 105, 8 March 2004.

²⁴ Shadow Play, *Holyrood Magazine*, Issue 105, 8 March 2004.

²⁵ Shadow Play, *Holyrood Magazine*, Issue 105, 8 March 2004.

‘I would be very comfortable with the First Minister having a formal role in the negotiations for the Barnett Formula. Holyrood should be included rather than isolated.’²⁶

1.6 Legislating for Northern Ireland at Westminster

Northern Ireland Minister, John Spellar MP, was questioned about the adequacy of the legislative process in place for Northern Ireland at Westminster under direct rule. Westminster predominantly legislates for Northern Ireland by passing Orders in Council, a process deemed by many as not providing effective parliamentary scrutiny and oversight. The Labour MP, and past veteran of the Northern Ireland Affairs Committee, Harry Barnes MP, asked why, under periods of direct rule, Bills for England and Wales could not also be applied to Northern Ireland.

John Spellar MP replied:

On the general principle that he raises, he will be aware that Northern Ireland legislation exists in many cases. If we were to specify applicability to Northern Ireland in the Pensions Bill, for example, a measure that is already very long would be even longer. That would add considerably to the pressure on parliamentary time. In addition, when the House debates legislative proposals, it often does so on the basis that the proposals and the general principles will apply to Northern Ireland as well.’²⁷

Lembit Opik, Liberal Democrat MP, also used this opportunity to voice his complaints about the legislative process under direct rule:

‘... is it right to run Northern Ireland by means of statutory instrument Committees that cannot amend legislation? Will he introduce a way to amend

²⁶ Shadow Play, *Holyrood Magazine*, Issue 105, 8 March 2004.

²⁷ HC Deb 17 Mar 2004 Col. 306-308. See

http://www.publications.parliament.uk/pa/cm200304/cmhansrd/cm040317/debtext/40317-02.htm#40317-02_sbhd1.

legislation so that hon. Members can hold the Government to account? At present, we have to watch Northern Ireland Ministers endlessly steamroller through all sorts of legislation that we have no opportunity to amend.’

Spellar rejected the notion that NIO ministers ‘steamroller’ through legislation. He insisted that the government were committed to consulting all the various stakeholders in Northern Ireland before Orders in Council are laid. He accepted that the current arrangements were not perfect but, in his opinion the only effective solution to the problem would be the full restoration of the devolved institutions in Northern Ireland.

1.7 Conservative Party Reshuffle

Caroline Spelman MP has become the new shadow Local and Devolved Government Secretary, following the resignation of David Curry MP from the Conservative front bench. Curry resigned for ‘entirely family reasons’ and insisted that there were no political differences between himself, a pro-European Conservative, and the leader Michael Howard. Howard took the opportunity to move others around in his ministerial team. David Cameron MP, was appointed as a shadow minister in the Local and Devolved Government Affairs team, where he has responsibility for local government finance. Desmond Swayne MP was also made shadow minister in this team, where he will focus on Northern Ireland affairs.

Figure 5: The Conservative Local and Devolved Government Affairs Team

Shadow Secretary of State for Local and Devolved Government Affairs	Caroline Spelman MP
Shadow Secretary of State for Local Government	Eric Pickles MP
Shadow Secretary of State for the Regions	Hon Bernard Jenkin MP

Shadow Secretary of State for Northern Ireland	David Lidington MP
Shadow Secretary of State for Scotland	Peter Duncan MP
Shadow Secretary of State for Wales	Bill Wiggin MP
Shadow Minister for London	Mark Field MP
Shadow Ministers	David Cameron MP
	Philip Hammond MP
	John Hayes MP
	Desmond Swayne MP
	Robert Syms MP
Shadow Ministers (Lords)	Viscount Bridgeman
	Lord Glentoran CBE DL
	Lord Luke
	Baroness Hanham CBE
	Lord Hanningfield DL
	Duke of Montrose
	Rt Hon Lord Roberts of Conwy

1.8 The Barnett Formula

The controversial Barnett formula – the mechanism used to allocate public expenditure to Scotland, Wales and Northern Ireland – was again criticised by MPs and others this quarter. Peter Kilfoyle, Labour MP for Liverpool Walton, tabled an Early Day Motion in Parliament stating:

That this House recognises that the Barnett Formula was instituted as a temporary measure to offset calls for devolution under the Callaghan

government; has, according to Lord Barnett, its author, existed beyond its sell-by date; remains unfair and to the detriment of the English regions and to the advantage of Scotland and Wales and ought to be replaced forthwith by a fairer distribution of funds throughout the United Kingdom.²⁸

Debates around the future of the Barnett formula are expected to arise during the referendum campaigns for regional assemblies in England's three northern regions – the North East, the North West, Yorkshire and Humberside – where there has been a tradition of opposition to Barnett. There have been press reports suggesting that the Deputy Prime Minister and most senior advocate for the English regions, John Prescott MP, believes that if all three northern regions establish regional assemblies they will then be able to provide a united front against Barnett calling for a review of the way funding is allocated to the regions and nations of the UK.²⁹ In an interview in the Newcastle Journal, his deputy, Nick Raynsford MP, said that while he 'didn't anticipate early changes' to Barnett, he did say that the 'case for reconsidering the basis of funding is getting stronger all the time'.³⁰

However, the Scottish Secretary, Alistair Darling MP, confirmed that the government have no intention of reviewing Barnett when he was asked about it by the Labour MP for North West Leicestershire, David Taylor. Taylor spoke out against Barnett, claiming that 'the days of building castles in the air at Holyrood with other people's taxes must end, and soon'. Darling insisted that, 'the Chancellor and the Chief Secretary have made it clear that they do not have any proposals to amend it.'³¹

1.9 The Territorial Select Committees

Welsh Affairs Committee

²⁸ To date 30 MPs have signed the EDM. Please see <http://edm.ais.co.uk/weblink/html/motion.html/ref=959>.

²⁹ See for instance *Unite and fight for a fairer deal*, Newcastle Journal, 5 November 2003 and also see HC Deb 11 February 2004 Col. 1526-1527. See <http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmhansrd/cm040211/debtext/40211-35.htm>.

³⁰ *Its all to play for*, Nick Raynsford interviewed in the Newcastle Journal, March 3 2004. See http://icnewcastle.icnetwork.co.uk/regionalassembly/news/tm_objectid=14009834&method=full&siteid=50081&headline=it-s-all-to-play-for-name_page.html.

³¹ HC Deb 27 April 2004 Col. 378.

The committee has published two reports this quarter: ³²

- 6 April *The Government Response to the First Report of the Committee Session 2003-04: The Empowerment of Children and Young People in Wales* (Second Special Report HC 459).
- 29 March 2004 *The Provision of Rail Services in Wales* (Third Report HC 458).

Scottish Affairs Committee

The committee has published two reports this quarter: ³³

- 28 April *The Proposed Whisky Strip Stamp* (Third Report HC 419)
- 7 April *Response by the Government to the First Report (Session 2003-04) on the Coincidence of Parliamentary Constituency Boundaries in Scotland and the Consequences of Change* (First Special Report HC 514).

Northern Ireland Affairs Committee

The committee has had two recent changes in membership. Peter Robinson MP, has been replaced by his DUP colleague, Geoffrey Campbell MP, and following the retirement from the committee of Harry Barnes MP, his Labour colleague, Stephen Hepburn MP has been appointed.

The committee has published five reports this quarter: ³⁴

³² All the reports of the Welsh Affairs Committee for the 2003-04 session can be found at <http://www.publications.parliament.uk/pa/cm/cmwelaf.htm>

³³ All the reports of the Scottish Affairs Committee for the 2003-04 session can be found at <http://www.publications.parliament.uk/pa/cm/cmsscotaf.htm>.

³⁴ All the reports of the Welsh Affairs Committee for the 2003-04 session can be found at <http://www.parliament.the-stationery-office.co.uk/pa/cm/cmniaf.htm>

- 21 May 2004 *'Hate Crime': the Draft Criminal Justice (Northern Ireland) Order 2004* (Fifth Report HC 615)

- 13 May 2004 *The Separation of Paramilitary Prisoners at HMP Maghaberry: Government's Response to the Committee's Second Report of Session 2003-04* (Third Special Report HC 583)

- 5 May 2004 *The Compensation Agency* (Fourth Report HC 271)

- 28 April 2004 *Work of the Committee in 2003: Government's Response to the Committee's First Report of Session 2003-04* (Second Special Report HC 510)

- 17 March 2004 *Introduction of the Aggregates Levy in Northern Ireland: one year on* (Third Report HC 395).

1.10 The Grand Committees

The **Welsh Grand Committee** met on March 24 to discuss *The Budget Statement and its Implications for Wales*.³⁵

The **Northern Ireland Grand Committee** met twice this quarter. Firstly, on the 29 April to discuss the *Social Economy in Northern Ireland*. At the beginning of the debate, David Trimble MP and his Ulster Unionist colleagues walked out in protest because they had apparently not been asked for their views on the social economy debate. Trimble, it emerged was also incensed over how the Northern Ireland Grand Committee had still not held a debate on 'community relations' - a session was cancelled in October 2003 and has not been rearranged despite the fact that the

³⁵ The debate can be viewed at <http://www.publications.parliament.uk/pa/cm200304/cmstand/welshg/cmwelsh.htm>.

committee has met three times since - which he felt was 'a more urgent and important issue than that before us'.³⁶

Trimble also expressed disappointment at how the Northern Ireland Grand Committee was still unable to meet in Northern Ireland, something he has been advocating for some time. Trimble complained that Northern Ireland Grand Committee is prevented from sitting in Northern Ireland, whereas the Scottish and Welsh Grand Committees can sit in Scotland and Wales.

The Northern Ireland Grand also met on 20 May to discuss the *Proposal for a Draft Special Educational Needs and Disability (Northern Ireland) Order 2004*.³⁷

The Scottish Grand Committee and the Standing Committee on Regional Affairs did not meet this quarter.

³⁶ The debate can be viewed at <http://www.publications.parliament.uk/pa/cm200304/cmstand/nilrelg/st040429/40429s01.htm>.

³⁷ The debate can be viewed at <http://www.publications.parliament.uk/pa/cm200304/cmstand/nilrelg/st040520/40520s01.htm>.

2. Devolution and Whitehall

2.1 The Richard Commission Report: The View from Westminster³⁸

The Richard Commission published their report on 31 March 2004. The National Assembly for Wales appointed the Richard Commission in July 2002 to investigate the adequacy of its powers and the electoral arrangements used to elect Assembly Members (AMs). The report concluded that the National Assembly should be given primary law-making powers. The main recommendations of the Richard Commission are set out below in Figure 6.

Figure 6: A Summary of the main recommendations of the Richard Commission

- The National Assembly should have primary legislative powers by 2011.
- It is desirable but not essential that the Assembly be given tax varying powers.
- The number of AMs should be increased from 60 to 80.
- The electoral system should be changed from the Additional Member System (AMS) to the single transferable vote.
- Abolish the corporate body structure of the National Assembly by formally separating the legislature from the executive.
- The report said that it supported the use of a referendum only if the Assembly was to gain tax powers. It did not therefore think that it was necessary for there to be a referendum for the Assembly to be given full legislative powers.

Peter Hain MP, the Welsh Secretary, issued a statement saying that the report contained plenty of ‘food for thought’, although the UK government would wait to see how the National Assembly responded, before formally commenting. While Hain said that it was important to achieve consensus between Westminster and Cardiff Bay, he also laid down the UK government’s ‘red lines’ on any further Welsh devolution.

³⁸ For a much more in-depth look at the findings of the Richard Commission please see the May 2004 *Devolution and Wales*, Monitoring report, which is available at <http://www.ucl.ac.uk/constitution-unit/nations/monitoring.php>.

He stated that for the Assembly to acquire primary legislative powers, it would have to be sanctioned by a referendum and that any reforms must be consistent with maintaining the existing number (40) of Welsh Westminster constituencies. Hain was more supportive of the reports criticism of the Assembly's AMS electoral system, which he has derided several times in the past.³⁹

Hain said:

'I repeat what I have already made crystal clear. First, that a referendum would be required on a Scottish model. Second, I welcome confirmation of the serious inadequacies of the existing electoral system. Third, any reforms agreed must be consistent with maintaining the existing number of Welsh parliamentary constituencies.'

It will be interesting to see how the UK government view and the view of the National Assembly unfold. There appears to be some potential difference of opinion over how each believes that devolution in Wales should develop. The First Minister for Wales, Rhodri Morgan AM, has made no secret of the fact that he supports full legislative powers for Wales, but even he recognised that his Labour colleagues in Westminster would take some convincing. Morgan said that the, 'fate of the Richard report does not lie ... in the hands of the Assembly', and that:

'Careful, collaborative and co-operative discussions will be needed with Westminster colleagues ... if we are to build on the excellent start that this report has provided in building a consensus for change'.⁴⁰

Speaking in the House, however, Hain questioned whether the Richard Commission proposals provided a way forward for Welsh devolution. He said:

'As for the Richard commission's report, I look forward to detailed consultations with my hon. Friend and other Back-Bench colleagues of all

³⁹ *Richard Commission: Statement by Peter Hain*, Wales Office press release, 31 March 2004. See http://www.walesoffice.gov.uk/pn_20040331a.html.

⁴⁰ Quoted in *Call for more AMs and Powers*, BBC Online News, 31 March 2004.

parties, with Cabinet colleagues and also with members of the Welsh Assembly Cabinet to ascertain whether there is a basis for moving forward. I do not think that the model that is outlined to its full extent in the Richard commission's report really provides that basis.⁴¹

2.2 A Children's Commissioner for England

The government's decision to follow the lead of Wales and establish a children's commissioner for England is often cited as a classic example of how devolution has enabled a degree of policy learning that was not possible pre-devolution. Yet the establishment of a commissioner in England is proving to be the source of some tension between the devolved administrations and the UK government.

Under the government's proposals – set out in the Children Bill – the commissioner for England would also assume powers over those areas of policy that relate to children, which are currently reserved to the UK government. These non-devolved areas include policies covering criminal justice and policing. However, the children's commissioners for Wales and Northern Ireland have issued a joint statement expressing concern over the power the English commissioner will have over non-devolved matters.⁴² The Welsh Affairs Select Committee and the National Assembly for Wales have both argued that responsibility for the non-devolved areas should be devolved to the children's commissioner in Wales, Peter Clarke, and therefore rejected the notion of the English commissioner having jurisdiction in Wales. However, the government have opposed such a move as they do not favour devolving these powers, and since responsibility for non-devolved matters lies at Westminster, they argue it is appropriate that the commissioner reports to UK ministers.⁴³ The problem highlights some of the anomalies we can expect with an asymmetric devolution settlement.

⁴¹ HC Deb 1 Apr 2004 :Col. 1792. See http://www.publications.parliament.uk/pa/cm200304/cmhansrd/cm040401/debtext/40401-16.htm#40401-16_spnew3.

⁴² See Children's commissioner hits back at Hodge, *The Guardian*, 6 May 2004.

⁴³ The government's position can be found in the Welsh Affairs Committee report, *The Government Response to the First Report of the Committee Session 2003-04: The Empowerment of Children and Young People in Wales (Second Special Report HC 459)*.

The government have argued that the role of the commissioner in England will differ substantially from the role of the Welsh commissioner. Giving evidence to the Welsh Affairs Committee, Margaret Hodge MP, minister for children, suggested that the English commissioner will play a much more strategic role and not get so involved in individual cases. The comments she made, differentiating the role of the two commissioners, caused an uproar with Peter Clark who said that he was ‘perplexed’ by what the minister had said.⁴⁴

2.3 Wales Office and Scotland Office Annual Reports

The Wales Office and the Scotland Office published their Annual Reports in April. The reports cover the work of the two offices in the 2002-03 period. Both are available online at:

Wales Office:

http://www.walesoffice.gov.uk/annual_report2004.pdf

Scotland Office:

http://www.scottishsecretary.gov.uk/Publications/so_report_04/TMP16h45ga77v.htm

2.4 Draft Transport (Wales) Bill

On 27 May, the Wales Office published a draft Transport (Wales) Bill which, if enacted, will transfer a range of transport powers and functions to the National Assembly for Wales.⁴⁵ The Bill is being published in draft form to allow for advance scrutiny by MPs and AMs and to provide a period of public consultation. The consultation period ends on 5 August, after which the Wales Office and the National Assembly will consider amendments in light of the views they receive.

The Bill will require the National Assembly to produce a Wales Transport Strategy, setting out how the Assembly intends to develop and implement policies for ‘the

⁴⁴ Margaret Hodge’s uncorrected evidence can be viewed at <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmwelaf/uc538-ii/uc53801.htm>. Peter Clarke was quoted in Children’s commissioner hits back at Hodge, *The Guardian*, 6 May 2004.

⁴⁵ The draft Bill can be viewed at http://www.walesoffice.gov.uk/transport_bill.html.

promotion and encouragement of safe, integrated, efficient and economic transport facilities and services’.

A statement by the Wales Office set out the powers that the Bill will transfer to the National Assembly:⁴⁶

- The Assembly will have new powers over rail services and facilities. This includes powers for the Assembly to give directions, guidance and advice to the Strategic Rail Authority concerning the pattern of rail services in Wales. The Assembly will also have the power to enter into binding agreements in respect of particular services or facilities to ensure the best possible use of capital investment.
- The Bill will give the Assembly powers to give financial assistance direct to air services and airport facilities, where such services would not otherwise be provided.
- The Assembly will be empowered to secure the provision of public passenger transport services, where the requirement for such services would not otherwise be met.
- The Bill also provides for a new, more strategic relationship between the Assembly and local authorities, with a clear framework of delivery for their transport plans. It makes provision for joint working by local authorities, as well as for joint transport authorities, to plan on a regional basis.

This is the second Wales-only Bill to be published this session, the first being the Public Audit (Wales) Bill.

2.5 Ministerial reshuffle at the Northern Ireland Office

The resignation of Beverly Hughes MP in March from the Home Office prompted a reshuffle within the Northern Ireland Office, with Jane Kennedy MP moving to the Department for Work and Pensions to replace Des Browne MP, Hughes’ replacement. Barry Gardiner, MP for Brent North, became the new minister at the NIO. Following

the reshuffle, Paul Murphy MP, the Secretary of State for Northern Ireland also announced new portfolios for his ministerial team. Ian Pearson MP takes over the security portfolio previously held by Jane Kennedy MP, while Barry Gardiner MP assumes responsibility for the Department of Education and the Department of Employment and Learning. He also takes over responsibility for the Department of Enterprise, Trade and Investment, previously held by Ian Pearson MP. The portfolios of John Spellar MP and Angela Smith MP, the other ministers at the NIO, were left unchanged.⁴⁷

2.6 New Devolution Guidance Note is published

On 29 April the Scottish Executive and the Department for Constitutional Affairs (DCA) jointly published Devolution Guidance Note (DGN) 15, *Scottish Legislative proposals giving Devolved powers and functions to UK bodies*. The DGN establishes a protocol between the UK government and the Scottish Executive setting out the procedures which will apply if the Scottish Executive is considering legislation which includes provisions that will give powers or functions to UK ministers, departments or other UK bodies.⁴⁸

2.7 Offshore Renewables Energy Consents to be devolved

The Scotland Office announced on 29 April that it was devolving powers over offshore renewable energy consents to Scottish Executive ministers. The Energy Bill, which is currently going through the Westminster parliament, provides for the establishment of Renewable Energy Zones (REZ), a measure intended to encourage the use of offshore wind and wave energy. The Scotland Office announced that following discussions between the Scottish Executive and the Department for Trade and Industry, the lead Whitehall department, consent powers for the new REZs in

⁴⁶ Draft Transport (Wales) Bill – consultation letter – available at http://www.walesoffice.gov.uk/transport_letter_e.pdf.

⁴⁷ For a more detailed account of the changes at the Northern Ireland Office following the move of Jane Kennedy to the Department for Work and Pensions please see, *New Ministerial Portfolios Announced*, Northern Ireland Office press release, 5 April 2004. See

⁴⁸ Devolution Guidance Note 15 – Scottish Legislative Proposals giving Devolved Powers and Functions to UK Bodies – can be viewed at <http://www.dca.gov.uk/constitution/devolution/guidance/dgn15.pdf>.

Scottish waters will be transferred to the Scottish Executive once the Energy Bill has received royal assent.⁴⁹

2.8 The European Constitution and the SNP

Following the government's announcement to hold a referendum on the European Constitution, the *Sunday Herald* newspaper claimed that Tony Blair was willing to renegotiate the common fisheries policy (CFP) in return for SNP support for the 'yes' campaign.⁵⁰ The story emerged while commentators speculated on whether, by calling a referendum, Blair had strengthened his bargaining power over other EU members as he would be able to claim that he would not win a referendum without further concessions. The SNP leader, John Swinney, was quick to offer Blair a 'deal' in which the SNP would support the government in return for the UK's withdrawal from the CFP. However, the government have since denied that they intend to renegotiate the CFP at the forthcoming Inter Governmental Conference, insisting that fisheries did not represent a 'red line' issue, such as taxation and foreign policy. First Minister, Jack McConnell was quick to rule out that any deal had been struck by the UK government and the SNP.⁵¹

⁴⁹ *Offshore Renewable Consents to be Devolved*, Scotland Office press release, April 29. See http://www.scottishsecretary.gov.uk/News_2004/ss0806.htm.

⁵⁰ Blair to woo SNP with EU fish deal, *The Sunday Herald*, 25 April 2004. See <http://www.sundayherald.com/41550>.

⁵¹ Labour rejects SNP fishing deal, *The Herald*, 29 April 2004.

3. Intergovernmental Relations

3.1 Update

The formal intergovernmental machinery has not been used this quarter, other than through JMC Europe (see below). There have been no meetings of the functional Joint Ministerial Committees or of the British-Irish Council. The Joint Ministerial Committee (JMC) has still not met in full plenary session. The meeting is planned to take place in Edinburgh but a date has still not been set. The Memorandum of Understanding states that ‘Plenary meetings of the JMC will be held at least once every year’ – but given that the last plenary meeting of the JMC was held on 22 October 2002, this commitment to annual meeting has not been met.⁵²

3.2 JMC Europe

The JMC Europe met three times this quarter (see chronology). No communiques were issued.

3.3 Meeting of the British-Irish Intergovernmental Conference

A British-Irish Intergovernmental Conference was held at the Northern Ireland Office in London on 21 April. The intergovernmental conferences were established as part of the Strand 3 infrastructure in the Northern Ireland Act 1998. The conference reviewed, inter alia, recent political developments in Northern Ireland, including the publication of the Independent Monitoring Commissions most recent report, and a review of the commitments made by Northern Ireland’s political actors in the Joint Declaration. The British Government was represented by the Joint Chair, the Rt. Hon. Paul Murphy MP, Secretary of State for Northern Ireland, who was accompanied by the Rt. Hon. John Spellar MP, Minister of State at the Northern Ireland Office and Ian Pearson MP, Parliamentary Under-Secretary of State at the Northern Ireland Office. The Irish Government was represented by the Joint Chair, Brian Cowen T.D.,

⁵² *Memorandum of Understanding and Supplementary Agreements*, Cm 5240, (London: The Stationery Office, 2001), p. 12.

Minister for Foreign Affairs, who was accompanied by Tom Kitt T.D., Minister of State at the Department of Foreign Affairs. A Joint Communique was issued giving details of what was discussed.⁵³

⁵³ The Joint Communique can be found on the Northern Ireland Office's website at <http://www.nio.gov.uk/press/040421b.htm>