

M O N I T O R

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Lords Reform Stage Two: Wakeham or What?

On 7 November, the Government presented Parliament with its long-awaited proposals for second stage reform of the House of Lords, in a consultative White Paper *Completing the Reform* (Cmd 5291). This followed the Government's manifesto commitment to implement the report of the Royal Commission chaired by Lord Wakeham.

The Government have accepted parts of Wakeham, but rejected others. In particular, the Government accept the principle of a largely appointed upper house, with a minority elected element to represent the nations and regions. The White Paper's suggestion of a 20% elected element is within Wakeham's proposed range of 12-35%. There would be a statutory Appointments Commission, with responsibility for maintaining gender and regional balance. Law Lords would continue as members, alongside a reduced number of Church of England Bishops (though not representatives of other faiths, as Wakeham proposed). The chamber's powers would remain un-

changed, save for reducing the veto over secondary legislation to a nominal delay.

The Wakeham report, as the Constitution Unit commented at the time, was overly cautious. However it also included some carefully-crafted suggestions to boost the best elements of the chamber (independence and a long term perspective). For example, Wakeham suggested that both elected and appointed members should serve long terms of office, with elected members chosen one-third at a time alongside European elections. There would be no re-election, and members would be barred from standing for the Commons until 10 years after their term ended, thus preventing the chamber becoming a launch pad for a Commons career. Yet the Government reject these two proposals, and are explicitly consulting on election timing and terms of office. Wakeham's 15 year terms seem unlikely to survive, and electing a single tranche of members on general election day, to serve just one parliam-

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entary term, now seems possible. This risks doing the very thing that Wakeham sought to avoid – creating elected members who would rival MPs.

The most significant departure from Wakeham was over appointments. Cont. p.2

New book *The State of the Nations 2001* - see flyer enc.



The State and the Nations 2001: The Second Year of Devolution in the UK, ed. Alan Trench - further details at:
http://www.imprint.co.uk/state_2001/State_2001.pdf

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The Government reject the proposal that all future appointments, including those representing the political parties, should be in the gift of the Appointments Commission. Lords Leader Gareth Williams explained to the House that 'political parties must be responsible for proposing those who are to represent them'. This may be *realpolitik*, but it further weakens the independence built into Wakeham's proposals. It allows the party leaders to use the Lords as a patronage bin, which the Appointments Commission could have guarded against.

Whilst making some bold proposals, in other ways Wakeham was too cautious, and out of step with international norms. It is primarily in these areas where government has stuck to the report. Publishing in January 2000, with the devolved institutions only just in place, Wakeham rejected indirect elections or significant links to devolution. Two years later, and with English regional government on the way, it would be timely to review the links to devolution, and to seek ways of strengthening them.

The key element retained from the Wakeham package – the proportion elected – is also the most controversial. Wakeham's chamber was large by international standards (550) and the Government propose to make it yet larger, with 120 out of 600 members elected. This has drawn wide criticism, from the press and opposition parties, but also from the government back benches. 165 Labour MPs have signed an Early Day Motion backing a wholly or largely elected house. There was hardly a voice of support when Leader of the Commons Robin Cook – himself said to be a sceptic – presented the report. An NOP poll in the *Evening Standard* (14 November) found public concern also high – with 71% backing a largely elected house and 91% thinking 120 elected members too few.

The proposals have drawn widespread criticism, including from Lord Wakeham and some of his Commission colleagues. Wakeham has stated that he would not himself vote for the government's package, due to the departures over both election and appointments (*Guardian* 12 November).

Labour's manifesto committed the Government to implementing the Wakeham report 'in the most effective way possible', and this is being used to fend off the detractors. However, the Government have made the mistake of seeing

the proportion of elected members as the central issue on which they have a mandate. Given the divergence from Wakeham's proposals on so many other matters, and his own dissent, it becomes questionable whether this is indeed implementation of the Royal Commission's report. The consultation period (to 31 January) must now be used to strengthen the proposals, hopefully starting with the best of Wakeham rather than the worst.

The White Paper is available from the Stationery Office, and can be found at www.lcd.gov.uk. Comments should be sent to laura.beaumont@lcdhq.gsi.gov.uk.

The Constitution Unit will be publishing a Commentary on the White Paper in January. We are hoping to hold a joint Democracy Forum with the Hansard Society on reform of the House of Lords also in January. See the Publications Order Form enclosed for a list of the Unit's other publications on Lords reform.

Devolution

The State of the Nations 2002

Has devolution really bedded down? So it appears from the second volume in the Constitution's Unit's series of devolution yearbooks, to be published on 10th December. Edited by Alan Trench, who leads the Unit's work on devolution, *The State of the Nations 2002* looks at how devolution has developed up to August 2001. There are contributions from the leaders of the Unit's devolution monitoring teams in Scotland, Wales, Northern Ireland and the English Regions, as well as chapters on how devolution affects Westminster and Whitehall. There is also a chapter on financing devolution and the 'Barnett squeeze' and one on changing public attitudes in the second year of devolution. See the flyer enclosed with this mailing for further details of the new book.

Wales

Relations between the parties in the Coalition government have been strained to cracking point over Labour's insistence on pushing through major structural changes in the organisation of the Welsh health service against Liberal Democrat objections. Last minute negotiations led to a compromise which kept the Liberal Democrats on side. Radical proposals to abolish

the five Welsh health authorities and replace them with 22 Local Health Boards, coterminous with the 22 local authorities, were presented to Cabinet in early July without prior consultation with the Liberal Democrats. This attempt to railroad the proposals through the Coalition resulted in the Liberal Democrat Group in the Assembly taking the extraordinary step of making its own response to the formal consultation process that ensued. In it the Group called for substantial modifications to the Coalition policy, specifically an all-Wales Health Authority to keep the administration of the Welsh health service at arms length from the Assembly.

In November the Assembly Administration endorsed the May 28 Flanders Declaration by European Regions with Legislative Powers seeking more influence within the institutions of the European Union. Although Wales did not sign the Declaration when it was first launched, it is a signatory to a successor Declaration agreed by some 45 Regions attending a Conference of Presidents of Regions with Legislative Powers, at Liège in mid-November. The May 28 Declaration urged that “the role and setting of the Regions in the European policy-making process” be added to the themes debated at the 2004 Inter-Governmental conference on the EU’s constitution.

On a number of occasions First Minister Rhodri Morgan has drawn attention to the close timing of the appearance of the Assembly’s Independent Commission report on extending its powers, in late 2003, and the Inter-Governmental conference in 2004. Evidently he believes that separate arguments made at the Welsh and European levels will reinforce one another in helping persuade a Westminster government to give ground on extending primary legislative powers to the National Assembly.

Meanwhile, an emerging consensus on the Assembly’s year long procedural review broke down at the end of October when the Opposition parties together with the Liberal Democrats refused to endorse a draft final report. Instead, Deputy Presiding Officer John Marek began a series of negotiations with the party leaders and business managers to achieve a harder hitting report with more focused recommendations.

Northern Ireland

The events of September 11th had dramatic reverberations in Northern Ireland. Combined with reports of IRA suspects allegedly training FARC guerrillas in Colombia, they changed the terms of trade of the arcane argument over arms decommissioning, the proverbial ‘logjam’ preventing the stabilisation of the devolved administration since the Belfast agreement. The delegitimation of ‘terrorism’ precipitated—or at least accelerated, in time to save the beleaguered Ulster Unionist leader, David Trimble—an ‘event’ in late October, witnessed by the head of the decommissioning commission, where some IRA arms were put ‘beyond use’.

Mr Trimble, who had resigned as First Minister in July, was subsequently reinstated, along with his (briefly) resigned UUP ministerial colleagues, and accompanied by a new Deputy First Minister, Mark Durkan, the Minister of Finance. But given the continuing suspicion in the Protestant community over the nature of the ‘event’, Mr Trimble could only secure re-election, under the ‘parallel consent’ requirement, by MLAs from the non-sectarian Women’s Coalition and Alliance temporarily re-designating as ‘unionists’. Anti-agreement anger at this ruse boiled over into fisticuffs.

Mr Durkan had meanwhile replaced at a stroke the outgoing SDLP leadership of John Hume and Séamus Mallon, a wind of change following the party’s poor showing in the June elections. Indeed, fear that further assembly elections would lead to unworkable gains for Sinn Féin and the Democratic Unionist Party persuaded the Northern Ireland secretary, John Reid, to pursue successive, restarting-the-clock, one-day suspensions in the hope some IRA arms would turn up (or, rather, be destroyed). In return for its re-designation favour, he was obliged by Alliance, which had fared even worse in June, to agree to a ‘strand one’ review, to revisit the communal registration by which it had been squeezed.

Amidst all these alarums, a second draft Programme for Government was promulgated, and a draft budget. The latter took some pressure off the health minister, facing a mounting crisis over waiting lists. Her colleague at education received the long-awaited review of Northern Ireland’s ‘11+’ examination. And, despite Mr Trimble’s ban on SF ministerial

engagement, on the north-south axis progress continued quietly to be made.

But this business-as-usual activity was counterpointed by continuing sectarian clashes in north Belfast—their nadir when tearful schoolchildren were forced, day after day, to endure sectarian abuse and worse. And Dr Reid could no longer avoid declaring the threadbare ceasefire of the main loyalist paramilitary organisation null and void.

Scotland

The main event was the resignation of Henry McLeish as First Minister. As a Westminster MP between 1987 and 1991, McLeish had sub-let his constituency office, funded by the House of Commons Fees Office, without reimbursing the Commons. The issue rose to prominence in late October when the Scottish media started to raise questions. Initially, David Steel, Presiding Officer in the Scottish Parliament, ruled out of order questions on the subject as it pertained to McLeish's behaviour as a Westminster MP. He later admitted this had been a mistake and a debate was scheduled for November 8. In the interim it transpired that there had been multiple sub-lets and McLeish's lack of candour, as much as the substantive issue, built pressure leading to his resignation minutes before the debate began.

Jack McConnell (Education and European Minister), who had contested the leadership against McLeish a year ago following Donald Dewar's death, became the only candidate after Wendy Alexander (Enterprise and Lifelong Learning Minister) dropped out after concluding she would not win. McConnell's private life then became the subject of enquiry after he pre-empted media exposure of an affair seven years ago by holding a press conference with his wife to make a public admission. Two other fringe hopefuls – Malcolm Chisholm (Deputy Health Minister) and backbencher John McAllion – failed to secure the seven nominations from amongst Labour MSPs to allow them to run.

McLeish's tenure had not been successful. He had failed to unite his cabinet, establish his authority and chalked up a number of spending commitments that will need to be addressed by the new First Minister.

Amongst the key policy developments was the publication of the Care Development Group report in September making recommendations on the implementation of McLeish's care for the

elderly policy. The Attendance Allowances issue - the Department of Work and Pensions in London insist these must be withdrawn if an individual receives other assistance from the public purse - was not resolved. The DWP is not willing to let Scotland be an exception, resulting in a shortfall in the cash necessary to implement the policy. This will be amongst the first challenges for McConnell. Given the prominence of this policy, the Liberal Democrats support for it and London's unwillingness to help out, McConnell's options are limited. Failure to win a concession from London or to cut other budgets may force him into a U-turn.

English Regions

The politics of English regionalism are being increasingly dominated by the preparation of the White Paper on regional governance. Two meetings of the new Cabinet Committee on the Nations and Regions have been held to discuss the forthcoming White Paper. John Prescott and Stephen Byers have formed an alliance to advance the cause of regional governance, making a number of high profile speeches making the case for devolution. But intense battles are underway in Whitehall, with the DTI fighting strongly to retain control of Regional Development Agencies. Some RDA chairmen are open in their scepticism about the case for elected regional assemblies. And the issue of single tier local government continues to rear its head. At Westminster backbenchers, especially from the North East, raised the question of regional government with greater frequency in the new Parliament. The White Paper is also having a number of knock-on effects. The DCMS has announced a major review of cultural policy in the regions in the light of the White Paper's preparation.

Stephen Byers is connecting the issue of tackling regional economic disparities to that of devolution. But his approach to regional policy was heavily criticised in a report from the Regional Studies Association, while his decision to allow Heathrow's Terminal 5 to be built was criticised by the Town and Country Planning Association as contributing to regional inequalities.

The proposal by ITV companies to reduce regional programming has led to a number of interventions by the ITC to stress the importance of regional broadcasting.

The Centre

The Joint Ministerial Committee had its second plenary meeting in Cardiff on 30th October. It was chaired by the Prime Minister and attended by the First Ministers and their deputies from the devolved administrations, the Deputy Prime Minister and the territorial Secretaries of State. The press statement issued afterward suggests a strong degree of agreement and consensus, lauding the way devolution has worked so far and seeking to improve that for the future. The meeting endorsed a new version of the Memorandum of Understanding, reviewed following last year's plenary JMC but with only minor changes from the present version.

After the JMC meeting the Prime Minister addressed the National Assembly for Wales for the first time, mainly on the subject of the war in Afghanistan.

Four days earlier the Health JMC met in London, without issuing a communiqué. It is believed to have carried on discussions from its previous meeting in October 2000 on such topics as NHS modernisation and winter planning.

It was announced on 20 September 2001 that the Labour/Liberal Democrat Joint Consultative Committee was to be suspended. A statement issued by Charles Kennedy and Tony Blair indicated that 'the Committee has done useful work and it remains available to resume its work if further constitutional items become ready for discussion'. Reports indicated that the Government's reluctance to hold a referendum on proportional representation for Westminster elections and Mr Kennedy's wish to increase the standing of the Liberal Democrats as an opposition party had led to the formal severing of links (*The Times*, *The Independent*, 12 September 2001). The Committee, set up by Paddy Ashdown and Blair in 1997, met only twice since Mr Kennedy took over as leader of the Liberal Democrats.

Towns seeking city status

The grant of city status is made under the Royal Prerogative by The Queen. It is one of the more peculiar items in the package of constitutional responsibilities transferred by the Home Office to the Lord Chancellor's Department after the election. The Queen's Golden Jubilee in 2002 is to be marked by the grant of city status to one town in England, Scotland, Wales and Northern Ireland. At the closing date for applications, the

LCD had received 26 applications from towns in England, 6 from towns in Wales, 4 from towns in Scotland and 6 from towns in Northern Ireland.

Parliamentary Reform

Modernisation Committee

The new Leader of the House of Commons, Robin Cook, has been developing the reform agenda which he first outlined in July at a Hansard Society conference. Under his chairmanship the Modernisation Committee has been looking at ways of strengthening Select Committees, starting with the appointments process. The hunt is on for a way of taking this out of the hands of the Whips. As an alternative to the Liaison Committee's 'three wise men', the Modernisation Committee is considering a selection panel consisting of the three Deputy Speakers and two other members from the Chairmen's Panel (hearings of 17 and 24 October). The new Liaison Committee of 32 committee chairmen was appointed on 5 November, illustrating the 'chicken and egg' problem if the selection were given to three of their number.

Other ideas for strengthening Select Committees under consideration by the Modernisation Committee include payment of Committee chairs; and the proposition that committees need not necessarily reflect overall party balance. This could make life difficult for Conservative backbenchers, who with their diminished numbers already find it difficult to devote enough time to committees.

Cook is also considering changes to the parliamentary calendar and sitting hours (Questions 6 November). He will develop these ideas in his Constitution Unit lecture on 10 December, at Senate House, University of London.

Modernisation in the Lords

Lord Williams' new Leader's Group on Working Methods are meeting weekly, and hope to report by the end of the year. They are tackling an agenda similar to that in the Commons, and looking at sitting times, length of sessions, procedure for scrutinising legislation, Questions to Ministers etc. The report could lead to quite a radical shake-up of Lords procedures.

Snub to Standards Commissioner

The House of Commons has advertised the post of Parliamentary Commissioner for Standards. This was widely reported as a putdown for the current Commissioner, Liz Filkin, who has been noted for the zeal and efficiency with which she pursues investigations of misconduct by MPs (*Guardian*, 1 and 12 November). It is open to Liz Filkin to re-apply.

Public Administration Committee

In publishing the government response to its last report, on Public Participation (HC 373), the Committee has called for a Democracy Commission to respond to the collapse in electoral participation at the 2001 election, when turnout fell to 59 per cent. The Committee's next major inquiry is into public appointments and patronage. This may lead the Committee to take an early look at the Government's retention of patronage in its proposals for appointing new members of the House of Lords (see page 1).

On 18 October the Committee had a session with John Prescott and Lord Macdonald, Minister for the Cabinet Office. Four months into the new government, they could not produce an organisation chart showing how all the Prime Minister's new Units fitted into the Cabinet Office and No 10. Cabinet Office staff have doubled, to almost 5000, with the addition of the Government Offices for the Regions. In November Cabinet Office published a new organisation chart for their website; but there is still none available of the new units in No 10.

Lords Constitution Committee

The new Constitution Committee is conducting its first major inquiry, into the Process of Constitutional Change. It has taken evidence from the Lord Chancellor, the Leaders of the Commons and the Lords, and from Robert Hazell and Peter Hennessy.

The Lord Chancellor sees his department as being the lead department responsible for the constitution. Robert Hazell agreed in his evidence that the LCD is now effectively a Ministry of Justice and Constitutional Affairs, like its counterparts in Australia, Canada and New Zealand. But it needs to recognise that by adopting a wider mission statement, e.g. "to promote respect for rights and freedoms, the law and the Constitution" like the Canadian Department of Justice.

Elections and parties

Women's Representation Bill

The Bill implementing the Queen's Speech commitment to help boost women's representation in politics has made unexpectedly rapid progress. The Sex Discrimination (Election Candidates) Bill had not been firmly promised this session and its introduction in the Commons on 17 October indicated the effectiveness of the women's lobby inside and outside parliament. Decisions on measures for the next general election should now be taken at party conferences in autumn 2002.

The Bill is short, simply removing the obstacle to 'positive action' in candidate selection uncovered by the *Jepson* case in 1996. Selection will be exempted from the Sex Discrimination Act 1975 where political parties introduce measures with 'the purpose of reducing inequality in the numbers of men and women elected'. The Bill is intended to allow use of mechanisms such as 'twinning', 'zipping' or all-women shortlists, for elections at all levels of government. However, parties will not be forced to do so.

This permissive approach secured cross-party support for the Bill, and it passed its Commons second and third readings (24 October, 14 November) without a vote. With consensus on the principle, debate focused on what measures the parties will adopt in response. Labour sought to make capital from the Liberal Democrats' rejection of positive action proposals at their September conference. The Conservatives stated they will not adopt all-women shortlists, and pressed Labour to admit that it will. The Bill was introduced to the House of Lords on 15 November.

The influence of the Constitution Unit's two reports on government thinking was acknowledged during the debates. Details of these reports may be found on the back page, or on the enclosed order form.

Election participation

The Public Administration Select Committee has taken the unusual step of issuing a response to the Government's reply to one of its reports. The committee produced a wide ranging report on public participation in March, although the Cabinet Office did not issue its response until

mid-October. The committee has now produced a nine paragraph follow up report. Noting the low turnout at the June general election, it argues that political life has continued "as if nothing has happened". To inject a greater urgency into the debate, the committee urges the government to establish a Democracy Commission to explore the reasons for the low turnout and recommend appropriate remedies.

<http://www.parliament.uk/commons/selcom/pubahome.htm>

Pilot scheme for local elections

The piloting of new voting methods is set to continue at the local level. The first 32 pilots began at local elections in 2000, although further planned experiments this year had to be postponed as local polls fell on the same day as the national election. The Government has now invited local councils to apply to run a further set of pilots at the May 2002 elections. Initial experiments with all postal ballots are to be re-run, with telephone voting also being tested. The main new methods to be trialled are various forms of electronic voting: electronic polling booths and counting systems, as well as online voting. The Electoral Commission will evaluate the pilots.

The pilots form part of the Government's e-democracy strategy, which they hope will allow electronic forms of voting to be used in general elections after 2006. It will shortly issue a consultation paper on e-democracy. A further strand of the strategy is a recently commissioned review of e-voting, funded by the Government, the Electoral Commission and three local government bodies. The review will examine practical issues associated with the introduction of electronic voting, and will examine public attitudes, the nature of the technology required, legal issues and the readiness of public authorities. The review, due for completion by May 2002, is being led by a team from De Montfort and Essex universities.

Local government

Elected mayors

Fourteen referendums have taken place so far on elected mayors around the country. Three have seen convincing 'yes' votes, three narrow 'yes' votes, and the other eight have seen 'no' votes. Turnouts have generally been around the local

government average of 30%, although turnout in Kirklees and Sunderland, which used a normal ballot rather than an all-postal one, fell to 13% and 10% respectively.

Initial investigation indicates that local electorates are unlikely to vote for an elected mayor unless there are exceptional circumstances. In Hartlepool and Doncaster, there was a long history of disaffection with local politics. Lewisham and Watford had long set out their stall in favour of elected mayoralities. Middlesbrough voted yes overwhelmingly due to the declared candidacy of the local hero 'Robocop' Ray Mallon. And North Tyneside was the only one of the fourteen councils where the Conservative Group campaigned strongly in favour of the mayor option.

Familiar apathy has been the byword so far in many authorities. Several held referendums despite all party groups on the council being against, and in most of these the proposal was rejected. Doncaster and Hartlepool were the only exceptions to this. In most cases Liberal Democrats and Conservatives have lined up against an elected mayor, sometimes joined by 'Old Labour' rebels; this was particularly notable in Brighton. And concerted 'no' campaigns can have a decisive influence on the result: even in the New Labour stronghold of Lewisham, 'no' campaigners brought the majority in favour down to a few hundred.

Six further referendums are planned, including the first imposed one in Southwark and one in the very large rural district of West Devon. Others take place in Durham (City), Plymouth, Shepway and Harrow. Petitions are being organised in a further dozen authorities.

Human Rights

Anti-terrorism, Crime and Security Bill

The Government's response to the events of 11 September culminated in the introduction by the Home Office, on 12 November, of the Anti-terrorism, Crime and Security Bill with the intention that it should come into force before the end of the year. The Bill was accompanied by an Order paving the way for the Government to derogate from the right to liberty and security of the person under Article 5 of the ECHR. Such a step is permitted under the ECHR where there is an emergency threatening the life of the nation. The Government argued that this situation had

arisen in respect of the need to be able to detain terrorist suspects who could not be deported (and against whom there was insufficient evidence for a prosecution in this country). Interestingly, the Government did not seek to derogate from the equivalent right to liberty contained in Article 9 of the UN International Covenant on Civil and Political Rights. It was also the only signatory to the ECHR to seek to take such a step.

The Joint Parliamentary Committee on Human Rights heard evidence from the Home Secretary and in its report published on 16 November questioned the need for the derogation. It also expressed particular concern over extensions to the powers of the police and security services that were unrelated to the fight against terrorism but were included in the Bill. Similar views were expressed by the Home Affairs Select Committee and by Human rights NGOs who expressed strong reservations over other contentious measures 'hitchhiking' on the theme of combating terrorism. While passage of the Bill through the Commons was not in doubt, the allowance of only three days for debate provoked a mini revolt on the labour back benches and portended a stormy reception in the Lords.

Applying human rights in Scotland

The Advocate General argued successfully in the *Mills* case (5 October) that human rights points in Scotland should be treated as devolution issues under the Scotland Act and not be taken forward under the Human Rights Act. This will entitle her to notice and to intervene (paragraphs 5 and 6 of Schedule 6 to the Scotland Act), avenues not available under the Human Rights Act.

The Courts

Devolution and the Courts

Judgement in the case of *Anderson, Reid and Doherty v The Scottish Ministers and the Advocate General for Scotland* was handed down by the Judicial Committee of the Privy Council on 15 October. The case raised the issue of whether the first Act passed by the Scottish Parliament (the Mental Health (Public Safety and Appeals) (Scotland) Act 1999) was within the competence of the Scottish Parliament and was the first heard under s.29 of the Scotland Act 1998. As Lord Hope observed, 'the Court is being asked

for the first time to strike down a provision which the Parliament has enacted.' The appeal, by three mental health patients, was based on the claim that the Act was in breach of Article 5 of the ECHR and was dismissed by the Judicial Committee. The case is notable for being the first time that the Judicial Committee has acted as a proto-constitutional court under the powers of the devolution Acts of 1998.

Auld Report

Sir Robin Auld's report on the criminal court system in England and Wales was published on 8 October. The recommendations offered by Sir Robin include the unification of magistrates courts and Crown Courts into a unitary criminal court structure, the abolition of trial by jury in cases of complex fraud and the production of a comprehensive legislative code for criminal justice (including offences, procedure, evidence, and sentencing). Described by the Shadow Lord Chancellor, Lord Kingsland, as 'the most radical set of proposals for our system of criminal justice since the end of the 19th century' (*The House Magazine*, 5 November 2001), the recommendations in the Auld Report are proving controversial, most significantly in the area of trial by jury. For further details see the Lord Chancellor's Department website: www.lcd.gov.uk

Report of the Review of Tribunals

The Report of the Review of Tribunals, by Sir Andrew Leggatt, was published on 16 August. The Report, commissioned by the Lord Chancellor's Department in 2000, argues that the tribunal system in England and Wales is 'disparate,' causing the management of the system to amount to 'a considerable waste of resources.' In addition, the fact that tribunals are sponsored by government departments means that they are not independent – meaning that, for users, 'every appeal is an away game.' For further details see: <http://www.tribunals-review.org.uk>

Freedom of Information

FOI Update

For the second time Tony Blair has vetoed a timetable for the implementation of FOI. After Jack Straw's attempt before the election, the new lead minister Lord Irvine proposed a similar

Constitution Unit News

Staff update

Welcome to Matthew Butt, who has taken on our publications, website and PR in succession to Gareth Lewes; and to Meredith Cook, who joins us in December. Meredith is a New Zealand lawyer who will lead our work on freedom of information and data protection, and develop the training we are doing for government departments and agencies. In February Ben Seyd is going to Melbourne for a year, and we will be joined by Oonagh Gay, who comes to us on secondment from the House of Commons Library. Oonagh is a considerable constitutional expert who will be leading our work on parliamentary and electoral reform.

Events news

The Constitution Unit held two big training conferences on FOI and Data Protection in October and November. Robert Hazell has been asked to join the Lord Chancellor's new Advisory Group on the Implementation of FOI.

The Unit will be holding a joint conference with the Royal Town Planning Institute in March 2002. The conference will examine the recent Planning Green Paper and issues around the Regional Government White Paper, in the context of the RTPI's proposal of a UK spatial planning framework. For further information please contact Mark Sandford, (tel: 020 7679 4926) in the new year.

Constitution Unit in the News

Lord Bingham, senior law lord, gave a lecture to JUSTICE in October on 'The Evolving Constitution', and drew heavily on what he described as "the admirably accurate, comprehensive and objective publications of the Constitution Unit". Lord Bingham's lecture will be published in the next issue of the *European Human Rights Law Review*, in January 2002. Meg Russell's two reports on how to increase women's representation were frequently cited in the parliamentary debates on the Sex Discrimination (Election Candidates) Bill, which has now passed all its stages in the Commons.

phased timetable, starting with central government and rolling out at six month

intervals to the wider public sector. This phasing was strongly supported by Elizabeth France, the Information Commissioner, because it would enable the public sector to learn from each other's experience; and it would enable her progressively to build up staff and expertise.

The Prime Minister has decided that instead of a phased timetable the new access rights will come into force throughout the public sector in a single Big Bang in January 2005, four years after the FOI Act was passed in November 2000. Publication schemes are to be introduced in phases, starting with central government in November 2002. The only individual access rights in the meantime are to personal records under the Data Protection Act 1998.

The Scottish FOI Bill was introduced into the Scottish Parliament in September.

Overseas news

MMP in New Zealand

The cloud hanging over New Zealand's proportional electoral system has been partially lifted, with a parliamentary committee failing to recommend a clear course of action. The committee, set up to review the Mixed Member

Proportional (MMP) system split along party lines, with two parties arguing for the system to be put to a public referendum in 2002, while four claiming that further elections should be held before MMP can be properly evaluated.

The parties also divided on whether the number of MPs should be cut, from 120 to 99 and on whether the party vote threshold (the share of the vote below which a party is not eligible for

'top up' seats) should be reduced from 5% to 4%. The committee did, however, reject unanimously the proposal that 'dual candidacies', where candidates appear on both the constituency and list parts of the ballot, be abolished. The impact of abolition, the committee, believed, would be to disadvantage small parties who may not have the personnel to field different constituency and list candidates.

The committee's report is available at:
<http://www.clerk.parliament.govt.nz/publications/index.html>

People on the Move

Shirley Williams is the new Leader of the Liberal Democrat peers in the House of Lords. **Lord Cranborne**, a former Conservative Leader, is taking leave of absence. **Helen Ghosh** is the new Head of the Central Secretariat in the Cabinet Office. **Chris Smith** MP has been appointed to the Committee on Standards in Public Life. **Lord Rodger** has been made a Law Lord and is succeeded as the Lord President of the Court of Session by **Lord Cullen**.

Constitution Unit Reports

Const. reform & confidence in government

The Unit, in collaboration with the Centre for Research into Elections and Social Trends (CREST), has just issued the first results from a major project examining the impact of constitutional reform on public attitudes to government. The research is funded by the ESRC, under its 'Democracy and Participation' programme.

The research examines trends in participation and public attitudes to government to answer the question of how far Britain is facing a crisis of democracy. While levels of political participation outside the polling station have not declined, public attitudes to government have become increasingly negative. Levels of political trust have fallen since the 1970s and 1980s, and the election of a new government in 1997 served only as a minor upward blip on what has otherwise been a tale of steadily declining confidence. The data suggests that the government's constitutional reform programme has not had an immediate effect on public

attitudes. We test this explicitly by seeing whether levels of political trust have risen more sharply among those who support various reforms than among those who do not support them. When it comes to devolution, levels of trust fell by more or less the same between 1996 and 2000 among those favouring the Scottish Parliament as among those who reject it. Nor have the Scots become more trusting in government since devolution than the English, who in the main have yet to be granted devolved bodies. The constitutional reform programme has not been an immediate remedy, then, for voters' declining confidence and trust in Britain's system of government.

Catherine Bromley, John Curtice and Ben Seyd, 'Political Engagement, Trust and Constitutional Reform', in *British Social Attitudes: The 18th Report*, London: Sage.

John Curtice: 'Devolution and Democracy: New Trust or Old Cynicism?', in John Curtice et al, eds, *New Scotland, New Society? Are Social and Political Ties Fragmenting*, Edinburgh: Edinburgh University Press.

Contact: *Robert Hazell*, r.hazell@ucl.ac.uk, tel: 020 7679 4971.

Breaking the Mould: Scottish Parliament

This report by Barry Winetrobe is the companion paper to the audit of the Northern Ireland Assembly published in May 2001. It audits the early performance of the Scottish Parliament against both its founding vision - set out in the reports of the Scottish Constitutional Convention and the Consultative Steering Group - and the generally accepted main functions of any parliament. It examines the evolution of that vision and its translation into the Parliament's operational blueprint, and describes how these processes have had a fundamental impact on the ethos and practice of the new Parliament.

The report concludes that the Parliament has been a success thus far by harnessing the true essence of its founding vision, and by using it purposefully to outgrow the rather limited initial blueprint imposed on it, so as to become an effective and productive parliament of which Scotland can be proud. Unlike Westminster, it is genuinely a parliament with a purpose. Some proposals are made in the final chapter designed to entrench and advance these positive trends, and to enable the Parliament to realise fully its essential vision.

Barry Winetrobe, *Realising the Vision: a Parliament with a Purpose. An audit of the first year of the Scottish Parliament*, see back page or publications list enclosed for details.

Contact: Robert Hazell, r.hazell@ucl.ac.uk, tel: 020 7679 4971.

Regional Government and Public Health

This paper, by Scott Greer and Mark Sandford, examines the progress of public health policy within the new regional structures in England. It compares the experience of London, with its directly-elected Mayor and Assembly, with the East Midlands, perhaps the most progressive of the regions but having only a voluntary Regional Assembly. The paper is funded by the Leverhulme Trust.

The authors argue that public health, by virtue of its interstitial and permeable nature, is an ideal competence both for the regional tier in general and elected regional assemblies in particular. It links to, and works through, many other policy areas, permitting joining-up to take place. In any case, in the absence of executive power that characterises the English regions, voluntary joint work (particularly through secondments) has been the most effective means available to promote public health so far.

The report summarises the strengths and weaknesses of the two regions' approach, relating these to their governmental structures, and end with proposals for converting public health into a fully devolved competency.

Scott Greer and Mark Sandford, *Regional Government and Public Health*, see back page or publications list enclosed for details.

Contact: Scott Greer, s.greer@ucl.ac.uk, tel: 020 7679 4992, Mark Sandford, m.sandford@ucl.ac.uk, tel. 020 7679 4926.

Further Steps for Regional Chambers

This is the second output of a project funded by the Regional Assembly for Yorkshire and Humberside. This report examines the progress of the eight Regional Chambers in the English regions since their formation in 1998-99, assessing the structures which they have devised and the policy areas in which they have had influence. It also examines their roles vis-à-vis other voluntary bodies such as the Sustainable Development Round Tables, the Regional

Cultural Consortiums, and the Public Health Observatories.

The paper also analyses various powers of direction available in existing statutes, through which the Chambers might achieve additional leverage over other regional public bodies. It concludes with a series of suggestions for provisions to be made, in the upcoming Regional White Paper, for extensions of Chambers' powers in order to increase their efficacy. These include greater powers of scrutiny over regional executive bodies, additional power to vire funding, and greater statutory force for the various strategies that Chambers must produce.

Mark Sandford, *Further Steps for Regional Chambers*, see back page or publications list enclosed for details.

Contact: Mark Sandford, m.sandford@ucl.ac.uk, tel. 020 7679 4926.

Publications Received

- *A Practical Guide to Human Rights Law in Scotland*, ed. by Lord Reed, Sweet and Maxwell, 2001. ISBN 0 414 01369 7, £45.
- *Out of the Ordinary: The Power of Ambition in an Uncertain World*, report by the Scottish Council Foundation. ISBN 1 901835 26 X, £10, available on line at www.scottishpolicynet.org.uk/scf/publications/paper19/frameset.shtml.
- *Agreeing to Disagree? A Guide to the Northern Ireland Assembly*, ed. Robin Wilson. The Stationery Office, ISBN 0-110497257-5, £9.99.
- *Government and Information: the Law relating to Access, Disclosure and their Regulation, 2nd edition*, Patrick Birkinshaw, Butterworths, ISBN 0-406-90593-2.

Useful websites

- Parliamentary Monitoring service, Edinburgh University:
http://www.ed.ac.uk/usgs/forum/parliament_news/curr_issue.html
- Bibliographic indexing of all United Kingdom parliamentary information
<http://www.parliant.com/>
- Vacher Dod Political Affairs
<http://www.politicallinks.co.uk>
- Parliamentary and political news – free email service:
<http://www.ePolitix.com>

Bulletin Board

Forthcoming Unit Events

To book a free place at Unit events, please contact Matthew Butt on 020 7679 4977. A location map for the Constitution Unit can be found at: www.ucl.ac.uk/constitution-unit/logos/find.htm

State of the Union Annual Lecture 2001 A Modern Parliament in a Modern Democracy Rt Hon Robin Cook MP

10 December 2001, 6.30 p.m.
Chancellor's Hall, Senate House, University of London with reception to follow.

Seminar: The Work of the new Constitution Committee in the House of Lords
Professor the Lord Norton of Louth: Professor of Government, University of Hull
29th January 2002, 6 p.m., The Constitution Unit

Seminar: The Reform of the House of Lords
Baroness Jay of Paddington:
Former leader of the House of Lords
19th February 2002, 6 p.m., The Constitution Unit

Seminar: The Joint Committee on Human Rights: Past, Present and Future
Professor David Feldman: Legal Advisor to the Joint Committee on Human Rights
14th March 2002, 6 p.m., The Constitution Unit

Seminar: Lessons from the First Three Years: the role of the Parliamentary Commissioner for Standards
Elizabeth Filkin: Parliamentary Commissioner for Standards
15th April 2002, 6 p.m., The Constitution Unit

Spring Lecture: A New Supreme Court for the United Kingdom
Lord Bingham of Cornhill: Senior Law Lord
The Constitution Unit and UCL Faculty of Laws
1st May 2002, 6 p.m., UCL venue – t.b.c.

Forthcoming Events

Public Meeting: Roundheads or Cavaliers? Debate on the Reform of the House of Lords
Thursday 13th December 2001, 7-9 p.m.
Westminster Central Hall
Speakers invited: The Lord Chancellor, Baroness Williams, Rt Hon Lord Strathclyde, Billy Bragg.
contact: Charter88 tel: 020 8880 6088.

New Publications by the Constitution Unit

For Constitution Unit publications please refer to the Unit's order form, or phone 020 7679 4977 to order:

- Barry Winetrobe, *Realising the Vision: a Parliament with a Purpose. An audit of the first year of the Scottish Parliament*, Constitution Unit report, Oct 2001, ISBN 1 903903 05 X, £15.
- Scott Greer, *Divergence and Devolution: A comparison of the health policies of England, Northern Ireland, Wales and Scotland since 1974*. Available from the Nuffield Trust, tel: 020 7631 8450.
- Scott Greer and Mark Sandford, *Regional Government and Public Health*, Constitution Unit briefing, Nov 2001, £8.
- Mark Sandford, *Further Steps for Regional Chambers*, Constitution Unit report, Dec 2001.
- Ben Seyd *Coalition Government in Britain: Lessons from Overseas*, Constitution Unit report, Jan 2002, £15.
- Catherine Bromley, John Curtice and Ben Seyd 'Political Engagement, Trust and Constitutional Reform', in *British Social Attitudes: The 18th Report*, London: Sage (November 2001)
- John Curtice and Ben Seyd 'Is Devolution Strengthening or Weakening the UK?', in *British Social Attitudes: The 18th Report*, London: Sage (November 2001)
- Meg Russell, 'What are Second Chambers for?', *Parliamentary Affairs* 54:3 July 2001. ISSN 0031-2290. pp. 473-459.
- Meg Russell, 'Responsibilities of Second Chambers: Constitutional and Human Rights Safeguards', *Journal of Legislative Studies* 7:1, Spring 2001, pp. 61-76. ISSN 1357-2334.
- Meg Russell, 'The Territorial Role of second chambers', *Journal of Legislative Studies* 7:1, Spring 2001. pp. 105-118. ISSN 1357-2334.
- Meg Russell, 'Responsibilities of Second Chambers: Constitutional and Human Rights Safeguards', and Meg Russell, 'The Territorial Role of second chambers' both in N. Baldwin and D. Shell (eds.), *Second Chambers*, Frank Cass: London, 2001. pp. 61-76. and pp. 105-118. ISBN 0714651443
- *Nations and Regions Devolution Monitoring Reports*, Nov 2001 - available free on the Constitution Unit website.