

MONITOR

THE UNION UNDER STRAIN

Great Britain celebrates an important anniversary on 1 May 2007, 300 years after the Acts of Union which joined England with Scotland in 1707. But recent press commentary suggests there may be little to celebrate, with some columnists forecasting the break up of Britain in the light of two opinion polls in November. The ICM polls found that a narrow majority of Scots supported independence; and that the SNP had edged a few points ahead of Labour in the run up to next May's Scottish Parliamentary elections.

Even if the SNP emerge as the victors next May, the next step is not necessarily Scottish independence. To reach that stage Alex Salmond's party would have to overcome a series of further political obstacles. First, the nationalists are unlikely to command an overall majority in the Scottish Parliament because of Scotland's proportional electoral system. They will almost certainly need the support of another major party to legislate for a referendum on independence, but the other major parties are all unionist. Even if they get beyond this first base, the SNP would then face a difficult referendum campaign. The North East referendum in 2004 is a salutary reminder that majority support in opinion polls can quickly fade when the issues are exposed to public debate in the run up to a real ballot.

For the SNP the most vulnerable issues are Scotland's membership of the EU, and the finances of an independent Scotland. The Constitution Unit's book on Scottish independence (Edinburgh Univ Press, 2003) concluded that the UK would be the successor state, and Scotland would have to re-apply for membership of the EU. As for the finances, the latest government figures suggest a possible spending gap of £12bn between total public expenditure in Scotland of £48bn, and an estimated £36bn of public revenues generated in Scotland.

The final obstacle lies at Westminster, which would have to legislate to dissolve the Union (this being a reserved matter outside the competence of the Scottish Parliament). Perhaps surprisingly, this last obstacle is likely to prove less challenging than the others: successive British prime ministers have acknowledged that Westminster would not seek to override the clearly-expressed will of the Scottish people.

Are we ever likely to get that far? It is true that an SNP victory next May will set all sorts of alarm bells ringing. Most of the alarmism will be nonsense. All that the people of Scotland will have voted for at that stage will be for an SNP-led administration in Scotland. For the reasons set out above, it seems unlikely that the SNP will manage

to travel much further down the road towards independence.

But the alarmism can also be dangerous. Opinion polls showing Scottish support for independence are not new. What is new is the reaction of the English, and the English press. A prescient leader in *The Observer* on 2 July 2006 suggested that if 'the English are told often enough they should feel aggrieved at the results of devolution, they will start to believe it'. They do seem to believe it now. An ICM poll in the *Sunday Telegraph* in November found that 59 per cent of English respondents approved of Scottish independence, and 68 per cent favoured an English Parliament.

Up to now the English have been generous in their attitudes towards devolution, showing strong support for the Scottish Parliament and Welsh Assembly. It may be that polls showing English support for Scottish independence are merely an extension of that relaxed attitude: 'if that is what the Scots want, let them have it'. But there may also be a danger, as Arthur Aughey warns in this month's *Parliamentary Brief*, of the peoples of the UK sleepwalking into national separatism. If the people of the UK still see value in the Union, they may need to make their voices heard and defend the inheritance of 300 years of Anglo-Scottish Union.

MAJOR COMMONS REFORMS

On 1 November the House of Commons agreed some important reform measures. The most far-reaching related to the legislative process, but this was discussed alongside September sittings and a new parliamentary communications allowance.

In September the Modernisation Committee, chaired by Commons Leader Jack Straw, had published a report on the legislative process (HC 1097). Its key recommendation was reform of the 'standing committees' that consider bills. In future, committees would be given the power to take evidence from outside bodies before turning to the detailed line-by-line scrutiny of the bill. This function has so far been limited to so-called 'special standing committees' and to select committee consideration of draft bills, both of which have been relatively rare. Evidence taking will now be normalised, and completed on almost every bill. Committees would be renamed 'bill committees', ending the confusion whereby 'standing' committees are actually temporary. The proposals were widely supported, passed the Commons without a vote and received little press attention. However, they have the potential to be transformative in their effects. MPs on bill committees will be exposed to expert evidence at the early stages of the legislative process, which may help break down party adversarialism.

IN THIS ISSUE

PARLIAMENT	2
.....	
EU CONSTITUTION	2
.....	
PARTY FUNDING	3
.....	
DEVOLUTION	3
.....	
FREEDOM OF INFORMATION	5
.....	
BRITISH BILL OF RIGHTS	5
.....	
FRANCE	6
.....	
CONSTITUTION UNIT NEWS	7
.....	
BULLETIN BOARD	8
.....	

35

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MAJOR COMMONS REFORMS (CONT'D)

A more evidence-based approach should be more satisfactory for both MPs and witnesses. Unlike select committees, bill committee members will however remain temporary and non-expert. The questioning of expert witnesses by non-expert MPs may well generate tensions, and increase pressures for establishment of permanent, specialised, legislation committees. This would bring the House of Commons into line with most other legislatures and strengthen parliament further still.

More controversial was an in-principle decision to create a new allowance for MPs, 'to assist in the work of communicating with the public on parliamentary business'. The details remain subject to negotiation and further votes. But this raised concerns that the aim was further bolstering the incumbency effect, whereby sitting members are cushioned against challengers from other parties. Perhaps unsurprisingly the proposal split the parties, with Labour members voting overwhelmingly in favour, and Conservatives overwhelmingly against. Nonetheless it passed by 290 votes to 200.

The night also saw a reversal of the policy, agreed when Robin Cook chaired the Modernisation Committee, of regular parliamentary sittings in September. September sittings have proved disruptive to MPs' summer plans, and also to the authorities at Westminster who like to use the summer for buildings maintenance work. Despite the firm rejection of September sittings (by 354 votes to 122), the issue seems unlikely to go away. Summer campaigns by MPs to have the Commons recalled are an almost annual event (this year the topic was the Lebanon crisis). Until the summer recess is broken up, or MPs gain the power to invoke a recall, these arguments will continue.

In late November the Modernisation Committee announced two new inquiries, on 'strengthening the role of the backbencher' and 'making better use of non-legislative time'.

PARLIAMENT

Lords reform

Rumours were rife this quarter that a new white paper on Lords reform was about to be published. As reported in the last *Monitor* Jack Straw had announced his conversion to a 50 per cent elected, 50 per cent appointed chamber, and was conducting negotiations with the other parties. Tony Blair – perhaps stung by claims from the Brown camp that his successor would succeed where he had failed then declared that Lords reform was one of the

'39 steps' he wished to complete before leaving office in 2007 (*The Times*, 27 September). In October there was a comprehensive leak to the *Sunday Times* of the proposals being discussed at the all-party talks. These, indeed, included a 50/50 chamber, with 450 members. A new statutory appointments commission would select half the members, with the remainder probably elected on 'semi open' proportional lists. The link between the peerage and membership of the House would be broken, and the changes phased in over three elections. Speaking at the Constitution Unit annual lecture on 24 October, Straw did not deny the leak's veracity, and indicated that a white paper (the government's fourth on Lords reform) would be published 'within the next few weeks'.

By the end of the year, however, no such paper had appeared. No bill was featured in the Queen's Speech, which merely promised that the government would 'work to build a consensus on reform of the House of Lords' and 'bring forward proposals'. Hesitation may reflect continuing deep divisions within government. It may also be a response to the reception that the leaked proposals attracted. Despite being party to the talks, the Conservative leader in the Lords, Lord Strathclyde, denounced them publicly as inadequate in almost every way (*Evening Standard*, 23 October). Lib Dem constitutional affairs spokesman Simon Hughes also criticised the proposals for having too few elected members. Straw's proposals thus looked very capable of falling apart.

Conventions governing the House of Lords

In November the parliamentary Joint Committee on Conventions published its report on the conventions governing the House of Lords (HL 265). As reported in the last *Monitor* the committee had collected a range of evidence and was presented with some interesting and complex issues. The government's thinking in establishing it was clearly to try and find a way of containing the growing confidence of the Lords by codifying existing conventions. The evidence that ministers gave suggested that unless this was done, further reform of the Lords' membership could not proceed. The committee, however challenged the very basis on which it had been established, concluding that 'In our view the word "codification" is unhelpful, since to most people it implies rule-making, with definitions and enforcement mechanisms. Conventions, by their very nature, are unenforceable. In this sense, therefore, codifying conventions is a contradiction in terms'. It insisted not only that conventions must remain 'flexible and unenforceable', but also that current conventions could not

necessarily be expected to hold if the chamber were further reformed to include elected members. This can only have added to the government's caution in proceeding with reform (as reported above).

Despite these reservations, the committee did suggest that some understandings about working relationships might be reached between the chambers by mutual resolution. In a response in December the government accepted these recommendations. Agreements could include manifesto bills not being subject to 'wrecking' amendments, government legislation being considered by the Lords in 'reasonable time' (though not in the 60 days that the government had initially proposed) and both chambers being given notice before considering each other's amendments. Even the terms of these agreements, however, would remain necessarily ill-defined, and the committee emphasised that the Lords would retain its right to vote down any bill or statutory instrument.

Constitutional committees in Parliament

The Commons Constitutional Affairs Committee has completed its inquiry into party funding, and published its report (HC 163) on 19 December. In the New Year it will turn its attention to the Carter report on the future of legal aid, and launch a new inquiry into the constitutional role of the Attorney General.

In December the Lords Constitution Committee was still looking for a new topic after its inquiry into the war making power, whose report was published last July (HL 236).

The Commons Public Administration Committee (PASC) has completed its inquiry into Ethics and Standards. Although the inquiry took in the whole range of constitutional watchdogs, including the Parliamentary Ombudsman, Auditor General etc, the main focus was on five non-statutory bodies sponsored by the Cabinet Office: the Civil Service Commissioners, Commissioner for Public Appointments, Advisory Committee on Business Appointments, House of Lords Appointments Commission, and the Committee on Standards in Public Life. The committee noted the overlap between some of these bodies, and recommended pulling them together into a Public Ethics Commission, to be accountable to, and funded by Parliament.

THE EU CONSTITUTION – DEAD OR MERELY SLUMBERING?

Confusion surrounds the prospects for EU governance at the start of 2007. By the end of the German presidency in June, Chancellor

Angela Merkel hopes to have won agreement for a road map to revive the constitutional treaty, in limbo since the French and Dutch rejected it by referenda in 2005. But as usual, rhetoric and reality diverge. Europe remains weak and divided. The election of a new French President by 8 May leaves too little time for a bold initiative. Too many states including Germany are ruled by weak coalitions, and the UK will be approaching the point of transition between Prime Ministers. It is unlikely that more than the present 16 states will ratify the treaty in its full, 400-page form. After grudgingly admitting Romania and Bulgaria on 1 January, the EU has refused to set negotiation timetables for further enlargement, the treaty's main *raison d'être*. Hopes of ending stasis now centre on a 'mini-treaty' which would allow the EU to function better without more governments risking referenda.

Almost certainly, the UK government would prefer to let the issue to lie dormant until after the next election; but under pressure to maintain some sort of European profile, it would back extending qualified majority voting into market liberalisation areas (but definitely not anti-terrorism and asylum). With new declarations on a common energy policy and climate change, such a limited package might be just enough to allow Tony Blair to depart the scene to a muted European fanfare.

More fundamentally, the deliberate absence of a definition of 'Europe', so beneficial after the collapse of the Soviet system, is now increasingly contentious, risking instability and harming relations with future candidate states – most immediately with Turkey.

A basic split remains between those like the Germans and the French right who see the institutions as instruments of integration and those such as the British for whom economic reform and further expansion are the priorities. As long as that gulf remains, disagreement over the scope of the institutions themselves will persist.

PARTY FUNDING

Sir Hayden Phillips was due to deliver his final report on the future of party funding in December 2006, however he has delayed its publication in an attempt to reach a consensus on the major issues of contention. Despite the delay, some details of the recommendations likely to be contained in the final report have emerged.

The review will make recommendations on the issues on which the major parties are in broad agreement: all are in favour of increased transparency of political donations

and party expenditure; there is recognition that expenditure during the year of the general election should be reduced, and that public funding of political parties should be increased. In such areas Sir Hayden Phillips has found common ground, and he is likely to recommend a significant reduction of the £19 million limit on spending during the general election. The Constitutional Affairs Committee has already recommended a limit on expenditure, a cap on donations from all individuals and organisations, and an increase in state funding. However the committee report focussed primarily on the broad principles and mostly eschewed making detailed proposals.

The main issues of contention for the Phillips review are the capping of donations and whether the limit on campaign expenditure should apply to every year rather than just the year prior to an election. Whilst all of the parties are at least amenable to a cap on individual donations, the form and extent of such a cap is contentious. The Labour Party stands alone in its view that trade union donations should be treated differently. The party's National Executive Committee reacted with great hostility to news that the review may recommend the introduction of a cap of £500,000 in 2009 to be reduced to £50,000 over the following three years; it is unlikely the Labour Party will move on this issue, even if some within the party would be content to do so. Similarly, given a reduction on the limit of general election campaign spending and a cap on donations, the Conservatives argue that there is no need for either year-on-year or local limits on expenditure. However, the Liberal Democrats are expected to receive a substantial increase in 'Short money'.

The problem for Sir Hayden Phillips is that each aspect of the package must be balanced with the other. Thus whilst it is agreed that there should be further public funding of parties, the degree of any such funding is linked to an agreement on the extent and form of caps on donations. Sir Hayden is now due to report at the end of January.

DEVOLUTION

Scotland

Political jockeying loomed large in the final part of 2005 as the parties prepared for the May 2006 elections. Opinion polling suggested that the SNP was on the rise while Labour was on a fall. A modest improvement for the Liberal Democrats and a modest decline for the Conservatives were also portended. These shifts, plus some polls

suggesting strong support for independence and some unexpected donations to party funds from two businessmen, seem to have prompted Alex Salmond, the SNP leader, to increase the campaigning volume. Apart from insisting he is in pole position to become the next First Minister, he pressed the independence cause, a marked shift from the 2003 election when the SNP downplayed independence. Labour's response was to talk of a 'union dividend', put mainly in the economic terms of existing public spending being larger than could be sustained under independence.

Labour ministers also discussed the possibility of forming a one-party minority government. To general surprise, the Tories said they might support such a bid, while the Liberal Democrats said they would not. For the LibDems, a coalition with the SNP appears to be a strong and even appealing possibility, provided the SNP drops its promise to hold an independence referendum.

The Executive's legislative highlight was the passage of a planning bill. This is intended to make planning less a reactive (to developers' proposals) process and more of a pro-active one, thereby speeding up decision-making. Councils are to produce development plans into which developers will have to fit. Ministers rebuffed various attempts to give a right of appeal to third parties not directly affected by planning proposals.

Transport rose sharply up the agenda when the Executive published a National Transport Strategy. This implies a big increase in investment in bus and rail to fulfil an aspiration to make Scottish transport more environmentally sustainable. Ministers talked about new high speed rail links between Edinburgh and Glasgow and between Scotland and London. But much investment may be diverted to a second Forth Road Bridge as unexpected structural weaknesses in the 1964 suspension bridge may force its closure in the next decade.

Wales

Underlining yet again the extent to which the use of the term 'settlement' in the Welsh devolutionary context remains a misnomer – or 'more aspirational than accurate', according to one seasoned observer – constitutional developments continue apace in Wales. Two developments are particularly noteworthy. The first is the provision of extensive framework powers for Wales in various pieces of legislation (as envisaged in the Better Governance White Paper). The second is more unexpected, namely the emergence of another route by which the Measure

DEVOLUTION

making powers are transferred to the National Assembly. In addition to the Order in Council process established in the Government of Wales Act (GoWA) 2006, several bills are set to amend Schedule 5 of the GoWA 2006 by adding 'Matters' under the various subject fields. While doubtless innovative and interesting in their own right, neither development is unproblematic from the perspective of accountability and legitimacy.

In the case of the provision of framework powers, the danger is that this will further strengthen an already apparent trend towards executive dominance of the National Assembly – unless steps are taken to transfer these powers to the Assembly itself rather than allowing them to remain with the Welsh Executive. In the case of the transfer of Measure-making powers via Acts of Parliament, the fact remains that there is no mechanism by which the Assembly might influence the contents of the 'Matters' being transferred: hardly a satisfactory state of affairs for a body that enjoys its own democratic mandate. The further layers of complexity added to the devolutionary dispensation by these and other related developments is yet another source of concern.

Authoritative voices have raised concerns about various aspects of the new arrangements that have been introduced by – and in the wake of – the GoWA 2006. Of particular note are the comments of Lord Ivor Richard, Chair of the Richard Commission on the Powers and Electoral Arrangements of the Assembly, who, at an Institute of Welsh Politics conference in Cardiff, highlighted what he termed the 'Proustian complexity' of the provisions the 2006 Act. The convoluted nature of the Measure-making process was also a point at issue in an important recent conference organised by the Cymru Yfory / Tomorrow's Wales ginger group.

As a codicil, readers of the *Monitor* will be aware that the banning of dual candidacy was a major point of contention during the passage of the GoWA 2006. During the various debates, much was made by ministers of the negative impact of dual candidacy on public perceptions of the Assembly and voter turnout. Until now there has been no credible evidence of public attitudes on this matter. Recent research conducted on behalf of the Electoral Commission has found, however, that 'dual candidacy had little effect in deterring people from voting'. The same research also suggests that the prospects for election turnout in 2007 appear, if anything, to be even worse than in 2003.

Northern Ireland

As what was affirmed by government as the final, final deadline for restoration of the Northern Ireland devolved institutions, 24 November, loomed, the parties were yet again assembled at a country retreat – this time St Andrews – in October. A deal was only secured after a raft of concessions had been offered to the Democratic Unionist Party by the prime minister, fearful of the next day's headlines, following the threat of a DUP walkout.

The backdrop proclaiming the 'St Andrews Agreement' had been pre-prepared, but despite the spin it was apparent that this was – just like the 'comprehensive agreement' of December 2004 – an accord to which only London and Dublin had signed up. In particular, there was no agreement by SF to hold the special *ard fheis* (conference) required for the huge *bouleversement* of supporting the reformed police service, successor to the Royal Ulster Constabulary, essential for any participation in renewed power-sharing. While republicans reported 'considerable' hostility to any such move, DUP figures said they couldn't envisage the devolution of policing and justice – which SF treated as a precondition of movement – in their 'political lifetimes'.

The government blinked first once more, with the Northern Ireland (St Andrews Agreement) Bill now allowing of a 'transitional' assembly after 24 November, to be dissolved on 30 January for an election on 7 March, with yet another devolution deadline of 26 March. And, during the debate on the bill, the Northern Ireland secretary, Peter Hain, said that the DUP and SF would now have only to 'indicate' their candidates for first and deputy first minister – rather than making formal nominations – on 24 November, to save the DUPs' blushes, and that when SF called the *ard fheis* on policing was a matter for that party.

On the fateful day, the SF leader, Gerry Adams, nominated Mr McGuinness as DFM, but the DUP leader, Rev Ian Paisley, insisted he could not yet nominate himself, invoking Martin Luther as he declared 'here I stand'. Bizarrely, this was interpreted by the assembly speaker, Eileen Bell, as a positive 'indication', though 12 DUP MLAs later explicitly rejected her interpretation. It was, commented the *Irish Times*, 'Alice in Wonderland politics'.

Meantime, just as it seemed matters could not become more surreal, the assembly was suddenly adjourned after an assault on Parliament Buildings by the maverick loyalist

paramilitary Michael Stone, released early from prison as a result of the Belfast Agreement. It emerged he had planned to assassinate Messrs Adams and McGuinness. In another huge irony, Stone was halted at the door by an alert female security official – a former member of the RUC.

Devolution and the Centre

With the Government of Wales Act coming into effect in May, questions are being asked about the continuing role of Westminster in legislating for Wales. The Act enables the Welsh Assembly to request legislative competence in specific areas with Westminster considering such requests on a case-by-case basis. Pro-devolutionists fear that this process grants excessive discretionary power to the majority party at Westminster and the Secretary of State for Wales. Wales Secretary Peter Hain has confirmed that he or his successor as well as either House of Parliament may wield a veto over Assembly requests for 'legislative competence orders' in exceptional circumstances. However Hain has also sought to assuage concerns, telling the Assembly on 28 November that he anticipated a convention 'whereby there is a clear presumption that the Assembly's requests for new powers will be agreed'. It has also been confirmed that the Commons Welsh Affairs Committee will play a key role in scrutinising draft competence orders, though details remain vague.

Clear linkages between UK and Welsh institutions are necessitated by the unusual legislative process for Wales. As far as Scotland is concerned, inter-institutional relations remain limited though several recent proposals have sought to redress this. The Commons Scottish Affairs Committee recommended a Scottish 'Super Grand' Committee – comprising MPs, MSPs and MEPs – which might consider policy issues that do not fall neatly into any one tier of government (*The Sewel Convention: the Westminster perspective*, HC 983, June 2006). At Holyrood in October, former Scottish Conservative leader David McLetchie also called for greater cooperation between the two parliaments in overlapping areas such as transport. Also in October, former deputy First Minister Jim Wallace suggested that the devolved institutions should have direct representation in a reformed House of Lords.

These proposals for more formalised inter-legislative relations appear to be making little headway. And at the intergovernmental level too, ministers remain convinced that informal relations are sufficient to resolve the limited conflicts that do arise. Suspicions persist however, that a time of greater inter-territorial

tension may be on the horizon, particularly if the SNP turns poll leads into electoral victory next May. Blair's government has already had to concede that it cannot impose new nuclear power stations on Scotland if the Scottish Executive refuses planning permission. It now faces a spat relating to the replacement of the Trident nuclear submarines, with calls for devolved environmental powers to be used to block their deployment north of the border. Following repeated controversy in Scotland about deportations of families in 'dawn raids', UK and Scottish ministers also recently met to hammer out a concordat on deportations of failed asylum seekers further demonstrating the difficulty of separating devolved and reserved policy areas.

English Regions and Local Government

As anticipated in *Monitor 34*, the Local Government White Paper – *Strong and Prosperous Communities* (Cm 6939) – was finally published last October but it failed to deliver the hoped-for clarity about the Government's future intentions on devolution, decentralisation and the reform of governance arrangements between the central and local levels in England. The White Paper set out some firm intentions and proposals for the next phase of local government modernisation but presented only a provisional statement about policies and structures for regions, city-regions and other sub-regional entities. The relevant chapter, on 'strong cities, strategic regions', referred to the important roles that key 'functional economic areas', centred mainly upon England's major cities, have played in driving regional and national improvements in productivity and economic performance. It also acknowledged that current administrative geographies – based on local authority units and the standard regions – rarely 'map' effectively onto these areas and that more needs to be done in ensuring that key policies on, for example, planning, housing, economic development, transport, skills, culture and employment are co-ordinated and delivered at more appropriate sub-regional scales. Quite how this will be achieved, where and when, however, remains uncertain.

The White Paper announced some tentative but widely-welcomed moves toward new sub-regional governing arrangements. One, the formation of 'City Development Companies' at the urban or urban-regional scale, is already subject to consultation. The Government also intends to reform (metropolitan) Passenger Transport Authorities and Executives, affording them greater influence over bus provision, and to encourage the development of voluntary metropolitan equivalents to Local

Area Agreements with a view to co-ordinating the inputs of a variety of public bodies that contribute to city-regional economic development and regeneration more effectively. Further clarity about the Government's intentions with respect to English devolution and decentralisation, however, now await the completion of the Sub-National Economic Development and Regeneration Review being undertaken by the Treasury, the DTI and DCLG, and the further-delayed results of the Lyons inquiry into local government finance. Both sets of findings, along with the results of the Barker (land use planning), Eddington (transport) and Leitch (skills) reviews, will feed into this year's Comprehensive Spending Review.

FREEDOM OF INFORMATION

On 14 December the DCA launched a twelve-week **formal consultation process on changes to the FOI fee regime**. The government appeared reluctant to consult formally, and given that amendments to the regulations can be made by the negative resolution procedure, it is likely that implementation will follow hot on the heels of the consultation (see Constitution Unit online comment of 27 November 2006 for more information). The intended proposals were preceded by two reports, the government response to the Constitutional Affairs Select Committee (CASC) and the Independent Review by Frontier Economics.

The **Government response to CASC** covers more ground than just the fees regime. Three main commitments are outlined: to publish statistics on extensions of the 20-day deadline taken to consider the public interest; to 'examine the viability' of publishing statistics on internal reviews; and to review the code of practice on records' management. It also contains a statement of preference for two of the options voiced in the Independent Review.

The review by **Frontier Economics** was an exercise in costing FOI and proposed changes to the fee regime, carried out in order to pave the way for the implementation of new regulations. The Prime Minister's rationale was that '[FOI] generates an awful lot of work for government and it's important there is some sort of cost benefit relationship to it.' Four options were tabled, of which the government is 'minded' to drop two and introduce two. The unappealing options are introducing flat rate fees, which would deter the less costly majority of requests, and reducing the cost threshold, which would have little effect on the volume of requests.

More attractive to the government, and laid out in more detail in the consultation document, is increasing the activities that count towards the 'appropriate limit'. Firstly, including 'reading time'; secondly, allowing the cost of non-similar requests to be aggregated - where 'reasonable'. The tranche of requests targeted here are the minority of expensive requests, particularly those made by the media. But appeals to 'reason' are likely to lead to more internal reviews and procedural complaints to the Information Commissioner.

As reported in the **ICO FOI Progress Report 2006**, the Information Commissioner's Office is already running out of room for manoeuvre. Richard Thomas reports higher rates of case closure but less progress in reducing the backlog because more cases are arriving than expected. Next year, without the one-off support of the DCA, the ICO expects to be able to close 50 per cent of new cases within 30 days; the rest after nine months. The ICO has requested a further one off grant from the DCA.

In Scotland, authorities do not seem to worry that the more people who use the act, the more it will cost. They have even aired television adverts for the Scottish Information Commissioner. The **Scottish Information Commissioner Public Awareness Research**, published in November, reports that awareness of the Act is now at 73 per cent although awareness of the Commissioner is at just 14 per cent. Moreover, 60 per cent think 'public authorities are becoming more open and accountable' and 53 per cent think the public can have 'more confidence in the decisions made by public authorities'.

Information about **MSP expenses** are certainly easier to come by. Quarterly figures, published in October, show a fall in 2005/6 claims from £1.8m in the first quarter to £690,000 in the second and £227,000 in the third. This fall coincides with widely reported media stories and outrage about the expenses of MSPs McLetchie and Raffan, which were obtained under FOI. Could this be an example of the FOI Act, changing public figures behaviour and saving some money – a benefit no less?

BRITISH BILL OF RIGHTS

Although the Conservative leader David Cameron appears to have attracted little support from his own Democracy task force for a British bill of rights, support is growing outside. The all-party lawyers' group JUSTICE has decided to focus its Changing the Rules project on the content of a British bill of rights, while the a newly-announced LSE project will look at the the process by which a new bill of

rights might be formulated and adopted.

The JUSTICE project is led by JUSTICE's director Roger Smith supported by Emma Douglas. In addition to thinking about the content of a bill of rights, the project will look at the relationship between a British bill of rights and the ECHR, the prospects for entrenching a bill of rights, and the implications for the balance of powers between judges, government and Parliament. Members of the steering committee include Lord Goodhart and Lester from the Lib Dems, Lord Kingsland from the Conservatives and Ross Cranston MP from the Labour Party. The project should report in Summer 2007.

The LSE venture – 'Future Britain' – will undertake a substantial research effort and a national consultation to foster debate about

how Britain should choose and implement change. Its aim is to discover how other nations have considered such questions and then assess these options in the context of modern Britain to see which may be most appropriate and which are most likely to succeed.

The project – to be formally launched in February 2007 – will work closely with JUSTICE and also Unlock Democracy (formerly Charter 88). Over the coming two months the LSE group will consult with key stakeholders to develop terms of reference for the work. The project's Director, Simon Davies, has stated that he is interested in guiding process rather than content.

Further information can be obtained through Simon Davies at s.g.davies@lse.ac.uk.

PEOPLE ON THE MOVE

Elish Angiolini has become Scotland's Lord Advocate, in succession to Lord Boyd.

Trevor Phillips is to be the first chair of the new Commission for Equality and Human Rights.

Lord Goodhart is to be chair of the Lords Committee on Regulatory Reform and Delegated Powers. Lord Goodhart is also to be chairman of JUSTICE, in succession to Lord Steyn.

Andrew McDonald (DCA) has returned to government from his sabbatical to be Chief Executive, Government Skills, based in the Cabinet Office.

Tom Wilson is the new clerk to the Lords Constitution Committee.

INTERNATIONAL CONSTITUTIONAL FOCUS: FRENCH PRÉSIDENTIELLE 2007

With Nicolas Sarkozy set to become the presidential candidate for the right-of-centre UMP and Ségolène Royale already nominated as the Parti Socialiste candidate, we compare the respective constitutional agendas of the two front-runners. Given current French disenchantment with the political class, both candidates are seeking to offer something new. Constitutionally, the rhetoric is of rebalancing the relationship between the citizen and the state: Sarkozy speaks of remaking the state 'comme en 1958' – when the semi-presidential 5th Republic was created – while Royale wants a 'révolution démocratique'.

• Presidential powers

Sarkozy has specifically targeted the extent of presidential power. In his proposals, the president will be limited to two mandates and can be called before parliament. Royale has hinted at a 'non-accumulation of mandates'.

• The State

Sarkozy has called for a smaller, more efficient state. He also proposes to limit the number of ministers to 15 ministers by law.

• Devolution

Both candidates support devolving power from the centre. Sarkozy wants 'decentralisation: act three'; Royale, aware of scepticism towards decentralisation, calls instead for 'regionalisation'.

• Parliament

Royale wants a stronger and more representative Parliament, but has not elaborated further. Sarkozy wants the possibility of parliament adjudicating on any subject and, in a nod to direct democracy, suppressing a law if 10 per cent of the population demand it.

• Direct democracy

Royale is occupying this turf. Assorted means are seen as options: citizens' juries, greater consultation of citizens, participative budgets and referenda. Sarkozy is not keen to cede this ground, but has an authoritarian reputation.

• Europe

Both are euro-pragmatists. Sarkozy supports a 'mini-treaty' addressing critical institutional reforms and believes Europe should be a buffer to globalisation. Royale thinks Europe should be judged on its actions, but has kept the specifics of her opinion on the EU constitution, like on many other matters, to herself.

CONSTITUTION UNIT NEWS

Recent Events at the Constitution Unit

On 28 September, **former Chancellor Kenneth Clarke**, who is heading the Conservative Party's Democracy task force, told the Unit of his aim to 'reverse the trends towards opaque, presidential government.' Clarke wants to cut the number and power of special advisers and make future investigations into the ministerial code of conduct independent. He favours a smaller Commons, the election of committee chairs by secret ballot and a loosening of government whips' tight grip on timetabling parliamentary business. Clarke also recommends more timely debates on key issues and a 'significant reduction' of the use of the royal prerogative to make war and treaties – 'an absurd anomaly'.

Leader of the Commons Jack Straw chose the **Constitution Unit Annual Lecture** (October 24) to announce a personal U-turn in favour of a hybrid 50:50 elected/appointed House of Lords, reducing its size from 740 to around 450. According to his 'five principles', a reformed Lords would become more representative without rivalling the Commons, would never have a single-party majority and would retain non-elected cross benchers. Though it would clean up the appointments process, the 50:50 compromise has so far failed to break the party deadlock on reform (see page 2 for further comment).

An elective element for the Lords is likely to feature in a new 'constitutional settlement' from Gordon Brown as Prime Minister, according to **Times political commentator Peter Riddell** (Unit Seminar, 9 November). His 'cautious' settlement however might be limited to 'unspecific concordats'. It might offer 'new procedures and understandings' with the Commons on any new war powers. Despite his enthusiasm in opposition for Charter 88 reforms, Brown is now cool on direct democracy and a British Bill of Rights.

Parliamentary Ombudsman Ann Abraham responded boldly (Unit Seminar, 4 December) to the government's rejection of two of her findings, on the extent of government liability for the collapse of private pensions schemes and the 'debt of honour' owed to Commonwealth and other non-British prisoners of war under the Japanese. If her recommendations were 'regularly and systematically' rejected, she might begin to favour legal enforceability, she said. Ms Abraham is considering asking the government to allow complaints to be sent to her directly from the public, rather than being routed through MPs.

Constitutional Futures 2

Following the success of *Constitutional Futures* (published in 1999), the Unit is about to embark upon its second futurological foray, *Constitutional Futures 2*. The new 'history of the next ten years' aims to shed light on the momentum unleashed in the latest rounds of constitutional reform. Funding has been secured from the Nuffield Foundation and, it is hoped, the book will be published by Oxford University Press. Work starts in January, with a two-day workshop for contributors in spring.

Lords in 2006: New Briefing

This briefing summarises developments on both Lords reform and the chamber's treatment of legislation in 2006. It suggests that the Lords is growing in strength, taking a new place in British politics as an increasingly important site of policy negotiation, and developing a new partnership with the Commons which is strengthening parliament as a whole. The text will appear as a chapter in *The Palgrave Review of British Politics* (ed. Rush and Giddings), but here includes additional appendices listing all government defeats in the Lords and all arrivals and departures in the chamber over the year.

Freedom of Information Projects

Preparation has already started so that the Unit can hit the ground running when the ESRC and DCA funded project evaluating FOI in Whitehall begins in January. It is hoped that interviews with officials and a survey of requesters will start in the first half of 2007.

Sarah Holsen, FOI Research Fellow, delivered a paper on *Freedom Of Information: History, Experience And Records And Information Management Implications In The USA, Canada And The United Kingdom* at the ARMA International Educational Foundation Conference in San Antonio. The paper explores freedom of information in practice in the three countries, and includes comparative sections on the use of exemptions, practical issues for authorities and points relevant to records managers, as well as national case studies on media use of FOI in the UK and use of the National Security Exemption in the US since 9/11. The paper, ARMA's second-most downloaded ever, is available from the ARMA International Educational Foundation website.

Devolution Monitoring Programme

The Devolution Monitoring Programme – led by the Constitution Unit – is pleased to announce that Professors Martin Burch

(Manchester University) and Alan Harding (Salford University) are the new editors of the English Regions Monitoring Report. Their first report for the programme will be published by the Unit in January 2007. This change follows the departure from the Unit of the previous author of the Regions reports, Mark Sandford. For more information: www.ucl.ac.uk/constitution-unit/research/devolution/devo-monitoring-programme.html.

Constitution Unit Online Comments

Since September 2006 the Unit website has included a separate space for Unit researchers or research partners to post timely comments on developments in the field of constitutional policy. Contributions so far include two analyses of the chances of Scottish independence, and a discussion of the government's plans for Lords reform. Unit comments can be read at: www.ucl.ac.uk/constitution-unit/news/index.htm.

Congratulations to...

Charlie Jeffery, Honorary Senior Research Fellow at the Constitution Unit and Professor of Politics at Edinburgh University, has been awarded a richly-deserved Political Studies Association Communication Award for his work in managing the ESRC's £4.7m Devolution and Constitutional Change research programme. Several Constitution Unit projects including the ongoing Devolution Monitoring Programme were funded as part of this programme, which ran from 2000 until 2006.

Unit Personnel Changes

In November, **Mark Glover** was appointed the new Research Assistant on the Freedom of Information team. He will work with Research Fellow Sarah Holsen on a new project on FOI and Whitehall. **Brian Walker** has been appointed Honorary Press Officer for the Unit, managing media relations and improving the Unit's website. The Autumn crop of interns included Chiara Cordelli, Daniele Faeta, Jeffrey Johns, Ernest Lau, Christopher Moses, Max Sciarra, and Jennifer Sheehy Skeffington. Thanks to all of them.

LORD (DENIS) CARTER 1932-2006

The Unit was saddened by the death of Denis, Lord Carter, government Chief Whip 1997-2002, on 18 December. He offered much help to our work on the Lords, and spoke at two Unit seminars in the last 18 months.

BULLETIN BOARD

CONSTITUTION UNIT PUBLICATIONS

- Carter, Megan and Andrew Bouris, *Freedom of Information: Balancing the Public Interest* (May 2006), 327-page book + CD, £75.
 - Hazell, Robert, *Time for a new Convention: Parliamentary Scrutiny of Constitutional Bills 1997-2005* (December 2006) £10.
 - Hazell, Robert and Claude Willan, *Fixed Term Parliaments* (February 2007) £10.
 - Russell, Meg and Akash Paun, *Managing Parliament Better? A Business Committee for the House of Commons*. 38-page Constitution Unit briefing (August 2006), £10.
 - Russell, Meg and Maria Sciarra, *The House of Lords in 2006: Negotiating a Stronger Second Chamber* (January 2007) £10.
 - Seyd, Ben, *Why has Political Trust in Britain Declined?* (December 2006) £10.
 - Trench, Alan, *Old Wine in New Bottles? Wales-Whitehall Relations after the Government of Wales Act 2006* (December 2006) £10.
 - Wilson, Lord Richard, *Tomorrow's Government*, RSA Lecture (December 2006) £8.
 - Various authors, Constitution Unit Online Comments, at: www.ucl.ac.uk/constitution-unit/news/index.htm
 - Various authors, *Devolution Monitoring Reports* on Scotland, Wales, Northern Ireland, English Regions, and the Centre (September 2006 and January 2007). Published at: www.ucl.ac.uk/constitution-unit/research/devolution/devo-monitoring-programme.html
- For full details of all Constitution Unit publications or to make a purchase, visit our website at: www.ucl.ac.uk/constitution-unit/publications or contact the unit on constitution@ucl.ac.uk or 020 7679 4977.*

EVENTS

Constitution Unit Devolution Conference

On 29 March 2007 the Constitution Unit is hosting a major conference on devolution, entitled 'Into the Third Term'. For further information, see the enclosed flyer, or the Unit website, or email v.spence@ucl.ac.uk.

FOI Live 2007

Details of the UK's premier Public Sector Information Rights Conference are now available at www.foilive.com. Essential for FOI practitioners, users, advisers and commentators, it offers relevant sessions on up-to-date issues and gives delegates a chance to meet other information rights specialists and network in sessions and over coffee and lunch.

Constitution Unit Government Information Policy Seminar Series

Booking is now open for the Constitution Unit Government Information Policy Seminar Series 2007. This year's selection of expert speakers includes John Angel of the Information Tribunal and Information Commissioner Richard Thomas. See www.ucl.ac.uk/constitution-unit/foidp/events/seminar-series-2007.html.

Constitution Unit Seminar Series 2007

The Unit is in the process of arranging its 2007 series of seminars. Details, once known, will be placed on our website at: www.ucl.ac.uk/constitution-unit/events. Reports on recent Unit seminars can be found on page 7.

Statute Law Conference

On 27 January 2007 the Statute Law Society is holding a conference on Constitutional issues and their effects on legislation at the Royal College of Surgeons, Lincoln's Inn Fields, with speakers including Professor Robert Hazell, Director of the Constitution Unit. Contact: statutelaw@aol.com.

Lobbying and British Democracy

On 31 January 2007 the Hansard Society is launching a report on the role of the lobbying industry in UK democracy. The event will be held from 6.30pm in Portcullis House, Westminster. To register your interest in the publication or event, email hans_admin@hansard.lse.ac.uk

PUBLICATIONS RECEIVED

- Baimbridge, Mark (ed.), *The 1975 Referendum on Europe: Volumes 1&2* (Exeter: Imprint Academic, 2006)
- Brazier, Alex, *Democracy and Capitalism* (London: Hansard Society, 2006)
- English Regions Network/Regeneris Consulting, *Adding Value to Regions: Regional Assemblies and the Comprehensive Spending Review 2007: A Report to the English Regions Network* (Birmingham: English Regions Network, 2006)
- Giddings, Philips, *The Future of Parliament: Issues for a New Century* (Basingstoke, Hampshire: Palgrave Macmillian, 2006)
- Goodwin-Gill, Guy S., *Free and Fair Elections: New Expanded Edition* (Geneva: Inter-Parliamentary Union, 2006)
- Kavanagh, Dennis, David Richards, Martin Smith and Andrew Geddes, *British Politics, 5th edn.* (Oxford: Oxford University Press, 2006)
- McDonagh, Maeve, *Freedom of Information Law, 2nd edn.* (Dublin: Thomson Round Hall, 2006)
- McHarg, Aileen, and Tom Mullen (eds.), *Public Law in Scotland* (Edinburgh: Avizandum, 2006)
- Prosser, Stephen, Michael Connolly, Rod Hough and Kathryn Potter, *'Making it Happen' in Public Service: Devolution in Wales as a Case Study* (Exeter: Imprint Academic, 2006)
- Rosenblatt, Gemma, *Parliament in the Public Eye 2006: Coming into Focus? A Review of the Hansard Society Commission of the Communication of Parliamentary Democracy* (The 'Putnam Commission') (London: Hansard Society, 2006)
- Rosenblatt, Gemma, *A Year in the Life: From Member of Public to Member of Parliament* (London: Hansard Society, 2006)



The Constitution Unit