

MONITOR

SCOTLAND: TOWARD A NEW SETTLEMENT?

The constitutional debate in Scotland continues apace. In the last *Monitor* we reported on the SNP Government's White Paper *Choosing Scotland's Future – A National Conversation*. This set out options for Scotland's constitutional future, ranging from further-reaching devolution to the SNP's own preference of independence.

Beyond their commitment to ignore the SNP's 'national conversation', the other main parties in Scotland were generally silent on Scotland's constitutional options until a speech by the new Labour leader in Scotland, Wendy Alexander, at the University of Edinburgh on St Andrew's Day, 30 November. This set out a unionist perspective on constitutional change; unlike the SNP White Paper, independence was not an option.

Alexander's speech set out a dual strategy of strengthening devolution while also taking steps to underpin the union. It was also a first attempt to build a unionist consensus on Scotland's constitutional future, with Labour, the Conservatives and the Liberal Democrats joining forces in a Scottish Parliament debate on 6 December to use their parliamentary majority to establish the Scottish Constitutional Commission flagged in Alexander's speech.

This body will have the remit of reviewing the present constitutional arrangements while also securing 'the position of Scotland within the United Kingdom'. It is set to be launched in early 2008, though as yet there is no information about who will sit on it, how it will work, and what resources it will get.

All this made rather less impact than it might because in the week Alexander gave her speech she became embroiled in a party funding controversy. This involved small-scale, yet illegal, donations to Alexander's campaign budget for the Scottish Labour leadership. The Scottish media inevitably latched on to the funding issue, leaving the unionist move on the constitution curiously underreported.

Yet this gambit was important for a number of reasons. It was the first time the unionist parties have used their majority in the Scottish Parliament pro-actively. It was the first time all three unionist parties have agreed on the need for further reform to the devolution arrangements. And it was the first time there has been a cross-border initiative on the constitution, with Gordon Brown at least tacitly approving Alexander's speech and David Cameron endorsing the Constitutional Commission during a visit to the Tory troops in Scotland on 10 December.

Also significant was the way Alexander combined calls for further powers and greater fiscal autonomy for the Scottish Parliament (both of which could fit easily into the prospectus set out

in the SNP White Paper) with ideas on reconciling more devolution with a renewal of the UK union (which mark out a very different agenda). Especially notable were her ideas on risk-sharing through fiscal solidarity across the UK, and those on guaranteeing rights of 'social citizenship' across the UK. Emphasising social rights across jurisdictions suggests a concern to build common purposes – or, put another way, limits to policy variation – to which risk-sharing and solidarity can be put to work in a UK-wide framework.

This is a bold agenda. For it to work much would depend on a willingness in Westminster and Whitehall to think creatively about rebalancing the union. If devolution is to have a stronger UK-wide context, then the devolved institutions need real rights of involvement in setting UK-wide objectives. On fiscal solidarity and common citizenship rights Westminster and Whitehall would have to share decision-making with their counterparts in Scotland, Wales and Northern Ireland. Otherwise critics could, rightly, cry foul about Westminster diktat undermining devolution. Are Westminster, Labour, the Conservatives, Gordon Brown and David Cameron really ready for that?

Professor Charlie Jeffery, Institute of Governance, Edinburgh University

CONSTITUTIONAL RENEWAL

Constitutional renewal is central to Gordon Brown's vision for the future of Britain. It was the subject of his first speech to parliament as Prime Minister, and his government's first major publication, *The Governance of Britain* (Cm 7170, July 2007).

The difficulty facing the government is how to give legislative effect to Brown's proposals for constitutional reform in ways that resonate with ordinary people. The big ticket items – Lords reform, a British bill of rights, possibly even a written constitution – must wait until there is stronger consensus about the way forward. So the Constitutional Renewal Bill will contain a host of smaller items, worthy in themselves, but not exactly vote winners.

The government's aim is for the bill to be published in draft around the end of February. There will then be 12 weeks for consultation. There are likely to be bids for pre-legislative scrutiny from at least one of three select committees: the Justice Committee, the Public Administration Committee (PASC), whose interest will be statutory regulation of the civil service, and the Lords Constitution Committee. To allow time for all this, it is unlikely that the bill itself will be introduced until November.

IN THIS ISSUE

BRITISH BILL OF RIGHTS	2
.....	
PARTY FUNDING REFORM	2
.....	
EU REFORM TREATY	3
.....	
PARLIAMENT	3
.....	
DEVOLUTION	5
.....	
FREEDOM OF INFORMATION	6
.....	
DATA PROTECTION	6
.....	
PEOPLE ON THE MOVE	6
.....	
CONSTITUTION UNIT NEWS	7
.....	
BULLETIN BOARD	8
.....	

38

The Constitution Unit
 UCL Department of Political Science
Director: Professor Robert Hazell CBE
www.ucl.ac.uk/constitution-unit
 Email: constitution@ucl.ac.uk
 Phone: +44 (0) 20 7679 4977
 Fax: +44 (0) 20 7679 4978

CONSTITUTIONAL RENEWAL (CONT'D)

The main theme of the bill will be strengthening parliament and curbing the prerogative powers. To that end the government issued a consultation paper in October on *War Powers and Treaties: Limiting Executive Powers* (Cm 7239). The paper outlines the options for giving parliament a formal role in the deployment of armed forces into conflict abroad. The main question is whether to codify parliament's future role in statute, or in a resolution of the house. Subsidiary questions are how to define which armed conflicts are to be covered by the new approval procedure; and what information should be provided to parliament before it votes on the issue. The government favours limiting this to the objectives and location of the deployment, and legal basis for the operation. The Lords could express their views on these matters, but only the Commons would decide.

On the ratification of treaties, the consultation paper proposes codifying in statute the Ponsonby Rule whereby the government does not ratify any treaty until it has been published and laid before parliament for 21 sitting days, so that parliament has the opportunity for debate if it chooses. Since 2000 copies of every proposed treaty have been sent to the Foreign Affairs Committee and the relevant departmental select committee.

A second consultation paper was issued in October on Judicial Appointments (Cm 7210). These are now effectively made by the Judicial Appointments Commission, with the Lord Chancellor having a very limited role. The consultation asks whether his role should be reduced still further, and whether there should be a role for parliament in scrutinising senior appointments.

The draft bill must be seen as only the start of Gordon Brown's constitutional reform agenda. In the summer Jack Straw will launch a much bigger consultation on a British bill of rights and duties. His Minister of State Michael Wills MP has indicated this will involve a wide ranging consultation and deliberative exercise with local citizens' juries, on-line consultation etc, and culminating in a Citizens' Summit of 1000 people.

A BRITISH BILL OF RIGHTS?

The UK is exceptional among western democracies in not having a 'home-grown' constitutional bill of rights. The Human Rights Act 1998 (HRA) partially filled this gap, by incorporating the European Convention on Human Rights (ECHR) into British law. However, over the last year, there has been growing political interest in the possibility of drafting a fully-fledged British bill of rights.

The impetus for this has come from a variety of sources. The tabloid campaign against the HRA, as ill-formed and inaccurate as it may be, seems to have generated political interest in drawing up a charter of basic rights that is seen as more genuinely 'British' in origin. The renewed debate on integration and the perceived need to encourage shared and distinct national values has also had an impact, with both Gordon Brown and David Cameron arguing in recent months that a bill of rights could help define such values. The Liberal Democrats for some time have supported including a British bill of rights within a written constitution, on the basis that it would reinforce, entrench and extend rights protection.

However, the difficulties of drafting a bill of rights should not be underestimated. For example, what would such a bill say about equality, diversity and multiculturalism in British society? Would it be confined to listing the classic civil and political rights, such as the right to freedom of expression, or would it also set out basic social entitlements, such as access to free health care and education? What would it say about jury trial, privacy rights, or the rights of non-citizens?

There are also complex issues about the design and content of any such document. A British bill of rights could be similar to that of the US in providing for full judicial override of executive and legislative acts that violate fundamental rights. Alternatively, it could be a purely declaratory document setting out shared values with no legal standing at all. Or it could lie somewhere between these poles. Also, difficult questions exist as to how a British bill of rights would interact with the existing HRA and ECHR. David Cameron has suggested replacing the HRA with a more authentic British set of rights than those in the ECHR. However, the ECHR was largely drafted by British lawyers to reflect the rights enjoyed in the UK legal system, and the UK would in any case continue to be bound by the Convention even if the HRA were repealed.

At present, the political discussion lacks real substance, even if a British bill of rights is now established on the constitutional reform agendas of all the major parties. The influential law reform organisation, Justice, have recently published an excellent discussion paper on this, *A Bill of Rights for Britain? Informing the Debate*. The issues should begin to sharpen when the government publishes its consultation paper on a British bill of rights and duties, and the parliamentary Joint Committee on Human Rights publishes its own report.

Colm O'Cinneide, Senior Lecturer,
Faculty of Laws, UCL

PARTY FUNDING REFORM

On 30 October, Sir Hayden Phillips announced that the inter-party talks on party funding, which had been established following his report in March 2007, had been suspended. At the time, it seemed that the attempt to broker consensus on reform of party funding had failed. However, in late November 2007, it emerged that Labour had been in receipt of over £600,000 in donations via intermediaries, which appeared to represent a breach of the *Political Parties, Elections & Referendums Act 2000*. The initial consequence was the swift resignation of Labour's General Secretary. Within days, the Electoral Commission had passed the matter over to the police (investigations are ongoing). It also prompted the Prime Minister to indicate that further reforms in party funding would take place, and Labour and the Liberal Democrats indicated their willingness to re-enter talks. The Conservatives, however, said they would not cooperate unless Labour made some upfront commitments on union donations.

The Phillips review had managed to achieve political consensus on certain major points such as reducing the sums that could be spent on national campaigns, and extending state provision. However, there was disagreement in two principal areas. First, some in the Labour Party feared that if trade union affiliation payments were capped – as was proposed for corporate and individual donations – this would threaten the constitutional link between affiliated unions and Labour. The review therefore proposed that payments from unions be regarded as individual contributions from union members for the purposes of the donation limit. This would be permissible if these contributions were made transparently and could be traced back to the individuals concerned. This proposal caused difficulties for Labour because it challenged the principle of collective contributions by affiliated organisations, and because the emphasis on transparency and traceability could arguably be conceived as a version of 'contracting in' by union members rather than 'contracting out'. The second area of contention surrounded proposals to further regulate and restrict spending at constituency level. This was opposed by the Conservatives, on the grounds that their party workers were essentially amateurs so it would be unreasonable to impose additional administrative burdens upon them.

The results of the review were published in March 2007 (see *Monitor* 36), with these two sticking points outstanding. In an attempt to reach consensus, talks between the largest three parties began in May 2007, leading to

a draft agreement being put to the parties in August. On trade unions, it was again proposed that affiliation payments be seen as individual rather than collective contributions. Again, there were proposals about greater transparency, but the principal change was the removal of the apparent threat of 'contracting in'. For party expenditure, it was proposed that spending controls would now apply to the whole Westminster electoral cycle and that the differentiation between 'national' and 'local' spending should effectively disappear. Instead, a single overall limit would apply to each party, including all its constituent organisations throughout the electoral cycle.

Neither proposal was accepted. Labour continued to argue that this proposal would threaten their relationship with affiliated unions, whilst the Conservatives claimed the proposals on local expenditure would be needlessly bureaucratic, and would trench the so-called information advantage enjoyed by incumbents (despite the fact that the use of MPs' allowances for electioneering is prohibited). However, the revelations of November 2007 have put party funding reform back on the agenda, and the indications are that Labour's stance on union contributions may be relaxed. The key will be how far the government is prepared to press for reform legislation during the remainder of its current term of office.

Justin Fisher, Professor of Political Science, Brunel University

A longer version of this article appears in Political Quarterly

BEYOND THE EU REFORM TREATY

Exhaustion with institutional change appears to have set in throughout the continent since the signing of the EU Reform Treaty in mid-December. Most of the 27 member states, the UK included, are likely to steer clear of involving the public directly in the ratification process and will rely instead on parliamentary approval only. Ireland, which is constitutionally bound to hold a referendum, will probably be the sole exception. In the UK the Conservatives may continue to attack Gordon Brown for ruling out a referendum, but mainly just as yet another stick with which to beat the government. Some of the passion has gone out of Conservative Euro-scepticism, partly because the party has found more effective weapons, but also because of Tory quandaries over how – or even whether – to oppose the treaty once it has been passed by parliament.

Nonetheless, British debates on EU matters are still likely to be marked by a distinct lack of enthusiasm. The Lisbon and Brussels summits last month did little to activate Gordon Brown's ambition for EU economic, as distinct from institutional, reform. And apart from contributions from the Lib Dems, the forthcoming Westminster debate on ratification will almost certainly continue to dwell on how European encroachments have been resisted – (the 'red lines') – rather than a more positive approach, such as what a reforming Europe can do for its members.

For the EU as a whole, after all the theological disputes about scaling down the planned EU constitution to a mere treaty, what difference will it actually make? In fact, despite the integrative character of many of the changes wrought by the treaty – such as the new post of President of the European Council (on a once-renewable 2 ½ year term), the single foreign affairs chief, the smaller commission, and the scrapping of veto powers on over 50 topics – the power politics of the European Union look like remaining firmly intergovernmental for as far as the eye can see.

PARLIAMENT

Scrutiny of the Executive

How best to provide for scrutiny of the executive? Recent government responses to reports of the Commons Public Administration Committee (PASC) reveal an ongoing dialogue between the executive and the committee in three related areas (the reports themselves were covered in *Monitor* 37).

Measuring Government Performance

The government rejected PASC's suggestion for a new independent National Performance Office, which would aim to do for performance what the National Audit Office (NAO) does for accounts, and take over the Capability Reviews. It argued that external members of Capability Review teams ensure independence, while the NAO's work already extends beyond financial audit. On cue, the NAO recently published an evaluation of the information used to measure achievement of Public Service Agreements (PSAs) and advocated that measurement issues be considered when agreeing PSAs (*Fourth Validation Compendium Report*, HC 22-II).

This chimes with other recent recommendations. In his recent book, *Public Sector Auditing*, Comptroller and Auditor General Sir John Bourne notes the difficulty of auditing 'aspirational' policy objectives, while the Better Government Initiative calls

for more rigorous policy proposals prior to legislation, leading to criteria for post-implementation review (*Governing Well*, at www.bettergovernmentinitiative.co.uk). Meanwhile, former Lords Constitution Committee chair Professor Lord Norton continued his crusade for more rigorous pre- and post-legislative scrutiny at a Constitution Unit seminar in November (details on p. 7 and at www.ucl.ac.uk/constitution-unit/events/reformingthelegislativeprocess.htm).

Machinery of Government Changes

Do Transfer of Functions Orders, which provide the authority for changes in departmental structure, allow for sufficient parliamentary scrutiny? PASC thinks not, as stated in their *Machinery of Government Report* (HC 672), and wants significant restructuring to require the assent of both Houses of Parliament. The government, in its response (HC 90), maintained that parliament does have enough opportunity to scrutinise, and emphasised the need for the Prime Minister to have discretion over the organisation of departments. Unsatisfied, PASC wrote a follow up report in December (HC 160), highlighting a perceived contradiction between the government's commitment to increasing parliament's role in, for example, the deployment of armed forces, and the reluctance to increase parliamentary oversight of the machinery of government. The committee called for such provision to be incorporated in the forthcoming constitutional renewal bill.

Government Propriety

PASC also recently called on government to rearrange the system of 'ethical oversight' provided by constitutional watchdogs (*Ethics and Standards*, HC 121-I). The government accepted some of PASC's specific proposals, such as non-renewable terms for watchdogs. It also drew attention to the new post of Independent Adviser on Ministers' Interests, to whom the Prime Minister can refer breaches of the Ministerial Code for independent investigation. On many other issues raised by PASC, the government made sympathetic noises, but is waiting for more specific proposals before committing further.

Modernisation of the House of Commons

Given the government's commitment to 'revitalising parliament', the latest set of procedural reforms approved by the Commons was notable for its timidity. These changes followed the June 2007 publication of the Modernisation Committee's report *Revitalising the Chamber: the role of the back bench Member* (HC 337). Despite being chaired

PARLIAMENT

by a Cabinet minister, some of the committee's bolder suggestions were rejected by the government in its October response. Thus proposals for the reinstatement of providing time for debate on private members' motions and for a 30-minute weekly debate on a recent committee report fell by the wayside. Changes that were approved included a new facility for weekly 90-minute 'topical debates', and the division of departmental question times into 'closed' and 'open' periods. In the latter, members will be able to ask questions on any subject relating to the work of the department in question.

October also saw the launch of a Constitution Unit report, *The House Rules?* (further details on pp. 7-8), which advocated a more extensive range of reforms to give backbench members and committees greater influence over parliamentary business. The major recommendation was for the creation of a 'Backbench Business Committee' to schedule a weekly 'House Business' slot. Items of business to be taken in this period would include debates on committee reports and procedural reform, time for members' bills and motions, and general debates that are currently scheduled at government discretion. Crucially, the proposed new body would have the power to determine whether debates take place on substantive motions which, among other things, would have enabled backbenchers to force a vote on those Modernisation Committee proposals not favoured by government.

Parliamentary Petitions

The right of citizens to petition parliament is an ancient liberty exercised in England for at least 700 years. Prior to timetable reforms in 1842 thousands of petitions were lodged each year and several hours per day were devoted to their consideration. Since then the public petition has all but disappeared as a meaningful part of Westminster life, despite occasional calls for its revival.

In July 2007, the latest such appeal was made in Gordon Brown's *Governance of Britain* green paper, which called upon parliament to review its petitioning process, and create an 'e-petitions' facility similar to that on the Number 10 website. This, the government claimed, 'would provide a modern mechanism for the public to engage with Parliament and would allow Parliament to demonstrate that it actively listens to the views of those it serves' (*Governance of Britain*, Cm 7170, p. 47). Subsequently, the Commons Procedure

Committee launched an inquiry into e-petitions. Part of this is an 'e-consultation' inviting public responses to three questions: whether respondents would consider signing an e-petition, what role MPs should play in the petitioning system, and what result respondents would expect a petition to have (at: <http://forums.parliament.uk/e-petitions>).

Although the method of consultation adopted is innovative, the committee is an unlikely champion of direct democracy. In an earlier inquiry it rejected ideas such as a dedicated petitions committee, direct petitioning of parliament by the public (bypassing MPs), and a requirement that select committees respond to petitions falling within their remit (*Public Petitions and Early Day Motions*, HC 513, May 2007). On the other hand, the committee did propose that 'there should be a regular opportunity for Members to initiate a debate on a specific Petition' (ibid, p. 33), which would be a sensible first step toward raising the profile of the petitions process. If the government is serious about tackling public disengagement from parliamentary democracy, it should throw its support behind such ideas. Simply creating a website where petitions are lodged, and then ignored, will do little to inspire participation.

Lords Reform

Progress is still awaited on the government's wholesale plans for Lords reform, but external pressure is mounting for more limited change. Cross-party talks are continuing, and a new White Paper is expected, probably in the spring. This will seek to take matters forward following the Commons vote in March for a wholly-elected chamber, but implementation is not promised until after the general election in 2009/10.

Pressure for change in the meantime comes from two sources. The first is Lord Steel, whose private member's bill fell at the end of the 2006-07 session, but was reintroduced immediately in the new session. The bill seeks to make the appointments commission statutory, phase out the hereditary peers by ending the system of by-elections, allow members to leave the House, and bar serious criminals from membership. These proposals appear uncontroversial enough, and in the previous session received strong support in the Lords itself. However at the repeated second reading on 30 November the bill's opponents were more organised, and many dissenting voices were heard. The primary concern is that approving such measures

would take the pressure off for more major reform, and cement a wholly-appointed House. At present ministers are disinclined to support it.

The second source of pressure is PASC, which published a report on 18 December following its short inquiry on propriety and honours sparked by the 'cash for peerages' affair. The committee has also concluded that there is no excuse for leaving the appointments process unreformed, and calls for a bill to create a statutory appointments commission and allow members to retire (and be expelled) from the chamber. It goes further than Steel by proposing the Prime Minister should lose his control over the size of the House, the party balance amongst appointees, and the names of party nominees. Instead the appointments commission would have some discretion to choose names from longlists put forward by the parties. In two respects the committee's report was refreshingly counter-cultural. First, it recognised that the Lords is always likely to contain some party donors and that this in itself does not imply corruption. But donation must not be a factor in determining an individual's suitability for appointment, so the process must be more robust. Second, while wanting a bill, the committee recognised the political obstacles to this in the current climate. It therefore urged that its key recommendations on appointments should be implemented by the Prime Minister immediately without legislation. Gordon Brown's initial response was to indicate general support for reducing prime ministerial patronage, without making any immediate commitment. But pressure on him is likely to grow. Unlike a bill it is hard to argue that surrendering prerogative patronage power voluntarily would do anything to scupper reform. It would simply ensure greater propriety in appointments until such time as more significant reform can proceed.

New poll on Lords

In December the Constitution Unit published results of a new poll (carried out by Ipsos Mori) on attitudes to the Lords and its reform. This found that slightly more people (57%) think that the House of Lords is carrying out its policy role well than think the same about the House of Commons (53%). Amongst those claiming to be knowledgeable about the Westminster parliament the gap is wider (66% to 57%). Unsurprisingly, by contrast, far fewer people believe the process for choosing members of the Lords is a good one than say the same about the Commons (36% to 62%).

DEVOLUTION

Yet asked which factors are most important to determining the legitimacy of the House of Lords more people prioritise careful legislative scrutiny, trust in the appointments process, and acting in accordance with public opinion than prioritise inclusion of elected members. Full details can be found in a briefing on the Unit's Lords project website.

Lords personnel

The membership of the House continues to develop incrementally. Since September two new Crossbench members have been added by the Appointments Commission: Professor Nicholas Stern and Professor Hali Afshar. The latter is the second Muslim woman appointed to the chamber this year. Other new members include former Scottish Deputy First Minister Jim Wallace and Sue Garden (both Liberal Democrat). Meanwhile Plaid Cymru have decided to drop their opposition to membership of the Lords and conduct an internal election to choose a candidate to put forward for appointment.

DEVOLUTION

Northern Ireland

The political 'honeymoon period' following the re-establishment of devolution in May 2007 came to an end in the autumn, with the relationship between the two principal partners in the new power-sharing executive, the Democratic Unionist Party and Sinn Féin, looking more like a shotgun marriage.

The first and deputy first ministers, respectively Rev Ian Paisley (DUP) and Martin McGuinness (SF), continued to smile before the cameras and ended the year on a joint trip to the United States, taking in a meeting with the president, George W. Bush, to promote inward investment. Symptomatically, however, they missed two deadlines they had set themselves on the appointment of a champion of the victims of Northern Ireland's 'troubles'. And their parties locked horns on a widening raft of neuralgic issues: Irish-language legislation, the devolution of policing and justice and the future of school selection at age 11.

With the parties tending to cancel each other out, the draft Programme for Government they published in October was flimsy, with no reference to key direct-rule strategies – particularly those designed to tackle the sectarianism (*A Shared Future*) and social exclusion (*Lifetime Opportunities*) which, in tandem, have scarred Northern Ireland – and no innovative alternatives. Taken with the draft budget, whose centrepiece was a three-

year rates freeze rather than expenditure on public programmes, the private-sector-oriented, economic focus of the PfG gave the administration a distinctly neo-liberal tenor.

This pleased the business community and reflected the dominance in general of the DUP, and in particular of the finance minister, Peter Robinson, in the four-party executive. But voluntary organisations were unhappy and the Ulster Unionist Party and the SDLP were nonplussed – to the extent, indeed, that the two parties supported a critical assembly motion on the PfG from the opposition Alliance Party. Indeed, there were signs of a realignment of the centre ground, with the SDLP social-development minister, Margaret Ritchie, securing a standing ovation at the UUP conference.

The sectarian implications of the DUP's pursuit of political primacy, which hardly chimed with the ethos of power-sharing, became clear when Ms Ritchie stuck to her political guns in insisting she would not fund a 'conflict transformation' project linked to the Ulster Defence Association when the paramilitary organisation refused to decommission its weapons. Mr Robinson contradicted her announcement in the assembly, and the executive split on the issue, but the minister insisted she would not be 'bullied' by him.

This and other developments left SF politically exposed, with the ideology of its newfound partner so inimical to its core constituency. The DUP was, however, unrepentant in the face of charges of political clientelism, when it emerged that the developer to whom its environment minister, Arlene Foster, was 'minded' to hand a contract for a visitors' centre at the Giant's Causeway – in preference to a public alternative – was a party member.

*Professor Rick Wilford & Robin Wilson,
Queen's University, Belfast*

English Regions

The autumn saw the publication of the Comprehensive Spending Review (CSR) covering the period 2008-11. Following the summer's Sub National Review of Economic Development and Regeneration (SNR), and a number of related policy developments, the CSR was expected to be the final piece in the jigsaw of a more coherent regional settlement for the Brown era.

After the emphasis on strengthening and refining the role of Regional Development Agencies (RDAs) in previous periods, it

therefore came as something of a surprise that the CSR contained the announcement that RDAs would see their budget shaved by 5% in real terms over the next three years. The 'Single Pot' RDA budget will be £2.14 bn in 2010-11, compared to £2.274 bn this financial year. The issue of exactly how RDAs will be made more 'accountable' to their constituent stakeholders remained to be tidied up at the end of the period.

The CSR also saw progress on some very important issues of finance. It confirmed the end of the line for proposals for a planning gain supplement, which arose from the Barker Review in 2004, but were considered by many to be unworkable. Instead, a statutory planning charge will be introduced to fund infrastructure associated with new developments. This has gone into the Planning Bill published in November, which also makes provision for the Independent Planning Commission, another Barker (and Eddington) recommendation.

The Local Authority Business Growth Incentive Scheme will not be funded in 2008-09, but will be re-shaped and re-introduced for the following financial years. Finally, Supplementary Business Rates (SBR), first proposed by Sir Michael Lyons in order to fund projects to promote economic development, were endorsed by the CSR. They are likely to be limited to 2p in the pound, and restricted to top tier local authorities.

Income from supplementary business rates applied in London will contribute a third of the £16bn budget for Crossrail which got the go-ahead in early October after crucial talks to agree the tripartite funding package. Central government will contribute £5.2bn to the scheme, while the rest will come from future ticket revenue.

The period also saw the announcement by DCLG of the final list of areas that will go ahead with developing Multi-Area Agreements (MAAs). Thirteen city-regions, ranging from Urban South Hampshire (Southampton and Portsmouth city-region) to Tyne and Wear, will now aim to finalise arrangements for their MAAs by June 2008, in the meantime producing plans for their areas in the light of the promised financial freedoms heralded by SBRs and the planning charge.

James Rees, Institute of Political and Economic Governance, University of Manchester

INFORMATION POLICY

Freedom of Information

In October 2007, the Prime Minister announced a 'package' of measures to reform FOI. The reforms consist of a review, a consultation and an announcement.

The review examines whether the thirty-year rule on the disclosure of historical documents should be reformed. Currently, documents subject to the rule must be kept secret for thirty years unless overridden by a specific FOI request. The review is to be carried out by Paul Dacre, Editor-in-Chief of Associated Newspapers, Sir Joe Pilling, former Permanent Secretary at the Northern Ireland Office, and historian Professor David Cannadine. The results will be known by next spring.

The consultation asks whether the scope of the Freedom of Information Act 2000 (FOIA) should be extended to bring 'organisations that carry out functions of a public nature' and 'contractors who provide services that are a function of that public authority' within the reach of the FOIA. The paper suggests five options, from 'no change to the current arrangements', to using section 5 of the act to 'progressively widen' the legislation by bringing in 'waves' of different bodies over a period of time. However, 'further consultation' with the bodies concerned and a full impact assessment will be necessary before any organisation would be made subject to the Act. The consultation will end in January 2008 (*Freedom of Information Act 2000: Designation of additional public authorities*, CP 27/07).

The announcement officially puts an end to the lengthy process of consultation on ways of reducing the costs of FOI (reported in past issues). Proposals had been made to limit 'vexatious' requests, but in practice these may have limited FOI requests more generally. On 25 October the government concluded that no changes would be made. However, the problem of vexatious requests remains an issue and the government pledged to promote a more 'robust' use of section 14 of the act to deter them, make clearer the guidelines on fees and support the Information Commissioner's new charter for responsible FOI use.

Data Protection

In recent months, the issue of data protection has risen to prominence in the wake of the loss of benefit claimant details at HMRC and separate data loss incidents at the Department of Transport and a number of NHS trusts. The Justice Select Committee and an interim report from the Cabinet Office gave similar recommendations regarding changes to the Data Protection Act and data handling. The Cabinet Office report recommended increasing information co-operation between government departments and the creation of a legal obligation to notify the Information Commissioner's Office of any data loss (*Data Handling Procedures in Government: Interim Progress Report*, at: www.cabinetoffice.gov.uk/reports/data_handling.aspx). It further suggested that the ICO's new power to spot check central government departments should be extended across the public sector.

The Justice Select Committee took the view that the ICO needed more resources and agreed that companies should be obligated to report any data loss (*Protection of Private Data*, HC 154). Both reports recommended that the Data Protection Act be amended to give new, possibly criminal, sanctions to section 60 of the act, which deals with those who unlawfully obtain or disclose information and currently makes such action punishable by a fine. The Ministry of Justice is now considering amending this part of the Act. The issue of data sharing and protection is also the subject of a review by the Information Commissioner and Dr Mark Walport. The review seeks to examine how to best share information while ensuring the safety of personal data. It is due to report in the first half of 2008.

PEOPLE ON THE MOVE

Stephen Carter has been appointed to a new post as political Chief of Staff to the Prime Minister. **Alex Allan** is the new Chairman of the Joint Intelligence Committee. He is replaced as Permanent Secretary of the Ministry of Justice by **Sir Suma Chakrabarti**.

Sir Christopher Kelly is the new chair of the Committee on Standards in Public Life, and **Charles Ramsden** the committee's new secretary.

John Lyon has become the new Parliamentary Commissioner for Standards, in succession to **Sir Philip Mawer**, who has been appointed as the Prime Minister's independent adviser on ministerial interests. **Stephen Mark** is the new clerk to the Public Administration Committee in the Commons. **Lucinda Maer** has moved from PASC to join the Parliament and Constitution Centre in the Commons Library.

In the House of Lords, **Lord Norton of Louth** is back on the Constitution Committee. The committee now has a strong legal membership: other members include the former **Lord Chief Justice Lord Woolf**, and two former Attorneys General, **Lord Lyell** and **Lord Morris**. Following the appointment of **Michael Pownall** as Clerk to the Parliaments, his post of Clerk Assistant has been filled by **David Beamish**. Mr Beamish in turn has been succeeded as Reading Clerk by **Rhodri Walters**, with **Edward Ollard** appointed the new Clerk of Committees.

In Cardiff, **Sir Jon Shortridge**, who had been Permanent Secretary of the Welsh Assembly Government since the start of devolution, has retired.

INTERNATIONAL CONSTITUTIONAL FOCUS: AUSTRALIA

The new Australian Labor government's 'National Platform and Constitution' includes plans for a range of constitutional changes. As in the UK, dominant themes include the need to boost accountability of government to parliament and the people, increase transparency and facilitate public participation.

Specific items include a clear statement in support of removing the British monarch as head of state, though lengthy consultations and a referendum would precede any change. The party intends to introduce simultaneous fixed four-year terms for both parliamentary chambers and to remove the power of the Senate to reject, defer or block appropriation bills. There are also plans for 'improved freedom of information legislation', for greater transparency in political donations, and for a review of the distribution of powers and resources between central and state governments.

CONSTITUTION UNIT NEWS

Unit seminar reports

The Unit held three public seminars between September and December of last year.

On 18 October, Lady Justice Heather Hallett and Sara Nathan of the Judicial Appointments Commission spoke on the commission's work since its establishment in January 2006. It is tasked with selecting on merit whilst also encouraging diversity; roles which both speakers stressed were complementary, not contradictory. Of course, the latter role is heavily dependent on diversity within the legal profession from which candidates are drawn, but can be aided by fair and transparent processes, outreach, shadowing and mentoring schemes.

On 30 November, Roger Smith, Director of JUSTICE and Professor Colin Harvey, Queen's University Belfast, reviewed the prospects for a British bill of rights. The overriding tenor was of caution with emphasis on the many pitfalls of the process. Both speakers noted the lack of a clear objective or political imperative for a bill of rights for Britain, adding that this was a key prerequisite for success.

On 5 December, Professor Lord Norton, former chair of the Lords Constitution Committee, and Helen Irwin, Clerk of Committees, House of Commons, discussed reform of the legislative process. Lord Norton judged that reforms to pre-legislative scrutiny have been productive but required extension. Post-legislative scrutiny remained 'the black hole', with a need to move away from the present *ad hoc* approach. Ms Irwin highlighted the importance of the new evidence-taking public bill committees but stressed that it was too early to judge their success.

Governance of Parliament

The Constitution Unit's two-year Governance of Parliament project came to a close in October 2007, with the publication of the project final report, *The House Rules? International lessons for enhancing the autonomy of the House of Commons*. The report, authored by Unit researchers Dr Meg Russell and Akash Paun, sets out a total of 60 proposals for reform of Commons procedure and practice designed to strengthen the

autonomy of parliament vis-à-vis the executive, and to encourage greater cross-party working among backbench MPs. A launch event chaired by Peter Riddell of *The Times* was held on 16 October at the Palace of Westminster, with the authors joined on the panel by Dr Tony Wright MP, Sir George Young MP and Lord Tyler. The findings of the report were subsequently discussed in a session entitled 'Whose parliament is it anyway?' at the Study of Parliament Group conference in Oxford in January 2008, as well as being mentioned in a Commons debate on modernisation shortly after publication.

The Constitution Unit would like to thank the Nuffield Foundation for its generous support of this research project.

A summary of the report's recommendations can be found on our website (at www.ucl.ac.uk/constitution-unit/unit-publications/142.htm), and hard copies of the full report purchased for £20. Ordering details are given overleaf.

Lords Project Report

It has been a busy period for the Lords project, which officially finished at the end of October. Further funding is being sought in order to continue this work. Meg Russell gave a lecture in the Lords on reform, at the invitation of its Leader, Baroness Ashton. She also gave oral evidence to the Public Administration Committee inquiry on propriety and honours, and a paper on the Crossbenchers at a conference at Birmingham University. A paper by Meg Russell and Maria Sciara on defeats in the House of Lords was published in the journal *British Politics* in November, and another has been accepted for publication in the *British Journal of Politics and International Relations*. In December a well-attended seminar was held in the Lords, hosted by the Lord Speaker, to report results of our surveys of peers and of the public. The briefing circulated at this event, as well as the text of the lecture, a link to the committee evidence, and an article for the Guardian on the PASC report can all be found on the project website.

Information Policy Update

The Unit presented an interim report on the Evaluation of FOI at a Government Information Policy Seminar in November,

which doubled as Sarah Holsen's swansong. Robert Hazell gave a similar presentation to the international conference of Information Commissioners in New Zealand in late November. At both events practitioners engaged strongly with the central research question: is FOI achieving its objectives? There was particular interest in the interaction between FOI and the media, and the effect of FOI on public trust.

In the December seminar, Deputy Information Commissioner Graham Smith rounded off the 2007 series in his usual insightful way. Information about all past seminars, along with brief summaries of the event, presentations, and links to further reading are now available online: www.ucl.ac.uk/constitution-unit/foidp/events.

Personnel Changes

The Constitution Unit is delighted to have appointed Dr Ben Worthy to succeed Sarah Holsen as our new Research Associate in Access to Information. Ben joined the Unit in October 2007 after completing a PhD from the University of Manchester on the development of Freedom of Information and open government in Britain. He has written articles on different aspects of FOI and open government for a variety of publications.

A total of five interns were also recruited for the autumn term. Thanks are due to Catriona Cairns, Gloria Dawson, Laura Frasca, Gabriel Pereira and Ed Turner.

Constitution Unit Website Update
New online resources

The Constitution Unit website has been updated to include more details on our activities. There is a new online publications resource where our back catalogue is available to download for free in PDF format. Please also see the revamped What's New? and Media sections showing the impact of our research on public debate.

For further details, see: www.ucl.ac.uk/constitution-unit

BULLETIN BOARD

CU PUBLICATIONS

- Glover, Mark, and Sarah Holsen, *Evaluating the Freedom of Information Act 2000: Issues and Questions paper* (31 October 2007). Published at: www.ucl.ac.uk/constitution-unit/foidp/events/evaluatingfoia2000.htm.
- Russell, Meg, *Lords Reform: Principles and Prospects*, lecture at the invitation of the Leader of the House of Lords (13 November 2007). Published at: www.ucl.ac.uk/constitution-unit/research/parliament/house-of-lords.html.
- Russell, Meg, *Peers' and Public Attitudes to the Contemporary House of Lords*, briefing for a seminar in the House of Lords (12 December 2007). Published at: www.ucl.ac.uk/constitution-unit/research/parliament/house-of-lords.html.
- Russell, Meg and Maria Sciara, 'Why does the Government get defeated in the House of Lords?: The Lords, the Party System and British Politics', in *British Politics* 2(3) (2007), 299-322.
- Russell, Meg and Maria Sciara, 'Independents Holding the Parliamentary Balance: The 'Crossbenchers' in the House of Lords'. Paper deliver to International Conference on Minor Parties, Independent Politicians, Voter Associations and Political Associations in Politics, University of Birmingham (November 2007).
- Russell, Meg and Akash Paun, *The House Rules? International lessons for enhancing the autonomy of the House of Commons*, (October 2007). 93-page report available to purchase from the Unit for £20. Summary of recommendations available at: www.ucl.ac.uk/constitution-unit/files/publications/HouseRulesRecommendations.pdf.
- Trench, Alan (ed.), *Devolution and power in the United Kingdom* (Manchester: Manchester University Press, 2007). Available as e-book at: www.manchesteruniversitypress.co.uk/catalogue/book.asp?id=1070.
- Various authors, *Devolution Monitoring Reports* on Scotland, Wales, Northern Ireland, English Regions and the Centre (January 2008). Published at: www.ucl.ac.uk/constitution-unit/research/devolution/devo-monitoring-programme.html

Further details on Constitution Unit publications can be found at www.ucl.ac.uk/constitution-unit/publications.

FORTHCOMING EVENTS

Constitution Unit Events

Info at: www.ucl.ac.uk/constitution-unit/events

- Richard Wilson (Director, Involve) Wednesday 23 January, 1pm (with sandwiches from 12.30.) **The Challenge of Increasing Participation**. At the Constitution Unit, 29/30 Tavistock Square. Reserve a place at: www.ucl.ac.uk/constitution-unit/events.
- **Inside Devolution 2008: The Constitution Unit's second annual devolution conference**, Thursday 22 May 2008, British Academy. Speakers from government, academia and the media will discuss developments in devolution since the elections and changes in government of 2007. Contact Vicki Spence on v.spence@ucl.ac.uk for further details.
- **The Fifth Annual Information Rights Conference for the Public Sector: FOI Live 2008**, Thursday 5 June, at Victoria Park Plaza, 239 Vauxhall Bridge Road, London SW1V 1EQ. Michael Wills MP, Minister for Constitutional Renewal, is a confirmed speaker. Info at: www.ucl.ac.uk/constitution-unit/foidp/events/foilive2008.html.
- **Information Policy Seminar series** (subscription only). The 2008 series includes a programme of eight seminars beginning with Maurice Frankel of the Campaign for Freedom of Information, speaking on 'FOI: settling down or all shook up?', on Wednesday 27 February 2008, 6.15pm. Info at: www.ucl.ac.uk/constitution-unit/foidp/events.

Selected External Events

- Constitution Unit Director Professor Robert Hazell will be giving the UK Public Administration Consortium's biennial **Sunningdale Accountability Lecture** on 29 January 2008 at 7.15 pm at the Royal Society of Arts, London. Further details at: www.ukpac.org or contact Terry.Caulfield@nao.gsi.gov.uk.
- The Institute of Advanced Legal Studies' **Constitutional Law Lecture Series** continues in 2008 with talks by Professor Dawn Oliver on 30 January 2008, Professor Anthony Bradley on 20 February 2008, and Professor Keith Ewing on 10 March 2008. Details at: <http://ials.sas.ac.uk>.
- Sir Malcolm Rifkind MP and Lord Falconer of Thoroton speak at the Hansard Society's public meeting entitled '**Is the West Lothian Question unanswerable?**', at 6.30 pm on 6 February 2008.

PUBLICATIONS RECEIVED

- Better Government Initiative, *Governing Well* (October 2007). Available at: www.bettergovernmentinitiative.co.uk.
- Bourn, John, *Public Sector Auditing: Is it value for money?* (Chichester: John Wiley and Sons Ltd, 2007)
- House of Commons Modernisation Committee, *Revitalising the Chamber: The role of the back bench Member*, Session 2006-07, HC 337 (London: House of Commons, 2007)
- Jowell, Jeffrey and Dawn Oliver (eds.), *The Changing Constitution*, Sixth edition, (Oxford: Oxford University Press, 2007)
- Justice, *A British Bill of Rights: Informing the debate* (London: November 2007).
- King, Anthony, *The British Constitution*, (Oxford University Press, 2007)
- Ministry of Justice, *Freedom of Information Act 2000: Designation of additional public authorities*, Consultation Paper CP 27/07, (London: Ministry of Justice, 2007).
- Ministry of Justice, *The Governance of Britain: Judicial Appointments*, Cm 7210 (London: The Stationery Office, 2007).
- Ministry of Justice, *War powers and treaties: Limiting Executive powers*, Consultation Paper CP 26/07, Cm 7239 (London: The Stationery Office, 2007)
- Office of the Leader of the House, *Revitalising the Chamber: The role of the back bench Member* (government response to Modernisation Committee report), Cm 7231 (London: The Stationery Office, 2007).
- Thomas, Richard, and Mark Walport, *Data Sharing Review: A consultation paper on the use and sharing of personal information in the public and private sectors* (London: Data Sharing Review). At: www.justice.gov.uk/docs/data-sharing-review-consultation-paper.pdf.



The Constitution Unit