

MONITOR

LABOUR'S LAST FLING ON CONSTITUTIONAL REFORM

Gordon Brown's bold plans for constitutional reform continue to be dogged by bad luck and bad judgement. The bad luck came in May, when the MPs' expenses scandal engulfed Parliament and government and dominated the headlines for a month. The bad judgement came in over-reacting to the scandal, promising wide ranging reforms which have nothing to do with the original mischief, and which have limited hope of being delivered in the remainder of this Parliament.

The MPs' expenses scandal broke on 8 May. As the *Daily Telegraph* published fresh disclosures day after day for the next 25 days public anger mounted. It was not enough that the whole issue of MPs' allowances was already being investigated by the Committee on Standards in Public Life, due to report in the autumn (*Monitor* 42, page 1). The government felt obliged to rush through emergency legislation for an independent Parliamentary Standards Authority (see page 2). And as critics denounced the whole Westminster system as rotten to the core, an extraordinary period ensued in which every conceivable remedy was put forward, from a right of recall to referendums to electoral reform.

The Guardian led a campaign for a referendum on electoral reform. Alan Johnson called for the referendum to be held at the same time as the next election (*Times*, 25 May). Peter Hain called for a switch to the Alternative Vote before the election, without a referendum. These calls defied political reality. Referendums require legislation, as does electoral reform. Neither would be likely to pass the House of Commons, let alone the Lords. Labour remains deeply divided over electoral reform, which is why the topic has made so little progress under both Blair and Brown.

On 10 June the Prime Minister made a statement to the Commons on the control of MPs' expenses, and set out proposals for reform on five further issues. First, the government would publish proposals for the final stages of Lords reform before the summer break. Second, it would initiate the widest possible debate about a bill of rights and a written constitution. Third, devolving power and engaging people in their local communities. Fourth, taking a debate forward on electoral reform. Fifth, increasing public engagement in politics.

These proposals had been approved by the Democratic Renewal Council, a new Cabinet Committee chaired by the Prime Minister. In *Building Britain's Future*, the draft legislative programme published on 29 June, the government announced "the DRC will agree a series of proposals for the fundamental reshaping of our

constitutional settlement ... We will work with the British people to deliver a radical programme of democratic and constitutional reform".

Such rhetoric also defies political reality. There is a strict limit on what the government can deliver before the next election. The 2009-10 legislative session will be at most six months long. There is a risk that even the modest proposals in the Constitutional Reform and Governance Bill will not pass. It was not introduced until 20 July, the day before the House rose for the summer recess. After a year's delay, the only significant additions are Part 3 of the bill, with the next small steps on Lords reform (see page 2); and Part 7, to strengthen the governance of the National Audit Office.

The rest of the bill is a cut down version of the draft published in March 2008 (*Monitor* 39). The government has abandoned proposals to restrict the powers of the Attorney General, to control the war making power by statute, and to remove the Prime Minister's involvement in the appointment of bishops. Still left are provisions to put the civil service and parliamentary scrutiny of Treaties on a statutory footing; and to relax the restrictions on demonstrations around Parliament. These issues will be of greater interest to the Lords than the Commons, and the Lords will determine whether the bill passes. The government will have to be prepared to abandon further parts of the bill to ensure the passage of the rest.

NEW SUPREME COURT STARTS IN OCTOBER: END OF THE LAW LORDS

On 1 October, the newly created Supreme Court will replace the Appellate Committee of the House of Lords as the final court of appeal in the United Kingdom. The Supreme Court assumes the existing jurisdiction of the House of Lords as well as the devolution jurisdiction of the Judicial Committee of the Privy Council. It was established by the Constitutional Reform Act 2005, with the aim of formally separating the legislative and judicial functions of the House of Lords. The Supreme Court is located in Middlesex Guildhall on Parliament Square, next to Westminster Abbey and the Queen Elizabeth conference centre.

The first justices of the 12 member Supreme Court will be the current Law Lords, with Lord Phillips of Worth Matravers serving as President of the Court and Lord Hope of Craighead as the Deputy President. Future appointments to the Court will be made by the new procedure used for the first time this year to appoint Lawrence Collins LJ, Sir Brian Kerr (LCJ, NI) and Sir Anthony Clarke MR.

IN THIS ISSUE

PARLIAMENT	2 - 3
EXECUTIVE	3
PARTIES AND ELECTIONS	3-4
DEVOLUTION	4-5
HUMAN RIGHTS	5
INFORMATION POLICY	5-6
INTERNATIONAL FOCUS	6
PEOPLE ON THE MOVE	6
UNIT NEWS	7
BULLETIN BOARD	8

43

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

NEW SUPREME COURT (CONT'D)

The selection commission is composed of the President and Deputy President of the Court along with members of the judicial appointment bodies from England and Wales, Scotland and Northern Ireland. All newly appointed judges will formally be Justices of the Supreme Court and not members of the House of Lords. Earlier this summer, it was announced that the Court will allow its proceedings to be televised when requested by the media.

PARLIAMENT

House of Commons Reform Committee

Alongside the new Parliamentary Standards Bill (see below), one of Gordon Brown's announcements in June following the MPs' expenses row was the establishment of a new committee on reform of the House of Commons chaired by Tony Wright MP. This initially sounded like a commission or taskforce, but went on to be established formally as a select committee. Its creation was delayed by disagreements over the committee's terms of reference, but was agreed on the day before the Commons rose for summer recess (20 July). The committee is charged with looking at scheduling of business in the House, the appointment of members and chairs of select committees, the appointment of deputy speakers, public initiation of parliamentary proceedings and other related matters. It has a limited life, being required to report by 13 November, before which agreement must be reached by its 18 members. One central issue for the committee is whether it should recommend creation of some kind of "Business Committee" to schedule House of Commons business. The 2007 Constitution Unit report *The House Rules?*, which has been mentioned by Justice Secretary Jack Straw in connection with the committee's work (see Liaison Committee evidence, 14 July), recommended establishment of a Business Committee specifically for timetabling non-government business. The report's co-author, Unit Deputy Director Meg Russell, has been appointed as a specialist adviser to the committee.

Lords reform: stages 2 and 3?

It seems you wait years for a package of Lords reform to come along, and then two arrive at once. In part spurred by the general furore around MPs' expenses, and in part due to the impending general election, the government has proposed further interim changes to the House of Lords, and set out a wholesale reform package to create a largely or wholly elected second chamber.

PARLIAMENT (CONT'D)

The first set of proposals are included within the Constitutional Reform and Governance Bill (see Page 1), and show distinct similarities to Lord Steel's private member's bill (see *Monitor* 42). One change would end the by-elections that replace hereditary peers as they die, meaning that these members would gradually disappear over time. Another would specify that members convicted of serious criminal offences, or made bankrupt, would be automatically expelled, and would allow the House to expel or suspend members who bring it into disrepute. A third would allow members to resign/permanently retire from the chamber. There are two notable omissions, however. The first, which was included in Lord Steel's bill, is any provision to put the House of Lords Appointments Commission on a statutory basis. The Commons Public Administration Committee has called for this, but ministers probably feared accusations of "cementing" an appointed House if they proposed it. The second omission is any provision to prevent resigning peers from immediately standing for the House of Commons. Such a provision has previously been recommended by the Royal Commission and others, including the government itself in previous white papers. Its non-appearance sparked controversies that Lord Mandelson would use the bill to return to the Commons, and perhaps even stand as Labour leader. Justice Secretary Jack Straw has since indicated that a "quarantine" clause may in fact be added to the bill (FT, 26 August). Nonetheless its passage before the election is not assured.

Jack Straw sought to maintain the momentum by announcements and public consultations in the summer over longer-term Lords reform. As indicated in the July 2008 white paper, and in line with Commons votes in March 2007, the government proposes an 80 or 100% elected chamber, with members serving long non-renewable terms. It promises to publish draft clauses for parliamentary scrutiny to implement such a plan, but formal introduction of a bill before the election is unlikely. The government appears to be moving towards an 80% elected chamber, phased in over three general elections, and elected by proportional representation on a regional basis. This would please the Liberal Democrats, but the Conservatives have declared themselves opposed to proportional elections, and generally see Lords reform as a low priority. The government has moved a long distance on this issue, but the odds are still against wholesale reform.

Parliamentary Standards Authority

In response to the MPs' expenses crisis, the government rushed through a Parliamentary

Standards Bill in the summer to create an Independent Parliamentary Standards Authority (IPSA). The IPSA will consist of four members and chair appointed by the Speaker of the Commons with the agreement of a parliamentary committee.

The authority will be responsible for creating a scheme for members' allowances, rule on members' interests, and for maintaining the register of financial interests. It will also supervise a new Commissioner for Parliamentary Investigations, who would look into allegations of abuse or misuse of allowances or failure to register financial interests. The two bodies will not be covered by parliamentary privilege and will be within the scope of the Freedom of Information Act.

The bill creates a new criminal offence of knowingly providing false or misleading information in a claim for an allowance, for which the maximum sanction is up to 12 months' custodial sentence or an unlimited fine (not exceeding the statutory maximum). A new offence of breaching the rules on paid advocacy is to be considered again in the future.

The bill underwent some revision as it went through parliament. The power of the Commissioner for Parliamentary Investigations to order MPs to repay misused allowances was dropped due to its potential impact upon parliamentary privilege. Instead, the Commissioner will report his or her findings to the House of Commons Committee for Standards and Privileges. A clause that allowed the courts to consider comments made by MPs during parliamentary proceedings was dropped for the same reason. The Joint Committee on Human Rights expressed concern that the disciplinary aspects of the bill contravened section 6(1) of the European Convention on Human Rights and recommended a right of appeal. The Lords Constitution Committee, among others expressed concern that the bill was fast tracked without sufficient time for scrutiny. Though the bill originally intended to cover the conduct of peers in the House of Lords, the Act does not do so. It received Royal Assent on 21 July.

CSPL enquiry into MPs' expenses

Throughout the hue and cry into MPs' expenses the Committee on Standards in Public Life has been quietly continuing with its enquiry, which it had commenced a month before the media storm broke. The Committee published an Issues and Questions paper in April, and in response it has received over 700 submissions, including about 50 from MPs. It has also held 9 days of public hearings.

PARLIAMENT (CONT'D)

The Committee plans to publish its report in late October. It will not be easy to forge a consensus about MPs' pay and allowances, especially six months before an election (see *Monitor* 42, page 1). An additional complication is that any new system will now have to be administered by the new Independent Parliamentary Standards Authority.

See: http://www.public-standards.gov.uk/OurWork/MPs_Allowances_0_1.html

Lords comings and goings

Following the allegations of impropriety over "cash for amendments" (see *Monitor* 42), Lord Truscott and Lord Taylor of Blackburn were suspended from the chamber in May. Their suspension will last at least until the general election. Various other membership changes have taken place, some more unusual than others. The June European elections saw the first automatic temporary "disqualification" of a peer (Baroness Ludford) elected as an MEP. In October when the Supreme Court is established the serving Law Lords will be similarly disqualified, but in June a final Law Lord, Lord Kerr, was appointed. That same month the Cabinet reshuffle saw Lord Mandelson promoted, and Glenys Kinnock appointed a peer in order to become Europe minister. Controversially Alan Sugar was also given a peerage and made "enterprise tsar". There was much comment about the number of peers now attending Cabinet (four, routinely) and the size and influence of Lord Mandelson's department, with limited accountability to the Commons. Concern has also been expressed that several of the "goats" (members of Gordon Brown's "government of all the talents") appointed to the Lords as ministers have very quickly stepped down but remain as peers. These now include Lord Jones, Lord Carter, Lord Darzi and Lord Malloch Brown. The Commons Justice Committee added an official voice to these criticisms in July. Other new arrivals include Crossbenchers Baroness O'Loan and Lord Sacks, Conservative Lord Freud, and Crossbench hereditary Lord Aberdare, who won what could be the final by-election, following the death of Lord Bledisloe. Other notable deaths include Lord Dahrendorf and Lord Kingsland.

Lords expenses

The Commons expenses row has been followed by more limited, but nonetheless potentially damaging, accusations about abuse of Lords expenses in various newspapers. These mostly relate to peers claiming an overnight allowance provided for members who live outside London on an allegedly

spurious basis. Concerns have also been raised about peers claiming daily attendance allowance for extremely brief appearances in the House. The matter of peers' allowances was referred by the House Committee to the Senior Salaries Review Body in June, which has issued a consultation document and is expected to report in October. It faces difficult questions, since many peers legitimately maintain - and indeed are encouraged to maintain - outside employment, the neat solution of paying a full-time salary seems inappropriate. Any new system of allowances will need to be relatively consistent with what the Kelly committee recommends to the House of Commons. By next year the system for both chambers is likely to have been reformed.

New House of Commons Speaker Elected

Tory MP John Bercow became the 157th Speaker of the House of Commons after defeating nine other candidates in the June election. He replaces Michael Martin who resigned after serving for almost a decade as Speaker. Martin has always been a controversial Speaker; however, his mis-handling of the Damien Green affair along with the MPs' expenses scandal caused many to lose confidence in his ability to serve any longer. Bercow is also a controversial figure, known as one of the 'most outspoken social liberals' within the Conservative Party (bbc.co.uk). Due to his lack of popularity within the Conservative Party, Bercow's election as Speaker was made possible largely by gaining the support of Labour MPs.

EXECUTIVE

Youth Citizenship Commission Final Report

In June the Youth Commission published its final report into youth citizenship and participation in the political system, entitled '*Making the connection: Building youth citizenship in the UK*'.

The Commission was created in 2008, in the wake of the *Governance of Britain* Green paper published the previous year. Its task was to define youth citizenship, find ways of increasing youth participation in politics, and consult on the possibility of lowering the voting age.

On citizenship, the commission found a lack of identification with the concept at all ages. To improve this, it said citizenship learning and experience should be embedded at a young age, with a 'greater focus on political literacy'. It therefore recommended: establishing a

EXECUTIVE (CONT'D)

universal system of school and class councils, including student representatives in school governance, youth-based advisory panels for national, regional and local public bodies, government support for volunteering, and exploring a programme of compulsory civic service for young people.

On politics, the commission found that young people are under-represented at all levels, lack crucial information, and do not feel empowered. It recommended: voter registration and polling stations in schools, enhanced use of new media to engage with young people, ongoing assessment of youth participation and legislative impact, annual scrutiny panels composed of young people, and a national award to recognise youths involved in 'citizenship activities'.

On the divisive issue of lowering the voting age (discussed in a separate report) the commission 'did not find significant evidence upon which to base a recommendation'. It also said that such a clear conclusion is unlikely to emerge in the foreseeable future, and that this should therefore be decided by political processes and parties, and that 'the approach of using independent commissions to review this issue ought not be used again.'

The Youth Citizenship Commission Final Report, 'Making the Connection: Building Youth Citizenship in the UK,' is available at: <http://www.ycc.uk.net/publications/>

PARTIES AND ELECTIONS

Political Parties and Elections Act 2009

The Political Parties and Elections Bill received Royal Assent in July. Although it was introduced long before the MPs' expenses scandal came to light, the Act may be seen as part of a larger project of restoring trust in politics. It is designed to improve the regulation of elections in the United Kingdom by strengthening the investigative powers of the Electoral Commission and providing it with additional sanctions. The Commission will be able to impose civil sanctions on those who breach electoral laws, whereas before it could only bring a criminal prosecution (which is viewed as too severe for many offences) or do nothing.

The Act also changes the composition of the Electoral Commission, with up to four people with recent political experience now able to serve as Commissioners at any one time. Despite some controversy, rules relating to the political activities of Commission staff members

PARTIES AND ELECTIONS (CONT'D)

have also been relaxed. The Act introduces a number of measures designed to ensure greater transparency and accountability relating to donations received by political parties and candidates. For example, future donations will have to be accompanied by a declaration as to the source of the money, and donations of more than £7,500 can only come from UK residents. Finally, the Act sets in motion a process to pave the way for individual voter registration.

DEVOLUTION

Scotland

The previous Monitor questioned the Scottish Government's ability to maintain its image as a strong and competent government: when faced with problems passing its budget legislation (highlighting the problems faced by minority governments); when struggling to address the economic crisis (highlighting its limited economic policy levers); and when faced with a limited ability to engage in intergovernmental issues with the Prime Minister rather than the Scottish Secretary (highlighting its status as another UK government department rather than a government in its own right). In this period, the issue of the Lockerbie bomber served further to challenge the SNP Government's image both internationally and with its own electorate.

The issue is multi-faceted and still unfolding. While the decision about whether or not to release Megrahi from Greenock prison was ostensibly one for Scottish Justice Secretary Kenny MacAskill, it was linked to levels of external pressure. This came not only from highly vocal US sources – such as the FBI director Robert Mueller and Secretary of State Hilary Clinton – against his release, but also alleged pressure from UK government sources to allow his release as a way to foster closer economic and political links between the UK and Libya. More could have been made of the Scottish-UK intergovernmental issue had MacAskill agreed to Megrahi's release under the UK-Libya prisoner transfer agreement, particularly since Alex Salmond was highly critical of then Prime Minister Tony Blair's involvement in the agreement and the absence of FCO consultation with the Scottish Government. Instead, MacAskill released Megrahi on compassionate grounds, allowing him and Salmond to present a narrative based Scottish ministerial autonomy (which the UK Government has been happy to reinforce, with Gordon Brown particularly reluctant to comment) and the principles of Scots law, leaving others to explore the degree of external interference.

DEVOLUTION (CONT'D)

So far, although the decision has proved unpopular with Scots and potentially damaged the SNP's electoral chances, it has not undermined the status of the minority Scottish Government. Neither has it produced significantly greater pressure for MacAskill (already under parliamentary pressure over such issues as knife crime and court reforms) to resign as Justice Secretary. Lockerbie has overshadowed the other main issue in this period: the publication of the Calman report. The report was surprisingly ambitious, calling for more fiscal autonomy for the Scottish Parliament (although actually producing a plan that makes it more accountable than autonomous, by increasing the Scottish Parliament's ability to vary income tax but not alter the mix of taxes overall) and the further devolution of certain taxes and issues such as Scottish Parliament elections, airgun regulation and drink-driving limits. It also recommended reforms to make intergovernmental relations more formal and to extend the Scottish Parliament's legislative process.

While it was received well by its main audience (the Labour, Conservative and Liberal Democrat parties), no party has made any firm commitment to implement its recommendations. Indeed, the irony is that the party most critical of the report is also the keenest to see some of it implemented immediately. The SNP is particularly opposed to its fiscal measures, but would like further devolution powers.

Paul Cairney, University of Aberdeen

Wales

In July 2009, the Independent Commission on Funding and Finance for Wales released its first report which recommends significant changes to the way that funding is allocated by Westminster to the Welsh Assembly. The Commission, which is chaired by the economist Gerald Holtham (the Holtham Commission), was established as part of the One Wales coalition agreement between Labour and Plaid Cymru. Its terms of reference are to examine the pros and cons of the present Barnett Formula based approach to the distribution of public funds to the Welsh Assembly Government and to consider whether the Assembly should have the power to vary the rate of taxation and borrow money. The Calman Commission has undertaken a similar review of funding devolution in Scotland.

For nearly thirty years the Barnett Formula has been the primary mechanism through which the Treasury distributes funds to Scotland, Wales and Northern Ireland. Under the Formula, any change in public expenditure in England will be distributed across the three devolved regions

in proportion to their respective populations. Accordingly, it is based on expenditure per person rather than on the needs of the devolved administrations. In the case of Wales, the Formula is controversial because its application will eventually result in a convergence in spending between England and Wales which does not take account of differing needs.

The Commission concluded that Wales currently loses approximately £300 million a year and that without changes that figure could reach £8.5bn within 10 years. As a short-term solution, the Commission recommends maintaining funding at current levels thereby stopping the relative decline in funding to Wales. The Commission's other recommendations include: ensuring that funding is aligned with the relative needs of the Assembly, which it presently is not; enhancing the funding flexibility available to the Welsh Government; reducing the likelihood of future disputes by establishing an independent advisory body to oversee the technical aspects of the operation of the Barnett Formula; and by agreeing to a new Ministerial concordat on the funding arrangements for Wales; and improving the transparency of the process by which the Assembly Government is funded.

The report has been welcomed by the Welsh First Minister, Deputy First Minister, and Finance Minister. But implementing the Commission's recommendations will require considerable negotiation and consultation between the Welsh Assembly, Westminster, the Treasury and the other devolved administrations. The Commission's second report, which is expected in late 2009 or early 2010, will focus on alternative funding arrangements and powers to vary taxation and borrow money.

Northern Ireland

It was another period of drift and inertia in Northern Ireland, with the largest party, the Democratic Unionist Party, continuing to demonstrate its determination to use the veto power over Sinn Féin granted to it in the St Andrews agreement of 2006, which paved the way for the renewal of devolution in May 2007.

Addressing an event in May commemorating the 1981 IRA hunger strike, the deputy first minister, Martin McGuinness – whose photograph, gun in hand, from 1972 was splashed on the *Sun* during the period – warned unionists that the alternative to what he called 'partnership and equality with Sinn Féin' was 'deadlock and stasis'. The DUP's European candidate, Diane Dodds, however insisted: 'Using devolution we have brought the Sinn Féin agenda to a grinding halt'.

DEVOLUTION (CONT'D)

But the party was challenged by a renegade member and incumbent MEP, Jim Allister, who pointed to the contradiction in the DUP sharing government with SF by day while attacking it on the doorsteps by night. Bairbre de Brún of SF duly topped the Euro-poll in June and the DUP leader and first minister, Peter Robinson, reshuffled his team, tasking his former finance minister and potential successor, Nigel Dodds, with 'reconnecting' with the party's base.

SF was however unable to bathe in victory. The party lost its Euro-seat in Dublin and for the first time in more than a quarter of a century there were calls for Gerry Adams to step down as leader. Party activists in the republic became increasingly restive about the perceived irrelevance of the party in the south, and in the north worried that it was being stymied by the DUP at every turn.

Shaken by the election, the DUP continued to drag its feet on the devolution of policing and justice—though advocated by the outgoing chair of the Policing Board and the outgoing chief constable, Sir Hugh Orde. The DUP demanded that the Treasury first provide additional funding. A frustrated Mr Adams ominously told a paramilitary-style gathering in Co Tyrone: 'The republican struggle was not and is not about bums on executive seats ...'

On those seats, there was correspondingly little activity. The Ulster Unionist Party - increasingly semi-detached from the executive and itself divided over its liaison with David Cameron's Conservatives - claimed in June that four-fifths of assembly business comprised private members' motions.

Impasse remained on the future of academic selection - with the now abolished 'transfer test' being replaced by two unregulated tests applied by most grammar schools this academic year - despite teachers'-union warning to the assembly's Education Committee of 'chaos' come September. There was still no sign of a devolved replacement for the direct-rule strategy to assist victims of the 'troubles,' leaving the four-member Commission on Victims and Survivors established in January 2008 twiddling its thumbs. And Mr McGuinness could only pledge that the successor policy to deal with sectarianism and racism, which had been due to be launched at the Community Relations Council conference in April 2008, would be worked on over the summer.

This policy vacuum was not without consequence: Mr McGuinness was speaking in an assembly debate following the expulsion of more than 100 Romanian Roma from south

Belfast earlier in June. The previous month a Catholic had been brutally slayed by 'loyalists' in Derry. And a series of minor sectarian attacks were reported during the period - at the end of which yet another 'peace wall' was erected in Belfast.

Robin Wilson, Queen's University Belfast

HUMAN RIGHTS

Law Lords strike another blow to Government's counter-terrorism strategy

The Government's counter-terrorism strategy suffered another blow this June when the law lords ruled that the use of secret evidence against three men subject to control orders denied their right to a fair trial. In *Secretary of State for the Home Department v AF [2009] UKHL 28*, the three appellants were subject to control orders which placed significant restrictions on their liberty. Control orders were introduced by Parliament in response to the decision in *A v. Secretary of State for the Home Department [2004] UKHL 56*. In that earlier case the law lords held that section 23 of the Anti-Terrorism Crime and Security Act, which provided for the indefinite detention of foreign nationals suspected of involvement with terrorism, was incompatible with articles 5 and 15 of the ECHR.

The Home Secretary can impose control orders on individuals who are suspected of involvement in terrorism but who cannot be deported or prosecuted. Control orders can be used to impose curfews of up to 16 hours a day, place restrictions on the use of mobile phones and the internet, and require the 'controlee' to regularly check-in with police.

The central issue in the 2009 case was whether the procedures for the judicial supervision of control orders satisfied the appellant's right to a fair hearing under article 6 ECHR. The appellants maintained that they had been denied a fair hearing because the judges relied primarily on secret evidence when deciding to impose the control orders. Much of the sensitive evidence is not disclosed to the defendants. Instead, special security vetted advocates can hear the sensitive evidence, but cannot disclose it to the defendant. A recent judgment of the ECtHR held that when full disclosure of evidence is not possible for reasons of national security, the Convention requires that the 'controlee' has the opportunity to effectively challenge the case against him or her. As Lord Phillips explained, when 'the case against the 'controlee' is based solely or to a decisive degree on closed materials the requirements of a fair trial will not be satisfied...

HUMAN RIGHTS (CONT'D)

(para. 59)'. Rather than issue a declaration of incompatibility, the Lords ordered the cases to be heard again in accordance with their ruling.

The full judgment is available at: <http://www.publications.parliament.uk/pa/ld200809/ldjudgmt/jd090610/af.pdf>

Trouble at the Equality and Human Rights Commission

After facing significant criticism for his leadership style, the embattled chairman of the Equality and Human Rights Commission (EHRC), Trevor Phillips, announced that he is to give up some of his powers. The EHRC has been plagued by scandal and infighting for over a year now. The National Audit Office released a report in July which found that the EHRC had spent nearly £1 million on consultancy contracts offered to seven of Mr Phillips' former colleagues at the EHRC who had recently been made redundant. Moreover, since March, six of seventeen commissioners have resigned, most of them after the announcement that Mr Phillips would be reappointed for another three years (Times, August 11). Mr Phillips has agreed to restructure the EHRC by appointing a senior official to head each of its areas of activity which is likely to diminish his overall authority within the Commission.

INFORMATION POLICY

Constitution Unit study on the impact of FOI

The FOI team recently completed its two and a half year ESRC funded study into the impact of FOI upon British central government. The study had two aspects. First, it examined whether FOI had met its six objectives. The objectives comprised two 'core' aims of increasing transparency and accountability, and four 'secondary' aims of improving decision-making, improving public understanding, and increasing public participation and trust in government. Second, it looked at how FOI may have impacted upon the Whitehall model of government, with its key features of ministerial accountability, collective cabinet responsibility and effective government.

The study drew upon interviews with a wide range of officials across eight government departments, plus requesters and journalists. This was supplemented by an online survey of requesters and analysis of more than 1000 newspaper articles in the national press between 2005 and 2008. This last aspect was particularly important given that 99.9% of the public only learn about FOI disclosures through the media (as less than 1 in 1000 people make an FOI request).

INFORMATION POLICY (CONT'D)

The findings showed that FOI has achieved its two core objectives of increasing transparency and accountability. Central government is more transparent, and is pro-actively releasing information with a more 'open attitude'. FOI has also been used as a tool of accountability, though only when the context is supportive.

However, FOI has not met its supporters' highest hopes. It has had little impact upon the secondary objectives. The study found that FOI had not improved decision-making, as wider initiatives towards evidence based policy-making had a far greater influence. FOI has not increased public understanding, as the media rarely reports FOI disclosures that have revealed decision-making information. Requesters rarely ask for it and access to such information is not guaranteed. Nor has FOI widened public participation. It is used mainly by professionals (journalists or campaigners) or those members of the public already involved in the political process in some way. Finally, FOI has not increased public trust. The most frequent stories revealed by FOI and highlighted by the media concern failure, incompetence or maladministration. Moreover, decisions to withhold information – the minority of cases - often make the headlines, characterising the government as secretive. FOI is caught within the wider conflict between parts of the press and government, a point thrown into sharp relief by the MPs' expenses controversy.

This is not to say FOI has 'failed'. FOI was oversold and claims were made that were unlikely to be achieved. It was not made clear how, for example, FOI would stimulate participation. Moreover, FOI is shaped by its context. The government is becoming more accountable and transparent without FOI and this movement helped FOI achieve these goals. Yet low levels of participation, trust and public understanding are problems that are complex and multi-causal. The belief that FOI would improve them ignores political realities. To achieve these objectives, FOI disclosures would have had to lead to changes in public behaviour that run contrary to long-established patterns.

FOI has not, however, realised the fears of sceptics and opponents. It was feared that FOI exposure would reduce civil servants anonymity and impartiality by publicly identifying them. Or that it would erode collective Cabinet responsibility by exposing discussion and undermine ministerial accountability by bypassing Parliament. However, FOI has had little bearing on officials being identified or associated with particular policies. Ministerial accountability to Parliament has not diminished. Nor has it exposed Cabinet discussion, though it came

close with the Information Tribunal's ruling ordering disclosure of the Cabinet minutes on Iraq, which the government subsequently vetoed.

The final concern examined was one that has been associated with FOI regimes across the world: the so-called 'chilling effect'. It is alleged to that to avoid disclosure, official information is created and distributed in ways that are not recorded. Although the cause of much anecdotal evidence and conjecture, there was very little hard evidence or concrete examples of the 'chilling effect' at work. In those few cases where recording behaviour changed, factors other than FOI were responsible, such as changes in how decisions are made or lack of resources to create records. Overall, the great majority of officials felt that not having a full record would ultimately cause far more trouble than having it.

The study will be published as a book next year. The Unit is now beginning an ESRC funded study of FOI at the local government level using the same methods. In parallel, it is conducting a Leverhulme Trust funded study of the impact of FOI upon Parliament, examining both how MPs have used FOI and how Parliament has been affected by the Act.

More details on the study can be found at the new FOI website: www.ucl.ac.uk/constitution-unit/research/foi/index.html

INTERNATIONAL FOCUS

Turks and Caicos Islands back under direct British rule

On Friday 14 August the British Governor in the Turks and Caicos Islands (TCI) stated that a proclamation had been signed which brings into force an Order in Council suspending parts of the Islands' constitution. The move follows an inquiry which revealed widespread corruption within the government. It is alleged that foreign developers and investors bribed Ministers and other government officials in order to secure favourable deals on Crown Land. Christopher Bryant, the Parliamentary Under-Secretary of State for Foreign Affairs, explained that, 'This is a serious constitutional step which the UK Government has not taken lightly but these measures are essential in order to restore good governance and sound financial management (Independent, August 15).' The suspension is set to last for two years, during which time the territory will be under the direct rule of Governor Gordon Wetherell, who is the Queen's

INTERNATIONAL FOCUS (CONT'D)

representative. Politicians within the TCI along with the 15 member states of the Caribbean Community have criticised the decision as "drastic" and neo-colonial.

PEOPLE ON THE MOVE

Chris Wormald is the new head of the Economic and Domestic Secretariat, Cabinet Office, in succession to **Paul Britton**. Paul continues to be the Prime Minister's Church Appointments Secretary, working on a part time basis.

In July 2009, the House of Lords Constitution Committee appointed two new legal advisers, in succession to Professor **Andrew Le Sueur** (Queen Mary, University of London) who stands down after three-and-a-half years in the role. They are Professor **Richard Rawlings** (Faculty of Laws, UCL) and Professor **Adam Tomkins** (School of Law, University of Glasgow).

Robert Rogers, at present Clerk of Legislation, has been appointed Clerk Assistant and Director General Chamber and Committee Services of the Commons. **David Natzler** replaces Robert Rogers as Clerk of Legislation.

Jacqy Sharpe replaces David Natzler as Clerk of Committees, while **Andrew Kennon** becomes the Principal Clerk Table Office. **Liam Laurance** Smyth replaces Andrew Kennon as Clerk of the Journals, and **Simon Patrick** replaces Liam Laurance Smyth as Clerk of Bills.

This summer's Cabinet reshuffle saw the resignations of **James Purnell**, **Hazel Blears**, **Jacqui Smith**, **John Hutton**, **Geoff Hoon**, **Margaret Beckett** and **Caroline Flint**. **Tony McNulty**, **Beverly Hughes** and **Liam Byrne** are left out of the new Cabinet. **Alan Johnson** moves from Health to the Home Office, while former Culture Secretary **Andy Burnham** moves to the Ministry of Health with **Ben Bradshaw** taking over as Secretary of State for Culture, Media and Sport. **Bob Ainsworth** takes over as Minister of Defence, **John Denham** is the new Secretary of State for Communities and Local Government, with **Lord Adonis** taking over as the Minister for Transport. **Yvette Cooper** is promoted to Secretary of State for Work and Pensions, while **Peter Hain** becomes the Secretary of State for Wales. Finally, **Lord Mandelson** has Innovation and Skills added to his already vast portfolio which includes Business, Enterprise and Regulatory Reform.

Alan Gillespie, former investment banker, has succeeded Lord (Adair) Turner as chair of the ESRC.

CONSTITUTION UNIT NEWS

Devolution Monitoring Reports

Sadly the ESRC has decided not to continue funding the Devolution Monitoring Reports, which we produce with our research partners in Scotland, Wales, Northern Ireland and the English regions. In 2008 we obtained offers to fund the reports for a further three years from the UK government and the Welsh and Scottish governments. We then sought matching funding from the ESRC under their Ventures Fund, but they have declined to do so. We are still in discussion with the three governments to see if they might be willing to fund a streamlined set of reports. It would be a great pity to abandon our work on devolution, and the research networks it sustains, just when it has reached such an interesting juncture.

Minority and coalition government

In anticipation of a possible hung parliament after the next general election, we are revisiting and updating earlier research conducted by Ben Seyd. In 2000-01 he carried out a two year study which looked at coalition government in Denmark, Germany, Ireland and New Zealand. His report was published as *Coalition Government in Britain: Lessons from Overseas* (CU publication 84). It covered the rules on government formation and dissolution; negotiating a coalition; drafting the coalition agreement; and managing coalition government.

Our new study will focus mainly on minority government, and will update the previous study by looking at the experience of New Zealand since 1996, Canada (13 minority governments in the past century), and Scotland. The Unit's research team is led by Robert Hazell, with Mark Chalmers from Canada and Ben Yong from New Zealand, working in partnership with Akash Paun from the Institute for Government.

Recent experience in Canada shows the difficulties of minority government, but Scotland and New Zealand both demonstrate that minority government can be stable, coherent and effective. Our report will be published in the autumn, and will draw out the lessons for the Prime Minister, Parliament, opposition parties, the Crown, the media and the public. If you want to see the report in draft, contact r.hazell@ucl.ac.uk

Conservative agenda for constitutional reform

The Unit is planning to produce a briefing on the Conservatives' agenda for constitutional reform, similar in spirit to the briefing we produced before Gordon Brown became Prime Minister in 2007. It will take all the Conservatives' known policy commitments,

and the unfinished business from recent constitutional reforms, and set out the options facing an incoming government. The biggest items on the Conservative agenda are a referendum on the EU Treaty; replacing the Human Rights Act with a British bill of rights; reducing the size of the Commons and the Lords; introducing English votes on English laws; and strengthening Parliament.

The Conservatives will not want to move fast on all these items. David Cameron has indicated that Lords reform is a 'third term' topic. Reducing the size of the House of Commons would take at least two parliaments, and might not be implemented until the third. Developing a British bill of rights would require widespread public consultation, which would also take years. One purpose of the briefing is to think through the phasing and the timetable for the different constitutional reform items, and their impact on each other, so that the Conservatives and Whitehall have a more realistic sense of what they might do, and in what order.

Pre appointment scrutiny hearings

The Unit has been commissioned by the Cabinet Office and the Liaison Committee of the House of Commons to conduct an evaluation of the new scrutiny hearings being conducted by Select Committees before major public appointments. This innovation was first proposed in Gordon Brown's 2007 Governance of Britain green paper. In 2008 the government and Liaison Committee agreed on a list of 60 appointments which would be subject to scrutiny hearings, on a pilot basis. The Unit will study the first 15 appointments subject to the new procedure, which fell vacant in 2008 and 2009.

The Commissioner for Public Appointments, Janet Gaymer, has expressed serious concerns about the new procedure. She fears that it will politicise the process, put off potential candidates, lengthen the process, and undermine its integrity. The purpose of the Unit's study is to investigate whether those fears have been borne out in practice, and to ask what value is added by the new scrutiny hearings, in making the executive more accountable, and the process more transparent. The study will be led by Peter Waller, formerly a senior civil servant with a lot of experience of public appointments. It should be completed in early 2010.

Meg Russell Appointed Specialist Adviser to the Committee on Reform of Parliament

The Deputy Director of the Constitution Unit, Dr Meg Russell, was appointed as a Specialist Adviser to the Select Committee on Reform of the House of Commons in July 2009. The role of the Committee is to consider

and make recommendations regarding the appointment of members and chairmen of select committees, and allowing the public to initiate debates and proceedings in the House of Commons.

FOI Live

The Unit's annual conference for Freedom of information practitioners, run in partnership with the Ministry of Justice and Information Commissioner's Office, took place at the Victoria Park Plaza Hotel in London on 11 June this year. The conference attracted more than 200 delegates from across the public sector. It was made up of workshops and panels from across the field of information rights. Highlights from the day included a discussion of the Obama administration's plans for FOI by Honorary Senior Research Associate Professor Daniel Metcalfe and presentations by a panel of FOI requesters. The day ended with a valedictory address by outgoing Information Commissioner Richard Thomas looking back on his time in the post.

Constitution Unit Staff Update

FOI/DP team Research Assistant Mark Glover has left the Unit in July 2009 to go to the National Audit Office. Mark was with the Unit from January 2006 and was a key part of the ESRC funded project into the impact of FOI upon British central government working alongside Sarah Holsen and then Ben Worthy. He was also responsible for the Unit's seminar series, which expanded during his time, the Unit newsletter and a whole range of other activities. Everyone at the Unit wishes him the best of luck in his new career.

This summer the Unit also welcomed two new staff members. Mark Chalmers joined in June as a part-time research assistant to Robert Hazell after completing an LLB at the London School of Economics. He also holds degrees in Political Science from the University of Windsor in Ontario Canada. His research interests include comparative constitutional law and judicial decision-making.

In August, Gabrielle Bourke joined the Unit as a full-time research assistant. Prior to joining the Unit Gabrielle worked as an Executive Assistant to the Honourable Michael Cullen MP and former Deputy Prime Minister of New Zealand. She holds a Master of Arts Degree from the University of Auckland and a Bachelor of Arts Degree from the University of Otago.

Interns...As always, the Constitution Unit is grateful for the hard work and diligence of its interns: Maria Baqueriza, Leah Jennings, Senay Nihat, Kristina Wollter, Ben Yong, Agnieszka Smolenska, Sundeep Iyer, Simon Black and James Easy.

BULLETIN BOARD

RECENT UNIT PUBLICATIONS

- Levy, J. 'Strengthening Parliament's Powers of Scrutiny: An assessment of the introduction on Public Bills Committees,' July 2009. Copies of the report can be obtained by emailing: constitution@ucl.ac.uk.
- Morris, R.M. (ed.) *Church and State in 21st Century Britain. The Future of Church Establishment* (Basingstoke: Palgrave Macmillan, 2009).
- Tyrie, A., Young, G. and Gough, R. (ed.) 'An Elected Second Chamber: A Conservative View', July 2009. Available at: <http://www.ucl.ac.uk/constitution-unit/files/publications/unit-publications/146.pdf>.

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

FORTHCOMING EVENTS

Constitution Unit Seminars

- Lord Jay of Ewelme (Chair, House of Lords Appointments Commission), Thursday 22 October, 1pm, *The Work of the House of Lords Appointments Commission*.
- Michael Russell (MSP, Minister for Culture, External Affairs and the Constitution), Monday 9 November, 6pm, *The Constitutional Debate about Scotland's Future*.
- Dr Tony Wright (MP, Chair, Committee on Reform of Parliament), Wednesday 25 November, 1pm, *Reforming Parliament* (Subject to change depending on the speaker's schedule, check website for updates).
- Sir Christopher Kelly (Chair, Committee for Standards in Public Life), Wednesday 20 January, 6pm, *MPs Expenses and Allowances*.
- Peter Riddell (Assistant Editor for The Times), Thursday 4 March, 1pm, *How to Ensure more effective Transitions of Government*.

Government Information Policy Seminar Series 2009 (subscription only)

- Jane Sigley (Head of FOI Policy and Strategy, Ministry of Justice), Tuesday 8 September, 6:15pm, *Information policy: where we've come from, where we're going* (provisional title).
- Jeremy Hayes (Senior Editor, "The World Tonight," BBC), Tuesday 13 October, 6:15pm, *A Shock to the System: Journalism, Government and the FOI Act*.
- Professor John Angel (Chair, Information Tribunal), Tuesday 17 November, 6:15pm, *Cases at the Information Tribunal*.

Full information on events can be found at: <http://www.ucl.ac.uk/constitution-unit/events/index.html>

PUBLICATIONS RECEIVED

- Vernon Bogdanor, *The New British Constitution* (Hart Publishing, 2009)
- Kochan, B. (ed.) *London Government: 50 Years of Debate* (London: LSE, 2008).
- Parker, S., Paun, A. and McClory, J. *The State of the Service: A review of Whitehall's performance and prospects for improvement* (London: Institute for Government, 2009).
- Strafford, J. *Our Fight for Democracy: A History of Democracy in the United Kingdom* (Beaconsfield: J. Strafford Holdings Ltd., 2009).

STOP PRESS

Sir George Young MP has been appointed Shadow Leader of the House of Commons, following David Cameron's removal of Alan Duncan MP from the shadow cabinet. Sir George is on the Council of the Hansard Society and a committed parliamentary reformer. He is also joint author of the Constitution Unit's latest publication: *An Elected Second Chamber – A Conservative View* (see opposite).