

# MONITOR

## The Constitution Unit Bulletin

Issue 1

September 1997

### Constitution Unit moves to School of Public Policy in UCL

At the end of May the Constitution Unit closed its doors at 4 Tavistock Place, and Robert Hazell moved to the School of Public Policy in UCL. There he has re-established the Unit as a source of independent and expert information and advice, but with a new set of activities.

With the election of a reforming government there is a continuing need for an independent body, but with a different role: to scrutinise how the government implements the reform programme, to provide an independent commentary, and to be a source of expert

advice for the media, the general public and the government itself. The Unit will focus on the following main functions:

- to influence policy through a continuing programme of research and analysis
- to scrutinise the new government's constitutional reform programme as it unfolds
- to provide an expert commentary for the media and others
- to maintain an information exchange with other experts in the UK and overseas.

The Monitor will be published

as a quarterly bulletin, and will include as regular items a report on the latest developments in constitutional reform, followed by analysis and comment. The Monitor will also include at the end a regular bulletin board reporting on publications received by the Unit, and a calendar of forthcoming events.

The bulletin board will be the main forum for exchanging information. If you want a publication to be mentioned, or to publicise a forthcoming conference or seminar, send us the details and we will try to include it in the next issue.

#### Initial research topics

##### Lords Reform Stage Two

To advise on the options, and to explore the strengths and weaknesses of a Joint Committee of both Houses as the chosen vehicle for Stage Two.

##### Constitutional Futures

To assess the cumulative impact of the new government's reform programme, and to forecast what the UK's constitution and political system might look like in around 2010.

#### Who's Who in the new Constitution Unit

##### Sir Michael Peckham

*Director, School of Public Policy*

##### Robert Hazell

*Director, Constitution Unit*

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## Constitutional reform starts to roll

The new government has made an impressive start to its constitutional reform programme, with eight constitutional measures in the first session. Constitutional reformers certainly cannot complain of delay. The risk is rather the reverse: that the new government is doing too much too fast, with proposals being unnecessarily rushed, inadequate consultation, and lack of coherence in the constitutional reform programme as a whole.

The lead responsibility for these measures is divided amongst half a dozen Whitehall departments.

### The Queen's Speech

The Queen's Speech on 14 May promised the following constitutional items in the first session (lead ministers in brackets):

- referendums in Scotland and Wales (Scottish Office/Welsh Office)
- Scottish Parliament (Scottish Office: Donald Dewar and Henry McLeish)
- Welsh Assembly (Welsh Office: Ron Davies and Peter Hain)
- incorporation of ECHR (Home Office: Jack Straw and Lord Williams of Mostyn)
- implementation of EU treaty amendments from Amsterdam IGC (Foreign Office: Robin Cook and Doug Henderson)
- regional development agencies in England (DETR: John Prescott and Richard Caborn)
- referendum on London strategic authority (DETR: John Prescott and Nick Raynsford)
- freedom of information White Paper and draft Bill (Cabinet Office: David Clark)
- Select Committee on Modernising the House of Commons (Leader of the House: Ann Taylor).

And in July was added a late entry:

- PR for elections to the European Parliament (Home Office: Jack Straw and George Howarth)

All the proposals need to be collectively considered by Ministers, and collective ministerial time is at a premium. So far it has been devoted almost exclusively to devolution in Scotland and Wales, with the Cabinet committee on devolution (DSWR) being in permanent session through the summer. In the autumn Ministers will turn their collective attention to incorporation of the ECHR, freedom of information and regional development in England.

### Cabinet committees

Three new Cabinet committees were announced when the new government promulgated its Cabinet committee structure. There is an overarching committee on constitutional reform, chaired by the Prime Minister, which has met only rarely; but this may change with the formation of the Cabinet committee on cooperation with the Liberal Democrats, which met for the first time on 17 September. The working committees are chaired by the Lord Chancellor, who has emerged as the Minister who has been put in overall charge of the constitutional programme, and now chairs three Cabinet committees on different aspects of the constitutional agenda.

### Cabinet committee structure

- Constitutional Reform Policy (CRP): Prime Minister plus 12
- Cooperation with Liberal Democrats: Prime Minister plus 10
- Devolution to Scotland and Wales and English regions (DSWR): Lord Chancellor plus 18
- Incorporation of ECHR (CRP (EC)): Lord Chancellor plus 16
- Freedom of Information (CRP (FOI)): Lord Chancellor plus 18
- London (GL (L)): Deputy Prime Minister plus 11
- Regional development in England (EA): Chancellor of the Exchequer plus 16
- Cabinet Office: new Constitution Secretariat (10)

The Cabinet sub committee on London existed under the previous government, but an important part of its new role is to develop the plans for the strategic authority for London and in this capacity it reports to CRP. There is also a dual filter for the policy on regional development agencies, which has been discussed at meetings of the cabinet committee on Economic Affairs (EA), because it touches on economic policy; but the White Paper will also be submitted to DSWR. Supporting this new Cabinet committee structure is the new Constitution Secretariat established in the Cabinet Office, which now has some ten officials plus support staff.

## TIMETABLE AND AGENDA

The timetable and key issues which Ministers will be addressing are as follows.

### Devolution to Scotland and Wales

The Referendums (Scotland and Wales) Bill was introduced in May, guillotined after second reading, and passed by the House of Commons after two days in Committee on the floor of the House. It was sent unamended to the House of Lords, where the Government suffered only one defeat (forcing the referendums to be held on the same day: this was subsequently reversed in the Commons). The Referendums Bill received its royal assent in July.

Criticisms voiced in the parliamentary debates were the absence of generic legislation for referendums; the novelty of pre-legislative referendums, and the risk of the electorate endorsing proposals which might subsequently be changed; the lack of any threshold (unlike the 40% hurdle in 1979); and the lack of arrangements to distribute summaries of the Yes and No case to each household.

The White Papers on Scotland and Wales were published at the end of July, and the referendums held in Scotland on 11 September and in Wales on 18 September. The intention is to introduce the main devolution bills in December 1997, with the aim of achieving royal assent in July 1998. The first elections to the new assemblies should be held in spring/summer 1999 with the assemblies being fully up and running in 2000.

## Scotland

The Scottish White Paper (Scotland's Parliament, Cm 3658) is very impressive and has incorporated many of the points made in the Unit's report *Scotland's Parliament*. The only remaining points of criticism are:

### • Finance

The White Paper says that the Scottish Parliament's budget will continue to be determined by the Barnett formula, which has produced fair settlements for Scotland. But it has not been fair to the rest of the UK:

- ◇ Scotland currently enjoys levels of public spending per head 25% higher than in England, when Scotland's spending levels were assessed by the Treasury 20 years ago as requiring expenditure only 16% higher.
- ◇ Scotland was then much poorer relative to the rest of the UK: its GDP per capita has since risen to around 99% of the UK average.
- ◇ There needs to be a fresh assessment of Scotland's spending needs for the devolution settlement to be accepted as fair to all parts of the UK.

### • Role of the Secretary of State

The White Paper acknowledges "the responsibilities of the Secretary of State for Scotland will change. The focus will be on promoting communication between the Scottish Parliament and ...the UK Government". This is not sufficient to justify separate representation for Scotland in the British Cabinet. In time the role is likely to wither, and responsibility for relations with Scotland may be combined with other duties. But it is difficult to envisage the post of Secretary of State for Scotland being abolished so long as the Welsh Secretary remains.

### • Dispute resolution by the Privy Council

The White Paper provides for jurisdictional disputes to be referred to the Judicial Committee of the Privy Council rather than the Appellate Committee of the House of Lords. On its own this is unimportant; but it matters if the Privy Council is being mooted as a proto constitutional court. The House of Lords is, in most matters, the final court of the UK's various legal systems, and should also be the final court for devolution and all other constitutional disputes.

## Wales

The Welsh White Paper (*A Voice for Wales*, Cm 3718) is much more superficial, and its proposals for an Assembly without primary law making or revenue raising power do not offer the basis for a stable or long lasting settlement. The specific failings are the weakness of executive devolution, which will not enable the Assembly to develop (or preserve) separate policies for Wales; excessive reliance on the Secretary of State, who is given a strong continuing role; the absence of fiscal responsibility, with the Assembly being solely dependent on the block grant from London; the risk of diffused accountability by adopting a local government committee structure for the Assembly; no review of the number of Welsh MPs at Westminster (unlike Scotland); and no provision for flexibility or adjustment to the devolution settlement by Order in Council rather than further primary legislation. These points are all developed in the *Constitution Unit commentary on the Welsh White Paper*: see order form for details.

## Regional government in England

The DETR published a discussion paper on Regional Development Agencies (RDAs) on 11 June, with comments invited by 5 September. The target is to introduce a bill to establish RDAs by the end of November, with an accompanying White Paper explaining how RDAs will mesh in with other agencies. The RDAs, which are to be established by April 1999, will initially be national quangos appointed by ministers. The timing and commitment to regional chambers and directly elected regional assemblies remains unclear. The main issues are:

- **Accountability**

The issues paper states "in the short term, the RDAs will be formally appointed by Ministers and be accountable through Ministers to Parliament...but Ministers want RDAs in addition to be fully responsive to the needs of their region and able to be called to account locally." But accountability cannot be divided in this way. RDAs might be required to give an account to their partners and stakeholders in the regions; but they can only be called to account

by the body which appoints them, and which funds them.

- **Regional chambers**

The Government says it supports the establishment of non-statutory regional chambers. It does not explain why the legislation to establish RDAs cannot also give statutory recognition to regional chambers. There are severe limits to what regional chambers can achieve on the basis of goodwill alone.

- **Credibility**

The Government promised no new money for RDAs. In subsequent negotiations the DTI has resisted proposals to transfer responsibility for inward investment to RDAs; and the DfEE has strongly protected the operation and budget of TECs. The RDAs risk being one more agency in an over crowded field, with a strategic role but a very slender budget.

## London

A consultation paper was published on 29 July (*New Leadership for London*, Cm 3724) setting out the Government's ideas for a new Greater London Authority; with responses invited by 24 October. The main issues for consultation cover the powers of the mayor, the role and size of the assembly, electoral issues, functions of the authority, and finance. The London referendum Bill should be introduced in the autumn, for swift passage in the New Year; and a White Paper published next March containing the Government's detailed proposals. These will be submitted to a referendum to be held at the same time as the London borough elections in May 1998. Thereafter the aim is to introduce the main legislation in 1998/99, with a view to holding the first elections in 2000.

The model chosen for the directly elected mayor, his relationship with the new Assembly, and the electoral systems for each will be important precedents. If the elected mayor is judged a success other cities may follow suit. The Unit has been consulted about this, together with Professor Iain McLean (elections expert) and the Greater London Group at the LSE.

## **IGC Bill**

Foreign Office: Robin Cook and Doug Henderson (Minister for Europe).

Following the conclusion of the IGC in June the Treaty of Amsterdam is to be signed in October. A Foreign Office bill to approve the Treaty amendments will be introduced in the autumn. It will be relatively short, like the Maastricht Bill, but should be a lot less controversial. The main items will be incorporation of the social chapter into the Treaty; and recognition of the new powers of the European Parliament.

## **ECHR incorporation**

Home Office: Jack Straw and Lord Williams of Mostyn.

A White Paper is to be published at the same time as the Bill is introduced, which may be in the Lords, in October/November. The key issues are:

- **The form of incorporation**

Will the courts be able to strike down legislation which is inconsistent with the ECHR? There will certainly be power to strike down secondary legislation, and to amend the common law; but where primary legislation is concerned, the Government is more likely to go for an adaptation of the New Zealand model. This would allow the courts to draw attention to the inconsistency, but leave it to Parliament to amend or repeal the offending statute.

- **Human Rights Commission**

Experts have argued for a commission with an education, monitoring and promotional role. But it would be another quango in an already crowded field. The EOC and CRE have mixed views about the suggestion that the Human Rights Commission might be established on the Australian model, as a collegiate body which would embrace the existing anti-discrimination agencies.

- **Remedies**

There is unlikely to be a new statutory tort; but the courts may be able to award compensation in line with the small awards made in Strasbourg.

## **Parliamentary reform**

Leader of the House of Commons (Ann Taylor).

The new Select Committee on Modernising the House of Commons was announced on 4 June, with a remit to improve the quality of legislation by allowing more effective consultation and scrutiny; reviewing the structure of the parliamentary year; overhauling the process for scrutinising European law; and strengthening the ability of MPs to call ministers to account.

The Select Committee published its first report on 29 July, on the Legislative Process (HC190). It recommends a more open and formal approach to timetabling; increased consultation on draft bills, and more pre-legislative scrutiny, including by Select Committees; more effective use of Standing Committees; and carry over of bills from one session to the next. On constitutional bills the Committee did not support the Government's suggestion that the Committee stage might be taken off the floor of the House, but did not reject it either: the Committee's report merely sets out the opposing views. The next subjects of the Committee will be scrutiny of European legislation; voting procedures; the parliamentary calendar; and the conduct of debate.

Although expressed in tentative terms, the Committee's proposals are potentially far reaching. How big a change they represent in legislative procedures will depend on how bold the new government is in making use of them. This is not simply a matter for Ann Taylor as Leader of the House, but also for her ministerial colleagues in using the power to experiment; and for the Whips' Office in not blocking them.

## **PR for European Parliament elections**

Home Office: Jack Straw and George Howarth.

This could have been included in the Foreign Office Bill to implement the conclusions of the IGC, but is now to be in a separate Home Office Bill. On 18 July Jack Straw announced "Legislation will be brought forward this session to enable the 1999 European elections to be conducted by a regional list system." The Bill

must be passed by the summer of 1998 for the Boundary Commission then to produce constituencies for the new regional list system, and for candidates to be selected for the new constituencies in time for the next European Parliament elections in June 1999.

The main issues are:

- **Defining the regions**

Not hugely important in the European context; but the regional boundaries chosen for these elections may help to define the regional *demos* for electing regional assemblies in due course.

- **What kind of regional lists?**

Will electors vote for individual candidates; for a party slate; can they reorder the candidates on the party list? Is there room for Independents to stand; and for parties which do not field the full slate?

- **Registration of political parties**

This will be necessary also for the operation of AMS in Scotland and Wales, to provide the means of identifying the political parties which will nominate the additional members.

## What Next?

This is already a heavy constitutional programme for the first session. The timing of the missing items from the Queen's Speech is likely to be as follows.

### Lords reform

The lead Minister is not yet clear: it may be the Leader of the Lords (Lord Richard), or the Lord Chancellor (Lord Irvine). No timing has been announced; but the bill to remove the hereditary peers must be a strong candidate for the second session in 1998/9. The manifesto proposed that the second stage of Lords reform should be referred to a joint committee of both Houses. This is likely to be on a long time scale: any legislation for an elected or partially elected House of Lords is likely to be for the next parliament.

### Freedom of Information

Chancellor of the Duchy of Lancaster (David Clark).

A White Paper was promised by the end of July, but is now expected in the autumn. The Government has said it will publish a draft bill early in 1998 so this must also be a strong candidate for legislation early in 1998/99; with the possibility of pre-legislative hearings on the draft bill by the new Select Committee on Public Administration.

The difficult issues are:

- **Enforcement**

David Clark has suggested this might be by a parliamentary committee; but this could only be in a supervisory capacity. Overseas models usually give the enforcement role to an Information Commissioner, to a tribunal, or to the Ombudsman.

- **Scope**

Should the legislation extend to local government; to quangos and other public bodies; to hospitals and NHS trusts; to schools, colleges and universities? And should it be retrospective, and provide for access to previous files?

- **Costs and charges**

FOI is burdensome, especially for the big case working departments (Inland Revenue, Benefits Agency, Child Support Agency etc.). In Canada it takes 7 staff-hours to process a request for a personal file, and 50 hours for a policy request. It is impossible to recover the cost without setting charges at a politically unacceptable level.

- **Overlap with data protection**

In July the government published its proposals for implementing the EC Data Protection Directive (Cm 3725). This will extend the access rights individuals currently have to computerise records to structured sets of manual records (card indexes, microfiches etc.). It will not create a general right of access by individuals to their personal files. This must await the Freedom of Information Act, which will introduce a regime which partially overlaps with the new data protection regime. It will

circumscribe the government's room for manoeuvre on charges: access charges under the data protection regime will probably remain at £10.

### **Electoral reform**

Home Office: Jack Straw and George Howarth.

In the Queen's Speech debate Jack Straw mentioned the commitment to the referendum on electoral reform and the proposal for an independent commission "which will be asked to recommend a proportional alternative to the first past the post system. I recognise the importance attached to this by many Hon Members and I intend to make the fastest progress that I can on this undertaking".

The pre-election talks with the Liberal Democrats on constitutional reform committed both parties to holding a referendum "within the first term of a new parliament". This must be the first item of business for the new Cabinet committee with the Liberal Democrats. The independent commission should be established in autumn 1997 and asked to report within twelve months. Thereafter the timetable is unclear. The referendum will need to be authorised in legislation; and legislation would be required to introduce a new system. If the referendum produces a vote for change the electorate would expect the new system to be introduced in time for the next general election in 2001/2. That would require a very tight timetable. If it proves impossible to deliver, the referendum might be held at the same time as the next general election.

### **Nexus groups on the Constitution and on Devolution**

Nexus is the policy and ideas network started by David Halpern and Stewart Wood. It exists to bring together academics, researchers and politicians to generate ideas that might be taken up by policy makers. In July Nexus established a new theme group on the Constitution, with Robert Hazell as the co-ordinator; and a group on Devolution and Decentralisation of which the

co-ordinator is Professor Iain McLean of Nuffield College, Oxford.

The two groups are holding an inaugural joint meeting at Westminster on 24 September to discuss the Scottish and Welsh devolution White Papers. If you want to join either group contact Matthew Graham at Nexus, 8-9 Jesus Lane, Cambridge, CB5 8BA Tel. 01223 740 065 Fax. 01223 740 079. If you want to circulate a paper or simply some comments you can post them on the Nexus website <http://www.net.nexus.org>. If you have ideas for useful activities or events you can contact Robert Hazell at the Constitution Unit (address and email on the front page); or Iain McLean at Nuffield College, Oxford OX1 1NF Tel. 01865 278 646 or 728 134 Email. [iain.mclean@nuff.ox.ac.uk](mailto:iain.mclean@nuff.ox.ac.uk).

### **Media database of constitutional experts**

To raise the level of constitutional debate, the Unit is putting together a database of academic and other experts who are willing to give interviews to the media. The database will be distributed in hard copy, but also be put on the Internet so that it can be easily searched by journalists and programme producers looking for briefing or comment from a recognised expert.

If we have not already approached you and you want to be included on the database please contact us by 6 October. If you are a journalist or editor and want a hard copy of the register of constitutional experts please contact Sara Northey at the Constitution Unit, School of Public Policy.

### **Constitution Unit website**

<http://www.ucl.ac.uk/constitution-unit/>

# Bulletin Board

## Publications by the Unit

The Collected Briefings of the Constitution Unit (CIPFA, July 1997: £12). CIPFA have brought together in a single volume the 12 Briefings published by the Unit in its first 2 years. Available from the Unit: complete the order form enclosed.

Delivering Constitutional Reform £2. Robert Hazell comments on the new government's constitutional reform programme and assesses the prospects for devolution in this CIPFA/Times Lecture given on 14 July.

Constitution Unit's commentary on the Welsh White Paper. £1

## Publications received

Scotland's Parliament...a Business Guide to Devolution (Scottish Council Foundation, £5 from 23 Chester Street, Edinburgh EH3 7ET, Tel. 0131 225 7911) by Graham Leicester, Director of The Scottish Council Foundation, and author of the Unit's report on Scotland's Parliament.

Scotland's Parliament: issues for discussion by Professor Iain McLean, Nuffield College, Oxford OX1 1NF.

The Economic Impact of a Welsh Assembly £10 from the Institute of Welsh Affairs, September 1997, Tel. 01222 575511.

Devolution Votes, PR Elections in Scotland and Wales £2.75 Democratic Audit Paper No.12, published by Democratic Audit of the United Kingdom, Human Rights Centre, University of Essex, Wivenhoe Park, Colchester, Essex CO4 3SQ. A forecast of how the first PR elections to the Scottish Parliament and Welsh Assembly might go in 1999, based on the 1997 General Election results and on a simulation carried out by ICM Research using AMS ballot papers.

Electoral Reform without constitutional reform: questions raised by the proposed referendum on proportional representation for the UK (Professor R.W. Johnston, Department of Geography, University Road, Bristol BS8 1SS Tel. 0117 928 9116).

## Forthcoming events

### **Understanding constitutional change - 21 November 1997**

One day conference in Edinburgh organised by the Centre for the Research into Elections and Social Trends (CREST). Details from Lindsay Adams, Tel. 0131 650 2456, Fax: 0131 650 6345, Email: Ladams@afbl.ssc.ed.ac.uk

If you want us to mention a publication or forthcoming conference or seminar in the next issue of the Monitor (December 1997) send details by 20 November to Sara Northey, School of Public Policy, Brook House, 2-16 Torrington Place, London WC1E 7HN Tel: 0171 209 6595, Fax: 0171 209 6594, Email: spp@ucl.ac.uk.