# The Constitution Unit

# MONITOR

Issue 19

The Constitution Unit Bulletin

*June 2002* 

# Regional Rejig

After many months of waiting (partly attributed to Tony Blair's rejection of the initial draft) the regional government White Paper, Your Region, Your Choice: Revitalising the English Regions, was published on 9 May 2002. Unfortunately, it was a fast news week: the White Paper had to compete against Stephen Byers's latest round of troubles, the Potters Bar rail crash following day, and Robin Cook's announcement on House of Lords reform on 13 May.

Nevertheless, the White Paper could prove to be an important landmark, although it is a cautious document. It does not propose the devolution of substantial executive powers to elected regional assemblies. But those powers that are devolved cover a wide range of policy areas, establishing future assemblies as potential 'all-rounders'.

John Prescott has not been given a free hand. The gap between the ambitions for 'revitalising' the regions, and the tools on offer to elected regional assemblies is vast. There is no attempt to build a rationale for the proposed basket of powers. They clearly represent a political compromise. Reading between the lines, much of the White Paper consists of reassurance to sceptical ministers and departments.

Executive powers offered consist mainly of the Regional Development Agency, European funding, and local housing allocations; the other powers on offer bring minuscule budgets to the table. Elected assemblies will also be required to produce ten strategies, and will influence over a variety of other regional and sub-regional bodies. The White Paper insists on unitary, wholly not predominantly unitary, local government being instituted at the same time as a regional assembly in any given region. The pattern of unitary local government will be decided by Electoral Commission, following its absorption of the Local Government Commission. This may prove major stumbling block for the introduction of regional government outside the North East, North West, Yorkshire and Humberside which already have predominantly unitary local government. The White Paper is coy about the costs of reorganisation: these will be far greater than the Government is prepared to admit.

The Government will pay elected regional assemblies a block grant, which will include an allowance for running costs, a power of precept upon local authorities, and more surprisingly, a power to borrow.

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# **Cabinet Reshuffle Moves Regions and Local Government to Prescott**



The Cabinet reshuffle following the departure of Stephen Byers has allowed John Prescott to take over responsibility for local government and the regions, so reducing the overlap with the old DTLR. Perhaps the prospect of a Scottish MP (Darling) taking over responsibility for English local government was too daunting. Elections has gone to the Lord Chancellor's Department, under Yvette Copoper. The new office of the Deputy Prime Minister is an strange mixture of the rump DTLR services department, and the policy unit functions of the Cabinet Office.

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The financial flexibility implied indicates that the Government has moved on from the 'GLA model' of regional assembly. This flexibility is offset by Government insistence obliging elected assemblies to meet 6-10 'high-level indicators', with the carrot of extra funding if they are met or exceeded.

It will be hard for any regional assembly contemplate to significant innovation or policy divergence with such a regime in place; the Treasury's centralising tendency has struck back with a vengeance.

Assemblies will contain 25-35 members, with an executive of six, elected by the Additional Member system. Each region will a single top-up constituency, and the singleconstituencies member will follow local authority boundaries. The latter aim is likely to be practically difficult, and the reason given—avoidance of conflict with MPs—is illogical, this model of regional assembly is much more likely to experience conflict with local government.

A package for strengthening of the Regional Chambers is also proposed, though here again the Government's centralist credentials shine through; there more emphasis on the enhancement of the Government Offices' role than that of Regional

Chambers. The emphasis for Chambers is on drawing in Social and Economic Partners more closely to decision-making processes.

Media comment on the White generally Paper was unfavourable. Inevitably, most commentary concentrated on the "abolition of the counties", though the White Paper does not commit to abolishing one or other tier of local government. More thoughtful commentators pointed out the weakness of the proposed assembly powers, and the political and financial costs imposed by the Government on the process of obtaining an assembly.

## Parliamentary Reform

#### **Reform of the House of Lords**

Several developments occurred this quarter, government may also offer severance payments which offer parliamentarians an opportunity to demonstrate a capacity for achievement. Westminster is interesting again.

To get round the differences of view within Cabinet, the Government has passed the next stage on Lords reform to Parliament. On 13 May the Leader of the House, Robin Cook, yielded to the longstanding opposition demands for the establishment of a Joint Committee of both Houses, 'in the hope that we can forge the broadest possible parliamentary consensus for the way forward'.

In its first phase this summer the Joint Committee will be asked to report on the options for composition. Both Houses will then have a free vote on the options identified by the Committee. • In the second phase the Committee will define in greater detail the proposed composition, role and powers of the reformed second chamber. A motion to approve membership of the Committee is due to be debated on 19 June in the Commons and on 29 May in the Lords.

This will be a big challenge for Parliament. Can they reach a consensus view where government cannot? The preponderance of •

feeling in the Commons is for a wholly or largely elected second chamber; in the Lords for one which is wholly or largely appointed. Ultimately the Lords will have to defer to the Commons. The to life peers who are willing to retire, to help autonomy and reduce the numbers from the present 700 to a becoming second chamber of around half that size.

> Inside the Lords a quiet revolution has been taking place, little noticed but of equal importance. Soon after the last election the new Leader in the Lords, Lord Williams of Mostyn, established an equivalent to the Commons Modernisation Committee. The Leader's Group on Working Practices consulted widely and produced a unanimous report (HL 111) which was debated and achieved approval on 21 May. If successfully implemented, the recommendations will transform the way the House works:

- pre-legislative scrutiny for almost all major government bills
- more bills taking their committee stage off the
- automatic carry over of bills to the next session, where pre-legislative scrutiny has taken place
- more backbench debates, and more debates on Select Committee reports
- more sensible hours, rising at 10pm
- sitting in September
- a new ad hoc Select Committee for Finance Bills

a new Select Committee to examine the merits of Statutory Instruments.

The Procedure Committee is to produce a report on the implementation of the proposals by 8 July. Some will need dovetailing with similar reform proposals (eg a new Select Committee on SIs) in the Commons. Crucially the Commons has yet to agree similar mechanisms for pre-legislative scrutiny and carry-over for the package to work as a whole. The impact on the Parliament Acts has yet to be dealt with (House Magazine May 13) and it may take several years for pre-legislative scrutiny to become the norm.

#### **Modernising Select Committees**

The Modernisation Committee proposals to revitalise the departmental select committee system suffered an unexpected setback in the Commons on May 14, when plans for a new Committee of Nomination were thrown out on an ostensibly free vote. No Cabinet Minister voted with Robin Cook. This was despite the approval of select committee chairs in the Liaison Committee in its report in March 2002 (HC 692). A number of speakers argued that the present system for selecting members of committees had only failed on two occasions, and that the reforms made by the Parliamentary Labour party in its selection procedures should not be subject to approval by representatives of other parties. Concerns about a 'gerontocracy' Nomination Committee keeping newer MPs off plum positions appear to have won the day. Arguably, the Commons has gone for the worst option—of continuing to leave selection in the hands of the whips, while allowing select committee chairman to receive extra payment, thus making the position more attractive for patronage purposes. The SSRB will now look at the possibilities for payment, but the House will make the final decision.

But other changes made are likely to be more significant to the improved effectiveness of committees. The establishment of common objectives for select committee is an important victory, as is agreement for a new staffing unit to offer committees more resources in financial scrutiny, bolstered by secondments from the National Audit Office. Committees will need to demonstrate determination, in order to fulfil the hopes of better and more consistent scrutiny, and not allow their agenda to be taken over by the

scrutiny for government bills. Finally, a new term limit for chairman was introduced, of two Parliaments or eight years, whichever is greater. One little noticed change was the new power for committees to exchange papers with the devolved assemblies/parliaments, which offers potential for joint working with their equivalents at Holyrood or Cardiff.

#### Prime Minister and the Liaison Committee

Tony Blair announced what could be a farreaching decision on 26 April: he would break with a long-standing precedent and appear before the Liaison Committee twice a year. No Prime appeared before a scrutiny Minister has committee of the House of Commons in the postperiod. For some time, the Public Administration Committee has been demanding the Prime Minister's presence. His appearance before the Liaison Committee, comprising all chairs of select committees, will permit wideranging questions. Blair's decision establishes a precedent that it will be difficult for future Prime Ministers to resile from. The necessary Standing Order was amended on 14 May.

#### Parliamentary Codes of Conduct

Also on May 14, the Commons approved a modified Code of Conduct, which relaxes the rule against paid advocacy. Strict interpretation of the post-Nolan ban had placed Opposition front benchers in some difficulty, and the Standards and Privileges Committee has acted quickly to mitigate the effects, and also to align registration requirements in the category of sponsorship with those placed on MPs by the Political Parties, Elections and Referendums Act 2000.

Parliamentary authorities, in the shape of the Clerk and the Leader of the House, defended selfregulation in front of the Wicks Committee, as the Committee demonstrated interest in buttressing independence Standards of the Commissioner. The Committee's enquiry has included a comparative study of parliamentary regulation in the devolved legislatures, Australia, Canada and Ireland, undertaken by the Unit. Robin Cook announced a change to the Ministerial Code to make explicit the duty on ministers to comply with the Commons' code. The issue has thrown a spotlight on the workings of the House of Commons Commission, and one Government when it wants pre-legislative of its members, Archy Kirkwood, admitted that disaster. Mrs Filkin argued on 20 May that Cardiff. The Government has also accepted the separate powers for the Commissioner were necessary to achieve sufficient independence. The full evidence can be read from www.publicstandards.gov.uk.

On a better note for the Commission, the longawaited visitor's cafe opened in Westminster Hall on 14 May and plans for a visitor's centre are well-advanced.

The new Lords' register of interests was also published in May. This is the first compulsory version, since the recommendations of the then Neill Committee were implemented in a new Code of Conduct narrowly approved in July 2001. There were some notable absences from the register, including Lord Heseltine and Lord Hattersley (House Magazine May 20).

#### Parliamentary Privilege

The issue of parliamentary freedom of speech has been under the spotlight recently, with the case of A v the U.K. being declared admissible on 5 March by the European Court of Human Rights. The case is sponsored by Liberty and revolves around remarks made in a parliamentary debate in 1996 by the ex-MP Michael Stern about a constituent. parliamentary of privilege, constituent, Louisa McNeil, had no opportunity to rebut the allegations. Parliamentary authorities are concerned that if the case goes against the UK, the whole of Article 9 of the Bill of Rights 1688 will be under review. If MPs can be sued for comments made in the Commons, their freedom of speech will effectively be over, preventing in future the type of comments made by Tam Dalyell in the House during the Belgrano affair in the 1980s. Article 9 marks out the current separation of powers between the courts, the executive and Parliament, and ramifications of this case are very wide indeed.

#### Parliament at the Apex?

As part of the money for health in the Budget statement, Gordon Brown announced a new independent health regulator, the Commission for Healthcare and Audit (CHAI) to inspect all NHS hospitals and to report directly to Parliament. The head will not be appointed by function of the Barnett 'squeeze': the formula, the Government, thereby offering a more mathematically if not politically, is designed to independent model than the body it replaces, the equalise expenditure per capita across the four

the Filkin affair had been a public relations is a matter for discussion between Whitehall and Sharman report recommendations to improve parliamentary accountability through public audit (Statement by Chief Secretary in Commons, 13 March). This will make the Comptroller and Auditor General statutory auditor of all NDPBs, and give him statutory rights of access to companies delivering public services.

#### Joint Committees and an Interactive Parliament

These devices are often seen as the way forward in co-operative working by both Houses, but the difficulties in setting up the Joint Committee on the draft Communications Bill show the problems in agreeing party representation. Shadow Leader Eric Forth protested on May 9 that the Conservatives in the Commons were given only one seat on the Committee, equal to the Liberal Democrats. The usual channels prevailed and the committee was established, chaired by Lord Puttnam. On 23 May it broadcasted its proceedings through a webcast, and received immediate emails in response from the public, a process moderated by the Hansard Society. The experiment, due to continue in June, raised interesting possibilities of direct democracy.

#### Devolution

#### Wales

A unanimous Assembly vote in May to challenge Westminster on finding the resources for free personal care for the elderly out of general taxation put the Assembly Government on a collision course with the UK Cabinet. A spokesperson for the Secretary of State for Wales, Paul Murphy, immediately denounced the move, an attempt to follow Scotland's lead, saying it would have "no impact on government policy." The Assembly Government regards the vote as a first step in a long-term campaign of persuasion.

Health spending will be £1.8 billion higher in 2007-08 than it was planned to be in 2003-04, as a result of Gordon Brown's April Budget. The figures can be re-stated as a 6.8 per cent a year real terms increase across five years, compared with a figure of 7.5 per cent in England. This is a Audit Commission. The territorial extent of CHAI countries. Plaid Cymru used the difference to claim that there would be a 'shortfall' in expenditure on health in Wales equivalent to £180m, prompting it to table a debate demanding a recasting of the formula on a needs basis. This, it claimed, would benefit Wales by an extra £800 million a year.

First Minister Rhodri Morgan pronounced a 'first for Welsh diplomacy in Europe' when he joined with nine other Regional Governments in promoting a Declaration in response to the Commission White Paper on European Governance. The Declaration called for more involvement of the European Regions European policy formulation, with the European Commission consulting directly with regional governments rather than via member state governments. In a parallel move, the Assembly Government pulled out of its involvement with the Wales European Centre in Brussels, and decided instead to expand direct representation in the European capital. This follows the representation pattern established by the Scottish Executive, and provides another example of the growing impact of the Assembly Government's determination to be more firmly in control of policy development and decisionmaking.

The Chairman of the independent Commission on the Assembly's powers and electoral arrangements, agreed as part of the Coalition Partnership between Labour and the Liberal Democrats, will be the Labour peer Lord Richard of Ammanford. The Commission will begin work in July and have ten members: four chosen by the political parties in the Assembly, and the remaining five appointed through advertisement. It will report in the Autumn of 2003 within six months of next May's Assembly elections. The Commission can be expected to address the case for the Assembly to have law-making and tax raising powers in line with the Scottish Parliament.

A potential break point for the coalition Assembly Government was prompted by the decision of Welsh Labour's Spring conference in Swansea to reject proportional representation for local government. Under the Partnership Agreement between Labour and the Liberal Democrats a Commission is currently examining local government electoral arrangements and is due to report in July. It is expected that it will recommend a version of PR for Welsh local elections.

#### Northern Ireland

A second act of IRA decommissioning ought to have stabilised devolution in Northern Ireland after the re-establishment of the institutions in November 2001 in the wake of the first. And a royal visit to Stormont ought to have epitomised political 'normality'.

Yet not only were Catholic youths rioting against the 'new' police service down the road from Parliament Buildings on the day of The Queen's address to MLAs. More seriously, the call by the first minister, David Trimble, for a border poll and his unreflective remarks about the 'sectarian' republic, to unify anxious Ulster Unionist troops, politically destabilised cross-community relationships—which continued to deteriorate on the street.

Most seriously, evidence emerged during the quarter that the republican movement was still pursuing a 'dual strategy', with indications of attempted arms procurement, revelations about the extent of IRA-FARC relationships and even the suggestion—hotly contested—of involvement in the break-in at the Castlereagh intelligence centre. As political and media reaction against SF hardened in the republic – where the main parties anticipated gains by the 'respectabilised' yet to most unreconstructed party at the Dáil election – and in the US-where the SF president, Gerry Adams, declined a congressional committee invitation to discuss the Colombian connection and George Bush's special envoy said it was time for SF to become 'normal' - the power-sharing administration came under renewed strain.

Only unionist division prevented the Northern Ireland secretary, John Reid, being handed the hot potato of adjudicating on the IRA 'ceasefire'. But the tensions were evident in ill-tempered assembly debates.

Meantime, it was slow-business-as-usual on 'normal' issues. Major decisions on schools (selection) and hospitals (rationalisation) remained pending and the assembly cut back on plenary sessions due to limited business, though a renewed flow of legislation is expected. The executive met infrequently until a flurry at the end of the quarter.

Yet if fewer Protestants support the Belfast agreement—due to sectarianism, cynicism and paramilitarism—devolution retains widespread Protestant (and Catholic) support. And the

parties was brought up short by the chancellor's initiative to allow the devolved administration to borrow at low interest, for urgent infrastructural investment, if it got its revenue-raising act (higher rates and water charges) together.

amidst the provincial alarums and excursions, an assembly committee produced an eminently sensible report on Northern Ireland in Europe, while the north-south institutions and the British-Irish Council continued their steady progress.

#### Scotland

The Procedures Committee of the Scottish Parliament has been taking evidence this quarter considering the extent to which the principles set out by the Consultative Steering Group are being realized in the actual operation of devolution. Its four principles were: sharing power between the people, the legislators and the Executive; accountability of the Executive to the Parliament and both accountable to the people; access and participation of the people and legislators in decision-making; promotion opportunities for all. At a time of disenchantment with politics and low turnout in elections these principles are highly relevant to problems afflicting liberal democracies across the globe. The concern that social networks are breaking down leading to disengagement from politics is not confined to Scotland or the UK, as a reading of Robert Putnam's Bowling Alone (London, Touchstone 2000) will illustrate with reference to the collapse and revival of community in America.

In this quarter, Scottish Parliamentarians have debated issues of law and order with particular reference to youth crime raising questions about the social cohesion of Scotland. The establishment of the Scottish Parliament might be seen in itself as an ambitious effort in developing social capital. It was recognised by its supporters that the institutions themselves would only succeed if brought changes were simultaneously. The four guiding principles were central to this. Although there may be disquiet aspects of devolution, judging opposition to the status quo ante public satisfaction with devolution is solid. That remains an important base from which to build the social capital referred to by Putnam.

oppositionalist politics still practised by the Philip Schlesinger highlighted an 'identity problem' suffered by the Parliament in evidence to the Procedures committee. A number of issues that surfaced during this quarter, some longrunning, including the escalating cost of the new Parliament building and the row over MPs salaries have not helped project a positive image of politics. As journalists giving evidence conceded, they are in business of reporting news and bad news for the Parliament is good news for the media.

> However, not all is negative. The response rate in the ballot on Glasgow's housing stock transfer was 58%, around the same level as in the Scottish Parliamentary elections in 1999 and the general election in Scotland last year. It may be surmised that when an issue is seen to be directly relevant to their lives, people are more inclined to participate. In a local government by-election in Stirling there was a turnout of 63.2%, following the first full postal ballot in Scotland. However, a downside of devolution is that we now have more elections. This constant campaigning encourages a negative image of the political process, most notably the role of political parties.

> In the conclusion to his book, Putnam challenges his fellow Americans to find ways to ensure that by 2010 many more Americans participate in public life. A more immediate challenge can be set for the Scottish Parliament: to ensure that next year's elections are conducted in a manner that encourages voters to go to the polls. Bowling is a popular sport in Scotland but the more dangerous analogy may relate to another national sport that has been prominent in the news' headlines this last quarter. The Scottish women's curling team that won gold medals at the Olympics in Salt Lake City suffered a fall-out. At least one team member looks set to be curling alone.

#### **English Regions**

The Cornish Constitutional Convention published a 'prospectus' in March 2002 entitled "Devolution for One and All", proposing a Cornish Assembly with approximately equal powers to those of Wales. Elsewhere, moves are taking place towards setting up a constitutional convention in the East of England region.

The Regional Development Agencies moved to the 'single pot' on 1 April 2002, and now have full freedom of virement over their budgets; previously only a small percentage of funding could be switched between separate budget Commission is due to report on the question of streams. They will also benefit from increased funding, rising to a total of £1.7bn in 2002-03.

#### The Centre

The consultation period on the size of the Scottish Parliament ended on 29 March 2002 with almost 230 responses reaching the Secretary of State for Scotland, Helen Liddell. She indicated that responses had been received from MPs, MSPs, trades unions and local authorities, among others, and that details of the submissions would be made public in due course. Further details can be found at: http://www.scottishsecretary.gov.uk/

The Scottish Parliament (Referendum) Bill was a private member's bill from Lord Palmer, which provided for a referendum to determine the continuance of the Scottish Parliament. The debate on second reading on 17 April offered an opportunity for critics of the Parliament to speak out, but Lord Palmer then withdrew the bill. For the Government, Lord McIntosh, suggested that much of the debate would have been ruled out of order in the Commons, as dealing with devolved actions.

### **Elections and parties**

#### **State Funding of Political Parties**

John Prescott joined other ministers in speaking in favour of state funding (Times 16 April), but the Opposition were quick to indicate that there had been no change of mind on their part. However, there is pressure for action, following evidence that company donations to parties were falling off, due to the unhelpful publicity generated for groups such as Powderject. The IPPR is conducting a study and the DTLR select committee is launching its enquiry. A private member's bill from John Maples and a debate by Andrew Tyrie in Westminster Hall, both on 22 May, indicate that not all Conservatives support the party line; both proposed a cap on donations and tax relief schemes or other state funding. Any scheme that receives official backing is likely to feature funding conditions to broaden party membership. The announcement by Labour of a committee to vet donations to the party on 21 May is unlikely to settle the concerns of much of PIN numbers of others who had decided not to its membership, horrified that its leaders are vote. The Electoral Commission is due to evaluate accepting donations from the press and soft porn the pilot schemes in August. The DTLR Secretary Desmond. Richard

state funding in 2003, and its chair, Sam Younger, has indicated his personal preference for a cap on donations (Times 18 May ).

#### **Local Elections and Pilots**

Local elections were held in 174 areas throughout England on May 2nd 2002. These were complicated by significant ward boundary changes, which served to inflate Labour's losses by reducing the total number of seats in some councils they held with large majorities. The Conservatives won approximately 2,007 seats (34% of the vote) nationwide compared with Labour on 2,416 (32%), the Liberal Democrats 1,250 (27%) and others 235 (5%). This means that Labour currently holds over 8,000 government seats (36%), the Conservatives 7,000 (32%) and the Liberal Democrats over 4,000 (20%). Over 2000 seats are held by independent or minor-party candidates. Turnout at 34% was higher than at recent local elections. It increased significantly in areas testing all postal voting.

In net terms, the Conservatives gained nine councils, the Liberal Democrats gained two while Labour lost seven. An independent group advocating more funding for Kidderminster Hospital took control of Wyre Forest council. The extreme-right British National Party won three seats in Burnley and achieved a high proportion of the vote in Oldham. On the whole, Conservative performance was poor. The party gained seats in barely half of the 174 councils with elections and lost seats in 22% of them. This does not bode well for a national revival of Conservative fortunes. On the other hand, the Liberal Democrats made net gains in the local elections and continue to eat into Labour territory.

The local elections also saw the piloting of a range of electronic voting methods, as well as postal voting, ranging from internet voting to textmessaging—all in a largely unsuccessful effort to boost turnout. In Sheffield approximately 30% of the electorate voted online. Security proved to be a problem. In Swindon for example, registered voters were provided with a 10-digit PIN number for use online, or via touch-tone telephone. Yet there was nothing to prevent a person using the The Electoral of State has indicated some interest in all-postal questions, 21 May). This raises large issues around the prevention of fraud.

### The civil service and government

#### A Civil Service Act

A swansong speech by Sir Richard Wilson on 26 March, advocating the introduction of a Civil Service Act, increased public pressure for legislation, but one of the first comments of his successor, Andrew Turnbull, was to dampen speculation about an immediate Act. The Public Administration Committee announced plans to draft an Act on 12 May, announcing that it thereby wished to put pressure on the Government to proceed. Lord Holme tried a similar tactic in initiating a Lords debate on civil service values on 1 May. He received significant support from the former head of the civil service, Robin Butler, and the First Civil Service Commissioner, **Baroness** Prashar. Government spokesman, Lord MacDonald of Tradeston, saw no need for an imminent announcement, pointing to the Wicks enquiry into the civil service as a reason for delay. The enquiry produced an excellent Issues and Questions paper in March, which attempts to broaden the debate beyond the role of special See www.public-standards.gov.uk. advisers. Nevertheless, the issue continues to surface, most notably in the emergency statement by Stephen Byers on May 9 after the continuing public row over the departure of the minister's head of communications, Martin Sixsmith. The Unit is conducting research for the Wicks committee on the regulation of the civil service in key comparator countries, to be published in July.

# **Human Rights and the Courts**

#### Joint Committee on Human Rights

This has embarked upon an inquiry into the case for a Human Rights Commission for the United Kingdom. The call for evidence was originally issued in April 2001 and the Committee has so far taken evidence from, among others, the Lord Lord Bingham, the senior law lord, was invited to Chancellor, Lord Irvine of Lairg, the UN High Commissioner for Human Rights, Mary Robinson, and the Minister of State in the Cabinet Of the four models identified in that report he Office, Barbara Roche MP. The Committee, in the preferred the fourth: 'a supreme court severed process of its inquiry, will focus on issues such as from the legislature, established as a court in its

elections for the European elections in 2004 (Oral how a Human Rights Commission could enhance protection of human rights in the United Kingdom, whether any such body should have jurisdiction over the entire UK, and what powers such a Commission should possess. For further details see the Joint Committee's website: http://www.parliament.uk/commons/selcom/hrh ome.htm

#### Stafford v the UK

The European Court of Human Rights handed down judgment in the case of Stafford v United Kingdom on 28 May 2002. The Court, holding that there had been an infringement of Article 5(1) and 5(4), upheld Mr Stafford's complaint that the Home Secretary's decision to overrule the recommendations of the Parole Board regarding his release was in breach of the complainant's right to liberty and security.

Mr Stafford had been imprisoned in 1967 for murder and had been released on license in 1979. He was jailed again in 1989 for breach of the conditions of his license and released in 1990. In 1994 he was given a six-year term for an offence of dishonesty and in 1997 the Parole Board recommended that he be released. recommendation of the Parole Board was rejected by the Home Secretary and subsequent legal challenges to the decision of the Home Secretary were unsuccessful.

The European Court of Human Rights held that 'Mr Stafford had to be regarded as having exhausted the punishment element for his offence of murder—if this were not the case, it was hard to understand why the Secretary of State had allowed his release in 1979. When his sentence for the later fraud offence expired on 1 July 1997, his continued detention under the mandatory life sentence could not be regarded as justified by his punishment for the original murder (European Court of Human Rights Press Release, 28 May 2002, available at: http://www.echr.coe.int/).' The present Home Secretary, David Blunkett, described the ruling as 'disappointing'.

#### Lord Bingham's Lecture on a Supreme Court

respond to the Unit's report on The Future of the UK's Highest Courts (le Sueur and Cornes, 2001). own right, re-named and appropriately re-housed...[with] the Judicial Committee continuing alongside so long as the demand for its separate services continues'.

Following the delivery of Lord Steyn's Neill Lecture, 'the Case for a Supreme Court' at All Souls, Oxford, Lord Irvine had dismissed the calls for reform as 'rather wearisome '(Financial Times, 15 April 2002). Lord Steyn had suggested that a 'major obstacle' to the creation of a new supreme court for the UK was the position of the Lord Chancellor. The Lord Chancellor responded by suggesting that Lord Steyn's argument amounted to little more than a demand for a 'grand new architectural venture' (Financial Times, 15 April 2002).

#### Freedom of Information

The Information Commissioner issued Part 1 in a 4 part Employment Practices Data Protection Code. Its stated aim is to strike a balance between a worker's legitimate right to respect for his or her private life and an employer's legitimate need to run its business. See www.information commisioner.gov.uk.

The Lord Chancellor's Department has released guidance on subject access requests under the Data Protection Act. See www.lcd.gov.uk/foi/dpasaguide.htm

The Lord Chancellor's Department has issued an interim report on statutory provisions concerning disclosure of information. The report lists provisions that prevent disclosure that will be repealed or amended. See www.lcd.gov.uk/foi/foidoirpt.htm

The Freedom of Information (Scotland) Act was passed by the Scottish Parliament on 24 April 2002. No timetable for implementation has been announced but it must be fully in force by 31 December 2005.

#### **Local Government**

#### **Mayoral Elections**

The strong impression gained from the first seven elections for executive local authority mayors was that this constitutional change has had some success in turning the focus of local elections toward local issues. The mayoral elections did not follow any strict pattern. Labour did, in a sense,

lose ground in all seven elections, but this was a reflection of the Supplementary Vote system and the opportunity for independent candidates to make an authority-wide mark, rather than falling support for the party *per se*.

Although the election of Stuart Drummond or H'Angus the Monkey in Hartlepool took the headlines, it was not as great a shock as some of the media claimed. At the last local elections Hartlepool replaced the Labour Party, longin with Liberal ensconced power, Democrat/Conservative coalition; their subsequent popularity can be measured by the 8% vote each obtained in the mayoral poll. Voters had become desperate for change. The result in Watford, a resounding victory for the Liberal Democrats over the Labour favourite, was a greater surprise.

Elsewhere, Ray Mallon's victory in Middlesbrough and the Conservatives' win in North Tyneside had also been anticipated. Labour were comfortable winners in Doncaster, Lewisham and Newham.

Other features of the vote were the turnout; in many cases many more people voted than had voted in the initial referendum, and turnout rose in tandem with the rise across the country. The number of votes cast for candidates not from the three major parties was also remarkable; even excluding the extenuating circumstance of Ray Mallon, it averaged 23%. Independents, rather than minor parties, did well: the BNP candidate in Newham, the three Socialist Alliance and three Green candidates mostly performed poorly.

#### **Overseas News**

### **Irish Elections**

The May 17 general election has returned the Fianna Fáil government to office with just short of an overall majority. The party has won 80 seats (with 41.5% of first preference votes), boosting its presence in the Dáil (parliament) by seven seats. In contrast, Fine Gael has dropped from 54 to 31 (22.5%). Labour (10.8%) still holds 21 seats; the Progressive Democrats (4.0%) have doubled their number of seats to eight; the Green Party (3.8%) has six (from two); Sinn Féin (6.5%) has five (from one); and others (11.0%) control 14. Turnout was down 3% on the 1997 election at 63%.

Fianna Fáil's victory was due to a meticulously Sinn Féin and other smaller parties in the Dáil managed campaign that made full use of the strategic vote management opportunities afforded by Ireland's electoral system (STV). The next government is likely to be either a continuation of the outgoing Fianna Fáil- • Progressive Democrat coalition or a Fianna Fáil minority government with the support of several the independent members of Dáil. administration will have to pay close attention to public finances at a time of increasing inflation and diminishing growth. It also faces the difficult task of winning a referendum on the ratification of the Nice Treaty, without which there could be an EU crisis.

The result was a disaster for the main opposition • party, Fine Gael, whose leader, Michael Noonan immediately resigned. However the presence of

have been boosted significantly.

- National Assembly for Wales. Carys Evans to be the Secretary.
- Sir Andrew Turnbull to be Cabinet Secretary and Head of the Civil Service, in succession to Sir Richard Wilson who retires in September.

## **People on the Move**

- Lord Dahrendorf to be Chairman of the House of Lords Delegated Powers and Regulatory Reform Committee, in succession to Lord Alexander.
- Robert Gordon to be Chief Executive of the Crown Office (Procurator Fiscal Service)
- Lord Richard to be Chairman of the independent Commission to review the powers of the National Assembly for Wales

# **Constitution Unit News**

#### Staff Update

Welcome to Helen Daines, our new Administrator, who joined us in April, and has quickly become a worthy successor to Rebecca Blackwell.

#### **Unit Conferences**

A one-day conference on turnout in British elections is being hosted by the Electoral Commission and the Constitution Unit. The conference is intended to provide an overview of the pattern of turnout in Britain and propose solutions to reverse the decline. Panellists include academics, government officials, the media and politicians. The conference will also feature the latest research from the Electoral Commission on voting patterns in the 2002 local elections. It will take place on Tuesday 18th June, from 10:00am-4:00pm in Church House, Westminster If you would like to attend please email simon.w.king@ucl.ac.uk.

#### The Constitution Unit in the News

Lord Bingham's lecture was the highlight of the quarter. His remarks were picked up by several national papers and the London Evening Standard, as well as prompting a leader in the Guardian. Lord Bingham, who went on to give a forthright interview to the Spectator, outlined his views on the future of the Law Lords, calling for a supreme court independent of the House of Lords. His proposals, welcomed by many, sit at odds with those of the Lord Chancellor, Derry Irvine, and the Constitution Unit lecture was the strongest statement of his views so far.

# **Constitution Unit Projects**

#### **Regional Assemblies**

Mark Sandford is shortly to complete a Joint Modelling Exercise commissioned by the South-

West Constitutional Convention and Cornish Constitutional Convention. The consultancy will investigate alternative models of devolution within the standard South-West region.

Contact: Mark Sandford, +44 (0) 20 7679 4976 m.sandford@ucl.ac.uk

The Unit is jointly organising a seminar with the Royal Town Planning Institute on the implications of the Regional Government White Paper for planning. The seminar will be held at Harrington Hall Hotel, near Gloucester Road, London, on 3 July 2002.

Contact: Mary Rickborn, +44 (0) 20 7881 1892

Mark Sandford will be undertaking a two-month placement within the Regional Policy Unit at the Department of Transport, Local Government and the Regions, in July and August 2002. He will carry out work on the effectiveness of Regional Chambers, focusing on the role of the social and economic partners and their contribution to greater inclusivity.

#### **House of Lords Comparators Seminar**

A one-day seminar on "House of Lords Reform: Lessons from Overseas" was held on 21 March 2002 at 11 Tufton Street, Westminster. The seminar was funded by the ESRC Future Governance Programme and organised jointly with the Department of Politics at the University of Hull. It attracted a wide attendance ranging from peers and clerks to journalists and academics, who heard four papers on the experience of second chamber reform from other states. The speakers were John Uhr (Australian National University), David Docherty (Wilfrid Laurier University, Canada), Michael Laver (Trinity College Dublin) and Gianfranco Bologna). Pasquino (University of discussions following the papers were led by Professor Vernon Bogdanor (Brasenose College, Oxford) and Professor Donald Shell (University of Bristol), and were wide-ranging and valuable. The papers from the seminar will be published in the Winter 2002 edition of the Journal of Legislative Studies.

#### **Effective Scrutiny Project**

The Constitution Unit is launching a project entitled "Effective Scrutiny". This will examine the activity of 'scrutiny' in local authorities, Regional Chambers, the Greater London Authority, the devolved assemblies/parliaments, and in Parliament. The research will comprise observation and evaluation of scrutiny processes, and will recommend how the activity of scrutiny could be better carried out. It will also produce a typology of the different types of scrutiny that can take place and the different methods available to achieve them. The project is

supported by the Esmee Fairbairn Foundation. *Contact: Mark Sandford*, +44 (0) 20 7679 4976 *m.sandford@ucl.ac.uk* 

# Survey of Central Government Data Protection Officers

This research survey of data protection officers in central government aims to collect empirical evidence on departments' handling of subject access requests, the nature and number of requests, and use of exemptions. The Unit will publish the aggregated results of the survey in July 2002.

Contact: Meredith Cook, +44 (0) 20 7679 4974 meredith.cook@ucl.ac.uk

#### The Public Interest Test in the FOI Act

When access rights come into force in January 2005, public authorities will be required to take the public interest into account when deciding whether or not to release information under the Act. This paper summarises the public interest test in FOI legislation in Australia, New Zealand, Canada and Ireland and identifies public interest factors that UK public authorities should consider.

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#### Special Advisers and Standards

The Wicks Committee on Standards in Public Life has commissioned a comparative study of civil service regulation with particular reference to the role of special advisers. The Constitution Unit is currently working on this study which will compare the statutory regulation and unofficial guidelines of civil service conduct in Australia, Canada, Ireland and New Zealand. The role and influence of special advisers in each of these countries will also be examined. This work is intended to help the Wicks

Committee develop a framework for the drafting of a code of conduct for special advisers in the LIK

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The Unit has also completed a comparative survey on the regulation of parliamentary standards in devolved legislatures and the Commonwealth for the Wicks Committee, which has featured in the oral evidence on Parliament given to the Committee in May. See http://www.public-standards.gov.uk/ for details.

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# **Bulletin Board**

#### **Forthcoming Unit Events**

To book a free place at Unit events, please contact Matthew Butt on +44 (0) 20 7679 4977.

Unless indicated, all events take place at The Constitution Unit, 29–30 Tavistock Square, London, WC1H 9QU.

A location map can be found a www.ucl.ac.uk/constitution-unit/map.

- Seminar: Fixed Term Parliaments
   Tony Wright MP
   July, 1 pm, The Constitution Unit, UCL
- Seminar: Modernising Electoral Practice Karamjit Singh: UK Electoral Commissioner
   19 September, 6 pm, The Constitution Unit, UCL
- Seminar: State Funding of Political Parties
   Matthew Taylor: IPPR
   15 October, 1 pm, The Constitution Unit, UCL
- Seminar: The Giscard Commission on the Future of the European Institutions Gisela Stuart MP November, The Constitution Unit, UCL, further details to be announced
- The Constitution Unit State of the Union Lecture
   10 December, further details to be announced

#### New Publications by The Constitution Unit

For other Constitution Unit publications please refer to the Unit's order form, or phone +44 (0) 20 7679 4977 to order.

- RUSSELL, M., 2002. Women's Political Participation in the UK. London, The British Council. £3.00
- BINGHAM, T., 2002. A New Supreme Court for the United Kingdom, The Constitution Unit Spring Lecture 2002 by Lord Bingham of Cornhill. London, The Constitution Unit. ISBN: 1 903903 10 6. £5.00
- GAY, O., 2002. The Regulation of Parliamentary Standards A Comparative Perspective. London, The Constitution Unit. ISBN: 1 903903 11 4. £10.00

#### **Publications Received**

- FLINDERS, M., 2002. The Politics of Accountability in the Modern State. Aldershot, Ashgate.
- WALLACE, J., 2002. *Devolution by Evolution*. London, Centre for Reform.
- AUGHEY, A., 2002. *Nationalism, Devolution and the Challenge to the Modern State*. London, Pluto Press.
- JONES, J.B., and OSMOND, J., 2002.

  Building a Civic Culture Institutional

  Change, Policy Development and Political

  Dynamics in the National Assembly for Wales.

  Cardiff, Institute of Welsh Affairs.
- *Indian Journal of Federal Studies*. New Delhi, Centre for Federal Studies.

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