Monitor

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Welsh Devolution: The next steps

The quiet of the summer season has been limited in Wales this year, thanks to the UK Government's White Paper on devolution for Wales, published in mid-June. The White Paper, *Better Governance for Wales*, sets out three key proposals for the development of the National Assembly for Wales.

One – restructuring the Assembly by splitting its parliamentary functions from its executive ones – has long been called for and was widely welcomed by Assembly Members (AMs), academics and all others involved. Controversy attaches to the second proposal which is to alter the electoral arrangements so that candidates will no longer be able to stand for both the regional list and for a constituency. This reflects the tensions and antipathy felt by (predominantly Labour) constituency AMs towards (predominantly opposition) list AMs. Debate on this has largely and predictably split along party-political lines.

Most controversial is the three-stage proposal for increasing the Assembly's powers. The first phase will be to use 'framework powers' in Westminsterlegislationtoexpandthe Assembly's discretion, but subject to a degree of Westminster control (and on a bill-by-bill basis). The second will be to transfer substantial functions to the Assembly in fields where it already has powers, by Orders in Council made with the consent of the Assembly and the UK Parliament. The third will be subject to a referendum, and will grant the Assembly primary legislative powers over

fields where it has functions. This therefore delivers a key recommendation of last year's Richard Commission report, but in a way that is slower, more incremental and more limited than Richard recommended. The political effect of the recommendations is carefully balanced. For supporters of devolution, they offer enhanced powers and a clear pathway to primary ones, with those primary powers put on the statute book. For those more sceptical about devolution, although greater autonomy is conceded to the Assembly, it remains subject to extensive controls from Westminster and Whitehall.

The overall tenor of the response to the proposals from politicians (Labour and opposition) has therefore been that of a guarded welcome. Academic response has been more critical. Some of this manifested itself at a major conference organised by the Constitution Unit and the Institute of Welsh Politics, held in Cardiff on 11 July, at which the keynote speaker was Welsh Secretary Peter Hain. A number of the speakers found the proposals lacking in detail, offering potentiallyinsecure bases for enhancing the Assembly's powers, and causing problems at Westminster over accountability and the need for Parliament to exercise due control over the executive. The overall view appeared to be that the proposals sacrificed legal and constitutional coherence for political effect. The best that could be said for them was that they would be better than the mess of the present arrangements!

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Formal consultation on the White Paper is due to end on 16 September 2005. In addition, an ad hoc Assembly committee chaired by the Presiding Officer is due to report in early September. In the Wales Office, however, work is already underway on the bill to implement these proposals. The bill will be introduced in late 2005 and should complete its passage by the autumn of 2006 at the latest, so that key measures can take effect in 2007. The May 2007 elections would therefore be run under the new electoral arrangements, and the Assembly elected then would be separate from the Welsh Assembly Government and would start to enjoy transfers of functions by orders in council. The clock is ticking.

Better Governance for Wales is available on the internet at: www.walesoffice.gov.uk/2005/better_governance_for_wales_report.pdf

An analysis of the White Paper by Alan Trench of the Constitution Unit has recently been published as part of the ESRC's Devolution and Constitutional Change programme (details on back page).

EU Referendum Called Off

Following May's 'no' votes in the Dutch and French referendums on the EU Constitutional Treaty, the UK Government decided to postpone the parliamentary passage of the European Union Bill pending the outcome of a Europewide 'period of reflection'. Whether the bill will actually be resurrected in the future remains uncertain, but the EU Constitution, and the government's handling of the situation, raises some interesting constitutional issues.

The EU Constitution itself confirms two accepted constitutional principles. First, the EU Constitution is a treaty and like all treaties requires the consent and ratification of acceding members. This treaty, therefore, rests on a consensual foundation by contracting sovereign states. Second, for it to become law the treaty would require implementing legislation. The statute is therefore subject to repeal. The treaty would not bind parliament as a sovereign body but would, however, claim legal supremacy over

the laws parliament enacts for as long as the UK remained a contracting state and so long as the relevant enabling legislation remained on the statute book.

Whilst sovereignty remains intact formally, the treaty, exceeding 500 pages, is open to several interpretations. Domestically, the debate has polarised. Some argue that the treaty is a simple consolidation measure, a 'tidying up exercise' ensuring the coherency of an organisation originally designed for a much smaller membership. Others, however, consider the treaty to amount to a 'fundamental change' to the UK constitution, a further move towards a European 'superstate'.

The view that the treaty was merely a 'tidying up exercise' appeared to be the reason the government initially refused a referendum. Its subsequent u-turn on the issue is illustrative of the general lack of an agreed or coherent process for constitutional change. Like all constitutional reforms, the legal and legislative path the treaty was to follow was contingent on how the government chose to characterise its constitutional impact. This freedom of manoeuvre for government lies at the heart of the inconsistent treatment Labour's various constitutional innovations have received. For example, whilst referendums were held for devolution and elected mayors, they were deemed unnecessary for the House of Lords or Human Rights Acts. The majority party also has discretion as to whether a constitutional bill is considered by a Committee of the Whole House or an ordinary standing committee.

Barring unlikely diplomatic and political breakthroughs across the channel, the European Union Bill will not be introduced. With several more constitutional reforms in the pipeline, however, debate will continue on whether special legislative and legal processes should be followed in reforming the constitution.

Robert Hazell is writing an article on 'The Process of Constitutional Change', to appear in a future issue of Public Law

People on the move

Following the general election, a number of interesting ministerial and machinery of government changes were made, though there were few new faces in the reshuffled Cabinet. Lord Falconer, Alistair Darling and Peter Hain retained the top positions in the Department for Constitutional Affairs (DCA), Scotland Office and Wales Office respectively. At junior ministerial level changes included the return to government of Harriet Harman - new Minister of State at the DCA - and the exit from the DCA of Chris Leslie, who lost his seat on May 5. Reflecting the post-devolution downgrading of the territorial portfolios, both Darling and Hain will continue to work part-time in two cabinet positions. Darling continues in the Transport brief while Hain is now also Northern Ireland Secretary - itself a part-time role for the first time. Hain's former position of Leader of the House was filled by Geoff Hoon. Full details of government and opposition spokespersons on constitutional and territorial matters are given in the table below.

At Cabinet Committee level, one significant change was the abolition of the devolution

committee, its functions incorporated into a broader constitutional affairs (CA) committee, chaired by Deputy PM John Prescott. Prescott also chairs the local and regional government (LRG) committee, but no territorial cabinet committees have been created. The CA committee has sub-committees devoted to electoral policy, freedom of information and parliamentary modernisation, chaired by, respectively, John Prescott, Lord Falconer and Geoff Hoon.

At Westminster, more than two months after the election, membership of the parliamentary select committees was announced. Alan Beith was reappointed chair of the Commons Constitutional Affairs Committee; Lord Holme had taken the chair of the Lords Constitution Committee shortly before the election. The new Commons territorial select committee chairs are Mohamed Sarwar (Scotland), Hywel Williams (Wales) and Nicholas Winterton (Ireland).

The DCA's new Constitution Director is Clare Moriarty, succeeding Andrew McDonald, who has gone to Berkeley on a Fulbright Fellowship.

Front Bench Teams in the Constitutional and Territorial Portfolios

Department	Labour	Conservatives	Liberal Democrats
Constitutional Affairs	Lord Falconer (SofS) Harriet Harman (MofS) Bridget Prentice (PUSS) Lady Ashton (PUSS)	Oliver Heald	David Heath
Scotland Office	Alistair Darling (SofS) David Cairns (PUSS)	Eleanor Laing	John Thurso
Wales Office	Peter Hain (SofS) Nick Ainger (PUSS)	Bill Wiggin	Lembit Öpik
N Ireland Office	Peter Hain (SofS) David Hanson (MofS) Lord Rooker (MofS) Shaun Woodward (PUSS) Angela Smith (PUSS)	David Lidington	Lembit Öpik
Cabinet Office	John Hutton		
Leader of House	Geoff Hoon	Chris Grayling	David Heath
Leader in Lords	Lady Amos	Lord Strathclyde	Lord McNally

Key: SofS – Secretary of State; MofS – Minister of State; PUSS – Under Secretary of State.

Hunting and the Parliament Act

Hunting supporters lost their second legal challenge to the Hunting Act 2004 in the High Court on 29 July. The court dismissed human rights arguments that the Act breached the European Convention on Human Rights (Article 8 and the First Protocol) and EU trading and employment law. The court accepted that there was interference with some of the claimants' rights, but applying the proportionality test it held that it was 'reasonably open to the majority of the democratically elected House of Commons to conclude that this measure was necessary in the democratic society which had elected them'.

The Countryside Alliance is awaiting a final ruling on its first constitutional challenge, which argues that the Hunting Act 2004 is unlawful because it was forced through without the consent of the House of Lords under the Parliament Act 1949, and the Parliament Act 1949 is itself unlawful. The claim was thrown out by the High Court and Court of Appeal, but is awaiting judgement from an extraordinary nine judge panel of Law Lords in the autumn.

Civil Service Act

In his valedictory speech before stepping down as Cabinet Secretary and Head of the Civil Service in July, Sir Andrew Turnbull warned that a Civil Service Act could do more harm than good, and was likely to disappoint its champions by bringing in unanticipated problems. In this he contrasted with his predecessor Sir Richard Wilson, who defended the case for a Civil Service Act in his own valedictory speech three years ago. The Prime Minister remains unpersuaded. Despite the government's commitment in principle, and Cabinet Office publication of a draft bill last autumn, the legislation did not feature in the Queen's Speech. The Committee on Standards in Public Life continues to press for legislation, but a Civil Service Bill is unlikely to be introduced so long as Blair remains Prime Minister.

Parliament

The aftermath of the election

The general election saw the government's majority in the House of Commons cut from 166 to 65. There has been much speculation about the effect that this will have on discipline in the Parliamentary Labour Party (PLP) and the likelihood of government defeats. Some have suggested that the more slender majority will make government more responsive to its backbenchers, whilst others predict that it will result in more disciplined behaviour by backbench MPs. These theories were not fully tested before the recess and only longer observation will determine which proves to be correct.

One concrete impact of the result was the need for a rebalancing of select committees. Previously a standard 11-member committee included seven Labour MPs, three Conservatives and one Liberal Democrat. The new balance in the House requires the number of Liberal Democrats to rise to two, whilst on 13-member committees the number of Conservatives rises from three to four. More crucially the number of chairs given to the opposition parties has risen, with Labour losing a net three chairs of departmental committees. whilst the Conservatives gained a net two and the Liberal Democrats one. Select committee memberships were announced shortly before the summer recess, with allegations of unnecessary delay by the whips, and counterclaims that the need for this rebalancing required complex negotiations. On the Labour side fears that chairs would be given as prizes to retiring ministers were not borne out, apparently thanks to the intervention of the party's newly elected Parliamentary Committee – which seems prepared to flex its muscles behind the scenes. Under the new select committee arrangements agreed by the PLP in 2001, the committee's approval is now required for the whips' list, which in any case may be amended by the full PLP.

House of Lords Reform

Labour enters its third term of office with the way forward on Lords reform remaining unclear. The 2005 manifesto yet again proposed a second stage of reform to follow the removal of (most of) the hereditary peers, but a concrete proposal that commands enough support remains elusive. This time the manifesto included a lengthy section about Lords procedures, stating that the 'Upper Chamber must be effective, legitimate and more representative without challenging the primacy of the Commons'. A free vote on the composition of the House was promised, alongside (for the third time) the removal of the remaining hereditaries.

Since re-entering office the government's approach has been cautious. The Queen's Speech did not promise a bill in the first session, and instead a new Joint Committee of both Houses is promised, to consider Lords procedure, powers and composition. However, this had not been established by the summer recess. Within government Lords reform is now under the direct control of the new cabinet committee on Constitutional Affairs chaired by John Prescott, who is unsympathetic to calls for election. Meanwhile the Conservatives, and even more crucially the Liberal Democrats, remain hostile to proposals to weaken the Lords most notably through the manifesto proposal that the chamber should be required to deal with all government bills within 60 sitting days. While government may argue that the Salisbury Convention requires it to get its way on such manifesto measures, Liberal Democrat leader, Charles Kennedy has guestioned whether the convention should any more apply. In his response to the Queen's Speech he suggested that a convention devised when Labour had a powerful popular mandate but a tiny number of seats in a hereditary House was outdated, in a context where Labour had just won only 35 per cent of the vote and has more peers than the Conservatives. There have been clear and repeated threats that the Liberal Democrats are prepared to breach the convention if necessary to protect the Lords powers.

The campaign to introduce election to the Lords continues. An Early Day Motion in the Commons

supporting the Second Chamber of Parliament Bill (presented before the election) attracted 81 signatures from all parties before the summer recess. The bill was introduced by Paul Tyler MP (now a Liberal Democrat peer) with the support of senior Labour and Conservative figures, and proposed a 70 per cent elected House. However, the untimely death of Robin Cook has removed one of the most influential members of this grouping. Some reformers hope that a Gordon Brown premiership would implement the plan, as a fitting tribute to his fellow Scot.

New Lords Appointments

The election was followed by two rounds of new appointments to the House. The first was a dissolution honours list announced on 13 May, comprising 27 ex-MPs. Of these, 16 were Labour, five Liberal Democrat and four Conservative. The Labour appointees, supplemented by former Downing Street adviser Andrew Adonis, who entered the Lords as an education minister, gave Labour a higher number of peers in the chamber than the Conservatives for the first time. However, the balance of power remains held by the Liberal Democrats and a large group of 'Crossbenchers'. This latter group was also supplemented on 22 July by five non-party appointees chosen by the House of Lords Appointments Commission. Following their strong showing in the general election, pressure to appoint the first Northern Ireland Democratic Unionist peers has grown, and there have been rumours that an appointment is coming. The Scottish National Party has also been debating whether it should (for the first time) accept seats in the Lords. All parties thus look to be preparing for an immediate future where the chamber remains unelected. In the meantime the hereditary peers' byelections continue, with Viscount Montgomery of Alamein (formerly a Conservative) elected to fill the place on the Crossbenches created by the death of Baroness Strange.

Lords Speaker

The debate has reopened about the position of House of Lords presiding officer, following the agreement on the Constitutional Reform Bill that, although the Lord Chancellor will continue to exist, this position could in future be filled by an MP. In a debate on 12 July the House agreed that it should elect its own presiding officer, and reconvened a committee chaired by Lord Lloyd of Berwick to consider the options. These proposals met with some resistance, but it was recognised that the chamber could be left in limbo if the Prime Minister chose to appoint a Lord Chancellor from outside the House. The committee is due to report by 20 December.

Parliamentary Control of the Armed Forces

Clare Short MP has used her high position in the annual ballot to sponsor a private member's bill which would require parliamentary approval before British troops were deployed in armed conflict. The Armed Forces (Parliamentary Approval for Participation in Armed Conflict) Bill has cross-party support, its named supporters including William Hague, Menzies Campbell, Ken Clarke and Alex Salmond. The bill would end the royal prerogative by which the Prime Minister can declare war or send troops in to armed conflict. A similar bill was introduced in January by Neil Gerrard MP, but fell due to lack of parliamentary time before the general election.

In a separate move, the House of Lords Constitution Committee announced on 11 August that it would conduct an inquiry into the use of the royal prerogative to declare war. A 2004 report on the prerogative by the Commons Public Administration Committee recommended that the government should introduce a bill 'ensuring full parliamentary scrutiny' of decisions on armed conflict. However the government, in its response, took the view that as it was already 'accountable' to parliament, no further action was necessary.

If Short's bill is passed at second reading, the government will have to decide whether to give it time in the parliamentary schedule. It may claim that, as the matter is now under review by the Lords committee, further action should be deferred until that committee publishes its report. However, Short came third on the ballot, which would normally guarantee sufficient

time for the passage of the bill. Government attempts to derail the bill would likely incite rebellion within the Labour ranks and given the wide support for Short's proposal – reportedly including Gordon Brown – the government may decide to accept at least a watered down version.

Devolution

Scotland

Jim Wallace, Scottish Lib Dem leader since 1992 and deputy First Minister since the Scottish Parliament's inception in 1999, stepped down from both posts in June with party members electing Nicol Stephen, MSP for Aberdeen South, as new leader. In accordance with the Labour-Lib Dem partnership agreement, Stephen immediately became deputy First Minister and took Wallace's enterprise and lifelong learning cabinet post.

Wallace's departure marks the further transfer of power from Westminster-trained politicians to a younger Scottish-bred generation – the exception is Alex Salmond, SNP leader but still an MP at Westminster. Stephen (42) has yet to make a mark, but the party election campaign, in which he defeated a pugnacious Labour-hostile backbencher, Mike Rumbles, by 2108 to 642 votes, suggested that the Lib Dems will be harder to court as coalition allies after the 2007 Scottish Parliament election.

That election looks likely to feature the Scottish Executive's tax-varying power, the ability to raise or lower basic rate income tax by 3p. Some in the SNP are reported to want to pledge a 1p reduction while there is a strong Conservative lobby for a 3p cut. This may also reflect party discontent with leader David McLetchie, allegedly over his lack of Tory radicalism, and who remains embroiled in rows about large taxi expense claims.

First Minister Jack McConnell rose above such Clochemerle politics by elbowing his way onto the G8 summit stage at Gleneagles. He used his spear-carrying role – meeting and greeting arriving world leaders – to the full, earning flattering domestic media coverage. Not so the Scottish Socialist Party. Its G8 protest at First

Minister's questions earned four of their number a parliamentary suspension and ensured that the Executive avoided a defeat later that day over its opposition to extending a compensation scheme for Hepatitis C sufferers, much to campaigners' anger.

Legislatively, McConnell made his first radical mark when the Executive, against howls of vested interest protest, won parliamentary approval for a bill to ban smoking in pubs and restaurants from April 2006. Justified by relatively high levels of smoking and cancer incidence, the measure's impact will be closely watched by Tony Blair's government, which has been less keen on outright smoking bans.

Whilst using the tax-varying power remains beyond the pale for Labour, McConnell has begun quietly examining whether the powers of the Scottish devolved bodies should be extended into such areas as drugs, firearms and immigration. McConnell has been notable for venturing into or close to reserved policy areas such as immigration, foreign policy and international developmental. Actively seeking to rewrite the devolution legislation would, however, mark a significant new departure.

Wales

The debate on the future of Welsh governance moved up a gear in June with the publication of the government's White Paper (see cover story). Meanwhile, politics in the National Assembly for Wales began adjusting to a new phase. Since April, Cardiff Bay has been run by a minority Labour administration after four years of Labour-Lib Dem coalition and two years of Labour majority rule. The loss of First Minister Morgan's majority was caused by Peter Law's expulsion from the party for standing as an independent in the general election, after an all-women shortlist prevented him running as the Labour candidate. The first severe test of Labour's authority was the controversial issue of top-up fees for students at Welsh universities. On 23 May, Labour was defeated by 30 votes to 29 on a Conservative motion instructing the Assembly Government not to introduce top-up fees.

These recent events have put the focus on Labour's continued ability to govern, with thoughts turning to the 2007 Assembly elections. The most likely scenario may well be a return to Labour-Lib Dem coalition, though with their stock seemingly on the rise, the Lib Dems would drive a hard bargain on issues such as electoral reform in local elections. An alternative scenario is of a grand anti-Labour coalition taking power, something Welsh Tory leader Nick Bourne has indicated support for. However, given the splits within his party on the powers - and even the very existence - of the National Assembly, it may prove impossible to find sufficient common ground with the Lib Dems, let alone Plaid, for a joint platform to be agreed upon.

That the idea of the Tories getting into bed with the nationalists is even seriously discussed is an indication of how far the Welsh Conservatives have managed to make themselves into a credible party in devolved politics. With David McLetchie pursuing a comparable strategy of putting clear blue and white water between the Scottish Conservatives and the still devosceptic UK Conservatives, the irony has not gone unnoted that of all the three main UK political parties, it is the erstwhile Conservative and Unionist Party that has moved the furthest towards de facto federalisation.

Northern Ireland

Elections have dominated the scene in Northern Ireland in recent months, though mercifully the citizenry may be spared any more until 2009. The big winner in both the Westminster poll and elections to the region's 26 district councils was Rev. Ian Paisley, the old Protestant-fundamentalist warhorse, Paisley saw off Ulster Unionist leader, David Trimble, who resigned following a humiliating election defeat he could not see coming.

The Democratic Unionist's victory was a remarkable testimony to how little Northern Ireland's much-vaunted 'peace process' has shifted the region's underlying tectonic plates. As was the consolidation of Sinn Féin as the main Catholic party. This despite being internationally excoriated, over the brutal

slaying by republicans of Robert McCartney outside a Belfast bar.

Indeed, as these elections confirmed, the two trends are towards polarisation between the ethno-nationalist forces on both sides – the DUP and SF – and growing disengagement on the part of the less ideologically committed. The turnout was markedly down, even before the effects of a reduced register are taken into account.

SF's electoral success was interpreted by its leader, Mr Adams, as endorsement of his call to the IRA to adopt 'political and democratic' methods. An IRA statement eventually emerged in late July, and was welcomed as 'a step of unparalleled magnitude' by Tony Blair. But as so often with Northern Ireland, there was less to this than met the eye. The statement was from the IRA leadership, and did not carry the endorsement of an 'army convention' of the rank and file. So while it declared an end to the IRA's 'military campaign', this was in itself no more than the 1994 declaration of a cessation of 'military operations': only the army convention can declare a final end to the IRA's 'armed struggle', to which it remains constitutionally committed.

The statement also said the IRA would engage in 'no activities', the same formula as was offered by Mr Adams in April 2003, but which was not deemed adequate to prevent the May 2003 assembly election being postponed. Then, but not now, Downing Street insisted the IRA had specifically to disavow arms procurement, intelligence-gathering, targeting, 'punishment' attacks and 'exiling'.

The statement nevertheless precipitated an immediate pledge of rapid de-escalation of the military presence, with watchtowers being dismantled within days. These measures were perfectly justifiable in themselves, but contradicted government assertions that the IRA statement would be judged by 'actions, not words'. This angered even moderate Protestants and the DUP thus felt secure in insisting that talks, let alone a reneval of power-sharing, with SF could be 2 years away.

English Regions

Unexpectedly, the Labour manifesto for the General Election contained a commitment to 'devolve further responsibility to existing regional bodies in relation to planning, housing, economic development and transport'. Including a commitment such as this, somewhat controversial in the light of the North-East regional referendum result, suggests that significant parts of the Labour Party still view the regional tier as an important contribution to governance.

This commitment also demonstrates that the 'Treasury agenda' now trumps the 'ODPM agenda' in terms of central government commitment. The Treasury is commissioning a new round of Regional Emphasis Documents from the three main institutions in each region, the Government Office, Regional Development Agency (RDA) and Regional Assembly. These will be completed at the end of 2005 to feed into the spending review of 2007. The Treasury has also released indicative funding allocations for transport schemes, RDAs, and Single Housing Investment Pots for the years up to 2015. Through its Devolving Decision Making Review it is continuing to consult on how regional institutions can or should be permitted to vire money between these different pots.

Fallout from the North-East referendum has been limited, but it has served to throw a spotlight on the activities of the existing unelected and non-statutory Regional Assemblies in all three northern regions. The chief executive of the North-East Assembly, Stephen Barber, stepped down early in 2005, whilst his counterpart in the North-West, Steve Machin, has been suspended on full pay following unspecified North-West allegations. The Regional Assembly has carried out a full internal review, voting through a new constitution and reducing staff numbers considerably. Significantly, there has been pressure for a strong sub-regional dimension to operations in the North-West, both in the Assembly and RDA.

Meanwhile, the South-East England Regional Assembly has confirmed that it will propose an annual new build of 28,900 homes in the region, considerably below the figures sought

by the ODPM and the 2004 Barker Review. It remains unclear whether the ODPM will seek to intervene in this decision.

The government's manifesto also committed to 'review the powers of the London Mayor and the Greater London Authority'. Initial work has already begun for this review, with central government reportedly willing to consider extensions of the GLA's power. The winning of the 2012 Olympics showcased the potential of devolved regional government in London, with the Mayor having been instrumental in putting the bid coalition together. The Olympics will also lead to considerable transport and regeneration investment in the eastern side of London.

Devolution and the Centre

The government's new legislative programme - as outlined in the Queen's Speech of 17 May – included several items of interest from a devolution perspective, including a record three Wales-only bills. Most notable was the Government's commitment to bring forward a new Government of Wales Bill, which will transfer much of the legislative process to the National Assembly for Wales without acceding to calls to grant full legislative powers on the Scottish model (see cover story). In the mean time, all legislation for Wales, however uncontroversial, must clear Westminster's full set of procedural and timetabling hurdles. The other two Wales-only bills to be introduced are the Transport (Wales) Bill, which fell victim to these hurdles in the pre-election legislative logjam, and the Older Persons' Commissioner (Wales) Bill. Both pieces of legislation enjoy cross-party support and are likely to reach the statute book without problems.

The Queen's Speech also contained a number of bills that would legislate for Scotland in devolved areas, therefore requiring the consent of the Scottish Parliament under the Sewel convention. Bills expected to require Sewel motions include the Equality Bill, the Animal Welfare Bill, the Lottery Bill and the European Union Bill, whose introduction has been indefinitely postponed (see page 2).

The Conservatives' election defeat means their proposal to bar Scottish MPs from voting on

bills with no application to Scotland will not be implemented, despite opinion polls indicating strong public support both north and south of the border. However, the reduced Labour majority and the fact that the Conservatives received more votes than Labour in England (but 92 fewer seats) render not unlikely the recurrence of challenges to the legitimacy of Scottish MPs voting at Westminster on English matters. Following the controversy over Scottish MPs determining the outcomes (or nearly so doing) of votes on top-up-fees and foundation hospitals, the issue of 'English votes for English laws' is likely to recur this parliament.

The only sizeable rebellion of the session has been over the ID Cards Bill, passed at second reading with a majority of 31. The legitimacy of Scottish MPs participating in this division was not under question as the bill is in a reserved area. The Scottish and Welsh administrations will, however, have autonomy to determine whether ID Cards must be shown to access devolved services so Scottish and Welsh MPs may be challenged if they participate in future Westminster votes on making ID Cards compulsory in England. The forthcoming Education Bill is also one to follow as early indications are that this bill will expand private sector involvement in primary education in England. This is likely to incite rebellion among Labour backbenchers which raises the possibility that passage of the bill will depend on Scottish and Welsh support.

Devolution and the European Union

The three months from early April were a period of uncertainty and turmoil in Europe and the devolved administrations were not able to escape the implications. Yet the regional voice in Brussels continues to grow. Scotland and Wales are in a unique position to capitalise on that despite their lack of formal negotiating responsibility.

Two major events contributed to Europe's current anxieties: the 'No' votes in the French and Dutch referenda on the constitutional Treaty and the failure to reach agreement on the EU's budget for the period after 2007. Both

have major implications for Scotland and Wales. Scotland played an active role in the group of regions with major legislative responsibilities (REGLEG) in pressing successfully for wording in the Treaty which entrenches the concept of subsidiarity and which for the first time included language which acknowledges the role of devolved Parliaments. Loss of the Treaty would mean loss of some major gains. So it is a priority for the devolved administrations to make sure their position – and the importance of genuine subsidiarity – is recognised during the current period of reflection on the future of the EU.

Continued deadlock in the budget negotiations will also have serious practical consequences for the devolved administrations. Without an agreement soon it will become more and more difficult for recipients of structural funds, especially the EU's new member states, to implement new programmes in time. Scotland faces a significant drop in structural fund receipts because of its stronger relative economic performance; so it has supported the UK's arguments in favour of the lowest possible overall budget. Wales is anxious for an early settlement while the figures are still in its favour. The devolved administrations also have a major interest in the balance of spending on agriculture. They will be keeping a close eye on these tricky negotiations as the UK Presidency seeks to move them forwards.

The overall picture is by no means negative: Scotland and Wales are uniquely well-placed in Brussels because they are treated as separate units within the UK Representation to the EU. This gives them diplomatic status and a much higher level of access to the EU institutions than is enjoyed by most other regional representations, including the major German Länder Offices. The regional voice is growing stronger all the time - over 200 sub-national governments now have offices in Brussels. Scotland and Wales are among the longest-established and best-respected, with a wide range of contacts at all levels of the Commission, the Council, the Parliament and the other EU institutions.

They are working closely with the UK during its Presidency by providing support for Council

working groups, including in some cases the chairpersons; and there are many Presidency related meetings and conferences taking place in Scotland and Wales. Both First Ministers participated in the visit of the whole College of Commissioners to London on 1 July to discuss Presidency business. The devolved governments are also fully involved in the EU decision-making machinery run by the Cabinet Office in Whitehall.

Elections and Electoral Systems

AsidefromLabour's third successive triumph, the May general election was notable for concerns over the use of postal voting, for the continued low turnout and for the unrepresentative nature of the results. In the wake of the many media stories of postal voting fraud, the government responded by issuing a set of proposals to tighten security, notably by providing for individual registration. However, this will be done, for the time being at least, through a single household form, since the government remains concerned that a full individual system might depress the number of people registering to vote. While the Electoral Commission broadly welcomed the government's proposals, it reiterated its support for registration via individual forms. The new measures will be introduced shortly via an Electoral Administration Bill.

Turnout at the election remained low at 61 per cent. This prompted the new Leader of the House of Commons, Geoff Hoon, to call for the introduction of compulsory voting. However, few other cabinet ministers seem to share Hoon's view, making such a measure unlikely. In addition to the low turnout, concerns were also expressed over the low level of support for the winning party (Labour gaining just 35 per cent of votes, the lowest ever for a governing party) and the high proportion of 'wasted' votes at the constituency level (with only 34 per cent of MPs gaining a majority of the vote in their area, the lowest level recorded). Not surprisingly, the result triggered calls for reform of the voting system, notably via The Independent

newspaper's 'Campaign for Democracy', which gathered the support of over 24,000 readers.

Unconnected with the post-election furore, the government announced in a low key way a review of the electoral systems now in use for devolved and European contests in Britain, thereby fulfilling a pledge made in its 2001 election manifesto. The review – which was reported to have started before the election – is being conducted by officials at the Department for Constitutional Affairs, and will feed through into the Cabinet sub-committee on electoral policy. No details of the review were provided with the announcement, which is expected to conclude by the end of the year.

Freedom of Information

DCA Monitoring Report

Since the Freedom of Information Act 2000 came fully into force, the Department for Constitutional Affairs has been monitoring the progress of the act's implementation across central government. In late June the DCA published its first quarterly monitoring report. The report detailed the number of requests that were made between 1 January and 31 March to central government departments, executive agencies and Non-Departmental Public Bodies. The DCA reported that FOI requests (defined as queries for 'non-routine' information) received by central government departments numbered 7,700, while a total of 13,400 requests were made to all monitored bodies. Of these requests, 82 per cent were answered within the statutory 20-day time period, or were granted valid extensions. Of those to which exemptions were applied, 56 per cent of all resolvable requests resulted in a full disclosure of information, 13 per cent in partial

disclosure and 18 per cent in refusals. The most frequently cited exemptions were section 35 of the FOI Act ('formulation of government policy') and section 40 ('personal information'). The report also touched upon the charging of fees by government departments when processing FOI requests. The report disclosed that only six of the 43 monitored bodies charged fees and 6 per cent of requests resulted in a fee being charged. 96 percent of the 847 requests for which a fee was charged were requests received by the National Archives.

Publication of ICO decisions

At the Third Annual Information Conference for the Public Sector: FOI Live 2005 on 16 June. Information Commissioner Richard Thomas announced that the Information Commissioner's Office (ICO) would publish FOI appeal decision notices on its website soon after the decisions were made. The ICO had initially decided not to publish decisions until the cases were allowed to progress to the Information Tribunal. The policy was reversed in order to bring the ICO in line with the practice of other commissioners' offices in similar jurisdictions (including the Scottish Information Commissioner's Office) as well as other bodies with comparable regulatory and appellate functions in the UK, such as the ombudsmen's offices. The publication of appeal decision notices was welcomed by the information rights community.

Information Tribunal

The Information Tribunal, a new body set up under the FOI Act to rule on appeals by FOI requesters dissatisfied with ICO rulings, has yet to serve judgement on any cases. There were 13 appeals pending at the time of publication, but dates have not yet been set for the hearings.

Robin Cook (1946-2005)

Robin Cook was a good friend of the Constitution Unit. We worked closely with him when he co-chaired the Labour-Lib Dem Joint Committee on Constitutional Reform in 1997, and senior researcher Meg Russell was seconded as his Special Adviser from 2001-03. He gave the Unit's 2003 State of the Nations lecture and a seminar on Lords reform in 2004. He was also an adviser on an ongoing project on Parliament, and a co-author of a recent publication of ours on the House of Lords. He will be greatly missed.

BulletinBoard

Forthcoming Events at the Constitution Unit

For tickets, email p.diamond@ucl.ac.uk.

- Lords Carter (Labour) and Tyler (Lib Dem) will discuss: 'The prospects for Lords Reform' – 18 Oct 2005, 1pm
- Lord Lester of Herne Hill QC will speak on the subject: 'The first 5 years of the Human Rights Act' – 8 November 2005, 1pm
- Richard Thomas, the Information Commissioner will speak on: 'The Freedom of Information Act – The first year in operation' – 1 Dec 2005, 1pm

New Constitution Unit Publications

- Dynamics of Devolution: The State of the Nations 2005 (Exeter: Imprint Academic, 2005), Alan Trench (ed.). ISBN 1-84540-036-4. Available from the Constitution Unit for £16.
- The Local Work of Scottish MPs and MSPs: Effects of Non-coterminous Boundaries and AMS - Report to the Commission on Boundary Differences

and Voting Systems (Arbuthnott Commission), Jonathan Bradbury and Meg Russell. Available free at: www. arbuthnottcommission.gov.uk/Research. htm

 Better Governance for Wales: An analysis of the White Paper on Devolution for Wales (ESRC Devolution Policy Paper), Alan Trench. Available at: www.devolution.ac.uk/pdfdata/ Policy%20Paper%20No.13.pdf

Publications received

- Members Only? Parliament in the Public Eye (London: Hansard Society, May 2005).
- New Politics, New Parliament? A Review of Parliamentary Modernisation since 1997 (London: Hansard Society, July 2005).
- Looking Back, Looking Forward: The Cook-Maclennan Agreement Eight Years On (London: New Politics Network, 2005).
- Parliament in the 21st Century, N. Baldwin (ed.) (London: Politico's, 2005).

Constitution Unit News

The Constitution Unit has continued to see a number of comings and goings. As previously reported, Dr Ben Seyd and Dr Scott Greer are leaving to take up academic posts at the Universities of Kent and Michigan respectively. Other departures include Helen Daines, who is leaving after three years as chief administrator; Research Fellow Mark Sandford, who will continue to work with the Unit as an Honorary Research Fellow; and part-time administrator Iyan Adewuya, who is returning to the USA.

Joining the team is our new full-time administrator Philip Diamond, who joins the Unit from the House of Commons. Over the past few months, the Unit has also benefited greatly from the assistance of no less than seven interns. Many thanks to Chris Bettiss, Vilhelm Öberg, Mark Wainwright, Daniel Webb, Michael Ramsden, Harshan Kumarasingham and Holly Jarman.