

# Monitor 51

Constitution Unit Newsletter | June 2012

## Scottish independence: the battle lines are drawn

Two words which did not appear in the Queen's Speech on 9 May are Scottish independence. But it will loom large over the coming months, as the UK and Scottish governments lock horns over the details of the independence referendum. Both governments' consultation exercises have now closed, with swift publication of the UK summary and response in April, and the Scottish government's still awaited. The issues on which the two governments will need to negotiate are gradually becoming clearer. These are: how to authorise the referendum; its timing; its supervision; the wording of the question; and whether to include a second question, on Devolution Plus or Devolution Max.

The two governments seem close to agreement on how to authorise the referendum. To dispel any doubts about the referendum's validity, the UK government had offered to make an s 30 Order under the Scotland Act authorising the Scottish Parliament to legislate for the independence poll. The Scottish government has indicated support for this approach. The draft Order would need to be agreed by both governments, and by both Parliaments. The sticking point may come if the UK government or Parliament seeks to attach conditions to their approval.

The most vexed issue is the referendum question, or questions. The UK government is adamant that there should be a single question. The Scottish government professed an open mind about including a second question; and polls suggest greater support in Scotland for Devolution Plus than for independence. But there are several difficulties. One is the complexity of multi-option referendums: they risk over-complicating the debate and confusing voters. Second is the complexity of counting the results of a three-way referendum. The third difficulty is the uncertainty surrounding Devo Plus (or Max), which remains largely undefined. The fourth is that Devo Plus depends heavily on the UK government: a proper prospectus could only be produced after detailed negotiations between both governments.

Even with a single question it may be difficult to reach agreement. The SNP's proposed question, 'Do you agree that Scotland should become an independent country?', seems simple and straightforward. But it has been criticised on two grounds. First, that it invites agreement. Second, some may understand 'independence' simply to mean greater autonomy. So the referendum question may need to speak of Scotland becoming 'a sovereign state, separate from [or outside] the UK'. The SNP dislike that, knowing that when 'separate' is used in polling questions support for independence is reduced.

If the Electoral Commission are put in charge of the referendum, they will advise on the clarity and fairness of the question. The Scottish government initially wanted their own Scottish Referendum Commission, but now seem likely to agree to the UK Electoral Commission being the supervisory body. They are not obliged to follow the Electoral Commission's advice; but the UK government might insist that they do so as a condition of its support.

The UK government might also have been tempted to make its support conditional on a rapid timetable, but privately they now accept that

the referendum will be held in autumn 2014. So the timetable is likely to see an s 30 Order made by December 2012, enabling the Scottish Parliament to legislate for the referendum in 2013, and allowing almost a year for the referendum campaign in 2014. The Yes campaign launched on 25 May, with the No campaign shortly thereafter.

See video of seminar on Scottish independence referendum with Robert Hazell and Alan Trench on our website.

### EXECUTIVE



#### Constitutional items in the Queen's Speech

Constitutional reform was a major theme of the Queen's Speech, with half a dozen constitutional topics included. The bill for an elected House of Lords is set to dominate the next session (see p 2). In addition the Queen announced:

- A draft bill setting out measures to close the Audit Commission
- A bill for individual registration of electors, and improving electoral administration
- Reform of the courts and tribunals to increase their efficiency, transparency and judicial diversity (see p 4).
- Legislation to strengthen the oversight of the security and intelligence agencies
- Continuing to work with the 15 other Commonwealth realms on reform of the rules governing succession to the Crown.

The first three items will also arouse some controversy. There will be resistance to the closure of the Audit Commission, which audits local authorities and the health service, and questioning of the adequacy of safeguards if the work is done by private audit firms with no external supervision. Individual electoral registration is controversial because of concerns that large numbers of voters may fall off the electoral roll, especially in inner city areas.

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The reforms to the courts and judicial appointments will be debated first in the Lords, where the Crime and Courts bill has already been introduced. It devolves to the Lord Chief Justice judicial appointments to the Circuit bench and below, changes the appointments panel for the Supreme Court, and allows for part time Justices.

Changing the rules of succession had been expected as a bill (see *Monitor* 50, January 2012): it is not known what further negotiation is needed with the other realms before the UK can set the lead in changing the rules on succession to the Crown. Other constitutional items missing from the Queen's Speech are legislation on lobbying, parliamentary privilege, and recall of MPs. These are all topics on which the government has recently published proposals, discussed elsewhere in this issue of the *Monitor*.

### Statutory register of lobbyists

January saw the government commence consultation on the introduction of a statutory register of lobbyists. The proposed register, part of the coalition's Programme for Government aimed at improving transparency, would require lobbying firms to register details of their employees, noting any ministerial or civil service background, and their list of clients.

Concerns exist regarding the scope and focus of the current proposals, as the register would not cover in-house lobbyists such as News Corporation's Frédéric Michel, who are said to account for the majority of the industry. This has been met with widespread disapproval in the media and was opposed in a number of submissions to the Political and Constitutional Reform Committee, responsible for the pre-legislative scrutiny.

The Committee held its final evidence session on 17 May, hearing from Mark Harper MP, Minister for Political and Constitutional Reform. Further pre-legislative scrutiny of a white paper and draft bill will follow.

## PARLIAMENT



### Lords reform

Since January there have been two major developments on Lords reform: the publication in April of the Joint Committee's report on the government's draft bill, and the announcement in May of a bill in the Queen's Speech. There was also some progress on David Steel's private peer's bill.

It was always going to be difficult for the Joint Committee to agree a report. The committee had 26 members, drawn equally from the two chambers, representing all the main parliamentary groups and a wide range of opinions. Many of the report's conclusions were therefore supported by only a majority of its members, and a group of 12 members released an 'alternative report' disagreeing with many of the key conclusions.

The points on which the Joint Committee agreed and disagreed provide good indications of where the pressure points will be if the government does go ahead and introduce a bill. Even those points where they agreed do not make easy reading for ministers. In particular, the committee stated that it was 'firmly of the opinion that a wholly or largely elected reformed House will seek to

use its powers more assertively, to an extent which cannot be predicted with certainty'. It concluded that clause 2 of the bill, which asserts that the relationship between the two chambers will not change following reform, 'is not capable in itself of preserving the primacy of the House of Commons'. Consequently, 'the increased assertiveness of a reformed second chamber will affect the balance of power between the two chambers in favour of the House of Lords'. Additionally the committee concluded that 'some elected members will seek to carve out a constituency role for themselves ... and we do not see how this can be prevented'. All of these conclusions will alarm MPs. The committee also agreed that a reformed chamber should have 450 members, rather than the government's proposed 300, which may be easier to accommodate.

But there were many sticking points and disagreements. Committee members were divided on the merits of an elected, partly elected or appointed chamber, though a majority (of 16:6) agreed that if there were elected members, 80 per cent was the right proportion. There were also disagreements on the proposal for 15 year terms, on terms being non-renewable, on allowances for members, on the presence of bishops, and on the need for a referendum on the reform (the latter being agreed by 13:8). Some of these issues were elaborated in the 'alternative report', whose signatories included Conservatives Lord Norton, Baroness Shephard and Eleanor Laing MP, Labour's Baroness Symons, Lord Rooker and Tom Clarke MP, and Crossbencher Lord Hennessy. These members concluded that 'the maintenance of the primacy of the House of Commons and the government's proposals for the election of the House of Lords are fundamentally incompatible', and that continued Commons' primacy required an appointed second chamber.

There was much speculation about whether the Queen's Speech would include mention of a bill. In the run-up to the speech, numerous Conservative MPs (ranging from youthful 'moderniser' Jesse Norman to former leadership challenger David Davis) spoke out forcefully against the reforms. But pressure remained high from Liberal Democrat leader Nick Clegg to press ahead. David Cameron and other senior Conservatives briefed around the speech that the reform was not a central priority, and should not take up disproportionate parliamentary time. But if a bill is introduced, it inevitably will. It must have its committee stage on the floor of the Commons, and this alone would take weeks. Conservative rebels have indicated that they will vote with Labour against the programme motion, which could destroy the timetable, and Cameron could be forced to concede a referendum even to get this through.

Beyond this, however, the Joint Committee's report offers a good guide to the likely flashpoints, several of which could lead to government defeat in the Commons. In particular, if Labour sought to amend the bill in favour of a wholly elected chamber (as their manifesto promised), many Conservatives might join them in order to wreck the proposals, while many Lib Dems (whose manifesto said this too) would support the change on principle. After a long and gruelling parliamentary passage, the bill could emerge from the Commons in a very different form to that in which it was introduced.

Another possible way forward is to negotiate a more minor reform. Some sceptics seized on the Queen's Speech committing only to 'reform the composition' of the Lords, without mentioning 'election'. Supporters of the 'alternative report' favour the measures in the bill proposed repeatedly by Lord Steel of Aikwood, which cleared the Lords by the end of the parliamentary session, but found no time in the Commons. But even the Steel bill needed heavy amendment in order to get through: originally it provided for a statutory appointments

commission, and gradual removal of the remaining hereditary peers, but by the end only the provisions on expelling those with serious criminal convictions, and allowing others to retire, remained. Lord Steel's bill was reintroduced this session on 17 May. Other options on the table include the list of proposals presented to the Joint Committee by former Lord Speaker Baroness Hayman. These include capping the size of the chamber, appointing new members on a proportional basis and for fixed terms, and ending the link between membership and the honours system. Even these changes, if pursued, would be a major achievement for Clegg.

### Lords working practices and committees

Another important proposal from Lord Goodlad's Leader's Group on Working Practices in the Lords was debated on 26 March. The Group had suggested that government bills starting in the Commons should routinely take their committee stage in the Lords in Grand Committee, rather than on the floor (unless they were constitutional or highly controversial). The Lords Procedure Committee proposed a more general presumption that all Commons bills were considered in Grand Committee unless the 'usual channels' (whips) agreed otherwise. Peers expressed concern, and Labour's Baroness Royall attempted to reword the motion, but in the end it was heavily defeated by 319 votes to 96. The subtext was that peers suspected government of trying to clear the decks to free up sufficient time on the floor for a Lords reform bill.

Alongside this, proposals from the Liaison Committee were debated and it was agreed to slightly change the structure of Lords select committees. The subcommittees of the European Union committee will be reduced from seven to six, and the resources to the Science and Technology Committee reduced. This frees up resources to support two new ad hoc committees, on public services and small and medium-sized enterprises, and more pre- and post-legislative scrutiny. A Procedure Committee proposal that the number of written questions per member should be limited to 12 per week was also agreed.

### Backbench Business Committee changes

The last *Monitor* reported that operation of the Commons Backbench Business Committee was due to be reviewed, following its first session. The Procedure Committee announced such a review in February, inviting submissions by 8 March. The Backbench Business Committee itself indicated that it would produce a report reflecting on its own operation during 2010-12. Many MPs were thus angered when the government tabled standing order changes for the elections to the committee in the week of 5 March, before the Procedure Committee's consultation was over, and before either committee had yet reported.

Furthermore, the government whipped its members to support the proposals, when such proposals are usually taken on free votes. The changes ended all-house election of the committee's members, bringing this (like those for select committees) inside party groups. The chair would still be elected by the whole chamber, but be required to be an opposition MP. An extremely bad tempered debate on the changes took place in the chamber on 12 March. Natascha Engel, chair of the Backbench Business Committee, confessed herself 'deeply disappointed' by the government's action, while Procedure Committee chair Greg Knight declared that his committee would 'in no way feel inhibited by what is determined today' in making its recommendations for the future. The proposals were nonetheless passed, and appeared motivated by the government's concerns that Conservative members on the Backbench Business Committee are less than loyal to the party leadership. But changing the electoral

system for these positions seemed a misguided response, given that their election in 2010 was unopposed. The obvious solution was simply for more Conservatives to stand. Elections were held on 17 May, and Natascha Engel was re-elected chair, unopposed.

The Backbench Business Committee's own report was published on 26 April, and urged clearer definitions of backbench business, more transparent timetabling, and more imaginative and flexible use of time. These ideas will feed into the Procedure Committee's inquiry.

### Liaison Committee inquiry on select committee effectiveness

The Commons Liaison Committee has continued its inquiry into 'select committee powers and effectiveness', and heard evidence on 23 February from the Unit's Robert Hazell and Meg Russell, alongside the Institute for Government's Peter Riddell, Hansard Society's Ruth Fox and Professor Matthew Flinders of Sheffield University. This has been the only oral evidence session so far, although various written evidence has been received. Speakers at the session urged the committee to think about how select committees can be more effective within their existing powers, without necessarily seeking new powers. As the Unit report *Selective Influence* demonstrated last year, committees can be at their most effective when they, for example, pick the right inquiry topics, collect original evidence, and doggedly follow up their recommendations.

### Financial privilege

The passage through Parliament of the Welfare Reform Bill earlier this year saw the government criticised for its use of financial privilege on amendments passed in the Lords. Under this privilege, when the House of Commons rejects a Lords' amendment that would have financial implications, the Lords will by convention not insist on the amendment though they may offer another amendment in lieu provided it does not 'invite the same response'.

During the bill's initial passage through the Lords the government suffered seven defeats, including on the so-called 'benefit cap'. The government rejected all of the changes in the Commons, and financial privilege was offered as the reason. Financial privilege had already been invoked earlier in the 2010-12 session and, consequently, some peers responded with alarm.

It is the Clerk of Legislation, acting on the authority of the Speaker, who decides whether an amendment has financial implications. However, the Commons can waive its privilege and frequently does so, for example when government amendments are made in the Lords. But now that the Lords is resisting government cuts, this may be used more frequently as a defence, which risks Lords debates being considered futile. If peers are pushed too far, conventions could break down, with implications for the future relationship between the two Houses.

See Dr Jeff King's (UCL Laws) article on the Constitution Unit blog.

### Commission on West Lothian Question

In January the government announced the long-awaited Commission into 'English votes on English laws'. Unlike the Commission on a British Bill of Rights, it is composed of experts and technocrats with no strong views on the underlying issues. The Commission is chaired by Sir William McKay, former Clerk of the House of Commons, and its other members include two former First Parliamentary Counsel (Sir Stephen Laws and Sir Geoffrey Bowman), and Sir Emyr Jones

Parry (Wales), Prof Charlie Jeffery (Edinburgh), and Prof Yvonne Galligan (Queen's Belfast). With such strong expertise in the drafting of bills and parliamentary procedure, the Commission is well placed to address their task, 'to consider how the House of Commons might deal with legislation which affects only part of the UK'. Roughly half of all Acts of Parliament apply to only part of the UK, with some 30 per cent applying only to England and Wales. The Commission will need first to decide how to define an 'English law', which might require considerable recasting of the statute book; and next to define 'English votes', by identifying those stages of a bill's passage when non-English MPs would not be allowed to vote. It is to report by May 2013.

## Parliamentary privilege

As part of its review of parliamentary privilege, the government published a green paper on 26 April with a view to meeting the Coalition's commitment to 'prevent the possible misuse of Parliamentary privilege by MPs accused of serious wrongdoing'. The green paper covers freedom of speech, exclusive cognisance, and other miscellaneous privileges.

The government writes that it has no intention of altering parliamentary privilege in relation to civil cases, but will consult on whether the protection of free speech in parliament should ever be disapplied in criminal cases involving MPs. On exclusive cognisance – the right of each House of Parliament to regulate its own affairs (including the conduct of its Members) without external interference – the government plans to consult on possible reforms to select committees, including the codification of their existing powers and the creation of criminal offences for committing contempt of parliament, allowing parliament's powers to be enforced through the courts.

The paper also deals with possible changes to a number of other privileges, including the reporting of parliamentary proceedings, Members' freedom from arrest in civil matters, and Members' freedom from being compelled to appear in courts as witnesses.

## JUDICIARY AND THE COURTS



### Brighton Declaration

Ken Clarke, Secretary of State for Justice, has heralded the recent Brighton conference on the European Court on Human Rights as a success for British ambitions to reform the court. The changes involved are actually relatively minor, but Mr Clarke appears broadly speaking to have got what he wanted. The 'Brighton Declaration', issued in April, emphasises the doctrines of subsidiarity and margin of appreciation. Subsidiarity refers to the principle that decisions should be made locally where possible. The margin of appreciation is the leeway that the court has historically offered to different jurisdictions to hold and give effect to their distinct moral values (the respect given to different moral views on abortion being one example). The Declaration states that these principles (which are already part of the case-law of the European Court of Human Rights) should be written into the Preamble of the Convention. It also, usefully, suggests the possibility of an optional 'Advisory Opinion' procedure whereby States Parties could ask for the opinion of the Court on a specific case at domestic level without the need for the case to go to Strasbourg on appeal (with all of the delay and administrative difficulties that this can entail). At a practical level, the Declaration asks that the time limit for

applications be reduced from six months to four and suggests that the criteria for admissibility be tightened. It should be possible for the Court to refuse cases that have been considered by a domestic court if that court has applied 'well-established' ECHR case law and also cases where there has been no significant disadvantage to the applicant.

The changes suggested by the Declaration are intended to reduce the Strasbourg court's immense case load and also to defuse areas of friction with domestic legal systems (Britain being prominent among these) and look like they may have a reasonable prospect of success.

Closer to home, the recent resignation of Michael Pinto-Duschinsky from the Commission on a Bill of Rights suggests that all is not well within that process. Dr Pinto-Duschinsky quit claiming that the Commission had 'sidelined parliament and the prime minister' by intending to 'issue a report in favour of the status quo'. These difficulties are not entirely surprising. With a membership split between human rights lawyers on one hand and sceptics on the other the Commission was always likely to experience difficulties. The Commission plans to issue its final report by the end of the year.

## Crime and Courts Bill and appointments

The new Crime and Courts Bill, announced in the Queen's Speech, introduces a number of changes to the way judges are appointed, following from a recent Ministry of Justice consultation.

Perhaps the most controversial change concerns diversity in appointments. The 'tipping point' provision of the Equality Act 2010 (section 159) is to be applied to judicial appointments. Section 159 provides that where there are two candidates of equal merit, a positive action policy may be applied. In addition, provision is to be made for part-time working for judges at High Court, Court of Appeal and Supreme Court level. These changes are not unexpected, but whether they will have any effect remains to be seen. Many judges and lawyers are wary of anything that might dilute the principle of appointment based exclusively on merit, and are firmly of the belief that it is impossible for two candidates to be completely equal. If this view remains pervasive in legal culture it may be difficult for section 159 to take root. Conversely, many who had hoped for more robust measures on diversity will be disappointed that what has been proposed is relatively tame.

## ELECTIONS AND POLITICAL PARTIES



### Party funding

Following the resignation of Tory treasurer Peter Cruddas over allegations that he offered policy influence in return for donations, party funding reform returned to the agenda in March. Cross-party talks were initiated by Nick Clegg, with negotiations led by Francis Maude and Lord Andrew Feldman for the Tories, David Laws and Tim Gordon for the Lib Dems, and John Denham and Lord Ray Collins for Labour. David Miliband publicly laid down the gauntlet for action in April, advocating a £5,000 annual cap on individual donations. Crucially, he stated that this would also apply to trade union donations—a long-standing sticking point for Labour—but he refused to support removing the annual 'opt-out' levy on members of party-affiliated trade unions, a significant component of Labour funding.

Both the government and Labour have reiterated their aversion to increasing state funding to meet the funding shortfall, as was recommended in the Committee on Standards in Public Life report, published in November 2011.

### Individual electoral registration

In response to the government's draft individual electoral registration (IER) bill (published June 2011), the Political and Constitutional Reform Committee (PCRC) acknowledged that while there is a general consensus on IER in principle, questions have been raised over its implementation. The government responded to the PCRC in February, outlining changes to the initial proposals. Data-matching (checking with other government databases e.g. DVLA) would be used to ensure a smooth transition, and the 2013 canvass will be moved to 2014. The government remains undecided over plans to allow voters to 'opt-out' of registering to vote, and whether failure to register should be made a criminal offence. There was no mention of halting the sale of the edited electoral register, a move that is supported by the Electoral Commission and others.

On 1 March the Electoral Commission announced that despite inconclusive trial results, data-matching has potential. The electoral registration and administration bill which made it into the Queen's Speech on 9 May keeps IER firmly on the agenda.

### Mayoral referenda

Ten cities voted in referenda on introducing a mayor on 3 May. The result was a resounding defeat for the mayoral project, with Bristol the only city to vote in favour. The referenda were also overshadowed by poor turnout, with an average of 28.8 per cent across the country and only 24 per cent in Bristol.

The implications for the government's localism plans—a core manifesto commitment of both coalition parties—look bleak. Critics have argued that the 'no' vote was a product of mayors being perceived as an unnecessary expense, whose powers and pay are insufficiently defined. Notwithstanding, long-time advocate of mayors Lord Adonis has said he expects to see mayors in all major cities within a decade, but as a 'bottom-up not a top-down process'. Liverpool, Salford, Doncaster and Leicester have all appointed mayors in the last year through local referenda or local council agreement.

See video of our seminar on elected mayors with Lord Adonis and Mayor of Hackney Jules Pipe on our website.

### Elected police commissioners

15 November 2012 has been set as the day for election of Police and Crime Commissioners across England. These new roles, created by the Police and Social Responsibility Act 2011, have been introduced to re-establish the link between the police and their local community. The commissioners will be accountable for their local police force and set local crime plans to address community issues.

Seen as a key coalition agreement, the reform has sparked intense debate. Lord Ian Blair has stated that police forces such as Thames Valley or Northumbria are simply too large and diverse for one individual to represent. Labour have criticised spending £125m on elections instead of frontline services and Lib Dems are worried about politicizing the police. Nevertheless, Labour and the Conservatives intend to field candidates for all 41 forces; Labour already have eight former ministers running including John Prescott (Humberside). Lembit Opik is rumoured as a Lib Dem candidate for Northumbria.

## DEVOLUTION



### Northern Ireland

This financial year the cuts introduced by Chancellor George Osborne will really hit the devolved jurisdictions, via their 'Barnett consequentials'. The theory is that confidence will then grow and businesses will invest, with the public sector no longer 'crowding out' the private.

Northern Ireland is the UK region where the public sector's proportion of gross domestic product is highest, so already the cuts are hurting. And the pain is exacerbated by the continuing refusal of the devolved administration to grasp the nettle of finding an equitable way of paying for water, so that health and education spending are further reduced.

Hospital accident-and-emergency departments are one of the front lines. In March the Royal College of Nursing warned that several were at 'breaking point'. The chair of the British Medical Association's GPs' committee interrupted a conference of the association in Northern Ireland to protest that waiting times for hospital appointments were, in his experience, the worst in the UK and that this was 'damaging patients'.

Also in March, the education minister, John O'Dowd, presented to the assembly the results of a viability audit of schools in the region. In Northern Ireland's still selective system, a remarkable 84 per cent of secondary schools (though only 35 per cent of grammars) were found to be struggling educationally, financially, or in terms of pupil numbers. It is estimated that a £300m investment is needed to bring the schools estate up to standard, including in some cases to meet health-and-safety criteria; the minister found £27m in May, following an internal review of its budget.

In April the chair of the Northern Ireland Housing Executive (NIHE) reported that unfitness in the region was rising for the first time in the four decades since the executive was formed in response to the civil rights movement. The NIHE estimates that at least £1bn is needed to renovate the social housing stock, yet the funding annually available for improvement has fallen in five years from £63m to just £5m.

Nor is there any prospect that this pain will be offset by private sector gain. Basic Keynesian economics would dictate the contrary, and in March the chief Northern Ireland economist of the Ulster Bank noted that firms in the region had seen demand for their products fall for more than 50 successive months, while the UK economy was flatlining.

Dr Robin Wilson is a Constitution Unit Honorary Senior Research Fellow and author of *The Northern Ireland Experience of Conflict and Agreement: a Model for Export?* (Manchester University Press, 2010).

### Scotland

The SNP enjoyed an unusually strong showing in the May local elections. A sign of the new narrative of SNP dominance in Scottish politics is that some journalists, when interviewing First Minister Alex Salmond, wondered if he was disappointed by the local results (this is also the line taken by analyst John Curtice, who remarked that the result marks a large drop in support compared with the 2011 Scottish Parliament election). Yet, despite being in national

government, the SNP won the most local seats and their highest-ever total (424 of 1223, or 34.7 per cent) and made bigger gains than Labour (now at 394 seats, 32.2 per cent), while the Conservatives lost 20 per cent (now 115, 9.4 per cent) and the Liberal Democrats lost 57 per cent (now 71, 5.8 per cent). This contrasts sharply with results in England, where the coalition parties made the traditional incumbent losses and Labour became the largest party.

We have also witnessed the unusual effect of some unusually high profile personalities (normally, Salmond is the only big personality in Scotland). The first is Rupert Murdoch, in the spotlight following various allegations that Salmond offered some sort of support to News International's BSkyB bid in exchange for the Sun's support for the SNP. Despite providing some hope for opposition parties seeking to undermine the SNP's image, compared with the attention currently focused on Jeremy Hunt, the allegations' impact was relatively muted. We can say the same about the response to allegations that Salmond used government resources to host a meeting with potential party donors to secure a £1m SNP donation from some lottery winners: nothing looks quite as bad in Scotland when compared with allegations of misconduct in Westminster.

The second is Donald Trump, in the limelight following his intense opposition to the proposed location of a wind farm which would be seen from his new golf course. Trump took the unusual step of announcing a multi-million pound fund to oppose wind farm expansion in Scotland before appearing before a Scottish Parliament committee (Energy and Tourism) to make his objections known officially. In this case, the fallout on the SNP and Salmond was relatively muted. Indeed, Trump may appear rather unreasonable and self-interested to most commentators, making it difficult for opposition parties to gain political capital.

These events overshadowed what might otherwise have been issues receiving high and enduring attention: NHS Lothian possesses an increasingly problematic PFI contract and has been found to have been manipulating its figures to meet waiting times targets (this practice is more associated with health policy in England, where the stakes, and therefore the incentives to 'game', are higher); and the prospect of Scottish Labour coming out to oppose free higher education tuition fees in Scotland.

Dr Paul Cairney, University of Aberdeen

## Wales

The first part of 2012 in Wales was dominated politically by the local election campaigns, which resulted in significant wins for Labour, who took control of most councils in Wales. The other political highlight was the election of Leanne Wood as the new leader of Plaid Cymru in mid-March. Wood's election was too close to the polls for the result to be treated as a judgment on her. Wood was seen as the more left-wing of the candidates, and her election suggests Plaid will seek to compete very directly with Labour in south Wales as well as appealing to its traditional support base. The Silk Commission has been continuing its work reviewing Welsh devolution generally, taking evidence across Wales, though its public meetings seem to have been thinly attended. Its timescale for reporting on financial matters has been extended to late autumn 2012, and for constitutional matters to 2014. An opinion poll for the *Western Mail* in early April suggested support from 46 per cent of the electorate for some measure of fiscal autonomy for Wales, a ten-point lead over those opposed to tax devolution. Welsh Labour appear to be at most sceptical about this, however, and their support for any change

will be conditional on progress on other issues, including borrowing powers for the Welsh government and 'fair funding'. They have also rejected the idea of corporation tax devolution. So far, they have been pursuing these issues bilaterally with the UK government, but with little success. Instead, they have found themselves in wars of words with Secretary of State Cheryl Gillan over a variety of policy matters.

First Minister Carwyn Jones has also sought to start wider debates about the UK's constitutional future, in the light of developments in Scotland. He has called for a constitutional convention in the UK (an idea since picked up by the Commons Political and Constitutional Reform Committee), and for reconstruction of the House of Lords as a federal chamber in the event of Scottish independence. Of more immediate impact is the consultation launched in late March on creating a separate legal jurisdiction for Wales, an idea already pooh-poohed by the Secretary of State but which has attracted considerable support in legal circles. The consultation closes on 19 June, and may stake out a key element of the future constitutional debate.

Alan Trench is author of the 'Devolution Matters' blog: [www.devolutionmatters.wordpress.com](http://www.devolutionmatters.wordpress.com)

## FREEDOM OF INFORMATION



### Post-legislative scrutiny of FOIA

In January 2011 Lord McNally and Deputy Prime Minister Nick Clegg pledged to begin the process of post-legislative assessment of the Freedom of Information Act. Clegg tasked the Justice Select Committee with scrutinising the implementation of the Act in order to 'ensure the public interest is put first'. The process of scrutiny was informed by the government's own investigative assessment, examining the implementation and usage of the act, the extent to which information is disclosed, and the impact the Act has had on public authorities. Presented to the Committee in the form of a memorandum from the Ministry of Justice, the study evaluated the initial objectives of the Act and assessed whether those objectives had been achieved. Attention was drawn to several areas of concern, including the volumes of requests, the cost of processing the increasing workload, and the level of protection given to policy discussion and cabinet papers.

The Committee invited written evidence on, but not limited to, the strengths and weaknesses of the Act, whether it is working effectively, and whether it is operating as was intended. 112 submissions were received, 25 per cent of which were contributed by universities or groups representing them, making higher education the most outspoken sector. A number of oral evidence sessions have also taken place, with the Committee hearing witness evidence from Lord Gus O'Donnell, Jack Straw MP, the Information Commissioner Christopher Graham, and the Constitution Unit, among others. Requester witnesses have included media representatives, WhatDoTheyKnow.com, and animal rights campaigners.

The evidence of Lord O'Donnell and Jack Straw focused heavily on the impact the Act has had on policy formation. Referring to the disclosure of ministerial communications, legal and professional advice and cabinet minutes, both recommended the removal of the public interest test in order to ensure a 'safe space' for discussion and the exchange of free and frank advice. The

Information Commissioner proposed the introduction of measures that would alter the way authorities are able to deal with frivolous or vexatious requests, adding that he hoped the Committee's recommendations will be made on facts rather than feelings.

The inquiry has also prompted formation of a number of campaign groups, fearful of the potential impact that post-legislative scrutiny and subsequent Committee recommendations may have on FOI legislation. One such example is the Save FOI campaign: a collective from various backgrounds including FOI officials and information rights experts, concerned that the inquiry could negatively impact on the scope and use of the legislation, leading to less transparency and increased bureaucracy. The group is active in raising the media profile and public awareness of the Act, creating petitions, compiling examples of where FOI has had a positive impact, and encouraging the public to contact their local MP in defence of FOI.

Once the evidence sessions of the Inquiry have concluded, it is anticipated that recommendations for amendments to the legislation or its Code of Practice will follow.

## PEOPLE ON THE MOVE

**Sir Alex Allan** is the new Independent Adviser on Ministerial Interests, in succession to **Sir Philip Mawer**. **Philip Rycroft** is to be the new Director General in the Cabinet Office heading the staff of the Deputy Prime Minister, in succession to **Chris Wormald** who has become Permanent Secretary in the Department for Education. **Lord Newby** is the Liberal Democrats' new Chief Whip in the House of Lords, and the Government's Deputy Chief Whip for the Upper House. In May's Labour frontbench reshuffle, **Baroness Smith of Basildon** became Deputy Chief Whip in the Lords, **Lord Beecham** joined the Justice team and **Baroness Hayter** the Cabinet Office team. **Nick Besley** is the new Clerk to the House of Lords Constitution Committee. **Ian Watmore**, Permanent Secretary in the Cabinet Office, will step down in June.

## CONSTITUTION UNIT NEWS

### ***The Politics of Coalition: Lessons learned 2010-11***

In December 2011, the Constitution Unit completed a year-long action research project examining the workings of the Conservative-Liberal Democrat Coalition. The Unit interviewed over 140 key individuals about the Coalition and the impact coalition government has had upon Westminster and Whitehall. This has led to a book, *The Politics of the Coalition: How the Conservative-Liberal Democrat Coalition Works*, to be published by Hart Publishing in June 2012.

*The Politics of Coalition* covers the period from the Coalition's formation to the end of 2011. The Coalition has confounded British expectations of coalition government as unstable and indecisive: it has been bold and harmonious. At the Centre, various informal decision-making forums have emerged to deal with coalition issues, but there has also been a revival of formal Cabinet government. In the departments, there was robust argument, but ministerial teams worked well together. The picture was less harmonious in Parliament. There have been high levels of rebellion and resentment in the Commons; and several defeats in the Lords. In spite of this, the government remained in control.

This project was generously funded by the Nuffield Foundation. There will be a series of events held to publicise the book's

publication. See Bulletin Board overleaf and [www.ucl.ac.uk/constitution-unit/research/coalition-government](http://www.ucl.ac.uk/constitution-unit/research/coalition-government)

### **Special advisers: aiding responsive government, not unaccountable government?**

The Constitution Unit has begun a 15 month-long project examining the role and functions of special advisers (spads) from 1997 till the present day. Very little is known about special advisers, temporary civil servants who are appointed to provide political and/or expert advice to ministers. This project asks: who are special advisers; what do they do; and how can their effectiveness be improved? We aim to remedy the lack of an evidence base through the construction of a database and semi-structured interviews. This project is funded by the Joseph Rowntree Charitable Trust. The project team consists of Robert Hazell, Ben Yong and Peter Waller.

We are interested in getting in touch with former and current special advisers, their ministers and the civil servants who have had contact with spads. We welcome hearing from anyone from these groups.

Ongoing updates on the project will available here:

[www.ucl.ac.uk/constitution-unit/research/special-advisers](http://www.ucl.ac.uk/constitution-unit/research/special-advisers)

### **Parliament's Impact on Government Legislation**

One of the Constitution Unit's major current research projects is a two-year study of the Westminster parliament's impact on government legislation, led by Dr Meg Russell. Now half-way through the project, the research team have reported the first preliminary results, based on the 2005-10 parliament, and they suggest that parliament is more influential on government policy than is generally acknowledged. One significant finding is that a high proportion of substantive government amendments responded to concerns that were first raised by non-government MPs and peers. The full preliminary results were presented in a paper to the annual conference of the Political Studies Association in Belfast in April, and have been revised for presentation at a special conference of the European Consortium of Political Research in Dublin in June.

### **Staff Update**

Research Assistant Simon Kaye left the Unit at the end of April to attend George Mason University in Washington DC as a Research Fellow over the summer. He will be returning to King's College London to continue his PhD in Democratic Theory in the autumn. Simon is replaced by Tom Semlyen. Tom is currently undertaking a PhD at King's College London, looking at the ideology of equality and diversity in Britain. His other academic interests include class analysis, political and social thought and British politics. Former intern Ashley Palmer, who worked on the Coalition Government project, returned to the Unit between April and June to assist Meg Russell.

In September we welcome Dr. James Melton, who has been appointed Lecturer in Comparative Politics at UCL, and will also be a member of the Constitution Unit. He is a principal investigator on the Comparative Constitutions Project, which aims to catalogue the contents of all constitutions written in independent states since 1789, and was joint author of *The Endurance of National Constitutions* (Cambridge University Press, 2009). He will add greatly to the Unit's international and comparative expertise.

Thanks to interns Jon Handcock, Robbie Fergusson, and Isabel McCann for all their sterling work between January and April.

# Bulletin Board Constitution Unit Newsletter

## Constitution Unit Events:

- **Wednesday 13 June, 6.00pm**  
Director of the Centre for European Reform Charles Grant will discuss the ongoing Eurozone crisis and its implications for European institutions (Council Room, Constitution Unit)
- **Wednesday 10 October 2012, 1.00pm**  
The Unit's Robert Hazell and Ben Yong will discuss the findings of their book, *The Politics of Coalition: How the Conservative-Lib Dem Government Works* (Council Room, Constitution Unit)
- **Tuesday 13 November 2012, 6.00pm**  
Lara Fielden, Reuters Institute for the Study of Journalism, will discuss international lessons for redesigning press regulation in the light of the Leveson Inquiry (Council Room, Constitution Unit)

A full programme for 2012/2013 will be available on our events webpage in due course: [www.ucl.ac.uk/constitution-unit/events](http://www.ucl.ac.uk/constitution-unit/events). Seminars are free and open to all. These seminars are funded by her family in memory of Barbara Farbey, late of UCL, who greatly enjoyed them and who died in 2009.

### Book Launch

R Hazell and B Yong, *The Politics of Coalition: How the Conservative-Liberal Democrat Government Works* (Hart Publishing)

- **Monday 18 June, 6.00pm**  
Venue TBC  
Speaker: Nick Boles MP
- **Tuesday 26 June, 6.00pm**  
Reading Room, British Academy, 10 Carlton House Terrace, London  
Speaker: Lord O'Donnell

Visit [www.ucl.ac.uk/events](http://www.ucl.ac.uk/events) to register.

## Constitution Unit Publications:

M Benton and M Russell, 'Assessing the Impact of Parliamentary Oversight Committees: The Select Committees in the British House of Commons' *Parliamentary Affairs* 2012; doi: 10.1093/pa/gss009

R Hazell, M Chalmers & M Russell, 'Pre-Appointment Scrutiny Hearings in the British House of Commons: All Bark, or some Bite?' *Journal of Legislative Studies* 18(2) 2012

R Hazell and B Yong, *The Politics of Coalition: How the Conservative-Lib Dem Government Works* (Hart Publishing, London, June 2012)

B Morris, 'The Commonwealth in the 21st Century', *Political Insight*, April 2012

B Morris and N Bonney, 'Tuvalu and You: The Monarch, the United Kingdom and the Realms' *Political Quarterly* 83(2), 2012

M Russell, 'Elected Chambers and their Powers: An International Survey' *Political Quarterly* 83(1) 2012, 117-129

B Worthy, J Amos, R Hazell & G Bourke, *Town Hall Transparency? The Impact of the Freedom of Information Act on English Local Government* (Constitution Unit, December 2011)

### Publications of Note:

M. Bennister, *Prime Ministers in Power: Political Leadership in Britain and Australia* (Palgrave, 2012)

P. Bradey, *Comments on the Proposed System for Individual Electoral Registration in Great Britain* (McDougall Trust, 2012)

P. Cairney, *The Scottish Political System Since Devolution* (Imprint Academic, 2011)

J Norman, 'Mr Justice' *The Economist: Intelligent Life* (March/April 2012) – memoir of the late Lord Bingham

T Wright, *Doing Politics* (Biteback Publishing, 2012)

International IDEA, *A Practical Guide to Constitution Building* (2011)

ResPublica, *Our House: Reflections on Representation and Reform in the House of Lords*

## Unit in the Press:

### Lords Reform

Meg Russell appeared on BBC2's *Newsnight* (23 April) and on the Guardian's *Politics Weekly* podcast (2 March) to discuss Lords reform

Lords buffoonery has to end. So why not abolish them? – *The Guardian* (23 April)

Dissenting members of the Joint Lords Reform Bill speak out – *The Huffington Post* (23 April)

The perils of Lords reform – [politics.co.uk](http://politics.co.uk) podcast (26 January)

### Scottish Independence

In January, Robert Hazell and Alan Trench were featured on BBC *Newsnight*, BBC *News at Six*, BBC *News at Ten*, the Radio 4 *Today* programme, and BBC Radio Scotland to discuss the Scottish Independence referendum.

Alan Trench: Answer to West Lothian question is still unclear – *The Scotsman* (18 January)

Cameron may regret this penalty shoot-out – *Times* (10 January) (behind paywall).

Coalitions sudden 'death-pack' referendum plan attacked – *The Herald* (10 January)

### Church and State

Bob Morris appeared on the BBC's *Daily Politics* to discuss Church and State (7 March)

### FOI

When Ministers say 'No' to FOI requests – *BBC News* (15 May)

A full list of the Unit's press coverage can be found at [www.ucl.ac.uk/constitution-unit/news](http://www.ucl.ac.uk/constitution-unit/news)



Constitution Unit Blog

[www.constitution-unit.com](http://www.constitution-unit.com)

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