



### Preparing for another hung parliament

Recent polls have suggested that the 2015 general election will result in another hung parliament, with no single party gaining an overall majority. The media and voters may assume that 2015 will then see a replay of 2010, with the swift formation of another coalition government. Not necessarily so, as Robert Hazell and Peter Riddell of the Institute for Government have been explaining in pre-election briefings for the broadcasters. Here are their key messages in response to some of the questions raised.

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*Will the leader of the largest party become Prime Minister?*

Not necessarily. The constitutional rule is that the politician who can command the confidence of the House of Commons becomes PM. This could be the leader of the second largest party, if he can secure sufficient support from third and minor parties.

*Does the Queen play a formative role?*

No. The political parties must establish between themselves who can command confidence in the new House of Commons. The Queen will be kept informed, and will appoint that person as Prime Minister when the result of the negotiations becomes clear.

*What if the negotiations result in a stalemate, with two rival combinations staking equal claims to be the next government?*

The default position is that the incumbent PM has the right to remain in office and meet the new parliament to test if he can still command confidence, as Baldwin did in 1923-24.

*Will another hung parliament lead to another coalition?*

Not necessarily. A minority government is equally possible. In the twentieth century Britain had 20 governments; five were coalitions, and five were minority governments. It is also possible to have a minority coalition.



*What is the role of the civil service?*

The civil service will offer a location for the party negotiations (in 2010, Cabinet Office); they will be available to offer information, but not advice, and act as note takers if required. The parties may choose a different location in 2015 to keep away from the media, such as parliament.

*How long will the negotiations take?*

Longer than five days, for several reasons. There are likely to be more parties involved than the three which negotiated in 2010. Their backbenchers will insist on more thorough consultation, and endorsement by the parliamentary party, before agreeing to any coalition agreement or support arrangements. It should also be noted that in 2010 it took 13 days to settle the full coalition agreement. The detailed Programme for Government was published on 19 May.

*Who governs in the meantime?*

The incumbent Prime Minister and his government remain in office. Under the caretaker convention they cannot make decisions which would bind the hands of a future government. So they cannot make new policies, public appointments or let important government contracts. If decisions cannot be deferred the government must consult the opposition parties, as Alistair Darling did the weekend after the 2010 election, when he attended the [ECOFIN meeting on 9 May 2010](#).

*What happens to Ministers who lose their seats?*

They remain Ministers, even though they are no longer MPs. Jim Knight attended Gordon Brown's last Cabinet meeting on 9 May 2010 although he had lost his seat. In 1964 Patrick Gordon Walker was appointed Foreign Secretary by Harold Wilson, even though he had lost his seat, and served for three months until he also lost a by-election in early 1965.

*Will there be a second election?*

There has been talk of Cameron or Miliband forming a minority government and then calling a second election to strengthen their numbers, as Wilson did in 1964 and again in 1974. This is made much harder by the [Fixed Term Parliaments Act](#), which abolished the prerogative power of dissolution. Under the Act parliament can only be dissolved by a two-thirds majority in the Commons

(effectively requiring the support of both major parties); or following a vote of no confidence, if no alternative government is formed in 14 days. Some MPs have called for repeal of the Act, and others believe it could be overridden, but they have yet to explain how.

## Elections & political parties



### Constitutional reform and the party manifestos

With the long campaign to the May 2015 general election well underway, it is becoming clearer which key constitutional commitments are likely to appear in the main party manifestos. In part these will reflect the commitments made at the [party conferences](#), which took place shortly after the Scottish referendum.

Territorial concerns will almost certainly feature highly. First are the necessary reassurances from all parties on the [Smith Commission](#) on Scotland, and the [Silk Commission](#) on Wales. On the assumption that no progress is made pre-election, parties will also set out their competing visions of English Votes on English Laws (see article in Parliament section below). Different visions of devolution in England are also likely, with the Liberal Democrats, Greens and Labour committed to regionalism, UKIP previously committed to an English Parliament, and all parties likely to include warm words on further localism.

Labour's central commitment, explicitly supported by all the main UK-wide parties except the Conservatives (so far), will be to a constitutional convention. This requires parties to retain some flexibility with respect to other promises, as it would clearly be nonsense to create a convention if the future of English devolution (for example) is already predetermined. This context - not to mention the need to allow for possible coalition negotiations after the election - also allows parties significant flexibility on other matters. Hence they may include declaratory statements on the principles of Lords reform (see below), but leave the fine detail to the convention.

Commitments on electoral reform are also likely to be approached with caution following the failure of the 2011

AV referendum. The Liberal Democrats may prefer to leave space to negotiate for proportional representation at the local level, realising that such change remains unlikely for Westminster for now.

Firm commitments from the Conservatives will clearly include a referendum on EU membership and reaffirmed commitment to a British Bill of Rights. As outlined by Dominic Grieve in his [lecture co-hosted by the Unit](#) in December, some Conservatives are uneasy about threats to withdraw from the European Convention on Human Rights, but the party is under considerable pressure from UKIP on this policy. On both of these matters the Conservatives can claim to have been held back by their coalition partners, so can use these as dividing lines. However, with the outcome of the election so uncertain, and the possible need therefore for further inter-party deals, the degree to which any party will find it prudent to set out real 'red lines' remains to be seen.

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## 2015 candidate diversity

The candidate selection process is well under way for the 2015 general election, as is the debate about diversity and representation. [Parliamentary Candidates UK](#) has examined the profile of new candidates in terms of gender and race diversity in marginal and retirement seats; constituencies where those selected are more likely to get elected.

The Labour Party's use of all-women shortlists (AWS) has given the party an advantage in terms of women selected. Of the candidates chosen to date, Labour has selected 38% women; Conservatives 33%; Liberal Democrats 30%; Greens 34%, Plaid Cymru 29%; UKIP trails behind with just 14%. This difference is greater when we look at the parties' selection in the 100 most marginal seats (based on the 2010 general election) i.e. 50% of Labour's 66 selections are women compared to 25% of the Conservatives' 49 selections. Percentages are similar for the Lib Dems (31%), the Greens (34%) and Plaid Cymru (33%). Again, UKIP are well behind at 15%.

A similar story emerges when looking at retirement seats (where the incumbent's party has selected its candidate): 70% Labour candidates in retirement seats are women, compared to the Liberal Democrats who have selected five women (46%) and the Conservatives have chosen nine women (32%). Plaid Cymru has one woman in the one seat where the party's incumbent stepped down.

Of the Black and Minority Ethnic (BME) candidates selected in retirement seats thus far, the Conservative Party has chosen more non-white candidates than the other parties. In retirement seats where the sitting MP stood down and the new candidate has a high chance of being elected, the Conservative Party takes the lead with five non-white candidates (18%) out of 28 selections, followed by the Lib Dems with one (9%) out of 11 and the Labour Party with one (3%) out of 30 new selections. In total, of the 70 candidates chosen in retirement seats only seven (10%) are from an ethnic minority background.

Looking at the 100 most marginal constituencies, 9% of all candidates are BME (26 out of 283). Labour has chosen seven BME candidates out of a total of 66 (11%); the Conservatives four out of 48 (8%), the Liberal Democrats five out of 45 (11%) and the Greens three out of 53 (6%) candidates. Perhaps contrary to popular wisdom, in the 100 most marginal seats, 10% of UKIP's selections are BME candidates (seven out of 68).

Despite increased media attention on candidate diversity and recent attempts to take action (e.g. AWS, A-lists), it seems that [local associations remain less willing](#) than their leadership to respond to the issue and shortlist or choose non-white and female candidates.

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## Assessing UKIP candidates

UKIP is no longer a peripheral party and will, for the first time in a British General Election, have a measurable impact on the outcome, both directly through potentially winning seats and indirectly by influencing the behaviour of the other major parties. According to recent polling data, [support](#) for UKIP is at 16%. Ofcom has endorsed it as a 'major' party and UKIP are set to be included in the prospective TV leader debates. A recent poll of [pollsters](#) predicts UKIP will win five seats in May, but predictions are risky—particularly when trying to factor what will happen in Scotland into the equation. Much of UKIP's appeal has arisen from positioning itself as the outsider or 'anti-Westminster' party. The question is, does UKIP really offer something different, or potentially just more '[male, pale and stale](#)' candidates?

Data on UKIP are surprisingly hard to get: candidates are not as forthcoming on websites, the internal party infrastructure is less developed than other more

established parties and local newspaper journalists have yet to tackle the more probing questions that one might expect to be answered by candidates who aspire to elected office. The available data indicates UKIP candidates are typically both more likely to be white (95% versus 88% for Conservative candidates) and male (87% versus 62% for Labour candidates), but also older (52 years old versus 39 for Conservative and 43 for Labour) than candidates from the other 'major' parties. On average, UKIP candidates have less political experience as previously elected representatives (36% compared with 80%+ for Labour and Conservative candidates) and fewer have occupied 'politics-facilitating' jobs (30% compared with 56% for Labour candidates).

Limited information is available on UKIP candidates' school and level of education. Where data are available, they indicate around 30% attended grammar schools, a figure similar to other parties. 28% of UKIP candidates attended private schools, a figure lower than Conservative candidates (42%), but higher than Labour candidates (15%). Nearly half of UKIP candidates hold an undergraduate degree, a similar figure to the other parties. However, only 14% attended Oxbridge compared with 40% of Conservative candidates.

*For more on the backgrounds of UKIP candidates, see the Unit blogpost [here](#).*

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## PCRC inquiry into redrawing the boundaries

Although the legislation on redrawing constituency boundaries is on hold until after the election, the Political and Constitutional Reform Committee is currently undertaking an inquiry into the difficulties boundary changes may bring.

One common recommendation from the evidence supplied is to loosen the strict 5% allowed variation from the ideal electorate size to 10%, especially if other factors need to be respected. A second issue is whether wards could be split in the process of redrawing constituencies. The Boundary Commission previously assumed this would be impractical but now seems more open to it. Professor Ron Johnston argued that allowing ward splitting could, somewhat counter-intuitively, actually ensure more continuity.

Also raised was the issue of whether constituencies should reflect equal electorates or equal populations. Should the registered electorate form the basis, even though certain demographics are under-represented, or should census data be used? Finally, opinion was split on reducing the number of MPs from 650 to 600 as proposed, with doubts expressed as to whether this would help to address popular dissatisfaction with politics.

The flavour of the evidence overall is that this remains a contentious but crucially important area.

*For a more detailed summary of the evidence submitted, see the Unit blogpost [here](#).*




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## English votes on English laws

In December William Hague published the government's proposals in a paper titled [The Implications of Devolution for England \(Cm 8969\)](#). It is a remarkable white paper, opening with three chapters on the devolution story so far, and options for devolution in England. These include a range of options from George Osborne to boost economic growth, with payments by results mechanisms, tax increment financing, earnbank and gainshare schemes; greater powers for cities over transport; and most radical of all, devolution on demand, which the Liberal Democrats would release under an English Devolution Enabling Bill.

Most remarkable are the final chapters, in which the coalition parties set out separate proposals for English votes on English laws (EVEL). Chapter 6 contains three Conservative options: a full strength English veto at each stage of the legislative process, based on the proposals of the Norton Commission (2000); a half strength version, giving English MPs a voice at Committee and Report stage, based on the [Conservative Democracy task force](#) chaired by Ken Clarke (2008); and a modified version of the [McKay Commission](#) proposals (2013), with an English Grand Committee passing a Legislative Consent Motion after Report stage and prior to Third

Reading. The first option offers a hard version of EVEL, giving English MPs a veto; Clarke and McKay a softer version, allowing clear expression of an English voice but allowing the House as a whole to override it.

Chapter 7 sets out the Liberal Democrat proposals. They support EVEL, but with a Lib Dem twist: that the English Grand Committee should reflect the votes cast in England, not the numbers of English MPs. That would increase Labour and Lib Dem representation on the committee, and reduce the numbers of Conservatives.

The white paper also contains a short chapter about the scope, timescale and terms of reference of a constitutional convention, which was Labour's proposal, but which is supported by the Lib Dems, and is not rejected by the Conservatives (see chapters 5 and 6).

The Conservatives intend to hold a parliamentary vote on the different options in the near future, in order to differentiate themselves from both Labour and the Lib Dems, and prevent UKIP stealing further votes in England. However, they will only do so if they are confident that Conservative MPs can coalesce around one of the three options, and decide to support a hard or a soft version of EVEL. If no vote is held it will suggest that the Conservatives remain divided but do not wish to expose their divisions publicly.

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## House of Commons Governance

The select committee on House of Commons Governance, chaired by Jack Straw, [published its report](#) in December. As summarised in [Monitor 58](#), creation of the committee was precipitated by arguments over the appointment of the new Clerk, to replace Sir Robert Rogers (now Lord Lisvane). The central question facing the committee was whether the roles of Chief Clerk and Chief Executive of the Commons should be split, and if so how. It concluded that they should, with a new post of Director General responsible for 'resource allocation and delivery' acting alongside the Clerk and ultimately managed by the Clerk. The report draws an explicit parallel to the relationship between the civil service Chief Executive and Cabinet Secretary. Existing Director Generals (e.g. of Facilities, and Information Services) would be renamed 'Directors'.

The committee also proposed some shakeup of management bodies. The House of Commons Commission would be given a more explicit strategic

focus, and include elected backbench members alongside the Speaker, Leader and Shadow Leader of the House, the Clerk, Director General and two external members. A new, smaller, Executive Committee would replace the current Management Board (currently chaired by the Clerk) and be chaired by the Director General. The committee was explicit that the prior appointment process for the new Clerk 'should be formally terminated', and that selection of the two new senior positions should be 'in line with modern recruitment practice'.

When the Commons [debated](#) the committee's report on 22 January its conclusions were largely accepted. The aim is that before parliament dissolves for the election standing order changes will be agreed and the new Clerk appointed (the Director General will need to be appointed after the Clerk). Straw hopes minor amendments to the [1978 House of Commons \(Administration\) Act](#), to facilitate changes to the Commission, will occur by the election as well.

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## House of Lords appointments, retirements and size

Appointments to the Lords, and the associated expansion of the chamber, have continued to be controversial. In October four new Crossbench peers were announced, but these were appointed directly by the Prime Minister rather than via the House of Lords Appointments Commission. There has long been an agreement between Downing Street and the Commission that the Prime Minister can in any parliament appoint 'up to 10 distinguished public servants, on their retirement, for non-party-political peerages'. These have generally been used for figures such as former Cabinet Secretaries. Cameron's October appointments included the retiring Commons Clerk and retiring Director General of the British Security Service, but also two others who did not fit the previous rubric. Media controversy particularly focused on Sir Andrew Green, the chair of Migration Watch (who retired from public service in 2000). It emerged that the Prime Minister had rewritten the rules, as set out in a little-noticed [written parliamentary statement](#) (col. 37WS) in June.

On 6 January, the House of Lords devoted five hours to [debating](#) the problems of its growing size. In a debate sponsored by Lord Williams of Elvel (Labour), numerous peers bemoaned the practical and reputational problems

of a membership nearing 850, and expressed concerns about yet more possible appointments post-May 2015. Various proposals were put forward, including organised retirements based on length of service, or age, or the possibility of all groups downsizing proportionately - perhaps based on election, as in 1999. But as some peers pointed out, any system of retirement is likely to fail until there are restrictions put on the number of appointments by the Prime Minister (see details in the [new Unit report](#)). To date only five peers have made use of the permanent retirement scheme in the House of Lords Reform Act 2014 - the most recent being Lord (Patrick) Jenkin of Roding, on the day of the debate.

## Lords reform proposals – large and small

Interest in Lords reform has somewhat revived, following the Scottish referendum and in the run-up to the general election. Labour in particular has claimed that a reformed Lords could help bind the Union together, with Ed Miliband calling in a speech in December for a 'territorial Senate' to replace the House of Lords. The precise shape of this remains unclear, and despite some media reports that this implies a 'US-style Senate' there are many different models. Some suggest indirect election of members of the second chamber by subnational assemblies, but this would be challenging when there remains no uniform pattern of such assemblies across the UK. The other party which has particularly seized on Lords reform as a campaign issue is the SNP, which has always spurned peerages. Its official position, as set out by Pete Wishart in a [Westminster Hall debate](#) on 14 January, is for an 'exclusively democratic' replacement for the Lords.

While these proposals remain somewhat ill defined, another very small reform may succeed before the election. [The House of Lords \(Expulsion and Suspension\) Bill](#) was proposed by former Lord Speaker Baroness Hayman, and completed its stages in the Lords on 7 January. It has been picked up in the Commons by former Conservative Leader of the House, Sir George Young. The bill is very short, and simply allows the Lords to specify in standing orders procedures for permanently expelling members or suspending them for a specified time. Its target is members who abuse procedures, for example through 'cash for questions' or impropriety over expenses - though it would not have retrospective effect.

## Digital democracy



The [Commission on Digital Democracy](#) was set up by Commons Speaker John Bercow in November 2013. It sought to consider the potential of digital technology for UK democracy through a wide range of evidence-taking procedures as well as engagement with numerous groups via roundtables, student forums and conferences.

The [Commission report](#), published on 26 January, sets out a series of recommendations for the House of Commons to enhance its engagement with citizens through the use of digital technology. It endorses the introduction of online voting by 2020 and proposes piloting the use of MPs' identity cards to record votes electronically during the next session of parliament, whilst also retaining the procedure of walking through division lobbies. Other recommendations include giving citizens opportunities to participate in the legislative process during 'the policy development and pre-legislative stages', to engage with select committees, and to submit questions to ministers or to the Prime Minister.

The report also suggests several targets for making parliament more accessible by publishing jargon-free annotations to Bills and making Hansard available as open data. This suggestion ties in with a point of action [previously suggested](#) by the House of Commons Governance Committee, which was the online free access publication of the next edition of Erskine May.

A short-term recommendation for MPs elected to House of Commons in 2015 is to create a 'Cyber Chamber' as a 'regular digital public discussion forum to inform debates held in Westminster Hall'.

# Executive



## Further differentiation by the coalition

As the election approaches, there have been further signs of loosening collective discipline between the coalition partners. One example of a legislative stand off has similarities to the revenge taken by the Liberal Democrats after Conservative backbenchers failed to support Nick Clegg's Lords reform bill, and the Lib Dems refused to implement the Conservative-inspired legislation for a smaller House of Commons with more equal sized constituencies.

This time the tit for tat has been over two Private Member's bills. The first is the Affordable Homes Bill, introduced by Andrew George MP (LD), who came first in the ballot, and whose bill would significantly mitigate the effects of the 'bedroom tax'. This was passed by 306 to 231 votes on Second Reading, but remains stalled in committee because Conservative ministers have refused to table the requisite money resolution. In response Nick Clegg has refused to table a money resolution for the EU Referendum Bill introduced by Robert Neill MP (Con), who has re-introduced James Wharton's bill which was passed by the Commons in the last session but failed to get through the Lords. The DPM has said that a money resolution will be tabled once one has been produced for the Affordable Homes Bill. Neither bill is now likely to pass.

## Changes to the Cabinet Manual

Chapter 2 of the Cabinet Manual, on Elections and Government Formation, was published three months before the 2010 general election to explain the rules of government formation in the event of a hung parliament. In anticipation of another hung parliament after the 2015 election, suggestions are being made for improvements to the Manual. The weakest part of chapter 2 is the section on the caretaker convention, which explains the restrictions on government activity between the time the election has been called and the new government has been formed. The inadequacy of the guidance has been criticised in [evidence to parliamentary committees](#) and in [academic articles](#).

There are four main lines of criticism. First, that the Manual conflates the caretaker convention with the 'purdah' rules on government publicity, and fails to explain the separate rationale for restricting the activity of a caretaker government, which is that it does not command the confidence of the House of Commons. A caretaker government has the lawful authority to govern, but not full political authority, which is why its actions are restricted. Second, the Manual does not state clearly enough that a caretaker government cannot resign: the Manual should state unambiguously that the Prime Minister and government must remain in office until it is clear who can command confidence in the new parliament. Third, the Manual is vague about when the caretaker period ends: but politicians, the media and public should all have a clear understanding of whether the government is operating in caretaker mode, and when that mode comes to an end. Fourth, there needs to be greater clarity about what kind of decisions are caught by the caretaker convention (what constitutes a 'major policy decision' or 'large procurement contract'), and ideally cross-party agreement, before these issues become the subject of partisan dispute.

A second suggested change to the Cabinet Manual is more speculative, and involves floating the idea of an investiture vote as an alternative to the traditional vote on the Queen's Speech as a way of demonstrating that the new government commands the confidence of parliament. This suggestion was raised during the Lords Constitution Committee's [inquiry into the constitutional implications of coalition government](#), but did not find favour with the committee, nor with the government [in their response](#).

## Lords Constitution Committee report on constitutional implications of coalition

The government response to the [Constitution Committee's report](#) was published in November. The committee had found little to say about the constitutional implications of the coalition, which in many respects has behaved in much the same way as previous governments in using its majority to govern in a majoritarian way. But they were concerned about the erosion of collective responsibility, evinced in the growing number of instances where the coalition parties have agreed to disagree (the latest being their failure to agree proposals for English votes on English laws – see

article on pp 5-6 above). Unsurprisingly, the government delivered a bland response, because the main incentives for collective responsibility are political rather than legal or constitutional: a government which appears to be divided generally pays the price at the next election.

The Constitution Committee had rejected the idea of an investiture vote, which had been [suggested in evidence](#) by Robert Hazell of the Constitution Unit and Peter Riddell of the Institute for Government. This would follow the procedure in Scotland where a newly elected parliament has to nominate the First Minister before that person is appointed by the Queen. The government agreed with the committee that the traditional vote on the Queen's Speech is a better way for the House to signify its confidence in the government as a whole.



## The Smith Commission considers devolution for Scotland

The [Smith Commission](#) was formed to produce proposals for a meaningful degree of further devolution in a remarkably short period of time following the Scottish Independence Referendum. Its terms of reference were:

'To convene cross-party talks and facilitate an inclusive engagement process across Scotland to produce, by 30 November 2014, Heads of Agreement with recommendations for further devolution of powers to the Scottish Parliament. This process will be informed by a Command Paper, to be published by 31 October and will result in the publication of draft clauses by 25 January. The recommendations will deliver more financial, welfare and taxation powers, strengthening the Scottish Parliament within the United Kingdom.'

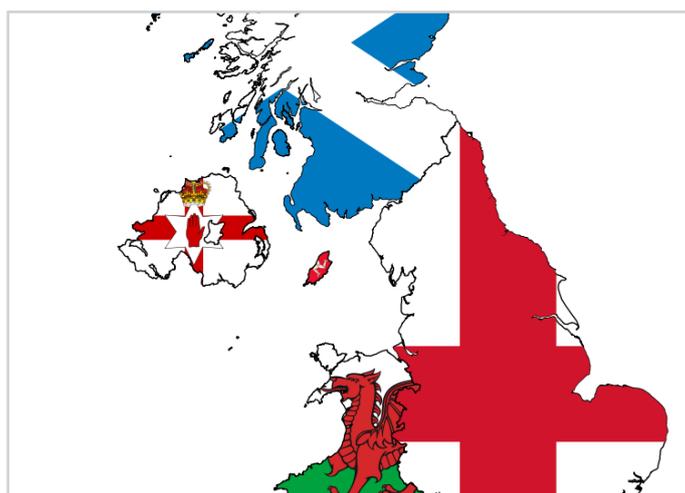
Although its deliberation process included a short period of public consultation, the Commission served largely as a way to negotiate a devolved settlement between the Scottish National Party (and Scottish Green Party)

on the one hand, and the Conservatives, Labour and Liberal Democrats on the other. The Scottish parties are now seeking the devolution of all policies bar foreign, defence and monetary policy, in contrast to the separate, and far more modest, devolution proposals presented by Unionist parties during the referendum campaign.

The Commission [reported](#) on the 27 November 2014, and its recommendations include to:

- Make the Scottish Parliament 'permanent'
- Devolve some fiscal powers, including the power to: set income tax rates and bands (higher earnings are taxed at a higher rate) but not the 'personal allowance' (the amount to be earned before income tax applies); set air passenger duty; and to receive a share of sales tax (VAT)
- Increase the Scottish Government's borrowing powers
- Devolve some aspects of social security, including those which relate to disability personal care, housing and council tax benefits
- Devolve some policies designed to encourage a return to employment
- Devolve the ability to license onshore oil and gas extraction (which includes 'fracking', or unconventional drilling for shale gas)
- Devolve control of the contract to run the Scottish rail network
- Encourage greater intergovernmental relations and a more formal Scottish Government role in aspects of UK policymaking

The UK Government produced [draft legislation](#) on the 22 January 2015 and the three main UK parties are expected to incorporate Smith's recommendations into their manifestos for the UK General Election in May 2015.



The Independence debate had produced a ‘window of opportunity’ to return to ‘first principles’ and consider the nature of the current and future Scottish political system. Potential topics included its economic future, its relationship with UK and international organisations, the prospect of political reform, and the extent to which its politics and policies might resemble those of Nordic democracies. The further devolution debate offered a much more limited, albeit still important, debate about the political and practical reasons to devolve specific powers to Scotland. Still, these recommendations have raised a number of potential problems that will take some time to be resolved, including:

- Intergovernmental relations – the proposals move us from a relatively clear devolved settlement, closer to a shared powers model, in which the governments may have cooperate more systematically than they have in the past
- Finance – it is not yet clear how the devolution of further taxes will work in practice. The UK Government has also proposed a rather vague ‘no detriment’ rule to allow for compensation between governments if the action of one has a negative effect on the other
- European Union - it is not clear how the Scottish Government wants to engage in the EU when it cannot act as a proxy member state. Nor is it clear how willing the UK is to entertain a more direct Scottish role
- Accountability – with shared powers comes shared responsibility, and the Smith Commission was unclear about how further devolution would enhance a sense of democratic accountability in each separate parliament.

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## The Wales Act and the St David’s Day process

In Wales the story on the constitutional front has been one of broad continuity punctuated by moderate change. Since the last Monitor, the Wales Bill became the Wales Act, receiving Royal Assent on 17 December. During the final stages of its legislative journey in the House of Lords, however, the Act was subject to two notable amendments. Firstly, and in a sign that the Wales Office truly is under new management since Stephen Crabb’s appointment as Secretary of State, the ‘lockstep’ mechanism of income tax devolution was removed by

the Lords at [committee stage](#). Following an amendment tabled by Wales Office Minister, Baroness Randerson, Welsh rates of income tax can now be set independently of one another.

And therein lies the rub. Despite the removal of one lockstep another more formidable lockstep remains: the [requirement of a referendum](#) before the devolution of income tax powers can take place. With the crucial veto players in this process, the Welsh Labour Government, demanding ‘fair funding’ before income tax devolution occurs, the prospects of any such referendum taking place in the near future are rather dim at best. The ‘vow’ after all has [seemingly guaranteed Barnett in perpetuity](#). If this referendum is held, however, it will be one in which 16 and 17 year olds will be entitled to participate. Citing the way in which the Scottish independence referendum was ‘invigorated’ by the lower franchise, the Government moved this amendment at Third Reading in the Lords. Only time will tell how the Scottish experience will translate to a referendum on partial income tax devolution.

Scotland’s shadow is also cast over what is now the main focus of constitutional discussion in Wales: the St David’s Day process. Part of a series of nation-specific constitutional conversations [inaugurated by David Cameron on 19 September 2014](#), cross-party talks, involving the Welsh party leaders at Wales and Westminster, have been held by Stephen Crabb in an attempt to reach a ‘baseline’ for further devolution for Wales after May’s general election. One recommended reform is already clear: a move to a reserved powers model of devolution. Recommended by both the [Richard and Silk Commissions](#), this model of devolution, [as Crabb has noted](#), commands cross-party support in the Welsh Assembly and in Westminster. The key question facing Welsh devolution now, and the real issue at stake in the St. David’s Day process, is what those reserved powers will be.

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## Stormont House Agreement negotiated in Northern Ireland

It was *déjà-vu* again in Northern Ireland as the British and Irish premiers sought for the umpteenth time to cajole the polarised protagonists that ‘peace process’ has ensconced—paramilitaries favoured over moderates in the Catholic community, sectarians emboldened at the

expense of liberal Protestants—to behave as if they were somehow other than ethnic tribunes.

The [Stormont House Agreement](#) eked out in December did at least keep the devolution show on the road. Sinn Féin, while legitimately criticising the injustice of Conservative welfare ‘reform’ in a region of high benefits dependency, finally accepted that resisting reform was imposing punitive penalties on Stormont—and allowed a budget to be struck rather than submitting to the temporary restoration of ‘direct rule’ from Westminster.

While the budget was lubricated with some further assistance from London, albeit overwhelmingly in loan provision, severe cuts remain inevitable. One in ten public servants will be invited into an ‘[exit scheme](#)’ in the years ahead, the redundancy payments funded by borrowing. The multiplier effect of that depression of demand will mean tens of thousands of jobs will be lost.

Worse still, the persistent failure of Northern Ireland’s devolved politicians to [raise revenue to match water charges](#) in Britain has put health and education under huge pressure. It was no surprise to discover in January that the region was the worst UK performer vis-à-vis the four-hour target for treatment of patients admitted to A&E departments.

Yet hundreds of millions more will be lost from the Northern Ireland grant if the devolution of corporation tax agreed at Stormont House is translated into a reduction to the 12.5% rate prevailing in the Republic of Ireland in the years ahead. The private employment gains arising are speculative; the further cuts in public-sector jobs certain.

Finally, there remained no more agreement than [a year earlier](#) on the visceral residues of Northern Ireland’s ethno-nationalist conflict—the ritual flying of the Union flag, sectarian parades and dealing with the years of lead—in which both Sinn Féin and the Democratic Unionists are so heavily implicated. This can was kicked down the road for various other bodies to address, most notably the Commission on Flags, Identity, Culture and Tradition.

## Courts & the judiciary



### Appointment of Senior Presiding Judge

In January the Lord Chief Justice appointed Sir Adrian Fulford LJ as Deputy Senior Presiding Judge, to serve as Senior Presiding Judge (SPJ) in 2016-17. He also announced the appointment of Dame Juliet Macur LJ to be SPJ from 2018-19. This signals stronger succession planning, by announcing two such appointments; and a wish to expose more judges to senior leadership roles, by reducing the normal term served by the SPJ from three years to two.

### Constitution Committee inquiry into Role of Lord Chancellor

In December the Lords Constitution Committee [published their report](#) into the role of the Lord Chancellor. The report opens with a reminder that the Lord Chancellor has a duty to uphold the rule of law in Cabinet and across government, not just in the Ministry of Justice. But the committee suggests this has become more difficult for new style Lord Chancellors, with their wider policy responsibilities, reduced role in relation to the judiciary, and more overtly political role as Justice Secretary. Other guardians of the rule of law have become more significant as a result, in particular the Law Officers.

Some witnesses suggested the titles and jobs should be separated, to enable the Lord Chancellor to focus on relations with the judiciary and the rule of law. The committee disagreed, because combining the office of Lord Chancellor with a major department of state conferred additional clout and political authority. So the committee concluded that the office should be retained, but with a strengthened oath; and with an oversight role in relation to the UK constitution as a whole, since no other minister has such a responsibility.

## International



### Constitutional ‘modifications’ in Ecuador

Last June the president of the National Assembly in Ecuador submitted a proposal to the Constitutional Court to amend 17 articles in [Ecuador’s constitution](#). The president of the National Assembly sought advice on whether or not the amendments are ‘modifications’ or ‘partial reform’. The distinction is significant because, if the amendments are merely modifications, ratification only requires approval of two-thirds of the National Assembly. A partial reform would also require a referendum. In November, the court ruled that the amendments qualified as modifications, so they can be ratified without a referendum.

The amendments will significantly enhance the power of the executive and legislature, both controlled by the PAIS Alliance. The amendments would modify article 88, allowing the National Assembly to regulate complaints to the judiciary about arbitrary state action; article 158, allowing the military to provide support during domestic security operations; and article 384, reclassifying communications as a ‘public service’ giving the executive broad regulatory powers over the media. Perhaps most significant, though, are the changes to articles 114 and 144, which completely remove term limits on elected officials. Such a change would allow President Rafael Correa to run for a fourth term in 2017. Note that the 2008 Constitution allowed President Correa to evade the term limits set forth in the 1998 Constitution, which would have barred him from re-election in 2009.

Opponents of the PAIS Alliance are currently gathering signatures to petition the National Assembly to send the proposed amendments to a referendum. They need signatures from at least 5% of the electorate to force a referendum. However, given that President Correa’s approval rating hovers around 70%, a referendum seems unlikely to stop the amendments from being promulgated.

### Pakistan gives military courts more power

The [21st amendment](#) to the [Pakistani constitution](#) was promulgated on 7 January 2015. The amendment has two parts. First, it adds the following text to article 175:

‘Provided that the provisions of this Article shall have no application to the trial of persons under any of the Acts mentioned at serial No. 6, 7, 8 and 9 of sub-part III or Part I of the First Schedule, who claims, or is known, to belong to any terrorist group or organization using the name of religion or a sect.’

The amendment removes the trials of persons belonging to religious or sect-based terrorist organisations from the jurisdiction of the ordinary court system.

The second part of the amendment places four federal acts in the First Schedule of the Constitution, including [The Protection of Pakistan Act, 2014](#), which gives Military Courts jurisdiction over cases of terrorism. All laws in the First Schedule are exempt from being declared void on the grounds that they are incompatible with the fundamental rights entrenched in the constitution. As a result, the 21st amendment effectively prohibits [The Protection of Pakistan Act, 2014](#) from being declared void by the courts.

The amendment was a response to the [Peshawar school massacre](#) on 16 December 2014, when seven members of the Taliban in Pakistan killed 149 people in an army public school in Peshawar. The attack has prompted a huge public backlash against the Taliban in Pakistan and prompted the government to move civilian trials of terrorist suspects to military courts. The change in jurisdiction seems prudent at the moment. However, it is risky in the long-run because the constitution never provides a clear definition of terrorism, which creates the possibility that any enemy of the Pakistani government could be declared a terrorist and tried in Military Courts.

### Sudan extends the power of the president

The Sudanese Parliament approved amendments to 18 articles in its [Interim Constitution](#) on 3 January 2015. President Omar Al-Bashir proposed the amendments in November.

The most notable changes are to the powers of the executive. The president will now have power to appoint and remove a wide range of public officials, including provincial governors and senior judicial posts. This threatens to undermine the independence of the judiciary and, perhaps more importantly, threatens to undermine the federal system established by the constitution. Previously, governors were elected by the people of each province. The concern with presidential appointment of governors is that they will be subservient to the central government, rather than to the citizens of the provinces.

The other major change made by the amendments is to the mandate of the National Security Service. Article 151.3 of the Interim Constitution states that '[t]he National Security Service shall be professional and its mandate shall focus on information gathering, analysis and advice to the appropriate authorities.' The new amendments change this mandate to focus on security, rather than information, putting the National Security Service on an equal plane with the army and police. Given that the National Security Service is under the supervision of the President (Article 151.5), this change essentially gives the president his own personal security force.

Both of these changes threaten the stability of Sudan because they remove important constitutional protections held by minority ethnic groups. The potential instability created by these amendments is compounded by two factors. First, Sudan is a weak state with a history of civil war, which makes future domestic conflict more likely. Second, the amendments enhance the power of President Al-Bashir, a suspected war criminal. Thus the amendments are likely to heighten sectarian violence in Sudan, rather than quell it.




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## Tanzania calls a referendum on new constitution

In October, the Constituent Assembly in Tanzania approved a [draft constitution](#) for consideration by the Tanzanian people. Recall from the [last Monitor](#) that the process to create a new constitution started back in November 2011 and has proceeded slowly through two separate drafting stages. The expectation back in early September was that President Jakaya Kikwete would wait to ratify the new constitution until after the October 2015 election. However, the president defied expectations and called a referendum on the draft constitution for late April 2015.

The proposed constitution makes a number of changes to the constitutional system in Tanzania. The most controversial changes are to the structure of the union. The constitution will leave Zanzibar a great deal of autonomy. In addition to its existing powers, Zanzibar will gain the ability to take on government debt and be allowed to explore the island for oil and gas reserves. Some had demanded a separate government for Taganyika, the Tanzanian mainland, in order to give it the same constitutional status as Zanzibar, but this additional level of government was omitted from the final draft.

Another major change from the extant constitution is in the status of women. The proposed constitution has a number of provisions related to gender equality. In addition to the normal equality provision that prohibits discrimination based on gender, article 54 is entirely devoted to the rights of women. The article gives women the right to participate in elections, to be paid the same salary as a man, to protection of their employment while pregnant and after delivery, and to own property. If these rights are complied with, they have the potential to significantly improve the status of women in Tanzanian society.

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## Thailand prepares new constitution

The Constitutional Drafting Committee established by Section 32 of the [Interim Constitution](#) began work on Thailand's next 'permanent' constitution on 12 January 2015. The new constitution, the country's 20th, is expected to be promulgated and put into force in July. Although drafting only began a few weeks ago, there are already rumours as to its contents.

The leaked content is a bit of a mixed bag. In terms of rights, there is reason for optimism. One of the earliest provisions leaked from the drafting committee provides protection from discrimination for gay and transgender people. The courts will also be strengthened under the new constitution, which may provide for better enforcement of whatever rights are eventually included.

The other leaked provisions are less encouraging. For instance, the constitution is likely to provide for an unelected Senate and prime minister. This will give the military and political elite a way to continue to influence politics even after a new National Assembly is elected later this year. There is also the risk that a greatly empowered judiciary could be used by the military and political elite to 'rule by law' rather than enhance the 'rule of law'. In sum, despite what initially appears to be a relatively liberal bill of rights, the constitution is likely to entrench the power of the military and political elite, which will be detrimental to any hope of returning to democratic rule.

*Click [here](#) to see the Unit blogpost reviewing the 2014 Thai Interim Constitution.*

## Unit news

### New Unit report on regulating Lords appointments

On 9 February the Unit published [Enough is Enough: Regulating Prime Ministerial Appointments to the Lords](#), exploring the options for a formula to put Lords appointments on a more sustainable basis. The report carefully analyses the effects of three formulae across different electoral conditions 2015-25. This shows clearly that the formula in the coalition agreement (of achieving proportionality across the chamber) is unsustainable: even by May 2015 it would probably require the chamber to grow to between 941 and 1340 members. In contrast, implementing a formula of proportionality across each new batch of appointments could allow the size of the chamber to be gradually managed down (for example via a principle of 'one-in-two-out', especially if coupled with voluntary retirements).

The report's launch in the House of Lords was chaired by former Lord Speaker Baroness Hayman, and speakers included former chair of the House of Lords Appointments Commission Lord Jay of Ewelme, former Labour chief whip Lord Grocott, and Conservative MP Jesse Norman. The report calls on the two main party leaders to commit to a new system of Lords appointments from May 2015, arguing that continuing the present system would 'simply be irresponsible'. The Hansard Society and the Constitution Society backed the report, in partnership with the Unit.

[Click here to view the report](#)

### New publication: The Political Costs of the 2009 British MPs' Expenses Scandal, Edited by Jennifer Hudson

In May 2009, the Daily Telegraph began publishing un-redacted expenses claims made by British MPs showing how, and the extent to which, some MPs took advantage of an unregulated expenses system. This study examines the evolution and political consequences of the expenses scandal and argues that despite claims at the time of a revolution in British politics, it in fact had a limited, short-term impact. Beginning with the efforts of journalist Heather Brooke and the role of the Freedom of Information Act in exposing the scandal, the book examines the scandal's electoral impact and how it affected public perceptions of wrong-doing and probity amongst politicians. It also notes the many opportunities MPs had to reform parliamentary expenses, and gives special consideration to the media's role in reporting the scandal and the role of Independent Parliamentary Standards Authority in reforming expenses.

*Click [here](#) to order online and use code PM14THIRTY for a 30% discount.*

### New Release of Constitute, now including the UK's written 'constitution'

The Constitution Unit is pleased to announce that a new version of Constitute is now available online. The new version has many new features and includes a number of new constitutions, including that of the UK. This will provide a tool for comparing extant UK constitutional laws with constitutional texts from across the globe.

Last year, we launched *Constitute*, a website for reading, searching and comparing constitutions from across the world. The *Constitute* site is host to the English language text of almost every national constitution currently in force. It not only provides users with free and easy access to these texts, but by drawing on data collected by the [Comparative Constitutions Project](#) (CCP) over the last 9 years, it also facilitates powerful, topic-based searches of over 300 common constitutional themes.

Since the launch of *Constitute*, we have been accumulating feedback from our users and have now launched a significantly improved site. Among the new features on the site are the ability to compare two constitutions side-by-side, the ability to pin more items, improved sharing of constitutional provisions and, for researchers, better access to the data underlying the site (for a full description of new features, see [here](#)).

For our users in the UK the most significant new addition is the inclusion of the UK's constitution on the site. As arguably one of the most influential and historically significant constitutions in existence, any tool for comparing the constitutions of the world was incomplete without the inclusion of the UK.

*Take a look at the new *Constitute* site here, and view the UK's written constitution on *Constitute* [here](#).*

*For more on how the UK's written constitution was defined and codified, see the *Constitution Unit* blogpost [here](#).*

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## Staff updates

### Welcome to Marco Morucci

Marco Morucci joins the Unit as Research Assistant on the Parliamentary Candidates UK (PCUK) project. He holds a BA in Political Science and International Relations from LUISS Guido Carli University of Rome and a MSc in Comparative Politics and Democratisation from LSE.

### Chrysa Lamprinakou joins new ERSC project

Dr Chrysa Lamprinakou, who was previously Research Assistant on the PCUK project, joins the ESRC-funded Representative Audit of Britain project headed up by Dr Rosie Campbell (Birkbeck), Dr Jennifer Hudson (UCL) and Dr Wolfgang Rudig (Strathclyde) as a Research Associate.

## Interns

The Unit is grateful for the hard work and diligence of our interns. Thanks to the Autumn 2014 interns Julian Payne, Chrysi Kalfa, Marco Morucci, Patrick Tomison and Sally Symington.

## People on the move

**John Pullinger**, Director General of Information Services in the new House of Commons, has become the National Statistician and Chief Executive of National Statistics.

**Sir Robert Rogers**, former Clerk of the House of Commons, was created a Life Peer in December taking the title **Baron Lisvane**. Following the appointment of **David Natzler** as Acting Clerk of the House of Commons, **Jacqy Sharpe** becomes Acting Clerk Assistant, **Liam Laurence Smyth** is Acting Clerk of Legislation, and **Paul Evans** is Clerk of the Journals.

**Natalie Ceeney** is the new Chief Executive of HM Courts and Tribunals Service. She was Head of Customer Standards at HSBC, and formerly Chief Executive of National Archives and the Financial Ombudsman Service.

**Antonia Romeo** (Director General, Criminal Justice Group, Ministry of Justice) is the new Head of the Economic and Domestic Affairs Secretariat in Cabinet Office, in succession to **Melanie Dawes**, who has been appointed Permanent Secretary at Department of Communities and Local Government.

**Sir Adrian Fulford LJ** to be the next Senior Presiding Judge in 2016-17, in succession to **Sir Peter Gross LJ**; and **Dame Juliet Macur LJ** to be Senior Presiding Judge in 2018-19.

# Bulletin Board

## Events

To sign up to our events, visit the Constitution Unit [event page](#).

Seminars are free and open to all. They are held in the Council Room, Rubin Building, 29-30 Tavistock Sq. unless otherwise specified.

### **Farewell to the Commons: Reflections on parliamentary change over 40 years**

Jack Straw and George Young

4 March 2015, 5pm

*Houses of Parliament, Committee Room 8*

### **Forecasting the 2015 election result, and preparing for a hung parliament**

Gus O'Donnell

12 March 2015

### **Coalition or minority government in 2015?**

Robert Hazell and Peter Riddell

15 April, 1pm

*These seminars are funded by the family of Barbara Farbey, late of UCL, who greatly enjoyed them.*

Watch our previous events online on our [Vimeo page](#)

## Unit in the news

Meg Russell on mixing of business and politics in House of Lords ([Wall Street Journal](#) 11 Nov 14)

PCUK research quoted in article on rise of career politicians ([The Telegraph](#) 25 Nov 14)

Robert Hazell on royal visit to America ([Newsweek](#) 8 Dec 14)

Link to Unit research on government defeats in House of Lords ([BBC News](#) 11 Dec 14)

PCUK research quoted in The Guardian's view on a year in feminism ([The Guardian](#) 31 Dec 14)

Robert Hazell speaks about 10-year anniversary of the Freedom of Information Act on Radio 4's Today programme [1:52:08] ([BBC iPlayer](#) 1 Jan 15)

Jennifer Hudson talks about PCUK project on Radio 4's Westminster Hour [35.15] ([BBC iPlayer](#) 4 Jan 15)

*Enough is Enough* report covered in Guardian and FT ([The Guardian](#), & [FT](#), 10 Feb 15)

## Unit publications

Graham Gee, Robert Hazell, Kate Malleson and Patrick O'Brien, *The Politics of Judicial Independence in the UK's Changing Constitution* (Cambridge University Press, February 2015) **order [online](#)** and use voucher code 'Constitution2014' for a 20% discount

Edited by Jennifer Hudson, *The Political Costs of the 2009 British MPs' Expenses Scandal* (Palgrave, October 2014) **order [online](#)** and use code PM14THIRTY for a 30% discount.

Meg Russell and Tom Semlyen *Enough is Enough: Regulating Prime Ministerial Appointments to the Lords* (Unit report, February 2015) [view online](#).

Robert Hazell and Mark Sandford 'The English Question or the Union Question? Neither Has Easy Answers' *Political Quarterly* 2015 (1) [view online](#)

Daniel Gover and Meg Russell 'The House of Commons' "financial privilege" on Lords amendments: perceived problems and possible solutions' *Public Law* 2015(1) [view online](#)

# Bulletin Board

## Announcements

### House of Lords Constitution Committee seeks legal adviser

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The House of Lords Constitution Committee is inviting applications for the vacant post of one of its two legal advisers.

The role is part-time, remunerated by daily fee. The successful candidate will demonstrate well-established expertise in the fields of public law generally and constitutional law in particular. The primary task is to help the committee fulfil its role examining the constitutional implications of all public bills, but the adviser will also help the committee with its inquiry work.

A full job description, and details of how to apply, can be found on the [Committee's website](#). The deadline for applications is Friday 27 February.

### Constitutional Law Discussion Group: Edinburgh Law School

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The Constitutional Law Discussion Group (CLDG) at Edinburgh Law School aims to provide a structured forum for the discussion of topics relevant to constitutional law and theory. We hold fortnightly meetings, attended by doctoral students and staff, mainly from the law school, but also political science and other departments. The CLDG operates in association with, and with the support of, the [Edinburgh Centre for Constitutional Law](#) (ECCL).

For more information, visit the CLDG website [here](#).



The Constitution Unit



Constitution Unit Blog

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

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