

Constitution Unit

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The Conservatives' constitutional reform programme

The general election result took almost everyone by surprise. The Cabinet Office had been rehearsing for coalition or minority government negotiations lasting for weeks. Instead they welcomed David Cameron back as Prime Minister leading a single party Conservative government with a Commons majority of twelve. Conservative feelings of triumph may prove short-lived, however, as they come to grips with the realities of a slender Commons majority (less than John Major had in 1992). They also face a more assertive and obstructive House of Lords, as the 101 Liberal Democrat peers move back to the opposition benches (see page 6).

But there was no lack of self confidence in the Queen's Speech, which set out an ambitious constitutional reform programme that offered more powers for Scotland, Wales and Northern Ireland; devolution to English cities; English votes for English laws; the EU referendum; and a British bill of rights.

[The Scotland Bill](#) has been introduced early, as was promised in the Vow before the referendum, facilitated by the fact the coalition government published [draft clauses](#) in January. As discussed on pages 7–8, it implements the proposals of the Smith Commission, but goes no further. Although it appears to be a done deal, it is likely to be attacked on both sides. The SNP will say their resounding victory in Scotland is a mandate to go much further. But the bill also risks being attacked on the government side, because the Smith proposals were very hurried, with no consultation amongst the political parties and endorsed only by the three main party leaders. When the details are examined, unionists on all sides may start to worry about their feasibility: no one can confidently say how the fiscal arrangements will work in practice.

The Wales Bill (discussed on page 9) faces the opposite problem, in that the Welsh government does not welcome greater fiscal powers until Wales receives 'fair funding'.

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Image credit: PM's David Cameron's speech in Downing Street
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The Welsh First Minister Carwyn Jones is more attracted by the plans to develop a ‘reserved powers’ model for Wales, but early indications suggest that Whitehall is not going to make it easy.

For Northern Ireland, the Queen’s Speech promised to give further effect to the Stormont House agreement. It was unfortunate that this happened in the same week as the Northern Ireland Assembly [refused to pass the welfare reform bill](#), blocked by Sinn Fein and the SDLP. The government has already legislated to devolve corporation tax to Northern Ireland, but only in exchange for welfare reform. So further devolution may be stalled, and the impasse over welfare reform could even lead to collapse of the Northern Ireland executive (see page 10).

In England the government promises further powers for city regions which opt for elected mayors to oversee planning, transport, policing and health. But the rhetoric may be larger than the reality, consisting mainly of unbundling small funding packages into larger ones, with no new money. In the House of Commons, Standing Orders will be changed to enable English votes on English laws. Before the election the Conservatives were divided over whether to introduce EVEL with a ‘soft’ or ‘hard’ English veto. An obvious early candidate for testing the new procedure will be the (English) [Cities and Devolution Bill](#).

The EU Referendum Bill will be an early measure, because of the determination to hold the referendum before the end of 2017. The Electoral Commission will be concerned about too rushed a timetable, and have warned against trying to hold the referendum in May 2016, when it would coincide with devolved and local elections. The SNP have argued for a Scottish veto, demanding that exit should follow only if that is supported by majorities in all four nations of the UK. For more on the EU referendum, see page 11.

The one item where the government’s confidence slipped was over plans for a British bill of rights, with the promise of a consultation paper instead of a bill. The government has begun to realise the manifold complications, with [opposition from the devolved governments](#), the liberal wing of the Conservative party, the judiciary and the House of Lords.

The most notable omission from the Queen’s Speech was the forthcoming parliamentary boundary review

which will reduce the House of Commons from 650 to 600 seats. This was aborted in 2013, but under the law as it stands, a new review by the Boundary Commissions has to be completed by October 2018. In its 2015 manifesto the Conservative Party remained committed to reducing the size of the House of Commons to 600 MPs.

The Queen’s Speech was also silent about which bills will count as ‘first class constitutional measures’, and so take their Committee stage on the floor of the House of Commons. The EU Referendum Bill will certainly be one, and the Scotland Bill, and probably the Wales Bill; and the British bill of rights when it comes forward. The whips will be keen to minimise the number of such bills, because they take up a lot of prime parliamentary time and are more difficult to manage than bills on the committee corridor.

Elections & political parties



Reviewing the campaigns

The 2015 general election was a tale of two very different campaigns. Voters in England and Wales saw centrally-orchestrated and often negative campaigns from Labour and the Conservatives. In contrast, voters in Scotland—still riding the independence referendum high—saw a more positive campaign dominated by a rising SNP and its charismatic leader Nicola Sturgeon. With nearly every poll predicting a hung parliament, the collective focus was on the outcome after 7 May: would 2015 produce another coalition government (unlikely), a minority government (more likely) and thorny red lines (Trident)?

Outside of Scotland, fascination with anticipated post-election intrigue was contrasted by the stale and defensive campaign. The Tory strategy of reminding voters of an unpopular Labour leader in Ed Miliband initially failed to make much traction. The Conservatives then played the Scotland card, portraying Miliband in the pocket of the SNP, which proved to resonate more effectively with voters. Labour found itself in an uncomfortable position: essentially accepting the Tory-Liberal Democrat approach to austerity to appeal to voters on the right and consequently failing to appeal to voters further left, many of whom ultimately left for UKIP

in England or the SNP in Scotland. Labour's [‘four million conversations’](#) failed to convert voters in the marginal constituencies, and in the end, it was probably the Tory ‘air war’—with its consistent messaging on the economy and competence – that swung voters.

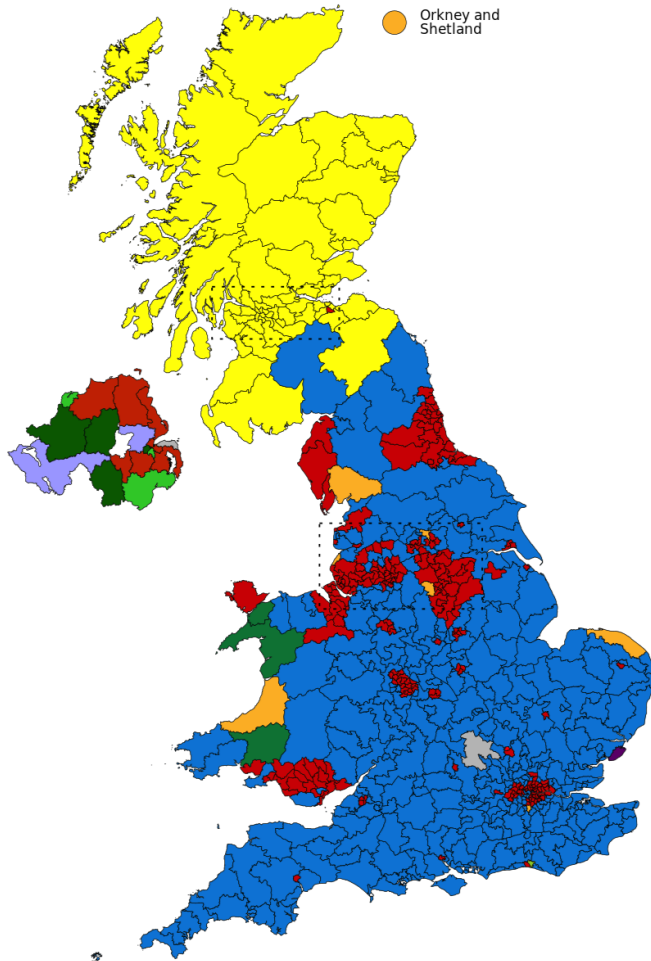


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The campaign will also be remembered for the tussle between broadcasters and the parties over the televised leaders' debates. It is clear now that the success of the 2010 debates has not established a precedent that parties feel obligated to meet. The single seven party leader debate did leave a mark however, making visible in the minds of voters the true nature of Britain's new era of multi-party politics. It also raised the profile of women leaders—Nicola Sturgeon, Natalie Bennett and Leanne Wood—a subtle signal that Westminster politics may be changing in other ways.

2015 also marked the first heavily data-driven general election campaign. In addition to the mainstays of British polling (YouGov, ICM, Ipsos) there were new players ([Survation](#)) and Lord Ashcroft's [constituency-](#)

[level polls](#), praised for providing insight into some of the election's key races. Widely available polling data also contributed to the increase in the number of forecasting teams ([ElectionForecastUK](#), [Polling Observatory](#)) and blog and data sites ([May2015](#), [YourNextMP](#), [Democratic Dashboard](#), [Parliamentary Candidates UK](#)) covering the election. The exit poll by Professor John Curtice and team gave us the first indication the pre-election polls were significantly off. The British Polling Council are investigating what went wrong and there will undoubtedly be lessons to learn for keen observers in 2020.

For more on the discussions around polling, see the Unit blog post [here](#).

Composition and profile of new parliament

Despite months of polls predicting a hung parliament, the Conservatives returned to single-party, majority government with 331 seats won. Although fewer candidates stood in 2015 (3,971) than in recent general elections, the new parliament is more representative in terms of race and gender than ever before.

There are now 191 women MPs in parliament, 48 more than were elected in 2010. Women make up 29% of newly elected MPs, an increase from 22% in 2010. Of the 56 Scottish National Party MPs, 20 are women, including the youngest MP Mhairi Black. Women thus make up 36% of the SNP's parliamentary party, compared to 43% for Labour and 21% for the Tories. Labour achieved this high watermark by concentrating women candidates in the most winnable seats. The Green Party had the highest overall percentage of women candidates standing (38%), but with chances in only a handful of seats they stood little chance in affecting parliamentary gender balance.

The vote on 7 May saw 41 black and minority ethnic (BME) MPs elected to parliament, constituting 6% of all MPs, and an increase from 2010 when 27 BME MPs were elected. The Tories led the way with 10% of BME candidates selected to stand in 2010, compared to 8% for Labour and the Lib Dems. But both the Conservatives and Labour increased the number of BME MPs: Labour by putting more BME candidates in their winnable seats and the Conservatives by selecting 7 BME candidates in very safe retirement seats.

In terms of the educational background of the new parliament, more than 85% of MPs have been to university. And, continuing trends from previous general elections, there has been a decline in the percentage of MPs attending fee-paying schools and attending Oxbridge.

Despite the new records, women still make up less than 30% of the House of Commons, putting the UK behind many of its European counterparts and well behind countries like Rwanda, Cuba and Kazakhstan. To put 2015 in perspective, we would need to elect an additional 130 women and to double the current number of BME MPs to make parliament descriptively representative of the population it serves.

Performance of the electoral system

The 2015 general election was set to open a new chapter in British politics, as for the first time more than two or three parties had a chance of gaining a significant number of seats in parliament. Somewhat surprisingly instead, the Tories won a single-party majority, while UKIP and Greens made no progress at all in terms of seats.

The strongly majoritarian system has played a major role in holding back the winds of change in this new party landscape: the decisive Conservatives victory can in part be attributed to the fact they took advantage of the specific structure of the first past the post (FPTP) electoral system by running a [strongly localised and targeted campaign](#).

The biggest victim of the electoral system at this election was UKIP, which obtained only one seat despite winning 12.6% national vote share and just short of 4 million votes. The result was similar for the Green Party, whose 3.8% vote share also translated into just one seat. In contrast, the regionally-concentrated SNP got 56 seats with a 4.7% national share. On average, the Labour and Conservative parties required between 30,000 and 40,000 votes per elected MP, and the SNP around 25,000. [These figures](#) have highlighted more strongly than ever the imbalances in the voting system.

[Proponents of proportional representation](#) have made the most of these results. Prospective figures on what [parliament would look like under PR](#) put the Conservatives at 242 seats, Labour at 199, followed by UKIP with 82 seats, Lib Dems with 51 and SNP with 31

seats. Lastly, the Greens would have 24 seats. Instead the outcome was Conservatives 331, Labour 232, SNP 56, Lib Dems 8, UKIP 1, and the Greens 1.

So this was an election where everything was supposed to change and very little actually did, offering a sharp reminder of the way first past the post favours the larger parties, and those with geographically concentrated support. It was also a reminder that the benefit from the way FPTP operates can shift from one of the two larger parties to the other. After 20 years when the system operated in favour of Labour, [it is estimated](#) that in 2015 it favoured the Conservatives by almost 50 seats. But although the outcome may have exercised electoral reformers - who are now more actively joined by UKIP in their cause - the new government is unlikely to show any interest in such matters.



Parliament

The election of the Speaker

The 2010 parliament ended dramatically, with a heated debate about the arrangements for re-election of the Speaker once the Commons returned. In 2011 the Procedure Committee had recommended that MPs should decide whether in future to re-elect the position by secret ballot - as now applies when a Speaker steps down, and to various other positions such as chairs of the main select committees. Despite pressure from the Procedure Committee this matter had not been debated, so it was a surprise when Leader of the House William Hague brought forward a motion on the last sitting day to introduce a secret ballot system. The move was seen as a barely-veiled attempt to unseat Speaker Bercow, and the procedural tactics (including minimal notice, when many MPs had already departed) drew criticism from across the House. The adverse comments from Procedure Committee chair Charles Walker (Conservative) were particularly widely reported. The government motion was defeated by 228 votes to 202, with 23 Conservatives and 10 Liberal Democrats voting against. This left the existing arrangements unchanged, and Speaker Bercow was re-elected without challenge on 18 May. As argued in a blog post [here](#) the initial row indicated two things: first, that the

House of Commons now has sufficient independence to challenge the executive on important matters relating to its own governance; but second, that the process of reform set in train by the Wright committee (2009-10) remains incomplete. That the Procedure Committee was unable to get its report debated in good time, and that the executive could propose this change without the committee's cooperation and at such short notice, demonstrated how the Commons in some respects still lacks control of its own agenda.



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Changes to Commons select committees

Following the election of the Speaker the next tasks for the reassembled Commons was to establish select committees, with chairs elected across the chamber as a whole and members subsequently elected inside their party groups. The departure of Nick Clegg as a Cabinet-level minister with central responsibility for constitutional reform was mirrored by the demise of the Commons Political and Constitutional Reform Committee (PCRC), which was very active in the last parliament. Since committee changes shadow machinery of government changes, which are themselves within the control of the executive, this was unsurprising. But the loss of a Commons committee focused on broad constitutional change at a time of significant uncertainty, and effectively at executive behest, drew some criticism (e.g. [here](#)). In part, recognition of these concerns 'constitutional affairs' have been tacked onto the remit of the (already busy) Public Administration Select Committee. Strikingly, while the Scottish Affairs, Welsh Affairs and Northern Ireland Affairs committees will continue to exist, there is no Commons committee with

a clear remit to consider the future of the devolution settlement as a whole, all of which may leave more work for the Constitution Committee in the Lords.

Other structural changes to the Commons committees include establishment of a new crosscutting Women and Equalities Committee, and a Petitions Committee (see below). The allocation of committee chairs between parties was [announced](#) on 3 June. As summarised [here](#) the main change is that the Liberal Democrats lose two committees and the SNP gain two. SNP members will chair the Scottish Affairs and Energy and Climate Change committees; Labour takes over the International Development Committee and new Petitions Committee; the Conservatives gain the Justice, Science and Technology and Women and Equalities committees. Labour by right retains the chairs of the Public Accounts Committee and Backbench Business Committee, but both are seeking replacements following Margaret Hodge's decision to step down and Natascha Engel's election as a Deputy Speaker. Elections take place on 17 June.

Commons procedural changes

On 24 February the House of Commons agreed to proposals from the Procedure Committee to set up a new system for handling e-petitions (for a summary see [here](#)). This has been a source of contention in recent years, after the coalition government set up an e-petition system in 2011 with an expectation that the Backbench Business Committee would schedule debates on petitions achieving over 100,000 signatures. The committee did not consider itself bound by this (executive) promise, but over 30 such debates were held. In the new parliament there will be a freestanding Petitions Committee (under the new Standing Order 145A), with rights to timetable debates on petitions in Westminster Hall on Monday afternoons. The Procedure Committee proposed that the new system should be a 'collaborative' one between government and parliament, in an attempt to end the previously existing muddle.

In March the Procedure Committee published two reports. The [first](#) usefully detailed changes to the standing orders for the new parliament. The second set out [Matters for the Procedure Committee in the 2015 Parliament](#) suggesting that the committee may want to revisit various issues including private members' bills and European scrutiny. The problems over the Speaker election (above) might also be added to that list.

Recall of MPs Act 2015

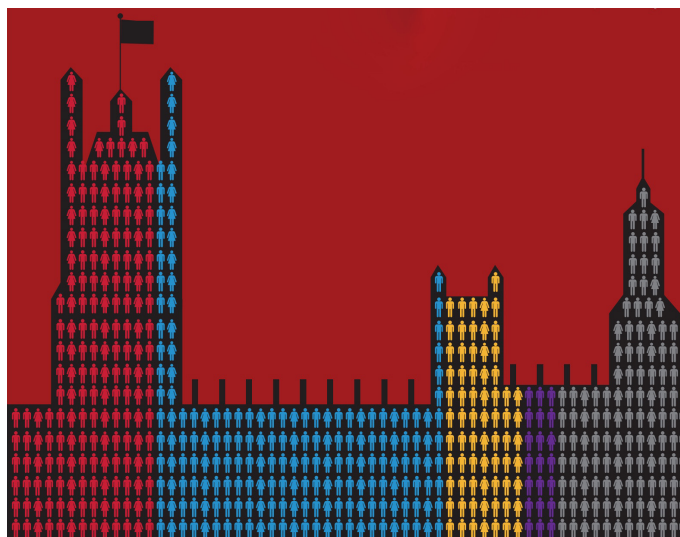
One of the final Acts to receive royal assent before the dissolution of parliament at the end of March was the Recall of MPs Act. This allows voters for the first time to petition for an MP to be removed from office during the course of the parliamentary term, triggering an early election.

The Act's origins lie in the 2009 scandal over MPs' expenses. This scandal gave rise to the perception that MPs could misbehave with impunity. All of the main parties rapidly pledged to introduce provisions allowing voters to recall an MP who had been found guilty of wrongdoing.

The Act implements this pledge. MPs become subject to the possibility of recall under one of three conditions: if they are sent to prison; if they are suspended from the House for a period of at least ten sitting days; or if they are found guilty of submitting false or misleading allowance claims. If any of these conditions is met, a six-week petition period begins. If at least 10 per cent of the eligible electors in the MP's constituency sign the petition during that period, then the MP loses the seat and a by-election is called. The Act does not prevent the ousted MP from standing again.

The Act raised some controversy. Some backbench MPs – notably Zac Goldsmith and Douglas Carswell – argued that a recall petition should be possible at any time, not just in cases of proved wrongdoing. The Political and Constitutional Reform Committee, in a [report published in 2012](#), argued that limited recall as proposed by the government could harm public confidence in politics and called for the proposals to be abandoned entirely. Nevertheless, the provisions as finally enacted differed only in details from the government's initial proposals.

The first test for the new provisions could be the case of Alistair Carmichael, the former Secretary of State for Scotland who has admitted to a role in the leaking of a memo about an alleged discussion between Nicola Sturgeon and the French Ambassador in the pre-election period. As a consequence, he has been referred to the Parliamentary Commissioner for Standards. Should this result in suspension from the House of at least ten days, the opening of a recall petition could be automatic. But that depends on whether the regulations bringing the new law into force have been passed by then: so far, they have not been.



The Lords and the new government

The election of a Conservative majority government takes large-scale Lords reform off the political agenda for the foreseeable future. The [Conservative manifesto](#) was explicit that this was 'not a priority in the next Parliament'. But the manifesto also included a pledge to 'address... the size of the chamber', which is challenging. Prior to the election rumours were circulating of a new peerage list, but at time of going to press only six new appointments had been announced, all to ministerial positions (Francis Maude, Ros Altmann, George Bridges, Andrew Dunlop, Jim O'Neill and David Prior). Clearly any significant round of dissolution appointments would push the size of the chamber well beyond 800 (it already stood at 779, excluding those on leave of absence etc, in early May), while likely strengthening other benches in the Lords as much as the government's.

It has been widely noted (one of the earliest contributions being our blog post [here](#)) that the new government is likely to face significantly greater difficulties managing the Lords than its predecessor. Before any new appointments, the Conservatives stood at 224 members. This returns the Lords to a dynamic familiar from the Blair and Brown years, where the votes of Liberal Democrats (now numbering over 100) can regularly determine the outcome of divisions and will likely contribute to numerous defeats. Crossbenchers, currently numbering 178, will also be crucial. The sensitivity of this matter came out in debate on the Queen's speech, when all three party leaders in the Lords indicated support for the [Salisbury Convention](#) (whereby manifesto policies are not blocked outright),

but both opposition leaders nonetheless defended the Lords' right to question policy. Liberal Democrat Lord Wallace of Tankerness pointedly questioned 'the strength of the mandate of the Government who secured less than 37% of the popular vote' (column 22 [here](#))

David Cameron may hope that permanent retirements from the chamber free up some space for new appointments. As of 23 May just [20 peers](#) had taken up this option provided by the 2014 House of Lords Reform Act, the most recent including Geoffrey Howe and John Roper. The government may now be tempted to pursue some kind of more compulsory retirement system. But in the end, as set out in our recent [Enough is Enough](#) report, any sustainable solution also requires a more regulated system of appointments.

Executive



Reconfiguring Whitehall to manage devolution

Recent months have seen three independent reports which are all highly critical of Whitehall's capacity to make coherent policies on devolution and the future of the union, from the [Institute for Government](#), the [Constitution Unit](#) and the [Bingham Centre for the Rule of Law](#). All three reports say that Whitehall's capacity to think about the union is exacerbated by the fragmentation in Whitehall, with six centres for devolution policy. This will not change so long as there are three relatively junior territorial Secretaries of State with separate offices, a hangover from pre-devolution days. They argue instead for a single senior Cabinet Minister responsible for devolution and the union, supported by territorial Ministers of State. Similarly in parliament there should be a single Devolution Committee, which could be a joint committee of both Houses; and which could have territorial sub-committees.

Devolution



Devolution and the future of the union

Just before the election the Constitution Unit published a [report](#) charting the future of the union in the light of the rapid changes in devolution planned by the new government. Their cumulative impact could radically change the nature of the political, economic and social unions which underpin the UK. The report warns that – without intending it – these changes could render the union ungovernable, or lead to its break up as a state.

The nature and functions of the union have been taken for granted. They need to be spelt out. The *economic union* provides the UK with a single market, with a single currency and strong central fiscal regime. The *social union* provides the social solidarity which binds the UK together, by redistributing revenue, and pooling and sharing risk through welfare benefits and pensions. In the *political union* every part of the UK is represented in the Westminster parliament, which manages the economic and social unions, and as the sovereign parliament can itself reshape the political union.

In forecasting further devolution, the report posits three models, labelled Devo More, Devo Even More, and Devo Max. The status quo is called Devo More because it includes big commitments already made to further devolution, to be implemented early in the new parliament [see pages 8 to 9]. Devo Even More would add further big taxes, such as corporation tax and employers' national insurance. There is space here only to discuss Devo Max, also known as full fiscal autonomy. Under this model Scotland would set and collect all taxes in Scotland, remitting a portion to the UK for shared UK services.

Devo Max would carry big financial risks for Scotland. Its own revenues would be inadequate, requiring cuts of £7-8 billion a year, with significant multiplier effects. It would not have any attraction for Wales and Northern Ireland, given their structural fiscal deficits. Nor would it have benefits for the UK. The UK government would continue to bear risks for currency and monetary policy without control over fiscal policy in Scotland.

The report concludes that Devo Max could not be a stable settlement, but is likely to be a staging post to Scottish independence.

To put Devo Max in comparative context, in OECD countries no sub-national government raises more than 50 per cent of its revenue. The Smith proposals already take Scotland close to that upper range. So full fiscal autonomy is highly unlikely. Extreme fiscal decentralisation is typically found only in remote islands, with limited links to the state of which they are part. Scotland is not in that category.

The Bingham Centre's devolution review

On 20 May the Bingham Centre for the Rule of Law [published a major 'constitutional review' of devolution](#). The report criticises the piecemeal ad hoc approach to devolution so far and examines what needs to be done to make a devolved union work better. Its centrepiece proposal is for a 'Charter of the Union', setting out general principles for the union as a whole and to which specific pieces of devolution legislation would be subject.

A more detailed discussion of the Bingham proposals is [here](#), and the report can be downloaded from the Bingham Centre's website [here](#).

The Conservative government's Scotland bill

The new Conservative government got its busy legislative programme off to a quick start by [publishing its Scotland bill on 28 May](#), the day after [the Queen's speech](#). This bill is a substantial extension of Scottish devolution, following 'The Vow' made toward the end of the Scottish referendum campaign last September and [the work of the Smith Commission](#) whose recommendations it implements.

Contents of the bill

The bill builds on the ['draft legislative clauses' published in January](#). It shows a significant re-think of some details; it now consists of 64 clauses and two schedules, compared to 44 clauses from the January paper, though the key provisions about welfare and tax devolution are substantively unchanged. On the tax side these provide for devolving the power to set income tax thresholds,

rates and bands on earned income, and to assign half of VAT receipts (10 points of normally-rated items and 2.5 points of items rated at 5 per cent). The welfare side is more complex, but includes provisions to vary elements of Universal Credit, including the timing of payments and the amounts payable for housing; to devolve disability benefits and those relating to the frail elderly (Disability Living Allowance, Personal Independence Payments, Carers Allowance and Attendance Allowance in particular); and a power to make certain discretionary welfare payments. The power to make discretionary payments is more limited than that agreed by the Smith Commission, and Smith's power to create new benefits is omitted. In these respects, the bill – like [January's Command paper Scotland in the United Kingdom: An enduring settlement](#) – is somewhat narrower than the Smith recommendations.

As important as what is in the bill is what is not. Key elements of the Smith package are non-statutory – in particular, the amounts to be added to the block grant for welfare devolution, the amounts by which it will be reduced to allow for tax devolution and how those will be adjusted, and further changes made reflecting behavioural changes under the 'no detriment' rule on which the January Command paper placed heavy emphasis. These will profoundly affect the workability and impact of the Smith package and will be the focus of considerable debate as the bill goes through the parliamentary process. Indeed, they already have been. The Holyrood [Devolution \(Further Powers\) Committee](#) has recently published a [lengthy and detailed examination of the draft clauses, as an 'interim' report](#) and will continue its scrutiny now the bill has been published. Other Holyrood committees including the [Finance Committee](#) are similarly concerned.

Getting the bill through

The bill comes with a fast timetable; the Commons second reading is scheduled for early in June, along with three days of Committee stage. The aim is for it to be passed by February 2016, before the Scottish Parliament elections in May. But the bill will need legislative consent from Holyrood under the [Sewel convention](#) as well. There may well be considerable brinkmanship about that as well as noisy contributions from the 56 SNP MPs at Westminster, seeking to extend the powers devolved under the bill.

One big question for the bill is whether and how the UK government changes the Smith Commission's proposals to reflect the general election outcome and the SNP's surge. In reality, there is limited scope to change those – not just because they embody a cross-party consensus in the commission but also because fiscal and welfare devolution are not straightforward. Although [‘full fiscal autonomy’ is sought by the SNP](#) and has [some attractions](#) for a Conservative government relying on English support, it is unlikely to be a viable option politically. Not only would it also pose grave practical problems if it were pursued, but given the bill's long title even probing amendments to raise the issue are likely to be out of order.

English votes for English laws, and income tax

Given a clear Conservative parliamentary majority, the need to act regarding ‘English votes for English laws’ may have seemed less pressing. That has not stopped a commitment to implement it being included in the [Queen's Speech](#). There is little detail about how this might work, though the [Conservative manifesto](#) set out an option for limiting Committee and report stages to English (or English and Welsh) MPs, plus a ‘legislative consent motion’ between report stage and third reading to ensure an English ‘veto’. The one clear statement is that the change will be made through standing orders not primary legislation, which itself has been the object of [some ill-considered criticism](#). This proposal has been on the Conservative Party's agenda since 2001, and throughout that period the presumption has generally been that it would be achieved via standing order change, not legislation.

What is not clear at this stage is whether these changes will extend to income tax matters once the new provisions for devolving it to Scotland come into effect ([as the Conservatives said it should during the general election campaign](#)). It is also unclear how the changes will address legislation that affects devolved finances through changes to the block grant.



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The St David's Day Agreement and Welsh devolution under the Tories

Since the last *Monitor* in February 2015, there have been two major developments: the publication of the St David's Day Agreement and the return of a Conservative majority government. The St David's Day Agreement, outlined in the Command paper [Powers for a Purpose: Towards a Lasting Devolution Settlement for Wales](#), represented the culmination of just over three months of Westminster-based cross party negotiations on the future of Welsh devolution, overseen by the Secretary of State for Wales, Stephen Crabb.

Trumpeted by the Prime Minister as ‘one of the biggest transfers of power’ in the fledgling history of Welsh devolution, the Command paper contained proposals for the establishment of a ‘reserved powers’ model of devolution (to replace the widely-derided conferred powers model) and the devolution of various functions including sewerage, aspects of ports and transport, planning consent for energy projects up to 350MW, and local government elections. Also to be devolved are the Assembly's procedures and electoral arrangements (in line with the Smith Commission proposals for Scotland). The Assembly will therefore gain the power to rename itself the Welsh Parliament and could also lower the franchise to include 16 and 17 year olds, increase its size and indeed could change the electoral system used for Assembly elections under these proposals. The Agreement also proposed a ‘Barnett Floor’

(explanation [here](#)), in the ‘expectation’ that an income tax referendum would be called by the Welsh Government – an expectation that was [swiftly disabused by First Minister Carwyn Jones](#).

Rather predictably, response to the announcement was at best mixed. Both [Plaid Cymru](#) and [Carwyn Jones](#) particularly targeted the rather modest nature of a number of the powers proposed for devolution. Two of the big-ticket items from the [Silk Commission’s second report](#) – the immediate devolution of policing and a review of the case for devolving criminal justice in a decade’s time – were both rejected. To even the most untrained of eyes, this would appear to fall some way short of the Secretary of State’s previous ambition for [‘a clear, robust and lasting devolution settlement for Wales.’](#)

Creating a ‘reserved powers’ model for devolution raises significant legal difficulties. No one is clear what the reservations might be, how far they might go or whether they might have the effect of removing from the National Assembly powers it currently has. Framing these will take some considerable time, so despite the announcement of the bill in the Queen’s speech it is unlikely to be published until the autumn and will almost certainly need to be carried over into the next parliamentary session. With Assembly elections due in May 2016, this may well mean it comes into effect part-way through the fifth term of the Assembly.

The Conservative manifesto committed the party clearly to the powers outlined in the St David’s Day declaration and to the reservation of policing and justice matters, whatever its shortcomings. With a Conservative majority government returned at the general election, the St David’s Day deal seems to be the only one in town. Expect few, if any surprises, when the draft Wales Bill is published in the autumn.

Northern Ireland: new crisis at Stormont

Not so long ago, the prospect of collapse at Stormont commanded Downing Street’s full attention because it threatened the peace process. But times have changed. This time the standoff has been relegated to a local difficulty barely noticed outside the ornate portals of the parliament building. For the current standoff is not about arms decommissioning or the region’s essential stability, but a game of chicken over money.

Last Christmas the [Stormont House Agreement](#) appeared to break a deadlock over accepting cuts in welfare which was holding up the passage of the £10 billion budget. Westminster’s carrot was a package of £2 billion extra ‘firepower’ in the form of more borrowing and loans, a raid on reserves and some extra real money. The stick was making the deal the condition for the devolution of corporation tax and funding for public sector redundancies and Troubles legacy issues.

But emboldened by the SNP’s anti-austerity stance, Sinn Fein reneged on the agreement. They were hoping for DUP leverage in the event of a hung parliament and looking ahead to future electoral gain in Dublin and Belfast. Belatedly joined by their nationalist rivals the SDLP, they blocked the enabling welfare bill, after discovering that the deal failed to mitigate the full cost of disability and other benefits.

In the Westminster election, Sinn Fein came nowhere close to emulating the SNP’s success. In the complicated numbers game of local politics, a limited unionist pact led to Sinn Fein losing one Westminster seat to the Ulster Unionists and the DUP regaining another, while the nationalist share of the vote fell slightly overall.

Although he quickly recovered, the situation wasn’t helped by the First Minister Peter Robinson’s heart attack. While the parties are connoisseurs of brinkmanship, all the options seemed unpromising for a budget deadline by the end of July. The clash with Conservative priorities is clear. Stormont House was the better deal already. The DUP finance minister gave a warning of imminent £600 million cuts imposed not by the Executive but by civil servants. After a long delay, the Secretary of State reluctantly recognised the possibility of Westminster taking over welfare powers. Sinn Fein ministers hinted at resignation if that happened. Talks convened by the British and Irish governments on 2 June were expected to drag on for weeks, in the hope that the impact of cuts in the Chancellor’s emergency budget would turn out to be less than signalled before the election.

As the saying goes, history repeats itself first as tragedy and then as farce. The flaws in the power sharing system whereby all must decide or nobody decides have been exposed more clearly than ever. With a fiscal deficit of £11-12 billion equivalent to 30-40 per cent of GDP, the

size of the UK subvention has stunted the development of fiscal responsibility. At worst, the system may slide into suspension. Northern Ireland may see the course of devolution reversed, against the general trend in the UK. It is hard to see how any party would benefit electorally from that.

Courts and the judiciary



A British bill of rights?

The one surprise in the Queen's Speech was back-peddalling on the plans for a British bill of rights, with the promise of a consultation paper instead of a bill. The government has begun to realise the manifold complications that scrapping the Human Rights Act would entail. The debate in the weeks between the election and the Queen's Speech highlighted that opposition would come from all sides, including the liberal wing of the Conservative party and the judiciary. Furthermore, the current composition of the House of Lords would make it difficult for the Conservatives to get a bill of this nature through (see our blog post [here](#)).

Opposition from the devolved governments and assemblies would also present practical challenges. Under the Scotland Act, Northern Ireland Act and Government of Wales Act, the devolved governments and their legislatures are bound to comply with the European Convention of Human Rights (ECHR), which in effect provides the bill of rights in their devolved constitutions. The devolved governments want to maintain adherence to the ECHR, and the UK government cannot legislate on matters affecting them without their consent. Any attempt to introduce a British bill of rights would therefore be at risk of ending up as an English bill of rights, with potentially negative consequences for the future of the union, and for human rights protection in the UK. (For more on this topic, see the Unit blog post [here](#).)

The tabloids will keep up the pressure, but it is hard to see how a British bill of rights which was 'ECHR minus' could get through parliament.

Europe



EU referendum

A central plank of the Conservatives' constitutional reform agenda is the referendum on Britain's continued membership of the European Union. This was pressed on David Cameron by his backbenchers during the coalition government, and eventually became party policy. An EU referendum bill was included in the Queen's Speech, and the referendum itself has been promised by 2017. Many have pointed out the potential advantages of an earlier poll, for example to avoid this issue dominating the parliament, to end uncertainty, and to avoid clashing with the 2017 elections in France and Germany. A referendum alongside the devolved and local government elections of May 2016 may be attractive to the government, but would require difficult negotiations in Europe to be carried out to a very fast timetable. The Electoral Commission, which must approve the referendum question, will be alarmed if the timetable is too quick as voters must have adequate notice and information.



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Having opposed a referendum during the election campaign, Labour has now indicated that it will support the policy in principle. Nonetheless, many points of detail will be hotly contested in parliament. Aside from the timetable, a key question is voter eligibility. Those favouring continued British membership will suggest

lowering the age threshold to 16, and will argue that the electorate should include not only UK citizens living overseas, but EU citizens resident in the UK as well. The latter cannot vote in general elections (and could not vote in the 2011 AV referendum), but can vote in local, devolved and European elections (and could vote in the 2014 Scottish referendum). The nationalist parties will also press for a ‘quadruple lock’, such that all four constituent parts of the UK must vote for exit. Such a demand is unlikely to be heeded, but will help fuel the inevitable renewal of calls for Scottish independence should English voters vote against the will of the Scots to leave the EU.

House of Lords report on the Review of the Balance of Competences

On 25 March 2015 the House of Lords European Union Committee published [its report](#) on the Review of the Balance of Competences between the United Kingdom and the European Union. The review was launched by the Foreign and Commonwealth Office in 2012 to inform the public debate surrounding the issue of the relationship between the UK and the EU. The then Foreign Secretary William Hague described it as ‘an audit of what the EU does and how it affects us in the United Kingdom.’

Over a two year period, the review examined all areas where EU Treaties give Europe ‘the power to legislate, to adopt non-legislative acts, or to take any other sort of action.’ It produced 32 separate reports that examine the relationship across a range of policy areas, from fisheries to foreign policy. The individual reports do not make recommendations, as they are intended to inform rather than lead political decision-making. But the [overall conclusion drawn from evidence submitted](#) to the review is that the present balance of competences works well for the UK.

Whilst appreciative of both the unprecedented scale and quality of the review, the Committee reported a number of limitations. Firstly, the lack of publicity surrounding the process was seen to have reduced its ability to inform the public debate. Secondly, the report criticised the government for reneging on the commitment to produce a single document compiling analysis of all 32 reports, thus further limiting the review’s impact on the current UK-EU discussion. Thirdly, it argued that reports on the Single Market, Animal Health and Welfare and Food

Safety and Fisheries give ‘undue weight’ to evidence reflecting the government’s own position.

The report called for the government to produce the single analysis, as well as an accurate estimate of the total cost of the review as soon as possible.

International



Italian Senate reform

On the Unit [blog](#) in April Carlo Fusaro reported on bicameral reform in Italy, which seems set to succeed where numerous other attempts have failed. The proposals have caused showdowns between Prime Minister Matteo Renzi and parliament, but have almost completed their passage. If they succeed they will bring an end to the ‘perfect bicameralism’ that has characterised Italy since 1947, whereby both chambers have equal power - not only over legislation, but over making and breaking governments. In future only the lower chamber would have the power of a confidence vote, and the Senate veto would apply only to certain classes of bills, otherwise being reduced to a delay power of 30 days. The membership of the chamber would also shift, from largely directly elected to largely indirectly elected by the regions.

Irish Senate reform proposals

Second chamber reform is also back on the agenda in Ireland, following the unsuccessful referendum to abolish the Seanad in October 2013. In April the [report](#) of a Working Group on Seanad Reform, chaired by Chancellor of the National University of Ireland and former Seanad Leader Maurice Manning, was published. Key proposals include a move from indirect election (by MPs and local councillors) to direct election for half the chamber’s seats, which would continue to be organised in ‘vocational’ panels as set down in the Irish constitution. Other vocational seats would continue to be elected as before, alongside seats representing university graduates and 11 members appointed by the Taoiseach (Prime Minister). Whether there is much appetite politically for these proposals remains to be seen.

Burundi

Since the ruling party nominated incumbent President Nkurunziza as its candidate in Burundi's upcoming elections on 25 April, the country has witnessed widespread protests from the President's opponents. Nkurunziza was first appointed as President in 2005 and then elected in 2010. If elected in the country's 26 June elections, Nkurunziza would serve his third consecutive term as President in apparent violation of Burundi's constitution. The opposition argues that a third term for President Nkurunziza is unconstitutional because [Article 96](#) of Burundi's constitution states that a President's mandate is renewable only once. However, since Nkurunziza was appointed, not elected, for his first term, the President and his supporters argue that he is eligible for re-election.

In early May, the Constitution Court ruled in favour of the President's argument, opening the door for Nkurunziza to run for a third term. In a 6-1 ruling, the Court ruled that each President is eligible to be re-elected once, so since Nkurunziza was given his first mandate by appointment, he remains eligible to serve one more term. However, the Court's ruling has not ended the unrest in Burundi because the opposition claims that the judges made their decision under duress - an accusation corroborated by statements from the Court's Vice President, Judge Nimpagaritse, who fled to Rwanda for fear of his life.

Ukraine

A Constitutional Commission has finally been established in the Ukraine. The commission met for the first time in April and is expected to propose amendments to the Ukrainian constitution in late May. The commission was called in response to the separatist conflict in Eastern Ukraine, which has been on-going since the secession of Crimea in March of 2014. The President previously [proposed amendments](#) to the Ukrainian parliament to appease separatist groups in the East. However, after being heavily criticised, the amendments failed to achieve the required majority in parliament, leaving the President little choice but to call a commission.

The primary issue facing the commission is the distribution of state power. Separatists in Eastern Ukraine are calling for federalism and significant autonomy. The President and his allies in Kiev argue that the focus should be on modifying the existing

unitary model, not federalising the Ukraine.

Current proposals create a more coherent model of decentralisation that is modelled after the Polish constitution. They envision a three-tiered system with minimum overlap in competencies between the different levels of government and financial independence at each level. The challenge facing the Constitutional Commission is that the President would like to retain significant oversight over the appointment and removal of local representatives, detracting from the independence of regional and district governments. Such an approach to decentralisation seems unlikely to placate separatists in Eastern Ukraine.

Sri Lanka

The [19th amendment](#) to Sri Lanka's constitution was approved by a vote of 212 in favour to 1 against, with 1 abstention, on 28 April 2015. The amendment reduces the power of the Sri Lankan President, delivering an important promise made by President Sirisena during this year's election campaign against former President Rajapaksa. The Sri Lankan President has always been the most powerful political actor in the country, and this amendment does not change that fact. However, it does reinstate some of the restrictions on executive power that were removed by the 18th amendment in 2010.

One of the most important changes is a reinstatement of presidential term limits. The 18th amendment removed a two term limit from the constitution, allowing President Rajapaksa to run for a third term earlier this year. The 19th amendment reinstates the two term limit and also reduces the presidential term from 6 to 5 years. Other changes include the creation of several independent oversight bodies, including an audit commission, an anti-corruption commission, and a human rights commission, and the revival of a Constitutional Council responsible for appointing judges and other public officials. The amendment does not put an end to Sri Lanka's executive presidency, as promised by President Sirisena, but it is a step forward. The Supreme Court ruled that a referendum would be necessary to make more substantial changes to the office of President, so it remains to be seen whether President Sirisena seeks further restrictions on his power.

For more detail on President Sirisena's 100-day reform programme, read the [Unit blog here](#).

Constitution Unit news



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New leadership team

In March it was [announced](#) that Meg Russell will be taking over from Robert Hazell as Director of the Constitution Unit in the autumn. After 20 years as Director Robert is retiring from full-time academic work, but will continue to play a key role. Dr Alan Renwick joins UCL from University of Reading in September, and will take up the post of Deputy Director. More in the next issue.

Staff changes

Daniel Gover, who has been a linchpin of the parliament team for the last four years formally ended his contract with the Unit in March. He is continuing to work with Meg Russell on a joint-authored book on the legislative process, while completing his PhD at Queen Mary University of London. Tom Semlyen has also ended his regular research contract after three years, but continues to offer some support on Lords research and to teach in the Department. We are very grateful to both for their past and continuing contributions.

Research volunteers

The Unit is grateful for the hard work and diligence of our research volunteers. Thanks to the Spring 2015 volunteers Fathma Khalid, Ruxandra Serban, Sam Sharp and Juliet Wells.

People on the move

The election inevitably saw various frontbench changes, to both government and opposition. **Michael Gove** became Lord Chancellor and Secretary of State for Justice, replacing **Chris Grayling**, who became Leader of the House of Commons. Gove was in turn replaced by **Mark Harper** as Conservative Chief Whip. **Greg Clark** replaced **Eric Pickles** as Secretary of State for Communities and Local Government. **David Mundell** replaced Liberal Democrat Alistair Carmichael as Secretary of State for Scotland. On the Labour side, **Lord (Charlie) Falconer of Thoroton** replaced **Sadiq Khan** as Shadow Lord Chancellor, and **Emma Reynolds** became Shadow Secretary of State for Communities and Local Government (replacing **Hilary Benn**, who became Shadow Foreign Secretary). The Shadow Secretary of State for Scotland is **Ian Murray**. **Baroness (Jan) Royall of Blaisdon** stood down as Shadow Leader of the House of Lords, and was replaced by **Baroness (Angela) Smith** of Basildon. Liberal Democrat portfolios had not been announced at time of going to press.

Lord Justice David Bean will take over from **Lord Justice Lloyd Jones** as chair of the Law Commission on 1 August. **Sir Jeffrey Jowell** is standing down as Director of the Bingham Centre for the Rule of Law in October. **Ursula Brennan** is retiring as Permanent Secretary in the Ministry of Justice.

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 Square unless otherwise specified.

[Repealing the Human Rights Act: what will replace it?](#)

Martin Howe QC
30 June 2015 at 6:00pm
[Register](#)

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](#)

Coverage of Meg Russell's inaugural lecture ([Times Higher Education](#) 5 Mar 15)

Meg Russell & Tom Semlyen on Lords appointments ([The Telegraph](#) 5 Mar 15)

Bob Morris on the second royal baby ([WWD](#) 2 May 15)

Meg Russell's tells Today programme why constitutional bills are harder to get through the Commons than other legislation [2:54:00] ([BBC R4](#) 27 May 15)

Meg Russell on how the Lords could cause trouble for David Cameron ([BBC News](#) 20 May 15)

Robert Hazell on Prince Charles' Letters to cabinet ministers ([BBC iPlayer](#) 13 May 2015)

Members of the Unit made frequent media appearances and were extensively cited before, during and after the 2015 general election. Click [here](#) for a full list of election coverage.

Unit in the news

The Lord Speaker responds to the *Enough is Enough* report ([FT](#) 16 Feb 15)

Meg Russell talks about *Enough is Enough* report on BBC Westminster Hour ([BBC R4](#) 23 Feb 2015. Full transcript of the interview [available here](#))

House of Lords article by Meg Russell ([Prospect Magazine](#) 19 February 15)

Meg Russell features in Prospect's roundtable discussion on Blueprint for Britain: How should the House of Lords be reformed? ([Prospect Magazine](#) 19 February 15)

Coverage of Constitution Unit valedictory event with Jack Straw and George Young ([Civil Service World](#) and [Huffington Post](#) 5 Mar 15)

Unit publications

Robert Hazell and James Melton (eds.) *Magna Carta and its Modern Legacy* (Cambridge University Press, April 2015) [order online](#)

Robert Hazell (ed.) *Devolution and the Future of the Union* (Unit report, April 2015) [view online](#)

James Melton, Christine Stuart and Daniel Helen *To Codify or Not to Codify: Lessons from Consolidating the United Kingdom's Constitutional Statutes* (Unit report, March 2015) [view online](#)

Meg Russell, Daniel Gover & Kristina Wollter (2015) 'Does the executive dominate the Westminster legislative process?: Six reasons for doubt' *Parliamentary Affairs* [view online](#)

Meg Russell & Philip Cowley (2015) 'The Policy Power of the Westminster Parliament: The 'parliamentary state' and the empirical evidence' *Governance* [view online](#)

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Daniel Gover & Meg Russell (2015) 'The House of Commons' "Financial Privilege" on Lords Amendments: Perceived problems and possible solutions', *Public Law* 2015(1): 12-22 [view online](#)

Publications to note

Bingham Centre for the Rule of Law
A Constitutional Crossroads: Ways forward for the United Kingdom (BIICL, May 2015) [view online](#)

Claudia Chwalisz *The Populist Signal: Why Politics and Democracy Need to Change* (Rowman & Littlefield International/Policy Network, June 2015) [book details](#)

Campaign for the North *Northern Government: Devolution to the North of England* (2014) [view online](#)

Jess Garland & Chris Terry *The 2015 General Election: A voting system in crisis* (Electoral Reform Society, May 2015) [view online](#)

Chris Terry (ed.) *Working Together: Lessons in how to share power* (Electoral Reform Society, March 2015) [view online](#)

Camilla Hagelund & Jonathan Goddard
How to Run a Country: A parliament of lawmakers (Reform, March 2015) [view online](#)

Dinah Rose QC *What's the point of the Human Rights Act?* (Politeia, February 2015) [view online](#)

Michael Zander *The Law-Making Process* 7th Edition (Hart Publishing, March 2015) [order online](#)

Contributors to Monitor 60 included Robert Hazell, Meg Russell, Alan Trench, Jennifer Hudson, James Melton, Alan Renwick, Marco Morucci, Adam Evans, Christine Reh and David Ireland.

The issue was edited by Sonali Campion.



The Constitution Unit



Constitution
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