

M O N I T O R

Issue 16

The Constitution Unit Bulletin

Sept 2001

Whitehall's constitutional duo

The June *Monitor* included a supplement about the initial changes in Whitehall following the general election. Three months on, we offer a brief update.

First, it is worth noting the things which have not changed. Despite press speculation about a possible merger, we still have separate Secretaries of State for Scotland, Wales and Northern Ireland. And despite the much lower priority given to constitutional matters in the second term, Tony Blair has recreated five Cabinet committees responsible for different aspects of the constitutional reform programme.

In terms of what has changed, the most interesting development is the way that the Government has moved toward having a constitutional 'supremo', as the Constitution Unit has long called for. There are in fact two supremos. The Lord Chancellor Lord Irvine has taken responsibility for a wide range of constitutional matters transferred from the Home Office - human rights, freedom of information and data protection, as well as Church

and State, the monarchy, and the Channel Islands and Isle of Man. Lord Irvine successfully fought off a move to transfer the courts to the Home Office in return (see p. 9). He will be jointly responsible for deciding policy on Lords reform, together with Lord Williams. And he takes over from the Prime Minister as chair of the Cabinet's main Constitutional Reform Policy Committee (CRP), as well as continuing to chair the sub-committees concerned with the specific issues of human rights, freedom of information and Lords reform.

At the same time, John Prescott has acquired overall responsibility for devolution, as chair of the new Cabinet Committee on Nations and Regions (CNR), replacing the former Devolution Policy committee, which was chaired by Lord Irvine. Prescott will be responsible for producing the White Paper on regional government in England, now promised in early 2002, and replaces the Prime Minister as UK chair of the British-Irish Council. Prescott is supported by junior Minister Barbara Roche MP, and the new

Contents

Devolution	
Wales	2
Northern Ireland	3
Scotland	3
English Regions	4
The Centre	4
Parliamentary Reform	5
Elections and Parties	6
Local Government	7
Human Rights	7
The Courts	8
Freedom of Information	9
European News	10
People on the Move	10
Constitution Unit News	10
Constitution Unit Reports	
Women's Representation Bill	10
Devolution and Health	11
Data Protection Practical Guide	11
Publications Received	11
Bulletin Board	12

Nations and Regions Division of the Cabinet Office. This includes the small devolution team from the old Constitution Secretariat, and the much larger numbers in the Government Offices for the Regions and the Regional Coordination Unit, transferred

cont p. 2

New Job Vacancies



The Constitution Unit has vacancies for four new posts - further details and descriptions can be found at:

<http://www.ucl.ac.uk/constitution-unit/page/job.htm>

SCHOOL of PUBLIC POLICY
29/30 Tavistock Square,
London WC1H 9QU
email: constitution@ucl.ac.uk

tel: 020 7679 4902 fax: 020 7679 4978

from the former DETR. The division is to be headed by Peter Unwin, who had worked as Prescott's Principal Private Secretary at DETR.

The Constitution Secretariat has been wound up, and the officials dealing with Lords reform, human rights etc. have moved to the new constitutional side of LCD. The LCD has become more recognisably a Ministry of Justice, with only elections (transferred from the Home Office to DTLR) missing from its constitutional portfolio.

This means that the UK is moving towards dealing with constitutional matters in a more coherent way. Two senior Ministers have overall responsibility for constitutional matters. Lord Irvine's constitutional role is strengthened. John

underlying story was of widening inter-communal division and increasing violence.

In sharp contrast to the rest of the UK, turnout in the Westminster elections in Northern Ireland (and accompanying local elections) was high, as effectively two separate electorates mobilised one against another. Within the 'two communities', this meant significant gains for the Democratic Unionist Party and Sinn Féin against the more moderate Ulster Unionists and the SDLP.

The viability of power-sharing thus became increasingly difficult, with the first minister, David Trimble, effecting his promised resignation in the absence of the start to the decommissioning of IRA weapons he had understood to have been pledged a year earlier.

Assembly business continued with remarkable consensus—though with considerable concern expressed about Northern Ireland's financial position—but that broke down when Mr Trimble's resignation was debated. And with the political élite distracted by constitutional matters, little executive policy activity took place.

Talks at Weston Park organised by London and Dublin were unable to secure agreement. The UUP leader was unable to keep business to his one-item decommissioning agenda; SF, meanwhile, refused to make any clear commitments in return for promised gains on policing and 'demilitarisation'.

A 'take it or leave it' package published by the two governments was thus long on the latter two items and very short on the former; calls for 'clarification' inevitably followed. Unionists were unmoved, awaiting movement by the IRA, but when it came it focused on the modality of decommissioning rather than when it might start.

As the six weeks available after the Trimble resignation to elect a new first and deputy first minister ticked away, the Northern Ireland secretary effected a one-day suspension of the institutions to buy another six weeks time. Outraged republicans withdrew their 'historic' offer.

While this undermined the credibility of the IRA's commitment, the arrest of three IRA suspects in Colombia, apparently having been assisting the FARC guerrillas, placed a huge question-mark against republican *bona fides*,

critically in the United States. Dublin became distinctly cooler towards SF, backing a revised British policing implementation plan which sought also to woo the SDLP.

There was continued activity on the north-south front, particularly with regard to EU matters. But there was a strong sense as summer ended that devolution to Northern Ireland was becoming less and less real.

Scotland

The first post-devolution UK General Election campaign and its aftermath have dominated the agenda of Scottish politics. Both the Parliament and Executive were quieter than normal during the campaign. There were marked tensions in each of Scotland's political parties, reflecting the fact that each was finding its feet about the dynamics of campaigning in a devolution environment in what is best considered a transitional election.

The outcome of the election was marked more by continuity than change – only one Scottish seat changed hands (Galloway and Upper Nithsdale Conservative gain from the SNP). Labour held all of its Scottish seats despite a 2% drop in support. It remained Scotland's dominant party winning 43.2 per cent of the vote and 55 of the 72 seats. Though the share of the vote for each party fell, Labour's ability to hold onto seats will have satisfied party strategists.

The SNP confirmed its position as Scotland's second party with 20.1 per cent of the vote though only five seats and the Liberal Democrats overtook the Conservatives for third place winning 16.4 per cent and ten seats while the Conservatives on 15.6 per cent now have one Scottish MP. The Scottish Socialist Party contested all of Scotland's 72 constituencies winning 3.1 per cent of the vote. Overall the two coalition partners (Labour and Liberal Democrats) fared well with the SNP and Conservatives generally perceived to have fallen

maturity including seeing the first bill ever to be introduced by a subject committee in the Parliament. The media have begun to differentiate the Parliament's performance from the Scottish Executive. The Executive continues to be criticised both at a personal level (the performance of ministers) as well as at a broader level - its lack of impact on substantive policy outputs (never mind outcomes) to date. With the 2003 Election now moving more sharply into focus the aim for the Executive in the next two years is to demonstrate its impact on substantive policy outcomes post-devolution.

English Regions

In a speech in Wakefield, prior to the General Election the Deputy Prime Minister, John Prescott, following earlier promises of a Green Paper, announced that the Government would produce a White Paper on Regional Government after the election. However, the Queen's Speech contained no proposals for the English regions, although Stephen Byers, the new Secretary of State for Transport, Local Government and the Regions, has predicted the Queen's Speech 2002 will contain legislation on regional government.

The major post-General Election reorganisation of Government departments (see lead story) has had significant implications for the governance of the English regions. A new Office of the Deputy Prime Minister has been created in the Cabinet Office. Among its responsibilities are Government Offices and the Regional Co-

The new House of Lords Committee on the Constitution issued its first report in July 2001 (HL 11, 11 July 2001). The committee was appointed in February 2001 following a recommendation of the Royal Commission on Reform of the House of Lords. It was re-appointed after the election in June with the same members: the chairman is Lord Norton of Louth.

The new committee has wide terms of reference: 'to examine the constitutional implications of all public bills coming before the House; and to keep under review the operation of the constitution'. It decided in its first report to set some boundaries and to offer some thoughts about working methods and relations with other parliamentary committees. The report offers a working definition of a constitution ('the set of laws, rules and practices that create the basic institutions of the state and its component parts'), and five basic tenets of the British constitution. The committee plans to devote more time to its proactive role than to scrutiny of constitutional bills. Its first two substantive inquiries will be into the Process of Constitutional Change (autumn 2001) and Inter-Institutional Relations in the light of Devolution (spring 2002). Written evidence for the first inquiry is invited by 1 October. The committee has a particular interest in how the Government prepares constitutional legislation; which ministers and departments are involved; and how they are co-ordinated.

Hansard Report on Scrutiny Role of Parliament

The week after Cook's speech MPs rebelled over the Whips' effective control of appointments to Select Committees. In a free vote on 16 July over 100 Labour backbenchers rebelled against the exclusion of previous committee chairs Gwyneth Dunwoody and Donald Anderson from the nomination lists for the new Select Committees. Robin Cook promised to review the appointments process and bring forward proposals in the autumn.

The Queen's Speech

The legislative programme for the 2001-02 session will contain two constitutional items: legislation to implement the second phase of Lords reform; and preparation of a bill to allow the political parties to make positive moves to increase the representation of women. The Lords reform bill will be introduced following consultation, and may need to be carried over to the next session. The bill to increase women's representation builds on the Constitution Unit's work in the past year to analyse the legal obstacles and find ways round them (see page 10 below for details of Meg Russell's final report on this subject). Notable by its absence from the Queen's Speech was any mention of regional government in England.

Reform of the House of Lords

The Lords devoted their first day of debate on the Queen's Speech to constitutional affairs (21 June). The focus was mainly on Lords reform. The Lord Chancellor said that the second stage would implement the conclusions of the Wakeham report; this would include removing the remaining 92 hereditary peers and putting the new Appointments Commission on a statutory basis. The new Leader of the House Lord Williams of Mostyn explained that the government had dropped from its 2001 manifesto the earlier commitment to set up a Joint Committee of both Houses as a vehicle for consultation, because the government wanted the committee to consider the parliamentary aspects, and the opposition parties wanted to be able to discuss composition. Both Conservatives and Liberal Democrats favour a bigger

propent0e 6t0e prw0iordar9a I botu.aarlwrrarle tiwanttmento-5.8(0.0005y,9 -pa I y68 Tw[(p(88-

were also in breach of Article 6(1) of the ECHR. Some 9,000 trials are estimated to be involved.

Following mounting confusion in some northern England courts, over what constituted an unreasonable delay in the hearing of criminal charges for the purposes of Article 6(1), the Attorney General has sought clarification of the relevant sections of the Criminal Justice Act 1972 (Attorney General Reference 2/2001). Judgement delivered by the Court of Appeal, in *R v J* (2 July), accepts that criminal proceedings should normally only be stayed where there has been an

Constitution Unit News

extends the circumstances in which qualified majority voting can be used. Opponents of the Treaty have argued that Ireland would lose substantial EU subsidies if some of the poorer Eastern European States admitted.

The turnout in the Irish vote was a disappointing 32.9%, with 54% voting against ratification and 46% for. The outcome of the Irish referendum will clearly delay implementation of the EU plans as implementation of the Treaty of Nice cannot go ahead until it has been ratified by all member states.

People on the Move

Sir Michael Jay, British Ambassador in Paris, will succeed Sir John Kerr as head of the diplomatic service early next year. **Lord Clyde**, Lord of Appeal in Ordinary since 1996, will step down with effect from 1 October 2001.

Constitution Unit Reports

Women's Representation Bill

Meg Russell's report, *The Women's Representation Bill: Making it Happen*, sets out the options for changing the law now that the Government has announced it will prepare legislation to allow political parties to apply positive action in selecting candidates. The Government will need to act quickly if it is to influence selection procedures for the next general election; it is almost certainly too late for the next Scottish and Welsh elections in 2003. This is because the parties in turn need to debate and introduce their own rule changes. A key issue is the extent to which the candidate selection process should be regulated by law, versus the extent to which this should be left to the internal democracy of the political parties.

The current legal difficulties result from the interpretation of the Sex Discrimination Act

1975, which has been found to cover candidate selection. The report identifies three broad options for changing the law, and favours creating a new body of law covering the candidate selection process, which disallows discrimination but allows positive action. It would acknowledge that candidate selection is a democratic (not an employment) process. Cases would be taken out of employment tribunals, and probably be sent to Election Courts.

The Women's Representation Bill: Making it Happen, is available from the Constitution Unit. See publication list for further details.

Contact: *Robert Hazell*, r.hazell@ucl.ac.uk, tel: 020 7679 4971.

Devolution and Health

What has devolution meant to health policy in Northern Ireland, Scotland, and Wales; and what could it mean in England? The Devolution and Health project is running studies intended to answer both questions that should bear fruit in the coming months.

In the devolved administrations, responses obtained from a large survey of NHS policymakers are being analysed to understand what devolution has meant for accountability, governance, and policymaking. Building on this, researcher Scott Greer will begin in-depth

Bulletin Board

Forthcoming Unit Events

To book a free place at Unit events, please contact Gareth Lewes on 020 7679 4977. A location map for the Constitution Unit can be found at: www.ucl.ac.uk/constitution-unit/logos/find.htm