

M O N I T O R

The Constitution Unit Bulletin

Unit wins £1m grant for devolution programme

In August the Unit was awarded a £1.1m grant by the Leverhulme Trust for a five-year research programme on devolution to the nations and regions. Twenty-six institutions originally bid for programme funding, and the joint winners with grants of £1m each are the Constitution Unit and Edinburgh University. The Unit's programme will cover the whole of the UK, including Northern Ireland and the English regions.

To achieve in-depth coverage in the different nations and regions the Unit has teamed up with research partners in 11 other universities. The programme will explore the factors that define the nations and regions of the UK; the extent to which the constitutional changes improve governance and command legitimacy; and the coherence of the devolution reforms, in particular the stability of the 'asymmetrical' model. Individual projects will explore changes in identity, attitudes towards the Union, the new structures in the English regions, intergovernmental relations and financing devolution.

The research programme will be underpinned by an ongoing

exercise to monitor the introduction of devolution in Scotland, Wales and Northern Ireland. The leaders of our monitoring networks are Graham Leicester, Director of the Scottish Council Foundation in Edinburgh; John Osmond, Director of the Institute of Welsh Affairs in Cardiff; and Robin Wilson, Director of Democratic Dialogue in Belfast. They will produce regular reports on the progress of devolution in each country: see their first reports on page 2.

At the end of the year we will bring together the monitoring reports and research findings into an annual *State of the Nations Review*. This will be accompanied by an annual State of the Nations lecture: the first, to be given next autumn, will be delivered by Donald Dewar, First Minister of the Scottish Parliament. We are also setting up dedicated pages for the Nations and Regions programme within the Unit's website. Full details of our research partners and of the individual projects can be found at the website address below. For a summary of the programme see inside on page 9.

Wanted - New Research Fellow, p9

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Devolution: The First Few Months

Wales by John Osmond

For its first few months, the National Assembly of Wales, which assumed its powers from the Welsh Office on 1 July, has been in a state of phoney war. It has spent much of the time coming to terms with the outcome of the opening salvo in May when the elections caused what has become known as 'the quiet electoral earthquake' in Welsh politics. The result, in which Labour emerged as the largest party with 28 of the 60 seats but with no overall control, has shaped the course of events ever since.

Plaid Cymru was the main beneficiary, trebling its support to 30 per cent compared with the 1997

There is a formal coalition government, with the cabinet looking very like the old Scottish Office ministerial team with the addition of a Finance Minister, a Minister for Rural Affairs and a Whip. Scottish Office departments have been renamed to match the new ministerial portfolios.

The Parliament has established one committee per department, plus a number of others recommended

party has announced its candidates for the Assembly constituency seats, following a ballot which attracted a 33% response from members. The candidates for the top up section will be chosen before the year end.

Devolution at the centre

William Hague, speaking to the Centre for Policy Studies on 15th July, argued that the Government, having devolved power, must now turn to the anomalies affecting England: "It is our duty to find a way through that strengthens the Union after devolution. I believe the answer lies in giving a voice to England; in English votes under English laws." Hague's proposals do not entail a the creation of an English Parliament, but a restriction of the rights of Scottish MPs so that they could no longer vote on matters that affect England only.

In July, the Speaker issued a statement in the House of Commons clarifying the matters on which the Secretaries of State for Scotland and Wales can be questioned following devolution: "Where matters have been clearly devolved to the Scottish Parliament or to the Welsh Assembly, questions on the details of policy or expenditure would not be in order. Where Secretaries of State have a residual, limited or shared role, questions should relate to that role." (HC Deb, 12 July, cols 21-2)

At the end of July, Dafydd Wigley asked a series of questions of Ministers in all Departments (eg 23 July

second amendment aimed to protect the Upper House's absolute veto over bills to extend the life of a parliament, by preventing peers appointed since the last election voting on the issue. This, it was suggested, would prevent a government packing the House to gain support for such a bill. The third amendment referred the Bill to the Privileges Committee for enquiry, on the matter of whether peers can be lawfully removed from the House before the next general election. The hearing will take place in October.

However, it is still anticipated that the Bill will pass before the end of this parliamentary session. The Government have again threatened that continued attempts by the peers to disrupt the Bill will result in the agreed compromise, of some hereditary peers remaining in the House, being dropped.

Meanwhile the arrangements for implementing this compromise have been agreed. A total of 92 hereditary peers will remain, including 42 Conservatives, 28 crossbenchers, three Liberal Democrats and two Labour peers. Ballots will be held in October for these positions, in party groups, and amongst the whole House for 15 additional office holders. A system of by-elections, to replace hereditary peers who die, was also agreed.

The delay to the establishment of the Appointments Commission was partly due to the Government wishing to create new peers in order to level out party numbers. In June, 36 new life peers were created: 22 Labour, four Conservative, seven Liberal Democrat, two Ulster Unionist and one crossbencher. The Government's attempt to dispel the notion that appointments are abused for political ends was, however, damaged by the appointment to the Lords of defence minister George Robertson MP in August. His appointment, before taking up a position as NATO Secretary General, was used to facilitate a by-election in his constituency which could otherwise not have been called during a parliamentary recess.

The Royal Commission

The Royal Commission on Reform of the House of Lords has continued to receive evidence, and held its last public meeting in July. Its report is due by the end of the year. The other parties have now submitted evidence to the Commission, besides that submitted previously by Labour and the Conservatives. The Liberal Democrats provided a very detailed response, suggesting a directly elected chamber, using the single transferable vote, to represent the nations and regions. The chamber would retain its current power over ordinary bills,

have a veto over constitutional change, and have new responsibilities relating to human rights, international treaties and public appointments. The party also proposed the removal of government ministers, bishops, and law lords, from the House.

In the Commons it was the first enquiry presided over by the Public Administration Committee's new chairman, Tony Wright MP. The Lords established an *ad hoc* Select Committee chaired by Lord Archer of Sandwell. Robert Hazell acted as Specialist Adviser to the Commons Committee.

Both Committees were strongly critical of the draft Bill. The Commons report (HC 570, 28 July) recommended six key improvements:

- a purpose clause stating a clear presumption in favour of disclosure
- less emphasis on discretionary disclosure
- review of the public interest test by the Information Commissioner
- narrow and precise exemptions
- a statutory duty to help requesters
- a duty to consult third party suppliers of information, and a right of appeal for them against disclosure.

The Committee accepted the need for a class exemption for Cabinet papers, and to protect the work of the security and intelligence services. But it rejected the draft Bill's class exemption for policy advice, and the breadth of the exemption for commercial information. The Committee also proposed a general statutory duty to give reasons upon request for administrative decisions.

The Government is unlikely to give much ground in its response to the Select Committee. No 10 is taking a close interest, and in the Home Office the junior Minister, Mike O'Brien, is new, following the departure of Lord Williams to become Attorney-General. The leader of the Bill team is Lee Hughes in the Home Office Constitutional Unit. The Bill is likely to be introduced in the next session, but we will not know for certain until the Queen's Speech.

Meanwhile in Scotland, the Scottish Executive introduced its own Code of Practice on Access to Information on 1 July. Jim Wallace (Minister of Justice) has promised that Scotland will have its own Freedom of Information Bill. A consultation paper is to be issued in the autumn, with legislation as soon as possible thereafter. It is being prepared not by the Dept of Justice but by a small team in Corporate Services, Michael Lugton and Keith Connal.

Elections & Party Funding

New rules on electoral funding

The Government has announced the largest shake-up of electoral law for a century. In a White Paper and draft Bill (Cm 4413) published in July, the Home Secretary agreed to virtually all the recommendations made by the Neill Committee in its October 1998 report. The overall themes of the White Paper are

the subject of inter-party consultations, and its budget and strategy overseen by a new Speaker's Committee. Both in the intention and execution, the Commission will operate as a powerful and independent body.

The area where the Government diverges most from Neill concerns referendums. It rejected Neill's recommendation that it refrain from participating in a referendum, agreeing only to a moratorium on public information in the 28 days prior to the poll. It also overrode Neill's objections to spending caps, by suggesting limits for umbrella groups and the parties of £5m and for other individuals and groups of £0.5m. The spending caps have raised concern, since they will severely restrict the resources available to the anti-EMU group at the referendum on the single currency.

The draft Bill (which can be viewed at: <http://www.homeoffice.gov.uk/>) is out for consultation until 15th October, with the Government expected to introduce legislation in the next session.

Scottish Election Commission

The UK-wide Electoral Commission was given a trial run in Scotland prior to the elections in May. Professor Anthony King served as Convenor of the Scottish Election Commission (SEC), alongside two other commissioners. The SEC's role was to oversee spending limits and disclosure of donations in relation to the parties and third groups. The SEC indicated that the parties had complied with the disclosure and spending rules, although its non-

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The Home Office Human Rights Unit now has a web page, with information on the Human Rights Task Force's work and the Human Rights Act (www.homeoffice.gov.uk/hract/hramenu.htm). The Human Rights Unit also published *Putting rights into public service*, an introduction to the Human Rights Act for public authorities (23 Aug), and the first edition of the Human Rights Task Force newsletter (20 Aug), both available on the website.

The Task Force's Chair is the new Minister, Mike O'Brien MP. When the Task Force resumes its meetings in September, it will be considering the progress which Whitehall has made in preparing for implementation of the Act.

Parliament and the Executive

The Disability Rights Commission Act, the Access to Justice Act and the Youth Justice and Criminal Evidence Act all received their Royal Assent on 27 July. Whilst the first Act establishes a body mandated to improve the human rights of the disabled, questions still remain as to whether or not elements of the latter will withstand challenge under the Human Rights Act.

Two recently published Home Office proposals - for legislative measures on fingerprints, footprints and DNA samples, and proposals for managing dangerous people with severe personality disorders - also raise concerns about the impact the proposals will have on protected rights. The Interception of Communications Consultation Document, addressing the *Halford* decision on unlawful tapping of telephone conversations at work has also been made available for comment.

Age of consent case before European Court of Human Rights

In response to the Government's undertaking to reintroduce the Sexual Offences (Amendment) Bill in the forthcoming parliamentary session, *Sutherland v UK* (challenging the different of age of consent for homosexual and heterosexual sex), scheduled for hearing on 8 September, was postponed. The Government have said that, following the defeat of the Bill in April in the Lords, it will invoke the Parliament Acts to ensure the Bill becomes law if necessary. Significantly the Lord Advocate in Scotland could already face a legal challenge should he seek to prosecute men for engaging in homosexual sex between the ages of 16 and 18.

Forthcoming cases in the ECHR

Scheduled for hearings before the Court are:

T and V v UK (15 Sept) challenging the right to a fair trial for juveniles and the Secretary of State's power to interfere with their sentencing.

McGonnell v UK (28 Sept) challenging the independence and impartiality of the Baliff of Guernsey on the basis that he is a member of the Executive. The judgement will have far reaching implications for the role of the Lord Chancellor and the Law Lords.

Khan v. UK

Crown had made to the form of such petitions, strengthened the role of the sheriff and "provides an additional safeguard against arbitrary arrest and detention". (*H.M.A. v Selfridge and Bain* judgement 04/08/99).

Early indications are that the implementation of the HRA in Scotland may lead to the development of a distinctive Scottish human rights regime. Justice Minister Jim Wallace is proposing distinctive Scots solutions to the issues of freedom of information and detention of those with mental disorders. He has also announced that he is in favour of a Scottish Human Rights Commission.

Irish Human Rights Commission

On 8 July the Irish Human Rights Commission Bill, to establish a Human Rights Commission in the Republic of Ireland, was published. This implements the obligations of the Good Friday Agreement. The Commission will co-operate in a Joint Committee of Representatives with members of the Northern Ireland Human Rights Commission. It will also be able to provide legal assistance to those wishing to take legal action, to appear before the High Court or the Supreme Court as *amicus curiae* and to take cases in its own right.

Constitution Unit Projects

Programme on devolution to the Nations and Regions

The Unit has been awarded a £1.1m grant by the Leverhulme Trust to lead a major programme of research over the next five years into devolution. The programme is built around 11 projects grouped under three overarching themes:

National and regional identities and attitudes

1. The dynamics of regional and national identities (Prof John Loughlin, Cardiff, and Prof Michael Keating, Aberdeen)
2. The impact of devolution on public attitudes (Prof John Curtice, Strathclyde, Prof Roger Jowell, National Centre for Social Research, and Ben Seyd, Constitution Unit)
3. Attitudes towards the Union (Prof Iain McLean, Nuffield College, Oxford)

The English Question

4. Regional attitudes and structures: a comparative study of the North East, the West Midlands and East Anglia (John Tomaney, Newcastle)

5. Business attitudes towards regional structures (Prof John Mawson and Mike Tricker, Aston Business School)
6. Westminster as the English Parliament (the Unit with advice from Prof Philip Norton, Hull)

Intergovernmental Relations

7. Intergovernmental relations within a devolved UK (Richard Cornes, Constitution Unit)
8. Intergovernmental relations and the EU (Prof Charlie Jeffery, Birmingham)
9. Multi-level electoral politics within a decentralised system of government (Prof Charlie Jeffery)
10. Funding a decentralised system of governance

to test the Government's claim that its constitutional reforms will 'reconnect' politics and voters, by exploring what impact the reforms (in particular, devolution and electoral system change) have on levels of trust in the political system and people's participation in the political process. We will conduct two surveys, in 2000 and 2002, which will enable us to measure immediate as well as longer term effects.

Contact: Ben Seyd

Improving women's representation in politics

The 1997 general election saw a large increase in the number of women in the House of Commons. High levels of women's representation have also been achieved in the Scottish Parliament and Welsh Assembly. This has largely been the result of positive action measures by the parties, particularly Labour. The legal situation regarding such measures remains unclear, and Labour's 'all-women shortlists' policy was dropped after an industrial tribunal in 1996. A new study by the Unit, funded by the Nuffield Foundation, will survey the legal views on this matter. The project, which begins in December 1999, will also review examples of positive action measures used in other countries which operate electoral systems recently introduced in the UK. Any offers of help, including legal contacts, are very welcome.

Contact: Meg Russell.

Devolved assemblies: Breaking the Westminster mould

Will the new legislatures in Edinburgh, Cardiff, and hopefully in time, Belfast, be models of a new type of democratic institution in the UK? Will they break from the perceived weaknesses of Westminster? This project, funded by the Gatsby Charitable Foundation, aims to answer these questions. A research paper to be published in October will introduce the project, outlining its basic assumptions and setting out the methodology for public comment. The methodology draws on the concept of a democratic audit, pioneered in this country by Stuart Weir and David Beetham of the Democratic Audit. It will involve devising a method of measuring the performance of the new institutions in their first year against their aspirations to break from the Westminster mould. The research paper will set out the criteria against which the new assemblies will be measured. Contact: Richard Cornes

Does the UK need a Supreme Court?

The Unit has been funded by the ESRC to conduct a research project on whether the UK requires a supreme, or constitutional, court. The project will consider three basic issues: what the function of a second level appeal is within the legal system, how a final level appellate court is best designed (including the choice of a separate constitutional court), and the role supreme or constitutional courts play in establishing new constitutional settlements. The work will involve a comparative analysis of courts in the USA, Canada, Australia, Spain and Germany. There will be a briefing published before the end of this year and a public lecture in early 2000 given by the principal researchers, Richard Cornes and Andrew Le Sueur (Reader, UCL Faculty of Laws). The lecture will focus on the first research question, i.e. 'what does the court of final appeal do?' and form the basis for the later research into the operation of the other courts to be studied.

Contact: Richard Cornes

Constitution Unit Reports

Representing the Nations and Regions in a New Upper House

A classic function of second chambers is to represent states and regions; this role is the commonest form of representation in second chambers around the world. In Britain the House of Lords is being reformed alongside a programme of devolution, opening up the possibility of a 'territorial' upper chamber. The Unit has published a briefing which looks at the e

A Human Rights Committee for Westminster

On 26 July 1999, the Government confirmed that it will invite both Houses of Parliament to appoint a joint committee on human rights. The Unit's briefing on a Human Rights Committee for Westminster identifies the issues which will need to be considered if

the committee is to be effective. Key factors are:

- the ability of the committee to subject Bills to a human rights impact assessment;
- adequate support from, and access to, legal advisers and human rights experts;
- its own dedicated staff rather than being dependent on part-time staff loaned by both Houses;
- firm priorities amongst the many tasks it will be entrusted with, and extending its reach through co-operation with other committees;
- a capacity to operate in a robust and non-partisan fashion, without the government automatically seeking a majority. Membership of the committee should also include non-lawyers, and be representative of the territories of the UK.

Contact: Aisling Reidy

Goodbye to Unit researcher

The lure of the corporate world has proved too much for the Unit's devolution research fellow, David Sinclair. He leaves us at the end of this month, to join McKinsey's. This probably means David will go on to either the Director General-ship of the CBI, or leader of the Conservative Party! We wish David all the best, and are looking for a successor (see p10).

Publications

New Publications by the Unit

[A Human Rights Committee for Westminster](#) by Aisling Reidy (July 1999) £5.

[Representing the Nations & Regions in a New Upper House](#) by Meg Russell (July 1999) £5

Publications Received

Scottish Executive

<http://www.scotland.gov.uk>

Welsh Assembly

<http://www.wales.gov.uk/assembly.dbs>

Northern Ireland Assembly

<http://www.ni-assembly.gov.uk/>

Bulletin Board

Forthcoming Unit Events

Sponsored by

Prof Neil McCormick, University of Edinburgh

The seminars will be held in December/January.
Details will be available from
www.wmin.ac.uk/csd