

## M O N I T O R

Issue 11

The Constitution Unit Bulletin

June 2000

## Legislative Logjam

One year on, one dividend from devolution which has not materialised is an end to the legislative logjam at Westminster. This summer's pile up of bills is the worst that Whitehall insiders can remember. The Scottish Parliament has doubled the amount of Scottish legislation, and found time for Scottish Law Commission bills which have waited for years in the queue at Westminster (see Scotland report on p.2). But at Westminster the blockage is worse than ever.

One casualty which illustrates the scale of the problem is the Freedom of Information Bill. It had its second reading in the Lords before Easter, but will not start its committee stage until mid-July. The Lords are struggling to do their bit as a revising chamber by sitting longer and longer hours; but they will increasingly be made the scapegoats for blocking the government's legislative programme as tempers get frayed during the summer. Difficulties are already stacking up (see p.5 on the Transitional House of Lords, below).

Who is really to blame? Perhaps the Lords could streamline their procedure, and this is likely to be reviewed in the near future (see p.5). But the originators of the logjam are the government. They plan each session's legislative programme in Cabinet committee, which is where collective discipline has broken down. Bills are allowed into the legislative programme which are insufficiently prepared, and then subjected to rafts of government amendments as they go through parliament.

This is nothing new, but the problem has got significantly worse. The spillover session this year may run for all of October and November, so that next year's session will start a month behind schedule. If Mr Blair is serious about joined up government he could start by giving more support and authority to the Legislation Policy Committee of his own Cabinet. That is where collective responsibility and discipline need to be exercised,

Contents	
<b>Devolution: One Year On</b>	
Scotland	2
Northern Ireland	2
Wales	3
England	3
Devolution at the Centre	4
<b>Parliamentary Reform</b>	<b>5</b>
<b>Elections and Parties</b>	<b>6</b>
<b>Human Rights</b>	<b>8</b>
<b>The Courts</b>	<b>8</b>
<b>Freedom of Information</b>	<b>9</b>
<b>Ombudsmen Review</b>	<b>9</b>
<b>Overseas News</b>	<b>9</b>
<b>Constitution Unit News</b>	<b>10</b>
<b>Unit Project Reports</b>	<b>10</b>
Electoral Systems	10
What do the Top Courts Do?	10
Women's representation in Politics	11
Whitehall and the Human Rights Act	11
<b>Publications Received</b>	<b>11</b>
<b>Bulletin Board</b>	<b>12</b>

by detecting and blocking inadequately prepared bills; not by leaving the mess to be sorted out later in Parliament.

Devolution Monitoring reports on our website



# Devolution: One Year On

---

## Scotland

The Scottish Parliament passed the anniversary of its election without its First Minister. Donald Dewar had heart surgery on 8 May and is not expected to return to post until the end of the summer. In his absence an initial unseemly rush to take over the reins amongst his would-be successors has now died down but only because it has gone underground. The surprise loss of the leader has also caused tension in the





refused previously by the Political Honours Scrutiny Committee, was allegedly given an unprecedented 'conditional' peerage dependent on his return to residence in the UK from Belize. His major donations to the Conservative Party also resulted in allegations of 'cash for coronets'. The Liberal Democrats in turn claimed government was trading 'seats for votes' and had required 'good behaviour' in return for new Lords seats (Hansard 7 March, col. 926). Even with new appointments the Lib

which were required by 6 June). Concerns were raised by Conservative peers about the involvement of the Neill Committee, given that the chamber is self regulating. However, the committee's role extends only to making recommendations for the House itself to implement.

### **Long Term Lords Reform**

There is no indication yet of progress to implement the main recommendations of the Royal Commission on House of Lords reform, or moves towards long term reform of the chamber. The joint committee promised by government to discuss the next stage has not yet been established. Government and the other parties are involved in discussions, aimed at reaching greater consensus, before any such committee is set up. The proposals of the Royal Commission have yet to be debated in the House of Commons, having been debated in the House of Lords on 7 March.

### **Strengthening Commons Select Committees**

In March the Commons Liaison Committee issued an unprecedented report, *Shifting the Balance: Select Committees and the Executive* (HC 300, 2 March 2000). All the select committee chairs have come together to protest at the influence of the whips over nomination to select committees, and to propose ways of making the committees more effective. They suggest a new select committee panel of three senior MPs to make the final decision on nominations, working in a non-partisan way.

While stressing that it is up to each select committee to choose their own priorities, the chairs commended recent examples of best practice: scrutiny of secondary legislation, and of draft bills, examination of treaties, holding confirmation hearings for major public appointments, systematic monitoring of follow-up action to their reports. The report offers seven suggestions to improve scrutiny of draft bills, and suggests that the Committee Office should establish a small unit specialising in public expenditure and pre-legislative scrutiny.

The Government's response (Cm 4737, May 2000) was dismissive: 'brutal' in the words of Tony Wright MP. Government rejected the need for any change to the current nomination procedure, and do not believe that select

committees should have a formal role in scrutinising public appointments.

### **Westminster and the English Regions**

In a surprise development on 11 April the Leader of the House introduced a motion to revive the Standing Committee on Regional Affairs. Margaret Beckett had floated the proposal to the Modernisation Committee in February 1999, when it attracted little support. The Regional Affairs Committee last sat in the 1970s, when it provided a forum for English MPs to debate English regional issues. In its revived form it would have 13 voting members, with party strength proportionate to the membership of the whole house (rather than just England). All English MPs would be able to attend and speak. The Conservatives alleged that the proposal was a sop to those Labour MPs who are disappointed by the lack of progress on elected regional assemblies. They voted against the motion, as did the Liberal Democrats.

## **Elections and Parties**

### **Electoral Regulation**

Having passed the Commons, the Political Parties, Elections and Referendums Bill, which implements the recommendations of the Neill Committee, is now in the Lords. During second reading on 3 April, the main concern was government's refusal to grant tax relief on small donations. In committee on 11 May, the focus shifted to the composition of the Electoral Commission, its relationship with the Boundary Commissions and the composition of the Speaker's Committee, to which the new Commission will be answerable. The government is considering an amendment giving the Commission an advisory role in the wording of referendums. Another amendment, put down by Lords Owen, Healey, Prior and Skidelsky, would provide for a referendum to be held on all bills deemed by the Speaker to be of first class constitutional importance.

The posts of the Electoral Commission's chair and four part-time members have been publicly advertised, with appointments due by November. The government hopes that the Commission will be in place by spring 2001. However, the functions of the Parliamentary Boundary Commissions will not be transferred until the next boundary review in 2005. There is

currently some debate over how the time limit for election expenses will be interpreted. The Bill provides for national spending limits to apply for the year preceding a general election. But should the next election be called within one year of the legislation being on the statute book, section 151(5) of the Bill allows the Home Secretary to make alternative provisions for spending limits. The opposition parties are

Hughes indicated that most invalid votes were blank ones, with only 1% being spoilt, suggesting that many Londoners had simply avoided using their second votes, rather than mismarking their ballot.

## Human Rights

---

### **Human Rights Act**

The government is making its final preparations for implementing the Human Rights Act (HRA). In an unusual step, the Home Office has sought confirmation concerning the readiness of other departments before it issues the order bringing the Act into effect on 2 October. In a parallel move, the Cabinet Office has sought details of all remaining issues where departments consider that a successful challenge might be mounted in an operationally significant or sensitive area. The exercise is said to have provided a degree of comfort that few such areas should remain by October assuming that the current legislative programme remains on track.



## **Freedom of Information**

---

The Freedom of Information Bill has left the Commons and had its second reading in the Lords on 20 April. The Bill suffered five backbench revolts during Commons report stage, with government concessions to increase the powers of the Information Commissioner and restrict the use of the veto. Because of the congested legislative programme the Bill will not start its committee stage in the Lords until July, so that report stage in the Lords will not be until October. This will raise the stakes in any ping pong between Lords and Commons at the end of the session, because those seeking to extract further concessions will face the risk of losing the bill altogether.

In Wales the new First Secretary Rhodri Morgan has started to publish minutes of Welsh Cabinet (see 'Wales', p.3) and has issued a consultation paper on a new FoI Code of Practice in Wales. In Scotland the Executive has published a summary of the 119 responses received to its consultation paper on FoI. Keith Connal, head of the Scottish FoI Unit, spoke to a Constitution Unit seminar in March.

## **Ombudsmen Review**

---

On 13 April the Cabinet Office published the report of its review of the public sector Ombudsmen. The report recommends bringing together in one new Commission the Ombudsmen for central government, local government and the health service. The recommendation was welcomed by the Ombudsmen, who had called for the review because they wanted complainants to be able to knock on just one door. The government is now consulting on the report. The difficulty will be to find parliamentary time to implement its recommendations, because combining the three schemes will require legislation.

In January Lord Lester QC anticipated a lesser recommendation of the review by introducing a Private Peer's Bill which would remove the MP filter for citizens wishing to approach the Parliamentary Ombudsman. By international standards the UK Parliamentary Ombudsman receives very few complaints. In part that is because of the disincentive of having to

approach him through an MP; in part because of his relatively low profile. Overseas

# **Constitution Unit News**

## **New Research Fellows**

Welcome to two new Research Fellows. In May Elizabeth Haggett joined us on a 12 month secondment from the Dept of Health, where she was Deputy Section Head of their Constitution Unit working on devolution and human rights. She is conducting a research project on the Human Rights Act 1998 and its implications for policy on access to NHS treatment and services. In July we will be joined by Clare Delap, who is coming to conduct a systematic review of public participation in policy making. This will be the first comprehensive review of all the new techniques (citizens' juries, deliberative polling, focus groups etc) covering all sectors (central and local government, health authorities etc), and also looking at experience overseas.

## **Website**

- Support for the extension of PR to Westminster is lower than that for the devolved bodies.
- Attitudes to PR remain sensitive to the way that survey questions are put; attitudes are not consistent.
- Although voters are not put off by the prospect of coalition government, they remain attached to the idea of a single local MP.
- Voters did not stay away from the polls because they disliked the voting system, or because they could not understand it.

The briefing is now available (see publication list for details). *Contact: Ben Seyd (020 7679 4972, email: b.seyd@ucl.ac.uk).*

### **Women's Representation in Politics**

The Constitution Unit has undertaken a study of women's representation in British politics, focusing on what action may be taken by government and the parties within the confines of the law. Parties have been cautious to adopt positive action measures (quotas) for candidature since the Labour Party lost an industrial tribunal over its all women shortlists policy in 1996. There has been pressure to change the UK's sex discrimination law to allow parties to

Ti4.0aigre

# Bulletin Board

## Forthcoming Unit Events

*To book a free place at Unit events, please return the events flyer enclosed. A location map for the Constitution Unit can be found at:*  
<http://www.ucl.ac.uk/constitution-unit/logos/find.htm>

Constitution Unit /Law Faculty Lecture  
**Wakeham in the Long Grass: Can the Lords Guard Democracy?**

Lord Alexander of Weedon Q.C.:  
 Visiting Professor, Faculty of Laws, UCL  
 28 June 2000, 6:00p.m.,  
 Gustave Tuck Lecture Theatre, UCL  
*in association with: Faculty of Laws*

Summer Seminar Series:

**Can the Welsh Assembly Survive?**

Rt. Hon Ron Davies AM MP

3 July 2000, **5.00 p.m.**

**please note change of time**

The Constitution Unit, UCL

Autumn Seminar Series:

**The Commons - Modernisation or Reform?**

Andrew Kennon: Clerk of Home Affairs  
 Committee, formerly Cabinet Office  
 adviser on Parliamentary procedure 1997-99  
 20 September, 1-2.30pm,  
 The Constitution Unit, UCL

**Further events in the Autumn are listed on the events flier enclosed.**

## Forthcoming events

Oxford Brookes University

**Conference: The New Constitutional Order**

Lord Wakeham, Dr Peter Edge, Prof. Diana Woodhouse, Ms Evadne Grant, Dr J Black-Branch  
 26 June 2000, 10 a.m. - 5 p.m.