

CSPL INQUIRY INTO MPS' EXPENSES

In late March, Sir Christopher Kelly's Committee on Standards in Public Life (CSPL), the independent advisory body charged with monitoring ethical standards across the whole of British public life, announced that it was bringing forward its 'wide-ranging review of MPs' allowances'. The announcement followed a number of allegations that some MPs, including senior ministers, were abusing the House of Commons' second-home allowance scheme (formerly the Additional Cost Allowance, now the Personal Additional Accommodation Expenditure).

An 'Issues and Questions paper', published in April, set out the CSPL's overall objective: 'to devise a set of arrangements which command a much greater degree of public confidence, which properly supports MPs in their important and difficult jobs, which allows them to claim for expenses properly incurred without creating suspicion that they are somehow obtaining personal advantage, which hold MPs properly to account, and which is enforceable and sustainable over the longer term.'

Realising that objective will not be easy. It is inherently difficult to devise a fair system for supporting MPs, whose job often requires the maintenance of two homes. Intelligent, well-meaning individuals can easily disagree over what should be done. The CSPL will also have to build media and public support for its proposals. As the CSPL recognises, it must be prepared to argue the case for increasing MPs' pay as part of a comprehensive settlement. The CSPL has a unique moral authority in the political system; given the public's current anti-politics mood, it may have to draw on this resource to the full.

Perhaps the biggest challenge facing the CSPL is winning over MPs. They can ultimately choose to reject any or all of its proposals. Their choices will be shaped by their own ideas about appropriate financial support – many MPs think their pa
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widespread support and illustrated the dangers of quick fixes.

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CHURCH AND STATE (CONT'D)

and a discrimination which also prevents the sovereign from being able to choose their own religion or none.

Clearly, Britain is no longer a confessional Protestant state holding out against its Catholic neighbours, as it was in 1700. Nor is it the Britain of 1952, when the present Queen acceded, ethnically homogeneous and observant Christian. Britain now is pluralised beyond any post WWII imagining: the Black and Minority Ethnic community constitutes over 8 per cent of the population; non-Christian religious observance is a well consolidated presence; Christian observance itself has radically declined and non-observance/unbelief extends to two thirds of the population.

Continuing pragmatic drift remains tempting to both church and state. Old forms cling on and politicians are reluctant to involve themselves

EXECUTIVE (CONT'D)

The Public Administration Select Committee also conducts a regular annual scrutiny of the work of the Cabinet Office. This is mainly based on evidence sessions, the last of which was with Sir Gus O'Donnell in December 2008.

Evidence is being accepted until May 15. More details at: http://www.parliament.uk/parliamentary_committees/lords_constitution_committee.cfm

More details about PASC's inquiries at: http://www.parliament.uk/parliamentary_committees/public_administration_select_committee/pasc_work_of_cabinet.cfm

DEVOLUTION

The SNP is remarkably popular for a mid-term government and still able to present an image of governing competence during difficult times. However, the political landscape appears to be more testing in 2009 than anything we have seen since 2007. For example, although Alex Salmond is still the most popular leader in the Scottish Parliament, the latest opinion poll suggests that Labour have taken the lead. This comes on the back of a torrid time for the SNP when it failed to pass its annual budget first time round, dropped its plans to introduce legislation establishing a local income tax and appeared to be forced by the opposition parties to introduce new legislation (rather than use existing regulations) to further its aims on alcohol policy.

While these examples perhaps demonstrate the harsh realities of minority government, they do not represent a nail in its coffin. The failure of the budget reflected badly on all parties (rather than a successful attempt on their part to embarrass the government), producing a scramble among Labour and the Liberal Democrats to find a way to accept a new bill that differed marginally from the old one. Subsequently, it showed that a political system containing a minority government could deal well with a crisis (assuming that the opposition parties would not welcome an early election), passing a new budget within a week of rejecting the old bill. There is further potential for cross-party cooperation on alcohol policy: there is a lot of common ground between the SNP and Labour on interventionist public health measures. And on the issue of fiscal autonomy, given Scottish Labour's new enthusiasm and the SNP pledge, following a budget concession to the Liberal Democrats, to engage with the Calman Commission on this point. Perhaps the more important problem for the SNP is its public image during

the policy process. The economic crisis has already damaged its hopes to appear to do a lot with limited powers, since Gordon Brown emerged as the leader most able to intervene and use the types of policy levers unavailable in Scotland.

Similarly, a succession of legislative failures presents the image of a government struggling to exert its power. The role of Jim Murphy as Labour's Secretary of State for Scotland may be to further this image. On the one hand the UK Government has accepted Scotland's veto on nuclear power. On the other, Murphy appears determined to block any formal meetings between First and Prime Minister that present the former with a sense of equal status. The strategy may be to equate Salmond on a par with Murphy and therefore less important than Brown.

Paul Cairney, University of Aberdeen

It is nearly two years since Wales's latest devolutionary settlement came into force. Part Three of the 2006 Government of Wales Act gives the National Assembly Measure-making powers on the basis of Legislative Competence Orders (LCOs) passed through Westminster. For its supporters, Part Three opened up the possibility of the steady accumulation of legislative powers in Cardiff, allowing the National Assembly to build up the requisite experience of law making before any move to law-making powers proper, as envisaged by Part Four of the same Act. For its critics, however, Part Three was pregnant with the possibility of delay, obfuscation and complication. A particular concern was that the National Assembly's legislative programme would be hostage to different bureaucratic and political priorities in London – a danger symbolised above all by the role of the Welsh Affairs Select Committee (WASC) in undertaking pre-legislative scrutiny of LCOs.

It is the sceptics that have been proven correct. A number of LCOs have become bogged down in seemingly endless 'consultations' with Whitehall. For example, it is now nearly two years since the Environmental Protection and Waste Management LCO entered the Whitehall labyrinth. There seems to be no prospect that it will emerge in the near future, let alone that the Measure itself will be laid before the National Assembly. Meanwhile, WASC has become increasingly insistent that LCOs be very tightly drafted, constraining the National Assembly's room for legislative manoeuvre. WASC also insists that the Welsh Government provide detailed accounts and justification

of what precisely it intends to legislate for. Indeed, when reading the agenda of forthcoming WASC meetings, is hard not to conclude that it is seeking to usurp for itself the role of an *ex ante* revising chamber.

With the system so obviously failing, it is not surprising that the Welsh Government has been seeking ways to break the log-jam. But those solutions are proving equally problematic. In one recent case, in order to seek to progress the Affordable Housing LCO, an attempt was made to write into the LCO the power to allow the Secretary of State to veto the Assembly's use of its proposed power to suspend right to buy legislation. This proposal had then to be withdrawn when Parliament's Joint Committee on Statutory Instruments suggested (in March) that the role proposed for the Secretary of State might not be legal under the terms of the 2006 Act.

Even more worrying for the longer term is the trend pointed to in an important new paper by Cardiff University's Marie Navarro and David Lambert, who cite an increasing tendency to empower the Assembly Government directly, rather than transfer legislative powers to the Assembly itself. If this tendency is not checked then executive dominance may well become the main story of the second decade of devolution in Wales.

Richard Wyn Jones, Wales Governance Centre, Cardiff University

It has been a time of jangled nerves in Northern Ireland, following the murder of two soldiers and a policeman in March, and the re-emergence of 'punishment' shootings, at the hands of 'dissident' republicans not reconciled to the renewal of power-sharing devolution in May 2007.

The murders were condemned not just by unionists but also, notably, by the Sinn Féin deputy first minister, Martin McGuinness, who denounced the 'traitors' responsible. The UK government was keen to build on the changed relationship between SF and the state by advancing the devolution of policing and justice – enabling legislation was rushed through Westminster. And the trade unions rediscovered the role they had played in Northern Ireland's darkest days, mobilising thousands across the sectarian divide at peace rallies.

That was the good news. But the persistent exercise by the Democratic Unionist Party of the *de facto* veto it has acquired over political developments, following the St Andrews

DEVOLUTION (CONT'D)

agreement of October 2006, has engendered renewed alienation among a significant section of young Catholic males. And the fringe republican groups could easily paint Mr McGuinness as the real 'traitor' to the cause – indeed, the police were to warn him of a threat to his life.

In January, moreover, the visceral emotions that lie just below the surface in Northern Ireland were tragically evident in the anger and controversy which surrounded the launch of a report into how to deal with the region's 'troubled' past. And, looking to the future, the DUP has yet to agree when policing should be devolved.

With the dominant executive parties having so little in common, only a trickle of devolved legislation was presented to the assembly in recent months. But while the Ulster Unionist Party and the SDLP argued that the flimsy Programme for Government should be rewritten in the context of the galloping economic crisis, the first minister was unmoved.

Perhaps most damagingly, chaos loomed in the forthcoming school year, with both Catholic and 'controlled' (predominantly Protestant) grammar schools voting with their feet to resist the plans by the SF education minister, Caitriona Ruane, to abolish academic selection by introducing tests of their own.

While the trade unions also brought their members on to the streets to protest against a catalogue of manufacturing job losses, the Northern Ireland middle class was thus organising too to protect its interest across communal lines. In both cases, the devolved government looked disturbingly like a spectator as events unfolded.

Robin Wilson, Queen's University Belfast

The most recent monitoring period witnessed the onset of recession, with unemployment reaching 2 million and a sharp contraction in GDP. Manufacturing sectors were particularly badly hit, as were the larger cities in the north and the midlands and those areas of the country that continue to be more reliant on manufacturing activity. A Government-commissioned report by Professor Michael Parkinson argued that the credit crunch had made the predominant property and housing-led regeneration model defunct.

Against this background, Business Secretary Lord Mandelson sought to present Regional

Development Agencies as a key part of the Government's response to recession, claiming for them a strong role in a new era of 'industrial activism'. This aspiration, it quickly became apparent, would see an end to the commitment to require RDAs to delegate funding and decision-making to localities and sub-regions. In some senses therefore RDAs are again the political battleground in sub-national governance. On one hand there has been continued indecision in Government policy. A report commissioned by the Government from PricewaterhouseCoopers on the performance of RDAs was published in April and was largely positive, indicating that the net impact of RDAs was greater than the taxpayer contribution. But the report had apparently been delayed from the autumn because ministers wanted to again outline a clear 'mission' for RDAs.

The centralist tendencies shown by Lord Mandelson contrast with emerging Conservative party policy approaches to sub-national economic development and governance. The Conservatives' intention to abolish some or all of the RDAs appears to be hardening, and in January the shadow Housing spokesman threatened also to scrap the Homes and Communities Agency if it cannot prove its worth within the next 18 months. In February the Conservatives published a policy paper suggesting that local authority partnerships representing functional economic areas could take over funding and powers from RDAs. It is expected that RDAs would also lose their recently granted planning role under a Conservative administration determined to return planning powers to the local level. Referendums on some cities gaining elected mayors could also be expected. Emerging Conservative policy in this area therefore focuses on localism, decentralisation and returning powers to local councils – a process it argues would not be directed from the centre.

Three further city-regional multi-area agreements were signed off in January: Merseyside, Leicester and Leicestershire, and Pennine Lancashire. Seven city-regional partnership groups – centred upon Manchester, Leeds, Birmingham, Middlesbrough, Bristol, Luton and Sheffield – were also shortlisted for the two or more statutory city-region pilots that were announced by the Government towards the end of 2008. Leeds and Manchester were confirmed as the successful candidates in the Budget on 22 April. The test in the coming months will be what level and form of devolution and delegation will be afforded these pilots.

James Rees and Alan Harding, University of Manchester

INFORMATION POLICY

The Cabinet minutes on the Iraq war will not be released, as ordered by the Information Commissioner and Information Tribunal, after the government announced its first use of the executive veto in February. This power, which the government has undertaken to exercise collectively, is provided for under section 53 of the Freedom of Information Act.

The request was for the minutes of two meetings of Cabinet in March 2003, at which it was decided to send military forces to Iraq. Under the Act, the decision to disclose or withhold Cabinet minutes is subject to a public interest test. The Commissioner and Tribunal were both of the view that the public interest in knowing how such an important and controversial decision was reached outweighed any public interest in withholding the information. Any longer term 'chilling effect' on Cabinet discussion and papers would be limited since disclosure would only take place in highly exceptional cases like this one.

Two reasons were put forward by Jack Straw when issuing the veto. Disclosure of the minutes would impair the deliberation that takes place in Cabinet, and harm the convention of collective Cabinet responsibility. Therefore, although there is public interest in understanding how the decision was reached, there is greater public interest in preventing damage to the Cabinet system.

What happens next? If the Commissioner and Tribunal continue the current line of reasoning in other controversial cases, the government may attempt to exempt Cabinet minutes from the Act. Such a move would be hard to get through Parliament, which may be the reason why it has not already been proposed. Otherwise the government may continue to exercise the veto whenever it feels its 'crown jewels' are encroached upon.

The independent review of the 30 Year Rule, which was set up after the Prime Minister's October 2007 'Liberty' speech, reported in January. The review team described the current set up as 'anachronistic and unsustainable'. Currently records are sifted and sent to the National Archives for release after 30 years unless requested under FOI earlier. The review favours halving the time to 15 years.

Despite the estimated cost of £75m over a 15 year period, the government's initial response was favourable. A release from the Ministry

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- Macdonald, J., Crail, R. and Jones, C. *The Law of Freedom of Information*, 2nd edn (Oxford: Oxford University Press, 2009).
- Ministry of Justice, *Freedom of Information Act 2000 – Statistics on implementation in central government: Q4 October– December 2008* (London: Ministry of Justice, 2009).
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