

# M O N I T O R

## The Constitution Unit Bulletin

### Lords reform 1,2,3...

---

#### **Cabinet Committee on Lords Reform**

On 22 December the Government announced a new Cabinet Sub-Committee, CRP(HL), “to consider policy and other issues arising from the Government’s plans for reform of the House of Lords, and make recommendations to the Ministerial Committee on Constitutional Reform Policy”. The Sub-Committee is surprisingly small. Chaired by the Lord Chancellor, Lord Irvine, it has only six other members: Jack Straw, Ann Taylor, Lord Richard (Leader in the Lords), Nick Brown (Chief Whip), Lord Carter (Chief Whip in the Lords), and Peter Mandelson.

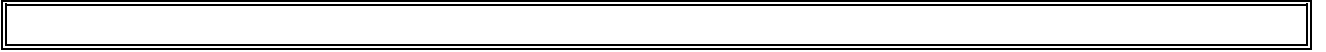
The Committee is a strong signal that the Government are planning to introduce a bill in the second session. In anticipation of such a bill the Unit has embarked on three pieces of work on Lords reform. The first is reported here; the other two are on p2.

#### **Reforming the Lords: A step up an appointed second chamber**

wider reform of the Lords.

The first two stages are for the current Parliament; stage three may be held over until the next. It will be difficult in stage one to avoid addressing the consequences of a ‘House of Patronage’: how far to redress the continuing party imbalance, and how to open up appointments. In stage two of the process these issues could be referred to a Joint Committee of both Houses, charged with developing a new set of conventions to govern appointments to an all-nominated House of Lords.

Stage three will involve a review of whether the Lords



# Constitution Unit Work in Progress

---

## **Rebalancing the Lords: the Numbers**

Redressing the party imbalance in the Lords is not as simple as it seems. The government wants to ensure that over time party appointees as life peers more accurately reflect the proportion of votes cast at the previous election. The Unit has developed a computer model to show the effect of future election results on the size of the Lords and its composition. The Unit's *Briefing* (£1) shows that rebalancing after each election will lead to an inexorable increase in numbers. The Lords may grow to 800 peers in 20 years' time. The only way to avoid this is not to aim for full proportionality; or to introduce term appointments instead of peerages for life.

### **Welcome**

To Richard Cornes, a lawyer from New Zealand, who has joined the Unit as a Visiting Research Fellow. He comes to us from the Constitutional Centenary Foundation in Melbourne, which is the nearest equivalent to the Constitution Unit in Australia.

## **Role of second chambers overseas**

The final stage of Lords reform will need to be preceded by a wide-ranging review of the options. One of the difficulties is that there is no agreed role for the second chamber within our parliamentary system. Politicians and others find it difficult to think beyond the House of

- devolution will allow Scotland and Wales to reassert their stronger ‘communitarian’ culture, and the health service will provide a highly visible test of the ability to do this
- Scotland has a stronger political will for devolution, but Wales has a clearer reforming health agenda
- to develop a strong public health agenda both countries need to stimulate stronger health policy communities
- public health policies should be easier to operationalise in Scotland and Wales, because their smaller size makes it easier to work across departmental boundaries.

The next stage is to hold follow up seminars in February in Cardiff and Glasgow, to stimulate the development of the health policy networks in Scotland and Wales. A final seminar will be held in March in Leeds or Newcastle, to explore the implications of devolution and regional government for the health service in England. The conclusions will be reported in the next *Monitor*, and the study will be published in April. Contact: Robert Hazell

### **Devolution and higher education**

The second devolution case study is being conducted jointly with Sue Taylor of the CVCP and Professor Lindsay Paterson of Edinburgh. Universities in England will be affected by regional government and devolution, as well as the universities in Scotland and Wales. The study will look at changes in funding, research grants, cross-border student flows, maintenance of academic standards and university autonomy and accountability post-devolution. It will be published jointly by the Constitution Unit and the CVCP.

### **Freedom of information seminars**

The Unit is organising a series of six seminars with Whitehall departments on Government information policy, in conjunction with Andrew McDonald of the Public Record Office. Andrew McDonald is an international expert on freedom of information, having followed in

## The legislative programme starts to roll

The September issue of Monitor reported on the eight constitutional bills in the Queen's Speech, and the four new Cabinet Committees established to guide the constitutional reform programme. The effort in the first three months of the new government was largely on devolution in Scotland and Wales, with the Cabinet Committee on Devolution (DSWR) meeting 15 times in May to July. In the autumn the focus has widened, with White Papers on human rights, regional development agencies and freedom of information, and half a dozen constitutional bills have now been introduced into Parliament.

### Human Rights Bill

In October the Human Rights Bill was introduced into the House of Lords by the Lord Chancellor. The Bill has passed through its Committee stage and should go to the Commons in the New Year.

The Bill incorporates into domestic law the European Convention on Human Rights (ECHR). The method of incorporation draws on experience in Canada, New Zealand and elsewhere, but the balance between parliament and the courts is unique to the UK:

- courts may strike down subordinate legislation (including legislation by the Scottish Parliament) but not Acts of the Westminster Parliament
- for Westminster legislation the court may make a 'declaration of incompatibility'
- the Government may then invite Parliament to remedy the breach by a fast track legislative procedure
- all new legislation must be accompanied by a declaration from the responsible Minister of compatibility with the ECHR
- there will be a new Parliamentary Committee on Human Rights, but no Human Rights Commission.

For the *Constitution Unit Briefing on the Human Rights Bill*: see the order form on the back page.

### Cabinet Committee with Liberal Democrats

In the summer the Prime Minister announced a new Cabinet Committee with the Liberal Democrats. The Committee has no fixed membership, but is chaired by the Prime Minister, and consists of four or five senior figures from each party.

The Committee met three times in the autumn. The first meeting was largely introductory; the second discussed the UK's presidency of the EU; and the third settled the terms of reference and membership of the independent Commission on the Voting System. Despite its wide terms of reference, the Committee has focussed mainly on constitutional issues. Lords reform is likely to be one of the topics the Committee will discuss in 1998.

could have offered a free mailing to both campaign groups

- the referendum on EMU may be similarly one sided. It will also be very market sensitive. The government might want to enact standing authority to hold a referendum so that it could seize an opportune moment without unduly destabilising the markets
- in the referendum on electoral reform the quality of public information will be critical, because the issues are more complex, and the electorate poorly informed.

## Government of Wales Bill

Welsh Office: Ron Davies and Peter Hain

The Government of Wales Bill was introduced on 26 November, and had its Second Reading on 8 December. It is a long bill (129 clauses and 12 Schedules), and the government is negotiating to take most of the committee stage in Standing Committee (with other constitutional bills the government has followed the convention that the committee stage is taken on the floor of the House).

The Bill follows the proposals in the July White Paper *A Voice for Wales*. Points of note are:

- the powers of the Assembly do not appear in the Bill, but are to be listed in a draft Order in Council
- with only 60 members the Assembly may find it difficult to man all the committees envisaged in the Bill, which will include subject, regional and procedural committees
- there will be an Executive Committee consisting of the leaders of the subject committees ('Assembly Secretaries'), and chaired by the First Secretary, who is to be elected by the whole Assembly
- an appraisal of the compliance costs of any proposed subordinate legislation must be carried out before it is laid before the Assembly.
- the Assembly must make schemes for promoting local government and the voluntary sector in Wales, and must establish a Partnership Council for Wales with local authorities
- an Advisory Group has been appointed, chaired by John Elfen Jones to prepare

guidance for the Standing Orders Commission.

## Scotland Bill

Scottish Office: Donald Dewar and Henry McLeish

The Scotland Bill was introduced on 17 December. It is shorter than the Wales Bill (116 clauses and 8 schedules), and conceptually neater. The Bill sets out the powers reserved to Westminster in Schedule 5; and the Scottish Office has published a guide on the legislative powers which by implication are devolved to Scotland.

The Scotland Bill is more recognisably a constitutional document:

- it provides for entrenched majorities (two thirds) before the Parliament can vote for a dissolution or agree to the removal of judges
- the number of Scottish MPs at Westminster is to be revised in line with the electoral quota for England. This will mean a reduction in 2005 from 72 to 57 MPs - with a corresponding reduction in the size of the Scottish Parliament, and a ratio of constituency to additional members of 50:50
- the Bill protects the independence of the Lord Advocate as head of the prosecution system in Scotland; and creates a new Ministerial office in the UK government of Advocate General for Scotland.

## The Barnett Formula

In November the Treasury Select Committee conducted an inquiry into the Barnett Formula. Their conclusions were published in a short report on 22 December.

- all parts of the UK are entitled to broadly the same level of public services, and expenditure should be allocated according to relative need
- the Barnett Formula is only a way of allocating increments in expenditure. It does not determine overall shares of public expenditure, nor does it reflect spending needs
- in 1995-96 expenditure in Scotland was 23% higher than in England and in Wales 16% higher

- it is time for a fresh needs assessment, to show whether the Barnett Formula remains the appropriate method of allocating changes in expenditure to the four nations of the Union.

The Select Committee did not say who should conduct this needs assessment. The Unit has argued the task should be given to an independent commission.

### **Regional Development Agencies**

DETR: John Prescott and Dick Caborn

The June consultation paper on RDAs in England evoked a big response. 1500 replies were received, most expressing strong support: with joint responses in many regions from business leaders and local authorities.

In December the government published its legislative proposals in the White Paper *Building Partnerships for Prosperity - sustainable growth, competitiveness and employment in the English regions* (Cm 3814).

- RDAs will be national quangos, appointed by Ministers, funded by government grant and accountable to Ministers and Parliament
- They will have 12 member boards, and be business led
- RDAs must also be responsive to regional chambers, and consult them on their corporate plan
- local authorities should be dominant on the regional chambers, but they must involve the other regional stakeholders
- the regional budgets of DTI and DfEE will not be transferred; but RDAs will administer the SRB Challenge Fund, the regeneration functions of English Partnerships and the Rural Development Commission, and take a leading role on EU structural funds.

John Prescott's introduction to the White Paper says this is only the start. "Modernisation of the structures in the English regions is part of the wider reform of the governance of the United Kingdom and in particular the devolution of powers to Scotland and Wales. England's regions may also go down this road; where there is popular demand, we are committed to further consultation on directly-elected regional assemblies".

### **Greater London Authority**

DETR: John Prescott and Nick Raynsford

The Greater London Authority (Referendum) Bill was introduced in October, passed by the House of Commons, and introduced in the Lords on 27 November. It provides for a referendum to be held on the government's plans for a new Greater London Authority on 7 May 1998. The single referendum question will be

- are you in favour of the government's proposals for a Greater London Authority, made up of an elected mayor and a separately elected assembly?

Put a cross in one box: Yes/No.

Amendments will be moved in the Lords to provide for two questions. The Conservatives are in favour of an elected mayor but not an assembly; the Liberal Democrats support an assembly, but not a separately elected mayor. The government is concerned about low turnout; but by holding the referendum on the same day as the local government elections in London they should at least achieve the normal London turnout of over 40%.

### **Lord Hunt's Local Government (Experimental Arrangements) Bill**

Lord Hunt of Tanworth was chairman of the House of Lords Select Committee on Central-Local Government Relations which reported in July 1996. This Bill, introduced on 26 November as a Private Peer's Bill, gives effect to one of the Select Committee's recommendations. Local government committee structures have long been criticised as cumbersome and inefficient, with responsibility for decisions being too diffuse. The Bill will allow local authorities to experiment with

- elected mayors with executive powers
- single councillors exercising executive powers
- single party committees (including an executive committee)
- scrutiny committees.

Local authorities must apply to the Secretary of State for approval to run an experiment for up to eight years; and the government must consult

with the Local Government Association and the Audit Commission before giving its approval.

## **Elections**

### **European Parliament Elections Bill**

Home Office: Jack Straw and George Howarth

From 1999 the UK will move into line with the rest of the EU by introducing PR for electing the UK's 87 MEPs in place of first past the post. The Bill introduces a regional list system for the 1999 elections to the European Parliament. England will be divided into nine regions each electing between six and eleven MEPs. Scotland, Wales and Northern Ireland will count as separate regions and will elect eight, five and three MEPs respectively. Northern Ireland will retain the Single Transferable Vote system (STV).

The Bill provides for 'closed' lists (see page 2) under which electors can vote only for parties but not for individual candidates (except Independents). At Second Reading Jack Straw indicated the government's willingness to consider a more open list, and the Home Office has placed in the House of Commons Library a memorandum on how open lists operate in Belgium. A move to open lists would have implications also for Scotland and Wales, where the two devolution bills currently provide for closed lists for the additional members.

Voting by party lists will require legislation for the registration of political parties, and new spending limits for regional election campaigns.

### **Independent Commission on Voting Systems**



review will also assess the case for merging all or part of its functions with the Parliamentary Boundary Commission.

## **Political Parties**

---

### **Registration of political parties**

The new electoral systems based on party lists (for Scotland, Wales and the European Parliament) will require a system for the registration of political parties. The Home Office is preparing a bill to be introduced in February, which will also cover party funding (see below). It is likely to give the registration function to an existing Registrar, possibly the Registrar of Companies. Issues which arise include:

- will the Registrar be able to disallow confusing party names (such as 'Literal

The Scotland and Wales Bills are long and complex, and their Committee stage will need to be referred to Standing Committee; with a possible compromise that the clauses of principle remain to be debated on the floor.

### **Freedom of Information White Paper**

Cabinet Office: David Clark, Chancellor of the Duchy of Lancaster

The government's proposals for a Freedom of Information Act, *Your Right to Know* (Cm 3818) were published in December.

- the Act will extend to central government, local government, the health service and the wider public sector (including the privatised utilities)
- there will be seven categories of exemption, based on a test of 'substantial harm'
- the investigation and prosecution of crime will be completely excluded
- appeals will go to a new Freedom of Information Commissioner, with power to order disclosure
- there will be no system of ministerial certificates to restrict or veto the Commissioner's decisions
-

# Bulletin Board

## **Publications by the Unit**

Reforming the House of Lords: a step by step guide by Ben Seyd and Robert Hazell. (December 1997), £3.

Reforming the Lords: the Numbers by Ben Seyd. (December 1997), £1.

Rights Brought Home: a briefing on the Human Rights Bill by Francesca Klug, with Rabinder Singh and Murray Hunt. Published jointly by the Constitution Unit and King's College London, (November 1997) £2.

## **Publications received**

### *Devolution*

The Scotland Bill: A Guide. Published by the Scottish Office. (December 1997).

To Make the Parliament of Scotland a Model for Democracy by Bernard Crick and David Millar. Available from the John Wheatley Centre, 20 Forth Street, Edinburgh EH1 3LH Tel/Fax: 0131 477 8220, £5.

A Parliament for the Millenium: a report of the advisory committee on Telematics for the Scottish Parliament. Available from the John Wheatley Centre, 20 Forth Street, Edinburgh EH1 3LH Tel/Fax: 0131 477 8220, £8.

Comments by The Law Society of Scotland on the White Paper "Scotland's Parliament". Available from the Society at 26 Drumsheugh Gardens, Edinburgh EC3 7YR Tel: 0131 226 7411 Email: lawsoc1@nildram.co.uk.

Making the Assembly Work

Research & Development Trust and Third Wave, Eastside, Huntingdon PE18 7BY. ISBN 1 902238 00 1.

Coalitions and Co-operation in Local Government by Michael Temple. Available from the Electoral Reform Society, 6 Chancel Street, Blackfriars, London SE1 0UU. Tel: 0171 928 1622 Fax: 0171 401 7789 Email: [ers@reform.demon.co.uk](mailto:ers@reform.demon.co.uk) (£6.95 plus p&p).

If you want us to mention a publication or forthcoming conference or seminar in the next issue of the Monitor (March 1998) send details by the end of February to Sara Northey, School of Public Policy, Brook House, 2-16 Torrington Place, London WC1E 7HN Tel: 0171 209 6669, Fax: 0171 209 6594, Email: s.northey@ucl.ac.uk.

## ORDER FORM

The Constitution Unit

### Reports and Briefing papers

	Report price	Quantity	Briefing price	Quantity
1 <b>Delivering Constitutional Reform</b> April 1996 (102pp)	£10		£1	
2 <b>Reform of the House of Lords</b> April 1996 (98pp)	£10		£1	
3 <b>Scotland's Parliament</b> June 1996 (175pp)	£10		£1	
4 <b>An Assembly for Wales</b> June 1996 (172pp) Briefing available in Welsh or English. (Please indicate preference)	£10		£1	
5 <b>Regional Government in England</b> June 1996 (120pp)	£10		£1	
6 <b>Human Rights Legislation</b> November 1996 (155pp)	£10		£1	
7 <b>Commission on the Conduct of Referendums</b> Nov 1996 (102pp)	£10		£1	
8 <b>Devolution in the Round</b> June 1996. Briefing only.			£1	

Address \_\_\_\_\_

\_\_\_\_\_

—

\_\_\_\_\_ **Postcode** \_\_\_\_\_

**Tel.** \_\_\_\_\_ **Date** \_\_\_\_\_

**Please invoice me**



**Please return to:** The School of Public Policy,  
Brook House, 2-16 Torrington Place, London WC1E 7HN  
Tel: 0171 209 6595 Fax: 0171 209 6594