

M O N I T O R

Issue 10

The Constitution Unit Bulletin

March 2000

Devolution Hots Up

For the first time since the elections to the Scottish Parliament and Welsh Assembly, devolution has dominated the news in the early months of this year. Attention has focused, in particular, on the tensions between the centre and the devolved institutions.

Wales

One personality and one issue has come to symbolise the problems of devolution in Wales. First Secretary Alun Michael's reported autocratic leadership style was widely

Wales cont.

Wales. An ICM poll in February revealed that half the Welsh sample believed that devolution had achieved nothing for Wales, and two fifths considered it a failure. Big changes are also required to restore the fortunes of the Welsh Labour Party: Labour slipped from second to fourth place in the Ceredigion parliamentary by-election held at the beginning of February.

Changing First Secretary has not resolved some of the deep-rooted problems of the Welsh Assembly. The Treasury has not budged from its position that no commitment to matched funding can be made before the Comprehensive Spending Review in July, despite fears that this might result in Wales losing access to some of the EU funds available. The Labour administration in Cardiff remains a minority administration, though the possibility of a coalition with the Liberal Democrats has not been ruled out altogether. There is controversy and uncertainty over the powers of the Presiding Officer of the Assembly following the vote of no confidence saga; and uncertainty over the powers of the Assembly itself have been exposed over calls by the Agriculture Committee in February to declare Wales a GM-free zone.

Scotland

When a leading newspaper runs a front page headline 'Scottish Executive in Disarray', as The Scotsman did towards the end of January, then the executive is in disarray. Perception is all. Just before Christmas John Rafferty, First Minister Donald Dewar's chief of staff, was sacked for reasons which Dewar has been unwilling fully to explain. That silence has left plenty of room for whisper and conspiracy. The sacking was followed closely by the enforced resignation of a second special adviser, following a drink driving conviction, and controversy about two others.

On top of all this, a storm has erupted over the executive's plan to drop Section 28 (section 2A in Scotland) which restricts teachers' treatment of homosexuality in schools. This has embroiled the entire administration and the two coalition parties in endless negotiation on a highly emotive but bizarre choice of issue. The intervention of millionaire businessman Brian Souter, backed by a professional PR company, has made sure the battle to 'Keep the Clause' has overshadowed all other political issues.

Behind this media storm the government's business goes on. The Cubie report on student tuition fees was published, and a compromise hammered out in the executive which both coalition partners could live with. Three of the six bills in the executive's legislative programme (Abolition of Feudal Tenure, Abolition of Poidings and Warrant Sales, Adults with Incapacity, Standards in Schools, Budget, and Iany7lit-2(ts 'r(er th)0 by ith In1()10.9.6(pe9br

against Catholics succeeding to the Crown. This would require consultation with the other 15 Commonwealth governments where the Queen is still head of state. Effectively such action can only be taken by government.

In January the Scottish Parliament resolved to allow Westminster to legislate for it on an issue which is now devolved. This is the age of consent for homosexual acts, which Westminster is lowering from 18 to 16 by the Sexual Offences (Amendment) Bill. Westminster has power to legislate even on devolved matters; but under the Sewel convention will not normally do so without the consent of the Scottish Executive and Parliament. This is the first example of the convention being used.

Northern Ireland

Northern Ireland once more went from political beacon to basket-case in little over two months. As with the Belfast agreement of 1998, so with its 1999 review under the same US chair, George Mitchell, supported by the British and Irish governments. It was one thing for the international actors to shoe-horn the parties into a deal; it was quite another for the parties to agree what they had agreed to.

On the one side, the Ulster Unionists, the SDLP and the Northern Ireland secretary, Peter Mandelson, believe the review concluded in November with an understanding. Contrary to the earlier invocation by the Sinn Fein president, Gerry Adams, that his UUP counterpart, David Trimble, and he should 'jump together', the review required Mr Trimble to jump first into a shared devolved government, including Sinn Fein, before any IRA decommissioning. The implicit quid pro quo was that a report due in January from the chair of the independent decommissioning body, Gen de Chastelain, would indicate actual progress in this regard.

No such progress was reported as of the early hours of 1 February, and Mr Mandelson protested 'betrayal'. The IRA insisted, outraged, that no decommissioning commitment had been made, indeed ever made (a claim undermining the 'seismic shift' the Prime Minister detected last summer). The Dublin government sought to stay the hand of Mr Mandelson, set upon suspending the devolved, and intergovernmental, institutions finally

area based initiatives announced since May 1997 were narrowly focused, too bureaucratic and had too many separate funding regimes.

The government accepted many of the proposals contained in this report, including:

- The creation of a Regional Co-ordination Unit (chaired by Cabinet Office minister Lord Falconer). This Unit will promote

Coopers. The seven-member Commission is expected to be in place by April. Before then more appointments are expected, designed to bring numbers between the two main parties in the chamber closer to parity. It has been widely reported that the Liberal Democrats are to be given nine new peers, rather than the 15 they requested, whilst Labour will have 19 new peers (eg. *Financial Times*)

determined ... the applicant's planning appeal'. As a consequence of this ruling it is has been suggested that the position of the Lord Chancellor, and indeed the Law Lords, may be untenable if the case before them deals with legislation that they have previously debated as members of the upper house. However, the Lord Chancellor stated in answer to a parliamentary question on 2 March that 'the position of the Lord Chancellor is unaffected by this decision' although 'When [the law lords] participate in your Lordships' debates, it would, of course, be prudent for them to abstain from concluded views of a judicial character on issues, which might later disqualify them from adjudicating should those issues come before them'.

Freedom of Information

The Freedom of Information Bill had its second reading on 7 December, and started its committee stage on 21 December. Despite pre-legislative scrutiny of the draft bill last summer, it made slow progress in standing committee, which finished in mid-January. The government has accepted no amendments. Those brought forward at report stage are as likely to reflect points made by the Select Committee last year as from standing committee.

Local Government

Legislation providing for new forms of local government leadership, the Local Government Bill, is passing through the Lords. The Bill commits local authorities to move to separate executives, which may involve a directly elected mayor. If a local authority wishes to move towards this model, or if 5% of local voters petition the council for a directly elected mayor, a referendum must be held. At report stage (2 March), issues for debate included whether there should be a minimum threshold (of 25%) below which a referendum result would be deemed void. The Government also successfully introduced an amendment to the Bill that, whilst a baseline of 5% of electors would be required for a petition, the government could keep this under review. Thus, if local campaigners find it difficult to muster 5% of their populations, the government has the option of reducing the baseline. The government is hoping that the Bill

will receive Royal Assent in time for local elections in May.

While polls show that few councillors support directly elected mayors, a recent survey found support for this option among voters. A February poll for the New Local Government Network found that 59% of voters would 'like the opportunity' to directly elect their mayor or local authority leader, with 32% against the idea. Outside London, support was highest in the North West and Scotland (61% in favour), and lowest in Wales (45% against) and East Anglia (39% against).

People on the Move

The Programme Director for the ESRC's Devolution Programme is **Prof Charlie Jeffery**, from the Institute of German Studies in Birmingham. **David Lambert**, former Chief Legal Adviser in the Welsh Office, takes up a new post as Legal Adviser to the Presiding Officer in the National Assembly for Wales. **Winston Roddick QC** remains Counsel General to the Assembly.

Jonathan Tross (ex DSS) is the new Head of the Constitution Secretariat in the Cabinet Office, succeeding **Sir Quentin Thomas**, who retired at Christmas. Other new arrivals in the Constitution Secretariat are **Mark Taylor**, in charge of Devolution, and **Donald Henderson**, on secondment from the Scottish Executive. **David Wilkinson** is the new Director of Regional Government at the DETR. His successor as Head of the Central Secretariat in the Cabinet Office is **Sonia Phippard**.

Overseas News

New Canadian Chief Justice

On 7 January the first woman Chief Justice of Canada was appointed. A former practitioner and Professor at the University of British Columbia, Beverley McLachlin P.C. was first appointed to the bench in April 1981, in the County Court of Vancouver. She was appointed to the Supreme Court of Canada in 1989. She takes the place of Antonio Lamer, P.C., who has retired. The Supreme Court of Canada has an excellent website and update service which can be accessed at <http://www.scc-csc.gc.ca/new/new.htm>.

Constitution Unit News

A Growing Team

The Constitution Unit is now 10 strong. Two new Senior Research Fellows joined us in January. Dylan Griffiths will lead the Unit's work on devolution. A Welsh-speaking Welshman, he comes to us after six years in Newcastle, and so understands regional issues in England. Jeremy Croft is our new Rubin Research Fellow in Human Rights. As a senior civil servant in Hong Kong, he introduced their Bill of Rights, and is an expert in international human rights. Roger Masterman has joined us as a Research Assistant, working mainly on our ESRC Constitutional/Supreme Court project.

Seminar and Lecture Programme

In the coming quarter the Unit is organising two seminars and two lectures. In May Sir Leon Brittan is giving a lecture on Europe; and in June Lord Alexander is giving one on the House of Lords. The seminars are on the role of Royal Commissions, the work of the Neill Committee and the future of the Welsh Assembly. See back page/enclosed flyer for details.

Project Reports

House of Lords Reform

In the last quarter the Unit has organised a major conference on the Wakeham proposals for House of Lords reform, and published a briefing on the proposals. In addition, Meg Russell's book, *Reforming the House of Lords: Lessons from Overseas* (OUP) was published in January.

The new briefing summarises the key elements of the Wakeham proposals, and gives a commentary, informed by UK and overseas experience. The reception given to the proposals is mixed. The Royal Commission's proposals are not, as they claim, a blueprint for the future. Rather they represent a possible next step in the gradualist reform of the chamber which took place throughout the last century. In particular the Commission allowed itself to be too tightly bound by the requirement in its terms of reference to 'maintain the position of the House of Commons as the pre-eminent chamber'. Its interpretation of this clause prevented it from giving the chamber greater

years. The study will particularly focus on the steps necessary to move towards a democratically elected tier of government in some or all of the English regions. Other scenarios short of directly elected regional assemblies will also be considered.

The investigators will be Dylan Griffiths, the Constitution Unit's Research Fellow in Devolution and Paul McQuail, a former civil servant who has written extensively on the subject of English regional government both for the Unit and elsewhere. Interviews will be held with key actors and commentators in the North East, Yorkshire and Humberside and the South East as well as in Whitehall and with representatives of relevant national organisations. The study will also include two case-studies of the development of regional government in France and Spain to examine

Bulletin Board

Forthcoming Unit Events

To book a free place at Unit events, please return the events flyer enclosed.

Spring Seminar Series

What are Royal Commissions Good For?

David Hill: Secretary to the RC on Reform of the House of Lords

Lord Lipsey: former political editor, *The Economist*

3 May 2000, 6.00p.m. The Constitution Unit

Constitution Unit Summer Lecture

Will the EU's Constitution ever fit Europe's responsibilities?

Rt. Hon Lord Brittan of Spennithorne Q.C.

17 May 2000, 6:00p.m., Clifford Chance, Aldersgate, EC1A 4JJ

