

M O N I T O R

Issue 12

The Constitution Unit Bulletin

Sept 2000

Rights Unleashed?

The Human Rights Act 1998

come

Rights Unleashed cont from p.1

How will the judges respond to the Human Rights Act? The Act invites them to develop a distinctive common law human rights jurisdiction for the UK. Judges will want to take matters out of the hands of Strasbourg: recent rulings of the Strasbourg court, for example on the liability of public authorities for failing to deliver public services, have caused deep concern among the Law Lords. Scotland's experience under the devolution legislation and cases in England and Wales where judges have 'jumped the gun' in applying Convention principles before October, demonstrate that there are breaches of Convention rights still to be rectified. Few expect this to be done through 'declarations of incompatibility' and remedial orders. Judges will find most of the latitude they need through the interpretation and 'reading down' of legislation in ways compatible with the Convention. And this is the practice that is likely to cause the government the most concern and difficulty in the months ahead. ●

devolution, the party seeks to work to ensure this succeeds in Scotland and Wales, whilst pledging to scrap Regional Development Agencies in England. Party leader William Hague confirmed his proposal that Westminster should be reformed so that 'only English MPs should be able to take part in the decisive stages of

Qualifications Authority to handle the Higher examination process this summer.

Finally, the biggest political news of the recess was the resignation of Scottish National Party Leader Alex Salmond, on 17 July. Although Salmond had been the subject of much criticism in the last year, few had expected his resignation. The leadership will be decided at the SNP conference in Inverness on 23 September. The main contenders are John Swinney, the deputy leader of the party and clear favourite; and Alex Neil, who is regarded as being on the left of the party and more in touch with the grassroots. Swinney is shrewd and far-sighted and clearly wants to put the issue of 'independence' into perspective so that his party can concentrate more on winning a mandate to govern a devolved Scotland. But it is the difficulty and frustration of playing that hand that finally persuaded his mentor Salmond to leave.

English Regions

This quarter has seen potentially significant developments in the English regions. Labour's National Policy Forum in July agreed a strong commitment to regionalism (see *Parties Gear Up*, on page 2). The New Local Government Network have, however, issued a report by Alan Harding calling for government to focus on urban and sub-regional bodies on the basis that there is no demonstrated demand for regions throughout most of England. The New Local Government Network is thought to be close to the government, so this episode suggests the debate on English devolution is by no means resolved yet.

In June the government launched a national consultation document, *The Regional Development Agencies as Strategic Drivers of Economic Development*, which proposes a stronger economic development role for the RDAs. The government's confidence in RDAs was endorsed in July with the announcement of £500 million additional budget by 2003/4 in the Comprehensive Spending Review. Significantly, RDAs are also to have greater flexibility over how to spend their budgets as their funding will be brought together in a single cross-departmental budget to which the DETR, DTI and DfEE will commit funds (DETR press release 21/07/00). RDAs will thus be more powerful bodies than they were in their first year.

The Centre

When the Chancellor announced his spending plans for the next three years on 18 July, the devolved governments benefited from the same

largesse as Whitehall departments, thanks to the Barnett formula. But Wales got a bonus of 1% more than the spending settlement for Scotland which involved a breach of the formula. Exceptionally the Treasury agreed to award significant extra sums (£272m over 3 years) outside the Barnett formula, to provide the PES cover needed for the match funding to ensure receipt of the EU funding under the new Objective 1 programme for West Wales and the Valleys.

The Disqualifications Bill was revived after lying dormant for six months, and had its Second Reading in the Lords on 28 July, the day before the summer recess. The government claimed it was a modest bill, removing the last major inconsistency in the way UK electoral law applies to Commonwealth and Irish citizens. The bill will allow members of the Irish parliament to serve as members of the House of Commons. Peers objected that the bill was being rushed through as a sop to Sinn Fein: while it was permissible to hold a dual mandate between Westminster and a devolved legislature or the European Parliament, it was wrong to allow dual membership in two sovereign parliaments.

On 28 June Labour backbencher Frank Field introduced the House of Commons (Reserved Matters) Bill. This would have answered the 'West Lothian Question' by barring Scottish or Northern Irish members of parliament from speaking or voting, except on reserved matters. It would also have precluded such members from becoming UK ministers, except in posts relating to reserved matters. Frank Field acknowledged that the main purpose of the bill was to raise the debate, and it was defeated by 190 votes to 131.

1 September saw the first plenary meeting of the Joint Ministerial Committee on Devolution, held in Edinburgh. The JMC has met six times since December 1999, with three meetings chaired by Gordon Brown (on Poverty, and the Knowledge Economy) and three chaired by the Prime Minister (in Cardiff, London and Glasgow) on Health. The September plenary is the first convened largely at the request of the devolved governments. Attended by the Prime Minister and all the First Ministers and their deputies, the JMC initiated a review of the workings of devolution, with recommendations to be brought back to ministers by the year end.

Parliamentary Reform

House of Lords Reform

The House of Commons finally debated the Royal Commission's report on reform of the House of Lords on 19 June, five months after its publication. Opening the debate, Leader of the House Margaret Beckett reiterated the position presented by Margaret Jay in the Lords debate on 7 March. 'The government' she said 'are minded to accept the broad outlines of the Royal Commission report; that is, we agree that the second chamber should be largely nominated,

- restricting the size of the cabinet to 20, junior ministers to 50 and parliamentary private secretaries to one per department, with a staggered reduction in the size of the Commons.

William Hague immediately accepted two of the Commission's proposals: to return Prime Minister's Questions to a twice-weekly slot, and to remove select committee appointments from the power of the whips. The latter was previously proposed by the Liaison Committee (see *Monitor* 11), and has since attracted support of 237 MPs in EDM 476, sponsored by Labour's Gordon Prentice. Hague also proposed to use the Norton report as a 'route map' to further parliamentary reform. The report was discussed at an opposition day debate in the Commons on 13 July, opened by Mr Hague and the Prime Minister. In the debate the government gave assurances that both the Modernisation Committee report and the Liaison Committee report will be debated after the summer recess, with reform proposals put to a free vote.

Draft Regulatory Reform Bill

This draft Bill, published in April (Cm 4713) will be a crucial test of where the boundaries should be drawn between what may be legislated by order or regulation and what must be left for Act of Parliament. Many committees have recommended much tighter procedures for sifting and scrutinising secondary legislation: most recently the Wakeham Commission on Lords Reform, and the Norton Commission (see page 6). Both recommended a 'super affirmative' procedure for major statutory instruments. The Regulatory Reform Bill might provide another vehicle for using secondary legislation to achieve major changes to the law, but doubts have been expressed about possible abuse: see the report from the House of Lords Committee (HL Paper 61, 9 May 2000), and two reports from the Commons (HC 488, 18 May 2000; HC 705, 17 July).

current President, Jacques Chirac, to increase his chances of being re-elected in 2002. The move would have wider implications, principally by bringing into line presidential and parliamentary terms, thus reducing the likelihood of 'cohabitation', whereby a Prime Minister and President of different parties govern side by side. However, for those who see cohabitation as a useful check, the move to align terms is seen as a dangerous method of increasing presidential power. It remains to be seen how supportive, or interested, are France's voters.

People on the Move

Donald Dewar returned to work on 21 August after several months off following his heart operation. **Alex Salmond** announced his resignation as SNP leader. **Dafydd Wigley** resigned as Plaid Cymru leader, to be replaced by **Ieuan Wyn Jones**. **Lord Neill** steps down as chairman of the Committee on Standards in Public Life at the end of September - no successor has yet been announced. The new Permanent

Secretary at the Cabinet Office is Mavis McDonald, following Brian Bender's move to be Permanent Secretary at MAFF.

Welsh First Secretary Rhodri Morgan replaced his Agriculture Secretary **Christine Gwyther** with her deputy, Bridgend AM **Carwyn Jones**. The position of Deputy Agriculture Secretary was filled by the newest AM in the Assembly, **Delyth Evans** who succeeded **Alun Michael** after he resigned from the Assembly. Meanwhile National Assembly Clerk **John Lloyd**, responsible for the Office of the Presiding Officer, is to retire. In a departure from past practice his post, described as 'A unique UK Civil Service appointment', was advertised at £100K. A new Cabinet Executive, incorporating the Cabinet Secretariat, the Central Policy and Strategic Planning Unit, and the Communication Directorate, is being created in

On the academic front **Professor Charlie Jeffery**
of University of Birmingham has become Director

Project Reports

Whitehall and the Human Rights Act

The first stage of this project examining the government's preparations and expectations for the coming into force of the Human Rights Act has been completed. It has documented the very substantial efforts made to eliminate potential breaches of Convention rights and to mainstream respect for human rights in every branch and activity of government. The preparation process has not been flawless. Central government is reasonably well prepared but other public authorities and private bodies performing public functions are less so. Areas for improvement have been identified. Nevertheless, expectations in Whitehall are that the government machine will bend but not break under the expected explosion of human rights cases after October. The second stage of the project will see whether such perceptions are borne out by the Act's first year.

The first briefing will be available in early October (see publication list for details). *Contact Jeremy Croft (020 7679 4979, jeremy.croft@ucl.ac.uk).*



email: r.hazell@ucl.ac.uk), or Greg Power (020 7955 7459 email: hansard@hansard.lse.ac.uk).

ESRC Devolution Programme

In July the ESRC announced 18 research grants in the first round of their Devolution and Constitutional Change programme. Apart from the three involving the Unit (see p.9) the other projects are:

- Martin Burch (Manchester): 'Asymmetric' Devolution and European Policy Making in the UK
- Prof A Cole (Cardiff): Devolution and Decentralisation in Wales and Brittany
- Helen Fawcett (Strathclyde): Social Exclusion in Scotland and the UK
- Prof M Goodwin (Aberystwyth): Constitutional Change and Economic Governance
- David Heald (Aberdeen): The Financial Arrangements for Devolved Government
- Prof Anthony Heath (Oxford): National Identity and Constitutional Change in England
- Prof Michael Keating (Aberdeen): Devolution and Public Policy - Divergence or Convergence?
- Dr R McGinty (Lancaster): Public attitudes to Devolution and National Identity in Northern Ireland
- Dr F Mackay (Edinburgh): Gender and Constitutional Change
- Alison Park (NCSR): Devolution, Identity and Public Opinion in Scotland
- Richard Parry (Edinburgh): The Home Civil Service as an Integrative Force Post-Devolution
- Dr R Phillips British Island Stories: History, Identity and Nationhood
- Prof A Tickell (Southampton): Devolution and England's South East
- Dr D Valler (Sheffield): Devolution and the Politics of Business Representation
- Richard Wyn Jones (Aberystwyth): Welsh Electoral Surveys 2001/2003

Further details from the Programme Director Prof Charlie Jeffery (C.A.Jeffery@bham.ac.uk).

Subscribe and Save Money

Subscribe to the Unit's publications to save time and money. For a subscription of just £100 for institutions and £60 for individuals you will

the Monitor (Dec) please send your details to:
constitution@ucl.ac.uk, or fax: 020 7679 4978.

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: www.ucl.ac.uk/constitution-unit/logos/find.htm

Seminar: The Human Rights Act and Parliamentary Accountability

Lord Lester of Herne Hill, QC
10 October, 6.00p.m. UCL Law Faculty

Seminar: How is the New House of Lords different from the Old?

Earl Russell, Prof of History, KCL
Viscount Tenby, House of Lords
15 November, 6.00p.m., Constitution Unit

Lecture: State of the Nations Review

Donald Dewar MP MSP
11 December, 6.00 p.m. One Great George Street

Further events in the Autumn are listed on the eves flier enclosed, and on the Unit's website.

Call for papers

"Multi Level Governance: Interdisciplinary Perspectives" University of Sheffield

The Political Economy Research Centre at the University of Sheffield is holding a conference on 28 - 30 June 2001. Abstracts to be received by 1st Dec 2000. More details from: <http://www.shef.ac.uk/~perc/mlgc/> or contact Sylvia McColm: s.mccolm@shef.ac.uk. PERC, Uni. of Sheffield, Elmfield Lodge, Northumberland Road,

