

# Monitor

The Constitution Unit Bulletin  
Issue 25  
December 2003

The Queen's Speech on 26 November included two constitutional bills from the Department for Constitutional Affairs: one on the next stage of Lords reform, and the second to establish a new Supreme Court and Judicial Appointments Commission, and abolish the office of Lord Chancellor. Unlike the Labour government's previous constitutional reform measures, both these bills face a difficult passage.

The Lords Reform Bill will remove the remaining 92 hereditary peers, and creating a statutory Appointments Commission (see page 2). The new Commission would in future appoint all members of the House of Lords, although the majority would be nominated by the political parties. In the Commons the opposition will focus mainly on the absence of an elected element: the shambolic votes in February 2003 showed that a preponderance of MPs favour an elected element, even though none of the individual options commanded a majority.

In the Lords the focus will be on the hereditary peers, who were left in place under the Cranborne/Irvine bargain in 1999. Irvine promised at the time that they 'will go when stage ttheHouse of Lords Appointments Commission will be important new constitutional watchdogs. There is a naïve belief amongst some that these constitutional guardians can somehow be detached from the political process. They cannot, and should not. The senior judges and members of the House of Lords wield significant political power. The body which appoints them must itself be made properly accountable. The government recognised that, in proposing that the Lords Appointments Commission should be directly accountable to Parliament. The Constitution Unit has made detailed suggestions how that could work in practice (see new publication below).



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On 18 September 2003 the Department for Constitutional Affairs published a new white paper (the government's third) on Lords reform: *Constitutional Reform: Next Steps for the House of Lords* (CP 14/03). This set out proposals to remove the remaining hereditary peers and create a statutory Appointments Commission.

Although the intention to cement the all appointed House had already been made clear, the paper included some surprising elements of conservatism. In particular it assumed that upper house members would continue to be peers appointed for life, whereas previous proposals had envisaged breaking the link with the peerage and introducing fixed terms. The Appointments Commission will be statutorily required to take account of the most recent general election results when allocating seats between the parties, and will have control over the size of the House. This represents a significant diminution of Prime Ministerial patronage. However, as The Constitution Unit's new briefing points out, difficulties will arise unless the detail of this is clearly thought through. In particular, the suggestion in the White Paper that some account might be taken of number of seats won in the Commons (as

well as votes cast) would not be manageable in practice: the strain between containing the size of the House and achieving party balance would simply be too great. It is also important that the arrangements for accountability of the Appointments Commission are correctly managed, if it is to win public respect. And the

On 20 September 2003 the Leader of the House, Gareth Williams, died suddenly aged 62. Lord Williams was well liked and respected in the House and the shock of his death was felt around Westminster. He was replaced as Leader by Baroness Amos, previously International Development Secretary.

The death of hereditary peer Lord Milner of Leeds led to the second by-election amongst hereditary members, as laid down in the House of Lords Act 1999. This drew even more ridicule than the last such event (see *Monitor* 22). Lord Milner sat on the Labour benches, so the electorate for his replacement comprised the other Labour hereditaries, a group of just three members. The chosen successor was Lord Grantchester, by 2 votes to 1: there were eleven candidates. Another first was the appointment of Dame Brenda Hale as a new Law Lord, the first woman ever to hold the position.

The Prime Minister has indicated to the Appointments Commission that he would like them to propose a ‘small number’ of new independent peers. Only one such group has been appointed so far—to much controversy—in April 2001. Far more controversial, however, is the rumour circulating Westminster that there is soon to be a new batch of political peers. Although there is a long list of potential Lords in waiting, the prospect of new political appointments whilst the new House of Lords Bill is under consideration would clearly conflict with the spirit of the Government’s proposals to end prime ministerial patronage.

Following the establishment of the new Department for Constitutional Affairs, the Lord Chancellor’s Department Committee has been renamed the Constitutional Affairs Committee. This was a very new committee, having been established in January 2003. Given the Department’s responsibility for ‘overall government policy on devolution’, it is noteworthy that all the committee’s members represent constituencies in England. On 16 September 2003 the committee took evidence from the Lord Chancellor about his role and that

of the new department. In autumn 2003 it  
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recruitment of senior civil servants by open competition, which ministers currently have when there is an internal trawl. This is to be discussed with the Civil Service Commissioners. It was one of the main topics addressed at a half day conference organised by the Constitution Unit on 29 October 2003, in conjunction with the Wicks Committee, the Civil Service Commissioners, the Public Administration Select Committee and the First Division Association (the trade union for senior

civil servants). The conference was addressed by Sir Andrew Turnbull, Head of the Home Civil Service. Baroness Prashar, First Civil Service Commissioner, and Sir Nigel Wicks both expressed concerns about the risks of politicisation of the civil service. The talks given at the conference can be found at [www.parliament.uk/parliamentary\\_committees/public\\_administration\\_select\\_committee.cfm](http://www.parliament.uk/parliamentary_committees/public_administration_select_committee.cfm)

The policy agenda for the last quarter in Scotland was distinct from that south of the border. However, there was some overlap: matters such as identity cards and foundation hospitals are figuring prominently north of the border. In health, differences exist also in terms of rhetoric—with the Health Minister refusing to refer to patients as ‘customers’. This suggests divergence without major disputes in devolutionary politics. An issue which has caused problems across Britain and was of significance this quarter was the provision of accommodation for asylum seekers as well as the education of their children. Though asylum is a reserved matter, the issue has a devolutionary dimension as education is a devolved matter.

The other significant event was the challenge to John Swinney’s leadership of the Scottish National Party. A relatively unknown party activist challenged Swinney resulting in a drawn-out campaign over the summer which culminated in a massive victory for Swinney at the SNP’s annual conference. In the event, the effort to undermine Swinney, which might have led to a more serious challenge him next year, proved to strengthen his leadership. However, the SNP leader’s position may again be questioned depending on how well his party performs at next year’s European Parliament elections.

The fragility of Welsh Labour’s majority in the Assembly was demonstrated at the end of November 2003 when it failed to secure backing for its plans to improve health and social care. Due to the illness of Carl Sergeant AM (Alyn & Deeside) and the opposition of the

Deputy Presiding Officer (independent John Marek), the Assembly tied 29 to 29 on a government motion to approve the plans. The Presiding Officer, Lord Elis-Thomas, then used his casting vote to oppose the motion, acting in accordance with standing orders.

Though the issue will be brought back to the Assembly as soon as Labour can be sure of its majority, this episode was a further sign that the Welsh Assembly Government is losing its grip on health policy, the biggest and most important function for which it is responsible. Faced with mounting problems it is falling back on good intentions around long term plans rather than facing up to immediate problems. Most pressing is waiting lists—more than 12,000 people waiting more than a year for treatment in Wales compared with only a handful for the whole of England.

Welsh Labour MPs at Westminster are losing patience. During the Assembly’s first term they held back criticism, wanting to give the Labour administration in Cardiff a fair wind. Now, however, they are giving voice to mounting concern. Gareth Thomas MP (Clwyd West) declared, “For the sake of political correctness, the Assembly has set its face against initiatives which are being used in England quite successfully, such as private finance and, in time, Foundation Hospitals. People are going to realise the health service in England is improving much faster than the health service in Wales.”

These comments came in the week the Assembly Government published its response to a wide-ranging examination of the Welsh health service’s problems which it had commissioned from its own civil servants. They were advised by Derek Wanless, the

business and finance expert who earlier had produced a report on NHS spending needs for the Chancellor Gordon Brown. The Welsh ‘Wanless’ report found that excessive emergency admissions to Welsh acute hospitals are clogging up bed space and directly causing the lengthening waiting lists. At the other end of the process patients are not being transferred quickly enough out of acute hospitals into social care.

Health Minister Jane Hutt’s response, published in November, was immediately criticised. As the Cardiff Central Labour MP, Jon Owen Jones, put it, “There are very few clear commitments to action. Incredibly the clearest evidence of problems in delivery, the waiting times, are not mentioned in the response.... The Welsh Assembly may find itself forced by the courts into this action unless it takes it willingly. The Health Service in Wales may be approaching the point where it becomes legally unsustainable.”

In more optimistic, post-Belfast-agreement, times, Seamus Heaney wrote lyrically of the ‘rhyme’ of ‘hope and history’. More like ‘hype and history’, said the wags, after the latest, much-flagged ‘historic’ day in Northern Ireland collapsed in failure to end the year-long suspension of devolution arising from the mistrust between most Ulster Protestants and the IRA.

A ‘choreography’ of statements and events involving the Ulster Unionist leader, David Trimble, the Sinn Féin president, Gerry Adams, the IRA, the Independent International Commission on Decommissioning, and the governments in London and Dublin was meant to roll out on 21 October 2003, to renew power-sharing embracing republicans.

Downing Street announced the election date of 26 November, and there were further warm words from Mr Adams, echoed by the IRA. But the cold steel put ‘beyond use’ by the latter was shrouded in uncertainty, with a lacklustre report by the IICD head, Sir John de Chastelain. Despite a dozen prior meetings having taken place between Messrs Trimble and Adams, the former declared himself unsatisfied with the scenario as it unfolded. Tony Blair and his counterpart, Bertie Ahern, found themselves

limiting the damage rather than trumpeting their achievement.

The hard-line Democratic Unionist Party was left able to present Mr Trimble as a credulous patsy. SF was allowed to take over representation of Northern Ireland’s Catholics without a vote being cast. The SDLP was enraged, while the non-sectarian parties were marginalised once again.

The UK government had insisted all along that an election without a deal allowing renewed devolution would be pointless. The *Irish Times*’ London editor cynically suggested that the prime minister had ensured, by insisting the election would still go ahead, that if it was a mess it would be ‘the people’s mess’.

The UUP leader tacked to his ‘no’ camp to present a nominally united front to anxious Protestant voters: a ‘charter’ for all candidates moved the party into a ‘non-agreement’ position. The SDLP went beyond the agreement to compete with the more nationalistic SF, demanding a vote (however unwinnable) on a united Ireland in the next assembly term. The long-anticipated review of the agreement loomed, having been targeted for December by the two governments.

The Unit’s five-year research programme on devolution, ‘Nations and Regions’, funded by the Leverhulme Trust, is entering its final year. The main programme outputs will be three edited books, available in late 2004 and 2005. The first book will focus on inter-governmental relations in the UK (edited by Alan Trench), the second on the place of England in a devolved system (edited by Robert Hazell) and the third on elite and mass level attitudes and identities (edited by John Curtice and Ben Seyd). In addition, the programme is also planning conferences and seminars in 2004 to report the research findings. Further details will be set out in the next Monitor, and will be available on the programme website: <http://www.ucl.ac.uk/constitution-unit/leverh/index.htm>

27 January 2004, 18:00, Church House,  
Westminster

Speaker: Peter Hain MP: Leader of the

In the Queen’s Speech the government announced plans to introduce the Scottish Parliament (Constituencies) Bill which will legislate for the retention of 129 MSPs in the Scottish Parliament (see table, page 2). Combined with the government’s commitment to reduce the number of Scottish MPs at Westminster, this decision means that the current link between Westminster and Holyrood constituencies will be broken. Such a move will have implications for electoral politics in Scotland prompting the Scottish Affairs Committee at Westminster to launch an inquiry into the issue.

The West Lothian Question surfaced over the government’s controversial plans for foundation hospitals. The proposals only extend to England, although technically the Bill is an ‘England and Wales Bill’ (but one provision applies to the whole of the UK). The government defeated an amendment against foundation hospitals by 17 votes on 19 November. 44 Labour MPs from Scotland and 24 Labour MPs from Wales supported the



will be eligible to vote. Other constituency associations are currently toying with the use of primaries.

See [www.electoral-reform.org.uk](http://www.electoral-reform.org.uk) and [www.prcommission.org](http://www.prcommission.org)

**Hayden Thomas** joined the Unit on 27 October 2003. Hayden will be working with Meredith Cook and Lucinda Maer supporting the team's work on Freedom of Information and Data Protection.

On 20 September **Lucy Scott** and **Emma Wild**, both part-time administrators, left the Constitution Unit.

**Barry Winetrobe**, the Unit's part-time Senior Research Fellow on devolution and the law, has been offered a lectureship in Public Law at the University of Glasgow, beginning in January 2004. Barry will continue to be involved as a partner on several of the Unit's projects.

The Constitution Unit ran its first ever internship programme over the summer of 2003. Seven interns were taken on for between one and three months to assist on a variety of projects, including House of Lords reform, devolution, and effective scrutiny.

This year's State of the Nations marks a departure from previous volumes. Instead of providing a chronology and analysis of the last year, it attempts to evaluate the overall impact of devolution given the completion of the first full term of the devolved institutions. In asking 'has devolution made a difference?' the book looks at how devolution has affected the politics and the constitution in Scotland, Wales and Northern Ireland. Importantly it also looks at how devolution has affected public policy in the UK, showing how policy divergence is becoming a part of UK politics.

It also looks at the impact of devolution on Westminster and Whitehall—assessing how they have responded to devolution and how their responses have affected the devolved institutions. The book also tackles the issue of devolution within England, with a chapter assessing the impact of devolution to London in the form of the GLA, and one looking at the

The Effective Scrutiny project is producing a number of outputs. A report on scrutiny in the devolved institutions, *Scrutiny Under Devolution*, was launched in Cardiff on 5 November 2003, and was well received by an audience of some 60 policy-makers, Assembly Members, and committee clerks. The findings of the project's research on local authorities will be launched in February 2004.

Sandford M & Maer L. *Scrutiny under Devolution: committees in Scotland, Wales and Northern Ireland*. 2003. London. The Constitution Unit. ISBN 1 903903 24 6

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# BulletinBoard

New Department for Constitutional Affairs  
website [www.dca.gov.uk](http://www.dca.gov.uk)

New Information Commissioner's Office (ICO)  
website [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)

New Centre for Public Scrutiny website  
[www.cfps.org.uk](http://www.cfps.org.uk)

New Federal Trust website [www.fedtrust.co.uk](http://www.fedtrust.co.uk)

Campaign for a positive vote in the referendum  
on a North-East Regional Assembly  
[www.yes4thenortheast.com](http://www.yes4thenortheast.com)

*Unless otherwise indicated these events are at the unit. Places are free and can be booked on line at [www.ucl.ac.uk/constitution-unit/events](http://www.ucl.ac.uk/constitution-unit/events) or by contacting Matthew Butt, [m.butt@ucl.ac.uk](mailto:m.butt@ucl.ac.uk), 020 7679 4977*

Dr Sydney Elliott, Queen's University Belfast,  
Prof David Farrell, University of Manchester,  
Prof Donald Horowitz, Duke University, USA,  
Dr Benjamin Reilly, Australian National  
University  
10am, Monday 19 January

Rt Hon Peter Hain MP, Leader of the House of  
Commons and Secretary of State for Wales  
6pm, Tuesday 27 January, Church House,  
Westminster

Rt Hon Robin Cook MP and Lord Oakeshott of  
Seagrove Bay  
6.15pm, Monday 9 February

Rt Hon Denis MacShane MP, Minister of State,  
Foreign and Commonwealth Office  
1pm, Tuesday 30 March

Lord Richard: Chair of the Commission  
1pm, Wednesday 21 April

Judge Anand Satyanand, New Zealand  
Ombudsman  
6.15pm, Wednesday 19 May

Rt Hon Dame Brenda Hale  
6.15pm, Thursday 10 June

Tony Travers, Director, Greater London Group,  
London School of Economics  
6.15pm, Wednesday 30 June

The Constitution Unit and Capita are holding  
the second annual Freedom of Information  
conference on 12 May 2004. There will be a  
range of international speakers and practical  
workshops.

For more information about the programme as  
it becomes available contact Sam Boyle at  
Capita: [samantha.boyle@capita.co.uk](mailto:samantha.boyle@capita.co.uk).

Trench A. *Intergovernmental Relations in  
Canada: Lessons for the UK?* 2003, London,  
The Constitution Unit, 1 903903 23 8

Sandford M & Maer L. *Scrutiny under  
Devolution: committees in Scotland, Wales and  
Northern Ireland.* 2003, London, The  
Constitution Unit. ISBN 1 903903 24 6

Russell M & Hazell R. *Next Steps in Lords  
Reform: Response to the September 2003 White  
Paper.* 2003, Constitution Unit, London. ISBN 1  
903903 25 4, £8

Osmond J ed. *Second Term Challenge: can the  
Welsh Assembly CxUnit, Londul R.*