

Constitution Unit

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Scottish independence: the countdown

Since the Scottish government published its independence White Paper, *Scotland's Future*, people have begun to turn their attention the wide range of issues that will need to be negotiated if Scotland votes Yes. Less attention has been devoted to the timetable for those negotiations, which looks set to cause major headaches for both the Scottish and the UK governments.

The SNP White Paper proposes an 18-month timetable following a Yes vote in September 2014. This would lead to independence in March 2016, just before the next Scottish parliamentary elections in May 2016. For comparison, the Czech-Slovak divorce in 1991 took just six months after the decision to separate. It was made reality through 31 treaties and some 2,000 legal agreements, many of which were negotiated subsequently. ([ÄYZ[NSHUJL TVU[OZ [OLYLMVYL ZLLTZ both parties negotiate in good faith and with a sense of urgency. To allow the negotiations to drag on for years would be debilitating for both countries, for their citizens and their businesses, as well as for international partners.

)\ [OLYL HYL [^V WV[LU[PHS KPIJ\S[PLZ ; general election in May 2015, right in the middle of the 18-month timetable. This creates a major hiatus. It means that the initial UK ministerial negotiating team represent a lame duck government with only six months left, reducing their authority. Negotiations will have to cease during the election campaign; and it is possible some of the issues being negotiated will be contested in the campaign. If there is a change of government in the UK in 2015, all the UK ministerial ULNV[PH[PUN [LHTZ ÄUHUJL KLMLUJL LU New ministers will need time to get up to speed, and may start to unpick what had been agreed so far.

;OL ZLJVUK KPIJ\S[` PZ [OL ULLK MVY SLN HUK PU [OL :JV[[PZO 7HYSPHTLU[[V NP]L The legislation cannot be introduced until the negotiations have been concluded. Westminster will not tolerate a framework bill HSSV^PUN [OL [^V NV]LYUTLU[Z [V ÄSS PU

Continued overleaf

Nor will it tolerate an urgent bill being rushed through under

H N\ PSSV[PUL (Z H ÄYZ[JSHZZ JVUZ[P[\[PVUHS TLHZ\YL P[^V\SK
OH]L [V [HRL P[Z JVTTP[[LL Z[HNL VU [OL ÅVVY VM [OL /V\ZL VM

Commons. Even if the government did manage to accelerate the bill's passage through the Commons, it would have no control over the timetable in the Lords which would want to allow plenty of time for a bill of such importance.

How long might the legislation take? There are few close analogies for a bill of such size and complexity. The Scotland Act 1998 took 11 months; but that was under favourable

JPYJ\TZ[HUJLZ PU [OL ÄYZ[ZLZZPVU VM H UL^ NV]LYUTLU[^P[O

a majority of 179. If there is a change of government in the UK in May 2015, the new government may not feel ready to introduce legislation immediately. Taking account of all these

KPHLYLU[MHJ[VYZ [OL LHYSPLZ[WVZZPISL KH[L MVY PU[YVK\JPUN H

Scotland Independence Bill is likely to be autumn 2015. Given the reaction there is likely to be in both Houses at Westminster against Scottish independence, which will be expressed as hostility to the terms of independence, it will not have an easy passage. It would be a miracle if the bill were passed in six months to meet the SNP's target date of March 2016. If

(3VYKZ YLMVYT ÄUHSS` OHWWLULK!
but who knew?

Almost 15 years after the 1999 House of Lords Act, the House of Lords Reform Act 2014 is due to come into force, having

passed its Lords third reading on 13 May. This was the private

TLTILY»Z IPSS 74) ZWVUZVYLK I` +HU)`SLZ PU [OL *VTTVUZ
HUK +H]PK :[LLS PU [OL 3VYKZ HUK P[YLWYLZLU[Z H ZPNUPÄJHU[

reform. Yet it has been agreed with virtually no public or media

JVTTLU[[OHURZ [V [OL SV^ WYVÄSL UH[\YL VM [OL 74) WYVJLZZ

Few outside groups engaged with it and no formal evidence was taken.

The Act does two things, both of which have long been called

for. First, it provides that peers convicted in future of a 'serious

JYPTPUHS VHLUJL» KLÄULK HZ ILPUN PTWYPZVULK MVY H[SLHZ[H
`LHY JHU IL WLYTHULU[S` L_WLSSLK :LJVUK P[HSSV^Z V[OLY

members to depart permanently - either voluntarily by resigning

or involuntarily because they fail to attend during an entire

ZLZZPVU L_JLW[PU MHPYS` SPTP[LK JPYJ\TZ[HUJLZ

;OL ÄYZ[WYV]PZPVU ^OPJO IYPUNZ [OL 3VYKZ YV\NOS` PU[V SPUL

with the Commons, will be used rarely if at all. But the second

OHZ ZPNUPÄJHU[JVUZLX\LUJLZ <U[PS UV^ SPML WLLYZ OH]L

also been life members of the Lords. This has now ended

[OV\NO KLWHY[PUN WLLYZ ^PSS YL[HPU [OLPY SPML WLLYHNLZ ;OL

intention is to allow elderly peers to retire with dignity, and

there are hopes that this may help reduce the size of the

chamber. However, until a formula is agreed between the

parties for replacing departed peers, the numbers retiring

will probably be small. Meanwhile the Unit's Meg Russell

has expressed strong concerns that the reform could have

unintended consequences, notably by turning the Lords

into a training ground for the Commons. These issues were

raised during the bill's Commons stages, but no safeguard

has been added to prevent departing peers from running as

47Z ;OL (J[JV\SK [O\Z V]LY [PTL ZPNUPÄJHU[S` JOHUNL [OL

type of people appointed to the Lords. In a report in March,

the Lords Constitution Committee sought assurances that

ministers would legislate in future if this became a problem.

Yet subsequent ministerial statements were pretty weak; at the

Lords second reading Lord Hill simply suggested that 'were

that to become a problem in the future, we would want to

review the situation. There is always an option to legislate to

In May the Institute for Government published two reports expanding on these themes. Their report Year Five: Whitehall and the Parties in the Final Year of the Coalition addressed the tensions for the civil service in serving current ministers, looking ahead and preparing for a possible change of

government. Due to the variation in practice across Whitehall and confusion amongst civil servants, it recommended that

the PM and Deputy PM should agree and publish rules of the NHTL MVY [OL ÄUHS `LHY PU WHY[PJ\SHY HIV\ [[OL YPNO[Z VM HJJLZZ for each party to support for the development of future policy.

>OP[LOHSS ZOV\SK JYLH[L ZLWHYH[L JVUÄKLU[PHS JOHUULSZ [OYV\NO which each party could access civil service support to help develop their post-2015 policy plans. Such requests would be clearly marked as relating to party policy development for the next term, and would be dealt with through a system separate to the normal provision of civil service advice to government.

Parties should be able to request information on estimated costs, implementation challenges, delivery timetables and legal

PTWSPJH[PVUZ I\ [VIJPHSZ ZOV\SK UV[VHLY HK]PJL VY KL]LSVW alternative policy options. Requests would be channelled

[OYV\NO [OL 7LYTHULU[:LJYL[HY` »Z VIJL [V LUZ\YL LX\HSP[` VM HJJLZZ HUK [OL JVUÄKLU[PHSP[` VM YLX\LZ[Z HUK [OLPY YLZWVUZLZ

The IfG's second report, on Pre-Election Contact between the Civil Service and the Parties addresses the question of how to ensure access for the opposition to help them develop policies for the next parliament. In an ideal world there would be a level

WSH`PUN ÄLSK ^P[O VWWVZP[PVU WHY[PLZ LUQV`PUN ZPTPSHY`HJJLZZ [V a separate space for future policy development as the parties in government. This is what happened in Scotland in 2007,

where the Labour/Lib Dem coalition agreed an integrated system for all opposition and governing parties to access

civil service support on similar terms. This would be a leap too far for Whitehall, because there is not the same degree

of trust between the coalition partners, nor the willingness to grant the same advantages to Labour as are enjoyed by the

parties in government. In April the prime minister announced that pre-election contacts for the opposition could not

commence until October, a period regarded by the IfG as far too short given that the parties will be out electioneering

from February onwards. The IfG hopes that over time the two distinct systems, separate space for the opposition parties and

pre-election contacts for the opposition, will begin to merge. However, Whitehall's preference for ambiguity and muddling

through make that seem unlikely.

A common theme in both reports is that it is time to more formally recognise that the permanent civil service has a responsibility of stewardship to possible future governments

HZ ^LSS HZ [V [OL J\YYLU[VUL ;OPZ KVLZ UV[ULLK [V HHLJ[P[Z loyalty to the government of the day, but it does require both

an explicit defence of its impartiality and a clearer setting out of the pre-election guidelines.

Candidate selection for the 2015 general election

With less than a year left before the 2015 general election, candidate selection is well underway. As of May 2014, more than 700 prospective parliamentary candidates have been selected by the three main parties and a further 150 candidates have been selected by UKIP, Plaid Cymru and the Green Party. Labour has taken an early lead in selection with more than half of the 650 constituency seats declared. However, recent work by the Unit's new research team (parliamentarycandidates.org) notes a sizeable number of vacancies for the 100 most marginal constituencies with the Conservatives, Labour and Liberal Democrats having selected only 60% of candidates in the seats most likely to change hands.

The gender balance of candidates has already attracted much press and debate. As usual candidates are more likely to be male, but this is particularly true for the Conservatives and Liberal Democrats. Continued use of all-women shortlists has resulted in women representing over half of all Labour candidates. More controversial has been the de-selection of *VUZLY]H[P]L 47 (UUL 4J0U[VZO ;OPYZR HUK 4HS[VU V\Z[LK by a vote of the constituency association membership, and a handful of female Conservative MPs who have announced they will not be contesting the 2015 election (Laura Sandys, South ;OHUL[" 3VYYHPUL -\SSIYVVR :V\O 9PIISL

Looking ahead, it will be worth keeping an eye on some of the TVZ[THYNPUHS JVUZ[P\LUJPLZ PUJS\KPUN (ZOÄLSK >HY^PJRZOPYL North, Sherwood, Hampstead & Kilburn, Solihill Swansea West and Thurrock. With recent polls showing the Conservatives pulling even with Labour, 2015 is shaping up to be one of the most compelling general elections in recent history

Individual electoral registration

;OL TVZ[ZPNUPÄJHU[JOHUNL [V [OL LSLJ[VYHS Z`Z[LT MVY V]LY H JLU[\Y` [OL TV]L [V PUKP]PK\HS]V[LY YLNPZ[YH[PVU 0,9 PZ [V IL introduced on a transitional basis from June. The timetable for implementation has been the topic of heated debate. Electoral Commission Chair, Jenny Watson, has repeatedly highlighted the challenges MVY IYPUNPUN MVY^HYK [OL ÄUHS [YHUZP[PVU [V December 2015. However, the latest evidence presented to the Political and Constitutional Reform Committee on readiness for IER suggested that the steps taken so far to reduce the risks of transition have been implemented without fundamental problems and on time.

;LZ[PUN MVY [OL]LYPÄJH[PVU HUK VUSPUL YLNPZ[YH[PVU Z`Z[LTZ ^HZ

resign following the collapse of the trial of John Downey, who was accused of involvement in the IRA bomb in Hyde Park in 1982. It emerged that Downey was one of hundreds of IRA 'on the runs' who had been given letters of comfort by the 5 V Y [O L Y U O Y L S H U K 6 I J L P U K P J H [P U N [O L ` ^ L Y L U V [I L P U N Z V \ N O [by the police.

Distributed under the Blair administration, these secret letters had followed the failure of the then-Northern Ireland secretary, Peter Hain, to secure parliamentary approval for such a measure in 2005. Sinn Féin had demanded them during the Belfast agreement of 1998, on the premise that the associated provision to release paramilitary prisoners should not leave IRA members who had not been imprisoned at a disadvantage. It subsequently emerged that 95 of the 228 individuals who received the letters were suspected of involvement in 295 murders. Robinson's resignation was only averted by a hasty announcement from David Cameron, who promised an inquiry into the row (though with no suggestion that any substantive J O H U N L ^ V \ S K M V S S V ^

Reactions to Adams' arrest

According to two former IRA colleagues, Adams ordered the murder of McConville. This very serious claim is frequently reasserted in the public arena without exciting any libel action. But with his arrest it was the turn of Sinn Féin Deputy First Minister Martin McGuinness—who dominated the IRA in Derry as Adams did in Belfast during 'the troubles'—to up the rhetorical ante.

McGuinness blamed 'dark forces' in the Police Service of Northern Ireland (and by implication the old Protestant Royal < S Z [L Y * V U Z [H I \ S H Y ` Y \ T W / L H S Z V Z \ N N L Z [L K : P U U - t P U T P N O [review its support for the service, another product of the Belfast agreement.

This inevitably escalated the tension between the two nominal coalition partners. The DUP had only accepted the renewal V M K L] V S \ [P V U P U . H M [L Y H Ä] L ` L H Y O P H [\ Z V J J H Z P V U L K I ` the discovery of an IRA spy-ring at Stormont—following the K L J V T T P Z Z P V U P U N V M T V Z [0 9 (^ L H W V U Z H U K H J J L W [H U J L V M the rule of law by Sinn Féin in a new ministerial Pledge V M 6 I J L

Facing the threat of a further collapse of devolution, which would have left the 'republican leadership' bereft of an argument against its 'dissident' critics, Sinn Féin rowed back from having cast doubt on its policing stance. But there was no doubting the visceral sectarian antagonisms once more ee. shugldy (0msn4c3y) D8.2460BT000e.8u(dga67h)Tj/02(041 W00d[R604532048005904006F3005)AD00D0048B04C0TD(0N56005)A

The Scottish referendum campaigns

The campaigns in the Scottish independence referendum are hard to assess. Shifts in the opinion polling have been limited,



Ombudsman reform

One way in which the courts could try to save money is by more disputes being channelled into Alternative Dispute

David Cameron responded by restating his support for the re-introduction of the bill and said he would invoke the Parliament Act if necessary. He also emphasised that the referendum was not dependent on a private member's bill, but rather the Conservatives re-election in 2015. He repeated his pledge to hold a referendum by 2017 and stated this would be a condition of any future coalition partnership. This pledge, like the bill, has been met with criticism. The proposed timetable greatly underestimates the time needed for negotiations, sparking fears that a referendum in 2017 would likely lead to Britain leaving the EU.

Labour's new policy on the EU

On 12 March Ed Miliband unveiled Labour's policy on Europe in a speech at the London Business School. The Labour leader stated that he would legislate for a lock that guarantees 'no transfer of powers without an in/out referendum about whether Britain stays in the EU'. However, he said it was 'unlikely' there would be a proposal for power transfer in the next parliament and that he wanted Britain to remain part of the EU.

Miliband also outlined his belief that collective reform of the EU in terms of accountability, economic reform and immigration PZ M\UKHTLU[HS MVY P[Z Z\Y]P]HS HUK LI WYVWVZLK JOHUNLZ [V ILULÄ[JSHPTZ HU restrict free movement of workers from new accession states.

The coalition has already ensured under the EU Act 2011 that any future transfer of power must be subject to a referendum. Labour's policy goes a step further and guarantees that any transfer of power would trigger an in/out referendum. This is similar to the 2010 Liberal Democrat manifesto commitment. On the other side of the debate, David Cameron remains committed to a straight in/out referendum in 2017 if he wins a majority in 2015.

House of Lords European Union Committee report on 'The role of national parliaments in the EU'

(TPK JUVJLYUZ VM [OL NYV^PUN KLTJVJYH[PJ KLÄJP[H[[OL OLHY[of the EU (see, for example, The Electoral Reform Society's Close the Gap report THU` JVTTLU[H[VYZ OH]L JH national parliaments to assume a greater role in fostering democratic accountability and engagement between citizens and EU institutions. Within this context, the House of Lords European Union Committee report, titled *The Role of National Parliaments in the European Union*, has suggested a range of 'practical options' designed to strengthen the involvement of national parliaments in the 'formulation and implementation' of EU policies.

This is to be achieved by enhancing parliaments' ability to °LHLJ[P]LS` ZJY\ [PUPZL» [OLPY NV]LYUTLWUK increasing parliamentary dialogue and engagement with EU PUZ[P[\ [PVUZ HUK WVSPJ`" L_WHUKPUN [OL_ZIYWL_HUK_LHLLIZ_VM]OL

reasoned opinion procedure; facilitating greater contact and cooperation between national parliaments; and strengthening parliaments' powers of oversight in economic and monetary matters. Rather than seeking these improvements through treaty change, the report suggests that changes should be secured through the autonomous and collective will of local parliamentarians and governments. With over 74% of Britons reporting feeling 'voiceless' within the EU structure, the hope PZ [OH[[OLZL YLJVTTLUKH[PVUZ ^PSS OLS gaps in the democratic legitimacy of EU institutions.

INTERNATIONAL

Ukraine's presidential election and the secession of Crimea

The presidential election held in Ukraine on 25 May was won outright by the oligarch Petro Poroshenko. The absolute THQVYP[` OL ULLK LK [V ^PU HM[LY [OL ÄYZ as a sign of a return to political stability. OSCE and NATO international election observers were quick to congratulate Ukrainians on the high turnout and transparency of the elections. Poroshenko has promised to restore this country's relationship with Russia while deepening its cooperation with the EU and has pledged to provide the east of the country with more independence.

However, keeping Ukraine together is likely to prove challenging. On 16 March 2014 Crimean citizens voted to secede from Ukraine, despite constitutional restrictions. The text of Article 134 of the Ukrainian constitution refers to Crimea as an 'inseparable constituent part of Ukraine', and Article 73 states that '[i]ssues of altering the territory of Ukraine are resolved exclusively by an All-Ukrainian referendum'. The referendum was condemned as illegal by the Western powers and Poroshenko has vowed never to recognise it. Nonetheless, with the help of Russia and the precedent set by Kosovo, Crimea appears to be taking steps to re-join the Russian federation.

Much has been said about international reaction to the referendum, its legality, and steps forward; too much to discuss here (for a summary, see the Monkey Cage's JVL]LYHNL 0UZ[LHK SL[\Z MVJ\Z VU [OL Y happened in Ukraine. Over the last 200 years, the vast majority of constitutions have been silent on the issue of secession e 6M [OL YLTHPUPUN JVUZ[P[\ [PVUZ <RYHPUL HUK ZWLJPÄJHSS` WYVOPIP[ZLJ [OLPY [LYYP[VY` 6US` L_WSPJP[S` H

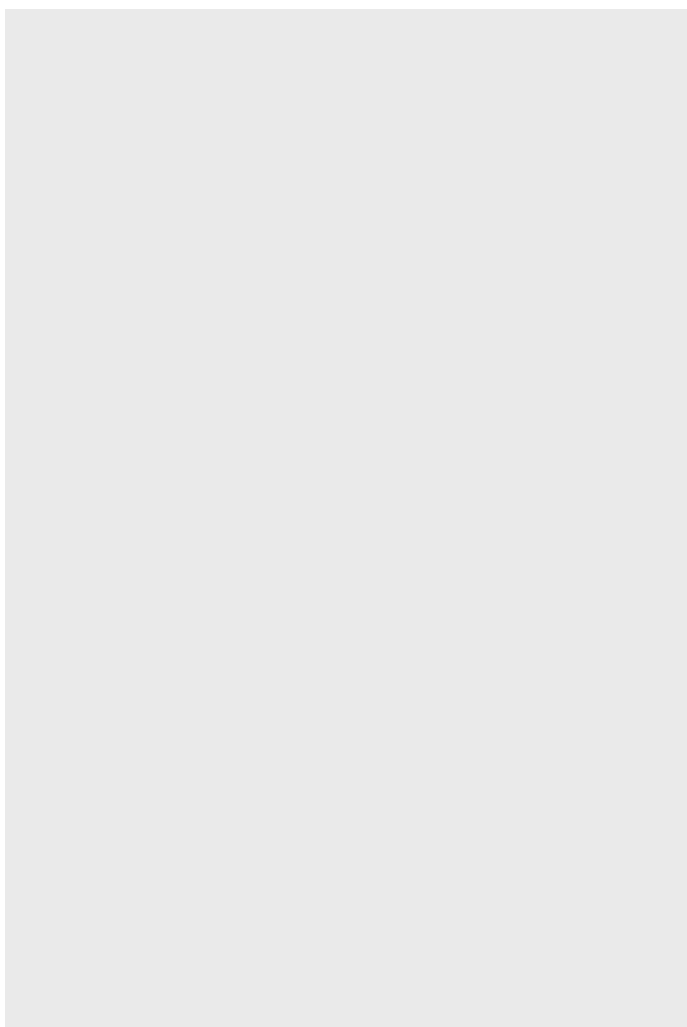
Two things are notable here. First, data from Roeder shows that, from 1901-2000, there were no secessions in states like Ukraine that constitutionally prohibited secession. In other ^VYKZ <RYHPUL TPNO[IL [OL ÄYZ[JV\UY constitutional ban on secession is violated. Second, there

are 19 instances of secession in countries where secession is explicitly allowed by the constitution; 15 of these were secessions from Russia and 3 were secessions from the former Yugoslavia. So, aside from any international precedents on the issue of secession, Eastern Europe has a long tradition of supporting secession.

Changing Japan's amendment procedure

The Japanese constitution, promulgated in 1946, is the longest surviving constitution without an amendment. At the age of

The longevity of Norway's constitution is perhaps attributable to its constitution in order to adapt to modern ideals, with a total of 316 formal amendments having been made over its 200 year lifespan. The amendment procedure has enabled the constitution to negotiate such events as a separation from Sweden, transformation from constitutional monarchy



David Laughrin are now preparing a wider range of resource materials for Special Advisers which can be used in training programmes, and which can also be accessed online.

On 28 March the Handbook was launched at a seminar at the Institute for Government, which also launched the IfG's publication In Defence of Special Advisers, by David Willett's former Special Adviser Nick Hillman.

9LWVY[VU ÄUHJPHS WYP]PSLNL

In March, the Unit also published Demystifying Financial Privilege, a report by Meg Russell and Daniel Gover. In situations where the Lords pass a legislative amendment that has tax or spending implications, MPs may reject it on the

IHZPZ VM [OLPY °ÄUHJPHS WYP]PSLNL» *VU]LU[PVU Z\NNLZ[Z [OH[the Lords should not then insist on its proposal. The practice

ILJHTL WHY[PJ\SHYS` JVU[YV]LYZPHS PU ^OLU ÄUHJPHS WYP]PSLNL ^HZ PU]VRLK [V V]LY[\YU KLMLH[Z PUÄPJ[LK I` [OL 3VYKZ [V [OL >LSMHYL 9LMVYT)PSS PUJS\KPUN VU [OL ILULÄ[Z JHW HUK ZV JHSSLK °ILKYVVT [H_» ;OL LWPZVKL SLK [V ^PKLZWYLHK

confusion, including complaints that the process had been abused by the government for political gain.

Our report is based around interviews with key actors and a

KL[HPSLK L_HTPUH[PVU VM OV^ ÄUHJPHS WYP]PSLNL OHZ VWLYH[LK in practice between 1974 and 2013. As well as clarifying the

process, it makes a number of recommendations for reform, including that the Commons should publish a clear and public

KLÄUP[PVU V\]SPUPUN [OL L_[LU[VM ÄUHJPHS WYP]PSLNL :WLHRPUN at the report's launch in the House of Lords, respected

Crossbencher Lord Pannick commented that 'the Constitution

Unit, Meg Russell and Daniel Gover have done a very great

ZLY]PJL PU PKLU[PM`PUN [OL WYPUJPWSLZ VM ÄUHJPHS WYP]PSLNL»

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