

M O N I T O R

The Constitution Unit Bulletin

Devolution Dawns

The reshaping of the United Kingdom has begun. Devolution went live with the Scottish and Welsh elections in May, and the new governments in Scotland and Wales take up their powers on 1 July. In the English regions the devolution bandwagon is also beginning to roll, as reported on page 4.

This cover article reports on Scotland and Wales. On 6 May voters elected the first Scottish Parliament to have sat since 1707 and the first members of the National Assembly for Wales. In both cases the proportional voting constituencies in Wales. They are unlikely to perform so well in general elections; but in Scotland and Wales it is not unrealistic for the nationalist parties to aspire to govern.

The new governments

Donald Dewar was sworn in by The Queen as First Minister in Scotland on 17 May. After a week of negotiations with the Liberal Democrats he formed a coalition government of nine Labour and two Liberal Democrat Ministers, with 11 deputy Ministers (including two more Liberal Democrats). Key portfolios went to the Scottish Liberal Democrat

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Six new briefings on Lords reform, p9

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leader Jim Wallace (justice and home affairs, and Deputy First Minister), Jack McConnell (finance), Henry McLeish (enterprise and life long learning), Sam Galbraith (children and education), Susan Deacon (health), Wendy Alexander (social inclusion, local government and housing), Sarah Boyack (transport and environment), Tom McCabe (business manager and chief whip) and Ross Finnie (rural affairs, and the second Liberal Democrat in the cabinet). Lord Hardie continues as Lord Advocate.

The coalition agreement between the parties was set out in a 20-page document entitled Partnership Scotland. The greatest stumbling block was student tuition fees, which the Lib Dems had pledged to scrap in their election manifesto (as had the SNP and the Conservatives). The issue has been referred to an independent review body. But whilst Lib Dem backbenchers believe they will be allowed a free vote on the issue, Labour believes both parliamentary groups should support the decision of the coalition government. Failure to resolve this could bring down the coalition. The other key issue is PR for local government, already being considered by the McIntosh Commission on local government reform. The agreement states: "We will ensure that publication of the final McIntosh recommendations is followed by an immediate programme of change, including progress on electoral reform".

In Wales the Labour leader Alun Michael decided to form a minority government rather than attempt a coalition. There will be eight Ministers, known as Assembly Secretaries: Rhodri Morgan (economic development), Edwina Hart (finance), Jane Hutt (health and social services), Peter Law (planning and environment), Tom Middlehurst (life-long education and training; Welsh language, culture and sport), Rosemary Butler (education), Christine Gwyther (agriculture and rural development) and Andrew Davies (business manager). They will work alongside six subject committees of the Assembly, to be chaired by Ron Davies (economic development), Sue Essex (planning and environment), Cynog Dafis (post 16 education, arts, sport, language), Ieuan Wyn Jones (agriculture and rural development), Kirsty Williams (health and social services) and William Graham (pre-16 education, children's issues). Two

Constitutional Update

Lords Reform

The Bill

The House of Lords Bill, which will remove the right of hereditary peers to sit and vote in the House of Lords, has now completed its House of Commons passage and House of Lords committee stage. It is due to begin its report stage in the House of Lords on 15 June, and will then return to the Commons.

Only one substantive amendment was passed during the House of Lords' consideration. This was the anticipated 'Weatherill amendment', moved by the leader of the crossbench peers Lord Weatherill. The amendment - passed by 351 votes to 32 - would allow a total of 92 hereditary peers to stay on in the transitional upper chamber. These represent 10% of hereditary peers plus a small number of office holders. Other amendments - including one to require a referendum on Lords reform - were either withdrawn or defeated.

The government had previously indicated that it would allow the Weatherill amendment to stand when the bill returned to the Commons. It is anticipated that the Commons will pass the amended bill, allowing it to reach the statute book at the end of this parliamentary session. The new transitional

20 Scottish members for Scottish bills, and 20 Welsh members for Welsh bills.

The committee also discussed the possibility of Westminster committees holding joint meetings with committees of the devolved assemblies; and access for members of the devolved assemblies.

‘Westminster Hall’: the Main Committee

The Commons Modernisation Committee has recommended a new committee (similar to the Australian Main Committee) to reduce pressure on debates in the chamber (HC 194, 13 April: Sittings of the House in Westminster Hall). Starting in the autumn, the new chamber will sit in the Grand Committee Room off Westminster Hall and provide more opportunity for adjournment debates, debating Select Committee reports, foreign affairs etc.

Parliamentary Privilege

The Joint Committee on Parliamentary Privilege, chaired by Lord Nicholls (a law lord), delivered its report in April (HC214, HL43). It recommends updating the laws regulating freedom of speech in Parliament in a new Parliamentary Privileges Act, and removing the change in the law that allowed Neil Hamilton MP to bring his libel action against The Guardian. It also recommends that all laws should apply to Parliament itself: the institution should cease to be a statute free zone.

Private Members’ Bills

There have been several Private Members’ Bills proposed in recent months with constitutional implications.

Scottish Parliamentary Constituencies Bill

This Bill, introduced by Lord Mackay of Arbrecknish, relates to the reduction in the number of Scottish MPs as a result of the next boundary review. The purpose of the review, (oom)l sult of itGuas numbfeoGuas uBw(T)-C re6 Tw().1932 Tw(H)uw1

and good practice to the departments as part of the on-going communication between the Office and departments.

The Task Force will also be conducting reviews of the readiness of various sectors of public authorities.

On 30 March judgement was given in the case of R v D.P.P. ex parte Kebilene and others. The case challenged a decision of the Director of Public Prosecutions to consent to a prosecution under the Prevention of Terrorism (Temporary Provisions) Act 1989, on the basis of the European Convention on Human Rights (ECHR) and the Human Rights Act 1998. The High Court (The Lord Chief Justice, Lord Bingham of Cornhill, Lord Justice Laws and Mr Justice Sullivan) held that s. 16 A and s. 16 B of the 1989 Act violated the ECHR, and as a consequence the D.P.P.'s decision was unlawful. Lord Bingham concluded that "It seems to me that on their face both sections undermine, in a blatant and obvious way, the presumption of innocence." Leave to appeal to the House of Lords has been granted.

Modernising Government

In March the Cabinet Office published the White Paper *Modernising Government* (Cm 4310), presented jointly by the Prime Minister and Jack Cunningham, Minister for the Cabinet Office. Items of constitutional interest include:

- On legislation, the government is committed to publishing more bills in draft for consultation and pre-legislative scrutiny.
- Wherever possible, regional boundaries should coincide with local authority boundaries at local level, and with Government Office for the Regions' boundaries at regional level.
- The Cabinet Office will publish in the summer its study on how central government is organised and delivers its services at regional and local level.
- The organisation of public sector Ombudsmen in England is to be reviewed, in order to make it easier to make a complaint across different services.

Change in Local Government

The government is pursuing a multi-pronged strategy to rectify the poor turnout in local elections, which reached only 30% at the contests on 6 May. The first, set out in the consultation paper *Local Government, Local Choice* (Cm 4298) and draft *Local Government (Organisation and Standards) Bill* in March, stipulates that councils must seek voters' views on whether to move to a cabinet model and/or a directly elected mayor. The status quo will be an

option only if the proposals are defeated in a referendum. Should councils not hold a referendum - which can be triggered by a petition supported by 5% of voters - the government retains the power to force them to put the issue to a popular vote.

Constitution Unit News

Summer seminar series

**Developing Regional Government in
England**

whether the UK should have a separate stand alone supreme court - or even a separate constitutional court of the kind found in Spain or Germany. Three of the Unit's staff also met with the law lords at Westminster.

Contact: Richard Cornes.

Joint Parliamentary Committee on Human Rights

In the White Paper *Rights Brought Home* the government had trailed the establishment of a Joint Parliamentary Committee on Human Rights. In December Margaret Beckett confirmed in a statement to the House of Commons that both Houses would be requested to establish such a committee.

On 27 May the Constitution Unit held a private seminar, hosted in the House of Lords, to discuss the practical issues which will need to be addressed when setting up the committee. Attended by parliamentary clerks, civil servants, academics and human rights representatives the seminar discussed the range of functions the committee may be tasked with. These include legislative scrutiny, conduct of inquiries and monitoring of domestic human rights policy. The scope of the committee's work also has potentially far-reaching effects for its composition, size and staffing and these issues were explored.

The establishment of the committee will contribute in large measure to the profile of human rights in Westminster. However the task lies in ensuring that human rights concerns do not become isolated in this specialist committee but are mainstreamed throughout the work of parliament. The relationship between this and all other committees, standing and select, will be important in this regard.

Whilst no clear date has been set for the establishment of the committee the need for it is already imminent. On 28 April the Joint Committee on the Financial Services and Markets Bill recommended that "*On the basis of our experience the two Houses should establish a specialist Human Rights Committee as soon as possible.*" With the Human Rights Act set to be brought into force on 2 October 2000, the need is all the more pressing.

The Unit will be publishing a short briefing on the establishment of the Joint Parliamentary Committee

Bulletin Board

New publications by the Unit

The Impact of the Human Rights Act: Lessons from Canada and New Zealand by Aisling Reidy (May 1999) £8 briefing

The Constitutionalisation of Public Law by Lord Steyn (May 1999), £5 briefing

A Directly Elected Upper House: Lessons from Italy and Australia by Meg Russell (May 1999)