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Devolution and the Centre Monitoring Report

May 2008

Akash Paun (ed.) & Edward Calow

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The Devolution Monitoring Programme

From 1999 to 2005 the Constitution Unit at University College London managed a major research project monitoring devolution across the UK through a network of research teams. 103 reports were produced during this project, which was funded by the Economic and Social Research Council (grant number L 219 252 016) and the Leverhulme Nations and Regions Programme. Now, with further funding from the Economic and social research council and support from several government departments, the monitoring programme is continuing for a further three years from 2006 until the end of 2008.

Three times per year, the research network produces detailed reports covering developments in devolution in five areas: Scotland, Wales, Northern Ireland, the English Regions, and Devolution and the Centre. The overall monitoring project is managed by Professor Robert Hazell and Akash Paun at the Constitution Unit, UCL and the team leaders are as follows:

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Abbreviations and Acronyms

BERR	Department for Business, Enterprise and Regulatory Reform
BIC	British-Irish Council
DCLG	Department for Communities and Local Government
GOWA 2006	Government of Wales Act 2006
JMC	Joint Ministerial Committee
LCM	Legislative Consent Motion
LCO	Legislative Consent Order
MAA	Multi-Area Agreement
RDA	Regional Development Agency
SNP	Scottish National Party
SNR	Sub-national Economic Development and Regeneration Review
WAG	Welsh Assembly Government
WASC	Welsh Affairs Select Committee

Chronology of Events: January 2008 to May 2008

- 15 January Meeting of 'Scottish Six' of Labour, Conservative and Liberal Democrat figures to discuss the remit of a Scottish Constitutional Commission.
- 17 January Welsh Affairs Committee and the Welsh Assembly's Proposed Domiciliary Care LCO Committee hold a joint scrutiny session regarding the 'National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008'.
- 24 January Secretary of State for Wales, Peter Hain resigns his office to be replaced by Paul Murphy.
- 30 January Northern Ireland Affairs Committee publishes report on *The Work of the Committee in 2007*.
- 4 February Scottish Affairs Committee publishes *Child Poverty in Scotland* report.
- 8 February Scottish Affairs Committee publishes *Work of the Committee in 2007* report.
- 16 February Welsh Labour Conference held in Llandudno.
- 18 February Prime Minister backs Scottish Constitutional Commission.
- 21 February it is confirmed that Dame Gillian Morgan will replace Sir Jon Shortridge as Permanent Secretary to the Welsh Assembly Government in May.
- 21 February Welsh Affairs Committee publishes *Work of the Committee in 2007* report.
- 23 February Welsh Liberal Democrat Conference held in Llandudno.
- 29 February Welsh Affairs Select Committee publishes government response to report on *The proposed Legislative Competence Order in Council on additional learning needs*.

- 1 March Scottish Liberal Democrat leader Nicol Stephen uses his speech at their spring conference to announce the recall of the Steel Commission to look into further Scottish devolution.
- 29 February Scottish Affairs Committee publishes government response to report on *The effects of tax increases on the oil industry*.
- 1 March Welsh Conservative Conference held in Llandudno.
- 4 March Welsh Affairs Committee begins inquiry into cross-border provision of services.
- 5 March Gordon Brown confirms that his Chancellor of the Exchequer will produce a 'factual paper' on the Barnett Formula.
- 5 March Welsh Affairs Committee publishes report on *The proposed National Assembly for Wales (Legislative Competence) Order in the Field of social welfare 2008*.
- 5 March Northern Ireland Affairs Committee publishes government response to report on *The Northern Ireland Prison Service*
- 12 March Lord Goldsmith's review into citizenship published.
- 12 March The Chancellor of the Exchequer announces the 2008 Budget.
- 13 March Establishing Committee of the All Wales Convention publishes report on how the proposed All-Wales Convention should operate.
- 25 March *Draft Constitutional Renewal Bill* and accompanying white paper *The Governance of Britain: Constitutional Renewal* published by Ministry of Justice
- 27 March Welsh Affairs Committee publishes government response to *Energy in Wales - follow-up inquiry* report.
- 28 March Scottish Labour Conference held in Aviemore.

- 30 April Scottish Affairs Committee publishes UK and Scottish government responses to *Poverty in Scotland* and *Child Poverty in Scotland* reports.
- 1 May Local elections held across England and Wales.
- 4 May Scottish Labour leader Wendy Alexander makes controversial call for the SNP to 'bring on' an independence referendum, only to be overruled by the Prime Minister.
- 14 May The Government publishes its 2008-9 *Draft Legislative Programme*.

1. Introduction: Monitoring the Union

This latest report published as part of the Constitution Unit's Devolution Monitoring Programme covers developments in territorial politics at 'the centre' and across the UK as a whole from January to mid-May 2008.

The monitoring period includes the first anniversary of the elections and government changes of 2007 – which saw the SNP and Plaid Cymru entering government for the first time, devolution to Northern Ireland being re-established, and Gordon Brown becoming Prime Minister. Collectively, these developments have transformed the political landscape to such an extent that it is plausible to suggest that 2007 marked the beginning of a qualitatively new phase of territorial politics in the UK. In this new political environment almost all the major pillars of the 1998-99 devolution settlement are open for renegotiation, and the agenda is largely being set in 'the periphery' often despite the preferences of the UK Government.

In Scotland, the key event was the formal establishment of the cross-party Commission on Scottish Devolution (the Calman Commission), which is expected to lead to recommendations for additional powers to be devolved. There is clearly greater reluctance to 'reopen the Scotland Act' in such a manner in Whitehall and among many Labour MPs. But with all three unionist parties in Scotland signed up to the reform agenda, while the SNP's parallel 'national conversation' on independence gets under way and First Minister Alex Salmond continues to ride high in the polls, a continuation of the status quo appears less and less likely.

Similarly, while the Wales Office and many Welsh Labour MPs remain sceptical about devolving full legislative powers to the Welsh Assembly (effectively creating a Welsh Parliament), events at the devolved level are generating probably unstoppable momentum towards this outcome. The most recent reflection of this was the setting up of the All-Wales Convention by the Labour-Plaid coalition in Cardiff.

Crucially, the debates in both Scotland and Wales put the spotlight on the mechanisms for funding devolution, with voices defending the Barnett Formula status quo few and far between. English dissatisfaction with the constitutional and financial status quo continues to be expressed too, including by elements of all three UK-wide parties. Finally, the Northern Ireland Assembly is on course to gain control of policing

and justice functions, while many in the Assembly harbour hopes of gaining some fiscal powers as well.

In response to these centrifugal pressures, the UK Government of Gordon Brown has sought to emphasise values and institutions associated with 'Britishness' as opposed to any of its constituent nationalities. Progress on the major elements of this agenda – the planned new 'British Bill of Rights' and 'British Statement of Values', and any government proposals flowing from the recent Citizenship Review – awaits further announcements.

But whatever success these initiatives have in diffuse ways such as boosting British national identity and citizens' sense of affiliation with the UK state, it is hard to imagine them quelling the growing pressures for concrete reforms to the devolution settlement. Debates will continue on further powers for the Scottish, Welsh and Northern Irish bodies, on devolution finance, and on the English Question. And the centre will have to play an active role in all of these, setting out a coherent vision of how the devolved UK should work and acting as a broker between competing interests to ensure that all can live with the outcome. Recent decisions by the UK government, such as those to resurrect the Joint Ministerial Committee framework for managing intergovernmental relations and (eventually) to give support to the Calman Commission, are signs of improvement in this regard. But more in the way of strategic thinking may be needed, especially on the issue of devolution finance, on which the Treasury is due to produce a 'factual paper' later this year.

As devolved governance approaches its tenth anniversary, territorial politics in the UK has rarely felt as dynamic, with reform of so many aspects of the devolution settlement under active consideration. Whether the reform process is marked by consensus or conflict, what actual institutional changes it leads to, and how stable any renegotiated settlement turns out to be will be among the key questions for future monitoring reports to discuss.

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The Constitution Unit
June 2008

¹ This report was co-authored by Akash Paun and Edward Calow at the Constitution Unit between March and June 2008, with assistance from Daniel Broadbent and Stephen Gummer.

2. Political Parties

2.1 Labour

In the 1970s divisions on the issue of devolution wracked the Labour Party, eventually contributing directly to the demise of Jim Callaghan's government. Two decades later, as the party returned to power, devolution was enacted remarkably straightforwardly, thanks to Tony Blair's large parliamentary majority and his dominant personal position within the party. Today, as debates unfold about the next stages of the devolution processes in Scotland and Wales, latent tensions within the party are once again becoming tangible, adding another item to the government's catalogue of problems.

The most high-profile disputes have been between the Labour leaderships at Holyrood and Westminster over how best to respond to the nationalist challenge north of the border. Scottish Labour leader Wendy Alexander's proposal for a cross-party Constitutional Commission to discuss further powers for Holyrood had to overcome serious reservations from Scotland Minister David Cairns² and Gordon Brown himself³ before being launched by Scottish Secretary Des Browne on 25 March largely in the format originally proposed by Alexander. Certainly, the terms of reference for the Commission, to be chaired Professor Sir Kenneth Calman, remain identical in phrasing to Alexander's original motion. Significantly, these include a commitment to reviewing the 'financial accountability of the Scottish Parliament',⁴ opening the way for a consideration of fiscal devolution, about which many Labour MPs are deeply sceptical.⁵

The Commission is predominantly funded by the UK Government (via the Ministry of Justice), but is formally 'independent', not to mention cross-party, so it will be intriguing to observe how Labour at Westminster reacts to proposals for significant changes to the powers of the Scottish Parliament.

² MacDonnell, H., 'Devolution Review "may lead to loss of Holyrood powers"', *The Scotsman* (17 February 2008)

³ 'Brown lays down the law to Wendy: "I'm in control of Scotland's future"', *Sunday Herald* (10 February 2008); 'Revealed: the leak that proves Brown opposes a constitutional commission', *Sunday Herald* (1 March 2008); Mitchell, J., 'Only Westminster can take devolution forward' *The Herald* (19 January 2008)

⁴ Commission on Scottish Devolution, 'About the Commission', at:

www.commissiononscottishdevolution.org.uk/about/index.php

⁵ Swanson, I., 'Power struggle has barely begun', *The Scotsman* (31 January 2008) at: <http://tinyurl.com/5lxqfp>

On 4 May Alexander further antagonised many of her party colleagues – including the Prime Minister. Talking to BBC Scotland about the SNP's plans for a referendum on independence, she said, reversing years of party policy, 'I don't fear the verdict of the Scottish people. Bring it on'.⁶ At Prime Minister's Question Time three days later Gordon Brown flatly denied Conservative leader David Cameron's contention that 'Wendy Alexander says there should be a referendum now on Scottish independence'.⁷ Following that, Alexander reiterated in Scottish Parliament First Minister's Questions that 'Scotland deserves a choice sooner rather than later',⁸ generating a strong impression of a party in crisis on the issue. The immediate consequence of this debacle was a weakening of Wendy Alexander's position, but the longer term effect may be to pave the way for a deal on a 'multi-option referendum', in which independence and some sort of 'devolution-plus' option emanating from the Calman Commission are put to the Scottish people along with the choice of sticking with the status quo.

Regarding Wales, the Labour Government at Westminster continues to vacillate over Welsh Labour's pledge to One Wales coalition partner Plaid Cymru to hold 'a referendum on full lawmaking powers for the National Assembly before [the next Assembly elections in] 2011'.⁹ The All Wales Convention set up to gauge public opinion ahead of such a referendum will now not report until autumn 2009,¹⁰ while the appointment of Paul Murphy as Secretary of State for Wales has raised concerns of a new 'devo-sceptic' approach to Welsh devolution. Murphy has not gone out of his way to quell this, describing a vote by 2001 as unlikely.¹¹ His predecessor, Peter Hain, added: 'I do not believe the time is right for a further referendum in this Assembly term',¹² despite a BBC St David's Day poll showing a 7 per cent lead in favour of a Welsh Parliament.¹³ As for what would be on offer in a referendum, the Wales Office flatly rejected a Plaid claim from Adam Price MP that it is 'probable that Wales will get tax varying powers'¹⁴ in any new constitutional settlement. Meanwhile,

⁶ Davidson, L., 'Wendy Alexander isolated in breakaway vote crisis', *The Times* (8 May 2008)

⁷ David Cameron, House of Commons Hansard, 7 May 2008, col. 695

⁸ Wendy Alexander, Scottish Parliament Official Record, 8 May 2008, col. 8425

⁹ Labour and Plaid Cymru, *One Wales: A progressive agenda for the government of Wales*, 27 June 2007, at: http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/27_06_07_onewales.pdf

¹⁰ Daily Post North Wales Tom Bodden

¹¹ Withers, M., 'Murphy rules out laws poll by 2011', *Wales on Sunday* (24 February 2008)

¹² Shipton, M., 'Referendum rift for Plaid and Labour', *Western Mail* (13 March 2008), at:

<http://tinyurl.com/6bamsf>

¹³ 'Voters divided on assembly powers', *BBC News* (28 February 2008), at: <http://tinyurl.com/6fv8yv>

¹⁴ Lister, S., 'Unlikely Wales will raise its own taxes', *Daily Post* (20 February 2008)

Carwyn Jones AM, a likely heir to leader Rhodri Morgan, used Welsh Labour's Spring Conference to condemn 'anti-Welsh' sentiment within the party.¹⁵

As it seeks to reconcile its competing wings on devolution and territorial issues, the UK Labour Party under Gordon Brown continues to press ahead with a 'Britishness' agenda that is bold on rhetoric, strong on symbolism, but light on details. As discussed in section 3.1 below, the Ministry of Justice leads on this, with initiatives including changes to flag-flying regulations, the recent Citizenship Review, and planned consultations on a British Bill of Rights and Statement of Values.

2.2 Conservatives

As noted in the previous monitoring report, despite his party's flirtations with English nationalism, David Cameron has tried hard to emphasise the Conservatives' unionist traditions, warning of an 'ugly strain of separation seeping through the Union flag' and vowing to ensure that 'the Union comes first' in party policy.¹⁶ This suggests the continuation of a cautious approach to the 'English Question', which Ken Clarke MP's Democracy Taskforce has been considering for some time. Mr Clarke appears ready to reject a proposal by Sir Malcolm Rifkind MP for a Grand Committee to deal with English-only affairs, previously described as an 'elegant' solution by David Cameron. Giving evidence to the Justice Committee, Clarke also rejected an English Parliament as 'a threat to the Union'. However, the taskforce remains likely to propose a technical solution to the 'West Lothian Question', with Clarke stating a desire to resolve this 'niggle' with 'some sensible minor constitutional change'. He added: 'I do not believe that it is not possible to identify a comparatively small amount of legislation which is totally English in its consequences and content'.¹⁷

The Conservatives also appear in no hurry to review the Barnett Formula. Shadow Chancellor George Osborne said he was 'open-minded about change' but that he was unable to elaborate as Chancellor Alistair Darling is yet to commission 'a needs based assessment' of how much each part of the UK should get if there were changes for which Osborne had asked.¹⁸

¹⁵ Livingstone, T., 'Anti-Welsh Valleys "is costing votes in rural areas"', *Western Mail* (18 February 2008)

¹⁶ David Cameron, 'Speech made outside Holyrood parliament', Edinburgh, 10 December 2007, at: www.scottishconservatives.com/news_press/news/david_cameron_speech.aspx

¹⁷ House of Commons Justice Committee, 19 February, oral and uncorrected evidence, *Devolution: A Decade On*, Q115-130, at <http://tinyurl.com/4w7ocd>

¹⁸ Livingstone, T., 'Tories keep "open mind on future of the Barnett formula', *Western Mail* (28 April 2008)

At the Party's Welsh conference David Cameron attempted to subdue what the *Western Mail* described as 'bitter internal divisions over devolution'¹⁹ by announcing a review of the party's position, to be headed by Tory elder statesman Lord Wyn Roberts. The speech was greeted by opposition politicians as 'a huge embarrassment' for the Welsh Conservative Leader Nick Bourne AM, who had previously expressed firm backing for a Welsh Parliament.²⁰ Bourne later insisted he supported a review, adding that 'devolution for Wales – within a strong United Kingdom – is here to stay'.²¹ An interim report is promised by the summer.²²

Meanwhile, there is little emerging from the party leadership at Westminster to contradict Scottish leader Annabel's Goldie's professed wholehearted enthusiasm for the new Constitutional Commission, with David Cameron restricting himself to attacking Gordon Brown's position. On the purpose of the Commission, Goldie said:

What the majority wants is the representation we have in the Scottish Parliament, the majority of MSPs coming from parties that support the Union, and, there, what we have to do is address the desire of the majority view, which is to stick with devolution but make it work better.²³

On questions of English sub-national governance, Regional Development Agencies (RDAs) briefly emerged as a Conservative target at the turn of the year. Mark Prisk, Shadow Minister for the Regions, questioned whether 'the RDAs have a proper economic future' in the light of the growing north-south divide.²⁴

2.3 Liberal Democrats

The Liberal Democrats have the clearest position of the three major UK-wide parties on devolution issues, and this is unlikely to change under new leader Nick Clegg. The party remains strongly in favour of an early referendum on full law-making powers for the Welsh Assembly, additional powers including over taxation for the Scottish Parliament, and a strengthening of local government in England, which Clegg suggests is gasping in 'the iron grip of Whitehall'.²⁵

¹⁹ Williams, T., 'Lord Roberts to sort out party's devolution squabbles', *Western Mail* (3 March 2008)

²⁰ Withers, M. 'Cameron's devolution vow', *Wales on Sunday* (2 March 2008)

²¹ Bourne, N. 'New Ideas, New Wales: speech to the Welsh Conservative Party spring conference, Llandudno, 1 March 2008

²² Williams, T., 'Lord Roberts to sort out party's devolution squabbles', *Western Mail* (3 March 2008), at: <http://tinyurl.com/4wspdm>

²³ Fraser, D., 'Union allies plan agenda for change', *The Herald* (16 January 2008),

²⁴ Taylor, R., 'Do regional wings need clipping', *The Daily Telegraph* (3 January 2008)

²⁵ Livingstone, T., 'Clegg calls for talks on 'unbalanced' Britain', *Western Mail* (11 February 2008)

At the party's Scottish conference on 1 March, the new leader endorsed Scottish Liberal Democrat leader Nicol Stephen MSP's proposal to resurrect the Steel Commission that originally reported in March 2006. This report recommended 'fiscal federalism' with significant tax-raising powers for the Scottish Parliament.²⁶ The new study's findings will shape the Scottish Liberal Democrats' contribution to the cross-party Calman Commission to which they have also signed up.²⁷ Clegg said: 'I share Nicol Stephen's ambition to strengthen and deepen devolution...Why can't the Scottish Parliament raise more of its own money?'²⁸ Support for greater fiscal autonomy tallies with the party's backing for reforming the Barnett Formula, though possibly not with its enthusiasm for a move to needs-based funding. Nick Clegg said, before becoming leader in November 2007: 'We do need to review the outdated formula and, if necessary, replace it with a fairer need-based funding formula'.²⁹

With the Welsh Liberal Democrats supporting in principle the All Wales Convention headed by Sir Emyr Jones Parry but having no input into its terms of reference – which were drafted by a Labour-Plaid 'establishing committee' – the Liberal Democrats have struggled to impose themselves on the constitutional agenda in Wales as a referendum on full legislative powers inches closer. The party's position is clear, however, as confirmed by Nick Clegg on his first visit to the Assembly in January, when he said: 'I think we need to be at the forefront of those who are calling for that referendum'.³⁰

²⁶ Final report of the Steel Commission to the Scottish Liberal Democrat spring conference, March 2006, pp110-121, at: www.scotlibdems.org.uk/files/steelcommission.pdf

²⁷ Dinwoode, R., 'LibDems send for Steel to examine powers for Holyrood', *The Herald* (1 March 2008)

²⁸ Clegg, N., 'Speech to the Scottish Liberal Democrat Spring Conference in Aviemore, 29 February 2008, at: <http://tinyurl.com/6zt8r4>

²⁹ 'Time to review Barnett formula?', *The Journal* (16 November 2007)

³⁰ Williamson, D., 'Nick Clegg's support for law-making powers', *Western Mail* (1 February 2008)

3. Devolution and Whitehall

3.1 Ministry of Justice

The Ministry of Justice retains formal responsibility 'for the overall management of relations between the UK Government and the devolved administrations in Scotland, Wales and Northern Ireland.'³¹ In practice, however, responsibility for devolution in Whitehall is fragmented, with the three territorial departments leading on their respective devolution settlements, DCLG and BERR managing English sub-national governance, and the Treasury maintaining its grip on devolution finance. One sign of a desire to take a more coordinated approach to devolution was the appointment last summer of Dr Jim Gallagher – formerly head of the Scottish Executive Department of Justice – as Director General of Devolution. Dr Gallagher is also now head of the secretariat for the Scottish Constitutional Commission.³²

While it generally takes a back seat in debates about concrete institutional questions relating to devolved governance, the department leads on the Governance of Britain agenda, one of whose central intentions is 'To work with the British people to achieve a stronger sense of what it means to be British.'³³ The most recent development in this area was the publication on 25 March of the long-awaited Draft Constitutional Renewal Bill and accompanying White Paper, but these contribute little of substance to the Britishness debate, save for some trivial clauses on flag-flying regulations. Of greater relevance is likely to be the forthcoming white paper on a British Bill of Rights and the planned 'Citizens' Summit' leading to a British Statement of Values. While the purpose and probable content of these initiatives remains somewhat opaque, they are likely at least to spark debate about how the different nations and regions of the UK relate to one another.

According to Secretary of State for Justice Jack Straw, speaking in January 2008, the British Bill of Rights could be a 'mechanism for unifying the population' and, rather than a mere 'legal document', a text in which the people have a genuine 'emotional

³¹ Ministry of Justice, 'Devolution', at: www.justice.gov.uk/whatwedo/devolution.htm, accessed 1 June 2008.

³² As reported in Crichton, T., 'Who has the upper hand now? The Westminster view', *Sunday Herald* (17 February 2008)

³³ *The Governance of Britain – Constitutional Renewal White Paper*, Cm 7341-I, 25 March 2008, at: www.justice.gov.uk/docs/constitutional-renewal-white-paper.pdf

stake'.³⁴ Minister of State Michael Wills has similarly suggested that the mooted Statement of Values could 'bind the entire country together'.³⁵ However, while the UK government is committed to involving citizens from across the UK in these processes, it has been noted that it has seemingly 'rejected any role for the devolved institutions in formulating such a bill, even though it would (presumably) be binding upon them, on the ground that the constitution is a reserved matter'.³⁶ This raises the spectre of potential intergovernmental conflict – particularly with the Scottish Government – or of the devolved governments setting up rival projects on rights and values in their own 'national' contexts. Indeed there is already an ongoing effort to formulate a Northern Ireland Bill of Rights,³⁷ whose relationship to the UK initiative also remains to be clarified. A further sign of troubles on the horizon lay in the reaction to Lord Goldsmith's Citizenship Review. One proposal was for school-leavers to swear an oath of allegiance to encourage a sense of British citizenship. Among the critics were Scottish Enterprise Minister Jim Mather who said: 'We don't support it and neither do the vast majority...in Scotland'.³⁸

3.2 HM Treasury

After years of rapid public spending growth across the UK and peaceable relations between the Labour-led administrations in London, Edinburgh and Cardiff, the Treasury now has to negotiate some rather choppy economic and political waters in managing the territorial financial settlement.

2008 Budget

The 2008 Budget was presented to Parliament by Chancellor of the Exchequer Alistair Darling on 12 March. With the Chancellor warning of low growth in 2008 (of around 2 per cent per annum) and of high public debt (rising to over £40bn), he had little option but to define the Budget as one to 'maintain stability through the world economic slowdown'.³⁹ From a devolution perspective, these worrisome numbers confirm the message of last autumn's Comprehensive Spending Review;⁴⁰ that over

³⁴ E.g. Straw, J., 'Towards a British Bill of Rights and Responsibilities', Cambridge Faculty of Law, 21 January 2008, at: www.justice.gov.uk/news/sp210108a.htm

³⁵ Michael Wills MP, 'The Politics of Identity', speech at the Institute of Public Policy Research, 26 March 2008.

³⁶ Trench, A., 'Intergovernmental Relations', in Jeffery, C. (ed.), *Scotland Devolution Monitoring Report: January 2008*, p. 63, at: www.tinyurl.com/65a9sa8.

³⁷ See the Northern Ireland Bill of Rights Forum's final report *Recommendations to the Northern Ireland Human Rights Commission for a Bill of Rights in Northern Ireland*, at: www.tinyurl.com/5nj9td

³⁸ 'No support for "oath of allegiance"', *BBC News* (11 March 2008), at: www.tinyurl.com/5qhsh5

³⁹ Alistair Darling, Hansard House of Commons, 12 March 2008, col. 285-298

⁴⁰ 'Meeting the Aspirations of the British People: 2007 Pre-budget Report and Comprehensive Spending Review', Cm 7227, 9 October 2008, at: <http://tinyurl.com/25qegz>

the next few years the Scottish, Welsh and Northern Irish administrations will face their first public spending squeeze since devolution commenced in 1999.

According to the 'regional' press notices issued by the Treasury, the Barnett Formula's provisions meant that an additional £26m, £21m and £5m will be provided to the Scottish Executive, Northern Ireland Executive and Welsh Assembly Government respectively as a result of spending increases in England announced in the Budget.⁴¹

However, these relatively small spending increments did not deter Scottish and Welsh nationalists from attacking the Budget. Scottish First Minister Alex Salmond argued that the Budget would 'damage Scotland's economic interests', and that predictions of a decline in oil revenue were 'a desperate move from a desperate Chancellor determined to try anything to hold onto power in Scotland'.⁴² This followed deputy leader Nicola Sturgeon's earlier declaration that the result of the 'extremely tight settlement' announced by the Treasury is that 'We do have a Barnett squeeze'.⁴³ There was a further dispute between SNP Treasury spokesman Stewart Hosie and the Chancellor about the decision to increase the tax on a bottle of Whisky by 59p, which Hosie saw as a 'discriminatory tax on Scotland's vital whisky industry'. Plaid Cymru, for its part, criticised what it called 'a budget that yet again benefits the super rich, and does little to ease the lives of ordinary working people'.⁴⁴

Barnett Formula:

While for the moment the Treasury continues to operate within the strictures of the Barnett Formula in allocating money to the different territories of the UK, there is good cause to believe that this system will be revised over the next five or so years.

First of all, developments in both Scotland and Wales place devolution finance prominently on the political agenda. In Edinburgh, all parties are now committed to reform, or at least consideration of reform, following the decision of the three unionist parties in the Scottish Parliament to set up the Scottish Constitutional Commission,

⁴¹ See HM Treasury, 'What Budget 2008 means for your region: regional press notices', 12 March 2008, at: www.hm-treasury.gov.uk/budget/budget_08/press_notices/bud_bud08_pressregindex.cfm.

⁴² Lydall, R., 'Budget is the worst blow to whisky for 33 years, claims SNP', *The Scotsman* (14 March 2008)

⁴³ House of Commons Justice Committee, oral and uncorrected evidence, *Devolution: a decade on*, 26 February, Q301

⁴⁴ Plaid Cymru, 'Plaid disappointed at weak budget', 12 March 2008, at: www.plaidcymru.org/content.php?nID=14;ID=483;IID=1

whose remit includes the task of 'improv[ing] the financial accountability of the Scottish Parliament'.⁴⁵ Similarly, the Labour-Plaid Cymru coalition in Cardiff plans an 'independent Commission to review Assembly Funding and Finance'.⁴⁶

At Westminster too, however, there have been signs of disquiet, with Lord Barnett himself among the most prominent critics of the formula that bears his name. In evidence to the Justice Committee on 1 April (see also section 5.1), he criticised the system for its lack of any assessment of need. He has also recently been frustrated in his attempts to persuade the House of Lords to appoint an ad hoc select committee to consider alternative allocation systems,⁴⁷ with the Chair of Committees arguing that such a politicised subject was best left to the House of Commons for consideration.⁴⁸ In the Commons the Treasury Committee has thus far shown little interest in devolution finance, and it will be interesting to observe whether the Justice Committee strays out of its normal territory by making recommendations in this area at the conclusion of its current devolution inquiry.

The Treasury itself remains reluctant to keep shut the Pandora's Box of territorial finance for as long as it can. Lord Barnett made this point to the Justice Committee, saying: 'It has been crystal clear to me that the Treasury do not want to consider any change at all, because they fear upsetting people in different places'.⁴⁹ The Treasury has committed to publishing a paper later this year setting out how the formula works,⁵⁰ but this is unlikely to contain radical proposals for change. The position of the government as a whole was perhaps best summed up by Secretary of State for Scotland Des Browne on 29 January:

I think it [the Barnett Formula] has been transparent. People understand it. It lends itself to an incremental increase in a proportionate fashion. I think it is for those people who think we should change it to come up with an alternative.⁵¹

⁴⁵ Commission of Scottish Devolution, 'About the Commission', at:

www.commissiononscottishdevolution.org.uk/about

⁴⁶ Welsh Labour and Plaid Cymru, *One Wales: A progressive agenda for the government of Wales*, July 2007, p. 6, at: http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/27_06_07_oneyales.pdf

⁴⁷ House of Commons Justice Committee, oral and uncorrected evidence, *Devolution: a decade on*, 1 April 2008, Q406

⁴⁸ Lord Brabazon of Tara, House of Lords Hansard, 7 February 2008, col. 1169

⁴⁹ House of Commons Justice Committee, oral and uncorrected evidence, *Devolution: a decade on*, Thursday 1 April 2008, Q450

⁵⁰ Robinson, N., 'Bye bye Barnett?', *BBC News* (26 March 2008), at:

www.bbc.co.uk/blogs/nickrobinson/2008/03/26/index.html

⁵¹ House of Commons Justice Committee, oral and uncorrected evidence, *Devolution: a decade on*, 29 January 2008, Q81, at: www.publications.parliament.uk/pa/cm200708/cmselect/cmjust/uc75-ii/uc7502.htm

The problem the government may face, however, is that the Scots, Welsh and perhaps elements of the English may indeed come up with their own mutually exclusive alternatives to the Barnett Formula. Without the involvement of the centre, it is questionable whether a workable compromise between these competing interests can be struck.

3.3 Scotland Office

As noted in January's Monitoring Report, the decision to give Defence Secretary Des Browne the additional mandate of Secretary of State for Scotland was criticised by opposition parties, parts of the media and the military.⁵² However, and somewhat ironically, while Browne is disparaged as a 'part-time Defence Secretary', the post of Scottish Secretary is often seen as a non-job, with the Scotland Office rendered obsolete by devolution.

SNP deputy leader Nicola Sturgeon, speaking to the Justice Committee on 26 February, was the most recent senior Scottish politician to call for its abolition, saying:

Although it is important that some of the functions of the Scotland Office continue to be carried out and it is important that reserved Government knows what devolved government is doing, I think that co-ordination could be carried out in different ways.⁵³

Meanwhile, SNP Westminster leader Angus Robertson branded the Office 'completely irrelevant'⁵⁴ in the wake of Scotland Minister David Cairns' unsuccessful rearguard campaign against Wendy Alexander's Constitutional Commission.⁵⁵ He also criticised their 'eerie silence' over Alexander's calls for an early referendum on Scottish independence.⁵⁶

In March, the Scotland Office formally responded to a freedom of information request for information on 'what the Secretary of State for Scotland has done to promote partnership between the Government and the Scottish Executive since the SNP took

⁵² Paun, A. (ed), *Devolution and the Centre Monitoring Report: January 2008*, at: www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Centre_Jan08.pdf

⁵³ House of Commons Justice Committee, oral and uncorrected evidence, *Devolution: a decade on*, 26 February 2008, Q288, at: <http://tinyurl.com/6ykvmc>

⁵⁴ Dinwoode, R. and M. Settle, 'Scotland Office rejects 'eerie silence' claim in row over call for referendum', *The Herald* (10 May 2008)

⁵⁵ Settle, M., 'We need to reclaim devolution at the heart of what we're doing', *The Herald* (12 February 2008)

⁵⁶ Dinwoode, R. and M. Settle, 'Scotland Office rejects 'eerie silence' claim in row over call for referendum', *The Herald* (10 May 2008)

charge in May 2007'.⁵⁷ In its response, the Scotland Office highlighted its responsibility for representing Scottish interests in Whitehall, overseeing the devolution settlement, and facilitating good relations between the two governments. It also noted its continuing role in the legislative process, particularly in relation to coordinating the passage of 'Sewel bills' (discussed in section 4.1 below) and delegated legislation under the Scotland Act 1998.

As guardian of the devolution settlement, the Scotland Office remains in charge of the running of Scottish Parliament elections, a row about which was kicked off by the problems of May 2007 and continues to rumble on. Chief Executive of the Electoral Reform Society Ken Ritchie has joined calls for responsibility for Holyrood elections to be transferred to the Parliament in Edinburgh. Ritchie said: 'We believe it would be an affront to democracy if the Westminster parliament...could impose its will...in this matter without having a very strong reason to do so'.⁵⁸ His comments echo the recommendations of the Gould Report into the administration of Scottish elections published last October⁵⁹ and those of Scottish Minister for Parliamentary Business Bruce Crawford MSP before the Justice Committee.⁶⁰ However, the Scottish Affairs Committee recently concluded that such a transfer of power was not justified.⁶¹ Meanwhile, the Scotland Office's is running its own consultation process on the electoral process before responding formally to the Gould report.⁶²

3.4 Wales Office

Wales Office Functions

The Wales Office retains a significant role in managing the Welsh devolution settlement, and in the Welsh law-making process, by virtue of the complex process through which additional legislative competences are conferred on the Welsh Assembly. Consequently the department has not faced such vociferous calls for its abolition as its Scottish counterpart.

⁵⁷ Scotland Office, FoI 100308 Partnership with Scottish Executive, 10 March 2008, at:

<http://tinyurl.com/4bposg>

⁵⁸ 'Scotland 'should run elections', BBC News (19 April 2008)

⁵⁹ Electoral Commission press release, 'Electoral Commission welcomes Ron Gould's Scottish elections report', 23 October 2007

⁶⁰ House of Commons Justice Committee, oral and uncorrected evidence, *Devolution: a decade on*, 26 February, Q243-244.

⁶¹ House of Commons Scottish Affairs Committee, *Experience of the Scottish Elections*, Fifth Report of Session 2007-08, HC 78, p.12, at: <http://tinyurl.com/6gvskn>

⁶² Scotland Office, *Sorting the Ballot: Improving the Elections to the Scottish Parliament, a consultation paper*, December 2007, at: <http://tinyurl.com/4twsmg>

In its legislative role, the Wales Office is responsible for liaising with other Whitehall Departments and the Welsh Assembly Government (WAG) over the transfer of legislative competence to the National Assembly via Legislative Competence Orders (LCOs) and primary legislation (see section 4.2 below). In addition, the department is running its own consultation exercise on the government's Draft Legislative Programme (DLP), which, somewhat surprisingly, does not ask any questions about the specific relevance of the DLP to Wales.⁶³

Wales Office Ministers

Following the resignation of Peter Hain MP in January 2008⁶⁴ Paul Murphy was appointed Secretary of State for Wales. Murphy, who previously occupied the position between 1999 and 2002, is known to lean towards the 'devo-sceptic' wing of Welsh Labour.⁶⁵ He originally opposed devolution altogether, and more recently expressed vocal opposition to the establishment of Labour's 'One Wales' governing coalition with Plaid Cymru. His appointment provoked some disquiet from other parties. The Welsh Liberal Democrat leader Mike German said: 'He comes with a bit of baggage. The Prime Minister has handed this man a veto over passing powers to the National Assembly. I think we are in for a bit of a sticky time'.⁶⁶

However, the new Secretary of State for Wales said that despite his prediction that there would be no referendum before 2011 he was not 'hostile' to devolution and that he was a 'realist who's got to make sure that the devolution settlement actually works for the people of Wales'.⁶⁷ In addition to his responsibility for managing the Welsh devolution settlement and legislative process, Murphy has been tasked with re-establishing the Joint Ministerial Committee structure for managing relations between the UK and three devolved governments, overseeing the British-Irish Council, and chairing the Cabinet Committee on Local Government and the Regions.⁶⁸ This set of

⁶³ Wales Office, 'Draft Legislative Programme', at: www.walesoffice.gov.uk/legislation/draft-legislative-programme, accessed on 1 May 2008.

⁶⁴ Peter Hain resigned from the Cabinet on 24 January after his belated declaration of £103,000 in donations to his campaign for the Labour Party deputy leadership was referred to the Metropolitan Police by the Electoral Commission. See 'Hain quits job to "clear name"', *BBC News* (24 January 2008) at: http://news.bbc.co.uk/1/hi/uk_politics/7206812.stm

⁶⁵ Withers, M., 'Paul Murphy's reality check for Welsh government', *Wales on Sunday* (24 February 2008)

⁶⁶ 'Lib Dem fears on Murphy return', *BBC News* (25 January 2008) at: <http://news.bbc.co.uk/go/pr/fr/-/1/hi/wales/7208459.stm>

⁶⁷ Withers, M., 'Paul Murphy's reality check for Welsh government', *Wales on Sunday* (24 February 2008)

⁶⁸ See Wales Office, *Annual Report 2008*, Cm 7404, p. 8, at: www.walesoffice.gov.uk/wp-content/uploads/2008/05/398692_cm-7404-english.pdf

responsibilities makes Murphy the closest thing in Whitehall to a Secretary of State for Devolution, a post which many believe should have been created years ago.⁶⁹

Murphy is supported in the Wales Office by parliamentary under-secretary Huw Irranca-Davies. In addition, Wayne David acts as Welsh whip in the Commons, and Baroness Morgan of Drefelin speaks on behalf of the Wales Office in the Lords.

St David's Day Debate

On 28 February the House of Commons conducted its annual St David's Day debate. It marked only the second time that Paul Murphy had spoken on the Commons floor as Secretary of State for Wales, since his reappointment to the post in January. In his contribution to the debate, the new Secretary of State emphasised the importance of the close relationship between Wales and the UK, and outlined his opposition to any reduction in Welsh MPs and also to any reduction in the status of Welsh MPs in Westminster. His speech signalled a staunch support for the status quo, in contrast to the desire of the Welsh Labour leader Rhodri Morgan to hold an early referendum on devolution of full legislative powers. He argued that 'there is nothing wrong in feeling comfortable with the current arrangements – comfortable with the fact that we can be British and Welsh.'⁷⁰ He also sought to move the debate away from constitutional questions and toward questions about the economy and public service provision.

3.5 Northern Ireland Office

With home rule in Northern Ireland successfully re-established, the major piece of unfinished business is the devolution of control of police and the justice system in the six counties to Stormont. As reported in the previous monitoring report, DUP MP David Simpson claimed in December that 'there would be no public confidence in any early move to devolve policing and justice powers'. However on 22 January the Millward Brown Ulster Survey was published, the results of which indicated significant public support from across the political spectrum for increased powers on policing and justice. The Secretary of State for Northern Ireland Shaun Woodward responded to the report by commenting that 'there are those who have been saying

⁶⁹ See Hazell, R., 'The Future of the Union'. Keynote Address to *Inside Devolution 2008* conference, 22 May 2008, p.5, at: www.ucl.ac.uk/constitution-unit/files/events/2008/Keynote_Address.pdf

⁷⁰ Paul Murphy, House of Commons Hansard, 28 February 2008. Col 1262-65.

there is no support for the transfer of powers – I am not sure what they are basing that on'.⁷¹

3 March saw the laying of the Draft Criminal Justice (Northern Ireland) Order 2008 before parliament. Consultation on the proposed draft order had begun on 8 November 2007. The Criminal Justice (NI) Order contains provisions for new sentencing powers for dangerous sexual and violent offenders, and would bring to an end automatic 50 per cent remission for all sentenced prisoners. It is hoped the order will be in the statute book by May 2008.

On 11 March the Northern Ireland Assembly's Assembly and Executive Review Committee report into the devolution of policing and criminal justice powers was published, titled *Devolving Policing and Justice in Northern Ireland: Indicative Legislative Proposals*. Shaun Woodward responded positively to this report:

Progress is being made on the devolution of policing and justice. Our polling makes it clear that the majority of people in Northern Ireland want this to happen and the Chief Constable, the person responsible for delivering policing on the ground, has also said that powers should be devolved...the people of Northern Ireland wish to see locally elected and accountable politicians taking decisions on policing and justice matters and the Government will fulfil its obligation to ensure that powers can be transferred as soon as the Assembly accepts responsibility for completing devolution.⁷²

Woodward reaffirmed his commitment to devolution of policing powers in a speech in New York on 14 March, saying: 'we know that the public feels increasingly confident, not only with the power-sharing Executive but also in their desire for politicians in Northern Ireland to take responsibility for law and order.'⁷³

On 5 March Minister of State Paul Goggins argued that a representation of 30 per cent Catholics in the Northern Ireland Police Service was achievable. He added 'The St Andrews Agreement makes it clear that the temporary 50:50 recruitment arrangements to the PSNI will lapse when the Government's target of 30% Catholic officers has been achieved. We are on course to reach this target by 2010/2011'.

⁷¹ Northern Ireland Office, 'Majority of public support devolution of policing and justice – Woodward', at: <http://tinyurl.com/5hfoeh>

⁷² Northern Ireland Office, 'Report on progress towards devolution of justice powers welcomed', 11 March 2008, at: <http://tinyurl.com/5ufntm>

⁷³ Northern Ireland Office, 'People want Policing powers devolved – Woodward', 14 March 2008, at: <http://tinyurl.com/5unxke>

- On 30 January the Lords ruled that the appointment of David Burrows to the Parades Commission in 2005 was unlawful.⁷⁴ On 18 March Shaun Woodward launched a competition to appoint a new Parades Commissioner in time for the summer parading season.
- On 5 March Shaun Woodward laid before parliament the third annual report of the operation of the Independent Monitoring Commission (IMC).

3.6 Department for Communities and Local Government

Hazel Blears' department will lead on the Community Empowerment, Housing and Economic Regeneration Bill outlined in May's DLP. The bill will build upon last year's publication of the Sub-national Economic Development and Regeneration Review (SNR);⁷⁵ and the department's ongoing consultation on the SNR in collaboration with the Department for Business, Enterprise and Regulatory Reform (BERR).

The DLP's proposals are designed to 'streamline regional governance' by changing the role of RDAs and to give citizens and local authorities limited new tools to engage with local issues and economic strategy respectively.⁷⁶ Specifically, RDAs would be empowered to become strategic planning bodies (an idea described in March's joint consultation document between the Department for Communities and Local Government (DCLG) and BERR as 'in line with devolved decision-making principles'). Citizens could gain some new rights including one 'to force a debate on specific local issues onto the council agenda'.⁷⁷ Local authorities could have to perform their own economic assessments and be required to sign off draft regional economic strategies⁷⁸. In addition, Multi-Area Agreements (MAAs) – produced by local councils to enable cooperation between them in the vacuum that followed the failure of elected regional assemblies – have been approved. The first formalisation of an MAA

⁷⁴ Northern Ireland Office, 'Statement by Shaun Woodward After Lords Ruling', 30 January 2008, at: <http://tinyurl.com/64hnp>

⁷⁵ *Review of Sub-national Economic Development and Regeneration*, 17 July 2007, at: www.tinyurl.com/4cup7g

⁷⁶ *Preparing Britain for the Future: The Government's Draft Legislative Programme 2008-9*, Cm 7372, 14 May 2008, pp. 66-67.

⁷⁷ Department for Communities and Local Government press release, 15 May 2008

⁷⁸ While the DLP refers only to 'ensuring local authorities and other partners help to shape priorities for the region', the first document of the joint consultation process with BERR that largely informs this proposed Bill states on page 6: 'A forum of local authority leaders, representing all local authorities in the region, would sign off the draft [regional economic] strategy'.

will occur in June. These issues are discussed in more detail in May 2008's *English Regions Devolution Monitoring Report*.⁷⁹

⁷⁹ See Burch, M., A. Harding and J. Rees, *Inching Towards a Solution to the Problem of England's 'Missing Middle': English Regions Devolution Monitoring Report: May 2008*, at: www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Regions_May08.pdf

4. Territorial Legislation and Motions

4.1 Scotland

Of the bills introduced by the UK government in the 2007-08 session, a total of nine stray into devolved areas in Scotland or amend the powers of the devolved institutions and therefore require the formal consent of the Scottish Parliament under the legislative consent ('Sewel') convention. Prior to their electoral victory of May 2007, the SNP had frequently expressed dissatisfaction with the use of legislative consent motions (LCMs) at Holyrood, suggesting that once in office the party might oppose any recourse to the convention. As recently as February 2007, the SNP Enterprise and Economy spokesperson Jim Mather explained his party's opposition to a particular LCM (relating to the Statistics and Registration Services Bill) in the following terms:

We oppose the motion on principle, on the basis that legislation that will materially affect Scotland should be scrutinised, debated and passed in Scotland, not at Westminster.⁸⁰

In practice the party never opposed all LCMs, many of which have only a minimal policy impact in devolved areas. And since entering office the nationalists have introduced or signalled an intent to introduce LCMs relating to all the nine bills where consent is required (with the SNP drawing somewhat ironic criticism from opposition [unionist] MSPs for excessive reliance on the 'mother parliament'.⁸¹) Although there has been some controversy in the Scottish Parliament about the new administration's use of the convention, at Westminster there has been little attention paid to the devolved elements of these bills.

The principal exception to this rule has been the Energy Bill. Although the Scottish Government agreed to move an LCM for the part of the bill that deals with offshore carbon dioxide storage, it refused the UK Government's request to extend to Scotland provisions relating to waste disposal from and decommissioning of new nuclear power plants, which ensure that companies which build nuclear plants bear these costs. This decision is in line with the SNP's opposition to the building of new nuclear power stations north of the border, and its intention to use devolved planning

⁸⁰ Jim Mather, Scottish Parliament Official Report, 1 February 2007, Col 31781

⁸¹ As discussed in Cairney, P., 'The Scottish Parliament', in McEwen, N. (ed), *Scotland Devolution Monitoring Report: May 2008*, section 2.6, at: www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Scotland_May08.pdf

powers to prevent this from occurring. UK Cabinet minister John Hutton told the House on 10 January that:

We invited Scottish Ministers to support a Sewel motion in the Scottish Parliament to facilitate the operation of the energy clauses of the Bill on a UK-wide basis. That would have been sensible, because the clauses are designed to ensure that there is no subsidy going into the costs of nuclear waste decommissioning and disposal. It is a missed opportunity.⁸²

During the second reading debates on the bill in the Houses of Commons (22 January) and Lords (21 May), regret was expressed by members of the Labour and Conservative parties that Scotland was to be left out of the relevant clauses of the bill, and, by implication, of plans for future nuclear power plant construction.⁸³ When pressed on the question, BERR Secretary John Hutton was unequivocal in stating that if the Scottish administration chose to oppose construction of such plants, “What will happen is that there will be no new nuclear power stations in Scotland.”⁸⁴ Despite the suggestions that the Scottish Constitutional Commission process might be a ‘two-way street’⁸⁵ – transferring powers from Holyrood to Westminster as well as vice versa – it appears that the UK government has ruled out any such move on this sensitive issue. No doubt there are some at Westminster who would favour amending the Scotland Act to remove the Scottish veto over nuclear power construction,⁸⁶ but the politician who would be happiest of all by such a move would surely be Alex Salmond, given the inevitable boost it would give to support for independence.

The full list of bills introduced in the 2007-08 session to which the legislative consent convention applies⁸⁷ is as follows:

- Climate Change Bill
- Criminal Justice and Immigration Bill
- Dormant Bank and Building Society Accounts Bill
- Education and Skills Bill
- Energy Bill

⁸² John Hutton, House of Commons Hansard, 10 January 2008, Col 524.

⁸³ See, inter alia, Adam Ingram, House of Commons Hansard, 22 January 2008, Cols 1388-91; and Baroness Carnegie, House of Lords Hansard, 21 May 2008, Cols 1501-03.

⁸⁴ John Hutton, House of Commons Hansard, 22 January 2008, Col 1374.

⁸⁵ ‘PM backs Scottish powers review’, *BBC News* (17 February), at: <http://tinyurl.com/5hsgn3>

⁸⁶ See Brady, B & E. Barnes, ‘Labour MPs plot to strip Salmond of nuclear veto powers’, *Scotland on Sunday* (27 May 2007)

- Health and Social Care Bill
- Housing and Regeneration Bill
- Pensions Bill
- Statute Law (Repeals) Bill [HL]

4.2 Wales⁸⁸

Legislative Competence Orders

The new system of Legislative Competence Orders (LCOs), through which WAG can petition Westminster for the devolution of specific legislative powers,⁸⁹ is in full swing. LCOs now operate in parallel with 'framework powers' in Acts of Parliament as means by which the powers of the Welsh Assembly can be extended.

This monitoring period saw the first ever LCO being passed, enabling the Welsh Assembly Government to introduce measures for educational provision for people with **additional learning needs**. The National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008 received Royal approval on 9 April. It was debated in the Commons by a delegated legislation committee on 16 March, leading to criticism from some Members that the 'historic' first LCO debate ought to have taken place on the floor of the House. David Jones (Conservative)⁹⁰ also drew attention to the dissatisfaction of the Welsh Affairs Committee about the information it had been provided by the Welsh Assembly Government about the case for an LCO and the use to which the new power would be put.⁹¹ On the other hand, there was cross-party support for the substance of the LCO, which enables WAG to introduce measures for special educational provision for people with additional learning needs. The order was approved without division by the committee, and then passed by the Commons without debate the following day. A debate on the LCO was also held in the Lords, with some discussion about the scope of the order and

⁸⁷ Full details of the legislative consent process and the current bills to which it applies can be found on the Scottish Parliament website at: www.scottish.parliament.uk/business/legConMem/index.htm.

⁸⁸ See also Navarro, M, 'The Legislative Process', in Wyn Jones, R. and R. Scully (eds.), *Wales Devolution Monitoring Report: May 2008*, at: www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Wales_May08.pdf

⁸⁹ While Assembly committees and ordinary Assembly Members may introduce draft LCOs to the Assembly, only the Welsh Assembly Government may put forward a proposal to be laid before Parliament.

⁹⁰ David Jones, Delegated Legislation Committee Debate on Draft National Assembly for Wales (Legislative Competence) (Education and Training) Order 2008, 18 March 2008, Cols 6-8.

⁹¹ See Welsh Affairs Committee, *Proposed Legislative Competence Orders in Council: Additional Learning Needs*, Second Report of Session 2007-08.

definitions used. As in the Commons the passage of the LCO was supported by Members from across the House and the order was passed without a vote.

Parliament was considering three further LCOs as it went into its mid-May Whitsun break. The Welsh Affairs Committee published a report on the **non-residential social care** LCO in March, following its first joint meeting with an Assembly committee to discuss an LCO.⁹² This report, discussed further in section 5.3, highlighted the fact that although WAG is required to set out in advance its plans for legislation under the competence order, once competence is granted, the Assembly is free to legislate as it wishes. In this case, the committee noted that while competence over non-residential social care was being sought by WAG in order to create a 'fair and consistent approach to charging' by local authorities for domiciliary care, the proposed LCO would enable the Assembly to abolish charging altogether, or to mandate charging for all, including children. This 'Goldilocks' dilemma of ensuring that LCOs are drafted to be neither too restrictive nor too permissive (but 'just right') in terms of the power granted to the Assembly is likely to dog the LCO process until it is superseded by the devolution of full law-making powers, which WAG hopes will occur by 2011. The committee is expected to report shortly on two other LCOs referred to Parliament – on **affordable housing** and **vulnerable children**.

In addition, an **environmental protection and waste management LCO** is yet to be introduced at Westminster despite having completed the scrutiny process in the Assembly. As explained in the most recent Wales Devolution Monitoring Report, it is being 'redrafted to reduce its scope and remedy the legal uncertainties it would currently create.'⁹³

The delay in introducing this draft order to Parliament prevented simultaneous scrutiny by Westminster and the Assembly, which had been intended for all orders. This follows the Welsh Affairs Committee's criticism of the delayed introduction of the first proposed LCO (on additional learning needs): in its annual report, published on 5 February 2008, the committee expressed 'regret' that 'the process did not work as anticipated, ruling out the possibility of working jointly with a committee of the

⁹² House of Commons Welsh Affairs Committee, *The proposed National Assembly for Wales (Legislative Competence) Order in the field of social welfare*, HC 257, Fourth Report of Session 2007-8

⁹³ Navarro, M., 'The Legislative Process', in Wyn Jones, R. and R. Scully (eds.), *Wales Devolution Monitoring Report: May 2008*, p. 24, at: <http://tinyurl.com/5l9xyo>

National Assembly for Wales'.⁹⁴ Although simultaneous referral did occur for the proposal on social welfare, the committee's report maintained that 'the Wales Office, the Welsh Assembly Government and the National Assembly for Wales should seek to coordinate the procedures more effectively in future'.⁹⁵

Framework Powers

As noted above, the second route by which the legislative competence of the Welsh Assembly is by the passage of Acts of Parliament containing 'framework powers'. During this monitoring period there were three bills in progress containing such provisions. This mechanism is advantageous in that it allows for gradual expansion of the Assembly's competence without adding additional items to the cluttered timetables of Westminster and the Assembly. However, the drawback may be that consideration of such bills is dominated by English concerns, since the devolution elements are marginal from a Westminster perspective.

The capacity for effective scrutiny of framework provisions may also be hampered if the framework clauses are significantly amended during the course of the legislative process. This has happened with the **Education and Skills Bill**, which received its third reading from the Commons on 13 May. At introduction, the bill contained clauses adding a new Matter 5.10A to the list of areas of competence of the Assembly contained in Schedule 5 to the Government of Wales Act 2006 (GOWA 2006):

The inspection of education or training provided (whether or not at a school) for children who are not above compulsory school age'.⁹⁶

By the time the bill completed its passage through the Commons, this clause had been significantly amended, broadening the powers being devolved. The amendments combined the new inspection powers with existing powers over further education, so that if the bill passes in its present form the Assembly will have the powers over the inspection of schools, 'relevant independent educational institutions', further education colleges and teacher training colleges.⁹⁷

⁹⁴ House of Commons Welsh Affairs Committee, *Work of the Committee in 2007*, HC 325, Third Report of Session 2007-8, para. 19

⁹⁵ House of Commons Welsh Affairs Committee, *The proposed National Assembly for Wales (Legislative Competence) Order in the field of social welfare*, 26 February 2008, HC 257 para. 75

⁹⁶ Education and Skills Bill as Introduced, Bill 12 07-08, clause 132, at: www.publications.parliament.uk/pa/cm200708/cmbills/012/2008012.pdf

⁹⁷ See Education and Skills Bill as brought from the Commons, HL Bill 58 07-08, clause 133, at: www.publications.parliament.uk/pa/ld200708/ldbills/058/2008058.pdf.

The amended bill would also add Matter 5.4A to Schedule 5, further allowing for the regulation of the independent educational sector.⁹⁸ While the powers being devolved are generally uncontroversial, it is far from ideal, from an accountability perspective, for important decisions about the legislative competence of the Assembly to be subject to repeated amendments in this way. Similar problems arose in relation to the **Planning Bill**, which completed its committee stage in the Commons in February 2008. The bill, which was flagged by the ministerial statement on the 'Government's Legislative Programme' as containing new framework powers⁹⁹ but did not on introduction, was then amended so that it did so after all. The bill as amended includes a provision to introduce Matters 18.1, 18.2 and 18.3 to Field 18 of Schedule 5. Together, these:

give the Assembly power to pass Measures about plans of the Welsh Ministers and local planning authorities concerning the development and use of land, subject to an exception regarding the status of such plans, and the review by local planning authorities of matters affecting their area's development.¹⁰⁰

The rigour of the LCO scrutiny procedure sharply contrasts with the limited scrutiny that can be afforded to potentially wide-ranging framework powers if they derive from late amendments to parliamentary bills. Welsh Affairs Committee Member David Jones drew the attention of Welsh Secretary Paul Murphy to this 'paradox' at a Committee hearing on 11 March:

LCOs receive a great deal of scrutiny both at the Assembly and before us, whereas framework powers, most recently in the Planning Bill, can really have very perfunctory scrutiny indeed'.¹⁰¹

Former Welsh First Minister Alun Michael MP (Labour) expressed specific concerns about the bill's late amendment at the same hearing, saying:

The content of the amendments was fine...[but the] process left out Parliament...[It] did not give an opportunity for MPs on the Committee, never mind those not on the Committee, to really understand what propositions were coming forward when the Welsh planning system is different from that in England. That is an example where it seems to me that a very much improved way of dealing with things is essential.¹⁰²

⁹⁸ See 'Welsh Assembly Government explanatory memorandum on the framework provisions for the National Assembly for Wales', 6 June 2008, at: <http://tinyurl.com/6jnx48>

⁹⁹ Peter Hain, House of Commons Hansard, 7 November 2007, Cols. 13WS-14WS

¹⁰⁰ House of Commons Research Paper 08/24 *Planning Bill: The Committee Stage*, 7 March 2008, available at: www.parliament.uk/commons/lib/research/rp2008/rp08-024.pdf

¹⁰¹ House of Commons Welsh Affairs Committee, oral and uncorrected evidence on *Work of the Wales Office*, 11 March 2008, Q8

¹⁰² Ibid Q7

In response, Paul Murphy maintained that these were ‘teething problems’ due to ‘getting used to a new system’. However, he conceded that these issues should be high on the agenda of ‘a review in a few months’ time’.¹⁰³

Finally, the **Local Transport Bill** proposes to add Matter 10.1, devolving the power to impose charges for users of major trunk roads in Wales.¹⁰⁴ By May 2008 the bill had completed its passage through the Lords and passed through the committee stage in the Commons. The framework provisions were unamended but did stir some controversy in committee, where the Conservatives voted against the new powers on the grounds that they granted tax-raising powers to the Assembly via the back door.¹⁰⁵

4.3 Northern Ireland

Seven bills from the Government’s legislative programme of 2007-08 that require the consent of the Northern Ireland Assembly were at various stages of the legislative process by the end of the monitoring period: Westminster’s Whitsun break.

The **Child Maintenance and Other Payments Bill** had passed through both Houses of Parliament by 7 May, and was expecting Royal Assent.¹⁰⁶ The Northern Ireland Executive Committee and the Assembly had also given their consent as required for Parliament to legislate to enable the exchange of information between the Northern Ireland Executive and the Child Maintenance and Enforcement Commission.¹⁰⁷

The **Dormant Bank and Building Society Accounts Bill** received its third reading in the House of Commons on 26 February and was introduced to the Lords the next day. As with Scotland the provisions subject to the legislative consent convention relate to the powers of the devolved executive to distribute sums released from dormant bank and building society accounts. It received legislative consent in principle from the Assembly in November 2007.¹⁰⁸

¹⁰³ Ibid Q7-8

¹⁰⁴ Local Transport Bill as brought from the Lords, 2008, HL Bill 67 07-08, clause 109, at: www.publications.parliament.uk/pa/cm200708/cmbills/067/2008067.pdf

¹⁰⁵ Public Bill Committee transcript of evidence, Local Transport Bill [Lords], 8 May 2008, Cols 374-77.

¹⁰⁶ Child Maintenance and Other Payments Bill as amended in Grand Committee, HL Bill 35 07-08, at: www.publications.parliament.uk/pa/ld200708/ldbills/035/2008035.pdf

¹⁰⁷ Northern Ireland Assembly, Motion 3.5 (22 October 2007)

¹⁰⁸ Northern Ireland Assembly, Motion 3.3 (27 November)

The **Climate Change Bill** received its third reading in the House of Lords on 31 March and was introduced to the Commons shortly thereafter. The bill confers a duty on the relevant Northern Ireland department to lay Government programmes promoting sustainable development before the Northern Ireland Assembly, setting out their objectives, proposals and time-scale for introduction. It received legislative consent in principle in December 2007.

The **Health and Social Care Bill** was read for the third time in the Commons on 18 February and reached committee stage in the Lords in April. The clauses relating to Northern Ireland deal with the work of the new Care Quality Commission in Northern Ireland; the regulation of health professions; the Health in Pregnancy Grant (including provision for making this grant an 'excepted matter' under the Northern Ireland Act 1998). It received consent in principle from the Assembly on 14 January.¹⁰⁹

The salient elements of the **Education and Skills Bill**, for which the consent of the Assembly was required and granted, relate to functions of the Qualifications and Curriculum Authority.¹¹⁰ It received its third reading in the Commons on 13 May.¹¹¹

The **Energy Bill** received its third reading in the Commons on 30 April, its second reading in the Lords on 21 May, and was endorsed in principle by the Assembly on 18 February.¹¹² When brought forward from the Commons it contained provisions relating to renewable obligations certificates in Northern Ireland and other related matters.¹¹³ Unlike in the case of Scotland (referred to in section 4.1 above), the Assembly gave its consent in principle to the bill's clauses relating to nuclear decommissioning.

The **Pensions Bill** was introduced to the Lords on 23 April having passed through the Commons.¹¹⁴ Parliament received consent in principle from the Assembly on 26 February to consider legislation in devolved fields to promote saving for retirement.¹¹⁵

¹⁰⁹ Northern Ireland Assembly, Motion 3.6 (10 December 2007)

¹¹⁰ Northern Ireland Assembly, Motion 2.2 (29 January)

¹¹¹ Education and Skills Bill as amended in Public Bill committee, Bill 81 07-08, at: www.publications.parliament.uk/pa/cm200708/cmbills/081/2008081.pdf

¹¹² Northern Ireland Assembly, Motion 2.2 (18 February)

¹¹³ The Energy Bill as brought from the Commons, HL Bill 52 54/3 (2 May), at: www.publications.parliament.uk/pa/ld200708/ldbills/052/2008052.pdf

¹¹⁴ The Pensions Bill as brought from the Commons, HL Bill 50 54/3 (23 April), at: www.publications.parliament.uk/pa/ld200708/ldbills/050/2008050.pdf

¹¹⁵ Northern Ireland Assembly, Motion 6.4 (26 February)

Meanwhile, the Assembly's own, unrelated Pensions Bill (Northern Ireland) became law on 11 February.

4.4 Early Day Motions

A number of Early Day Motions relating to devolution and territorial matters were tabled in this monitoring period, giving an indication of strength of feeling on the backbenches about particular issues. These included:

- Angus MacNeil (SNP) tabled EDM 887, which commended 'the spirit of cross-party consensus that has developed in the new Scotland since the national and local elections of May 2007'. It was signed by 6 MPs.
- Pete Wishart (SNP) tabled EDM 938, which called for negotiations 'between the Scottish and UK governments to secure Berwick-upon-Tweed's restoration as part of the nation of Scotland'. It was signed by 2 MPs.
- Angus MacNeil (SNP) tabled EDM 1085, which welcomed 'the abolition of the graduate endowment fee and the restoration of free education in Scotland', and called on the Westminster Government 'to follow the Scottish Government's example'. It was signed by 5 MPs.
- Nigel Evans (Conservative) tabled EDM 1135, which called on the Government 'to recognise the imbalance of prescription charges between Wales, Scotland and England, and to create the parity that ought to be present in a national health service'. It was signed by 23 MPs.
- Dawn Butler (Labour) tabled EDM 1196, which celebrated St. George's Day on 23 April and called on the Government to acknowledge the date. It was signed by 51 MPs. An amendment by Bob Spink calling for a national holiday was signed by 5 MPs.
- Andrew Rosindell (Conservative) tabled EDM 1253, which urged Members 'to support the campaign to establish 23 April as an annual public holiday' and the Government 'to mark the occasion by ensuring that the Cross of St. George flag is flown from all public buildings on this day'. The motion was signed by 41 MPs.

- Greg Mulholland (Liberal Democrat) tabled EDM 1429, which called for a specifically English National Anthem to be played before England matches during the forthcoming 2008 Rugby League World Cup. It was signed by 8 MPs.
- Ann McKechin (Labour) tabled EDM 1466, which expressed dismay over the decision by 'the SNP-led Scottish Executive, supported by the Tory group in the Scottish Parliament', not to fund school visits to the Holocaust Educational Trust using the £150,000 allocated to it by the Barnett Formula because of Westminster's financing of such visits. It was signed by 22 MPs. An amendment from Angus Robertson (SNP) defending the Scottish Government was signed by 7 MPs.

5. Territorial Committees at Westminster

5.1 Justice Committee

The Committee has continued hearing evidence in its inquiry on 'Devolution: A Decade On'. According to its chair, Alan Beith (Liberal Democrat), the aim is to examine 'how the system works as a whole, rather than in the individual countries in which devolved powers exist... [together with] questions around England'.¹¹⁶ This ambitious intention is reflected in the wide range of issues addressed in the seven evidence sessions held up till the end of April, the first of which was covered in the previous report.¹¹⁷

The second session, on 29 January, saw MPs question the Secretaries of State for Scotland and Wales (Des Browne and Paul Murphy respectively) as to how relevant their posts remained in the era of devolution. Des Browne said it was important that 'when issues at the high level of policy are discussed [in Cabinet] there is a Scottish representative there'. He also spoke of a role in bilateral relations between the Government and the Scottish administration, though Alan Beith was left 'wondering why they need you'.¹¹⁸

Paul Murphy echoed Des Browne on this issue, later specifying that the GOWA 2006 required that he maintain 'a good relationship in Wales with ministers' to ensure the smooth transfer of powers to the Assembly.¹¹⁹

Other subjects addressed included the Barnett Formula and the 'English Question', on neither of which issue did the two ministers concede that the current arrangements were of cause for concern.¹²⁰

In the third session, on 19 February, the Committee discussed the English Question in depth, with Kenneth Clarke MP, Lord Tyler and Professor Vernon Bogdanor, and

¹¹⁶ House of Commons Justice Committee, 26 February, oral and uncorrected evidence, *Devolution: A Decade On*, Q176, at <http://tinyurl.com/6ykvmc>

¹¹⁷ See Paun, A. (ed.), *Devolution and the Centre Monitoring Report: January 2008*, at: <http://tinyurl.com/3mt3el>

¹¹⁸ House of Commons Justice Committee, 29 January, oral and uncorrected evidence, *Devolution: A Decade On* Q57-59

¹¹⁹ *Ibid* Q94

¹²⁰ *Ibid* Q78-81

then with Michael Knowles (Campaign for an English Parliament) and Peter Facey (Unlock Democracy).

While Prof Bogdanor cautioned against zealously pursuing a constitutional solution, noting that the Union's survival requires 'English self-restraint', Kenneth Clarke insisted that English discontent must be addressed 'by some sensible constitutional minor change...to finish the business of devolution'.¹²¹

However, few proposed solutions attracted widespread support. Prof Bogdanor described an English Parliament as 'absurd', and both Lord Tyler and Prof Bogdanor were sceptical of the workability of the Conservatives' 'English votes on English laws' plans.¹²²

The fourth session, on 26 February, discussed whether the structure of intergovernmental relations met the needs of both the UK and the Scottish institutions. The process by which Westminster legislates for Scotland in devolved areas (the Sewel convention) was generally seen as operating smoothly, including by the SNP's Minister for Parliamentary Business Bruce Crawford.¹²³

Other witnesses cast doubt on the importance of the Scotland Office in managing bilateral relations. Sir John Elvidge (Permanent Secretary to the Scottish Executive) 'does not think of them as the key interlocutors' when approaching Whitehall to discuss the Scottish dimensions of proposed legislation. Nicola Sturgeon (Deputy First Minister, Scottish Government) described the Scotland Office as 'of a past era', claiming that its co-ordinating role could be better achieved by the Cabinet Office or through Joint Ministerial Committees (JMCs).¹²⁴

In the fifth session, on 13 March 2008, the committee addressed the issue of English local and regional governance arrangements. Professor John Mawson (Warwick Business School) argued that regional government could help to mitigate English resentment towards Scotland's constitutional position. Dr Sarah Ayres (University of Bristol) agreed, and said that there is no alternative 'to tackling the English Question [through] administrative decentralisation'. An alternative justification for regionalisation of governance was provided by Paul Watson, of Sunderland County

¹²¹ Ibid Q115-116

¹²² Ibid Q127-130

¹²³ Ibid Q179

¹²⁴ Ibid Q226 and Q288

Council, who argued that despite the failure of the North East Assembly referendum, there is consensus among councillors that 'there are some issues which can only sensibly be addressed on a regional [rather than local] basis'. He further argued for formalisation of existing loose regional cooperative arrangements among local authorities, as is occurring via the MAA process.¹²⁵

The sixth session, on 1 April, addressed the Barnett Formula. Giving evidence, Lord Barnett noted that the Formula is 'a population-based allocation of expenditure', and expressed exasperation with Gordon Brown, who 'for some strange reason thinks it is based on need'.¹²⁶

MPs suggested to Lord Barnett that the current grant system did have some redeeming qualities. Alun Michael spoke of 'some virtue in a simple formula', and Lord Barnett agreed. However, he rejected Dr Nick Palmer's contention that the discrepancy between Scottish and English spending will gradually diminish and disappear.¹²⁷

Lord Steel and Former Scottish First Minister Jack McConnell MSP were questioned in the seventh session. The committee asked whether fiscal devolution could be a solution to the shortcomings of the Barnett Formula. Lord Steel unambiguously thought it could, though he admitted: 'You are always going to have some equalising measure or accounting responsibility at a UK level for matters...[such as] foreign affairs [and] defence'.¹²⁸ McConnell, however, was wary of 'a position that effectively creates two different taxation regimes within the UK single market'.¹²⁹ The two witnesses similarly disagreed over whether responsibility for Holyrood elections should be devolved.¹³⁰

Further evidence sessions, including with the Secretary of State for Justice, are planned, and the Justice Committee aims to publish its final report before the summer recess.

¹²⁵ House of Commons Justice Committee, oral and uncorrected Evidence, *Devolution: a decade on*, 13 March 2008, Q310-336

¹²⁶ House of Commons Justice Committee, oral and uncorrected evidence, *Devolution: a decade on*, Thursday 1 April 2008, Q399-406

¹²⁷ Ibid Q453-455

¹²⁸ Q491

¹²⁹ Q523

¹³⁰ Q460 and Q510.

5.2 Scottish Affairs Select Committee¹³¹

Recent reports published by the committee demonstrate that it continues to interpret its remit to examine 'the expenditure, administration and policy of the Scotland Office'¹³² in a broad sense. In particular, the committee feels justified in conducting inquiries into primarily reserved policy areas such as defence, taxation and poverty reduction given the role of the Scotland Office in representing Scotland's interests in policy discussions and negotiations within the UK government.¹³³ The committee also has an understandable interest in intergovernmental relations, including a focus on what the effects of 'cohabitation' will be on the role of the Scotland Office and the committee itself. As noted in section 3, the Scotland Office may at some point be merged with the other territorial departments, which would presumably spell the demise of the Scottish Affairs Committee.

Child Poverty in Scotland

On 22 January the committee published a second report deriving from its major inquiry into poverty in Scotland, this one examining the success of measures to combat child poverty. It begins by noting that 'rates of child poverty in Scotland have reduced significantly' and that 'Scotland has performed better than the UK average in reducing child poverty', a success that it attributes both to 'unprecedented levels of investment and a strong political will that now appears to be shared by all'.¹³⁴

However, the committee was less convinced that the Scotland Office was maximising the benefits of this investment, questioning whether 'policy on poverty was "joined-up" either nationally or with the devolved administration in Scotland and Scottish local authorities'. It recommended that more needs to be done 'to ensure that policies [do] not conflict with each other'. The problems inherent in relying on the use of centralised, reserved powers in the absence of 'an integrated strategy' are demonstrated by the UK Government's current focus on providing tax credits and Welfare to Work programmes, which is argued to be 'more likely to benefit those just below the poverty line' than 'those families in the severest poverty'. In the same vein, 'the Government's efforts to raise incomes by making work pay' are being

¹³¹ Full details of all activities of the Scottish Affairs Committee can be found at: www.parliament.uk/parliamentary_committees/scottish_affairs_committee.cfm.

¹³² Scottish Affairs Committee, *Child Poverty in Scotland*, HC 277, Third Report of Session 2007-8, Preface

¹³³ Scottish Affairs Committee, *Work of the Committee in 2007*, HC 278, Fourth Report of Session 2007-8, p. 6 (para. 14)

¹³⁴ Scottish Affairs Committee, *Child Poverty in Scotland*, Third Report of Session 2007-8, HC 277 pp. 3-8 (para. 49, 81 and summary)

undermined by 'the high transitional costs experienced by parents entering the workplace', an area where devolved and local powers need to be used to solve problems such as 'inadequate childcare, lack of provision for disabilities or adverse employer attitudes'.¹³⁵

Government Response to Committee's Report on the Effects of Tax Increases on the Oil Industry

The Government's response to the committee's 2007 report on recent tax increases imposed upon the oil industry was published on 26 February 2008.

The earlier report had argued that while 'the fiscal regime is unlikely to be the most important factor driving investment decisions in major fields,... tax is clearly significant', and may be primarily a 'factor affecting investment in older, more marginal fields'. As such, 'there is a need to balance the return on investment and the return to the UK taxpayer'.¹³⁶ In response, the Government acknowledged there were 'twin objectives for the fiscal regime – to promote investment and production whilst striking the right balance between producers and consumers and ensuring a fair return for the UK taxpayer'.¹³⁷

The committee also stressed that any 'changes to the fiscal regime should aim to make the system simpler to administer'.¹³⁸ The Government response promised that the proposed package of reforms [set out in the December 2007 consultation document *Securing a sustainable future: a consultation on the North Sea fiscal regime*¹³⁹] 'will improve certainty and stability as well as helping to simplify the fiscal regime and reduce administrative burdens'.¹⁴⁰

5.3 Welsh Affairs Select Committee

As noted in previous monitoring reports, the Welsh Affairs Select Committee (WASC) is an unusual creature in Westminster terms in that it now combines classic select committee functions of holding government to account with a new responsibility for

¹³⁵ Ibid pp. 14-28 (para. 28, 38-39, 83)

¹³⁶ Scottish Affairs Committee, *Effects of Tax Increases on the Oil Industry: First Report of Session 2007-8*, HC 35, para.17-18

¹³⁷ Scottish Affairs Committee, *Effects of Tax Increases on the Oil Industry: Government Response to the Committee's First Report of Session 2007-8: First Special Report of Session 2007-8*, HC 376, para. 4

¹³⁸ Ibid para. 5

¹³⁹ Available at: www.hm-treasury.gov.uk/media/8/A/consult_northsea051207.pdf

¹⁴⁰ Scottish Affairs Committee, *Effects of tax increases on the oil industry: Government Response to the Committee's First Report of Session 2007-8*, First Special Report of Session 2007-8, HC 376, 26 February 2008, para. 5

scrutiny of one form of legislation – LCOs (discussed in section 4.2 above). Early 2008 saw WASC continue to actively pursue both these roles.

The committee's annual report noted that its 'role differs from that of many departmental select committees' in that the Wales Office, which it holds to account, is not a typical policy-making and spending department. Instead, the Wales Office plays a key role as intermediary between Whitehall and Cardiff, which is reflected in the committee's own remit which includes 'establishing and maintaining relations with the National Assembly for Wales on behalf of the House of Commons'. In addition, the committee asserts that 'scrutiny of Government policy is a core task', but interprets this broadly, such that their activities over the past year have covered the activities of the Home Office, DWP, BERR and the Border and Immigration Agency as well as the Wales Office.¹⁴¹

Legislative Scrutiny

On 5 March the committee published its report on 'The proposed National Assembly for Wales (Legislative Competence) Order in the Field of Social Welfare 2008'. The report deals with the second draft LCO to be put before Parliament, which will authorise the Assembly 'to legislate in respect of charges for non-residential social care provided or secured by local authorities', in order to set a maximum price for this service.¹⁴² The committee reached conclusions both on the content of the proposed LCO and the process by which it has been handled.

On the latter the committee was pleased to note that, unlike the Assembly's previous 'haphazard approach to processing proposals for LCOs', this latest draft LCO was sent to the Welsh Affairs Committee and the relevant National Assembly committee simultaneously, allowing the two to work together as intended on pre-legislative scrutiny. This included holding a joint meeting on 17 January. However, the committee noted with disappointment that Whitehall had yet to lay before Parliament other proposed LCOs that have already been scrutinised by the Assembly.¹⁴³

The committee expressed overall approval for the content of the proposal. It accepted that an LCO 'is the most appropriate way for the Welsh Assembly

¹⁴¹ Welsh Affairs Committee, *Work of the Committee in 2007*, HC 325, Third Report of Session 2007–08, pp. 3–4 (para. 3–6)

¹⁴² Welsh Affairs Committee, *The proposed National Assembly for Wales (Legislative Competence) Order in the Field of Social Welfare*, Fourth Report of Session 2007–8, HC 257, para. 11

¹⁴³ *Ibid* para. 8–10

Government to pursue its policy objectives', that the requested powers consistent and 'represent a "good fit" with existing and previously announced Welsh Government policy', and that it is consistent with the devolution settlement in so far as Excepted Matters 'will not impair upon its ability to enact the policies for which it seeks [these] powers'. As discussed in section 4.2, the committee also highlighted that the wording of the LCO meant that the Assembly would have the power to abolish or mandate charges for local authority care, as well as to set a maximum price, as it intends. This did not prevent the committee from giving its support to the LCO as it stood, though some amendments to the definitions used were recommended.¹⁴⁴

- This monitoring period also witnessed the publication of the brief government response to the committee's report on the first LCO on additional learning needs.¹⁴⁵ The committee's recommendation that the power devolved be extended to make provision for travel arrangements for people in higher education was accepted, though the proposal to use the World Health Organisation (WHO) definition of disability was not.
- As noted above, WASC has issued calls for evidence relating to the third and fourth LCOs to be referred to Parliament, relating to affordable housing and vulnerable children.

Executive and Policy Scrutiny

The two major inquiries being conducted by WASC during the period covered by this report are 'Globalisation and its Impact on Wales' and 'The Provision of Cross-Border Public Services for Wales'. Between January and May, the committee held a total of 11 evidence sessions as part of these inquiries.

The globalisation inquiry – which is structured around the four themes of employment, population, food and broadcasting – has now been running for 18 months, with a total of 29 evidence sessions held to date. The range of subjects touched upon includes: the promotion of investment into and trade from Wales; competition and supply chains in food production and retailing; the response of broadcasters to challenges arising from global media content proliferation; and Polish-Welsh relations. What

¹⁴⁴ Ibid para. 18-27, 77-92 and conclusions 1-16

¹⁴⁵ The committee's report is discussed in Paun, A (ed.), *Devolution and the Centre Monitoring Report: January 2008*, section 5.2.

useful or original conclusions the committee will be able to draw from the mass of evidence received remains to be seen.

The inquiry on cross-border issues, meanwhile, corresponds with the concern among some Welsh MPs that devolution may be leading to separatism, to the detriment of public services and voters in the border regions of both Wales and England. Hearings so far have uncovered evidence of problems near the border caused by diverging policies, particularly surrounding the Welsh Assembly's ambition to supply health care 'in-country', when, according to Tom Taylor (Chief Executive, Shrewsbury and Telford NHS Hospital Trust) 'Wales does not have the critical mass or geography for such an approach.'¹⁴⁶

The committee also held one meeting to discuss the 'Work of the Wales Office'. This session, held on 11 March, saw Paul Murphy (Secretary of State for Wales) questioned on his management of LCOs and framework powers, some key points of which debate were discussed in section 4.2 above. The minister also suggested that 'enlarging the work of the [dormant] Joint Ministerial Councils (JMCs)' would help, 'settle disputes' as territorial policies diverge since current mechanisms for relations between ministers were 'not sufficiently robust'.¹⁴⁷

Other topics raised at the hearing included David Jones MP's fear that 'the thrust of devolution at the moment...is to suck up powers from local government', Paul Murphy's defence of the Welsh Grand Committee, and a brief discussion on 'cross-border issues'. Paul Murphy said these should be dealt with using 'common sense and pragmatism' and that there was no 'reluctance on the part of the Welsh Assembly' to do so, despite David Jones' fears of about the Assembly government adopting an 'All Wales agenda'.¹⁴⁸

5.4 Northern Ireland Affairs Select Committee

In this monitoring period the Northern Ireland Affairs Select Committee has published two reports: the First Special Report into the *Northern Ireland Prison Service: Government Response to the Committees First Report of Session 2007-08*, and the Second Report into *The Work of the Committee in 2007*. In this second report the changing role of the committee is acknowledged:

¹⁴⁶ House of Commons Welsh Affairs Committee, oral and uncorrected evidence on *The Provision of Cross-Border Public Services*, Q81

¹⁴⁷ Ibid Q3-4

As a Committee we are of course delighted that responsibility for the majority of policy areas has been restored to a body which is directly accountable to the people of Northern Ireland. For us, however, this has meant a considerably reduced remit, with inevitable consequences for our ability to carry out the 'core tasks' set by the House for all departmentally related select committees.¹⁴⁹

An inquiry into *Policing and Criminal Justice in Northern Ireland* is still ongoing.

5.5 Regional Select Committees

Following the commitment to establish regional select committees in the Governance of Britain green paper in July 2007,¹⁵⁰ the detailed work on how to make this a reality was taken on by the Modernisation Committee. This committee held five oral evidence sessions on regional accountability between January and March, in which the merits of the establishment of regional select committees were discussed. In the fifth session, on 5 March, Hazel Blears, Secretary of State for Communities and Local Government, set out the case for regional committees, which is that there remains 'a fairly significant gap at regional level in terms of accountability...and scrutiny'. However, there remain many unresolved issues, including the form such bodies would take. Hazel Blears argued that 'some kind of hybrid that is a select committee with constraints' might be the way forward'¹⁵¹.

5.6 Territorial Grand Committees

On 26 March the Welsh Grand Committee met to consider the budget statement, holding a wide-ranging four-hour debate formally on the motion 'That the Committee has considered the matter of the Budget Statement and its implications for Wales'. The main debate was preceded by a half-hour oral question time with Paul Murphy, Secretary of State for Wales, and junior minister Huw Irranca-Davies. Among the issues raised was the likelihood of changes to the powers of the Assembly in Cardiff. In response to a question from Plaid MP Adam Price, Paul Murphy poured cold water on the idea of tax-raising powers being devolved:

My view is that there is not a case for tax-raising powers in Wales for two reasons. First, I do not think that everybody wants them. Secondly, the resource base in Wales is inevitably lower than that in Scotland.¹⁵²

¹⁴⁸ Ibid Q16-24

¹⁴⁹ Northern Ireland Affairs Committee, *Work of the Committee in 2007*, Second Report of 2007-8 Session, HC 286, p3 (para.2), at: <http://tinyurl.com/5d8l49>

¹⁵⁰ *The Governance of Britain*, Cm 1710, Ministry of Justice, 3 July 2007, at: <http://tinyurl.com/2hr4z6>

¹⁵¹ House of Commons Modernisation Committee, uncorrected oral evidence on *Regional Accountability*, 5 March 2008, Q144-166, at: <http://tinyurl.com/5bxdal>

¹⁵² Paul Murphy, Welsh Grand Committee, 26 March 2008, Cols 11-12.

The minister further suggested that amending the Barnett formula would be risky from a Welsh perspective as it could lead to a drop in spending. He also defended the decision not to release correspondence between the UK and Welsh Governments about the legislative process to his shadow, Cheryl Gillan MP. Other issues raised in the question period included introducing a right to bilingual juries (which the government is apparently actively considering), affordable housing in Wales and the coal compensation scheme.

- The Scottish and Northern Ireland Grand Committees, and the Regional Affairs Committee did not meet during the timeframe of this report.

5.7 Lords Constitution Committee

On 28 January the committee published its *Annual Report 2006-7*. It noted that it had conducted pre-legislative scrutiny on two Legislative Competence Orders under Section 95 of the GOWA 2006, and had cleared both as not raising matters of constitutional significance.¹⁵³

¹⁵³ House of Lords Constitution Committee, *Annual Report 2006-7*, HL 44, para. 22-23

6. Inter-Institutional Relations

6.1 Intergovernmental Relations

Intergovernmental relations have become far more susceptible to conflict – and far more interesting from a research perspective – since the electoral victory of the SNP, the formation of the Labour-Plaid coalition, and the resumption of devolution to Northern Ireland. Disagreements have arisen in recent months between the UK and Scottish governments on: the issue of nuclear power (as discussed in section 4.1); the size of the block grant to Scotland (section 3.2); control of Scottish Parliamentary elections (section 3.3); and the question of whether the Treasury or the Scottish Government should keep money that will be saved from Council Tax Benefit payments if the SNP succeeds in introducing a local income tax.¹⁵⁴ All these issues relate entirely or in part to reserved matters – as has been the case with other disputes, such as those over the siting of nuclear weapons in Scotland,¹⁵⁵ and the role of Scottish ministers in EU negotiations¹⁵⁶ – demonstrating the SNP's willingness to push at the boundaries of the devolution settlement whenever possible.

Relations between the UK and Welsh Governments are more cordial – unsurprisingly, given Labour's leadership of both. Key ongoing issues to be negotiated are the gradual transfer of legislative competence to the Assembly in Cardiff (section 4.2), the timing of a referendum on full legislative devolution (section 2.1) and the planned establishment of a commission to examine the funding of the Assembly, which the Treasury is far from enthusiastic about (section 3.2). As far as Northern Ireland is concerned, the major piece of business to be resolved is the transfer of control of policing and criminal justice, which the UK Government is seeking to accelerate and the DUP to delay.

¹⁵⁴ See Scott, D., 'Relations with Local Government' in McEwen, N. (ed.) *Scotland Devolution Monitoring Report: May 2008*, section 7.1, at: www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Scotland_May08.pdf.

¹⁵⁵ Gray, L., 'SNP Gathers forces to fight Trident replacement', *The Scotsman* (23 October 2007), at: <http://news.scotsman.com/topics.cfm?tid=373>

¹⁵⁶ Lynch, P., 'European and International Affairs' in C. Jeffery (ed.), *Scotland Devolution Monitoring Report*, January 2008, at: www.ucl.ac.uk/constitution-unit/files/research/devolution/dmr/Scotland_Jan08.pdf, p. 70.

6.2 Intergovernmental Structures

Joint Ministerial Committee

More than five years since its last meeting, the Joint Ministerial Committee is finally expected to meet in June in plenary form, bringing together the First and Deputy First Ministers of the three devolved territories with senior members of the UK Cabinet. The decision to resurrect this body was taken by the Prime Minister after repeated requests by First Minister Alex Salmond,¹⁵⁷ and apparent support from his Welsh and Northern Irish counterparts.¹⁵⁸ Salmond's enthusiasm for utilising this multilateral, formal mechanism for intergovernmental relations contrasts with the position of his predecessor Jack McConnell MSP, who recently told the Justice Committee that in 2002 the JMC structures 'did not just wither on the vine; a conscious decision was made to stop the JMCs meeting in order to facilitate and encourage a much stronger bilateral relationship.' However, he recognised that the changed political environment since 2007 may justify their reinstatement.¹⁵⁹ Responsibility for coordinating the JMC has been handed to Welsh Secretary Paul Murphy, while Justice Secretary Jack Straw is expected to chair the first meeting.

British-Irish Council

In the absence of JMC meetings, the British-Irish Council (BIC) was for many years the only official forum in which the UK and devolved governments met on a multilateral basis, along with representatives of the Irish, Manx, Jersey and Guernsey administrations. The tenth BIC summit was held on 14 February in Dublin, hosted by the Irish Government, and with the British Government represented by Welsh Secretary Paul Murphy.

The BIC, created as part of the 1998 Belfast Agreement, has the rather grand purpose of seeking 'to promote the harmonious and mutually beneficial development

¹⁵⁷ Dinwoodie, R., 'Salmond welcomes return of devolution roundtable', *The Herald* (5 March 2008), at: www.theherald.co.uk/politics/news/display.var.2093239.0.Salmond_welcomes_return_of_devolution_roundtable.php

¹⁵⁸ Alex Salmond told the Scottish Parliament that during the 14 February British-Irish Council summit he held a trilateral meeting with the First Ministers of Northern Ireland and Wales in which they 'reached a clear collective view on the importance of the joint ministerial committee and other formal mechanisms and the reinstatement of mechanisms that have fallen into abeyance' - Alex Salmond, Scottish Parliament Official Record, 21 February, col. 6426-7

¹⁵⁹ House of Commons Justice Committee, 22 April, oral and uncorrected evidence, *Devolution: A Decade On*, Q506, at: <http://tinyurl.com/3nyjkg>

of the totality of relationships among the peoples of these islands'.¹⁶⁰ Although criticised as a talking shop, it has significant symbolic value in demonstrating the cooperative approach taken by the UK and Irish governments over the future of Northern Ireland.

At the Dublin summit, the Council received an interim report from the Strategic Review instigated by the previous plenary summit, in Belfast in July 2007. This approved the progress towards the establishment of a standing BIC secretariat, and in particular 'the consensus that it should be a single, co-located model'.¹⁶¹ Such a development will help to secure the future of the Council as a permanent intergovernmental institution.

As part of the review, the Council also examined the remit of its various subsidiary 'work sectors' that operate in specific policy areas, and considered proposals for new sectors. The First Ministers of Wales, Northern Ireland and Scotland proposed that the BIC expand its work to include the promotion of cooperation over early years, child protection and energy policy respectively.

Beyond the summits, the BIC's sectoral work has continued in a range of policy areas, and three of its groups held ministerial meetings during the timeframe of this report. At the Environment Sectoral group's eighth meeting on 1 February in Bangor, Northern Ireland, matters discussed included climate change and renewable fuels.¹⁶² On 31 March, the Demography Group held its first formal ministerial meeting since its November 2006 establishment on the initiative of Jack McConnell MSP's Scottish Executive, which had a strong interest in tackling Scotland's declining population.¹⁶³ Finally, the Social Inclusion Group used its second ministerial meeting on 20 May to discuss, in particular, child poverty.¹⁶⁴

6.3 Interparliamentary Relations

Formal linkages between Westminster and the devolved legislatures remain minimal. The limited cooperation that occurs is generally conducted by the respective territorial select committees:

¹⁶⁰ *The Agreement: Agreement reached in the multi-party negotiations* [The Belfast Agreement], 10 April 1998, at: <http://cain.ulst.ac.uk/events/peace/docs/agreement.htm>, Strand 3, para 1.

¹⁶¹ Ibid

¹⁶² 'Eighth meeting of the British-Irish Council (Environment Sectoral Group)', British-Irish Council communiqué, 1 February 2008

¹⁶³ 'Ministerial Meeting of the Demography Group', British-Irish Council communiqué, 31 March 2008.

¹⁶⁴ 'Ministerial Meeting of the Social Inclusion Group', British-Irish Council communiqué, 20 May 2008

- As noted in section 4.2 and 5.3 above, WASC and the National Assembly for Wales Domiciliary Care LCO Committee held a joint meeting on 17 January to consider the proposed LCO in the field of social care. Further such formal cooperation between the two legislatures is expected to take place when future LCOs are under consideration.
- The Scottish Affairs Committee is responsible for maintaining relations with the Scottish Parliament on behalf of the House of Commons, but has not been involved in any formal cooperation with MSPs or Holyrood Committees in recent months.
- As part of its inquiry into the Northern Ireland prison service, the Northern Ireland Affairs Committee met with the Northern Ireland Assembly Committee for Health, Social Services and Public Safety to discuss arrangements for transferring responsibility for prison health care to the Assembly from Westminster.¹⁶⁵

¹⁶⁵ As noted in Northern Ireland Affairs Committee, *The Work of the Committee in 2007*, Second Report of Session 2007–08, HC 286, p. 7 (para. 22)