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Devolution and the Centre Monitoring Report

January 2008

Akash Paun (ed.) & Edward Turner

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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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Introduction

Never has the phrase that devolution is ‘a process not an event’ appeared so apt as during the four month period covered by this monitoring report (September – December 2007). In all three devolved territories there are almost no voices to be heard in favour of the constitutional status quo, and the debate is now about how rather than whether the powers and structures of the devolved bodies should be amended, and what future change to the territorial constitution will mean for the UK as a whole.

The SNP administration in Edinburgh and the Labour-Plaid coalition in Cardiff both have relatively clear visions for future constitutional reform. For its part, the British government appears to be struggling to define a coherent approach. Divisions within the Labour party are real, and perhaps widening, on issues such as whether the Scottish Parliament should gain additional powers or whether a referendum should be held by 2011 on devolving full primary legislative powers to Wales. As constitutional change can only be implemented at Westminster, at some point the British government will need to develop a clear policy on these and other burning questions. Gordon Brown’s Britishness agenda is unlikely to paper over the cracks. The Conservatives also face competing pressures, and are seeking a way to tap into English disquiet about the asymmetrical devolution settlement without undermining their cherished unionist credentials.

This publication, the third-from-last in the current series of reports, sets out to paint an up-to-date picture of devolution as viewed from the perspective of the centre of the United Kingdom. An overarching first chapter on ‘Monitoring the Union’ ties together the major developments of the period. The report then provides detailed discussions of devolution-related developments in the political parties, at Whitehall, in Westminster and in the interinstitutional linkages that underpin the functioning of the devolved UK.

*Akash Paun
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February 2008*

Chronology of Events: September to December 2007

2 September	Wales Office Annual Report published.
11 September	Ten year anniversary of Scottish devolution referendum.
16-20 September	Liberal Democrat conference held in Brighton
18 September	Ten year anniversary of Welsh devolution referendum marked by formal signing of <i>One Wales</i> coalition agreement by Labour First Minister Rhodri Morgan and deputy FM Ieuan Wyn Jones (Plaid Cymru).
23-27 September	Labour Party conference held in Bournemouth.
30 Sept-3 October	Conservative party conference held in Blackpool.
2 October	Joint Ministerial Committee (Europe) meeting held in London.
9 October	Treasury publishes <i>Pre-Budget Report and Comprehensive Spending Review</i> , setting out funding allocation for devolved governments, as well as Whitehall departments, for 2008-11 period.
23 October	Greater London Authority bill receives Royal Assent.
23 October	Publication of independent review of 2007 Scottish elections, commissioned by the Electoral Commission and compiled by Canadian elections expert Ron Gould.
30 October	Prorogation of parliament.
6 November	New parliamentary session opens. Queen's Speech sets out government's legislative programme for 2007-08.
6 November	Welsh Affairs Committee announces inquiry into the 'Provision of Cross Border Public Services for Wales'.
8 November	Northern Ireland Office (NIO) opens consultation process on the Draft Criminal Justice (NI) Order 2007.

- 13 November Scottish Affairs Committee takes evidence from the Electoral Commission and David Cairns, Minister of State, Scotland Office, as part of inquiry on 'The experience of the Scottish Elections'.
- 21 November House of Commons hold debate on the Barnett Formula in Westminster Hall.
- 30 November Scottish Affairs Committee publishes report on *Effects of tax increases on the oil industry*
- 4 December Lords Constitution Committee publishes report on *Scrutiny of Welsh Legislative Competence Orders*
- 6 December The three major UK-wide parties join forces in the Scottish Parliament, voting to create an independently-chaired Scottish Constitutional Commission to review devolution in Scotland.
- 7 December Welsh and Scottish First Ministers meet in Edinburgh, discussing the possibility of cooperative action.
- 12 December Northern Ireland Affairs Committee publishes report on *The Northern Ireland Prison Service*
- 13 December Welsh Affairs Committee announces inquiry into second proposed 'legislative competence order', which will devolve power to legislate in the area of domiciliary care.
- 17 December Welsh Affairs Committee publishes follow-up report on *Energy in Wales*
- 17 December Scottish Affairs Committee publishes report on *Poverty in Scotland*
- 17 December Publication of *Review of Tax Policy in Northern Ireland*
- 18 December Welsh Affairs Committee takes evidence from Secretary of State Peter Hain on *Wales Office Annual Report*.

- 21 December Welsh Affairs Committee publishes report on *Proposed Legislative Competence Orders in Council: Additional Learning Needs*.
- 23 December Media reports reveal that the leaders of the UK and Scottish governments have not spoken since August.
- 30 December First Minister Alex Salmond delivers his New Year's message and in it celebrates the fact that the Scottish government is no longer so dependent on Westminster 'to do things' for Scotland.

1. Monitoring the Union

As part of its commitment to constitutional reform the UK government continued, in the September to December 2007 period, to develop its interest in the themes of Britishness, citizenship, national identity and shared values, as set out in the *Governance of Britain* green paper in July.¹ In the autumn of 2007 the government confirmed plans for a Citizens' Summit to create a new British Statement of Values,² and a consultation process leading to a British Bill of Rights and Duties/Responsibilities,³ as well as setting up the promised Citizenship Review under Lord Goldsmith.⁴ The government's interest in this area reflects concerns about the rise in 'regional' nationalisms within the UK (particularly in Scotland), and the related potential for territorial conflict, as well as factors such as multiculturalism and political disengagement. The July green paper gave some insight into the government's motivations, speaking of 'a growing recognition of the need to clarify not just what it means to be British, but what it means to be the United Kingdom.'⁵

In December 2007, the Leader of the Opposition also weighed in to the debate as he sought to distance the Conservatives from English nationalism in favour of a rejuvenated unionist agenda. In this speech, David Cameron criticised Brown's Britishness approach: 'He [Gordon Brown] talks about values but Britishness isn't just about values – liberty, fair play, openness – are general, unspecific, almost universal'.⁶ Rather, 'Britishness is also about institutions, attachment to our monarchy, admiration for our armed forces, understanding of our history, recognising that our liberty is rooted in the rule of law and respect for parliament'.⁷

However, when it comes to concrete questions about reform of the institutional architecture of devolution, both major parties – at least at the UK level – have avoided making clear policy commitments. Despite the changed political configuration of the administrations in the devolved capitals, the British government has continued with politics as usual, thus far without any major hiccups. Thus,

¹ Ministry of Justice, *The Governance of Britain*, Cm 7170, July 2007, at: www.official-documents.gov.uk/document/cm71/7170/7170.pdf, especially chapter 4.

² See Gordon Brown, 'Speech to the National Council of Voluntary Organisations on politics', 3 September 2007, at: www.pm.gov.uk/output/Page13008.asp

³ See Jack Straw, 'Mackenzie-Stuart Lecture', 25 October 2007, at: www.justice.gov.uk/news/sp251007a.htm

⁴ Lord Goldsmith QC Citizenship Review, www.justice.gov.uk/reviews/citizenship.htm

⁵ Ministry of Justice, *The Governance of Britain*, op cit, para. 212.

⁶ David Cameron, 'Speech made outside Holyrood parliament', Edinburgh, 10 December 2007, at: www.scottishconservatives.com/news_press/news/david_cameron_speech.aspx

following the Queen's Speech on 6 November 2007 (see section 4), the first Sewel motion of the SNP era was passed, giving the Scottish Parliament's consent for Westminster to pass the Climate Change Bill. Three more bills in the Queen's Speech are expected to require Holyrood's consent, while eight will require the consent of the Northern Ireland Assembly. The gradual accretion of legislative competence by the National Assembly of Wales also continued, by means of two government bills and the first Legislative Competence Orders (LCOs). On 9 October, the government also published its Comprehensive Spending Review, setting out budget limits for the devolved administrations (and Whitehall departments) for the 2008-11 period (see section 3.2).

The spending review confirmed that public spending growth would slow, leading to inevitable criticisms from the devolved bodies (and particularly the nationalist administration in Edinburgh) about being 'squeezed' by Whitehall. And in all the devolved capitals, the future of the Barnett formula (used to determine the size of the devolved bodies' block grants) and the question of fiscal devolution is very much on the agenda. At Westminster too, tensions about the distribution of funds across the UK were laid bare, during a debate on the Barnett formula in Westminster Hall on 21 November (see section 3.2). Despite concerns on the backbenches of both main parties, however, neither Gordon Brown nor David Cameron committed to a review of the current arrangements.

Debates are also well under way on further reform of the constitutions of Scotland and Wales with the Scottish Government's 'national conversation' and the Welsh Assembly Government's 'All Wales Convention' being set up. Having made a splash with its August white paper, however, the SNP's national conversation has made limited impact, apparently because of funding difficulties and an understandable reluctance to divert resources from public services to pay for public consultation exercises and the like. The nationalists can, however, claim a significant victory in persuading the three unionist parties at Holyrood to unite behind Scottish Labour leader Wendy Alexander's call for an independently chaired commission to consider potential changes to the powers of the Scottish Parliament.⁸

⁷ David Cameron, 'Speech made outside Holyrood parliament', op cit.

⁸ Wendy Alexander, Motion S3M-976, 6 December 2007, see: <http://scottish.parliament.uk/business/businessBulletin/bb-07/bb-12-06a.htm>

Although the SNP opposed the motion – which explicitly ruled out the party’s desired goal of securing the position of Scotland outwith the United Kingdom – its amendment offered congratulations to the unionist parties for their changed position, which it suggested was a result of the national conversation having ‘reinvigorated the debate on Scotland’s constitutional future and caused the Labour, Conservative and Liberal Democrat parties to seek an agreement on more responsibilities for the Scottish Parliament’.⁹ The motion was passed by 76 votes to 46 and the commission is due to start work in the spring, and ‘will include the Westminster wing of the parties as well as private and public institutions’ in what Wendy Alexander believes is a ‘bold cross-party and cross-Border initiative to look again at how this place serves the interest of Scotland’.¹⁰ At Westminster, however, there remains a good deal of reluctance to countenance reform of the Scotland Act 1998.

In Wales, Labour and Plaid Cymru have been discussing the terms of reference for the All Wales Convention, which will be chaired by former diplomat Sir Emyr Jones Parry and is expected to set out the case for staging a referendum to turn the Assembly into a Welsh parliament. At Westminster the attitude of the Welsh Secretary has been ambivalent at best with Peter Hain saying he did not want to be ‘bounced into an early referendum’. He later clarified this, stating that ‘nothing has changed’ and that he was only concerned that ‘calling a premature referendum would produce a repeat of 1979’.¹¹ One factor bolstering calls for a referendum is public opinion. The Institute of Welsh Politics at the University of Wales, Aberystwyth found that popular support for a ‘Scottish-style parliament in Wales has nearly doubled in the 10 years since the country voted in favour of devolution’ from 23 per cent in 1997 to 43 per cent in September 2007.¹² The coalition in Cardiff is also committed to establishing an independent commission to ‘to review Assembly Funding and Finance, to include a study of the Barnett Formula, of tax-varying powers including borrowing powers’.¹³

⁹ Nicola Sturgeon Amendment S3M-976.2, 6 December 2007, see:

<http://scottish.parliament.uk/business/businessBulletin/bb-07/bb-12-06a.htm>

¹⁰ Louise Gray, ‘Parties join forces to bulldoze SNP’, *The Scotsman*, 7 December 2007, at:

<http://thescoatsman.scotsman.com/index.cfm?id=1908452007>

¹¹ Matt Withers, ‘Hain: I’m not polls apart’, *Western Mail*, 4 November 2007.

¹² Tomos Livingstone, ‘Parliament for Wales says poll’, *Western Mail*, 17 September 2007, at:

http://icwales.icnetwork.co.uk/news/politics-news/tm_headline=parliament-for-wales-says-poll&method=full&objectid=19800292&siteid=50082-name_page.html

¹³ 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_oneyales.pdf, p. 6.

In Northern Ireland, the major piece of unfinished business relates to the devolution of police and criminal justice powers. Provision for the transfer of these sensitive policy areas was made in the St Andrews' Agreement (Northern Ireland) Act 2006, but while unionists remain unconvinced at the commitment of Sinn Fein to the criminal justice system, the transfer will not go ahead.

England remains the 'gaping hole' in the devolution settlement,¹⁴ with the government opposed to creating a separate English forum at Westminster (let alone a separate English Parliament). There are also no plans for to resurrect the vision of elected regional governance in England, outside of London (where further powers were transferred by means of the Greater London Authority Act 2007), which was rejected in the 2004 North East referendum. Despite firm commitments, the government has also yet to create regional select committees in the House of Commons. The Conservatives have continued to keep the West Lothian Question on the agenda, albeit in a low-key way. The latest proposals (discussed in section 2.2) are for an English Grand Committee to which 'England-only' legislation could be referred for part of the legislative process. The party leadership has yet to make concrete commitments however.

¹⁴ Robert Hazell, 'The English Question', *Publius*, Vol. 36 (2006), 37-56.

2. Political Parties

2.1 Labour

As discussed above, strengthening the Union and British national identity is a major theme of Gordon Brown's agenda. This was reiterated in his first party conference speech as Prime Minister in September, when he discussed the crises that marked the first months of his tenure:

As we saw again this summer there is no Scotland-only, no Wales-only, no England-only answer to the spread of disease or to terrorist attacks that can strike at any time, anywhere in any part of our country. And sharing this same small island, we will meet our environmental, economic and security challenges not by splitting apart but when we as Great Britain stand united together.¹⁵

This unionist rhetoric stands, to some extent, in contrast with the line taken by the Scottish and Welsh Labour Parties. In Edinburgh, new Labour leader Wendy Alexander was the driving force behind the move to create a Scottish Constitutional Commission to consider further devolution, including of fiscal powers. This move caused some consternation among the Labour leadership at Westminster – whose position has long been that the 1998 settlement should not be reopened¹⁶ – despite the careful phrasing of Alexander's parliamentary motion, which emphasised that cementing the Union would be an objective of the commission. According to the motion, the full remit of the new body would be:

To review the provisions of the Scotland Act 1998 in the light of experience and to recommend any changes to the present constitutional arrangements that would enable the Scottish Parliament to better serve the people of Scotland, that would improve the financial accountability of the Scottish Parliament and that would continue to secure the position of Scotland within the United Kingdom.¹⁷

The period covered by this report also revealed the continuing tensions in the Labour Party about Welsh devolution – and in particular on holding an early referendum on full primary legislative powers for the National Assembly for Wales. In late October,

¹⁵ See Gordon Brown's Labour party conference speech 2007, at: www.labour.org.uk/conference/brown_speech

¹⁶ In August 2007, for instance, Secretary of State for Scotland Des Browne argued that additional powers for the Scottish Parliament were unnecessary on the grounds that 'The majority of people in Scotland don't think it's a constitutional debate that Scotland needs, but politicians making the best of what they have.' In: Severin Carrell, 'Holyrood ploy by Brown to head off independence threat', *The Guardian*, 14 August 2007.

Welsh Secretary Peter Hain alarmed Assembly colleagues by publicly expressing his doubt about the need for a referendum and the likelihood of a yes vote. Indeed, Hain said that there was 'no consensus' on a vote and that he could not see it happening in 'this Assembly term'.¹⁸ This admission came at the same time as former UN ambassador Sir Emyr Jones Parry was appointed to head the All Wales Convention, which is tasked with laying the ground for a successful referendum. Peter Hain subsequently modified his comments after threats from Plaid Cymru to withdraw from the coalition by saying that 'we're proceeding as laid out in *One Wales* to convene a joint Labour Plaid MP and AM group to take forward preparations for a convention'.¹⁹ Following the Queen's speech in November, Hain was then at pains to underline the occasion as a 'coming of age for devolution' and a 'huge achievement' since the government's legislative programme would create 'nine new areas in which the Assembly Government will have full law-making powers' (discussed further in section 4.2).

Also at party conference, Secretary of State for Northern Ireland Shaun Woodward delivered a congratulatory record of how Labour has helped to bring about power-sharing in the province.²⁰ Woodward emphasised that devolution now had to move into a 'second stage', as agreed at the St Andrews Agreement, which meant devolving police and criminal justice to Stormont. Woodward painted an optimistic future as he said that steps were already under way in this process following Sinn Fein's decision to join the policing board, and First Minister Ian Paisley's conciliatory approach to relations with the Republic of Ireland.²¹

2.2 Conservatives

To coincide with the 300th anniversary of the Union the Conservative conference fringe held a debate on the 'State of the Union' where David Mundell MP, Nick Bourne AM and Malcolm Rifkind MP discussed possible solutions to the West Lothian Question. Rifkind – a former Scottish Secretary – used the occasion to set out his 'East Lothian Answer' (so-called because Rifkind hails from Edinburgh), according to which an English Grand Committee would be created to deal with

¹⁷ Wendy Alexander, Motion S3M-976, 6 December 2007, op cit.

¹⁸ See Tomos Livingstone, 'Early referendum for parliament would fail', *Western Mail*, 29 October 2007.

¹⁹ See Tomos Livingstone, 'Hain bounces back to weaken Plaid's pull out threat', *Western Mail*, 6 November 2007.

²⁰ See Shaun Woodward, Labour Party conference 2007 speech, at www.labour.org.uk/conference/shaun_woodward_speech

²¹ Ibid

English only affairs.²² This approach could avoid some of the critiques levelled at the 'English votes for English laws' idea as it would not formally undermine the principles of equality amongst all MPs and sovereignty of the House as a whole. Rather, it would rely on a convention developing that decisions of the new English body would not be overturned using non-English votes in the chamber as a whole. Serious problems remain, however, with the questions of whether English-only matters can in fact be distinguished without controversy, and how a government could continue in office if it was unable to pass legislation in key areas such as health and education.

At party conference Nick Herbert, Shadow Secretary State for Justice, made the case in favour of reform, criticising the devolution settlement for having 'fuelled the flames of nationalism' by not resolving the West Lothian Question. The answer, for Herbert, is to 're-balance our constitution to strengthen the Union by ensuring that English Members of Parliament have the decisive say over English laws.'²³

Party leader David Cameron, however, is cautious about the party being tarred with an English nationalist brush. In his December Edinburgh speech he vowed to fight the 'ugly strain of separation seeping through the Union flag' and ensure that 'the Union comes first' in the party.²⁴ Cameron believes that the 'future of the Union is looking more fragile, more threatened than at any time in recent history' because of SNP tactics that take the easy option and seek to 'blame your neighbours' thus stirring up English nationalism and endangering the Union. For Cameron 'what we should be doing is blaming Labour' because it is 'not because of the Union that you [Scotland] are being held back' rather 'it is because of the Labour government'.²⁵ David Cameron also stressed that 'when it comes to the rise of separatist sentiment, some would seek to blame constitutional and economic arrangements. I do not believe this represents an adequate explanation: after all, issues like the West Lothian question and the Barnett formula have been debated in one form or another for decades' before he added that 'it does not mean for one second that we can afford to ignore them today'.²⁶ The mixed messages emanating from the Tories suggest that a Conservative government would tread carefully, perhaps doing nothing more than creating an English 'talking shop' that takes no substantive

²² Conservative conference fringe programme 2007, at: www.conservatives.com/pdf/CCHbookFLMonday.pdf

²³ Nick Herbert, 'Time to repair our broken politics', Conservative Party conference 2007, 2 October, at: www.conservatives.com/tile.do?def=conference.2007.news.story.page&obj_id=139318&speeches=1

²⁴ David Cameron, 'Speech made outside Holyrood parliament', op cit.

²⁵ David Cameron, 'Speech made outside Holyrood parliament', op cit.

decisions. After all, an incoming Conservative administration would – unless Parliament was hung – enjoy a UK majority and therefore have little need to defend its English legislation against Scottish and Welsh interference.

Meanwhile, the deputy leader of the Conservatives in the Scottish Parliament, Murdo Fraser, submitted a cautionary piece on Conservativehome.com (a conservative supporter's website) warning that the current 'English backlash' against Scottish devolution is playing into the hands of the Scottish separatists.²⁷ Mr Fraser stated that 'a Conservative Party committed to the principle of localism must be a champion of devolution, and set itself the task of sorting out the mess that Labour have created' He suggested that the end point of this constitutional chess game could be a federal, or quasi-federal, United Kingdom.²⁸ Fraser's position appears to reflect the thinking of the Scottish Conservative group as a whole, given the party's support for Wendy Alexander's proposed commission to review devolution in Scotland.

2.3 Liberal Democrats

Despite the party's strong support for further reform of the devolution settlement little was said on the matter at the party's national conference, which was held from the 16-20 September in Brighton. However, then-leader Sir Menzies Campbell did reiterate his party's support for devolution of further powers to the Scottish Parliament;

In Scotland the Liberal Democrats have campaigned consistently for more powers for the Scottish Parliament. Just yesterday, Nicol Stephen met the Labour and Conservative leaders in Scotland to discuss how devolution might be strengthened. But how those powers would be used would – I can tell you – be a matter for vigorous debate between the parties.²⁹

As noted above, developments in the Conservative and Labour parties have raised the likelihood that these aspirations will be realised in the near future, though it also undermines the distinctiveness of the party's policy platform. Similarly, in Wales, the Liberal Democrats back the Labour-Plaid plan for a referendum on granting the Assembly primary legislative powers, but having ruled themselves out of government

²⁶ David Cameron, 'Speech made outside Holyrood parliament', op cit.

²⁷ Murdo Fraser MSP, 'We must not allow nationalists to drive England and Scotland apart', 27 October 2007, at: www.directdemocracy.co.uk/display_page.asp?section=analysis&id=13

²⁸ Murdo Fraser MSP, 'We must not allow nationalists to drive England and Scotland apart', op cit.

²⁹ Sir Menzies Campbell, speech made to Liberal Democrat conference 2007, Brighton, 21 September 2007, at: www.libdems.org.uk/conference/brighton-2007-menzies-campbell-leaders-speech-part-2-of-3.7750.html

they have little ability to influence the timing of this, nor the operation of the planned commission to investigate the funding of the Welsh Assembly.

At its conference, the party set out its vision for subnational governance in England. A motion by Liberal Democrat Communities and Local Government spokesperson Andrew Stunell committed the party to a scrapping of national targets for local councils, a move to proportional representation (in the form of STV) for local elections, and a greater involvement of residents in local decision-making. The party also kept alive the prospect of directly-elected regional assemblies ‘in those regions that want it’ as the assemblies would take powers and functions away from central government’.³⁰

Nick Clegg was elected party leader on 18 December after a leadership campaign contest with Chris Huhne during which both men set out their stall regarding constitutional reform. Huhne was the more vocal in addressing the West Lothian Question and although he did not back Tory proposals for an English Grand Committee at Westminster he did declare that ‘the “anomaly” that allows Scots MPs to vote on English matters — but not Scottish issues devolved to the Scottish Parliament — must be resolved’. Huhne, in line with his party's policy, believes that this anomaly should be tackled as part of a wider, constitutional settlement.³¹

³⁰ Liberal Democrat Conference 2007, ‘The Power to be Different’, Liberal Democrat conference September 2007; www.libdems.org.uk/news/whitehall-targets-for-local-government-should-be-scrapped-stunell.13162.html

³¹ James Kirkup, ‘Lib Dems in favour of excluding Scots MPs’, *The Daily Telegraph*, 30 October 2007, at: www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/10/30/ncameron230.xml

3. Devolution and Whitehall

3.1 Ministry of Justice

The new Ministry of Justice is the lead department for the government's programme of constitutional renewal as outlined in the *Governance of Britain* green paper, published in July 2007.³² This agenda does not directly address questions of subnational governance, with questions about the future development of devolution left largely to the three territorial departments.

Partly in response to the threat of emergent nationalism in the different territories of the UK, Gordon Brown has made the promotion of British values and citizenship a major theme of his premiership. In policy terms, this is expected to lead to a Citizens' Summit on a 'British statement of values' in Spring/Summer 2008. Further down the line the intention is to craft a fully-fledged British Bill of Rights to complement the existing Human Rights Act.

In front of the Liaison committee, the Prime Minister was questioned about the role of the Scottish Parliament in the process in the following exchange:

Q44 Mr Doran: Prime Minister, the Green Paper acknowledges the position of the devolved administrations and in some areas it is quite clear, for example, a Bill of Rights or new powers for local authorities, that in the case particularly of Scotland there would need to be legislation, so there would need to be agreement between the Westminster Parliament and the Scottish Parliament on some laws. Can you say a little bit more about the process that you envisage in that debate and, in particular, if we look at the situation at the moment, there is no guarantee that agreement could be reached. I may be wrong about that. Could you say a little about how your goal of a shared national purpose for all the people of the UK would look if we could not reach agreement with the Scottish Executive and people in some parts of the UK had different rights from people in other parts of the UK?

Mr Brown: This is a United Kingdom constitution and the powers that are devolved are powers that are actually devolved by Parliament to the Scottish Parliament and there are areas where it is the right of the Westminster Parliament to legislate and it is not within the power of the Scottish Parliament to legislate. I think sometimes people have

³² Akash Paun (ed) and Rene Holbach, *Devolution and the Centre Monitoring Report*, September 2007, at: www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Centre_Sept07.pdf

forgotten that this is devolution. It is not a form of federalism; it is a form of devolution.

Although somewhat vague, the PM's response implied that the devolved bodies would play no formal role in the process leading to a British statement of values or bill of rights, which might create an opportunity for debates to develop outside England about distinct Scottish or Welsh values and rights,³³ just as Northern Ireland is already on the path to its own Bill of Rights.³⁴

3.2 HM Treasury

Comprehensive Spending Review

On 9 October the Treasury published the *Pre-Budget Report and Comprehensive Spending Review*, setting out departmental budgets for the 2008-11 period.³⁵ Even before the details were released, Alex Salmond had attacked the new spending limits for Scotland as 'lousy', claiming that an 'increase of around 1.6 per cent a year would be a massive reduction compared with recent years'.³⁶ As it turned out the Scottish Parliament budget will rise by 1.8 per cent in real terms over the next three years. Thus the Treasury announced that 'spending will be higher than in 2007-08 by £1.2bn in 2008-09, £2.3bn in 2009-10 and £3.7bn in 2010-2011, a total increase of £7.2bn'.³⁷ There were also reports that the SNP administration had succeeded in negotiating the release of £1bn of Scottish funds which had been 'banked' with the Treasury as a result of underspending by the previous Labour-LibDem administration.³⁸

As for Wales, the Treasury announced that the funding allocation for its devolved institutions will rise at an annual rate of 2.4 per cent in real terms over the next three years: a total increase of £4.3bn.³⁹ And in Northern Ireland, Treasury figures indicate

³³ This point was made at a Constitution Unit seminar on 30 November 2007 in London. See: www.ucl.ac.uk/constitution-unit/news/report8.htm.

³⁴ See the Bill of Rights in Northern Ireland website at: www.borini.info.

³⁵ HM Treasury, 2007 Pre-Budget Report and Comprehensive Spending Review, 9 October 2007, at: www.hm-treasury.gov.uk/pbr_csr/report/pbr_csr07_repindex.cfm

³⁶ Eddie Barnes, SNP attacks 'lousy' grant to Scotland, *Scotland on Sunday*, 7 October 2007 at: <http://scotlandonsunday.scotsman.com/politics.cfm?id=1600982007>

³⁷ HM Treasury regional press notice for Scotland, '2007 Pre-Budget Report and Comprehensive Spending Review', 9 October 2007 at: www.hm-treasury.gov.uk/media/0/2/pbr_csr07_regionalpnscotland.pdf

³⁸ Eddie Barnes, SNP attacks 'lousy' grant to Scotland, *Scotland on Sunday*, 7 October 2007 at: <http://scotlandonsunday.scotsman.com/politics.cfm?id=1600982007>

³⁹ HM Treasury regional press notice for Wales, '2007 Pre-Budget Report and Comprehensive Spending Review', 9 October 2007 at: www.hm-treasury.gov.uk/media/3/4/pbr_csr07_regionalpnwales.pdf

annual spending growth of 1.7 per cent in real terms up until 2011, representing a total increase of £2.3bn.⁴⁰

Barnett Formula Debate

With developments in Edinburgh and Cardiff (discussed in section 1) opening up the Pandora's Box of territorial finance, a debate was held in Westminster Hall on 23 November 2007 on the Barnett formula, the basis on which the Treasury calculates the budgets of the devolved bodies in Scotland, Wales and Northern Ireland. In this debate, English concerns at the uneven distribution of public spending were laid bare, including on the government backbenches. Thus Graham Stringer, Labour MP for Manchester Blackley and the sponsor of the debate, stressed how the English regions suffer a 'double whammy' from the formula as 'first they do not get the same level of funding and, secondly, they have less immediate control over many of the services that the Welsh assembly and Scottish parliament control away from Westminster'.⁴¹ Stringer called for 'a fairer distribution of public money' from the centre.⁴² An example cited by Stringer of the unfairness of the system was that although transport is underfunded in the North of England, spending on the Cross Rail project in London will generate extra funding for the devolved governments (under the Barnett formula) rather than supporting tram projects in Leeds or Liverpool.⁴³

Another Labour MP, George Howarth, went one further than Stringer, describing a 'triple whammy' that also includes the fact that 'there are huge disparities between English regions'.⁴⁴ A third Labour MP representing a northern constituency, Hugh Bayley, underlined that the formula was 'a short term fix' from the mid 1970's which 'may have made sense since then but is no longer appropriate',⁴⁵ and one that had 'been disowned by Joel Barnett himself'.⁴⁶ Bayley then illustrated the unfairness of the formula by citing how his region suffers to the extent that 'people living in Yorkshire receive £1,400 less per year than people living in Scotland'.⁴⁷ Derek Wyatt,

⁴⁰ HM Treasury regional press notice for Northern Ireland, '2007 Pre-Budget Report and Comprehensive Spending Review', 9 October 2007 at: www.hm-treasury.gov.uk/media/2/D/pbr_csr07_regionalpnnorthernireland.pdf

⁴¹ HC Deb, 21 November 2007, Column 146 WH.

⁴² HC Deb, 21 November 2007, Column 145 WH.

⁴³ HC Deb, 21 November 2007, Column 147 WH.

⁴⁴ HC Deb, 21 November 2007, Column 147 WH.

⁴⁵ HC Deb, 21 November 2007, Column 155 WH.

⁴⁶ HC Deb, 21 November 2007, Column 155 WH.

⁴⁷ HC Deb, 21 November 2007, Column 155 WH.

meanwhile, reiterated his call (first made in 2001) for a cross party group of MPs and Lords to review the formula.⁴⁸

The Government's response came from the Treasury Minister, Angela Eagle MP, who admitted that 'no formula is perfect or above criticism'⁴⁹ but argued that 'the longevity of the Barnett formula is a tribute to its effectiveness', and that among its 'substantial advantages' were that it avoids the need for 'detailed, line by line negotiations between treasury ministers and their counterparts in Scotland, Wales, Northern Ireland during public spending reviews'. Eagle further asserted that

The Barnett formula has produced distributions of public funds over the period since it was introduced that have been perceived as generally fair and broadly acceptable.⁵⁰

In Prime Minister's Questions on the same day, Gordon Brown failed to shed any additional light on the government's position on devolution finance. Asked by Ronnie Campbell (Labour, Blyth Valley) why the Barnett formula could not be applied to the English regions, Brown responded:

The Barnett Formula is for the whole of the United Kingdom. It is not for one part of the UK. It covers all areas of the United Kingdom, and the formula is based on the needs of each different part.⁵¹

The Conservative line on Barnett reform also hardly shines with clarity. The Shadow Chief Secretary to the Treasury Philip Hammond explained that

We are not considering changes to the Barnett formula, but we recognise a growing body of opinion that questions the settlement...It is legitimate to ask whether the formula, which has served the UK well, is best suited to dealing with the distribution of public spending in the future.⁵²

In his Edinburgh speech, David Cameron also touched upon the issue, stating that the party would 'seek answers to any unfairness in the Union' but avoid leaping on the 'Barnett formula bandwagon' because to do so would be to 'exploit these matters and foster a sense of English nationalism'.⁵³

⁴⁸ HC Deb, 21 November 2007, Column 152 WH.

⁴⁹ HC Deb, 21 November 2007, Column 166-67 WH.

⁵⁰ HC Deb, 21 November 2007, Column 166-67 WH.

⁵¹ HC Deb, 21 November 2007, Column 1186.

⁵² HC Deb, 21 November 2007, Column 165WH.

⁵³ David Cameron, 'Speech made outside Holyrood parliament', op cit.

On behalf of the Liberal Democrats Lembit Opik advocated a fairer means of distributing funds to the devolved bodies by replacing the Barnett formula with a needs-based approach,⁵⁴ a position also supported by Plaid Cymru. The SNP, of course, favours full independence and holds to the position that Scotland does not receive a disproportionate share of public spending under the current arrangements.

Varney Review

The Treasury-commissioned Varney review of tax in Northern Ireland was published during this monitoring period. Sir David Varney had been asked by the government to investigate the case for reducing corporation tax in Northern Ireland to the lower level imposed in the Republic of Ireland. Varney concluded that 'on the basis of costs and benefits for Northern Ireland alone, there is no clear and unambiguous case to cut the corporation tax rate' and that for the UK as a whole, a differential corporation tax rate 'would run the risk of encouraging profit shifting from the rest of the UK to Northern Ireland' to the detriment of the public finances.⁵⁵

3.3 Scotland Office

The position of the Scottish Secretary for State, Des Browne, has come under fire following Gordon Brown's decision to appoint his near namesake Secretary of State for Defence as well as for Scotland. Thus Des Browne sits in cabinet with two titles and has attracted heavy criticism from Conservative leader David Cameron, who asked the Prime Minister 'why does he not start today by appointing a full-time Secretary of State for Defence?'.⁵⁶ Mr Cameron also backed a call by the five former chiefs of defence staff who want Browne to drop his dual role. Similarly, Alex Salmond has weighed in as he called for the post of Secretary of State to be scrapped as he said that 'having a part time Secretary of State combined with a UK department is clearly anomalous, and now is a good time to consider and bring forward improvements'.⁵⁷

The Scotland Office was forced to defend the Treasury's Pre-Budget Report and Comprehensive Spending Review against SNP claims of 'statistical jiggery-pokery'.⁵⁸

⁵⁴ HC Deb, 21 November, Column 149 WH.

⁵⁵ Sir David Varney, *Review of Tax Policy in Northern Ireland*, (London: The Stationery Office, December 2007), at: www.hm-treasury.gov.uk/media/1/3/varney171207.pdf, p. 3.

⁵⁶ HC Deb, 5 December 2007, Column 818.

⁵⁷ Jenny Percival, 'Growing pressure on Browne's role', *The Scotsman*, 25 November 2007, at: <http://news.scotsman.com/index.cfm?id+1849722007>

⁵⁸ Barnes, Eddie, 'SNP attacks 'lousy' grant to Scotland', *Scotland on Sunday*, 7 October 2007 at: <http://scotlandonsunday.scotsman.com/politics.cfm?id=1600982007>

In reply Des Browne issued a press release arguing that 'this is an unequivocally good settlement for Scotland. The Scottish Executive will be getting more money year-on-year with a total of £7.2bn extra available to them over the three years of this spending review period. By the end of the period, the money available to the Scottish Executive will reach £29bn - more than double the 1999 figure of £14bn'.⁵⁹ Junior minister David Cairns was more explicit as he publicly denied that the spending increases were fudged or that Scotland had got a raw deal from the Chancellor and instead suggested that Alex Salmond is 'desperate' because 'he's known since March his sums don't add up. But now he is flailing about trying to blame anyone but himself. He's got a budget of £30bn – doubled in eight years'.⁶⁰

The department was also dismissive of the SNP's aspiration to cut corporation tax below UK levels, citing Sir David Varney's report on tax policy in Northern Ireland (see section 3.2). A Scotland Office press release argued that:

The SNP is wedded to a policy that not only is ineffectual, but is also one that Scotland can ill afford. The Scottish Executive's own figures show that Scotland has a structural fiscal deficit of £11.2bn. Cutting Corporation Tax would add to this deficit by nearly £800 million next year.⁶¹

3.4 Wales Office

The department marked ten years since the Welsh people voted for devolution on the 18 September by hailing it as a 'historic' night and a decision that has been totally vindicated since.⁶² A few days after this landmark the Office concluded its 'drive to enable people to play a direct role in the policy-development processes' by closing its consultation on the government's draft legislative programme for Wales.⁶³ In the event Queen's speech, later in the autumn, included 11 bills containing Welsh provisions (see section 4.2), leading Secretary of State Peter Hain to herald a 'coming of age' for Welsh that would enable 'the Assembly to pass Measures and legislate in a record number of areas'.⁶⁴

⁵⁹ Scotland Office, Press release, 'Response to announcement of CSR & Pre-Budget Report', 9 October 2007, at: www.scotlandoffice.gov.uk/our-communications/release.php?id=3625

⁶⁰ Eddie Barnes, 'SNP attacks 'lousy' grant to Scotland', op cit.

⁶¹ Scotland Office, Press release, 'Reaction to Varney Report on Corporation Tax', 17 December 2007, at: www.scotlandoffice.gov.uk/our-communications/release.php?id=3648

⁶² Peter Hain, Wales Office Press release, 'Success of Welsh Assembly Vindicated 'yes' vote, says Peter Hain', 18 September 2007, at: www.walesoffice.gov.uk/2007/pn_20070918.html

⁶³ See Wales Office, 2007, at: www.walesoffice.gov.uk/Legislative.html

⁶⁴ Welsh Office, 'Peter Hain hails coming of age for devolution', 6 November 2007, at: www.walesoffice.gov.uk/2007/pn_20071106.html

Junior Minister Huw Irranca-Davies welcomed the first ever request by the Welsh Assembly for a Legislative Competence Order (on additional learning needs):

Today is a historic day for Welsh devolution. The Order in Council process was established to give the National Assembly for Wales a simpler and quicker process to achieve its legislative priorities and today we are starting to see that happen. By presenting this Order in Council for pre-legislative scrutiny we are starting to see how we can create more legislation that is truly 'made-in-Wales'.⁶⁵

3.5 Northern Ireland Office

As reported in previous monitoring reports, the Northern Ireland (St Andrew's Agreement) Act 2006 paved the way for the devolution of policing and criminal justice functions to the Northern Ireland Assembly.⁶⁶ Theoretically this could proceed as early as May 2008, but the lack of consensus on the issue among the political parties in Northern Ireland makes this highly unlikely.⁶⁷

The continuing divisions on this sensitive issue were also made evident at Westminster as Democratic Unionist MP David Simpson asked the Prime Minister:

Does the Prime Minister agree that following recent attempts on the lives of police officers by paramilitary organisations in the Province, there would be no public confidence in any early move to devolve policing and justice powers? Will he assure the House that there will be no attempt, either through the House or by back-door means, to push through such legislation on the Province?⁶⁸

Brown's reply was that 'this is a matter for continuing discussion between the Government and the Northern Ireland Administration, and I think that that is the proper way of moving this forward'.⁶⁹

In the mean time, the Northern Ireland Office retains policy responsibility for policing and justice in the six counties, though the Northern Assembly will be involved in scrutinising legislation in this area. The Northern Ireland Office exercised this responsibility by publishing a Draft Criminal Justice Order (Northern Ireland) and submitting it for consultation from 8 November 2007 to 31 January 2008. The

⁶⁵ Welsh Office, 'Devolution in Wales reaches new milestone with first ever order in Council', November 2007, at: www.walesoffice.gov.uk/2007/pn_20071107.html

⁶⁶ See Akash Paun (ed.) and Ernest Lau, *Devolution and the Centre Monitoring Report*, January 2007, at: www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Centre_Jan07.pdf, p 24.

⁶⁷ See Rick Wilford & Robin Wilson (eds.), *Northern Ireland Devolution Monitoring Report*, January 2008, p 69, at: www.ucl.ac.uk/constitution-unit/files/research/devolution/dmr/NI_Jan08.pdf

⁶⁸ HC Deb, 5 December 2007, Column 825.

⁶⁹ *Ibid.*

Northern Ireland Office believes that the draft order is 'the most comprehensive piece of legislation to be introduced into Northern Ireland in a generation'. It aims to 'strengthen the law in relation to knife crime, road traffic powers and confront anti-social behaviour with new measures to stop drinking in public'.⁷⁰ This piece of legislation is to be scrutinised by an ad hoc Assembly committee in Belfast.⁷¹

3.6 Department for Communities and Local Government

Plans to create new unitary authorities in place of existing two-tier council structures in parts of England were announced by the department. Local government minister John Healey announced the decision to create five new authorities in Cornwall, Durham, Northumberland, Shropshire and Wiltshire. According to the department's timetable the new bodies will be 'all up and running effectively on 1 April 2009'. The Government also remains 'minded' to implement Bedford Borough Council's proposal, and final decisions will be made once unitary proposals for the remainder of Bedfordshire have been received.⁷²

⁷⁰ Northern Ireland Media Office, 'Radical changes to Northern Ireland's Criminal Justice laws', 8 November 2007, at: www.nio.gov.uk/radical-changes-to-northern-irelands-criminal-justice-laws/media-detail.htm?newsID=14799

⁷¹ The Northern Ireland Assembly Business Committee, 13 November 2007, at: www.niassembly.gov.uk/businesscom/2007mandate/minutes/071113.htm

⁷² Department for Communities and Local government, press release, 'Green light for five flagship Unitary Councils', 5 December 2007, at: www.communities.gov.uk/news/corporate/575159

4. Territorial Legislation and Motions

4.1 Scotland

Following the announcement of the government's legislative programme in the Queen's Speech on 6 November, ministerial statements were published setting out the applicability of the 24 planned bills to the three devolved territories. In the case of Scotland, the government stated that 13 bills relate to reserved policy domains, 3 to England and Wales only, and 4 to England and Wales, but with some reserved provisions that extend to Scotland.⁷³ That left four bills that relate to *devolved* policy areas in Scotland and would therefore require the consent of the Scottish Parliament under the terms of the legislative consent (Sewel) convention. All four – the Climate Change Bill, the Dormant Bank and Building Society Accounts Bill, the Education and Skills Bill, and the Health and Social Care bill – were introduced to parliament before Christmas 2007. In line with the commitment to a more transparent operation of the convention,⁷⁴ the explanatory notes to each bill confirm that 'At Introduction this Bill contains provisions that trigger the Sewel Convention' before setting out precisely to which provisions this relates.

Under the previous Labour-Liberal Democrat administration in Scotland, the SNP frequently opposed legislative consent motions. In power, however, the party has thus far taken a more pragmatic approach. In December the first such motion was passed, relating to the Climate Change Bill. Further motions are expected in the New Year with no signs, as yet, that the SNP intends to oppose any of the UK government's planned legislation. Of course, as a minority administration, the Scottish Government could not in any case prevent the opposition parties from forcing through a legislative consent motion which may help to explain the SNP's approach.

4.2 Wales

In the ministerial statement on the 'Government's Legislative Programme (Application to Wales)', it was revealed that three of the planned 24 bills would contain 'framework powers' extending the legislative competence of the National Assembly for Wales.⁷⁵

⁷³ Des Browne, HC Deb, 7 November 2007, Columns. 11WS-13WS.

⁷⁴ This commitment was made in Scottish Affairs Committee, *The Sewel Convention: the Westminster perspective: Government Response to the Committee's Fourth Report of Session 2005-06*, Second Special Report of 2005-06 Session, HC 1634, paras. 4-6.

⁷⁵ Peter Hain, HC Deb, 7 November 2007, Cols. 13WS-14WS.

On introduction, only two of these – the Education and Skills Bill, and the Local Transport Bill (but not the Planning Bill) – contained such provisions, each adding one new ‘matter’ to the list of areas of devolved legislative competence set out in Schedule 5 of the Government of Wales Act 2006. Consequently, if the relevant provisions reach the statute book unamended, the Assembly will gain the power to legislate in the following areas:

“Matter 5.10A:

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

and

“Matter 10.1:

Provision for and in connection with—

(a) the making, operation and enforcement of schemes for imposing charges in respect of the use or keeping of motor vehicles on Welsh trunk roads;

(b) the application of the proceeds of charges imposed under such schemes towards purposes relating to transport.”

These bills also confer a number of new functions on the Welsh Ministers, as will at least eight other bills announced in the Queen’s Speech.

In addition, as discussed further in section 5.2 and 5.7 below (and also in the ‘Legislation’ chapter of the *Wales Devolution Monitoring Report* for January 2008), the first two draft Legislative Competence Orders (LCOs) for Wales have been introduced at Westminster, relating to the areas of ‘additional learning needs’ and ‘domiciliary care’ respectively. Unlike ‘framework powers’ in bills, these instruments begin their lives as proposals of the Welsh Assembly Government or other Assembly Members. In pre-legislative form they are then scrutinised by the Assembly and by committees of both Houses of Parliament. The Secretary of State for Wales and all three legislative chambers must then approve a final version before the Assembly can make use of its new powers to set policy for Wales.

Given its complexity, this process is hardly ideal from the perspective of transparency and public understanding.⁷⁶ It will be superseded by the devolution of ‘full primary

⁷⁶ As argued by House of Lords Select Committee on the Constitution, *Government of Wales Bill*, HL 142, para. 31.

legislative powers' if the Welsh Assembly Government fulfils its intention to hold and win a referendum on the issue by 2011.⁷⁷

4.3 Northern Ireland

The government stated that its legislative programme for 2007-08 would include eight bills for which the consent of the Northern Ireland Assembly would be required.⁷⁸

These are:

- Child Maintenance and Other Payments (Department of Work and Pensions)
- Climate Change (Department of Environment, Food and Rural Affairs)
- Dormant Bank and Building Society Accounts (HM Treasury)
- Education and Skills (Department for Children, Schools and Families)
- Energy (Department for Business, Enterprise and Regulatory Reform)
- Health and Social Care (Department of Health)
- Pensions (Department of Work and Pensions)
- Planning Reform (Department for Communities and Local Government)

4.4 London

The Greater London Authority Act 2007 (GLAA) passed into law in October after the House of Lords backed down on two amendments.⁷⁹ The first imposed a two-term limit upon the Mayor of London's tenure (effectively excluding current incumbent Ken Livingstone from standing in 2008). The second granted the London Assembly power to amend the Mayor's budget on the basis of a simple, rather than a two-thirds, majority. These amendments were rejected in the House of Commons, and the upper chamber eventually accepted the will of the lower.

The GLAA will give the Mayor a greater role in relation to health, planning, housing, the environment and culture. The Act also increased the powers of the Assembly allowing it to set its own budget on a two-thirds majority and to hold confirmation hearings for core appointments made by the Mayor.

⁷⁷ Labour and Plaid Cymru, *One Wales*, op cit., p.6.

⁷⁸ Shaun Woodward, HC Deb, 7 November 2007, Cols. 10WS-11WS.

⁷⁹ Greater London Authority Act 2007, Chapter 24, at: www.opsi.gov.uk/acts/acts2007/ukpga_20070024_en_1

4.5 Early Day Motions

- Michael Moore tabled EDM 59, which criticised Alex Salmond's decision to appeal to the Burmese government as part of the First Minister's efforts to gain observer status for Scotland at the United Nations. Mr Moore believes that some sort of prior agreement between the First Minister and the Foreign and Commonwealth Office could have avoided this situation. It was signed by 42 MPs.
- Phillip Davies tabled EDM 266, which called on the Prime Minister to disassociate himself from being a signatory to the ancient 'Scottish Claim of Right' in the interests of fairness to England, Wales and Northern Ireland, since the 1988 Claim of Right binds the Prime Minister to putting the people of Scotland first. It was signed by 11 MPs.
- Angus McNeil tabled EDM 539, which calls on the Home Office to follow the lead of the SNP administration in Scotland in awarding police officers a pay deal in line with the recommendation of the Police Arbitration Panel. It was signed by 12 MPs.
- Albert Owen tabled EDM 552, which called on the government at Westminster and the National Assembly to make St David's Day a national bank holiday in Wales. It was signed by 17 MPs.
- Albert Owen also tabled EDM 553, which call on the government to consult on changing the Union flag in order to incorporate Wales. It was signed by 9 MPs.
- Pete Wishart tabled EDM 611, which welcomes a TNS/System poll which showed that support for Scottish independence had risen from 35 per cent to 40 per cent. It was signed by 3 MPs.
- Greg Mulholland tabled EDM 509, which calls on the government to drop the final verse in the National Anthem because, as the former Attorney General, Lord Goldsmith pointed out, it makes reference to 'crushing rebellious Scots' and is therefore inappropriate for an inclusive Union. It was signed by 2 MPs.

5. Territorial Committees at Westminster

5.1 Scottish Affairs Select Committee⁸⁰

Scottish Elections Review

The Committee held a public evidence hearing on the 'The experience of the Scottish Elections' on 3 November following the publication of the Independent Review of the 3 May 2007 elections in Scotland.⁸¹ The review, commissioned by the Electoral Commission (and led by the former assistant chief electoral officer of Canada Ron Gould) was set up in the aftermath of the May 2007 Scottish Parliament and local council elections, whose results were marred by over 140,000 spoiled ballots and problems with the counting process. The Electoral Commission and the Minister of State for the Scotland Office, David Cairns MP, both gave evidence to the committee, chaired by Mohammad Sarwar MP.

Under questioning, the witnesses admitted to mistakes in the process and accepted Ron Gould's charge that 'the voter was treated as an afterthought by virtually all the other stakeholders' in planning the elections.⁸² David Cairns acknowledged that this was 'a fair assessment' and confirmed that the government was prepared to;

Accept five core recommendations right away: first, that we revert to manual counting for the Scottish Parliament; second, that we revert to separate ballot papers; third, that we extend the period of time between close of nominations and polling day; fourth, that we consolidate the legislation; and, fifth, we do not introduce any new electoral provisions within six months of the Scottish Parliament elections.⁸³

He also mentioned that the government would consider the 'recommendation of a chief returning officer and professional status for returning officers'.⁸⁴ The committee plans to continue this inquiry in 2008 and has announced that it will hear from Ron Gould at its next public evidence session on 15 January.

⁸⁰ Full details of all activities of the Scottish Affairs Committee can be found at: www.parliament.uk/parliamentary_committees/scottish_affairs_committee.cfm.

⁸¹ *Independent review of the Scottish Parliamentary and local government elections 3 May 2007* (Electoral Commission, 23 October 2007), at:

www.electoralcommission.org.uk/elections/scotelectionsreview.cfm

⁸² *Independent review of the Scottish Parliamentary and local government elections*, op cit, p. 120.

⁸³ Scottish Affairs Committee, *Experience of the Scottish Elections*, 13 November 2007, Q113.

⁸⁴ *Ibid.*

Poverty in Scotland

On 17 December, the Committee published the findings of its inquiry into poverty in Scotland. Among its conclusions were a call for better intergovernmental cooperation to tackle poverty:

Co-ordination with the Scottish Executive is needed to ensure that national policies are delivered effectively and 'join up' with devolved programmes. The Scotland Office has a key role in this process. Conversely, the Scottish Executive needs to ensure that its own programmes dovetail with national provision.⁸⁵

Noting the important role that local government can play in poverty reduction, the committee also found that:

We are particularly concerned by perceptions that the relationship between Scottish local government, the UK Government and Members of the UK Parliament has weakened since devolution. We urge all sides to work together to renew links.⁸⁶

In an accompanying press release Committee chair Mohammad Sarwar reiterated the recommendations, urging the government to 'work with the Scottish Executive and with local government in Scotland to formulate a clear and effective strategy to tackle this unacceptable situation'.⁸⁷

- At the start of the new parliamentary session, on 8 November, Jim McGovern (Labour) was discharged from the Scottish Affairs Committee to be replaced by David Hamilton (Labour).

5.2 Welsh Affairs Select Committee

On 6 November the Welsh Affairs Select Committee (WASC) announced an inquiry into the 'Provision of Cross Border Public Services for Wales', and will set out a programme of hearings early in 2008. The inquiry will 'examine the coordination, effectiveness and funding arrangements of cross-border provision of public services', and may involve joint working with committees of the Welsh Assembly.⁸⁸ Specific policy areas that this inquiry will touch upon include further and higher education, health, transport, civil service employment and broadcasting. The cross-departmental

⁸⁵ Scottish Affairs Committee, *Poverty in Scotland*, Second report, 2007-08 Session, 17 December 2007, at: www.publications.parliament.uk/pa/cm200708/cmselect/cmsscota/128/12810.htm, para. 27.

⁸⁶ Ibid, para. 28.

⁸⁷ Scottish Affairs Committee Press Notice, 17 December 2007, at: www.parliament.uk/parliamentary_committees/scottish_affairs_committee/sacpressnotice171207.cfm

⁸⁸ See the Welsh Affairs Committee website, Press notices, 2007, at:

www.parliament.uk/parliamentary_committees/welsh_affairs_committee/wacpn107_08.cfm

scope of this inquiry is an interesting sign of how the committee is seeking to reshape its role as the Wales Office – scrutiny of which is formally the main responsibility of WASC – shrinks as an active policy-making department.

December's publication of *Energy in Wales: Follow-up enquiry* marked the culmination of another WASC investigation that strayed beyond the narrow confines of the sphere of responsibility of the Wales Office. While noting the importance of tackling climate change and fostering renewable energy sources, a central conclusion of the report was that the British and Welsh governments should 'develop a more balanced energy mix which fully recognises the continuing importance of Welsh coal to the British electricity supply industry'.⁸⁹ The report did not touch upon the sensitive issue of nuclear power.

In a busy period for the committee, WASC also carried out, for the first time, its new function of conducting pre-legislative scrutiny of draft legislative competence orders (LCOs) which confer law-making power on the National Assembly for Wales. The committee published its report on the first proposed LCO, on additional learning needs, on 21 December. Although the committee agreed that the LCO should be proceeded with, a number of criticisms were levelled at the functioning of the new legislative process. One cause of dissatisfaction was that 'due to timetabling considerations it was not practicable to explore the possibility of working jointly with the Assembly Committee on the proposed Order'. It was further noted that two other draft LCOs were referred to Assembly committees before being laid before Parliament, rendering cooperation between members of the two legislatures difficult. Joint scrutiny remains the intention for future such inquiries.⁹⁰ The committee was also critical of the information given it about the intended use to which the powers transferred to Cardiff will be put. The explanatory memorandum provided by the Welsh Assembly Government was deemed not to demonstrate the 'identifiable need' for the LCO either 'effectively or convincingly'.⁹¹

- Two changes to the membership of the committee occurred in this monitoring period. On Thursday 8 November 2007 Wayne David MP was replaced by the former First Minister Alun Michael and on 17 December 2007 Welsh Tory

⁸⁹ Welsh Affairs Committee, *Energy in Wales: follow-up Inquiry*, First Report of Session 2007-08, p.20.

⁹⁰ See the Welsh Affairs Committee, *Proposed Legislative Competence Orders in Council: Additional Learning Needs*, Second Report of Session 2007-08, paras. 13-15.

⁹¹ *Ibid*, paras. 28-29.

Stephen Crabb was replaced by Mark Pritchard MP, who represents a seat in England (The Wrekin), albeit close to the Welsh border.

5.3 Northern Ireland Affairs Select Committee

On 22 November 2007 the Committee announced the launch of a new inquiry into 'Policing and Criminal Justice in Northern Ireland'. The inquiry will focus on the administration of policing and the criminal justice system in Northern Ireland and will initially hear evidence on two specific areas of current concern;

The financial and operational consequences for the Police Service Northern Ireland of servicing the various 'historic inquiries' into past events in Northern Ireland; and

The effect on the ability of the Police Service Northern Ireland to bring accused persons to trial of provisions in the Public Inquiries Act 2005 and in other legislation requiring the police to divulge information which might identify a covert source.⁹²

Depending on the evidence gathered the committee may then decide to extend the inquiry into a second phase.

- On Thursday 8 November 2007 Labour MP Stephen Pound was discharged from the Northern Ireland Affairs Committee, and replaced by his Belfast-born colleague Kate Hoey MP.

5.4 Regional Select Committees

No visible progress was made towards creating regional committees in the House of Commons since the appointment in June 2007 of nine new English regional ministers, whose functions they would scrutinise.⁹³ At the time, the government asserted that establishing select committees for the nine standard English regions 'would offer an important step forward in democratic accountability and scrutiny of the delivery of public services in the English regions'.⁹⁴ However, major unresolved issues about the proposed new bodies include their size, membership, party balance, work programme, relationship with local councils as well as questions about when and where the committees will meet.⁹⁵

⁹² See the Northern Ireland Affairs Committee press releases, 2007, at:

www.parliament.uk/parliamentary_committees/northern_ireland_affairs/niac_pn02_07_08_.cfm

⁹³ See the *Devolution and the Centre Monitoring Report*, September 2007, at:

www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Centre_Sept07.pdf

⁹⁴ Ministry of Justice, *The Governance of Britain*, Cm 7170, July 2007, para. 120.

⁹⁵ Lucinda Maer & K. Parry, 'The proposed regional select committees and the future of regional assemblies', Parliament and Constitution Centre, Standard Note: SN/PC/4411, 16 October 2007, at: www.parliament.uk/commons/lib/research/notes/snpc-04411.pdf

The government's answer to a written parliamentary question tabled by Conservative MP Phillip Hollobone in October 2007 failed to elucidate the issue:

Mr. Hollobone: To ask the Leader of the House what plans she has for the membership of the proposed regional select committees to reflect the composition of the House in respect of each such region.

Helen Goodman: The Government are considering how best to take forward the ideas in the Governance of Britain Green Paper for committees to reflect the English regions. Any proposals will be announced in due course.⁹⁶

The House of Commons Modernisation Committee is to address many of these issues following their announcement on 24 October to hold an inquiry into regional accountability.⁹⁷ The government expects to submit a memorandum to this inquiry.⁹⁸

5.5 Justice Committee

In accordance with the spring's machinery of government changes, the Constitutional Affairs Committee has been renamed, with a remit to 'examine the administration, expenditure and policy of the Ministry of Justice'.⁹⁹ The committee has since embarked on its inquiry on 'Devolution: A decade on', which, according to its chair, Alan Beith, will look at how devolution 'is functioning for the United Kingdom as a whole and of course additionally the questions that arise from the position of England'.¹⁰⁰

At the first evidence session, held on 13 November, MPs questioned three academic experts on devolution: Professors Robert Hazell (UCL), Charlie Jeffery (Edinburgh) and John Curtice (Strathclyde). One question posed was how 'the legislative process in Westminster has changed to accommodate devolution', to which Professor Hazell answered that 'the short answer is not enough' although it has 'got progressively a little bit better',¹⁰¹ a verdict echoed in past issues of the *Devolution and the Centre Monitoring Report*. Asked about arrangements in Whitehall, Professor Hazell stated

⁹⁶ Office of the Leader of House of Commons, 8 October 2007, at:

www.commonleader.gov.uk/output/page2103.asp

⁹⁷ House of Commons Select Committee on Modernisation of the House of Commons, Press release, 24 October 2007, at:

www.parliament.uk/parliamentary_committees/select_committee_on_modernisation_of_the_house_of_commons/modcompn241007.cfm

⁹⁸ Harriet Harman, HC Deb, 20 November 2007, Column 841W.

⁹⁹ House of Commons Justice Committee, 6 November 2007, at: www.parliament.uk/justicecom

¹⁰⁰ House of Commons Justice Committee, 13 November 2007, Oral evidence on Devolution: A Decade On, www.publications.parliament.uk/pa/cm200708/cmselect/cmjust/uc75-i/uc7501.htm

that in the 'medium to long term I would like there no longer to be three Secretaries of States. They are part of the pre-devolution structure' and do not need a 'place in Cabinet because the devolved institutions will represent the Secretaries of State's voice and interests enough'.¹⁰²

At the same hearing, Professor John Curtice informed the committee that 'it appears to be the case that England is beginning to feel more English than British' but also noted that 'we should not necessarily presume from that, as a result of that, there is developing a wellspring of political support for some form of devolution in England'.¹⁰³ Professor Curtice discussed the 'grumble in England' about the Barnett formula, which according to his public attitudes research is 'not as obviously a grumble or at least it is not as obviously salient a grumble as perhaps you might imagine'.¹⁰⁴ On English regional government the three academics were sceptical about reviving elected regional assemblies. However, Professor Hazell warned against 'writing off the idea...for ever' especially since the original Welsh devolution referendum (in 1979) produced a similar result (four-to-one against) as that in the North East in 2004 before '20 years later the people of Wales changed their minds'.¹⁰⁵ There was also scepticism about the feasibility of the 'English votes for English Laws' and English Parliament solutions to the West Lothian Question. Two partial solutions to the question advocated by Professor Hazell were electoral reform – to reduce the disproportionate dominance of Labour in Scotland and Wales – and a reduction in the number of Scottish and Welsh MPs.

5.6 Territorial Grand Committees

On 23 October the Northern Ireland Grand Committee met to debate Youth Offending in Northern Ireland. The Welsh Grand, Scottish Grand and Regional Affairs Committees did not meet during the timeframe of this report.

5.7 Lords Constitution Committee

The Lords Constitution Committee (LCC) has long taken an interest in the impact that devolution has had on the legislative process at Westminster.¹⁰⁶ As part of the new

¹⁰¹ Ibid., Q2.

¹⁰² Ibid., Q33

¹⁰³ Ibid., Q1

¹⁰⁴ Ibid., Q1

¹⁰⁵ Ibid., Q18

¹⁰⁶ See House of Lords Constitution Committee, *Devolution: Its Effect on the Practice of Legislation at Westminster*, 15th Report of Session 2003–04, HL 192; and House of Lords Constitution Committee, *Devolution: Interinstitutional relations in the United Kingdom*, 2nd Report of Session 2002–03, HL 28, Chapter 4.

Welsh Legislative Competence Orders (LCOs) process, the LCC has now taken on a formal role in pre-legislative scrutiny of draft LCOs, for a 12-month trial period. In a December report, the committee set out its chosen approach to this task:

The Constitution Committee will apply the usual yardstick of concerning itself with 'matters of principle affecting a principal part of the constitution'. The overarching question will be whether, from a constitutional point of view, the request for legislative competence is within the overall letter and spirit of the devolution settlement.¹⁰⁷

The first LCO considered by the LCC, the proposed National Assembly for Wales (Legislative Competence) Order 2007 (Additional Learning Needs) was not found to raise any matters of constitutional significance.¹⁰⁸ As discussed above (section 5.2), this LCO was also scrutinised by the House of Commons Welsh Affairs Committee.

¹⁰⁷ House of Lords Constitution Committee, *Scrutiny of Welsh Legislative Competence Orders*, 2nd Report of Session 2007–08, HL 17, para. 10.

¹⁰⁸ *Ibid*, para. 14.

6. Inter-Institutional Relations

6.1 Intergovernmental Structures

Despite requests from Scottish First Minister Alex Salmond, the British government has declined to resurrect the Joint Ministerial Committee (JMC) following the formation of new governments across the UK in 2007. The JMC ceased to hold annual plenary meetings in 2002. Salmond's campaign for a more formal approach to intergovernmental relations has received some support from the other devolved capitals. In November the First Minister of Wales, Rhodri Morgan, met with Salmond and argued that 'for Scotland, Wales and Northern Ireland there is a clear need to update the constitutional structures' and that greater cooperation between Scotland and Wales in negotiations with Westminster could be in the interests of both.¹⁰⁹ This followed even stronger statements in favour of joint action between the devolved bodies by Northern Ireland's First Minister Ian Paisley in May 2007.¹¹⁰

As discussed in this month's *Scotland Devolution Monitoring Report*, the Joint Ministerial Committee on Europe did meet in this monitoring period, on 2 October, at which meeting the SNP put the case for the Scottish Government to play a more active role in EU fisheries negotiations.¹¹¹

Aside from this meeting, relations between the Scottish and UK governments, at least at the top level, were apparently minimal, with reports suggesting that Gordon Brown gave Alex Salmond 'the cold shoulder' between their initial conversation in August 2007 and the end of the year.¹¹² In lieu of formal dialogue of the kind that Alex Salmond would prefer, the SNP instead resorted to making its case through the media. And as expected, tensions arose over a number of issues including: the budget allocation for the Scottish Parliament (see section 3.2); the British Government's nuclear weapons plans (which the SNP opposes)¹¹³; and the potential

¹⁰⁹ Louise Gray, 'Welsh agree to join SNP efforts to get best deal for UK regions', *The Scotsman*, 11 November 2007, at: <http://news.scotsman.com/latestnews/Welsh-agree-to-join-SNP.3588265.jp>

¹¹⁰ Devlin, K., 'Salmond and Paisley in bid to squeeze Brown', *The Daily Telegraph*, 19 May 2007, at: www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/05/18/nsalm18.xml.

¹¹¹ Peter Lynch, in Charlie Jeffery (ed.), *Scotland Devolution Monitoring Report*, January 2008, at: www.ucl.ac.uk/constitution-unit/files/research/devolution/dmr/Scotland_Jan08.pdf, p. 70.

¹¹² Tom Gordon, 'Brown gives Salmond the cold shoulder', *Sunday Times*, 23 December 2007.

¹¹³ Louise Gray, 'SNP Gathers forces to fight Trident replacement', *The Scotsman*, 23 October 2007, at: <http://news.scotsman.com/topics.cfm?tid=373>

transfer to Holyrood of responsibility for policy areas such as firearms regulations¹¹⁴ and electoral administration.¹¹⁵

6.2 Interparliamentary Relations

Formal links between Westminster and the devolved legislatures remain limited, although the new process for conferring powers on the Welsh Assembly, in particular, create a new incentive for MPs and AMs to develop closer relations. As noted above (section 5.2), the Welsh Affairs Committee plans to develop its formal links with the Assembly by holding joint meetings with Assembly committees in scrutinising draft LCOs, and also may do so as part of its new inquiry into cross-border provision of public services.

The introduction of the first ‘Sewel bills’ of the SNP era (see section 4.1) raises the possibility of changes in the relationship between the UK and Scottish Parliaments. Although there are no signs of this happening yet, the Scottish Parliament may at some point decline to give its consent to a Westminster bill that strays into devolved areas. In this scenario the UK Parliament would be expected to amend the bill either to take out the relevant provisions altogether or to rephrase them in a manner that is acceptable to the majority view at Holyrood. In such circumstances, a form of inter-legislative ‘dialogue’ may even develop.

¹¹⁴ ‘New firearm restrictions in force’, *BBC News*, 1 October 2007, at: http://news.bbc.co.uk/1/hi/scotland/glasgow_and_west/7021172.stm

¹¹⁵ James Kirkup and Kate Devlin, ‘Douglas Alexander in dock over election fiasco’, *Daily Telegraph*, 24 October 2007, at: www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/10/24/nfiasco124.xml