

The **Constitution** Unit

DEVOLUTION
MONITORING
PROGRAMME
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Devolution and the Centre Monitoring Report
January 2009

Robert Hazell
The Constitution Unit
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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 at The Constitution Unit, UCL and the team leaders are as follows:

- Scotland: **Dr Paul Cairney**
University of Aberdeen
- Wales: **Prof Richard Wyn Jones & Prof Roger Scully**
Institute of Welsh Politics, Aberystwyth University
- Northern Ireland: **Professor Rick Wilford & Robin Wilson**
Queen's University, Belfast
- English Regions: **Prof Alan Harding & Dr James Rees**
IPEG, University of Manchester
- The Centre: **Prof Robert Hazell**, The Constitution Unit, UCL

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WALES OFFICE



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Abbreviations and Acronyms

AM	Assembly Member [of the National Assembly for Wales]
DCLG	Department for Communities and Local Government
DCSF	Department for Children, Schools and Families
DEFRA	Department for Environment, Food and Rural Affairs
DUP	Democratic Unionist Party
EDM	Early Day Motion
HET	Historical Enquiries Team
LCM	Legislative Consent Motion
LCO	Legislative Competence Order
MEP	Member of the European Parliament
MOD	Ministry of Defence
PSNI	Police Service of Northern Ireland
SDLP	Social Democratic and Labour Party
SNP	Scottish National Party
UKIP	United Kingdom Independence Party
UUP	Ulster Unionist Party

1. Monitoring the Union

As the global economic climate has continued to worsen, the governments of the United Kingdom have increasingly had to work together to solve shared economic problems. The economic crisis was discussed at the British Irish Council, and has seen close cooperation between the UK and Welsh Assembly governments (see section 6).

Inter-governmental co-operation has also been apparent on the passage of legislation. Welsh and UK institutions have continued to work together to progress further Legislative Competence Orders (LCOs) and in November 2008 the Scottish Parliament passed another Legislative Consent Motion (LCM) in relation to the UK **Energy Act**. The Queen's Speech contained a range of legislation with applicability in the devolved regions, suggesting that the relationship between the devolved administrations and the centre is going to continue to be lively over the course of the upcoming year. Much of the legislation will require the consent of the devolved assemblies and much of the remainder will at least need the co-operation of the devolved administrations in order to work effectively.

Devolution finance remains an issue of growing importance. The interim report of the Calman Commission on the Future of Scottish Devolution published in December 2008 devoted a detailed chapter to the financial accountability of the Scottish Parliament, and has undertaken to identify different combinations of funding mechanisms in the next stage of its work. In Wales the Independent Commission on Funding and Finance was launched in October, and its chair Gerry Holtham has promised a first report by summer 2009. Meanwhile at Westminster the House of Lords has established an ad hoc Select Committee to examine the effectiveness of the Barnett formula and consider alternative mechanisms: the committee first met on 17 December.

Northern Ireland saw two major developments take place which are likely to have long-lasting repercussions. Firstly, after months of deadlock, an agreement has been reached between the DUP and Sinn Féin on the process to devolve policing and criminal justice powers to Northern Ireland and to start holding meetings of the Northern Ireland Executive again. The second development is that the Conservative and Ulster Unionist parties have reached an election pact whereby they will put up joint candidates in General and European elections. Both of these events would

appear to suggest a continuing normalisation of politics in Northern Ireland. The DUP-Sinn Féin agreement on devolution would appear to reaffirm the belief that politics can work in Northern Ireland without the need for violence; while the introduction of a mainstream UK party offers Northern Ireland the opportunity for political choices beyond the unionist-nationalist divide.

After strong opposition from the Conservatives, the government narrowly gained approval for its plans to create new regional committees for England. The House of Commons voted on 12 November to create eight regional select committees and eight regional grand committees, one for every region except London. The regional committees are intended to ensure greater scrutiny and democratic accountability of regional strategies and bodies, including the new Regional Ministers created by Gordon Brown in summer 2007. The Conservatives are critical of the waste of money involved, and are opposed to the creation of any new regional structures.

2. Political Parties

2.1 Labour

Iain Gray MSP was elected leader of the Scottish Labour Party in September, and benefited from the improvement in the Labour Party's fortunes towards the end of 2008. In Scotland the party successfully held onto the Glenrothes UK Parliament constituency in a byelection on 6 November. Glenrothes is a traditional Labour stronghold but the SNP held the equivalent Scottish Parliament seat and ran the local council, so following the SNP win in Glasgow East back in July it was widely expected that they would take the seat from Labour.¹ Turnout was down, but the Labour Party's vote went up by 3.2 per cent and the SNP's by 13.1 per cent.² During the campaign the Labour Party focused its attacks upon the SNP's record in government. The SNP's failure to win the seat may well indicate that public support is gradually shifting away from the SNP,³ something which recent polling in Scotland seems to suggest.^{4 5}

2.2 Conservatives

The long history of Conservative-UUP relations started a new chapter in November when the two parties agreed a pact to run joint party candidates in general and European elections.⁶ Prior to the Sunningdale Agreement, UUP MPs used to follow the Conservative whip but that agreement came to an end and the relationship had never been so advanced that the MPs held joint party membership – with all the rights and responsibilities that entails.

Both parties have been keen to emphasise the benefits of the new arrangement for Northern Irish voters: giving voters in Northern Ireland the opportunity to have a

¹ BBC Online, 'Labour's tale of the unexpected', 7 November 2008, at: http://news.bbc.co.uk/1/hi/uk_politics/7714700.stm

² Edmund Tetteh, 'By-elections since 2005', 10 November 2008, at: <http://www.parliament.uk/commons/lib/research/briefings/SNSG-03726.pdf#page=14>

³ 'Editorial: Let political battle be rejoined after Glenrothes', *The Guardian*, 9 November 2008, at: <http://www.guardian.co.uk/commentisfree/2008/nov/09/alexsalmond-snp>

⁴ YouGov Opinion Poll, 'Scottish Political Issues', 8 September 2008, at: <http://www.yougov.com/uk/archives/pdf/Scottish%20ST%20toplines.pdf>

⁵ YouGov Opinion Poll, 'Scottish Omnibus', 27 October 2008, at: <http://www.yougov.com/uk/archives/pdf/copy%20of%20results%2008%2010%2024%20scotland.pdf>

⁶ BBC Online, 'UUP agrees on Conservative pact', 20 November 2008, at: http://news.bbc.co.uk/1/hi/northern_ireland/7740711.stm

greater say in UK and international politics.^{7 8} In his speech to the UUP Conference David Cameron highlighted the importance of the agreement to a future Conservative cabinet, with UUP MPs being given the opportunity to join a UK-wide government and letting the Conservative Party draw upon the talents of Northern Irish politicians when forming a government.⁹ Mr Cameron said that he had 'selfish and strategic interests' in being involved in Northern Ireland.¹⁰

While the Conservative leader downplayed the potential electoral benefits of the agreement, such benefits could be significant to the parties. At the last general election Northern Ireland elected 18 MPs and at the last European election it elected three MEPs; only one of each was a UUP candidate. However polls suggest potential support for the Conservative Party in Northern Ireland (Devolution and the Centre DMR, September 2008). These extra seats could end up being pivotal to the Tories in the next election. Yet while working with the UUP might avoid competing with them for right-wing votes, it is hard to determine what the impact of working with a sectarian party will be at the polls. It might alienate potential voters who were looking for a non-sectarian option. It also puts the Conservatives into direct competition with other Northern Irish parties, some of whom the Conservatives might be dependent upon in the case of a hung parliament.

One benefit for the Conservative Party is that they can now claim to be the only major party to run in every part of the UK, a move which it would be difficult for the Labour Party to follow. The Social Democratic and Labour Party (SDLP) currently follow the Labour whip and sit on the same benches, however the SDLP is nationalist and the Labour Party is unionist so it is hard to conceive of a situation in which the parties would put up shared candidates. It is also unlikely that the Labour Party would risk sacrificing the support of the SDLP and splitting the left-wing vote in Northern Ireland by running their own candidates.

⁷ Conservative Party, 'A new choice for the people of Northern Ireland', 21 November 2008, at: http://www.conservatives.com/News/News_stories/2008/11/A_new_choice_for_the_people_of_Northern_Ireland.aspx?currentRegion=dd6f4304-b5ca-4499-a0ed-a540846fa0ad

⁸ BBC Online, 'Pact will 'empower NI electorate'', 6 December 2008, at: http://news.bbc.co.uk/1/hi/northern_ireland/7768650.stm

⁹ Henry McDonald, 'I want Ulster Unionists in cabinet', 7 December 2008, at: <http://www.guardian.co.uk/politics/2008/dec/07/conservatives-david-cameron-northern-ireland>

¹⁰ Nicholas Watt, 'An old fashioned Conservative and unionist heart beats in Cameron's chest', 10 December 2008, at: <http://www.guardian.co.uk/politics/blog/2008/dec/10/northernireland-northernireland>

A similar concern might exist for the Conservative Party. The DUP, as the most electorally successful unionist party at present, has voiced their concern that the Conservatives could split the unionist vote in some constituencies, leading to the election of nationalist candidates,¹¹ whereas the UUP might well find that, by organising alongside the dominant right-wing party of UK politics, they end up losing support amongst left-leaning unionist voters and even members of their own party.¹² Indeed the party's only MP, Lady Sylvia Hermon, has often voted with Labour in Parliament and Cameron suggested in his speech that she does not support the UUP's working with the Conservatives.¹³

One potentially major change is that, despite the fact that the Conservatives are self-proclaimed unionists, by formally attaching themselves to a sectarian party they may well have lost their 'neutrality' on the question of Northern Ireland's future. When the Conservative Government declared in 1990 that they had no 'selfish strategic or economic interest' in Northern Ireland they adopted a position of neutrality which encouraged the nationalists to take peace negotiations seriously.¹⁴ David Cameron's declaration of his 'selfish and strategic interests' in the country eighteen years later risks estranging nationalists and, if he were to be elected, could prevent the Government from acting effectively to resolve future sectarian conflict.

2.3 Liberal Democrats

Kirsty Williams, AM (Assembly Member) for Brecon and Radnorshire, has been elected to replace Mike German as leader of the Welsh Liberal Democrats. She beat Jenny Randerson, AM for Cardiff Central, 59.9 per cent to 40.1 per cent on a 68.1 per cent turnout, becoming the first woman to lead any of the Welsh parties (and by far the youngest of the current leaders).¹⁵ The Liberal Democrats have a federal party structure, so the leader of the Welsh Liberal Democrats has a considerable amount of lee-way in running the party. As yet it is unclear what direction Kirsty Williams is

¹¹ BBC Online, 'Pact will 'empower NI electorate'', 6 December 2008, at:

http://news.bbc.co.uk/1/hi/northern_ireland/7768650.stm

¹² Henry McDonald, 'I want Ulster Unionists in cabinet', 7 December 2008, at:

<http://www.guardian.co.uk/politics/2008/dec/07/conservatives-david-cameron-northern-ireland>

¹³ BBC Online, 'Cameron shines at UUP conference', 6 December 2008, at:

http://news.bbc.co.uk/1/hi/northern_ireland/7769470.stm

¹⁴ Nicholas Watt, 'An old fashioned Conservative and unionist heart beats in Cameron's chest', 10 December 2008, at:

<http://www.guardian.co.uk/politics/blog/2008/dec/10/northernireland-northernireland>

¹⁵ BBC Online, 'Williams' election 'breaks mould'', 8 December 2008, at:

<http://news.bbc.co.uk/1/hi/wales/7771745.stm>

likely to take. During the election she spoke frequently of her desire to create a more liberal Wales but with little elaboration on what this means or how she will go about it. Her main challenge will be to increase the representation of the Welsh Liberal Democrats in the Assembly beyond the six seats they have won in every election so far.

3. Devolution and Whitehall

3.1 HM Treasury

The Pre-Budget Report set out a range of measures the Government would use to help stimulate the UK economy. In the report the Government unveiled a fiscal stimulus package worth £20 billion, including moving £3 billion worth of public expenditure forward from 2010-11 to be spent in the upcoming year. Such measures will affect the economy of every region of the UK.¹⁶ The Scottish Government will be allowed to reallocate £260 million of capital spending, the Northern Ireland Executive will be able to do the same with £86 million as will the Welsh Assembly Government with £140 million.¹⁷ Since the block grant for each administration is calculated as a proportion of equivalent English expenditure, the increases in government spending announced as part of the package will lead to a rise in the block grant for each of the devolved administrations.

The mechanism for determining the block grants allocated to each devolved government, the Barnett formula, is now under review in Parliament. Following a long campaign by Lord Barnett, the House of Lords approved an *ad hoc* committee to assess the effectiveness of the Barnett formula and to investigate possible alternatives, and the new Committee was appointed and held its first meeting in December. The new Committee is due to report by the 2009 Summer Recess.¹⁸ Its chair is Lord Richard, with two former Scottish Secretaries (Lord Forsyth and Lord Lang), Lord Trimble (former First Minister of Northern Ireland) and Lord Lawson (former Chancellor of the Exchequer) amongst its members.

In December the Calman Commission published its First Report.¹⁹ The Commission was established by the Scottish Parliament (at the instance of the opposition parties who have a majority there), and the UK government. It reports to both, and is

¹⁶ BBC Online, 'At-a-glance: Pre-Budget report', 25 November 2008, at:

http://news.bbc.co.uk/1/hi/uk_politics/7746188.stm

¹⁷ HM Treasury, 'Regional Press Notices', 28 November 2008, at: http://www.hm-treasury.gov.uk/press_128_08.htm

¹⁸ House of Lords Liaison Committee, '2nd Report of Session 2007-08, HL Paper 142', July 2008, at:

<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldliaisn/142/14203.htm>

¹⁹ Calman Commission, 'The Future of Scottish Devolution within the Union: A First Report', December 2008, at:

http://www.commissiononscottishdevolution.org.uk/uploads/2008-12-01-new-scot-dev-summary_v6.pdf

supported by a secretariat provided by the Scottish Parliament and UK government. Its remit is to consider the future of Scottish devolution within the Union, looking in particular at the balance of functions between the Scottish and UK Parliaments; the financial accountability of the Scottish Parliament; and ways in which the Scottish and UK institutions work together.

The First Report is a detailed analysis, running to 116 pages. In the chapter on powers and functions, the Commission identified the following as ones where substantial evidence had been received making a case for further devolution: broadcasting; energy policy; animal health and movement; firearms; misuse of drugs; regulation of health care professionals; and marine planning. They also published a second list of functions which were candidates for further change, but where sufficient evidence had not yet been received: the civil service; insolvency; employment law and relevant aspects of immigration; and health and safety.

On financial accountability, the Commission was assisted by an Independent Expert Group of economists and others, whose conclusions are appended to their report. They were advised that the present system of funding had got the Scottish Parliament off to a good start, but was weak in terms of accountability. Any system of funding requires trade offs between equity, efficiency and accountability. The choice between these conflicting principles must be determined not by technical considerations, but by the constitutional objectives that the funding system is designed to support. In the next phase of its work the Commission hopes to identify possible combinations of funding mechanisms, but in accordance with its own logic, must first identify the constitutional objectives which those funding mechanisms are designed to support.

The Commission was critical of the informality of intergovernmental relations between the Scottish Executive and UK government, and felt that in future it would be necessary to use more formal mechanisms for discussion and dispute resolution. It also linked this issue to the division of powers and functions: with more effective processes for resolving disputes, it might be possible to have more overlapping or concurrent executive responsibilities.

3.2 Scotland Office

In September David Cairns MP resigned as Minister of State at the Scotland Office, believing that the Labour party should allow a challenge to Gordon Brown's

leadership. With Des Browne giving priority to his job as Defence Secretary, David Cairns had played an important role in the Scotland Office. He was replaced by Anne McKeekin MP, who was appointed Parliamentary Secretary in the Scotland Office.

In the October Cabinet reshuffle Des Browne lost his jobs as Defence Secretary and Secretary of State for Scotland. He was succeeded as Scottish Secretary by Jim Murphy, MP for East Renfrewshire. Jim Murphy was briefly PPS to Helen Liddell when she was Scottish Secretary in 2001. After serving in the Whips' Office from 2002 to 2005, he became Parliamentary Secretary in the Cabinet Office in 2005-06, Minister of State for Employment in 2006-07, and Minister for Europe in 2007-08. This is his first time in the Cabinet, and the Scotland Office once again has a full-time Secretary of State.

With the deepening economic crisis, the Scotland Office has had to work hard as a go-between for the UK and Scottish governments, helping to co-ordinate the responses of the two bodies to the problems facing Scotland's economy. In undertaking this role the Secretary of State has held meetings on the economic situation with a wide range of persons, including Geir Haarde, the Icelandic Prime Minister, to discuss Scottish deposits in Icelandic banks.²⁰

The Scotland Office has been supporting the Calman Commission and provided the Commission with the UK Government's evidence on Scottish devolution. On release of the Commission's interim report it was welcomed by Jim Murphy without significant comment.²¹

3.3 Wales Office

Wayne David MP was appointed Parliamentary Under-Secretary of State for Wales as part of the October reshuffle, replacing Huw Irranca-Davies who has become Parliamentary Under-Secretary at DEFRA. The Secretary of State for Wales, Paul Murphy, retained his position during the reshuffle.

²⁰ Scotland Office, 'Murphy in Reykjavik talks to help recover Scots investments', 3 November 2008, at: <http://www.scotlandoffice.gov.uk/our-communications/release.php?id=3706>

²¹ Scotland Office, 'Jim Murphy welcomes Calman Commission interim report', 2 December 2008, at: <http://www.scotlandoffice.gov.uk/our-communications/release.php?id=3722>

The Wales Office continued to progress the LCOs sent from the National Assembly to Westminster. They successfully managed to get the **Vulnerable Children** LCO onto the statute book and have moved others further through the Parliamentary Scrutiny process (see section 4).

3.4 Northern Ireland Office

The main task of the Northern Ireland Office has been encouraging the Northern Ireland Executive to resume regular meetings, and to find some agreement between the DUP and Sinn Féin on the process of devolving policing and criminal justice powers to Northern Ireland.²²

The DUP and Sinn Féin managed to reach an agreement on the process to devolve these powers in November. This removes the last obstacle to Northern Ireland's gaining large-scale control over its justice system, and will require the creation of a new department and minister responsible for justice. Although no specific timetable has yet been released the process is expected to have been completed by May 2012. The two parties also agreed that the Executive will start meeting again.

²² Northern Ireland Office, 'Woodward welcomes political agreement', 19 November 2008, at: <http://www.nio.gov.uk/woodward-welcomes-political-agreement/media-detail.htm?newsID=15560>

4. Territorial Legislation and Motions

4.1 Scotland

Fears that the **Marine and Coastal Access Bill** would lead to conflict between Westminster and Holyrood appear to have been misplaced. The Joint Ministerial Committee managed to ensure consensus was reached between the UK Government and devolved administrations on the content and passage of the bill (see section six).

A further legislative consent motion (LCM) was passed by the Scottish Parliament authorising Westminster to legislate for Scotland on the provisions of section 2 and the amendments to section 5 of the UK **Energy Bill**. The motion opened up the way for the UK Government's proposed Renewable Heat Incentive, a financial incentive paid to generators of renewable heat by the UK Government on the basis of quantities of renewable heat produced.²³ The Scottish Parliament had already passed an LCM relating to the Energy Bill, back in June, permitting the creation of a UK-wide licensing authority for off-shore carbon storage (Devolution and the Centre DMR, September 2008).

A number of the Bills contained in the Queen's Speech are also likely to require the consent of the Scottish Parliament. According to the Secretary of State for Scotland the four Bills which will be most likely to require legislative consent motions are:

- The **Children, Skills and Learning Bill** (DCSF)
- The **Coroners and Justice Bill** (Ministry of Justice)
- The **Equality Bill** (Government Equalities Office)
- The **Local Democracy, Economic Regeneration and Construction Bill** (DCLG)²⁴.

The Scottish Government has already announced that it will introduce LCMs for these bills to the Scottish Parliament but took the opportunity to point out that such measures would not be necessary were Scotland independent.²⁵

²³ 'Memorandum from the Scottish Government', 30 October 2008, at: <http://www.scottish.parliament.uk/business/legConMem/LCM-2007-2008/documents/UKEnergy-LCM1.pdf>

²⁴ Commons Hansard, 4 December 2008, Col.13WS. <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm081204/wmstext/81204m0003.htm#08120433000366>

In addition to the bills which require the consent of the Scottish Parliament other bills contained in the speech are likely to involve cooperation of the UK and Scottish Governments, such as the **Child Poverty Bill**, and there are bills which will apply to Scotland but which will not require LCMs, such as the **Borders, Immigration and Citizenship Bill**.^{26 27}

4.2 Wales

Legislative competence orders

Since October progress has been made on a number of LCOs. With the growing number of LCOs which have now received approval, the National Assembly has already proposed and passed a number of measures.

The **Vulnerable Children** LCO was made on 10 December 2008. The LCO transfers to the Assembly the power to pass measures relating to child poverty and welfare.

The report of the Commons' Welsh Affairs Committee on the **Affordable Housing** LCO has been released. The Committee supported the order with revisions. Their most notable concern was that the scope of the proposed LCO included the abolition of the Right to Buy and Right to Acquire. It also expressed doubts that the powers would be effective in accomplishing the Welsh Assembly Government's goals of preventing shortages of affordable housing. The Committee recommended that such suspensions are temporary, with set time limits and subject to regular review.²⁸

Scrutiny of the **Red meat industry** LCO has started in both the National Assembly and Parliament. Both processes started at the same time, an improvement on previous LCOs where complaints have been raised that differences in timing have limited the effectiveness of the scrutiny process (Devolution and the Centre DMR, September 2008). The Assembly Committee reported its scrutiny findings on 10

²⁵ The Scottish Government, 'The Queen's Speech', 3 December 2008, at: <http://www.scotland.gov.uk/News/Releases/2008/12/03135522>

²⁶ BBC Online, 'MSPs to be asked to back UK bills', 3 December 2008, at: <http://news.bbc.co.uk/1/hi/scotland/7762730.stm>

²⁷ BBC Online, 'MSPs to be asked to back UK bills', 3 December 2008, at: http://news.bbc.co.uk/1/hi/uk_politics/7762405.stm

²⁸ Welsh Affairs Committee, 'Welsh Affairs – Seventh Report', 7 October 2008, at: <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmwelaf/812/81202.htm>

December and the Commons Welsh Affairs Committee on 23 February. Similarly, scrutiny for the **Carers** LCO began in both legislatures at the same time.

The Welsh Assembly has granted leave for the **Displaying of flags and motifs on vehicle registration plates** LCO, whereas the **Official language status** LCO proposed by Conservative AM David Melding failed to gain sufficient support in the Assembly to proceed. The legislation had been proposed in the absence of a Welsh Assembly Government LCO and consequently it lacked Government support.

Framework powers

Most of the 14 Bills outlined in the Queen's Speech will have provisions which affect Wales to a greater or lesser extent and two Bills will create new framework powers for the Welsh Assembly.²⁹

The **Marine and Coastal Access Bill** has been introduced in the House of Lords. The Bill will give the Welsh Assembly the power to legislate for coastal access in Wales and the Welsh Assembly Government will be given powers to control marine planning. The Bill also provides for the creation of a Welsh Fisheries Zone.

The **Local Democracy, Economic Development and Construction Bill** has also been introduced in the House of Lords. This will transfer to the National Assembly the power to introduce reforms of county and county borough councils in Wales, including the power to reform scrutiny and review committees. This Bill does not, however, transfer any powers to reform the electoral arrangements of councils.³⁰

The **Planning** and **Local Transport** Acts, as discussed in the September report, have now been passed into law, devolving further powers to the Assembly. The **Education and Skills Act** was also passed, transferring additional powers over education to the Assembly. Since the overall purpose of the legislation is to improve and encourage greater participation in post-16 education most of the powers transferred to the Assembly focus on this area.

²⁹ Wales Office, 'Government delivering economic stability and social fairness for Wales, says Paul Murphy', 3 December 2008, at: <http://www.walesoffice.gov.uk/2008/12/03/government-delivering-economic-stability-and-social-fairness-for-wales-says-paul-murphy/>

4.3 Northern Ireland

A number of Bills contained in the Queen's Speech apply to Northern Ireland and many potentially affect devolved matters. According to the Minister of State ten of the Bills proposed will require the consent of the Northern Ireland Assembly. These include:

- The **Banking Bill** (HM Treasury)
- The **Political Parties and Elections Bill** (Ministry of Justice)
- The **Borders, Immigration and Citizenship Bill** (Home Office)
- The **Coroners and Justice Bill** (Ministry of Justice)
- The **Child Poverty Bill** (Child Poverty Unit)
- The **Policing and Crime Bill** (Home Office)
- The **Marine and Coastal Access Bill** (DEFRA)
- The **Children, Skills and Learning Bill** (DCSF)³¹.

Meanwhile, in the rush to clear legislation before the Queen's Speech, various bills with relevance for Northern Ireland – covered in previous reports – received the Royal Assent: the **Energy Bill**, the **Pensions Bill**, the **Climate Change Bill** and the **Dormant Bank and Building Society Accounts Bill**.

During the period covered by this report there have been no LCMs discussed in the Northern Ireland Assembly.

4.4 Early Day Motions

Since September a number of devolution related Early Day Motions (EDMs) have been tabled, including:

- Multiple EDMs were raised on the issue of whether or not Great Britain should be represented by a single football team at the 2012 Olympics. Jim Sheridan (Labour) tabled EDM 2496 in favour of such a team, which was signed by 43 MPs. Pete Wishart (SNP) tabled EDMs 2496A1 and 2496A2 as amendments to Jim Sheridan's EDM, changing the motion to oppose a single football team. Pete

³⁰ 'Local Democracy, Economic Development and Construction Bill [HL]', 4 December 2008, at: <http://www.walesoffice.gov.uk/2008/12/03/government-delivering-economic-stability-and-social-fairness-for-wales-says-paul-murphy/>

³¹ Commons Hansard, 4 December 2008, Col.13WS.

Wishart's EDMs were each signed by six MPs. Adrian Saunders (Liberal Democrat) tabled identical EDMs 2511 and 63 and encouraged the use of a Home Nations' tournament to select a team from one of the UK's constituent nations to represent the country as a whole. Adrian Saunders' EDMs received the signatures of six MPs and four MPs respectively. John McDonnell (Labour) tabled EDM 359 which looked at the same issue for a women's GB team, regretting the current undervaluing of women's football and encouraging the Government to support a women's GB team at the 2012 Olympics and to develop women's football in general.

- Three EDMs were raised on the merger of HBOS with Lloyds TSB. Malcolm Bruce (Liberal Democrat) tabled EDM 2461 supporting the independence of HBOS on the grounds of its benefits to the economies of Scotland and Yorkshire and encouraging the government to use its influence to secure a better deal for the bank. It was signed by 20 MPs. Alistair Carmichael (Liberal Democrat) tabled EDM 2269 requesting that, due to the loss of jobs in Scotland which is likely to result from a merger, the Government no longer use the merger as a condition of their bailing-out HBOS. It was signed by 18 MPs. Stewart Hosie (SNP) tabled EDM 2523 noting the loss of jobs and competition to which the merger might lead and suggesting that the continued independence of the banks would be better. It was signed by 12 MPs.
- John Hemming (Liberal Democrat) tabled EDM 17 calling for a review of the Barnett formula. It was signed by 31 MPs. Stewart Hosie (SNP) tabled EDM 12A1 amending the motion to include the intention to grant full fiscal autonomy to Scotland. Mr Hosie was the sole signatory.
- Dai Davies (Independent) tabled EDM 2430 condemning the cutbacks to political coverage on ITV Wales and calling upon ITV to reverse its decision. While the motion noted that similar measures had been taken by ITV across the UK it highlighted the specific problems for Wales, where a shortage of political coverage already exists due to similar measures which had been taken by other media groups. The motion pointed out that this was not good for democracy in Wales and that Ofcom had the power to award the franchise to someone else. It was

signed by 15 MPs. In the new session he tabled EDM 116, an almost identical EDM which was signed by 13 MPs.

- Pete Wishart (SNP) tabled EDM 145 welcoming the Scottish Government's Year of Homecoming initiative and encouraging people to go and participate in its events. It was signed by 11 MPs. Jim Hood (Labour) tabled 145A1 amending the motion to express regret that the initiative's television advert has only been shown in Scotland and the consequent missed opportunities for encouraging tourism. The amendment described this as a failure of the SNP government and raised the hope that the situation could be remedied in order to avoid the affair being seen as just an attempt to stir up nationalist sympathy in Scotland. It was signed by 11 MPs.
- Mark Lazarowicz (Labour) tabled EDM 270 noting the failure of the SNP administration to describe how they intend to use the £1 million in funding they have gained as a result of extra funding for citizens advice bureaux in England. It was signed by 13 MPs. John Mason (SNP) tabled EDM 270A1 amending the motion to take note of various measures the Scottish Government is currently pursuing in helping those with financial difficulties and making additional note of the financial limitations imposed on the administration. It was signed by two MPs.
- Bob Spink (UKIP) tabled EDM 35 calling upon the government to abolish prescription charges in England, recognising that a recent deal with a pharmaceuticals company saved the NHS an amount roughly equivalent to that raised for the Government by prescription charges in England. It was signed by 18 MPs. John Mason (SNP) tabled EDM 35A1 amending the motion to add congratulations to the SNP in Holyrood for having announced the abolition of prescription charges in Scotland by 2011. It was signed by five MPs.
- Anne McGuire (Labour) tabled EDM 2330 congratulating the Government on its guidance to prevent house repossessions from occurring until alternatives had been considered and requesting that the UK Government encourages the Scottish Government to do the same. It was signed by 24 MPs.
- Diane Abbott (Labour) tabled EDM 2393 recognising the current lack of access women in Northern Ireland have to abortion facilities and calling upon the UK

Government to provide funding so that women in Northern Ireland can access abortion facilities in other parts of the UK. It was signed by 38 MPs.

- Pete Wishart (SNP) tabled EDM 146 welcoming the Scottish Government's provision of funding for Scottish school children to visit Auschwitz and condemning Labour MPs for 'playing politics' with the matter. It was signed by 11 MPs. Back in April Labour MP Ann McKeichin had tabled EDM 1466 criticising the SNP for failing to fund such trips.
- Andrew Rosindell (Conservative) tabled EDM 156 pointing out the importance of the UK's historic counties and calling upon the Government to introduce various administrative, cartographic and ceremonial measures to better recognise them. It was signed by 19 MPs.
- Mark Williams (Liberal Democrat) tabled EDM 179 noting that there is currently insufficient provision of treatment for sufferers of lymphoedema and requesting that the UK and devolved governments ensure a greater recognition of the condition and that treatment is made available everywhere. It was signed by 33 MPs.
- Eddie McGrady (SDLP) tabled EDM 196 calling for party funding arrangements to be reviewed as the current arrangements allow Sinn Fein to use public money for political activities which other parties are prohibited from doing. It was signed by three MPs.
- Katy Clark (Labour) tabled EDM 330 expressing concern that planned job cuts at BBC Scotland will lead to the overworking of staff and a decline in the quality of its output and requesting that the BBC reconsider its plans. It was signed by 21 MPs.
- Michael Connarty (Labour) tabled EDM 332 welcoming the UK Government's increased funding for retraining those facing redundancy in comparison with a lack of action by the Scottish Government and calling upon the UK Government to convince the Scottish Government to take similar steps. It was signed by 18 MPs.

5. Parliamentary Committees and Devolution

5.1 Justice Committee

The Committee has finished collecting evidence and is now preparing its report for 'Devolution: A Decade On'. No new devolution related activity has taken place in the Justice Committee during the timeframe for this report.

5.2 Scottish Affairs Select Committee

The Scottish Affairs Select Committee held two oral evidence sessions, one on the 'Office of the Advocate General for Scotland' and one on 'The implications for the Scottish economy of the current economic climate'.³² The Committee also visited the South Lanarkshire Credit Union as part of their inquiry into credit unions.

Responses of the Government and the Scottish Executive to the Committee's report on Employment and Skills for the Defence Industry in Scotland³³

The Government and Scottish Executive's responses to the Committee's report 'Employment and Skills for the Defence Industry in Scotland' were published on 15 October 2008. The Committee's report had focused around the construction of the new CVF (Carrier Vessel Future) carriers in Scotland. One of the main concerns had been over the delays in the MOD's signing contracts related to CVF. The Government explained the reasons behind these delays and detailed the measures in place at the MOD to avoid delays in signing contracts. The Committee had also raised concerns over the future of jobs and training in the ship construction industry. The Government sought to reassure the Committee about the future of these jobs and their support for training but pointed out that the Scottish Executive had a large role to play in these decisions and that training was a devolved matter. One issue of particular relevance which arose was the potential impact of Scottish independence on the future of these jobs. The Government was keen to stress the importance of UK defence contracts to the industry and the damage which secession would do to the sector.

³² Transcript at <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmsscotaf/uc38-i/uc3801.htm>

³³ Scottish Affairs Select Committee, 'Employment and Skills for the Defence Industry in Scotland: Responses by the Government and Scottish Executive to the Committee's Sixth

The Scottish government pointed to a range of measures it was taking in supporting training in the ship construction and other industries. They rejected the Committee's belief that Scottish Enterprise had not been particularly pro-active and claimed that Scotland's approach to jobs and skills in industry is ahead of the rest of the UK. On the matter of the potential impact of Scottish independence they claimed that due to Scotland's capabilities in ship construction the industry would not suffer from secession and pointed out that similar independent countries actually do better than Scotland does at present.

5.3 Welsh Affairs Select Committee

The Welsh Affairs Select Committee has continued to scrutinise the steady stream of legislative competence orders (LCOs) proposed by the National Assembly for Wales (see section 4). The Committee published its report on the draft Housing LCO in October. In the process of conducting scrutiny on the Red meat industry LCO the Committee met with the National Assembly's Red Meat Industry LCO Committee. The meeting took place over video-link and involved an exchange of relevant information between the two committees; the chairmen of both committees expressed their hopes that this form of communication might be used again in the LCO scrutiny process.³⁴

Through October and November the Committee continued to conduct evidence sessions as part of their inquiry on cross border public services for Wales. The sessions held in this period looked into the provision of transport and further and higher education.

Two new inquiries were announced in November. The first to be announced was an inquiry on digital inclusion in Wales, particularly focusing on the availability of technology and the role of government and non-governmental organisations in

Report of Session 2007-08', 15 October 2008, at:

<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmsscota/1098/1098.pdf>

³⁴ Welsh Affairs Select Committee, 'Welsh Affairs Committee and National Assembly for Wales Committee statement on joint meeting to discuss red meat industry LCO', 9 December 2008, at:

http://www.parliament.uk/parliamentary_committees/welsh_affairs_committee/wacpn208_09.cfm

promoting digital inclusion.³⁵ The Committee also announced an inquiry into the potential benefits of the 2012 Olympics and Paralympics for Wales.³⁶

5.4 Northern Ireland Affairs Select Committee

During November and December the Northern Ireland Affairs Select Committee has been taking evidence as a part of their inquiry into Cross-Border Cooperation. At the 5 November 2008 session the Chief Constable of the Police Service of Northern Ireland (PSNI) Sir Hugh Orde highlighted the political value to 'dissident Republicans' of the incomplete nature of devolution and claimed that until police and justice powers are devolved they will increasingly use it to agitate - a sign that devolution is not working.³⁷ The Committee also took evidence on Political Developments in Northern Ireland.

Government response to the Committee's report on Policing and Criminal Justice in Northern Ireland

On 8 October 2008 the Government's response to the Committee's Police and Criminal Justice in Northern Ireland report was published.³⁸ While praising the Historical Enquiries Team (HET) the Committee's report had raised concerns over HET's lack of independence from the PSNI and the demands this places on the PSNI's time. The Government recognised these concerns and said that the Consultative Group on the Past is looking into whether a consensus can be found on any alternative approach.

The other major point raised by the Committee had been that the current cost of inquiries carried out by the HET was in their view 'unsustainable' and that the Government needs to take action to bring the cost of inquiries under control. The Government replied that they were also concerned by the cost of inquiries and that

³⁵ Welsh Affairs Select Committee, 'Digital Inclusion in Wales', 26 November 2008, at: http://www.parliament.uk/parliamentary_committees/welsh_affairs_committee/wacpn3707_08.cfm

³⁶ Welsh Affairs Select Committee, 'Inquiry into the potential benefits of the 2012 Olympics and Paralympics for Wales', 26 November 2008, at: http://www.parliament.uk/parliamentary_committees/welsh_affairs_committee/wacpn3607_08.cfm

³⁷ Northern Ireland Affairs Select Committee, 'Uncorrected Transcript of Oral Evidence To be published as HC 1174-i', 5 November 2008, at: <http://www.parliament.the-stationery-office.co.uk/pa/cm200708/cmselect/cmniaf/uc1174-i/uc117402.htm>

³⁸ Northern Ireland Affairs Select Committee, 'Policing and Criminal Justice in Northern Ireland: the Cost of Policing the Past: Government Response to the Committee's Third Report

cost is among the factors which the Consultative Group on the Past will consider in forming their recommendations.

5.5 Regional Committees ³⁹

On 12 November 2008 the House of Commons voted to create select committees and grand committees for each of England's eight regions, excluding London where the regional structures are already more developed than in other regions. The motions creating the new committees followed for the most part the recommendations of the Modernisation Select Committee. The creation of regional committees form an attempt on the part of the Government to address the current deficit of scrutiny and democratic accountability of bodies and strategies operating on the regional level. The stated remit of the new regional select committees is to conduct this scrutiny and hold the relevant bodies and persons to account for actions and strategies employed in each region. Regional grand committees were not given a specific remit but their existence provides a similar opportunity for all MPs in the region to hold to account those bodies with significant impact in their region, regional ministers in particular, and to ensure that regional matters are considered by central government.

Regional select committees will hold regular meetings and in conducting their remit will have access to the same material and personnel resources as the House's other select committees. In contrast regional grand committees will only meet following a motion to do so by a government minister. Meetings could involve hearing ministerial statements, the opportunity to question the regional minister or conducting a debate on a regional matter.

These committees will exist for an 'experimental period', ending at the next general election. By creating two different types of regional committee the government may be looking for practical experience of how each model works in order to inform a future decision on how best to provide regions with appropriate scrutiny and accountability in the House.

of the Session', 8 October 2008, at: <http://www.parliament.the-stationery-office.co.uk/pa/cm200708/cmselect/cmniaf/1084/1084.pdf>

³⁹ House of Commons Library, 'Regional Accountability at Westminster', 13 November 2008, at: <http://www.parliament.uk/commons/lib/research/briefings/snpc-04411.pdf>

The Government's explanatory memorandum suggested that regional select committees might hold around six meetings per year, less than other select committees, and that regional grand committees would meet only a couple of times per year. Both regional select committees and regional ministers are expected to hold the majority of their meetings in their regions.

Each regional select committee will have a membership of up to nine MPs, and the party composition of the committee will reflect the composition of the House. This may require some committee members to be from outside the region. The regional grand committees will comprise of all the MPs with constituencies in the region plus at most five other MPs, to be appointed and discharged by the Committee of Selection.

The composition of the committees was sharply criticised by the Opposition, who had declined to support the Modernisation Committee's proposals. They argued that the composition of each regional committee should consist solely of MPs elected in that region, and should reflect the proportion of each party's MPs elected in each region. For this reason some preferred regional grand committees to the select committees, and opposed the appointment of MPs from outside the region to those committees.

The cost of running the new committees was another point of criticism. The combined cost of the new committees was estimated to be £1,345,132, with select committees forming the bulk of the cost. However attempts have been made to keep costs low, with much of the staffing provided by the Commons' existing staff. Unlike other select committee chairmen, regional select committee chairmen will not be paid (saving £109,704).

The new committees will start operation in January 2009. These new regional committees, alongside Government Offices for the Regions and Ministers for the Regions, reveal a growing institutional recognition of the importance of regional governance by central government. Indeed these institutions appear to be a weak reflection of the arrangements which existed for Scotland, Wales and Northern Ireland prior to devolution.

5.6 Territorial Grand Committees

The Northern Irish Grand Committee met on 18 November 2008 to discuss 'Organised Crime'. No meetings of the Scottish or Welsh Grand Committees or the Regional Affairs Select Committee took place during this period.

5.7 House of Lords Barnett Formula Select Committee

As mentioned in section 3.1, in December the House of Lords appointed an ad hoc Committee to examine the Barnett formula. Its terms of reference are to examine the purpose, methodology and application of the Barnett Formula as a means of determining funding for the devolved administrations of the United Kingdom; to assess the effectiveness of the calculation mechanism to meet its purpose; and to consider alternative mechanisms.

The Committee is chaired by Lord Richard. Its website explains that its terms of reference are intended to exclude consideration of

- the overall system of funding the devolved administrations-in particular the question of whether greater tax-raising powers should be accorded to the devolved administrations,
- other political aspects of the devolution settlements, and
- the distribution of funds within the different regions of the United Kingdom.

The Committee includes three peers from Scotland (Lords Forsyth, Lang and Sewel), one from Wales (Lord Rowe-Beattie) and one from Northern Ireland (Lord Trimble).

6. Inter-Governmental Relations

During the period covered by this report there was no meeting of the Joint Ministerial Committee,⁴⁰ but there was a meeting of the British Irish Council in November.

The SNP Government in Edinburgh has continued to put legislative consent motions before the Scottish Parliament and promised to do so for bills announced in the Queen's Speech. Meanwhile, legislative power has started to flow from Westminster to Cardiff Bay as Parliament processes the stream of LCOs passed by the National Assembly.

JMC Agreement on Marine and Coastal Access Bill

Despite fears that a confrontation would develop between Westminster and Holyrood (Devolution and the Centre DMR, September 2008), an agreement was reached in November between the UK and devolved governments on the provisions of the **Marine and Coastal Access Bill**. The agreement was reached after discussions between the governments, starting with the Joint Ministerial Committee meeting back in June.⁴¹

If passed the legislation will bring about a co-ordinated approach to UK Marine planning and conservation and ensure that pedestrians have access to land along the coast. The Bill will also devolve further power to Scotland, Wales and Northern Ireland. The Scottish Government will gain powers for marine planning and conservation for the 200 nautical miles adjacent to Scotland.⁴² In Wales a Welsh zone for fisheries will be created and the National Assembly will be given the power to legislate for coastal access.⁴³ In Northern Ireland the Northern Ireland Environment Agency will operate elements of the new marine planning and licensing regime.⁴⁴

⁴⁰ Although the Cabinet Office press notice on 27 November (see n 41) said that 'a further meeting of the Committee is due shortly'.

⁴¹ Cabinet Office, 'Joint Ministerial Committee: UK Government and the Devolved Administrations announce agreement on the Marine and Coastal Access Bill', 27 November 2008, at:

www.cabinetoffice.gov.uk/newsroom/news_releases/2008/081127_jmc.aspx

⁴² Scottish Government, 'Devolved Scotland extends out to sea', 27 November 2008, at: <http://www.scotland.gov.uk/News/Releases/2008/11/27105536>

⁴³ Welsh Assembly Government, 'Agreement announced on the Marine and Coastal Access Bill', 28 November 2008, at: <http://wales.gov.uk/topics/environmentcountryside/ecnewsevents/ralatestnews/marineagreement/?lang=en>

⁴⁴ Northern Ireland Executive, 'UK government's marine and coastal bill published', 5 December 2008, at:

These powers are however within an agreed UK policy statement, and exerciseable substantially by agreement.

It is expected that in due course both the Scottish and Northern Irish administrations will bring their own marine planning and conservation legislation forward in consultation with the relevant UK Government departments.

British Irish Council meeting in September

The British Irish Council held its eleventh summit meeting in Scotland on 27 September.⁴⁵ The Welsh Secretary Paul Murphy MP represented the British government, while the Irish government delegation was led by the Taoiseach, Brian Cowen TD, and the devolved governments were represented by their First and Deputy First Ministers.

The Council discussed its continuing work on a wide variety of subjects: demography and migration; misuse of drugs; the knowledge economy; social inclusion; tourism; eHealth; transport; minority languages. These subjects are pursued in sectoral groups (of which there are nine listed on the Council's website), with a lead administration for each group. It is open to governments to propose new topics, and at this meeting the Council agreed to consider the proposal from Scotland for an energy work stream; proposals on child protection, housing and collaborative spatial planning from Northern Ireland; and a proposal from the UK Government for a work stream on digital inclusion. The Council agreed to adopt an early years policy work stream, with Wales leading.

BIC Sectoral Group on the Misuse of Drugs

The Ministerial Group on Misuse of Drugs met in London on 20 November, to discuss how to engage effectively with communities around drugs misuse. The UK and Irish governments were represented by junior Ministers, and the Scottish and Welsh governments by officials. The Northern Ireland government was not represented.⁴⁶

<http://www.northernireland.gov.uk/news/news-doe/news-doe-051208-uk-governments-marine.htm>

⁴⁵ The communique is at http://www1.british-irishcouncil.org/documents/edinburgh_summit.asp

⁴⁶ The communique is at <http://www1.british-irishcouncil.org/documents/drugs6.asp>

Economy

The BIC meeting in September concluded with a discussion of the global financial crisis, which has given the devolved governments added incentive to work with the UK government.

The Welsh Assembly Government has co-ordinated All-Wales Economic Summits bringing together the Secretary of State for Wales, members of the Welsh Assembly Government and various business and trade union representatives to discuss the economic problems facing the nation.⁴⁷

In Scotland a meeting was held between the Secretary of State for Scotland, the First Minister, the Scottish TUC and the Scottish CBI. At the meeting they discussed the various actions taken by the UK and Scottish governments to deal with the economic downturn and agreed to have further meetings on this subject.⁴⁸

One area where the Scottish and UK governments did not find agreement was over the merger of HBOS with Lloyds TSB. The Scottish Government had hoped that HBOS could have been rescued without the need for the merger and blamed the UK Government for not leaving HBOS shareholders with any better alternative.⁴⁹ Back in October the UK Government had made the merger a condition of their bail-out of the two banks.⁵⁰

⁴⁷ Wales Office, 'All-Wales Economic Summit', 16 October 2008, at: <http://www.walesoffice.gov.uk/2008/10/16/all-wales-economic-summit/>

⁴⁸ Scotland Office, 'Joint statement from meeting between Secretary of State, First Minister, STUC and CBI Scotland', 21 October 2008, at: <http://www.scotlandoffice.gov.uk/our-communications/release.php?id=3702>

⁴⁹ Scottish Government, 'HBOS merger', 12 December 2008, at: <http://www.scotland.gov.uk/News/Releases/2008/12/12145116>

⁵⁰ BBC Online, 'UK banks receive £37bn bail-out', 13 October 2008, at: <http://news.bbc.co.uk/1/hi/business/7666570.stm>