The Conservative Agenda for

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Summary of Key Points

The Conservative party have a big agenda for constitutional reform in the next Parliament, including big commitments of their own, and unfinished business from Labour's constitutional reforms.

The big Conservative commitments are to reduce the size of Parliament (Commons and Lords); introduce a British bill of rights; legislate to require referendums for future EU Treaties, and reaffirm the supremacy of Parliament in a Sovereignty Bill; introduce English votes on English laws; and hold referendums on elected mayors in all major cities.

Unfinished business from Labour includes strengthening the autonomy of the House of Commons; further reform of the House of Lords; and devolution, where all three assemblies are demanding further powers.

Ministers and the Executive

How serious Cameron is about his constitutional reforms will be tested by early decisions on which ministers he puts in charge of what; whether he reduces the size of his government by 10%, as well as the Commons; and strengthens the Ministerial Code.

Key ministerial posts will be the Cabinet Office minister put in charge of Civil Service

bill in November 2010. Immediate decisions will also be needed on establishing a Business Committee and electing Select Committee chairs, to implement the Wright reforms.

In the Lords, the immediate decision is how many Conservative peers to appoint. To catch up with Labour, Cameron would be justified in appointing 30-40 new Conservative peers; but if he follows the same policy of restraint as Labour, he could do so gradually, narrowing the gap by 10 peers a year.

British bill of rights, and the judges

The British bill of rights can be developed more slowly, with a Green Paper and White Paper in 2011, public consultation led by an independent commission in 2012, and draft bill in 2013. The process is as important as the content, to build up public ownership and legitimacy, and overcome resistance from lawyers and judges, who are strongly attached to the Human Rights Act.

The judges may resist repeal of the Human Rights Act. They will defend the budgets of Legal Aid and the Courts Service against public spending cuts; and resist attempts to

More referendums

Conservative plans involve greater use of referendums: for any future EU Treaties, and to initiate parliamentary debates and table laws; for elected mayors in ten major cities; and to empower citizens to initiate referendums on local issues, and veto Council tax rises. There may also be a referendum in 2010 on primary legislative powers for the Welsh Assembly.

Summary of Key Decisions and Timetable

This table was to have been in the concluding chapter of the report. It is placed at the front to bring home the range of different ministers and departments involved, and the number of early decisions required. The table is set out by subject matter, to correspond with the order of chapters in the report.

Constitutional reform item	Lead Department	Action required	Date
Ministers and the Executive			
Decide to establish Cabinet Committee on Constitution	No 10 Cabinet Office	Executive action	May 2010
Reduce the number of Ministers in government	No 10 Cabinet Office	Executive action	May 2010
Limit the number of Special advisers	No 10 Cabinet Office	Executive action	May 2010
Strengthen Collective Cabinet government	Cabinet Office	Revisions to Ministerial Code and Cabinet Manual	May 2010
Approve Ministerial Code and Cabinet Manual	Leader of the House	Parliamentary resolution	May 2010

Replacing Barnett Formula, fiscal autonomy for Scotland	HM Treasury	Cabinet Committee JMC Devolution White Paper	2010 – 2017 for full phasing in
English votes on English laws	Leader of the House	Refer to Procedure Committee	For report 2011
SNP referendum bill on Scottish Independence	Scotland Office	Ignore	2010
Abolition of Regional Assemblies	Communities and Local Government	Already done by current government	
Slimming down Regional Development Agencies (RDAs)	DBIS	As part of public expenditure cuts	2010
Parliament			
Reduce the size the House of Commons by 10%	MoJ	Cabinet Committee White Paper Legislation	May-

European Union			
United Kingdom Referendum Bill on EU powers	FCO	Cabinet Committee White Paper Legislation	2011? No urgency, save for political reasons
United Kingdom Sovereignty Bill	FCO / MoJ	As above	As above
British bill of rights			
Repeal the Human Rights Act and replace it with a British Bill of Rights	MoJ	Cabinet Committee GP and WP Public consultation Draft bill Legislation Implement	2010 2011 2012 2013 2014 2015, anniversary of Magna Carta
Elections and political parties			
Individual voter registration	MoJ	Decide on speeding up timetable	2010
Review structure and process of Parliamentary Boundary Commissions	MoJ	White Paper on reducing size of House of Commons	July 2010
Judiciary			

Constitutional Watchdogs			
Review CWs as part of review of Quangos	Cabinet Office	Review purpose and expenditure of each quango every 3 years	2010-13
Strengthen indepence of Information Commissioner	MoJ	Make Info Commissioner appointed by Parliament. Legislation	When a suitable legislative vehicle arises
Strengthen design of other CWs	Cabinet Office	Build up centre of expertise	2011-12
Create Office for Budgetary Responsibility	Treasury	Establish initially on non statutory basis	May-June 2010
Abolish Standards Board for England	DCLG	Include in wider local govt legislation	2011-12
Monarchy			
Prepare for Queens Diamond Jubilee	DCMS	Appoint lead minister and team of officials	2010-12
Prepare for possible regency	MoJ	Contingency planning	
Prepare for demise of Crown	MoJ	Plan for Accession Coronation New Civil List	
Consider ending male primogeniture and ban on Catholics	MoJ	Consult 15 Commonwealth governments where Queen is head of state	

1 Introduction

> A programme of constitutional reform to strengthen our parliamentary democracy and our national identity provides an inspiring mission for our party
>
> (David Cameron, 'Family, Community, Country' speech to Carlton Club, 27 July 2005)

The Conservative party is not generally associated with constitutional reform. But they have introduced constitutional changes in the past, big and small: the introduction of life peerages in 1958, entry into the European Community in 1973, the departmental select committee system in 1979. They have a big agenda for further reforms in the coming Parliament, and they will inherit substantial items of unfinished business from Labour's 1997 constitutional reform programme. Their own agenda includes legislation to require referendums for any future EU Treaties, a Sovereignty Bill to re-affirm the supremacy of the UK Parliament, and a British bill of rights. The unfinished business includes strengthening Parliament; further reform of the House of Lords; and devolution, where all three assemblies are demanding more powers.

The purpose of this briefing is first to set out the Conservative agenda for constitutional reform, by drawing on reports of Conservative party task forces and other policy documents, and speeches of the party leader and leading spokesmen, to identify the main policy commitments. At the start of each chapter we summarise the main commitments in that policy area. We then work through how those policy commitments can best be implemented, in what order and what timescale. We approach the task in the same spirit as the Unit's previous policy briefings on the Blair and Brown agenda (Hazell 2003, 2007). We do not question the desirability of the policy commitments, but we offer our best advice on how they can be brought into effect, and the obstacles which need to be overcome.

The briefing opens with an explanation of the Conservative approach and philosophy towards constitutional reform, drawing mainly on speeches by David Cameron and his constitutional spokesmen. It then goes through the major constitutional issues, item by item, identifying Conservative policy on each issue, and issues which they will need to address. The briefing identifies the lead ministers and departments for each issue, to s

2 Conservative Philosophy underlying their constitutional agenda

The starting point of the Conservative constitutional reform agenda is the electorate's political disengagement. The main principles which emerge from speeches, Democracy Taskforce and other papers are intended to be solutions to this problem. There are four key principles:

1. Decentralisation and the redistribution of power to the people. People

> Every decision government makes, it should ask itself a series of simple questions: Does this give power to people, or take it away? Could we let individuals, neighbourhoods and communities take control? How far can we push power down? (Cameron 2009a)

2.

2.4 Transparency

In the same May 2009 speech Cameron spoke about the need for 'near total' transparency and the positive impact this would have on the public's perception of politics:

> If we want people to have faith and get involved, we need to defeat this impression by opening politics up - making everything transparent, accessible - and human.
>
> And the starting point for reform should be a near-total transparency of the political and governing elite, so people can see what is being done in their name.
>
> …we will extend this principle of transparency to every nook and cranny of politics and public life because it is one of the quickest and easiest ways to transfer power to the powerless and prevent waste, exploitation and abuse.
>
> …But transparency isn't just about cleaning up politics, it's also about opening up politics. Right now a tiny percentage of the population craft legislation that will apply to one hundred percent of the population. This locks out countless people across the country whose expertise could help. So why not invite them in on the process? …In time, this will have a transformative effect on our politics, taking power from the party elites and the old boy networks and giving it to the people. (Cameron 2009b)
>
> We will publish every item of government spending over £25,000.
>
> It will all be there for an army of armchair auditors to go through, line by line, pound by pound, to hold wasteful government to account (Cameron 2009a).

2.5

3 Ministers and the Executive

3.1 Limit number of Special Advisers

In October 2009 there were 74 Special Advisers serving the Brown government: 25 in No 10 and 49 in Departments. It has been at around this level since 1997, when Blair became Prime Minister and appointed twice the number of Special Advisers there had been under John Major. This led to criticism from the Committee on Standards in Public Life (CSPL 2000), which recommended capping their number in statute. The

Committee (this is currently in para 2.6 of the Ministerial Code). Some comment has suggested that David Cameron will be no keener than Tony Blair or Gordon Brown to allow discussion outside their inner circle (Forsyth, 2009). The Cabinet Office are

Secretary. When a fixed term expires there is no obligation to find another position for the head of department, who is retired: unless she/he finds another post, which most do. In 1996, after the election of the Howard government, the contracts of six Departmental Secretaries were terminated. At the time of the initial transition, the government offered a pay loading of 20% to encourage existing Secretaries to con

recommend removal of the Permanent Secretary. A majority of the non-execs would come from the commercial private sector (Maude 2009)

The Conservatives are right to focus on boards as being key to raising departmental performance, and to seek greater ministerial involvement. Boards should assume more collective responsibility, and not simply be advisory to the Permanent Secretary (who chairs most departmental boards). But the private sector model is not directly transferable, because the role of company boards and their non-execs is different; and full ministerial involvement would require ministers to be the chief executive or executive chairman, which most ministers will be unable or unwilling to do.

Non-execs could play a stronger role, but the following issues need to be worked

revive the Future Legislation Committee, merged by Blair into LEG, which controlled access to the legislative programme. But it needs to be chaired by a senior Cabinet figure, who has the confidence of the Prime Minister, and who can say no to his colleagues. LEG will also need more forceful leadership if there is to be an increase in pre-legislative scrutiny (see 5.1.3), because departments are reluctant to sacrifice the additional time required; or if there are to be additional checks on legislative proposals like Privacy Impact Assessments (Grieve and Laing, 2009).

That leads into a final point about collective government, which is the importance of chairing Cabinet committees. The Prime Minister cannot chair them all. He needs to have at least one senior member of the government without a departmental portfolio, whom he trusts, to chair the main committees which he cannot chair. This was the role played by Lord Whitelaw under Mrs Thatcher and Michael Heseltine under John Major. It is crucial to the effective working of Cabinet government.

3.5 Number of Ministers in government

In 2001 the Conservative Manifesto said: "We will cut the number of government ministers and, once we have strengthened parliamentary scrutiny, we will reduce the size of the House of Commons". The Norton Commission on Strengthening Parliament, established by William Hague as Conservative leader, recommended capping the size of Cabinet at 20, junior ministers at 50, and having only one parliamentary private secretary (PPS) per department (Norton Commission 2000). In 2004 Michael Howard as Conservative leader proposed a Smaller Government Bill, which in addition to reducing the number of MPs, would cut the number of Ministers by 20 per cent.

David Cameron has pledged to reduce the size of Parliament, but despite press rumours (eg 'Cameron to cull Cabinet and ministerial posts' Daily Telegraph 9 Sept 2009) he has been silent about the size of his government. It will take a long time to reduce the number of MPs (see 5.1 below), but Cameron risks incurring the criticism that he will weaken Parliament if he does not correspondingly reduce the size of government. The number of Ministers has crept upwards over the years, as has the size of the 'payroll vote' (Ministers, whips and PPSs in the Commons, whether paid or unpaid). In the Brown government there are 23 Cabinet Ministers, 71 junior Ministers, and 45 MPs acting as unpaid PPSs, with 141 MPs in the 'payroll vote' (out of a total of 349 Labour MPs). If Cameron wanted to reduce the size of government by 10 per cent (the same target as his planned reduction of MPs) there would be 21 Cabinet Ministers, 64 junior Ministers and 40 PPSs: taking the government back to the size it was under Mrs Thatcher. And if he wanted to make the reduction permanent, he could amend the House of Commons Disqualification Act 1975 which limits the number of holders of ministerial office who may sit and vote in the House of Commons (whether paid or not). The present maximum is 95. If the House of Commons is reduced by 10 per cent, the maximum number of Ministers in the House should be reduced to 85.

One easy way of reducing the size of Cabinet would to get rid of the three separate territorial Secretaries of State, for Scotland, Wales and Northern Ireland. This has been suggested by the Cabinet Secretary at the formation of every new government since 2001: as a consequence of devolution these are not proper Cabinet level jobs, and their posts could be amalgamated (see 4.1 below). If policing and justice is devolved to Northern Ireland the case will become yet stronger, because that post will join the other two in ceasing to have any major executive responsibilities.

3.6 Minority or coalition government

It will be apparent immediately after the election if there is a hung Parliament, with no single party having an overall majority. If the Conservatives are the largest single party, they do not automatically have the right to form the new government. But it is most unlikely that the Liberal Democrats would want to support Labour if they have slumped in the polls. Nor will they want to enter formal coalition with the Conservatives. The most likely outcome is a minority Conservative government, with a supply and confidence agreement from the Liberal Democrats to support them for the first 12-18 months, in exchange for Conservative support for certain Liberal Democrat policies. In that first year the Liberal Democrats would look for strong progress on devolution and

4 Devolution and Decentralisation

So far the Conservatives have allowed other parties to make the running in shaping the devolution agenda. That may be about to change. Even if their inclination is to duck some of the harder questions, there are several policy issues on which a new Conservative government will be obliged to respond:

- the SNP's proposed legislation for a referendum on independence
- the likelihood of a referendum on primary legislative powers for the Welsh Assembly

Cameron also emphasised the need to reduce top down, centralised government. Decentralisation is a strong part of Conservative philosophy (see 2.1), and the belief that if you give people greater responsibility, they will behave more responsibly. The Conservatives can be expected to support further decentralisation, so long as it does not threaten the Union.

Cameron said that he would seek to address any unfairness in the Union. There are three elements of unfairness in the post-devolution arrangements, all hangovers from privileges granted to Scotland, Wales and Northern Ireland in the pre-devolution days:

Retaining the three territorial Secretaries of State
Continuing the Barnett formula for funding devolution
Over-representation at Westminster.

4.2 The territorial Secretaries of State

The most glaring anomaly is continuing with three separate Secretaries of State. The original justification was to enable the voices of Scotland, Wales and Northern Ireland to be heard in Cabinet. Post devolution their voices and representation now chiefly come through the devolved institutions. The Scottish Secretary is largely redundant. The Welsh Secretary still has a significant job regarding legislative powers for Wales and decisions about a referendum on primary powers, but even that is not time-consuming at ministerial level; while the Northern Ireland Secretary's job will shrink considerably once devolution of policing and justice is completed.

Merging the posts would save two Cabinet places, and offer greater flexibility in Cabinet formation, in policy fields where the Conservatives are short of experience. Retaining the separate offices would not only increase the size of Cabinet, but mean that the

4

current stage is experimenting with limited Legislative Competence Orders (LCOs), which are proposed by the Assembly, laid before Parliament by the Secretary of State,

referendum requirement for future EU Treaties (see chapter 6). If the Welsh referendum requirement can be so easily cast aside, critics will say, what value can be placed on the new requirement for referendums on EU Treaties?

In practice the Conservatives will probably be divided similarly to the Labour party. This reflects divisions in Wales itself. Although opinion polls in Wales have generally shown support for the Assembly having law making powers, it takes time to convert soft polling support into hard votes in a referendum. A recent poll suggests that 42% would vote Yes for law making powers, 37% No (YouGov, 27 October).

The attitude of a future Conservative government depends critically on whether the Cabinet want the Assembly to acquire primary legislative powers. The 12 Conservative AMs in the Assembly are strongly in favour of primary powers, but the three Conservative MPs from Wales are against (as are most Labour Welsh MPs). But the balance of support in both main parties may change after the election. September polls suggested that after the election there might be as many as 18 Conservative MPs from Wales, while the number of Labour Welsh MPs might slump from 29 to 14 (Guardian 15 Sept 2009, reporting YouGov polling analysed by ElectoralCalculus). The new group of Conservative Welsh MPs will contain some devo-supporters, some devo-sceptics, and some in the middle. They will want to shore up their support, and some will fear that a Conservative government that blocked calls from Wales for a referendum would risk undermining that support.

4.5.2 Scotland

The proposals for Scotland are much more modest, reflecting the fact that the Scottish Parliament already has extensive legislative powers. The Calman Commission proposed only minor re-adjustments, that Holyrood should be given powers to control airgun legislation, powers over drink driving and speed limits, and the running of Scottish elections (this last in the wake of the 2007 Scottish elections, when almost 150,000 ballot papers were rejected). In the other direction, Calman suggested that Westminster should regain responsibility for food content and labelling; the regulation of health professionals; the winding up of companies; and aspects of Scottish law on charities.

The complexities of the model of tax devolution recommended by Calman are considerable, and will take time to resolve. That is not the case for the recommendations about powers. If the Conservatives wished to indicate their support for the Calman package as a whole, they could embrace action on these proposals as soon as possible.

4.5.3 Northern Ireland

The Northern Ireland Assembly also has extensive legislative powers. The only remaining powers waiting to be transferred are policing and justice. The Northern Ireland Act 2009 paves the way, but further subordinate legislation will be required in the Northern Ireland Assembly and at Westminster to give effect to the transfer.

The parties in Northern Ireland have been divided over the financial package to accompany the transfer; how the new justice department fits into the wider Executive, and which party might control it; and ‘community confidence’ (unionist code for whether the republicans are showing sufficient support for the new Police Service for Northern Ireland).

The parties are still a long way from resolving their differences. In September the Northern Ireland Assembly passed the second stage of the Justice Bill, voted through by the DUP, Sinn Fein and the Alliance party. [

Unit has similarly shown that post devolution Scottish and Welsh MPs have reduced workloads compared with their English counterparts, in terms of their postbags, and constituency work (Paun 2008). If the same one third discount were followed, Scotland would have 40 MPs, Wales 22 and Northern Ireland 12. This is politically explosive, and might be a gift to nationalist parties in all three parts of the country. But the combined reduction of 40 MPs would achieve more than half the Conservative target of reducing

make the police accountable to the people they serve through directly elected commissioners, crime maps and quarterly beat meetings;

abolish the Standards Board;

5 Strengthening Parliament

Conservative commitments:

- Reduce the size of the House of Commons by 10 per cent
- Strengthen Select Committees
- Reduce government control of the parliamentary timetable
- Enable the public to put things on the parliamentary agenda
- Reduce House of Lords to 250-300 members once it is elected.

Strengthening Parliament is a strong theme running through recent Conservative manifestos and many of David Cameron's speeches. The focus is mainly on the Commons, where there is no shortage of proposals for strengthening the way Parliament works. These are to be found in reports from the Norton Commission on Strengthening Parliament (2000) and Ken Clarke's Conservative Democracy Task Force (2007), as well as from independent bodies such as the Hansard Society (2001, 2005, 2006) and the Constitution Unit (2007).

The challenge facing the new government is how to select and prioritise between the different proposals. This task has in part been done by Tony Wright's Select Committee on Reform of the House of Commons, which highlighted three key areas: electing Select Committees, more backbench control over the parliamentary agenda, and more public input. With the government's hesitation and delay in finding time to debate the Wright report, it will be largely up to the new Parliament to implement and give life to its proposals. This could be a defining moment for parliamentary reform, much as the St John Stevas reforms of 1979 built on strong proposals inherited from the previous Parliament.

The Conservatives also have commitments to reduce the size of the House of Commons; and significantly to reduce the House of Lords, once elections have been introduced for the second chamber. This chapter looks first at reform of the House of Commons, and then the Lords.

5.1 Reforming the House of Commons

5.1.1 Reducing the size of the House of Commons

The Conservative commitment to reduce the size of the House of Commons is long standing, and can be found in the 2001 and 2005 manifestos. It was repeated by David Cameron in speeches in summer 2009, with a target of reducing the Commons by 10 per cent. Sir George Young reiterated the commitment to the 2009 party conference in the following terms:

> So we will instruct the Boundary Commission to set out detailed proposals to reduce the number of MPs by ten percent for the next General Election after this one.

> Our proposals would simply increase the average size to around 77,000: the size of many constituencies today including my own.

But, crucially, we will address the disparities that exist between constituency populations. So as well as reducing the number of MPs, we will change the law to ensure that every constituency is broadly the same size.

The House of Commons elected in 2010 will have 650 members. The target is thus to reduce the House to 585 members, for the next general election to be held at the latest in 2015. This will require a wholesale boundary review of all constituencies, to remove 65 constituencies, and raise the average size of each constituency from 70,000 to 77,000 electors.

There is a wholesale review of all parliamentary constituencies every 8 to 12 years, conducted by the parliamentary boundary commissions (there are four separate commissions for England, Scotland, Wales and Northern Ireland). The last periodic review commenced in 2000, and was completed in 2008. The timetable varied for each commission: England took the longest, at 6½ years. The next periodic review is due to start in 2012, and if it follows a similar timetable might not be completed until 2018.

The four parliamentary boundary commissions are independent bodies which operate under the provisions of the Parliamentary Constituencies Act 1986 as amended by the Boundary Commissions Act 1992. The ex officio Chairman of each Commission is the Speaker, but he is a figurehead. The work of the boundary reviews is led by Deputy Chairmen, who are High Court judges. England is the main problem, with 82% of all the constituencies. The main reason for the slow progress of the reviews in England is that they are staggered, with successive waves spread out over five years. A second is the painstakingly slow process of public consultation, with almost half the reviews going to Local Inquiries, which then add 12 to 15 months to the timetable. A third is that the judges continue to sit in court, and lead the reviews largely in their spare time. A fourth is that the parliamentary commissions often have to wait for local government reviews, because the building blocks for parliamentary constituencies are local government and ward boundaries. A fifth is that no single body is charged with co-ordinating and driving the exercise forward.

What might be done to speed up the process?

> Abolish Local Inquiries, and rely upon written representations only. This would be supported by most election experts. Half of all Inquiries result in no change at all. Of all the wards in areas for which Inquiries were held in the last periodic review, only 3% were moved between constituencies as a consequence
>
> Abolish the consultation process altogether, and allow the Commissions' original recommendations to be final. This might save six months; but it might make the Commissions' recommendations more vulnerable to challenge in the courts, delaying the process even further
>
> Increase the staffing and resources of the Boundary Commission (and for England, the number of Commissioners). Increasing staffing and resources is what happened in 1992, when the Major government was very keen for the fourth periodic review to be completed before the next general election. The secretariat was increased from 12 to 40 staff, and a target end date set of

December 1994. The review, which had started in February 1991, was completed in April 1995, and the report submitted to Parliament in June

So in the recent past, 3 to 4 years is the fastest the English Commission can move to complete a review. That suggests that it will require streamlining of procedures as well as additional resources if a review is to be completed within the life of a single Parliament. The cost of a comprehensive review of parliamentary boundaries is about £12m; of a speeded up review probably £15m.

Legislation will be required to reduce the size of the Commons and to give the parliamentary boundary commissions new marching orders. It will not be easy to introduce legislation straight away, because several tricky issues need to be resolved first:

The timescale for the reviews: by what end date will the commissions be asked to report?

The new procedure. Will Local Inquiries be abolished? Will consultation be abolished altogether?

The body in overall charge: should this be the Ministry of Justice, or the Electoral Commission?

The leaders of the Boundary Commissions. Should they continue to be serving

timetable for policy planning, legislation, wholesale boundary reviews and their implementation might be as follows:

Date	Activity
May 2010	General Election
	Establish Cabinet Committee to plan policy and legislation

new Parliament with many new members. The committee's recommendations will be put to the test early in the new Parliament. A chaotic or long drawn out process will not be a good advertisement for the new model (remember the election of the new Speaker in 2000). Under the old rules, it could take as long as three

5.1.5 Controlling the prerogative powers

David Cameron and the Democracy Task Force have called for an enlargement of Parliament's role in scrutinising the prerogative powers of going to war; ratification of international treaties; making senior appointments; and reorganising government departments (Cameron 2006, Task Force 2007).

The government is in broad agreement. It has introduced pre-appointment scrutiny hearings for senior public appointments (see 5.1.3 above). Its proposals for more effective scrutiny of treaties are in Part 2 of the Constitutional Reform and Governance Bill, introduced in July 2009. This would give legal effect to a resolution of the House of Commons that a treaty should not be ratified. The Commons could resolve against ratification and make it unlawful for the Government to ratify the treaty. The House of Lords could require a further statement from the government explaining why the treaty needed to be ratified.

The government had also proposed closer parliamentary scrutiny of the war making power. In the 2007 Governance of Britain green paper they proposed that the government should seek the approval of the House of Commons before going to war. A consultation paper was published seeking views on the modalities (Ministry of Justice, 2007). In the 2008 Constitutional Renewal white paper the government expressed its preference for a detailed resolution of the House rather than a statutory regime. This was agreed by the parliamentary Joint Committee scrutinising the draft Constitutional Renewal Bill. It remains for the government to bring forward a draft resolution. If the Brown government fails to do so, the next government could complete this unfinished business by coming forward with its own resolution.

The proposal for parliamentary scrutiny of reorganisations of Whitehall departments originates from the Public Administration Select Committee (PASC), in their 2007 report on Machinery of Government Changes. PASC recommended a debate and vote in Parliament before any major change to the machinery of government; and that statutory functions should be given to government departments, not interchangeable Secretaries of State. The government disagrees. One issue is who should conduct the initial scrutiny: should it be the relevant departmental Select Committee(s), or an overarching Select Committee like PASC? Another is whether David Cameron is willing to submit any initial reorganisation of Whitehall flowing from the formation of his first Cabinet to parliamentary scrutiny.

A final item to mention is the proposal from the Conservative Democracy Task Force that the Ministent(m [(t).0(P)3.0(A)-2.y-3.9(n)-440r)3.ET Q 89(t Tm [(42(

the charge that he is further increasing the size of an already over large House of Lords at the same time as he seeks to reduce the size of the Commons. Second, quality matters more than quantity. The Lords is a useful recruiting ground for ministerial talent: it can provide people with a wide range of senior management and leadership experience which is in short supply in the Commons. Third, there are logistical constraints. The Appointments Commission cannot process a large block of names all at once; and the House of Lords has run out of space, and will be hard pressed to find office space for all the new peers.

A final reason is that so long as the Conservative and Labour groups remain broadly of equal size, the actual size of the Conservative group will not make much difference to how often a Conservative government is defeated in the Lords. Contrary to what might be supposed from Figure 5.1, it is the Liberal Democrats who determine the outcome of most divisions in the House of Lords. Although on paper the Crossbenchers are the largest group holding the balance of power, they attend to vote far less than party members (Russell and Sciara 2008). Because of their higher participation(00)-1.9d1ti

number of hereditary peers on their benches: 48 Conservative peers, one quarter of the Conservative group, are hereditaries.

If the Constitutional Reform and Governance Bill is not passed before the election, a Conservative government may wish to re-introduce the provisions for discipline and retirement. Retirement is the more important issue, given concerns about not increasing the overall size of the Lords.

6 Europe: Treaties, Referendums and Sovereignty

6.1 Referendum requirement for future EU Treaties

After ratification of the Lisbon Treaty (on which the Conservatives had promised a referendum) David Cameron gave a major speech setting out the Conservatives' new policy on Europe:

> Never again should it be possible for a British government to transfer power to the EU without the say of the British people. If we win the next election, we will amend the European Communities Act 1972 to prohibit, by law, the transfer of power to the EU without a referendum. And that will cover not just any future treaties like Lisbon, but any future attempt to take Britain into the euro. We will give the British people a r.2r.0(e)-2.9(f)3.0(e)-2.9(r)3.0(e)(an)44thempt te a fut

The answer to the first question is probably not. The comparison with Ireland is misplaced. Ireland has a written constitution and a constitutional court which has the right under the Constitution to hold government activity to be unconstitutional. Under the UK's doctrine of parliamentary sovereignty, a government can always invoke the current sovereignty of the current Parliament to repeal the legislation of a previous Parliament.

So it would be very difficult for the new law to be legally entrenched. A later Act of Parliament could always repeal it.

they do not occur as a result of any new treaty. It may not be easy to define which treaties ‘transfer power to the EU’ so as to require a referendum. And the government will be asked, who will decide? Will it be left ultimately to the courts to determine whether a Treaty comes into the defined category? Or will it be for ministers to certify:

2. On the assumption of continued UK membership, do you approve the UK's accession to the latest EU Treaty?

6.2 Sovereignty Bill

In his same post-Lisbon Treaty speech, Cameron included a further commitment:

> Because we have no written constitution, unlike many other EU countries, we have no explicit legal guarantee that the last word on our laws stays in Britain. There is therefore a danger that, over time, our courts might come to regard ultimate authority as resting with the EU. So as well as making sure that further power cannot be handed to the EU without a referendum, we will also introduce a new law, in the form of a United Kingdom Sovereignty Bill, to make it clear that ultimate authority stays in this country, in our Parliament.
>
> This is not about Westminster striking down individual items of EU legislation. It is about an assurance that the final word on our laws is here in Britain. It would simply put Britain on a par with Germany, where the German Constitutional Court has consistently upheld - including most recently on the Lisbon treaty - that ultimate authority lies with the bodies established by the German Constitution. (Cameron 2009).

In effect the Sovereignty Bill would see

If at any time Parliament decides to legislate in a way which is incompatible with EU law, and expressly so declares by disapplying the relevant provisions of the European European Union (Amendment) Act 2008, the UK courts shall give effect to UK and not EU law.

If at any time Parliament decides to legislate in a way which is incompatible with the ECHR, and expressly so declares by disapplying the relevant provisions of the Human Rights Act 1998, then the UK courts shall give effect to UK law and not to the ECHR.

6.2.3 What are the likely obstacles?

There will be three major sources of opposition, assuming the government has a sufficient majority to get its Sovereignty Bill through the Commons. The first is the House of Lords, where the government has no majority. The bill will be referred to the Lords Constitution Committee and to the EU Committee. Both committees are likely to

Criminal justice.

What Cameron said in his speech of 4 November was:

We will want to negotiate the return of Britain's opt-out from social and

7 Elections, Referendums and Political Parties

Conservative commitments:

- Speed up individual voter registration
- Speed up boundary reviews to reduce Parliament by 10 per cent
- Legislate to require referendums for EU Treaties
- Legislate for referendums on elected mayors and local issues.

7.1 Elections

7.1.1 Individual voter registration

The Conservatives have long supported individual electoral registration (IER) as a means of improving the comprehensiveness and accuracy of the electoral register, and reducing electoral fraud. At their initiative a new clause was added to the Political Parties and Elections Act 2009 for the introduction of IER, replacing the current voter registration system by heads of households. Introduction will be in two phases. From 2010 to 2015 individual information (National Insurance number, date of birth and signature) will be collected by Electoral Registration Officers on a voluntary basis. The Electoral Commission will monitor take-up, and in July 2014 will make a formal report on whether the provision of personal identifiers should be compulsory for everyone who wants to be on the electoral register.

The Conservatives have criticised the long time scale, and want to speed up the process. There are three obstacles to doing so. The first is that it will require fresh legislation to depart from the gradual and voluntary approach in the 2009 Act. The second is an increase in the initial cost. The voluntary programme of IER is estimated to cost £45m in 2010-11, £30m in 2011-12, and £20m pa thereafter. Making the process compulsory would cost more initially, with £60m in Year 1, but overall the costs would be halved. The third difficulty is that compulsion from the start might damage public confidence in the new system, and put at risk the accuracy and integrity of the electoral roll. The Electoral Commission will be consulting about their evaluation approach, but they will be concerned to maintain integrity of the registration process and the confidence of electors, and to ensure that personal data is properly managed and protected.

It is worth remembering that postal voting was speeded up at government insistence in 2003, against the advice of the Electoral Commission, and electoral fraud increased as a result. So the government should consult the Electoral Commission before speeding up the process, and think hard before overriding the Electoral Commission's advice.

7.1.2 Reduction in size of Parliament: changes to Parliamentary Boundary Commissions

If the government wishes to reduce the size of the House of Commons by 10 per cent in the life of a single Parliament, it will need greatly to speed up the process of parliamentary boundary reviews (see ch 5.1.1). This may require reviewing the future of the parliamentary boundary commissions (their functions were due to be transferred to

the Electoral Commission, but they were then granted a reprieve). More likely is a further reprieve; but radical streamlining and speeding up of the way they conduct boundary reviews. This will require urgent legislation in the first year of the new government, which will be contested with accusations of gerrymandering. It will also require additional expenditure to increase the staffing of the boundary commissions to enable them to speed up the process. A rough cost estimate is £15m.

7.1.3 Electoral Administration

The Electoral Commission was set up in 2000 to regulate elections, referendums and the funding of political parties. It is not popular with politicians, but it would be difficult now to get rid of it. Following a critical report by the Committee on Standards in Public Life in 2007, it has been trimmed a little: it is no longer responsible for electoral policy or electoral boundary setting. It is accountable to a Speaker's Committee of the House of Commons. If the government wished to trim it further, it would not be easy, because its budget is set by the Speaker's Committee (see 11.3).

Following the passage of the Political Parties and Elections Act 2009, the Electoral Commission is to have four additional Commissioners appointed by the political parties, which may make it more sensitive to their needs. Under the same Act, it will be heavily involved in the introduction of individual voter registration. It may also be required to supervise referendums under PPERA 2000. It will be responsible for conducting the referendum on legislative powers for the Welsh Assembly (see ch 4.5.1), and any future referendums on EU Treaties. But it will not be responsible for any independence

7.3 Regulation and funding of political parties

The last five years have seen three reviews of the funding of political parties: by the Electoral Commission (2004), the Constitutional Affairs Select Committee (2006), and Sir Hayden Phillips (2007). Building on the previous reviews, Phillips concluded that the status quo was no longer sustainable. He recommended:

> a cap of £50,000 on donations
> reducing major parties' spending on general elections from £20m to £15m
> additional state funding.

The Phillips report was followed by inter party talks, with a draft agreement published in August 2007, but the talks were suspended in December. There had been two main obstacles: the Conservatives wanted the £50,000 cap on donations to apply to trade union contributions to the Labour party; and Labour wanted action to curb Lord Ashcroft's special fund for marginal constituencies.

8 Human Rights

8.1 Replace Human Rights Act with a British bill of rights

There can be no doubt of the Conservative commitment to repeal the Human Rights Act. In the 2005 Conservative manifesto the commitment was to conduct a review. David Cameron raised the stakes in a speech in June 2006 which was wholly devoted to a critique of the Human Rights Act, when he first pledged its repeal (Cameron 2006a). He has repeated the commitment in many speeches since (Cameron 2006b, 2007, 2008,

8.2 British bill of rights: Contents

8.2.1 ECHR plus or minus?

Labour and the Liberal Democrats are clear that a British bill of rights (BBOR) must build upon the ECHR rights as its floor: in human rights shorthand, it must be 'ECHR plus'. Within the Conservative party there is an unresolved debate as to whether it might be ECHR minus: whether it might be possible to restrict the application of some of the Convention rights by interpreting them through the limiting prism of a British bill of rights.

Human rights experts are agreed that a BBOR must be ECHR plus. After hearing evidence from these experts the JCHR concluded:

> We agree that any UK Bill of Rights has to be 'ECHR plus'. It cannot detract in any way from the rights guaranteed by the ECHR (JCHR 2008 para 50).

Their reasoning was as follows:

> even if a Bill of Rights were enacted, this would not change the existing ECHR caselaw, or lead to a watering down of ECHR rights, unless the UK withdrew from the ECHR. Withdrawing from the ECHR is not a realistic possibility, since being a signatory to the ECHR is now effectively a condition of membership of the EU (JCHR 2008, para 48).

In 2007 the Conservatives established a commission of lawyers to try to square this circle, but their work is still not complete. But in a speech in late 2009 Dominic Grieve gave some strong indications of their thinking. He argued that s2 of the Human Rights Act merely required our courts to 'take account of' the Strasbourg jurisprudence, but they had gone further. They should be encouraged to challenge and engage in dialogue with Strasbourg where the ECtHR failed to provide principles of general application, and should not go further than Strasbourg in developing home grown jurisprudence on matters such as restrictions on deportation, and privacy law.

Grieve outlined that a British bill of rights might:

> Reword s2 of the HRA, to emphasise the leeway of the UK courts to have regard to our national jurisprudence and traditions
>
> Through interpretation clauses give more detailed guidance on where the balance is to be struck between competing rights
>
> For example, clarify the balance between privacy law and freedom of expression within our national tradition, which has historically treated the right to freedom of expression as paramount.

In terms of additional rights, Grieve proposed as possible candidates:

> The right to trial by jury
>
> Limiting the power of the state to impose administrative sanctions

Extending equality and sexual orientation law to include gender and sexual orientation

But not to include any social or economic rights

Nor to include any responsibilities, save possibly in a preamble.

In terms of the process to be followed, Grieve expected to consult widely by means of a Green Paper. It was important not to rush the process, because the objective was to develop

8.2.4 Social and economic rights

procedure. Three were still awaiting a governmental and parliamentary response, but the remainder had been addressed using primary legislation (Leigh and Masterman, 2008).

8.4 British bill of rights: Entrenchment

The HRA is not entrenched, save for the obligation to interpret all legislation, including future legislation, compatibly with Convention rights. It thus entrenches the ECHR rights against implied repeal, but leaves Parliament free to pass incompatible legislation if it makes clear that is its intention.

A British bill of rights will raise again the question of whether it should be more strongly entrenched than this. It is not easy to entrench legislation within the British system of parliamentary sovereignty, but there are four possible mechanisms:

> Requiring the consent of both Houses to any measure amending the bill of rights, by excepting amendments to the bill of rights from the terms of the Parliament Act 1911 (so the Commons could not overrule the Lords)
>
> Requiring special voting majorities, eg two thirds or three quarters, for any amendments to the bill of rights (as New Zealand requires for amendments to provisions of their Electoral Acts)
>
> A referendum requirement for any amendments
>
> A simple declaration against amendment.

When the Human Rights Act was introduced entrenchment was considered difficult if not impossible. Attitudes are changing; and the Conservatives are themselves proposing entrenchment for other measures (see chapter 6). If entrenchment is desired, the first mechanism is preferable for a strong form of entrenchment, and the fourth for a weak form. Special majorities are so far unknown in the UK; and a referendum seems too high a threshold for what may sometimes be minor amendment.

But a referendum should be considered as part of the process for adopting the bill of rights.

2011		
spring	Green Paper published	
summer	JCHR inquiry and report on Green Paper Devolved governments and assemblies are consulted	To establish the strength of parliamentary support for the Green Paper proposals, and of support or resistance from Scot, Wales and NI
autumn	White Paper published Expert Consultation Commission starts work, given 12 months for public consultation	The Commission in Victoria had 6 months to consult 5m population. UK population is 60m
2012		
autumn	Consultation Commission reports	
2013		
spring	Govt introduces draft British bill of rights to Parliament; referred to JCHR	

9 The Judges

9.1 Growing power and independence of the judiciary

We should also, however,

bureaucratic and slow. It has not so far succeeded in its target of widening diversity (Justice Committee, 2008). But if the Lord Chancellor wanted to take judicial appointments back into his own hands there could be uproar from the judiciary. They would see any attempt to abolish the JAC or curtail its independence as a threat to their own independence. Although the judges initially resisted the reforms ushered in by the CRA 2005, they ended up with their independence greatly bolstered, and they can be expected stoutly to defend the new settlement.

The judges are likely to voice their disapproval in several different ways. They may criticise government policy in the course of judicial review cases (as they did over the stopping of welfare benefits for asylum seekers). They may give speeches which challenge the government's plans head on, as Lord Woolf did when Lord Chief Justice in 2004 (Woolf 2004). They may give evidence to

10 Freedom of information and Privacy

Conservative commitments

- Publish every item of government spending over £25k
- Create a new right to request government datasets
- Reduce 30 year rule to 20 years
- Review the role of the Information Commissioner
- Scrap the identity card scheme and ContactPoint database

Other issues to address

- Extend FOI to wider range of public bodies
- Reconsider FOI fees regime

10.1 Publish every item of government spending over £25k

In his speech 'Giving Power to the People' Cameron made two commitments to increase government transparency. The first was

> We will publish every item of government spending over £25,000.
>
> It will all be there for an army of armchair auditors to go through, line by line, pound by pound, to hold wasterful government to account… And we're going to publish online all poublic sector salaries over £150,000 (Cameron, 2009; 2009b).

This policy is based on similar initiatives in the US: the Federal Funding Accountability and Transparency Act 2006, which led on to state-level initiatives such as the Missouri Accountability Portal. The federal Act does not give a breakdown of all government spending. It simply brings together on one website (www.USAspending.gov) details of all federal contracts, grants and awards. The Missouri Accountability Portal (since emulated in seven other states) goes much further, giving details of all state spending, broken down by agency, category, contract or vendor (mapyourtaxes.mo.gov/MAP/Portal). So it is possible to trace a break down of all the spending by a single department (eg Corrections), or all spending on a single category (e.g. buildings). It also gives individual details of the salaries of all state employees.

Both websites illustrate the two layers of difficulty involved in publishing such information. The first is the daunting task of pulling together huge amounts of financial information from many different places. The second is publishing it in an accessible way. The Missouri Portal is a lot more accessible than its federal equivalent. In developing user friendly websites, the government might want to seek advice from NGOs like the Open Knowledge Foundation which have sought to pioneer similar initiatives in the UK (see wheredoesmymoneygo.org/prototype); or to encourage Missouri officials to come on secondment to Whitehall.

Cameron hopes that greater transparency will lead to spending restraint and lower public expenditure (Cameron 2009b). There have been no evaluations of the American

initiatives, but the Texas state comptroller claims savings of $2.3m (an amount which could well be less than the cost of creating the accountability portal). So there is no evidence that these initiatives can generate significant reductions in public expenditure. Nor will greater transparency necessarily help to increase trust. Because the cases that get publicised tend to be negative examples of inefficiency and waste, greater transparency can actually lead to a decrease in trust (Hazell, Worthy and Glover 2010).

10.2 Publish government datasets

Cameron's second commitment also derives from American example: a commitment to publish government datasets.

> In the first year of the next Conservative Government, we will find the most useful information in twenty different areas ranging from information about the NHS to information about schools and road traffic and publish it so people can use it.
>
> This information will be published proactively and regularly - and in a standardised format so that it can be 'mashed up' and interacted with.
>
> What's more, because there is no complete list that can tell us exactly what data the government collects, we will create a new 'right to data' so that further datasets can be requested by the public (Cameron 2009).

Here the American precedent is the new federal website data.gov, which lists government datasets by agency and by category. It was launched in May 2009, initially with 47 datasets, but claims now to have 118,000 datasets and to have received 47 million hits. It enables citizens to suggest new datasets. The British government followed suit in January 2010 with the launch of data.gov.uk, advised by Sir Tim Berners-Lee and Prof Nigel Shadbolt. They have brought together an initial collection of over 2,500 datasets from across government which can be re-used by businesses and the public. It is a strong start. But the crucial decisions are whether to include Ordnance Survey data, which would cost the government £20m a year (out to consultation until April); and whether in future the government makes publication of data the rule

> The Code of Practice on access to Government information [the code that preceded the FOI Act 2000] introduced by the Major Government specifically and deliberately excluded minutes of Cabinet and Cabinet Committees…would it not be sensible to reintroduce that rule?

He cited the concern that the possibility of disclosure would inhibit the free discussion necessary in Cabinet:

> I am forced to disagree with the Information Commissioner when he says that such requests will have little impact because they will be rare. Quite the opposite.

requests the government proposed amending the Fees Regulations to allow departments to count deliberation and consultation time as part of the total cost. But following a public and media outcry the government backed down, and FOI requests continue to be free of charge.

If there is a wider review of fees and charges across government, to tighten public finances, the government may want to revisit this issue. It could propose an application fee for all FOI requests, or a more robust charging regime, or both. There will be a strong adverse reaction; but the governments in Australia and Ireland have succeeded in introducing tougher charging regimes.

10.6 Reversing the Surveillance State

In his 2009 speech 'Giving Power to the People' Cameron pledged to scrap the ID card scheme and ContactPoint database of children, and remove innocent people's records from the DNA database. In September 2009 these headline policies were fleshed out in a report by Dominic Grieve and Eleanor Laing, Reversing the Rise of the Surveillance State. The report begins by setting out the following principles:

> Fewer – not more – giant central government databases
>
> Fewer personal details, accurately recorded and held only by specific authorities
>
> Greater checks on data-sharing between government departments, quangos and local councils
>
> Stronger duties on government to keep the private information it gathers safe

The report then sets out what this will mean in practice:

> Scrapping the National Identity Register and ContactPoint database
>
> Establishing clear principles for the use and retention of DNA on the National DNA Database, including ending prolonged retention of innocent people's DNA
>
> Restricting local council access to personal communications data
>
> Strengthening the audit powers and independence of the Information Commissioner

10.7

11 Constitutional Watchdogs

11.1 Review all Quangos

In a speech on ‘Cutting the Cost of Politics’ in September 2009 David Cameron promised a review of all quangos:

> The existence of each and every quango must be justified by passing one of three tests we have set.
>
> > Does it undertake a precise technical operation?
> > Is it necessary for impartial decisions to be made about the distribution of taxpayers' money?
> > Does it fulfil a need for facts to be transparently determined, independent of political interference?

Abolish the Standards Board for England (Cameron, 2009b)
Reduce unnecessary functions of the Electoral Commission (Cameron, 2009b)

11.4 General review of constitutional watchdogs?

The Conservatives are pursuing a piecemeal approach, identifying problems with individual watchdogs, but not attempting to view the system as a whole. The risk is that constitutional watchdogs will continue to proliferate; that each watchdog will have a different constitutional design; and that no lessons will be learnt across the system as a whole. This is not just an issue of bureaucratic tidiness. Ill-thought-out watchdog design is likely to be inefficient, ineffective and uneconomic, satisfying neither those being regulated, nor the public. The existence and operation of constitutional watchdogs are crucial to maintaining public trust and legitimacy. Yet their very activity – by revealing failings or improper conduct – can serve to erode, rather than enhance, public trust. As the 2007 PASC Report correctly put it: "the primary purpose of the ethical regulatory system is to ensure that standards of public conduct remain high, rather than to seek to promote trust in public life as a whole."

What scope is there for a more holistic approach? In 2007 PASC issued a report in which they stated that it was unacceptable for ethical regulators to be appointed by government and funded by government (PASC, 2007). The government disagreed, asserting that no one questioned the independence of the current regulators. Unfortunately PASC did not spell out by whom constitutional watchdogs should be app

12 The Monarchy

12.1 Diamond Jubilee

Although the monarchy may seem one of the few fixed points in the constitution, there are contingencies for which the new government should be prepared. The first are two celebratory events. In 2012 the Queen will celebrate 60 years on the throne, her Diamond Jubilee. If she is still on the throne in February 2015, she will be able to celebrate the longest reign in British history. The government will need to prepare for nationwide celebrations to mark both events.

Lord Mandelson, as lead minister, made a preliminary announcement on 5 January about diamond jubilee arrangements. These will include the postponement until 4 June 2012 of the late May Bank Holiday that year and the addition of a further Bank Holiday on 5 June to create a four day period for the principal Jubilee celebrations. These will no doubt include a parade, a service of thanksgiving, and a series of events similar to those for the Queen's golden jubilee in 2002. Settling on dates in early June will help to

A more permanent regency may occur if the sovereign becomes incapable of performing royal duties through infirmity of mind or body. Incapacity must be declared on medical evidence by any three of the sovereign's spouse, the Lord Chancellor, the Commons Speaker, the Lord Chief Justice of England and the Master of the Rolls. Prince Charles would then become regent. The regent acquires all the powers of the sovereign except that he may not assent to any Bill changing the line of succession or the position of the Church of Scotland.

There are therefore limits to what an heir may undertake without a regency; but a regency may occur only as a result of the sovereign's incapacity. Short of a regency, the heir could not appoint prime ministers or bishops, give assent to legislation, confer honours or grant dissolutions. But he could take on a wide range of public and ceremonial functions, from reading the Queen's speech, leading attendance on Remembrance Day, fronting diplomatic and Commonwealth occasions, and presiding over the presentation of honours. Attending the Prime Minister's audiences with the sovereign might also be sensible.

If the sovereign suffers prolonged ill-health short of incapacity, such a limbo life could continue for a long time. There might then be a case for a new kind of regency which gave full powers to the regent but took none away from the sovereign (Brazier 1999, at 204).

12.3 Accession of Charles III

There is no question but that Prince Charles would immediately succeed. Talk of leapfrogging to Prince William is empty speculation: it would require legislation like the Abdication Act 1936 and the willing consent of the fifteen Commonwealth countries that are monarchies to change the line of succession. But the government of the day would need to take early decisions on a number of other questions:

- The regnal names of the monarch and his spouse
- the nature of the accession and coronation ceremonies
- The size and management of the Civil List
- The conventions governing the public utterances of the new monarch
- Whether the religious tests and male primogeniture should remain.

12.3.1 Regnal names and accession ceremonies

Although the monarch's regnal names

king should be presented to his people, which people, where and how arrayed. Positions need to be taken before media speculation fills any vacuum.

12.4 Review of Civil List

A decennial review under the Civil List Act 1972 is due in 2010. After the last review in 2000 no increase was recommended by the Royal Trustees (the Prime Minister, Chancellor of the Exchequer and Household Treasurer: HC Deb 04 July 2000 vol 353 cc161-9). Thanks to reduced inflation the civil list had accumulated a substantial surplus. Depending on the state of the royal finances, the new government may come to a similar conclusion. Under the 1972 Act it cannot reduce the size of the civil list (only increase it); nor can it pocket any surplus, which is carried forward.

A completely new Civil List Act will be necessary to determine the size of taxpayers' annual subvention to the new sovereign. The existing provision will last only until the end of six months into the new reign. In the past the quantum has been determined by a Commons select committee chaired by the Chancellor of the Exchequer. However, more than quantum will be at issue, since questions will be raised about the auditing of expenditure and its control. The government will need to be prepared for such questions, including whether audit should be undertaken by the Comptroller and Auditor General rather than the Treasury, and whether management of voted expenditure should be vested in a new Civil Service run office accountable to ministers, or left with the household accountable only to the sovereign.

12.4.1 Behavioural conventions

The Prince of Wales has incurred controversy through his habit of corresponding with ministers and speaking out about his own policy interests and preferences. Although the discussion may be best kept private, the Cabinet will need to secure a clear understanding from the new monarch that such behaviour is not appropriate in the sovereign. The forthright advice from Asquith to King George V in 1913 provides a good statement of the doctrine that the sovereign should act always and only on the advice of ministers (for the text of the letters see McLean 2008).

12.5 Ending religious tests and male primogeniture

Few would now defend the discrimination in the laws of succession, whereby the Crown passes to male heirs ahead of females; and cannot be held by anyone who is, or is married to, a Roman Catholic or who is otherwise not in communion with the Church of England. In recent years several private member's bills have been introduced to remove these discriminatory provisions, including by Conservatives. The Blair government did not seek to defend the discrimination, but said that changing the law would be complex and controversial, and it had other legislative priorities.

Under Gordon Brown the position has changed. In spring 2009 Downing Street said they had been in discussion with Buckingham Palace about amending primogeniture rules and ending the ban on Catholics. David Cameron expressed support for the proposed changes, and the Queen was said to have agreed in principle (Independent 28 March 2009). In November 2009 Brown discussed the changes with Commonwealth governments at the Commonwealth Heads of Government Meeting. The Commonwealth governments need to be consulted because the sovereign is head of state

13 Direct Democracy

Scattered through the Conservatives' proposals are quite a lot of plans for the increased use of referendums. This chapter draws these proposals together, and considers the implications of more frequent referendums for the balance between direct and representative democracy. It considers first the plans for referendums and citizens' initiatives at national level, and then at local level. The plans for referendums at local level are more extensive.

13.1 Direct democracy at national level

13.1.1 Referendums on EU Treaties

The only plans for referendums at national level are the proposals to prohibit, by law, further transfers of power to the EU without a referendum. The legal and constitutional

13.1.2 Public initiation of parliamentary debates and laws

The Conservatives have two proposals to enable the public directly to influence the parliamentary agenda:

> A petition signed by a set number of voters (say 100,000) would trigger a formal debate in Parliament on the topic
>
> A petition of one million electors could require Parliament to consider a bill. (Cameron and Herbert, 2008; Cameron, 2009a).

This is not the same as a referendum; this is a right of citizens' initiative. A referendum is held at the government's initiative, before legislation is passed or implemented, and it allows the people to say No. A citizens' initiative is the reverse: it allows the people to invite the government or Parliament to pass a law, and Parliament is entitled to say No. In states like California citizens can make laws directly, bypassing the legislature, but that is not what is proposed here. The Conservatives are proposing a right for people to put items on the parliamentary agenda; but Parliament retains the right to reject what people propose.

There are many different models of citizens' initiative around the world, from California (and 23 other states in the USA) to Switzerland as world leaders, with strong forms of initiative, regularly used; to Austria, Italy, Hungary, Latvia, Lithuania, Slovakia, Slovenia and the Ukraine, with weaker forms, less frequently used. The closest models to the Conservative proposals are the citizens' initiatives in New Zealand and British Columbia, both Westminster parliaments which have experimented in recent years with citizens' initiatives.

In British Columbia any voter can apply to the Chief Electoral Officer to have a petition issued in support of a legislative 0 1 90 29

by Parliament. In 2008 the Clerk declared that a petition to reverse an ‘anti-smacking’ law

The next two policies, on referendums to veto Council tax rises, and a power to instigate referendums on local issues, will both be resisted by local authorities. The latter proposal is to

> Give power to residents to hold local referendums on any local issue by legislating to ensure that a referendum is held in a local authority area if 5 per cent of local citizens sign a petition in favour within a six month period.
>
> To minimise the cost of any such referendum, the poll would be held at the time of the next ballot in the locality … unless the council wished to finance the poll at an earlier date. The local Electoral Returning Officer would ensure the wording of the referendum question was fair and balanced, if necessary by obtaining the advice of the Electoral Commission.

The key question is whether such referendums would be advisory or mandatory. If they are mandatory, there is a risk that councils will be burdened with policy or spending commitments which they cannot deliver, because the petition proposers do not provide the necessary resources. This is what has happened in California, where people have repeatedly voted for reductions in taxes, whilst supporting other referendum propositions which require increased spending. To avoid that difficulty, local authorities will argue that petitions should be advisory, and will point to the contrast with the Conservative proposals for central government, where petitioners can do no more than put an item on the parliamentary agenda (see 13.1.2). If that model is followed, then a

14

	assemblies on BBOR		
June	White Paper on Surveillance State, strengthening Information Commissioner		
July	White Paper on referendum bill on EU powers, and Sovereignty Bill	Royal Assent for bill to reduce size of House of Commons. JCHR report on BBOR	
Aug			
Sept			Boundary Commissions start reviews
Oct	White Paper on British Bill of Rights		
Nov	Expert Commission starts 12 month consultation on British Bill of Rights	Introduce EU Treaties Referendums Bill, and Sovereignty Bill	
Dec		Bill to strengthen Information Commissioner	
2012			
Jan			
Feb			
Mar			
April			
May			
June			
July			
Aug			
Sept			
Oct			
Nov	Expert Commission re0.48 re f BT		

Sept			
Oct			
Nov		BBOR introduced	
Dec			
2014			
Jan			
Feb			
Mar			
April			
May			Next general election under new boundaries?
June			
July		BBOR passed	
Aug			
Sept			
Oct			
Nov			
Dec			
2015			
Jan			
Feb			
Mar			
April			
May	White Paper on elected second chamber?		

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