

Devolution and Westminster

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INTRODUCTION

Devolution had an immediate impact on the range of issues which could be discussed or legislated on at Westminster. Consequently the procedures and conventions under which Parliament operates underwent a vast change in a short period of time. But, as Russell and Hazell observed in *The State and the Nations* in 2000, changes to the parliamentary process during the first year of devolution were piecemeal and minimalist.² More recently commentators on the Westminster response to devolution also support this view. Writing at the end of 2000, Cowley and Stuart commented:

The year 2000 could have been a year in which Parliament began to deal with the consequences of devolution . . . Instead, for the most part Parliament continued to treat devolution as a problem that would go away if it were ignored for long enough . . .³

And in summer 2001 the Hansard Society Commission on Parliamentary Scrutiny described the situation as follows:

Parliament has been slow to adapt its own procedures in the face of these sizeable constitutional reforms . . . and as the Procedure Committee noted in its report on the Procedural Consequences of Devolution there is a degree of confusion as to what can and cannot be discussed in London. Since devolution certain matters are now ruled inadmissible by the Speaker if they relate to devolved matters. Yet defining the specific ministerial responsibilities of the Scotland Office or Wales Office is not straightforward. There are many issues which overlap, where responsibility is not clear. The fear of some who gave evidence to the Procedure Committee was that this ambiguity would allow ministers in the Westminster Parliament to define those areas where they are willing to answer questions.⁴

The way in which Parliament has reacted to devolution has been largely reactive and responsive. Action has generally been taken only in response to

¹ Particular thanks are due to Meg Russell for her work on the impact of devolution on Westminster.

² Russell and Hazell 2000, p219.

³ Cowley and Stuart 2001, p238.

⁴ Report of the Hansard Society Commission on Parliamentary Scrutiny 2001, para 1.13.

some challenge to the established procedures of Westminster, and generally in response to small procedural matters rather than to bigger issues of substance. This inertia is most clearly illustrated by the lack of a convincing answer to the 'English Question'. In this as in other things Westminster follows the pattern set by the government, which is inevitable in a parliamentary system where the lead for parliamentary reform comes from the executive.⁵ Only in the House of Lords, the chamber which is not dominated by the executive, are there signs that Westminster is beginning to take a more active interest, through the Lords' new Committee on the Constitution.

An MP who had left Parliament in 1997, on the eve of devolution, and returned to the House of Commons today would find very little changed so far as a result of devolution. Scotland and Wales are still over-represented in terms of the number of their MPs.⁶ There is still the full range of Scottish, Welsh and Northern Irish committees (Grand, Select and Standing) even though there should be less Scottish, Welsh and Northern Irish business for Westminster to consider. There is still a separate question time every month for each of the territorial Secretaries of State, although they have much less to answer for. These are matters which eventually Westminster will start to rationalise, but for the moment most of the pre-devolution structures and procedures have been left in place.

The story in this chapter is mostly one of minor rather than major changes. The chapter begins with a brief chronology of the main events at Westminster (Figure 9.1), before analysing the changes in the membership of the new House of Commons following the general election in June 2001. We then look at Westminster's legislative output, analysing how Westminster legislates sometimes for the whole UK, sometimes for one of its constituent parts: and how Westminster continues to legislate for Scotland, even on matters now devolved to Scotland. We then turn to the changing work of the territorial committees: the Scottish, Welsh and Northern Ireland Select Committees, and Grand Committees, and the strange case of the short-lived English committee, the Standing Committee on Regional Affairs. That leads into a section on the English Question, and William Hague's proposal for 'English votes on English laws'. The chapter concludes with a discussion of the potentially more significant changes in response to devolution which are starting to be made in the House of Lords.

⁵ A salutary reminder from an expert insider is Andrew Kennon 2001.

⁶ Scotland has 72 MPs and Wales 40. If their representation was brought into line with the English quota they would have 57 and 33 respectively. Scottish representation is due to be reduced in the current Boundary Commission review (Scotland Act 1998, s.86), due to report between 2002 and 2006; but there are no plans to reduce Welsh representation.

Figure 9.1. Key events at Westminster, July 2000–July 2001

23 October 2000	Michael Martin MP elected to replace Betty Boothroyd as Speaker of the House of Commons.
13 Nov. 2000	William Hague gives speech at Magdalen College Oxford proposing 'English votes on English laws.'
30 Nov. 2000	Prorogation of Parliamentary Session 1999-2000.
6 Dec. 2000	Queen's Speech — opening of the 2000-2001 Parliamentary Session.
8 February 2001	Membership of the House of Lords Committee on the Constitution announced.
13 March 2001	Membership of the House of Commons Standing Committee on Regional Affairs announced.
21 March 2001	House of Lords debate on devolution to the English regions.
10 May 2001	First meeting of the Standing Committee on Regional Affairs since 1978.
11 May 2001	Children's Commissioner for Wales Act receives Royal Assent.
11 May 2001	Dissolution of Parliament.
7 June 2001	General election — Labour administration re-elected with a majority of 167.
8 June 2001	William Hague announces that he will step down as leader of the Conservative Party.
19 June 2001	Publication of the Hansard Society Commission Report on Parliamentary Scrutiny: <i>The Challenge for Parliament: Making Government Accountable</i> .
20 June 2001	Queen's Speech — Opening of the 2001-2002 parliamentary session.
20 July 2001	Parliament adjourns for the summer recess.

THE HOUSE OF COMMONS

The State of the Parties, July 2001

The UK general election of June 2001 was the first since the devolved administrations assumed their functions during the summer of 1999. Following the general election of 7 June the division of Westminster seats among the parties showed little change. Having lost all their seats outside England in 1997, the Conservatives gained just one in Scotland; and in terms of their electoral representation they continued to be an overwhelmingly English party. Labour was completely dominant electorally in England, Scotland and Wales.

Figure 9.2. Territorial and party strength in the new House of Commons, July 2001

	Lab	Con	Lib Dem	Other	Total
England	323	165	40	1	529
Scotland	56	1	10	5	72
Wales	34	0	2	4	40
Northern Ireland	0	0	0	18	18
Total	413	166	52	28	659

Source: House of Commons Information Office

The End of Dual Mandates

From the devolution point of view, the main change in the new Parliament was the disappearance of all the dual-mandate MPs except for those in Northern Ireland. A total of 17 dual-mandate MPs stood down at the election, choosing to focus on their work in the devolved administrations. Only one, Alex Salmond MP, former leader of the Scottish National Party, in a surprising move announced that he was going to stand down as a Member of the Scottish Parliament to focus on a 'crucial general election campaigning role' for the SNP at Westminster.⁷ Both the Scottish National Party (SNP) and Plaid Cymru (PC) had faced some criticism that post-devolution they would be fielding their B-team at Westminster. But the dilemma was one facing all parties, as they came to realise that post-devolution they needed effective leaders both at Westminster and at the devolved level. For the SNP Salmond will ensure they maintain an effective presence at Westminster. For the main political parties the search has been in reverse — Labour, the Conservatives and Liberal Democrats have all had to seek out new political talent to lead their parties at the devolved level.

Figure 9.3. Westminster MPs with experience of the devolved institutions

Formerly Member of the Scottish Parliament:		
Alex Salmond	SNP	Banff and Buchan
Formerly Member of the National Assembly for Wales:		
Alun Michael	Labour	Cardiff South and Penarth

Source: House of Commons Information Office

Salmond remains the only MP at Westminster with first-hand experience of devolution to Scotland. Alun Michael, former First Secretary of the

⁷ 'Salmond opts for Westminster in change of heart', *The Guardian*, 11 January 2001. 'Salmond defies Westminster critics'. *The Herald*. 16 January 2001.

National Assembly for Wales, is now a junior minister in the Department of the Environment Food and Rural Affairs (DEFRA).

Figure 9.4. Dual-Mandate MPs in the 1997-2001 Parliament who did not contest their seats in 2001

Members of the Scottish Parliament:		
Malcolm Chisholm	Labour	Edinburgh North & Leith
Roseanna Cunningham	SNP	Perth
Margaret Ewing	SNP	Moray
Sam Galbraith	Labour	Strathkelvin & Bearsden
Donald Gorrie	Liberal Democrat	Edinburgh West
John Home Robertson	Labour	East Lothian
John McAllion	Labour	Dundee East
Henry McLeish	Labour	Fife Central
Alasdair Morgan	SNP	Upper Galloway & Nithsdale
John Swinney	SNP	Tayside North
Jim Wallace	Liberal Democrat	Orkney and Shetland
Andrew Welsh	SNP	Angus
Members of the National Assembly for Wales:		
Ron Davies	Labour	Caerphilly
Ieuan Wyn Jones	Plaid Cymru	Ynys Môn
John Marek	Labour	Wrexham
Rhodri Morgan	Labour	Cardiff West
Dafydd Wigley	Plaid Cymru	Caernarfon
Member of the Northern Ireland Assembly:		
John Taylor	Ulster Unionist	Strangford

Source: House of Commons Information Office

The loss of these dual-mandate MPs has removed one of the informal links between Westminster and the Scottish Parliament and National Assembly for Wales. However the effectiveness of the links has been called into question — at least one MP has commented on the fact that dual-mandate MPs from Scotland, Wales or Northern Ireland rarely attended Westminster sittings.⁸ Five members of the House of Lords also hold seats in the devolved bodies in Wales, Scotland and Northern Ireland.⁹

⁸ Interview with Westminster MP, March 2001.

⁹ Lord Selkirk of Douglas (James Douglas-Hamilton), Lord Steel of Aikwood (Sir David Steel) and Lord Watson of Invergowrie in the Scottish Parliament; Lord Elis-Thomas in the National Assembly for Wales; and Lord Alderdice in the Northern Ireland Assembly. Lords Steel, Elis-Thomas and Alderdice are all presiding officers of their respective assemblies.

Northern Ireland is a big exception. A majority of MPs from Northern Ireland are dual-mandate MPs, holding their Westminster seats in conjunction with seats in the Northern Ireland Assembly.

Figure 9.5. MPs holding seats in the Northern Ireland Assembly, July 2001

Gerry Adams	Sinn Féin	Belfast West
Roy Beggs	Ulster Unionist	East Antrim
Gregory Campbell	DUP	East Londonderry
Nigel Dodds	DUP	Belfast North
Pat Doherty	Sinn Féin	West Tyrone
Michelle Gildernew	Sinn Féin	Fermanagh and South Tyrone
Seamus Mallon	SDLP	Newry and Armagh
Martin McGuinness	Sinn Féin	Mid Ulster
Rev Ian Paisley	DUP	North Antrim
Iris Robinson	DUP	Strangford
Peter Robinson	DUP	Belfast East
David Trimble	Ulster Unionist	Upper Bann

Source: House of Commons Information Office

Twelve of the eighteen MPs from Northern Ireland following the 2001 UK general election also hold seats in the Northern Ireland Assembly. John Hume, the Social Democratic and Labour Party (SDLP) Member of Parliament for Foyle, resigned his seat in the Northern Ireland Assembly on 1 December 2000.

Nationalist Parties Form Joint Party Group

Another change in the new Parliament is that, after discussions with the Speaker, the SNP and PC announced that they had formed a joint group in order to achieve more speaking rights in the House and better representation on Select Committees.¹⁰ The group, now comprising nine MPs, will be the fourth largest in the Commons, above the Ulster Unionists.

When membership of the parliamentary select committees was announced on July 16 2001, the decision to form a parliamentary group did not seem to pay dividends with the nationalist parties being awarded five seats between them, the same number as they had held at the beginning of the previous Parliament in 1997. In July 2001 the newly elected Scottish National Party MP Michael Weir was awarded a seat on the Scottish Affairs Committee, while Alasdair Morgan gained a seat on the Trade and Industry Select

¹⁰ 'Welsh link up with the Scots', *The Times*, 28 June 2001.

Committee. PC MP Adam Price gained a seat on the Welsh Affairs Committee and Simon Thomas will sit on both the Environmental Audit Committee and Commons Select Committee on Catering.¹¹

WESTMINSTER LEGISLATION

The period July 2000 to July 2001 spanned two Parliamentary sessions: 1999-2000, and 2000-2001. During this period 58 Acts of Parliament received Royal Assent. Just over half of these (33 Acts) applied to the whole of the UK. In the next largest category (20 Acts) Parliament was legislating just for England and Wales.

Figure 9.6. Territorial extent of legislation passed during 1999-2000 parliamentary session

United Kingdom	16
Great Britain	4
England and Wales	16
Northern Ireland	1
Total	37

Figure 9.7. Territorial extent of legislation passed during 2000-2001 parliamentary session

United Kingdom	17
Great Britain	0
England and Wales	4
Northern Ireland	0
Total	21

Legislating for Scotland

The Westminster Parliament also continues to legislate to a surprising extent for Scotland, even on matters which are now devolved. During the passage of the Scotland Act it was anticipated that Westminster would continue sometimes to legislate for Scotland; an understanding known as the 'Sewel convention' after it was first proposed by the then Scottish Office minister Lord Sewel.¹² It was generally believed that this licensed legislative trespassing would happen only occasionally. In practice it seems to be happening

¹¹ In 1997 the SNP and PC held five seats between them on the Scottish and Welsh Affairs Committees, the Trade and Industry Committee, the Environmental Audit Committee and the European Legislation Committee.

¹² See further: Devolution Guidance Note 10, *Post Devolution Primary Legislation Affecting Scotland*.

regularly. Of the 58 Acts of Parliament which received Royal Assent between July 2000 and July 2001 thirteen were endorsed by way of a Sewel Resolution made by the Scottish Parliament (they are divided by Parliamentary session in the table below).

Figure 9.8. Acts passed for which Sewel resolutions made by the Scottish Parliament

1999-2000 Parliamentary Session:

Limited Liability Partnerships Act 2000.

Care Standards Act 2000.

Sea Fishing Grants Act 2000.

Government Resources and Accounts Act 2000.

Regulation of Investigatory Powers Act 2000.

Race Relations (Amendment) Act 2000

Insolvency Act 2000.

Political Parties, Elections and Referendums Act 2000.

Criminal Justice and Court Service Act 2000.

Sexual Offences (Amendment) Act 2000.

2000-2001 Parliamentary Session:

Health and Social Care Act 2001.

International Criminal Court Act 2001.

Armed Forces Act 2001.

Two things are worth noting about this table. First is the statute which is missing. A significant omission from the above list is the Health Service Commissioners (Amendment) Act 2000: an act passed at Westminster which trespassed on matters which were devolved to Scotland, but was not the subject of any Sewel resolution or debate in the Scottish Parliament.

Second is the inclusion in the list of Acts which only trespassed marginally on devolved matters. Some of the statutes fell squarely within the powers of the Scottish Parliament (for example the Sexual Offences (Amendment) Act),¹³ but others are more borderline. By erring on the side of caution the UK Government would be following the advice which it promulgated in Devolution Guidance Note (DGN) 10, which states that:

... consent need only be obtained for legislative provisions which are specifically for devolved purposes, although it will be good practice to consult the Scottish Executive on changes in devolved areas of law which are incidental to or consequential on provisions made for reserved purposes.¹⁴

¹³ As observed by Baroness Blatch, HL Deb, 11 April 2000, Col. 98.

¹⁴ DGN 10, para 2(3).

An example of the latter is the Race Relations (Amendment) Act, which is squarely within the competence of Westminster, since equal opportunities and race relations are reserved matters. But the Act contains sections which touch on issues of criminal justice which are devolved to Scotland, and for that reason was endorsed by the Scottish Parliament by way of Sewel resolution on 25 May 2000.¹⁵

Legislating for Wales

In Wales the division of legislative responsibility is very different. Westminster continues to pass all primary legislation for Wales, and the National Assembly has powers of secondary legislation only. This makes it the more important for there to be effective procedures which enable Wales to feed in views about the primary legislative framework. Those procedures are outlined in DGN 9, *Post Devolution Primary Legislation Affecting Wales*. The DGN states that the Cabinet of the Assembly should always be consulted on bills which confer new functions on the Assembly, alter the existing functions of the Assembly, or otherwise affect areas which are the responsibility of the National Assembly for Wales (NAW) (including where implementation is a matter for the Assembly, although control of the underlying policy remains with the UK government).

Even at this early stage of devolution we can see patterns emerging in the Westminster legislation which impacts on the devolved responsibilities of the National Assembly. For the majority of Acts which relate to devolved competences there is a simple read-across provision — the National Assembly will receive equivalent powers to the relevant Secretary of State.

Less frequent, however, are Acts which although conferring powers on the NAW, do not do so to the same extent as the relevant Secretary of State. An example is the Local Government Act 2000 which gives the NAW various powers with regard to local authorities, but reserves to the Secretary of State powers over commencement orders and 'Henry VIII' provisions.

Finally there are those Acts which allow the development of a separate policy framework for Wales, the most obvious example so far being the Care Standards Act 2000 which established the Office of Children's Commissioner for Wales. The powers of the Commissioner were extended in the Children's Commissioner for Wales Act which received Royal Assent on 11 May 2001. This was the first formally Wales-only legislation introduced at Westminster at the instigation of the National Assembly. The Act legislated to give effect to the recommendations of Sir Ronald Waterhouse's inquiry into child abuse in Wales, which had not been published at the time of passing the Care Standards Act. The Act had an uncontroversial passage through Westminster and had cross party support within the National Assembly for

¹⁵ Scottish Parliament Official Report, 25 May 2000, Cols. 1059-1078.

Wales. It stimulated some MPs at Westminster to question why there was no parallel legislation for England.¹⁶

The Queen's Speech given on 20 June 2001 indicated that the next Wales-only legislation likely to be debated at Westminster would involve plans to reform the National Health Service in Wales in line with proposals agreed by the National Assembly early in 2001.¹⁷ In July 2001, however, it was announced that the clauses of the draft NHS (Wales) Bill had been merged into the NHS Reform bill.¹⁸

Legislating for Northern Ireland

The Northern Ireland Assembly has significant legislative powers broadly comparable to those of the Scottish Parliament. As with Scotland, DGN 8, *Post-Devolution Primary Legislation affecting Northern Ireland*, provides that the UK Government would 'not normally legislate with regard to devolved matters except with the agreement of the devolved legislature'.¹⁹ Under the DGN it remains the responsibility of the devolved administration for seeking agreement after an approach by the UK government. In practice it has been left to the Executive Committee to decide whether further action needs to be taken by the Northern Ireland Assembly, and in operation has proved less formal than the Sewel procedure as evident in the Scottish Parliament.

It should be noted at this point that Westminster continues to deal with controversial legislation dealing with Northern Ireland. One example of this is the Disqualifications Act 2000. The primary purpose of the Act was to remove the disqualification for membership of the House of Commons and the Northern Ireland Assembly of persons who are members of the legislature of Ireland (the Oireachtas). Lord Falconer of Thoroton, presenting the bill on behalf of the government stated that the purpose of the bill was to:

... enable members of the Irish legislature to stand for election to the House of Commons and the UK devolved legislatures, thereby giving them equal treatment with Members of Commonwealth legislatures and the same rights as other non-elected Irish citizens.²⁰

Opponents of the bill, however, criticised it as a sop to Sinn Féin, who would be its main beneficiaries. During the course of the Lords debates the bill was described as 'a constitutional monstrosity'²¹ and came under fire for lacking

¹⁶ HC Deb, 16 January 2001, Col. 212. Interview with Westminster MP, January 2001.

¹⁷ HL Deb, 20 June 2001, Col. 5. See also *Improving Health for Wales: A Plan for the NHS with its Partners* (National Assembly for Wales, 2001), available at: www.wales.gov.uk/healthplanonline/health_plan/index.htm

¹⁸ See Osmond 2001, p14.

¹⁹ DGN 9, para 1.

²⁰ HL Deb, 27 July 2000, Col. 706.

²¹ HL Deb, 6 November 2000. Col. 1254.

popular and parliamentary support, and for having no foundation in the Belfast Agreement.²²

Despite a successful wrecking amendment by Conservative peers on 20 November 2000, prompting suggestions that the bill would be dropped,²³ the government pressed ahead with the Bill and its Royal Assent was granted on 30 November 2000. Other controversial legislation included the Northern Ireland Act 2000, which grants the Secretary of State for Northern Ireland the power to suspend the devolved institutions, and legislation relating to policing reform.

THE WORK OF THE TERRITORIAL COMMITTEES

Scotland, Wales and Northern Ireland still retain their separate committee structure at Westminster, with three different kinds of committees. There are the Scottish, Welsh and Northern Ireland Select Committees, to scrutinise the work of the three territorial Secretaries of State. There are the much larger Scottish, Welsh and Northern Ireland Grand Committees, which consist of all the MPs sitting for Scotland, Wales and Northern Ireland respectively. And there is still the possibility of a Scottish, Welsh or Northern Ireland Standing Committee, to take the committee stage of legislation applying to one of the territories.

Although the UK government has made no move to rationalise the pre-devolution committee structure, MPs recognise the need to do so. A survey of MPs conducted by the Constitution Unit during 2000 produced interesting responses with regard to territorial committees at Westminster. Results indicated a high degree of agreement between MPs that there should be fewer forums at Westminster to discuss Scottish-only issues, with no MP suggesting that there should be an increase in such forums. It was also largely agreed that there should be fewer Wales-only forums (a view demonstrated more markedly by Conservative responses).²⁴ And there was strong support for more English-only, or English regional, forums amongst MPs.

The Territorial Select Committees

Following devolution to Scotland, Wales and Northern Ireland the remits of the territorial Select Committees have been altered to allow the scrutiny of

²² HL Deb, 27 July 2000, Col. 709. Subsequent to the passing of the Act a number of Parliamentary questions were tabled by Lord Laird asking where and when the support of the Irish Government for the Disqualifications Bill was gained (HL Written Answers, 21 December 2000, WA 87; 19 February 2001, WA 84). Each received an equally elusive answer.

²³ 'Ireland Bill may have to be ditched,' *The Times*, 22 November 2000; 'Ministers may sacrifice bill to aid Trimble,' *The Guardian*, 22 November 2000.

²⁴ A survey of MPs for the Devolution and Westminster Project funded by the Leverhulme Trust and carried out by Meg Russell, summer 2000. Results will be published by the Constitution Unit in due course.

not only the workings of each territorial office, but also relations between that office and its corresponding devolved administration.²⁵ The work of the Wales and Northern Ireland Committees during 2000-2001 has reflected this expansion of their role with each conducting a reassessment of their role in the post-devolution Parliament. The Scottish Affairs Committee does not appear to have engaged in a similar rethink, and produced just two reports in 2000-1, compared with four from the Welsh Affairs Committee and eight from the Northern Ireland Affairs Committee (see Figures 9.9–9.11).

Figure 9.9. Welsh Affairs Committee reports published, 2000-1

21 Dec. 2000	The Work of the Committee since Devolution	HC81
15 Jan. 2001	Social Exclusion in Wales	HC 365 I-II
28 March 2001	Wales in the World: The Role of the UK Government in Promoting Wales Abroad	HC38
11 May 2001	Welsh Young Offenders held outside Wales: Interim Report and Proposals for Further Inquiry	HC511

It has been suggested that this comparative lack of action has of late been, in part, caused by the debate over the future of the Scotland Office held in the run-up to the 2001 general election.²⁶ But perhaps equally the case is that because of the reduced range of Scotland Office responsibilities the Scottish Affairs Committee is finding it harder to identify topics for investigation.²⁷ But nevertheless, in the face of similar alterations to the scope of potential inquiries, both the Northern Ireland and Welsh Affairs Committees have tackled the impact that devolution will have on their work in significantly more detail than the Scottish Affairs Committee. Despite taking evidence on the work of the Scotland Office in early 2000,²⁸ and submitting a memorandum to the Liaison Committee which deals with the Committee's work post-devolution,²⁹ the Scottish Affairs Committee has not looked into the ramifications of the new constitutional settlement since its report on Multi-Layer Democracy, published in 1998.³⁰

²⁵ Standing Order No. 152.

²⁶ Interviews with Westminster MPs, March–April 2001. For further details of the debate over the future of the territorial offices see Chapter 8, on Devolution and the Centre.

²⁷ Interview with Westminster MP, December 2000. Indeed, in a memorandum to the Liaison Committee, the Scottish Affairs Committee indicated that devolution had narrowed its range of interests (Liaison Committee 2001).

²⁸ Scottish Affairs Committee 2000, vol. i. The Scottish Affairs Committee has, in its memorandum to the Liaison Committee, suggested that it may return to this topic in the future.

²⁹ Liaison Committee 2001.

³⁰ Scottish Affairs Committee 1998.

Figure 9.10. Northern Ireland Affairs Committee reports published, 2000-1

4 August 2000	Public Expenditure in Northern Ireland: Inward Investment.	HC 198 I-II.
4 August 2000	Northern Ireland Railways: Financial Provision for New Rolling Stock in 2000-1.	HC 512.
28 Feb. 2001	The Northern Ireland Prison Service.	HC 263.
11 April 2001	The Parades Commission.	HC 120 I-II.
11 April 2001	Relocation Following Paramilitary Intimidation.	HC 59 I-II.
11 May 2001	The Parades Commission — Supplementary Report.	HC 521.
29 June 2001	Miscellaneous Financial Matters and the Government's Response to the Committee's Third Report Session 1999-2000.	HC 458.
13 July 2001	Legal Aid in Northern Ireland.	HC 444.

Figure 9.11. Scottish Affairs Committee reports published, 2000-1

19 July 2000.	Poverty in Scotland.	HC 59 I-II.
1 May 2001.	The Drinks Industry in Scotland: Issues and Concerns.	HC 114.

In its report *The Work of the Committee Since Devolution*,³¹ the Welsh Affairs Committee indicated that:

We have taken a flexible approach to the interpretation of the new terms of reference. The primary functions of the Wales Office include promoting the interests of Wales in policy formulation by the UK Government, promoting UK Government policies in Wales, consulting the National Assembly on the Government's legislative programme and steering primary legislation through Parliament. We believe that this gives us a broad remit to examine the impact of UK Government policy in Wales, as well as more technical issues such as the mechanics of the devolution settlement and the calculation of the National Assembly's budget.³²

That the Welsh Affairs Committee have interpreted this remit broadly is demonstrated by their subsequent inquiries into European structural funds, the impact of the Transport bill in Wales, and social exclusion in Wales, all of

³¹ Welsh Affairs Committee 2000.

³² *Ibid.*, para 9.

which deal with the impact of UK government policies in Wales.³³ Indeed the Committee believes that this broader approach to matters has helped to define their role, post-devolution:

Unlike the position in Scotland, where a large measure of responsibility for primary legislation has been devolved, much of the primary legislation passed at Westminster affects Wales directly and we believe that we can play a useful role in taking up Assembly Members' concerns about matters which fall within the responsibility of the UK Parliament.³⁴

In addition to this expansion of the Committee's areas of interest, meetings have taken place, both formally and informally, with representatives of the Assembly, a trend which the Committee would favour the continuation of in the future where appropriate.³⁵

In keeping with the expansion of the interests of the Welsh Affairs Committee it announced in February 2001 that it will be conducting an inquiry into the 'way in which Welsh interests, including the interests of the National Assembly, are taken into account in the drafting of primary legislation and its passage through Parliament.'³⁶ This topic was proposed by the Assembly's committee chairs at one of their regular meetings with the Welsh Affairs Committee. At the time of writing the Committee continues to receive memoranda related to this course of inquiry and is expected to return to it in 2002.³⁷ Bearing in mind the spirit of co-operation which is emerging between the Welsh Affairs Committee and the National Assembly the former may provide the latter with a louder voice at Westminster with regard to any proposed reforms emanating from Cardiff. Any proposals made by the Committee will have to be afforded a formal UK government response.

In the Annual Report of the Northern Ireland Affairs Committee³⁸ the Committee drew attention to its relationship with the Northern Ireland Office. Relations between the two were described as 'generally good' with the Northern Ireland Office keeping the Committee 'adequately informed of general developments'.³⁹ Similarly to the Welsh Affairs Committee, although in practice at a less advanced stage, relations between the Committee and the Northern Ireland Assembly were also high on the Committee's list of priorities and it was predicted that growing links between the two

³³ *Ibid*, para 10.

³⁴ *Ibid*, para 24.

³⁵ *Ibid*, paras 29-31.

³⁶ Welsh Affairs Committee, Press Notice No. 7 of Session 2000-01, 12 February 2001.

³⁷ Such an inquiry will be running in conjunction with two reviews of the workings of the National Assembly currently underway in Cardiff, on which see Chapter 2 'In search of stability: coalition politics in the second year of the National Assembly for Wales', and Osmond 2000.

³⁸ Northern Ireland Affairs Committee 2001.

³⁹ *Ibid*, para 23.

would yield benefits for accountability through the strengthening of 'parliamentary oversight of both Executives.'⁴⁰

Of particular note were the Committee's observations with regard to the new procedure for legislation by way of Order in Council under the Northern Ireland Act 1998. Under s.85 of the Act a new procedure was introduced whereby proposed legislation on certain reserved matters would have the opportunity to go before the Commons and its Committees before its approval. The Northern Ireland Affairs Committee recommended that:

... there should be a presumption that each such proposal will in any event be debated in the Northern Ireland Grand Committee. We also recommend that consideration be given to introducing into the Northern Ireland Grand Committee, for use when considering proposals for draft Orders in Council, a procedure similar to that used in European Standing Committees, whereby Ministers of the Crown may make statements about the proposal and answer questions thereon for a period, before the Committee embarks on the debate. Use of such a procedure might make the Committee's scrutiny even more effective.⁴¹

While the Northern Ireland Affairs Committee retains a larger scrutiny role than either its Welsh or Scottish counterparts, and while the Welsh Affairs Committee has re-invented itself following devolution, the Scottish Affairs Committee has been, if not inactive, then slow to respond to the post-devolution climate at Westminster. Devoting almost the entire year to its work on the drinks industry in Scotland the Committee has, as yet, failed to make attempts comparable with those of the Welsh Affairs Committee to come to terms with its redefined role following devolution.

The Work of the Grand Committees

The Scottish, Welsh and Northern Ireland Grand Committees consist of all the MPs sitting for Scotland, Wales and Northern Ireland. They are essentially territorial clubs, with few powers, and when in the 1992 Parliament the Major government tried to breathe life into them as an alternative to devolution, they were dismissed by Labour as mere talking shops. Their role as a voice for the territory has passed to the devolved assemblies. In reflecting on their role at the first meeting of the Welsh Grand Committee in the new Parliament the Secretary of State for Wales, Paul Murphy MP, confirmed that they are essentially clubs, providing territorial MPs with the opportunity to get together:

The role of the Welsh Grand Committee needs to be examined occasionally and we need to reflect on why we meet in the House according to such a format. It is important that we meet in this way. Everyone knows that 40 Members of Parliament represent the people of Wales in the House, and our Committee gives

⁴⁰ *Ibid*, para 31.

⁴¹ *Ibid*, para 28.

us an opportunity, which has perhaps become more significant since devolution, to talk about various matters, some of which may be devolved, but which have a resonance for us all because we are public representatives . . . Our Committee gives Members representing Welsh constituencies the opportunity to get together.

Figure 9.12. Meetings of the Welsh Grand Committee, 2000-1

Date:	Subject of Debate:
19 July 2000	Comprehensive Spending Review.
11 December 2000	Legislative Programme and Pre-Budget Statement.
13 February 2001	Building Safer Communities.
12 March 2001	Budget Statement and its Implications for Wales.
3 July 2001	Legislative Programme.

Figure 9.13. Meetings of the Northern Irish Grand Committee, 2000-1

Date:	Subject of Debate:
5 July 2000	Devolution in Northern Ireland.
29 November 2000	Juvenile Justice.
8 February 2001	Human Rights and Equality in Northern Ireland.
22 March 2001	Life Sentences (Northern Ireland). Financial Investigations (Northern Ireland).

Figure 9.14. Meetings of the Scottish Grand Committee, 2000-1

Date:	Subject of Debate:
10 July 2000	Employment Policy.
28 March 2001	Oil and Gas Industry.

Views amongst MPs as to the continuing usefulness of the Territorial Grand Committees are polarised. During the tenure of John Reid as Secretary of State for Scotland the Scottish Grand Committee was seen by some as becoming nothing more than a campaigning tool for the government and more generally by others as an irrelevance.⁴² Nevertheless, others saw the Committee as a useful way to hold the government to account and attract the Scottish press to Westminster matters.⁴³ But in parallel with the Scottish Affairs Committee the Grand Committee has, in comparison with its Welsh

⁴² Interviews with Westminster MPs, February 2001.

⁴³ Interview with Westminster MP, March 2001.

and Northern Irish counterparts, been relatively inactive, meeting only twice during 2000-1.

Opinions of Welsh MPs are again diverse. The Welsh Grand Committee has met on a more regular basis and is seen as a useful forum for backbenchers to make speeches⁴⁴ and has been favourably compared to the National Assembly for Wales in its scrutiny role.⁴⁵ Others however see it as meaningless.⁴⁶ However, there seems to be a consensus that, were the Grand Committee to have an increased role with regard to Welsh legislation, then its future would be secured.⁴⁷ Otherwise, many predict that there will be a gradual withering of the Grand Committee system.

CHANGES IN PROCEDURE

There were few procedural changes as a result of devolution during 2000-1. Most of the rulings on which matters would no longer be admissible (because they were now devolved) were dealt with during the first year of devolution.⁴⁸ However, occasional reminders were provided by the Speaker as to what was, and was not, in order. Some of these bordered on the absurd. For example, the Speaker, Michael Martin, told Parliamentary clerks only to accept written questions referring to the First Secretary of the National Assembly for Wales after a number of questions had referred to Rhodri Morgan as the First Minister, the title he has adopted.⁴⁹

The Lords is not immune to such self-importance, but it has also addressed procedural issues of greater substance. One of these involved making more transparent the implications of Westminster legislation for the devolution settlement in Wales. It is becoming a serious problem that there is no uniform approach in Westminster drafting to conferring new powers on the National Assembly for Wales.⁵⁰ The Select Committee on Delegated Powers and Deregulation noted from its experience discussing the Transport Bill (now the Transport Act 2000) that powers delegated to the National Assembly were scattered throughout the bill and it was therefore difficult to pin-point them. Consequently it recommended that all departments, when drafting the accompanying memoranda to bills, produce a supplementary list of all clauses which (purport to) delegate powers to the National Assembly.⁵¹

⁴⁴ Interview with Westminster MP, February 2001.

⁴⁵ Interview with Westminster MP, March 2001.

⁴⁶ Interviews with Westminster MPs, March 2001.

⁴⁷ Interviews with Westminster MPs, January — March 2001.

⁴⁸ Russell and Hazell 2000, p187-194.

⁴⁹ HC Deb, 15 November 2000, Col. 939. The UK government displayed similar sensitivity when Henry McLeish as the new First Minister wanted to refer to the Scottish Executive as the Scottish government.

⁵⁰ Rawlings 2001, pp 54-80.

⁵¹ Select Committee on Delegated Powers and Deregulation 2000*a*, paras 70-71.

However at the end of the 2000-1 Parliamentary session, evidence of this recommendation being put into practice has been conspicuous only through its absence. This is despite the fact that Devolution Guidance Notes, issued to Whitehall departments by the Cabinet Office, have also made equivalent recommendations and state that papers outlining the effects of proposed legislation on devolved competences should be available to the Cabinet Committee on the Legislative Programme (LP).⁵² If a 'devolution impact statement' is available to Cabinet for each bill, it should also be made available to Parliament.

THE ROLE OF MEMBERS OF PARLIAMENT

Devolution has significantly reduced the scope for debate and scrutiny at Westminster of Scottish and Welsh matters. The strongest evidence of this is the marked decline in the number of written parliamentary questions to the Scotland Office and the Wales Office in the two years since devolution, set out in the tables below. The thousands of questions asked before devolution now go to ministers in the Scottish Parliament and National Assembly. The number of oral questions has not declined so sharply because separate question times have been preserved for the three territorial Secretaries of State (although shortened from 40 to 30 minutes), and the space is there to be filled.

Figure 9.15. Parliamentary questions to the Welsh Office and Wales Office, 1997-2001

	1997/1998 (18 months)	1998/1999 (12 months)	1999/2000 (12 months)	2000/2001 (5 months)
Oral	370	180	264	79
Written	2150	1075	576	187

Source: House of Commons Information Office

Figure 9.16. Parliamentary questions to the Scottish Office and Scotland Office, 1997-2001

	1997/1998 (18 months)	1998/1999 (12 months)	1999/2000 (12 months)	2000/2001 (5 months)
Oral	492	278	155	88
Written	2388	53	396	201

Source: House of Commons Information Office

⁵² DGN 9, para 7; DGN 10, para 8; DGN 8, para 7.

Figure 9.17. Parliamentary questions to the Northern Ireland Office, 1997-2001

	1997/1998 (18 months)	1998/1999 (12 months)	1999/2000 (12 months)	2000/2001 (5 months)
Oral	286	200	191	87
Written	2377	1104	930	399

Source: House of Commons Information Office

Although the scope of questions that can be raised by both Scots and Welsh MPs, post-devolution, has been limited many have sought to redefine themselves to exert an influence on Westminster. One Welsh MP suggested that although many of areas of interest and expertise have been transferred to the NAW the job for MPs representing Welsh constituencies is to ensure that the voice of Wales is still heard.⁵³ At a meeting of the Welsh Grand Committee in July 2001 Paul Murphy emphasised the continuing role of Welsh MPs:

Our role in the devolution settlement is to fulfil two functions in respect of devolved matters: first, to ensure that we get the resources . . . and, secondly, to provide the legislative tools to enable the Assembly to go about its business in delivering the services that it is charged to deliver. On non-devolved matters, we shall play our part in the House of Commons and as legislators.⁵⁴

There exists a view, most prominently held among Conservative MPs, that the role of members representing Scottish constituencies has significantly diminished in practice. Although, as with Welsh MPs, many Scots have sought out new areas of work and become involved with areas of UK-wide interest.⁵⁵ With regard to voting habits, many Scots MPs continue to vote on matters affecting England and Wales only but there are some who have consciously abstained from voting on matters which do not affect Scotland.⁵⁶ But regardless of the personal tendencies of Scots members, the debate over their role, at least amongst English members, looks set to continue for some time.

THE ENGLISH QUESTION

The outstanding, and recurrent, challenge to the established Westminster order post-devolution remains the English Question.⁵⁷ Russell and Hazell, in *The State and the Nations*, discussed the English Question in terms of the four proposals that had been put forward for its remedy: the creation of an

⁵³ Interview with Westminster MP, January 2001.

⁵⁴ Meeting of the Welsh Grand Committee, 3 July 2001.

⁵⁵ Interviews with Westminster MPs, January–February 2001.

⁵⁶ Interview with Westminster MP, March 2001.

⁵⁷ For further detail see Hazell 2000.

English Parliament, regional assemblies in England, 'English Votes on English Laws' or new English structures at Westminster.⁵⁸

As Russell and Hazell observed, popular support for an English Parliament is negligible.⁵⁹ The Campaign for an English Parliament remains the only body committed to such a step, and its influence remains marginal. It has not attracted the support of any political heavyweights, although the idea surfaces occasionally in debates at Westminster. In a short debate on Constitutional Change in the House of Lords the Conservative peer Lord Renton asked whether devolution had 'made the trend towards an English national parliament at Westminster irreversible?' Lord Irvine was dismissive of the question, saying 'I do not believe that there is any appetite in England for a national parliament for England.'⁶⁰

Further constitutional reform may go some way towards answering the political aspect of the English Question, were elected Regional Assemblies to have jurisdiction over some of the England-only policies regularly raised in debates over the English Question, for example health policy and education.⁶¹ Nevertheless, it is unlikely that powers equivalent to the devolved administrations will be granted to English regional bodies, and so there remains the likelihood of Scottish members being able to debate English matters at Westminster.

English Votes on English Laws

William Hague outlined the action that would be taken by an incoming Conservative government in a speech at Magdalen College, Oxford, on 13 November 2000.⁶² Hague stated that one of his first acts as Prime Minister would be to prevent Scottish MPs from voting on matters dealt with in the Scottish Parliament by MSPs. All MPs at Westminster would remain able to vote on matters of UK-wide application such as taxation, defence, social security and foreign policy. Quoted in *The Times* the Labour response accused Mr Hague of attempting to create an 'English Nationalism bandwagon', while Alistair Morgan of the Scottish National Party denounced Mr Hague's speech as 'typical Tory anti-Scottishness.'⁶³

⁵⁸ Russell and Hazell 2000, p202-214 and Hazell 2000.

⁵⁹ Russell and Hazell 2000, p203-204. But see Figure 10.3, which suggests that support for regional assemblies and an English Parliament may be about equal.

⁶⁰ HL Deb, 3 April 2001, Cols. 719-722.

⁶¹ For a fuller analysis of the Government's proposals for elected regional government for England see Chapter 5, on the English Regions.

⁶² *A Conservative View of Constitutional Change*, Speech at Magdalen College, Oxford, 13 November 2000.

⁶³ 'Scots MPs would lose vote under the Tories,' *The Times*, 14 November 2000. Anti-Scottish tendencies were raised at a number of points throughout the year: see for example: 'English MPs to oppose Scot as new Speaker,' *The Daily Telegraph*, 24 August 2000. The issue of Scots domination of the Cabinet was raised later in the year: in a letter to the Commission for Racial Equality (CRE) in which he explained his reasoning behind not signing its anti-racism pledge, the Conservative MP for

Hague's proposal, a step back from the English Parliament he first suggested in 1998,⁶⁴ provoked much comment. Professor Vernon Bogdanor sparked a succession of letters to the editor of the *Financial Times* through an article responding to Hague's suggestion for English votes on English laws.⁶⁵ Professor Bogdanor argued that under our constitution the government of the day is responsible to the House of Commons for all issues, whether domestic or non-domestic. By implementing Mr Hague's proposal of English votes on English legislation this principle of 'collective responsibility' would be weakened by effectively removing the majority of any Labour government which might be reliant on their members in Wales and Scotland for an overall majority in the Commons.

The Conservative Election Manifesto duly contained the commitment to English votes on English laws.⁶⁶ However, since William Hague's resignation as Conservative leader, his successor, Iain Duncan Smith, has not revealed his position on the issue.

The Government's Position on the English Question

On 27 June 2001, Edward Leigh MP lamented the Government's lack of interest in resolving the debate:

... although we have argued about the West Lothian question for four years, there is still no answer. Our English constituents are still faced with the fact that Scottish MPs vote on our health, education, policing, agriculture, transport, housing policy and much else, whereas we have no say on Scottish matters. We should point that out again and again because it is a denial of natural justice ... it is a matter of justice, and it must be dealt with. The Government cannot ignore it.⁶⁷

The government seem to have made a point of failing to address the widespread concerns over the issues surrounding the English Question. Its stance is epitomised by Lord Irvine's famous response that the best way to answer the English Question is to stop asking. William Hague's retort was that the best way to find an answer to the Question might be to stop asking Lord Irvine.⁶⁸

Instead of addressing the issue directly, the government response has been to either criticise the hypocritical attitude of the Conservative Opposition or emphasise the fact that the Westminster Parliament remains the Parliament of the United Kingdom. The latter most closely resembles an 'answer' to the

Yorkshire East, John Townend, added that the English considered themselves 'ignored by a government dominated by Scots ('Tory complains of Scots domination', *The Herald*, 27 April 2001).'

⁶⁴ *Change and Tradition: Thinking Creatively about the Constitution*, speech to the Centre for Policy Studies, 24 February 1998.

⁶⁵ 'West Lothian is not the question,' *Financial Times*, 21 November 2000.

⁶⁶ Conservative Party, *Time for Common Sense*, 2001, p46.

⁶⁷ HC Deb, 27 June 2001, Col. 674.

⁶⁸ Hazell 2000, p17.

question, perhaps most akin to that of Vernon Bogdanor. An example of the former is perhaps best illustrated by the following response to a question from the Conservative Member, Dominic Grieve, by the former Scotland Office minister, Brian Wilson:

It comes ill from a Tory to seek that sort of absolutist solution to a relative problem. When legislation that was already devolved administratively was carried out in this House, I do not remember the hon. Gentleman or any of his colleagues thinking that it was a great constitutional outrage that the Tories ruthlessly used their majority to drive through Scottish legislation against the will of the people of Scotland. There is, by the will of this Parliament, a devolved responsibility to the Parliament in Scotland over certain areas, but that does not change the constitutional position of this House or Members of this House.⁶⁹

The then Home Secretary, Jack Straw, illustrated the latter approach during the second reading in the Commons of the contentious England and Wales-only Hunting Bill by responding to suggestions that Scottish members should be prevented from participating in the discussions of the bill with a forceful reassertion of Westminster as not only the sovereign parliament, but also as the Parliament of the Union:

I happen to believe in the sovereignty of the Parliament of the United Kingdom of England, Wales, Scotland and Northern Ireland and believe that every member elected to the Parliament has a right to legislate, subject to previous legislation, in respect of every part of the United Kingdom.⁷⁰

New English Structures at Westminster

Westminster Hall had been mooted as a further possible forum for the discussion of territorial matters, initially by the Procedure Committee in 1999.⁷¹ Although debates in Westminster Hall have occasionally dealt with English regional issues, most have tended to be driven by members' individual constituency interests rather than anything else.

The first England-only forum, the Standing Committee on Regional Affairs, finally met in May 2001, over a year after Margaret Beckett, Leader of the House of Commons, announced that it was to be revived.⁷² The Committee met on 10 May 2001, the day before the dissolution of Parliament, devoting its first and last meeting to regional economic performance and imbalances. Membership of the Committee had been announced on 13 March 2001 (see the table below) under the joint chairmanship of Bill O'Brien (Labour) and Jonathan Sayeed (Conservative). Although the Committee has a standing membership of 13, any MP representing an

⁶⁹ HC Deb, 19 December 2000, Col. 190.

⁷⁰ HC Deb, 20 December 2000, Cols. 380-381.

⁷¹ Russell and Hazell 2000, p195.

⁷² HC Deb, 11 April 2000, Col. 289.

Figure 9.18. Membership of the Standing Committee on Regional Affairs, announced 13 March 2001

Bill O'Brien (Joint Chair)	Labour	Normanton
Jonathan Sayeed (Joint Chair)	Conservative	Mid Bedfordshire
Joe Ashton	Labour	Bassetlaw
Candy Atherton	Labour	Falmouth and Camborne
Karen Buck	Labour	Regent's Park and Kensington North
David Chidgley	Lib. Dem.	Eastleigh
Louise Ellman	Labour	Liverpool Riverside
Nigel Evans	Conservative	Ribble Valley
Christopher Fraser	Conservative	Mid Dorset and North Poole
Andrew George	Lib. Dem.	St Ives
Denis Murphy	Labour	Wansbeck
Ian Pearson	Labour	Dudley South
Laurie Quinn	Labour	Scarborough and Whitby
Anthony Steen	Conservative	Totnes
Derek Wyatt	Labour	Sittingbourne and Sheppey

English constituency may attend and speak at its meetings. It is a kind of English Grand Committee, and like the other Grand Committees has no effective powers.

The long delay in establishing the Committee was, according to Beverley Hughes MP, attributable to Conservative lack of interest.⁷³ Indeed as Russell and Hazell observed, at the time the resurrection of the Standing Committee was announced the 'Conservatives were dismissive of the proposals, considering them no substitute for separate treatment of English legislation.'⁷⁴ This was reflected at the first meeting of the Committee which was attended by only one Conservative MP, Anthony Steen, who left shortly after the start of the meeting. Nine of the standing members of the Committee attended, with a further six MPs — the North East of England being particularly well represented..

Due to the lack of cross-party support for the Standing Committee on Regional Affairs it remains doubtful whether the short-lived experiment will be revived. It will be a pity if nothing is done because there is strong support for more English regional forums at Westminster amongst all except

⁷³ Standing Committee on Regional Affairs, 10 May 2001 (available at: www.publications.parliament.uk/pa/cm/cmpublicns.htm).

⁷⁴ Russell and Hazell 2000, p211.

Conservative MPs.⁷⁵ Conservative MPs also favour more English forums, but they favour additional forums for the discussion of English-only, rather than English regional, issues.⁷⁶ The timing of the first meeting of the Committee cannot have encouraged those who may have attended, and indicates a certain lack of enthusiasm for the Committee on the part of the government. The doubts on the part of the Conservative Party remain that, without legislative powers, the Committee will be nothing more than a talking shop and a sop to English regionalism.⁷⁷ The Committee has not, as at August 2001, been re-appointed in the new Parliament.

THE HOUSE OF LORDS

In the upper house the response to devolution is closely linked to the continuing debate about reform of the House of Lords. The major parties are all agreed that a fully reformed House of Lords should contain members elected to represent the nations and regions, giving the second chamber more of a quasi-federal role. The only disagreement is what proportion of the second chamber should be elected, with the Liberal Democrats favouring an all-elected second chamber, the Conservatives a majority, but the Labour Party only a minority of elected members. The Blair administration maintains its commitment to further reform of the House of Lords based on the recommendations drawn up by Lord Wakeham's commission in January 2000.⁷⁸ The pledge to continue with stage two of reform of the upper house was cemented with the promise of legislation, following consultation, contained in the Queen's Speech of June 2001.⁷⁹ Following the Queen's Speech the Lord Chancellor, Lord Irvine, promised that the Government would:

. . . introduce legislation to implement the final stage of reform of the House of Lords. That will include the removal of the remaining hereditary Peers and put the House of Lords Appointments Commission on a statutory footing. We have given our support to the report and conclusions of the Wakeham Commission and we will seek through consultation to find a means of implementing those conclusions in the most effective way possible.⁸⁰

The Wakeham report included three different options for elected members to represent the nations and regions, comprising 65, 87 or 195 members (representing 12 per cent, 16 per cent or 35 per cent in a second chamber of 550).

⁷⁵ Constitution Unit Devolution and Westminster survey of MPs, conducted in summer 2000

⁷⁶ *Ibid.*

⁷⁷ Interviews with Westminster MPs, February–March 2001.

⁷⁸ HL Written Answers, 10 July 2001, Col. WA69.

⁷⁹ HL Deb, 20 June 2001, Col. 5.

⁸⁰ HL Deb, 21 June 2001, Col. 48.

Such little debate as there has been has focussed on the small proportion of elected members. As important in the devolution context is the nature of their role in representing the nations and regions, and what links if any they would have with the devolved institutions.⁸¹ 'Consultation' has so far been confined to behind the scenes negotiations with the political parties at Westminster. It is to be hoped that the next stage of consultation might take more account of the representative role to be accorded to the elected members, and include the devolved administrations.

The House of Lords Select Committee on the Constitution

To reinforce the second chamber's role as guardian of the constitution and of the devolution settlement, the Wakeham commission recommended that the House of Lords should establish a constitution committee and a devolution committee (with the latter possibly being a sub-committee of the former). The House of Lords implemented this recommendation on 8 February 2001, when the membership of the new Constitution Committee of the House of Lords was announced. Under the Chairmanship of the Conservative peer Lord Norton of Louth the Committee's terms of reference are as follows:

... to examine the constitutional implications of all public bills coming before the house; and to keep under review the operation of the constitution.⁸²

Figure 9.19. The members of the Constitution Committee at July 2001

Lord Acton	Labour
Viscount Cranborne	Conservative
Lord Fellowes	Crossbench
Lord Holme of Cheltenham	Liberal Democrat
Baroness Howells of St. Davids	Labour
Lord Lang of Monkton	Conservative
The Earl of Mar and Kellie	Liberal Democrat
Lord Morgan	Labour
Lord Norton of Louth	Conservative
Lord Ponsonby of Shulbrede	Labour
Lord Weatherill	Crossbench
Baroness Young	Conservative

The debate over the future role of the Constitution Committee took place in the Lords on 13 February 2001. It was widely agreed that the Committee

⁸¹ Russell 2000, chap. 10.

⁸² HL Deb, 8 February 2001, Col. 1269.

should play a vital role in scrutinising the workings of the Scottish Parliament and Assemblies in Wales and Northern Ireland⁸³ and in looking at 'relations between Holyrood and Westminster, the smooth functioning of which is vital to the survival of the United Kingdom.'⁸⁴ This is not, however, a point that has been lost on other committees of the House of Lords. The Lords Select Committee on Delegated Powers and Deregulation has observed that unlike the Commons the Lords has no 'obvious first port-of-call for relations with the Parliament and Assemblies'⁸⁵ and consequently recommended that the Lords consider the procedural consequences of devolution a 'high priority' issue.⁸⁶

The Constitution Committee's First Report⁸⁷ published in July 2001 examined its terms of reference, possible topics for consideration, relationships with the work of other committees and the resources available to the Constitution Committee. In identifying the boundaries of their jurisdiction the Committee defined a constitution as:

... the set of laws, rules and practices that create the basic institutions of the state and its component and related parts, and stipulate the powers of those institutions and the relationship between the different institutions and between those institutions and the individual.⁸⁸

Building on this focus on the institutions of the state, the Committee announced that inter-institutional relationships in a devolved UK would form the subject of its second inquiry, to commence after Christmas 2001.

The new House of Lords committee provides the first opportunity for Westminster to address the devolution settlement in the round. Whereas the territorial committees in the Commons remain fragmented and tend to be relatively parochial in their choice of subjects, the new House of Lords committee can think through the issues raised by devolution in a comprehensive and systematic way. Its establishment may come to be one of the most significant steps taken at Westminster towards adapting, and responding to the challenges posed by devolution.

⁸³ See comments of Lord Goodhart, HL Deb, 12 February 2001, Col. 95: '... it is a vital question to study how the devolution is working. Is the balance of devolved and reserved powers satisfactory? Is the partial system of devolution to Wales, which gives power over secondary but not primary legislation workable?'

⁸⁴ HL Deb, 12 February 2001, Col. 97.

⁸⁵ Select Committee on Delegated Powers and Deregulation 2000*b*.

⁸⁶ *Ibid.*

⁸⁷ House of Lords Constitution Committee 2001.

⁸⁸ *Ibid.* at para 50.

CONCLUSION

At the end of the second full year of devolution the Westminster response to devolution can still be seen as piecemeal. Significant questions, most notably regarding the English Question and the uncertain future of the territorial committees in the House of Commons, continue to remain unanswered. Inertia on the part of the government has allowed the debate over the English Question to continue without adequate response. Inertia on the part of the Scottish Affairs Committee has led some to question the continuing usefulness of its role. By contrast the Welsh Affairs Committee is trying to forge a new role for itself by deliberately taking an expansive view of its revised remit, while Scots and Welsh MPs are beginning to take a stronger interest in UK-wide matters and are forcing debate over the effects of such matters on the devolved territories.⁸⁹ The House of Lords remains part-reformed but despite this has established perhaps the most significant piece of machinery in the UK Parliament post-devolution. The Constitution Committee may yet prove to be the significant factor in bringing Westminster to terms with the developing constitutional settlement.

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