



National Assembly for **Wales**
Cynulliad Cenedlaethol **Cymru**

The Governance of Britain

Abstract

This paper provides background briefing on the recent UK Government Green Paper, *The Governance of Britain* (Cm 7170) which includes proposals to limit executive power, strengthen parliament and plans relating to British citizenship and identity.

The paper highlights the areas where the UK Government has undertaken to consult with devolved administrations.

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The Governance of Britain

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Executive Summary

The Green Paper *The Governance of Britain* was published by the UK Government in July 2007. The Prime Minister said that he wanted the process to be one in which all political parties and people of the country would be consulted so the proposals “*should not be seen as the final blueprint for a constitutional settlement but a route map towards it.*”

Much of the Green Paper refers to the executive powers of the UK Government, the UK Government's accountability to Parliament and proposals for the regions and local government in England. However, in some cases the paper makes explicit commitments to consult with devolved administrations and the proposals relating to the citizen and the state have implications for the UK as a whole.

The research paper provides a summary of the key issues which include:

- Restricting the powers and improving the accountability of the Executive.
- Reinvigorating democracy.
- Citizens' and the State

The paper also highlights areas where the UK Government has undertaken to consult with devolved administrations and areas that will be of interest to Members. These include:

- Prerogative exercised by devolved administrations.
- Placing the Civil Service on a statutory basis.
- Flying the Union Flag.
- Electoral Reform.
- House of Lords.

The paper includes a table which provides details of how proposals in *The Governance of Britain* are being implemented.

On the 6 November 2007 the Queen's Speech indicated that the UK Government would be bringing forward a *draft Constitutional Renewal Bill* which would carry forward the proposals in the *Governance for Britain*.¹

¹ 10 Downing Street website, Queen's Speech pages, Constitutional Renewal Draft Bill, http://www.number10.gov.uk/files/pdf/26_Constitutional%20Renewal%20Draft%20Bill.pdf

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“*The Governance of Britain*”

1 Introduction

On 3 July 2007 the new Prime Minister, the Rt.Hon.Gordon Brown MP, made a statement to Parliament on constitutional reform and announced the publication of the green paper², *The Governance of Britain*.³ The Prime Minister said that he wanted the process to be one in which all political parties and people of the country would be consulted so the proposals “*should not be seen as the final blueprint for a constitutional settlement but a route map towards it.*” He added:

This route map seeks to address two fundamental questions: to hold power more accountable and to uphold and enhance the rights and responsibilities of the citizen.⁴

Much of the green paper refers to the executive powers of the UK Government, the UK Government’s accountability to Parliament and proposals for the regions and local government in England. However, in some cases the paper makes explicit commitments to consult with devolved administrations and the proposals relating to the citizen and the state have implications for the UK as a whole. The paper states:

Some of the ideas and measures proposed will apply to the whole of the United Kingdom. But the devolution settlement means that some issues are in the hands of the devolved legislatures of Scotland, Wales and Northern Ireland. The Government’s proposals in those cases apply only in England but it hopes that the devolved administrations will be equally involved in the dialogue to come.⁵

This research paper provides a summary of the key issues and highlights areas where the UK Government has undertaken to consult with devolved administrations and areas that will be of interest to Members.

On 6 November 2007 the Queen’s Speech indicated that the UK Government would be bringing forward a draft Constitutional Renewal Bill which would carry forward the proposals in the *Governance for Britain*.⁶

2 The Green Paper

2.1 *Limiting the powers of the executive*

The UK Government is seeking to surrender or limit powers which it considers should not, in a modern democracy, be exercised exclusively by the executive. This will be subject to consultation with interested parties and, where necessary, legislation. These include powers to:

- deploy troops abroad;
- request the dissolution of Parliament;
- request the recall of Parliament;
- ratify international treaties without decision by Parliament;

² HC Debates, 3 July 2007, Cols.815-8.19

³ Ministry of Justice, *The Governance of Britain*, Cm.7170 <http://www.official-documents.gov.uk/document/cm71/7170/7170.pdf>

⁴ Op.Cit., HC Debates, 3 July 2007 Col.815

⁵ Op.Cit., Cm.7170, para.13, p.12.

⁶ 10 Downing Street website, Queen’s Speech pages, Constitutional Renewal Draft Bill, <http://www.number10.gov.uk/files/pdf/26.Constitutional%20Renewal%20Draft%20Bill.pdf>

- determine the rules governing entitlement to passports and for the granting of pardons;
- restrict parliamentary oversight of the intelligence services;
- choose bishops;
- have a say in the appointment of judges;
- direct prosecutors in individual criminal cases; and
- establish the rules governing the Civil Service.

The UK Government also intends to support measures to increase parliamentary scrutiny of some public appointments and ensure that appointments are appropriately scrutinised more generally. It also intends to review the role of the Attorney General.

2.2 Making the executive more accountable

The UK Government intends to improve its accountability to Parliament. It has already published a revised Ministerial Code with new arrangements for independent advice to Ministers and more transparency around Ministers' interests and travel.⁷

It will further:

- consider legislation with the aim of maximising the effectiveness of the Intelligence and Security Committee and, in the interim, propose changes to improve the transparency and resourcing of the Committee;
- publish a National Security Strategy which will be overseen by a new National Security Committee, chaired by the Prime Minister;
- introduce a pre-Queen's Speech consultative process on its legislative programme;
- simplify the reporting of Government expenditure to Parliament;
- invite Parliament to hold annual parliamentary debates on the objectives and plans of major Government Departments; and
- limit the pre-release of official statistics to Ministers to 24 hours before publication.

2.3 Re-invigorating democracy

The green paper indicates that the UK Government intends to proceed with reforms to the House of Lords. It also plans to make changes to aspects of elections. The Prime Minister said in his Commons statement that the first stage of any future discussion will be the publication, soon, of the review of electoral systems, especially those that have been created since 1997. The green paper also makes reference to changes already outlined in relation to local government in England in the white paper, *Strong and Prosperous Communities – the Local Government White Paper*. Proposals include:

- to continue to develop reforms for a substantially or wholly elected second chamber;
- consider extending the duration in which parties can use all-women shortlists for the selection of electoral candidates;
- better enable local people to hold service providers to account;
- place a duty on public bodies to involve local people in major decisions;
- assess the merits of giving local communities the ability to apply for devolved or delegated budgets;

⁷ Cabinet Office, *Ministerial Code*, July 2007.
http://www.cabinetoffice.gov.uk/propriety_and_ethics/publications/pdf/ministerial_code_current.pdf



- consult on moving voting to weekends for general and local elections;
- complete and publish a review of voting systems in line with the Government's manifesto commitment; and
- review the provisions that govern the right to protest in the vicinity of Parliament.

2.4 *Britain's future: the citizen and the state*

This part of the green paper explores citizenship and identity as general concepts, in a comparative context and within the British context. The UK Government proposes to:

- initiate an inclusive process of national debate to develop a British statement of values;
- work with Lord Goldsmith to conduct a review of British citizenship;
- launch a Youth Citizenship Commission, looking at citizenship education, ceremonies and the possibility of reducing the voting age; and
- consult on the current guidance on flying the Union Flag from government buildings and Westminster Parliament.

This section will be discussed more fully below.

3 Reaction to the Proposals

Responding to the Prime Minister's statement for the Opposition, the Rt. Hon. David Cameron MP welcomed much of what is in the statement, in particular the national security council; confirmation hearings for certain public appointments and neighbourhood budgets. However, he cautioned that any "*attempt to alter the electoral system without the consent of the people will be seen for what it is—an attempt to change the rules to suit one party's interests and to cling to power.*" He also argued that the Prime Minister had failed to get to grips with the West Lothian Question:

Today, the situation is that neither he, nor I, nor any Member of the House has the right to vote on hospitals, schools or housing in his constituency or in other parts of Scotland, yet he is able to vote on hospitals, schools and housing in my constituency. We already have two classes of MP. Is it not the case that the only effective way to solve that problem is to give MPs in English constituencies the decisive say in the House on issues that affect only England? The Prime Minister has had 30 years to come up with answers to the West Lothian question, and I have to tell him that Question Time for regional Ministers just does not cut it. Does he not see that the failure to answer that question is actually putting the Union at risk?⁸

On this point the Prime Minister responded:

I believe that we should seek consensus in the House on this matter—I have said that although I look forward to a discussion about the implications of devolution for our constitution, I do not believe that English votes for English laws is the answer. If the Conservative party wishes to continue to push that, it has to take into account the fact that the Executive would owe their authority to two different groups of people: on one occasion, to all Members of the House and on another occasion, simply to some Members of the House. That is why the shadow Home Secretary said in 1999 that it would cause constitutional chaos and why the right hon. and learned Member for Kensington and Chelsea (Sir Malcolm Rifkind) said only a few weeks ago:

"It would weaken rather than strengthen the United Kingdom."

Yes, we are prepared to look at proposals that will strengthen the United Kingdom in the light of devolution, but no, I do not believe that we will have a sensible debate if it is purely about English votes for English laws—something that would create two categories of Members in the House of Commons.⁹

Responding for the Liberal Democrats, the Rt.Hon. Sir Menzies Campbell QC MP also broadly welcomed the proposals in the green paper. He noted that the Prime Minister's reference to electoral reform had been vague and said that "*for many people, the reform of the constitution in essence requires electoral reform*". He also argued for fixed terms of Parliament and a written constitution. On the West Lothian Question he said:

On the issue of English votes for English laws, does the Prime Minister accept that once devolution is properly established in Northern Ireland, Scotland and Wales, it will be impossible to ignore the role of Members of Parliament from those three nations here in Westminster?

He concluded by arguing that a constitutional convention would be "the best and most effective way" of driving forward the proposals in the paper.¹⁰ The Prime Minister replied:

⁸ Op.Cit., HC Debates, 3 July 2007, Cols.820-821.

⁹ Ibid., Col.823

¹⁰ Ibid., Col.824

As for the constitutional convention that he proposes, let me tell him that a constitutional convention of the great and the good is not as good as hearings that will be held in all parts of the country, that will involve people in different communities of the country, and that will be led by the Secretary of State for Justice after consultation with the other parties.¹¹

Elwyn Llwyd MP, responded for Plaid Cymru and the Scottish Nationalist Party. He questioned whether the Prime Minister intended to review the convention whereby the Attorney-General's full legal opinion is not usually disclosed to the House of Commons; welcomed the proposal to limit the prerogative powers, and sought confirmation from the Prime Minister that he would do "*all in his power to ensure that devolution in Wales—the unfinished business—will proceed accordingly and that eventually we will be able to put in place all the Richard commission's suggestions.*" The Prime Minister said this would be a matter for the Welsh Assembly and Parliament to discuss.¹²

In the period after the paper's publication some Parliamentary committees published responses. The House of Commons Public Administration Committee published a short Report¹³, as did the Constitution Committee of the House of Lords which stated:

We also welcome the Government's stated intention to consult widely on these proposals. In several of our reports in recent years we have lamented that significant constitutional change has been initiated by the Government without proper discussion or any attempt to seek consensus. So any useful consultation must include the other branches of government—Parliament and the judiciary. We welcome the publication of this Green Paper which stands in stark contrast to the mishandled announcement in 2003 of plans to reform the office of Lord Chancellor and to create a Supreme Court. We look forward to engaging in mature and measured consideration of the proposals in the spirit of openness that is promised by the Green Paper.¹⁴

The Secretary of State for Wales, the Rt.Hon. Peter Hain MP, commented that, "*the changes in the UK constitution, including regional select committees, would create a closer symmetry with Wales and would dispel any calls from opposition members for an England-only parliament or a two-tier system of MPs.*"¹⁵

In a response prepared for the University College of London Constitution Unit ("the Constitution Unit"), Professor Robert Hazell argued that the UK Government needed to give more attention to devolution in Wales. He stated that the issue of how devolution for Wales is handled will now "*present serious difficulties*" and the Government should take the opportunity to be clearer about a number of important matters. He continued:

One issue relates to the National Assembly's acquisition of legislative powers. For a considerable time the UK Government has avoided expressing a clear view about the circumstances in which it would reject applications from the National Assembly for legislative competence orders (LCOs) extending its legislative powers, and it is a pity that the opportunity to take a clear position on this was not taken in the Green Paper.It is important that this issue be handled carefully, and in a way that tries to disentangle the constitutional issue of whether powers should be conferred or not from policy issues relating to the use of those powers. Clear guidance from the

¹¹ Ibid., Col.825

¹² Ibid., Col.828

¹³ HC Select Committee on Public Administration, *The Governance of Britain*, First Special Report of Session 2006-7, HC901, 11 July 2007. <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmpubadm/901/901.pdf>

¹⁴ HL Select Committee on the Constitution, *The Governance of Britain*, Seventh Report, 2006-7, 20 July 2007. para.5 <http://www.publications.parliament.uk/pa/ld200607/ldselect/ldconst/158/158.pdf>

¹⁵ Wales Office, *Peter Hain welcomes constitutional shake up*, Press Release, 3 July 2007. http://www.walesoffice.gov.uk/2007/pn_20070703.html



Government about this might help pre-empt disputes that will sour relations between London and Cardiff.¹⁶

He continued:

It is also important that the UK Government try to ensure consistency in the two ways of conferring legislative powers on the National Assembly. The two routes – of LCOs and of direct amendment of Schedule 5 to the Government of Wales Act 2006 by Westminster legislation – may work in different ways, a problem that the recent report of the Commons Welsh Affairs Committee scarcely addresses let alone remedies.¹⁷

His final point was that it would be helpful if the Government could be clearer about the approach the Secretary of State will take to calling a referendum, in the event of the National Assembly resolving in favour of holding one.

¹⁶ R Hazell, *Constitution Unit response to Cm 7170: The Governance of Britain July 2007*, Constitution Unit, 2007. p.6.
<http://www.ucl.ac.uk/constitution-unit/files/publications/GovernanceResponse.pdf>

¹⁷ Ibid.

4 Implications for Wales

4.1 Prerogative Powers

The Green Paper states:

For centuries the executive has, in certain areas, been able to exercise authority in the name of the Monarch without the people and their elected representatives in their Parliament being consulted. This is no longer appropriate in a modern democracy. The Government believes that the executive should draw its powers from the people, through Parliament.¹⁸

A feature of the current UK constitution is the extent to which the Government in the UK continues to exercise a number of powers which were not granted to it by a written constitution, nor by Parliament, but are, rather, ancient prerogatives of the Crown. These powers derive from arrangements which preceded the *1689 Declaration of Rights* and have been accumulated by the government without the endorsement of Parliament. These powers are commonly referred to as the “royal prerogative” powers but this term includes a number of powers, not all of which are exercised by Government. Prerogative powers include:

- the *legal prerogatives* of the Crown, which the Monarch possesses as an embodiment of the Crown. These include the principle that the Crown is not bound by statute except by express words or necessary implication; that is, that the legislation does not make sense unless it applies to the Crown explicitly.
- the Monarch's *constitutional or personal prerogatives*. Some of these prerogative powers are, by convention, exercised on the advice of Her Ministers, for example the power to grant most honours. These powers are effectively exercised by the Government.
- *prerogative executive powers*, which are effectively devolved from the Monarch to Her Ministers. The precise scope of the prerogative executive powers is uncertain: there is no authoritative list. Conventions exist on the exercise of prerogative executive powers but these remain uncodified.¹⁹

The thrust of the proposals in the green paper is that executive prerogative powers should be put on a statutory basis and brought under stronger parliamentary scrutiny and control. This section of the paper was warmly welcomed by the House of Commons Public Administration Committee²⁰ which had produced a Report on prerogative powers in 2004.²¹

The paper states that the process of consultation and review will take account of areas in which prerogative powers are now exercised by devolved administrations.²²

¹⁸ Op.Cit., Cm.7170, para,14, p.15

¹⁹ Ibid., para.21, p.16.

²⁰ Op.Cit., HC Public Administration Committee, 20 July 2007.

²¹ HC Select Committee on Public Administration, *Taming the Prerogative: Strengthening Ministers' Accountability to Parliament*, Fourth Report 2003-4, HC 422. 4th March 2004

<http://www.publications.parliament.uk/pa/cm200304/cmselect/cmpublicadm/422/422.pdf>

²² Op.Cit. Cm 7170., para.51, p.23

In Scotland, section 53 (2) of the *Scotland Act 1998* states:

53. - (1) The functions mentioned in subsection (2) shall, so far as they are exercisable within devolved competence, be exercisable by the Scottish Ministers instead of by a Minister of the Crown.

(2) Those functions are-

(a) those of Her Majesty's prerogative and other executive functions which are exercisable on behalf of Her Majesty by a Minister of the Crown,

(b) other functions conferred on a Minister of the Crown by a prerogative instrument, and

(c) functions conferred on a Minister of the Crown by any pre-commencement enactment,

but do not include any retained functions of the Lord Advocate.²³

An example of a prerogative power exercised by the Scottish Executive, given in the green paper, is the granting of mercy.²⁴

The situation in Wales is more unclear. There is no parallel clause in the *Government of Wales Act 2006*. Under the *Government of Wales Act 1998*, "Welsh Ministers" had no prerogative powers as they were Ministers in name only, having assumed the title. The position has changed slightly under the 2006 Act, in that they are treated as Ministers of the Crown for certain purposes. Welsh Ministers, the First Minister and Counsel General do not at present generally exercise any prerogative executive powers although it is possible for them to be given power to exercise them. The only relevant example of a prerogative executive power is in relation to the staff of the Welsh Assembly Government.²⁵

Section 58 of the *Government of Wales Act 2006* provides that functions which are exercisable by a Minister of the Crown may be made exercisable by the Welsh Ministers, First Minister and Counsel General in relation to Wales. This could include functions of a Minister of the Crown in exercising prerogative powers.

However, the green paper says in relation to UK executive prerogative powers that "the precise scope of the powers is uncertain: there is no authoritative list." The UK Government's intention is that the "prerogative powers should be put onto a statutory basis and brought under stronger parliamentary scrutiny and control." If this occurs, it is to be assumed that a definitive list will be produced of executive prerogative powers in Westminster, Wales, Scotland and Northern Ireland.

4.2 Placing the Civil Service on a Statutory Footing

Some prerogative powers are exercised by the Prime Minister and Ministers in relation to the Civil Service. The Civil Service Commission²⁶ was set up by a Crown prerogative Order in Council. The regulation of the Civil Service continues to be carried out largely through this type of Order in Council, along with the Civil Service Code, the Civil Service Management Code, a Special Advisers' Code and parts of the Ministerial Code. However, the UK Government intends to bring a Civil Service Bill to enshrine the core principles and

²³ *Scotland Act 1998* (Chapter), s.53(2)

²⁴ Op.Cit., Cm.7170, para.51, p.23

²⁵ Information from Welsh Assembly Government.

²⁶ Civil Service Commissioners' website <http://www.civilservicecommissioners.gov.uk/>



values of the Civil Service in law.²⁷ A draft Civil Service Bill and consultation document were published by the UK Government on 15 November 2004. The draft Bill was followed the lines of an earlier Public Administration Select Committee draft bill.²⁸

This legislation will place the independent Civil Service Commissioners on a statutory footing. It will also make a legal reality of the historic principle of appointment on merit following fair and open competition. The UK Government argues that legislation will ensure that the Civil Service is not left vulnerable to change at the whim of the Government of the day without proper parliamentary debate and scrutiny.

The paper also states:

The Government will consult on the proposed Civil Service legislation with the Scottish Executive and Welsh Assembly Government. The Northern Ireland Civil Service is a separate service.

Civil Servants in Wales and Scotland are part of the UK Civil Service. The Permanent Secretaries to the Scottish Executive and Welsh Assembly Government are appointed (at least formally) by the UK Prime Minister. However, in common with UK Government departments, the Scottish Executive and Welsh Assembly Government have considerable autonomy in staffing matters, extending to levels of staffing, promotions and grading, and pay settlements. A single framework governing the whole of the Home Civil Service only arises for the highest reaches of the Home Civil Service - the Senior Civil Service. As far as the Home Civil Service is concerned, one change occasioned by devolution was to amend the Civil Service Code. This now provides that "*civil servants owe their loyalty to the Administrations in which they serve*", Administration meaning the UK Government, Scottish Executive or Welsh Assembly Government.²⁹ The Civil Service Code was amended in 2006 and applies to all Home civil servants.³⁰ However, those working in the Scottish Executive and the Welsh Assembly Government, and their Agencies, have their own versions of the Code.³¹

Amongst other matters, the legislation will clarify the role of Special Advisers within government. Special Advisers are temporary civil servants appointed under Article 3 of the *Civil Service Order in Council 1995* ("the Order in Council")³². They are exempt from the general requirement that civil servants should be appointed on merit and behave with political impartiality and objectivity. However, they must act in line with the Civil Service Code in terms of integrity and honesty, compliance with the law and not to deceive or knowingly mislead. The Cabinet Office has issued a code for special advisers which applies equally to those working for devolved administrations.³³

²⁷ Cabinet Office, *A Draft Civil Service Bill: A Consultation Document*, Cm.6373, 15 November 2004.

http://www.cabinetoffice.gov.uk/propriety_and_ethics/publications/pdf/Consultation_Bill_Cm_6373.pdf

²⁸ HC Select Committee on Public Administration, *A Draft Civil Service Bill*, First Report, 2003-4, 11 December 2003.

<http://www.publications.parliament.uk/pa/cm200304/cmselect/cmpubadm/128/12802.htm>

²⁹ HL Select Committee on the Constitution, *Devolution: Inter-institutional Arrangements in the United Kingdom*, Second Report 2002-3, HL 28, 16 January 2003, paras. 150-151

<http://www.publications.parliament.uk/pa/ld200203/ldselect/ldconst/ldconst.htm>

³⁰ Civil Service website, *The New Civil Service Code*, 2006.

<http://www.civilservice.gov.uk/publications/civilservicecode/index.asp>

³¹ Welsh Assembly Government website, *Civil Service Code*, 2007.

http://new.wales.gov.uk/docrepos/40382/40382313/273897/Civil_Service_Code_-_Englis1.pdf?lang=en

³² *Civil Service Order in Council 1995* (Civil Service Commissioners' Consolidated Version)

http://www.civilservicecommissioners.gov.uk/upload/assets/www.civilservicecommissioners.gov.uk/cs_order_council_1995_aug05.pdf

³³ Cabinet Office, *Code of Conduct for Special Advisers*, July 2005.

http://www.cabinetoffice.gov.uk/propriety_and_ethics/publications/pdf/code_conduct_special_advisers.pdf



The question of whether to place a limit on the number of advisers that UK Ministers can appoint is flagged up in the paper. Limits are imposed by the Order in Council on the Scottish Executive (12)³⁴ and the Welsh Ministers s(6)³⁵, but not on Ministers of the UK Government.³⁶

Since the Assembly Election in May 2007, seven paid Special Advisers have been appointed by the Welsh Assembly Government. As three of the advisers work part-time, one adviser has been appointed in addition to the limit of six to make up the full-time allowance.³⁷ The Special Advisers are listed in **Box 1**.

Box 1:

Advisers to the First Minister are:

Professor Mark Drakeford

Advises Carwyn Jones AM and Carl Sargeant AM on Assembly Business; Edwina Hart AM on Health; Brian Gibbons AM on Social Justice and Jane Hutt AM on Education.

Jeff Andrews

Advises Andrew Davies AM on the Budget and the First Minister on Europe

Jo Kiernan

Advises Carwyn Jones AM on Communications

Ceri Williams

Advises Jane Davidson AM on the Environment; John Griffiths AM on Skills and Leighton Andrews AM on Regeneration.

Professor Mike Sullivan

Advises Edwina Hart and Gwenda Thomas AM on Health and Social Services and Andrew Davies AM on Public Services

Advisers to the Deputy First Minister:

Simon Thomas

Policy

Rhuanedd Richards

Communications

³⁴ Op. Cit, Order in Council, 1995, Article 3 (4)

³⁵ The *Civil Service (Amendment No.2) Order in Council*, made on the 2nd May 2007, amended the 1995 Order to apply to the "First Minister" and "Welsh Ministers" under the Government of Wales Act 2006. The limit on the number of special advisers remained unchanged at six.

³⁶ Ibid. Article 3 (5).

³⁷ Welsh Assembly Government, Cabinet Secretariat.

4.3 *Flying the Union Flag*

On 25 July 2007, the Department for Culture, Media and Sport (DCMS) launched a consultation about altering the current guidance on flying the Union Flag from UK Government buildings and the Palace of Westminster.³⁸

The existing position is that Government buildings only fly the Union Flag on flag flying days specified by the DCMS (of which there are about 16). UK Government buildings in Scotland and Wales fly flags on the same days as in England, with the exception of St George's Day, which is replaced by St Andrew's Day in Scotland and St David's Day in Wales. The aim of the consultation is to give Government departments the freedom to fly the flag every day. In fact, the Rt.Hon.James Purnell MP, the Secretary of State for Culture, decided on Thursday 5 July 2007 to give UK Government department buildings in England, Scotland and Wales the freedom to fly the Union Flag at all times during the consultation period.

Individuals, local authorities and other organisations may fly the Union Flag whenever they wish, subject to compliance with any local planning requirement. However many local authorities and other organisations choose to follow the Government practice.

This consultation document covers UK Government buildings in England, Scotland and Wales. It does not extend to the buildings of the National Assembly for Wales and the Welsh Assembly Government is responsible for policy on flag flying from its own buildings.

4.4 *Electoral Reform*

In a response to question about electoral reform following his statement on the green paper, the Prime Minister said that the first stage of any future discussion will be the publication the review of electoral systems, "*especially those that have been created since 1997*", which includes Wales, Scotland, elections to the European Parliament and elections to the London Assembly.³⁹ He said that it would be published "soon".

A series of parliamentary questions about the review were laid in early 2007 by Richard Burden MP. The Minister, Bridget Prentice MP, replied that the Government review of the experiences of the new UK voting systems introduced for the devolved administrations, the European Parliament and London Assembly elections, is being conducted by officials within the Department for Constitutional Affairs (part of the Ministry of Justice since April 2007). The Review is a desk-top study and in order to ensure factual accuracy, Ministry of Justice officials have circulated draft sections of the Review to officials at the Wales Office; Northern Ireland Office; Scotland Office; Cabinet Office; Foreign and Commonwealth Office; and the Government Office for London.⁴⁰ A draft of the review was also shown to Professor Robert Hazell, at the Constitution Unit.

³⁸ DCMS, *The Governance of Britain: "Flag Flying", Consultation on altering the current guidance on flying the Union Flag from UK Government buildings*. July 2007. <http://www.culture.gov.uk/NR/rdonlyres/D4A22BF1-DEA6-46C7-BBE8-4C32DBB21FB4/0/TheGovernanceofBritainflagflying.pdf>

³⁹ Op.Cit., HC Debates 3 July, 2003, Col.831.

⁴⁰ HC Debates, 16 January 2007, Cols, 1107w-1108w; HC Debates 23 January 2007, Col.1628w.

4.5 House of Lords

Under the *Government of Wales Act 2006*, Legislative Competence Orders must be approved by both Houses of Parliament, as must primary legislation which relates to Wales and which may confer Measure making powers on the National Assembly for Wales. The future composition of the House of Lords may well, therefore, have an impact on how devolution operates in Wales.

The House of Lords was last reformed in 1999 when the majority of hereditary peers were removed (leaving 92).⁴¹ This was presented as the first step in a two-stage process but a subsequent vote in the House of Commons in 2003 saw MPs rejecting all of the seven options for reform available to them, ranging from a fully elected chamber to a fully appointed one.⁴² However, the UK Government published a new White Paper in February 2007⁴³ and in March 2007 the Commons voted overwhelmingly, in a free vote, for a 100 per cent elected House of Lords, and with a 38 vote majority for an 80 per cent elected Lords. There was a 280 vote majority for removing the remaining 92 hereditary peers. The House of Lords itself has voted for a fully appointed upper chamber.

On 19 July 2007, the Rt.Hon. Jack Straw MP, the Minister for Justice and Lord Chancellor, made a statement to the House of Commons on Lords reform. Referring to votes in March 2007, he said that “the cross-party talks before the free votes were successful in building up a significant degree of consensus on a range of issues” and signalled his intention to continue the practice. He went on:

Given that all three main parties are committed by their manifestos to further reform of the House of Lords, it is right that the group should consist of Front-Bench representatives of the parties, as well as representatives from the Cross Benches and the Lords Spiritual. But of course we want the widest possible consensus and I intend to make arrangements so that we can take proper account of the views of all parliamentarians, including non-party independent Members, and interest groups and the public.⁴⁴

The work will proceed on the basis of a model with an 80 per cent or 100 per cent elected House of Lords. The group will discuss the outstanding elements of the reform package, including powers, electoral systems, financial packages, and the balance and size of the House, including diversity and gender issues. It will also discuss the transition towards a reformed House in detail, including the position of the existing life peers.

The Lord Chancellor said that he hoped to be able to publish a further White Paper towards the end of the year setting out “*where we have got to in the cross-party talks—possibly accompanied by draft clauses that would form elements of the final reform Bill.*” He added that the work of the cross-party group is intended to formulate a comprehensive reform package that can be put to the electorate as a manifesto commitment at the next general election and which hopefully the other main parties would include in their manifestoes, thereby indicating that reform would not take place before the next election.⁴⁵

⁴¹ HL Briefing, *Reform and Proposals for Reform since 1900*, March 2000. <http://www.parliament.the-stationery-office.co.uk/pa/ld199798/ldbrie/ldreform.htm>

⁴² BBC News website, *Lords Reform in Disarray*, 5 February 2003. http://news.bbc.co.uk/1/hi/uk_politics/2721979.stm

⁴³ HM Government, *House of Lords: Reform*, Cm. 7027, February 2007. <http://www.official-documents.gov.uk/document/cm70/7027/7027.pdf>

⁴⁴ HC Debates, 19 July 2007, Col.450.

⁴⁵ Ibid.

5 Proposals on the Citizen and the State

The final section of the green paper outlined the UK Government's proposals regarding the citizen and the state. In terms of establishing a context it discussed the aspects of citizenship in other countries and the nature of identity:

Each of us possesses multiple identities because we define ourselves in different ways depending on the factors that matter most to us. Factors such as gender, race, ethnicity, age, disability, class and faith are shared with some and different from others. But in addition to these there is a national identity that we can all hold in common: the overarching factor – British citizenship – that brings the nation together.

The paper articulates the UK Government's belief that a clearer definition of citizenship would give people a better sense of their British identity in a globalised world and that everyone in the UK should be offered an easily understood set of rights and responsibilities when they receive citizenship. It argues that this might serve to make citizenship more attractive but also to make it clearer to potential citizens what it is to be a member of Britain's democratic society.

The UK Government has already introduced some measures aimed at raising the profile and meaning of citizenship, introducing language and Knowledge of Life tests for new applicants and citizenship ceremonies.

As well as wishing to develop a concept of citizenship that will assist new citizens to integrate into society, the Government is also concerned about young people acquiring a notion of citizenship. It proposes to launch a Youth Citizenship Commission which will examine ways to invigorate young people's understanding of the UK's historical narrative and of what it means to be a British citizen, and to increase their participation in the political sphere.

The Commission will examine what support schools in England need to improve the ways that they prepare young people for their life as an adult citizen. It will look at how citizenship education can be connected to both a possible citizenship ceremony when young people reach adulthood and to the acquisition of voting rights. In that context, the Commission will also examine, including in debate with young people, whether reducing the voting age would increase participation in the political process.⁴⁶

The extent to which the work of the Youth Citizenship Commission will apply to Wales, Scotland and Northern Ireland is unclear. Of course, education is devolved and there have been distinct approaches to citizenship education in the past. However, voting rights are not a devolved issue.

Citizenship education is currently delivered via a Key Stage 1-4 (ages 5-16) Personal and Social Education (PSE) framework in Wales. Though PSE has been statutory in Wales since September 2003, the framework is non-statutory. During its scrutiny project on electoral arrangements in the Second Assembly, the Local Government and Public Services Committee explored the teaching of citizenship and 'political literacy' in Wales.⁴⁷

Lord Goldsmith, the former Attorney-General, is to carry out a review of citizenship, looking both at legal aspects and other issues including civic participation and social responsibility. The paper states:

⁴⁶ HC Library, Standard Note, *Reduction in Voting Age*, SN/PC/1747, 19 July 2007.

<http://www.parliament.uk/commons/lib/research/notes/snpc-01747.pdf>

⁴⁷ Local Government and Public Services, Committee, 'Electoral Arrangements in Wales' Scrutiny Project, Final Report, December 2006. <http://www.assemblywales.org/elect-arrange-e.pdf>

The Government believes that in order to ensure that there is a common bond between all types of citizen in the UK, whether born in the country or naturalised, it is important that there is more widespread agreement and understanding around the nature of the rights and responsibilities that come with citizenship. A clearer understanding of the common core of rights and responsibilities that go with British citizenship will help build our sense of shared identity and social cohesion.

The final section of the paper outlines the UK Government's plans to develop common British values. The paper drew comparisons with other countries:

French citizens have a clear understanding of their values of liberty, equality and fraternity. America has a strong national perception of itself as the "land of the free". But there is a less clear sense among British citizens of the values that bind the groups and communities who make up the body of the British people.

The paper further states that it is important to be clearer about what it means to be British, what it means to be part of British society and, "crucially, to be resolute in making the point that what comes with that is a set of values which have not just to be shared but also accepted." It continues:

There is room to celebrate multiple and different identities but none of these identities should take precedence over the core democratic values that define what it means to be British. A British citizen, fully playing a part in British society, must act in accordance with these values.

The UK Government, therefore, intends to hold a "national debate" to develop a British statement of values. Over the next few months the Government intends to release a series of discussion documents and materials. It wishes to build on the current and ongoing work by academics, think-tanks and so forth. It also plans to have local, regional and national level events and to use diverse methods of engagement with the wider public. It concludes:

The end point will be a British statement of values that reflects the voices of citizens across the country. The debate will also provide valuable insights into national views on citizenship and Britishness, which may be published after a period of dialogue and feedback.

6 The Draft Legislative Programme

On 11 July 2007 the Prime Minister made a statement on the legislation that the Government is planning to bring forward in the Queen's Speech in the autumn and a draft legislative programme was published.⁴⁸ This innovation was justified by the Prime Minister:

For over one and a half centuries the annual Gracious address has been drafted inside Government and agreed by the Cabinet far from the public arena. But I believe it is now right in the interests of good and open government and public debate that each year the Prime Minister make a summer statement to this House so that initial thinking, previously private, can now be the subject of widespread and informed public consultation.

⁴⁸ Office of the Leader of the House of Commons, *The Governance of Britain –the Government's Draft Legislative Programme*, Cm.7175, July 2006. <http://www.cabinetoffice.gov.uk/publications/reports/governance/governance.pdf>

And today in advance of final decisions the Leader of the House is publishing details of our initial list of proposed legislative measures -- inviting debate on them in both Houses this month and making provision for region-by-region deliberation and responses.⁴⁹

Many of the proposals in the green paper are likely to be carried forward in the proposed *Constitutional Reform Bill*. The draft programme states that "the main elements of the bill are in many cases dependent on subsequent consultation exercises". It could include:

- placing on a statutory footing the role of parliament in the process for ratifying treaties;
- implementation of any changes arising from the consultation on the role of the Attorney General; and
- placing the Civil Service on a statutory footing.

Although the constitution is a reserved matter the Government intends to "work closely with the Devolved Administrations on matters which may have an impact on their responsibilities."⁵⁰

On 25 July the Member for Blaenau Gwent, Dai Davies MP, asked the Leader of the House of Commons about the implications of the draft legislative programme for Wales:

Mr Dai Davies MP (Blaenau Gwent):

To ask the Leader of the House, pursuant to the Prime Minister's statement of 11th July 2007, Official Report, columns 1449-51, on the draft legislative programme, which of the planned bills will apply (a) fully and (b) in part in (i) Wales, (ii) Scotland and (iii) Northern Ireland; and, in such cases, if she will set out the form in which the legislation will apply in each respective area of the United Kingdom.

Helen Goodman:

In *The Governance of Britain - The Government's Draft Legislative Programme* (CM 7175) the Government set out how the proposed bills will apply to the devolved administrations of Wales, Scotland and Northern Ireland on the basis of current plans. In many cases discussions will continue to take place with the Devolved Administrations and the Government is mindful to ensure that it honours the commitments to consult and communicate with them on such matters, made in the 'Memorandum of Understanding with the Devolved Administrations'.⁵¹

The Members' Research Service has produced a Research Paper on the details of the 2007 Queen's Speech (No.??).

⁴⁹ HC Debates, 11 July 2007, Co.1449

<http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070711/debtext/70711-0004.htm#07071161000584>

⁵⁰ Op.Cit., Cm.7175, p.28

⁵¹ HC Debates, 25 July 2007, Cols.1122W-1123W.

Annex 1 – Implementation of the *Governance of Britain* Proposals

The proposals in the UK Government Green Paper, *The Governance of Britain*, are being taken forward in a number of different ways. This grid shows how different proposals are to be implemented.

| Proposal | Department and indicative timescale |
|---|--|
| Alteration of Ministerial Code | Completed, July 2007. |
| Consultation on flying the Union flag all the time on Government buildings. Published 25 July 2007. | DCMS. Deadline for response 9 November 2007, although UK departments have been able to fly the flag all the time if they wish during the consultation period. |
| Consultation on the role of the Attorney General. ⁵² | Deadline for responses is 20 November 2007. |
| House of Lords Reform | Cross-party talks ongoing. White paper with possible draft clauses to be published at the end of 2007. No implementation of reform expected before the next General Election. |
| Lord Goldsmith's Citizenship Commission | Launched on 5 October 2007 at Wembley Stadium. The review will: <ul style="list-style-type: none"> ▪ Examine the legal rights and responsibilities associated with British citizenship. ▪ Consider the difference between the different categories of British nationality. ▪ Examine the relationship between residence, citizenship and British national status and the incentives for long-term residents to become British citizens. ▪ Explore the role of citizens and residents in civic society, including voting, jury service and other forms of civic participation.⁵³ |
| Youth Citizenship Commission | Commission to be launched "this autumn". It will report to the Prime Minister, the Secretary of State for Children, Schools and Families, and the Secretary of State for Justice. The Commission will be supported by a small Secretariat, based at the Department for Children, Schools and Families. ⁵⁴ |
| Constitutional Reform Bill | A draft Constitutional Renewal Bill has been announced in Queen's Speech on 6 November 2007. The purpose of the bill is to take forward the initial legislative elements of the |

⁵² Office of the Attorney General, A Consultation of the Role of the Attorney General, July 2007.

<http://www.attorneygeneral.gov.uk/attachments/Press%20Release.consultationdoc26.07.07.pdf>

<http://www.attorneygeneral.gov.uk/attachments/Consultation%20on%20the%20Role%20of%20the%20AGO.pdf>

⁵³ Lord Goldsmith QC Citizenship Review, *Review of Citizenship to launch at Wembley Stadium*, Press Release, 4 October 2007.

⁵⁴ HC Debates, 18 October 2007, c.1306w.



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|---|--|
| | <p>Constitutional Renewal package to be set out in 'The Governance of Britain'..</p> <p>The Bill would apply to the United Kingdom. The constitution is a reserved matter; however the Government will work closely with the Devolved Administrations on matters which may have an impact on their responsibilities.</p> |
| <p>Prime Minister stated that a review of electoral systems, especially those put in place in 1997, would form the basis of a consultation on electoral reform</p> | <p>On 3 July 2007 the Prime Minister said that this review would be published "soon" by the Ministry of Justice.</p> |
| <p>Statement of British Values</p> <p>Prime Minister said:</p> <p><i>In Britain we have a largely unwritten constitution. To change that would represent a fundamental and historic shift in our constitutional arrangements. So it is right to involve the public in a sustained debate whether there is a case for the United Kingdom developing a full British Bill of Rights and Duties, or for moving towards a written constitution.</i></p> <p><i>And because such fundamental changes should happen only where there is a settled consensus on whether to proceed, I have asked my Right Honourable Friend the Secretary for Justice to lead a dialogue within Parliament and with people across the United Kingdom by holding a series of hearings, starting in the autumn, in all regions and nations of this country --- and he will consult with the other parties on this process.</i></p> | <p>Ministry of Justice. Discussion paper to be published and meetings scheduled around the UK . An answer to a Commons' question on 24 October stated:</p> <p>Kerry McCarthy (Bristol, East) (Lab): What steps he is taking to engage in dialogue with the public on a British statement of values. [160184]</p> <p>The Minister of State, Ministry of Justice (Mr. Michael Wills): The process for developing a British statement of values will involve local, regional and national events, and opportunities for the public to deliberate and debate, using a wide range of mechanisms.⁵⁵</p> <p>On the 25 October the Prime Minister gave a keynote speech on Liberty in which he stated:</p> <p>Today, Jack Straw is signalling the start of a national consultation on the case for a new British Bill of Rights and Duties - or, as I said in July, for moving towards a written constitution.</p> <p>This will include a discussion of how we can entrench and enhance our liberties - building upon existing rights and freedoms but not diluting them - but also make more explicit the responsibilities that implicitly accompany rights. We will also examine the rights and responsibilities that flow from British citizenship, informed by the work being carried out by Peter Goldsmith on citizenship.</p> <p>The debate about a Bill of Rights and Duties will be of fundamental importance to our liberties and to our constitutional settlement and opens a new chapter in the British story of liberty. So it is right that the discussion should engage those of all parties and none who believe in our democracy</p> |

⁵⁵ HC Debates, 24 October 2007, c.274.



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|--|--|
| | and the importance of liberty within it in a constructive dialogue. And this debate is not just for one party or one year but for all parties and for this generation. I hope other political parties will join this dialogue. ⁵⁶ |
| Limiting power of the executive to declare War. | The Ministry of Justice published a Consultation Paper: <i>War Powers and Treaties: Limiting Executive Powers</i> on 25 October 2007. ⁵⁷ The consultation closes on 17 January 2008. |
| Managing protests around Parliament | The Home Office published a Consultation Paper, on 25 October 2007. The consultation closes on 17 January 2008. ⁵⁸ |
| Role of the executive in making judicial appointments. | The Ministry of Justice published a Consultation Paper on 25 October 2007. The consultation closes on 17 January 2008. ⁵⁹ |

⁵⁶ The Rt. Hon. Gordon Brown MP, Prime Minister, Speech on Liberty, October 2007.

<http://www.number10.gov.uk/output/Page13630.asp>

⁵⁷ Ministry of Justice, *War Powers and Treaties: Limiting Executive Powers* (CP26/07), October 2007.

<http://www.justice.gov.uk/publications/cp2607.htm>

⁵⁸ Home Office, *Managing Protests around Parliament*, Cm 7235, October 2007.

<http://www.homeoffice.gov.uk/documents/cons-2007-managing-protest?view=Binary>

⁵⁹ Ministry of Justice, *Judicial Appointments* (CP25/07), October 2007. <http://www.justice.gov.uk/publications/cp2507.htm>