Remaining stages of the Constitutional Reform and Governance Bill 2009-10

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Author: Oonagh Gay
Section Parliament and Constitution Centre

The *Constitutional Reform and Governance Bill 2009-10* had its remaining stages in the House of Commons on 2 March 2010. Further Government amendments were made on report; the main ones were in relation to reducing the 30 year rule for public records to 20 years for specified areas and creating a new exemption for communications with the Royal Family. In addition the Independent Parliamentary Standards Authority (IPSA) would be required to give advice to Members on making claims for allowances. There were a series of amendments on the Members pension scheme and there is a new version of the clause requiring Returning Officers to begin the count four hours after the close of a parliamentary election poll. References in the Note are initially to Bill 68 of 2009-10 – as printed after Commons committee stage. The Bill was reprinted as HL Bill 40 of 2009-10.

Second reading of the Bill in the Lords took place on 24 March 2010. The Bill had an expedited committee report and third reading, due to the imminence of dissolution of Parliament. The following parts were removed during wash-up:

- Referendum on voting systems
- House of Lords
- Public order provisions
- Human rights claims against devolved administrations
- Courts and tribunals
- National audit

In addition, the provisions on nationality and crown employment were removed from part 1 on the civil service. The Bill became the *Constitutional Reform and Governance Act 2010* following royal assent.

Contents

1 Introduction

Research Paper 9/72 *The Constitutional Reform and Governance Bill 2009-10* provides background to the Bill as first introduced into the Commons. Research Paper 10/18 *The Constitutional Reform and Governance Bill: Committee stage report* explains the changes made to the Bill up until report stage.

2 Commons Report stage and third reading

This took place on 2 March 2010. There were further major amendments to the Bill, as well as some further tidying up of existing provisions:

- Amendments to the *Public Records Act 1958* and the *Freedom of Information Act 2000* in respect of the 30 year rule and the royal family;
- Amendments to the *Parliamentary Standards Act 2009* requiring the Independent Parliamentary Standards Authority (IPSA) to give guidance to Members on their claims for allowances;
- Amendments on the operation of the Members' pension scheme, which is to become a responsibility of IPSA;
- A new version of the clause recommending Returning Officers to begin the count 4 hours after a general election or offer reasons why this could not be undertaken.

There was a short debate on a new Money Resolution to provide for regional counting officers, which the Conservatives opposed as one aspect was the payment for Counting Officers for the AV referendum. The Resolution was approved by 331 votes to 161.[1]

There followed a debate on a new Programme Motion (no 6) which, according to the Government, allowed time for debates on FoI changes, IPSA changes and Part 7 on protests near Parliament.[2] The Opposition complained that the Government amendments at this stage had prevented any opportunity to debate the several other amendments on the Order Paper.[3] Tony Wright, the chair of the Public Administration Select Committee also complained that despite years of work on a number of different topics such as the parliamentary ombudsman PASC had been unable to ensure that its amendments were selected for debate.[4] The programme motion was passed by 272 votes to 226.

2.1 Public records and freedom of information

Government New clauses 22 and 23 and New schedule 1 were added to the Bill. The main effect of the changes is to reduce the 30 year rule for the release of official records to 20 years for some records, and to create a new FoI exemption for communications between members of the Royal Family and public authorities. Further information is available in Library Standard Note SN/PC/05377 *Public Records, Freedom of Information and the Royal Family.*

The new clauses implement the Government's response to the Dacre Review on public records, which reported in January 2009. It recommended reducing the 30 year rule to 15,

1 HC Deb 2 March 2010 c810
2 HC Deb 2 March 2010 c815
3 HC Deb 2 March 2010 c817
4 HC Deb 2 March 2010 c820

and adding exemptions to deal with communications with the Royal Family and Cabinet papers. On 10 June 2009 the Prime Minister, Gordon Brown, made a statement on Constitutional Renewal, in which he said that:

> I should also announce that, as part of extending the availability of official information, and as our response to the Dacre review, we will progressively reduce the time taken to release official documents. As the report recommended, we have considered the need to strengthen protection for particularly sensitive material, and there will be protection of royal family and Cabinet papers as part of strictly limited exemptions. But we will reduce the time for release of all other official documents below the current 30 years, to 20 years[5]

The formal response to the review was published on 25 February as Command Paper 7822. The Government announced that it would not proceed with a new exemption for Cabinet records.

The FoI clauses were the first set of amendments to be discussed at report. Mr Straw noted that there would be a transitional period until the target of 20 years was reached:

> Because the proposal involves a big change, the Dacre review recommended a transitional period and essentially proposed that until we reach the target time of 20 years, in the intervening period two years' records should be released every year to get down from the 30-year limit to the 20-year limit. The new clause makes provision for the transitional period to be brought in by order, because exactly when that new time limit is introduced will need to be considered by Government in the next Parliament.[6]

He also noted that the new 20 year limit would not apply to several exemptions within FoI: Further detail is given in Library Standard Note 5377 *Public records, freedom of information and the Royal Family*. Mr Straw highlighted the continuing 30 year rule for commercial information, as remaining subject to a public interest test, and also the 30 year exemption for information which might be prejudicial to the work of the Northern Ireland Executive.[7] Mr Straw explained that para 3 of new schedule 1 provides an absolute exemption in respect of records relating to the monarch and the next two in line and also for a qualified exemption of 20 years or for five years after the death of a monarch, whichever is later.[8]

Mr Straw explained the process of transitional implementation:

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The New Clauses and Schedule were added to the Bill without a division.

2.2 IPSA changes

Mr Straw moved amendments to section 7 of the *Parliamentary Standards Act 2009* to require IPSA to prepare guidance for Members about making claims under the allowances

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5 HC Deb 10 June 2009 c797
6 HC Deb 2 March 2010 c830
7 HC Deb 2 March 2010 c830-833
8 HC Deb 2 March 2010 c835
9 HC Deb 2 March 2010 c830

scheme. This followed concerns expressed at committee stage that such a duty was needed.[10] He also moved a series of amendments on the Members' pension scheme, and announced that he would accept some amendments from Sir John Butterfill, on behalf of the current pension scheme trustees. He explained the rationale as follows:

> The first concern was that there should be proper safeguards for hon. Members' accrued pension rights. My aim is to ensure that the statutory safeguards afforded to members of other occupational pension schemes broadly apply to the parliamentary scheme. As with statutory protection for pension schemes elsewhere, amendment 74 would put a double lock on any provision adversely changing accrued pension rights. It would first be necessary for the trustees to consent to the scheme making such provision and, secondly, each member would have to give his or her informed consent to any changes to accrued rights.
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> It is the Government's view that in giving such approval, and indeed exercising any of their other functions, the trustees would need to act in the best interests of the members in accordance with their clear fiduciary duties as trustees. That protection means that if IPSA were to change the rules of the scheme, the pension entitlements that other hon. Members and I have would be safeguarded if we left service immediately before any change. No adverse changes could be made to that pension entitlement without the agreement of the trustees or our individual consent.
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> Secondly, there were concerns that schedule 7, as originally drafted, left open to doubt whether the new arrangements ensured the continuation of a trustee-based scheme with appropriate member representation on the board of trustees. Amendment 64 would put that beyond doubt and set out on the face of the Bill the structure of the board of trustees. The amendments provide for a board of 10 trustees, one of whom would be appointed by IPSA, a second by the Minister for the Civil Service, while the remaining eight would be member-nominated trustees. It will be left to the trustees collectively to make appropriate arrangements for the nomination and selection of the member-nominated trustees, but such arrangements must involve all members of the MPs' and Ministers' pension schemes.
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> The amendments include appropriate transitional provisions, so that there can be a managed progression from the current board of trustees to the new one, but the existing trustees will continue to be trustees until the end of the transitional period. There is also provision for the first eight member-nominated trustees to be chosen from among the existing trustees.
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> Thirdly, amendment 66 would require IPSA to obtain the consent of the trustees before making the administration scheme under paragraph 3 of schedule 7. This is an appropriate further safeguard, given that the administration scheme will set out the trustees' core responsibilities in respect of the administration of the parliamentary contributory pension fund and the management of its assets.
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> I have considered very carefully whether we have got the balance right between the administration scheme and the MPs' pension scheme. I know that this was another issue that has troubled the trustees. After much discussion, I am satisfied, and I hope that the trustees are too, that we have got the demarcation between the two schemes right. The pension scheme will determine the full range of pension benefits and entitlements. In accordance with the overarching principle of independent determination, these are properly matters for sole determination by IPSA, albeit-as the provisions in the Bill make clear-after consultation with the trustees, the Government Actuary, the Senior Salaries Review Body and others.

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[10] HC Deb 2 March 2010 c853

> I have studied carefully the amendments in the name of the hon. Member for Bournemouth, West (Sir John Butterfill) and other trustees, and I have had the opportunity to discuss them. I have advised the House on those that I think it should accept. I understand that the hon. Gentleman is ready to withdraw some of his amendments, but I shall address them briefly.[11]

He also drew attention to amendments to enable the Compliance Officer to exercise appropriate discretion:

> Finally, amendments 56, 58 to 60 and 62 respond to concerns that the enforcement provisions in schedule 5 to the Bill do not enable the compliance officer to exercise appropriate discretion when seeking to recover overpaid expenses in those cases where the compliance officer has established that IPSA was wholly or partly at fault. There may be circumstances where, for example, an MP incurs expenditure in good faith having sought advice from IPSA; IPSA then reimburses that expenditure; but it subsequently transpires that the advice was erroneous and that the expenses should not have been paid. If in exceptional circumstances such as these the compliance officer finds that IPSA is at fault, we agree that the compliance officer should have discretion not to require full repayment of the overpaid expenses.[12]

For the Opposition, Shailesh Vara expressed support for the requirement on IPSA to give guidance and for the discretion for the Compliance Officer. Both Mr Vara and David Heath, for the Liberal Democrats, suggested that further work was necessary on the pension amendments and David Heath queried the accountability of the Compliance Officer.[13]

Mr Butterfill expressed thanks for the work of the Justice Secretary and set out the context as follows:

> What I have to say about the Bill should be seen in the context of the fundamental shift that is going to take place, as recommended by Kelly, when future benefits for Members of this House are to be set by IPSA. That is what will happen and as it goes forward, the trustees will be consulted-but only consulted-on any future scheme. Because of the complexity of pensions, however, and the fact that current and former members have accrued rights within the pension scheme that should be protected, the role of the trustees is important for the administration and the management of the scheme in the future. I hope that the trustees will be helpful to IPSA in dealing with the most complex areas.[14]

He made a series of detailed recommendations. In response Mr Straw gave an undertaking that should further glitches in the drafting remain, the House might need to return to the matter after the general election.[15]

2.3 Other issues

Public order

Eleanor Laing, for the Opposition, spoke to amendments to part 7 of the Bill on demonstrations near Parliament, designed to prevent excessive amplification near the Palace:

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11 HC Deb 2 March 2010 c854-5
12 HC Deb 2 March 2010 c856
13 HC Deb 2 March 2010 c858
14 HC Deb 2 March 2010 c861
15 HC Deb 2 March 2010 c864

> **Mrs. Laing:** Although amendment 2 is the lead amendment, it is to amendment 3, proposed by the Conservatives, that I should like to address my remarks. It would amend the Serious Organised Crime and Police Act 2005 in respect of activities in Parliament square. The amendment would empower the most senior police officer present, first, to require the operator of amplified noise equipment to desist and, secondly, to confiscate the equipment on receipt of a complaint about excessive noise.[16]

She appealed for a consensus on the matter, David Howarth, for the Liberal Democrats, said that there was no need for a special law and complained that Government amendments in committee had extended, without debate, the area around Parliament to be dealt with under the Bill's provisions.[17] Andrew Dismore, chair of the Joint Committee on Human Rights, also spoke to amendments designed to create more certainty, and noted that his committee also had concerns about the increase in the area surrounding Parliament from 250 metres to 300 metres made at committee. In response, the junior Home Office minister, David Hanson, pointed out that the proposed amendments were defective and might have unintended consequences.[18]

Mrs Laing decided to press amendment 3 to a division, which was lost by 312 votes to 135. A Liberal Democrat amendment to amend Schedule 9 was lost by 388 votes to 45.[19]

Miscellaneous amendments

According to the terms of the programme motion, the other amendments were taken forthwith. These included:

- Regional counting officers for the AV referendum (New Clause 24);
- Power to make orders on the conduct of the AV referendum (New Clause 25);
- Treasury powers over Electoral Commission accounts (New Clause 26);
- New version of the clause on counting of votes after the general election, which requires the Returning Officer to take reasonable steps to begin the count within four hours; if not, to publish reasons for the decision not to. Further information is given in Library Standard Note 5166 *Timing of parliamentary election counts (*New Clause 37)
- Amendment to special advisers code in clause 8 ensuring that advisers may not authorise the use of public funds; or manage the civil service; to apply in the UK; Scotland, Wales and Northern Ireland.

2.4 Third reading in the Commons

On the third reading Mr Wills said that the Bill represented significant constitutional reform and had largely proceeded with cross party consensus. In response, Dominic Grieve, for the Opposition, complained that the AV referendum had been added at a late stage and was an unnecessary use of public funds. He asked for the Conservative amendments on public order to be considered. Finally, he noted the continuing issue in relation to the House of Lords:

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16 HC Deb 2 March 2010 c873
17 HC Deb 2 March 2010 c877
18 HC Deb 2 March 2010 c887
19 HC Deb 2 March 2010 c889-890

> Then there is an issue that is of deep concern to us but is quite capable of being resolved. I have to put the Minister on notice that unless it is sorted out, it will prejudice the ability of the Bill to go on the statute book; it is the extraordinary procedure by which it will be possible, under the Bill as it stands, for a Member of the House of Lords to resign and immediately stand for election for the House of Commons. I think that I am right in saying that the Liberal Democrats and ourselves-and, indeed, I suspect others in this House-tend to see that as a device by which certain Government Ministers who have found their political careers in this place ended by various problems and gone to the other place for a resting period while they recover their strength, like Lord Voldemort, can come back to this House, reinvigorated. Quite frankly that is unacceptable.
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> There must be a period between resignation from the House of Lords and return or re-embodiment in this Chamber. There should be a period during which that return is not permitted. It is likely that that matter will be returned to in another place. If there is no time, and we get to the wash-up and there have to be discussions about issues in the Bill, that is one that will have to be sorted out to our satisfaction if the Bill is to go on the statute book. As it stands, it is contemptuous of the public and of the reasons why people should be going to the House of Lords in the first place as legislators; usually because they accept that some aspect of political ambition is gone and not as a springboard to a resurrected existence in this place. For those reasons, I hope that the Government will listen to the arguments in the other place and act accordingly.[20]

David Howarth commented for the Liberal Democrats:

> The Bill contains important and welcome reforms, but it is in danger of being hacked to pieces in the process of negotiation that happens at the end of Parliaments. It would be regrettable if that were the case. This is not a real constitutional reform Bill, which would deal with much bigger issues. It would be a shame, however, if the achievement, such as it is, were lost in procedural wrangles at the end of the Parliament.[21]

3 The Bill in the Lords

3.1 Lords Constitution Committee report

The Lords Constitution Committee produced a report on this Bill, as a constitutional bill, which expressed a great deal of concern about inadequate scrutiny:

> 40. This makes it all the more disappointing that this House, too, is in all likelihood to be denied the opportunity to scrutinise the provisions in this Bill properly. Parliament is likely to be dissolved before the House of Lords can progress its consideration of this Bill beyond second reading. The fault lies with the Government. In the first place there was excessive delay between the publication of the Draft Bill in March 2008 and the publication of the present Bill in July 2009. This was compounded by the protracted nature of the Committee stage in the House of Commons, which was repeatedly extended as the Government tabled numerous rounds of late amendments. It is inexcusable that the Government should have taken so long to prepare this Bill that it has effectively denied both Houses of Parliament—and especially this House—the opportunity of subjecting this important measure of constitutional reform to the full scrutiny which it deserves. [22]

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[20] HC Deb 2 March 2010 c905
[21] HC Deb 2 March 2010 c912
[22] Lords Constitution Committee Constitutional Reform and Governance Bill Eleventh Report HC 98 2009-10

The committee was particularly annoyed that part 1 on the civil service would not be scrutinised in any detail, given its earlier comments that the subject matter deserved a separate bill.

3.2 Delegated powers and regulatory reform Committee

This Committee recommended some minor changes in relation to the IPSA aspects of the Bill, making clear that it applied to the House of Commons only. It considered that the power in Schedule 9 to maintain access to the Houses of Parliament should be by way of affirmation resolution. In the event, this part of the Bill was removed in its entirety in wash-up.[23]

3.3 Second reading

This took place on 24 March 2010. After an introduction to the Bill from the Government minister, Lord Bach, the debate was dominated by concerns that the Bill would not receive full scrutiny in the Lords, due to the imminence of dissolution of Parliament. Lord Steel of Aikwood proposed an amendment regretting the absence of a statutory House of Lords Appointments Commission, but this was withdrawn at the end of the debate. [24] There had been some expectation that the Government would bring forward draft clauses on House of Lords reform, but in the event these were not published before the election.[25]

3.4 The Bill in wash-up

Many aspects of the Bill were removed at the end of the 2005 Parliament, as there was no more Government time available to progress the Bill beyond second reading in the Lords. These parts were removed from the Bill in their entirety:

- Referendum on voting systems
- House of Lords
- Public order provisions
- Human rights claims against devolved administrations
- Courts and tribunals
- National audit

In addition, the provisions on nationality and crown employment were removed from part 1 on the civil service.

However some of the provisions added to the Bill during its progress were retained. These included the new provisions on IPSA, the timing of the counting of the vote, freedom of information and records management. On the other hand, aspects of the Bill which had been included at second reading, such as the national audit provisions were dropped.

3.5 The wash-up process

CRAG was a key bill in the process of wash-up at the end of the 2005 Parliament in April 2010, as it was a major constitutional bill which had yet to receive scrutiny in the House of

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23 Seventh report HL 97 2009-10
24 HL Deb 24 March 2010 c984
25 See Library Standard Note 5141 for further details

Lords.[26] On Wednesday 7 April 2010 Lord Trefgarne spoke to an amendment to ensure that CRAG was not dealt with on that day, according to the suspension of standing orders motion moved by Baroness Royall. A number of speakers took the opportunity to express their concern that an important constitutional bill was being rushed through because of the imminent dissolution of Parliament.[27] Lord Tyler decided to divide on his amendment on the Government proposal to suspend standing orders, but lost by 55 votes to 215. Lord Trefgarne withdrew his amendment after Baroness Royall promised to hold further talks including with Baroness D'Souza of the crossbenchers and the Liberal Democrats.[28]

Following that meeting, the decision of what to remove from the Bill appears to have changed from the initial statement of Baroness Royall at col 1478, to exclude in addition the whole of part 5 rather than simply the ending of by elections for hereditary peers and provision for the resignation of peers. The committee stage of the bill commenced at just after midnight and Lord Bach set out the clauses which would be removed as follows:

> As a result of these discussions, I hope that we will meet the clearly expressed will of the House earlier today to proceed with all the remaining clauses. For the convenience of the House, the Government intend that the following clauses should be left out of the Bill. They are: Part 1, "The Civil Service Etc", Clauses 20 to 23 and Schedule 3; Part 3, "Referendum on Voting Systems", Clauses 29 to 37-all of this part; Part 5, "The House of Lords", Clauses 53 to 58 and Schedule 8-all of this part; Part 7, "Public Order", Clause 61 and Schedule 9-all of this part; Part 8, "Human Rights Claims Against Devolved Administrations", Clauses 62 to 64-all of this part; Part 9, "Courts and Tribunals", Clauses 65 to 67 and Schedule 10-all of this part; Part 10, "National Audit", Clauses 68 to 82 and Schedules 11 to 14-all of this part; and Part 13, "Miscellaneous and Final Provisions", Clauses 88 and 89 on referendums and Clause 91 on Electoral Commission accounts.[29]

The Liberal Democrat spokesman Lord McNally expressed concern that the clause on the suspension and expulsion of peers had been removed; for the Conservatives, Lord Strathclyde, said that if they formed the next Government, they would want to 'put that right'.

3.6 Amendments at committee stage

The Government accepted an amendment from the Conservative peer Lord Norton of Louth, which was designed to ensure that civil servants were aware of their wider duty to Parliament and the conventions governing the relationship between Parliament and Government. The Minister for the Civil Service was given a specific duty to ensure this wider duty became known. The Government did not accept other amendments from Lord Norton in respect of civil service matters, including special advisers.[30]

Lord Norton was also successful in persuading the Government to accept an amendment requiring an Explanatory Memorandum for each treaty laid before Parliament, but others were rejected.[31]

Government amendments made a series of consequential amendments to Schedule 5, replacing House of Parliament with House of Commons, according to the recommendations

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26 For more information on the process of wash-up see Library Standard Note 5398
27 HL Deb 7 April 2010 c1490
28 HL Deb 7 April 2010 c1501
29 HL Deb 7 April 2010 c1610
30 HL Deb 7 April 2010 c1615
31 HL Deb 7 April 2010 c1622

of the Delegated Powers and Regulatory Reform Committee. There was also an amendment to allow for the new 20 year period for public records to be phased in, in the anticipation that there would be large number of requests for records in the 20-30 year period.[32]

3.7 Other points

The Liberal Democrats expressed frustration that clauses on the AV referendum and ending of by elections for hereditary peers had been removed, together with retirement, expulsion and suspension provisions. Lord Bach, for the Government, said that the bill would have fallen if the Government had insisted on the clause on by elections.[33] Lord Stoddart of Swindon noted that there were a large number of amendments on the House of Lords clauses, so the Government realized there was a danger of the bill falling. Lord Strathclyde for the Conservatives reiterated his party's support for the clauses on suspension and expulsion. There were divisions on the removal of clauses 53 and 54, resulting in their removal.[34]

Some further probing amendments followed: on the definition of being domiciled for the purpose of what became sections 41 and 42 of the Act and a debate initiated by Lord Ramsbotham on the question of prisoner voting rights. No amendment was made and the bill passed all stages.[35] It was returned to the Commons on 8 April where the Lords amendments were accepted.

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32 HL Deb 7 April 2010 c1641
33 HL Deb 7 April 2010 c1630
34 HL Deb 7 April 2010 c1634
35 HL Deb 7 April 2010 c1642-48