



RESEARCH PAPER 98/118  
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# *The Greater London Authority Bill: Electoral and Constitutional Aspects*

**Bill 7 of 1998-99**

The *Greater London Authority Bill* is due to have its second reading debate on 14-15 December. A general briefing on the main policy and provisions of the Bill (including the nature of, and relationship between, the Mayor and Assembly) is provided by the companion Research Paper 98/115, and the transport aspects are considered in Research Paper 98/116. This Paper deals mainly with the elections for the mayor and the Assembly, including the voting systems applicable. It also considers briefly the Government's proposals for the governance of Greater London in the context of its overall constitutional programme.

The new-style Explanatory Notes to the Bill [Bill 7-EN] provide a very detailed description by DETR of the Bill's provisions.

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## **Summary of main points**

Members should consult Research Papers 98/115 for full briefing on the main policy and provisions of the Bill (including the institutional arrangements of the Mayor and the Assembly), and 98/116 for the transport aspects. This companion Paper concentrates on two aspects: the electoral arrangements for the new Authority and the constitutional context of the new system of Greater London governance.

The voting systems to be used to elect the Mayor and the Assembly members is examined. The Mayor will be elected by the Supplementary Vote system across Greater London. The 14 constituency members of the Assembly will be elected by the simple majority system ('First Past the Post'), and the 11 'London members' by a London-wide party list system. These provisions are examined, including the constitution of the relevant constituencies, the franchise, qualifications for candidature, and arrangements for the elections themselves (including financial issues such as deposits and expenses limits).

The Paper also considers the Bill's policy in the overall context of the Government's substantial programme of constitutional reform legislation in this Parliament, and briefly compares it to other territorial developments, such as devolution, regionalism and local government. Finally the legislative process implications of the Bill being treated, to any degree, as a 'constitutional Bill' are considered, including the treatment of its Commons committee stage.

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## I Elections to the Greater London Authority

### A. Background: the Greater London Council

For the purposes of elections to the Greater London Council, Greater London was divided into electoral divisions. From 1973 each division returned one councillor<sup>1</sup> At the first three elections to the GLC (1964, 1967, 1970) there were 100 councillors, and 32 divisions, each corresponding to one London borough (with the City of London included within Westminster). There were between 2 and 4 councillors for each of these electoral divisions, but from the 1973 elections there were 92 councillors representing single member divisions. Electoral divisions were required to be wholly within a London borough (except Westminster and the City). Every Parliamentary constituency wholly within a borough was to constitute an electoral division. This meant that each division was co-terminous with a Parliamentary constituency.<sup>2</sup> The Local Government Boundary Commission became responsible for conducting reviews of electoral arrangements. Elections were conducted under the First Past the Post System. The local government electorate was used. The last full elections were held in 1981 and since 1973 had been on a four year cycle.

### B. The Greater London Authority

The 1993 Plant Commission on electoral reform<sup>3</sup> did not make any recommendation on possible voting systems for a London assembly; Labour did not reach any agreement with the Liberal Democrats before the 1997 election over the voting system to be used for elections for a London mayor and the proposed London assembly. The report of the Labour/Liberal Democrat Joint Consultative Committee on Constitutional Reform (March 1997) noted both parties' commitment to a referendum on the establishment of an elected assembly, and the Labour commitment to an elected Mayor. Policy documents issued by the Labour party before the 1997 elections did not propose alternative voting systems for a Greater London Authority.

The Green Paper *New Leadership for London: the Government's proposals for a Greater London Authority*<sup>4</sup> did not recommend a specific voting system for the mayor or the assembly. It asked which system should be used for the mayoral elections and set out electoral options for the assembly:

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<sup>1</sup> *Local Government Act 1972* s.8(1) Schedule 2, para 7. The electoral divisions were defined by the *Greater London(Electoral Areas) Order 1972* SI no. 924

<sup>2</sup> Full details of the rules governing electoral arrangements were given in Schedule 11 of the *Local Government Act 1972*

<sup>3</sup> *Report of the Working party on electoral systems 1993* For background see Research Paper 97/26 *Voting systems: the alternatives*

<sup>4</sup> Cm 3724 July 1997

### **Electing the Mayor**

3.03 It will be important to ensure that the method of election of the mayor gives the eventual winner a clear mandate from the people of London. There are a number of options, including the system currently used for local government elections, and more representative systems such as the second ballot and the alternative vote system. The first-past-the-post system does not require a candidate to obtain a majority vote over all other candidates, or to obtain a given proportion of the total vote. The successful candidate has simply to secure more votes than the next placed candidate. If more than two candidates were standing for election as mayor, one could win with well under half the vote.

3.04 As the name implies the second ballot system involves two rounds of voting. In the first round, only a candidate who secures an overall majority would be elected. If no candidate secures a majority, then a limited number of candidates would go forward to a second vote. The winner would become mayor.

3.05 Under the alternative vote system, instead of voting for just one candidate, voters select any number of candidates they like, in order of preference. To win, a candidate has to obtain an overall majority. If no candidate secures a majority of first preferences, then the lowest placed candidate drops out and his or her second preferences are transferred to the other candidates. This process continues until one candidate achieves an overall majority.

### **Electing the Assembly**

3.06 The method of election to the assembly needs to reflect and support the role of assembly members. Assembly members will be required to think and act strategically, looking at London-wide issues and the long-term interests of the capital. We do not think they need to or should duplicate the local representational roles of borough Councillors, MPs and Euro-MPs.

3.07 The electoral landscape of London is also relevant. There are approximately five million electors in London, 74 Parliamentary constituencies, 10 Euro-constituencies, 32 (unitary) London boroughs and the Corporation of the City of London. Some Euro-constituency boundaries extend beyond the limit of the area proposed for the new authority.

3.08 We are committed to a streamlined and effective assembly and will consider views on the size, shape and distribution of constituencies and the methods of electing assembly members.

### **Constituencies**

3.09 Several constituency models are available. For example, single-seat constituencies could follow borough boundaries, or 24 constituencies, each made up of approximately 3 Parliamentary constituencies. 32 constituencies would be easily understood by electors, but could lead to a focus on local rather than strategic issues. 24 constituencies would partially overcome this problem.

3.10 Larger multi-seat constituencies would allow constituencies more strategic in nature, perhaps corresponding with existing sub-regional partnerships. They would not have to be of equal size. London could, for example, be divided into between 8 and 10 constituencies, each with three elected representatives. Alternatively, there could be five larger constituencies (each with 5 or 6 members), with a large central area constituency and four based on sub-regional partnership areas or the points of the compass. Larger constituencies might allow assembly members to develop sub-regional identities, perhaps leading to a general strengthening of existing area partnerships .

3.11 A single London-wide constituency would give members a London-wide focus, as for the mayor, and this might encourage a more strategic outlook. Conversely, it may also result in some areas of London feeling under represented if elected assembly members have no obvious link at all with a community. This could also be an expensive option in campaigning terms.

### **Electoral Options for the Assembly**

3.12 In the single seat constituency model, the first-past-the-post and the alternative vote systems are probably the only viable options. In multi-seat constituencies a number of different electoral systems might be appropriate. These include first-past-the-post and other systems such as the list system, the additional member system and the single transferable vote system.

3.13 In the first-past-the-post system for multi-member constituencies, the candidate with the highest number of votes would be elected (for example, in a three member constituency, the three with the most votes would be elected). In the simplest terms, the list system requires electors to vote, not for an individual candidate, but for a party which provides a list of candidates which might be ranked in the order the party wishes them to be elected. Seats in constituencies would then be allocated amongst the parties according to the proportion of the vote gained in each constituency. This system would more or less cut out the option of independent candidates.

3.14 The additional member system allows a proportion of the available seats to be allocated on the first-past-the-post system, with the remainder allocated to parties on an all-London list, similar to that described above. The single transferable vote system requires voters to put candidates in an order of preference. Candidates have to reach a quota in order to be elected and where a candidate passes the quota, any excess votes are redistributed on the basis of voters' second preferences. If no candidate reaches the quota, the lowest placed candidate drops out and his or her second preferences are transferred. This process continues until the required number of candidates are elected.

The Green Paper favoured simultaneous elections for mayor and assembly with terms of between three and four years; it asked whether it was desirable to limit the number of terms of office of the mayor or assembly members. It would not be possible to be both the mayor and an assembly member. Rules for eligibility should be the same as for a local councillor

and the Paper raised the possibility of limiting the number of candidates for mayor to avoid too lengthy a ballot paper. (paras 3.15-3.17)

Finally the Green Paper considered that there needed to be arrangements to control expenditure in relation to assembly elections and mayoral elections. The Paper did not offer any details on proposed schemes to control expenditure. The issue would become more complex if a PR system were adopted for elections to the Assembly since controls on expenditure in Great Britain relate to expenditure by the individual candidate or his agent in a particular constituency rather than spending by a political party. Major changes to the system of election expenses for local elections would therefore be necessary. The current election expense limits for local elections are £219 per candidate, plus an additional 4.3p for every entry in the register of electors to be used at the election.<sup>5</sup>

Professor Patrick Dunleavy and Dr Helen Margetts prepared a report for the Government Office for London on possible electoral systems for London, using simulations of the systems.<sup>6</sup> It recommended the Supplementary Vote for elections for the Mayor, and either AMS with 14 or 16 local seats or STV using 5 constituencies or a list PR system as giving proportional results for the Assembly. It considered that it was important to choose voting systems which operated consistently with each other and therefore favoured either SV for Mayor and AMS or list PR for the Assembly or AV for Mayor and STV for the Assembly.

Dunleavy and Margetts also concluded that there was a case for government intervention to guarantee the use of 'one member one vote' (OMOV) procedures in the selection of party candidates for Mayor or for the Assembly. The election for Mayor would not command public support if parties' internal procedures were seen as undemocratic.

The White Paper *A Mayor and Assembly for London* proposed the Supplementary Vote for the election of the Mayor and AMS for the Assembly with 14 individual constituencies and 11 seats taken from a London wide list. The Local Government Commission would be asked by the Secretary of State to recommend boundaries of the new constituencies. The details were set out as follows:

#### **ELECTING THE MAYOR**

4.7 New Leadership for London said that it will be important to ensure that the method of election of the Mayor gives the eventual winner a clear mandate from the people of London. We propose to use a simplified version of AV, the Supplementary Vote System (SV), for electing the Mayor. It is simple and easy to use and can produce a clear winner who would enjoy the support of a large number of Londoners.

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<sup>5</sup> s.76 of the *Representation of the People Act 1983* as amended by the *Representation of the People (Variation of Limits of Candidates' Election Expenses) Order 1997*

<sup>6</sup> *Report to the Government Office for London: Electing the London Mayor and the London Assembly* 20.1.98 Dep 5941

### **The Supplementary Vote**

4.8 The SV system has similarities with the second ballot system, but does not require two rounds of voting. It is a simplified form of AV, but is quicker to operate and count.

4.9 Under the SV system voters simply mark their first and second choices of candidates on the ballot paper. They do this with an X - as is usual in other elections - rather than by having to number the list of candidates in their order of preference, as is the case under AV. They are not required to make two choices if they do not wish to do so.

4.10 Counting is also simple. Voters' first preferences are counted and if one candidate gets 50% of the vote or more, he or she is elected. If no one gets 50% of the vote, all of the candidates, except the two who received the highest numbers of votes, are eliminated. The second preferences on the ballot papers of the eliminated candidates are examined and any that have been cast for the two remaining candidates are given to those candidates. Whoever has the most votes at the end of the process, wins.

### **ELECTING THE ASSEMBLY**

4.11 The method of electing Assembly members needs to reflect and support the role envisaged for them. Assembly members will be required to think and act strategically, looking at London-wide issues in the round and at the long-term interest of the capital. They do not, nor should they, duplicate the local representational roles of borough councillors, MPs and MEPs.

#### **Size of the Assembly**

4.12 This argues forcefully for a small and effective Assembly. Taking into account the duties, tasks and appointments which Assembly members will have to undertake, the Assembly could do its work effectively with 25 members.

#### **The Additional Member System**

4.13 Assembly members will be elected by AMS, which is the electoral system being used for elections to the Scottish Parliament and the Welsh Assembly. This will produce an Assembly which closely reflects the views of Londoners. There will be 14 members, each representing a specific voting areas, and 11 further London-wide members.

4.14 Under this electoral system people have two votes, one elects a member for a specific voting area and the other vote is for a party or an independent candidate.

4.15 Voters will elect one member for their voting area using the first-past-the-post system. The second vote will be cast for a political party or an independent candidate. The names will appear on the ballot paper. The names of independent candidates will also be on the ballot paper. The remaining 11 Assembly seats will be allocated to ensure that the overall distribution of seats

reflects the proportion of the votes cast for each party, or independent candidates. In the case of the party votes, the successful candidates will be drawn in order from the party lists which voters can read before they vote.

4.16 This system will produce an Assembly where more than half of the members have been elected in single member constituencies, and where each party's share of the seats closely reflects its vote share. This will ensure that there are Assembly members with whom the electorate can identify on a geographical basis and that there is a more proportional outcome. Annex C gives more detail on AMS.

### **The Constituencies**

4.17 If the result of the referendum is a 'yes' vote, the Local Government Commission (LGC) will be directed by the Secretary of State for the Environment, Transport and the Regions to make recommendations about the boundaries of the 14 voting areas mentioned above. We expect these to comprise combinations of contiguous boroughs and respect existing borough boundaries. Where the LGC thinks this is appropriate, boroughs north and south of the River Thames might be combined. The LGC will also be directed to recommend names for the constituencies. It will be for the LGC to propose the most appropriate groupings of boroughs, bearing in mind the need to achieve reasonable electoral equality - ie achieve constituencies covering broadly equal numbers of voters - and to reflect the nature and function of the Assembly.

The Supplementary Vote was the preferred option of the Labour Party's Plant Commission on electoral reform in 1993 for the House of Commons and was a variation of the Alternative Vote suggested by Dale Campbell Savours. A version of SV was proposed in the *Representation of the People (no 2) Bill* of 1930-31 but was amended to AV in at Commons committee.<sup>7</sup> If a candidate has over half of the first preferences he is elected. If no candidates have over half all but the top two candidates are eliminated, and the second preferences of those voting for eliminated candidates are counted - those for either of the top two candidates are added to their votes and whoever has the highest number wins. Its supporters favour it above the Alternative Vote as it restricts the voter to two preferences so as to prevent the very weak preferences at the bottom of the ordering scale influencing the result unduly. On the other hand the votes of those using both votes for eliminated candidates are 'wasted'. A version is used in Presidential elections for Sri Lanka. The Dunleavy report<sup>8</sup> noted that the "SV elimination method favours the existing major parties (Conservatives and Labour) ... but the second preferences of Liberal Democrats and other voters will be critically important in determining the final result." (para 2.24) Vernon Bogdanor has argued that SV can have capricious effects in a four party system.<sup>9</sup> Dunleavy and Margetts noted:

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<sup>7</sup> see Research Paper 98/ *Voting Systems: The Jenkins Report* for background

<sup>8</sup> *Report to the Government Office for London: Electing the London Mayor and the London Assembly* Professor Dunleavy and Dr Helen Margetts 20.1.98

<sup>9</sup> *Power and the People* 1998 p 69

**2.26** Our existing research into AV and SV in British parliamentary elections has demonstrated conclusively that whether we use AV or SV there are very small differences in outcome, in that particular context of local constituency elections with a restricted candidate list. In that same context, any modified AV procedure would probably produce outcomes virtually identical to normal AV. However, for the London Mayor elections we would expect candidate lists to be much more extended with 4 or 5 candidates attracting significant vote shares, and their supporters second and subsequent preferences having an important influence upon the election results. In these circumstances the differences between AV and SV could become much more significant since SV guarantees that only the top two candidates on the first round can emerge as a winner and restricts voters' abilities to mark preferences, while under AV a third-placed or even fourth-placed candidate on first preferences could conceivably win. Wherever AV and SV would operate differently, modified AV procedures are likely to produce outcomes which lie between their two sets of outcomes.

In a lecture to the Constitution Unit, the Lord Chancellor, Lord Irvine of Lairg, stated with reference to Government proposals for a directly elected London Mayor:

'We decided on the supplementary vote system: that is in effect, a system of improved first past the post. We did this because the Mayor will be in a unique position. Never before has so large an electorate voted for a single individual... The Mayor's authority will be enhanced by the fact that he will enjoy a broader base of support than might be achieved by first past the post alone. All this demonstrates our hostility to uniformity or symmetry for its own sake.'<sup>10</sup>

Dunleavy and Margetts considered the possibility of drawing the list members from the whole of the London area rather than creating separate electoral regions as in Scotland and Wales, finding it an attractive solution, as using a large London wide area for allocating list seats means that it was easier to compensate for imbalances in the parties' shares of local seats compared with their vote shares. On the other hand large ballot papers could be expected if each major party decided to submit a full list of candidates and voters might be confused by the choice to be made. Dunleavy and Margetts grouped boroughs for a 14-seat constituency scheme by creating four three borough seats.<sup>11</sup> They concluded that with ten or more list seats a London wide system would produce highly proportional and fairly stable results (para 3.34).

The Local Government Commission for England began a review of the electoral areas for London in May 1998, having been so directed by the Secretary of State under s7 of the *Greater London Authority (Referendum) Act 1998*. In August 1998 its draft proposals on the electoral areas were published followed by final proposals on 30 November 1998 which did

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<sup>10</sup> *Government's Programme of Constitutional Reform* 8.12.98

<sup>11</sup> Kingston Merton and Wandsworth, Hammersmith Kensington and Westminster, Barking Havering and Newham, Hackney Islington and Tower Hamlets would be the four three borough groupings Map 6 of the report gives details of the pairing of other boroughs. In the event the Local Government Commission adopted different groupings

not differ from the final recommendations apart from renaming 'London South West' as 'South West'; 'London Central' as 'West Central'; 'City & London East' as 'City and East', and 'Islington and Lee' as 'North East'. The areas are listed as follows:

### Final recommendations

	<b>Name of Electoral Area</b>	<b>Constituent Boroughs</b>	<b>Electorate (1998)</b>	<b>Variance from avg member: Elector ratio</b>
1	Havering and Redbridge	Havering and Redbridge	355,131	-1%
2	City and East	Barking & Dagenham, City of London Newham and Tower Hamlets	390,500	8%
3	North East	Hackney, Islington and Waltham Forest	392,722	9%
4	Enfield and Haringey	Enfield and Haringey	348,335	-3%
5	West Central	Hammersmith & Fulham, Kensington & Chelsea and Westminster	340,000	-6%
6	Barnet and Camden	Barnet and Camden	363,027	1%
7	Brent and Harrow	Brent and Harrow	326,254	-9%
8	Ealing and Hillingdon	Ealing and Hillingdon	389,339	8%
9	South West	Hounslow, Kingston upon Thames and Richmond upon Thames	383,579	6%
10	Merton and Wandsworth	Merton and Wandsworth	331,181	-8%
11	Croydon and Sutton	Croydon and Sutton	358,131	-1%
12	Lambeth and Southwark	Lambeth and Southwark	344,001	-5%
13	Greenwich and Lewisham	Greenwich and Lewisham	328,656	-9%
14	Bexley and Bromley	Bexley and Bromley	394,106	9%
	<b>Average size of electoral area</b>		<b>360,354</b>	
	<b>Total electorate for London</b>		<b>5,044,962</b>	

Source: Office for National Statistics

Therefore there are three three borough groupings:

- 1: City of Westminster, Kensington and Chelsea, and Hammersmith and Fulham
- 2: Islington, Hackney and Waltham Forest
- 3: Hounslow, Kingston on Thames and Richmond on Thames;

There was one four borough grouping: Barking and Dagenham, City of London, Newham and Tower Hamlets.

The Commission laid emphasis on the principle of electoral equality and concluded that the boundaries of existing Parliamentary or European constituencies should not be a major consideration when constructing electoral areas. The final report also stressed that the division of some Parliamentary constituencies was unavoidable (para 106). The Commission expressed disappointment at the low level response rate to the draft recommendations (para 15)

### **Candidates**

The White Paper was concerned to ensure that frivolous candidates should not be encouraged, through restrictive requirements on eligibility to stand:

#### **ELIGIBILITY TO STAND FOR ELECTION AS MAYOR**

4.23 British, Commonwealth and EU citizens resident or working in London will be eligible to stand for election as Mayor. To be Mayor of London will be to hold a unique, powerful and influential public office. We are anxious, therefore, to ensure that the election itself does not become a platform for frivolous candidates or publicity seekers, who could gain unfair access to public funds simply in an attempt to promote either themselves or obscure causes. Equally we are concerned to ensure that candidates are not discouraged from seeking election because the rules governing eligibility are too prescriptive or that thresholds and costs are set too high. Therefore we have sought to strike a balance in the conditions we intend to impose. Candidates will be required to:

- **demonstrate the seriousness of their intent** by paying a significant deposit to register as a candidate. The level of the deposit will be set by the government. The qualifying threshold for retaining the deposit would be set at 5%; and
- **demonstrate that they have support across London** by providing a list of a significant number of names of people supporting their nominations. Each applicant would need to be nominated by a set number of registered voters, including a set number from each London borough.

Rather surprisingly, the Neill Committee did not make any specific recommendations in this area, despite a reported request from the DETR and the Home Office.<sup>12</sup> Candidates would be required to pay a deposit, to be set by the government with a threshold of five per cent, and to be nominated by a set number of registered voters resident within the London boroughs which will be combined to form the voting area they contest (paras 4.24-6). The White Paper noted that people "appointed to public office" would be required to resign if they stand for election but MPs, MEPs and councillors would not have to resign in advance of elections. It would be for political parties to decide whether to formulate rules about dual mandates.(paras 4.27-8)

Procedures for the selection of candidates have not yet been discussed in detail by the major political parties, although the Conservatives have proposed that every party member in London would be entitled to take part in a Primary election to choose the Conservative candidate for Mayor.<sup>13</sup> There is press interest in the possible candidature of Lord Archer, with speculation that, although the Conservatives will not block his candidature, unease remains about his status as an official candidate.<sup>14</sup> The Greater London Labour party has voted for a system of approved candidates and this has been interpreted by the press as an attempt to ensure that Ken Livingstone is not selected.<sup>15</sup> Mr Livingstone has responded by inviting London Labour Party members to conduct a 'write-in' of his name, when presented with alternatives.<sup>16</sup> The London Liberal Democrats issued rules for the Assembly members and mayoral selection in September 1998.<sup>17</sup> Selection will be on an OMOV basis once a list of approved candidates had been issued; counting will be conducted using STV. There will be a separate shortlist for the mayoral candidate, expected to be announced by spring 1999.

### C. The Greater London Authority Bill

**Clauses One and Two** establish the Greater London Authority as consisting of both the Mayor of London and the London Assembly, with 25 members. 14 of these members are to be constituency members representing London areas, and 11 to represent the whole of Greater London and to be elected from a party list. The Authority is to be a body corporate.

The Mayor and the Assembly members will be elected at the same election (**Clause 2(7)**) and will take place on a date appointed by the Secretary of State initially (**Clause 3(1)**)

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<sup>12</sup> *Guardian* 26.10.98 'Sales pitch threatens London vote'. This article reported concern that commercial firms could put up candidates for the London mayor and take advantage of free mail shots and political broadcasts

<sup>13</sup> *The Fresh Future: The Conservative Party Renewed* February 1998 p 23

<sup>14</sup> *Sunday Telegraph* 15.11.98 'Archer to ditch Tories in London contest'

<sup>15</sup> *Guardian* 11.11.98 'Livingstone suffers mayoral setback'

<sup>16</sup> *Guardian* 12.11.98 'Livingstone raises stakes'

<sup>17</sup> London Liberal Democrats *Rules for GLA and Mayor Selections*

but then on the first Thursday in May on a four yearly cycle. There are provisions to modify the date and the assumption of office of the Mayor and Assembly by order (**Clause 3(5-6)**). It is expected that the first election will be held in May 2000, although there has been no official announcement as yet of the date. There are no term limits for the Mayor or Assembly members in line with proposals in the White Paper that there be none.

The **franchise** to be used will be the local government franchise, as applied under **Clause 17** and **Schedule 3**. This is in line with the franchise for the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. It means that peers and EU citizens who meet the residency requirements can vote, but not British citizens who are overseas electors for the purposes of Westminster elections. The franchise in the City of London will be confined to those resident there, i.e. those occupying, and rateable at over £10 per annum who are qualified to vote at municipal elections in the City, but not resident, will not be able to vote in the referendum.<sup>18</sup>

Each elector will therefore have to cast three votes: one for the Mayor using the Supplementary Vote (SV) system (see below) one for the constituency member to represent the local area and one for the list which will be used to select the 14 London wide members. Under **Clause 4(1)(c)** these will be known as London votes. There is likely to be two ballot papers - one for the Mayor and one for the Assembly, whether constituency or London wide, although the form of the ballot paper will be set out in subordinate legislation and is not specified in the Bill. A brief explanation of the electoral systems to be used is given below.

### **Elections for the Mayor**

As foreshadowed in the White Paper SV will be used,<sup>19</sup> but the voter will simply mark his first and second choice with a cross, rather than numbering the ballot paper. There will

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<sup>18</sup> The bulk of office premises in the City are occupied by limited companies which pay rates but do not have a vote. The *Representation of the People Act 1969* abolished the business franchise for local government elections and so business voters did not have a separate vote for GLC elections. The City carried out consultations on proposals to alter the franchise to include corporate bodies within the franchise. Details are contained in its booklet *Improving the City's Franchise (1997)* This booklet proposes linking voting entitlement to the size of a business, so that additional votes could be gained according to the rateable value of the property of the business. In its policy document *Road to the Manifesto: a Voice for London (1996)* the Labour Party stated that the City Corporation's "present electoral arrangements cannot be defended and must be changed." The Green Paper made it clear that there were no proposals to abolish the City Corporation and stated that the Government looked forward to detailed discussions with the Corporation in autumn 1997 over Corporation proposals on its franchise. (paras 1.10-1.11) The *Financial Times* 27.7.98 'Corporation of London reforms electoral process' reported that the Government had decided not to include reforms to the City franchise in the Greater London Authority Bill and that the City would need to promote private legislation to implement planned changes. The *City of London (Ward Elections) Bill* has now been deposited. Its provisions are outlined in *Voting for a World Class City (1998)* by the Corporation of London

<sup>19</sup> In the unlikely event of there being only two candidates, a simple First Past The Post system would be used

no requirement to enter a second choice, if the elector prefers not to. There may be problems with the operation of SV however if significant numbers of voters do not enter a second preference, as sufficient votes will not transfer between candidates. It was partly for this reason that Australia requires its electors to enter all the preferences under its Alternative Vote (AV) system. The mechanics of SV are set out in Part I of **Schedule 2**. If one candidate receives more than half of all the first preference votes he is elected. If no candidate achieves this, all but the two candidates with the highest first preference votes are eliminated (unless three candidates share the same number in which case all three are retained). The ballot papers of the eliminated candidates are then examined to allocate the second preference votes to the remaining candidates, and the candidate with the most votes, whether first or second preference, is the winner. A dead heat would be settled by lot.

There is likely to be some further debate on the choice of SV rather than AV for the election of the Mayor; the Electoral Reform Society claim that AV would be more appropriate, arguing that it reduces the need for tactical voting and allows electors to express their true preferences. On the other hand, if there were large numbers of candidates electors might not express preferences beyond the first two or three anyway, or the 'weak' preferences of voters for less popular candidates might have a disproportionate effect on the result, as noted by the Dunleavy and Margetts report (paras 2.12-29).

### **Election of Assembly Constituency Members**

This is to be conducted under First Past the Post, or the simple majority system as referred to in the Bill (**Clause 4(4)**). No candidate may stand for more than one Assembly area and the Mayor cannot also be a constituency member. (**Clause 4(9-10)**). There is no prohibition on constituency candidates also standing for the lists. The Government have therefore decided not to experiment with the Jenkins Commission proposal for AV Plus instead of Additional Member System (AMS), which would have involved the use of AV for the constituency part of the election. The Electoral Reform Society have suggested that the London elections could have served as a trial run to test the practicalities of the Jenkins proposals.<sup>20</sup>

The Assembly areas were announced by the Local Government Commission on 30 November 1998. There is to be one member for each of the fourteen areas, and these areas will be specified by name in orders made by the Secretary of State (**Clause 2(4)**). The Secretary of State will make an order under this clause giving effect to the recommendations of the Local Government Commission made under s7 of the *Greater London Authority (Referendum) Act 1998*. The Secretary of State has power to make modifications to the recommendations, but none are envisaged at present. **Schedule 1** provides for changes to Assembly constituencies following reviews by the Local

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<sup>20</sup> Electoral Reform Society *Parliamentary Brief: The Electoral System for the Greater London Authority* December 1998

Government Commission under s13(1) or s15(6) of the *Local Government Act 1992*. The rationale is to align the Assembly constituencies with changes in boundaries to any or all of the London boroughs. Under para 2 the Secretary of State has power at any time to direct the Commission to carry out a comprehensive review of Assembly constituencies; the review would be governed by rules set out in para 7:

### **The rules about Assembly constituencies**

7. - (1) The rules referred to in paragraphs 1(4), 2(2) and 4(3) above are- 1. There shall be fourteen Assembly constituencies.

2. Each Assembly constituency shall consist of two or more entire London boroughs.

3. A part of the boundary of each London borough contained within an Assembly constituency shall adjoin a part of the boundary of at least one other London borough contained within that constituency.

4. No London borough shall be included in more than one Assembly constituency.

5. The electorate for an Assembly constituency shall be as near the electorate for each other Assembly constituency as is reasonably practicable.

(2) For the purposes of the rules in sub-paragraph (1) above- (a) any reference to a London borough includes a reference to the City of London, which for this purpose shall be taken to include the Inner Temple and the Middle Temple; and

(b) a part of a boundary which would, except for the river Thames or a tributary of the river Thames, adjoin a part of another boundary is deemed to adjoin that part of that other boundary.

The Commission would be under an obligation to publish a draft report for consultation, and is subject to further direction from the Secretary of State, on similar lines to its duties under the 1992 Act.

### **Elections for London members**

Eleven London members are to be selected through a party list system similar to that contained in the *European Parliamentary Elections Bill*. The elector would vote either for a registered<sup>21</sup> party or for an independent candidate - the so-called closed list system. Under Part II of **Schedule 2** each party will submit a list to the London returning officer consisting of not more than 25 candidates. (The list would also be used for selecting substitutes, instead of by-elections). Individual, non-party candidates cannot stand if they

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<sup>21</sup> for further background see Research Paper 98/62 *The Registration of Political Parties Bill*

are also on a party list or if he is the candidate of any registered party to be the Mayor or a constituency member. The parties will order the list and the voters will have no opportunity to record a personal preference for a particular candidate of that party. This is the form of Additional Member System enacted for the Scottish Parliament and the Welsh National Assembly, but the use of closed lists is not in line with the recommendations of the Jenkins Commission<sup>22</sup> on electoral reform. The issue of closed lists came to the fore in the disagreements between the Lords and Commons at the close of the 1997-8 session.<sup>23</sup>

However in the debates on AMS in the *Scotland Bill* and the *Government of Wales Bill* the Conservatives were more concerned with the issue of 'alter ego' parties and in the Lords the *Government of Wales Bill* was amended to allow the elector only one vote. This amendment was later overturned by the Commons.<sup>24</sup> The debate over open and closed lists may not be so intense as with the proposals for the European Parliament because the elector under AMS has the opportunity to cast a vote for an individual candidate in the constituency part of the election. However, the Scottish Affairs select committee report on the operation of multi-layer democracy referred to the open list version of AMS used in Bavaria and considered that 'an open list would be more in keeping with the principle of trusting the people and giving them the maximum choice' (para 91).<sup>25</sup>

The allocation of seats is governed by the D'Hondt formula also used for elections under AMS for the Scottish Parliament and the Welsh Assembly, and it is also the quota used for allocating seats in the *European Parliamentary Elections Bill*. The seats are allocated in a corrective fashion to ensure that each party receives seats equal to its percentage share of the vote. Therefore the number of constituency seats has to be calculated first, and the seats won by each party in the constituencies are taken into account when the all-London seats are allocated. A party which won 30 per cent of the vote would therefore receive 30 per cent of the seats, whether constituency or London seats. Parties which win more constituency seats than their share of the vote would justify do not lose these seats however. The *Explanatory Notes* which follow set out the calculations in detail.

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<sup>22</sup> *The Report of the Independent Commission on the Voting System* Cm 4090 October 1998 see Research Paper 98/112 *Voting Systems: The Jenkins Report* for further details

<sup>23</sup> see Research Paper 98/102 *The European Parliamentary Elections Bill* for background on the arguments

<sup>24</sup> see Research Paper 98/113 *Voting Systems: The Government Proposals* for further details

<sup>25</sup> Scottish Affairs Select Committee *The Operation of Multi-Layer Democracy* HC 460 1997-8

**ILLUSTRATION***Allocation of London-wide seats.*

<i>London-wide</i>	<i>Party A</i>	<i>Party B</i>	<i>Party C</i>	<i>Independent</i>	<b>RESULTS</b>
1 <sup>st</sup> Seat	1,857,000+7 = 265,286	1,500,000+6 = 250,000	900,000+4 = 225,000	230,000+1 = 230,000	<b>Party A</b>
2 <sup>nd</sup> Seat	1,857,000+8 = 232,125	1,500,000+6 = 250,000	900,000+4 =225,000	230,000+1 = 230,000	<b>Party B</b>
3 <sup>rd</sup> Seat	1,857,000+ 8 = 232,125	1,500,000+ 7 = 214,286	900,000+4 =225,000	230,000+1 = 230,000	<b>Party A</b>
4 <sup>th</sup> Seat	1,857,000+ 9 = 206,333	1,500,000+ 7 = 214,286	900,000+4 =225,000	230,000+1 = 230,000	<b>Independent</b>
5 <sup>th</sup> Seat	1,857,000+ 9 = 206,333	1,500,000+ 7 = 214,286	900,000+4 =225,000	230,000+2 = 115,000	<b>Party C</b>
6 <sup>th</sup> Seat	1,857,000+ 9 = 206,333	1,500,000+ 7 = 214,286	900,000+5 = 180,000	230,000+2 = 115,000	<b>Party B</b>
7 <sup>th</sup> Seat	1,857,000+ 9 = 206,333	1,500,000+ 8 = 187,500	900,000+5 = 180,000	230,000+2 = 115,000	<b>Party A</b>
8 <sup>th</sup> Seat	1,857,000+ 10 = 185,700	1,500,000+ 8 = 187,500	900,000+5 = 180,000	230,000+2 = 115,000	<b>Party B</b>
9 <sup>th</sup> Seat	1,857,000+ 10 = 185,700	1,500,000+ 9 = 166,667	900,000+5 = 180,000	230,000+2 = 115,000	<b>Party A</b>
10 <sup>th</sup> Seat	1,857,000+ 11= 168,818	1,500,000+ 9 = 166,667	900,000+5 = 180,000	230,000+2 = 115,000	<b>Party C</b>
11 <sup>th</sup> Seat	1,857,000+ 11 = 168,818	1,500,000+ 9 = 166,667	900,000+6 = 150,000	230,000+2 = 115,000	<b>Party A</b>
<b>Total FPTP Seats</b>	<b>6</b>	<b>5</b>	<b>3</b>	<b>0</b>	
<b>Total London-wide Seats</b>	<b>5</b>	<b>3</b>	<b>2</b>	<b>1</b>	
<b>Total Seats</b>	<b>11</b>	<b>8</b>	<b>5</b>	<b>1</b>	

In contrast to Scotland and Wales, there is a formal **threshold** in para 7. There is power for the Secretary of State to set a prescribed percentage of total vote which a party must reach to be allocated a seat. If this percentage is not reached, the party is disregarded for the purpose of allocations of seats under the d'Hondt System. The prescribed percentage may not be greater than five per cent, and part of the motive may be concern about extremist parties gaining a seat. However the Green Party, which polled 2.9 per cent across London in the 1998 local elections may be caught by the threshold. Other parties (including the BNP) polled a total of 2.7 per cent on a 34.1 per cent turnout<sup>26</sup>. Potential new parties which might have promoted sectional interests, such as ethnic minorities or those with particular environmental concerns, may also be affected. Calculations suggest that the overall percentage of the vote needed to obtain a list seat is around the 3-4 per cent level, and if there are several small parties some might have been able to obtain a seat with less than this percentage. New parties would also have to register with the Registrar of Companies under the *Registration of Political Parties Act 1998*. The extra requirements on parties to register may discourage more informal groups from contesting the elections. The registration process is expected to begin early in 1999 with the registration of political parties already represented in Parliament.

The Bill does not give any detail on the **nomination** procedure, but it is likely that a greater number than the usual 10 electors may be required for the nominations for London wide members. The White Paper proposed a set number of electors to be required for nomination to the constituencies, without giving any further details (para 4.24). Small parties are likely to argue that requiring registered voters in each constituency area to nominate a London wide candidate would be a fairer way of ensuring democratic legitimacy than using formal thresholds.

### **Vacancies**

Members can resign under **Clause 6** or their seat is deemed vacant if they fail to attend meetings for six consecutive months, except if their absence is due to Crown employment in connection with war or emergencies. **Clause 7** deals with vacancies due to disqualification. By-elections would be held after 35 days where a vacancy occurs among the constituency members, but a vacancy for a London (or list) member would be filled by substitution from the first available candidate on the party list, unless the party notify the Greater London returning officer that the candidate is no longer a member of that party. Vacancies caused by individual non-party members are to be left unfilled (**Clauses 10-11**). Vacancies for constituency members which occur less than six months from the date of the next full elections would be left unfilled. All these provisions are similar to those contained in the *Scotland Act 1998* and *Government of Wales Act 1998*.

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<sup>26</sup> source: *Local Elections Handbook 1998* Colin Rallings and Michael Thrasher

There is provision in **Clauses 12 -16** for a separate election for a **Mayor** to be held should a vacancy occur through resignation, non-attendance, disqualification or otherwise. No election would be held if there were less than six months to the full election of the Authority. Otherwise, the election would be held 35 days after the vacancy occurs. However, there are provisions in **Clause 30** and **Schedule 4** for the Deputy Mayor to act where there is a vacancy or the Mayor is temporarily incapacitated. **Schedule 4** considerably limits the functions of the Deputy Mayor when he is acting in the place of the Mayor.

### **Qualification of members and Mayor**

Qualification follows a similar pattern as for local government elections, with British, Commonwealth, Irish or EU citizens eligible who are 21 or over, as long as a residency qualification can be met set out in **Clause 19(4)**:

- (4) The person must satisfy at least one of the following conditions- (a) on the relevant day he is, and from that day continues to be, a local government elector for Greater London;
- (b) he has, during the whole of the twelve months preceding that day, occupied as owner or tenant any land or other premises in Greater London;
- (c) his principal or only place of work during that twelvemonths has been in Greater London;
- (d) he has during the whole of that twelve months resided in Greater London.

The relevant day is defined as the day of nomination as candidate (including on a party list), and day of the poll in **Clause 19(8)**. This follows the standard requirements for local authority councillors set out in s79 of the *Local Government Act 1972*. The qualification requirement applies to the Mayor and both types of Assembly member. Apart from the form of election, the Bill does not attempt to differentiate the role of the constituency member from the London-wide member.

Since the local government model is followed, peers are eligible, but not staff employed by the Authority, bankrupts, those convicted less than five years before of an offence carrying a 3 month imprisonment sentence, and those disqualified for electoral offences or financial irregularities under s17-18 of the *Audit Commission Act 1998*. The Secretary of State may designate by order a list of offices and appointments the holders of which would be disqualified from the office of Mayor or member. No detail is yet available on the contents of the order. The White Paper proposed that MPs and councillors should not be disqualified, but suggested that political parties would wish to devise rules on dual mandates.

Under **Clause 57** the usual 'twin-tracking' procedures set out in s1-2 of the *Local Government and Housing Act 1989* would apply, disqualifying holders of politically restricted posts in local authorities from becoming candidates for the Assembly or from being members of Transport for London, the Metropolitan Police Authority and the London Fire and Emergency Planning Authority. A recent challenge to the twin-tracking rules heard in September 1998 before the European Court of Human Rights was not successful.<sup>27</sup> This will not apply to the Mayor's two special advisers appointed under **Clause 56(1)(a)** who will be able to stand for election to a local authority. Up to ten further persons appointed as advisers under **Clause 56(1)(b)** will be able to be members of Transport for London and the London Development Agency on an unpaid basis. Generally, political advisers employed by local authorities are caught by the twin-tracking provisions and political advisers employed by government ministers are required to resign before standing for Parliament under the terms of their model contract. This clause may require some redrafting in committee as there were no explicit proposals to exempt special advisers in the White Paper.

Officers of London boroughs who are employed under the direction of committees or sub-committees whose members included the Mayor or those appointed by the Mayor would also be disqualified. This may have potentially wide implications, given the number of joint boards or committees in London boroughs at present (**Clause 20**). It does however follow the model of s80 of the *Local Government Act 1972* which disqualifies employees of joint committees where appointments are made by the relevant authority. S92 of the *Local Government Act 1972* will be applied for proceedings for disqualification of members (**Clause 22**).

Finally, the Mayor and the members of the Assembly are to be required to make a declaration of acceptance of office in a form prescribed by order by the Secretary of State (**Clause 23**). Once again, this follows precedents for local councillors contained in s83 of the *Local Government Act 1972*. The declaration of acceptance of office is set out in the *Local Elections (Principal Areas) (Declaration of Acceptance of Office) Order 1990*.<sup>28</sup> Significant changes to the formula of the declaration of acceptance are expected following proposals in the White Paper *Modern Local Government: In Touch with the People*<sup>29</sup> for the existing National Code of Local Government Conduct to be replaced by new local codes incorporating *The General Principles of Conduct*. A draft Bill is expected this session which will contain further detail.

### **Election expenses**

The Bill does not contain any detail about the system of election expenses to be used. The White Paper noted that there would need to be a limit on the amount of spending on election campaigns, and stated that the legislation establishing the GLA would set the level of those

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<sup>27</sup> Application no 65/1997/849/1056, 2<sup>nd</sup> September 1998

<sup>28</sup> SI no 932

<sup>29</sup> Cm 4014 July 1998

expenses after consultation with the Association of London Government. Final decisions would be taken once the Neill Committee had reported (paras 4.21-2). There is no direct comparison which can be used for assessing the expenses level for the election of an executive official such as the Mayor for London. In the event, the Neill Committee did not offer any detailed guidance, beyond recommending that 'an appropriate limit for London would include constituency limits and a London wide limit similar to those we have proposed for Scotland, Wales and Northern Ireland. The London-wide limit would cover all spending by political parties for both Mayoral and Assembly elections. Third party limits... would also be required.' (para 10.105). The reference to third party limits is to campaigns by pressure groups and others in support of a particular political party. No details are yet available on the question of **deposits** for candidates, whether for Mayor or Assembly member.

## II The GLA scheme in the constitutional framework

"London is unique. It is neither regional nor local in the same sense as the rest of the country. The metropolis requires -- and will get -- special treatment ..... The new greater London authority will be a new type of government, tailored specifically to London's needs."

--- Lord Whitty, junior minister, DETR, 30 November 1998<sup>30</sup>

### A. 'Constitutional' issues

The Government is undertaking a substantial and wide-ranging package of legislation in constitutional matters, from devolution through freedom of information to changes to both Houses of Parliament. An issue that is growing in political debate is the extent to which this package forms a coherent whole, and whether, in effect, there is an overall 'grand plan'.<sup>31</sup> In the current context the question arises about the extent to which the government's plans for Greater London's governance fits into the Government's constitutional agenda generally, and, in particular, with other 'territorial' proposals, namely devolution, regionalism and local government.

As the UK does not have a written constitution, there exists no legally definable class of 'constitutional' issues or legislation, although the term is often used in the context of its Parliamentary legislative process. Strictly speaking, there is no such thing in our law as a hierarchy of primary legislation,<sup>32</sup> and definitions of classes such as 'constitutional' will arise

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<sup>30</sup> HL Deb vol 595 cc345-6, 30.11.98

<sup>31</sup> For a recent thoughtful analysis see Professor Robert Hazell *Re-inventing the constitution: can the state survive?* Constitution Unit, Nov 1998

<sup>32</sup> On this, and possible Union and EU exceptions, see Research Paper 96/82

in their own particular contexts. Some issues, and their legislation, (and local government is a common example of this) may be described as 'constitutional', for example, by critics of such legislation as a way of opposing its provisions. Some issues may be 'constitutional' in a narrow sense, without being regarded necessarily, in a political sense, as major or controversial.<sup>33</sup>

Generally speaking, constitutional issues can be said to include those relating to the powers and structure of the state (borders, form of government, head of state); the system of government of the country (Parliament, executive and judiciary), elections, civil rights and liberties, immigration/nationality, international and supranational relations (especially EU affairs) and so on. Not all of these (eg. civil liberties, local government, 'routine' international treaties) would necessarily always be regarded as 'core' constitutional issues. Any proposed legislation relating to the basic existence of the United Kingdom as a political and geographical entity (eg. Northern Ireland or devolution legislation); the structure, operation and powers of Parliament and the Crown (in its political, official and monarchical contexts; elections and the franchise; emergency powers; innovations such as referendums or bills of rights), and major issues of foreign affairs (eg EU treaties) would generally be regarded as *prima facie* constitutional matters.

## **B. 'Asymmetrical' constitutional reform**

As already noted, the Government's proposals are extensive. However they do not, in themselves, constitute a fundamental constitutional revolution in the traditional sense, that of a comprehensive creation, from 'first principles', of a new constitutional settlement, generally as a single written code, which is entrenched as the fundamental and higher law of the territory.<sup>34</sup> In fact, as seen in areas such as devolution and ECHR incorporation, ministers have been clear that their reforms are in tune with, and do not undermine, the key constitutional concept in this context, that of the 'sovereignty of Parliament'.<sup>35</sup>

The notion of the asymmetrical constitution has a long pedigree, at least as a pragmatic description of the British constitution and its development, based on the varying territorial jurisdiction of the state in recent centuries, and the consequent variety in the application of law within the distinct territories with the UK. A key factor in this arrangement has

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<sup>33</sup> This may include matters such as Parliamentary pensions legislation or amendments to the various Ombudsman schemes

<sup>34</sup> See generally, Research Paper 96/82, *The Constitution: principles and development*. The Liberal Democrats and groups such as the IPPR have produced such proposals in recent years

<sup>35</sup> More accurately and comprehensibly described as the 'legislative supremacy of Parliament'. See Research Paper 96/82, section V. The Lord Chancellor, in the speech cited below, declared unequivocally that "the Westminster Parliament will remain sovereign"

been the twin relative dominance (in population etc.) of England within the UK, and, to a lesser extent perhaps, London<sup>36</sup> within England and the UK.

In recent times, asymmetry has been used by some reformers in a defensive context, especially as an answer to the charge of fragmented and unstable constitutional change. This has been most pronounced in the devolution context, most famously as an 'answer' to the 'West Lothian Question',<sup>37</sup> and the resulting charge that proposals for English regionalism have been put forward more as an attempt to undermine these attacks than as a positive scheme of improved governance.

However, reformers in general, including ministers, have more recently been vocal in regarding asymmetry as a virtue of the UK constitution, that the absence of uniformity is a sign, not of fragmentation and incoherence, but of vitality and positive diversity. In this respect, a key text is the Lord Chancellor's lecture at Church House, Westminster, to the Constitution Unit on 8 December.<sup>38</sup> Lord Irvine of Lairg described the Government's approach as 'pragmatism based on principle': "We are steering a steady, pragmatic course. Let me assert this as strongly as I may. Pragmatism is not unprincipled." He elaborated on this theme:<sup>39</sup>

It would be extraordinary if a Union of such diverse parts as the United Kingdom could yield to a uniform pattern of powers devolved from the centre. The continued harmony of a Union of parts so diverse requires structures sensitive to place and people, not uniform structures imposed for uniformity's sake. Intellectually satisfying neatness and tidiness is not the cement which makes new constitutional arrangements stick. What sticks are arrangements to which people can give their continuing consent because they satisfy their democratic desires for themselves.

Having identified that "the problems we faced need to be tackled across a broad front: no single blueprint for change would suffice",<sup>40</sup> he claimed that "the main elements of our reform programme add up to a coherent and effective overall prescription for change." For present purposes, it is interesting to note that he listed, as the institutional tranche of these 'main elements':

- Devolution
- London
- Regional government in England
- Reform of local government

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<sup>36</sup> In its broad metropolitan sense

<sup>37</sup> See Research Paper 98/3

<sup>38</sup> The following is based on the LCD transcript

<sup>39</sup> Transcript, p 4

<sup>40</sup> He classified these as institutional, legal, electoral and administrative/cultural changes

Crucially, he said that "the devolution schemes for all three [ie Scotland, Wales and Northern Ireland] are, of course, quite different. The UK is an asymmetrical entity and the Government's approach reflects the different histories and contemporary circumstances of England, Scotland and Northern Ireland. We are not promoting a federal style uniform devolution of powers, but differential devolution to different parts of the United Kingdom."<sup>41</sup> A new factor in the contemporary equation, which he highlighted, was the new 'international' structures arising out of the Belfast Agreement (such as the British-Irish Council) linking the Irish Republic -- and, in the case of the British-Irish Council, the Channel Islands and Isle of Man -- with the various parts of the UK.<sup>42</sup>

His conclusion was as follows:<sup>43</sup>

So I have said enough to make clear why I reject criticisms based on want of uniformity, symmetry or purism. The diversity of the separate parts of the United Kingdom and the singularity of its histories, though crucially intersecting, are conclusive against uniform programmatic outcomes. Devolution is not a form of either federalism or independence for Scotland, Wales, or Northern Ireland. The Westminster Parliament will remain sovereign. The Union will be renewed, not weakened by devolution: it will be able to evolve in a way which decentralises power, recognises a strong sense of Identity where that exists and extends political accountability.

Devolution needs courage; but I say it will forge a new Britain - a strong, multi-national. multi-cultural. multi-ethnic, country, where our strength will come not from uniformity but from our diversity; not from a flattening process of programmed assimilation, but from democratic renewal through mutual toleration and respect. True there must be continuing co-operation. And there will be arrangements to ensure that the UK Government and the devolved administrations co-operate on issues of common interest. We envisage the establishment of a Joint Ministerial Committee in which the UK Government and the devolved administrations will be members. And also there will be Concordats between Whitehall Departments and their counterparts in the devolved institutions which will be models for future co-operation.

and:<sup>44</sup>

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<sup>41</sup> p 5. Classification is a difficult and subjective task when applied to constitutional structures and processes, as it depends on the aspects the classifier regards as relevant, and the relative priority these are given. For example, one could suggest that, in broad terms, the Government is promoting two distinct devolved forms, based on the criteria of their legislative powers and their executive-legislature relationship. In this way, the Scottish and Northern Irish schemes can be regarded as closely related, or even fundamentally similar, but both can be distinguished from the Welsh model

<sup>42</sup> In addition the Government revealed during the Scotland Bill's proceeding that a Joint Ministerial Committee has been established as a consultative body for ministers of the various administrations: HL Deb 28.7.98 c1487. The Lord Chancellor briefly referred to this later in his lecture (p 12)

<sup>43</sup> p 12

<sup>44</sup> p 13

After many decades of sterility we have embarked on a major programme of constitutional changes realigning the most fundamental relations between the state and the individual in ways that command the consent of the people affected- We are not, however, hunting the chimera of constitutional master plans, nor ultimate outcomes. Too easily these can map out well intentioned routes to disaster. We prefer the empirical political genius of our nation: to go, pragmatically, by step, for change through continuing consent. Principled steps, not absolutist master plans, are the renewal in unity and in peace.

### **C. London governance as institutional constitutional reform**

As already noted, local government is not always regarded, for all purposes, as a core constitutional issue. This is especially true of legislation or policy affecting 'internal' detail of local government law and practice. However, major changes to the very structure or mix of functions of the local government system, or its relationship with central government (including key finance issues), may well be regarded, to some degree at least, as 'constitutional'.

London (metropolitan) government can be regarded as distinct from the generality of English or British local government for a number of reasons. Its place as the historic seat of government is one example,<sup>45</sup> as is its sheer size, in population and geographical terms. In a political context, the debate about London governance in the last decade or so has been about the 'restoration' of an existing form of democratic government, i.e. at the Greater London level, abolished under controversial circumstances, rather than simply the creation of a totally new governmental tier, as with devolution or regionalism, or the restructuring of existing counties/districts. As such it can be portrayed as a constitutional issue by some.

The Lord Chancellor said of the Government's proposals:<sup>46</sup>

Second, there are our proposals for London. No other capital city in the world of the stature of London has to manage without a city-wide authority to look after its strategic interests. Yet that has been the position of London since 1986. We will give London the voice it needs and deserves by creating a city-wide strategic authority, consisting of a powerful directly-elected mayor and a separately elected Assembly.

It would seem that ministers regard London governance, and their proposals as expressed in the current Bill, as distinct from devolution, regionalism or local government. Lord Whitty's remarks on 30 November have been quoted at the outset of this section of the

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<sup>45</sup> This has frequently been cited as one reason for the hitherto central control of the Metropolitan Police, for example.

<sup>46</sup> p 6

Paper. In his Commons statement on 30 July, launching the *Modern local government* white paper, John Prescott said:<sup>47</sup>

The Government are building a modern Britain and a fair society. The White Paper that I am publishing today will help to achieve both. After two decades of creeping centralisation, the White Paper returns power to the people. It sets out proposals to modernise English local government. Those reforms are at the heart of our programme for constitutional change.

The Parliament for Scotland, the Assemblies for Wales and Northern Ireland, a mayor and assembly for London and the regional development agencies are all part of a package for decentralising power in Britain. It is the most radical and comprehensive package of local government reforms for generations. Previous Governments have changed local government boundaries and structures. Those are not unimportant, but they are not the whole story either. We have seen over the past few years what a distraction such boundary and structure changes can be.

#### **D. Legislative treatment of 'constitutional' bills**

In Parliamentary legislative practice, bills regarded as 'constitutional', or 'of first-class constitutional importance' have been treated (or thought to have been treated) differently in some respects from the generality of bills. This applies in particular to the Commons committee stage, but may also to the length of second reading debates in both Houses. It is often said that constitutional bills are not subjected to guillotines in the Commons, but practice does not bear out such a sweeping statement. In addition gradual adoption of the changes to legislative procedure in the Commons, through the 'modernisation' programme,<sup>48</sup> may make some of these practices and 'precedents' less relevant to contemporary situations. A good example of this is the widespread adoption of the more consensual 'programme motion' as a means of timetabling rather than the more draconian (at least in perception) guillotine motion. Use could also be made of devices such as special standing committees.

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<sup>47</sup> HC Deb vol 317 c 529, 30.7.98. He was quoted as saying at the launch of the government's consultation paper, *New leadership for London*, in July 1997: "It is almost a forerunner to any decision we make on regional government ... When we look at the structures for the regions of England we will look at this. If the lessons are good we will certainly draw [on them] for other regions" (*Local Government Chronicle* website, 1.8.97)

<sup>48</sup> See generally, Research Paper 97/107

These general issues are not considered in detail here.<sup>49</sup> For Commons committee stage, there are three basic options:

- *the whole Bill on the floor of the House (Committee of the Whole House)*: this is the usual practice for the most important constitutional bills, and also, when appropriate, for bills desired to be enacted swiftly
- *the whole Bill in standing committee 'upstairs'*: this is the usual practice for the generality of Bills
- *splitting between the Chamber and standing committee*: this is now the usual practice for large Finance Bills, and for some constitutional Bills, especially where clauses of major principle at the heart of the policy of the measure (often clause 1, and its accompanying schedules, if any) can be identified for detailed consideration on the floor of the House. The *Government of Wales Bill* last session was originally due to be treated in this way, but, after it became clear that the *Scotland Bill's* committee stage was to be taken entirely in Committee of the Whole House (as part of a programme motion), the same was adopted for the Welsh Bill.<sup>50</sup>

The Bill creating the Greater London Council, the *London Government Bill 1962-63*, had a split committee stage, with clause 1 and schedule 1 taken on the floor, and the rest in standing committee.<sup>51</sup> The Bill abolishing the GLC was treated similarly. Following its second reading on 4 December 1984, the then Environment Secretary, Patrick Jenkin, moved that clause 1 of the bill be taken on the floor of the House and the remainder 'upstairs':<sup>52</sup>

The Bill is clearly of great interest to a great many right hon. and hon. Members on both sides of the House. Therefore, in accordance with precedent, we suggest that the main provision, which is part I of the Bill, should be taken on the Floor of the House. Clearly it is impracticable that the whole Bill should be taken on the Floor of the House, and, I would suggest, quite inappropriate that such a Bill should be referred to a Select Committee.

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<sup>49</sup> See Research Paper 97/53, *The Commons committee stage of 'constitutional' bills*, 20.5.97; Research Paper 97/97, *Time spent on Government Bills of constitutional significance since 1945*, 1.8.97; Research Paper 98/1, *The Scotland Bill: devolution and Scotland's Parliament*, 7.1.98, section V.A, and J Seaton & B Winetrobe, 'The passage of constitutional bills in Parliament', (1998) 4 *Journal of Legislative Studies* 33-52.

<sup>50</sup> Seaton & Winetrobe, *op cit*, p 40

<sup>51</sup> For procedural reasons, the House had no opportunity to vote on keeping the whole Bill on the Floor: HC Deb vol 669 cc 343-4, 11.12.62. The legislative proceedings on the Bill are outlined in Appendix 2, and are also considered in Clifford Pearce's excellent *The machinery of change in local government 1888-1974*, chap 7

<sup>52</sup> HC Deb vol 69 cc 274-5, 4.12.84

**Dr. John Cunningham** (Copeland): I understand what the Secretary of State has said about its being inappropriate for the whole Bill to be taken on the Floor of the House. Clearly we agree that clause 1 should be taken on the Floor of the House. However, will not the right hon. Gentleman accept that there are good arguments for clause 21, which refers to the future of the Inner London education authority, clause 40, which refers to the future of police and fire authorities which will be designated under the Rates Act 1984, clause 64 and clause 80 also being considered by a Committee of the whole House?

**Mr. Meadowcroft:** .... I understand that according to Standing Order No. 42, which relates to the committal of Bills, the motions in the name of my right hon. and hon. Friends cannot be voted upon or even debated. If the Secretary of State's motion is carried, only clause 1 will be taken on the Floor of the House. If that motion is defeated, the entire Bill will go to a Standing Committee. It seems strange that the Standing Orders do not permit any addition to the motion to enable us to take more than clause 1 on the Floor of the House. Should there not be some way in which the House could vote on whether it wished to take the whole Bill on the Floor of the House?

**Mr. Speaker:** That is not a matter for me. If the House wishes to change the Standing Order, it may do so.

## Appendix I London voting statistics<sup>53</sup>

Table 1 shows the results of elections to the Greater London Council from 1964 to 1981.

Table 1

### Elections to the Greater London Council: 1964-1981

	<i>Turnout</i>	Con	Lab	Lib	Other	Total
<b>Share of the vote</b>						
1964	44.4%	39.8%	44.6%	10.4%	5.2%	100.0%
1967	39.6%	52.0%	34.1%	9.3%	4.6%	100.0%
1970	34.3%	50.2%	39.7%	5.7%	4.4%	100.0%
1973	36.7%	37.9%	47.4%	12.5%	2.1%	100.0%
1977	43.2%	52.5%	32.9%	7.8%	6.8%	100.0%
1981	44.3%	39.7%	41.8%	14.4%	4.1%	100.0%
<b>Divisions won<sup>(a)</sup></b>						
1964		12	20	0	0	32
1967		25	7	0	0	32
1970		21	11	0	0	32
1973		32	58	2	0	92
1977		64	28	0	0	92
1981		41	50	1	0	92
<b>Seats on council<sup>(b)</sup></b>						
1964		41	75	0	0	116
1967		92	24	0	0	116
1970		76	40	0	0	116
1973		38	67	2	0	107
1977		64	28	0	0	92
1981		41	50	1	0	92

(a) From 1964 to 1970 there were 32 divisions for GLC elections, one for each London Borough with the City of London included within Westminster. Between two and four councillors were elected from each borough. From 1973 divisions were co-terminous with the 92 Parliamentary constituencies and each returned one councillor

(b) For the 1964 to 1973 elections, the GLC included a number of Aldermen (who were elected by the councillors) as well as elected councillors. These are included in the totals in the table. There were 16 Aldermen on the GLC in 1964, 1967 and 1970 and 15 in 1973.

*Local Elections in Britain: A Statistical Digest*, Rallings and Thrasher,  
Local Government Chronicle Elections Centre, 1993

<sup>53</sup> Supplied by Bryn Morgan, Social and General Statistics Section

Table 2 gives estimated outcomes for the results of Greater London Authority elections based on the May 1998 London Borough elections. It assumes that first and second votes were cast for the same party.

Labour would have won nine of the fourteen constituency seats but only two of the eleven London-wide top-up seats. The last top-up seat was won with a d'Hondt score of around 62,300 votes or 3.6% of the total. This is the number of votes that would have been required by a party without any seats to gain a seat on the basis of a d'Hondt distribution. However, they would not have been awarded the seat if the prescribed percentage for the minimum share of vote was set at 5%.

Table 2

**Estimated results of Greater London Authority elections based on 1998 London Borough election results**

	Electorate	Share of vote <sup>(a)</sup>					
		Con	Lab	LDem	Green	Ind	Other
Barnet and Camden	363,027	32.8%	<b>41.3%</b>	19.0%	5.7%	0.5%	0.6%
Bexley and Bromley	394,106	<b>48.2%</b>	18.7%	32.1%	0.6%	0.0%	0.4%
Brent and Harrow	326,254	34.0%	<b>43.3%</b>	19.1%	1.0%	0.6%	2.0%
City & East	390,500	12.6%	<b>56.9%</b>	17.9%	0.0%	4.2%	8.4%
Croydon and Sutton	358,131	<b>40.2%</b>	31.0%	26.3%	1.0%	0.5%	1.0%
Ealing and Hillingdon	389,339	36.2%	<b>41.8%</b>	13.7%	3.0%	0.5%	4.7%
Enfield and Haringey	348,335	30.1%	<b>49.5%</b>	14.2%	4.2%	0.6%	1.5%
Greenwich and Lewisham	328,656	24.2%	<b>55.9%</b>	13.3%	3.6%	1.1%	1.9%
Havering and Redbridge	355,131	33.6%	<b>38.0%</b>	12.9%	0.1%	1.1%	14.3%
Lambeth and Southwark	344,001	15.4%	<b>43.1%</b>	31.6%	7.1%	1.3%	1.6%
Merton and Wandsworth	331,181	<b>43.3%</b>	38.0%	11.9%	5.3%	0.2%	1.4%
North East	392,722	17.2%	<b>41.0%</b>	32.4%	7.8%	0.5%	1.2%
South West	383,579	<b>33.8%</b>	31.9%	31.5%	1.0%	1.1%	0.7%
West Central	340,000	<b>47.3%</b>	38.7%	12.2%	0.3%	1.2%	0.3%
Constituency seats		5	9				
London seats <sup>(b)</sup>		4	2	5			
Total seats		9	11	5			
Share of seats		36.0%	44.0%	20.0%	0.0%	0.0%	0.0%
Estimated share of vote		32.3%	40.1%	21.0%	2.9%	0.9%	2.8%

(a) Uses estimated share of vote and turnout to arrive at a figure for number of votes cast in each constituency.

The winning party is shown in bold type

(b) Calculated using d'Hondt method

*Local Elections Handbook 1998, Rallings and Thrasher*

## Appendix 2: The Parliamentary passage of the London Government Bill 1962-63<sup>54</sup>

Presented by Sir Keith Joseph	20 Nov.1962	Bill 16
2 <sup>nd</sup> Reading, debate adjourned	10 Dec.1962	669 c37-164
2 <sup>nd</sup> Reading and Money Resolution	11 Dec.1962	669 c223-360
Considered in Committee [Clause 1&Schedule 1]	23 Jan.1963	670 c105-238
Further considered in Committee [Clause 1 and Schedule 1]	24 Jan.1963	670 c301-438
Allocation of time motion moved by Mr Macleod, Agreed to	29 Jan.1963	670 c764-898
Considered in Standing Committee F [except Clause 1 and Schedule 1] -1 <sup>st</sup> Sitting	5 Feb.1963	S.C.Deb
Further considered in Committee [Clause 1 and Schedule 1]	13 Feb.1963	671 c1307-442
Further considered in Committee [Clause 1 and Schedule 1]	20 Feb.1963	672 c445-600
Proceedings in Standing Committee F	21 March 1963	H.C.172
As amended by Standing Committee F	21 March 1963	Bill 84
Considered on recommittal and on report	1 April 1963	675 c41-200
Further considered on report & 3 <sup>rd</sup> Reading	2 April 1963	675 c252-410
Brought from the Commons	3 April 1963	H.L.57
2 <sup>nd</sup> Reading, debate adjourned	23 April 1963	248 c1123-200
2 <sup>nd</sup> Reading, debate concluded	24 April 1963	248 c1214-302
Considered in Committee	9 May 1963	249 c862-971
Further considered in Committee	13 May 1963	249 c973-1048, 1086-174
Further considered in Committee	14 May 1963	249 c1193-253, 1266-93
Further considered in Committee	15 May 1963	249 c1306-16, 321-52, 1367-417
Further considered in Committee	16 May 1963	249 c1475-540
Further considered in Committee	20 May 1963	250 c10-134
Further considered in Committee	21 May 1963	250 c140-66, 168-240, 243-78

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<sup>54</sup> Supplied by Helen Holden, Reference & Reader Services Section

Further considered in Committee	23 May 1963	250 c423-44, 449-546
Further considered in Committee	27 May 1963	250 c569-708
Further considered in Committee	28 May 1963	250 c719-842
Consideration in Committee concluded	30 May 1963	250 c965-78, 984-1079
As amended in Committee	30 May 1963	H.L.91
Considered on Report	24 June 1963	251 c2-21, 24-124
Further considered on Report	25 June 1963	251 c133-251
Further considered on Report	1 July 1963	251 c517-40, 543-638
Consideration on Report concluded	2 July 1963	251 c654-70, 681-878
As amended on report	2 July 1963	H.L.111
3 <sup>rd</sup> Reading	8 July 1963	251 c1179-266
Lords Amendments	8 July 1963	Bill 133
Allocation of time motion, agreed to	25 July 1963	681 c1787-96
Lords Amendments considered	25 July 1963	681 c1797-952
Royal Assent	31 July 1963	cap.33