



The Constitution Unit



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# Nations and Regions: The Dynamics of Devolution

Quarterly Monitoring Programme

Scotland

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## **Key Points**

- The UK General Election campaign and its aftermath dominated the agenda of Scottish politics during this quarter. Both the Parliament and Executive were quieter than normal during the campaign.
- It is likely to be seen as a transition election in historical terms with each party 'learning on its feet' about the dynamics of campaigning in a devolution environment.
- The outcome of the election is marked more by continuity than change – only one Scottish seat changed hands. Labour held all of its Scottish seats despite a 2% drop in support. Turnout in Scotland fell by 13.2 per cent in Scotland compared with 1997 (slightly higher than the fall across Britain as a whole).
- Two-year anniversary evaluations and 'report cards' have tended to be kinder to the Parliament than the Executive. There are signs of growing maturity in the Parliament as an institution, whilst the Executive is routinely criticised for its lack of impact on substantive policy outputs (never mind outcomes) to date.

**Introduction**  
**Neil McGarvey**

This quarter’s coverage is dominated by the UK General Election. Despite devolution, the outcome of the election was marked more by continuity than change. Only one seat changed hands in Scotland. Galloway and Upper Nithsdale was recaptured by the Conservatives from the Scottish National Party (SNP) to provide the Scottish Tories with a presence in the House of Commons. Tables 1 and 2 below outline the outcome of the election, giving details of both the 1997 General Election and the 1999 Scottish Election as a basis for contrast.

Overall, Scottish Labour retained its lead despite the dramatic fall in turnout. Labour remained Scotland’s dominant party winning 43.2 per cent of the vote and 55 of the 72 seats. Though the share of the vote for each party fell, Labour’s ability to hold onto seats will have satisfied party strategists. The SNP confirmed its position as Scotland’s second party with 20.1 per cent of the vote though only five seats and the Liberal Democrats overtook the Conservatives for third place winning 16.4 per cent and ten seats while the Conservatives on 15.6 per cent now have one Scottish MP. The Scottish Socialist Party contested all of Scotland’s 72 constituencies winning 3.1 per cent of the vote. Michael Martin, the Speaker and former Labour MP, was safely returned in Glasgow Springburn though the SNP and SSP broke with tradition and contested the Speaker’s seat.

**Table 1: Votes and Seats in Scotland in the 2001 (1997) General Elections**

	Cons	Labour	Lib Dem	SNP	SSP/Other
Scotland Vote (%)	15.6 (17.5)	43.2 (45.6)	16.4 (13.0)	20.1 (22.1)	3.1 (1.9)
Seats	1 (0)	55* (56)	10 (10)	5 (6)	1* (0)

\* The Speaker holds Glasgow Springburn

**Table 2: Votes and Seats in Scotland in the 1999 Elections**

	Cons	Labour	Lib Dem	SNP	Others
Scotland Constituencies					

Vote (%)	15.5	38.8	14.2	28.7	2.7
Seats	0	53	12	7	1

#### Regional Lists

Vote (%)	15.4	33.6	12.4	27.3	11.3
Seats	18	3	5	28	2

Neither Labour nor the Nationalists can read too much into these results as far as elections to the Scottish Parliament are concerned. Voting patterns appear to be different for the two levels of government and while this does not mean that there is no relationship between the devolved and UK elections, it does mean that at this stage we must be careful in our interpretation. Turnout in 1999, for example, appeared to suggest that the Scottish and Welsh elections were second order when compared with previous general elections. However, the low turnout in 2001 might contradict this and suggest that 1999 marked a general downward trend. The Conservatives could take little comfort from these results with the local parties in both Scotland and Wales complaining bitterly that they had been let down by a British leadership that failed to take account of devolution. Despite Michael Ancram, party chairman, having formerly been a Scottish MP and Scottish Office Minister, the London leadership ran a campaign that appeared no less unsympathetic to Scottish distinctiveness than in the past.

Labour's remarkable performance in terms of seats owes much to an electoral system that exaggerates its representation. The best hope for Labour's opponents in two years will continue to be the alternative member system with its additional proportional element.

Another consideration is the extent to which any party can expect to do well in the four party system that operates in Scotland. With the intervention of Tommy Sheridan's SSP claiming to be Scotland's fifth party, indeed outpolling the Liberal Democrats in by-elections, the competition for votes is intense in Scotland. Labour's 43.2 per cent share of the vote may appear unimpressive by the standards set in the past but in the modern Scottish party system this is indeed impressive. Labour's vote fell by 2.3 per cent, marginally more than the SNP's, but it held on to all of its seats. The intense media coverage of Labour-Conservative marginals – Eastwood, Edinburgh Pentlands, Ayr - during the campaign ensured that Labour's success in holding these seats was portrayed as a remarkable achievement.

The most remarkable figure was that for turnout. This fell by 13.2 per cent in Scotland compared with 1997 (compared to 12.3 per cent across Britain as a whole). Speculation that devolution might lead Scots to doubt the value of the House of Commons and result in a low turnout might have appeared to have

been justified but for the exceptionally low turnout recorded across Britain. However, the low turnout does raise questions about the perceived relevance of the Scottish Parliament and Westminster. The turnout in elections to the Scottish Parliament in 1999 (58.8 per cent) was almost identical to the turnout in the 2001 General Election (58.2 per cent). The highest turnout in Scotland was in Eastwood. Yet at 70.7 per cent this was still below the average for Scotland in 1997. In a number of seats the turnout was abysmally low: in six of Glasgow's ten constituencies, turnout was under 50 per cent, falling as low as 39.7 per cent in Shettleston.

After the 1999 elections it was widely assumed that the low turnout reflected the significance voters attached to the Scottish Parliament. These were 'second order' elections. But the low turnout in 1999 may simply have reflected a more general and worrying trend as electors become disengaged from politics.

The impact of the UK General Election is reflected in each of this quarter's contributions. Barry Winetrobe outlines both the UK Cabinet Office and Scottish Executive official guidelines for official conduct during the campaign. In practice, the requirements of the campaign were reflected in a marked decrease in Executive press releases and policy announcements. This quarter also marked the two-year anniversary of the Parliament and the inevitable assessments of performance. The Scottish Executive (now being differentiated from the Parliament) continues to receive critical evaluations in the media. With the 2003 Election now moving more sharply into focus the aim for the Executive in the next two years is to demonstrate its impact on substantive policy outcomes post-devolution.

Like the Executive, the Parliament was marked by a downturn in business during the General Election campaign. However, unlike the Executive, the Scottish Parliament received more favourable comment on its second anniversary. As Mark Shephard highlights, its first two years have been marked, as would be expected, by a marked increase in the speed and output of Scottish legislation. The Parliament is showing visible signs of maturity with this quarter seeing the first bill ever to be introduced by a subject committee in the Parliament.

There are signs of the Scottish Executive 'growing up' too – as Alex Wright notes it is increasingly seeking to raise its voice on the international stage. On 'Europe Day' (May 9) the Parliament debated the EU's impact on Scotland. Later that month the First Minister was involved in the political declaration by the constitutional regions of Bavaria, Westphalia, Salzburg, Scotland, Wallonia and Flanders who all share concern about their lack of influence in EU matters.

Wright highlights media reports that suggest Foreign Office irritation at Executive involvement in foreign affairs.

Whilst the Executive has been finding its feet on the intergovernmental international stage it has sought to codify internal relations with the publication of the Partnership Framework. This establishes a clear written protocol and at a symbolic level a commitment to shared working between the Executive and local government. Neil McGarvey also outlines the outcome of the COSLA internal review instigated after the withdrawal of three of its council members and the projected financial shortfall this would cause. The other report considered is the Report of the Leadership Advisory Panel which outlines the progress of Scotland's 32 councils in their self reviews of political management arrangements.

In his discussion of finance David Bell evaluates the impact of devolution on the budget process highlighting the difficulty the Parliament has had in gaining financial information in a format suitable for it to undertake its role effectively. The Parliament may also be frustrated by the legal profession. As outlined by Barry Winetrobe, this quarter was also notable for the first legal challenge to an Act of the Scottish Parliament before the Judicial Committee of the Privy Council. Judgement is not expected until the Autumn but it could be a landmark judgement in terms of the legislative competence of the Scottish Parliament.

Both the media section by Philip Schlesinger and the political parties' section by Neil McGarvey return the focus to the UK General Election campaign. Philip Schlesinger reports on how the Scottish media dealt with reporting the first UK election in the middle of a term of the Scottish Parliament. Neil McGarvey reviews the results and aftermath reviewing the performance and behaviour of each of Scotland's main parties. There were marked tensions in each of the parties reflecting the fact that each was finding its feet in what is best considered a transitional election. Overall the two coalition partners (Labour and Liberal Democrats) fared well with the SNP and Conservatives generally perceived to have fallen short of their own targets.

Barry Winetrobe reviews public policies in the final section of this quarter's report. He highlights the continuing prominence of a distinct Scottish policy agenda post-devolution. The Parliament, he suggests, is playing a crucial role in shaping this agenda through such devices as debates and committee inquiries.

## **1. The Scottish Executive**

**Barry K Winetrobe**

### **1.1 The UK election**

The quarter was dominated by the UK general election, the first such under devolution. Other sections of this report discuss how the election affected devolved Scotland; from the point of view of the Executive (as for the Parliament), the campaign period required a delicate balancing act between 'business as usual' and 'appropriate purdah'. Because of the novelty of this situation (which will be replicated in reverse in 2003, during the Scottish Parliament's election), and how it neatly symbolises the reality of the new Scottish political environment, it is worth looking at this matter in a little detail.

### **1.2 Official guidance**

The Cabinet Office's guidance referred briefly to the position of the devolved administrations.<sup>i</sup>

1. The General Election does not affect the devolved administrations in the same way. The devolved legislatures are not being elected, and they and devolved Ministers in Scotland, Wales and Northern Ireland must continue to carry out their devolved functions in those countries in the usual way.
2. Under the Civil Service Code and the Northern Ireland Civil Service Code of Ethics, civil servants in the devolved administrations owe their loyalty to those administrations, not to the UK Government. Accordingly, this guidance does not apply to them. They will continue to support their Ministers in their work.
3. However, all the devolved administrations acknowledge that their activities could have a bearing on the general election campaign. They have thus issued their own guidance, in consultation with the Cabinet Office, reinforcing the need to maintain political impartiality and to prevent the use of public resources for party-political purposes. While the devolved administrations will continue largely as normal, they are all aware of the need to avoid any action which is, or could be construed as being, party-political or otherwise controversial in the context of the General Election. They will respond to requests for information from MPs, candidates and political parties in accordance with [Guidance Note A](#) and similarly will not brief or otherwise assist their Ministers in any way that could lead to accusations that public resources were being used for party political purposes.
4. Officials in the devolved administrations are subject to the rules in [Guidance Note E](#) as regards their personal political activities, in the same way as UK Government officials.

5. Discussions with the devolved administrations during the campaign period should be conducted in this context, and in line with the remainder of this guidance.

The Executive produced its own guidance on how it and its officials would operate during an election period. This guidance was published on its website,<sup>ii</sup> and the summary and introduction are reproduced below:

### **Summary**

1. This note contains guidance to Scottish Executive civil servants on their role and conduct during the forthcoming UK General Election campaign. The Election will take place on 7 June and this guidance comes into force today.

2. This is the first UK General Election campaign since the creation of the devolved administrations. The Scottish Executive will of course remain in office whatever the outcome of the Election, and the presumption is that both the Executive and the Parliament will continue to function during the Election campaign: it is important that there should be as little disruption as possible to the normal business of the devolved administrations during the Election period. However, because the campaign will take place across the United Kingdom, it is particularly important that civil servants should take special care during this period to ensure that they conduct themselves in accordance with the *Civil Service Code*. This guidance sets out the general principles that civil servants should observe, and the arrangements which are being put in place to consider the application of those principles to particular cases in the event of any uncertainty or difficulties which may arise.

3. The two overriding principles are that:

- civil servants should not undertake any activity which could call into question their political impartiality; and that
- they should ensure that public resources are not used for party political purposes.

4. The routine business of both the Executive and the Parliament will continue during the Election campaign, and the general presumption that civil servants provide support to Ministers will continue to apply. Ministers consider that it will not however be appropriate for such support to be provided in relation to the launch of new policy initiatives, the announcement of new decisions, the launch of paid publicity campaigns or similar matters which could have a direct material bearing upon the General Election campaign.

### **General Principles**

5. The following general principles should be observed by all civil servants, including Special Advisers:

i there should be even-handedness in meeting requests for factual information from candidates from different political parties. Such requests and responses should be handled in accordance with the principles laid down in the *Code of Practice on Access to Scottish Executive Information*. Parliamentary Questions and official correspondence should be dealt with in the normal way during the Election campaign. If you are in any doubt about the propriety of providing

factual information, advice is available from Constitution and Parliamentary Secretariat or Personnel Policy Unit (see paragraph 18 below). Where information is requested by candidates or representatives of political parties, a copy of the response should be sent to the relevant Minister's Private Secretary for information;

ii particular care should be taken over official support and the use of public resources, including publicity, for announcements by Ministers which have a bearing on responsibilities of the UK Government and are therefore potentially relevant to the General Election. Where announcements during the campaign involve consultation with UK Government departments, the general presumption is that they should be deferred until the new UK Government is in place;

iii similar care should be taken over announcements of decisions made at official level. Each case should be considered on its merits;

iv. Special care should be taken in respect of paid publicity campaigns, which should not be open to criticism that they are being undertaken for party political purposes. Ministers consider that there should be a general presumption against undertaking new campaigns in any area which could have a direct material bearing upon the General Election campaign.

### **1.3 Executive activity during the campaign**

In keeping with the policy of the official guidance, the Executive operated broadly as normal during the campaign period, that is, from the announcement on 8 May of the election. In practice, there had already been a long 'phoney campaign' period, in expectation of a May 3<sup>rd</sup> election, before that timing was ruined by the foot and mouth crisis.

A glance at the Executive's website demonstrates the contrast with UK government departments (including the Scotland Office), as press releases and other official documents continued to be published during the month before polling day. However it is noticeable that the bulk of these pronouncements were of the 'worthy but dull' variety, rather than on potentially controversial areas of public policy. The main exceptions were in what may be termed as policy-reactive areas, such as the continuing foot and mouth crisis. There was a marked difference in the level of policy announcements and consultation exercises during the campaign period and in the weeks after polling day.<sup>iii</sup>

Parliamentary activity by the Executive also appeared, on the face of it, to conform to the tone of the guidance. There was only one ministerial statement during the election period (on foot and mouth), whereas there were several substantive statements in the few weeks between polling day itself<sup>iv</sup> and the recess, including statements on the budget, quango reform and school exams. Executive-initiated debates tended not to be on the most controversial of topics.<sup>v</sup> Executive legislation was taken during the campaign period, and Question Times

remained as lively as usual, with the election inevitably intruding into many exchanges, especially at First Minister's Question Time.

The official guidance was directed explicitly at Executive officials, rather than at ministers. It was well-known that ministers would be involved, in their party capacities, in the UK election campaign in Scotland, and much had been made in the media and the Parliament of the role of Wendy Alexander as a leading strategist for the Labour campaign. Despite the potential ethical problems this activity could have caused, especially under coalition government with Labour and Liberal Democrat ministers obviously in opposing camps for the duration, there appears to have been little real public difficulty with the operation of devolved government. It may be that any strains and tensions, among ministers, between ministers and their officials, or between the Executive and the UK Government, were kept under the surface and may emerge in any post mortems of this novel period of multi-layered government.

#### **1.4 The Executive's performance**

The Executive, especially in its political/ministerial guises, continues to receive a bad press. The past quarter not only saw the UK election, but also covered the second anniversary of devolution, with all the retrospectives and 'report cards' that such a milestone brings. It was striking, and very welcome, just how the perceived opinion of the performance of the two main organs of devolved governance, the Executive and the Parliament, has begun to diverge. Perhaps, at long last, commentators are beginning to understand the basic constitutional and political distinctions between the two bodies.

Although the Parliament and its MSPs appear to be better regarded in year 2 than in the initial twelve months of devolution,<sup>vi</sup> the Executive itself continues to be criticised at almost all levels. The UK election had a curiously contradictory impact on the devolved government, because of its close involvement (albeit in a party rather than ministerial guise, as already discussed) in the campaign. While it was compared unfavourably on what was generally seen as a basically cohesive, competent and election-winning UK Government, it also managed to be tarred with the 'non-delivery' criticism levelled at the Blair Administration. Given the more limited powers of the devolved government, this is a potentially devastating criticism, because it means that it is being accused both of failing to deliver in areas where it has little or no remit (broad economic and fiscal policy, in particular), as well as in the areas where it has.<sup>vii</sup> This opens up the whole thorny issue of the division of powers under devolution, already running fairly strongly in the tax-raising area (see sections 3.1, 10.2).

Another interesting outcome of the election was the surprisingly strong showing of the Scottish Liberal Democrats. This may well be due, to a large degree, to the effective performances of their two cabinet ministers, Jim Wallace at Justice (and as Deputy First Minister) and Ross Finnie at Rural Development. The latter was generally reckoned to have had a good foot and mouth war. This has not led to talk of coalition tensions, as would have been the case in 1999-2000, but has thrown the critical focus on the performance of the Labour majority within the Executive. This has served to fuel the fires of internal party division at the highest levels of the party. The media have continued to run this story gleefully, highlighting the performance of the First Minister in particular, and his difficulties with other Cabinet heavyweights such as Jack McConnell and Wendy Alexander.

Henry McLeish has had a difficult balancing act as First Minister, trying to act as a bridge between the old Dewar era and the new guard of frontline Labour politics. He has tried to distance his administration from some of the substantive policy and style of the previous regime, while maintaining adherence to the more consensual style of the 'new politics', of which he was a leading figurehead as devolution minister and chair of the Consultative Steering Group. This has been especially difficult in the Parliament, which has generally settled down quite happily to a modified version of Westminster-style adversarial politics. His unique oratorical style has not made him particularly effective at Question Time and in other proceedings, either in the eyes of his colleagues or the public.

With the UK election now out of the way, and this first period of devolved governance past its mid-point, attention now focuses even more clearly on the Parliament's next general election, presumably in 2003, thereby putting the Executive, and its various party and personality strains, ever more in the spotlight. As in London, the clear aim for the administration in the next two years will be to demonstrate actual and visible policy delivery.<sup>viii</sup> The Parliament is beginning to make a difference; the Executive has to convince the Scottish people that it can do the same.

## **2. The Scottish Parliament**

### **Mark Shephard**

#### **2.1 A Two Year Overview**

The Scottish Parliament has now completed its second year, passing 4 new bills this quarter. In its two years it has passed 24 bills (20 Executive Bills and 4 Members' Bills) and two have been withdrawn (1 Executive Bill and 1 Members' Bill). Details of the current state of legislation and the Bills passed in this quarter can be found below (section 2.7). A simple two-year quantitative comparison between the Scottish Parliament (07/99 – 07/01) and Westminster pre-Scottish Parliament (07/97 – 07/99) reveals that devolution has enabled more specifically Scottish legislation to be addressed. In the last two years the Scottish Parliament has been able to pass six times as much specifically Scottish legislation as Westminster in the two years pre-devolution. Although this says nothing about the quality of the legislation passed, political commentators such as Elizabeth Quigley have argued that the creation of a Scottish Parliament has enabled the passage of the first Scottish Housing Bill in 13 years as well as the passage of other legislation that would never have seen the light of day in Westminster, for example the abolition of feudal tenure.<sup>ix</sup> Meanwhile, in a speech to the Oxford Union, Sir David Steel MSP noted how the Parliament had, 'proved effective in delivering greater speed and degree of legislation for Scotland than was ever possible in the crowded agenda at Westminster'.<sup>x</sup> In short, the Parliament appears to be making a difference both in terms of the quantity and the quality of the legislation passed.

In terms of the origin of legislation (Executive/Members/Committees), the first two years suggest that the Executive has dominated, particularly in the last 18 months. To date, there have been 28 proposals for Members' Bills. While 24 proposals have been 'successful' (i.e. attracted a 12<sup>th</sup> supporter among MSPs within one month) only six proposals for Bills (all in 1999) have so far been introduced. Four of these have been enacted (Leasehold Casualties; Abolition of Poidings and Warrant Sales; Mortgage Rights; and Sea Fisheries (Shellfish) Amendment) and one has been withdrawn (Family Homes and Homelessness). What is interesting about the introduction of Members' Bills having the requisite number of signatures is that no Members' Bills have been introduced in the last 18 months. Evidently Members stood the greatest chance of introducing legislation in the first few months of the Parliament before the Executive had become fully organised. Since the end of 1999, the Parliament has had very little time to consider anything else but Executive Bills. That said, this is an interesting quarter in that for the first time a committee has introduced a Bill.

## **2.2 The First Committee Bill**

On 4 June 2001, Alasdair Morgan introduced the Protection from Abuse (Scotland) Bill on behalf of the Justice 1 Committee. The Protection from Abuse (Scotland) Bill is the first Bill ever to be introduced by a subject committee in the Parliament. Constitutionally, this Bill represents a key divergence from practice at Westminster where committees do not have the power to initiate legislation. As Alasdair Morgan commented in the Stage 1 debate on 28 June 2001, '...the ability of the Parliament's committees to initiate legislation ... is one of the most important ways in which our system is innovative and fundamentally different from that at Westminster'.<sup>xi</sup> Substantively, the Bill is interesting in that it anticipates extending powers of arrest beyond spouses and cohabitants with occupancy rights to include divorcees, the wider family, same-sex couples and even neighbours.

The inclusivity of the groups in society covered by the Bill is proving to be standard practice in the Parliament. In the case of the Housing (Scotland) Bill, for example, inheritance rights for local authority and housing association tenancies have been extended to include same-sex partners. The Bill also includes rights for homeless people and extends both the catchment and the period of the right to buy.

## **2.3 The Impact of the First General Election since Devolution**

As well as witnessing the Parliament's first committee Bill, this quarter was also interesting because the UK had its first General Election since devolution. From the perspective of the Parliament, one of the questions raised by this was whether the campaign for the General Election would have a deleterious effect on the workings of the Parliament. At the outset of the campaign, the Presiding Officer, Sir David Steel, pleaded with MSPs not to bring the General Election into the debating chamber. Although many MSPs heeded this request, the election battle was particularly noticeable at First Minister's Questions. Moreover, the main problem was not that MSPs would bring the General Election into the Parliament, but more that the General Election would entice the MSPs out of the Parliament on the campaign trail. Using the votes taken during Decision Time in May 2001 as a rough indicator of levels of attendance and participation, it does appear that the General Election had a considerable impact. At the beginning of May (before the official campaign) 114 out of 129 MSPs voted during Decision Time. By the middle of May the number of MSPs voting dropped to the low 90s, and by the end of May (one week before the General Election) the number of MSPs voting had dropped to 72. Compounding this evidence that the General Election had an effect on the workings of the Parliament is the fact that an unusually low number of reports and inquiries were published during May 2001

(see section 2.6 below for details). Whereas eleven and nineteen reports/inquiries were published in April and June 2001 respectively, only four reports/inquiries were published in May 2001.

#### **2.4 An Increasing Sense of Realism?**

Although the Parliament passed a Members' Bill to 'abolish poindings and warrant sales' in December 2000, implementation has been delayed until alternative means of debt recovery could be framed in its place. In July 2001, a parliamentary working group headed by the Finance Minister presented its proposals for new debt collection procedures to the Executive. The proposals present an interesting dilemma for the Executive and Parliament because they do not 'abolish' poindings and warrant sales – and yet 'abolition' was what the Parliament voted for in the first instance. This particular piece of legislation and its evolution over time provides a nice example of the Parliament's moves from idealism to realism in aspects of public policy.

Another example of the increased presence of realism in the Parliament is the failure of the Wild Mammals Bill to be recommended by a Scottish parliamentary committee. The Bill, which aims to end hunting with dogs, is the first piece of legislation that has failed a committee recommendation.<sup>xii</sup> The Rural Development Committee did not recommend the Bill because it deemed it too wide-ranging and unworkable. The Parliament does not have to accept the recommendations of the Committee when it next considers the Bill after the summer recess.

#### **2.5 Other Issues**

In June 2001, the Standards Committee published a consultation paper on the statutory registration of commercial lobbyists that was based on evidence from the lobbied, the lobbyists as well as academic commentators.<sup>xiii</sup> The consultation paper extends its definition of lobbying to include distinctions that attempt to take into account the activities of commercial lobbyists. As well as navigating the complex questions posed by definitions of lobbying, the Committee has also addressed issues such as 'the information to be disclosed', 'publication and administration' and 'policing and enforcement'. Although only a consultation paper, it does provide an interesting example of how the rules of the game (and not just the policy) are capable of diverging from Westminster.

Finally, the high profile visits and addresses made by Irish Prime Minister, Bertie Ahern and the South African President, Thabo Mbeki in June 2001 provide continuing evidence that the Parliament is continuing to attract international attention and with that, stature on the world stage.

## **2.6 Committee Reports and Inquiries (1 May 2001 – 31 July 2001)<sup>xiv</sup>**

*The Real Scope for Change: appraising the extent to which the Parliament can suggest changes to programme expenditure*, 2 May 2001, Finance Committee

*Call for Evidence on Crown Office and Procurator Fiscal Service inquiry*, 8 May 2001, Justice 2 Committee

*Report on the Scottish Local Authorities (Tendering) Bill*, 14 May, Local Government Committee

*Reforming the Common Fisheries Policy: a Blueprint for negotiations*, 17 May 2001, European Committee

*Report on Complaint Concerning the Unauthorised Disclosure of the Education, Culture and Sport Committee Draft Report on Special Education Needs*, 1 June 2001, Standards Committee

*Standards Committee Consultation Paper: Statutory Registration of Commercial Lobbyists*, 1 June 2001, Standards Committee

*Improving Consultation with Children and Young People in Relevant Aspects of Policy-Making and Legislation in Scotland*, 5 June 2001, Education, Culture and Sport Committee

*Stage 1 Report on the International Criminal Court (Scotland) Bill*, 6 June 2001, Justice 2 Committee

*Changes to the Standing Orders of the Scottish Parliament*, 8 June 2001, Procedures Committee

*Report into the Volume of Written Parliamentary Questions and the Scottish Executive's Speed of Response, and Related Matters*, 8 June 2001, Procedures Committee

*Justice Committee Commissions research study into public attitudes towards prison sentencing*, 11 June 2001, Justice 1 Committee

*Land Reform: Report of the Rural Affairs Committee fact finding visits*, 12 June 2001, Rural Development Committee

*Resource Accounting and Budgeting*, 14 June 2001, Finance Committee

*Report on Protection of Wild Mammals (Scotland) Bill*, 15 June 2001, Finance Committee

*Children's Commissioner Inquiry – background information*, 18 June 2001, Education, Culture and Sport Committee

*Report on the Inquiry into the Impact of the New Economy*, 19 June 2001, Enterprise and Lifelong Learning Committee

*Justice 1 Committee announces remit of major inquiry into the regulation of the legal profession*, 20 June 2001, Justice 1 Committee

*Report on Inquiry into Water and the Water Industry*, 21 June 2001, Transport and the Environment Committee

*Report on Protection from Abuse (Scotland) Bill*, 25 June 2001, Finance Committee

*Stage 1 of the 2002/03 Budget Process*, 25 June 2001, Finance Committee

*Inquiry into Gypsy Travellers and Public Sector Policies*, 27 June 2001, Equal Opportunities Committee

*Report on Inquiry into The National Stadium*, 28 June 2001, Education, Culture and Sport Committee

*Report on Complaint Against Dr. Richard Simpson MSP*, 29 June 2001, Standards Committee

*Report by Reporter Margaret Jamieson on PE 217 by Glenorchy and Innishail Community Council on Single GP Practice*, 4 July 2001, Health and Community Care Committee

*Response to the Procedures Committee Inquiry into CSG Principles in the Scottish Parliament*, 4 July 2001, Transport and the Environment Committee

*National Health Service Bodies in Tayside*, 6 July 2001, Audit Committee

*Call for Evidence on Sexual Offences (Procedure and Evidence) (Scotland) Bill*, 6 July 2001, Justice 1 Committee

*Call for Evidence on Sexual offences (Procedure and Evidence) (Scotland) Bill*, 6 July 2001, Justice 2 Committee

*Launch of Lifelong Learning Inquiry – open call for evidence*, 9 July 2001, Enterprise and Lifelong Learning Committee

*Stage 1 Report on the Protection of Wild Mammals (Scotland) Bill*, 11 July 2001, Rural Development Committee

*Report on Complaint Against Andrew Wilson MSP*, 13 July 2001, Standards Committee

*Comments on the Executive's Paper: 'Review of Funding for the Voluntary Sector' June 2001*, 18 July 2001, Finance Committee

*Inquiry into the Scottish Executive's strategy for Scottish Agriculture*, 20 July 2001, Rural Development Committee

*Call for Evidence – Inquiry into Governance and the future of the European Union: what role for Scotland?* European Committee

*Scotland and Europe – A European Seminar (February 2001)*, European Committee

## **2.7 Parliamentary Bills (1 May 2001 – 31 July 2001)<sup>xv</sup>**

Executive Bills in Progress:

- International Criminal Court (Scotland) Bill (Stage 2)
- Police and Fire Services (Finance) (Scotland) Bill (Stage 1)
- Sexual Offences (Procedure and Evidence) (Scotland) Bill (Introduction)

Committee Bills in Progress:

- Protection from Abuse (Scotland) Bill (Stage 1)

Members' Bills in Progress:

- Family Homes and Homelessness (Scotland) Bill: Withdrawn on 12 June 2001
- Protection of Wild Mammals (Scotland) Bill (Stage 1)

Executive Bills Passed:

Convention Rights (Compliance) (Scotland) Bill: Passed on 30 May 2001, Royal Assent on 5 July 2001

- Education (Graduate Endowment and Student Support) (Scotland) (No. 2) Bill: Passed on 29 March 2001, Royal Assent on 3 May 2001
- Housing (Scotland) Bill: Passed on 13 June 2001, Royal Assent on 18 July 2001
- Regulation of Care (Scotland) Bill: Passed on 31 May 2001, Royal Assent on 5 July 2001
- Scottish Local Authorities (Tendering) Bill: Passed on 6 June 2001, Royal Assent on 6 July 2001)

Members' Bills Passed:

- Mortgage Rights (Scotland) Bill: Passed on 20 June 2001, Royal Assent on 25 July 2001

***Proposals for Members' Bills:***

In the last quarter there have been four proposals by Members for Bills. On 12 June 2001, Donald Gorrie proposed a Bill to make sectarian behaviour an aggravation of a criminal offence as well as calling for the creation of a code of conduct on tackling sectarian behaviour. On 21 June, Tommy Sheridan proposed a Bill to provide universally free school meals. On 26 June, Nicola Sturgeon proposed a Bill to control the advertising and promotion of tobacco products. And on 4 July, Kenneth Gibson proposed a Bill to regulate smoking in enclosed public premises serving food. With the exception of the latter proposal, all proposals in the last quarter have received enough supporting signatories to be introduced to Parliament.

**2.8 Cross Party Groups**

The number of Cross Party-Groups which have been approved by the Standards Committee continue to rise (from 39 to 42 in the last quarter). The new Cross-Party Groups recognised include Asthma, Cancer, and Consumer Issues.

### **3. The Media**

#### **Philip Schlesinger**

#### **3.1 The general election**

Prior to the general election of 7<sup>th</sup> May, there had been much speculation in the Scottish media as to how this would play itself out. The election was a UK event but, as always, it was given a distinct inflection. This was the first general election since the formation of the Scottish Parliament and the parliamentary elections of 1999. Scotland's political culture - and its media reporting - has become increasingly centred on Edinburgh and there is a continuing reinforcement of a distinct Scottish public sphere<sup>xvi</sup>. For the first time, the Scottish media have had to face the complexities of dealing with a dual electoral cycle in which the UK elections came in the middle of the four-year fixed term of the Scottish Parliament. While there was much journalistic speculation that the UK election would constitute a mid-term test for New Labour, there is little evidence that the Scottish electorate has yet chosen to play it that way (see introduction).

Certainly, no one could say that the Scottish press caused shivers running up the spines of either Tony Blair or Henry McLeish, because it was largely 'on side'. The leading broadsheets, *The Herald* and *The Scotsman*, broadly backed New Labour. The tabloid *Daily Record*, with the largest circulation in Scotland was an enthusiastic endorser of the UK government. Key regional publications such as the *Aberdeen Press and Journal* and the *Dundee Courier* stayed aloof. Only the *Telegraph*, with minuscule circulation in Scotland, endorsed the Tories, whereas the 'blue-top' *Mail* kept its counsel in line with the dominant consensus<sup>xvii</sup>.

One key issue emerged that perhaps holds a key to the future. Triggered by *The Scotsman*, the fiscal independence of the Scottish Parliament was extensively debated north of the border. This had its pale echoes in the south in a short-lived debate about the continuing future of the Barnett formula, questions about which were quickly quashed by the Blair PR machine. The issue goes to the heart of relations between Westminster and Holyrood and is likely to be revisited as an inevitable consequence of the devolutionary dynamic. On this, once again, Scotland signalled its difference.

#### **3.2 Death of a Cardinal**

On 17 June 2001, Cardinal Thomas Winning, a towering and highly controversial figure in Scottish political and moral debate, died. In scope and scale the story ran close to the reporting of Donald Dewar's death, with full coverage for a good three days, followed by major accounts of his funeral a week later.

Every single paper and the Scottish broadcasters paraded the establishment's opinions across its pages, as the great and the good mobilised to tell us what to think. The Queen, Tony Blair and Henry McLeish were joined by all the other party leaders, clerics of various faiths, prominent friends and Catholic laymen in singing the praises of the dead Cardinal. Ordinary folk were also allowed their say, always positive, in a supporting role.

For a society riven daily by conflict over values and lifestyles such a suspension of hostilities was a remarkable moment. The struggle on 18 June, the day after the death was announced, shifted from fighting directly over beliefs to questions of interpretation.

The *Daily Telegraph*, with the arch-conservative Charles Moore actively editing, stressed Winning's attacks on New Labour, describing him as a thorn in Tony Blair's side. Special editorial praise was lavished on the Cardinal's 'pro-life campaigns' and his opposition to the abolition of Section 28 of the Local Government Act, the legislation banning the 'promotion' of homosexuality in schools. The *Telegraph* conveniently overlooked the Cardinal's opposition to the Tories' poll tax, Conservative government attacks on 'scroungers' and his denunciation of the Gulf War. Described by political commentator Alan Cochrane as a 'worker cardinal' and 'Scotland's leader of the opposition', he was also characterised as deeply enigmatic: 'he played all politicians like salmon'.

On the other side of the spectrum, *The Guardian* labelled Winning 'a left-wing clergyman who championed social justice'. But at the same time, the paper decisively broke with the polite consensus by running author Joan Smith's vehement denunciation of 'an unreconstructed bigot who joined forces with a homophobic businessman to wage a fanatical campaign against the repeal of Section 28'.

Others may have thought this, but they said it differently or not at all. Like most other Scottish papers, *The Scotsman* echoed the Pope's description of Winning as 'a man of the people'. Both in its reporting and editorially the paper did much the same as *The Herald*. It balanced his attack on Section 28 by noting the Cardinal's emphatic support for asylum-seekers' rights. *The Scotsman* underlined how Winning had brought Scottish Catholicism out of the ghetto into the mainstream. For its part, the *Herald* described Winning as 'politically left-of-centre' but 'unflinchingly conservative in Church matters'. The paper argued editorially that Winning ultimately had to be understood as a 'committed Christian' rather than in political terms.

*The Daily Record* took a different line. Playing up his working-class credentials, it underscored Winning's identity as 'the people's priest', describing him as a 'hard-liner' but 'compassionate and sincere'. But within its general celebratory approach - which included running a special supplement - licence to dissent was given to political commentator Tom Brown. He described the Cardinal as 'an unrelenting religious hard-liner who would not compromise on his beliefs or the laws of his church, no matter the cost in human hurt'. Only three days later, following the prevailing wind, Brown rounded on the 'sneaks, snivelers and snipers of the new bigotry already shoveling dirt on him as he lies in his open coffin'.

The press's use of photographs was striking. Drawing on Christian iconography, *The Evening Times* ran a front-page with a praying parishioner, a crucifix and a smiling Cardinal looking down on the scene. *The Herald* pictured his lying-in-state as projecting a white aura of saintliness. Other notable shots included the Cardinal with a crying baby and one tenderly holding his grand-niece at her christening. Given his anti-abortion stance, such images spoke volumes.

One intriguing photograph showed the newly created Cardinal in St Peter's Square in Rome, surrounded by an adoring crowd of Scottish Catholics. His right arm is raised and the fist is clenched. One could only wonder at this masterly management of ambiguity.

## **5. UK Intergovernmental Relations**

**Alex Wright**

### **5.1 The Foreign and Commonwealth Office (FCO)**

In the aftermath of the UK general election, Jack Straw replaced Robin Cook as Foreign Secretary, prompting *The Sunday Times* to warn:

“Scottish ministers are dismayed at Straw's promotion, believing that he could block attempts to forge more direct links between Holyrood and Brussels. Straw is notoriously sceptical about devolution. According to executive sources, Scottish ministers are worried that the new foreign secretary will have a far less indulgent attitude than Cook about Scotland dealing directly with Brussels, by-passing London.”<sup>xviii</sup>

This particular article was directed at McConnell's submission to the Commission in February, but a subsequent piece was critical of the First Minister himself and it included the claim that he had 'defied' the Foreign and Commonwealth Office (FCO) over the declaration in May. Officials at the FCO and Labour 'sources' did not pull their punches in an 'off the record' briefing against McLeish which was presumably intended to circumscribe his excursions into external affairs:

“Senior government figures this weekend expressed their irritation over McLeish's determination to carve out a role for himself as an international player. Since succeeding Donald Dewar as first minister, McLeish has sought to raise Scotland's international profile by making more overseas visits and by pushing for more direct contacts between Scotland and foreign states. Key figures close to the Foreign Office believe McLeish should concentrate on problems at home and the delivery of public services in the run up to the crucial Scottish general elections rather than pursuing what they see as a 'nationalist' agenda. Sources in the Foreign Office underlined their position that any Scottish involvement in the next inter-governmental conference, the key policy-making body of the EU, would not be direct but channelled through the UK delegation. 'Formal discussions on the future of Europe are for member states at the 2004 IGC and Scotland will of course, be involved formulating the UK position. The inter-governmental conference is a matter for member states to deal with as member states, but Scotland would be involved in participating through helping to formulate the UK position. When the Foreign Office and Scottish executive discussed the statement Mr McLeish signed, the Scottish executive were of course fully aware that while Scotland will feed ideas into the UK position for the next IGC, obviously the discussions at the IGC are a matter for member states,' said a Foreign Office spokesman.

Key Labour sources have underlined the 'unease' within Whitehall over McLeish's move into foreign affairs - a power reserved to Westminster. One Labour source said: 'To be honest, it has got more to do with Foreign Office concerns about McLeish than anything. The ill ease has more to do with senior figures suspecting that he doesn't know what he is doing. He is viewed as liability on the international stage.'<sup>xix</sup>

It would appear that figures at the FCO and 'key sources' in the Labour party now perceive that the Executive has crossed a line in the sand and that McLeish, and McConnell, now need reining in.

### **5.2 The Boundary Commission**

The Boundary Commission for Scotland began its review at the end of June. This will be a two-stage process which starts with Westminster constituencies and then focuses on those at Holyrood. Although the outcome will not be published for some years yet (the report is due sometime between 2002 and 2006), it is likely to be extremely controversial. The Boundary Commission for Scotland is legally obliged to conduct reviews periodically under the terms of the *Parliamentary Constituencies Act 1986*, but this one is more complex for a number of reasons. As a result of legislative devolution, there is likely to be a substantial cut in the number of Scottish MPs at Westminster on the basis that now Scotland has its own parliament the number of electors in Scottish constituencies should equal that of English seats (70,000). This will mean that the number of Scottish MPs will probably be cut from 72 to 57. That will potentially affect the number of MSPs at Holyrood, in part because the 'constituency' MSPs are based on the same localities as MPs at Westminster. In addition, if there were to be a reduction in constituency MSPs that could affect the number of 'list' MSPs on the basis that there should be a 56:73 ratio between the two under the terms of the *Scotland Act 1998*. It is therefore conceivable that the number of MSPs at Holyrood could be cut from 129 to 102, and legally there may be little that MSPs can do about it. Although the Commission will 'lay' its recommendations before the Scottish Parliament, the decision resides with the Secretary of State for Scotland in the first instance and ultimately with both Houses of the Westminster parliament. An additional complication, is that the list seats for MSPs were based on the original European Parliamentary constituencies, under the *European Parliamentary Constituencies (Scotland) Order 1996*, but this Act is no longer in force for European Parliamentary Elections<sup>xx</sup>. The waters are further muddied by the reform of local government in Scotland in 1996 – which may well have an impact on the boundaries of parliamentary constituencies at both Westminster and Holyrood. It will be interesting to see how this unfolds in the years ahead.

In the meantime, there have been hints that if MSPs involve themselves in reserved matters, 'Westminster' might be more amenable to a cut in their number. *The Herald* reported:

“Government sources warned last night that if Holyrood continued to debate reserved issues, the number of MSPs was more likely to be cut. The caution came as Labour front bencher Lord McIntosh of Haringay

yesterday indicated that the government remained 'open minded' about the knock on effects of the planned boundary changes in Scotland. But insiders cautioned that the government was less inclined to take a sympathetic view of 'overworked' MSPs if they spent vast amounts of time debating issues reserved to the Westminster parliament. 'Although the Scottish Parliament is perfectly entitled to debate reserved matters and Westminster devolved matters, the fact is, MPs have never debated devolved issues while Holyrood has so far held 16 debates on reserved matters ranging from defence to the post office, to immigration and asylum, and fuel duty,' the source said. 'And tomorrow they are due to debate the new opportunities fund. One of the main reason [sic] for them retaining the current number of MSPs is because they are so overworked. This won't carry much weight if MSPs insist on spending their time debating matters reserved to Westminster.' " <sup>xxi</sup>

Although in this instance foreign affairs was not mentioned by 'Government sources/insiders', and the news report related primarily to debates by MSPs, it could also be also viewed as a shot across the Executive's bows – it should consider the consequences before 'straying' onto Westminster's turf.

### **5.3 Post Election Consequences**

Following the defeat of the Conservatives at the Westminster election and the resignation of William Hague as leader, the two contenders, Ian Duncan Smith and Kenneth Clarke each visited Scotland and stressed their support for Scottish legislative devolution. In an interview with Jason Allardyce in *Scotland on Sunday* Kenneth Clarke intimated that devolution was a process and that he 'did not rule out changes to the Scotland Act to transfer some areas of responsibility from London to Edinburgh'. That prompted Allardyce to observe that 'Clarke's line leaves Labour facing the prospect of being the only Scottish party not seeking more powers for Holyrood'<sup>xxii</sup>. How far Clarke is genuinely committed to this remains to be seen and he may not secure the leadership, whilst for their part the Conservatives have a long slog to regain power at Westminster. Even so, it is ironic that Labour, which was the 'midwife' of the Scottish parliament now appears alarmed about Holyrood's tentative steps towards more autonomy, whereas senior figures within the Conservative party (a party which opposed the Parliament's formation prior to 1997), seem to be amenable to further constitutional change.

## **6. Scotland – EU Relations**

### **Alex Wright**

#### **6.1 Executive/COSLA joint submission to the European Commission**

On May 9 2001 ('Europe Day') the Parliament debated the European Union's (EU) impact on Scotland. Jack McConnell, the minister for education, Europe and external affairs, began by stressing the advantages of European integration and the potential benefits of enlargement. He observed subsequently that:

“Although enlargement will help the European Union to compete with the superpowers, it must not create a superstate. Increasing the involvement of regions and nations inside member states will be a key foundation on which to build a people's Europe. We must ensure that our citizens can participate more effectively in the European decision-making process.”

He then turned to what was to become a focal point of the ensuing debate – a joint submission to the European Commission by the Scottish Executive and the Convention of Scottish Local Authorities (COSLA), during March 2001. This was in response to the Commission's forthcoming White Paper on the future governance of the EU. McConnell commented:

“For that reason, we welcome the review of the governance arrangements that is currently underway within the European Commission. In March, I attended a hearing of the Commission's team on governance and submitted a joint discussion paper that was produced by the Executive in collaboration with the Convention of Scottish Local Authorities. I am pleased that we were able to develop a joint position that reflected our views.”<sup>xxiii</sup>

The paper was controversial because it apparently advocated a more direct relationship between Scotland and the EU but how this was to be realised was rather more ambiguous. On the one hand the Executive and COSLA were calling for a greater involvement in EU decision making. For example principles two, three and four stated:

- We need to find ways of better engaging regional and local organisations in the EU decision-making process
- It is particularly important to involve regional and local levels of government because they are democratically elected and implement much EU legislation. We think it is essential that the EU Governance debate addresses

the potential for giving a greater role to Scotland and the other regions with legislative powers.

- Decisions should be taken at the lowest level (i.e. closest to the citizen) consistent with effectiveness (the subsidiarity principle). This becomes all the more important with enlargement.

The inference from this is that the authors were calling for the EU to ensure that decision making was devolved to the lowest level of authority where appropriate, not least because it was the EU itself which had instigated the governance debate in the first place and the paper was consequently directed at the European Commission. But the fourth principle explicitly affirmed that it should rest with the Member State to determine 'the internal allocation of competencies':

- The EU institutions must respect the Member State's role in deciding the internal allocation of competencies between it and sub-national authorities.<sup>xxiv</sup>

### **6.2 Constitutional Regions Political Declaration**

This is rather contradictory, as on the one hand the submission invokes the principle of subsidiarity and on the other it states that the Member State should decide how this should apply in practice. One conclusion, therefore, is that although this submission may have been presented formally to the European Commission the underlying message concerning 'greater involvement' was subliminally directed at the UK government. However, the Executive/COSLA paper was rather overshadowed by the First Ministers' involvement in the political declaration by the constitutional regions of Bavaria, Westphalia, Salzburg, Scotland, Wallonia and Flanders on May 28 2001. This is something of an ad hoc group of territorial governments each of whom have their own legislative assemblies who share the concern about their lack of influence over the EU and its policies. The origins of this network can be traced to September 2000 when its constituent members hoped to have some effect on the IGC at Nice the following December. Although Wales 'assisted as an observer' at the September meeting there was no sign of Scottish involvement whatsoever, but by February Scottish academics did participate in a colloquium of the Constitutional Regions (entitled 'Reinforcing the role of the constitutional regions in Europe'). Under the chairmanship of the Flemish minister-president the colloquium was intended to act as a think tank regarding institutional reform and the role of the constitutional regions in the EU's policy processes. Its conclusions included the following:

- In itself, strengthening the Committee of the Regions is a commendable development, but for the constitutional regions, it would only amount to

slight progress. After all, despite the diverse composition of the Committee, the collective representatives of the constitutional regions form only a small minority. Therefore it is to be expected that the constitutional regions will have to look for alternatives to promote their interests in Europe. Without working them out in detail, a number of such lines of thought were put forward during the colloquium. First, the subdivision of the Committee of the Regions into a chamber for regional and a chamber for local administrations. Next, the establishment of a second chamber within or side-by-side with the existing European Parliament, in which the Member States and the constitutional regions would be represented. Finally, the creation of a Regional Affairs Council which could examine whether the various specialised councils have sufficiently respected the principle of subsidiarity.

- The direct access of the constitutional regions to the Court of Justice is not only highly desirable, but also within reach. On the one hand, the proposal had already been (unsuccessfully) tabled in Nice, and was therefore taken into the post-Nice era. On the other hand, it was suggested that the constitutional regions might even be able to acquire this right without changing the treaty. <sup>xxv</sup>

Three months later Mr McLeish signed a political declaration, along with the other constitutional regions (by this time Wales appeared to be no longer involved). In the event the declaration reflected the tenor of what had been suggested at the colloquium. It identified the following as 'areas of interest':

- The constitutional regions have a specific interest with regard to the debate on the future of the European Union. Firstly, the competencies of the constitutional regions are affected by the integration process. And secondly, the regions have an important role in implementing European legislation, but do not have a sufficient say in preparing and determining European policies and legislation. Therefore, the constitutional regions demand to participate directly in the preparatory work for the Intergovernmental Conference of 2004.
- The constitutional regions want a broader discussion than the themes listed by the Intergovernmental Conference of Nice and urge that *'the role and setting of the regions in the European policy-making process and the institutional framework'* will be added as a theme to be debated.
- The principle of subsidiarity has to be taken as the basis for the debate on the European Union's key tasks, a debate that has to result in an effective European Union that shall only take action if and insofar as the objectives

of the proposed action cannot be sufficiently achieved on the regional and national level.

- The European Union's missions need to be carefully considered and, in keeping with the principle of subsidiarity, redefined by a clearer allocation of powers, so these can be more effectively distinguished from those of the Member States and their regions. In this respect the constitutional regions favour a flexible solution which would not hinder the European integration process.
- In order to ensure due compliance with the principle of subsidiarity and therefore guarantee full respect for the constitutional regions' own areas of competence, the political role of these regions has to be strengthened within the European Union.

Potentially the most controversial demand related to the European Court of Justice (ECJ) where the signatories demanded:

- The right for the constitutional regions, as exists for the Member States, to refer directly to the European Court of Justice when their prerogatives are harmed. Within the legislative framework, the main aim is to boost the contribution of the constitutional regions in the Council. This request is in the first directed towards the national policy level. The Member States should be required to take into account the views of their constitutional regions about matters that fall within the latter's policy areas. The European Union has to give way to the involvement of the constitutional regions in the decision-making process as has already been done through article 203 EC Treaty.<sup>xxvi</sup>

This raises all sorts of possibilities. For instance, would it result in the UK government being brought before the ECJ by the Scottish Executive for infringing subsidiarity? (in much the same way hitherto that individuals and organisations have sought redress at the European Court of Human Rights before the European Convention was incorporated into UK and Scottish legislation). Given the parties currently in office in Edinburgh and London that is unlikely for the time being, but one day that could change. In so doing would such a scenario affect the competence of the Judicial Committee of the Privy Council which up until now is supposed to act as a kind of quasi constitutional court if needs be? Transcending that though is the shift in emphasis on the joint Executive/COSLA submission in March 2001 and the Declaration the following May. Whilst the former confirmed that it rested with the member state to delineate competence between the state and territorial levels of authority, the latter indicated that this

was much more ephemeral and might ultimately rest with the ECJ vis-à-vis EU matters.

On July 25<sup>th</sup> the European Commission published its White Paper on Governance in the EU. Its 'action points' included the following:

“The Commission will: Establish from 2002 onwards a more systematic dialogue with European and national associations of regional and local government at an early stage of policy shaping.

“The member States should: Examine how to improve the involvement of local and regional actors in EU policy making.<sup>xxvii</sup>

The consultation process continues until March 31 2002 with the Commission drafting a further report by the end of that year. In the light of Mr McLeish's support for the declaration by the Constitutional Regions it remains to be seen how the Scottish Executive will respond to this and what the possible ramifications might be for Scottish-UK relations.

## **7. Relations with Local Government**

### **Neil McGarvey**

As previewed in last quarter's report, three key documents relating to Scottish local government have been published – the Partnership Framework between the Executive and local government, COSLA's internal review and the report of the Leadership Advisory Panel into Scottish Local Government's Self-Review of its Political Management Structures. Most of this quarter's review is dedicated to reviewing the publication of these documents.

#### **7.1. Executive-Local Government Partnership Framework**

In May the Executive Minister for Finance and Local Government, Angus MacKay, signed a Partnership Framework with COSLA. The Framework document outlines the basis upon which the Executive and Local Government will seek to work in partnership in their shared responsibility of serving the people of Scotland. Mackay speaking at the signing ceremony in Edinburgh City Chambers said:

"Signing this framework today with COSLA's President, Norman Murray, is a clear indication of the importance the Executive places on working constructively with Local Government. It is important that we consult with each other and communicate effectively wherever possible so that we can all deliver the levels of service that Scotland deserves"

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COSLA also welcomed the introduction of the Partnership Framework. Its President Norman Murray commented:

"Partnership working between the two democratically elected levels of government in Scotland is essential and can only be achieved through parity of esteem, which this framework clearly defines. To work constructively together, we must operate in a climate of openness, transparency and trust and I believe the Framework will help us achieve that in order to deliver the highest quality possible services to our communities." xxix

This is the first time there has been a clear written protocol between the two levels of government in Scotland. At a symbolic level this is important in demonstrating commitment to shared working. It follows the McIntosh Commission recommendation that a formal working agreement should be established between local government and the Scottish Executive to supersede the informal Framework for Partnership working document which was put in place after the 1997 General Election.

The Partnership Framework emphasises mutual respect as the foundation of the relationship between the Executive and local councils, recognising that each other's roles and functions are both distinct and complementary. Operationally

this respect should manifest itself in engagement, consultation, public announcements, and the exchange of information and ongoing meetings between the Executive and COSLA/Local councils. This would involve the establishment of such institutional devices as the Leadership Advisory Forum. From within local government circles the framework is viewed as a useful device. It will remind the Executive's civil servants and ministers of protocol and the requirement for consultation and joint working in a wide range of policies.

## **7.2. COSLA Internal Review**

Following the withdrawal of three councils from COSLA (see previous quarterly reports) it instigated an internal review of its operations in order that it may deliver a better service to its members. The outcome of the review is a recommendation that COSLA streamline its operation and deliver 'core' services to its members. A list of 30 recommendations is designed to ensure COSLA remains financially stable, has a long-term future and a more focused approach to its work.

The review was informed by a survey of members. The survey revealed high satisfactions levels (75%) with its work on finance and the value for money of its service. Most councils recognised the need for councils to work together at a national level, although some noted the need for COSLA to retain some distance from the Executive if it was to fulfil its role effectively.

It is rather ironic that post-devolution when there is a constant flow of consultation documents from the Executive and numerous Parliamentary committees seeking expert evidence Scotland's only umbrella group for local authorities is contracting. COSLA is required to act almost daily to new policy announcements and press releases. However, COSLA is merely facing the same financial pressures most of its members have faced. After several months when the longer term looked very bleak for the organisation it would be fair to say its future now looks assured. The three 'renegade' councils (Glasgow, Falkirk and Clackmannanshire) were reported to be re-considering their position after the internal review was published.

## **7.3. Report of the Leadership Advisory Panel (MacNish Report)<sup>xxx</sup>**

The long awaited Leadership Advisory Panel Report was finally published this quarter. More commonly referred to as the MacNish Report (reflecting the name of the panel's chairman) the report outlines the progress of Scotland's 32 councils in their self reviews of political management arrangements. It was set up in August 1999 in line with the recommendations of the Commission of Local Government and the Scottish Parliament (the McIntosh Report).

The remit given to the Leadership Advisory Panel was

“To advise councils on the review of their decision making and policy development processes and working practices which support those processes. In addition, the Panel will provide advice to Ministers on the outcome of the review which councils undertake.”

The picture presented in the Report is one,

“ ... of progress being made across the country, and a rich diversity of models that reflects the degree to which councils have thought carefully about developing structures suited to their particular needs. The process has shown that councils are not just receptive to the theory of modernisation but are actively pursuing real improvements” (p.4).

The panel based their judgement of councils' change plans against the following criteria:

- Council business should be managed in such a way that policy proposals and matters for decision by the Council are subject to open debate.
- The Council must be able to effectively scrutinise the actions of the leadership or Executive and hold it to account for its performance.
- The work of the Council should take place, as far as possible, in public and free from unnecessary constraints imposed by the use of the party whip.
- Council business should be organised in such a way which allows as wide a cross-section of the community as possible to realistically consider becoming a councillor

The approach in Scotland is different from that south of the border. In England and Wales a statutory approach was taken to prescribe a menu of options. The Local Government Act 2000 requires most local authorities in England and Wales to choose one of three 'modernising' options: elected mayor and cabinet/executive; an appointed leader and executive; or an elected mayor and council manager. In Scotland there was less prescription, although the McIntosh Report did recommend “councils should give particular consideration to formalising the political leadership as an executive, but should also be able to consider other options” (p.6). MacNish categorises the new structures in Scottish local councils as fitting into one of three general categories:

- Streamlined committee structures (n=23);

- Executives (n=6);
- Devolved and partially devolved structures (n = 3).

In great detail it then outlines each of Scotland's 32 council approaches. Given the McIntosh recommendation it is perhaps surprising that so few councils have gone down the 'executive model' route. The majority of these councils opting for the executive model are in the East (Edinburgh, Midlothian, East Lothian and Scottish Borders) with a couple of Glasgow suburban authorities (East Renfrewshire and West Dunbartonshire). All of these councils received very positive commentary in the report. There is little in the way of general criticism of local councils. Where criticism does exist it is towards councils that have not followed the modernising programme. The less favourable commentary was reserved for councils which adopted a more conservative approach to change (e.g. Angus, Dundee, East Ayrshire, Glasgow and Inverclyde).

Evolution rather than revolution would be a fair summary of the vast majority of the approaches adopted by the councils. The MacNish Report emphasises the need for councils to embrace a commitment to continuous improvement (a key aspect of best value) with ongoing self-review and evaluation of processes leading to continuous development and refinement.

#### **7.4. Local Government Ombudsman <sup>xxxi</sup>**

Also launched in this quarter was a Consultation paper on proposals for reform of the public sector ombudsmen system in Scotland. The key proposal in the paper is to establish a one-stop shop combining the offices of the Scottish Parliamentary, Health Service, Local Government and Housing Association Ombudsmen. The consultation process is part of the process of fulfilling section 91 of the Scotland Act 1998. Section 91 requires the Scottish Parliament to make provision for the investigation of certain complaints of maladministration made to its members. As well as amalgamation the paper invites views on other matters for reform of the role of ombudsman such as their remit, investigation procedure, reporting arrangements, enforcement powers and procedures for appointment (for more details see 11.2 Devolved governance: ombudsmen and quangos).

## **8. Finance**

### **David Bell**

#### **8.1 The Budgetary Process**

If devolution is to be effective in the sense of increasing local control over the deployment of public resources, the Parliament must be able to understand and influence the budget process. During the last quarter, attention has focussed on this process and the extent to which transparency and accountability have increased following devolution.

In some ways, the presentation of the budget has changed radically. Executive ministers now regularly meet with the Finance Committee to discuss budgetary issues, rather than civil servants making a brief annual appearance before the Scottish Affairs Select Committee in the House of Commons. Yet there is a strong view within Parliament that further reform of the budgetary process is necessary in order to allow more effective scrutiny of the activities that it funds.

In the debate on the budget process 2002-2003, Mike Watson, chair of the Finance Committee argued that the committees shadowing the local government and health and community care departments, whose budgets jointly amount to more than £13bn, are unable to properly scrutinise spending in these departments because a high proportion of their services are delivered locally. To exemplify this issue, Dr Simpson, a member of the Health and Community Care Committee, reported that out of the health budget of £5bn, the committee was only able to identify £1m for cancer services - one of the three national health priorities. The Scottish Parliament is thus beginning to confront a problem with which the Westminster Parliament is very familiar - that of reconciling local discretion with national priorities. The Parliament is likely to increasingly insist on standardised reporting of resource allocation by local authorities and health boards. Until this is available it will continue to be frustrated in its attempts to influence policy.

In contrast to the impotence of the Parliamentary committees, the Executive has increasingly used ring-fencing as a lever to ensure delivery of specific policy initiatives at a local level. This has been an increasing source of frustration for local government. Representatives of the Convention of Scottish Local Authorities stated in evidence to the Local Government Committee: "virtually every penny of additional resources that has been made available for the next three years is directed centrally by the Executive. That puts considerable pressure on local authorities to deliver on their core services."<sup>xxxii</sup>

Both the Executive and the Parliament have designs on local policy delivery. So far the Parliament's efforts at influence have been frustrated by lack of adequate financial information. Once the Parliament has mechanisms in place to deliver greater financial transparency, the frustration felt by local government is likely to increase as it tries to deliver on the initiatives of both the Executive and the Parliament, while still trying to maintain some local policy discretion. The outcome will almost certainly be further erosion of the powers of local government. Whether or not the weakening of local government is an intended consequence of devolution, the balance of power between the centre and the local authorities is surely worthy of some wider debate than has taken place up to now.

However, the concerns of the committees go beyond the issues raised by local discretion: they extend to the budget the process itself. In its report, the Health and Community Care Committee commented that it "believes the targets set in The Scottish Budget to be wholly inadequate for the purposes of guiding or judging performance". This is fairly blunt criticism.

In response, Mike Watson, chair of the Finance Committee commented that, "If such criticisms had been repeated or mirrored in comments from other committees, the effectiveness of the budget process would be called into question. It is essential that committees be presented with the necessary information in the annual expenditure report in the appropriate format. It is not acceptable that committees should require clarification of inaccurate or incomplete information or that committees should be denied that information within the time scale set out for them to complete their stage 1 reports to the Finance Committee." <sup>xxxiii</sup> This again is blunt criticism of the current budgetary process.

One response from the Executive has been the introduction of real as well as cash measures and a more detailed breakdown of the annually managed expenditure (AME) element of the budget. The Executive also intends to introduce "outcome-based" budgets in the future to provide more evidence on the real effects of its policies. Though desirable, this is an extremely complex and data-intensive process. It will be some time before the Finance Committee will be able to take advantage of such information.

A much more straightforward issue that causes difficulties both for MSPs and for outside commentators is that of comparability in spending plans between financial years. For example, though comparisons between Making a Difference for Scotland - Spending Plans for Scotland 2001-02<sup>xxxiv</sup> and The Scottish Budget 2002-2003<sup>xxxv</sup> are possible at level 1 (aggregate departmental expenditures), only around half of the more detailed level 2 spending categories are common

between the two years. This may be the result of the Executive increasing the level of detail in the later publication, but of course is frustrating for those who wish to comment in detail on patterns of change in the budget.

A further source of confusion for the Parliament has been the role of reserves. The devolved Parliament and Assemblies have no borrowing powers, but the Treasury has been keen to encourage them to create their own reserves to cover unforeseen events. The Executive has formed such a reserve based on departmental underspends. It has enabled the Executive, for example, to meet the increased cost of Holyrood without raiding departmental budgets. However, the reserve, which currently stands at £134m, is ultimately derived from the Barnett-determined grant from the Treasury and will be increasingly difficult to maintain as the "Barnett-squeeze" takes effect.

The Parliament also has access to the UK reserve for "exceptional and unforeseen circumstances" that are of "UK significance". Such circumstances seem to include foot and mouth disease: the Treasury reserve is funding the costs of rates relief to businesses in foot and mouth affected areas including Scotland. There are thus two reserves available to the Scottish Parliament - one to meet Scottish contingencies, the other, by implication, to meet events that affect other parts of the UK as well as Scotland. How easy it will be to unambiguously define this latter category remains to be seen.

Further adding to the complication of the reserves issue is the treatment of Annually Managed Expenditure (AME) - that component of the Scottish budget that is "demand-led" and therefore difficult to predict from year to year. The Treasury makes a grant to the Executive to meet AME based on estimates of Scottish requirements. If this grant is underspent, the balance is returned to the Treasury. This is not an example of the Treasury raiding the Scottish budget. Rather it is the result of inaccuracy in predicting Scotland's requirements for AME, though commentators might wish to read something more Machiavellian into financial flows from the Executive to the Treasury.

## **9. Devolution disputes and litigation**

**Barry K Winetrobe**

### **9.1 Mental Health Act challenge**

July saw the first serious legal challenge to an Act of the Scottish Parliament before the Judicial Committee of the Privy Council, a potentially defining moment in the devolution 'settlement'.<sup>xxxvi</sup>

The first statute enacted by the Parliament was the *Mental Health (Public Safety and Appeals) (Scotland) Act 1999*.<sup>xxxvii</sup> Ironically this was rushed through under the 'emergency bill' provisions of Standing Orders, as a reaction to an immediate situation, rather than by way of the more detailed and substantive pre-legislative scrutiny and legislative process which had been devised. As required by the *Scotland Act* itself, the Bill as introduced was accompanied by statements from the Presiding Officer and from the Executive that it was within the Parliament's legislative competence. To be so, a Bill must not be incompatible with European Court of Human Rights (ECHR).<sup>xxxviii</sup> There was some discussion, both during and outwith the expedited parliamentary proceedings on the Bill, about the Bill's compatibility with European Convention provisions, including those which had apparent retrospective effect.

Three restricted patients from the State Hospital, who saw themselves in a similar position as Noel Ruddle (the patient whose release had precipitated the legislative rush) challenged the provisions of the new Act in the Scottish courts. They were ultimately unsuccessful in the Inner House of the Court of Session in June 2000, where the Lord President and two other senior judges rejected this first direct attack on a statute of the Parliament.<sup>xxxix</sup> They decided that the provisions of the Act, including those with apparently retrospective effect, did not breach the right to liberty and security under Article 5 of restricted patients. The judges were aware of the novelty and wider importance of their decision. One, Lady Cosgrove, described it as "a significant milestone in the development of Scots law: for the first time in its history the Court of Session is asked to strike down the Act of a legislature, the power to do so having been conferred on it by section 29(1) of the Scotland Act."

The matter was taken on appeal to the Judicial Committee of the Privy Council, the highest court of appeal on 'devolution issues', and was heard over three days in mid-July. Judgment is not expected until October at the earliest. When it is delivered, it could be a landmark judgement in terms of the future of the devolution scheme, as important to the legislative competence of the Parliament,

as was the case against Mike Watson's efforts to promote his anti-hunting Member's Bill in terms of the internal autonomy of the Parliament.<sup>xi</sup>

## **9.2 Job-share MSPs**

The Queen's Speech on 20 June had promised that legislation would be prepared by the UK Government "to allow political parties to make positive moves to increase the representation of women in public life." It was reported in the press in late July that progress towards introduction and enactment of a *Women's Representation Bill* might be made more complex by a legal challenge originating at the time of the first Scottish Parliament elections.<sup>xli</sup> This involved an attempt by prospective candidates from the Highlands and Islands Alliance, including Lorraine Mann, to appear on the regional list ballot on a 'job-share' basis, and resulted in a claim to an employment tribunal. That claim was successful, but was overturned, primarily on procedural and jurisdictional grounds, by an Employment Appeal Tribunal (EAT) in late 2000.<sup>xlii</sup> Ms Mann is reported as having lodged a further challenge, to be heard in November, on the substantive issues of sex discrimination and breach of human rights in respect of *de facto* entry requirements for the 'job' of an MSP.

According to the press report, government sources are concerned that, if the proposed legislation seeks to permit positive action in favour of women in elections by way of a derogation from the Sex Discrimination Act, this could be taken as implicitly accepting that the office of an elected parliamentarian, such as an MP or MSP, is an occupation. This could strengthen Ms Mann's particular case against the Regional Returning Officer. Interestingly, the EAT's judgement stated that, "we have little hesitation in concluding that membership of the Scottish Parliament constitutes an "occupation" at least simply by reference to that particular word and its natural meaning."

Therefore any forthcoming legal proceedings on this matter may not only be relevant to the important issue of women's representation, but also to the very nature and status of an elected representative in the Scottish Parliament, and, possibly, in other parliaments and assemblies.

## **10. Political Parties**

### **Neil McGarvey**

In this quarter Scotland's political parties have all been focused on the UK General Election and its aftermath. We will therefore review each of the approaches of the parties to the election campaign, as well as events immediately succeeding it. Each of the main parties was 'finding its feet' in terms of how to approach the Westminster elections from a Scottish angle. The difference between the General Election campaign north and south of the border has become even more accentuated post-devolution. Devolution has created new inter and intra-party relations, different forms of electoral arithmetic as well as raising questions about how parties would conduct elections in the context of multi-level politics in the future.

The 2001 General Election is the first to be held in this context. It signals the end of dual mandate MSPs – of the thirteen remaining twelve resigned their Westminster seats, whilst former SNP leader resigned his Holyrood seat to remain as SNP leader in Westminster. Despite this changed context the party campaigning and results in Scotland was marked more by continuity than change. Tensions in party approaches to general elections were, however, clearly visible. This suggests that the 2001 General Election was transitional one. It will be a few years before the effects on party behaviour of devolution come to be fully explored.

Devolution complicates matters in that there is considerable media focus on the leaders of the parties in the Scottish Parliament. The focus of the electorate shifts between leaders in London and in Edinburgh and even the SNP now have both a London and Scottish party leader.

As ever, measurements of 'success' in an election need to be treated with care and in these elections we had the added complication of the elections to the Scottish Parliament two benchmarks - the 1997 general election and the 1999 Scottish Parliamentary elections. Other measures of 'success' were the expectations of the parties and commentators.

### **10.1 Labour<sup>xliii</sup>**

As measured by the simple and ultimately the most important test, of comparing the parties in this election, Labour was the winner. It retained all of its seats. However, its share of the vote fell from 43.2 to 40.9 per cent. It also retained its seat in the StrathKelvin and Bearsden Scottish Parliament by-election.

The main theme of Labour's campaign in Scotland was 'partnership'. Though First minister Henry McLeish was kept well away from the media (Wendy

Alexander was the key figure in running the Scottish campaign), he was frequently referred to as part of the partnership with London. McLeish has gained notoriety for gaffes and Labour adopted a 'safety first' campaign, keeping the First Minister away from the camera.

This strategy proved sensible given that a day after the election McLeish was caught on tape denouncing John Reid, former Scottish Secretary, as a 'patronising bastard' and Brian Wilson, former Scottish Office Minister of State, as a 'liability'. The partnership between London and Edinburgh had not been as smooth as Labour succeeded in projecting it but this conversation picked up by a radio journalist came after the election was safely over.

Another theme of Labour's Scottish strategy was to stress that it was a two-horse race between Labour and the Conservatives. At first sight this might have seemed odd given that the Conservatives had no seats in Scotland before dissolution and that the main threat to Labour comes from the SNP. However, the intention was to remove the Nationalist threat by simply ignoring it. One consequence was that it would involve 'talking up' the Conservatives as a threat and thereby potentially aiding that party in its efforts to win back seats. In the event, the strategy appears to have worked without the cost of aiding the Tories to any great extent. Indeed, from Labour's perspective, the Tory victory in Galloway at the expense of the SNP was a good result as became clear in Labour's post-election comments.

Post-election First Minister, Henry McLeish, is bracing himself for a rough ride. During the election the Scottish cabinet put on the required united front, however, there remains much internal criticism. McLeish has said he is "committed to delivering the principles of the Sutherland Report" and set a £100 million-a-year price limit on Free Care for the elderly and staked his political future on implementing the Sutherland Report. At this price limit there is little room for manoeuvre.

## ***10.2 SNP<sup>xliv</sup>***

The SNP strategy was first to find some means of entering the race and laying down markers for the Scottish Parliamentary elections in 2003. It was also keen to raise the public profile of its leader, John Swinney - he was pictured on the front cover of the party's manifesto and led the campaign. The irony of this of course is that Swinney was standing down from the Commons.

Swinney adopted a more cautious campaign than that adopted by the SNP leadership in recent times. In recent elections Alex Salmond has sought to 'talk up' its support in the hope of gaining media exposure and thereby increasing its

vote. The most infamous slogan was that of 'Scotland Free by '93' prior to the 1992 General Election. The cost of doing this had often been disillusionment when the party had failed to make anything like the breakthrough promised.

The SNP strategy in 2001 appears to have been to play down expectations - the message from the party was that it would be content to hold its existing seats. It nearly did. It only lost Galloway and Upper Nithsdale by 74 votes (to the Conservatives) despite its overall Scottish vote falling by 2.0 per cent. It retained Salmond's Banff and Buchan Scottish Parliament seat in a by-election.

The Scottish media hostility shown to the Nationalists did not reach the levels of the 1999 Scottish election. The media overwhelmingly accepted the argument that the SNP would struggle to be relevant post-devolution in a general election. The common view as articulated in the Scottish media was the SNP would not only have difficulty in building on its 1999 performance but that the party would struggle to retain its 1997 level of support. Overall, although losing a seat and 2% points off its 1997 General Election vote, when you consider that all its candidates (bar Salmond) were novices and the issue of fiscal autonomy was placed firmly on the political agenda, it was a reasonable election for the SNP.

Voting for the SNP to ensure that Scotland's interests at Westminster were protected became a theme in this election. The SNP successfully put the issue of fiscal autonomy on the campaign agenda. However, the issue is linked as it is with the complex and disputed Barnett formula which is highly technical and unlikely to attract significant public attention. The SNP had difficulty of translating a technically complex matter into a popular vote winner. However, by placing the issue on the agenda it did present the other parties with tricky territorial management issues - each has elements within their party who are arguing for a review of the territorial distribution of public spending.

Post election there was a re-shuffle the main move being Andrew Wilson's 'demotion' from the Finance portfolio to Economy and Transport. His internal critics blame him for boring electors about the Barnett formula during the campaign. However, his friends say Fiona Hyslop weakened the message with her social justice 'how we would run Holyrood better' message. This could be the first sign of a new SNP split replacing the traditional gradualism and fundamentalism one. One side (which includes Wilson) sees fiscal autonomy as the main target - a new stepping stone between the status quo and independence. The other (which includes Hyslop) thinks the SNP should seek a new position in the status quo, and concentrate on governing Scotland as part of the UK then take it from there.

### ***10.3 Liberal Democrats<sup>xliv</sup>***

For the Liberal Democrats it was not a bad General Election. The Liberal Democrats held onto each of its Scottish seats and saw its share of the vote rise by 3.4 per cent to 16.4 per cent. Alone of Scotland's four main parties, the Liberal Democrats saw a rise in the actual number of votes cast for it despite the drop in turnout. The party had not expected to make any gains and polls suggested that its share of the vote would likely be under 10 per cent. Measured against expectations, especially set by the polls, and against its 1997 general election performance, the Scottish Liberal Democrats came out on top.

They are now ranked third, ahead of the Tories, for the first time ever in a Scottish general election. Had they done worse then it is likely that there would have been a post-mortem on whether being in coalition was doing their reputation harm. The respectable performance may give Jim Wallace heart to take Labour to task on PR for local government. There is conjecture that Wallace is preparing to break the coalition months before the 2003 Holyrood election as a gambit if McLeish does not deliver on PR for the council elections.

For the Liberal Democrats, the central aim had been to convince voters that they were relevant. Liberal Democrats emphasised their part in the coalition. Liberal Democrats in both Scotland and the UK have long based their appeal on being strong representatives for their constituencies. With coalition politics they are now able to add real influence to their appeal and this was done, with remarkably few challenges in Scotland. They made much of their involvement in the Scottish coalition, claiming policies as their own and exaggerating their impact. Scottish university tuition fees were 'abolished' when payment of fees had really only been postponed until after a student graduated. As coalition partners, Labour and its supporters in the media found it difficult to challenge the Liberal Democrats. The SNP and Conservatives targeted Labour rather than its coalition partner. The Liberal Democrats were in the unusual position of being able to make the running almost unchallenged. As a Scottish MP, Charles Kennedy had fewer problems than either William Hague or Tony Blair in projecting himself as in touch with his Scottish colleagues. If at times Jim Wallace, Scottish Liberal Democrat leader irritated opponents with pompous references to his position as Deputy First Minister it succeeded in creating an impression that the Liberal Democrats were serious players in Scottish politics.

### ***10.4 Conservatives<sup>xlvi</sup>***

The Tories played down expectations that they would make many gains in the election. In common with the pundits, the Tories were unclear as to which seats they were most likely to gain. There was little talk of winning back Galloway and Upper Nithsdale and the result was reminiscent of Ian Lang's 1992 victory when the Scottish Secretary appeared amazed that he had held on to Galloway for the Tories. While the Scottish Conservatives have come to terms with devolution, in some respects better than any of the other parties, this cannot be said for the party at the UK level. The perception that the Conservatives are an English party with little sympathy or understanding of Scotland was not altered under William Hague's leadership. The UK manifesto commitment to stop Scottish MPs voting on exclusively English matters may have been seen as a reasonable response in England but confirmed a long standing impression in Scotland that the Tories had not changed. However much comfort the Conservatives took from regaining one seat (now its most marginal in Britain) this was a very poor election for a party that has now sunk to fourth place for the first time both in terms of votes and seats.

Post-election, the consensus in the media appears to be that most Scots Tories are backing Clarke in the leadership contest. It is not difficult to understand this position. Since devolution the party has sought to re-brand itself with the Scottish electorate by attempting to move closer to the centre ground. Duncan Smith, as well as being a noted right winger, is famous for being the only shadow cabinet member to demand the repeal of devolution and has been known to question the amount of public expenditure in Scotland. Having said this he can count on the support of the only Scottish Conservative MP, Peter Duncan. Malcolm Rifkind, the Scottish Conservative President, is backing Kenneth Clarke and if he wins, the anticipation is he will remain as President. Raymond Robertson is resigning as Chairman (after failing to regain the Westminster Eastwood seat). Talk of a breakaway Tory MSP movement has been notable for its absence.

### **10.5 Scottish Socialist Party<sup>xlvii</sup>**

The Scottish Socialist Party set itself an ambitious target of 100,000 votes at the beginning of the campaign. It achieved just under three-quarters of that figure, which given the low turnout is a respectable figure for a party still in its infancy. From the SSP's perspective the campaign was useful in raising its profile with the wider electorate and reinforcing its support amongst its core voters.

## **11. Public policies**

**Barry K Winetrobe**

### **11.1 Policy development**

Despite the hiatus caused by the UK general election, and the rather confusing discussion of devolved and non-devolved policy issues, the past few months have seen the continuation of clear trends in Scottish public policy. In particular, the translation of domestic Scottish administration from the era of the Scottish Office to that of the Scottish Executive has brought to the forefront those areas of public policy that may not previously have enjoyed such prominence. These included issues in the broad area of culture and leisure, albeit those with economic overtones, including the future of the Scottish film industry, efforts at winning prestigious sporting events such as the Ryder Cup golf and the European football championships, and the ongoing traumas of the tourist industry. These took place at a time of further bad news on the employment front, both in the old industries, such as shipbuilding, as well as the new industries such as electronics. In addition ministers continued to grapple with ongoing crises, such as the impact of foot and mouth disease on agriculture and the wider rural economy, and the latest instalment in the administration of Scotland's school examinations.

An interesting effect of devolution on policy is where policy development on a particular matter would probably have taken place under pre-devolution arrangements, but which has been subject to far greater and more transparent public and parliamentary scrutiny because of the arrival of the devolved Parliament and the Executive. This is of particular interest in cases where it may be surmised that this enhanced policy process has led to substantively different outcomes from what may have emerged through the old Scottish Office and UK Parliament arrangements. An example of this which reached fruition towards the end of the past quarter was the planning treatment of telecommunications developments, especially mobile phone masts.

Scottish Office policy prior to devolution was to tighten up the existing planning regime along lines which were introduced south of the border in 1999. However, these proposals had not been implemented by the time devolution was introduced. When the Executive indicated that they would adopt and give effect to these proposals, the Parliament's Transport and the Environment Committee announced an inquiry in September 1999, in response, in part to health concerns about the siting of such masts. It reported in March 2000, recommending the imposition of full planning control on such developments, a tighter regime than

was hitherto proposed by ministers.<sup>xlvi</sup> This reported was debated and approved by the Parliament on 11 May 2000.<sup>xlix</sup>

The Executive went a long way to adopting the spirit and substance of the Parliament's wishes, in a consultation exercise launched last autumn.<sup>1</sup> This resulted in new planning regulations and guidance introduced in June/July 2001.<sup>li</sup> The robustness of this new planning regime will be demonstrated one way or the other over the coming months and years. Ministerial policy has clearly been substantially shifted by public concern, as channelled through the democratic medium of the Parliament, over health fears of mobile phone masts. The industry has, not surprisingly, expressed concerns about the economic impact of these tighter controls on future growth of new technologies in Scotland. Development of Scotland as a full and active player in the 'new IT economy' is a key policy of the Executive. The balancing of these considerations, with sustained public and parliamentary concerns on the health and environmental impact, is just the sort of executive decision-making that is now more in the public spotlight, thanks to devolution.

## **11.2 Devolved governance: ombudsmen and quangos**

The Executive has continued to redesign the shape of devolved governance, both in the core administration and in the wider public sector. This quarter has seen developments in two particular areas.

*Public sector ombudsmen:* On 11 July, the Executive published a further consultation document on the proposed reform of the public sector complaints system,<sup>1</sup> a follow-up to the consultation exercise begun the previous October.<sup>liii</sup> The aim, according to the Minister for Finance & Local Government, Angus MacKay, is to set up "a modern complaints system for the Scottish public sector which is open, accountable, easily accessible to everyone and has the trust of the Scottish public." This is to be achieved by creation of a 'one-stop shop', combining the existing public sector ombudsmen in devolved Scotland.<sup>liv</sup>

The Scotland Act had required the Parliament to legislate for an Ombudsman-type system to deal with complaints made to MSPs of maladministration by the Executive generally, and empowered it to provide such a scheme for other devolved public bodies.<sup>lv</sup> Interim provision had been made by an order under the Act for a Scottish parliamentary ombudsman scheme, paralleling the UK Parliamentary Commissioner for Administration arrangements.<sup>lvi</sup>

A major change proposed by the Executive is the removal of the 'MSP filter', which had required<sup>lvii</sup> all complaints under the interim scheme to be channelled

through an MSP. However the possibility that complaints need not be made only by the person directly aggrieved, but by any person aware of an alleged case of maladministration, has been dropped. The Executive will also not be pursuing the idea of the Ombudsman pursuing apparent cases on his or her own initiative, without need for receipt of a formal complaint.

The new office would be called something like *Complaints Scotland* or the *Scottish Public Complaints Office*, under a Scottish Public Sector Ombudsman. This officer would have up to 3 Deputies. Matters of appointment, removal, staffing, reporting and such are proposed to be much as under the interim scheme, through the Parliament itself and/or its Corporate Body, thereby retaining some parliamentary linkage, despite the removal of the MSP filter.<sup>lviii</sup>

Comments are invited on these revised proposals by 8 October 2001, to inform a proposed introduction “as soon as possible” of an Executive Bill to set up the new scheme.

*Non-departmental public bodies (NDPBs)*: Quango reform has been a policy objective of the McLeish administration, with revived talk of that old cliché of a ‘bonfire of the quangos’. The outcome of the Executive’s review was announced on 21 June by the Finance & Local Government Minister, Angus McKay.<sup>lix</sup> Naturally, Executive spin was focussed on the level of culling of existing NDPBs, with the abolition of a third of all quangos and the review of a further third with a presumption in favour of abolition.<sup>lx</sup> The fine print revealed that much of this apparent massacre was made up more by rationalisation and amalgamation of quangos, especially health bodies and water authorities,<sup>lxi</sup> rather than by outright abolition. More detailed proposals were made for the appointment, operation and accountability of the remaining quangos, which would be,<sup>lxii</sup>

- Fewer in number, and fit for purpose in 21<sup>st</sup> century Scotland;
- Doing a job that needs to be done – and can best be done by a public body;
- Clearly accountable to Ministers and to the people whom they serve;
- Effective, properly-run and delivering value for money
- Able to work in a joined-up way with other organisations
- Fully representative of the diversity of Scotland’s communities.

The minister set out in his statement the timetable for implementation of the review’s proposals:

“The review's recommendations are detailed and will require major and time-consuming administrative and legislative action. As members are aware, the Executive has a full legislative programme until May 2003. Unfortunately, there are substantial difficulties in finding time to implement our proposals, but the Executive has identified administrative action or legislation that will be completed by May 2003 for 46 of the 52 bodies that are to be abolished. That will abolish all but six of the bodies concerned. We wish to go further than that. We intend to introduce an omnibus bill in September 2002 to abolish the remaining six bodies. That means that all the bodies that we propose to abolish will be gone within the first Scottish Parliament. With further departmental scrutiny to come, the review could result in at least a halving of the number of quangos in Scotland.”

As may have been expected, several of the public bodies earmarked for definite or possible extinction began to fight back by justifying their existence. In addition, such an across-the-board administrative reform inevitably breaks down into the particular public policy areas where the various bodies operate, and so adds to the already active policy debate in areas as diverse as school examinations (SQA) to the film industry (Scottish Screen). While such debate is presumably part of the Executive's policy strategy, by encouraging threatened bodies to improve their efficiency and effectiveness, it also means that ministers risk that, if too many quangos are reprieved, they could be accused of turning their promised bonfire into little more than a damp squib.

### **11.3 Policy implementation: abolition of poindings and warrant sales**

One of the innovations of Scottish devolved governance was that the initiative on legislating on matters of public policy was not solely to be the preserve of the Executive. Whether or not the intention was that MSPs and committees would restrict their legislative ambitions to small, uncontroversial Bills,<sup>lxiii</sup> Tommy Sheridan took full advantage of the Member's Bill procedure to push through successfully, following a prolonged parliamentary struggle in the teeth of the Executive, a Bill to abolish poindings and warrant sales. The price that the Parliament accepted to enable enactment was delay in the implementation while “a workable and humane replacement” form of debt recovery was devised. This work was undertaken by a working group, set up by the Justice Minister, Jim Wallace in June 2000, comprising a broad range of members including ministers and MSPs, and chaired by the Finance and Local Government Minister, Angus MacKay.<sup>lxiv</sup> Its report was published in July, and its proposals have been made the subject of a consultation exercise.<sup>lxv</sup>

The report's proposals were for

- Nation-wide provision of user-friendly information and advice for debtors.
- Setting up a statutory debt arrangement scheme to help people pay debts in a managed way without the threat of enforcement action.
- Creating new incentives for debtors and creditors to reach negotiated settlements.
- Reforming the enforcement procedure to afford much greater protection to debtors in the event of legal action being necessary.
- Introducing new safeguards to ensure the enforcement action can only be taken against those who can, but refuse to, pay their debts.
- Assisting the debtor by providing opportunity for voluntary disclosure.
- A final sanction against those who can pay but unreasonably refuse to sell valuable non-essential goods to meet their responsibilities (compulsory sale order).
- Reforming the role and regulation of officers of court when carrying out enforcement action.
- A wide range of further specific actions aimed at improving the regulation of credit and debt collection, the way local authority taxes are collected and the way representation within the court system operates.
- And a fast-track process for compulsory sale in commercial cases (commercial attachment order).

The group summarised its approach as follows:

“We believe that the approach set out in our report is both forward-looking and fair. It places the emphasis on dialogue and negotiation, rather than legal action. It will protect the most vulnerable in our society, while ensuring that the legitimate interests of creditors, and indeed of society as a whole, are also adequately protected. If our recommendations are implemented, we believe that there can be a new beginning for debt management in Scotland for the 21<sup>st</sup> century.”

Sheridan himself has been reported as denouncing the proposals as “a fraud and a disgrace”, and as an attempt to retain the discredited system by the back door: “The word abolish is quite clear, but what we have got in the recommendations of the working group is the retention of poindings and warrant sales - yes they are more difficult to use - but they still are not what the parliament voted for.”<sup>lxvi</sup> The consultation period is due to end on 17 October, and any alternatives will

have to be enacted speedily to meet the statutory deadline of 31 December 2002, as agreed in the *Abolition of Poindings and Warrant Sales Act 2001*. Presumably the Executive hopes that the working group review and the current consultation exercise will produce enough of a consensus around an alternative debt recovery system, thereby avoiding any further parliamentary humiliation on this sensitive subject.

#### **11.4 Other policy consultations**

*Land reform:* This topic was discussed generally in the last quarterly report.<sup>lxvii</sup> Reaction has concentrated recently on the access provisions of the Executive's proposals, and the possible need to separate this topic from that of community land ownership. Supporters of radical reform in the latter area - including Calum MacDonald, a Labour MP and former Scottish Office minister involved in the early days of the land reform programme - have expressed concern that the access provisions, themselves diluted by too close a policy relationship between civil servants and landowners, are deflecting attention from the ownership aspects.<sup>lxviii</sup> On the other hand, landowners have warned of the potential economic impact of widespread access rights, and the media has focussed on the high-profile warnings of Peter de Savary, owner of Skibo Castle which was recently made famous by Madonna's wedding.<sup>lxix</sup> These various strands of the land reform agenda are complex and sensitive policy issues, where the Executive could well find it difficult to satisfy everyone.

*Other consultations:* Those launched by the Executive during the past three months include

- *The future for care homes in Scotland*, 4 May<sup>lxx</sup>
- *Loch Lomond and the Trossachs National Park: Consultation on draft Designation Order*, 12 June, by 21 September<sup>lxxi</sup>
- *School Education (Amendment) (Scotland) Bill [Draft]*, 5 July, by 17 September<sup>lxxii</sup>
- *Complaints against the police in Scotland*, 5 July, by 12 October<sup>lxxiii</sup>

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#### **ENDNOTES: The Executive**

<sup>i</sup> *2001 General Election guidance*, Cabinet Office, May 2001, section K, <http://www.cabinet-office.gov.uk/central/elect/index.htm>.

<sup>ii</sup> *Elections to the United Kingdom Parliament: guidance on conduct for Scottish Executive civil servants*, Scottish Executive, May 2001, [http://www.scotland.gov.uk/government/uk\\_elections\\_2001.pdf](http://www.scotland.gov.uk/government/uk_elections_2001.pdf).

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iii Some of the policy developments are considered in chapter 11 of this report, including two directly affecting the organisation and operation of the Executive itself, proposed restructuring of public sector complaints machinery and the reform of quangos.

iv When the Parliament did not sit, despite Thursday being its normal day for a full plenary session.

v The Opposition parties, being under no restriction, chose more politically high-profile subjects for their debates.

vi Other than in relation to the long-running debacle over the Holyrood Parliamentary Building Project, for which the Executive, and its predecessor Scottish Office, share in the public blame.

vii This will be convenient for UK ministers, if and when there is an economic downturn or other negative effects on Scotland of UK policy.

viii One example of non-delivery this quarter is in relation to the detailed Notes on Sections to the Scotland Act, referred to in this chapter of the last report (p12). It was reported there that the Finance and Local Government Minister had stated in a written answer on 30 April that the Executive's objective was to have this document published by the end of June. Unfortunately, this had not appeared by the time the Parliament rose for the summer, and it is understood that publication is now expected some time in the autumn.

#### **ENDNOTES: The Parliament**

ix Elizabeth Quigley, 'Politicians under the spotlight', *BBC News Online*, 30 June 2001, [http://news.bbc.co.uk/hi/english/uk/scotland/newsid\\_1414000/1414853.stm](http://news.bbc.co.uk/hi/english/uk/scotland/newsid_1414000/1414853.stm)

x Sir David Steel, 'A dozen differences of devolution', Speech to the Oxford Union (04/06/01), *The Scottish Parliament*, [http://www.scottish.parliament.uk/whats\\_happening/news-01/pa01-031.htm](http://www.scottish.parliament.uk/whats_happening/news-01/pa01-031.htm)

xi Protection from Abuse (Scotland) Bill: Stage 1, Scottish Parliament Official Report, 28 June 2001, Col 2035, [http://www.scottish.parliament.uk/official\\_report/session-01/sor0628-02.htm#Col2035](http://www.scottish.parliament.uk/official_report/session-01/sor0628-02.htm#Col2035)

xii 'Hunting Bill hits major setback', *BBC News Online*, 11 July 2001, [http://news.bbc.co.uk/hi/english/uk/scotland/newsid\\_1433000/1433016.stm](http://news.bbc.co.uk/hi/english/uk/scotland/newsid_1433000/1433016.stm)

xiii *Standards Committee Consultation Paper: Statutory Registration of Commercial Lobbyists*, June 2001, [http://www.scottish.parliament.uk/official\\_report/cttee/stan-01/st-consult1.htm#2](http://www.scottish.parliament.uk/official_report/cttee/stan-01/st-consult1.htm#2)

xiv Excludes all reports on subordinate legislation

xv Latest parliamentary stage recorded.

#### **ENDNOTES: The Media**

xvi Schlesinger, P., Miller, D. and Dinan, W. (2001) *Open Scotland? Journalists, Spin Doctors and Lobbyists*, Edinburgh: Polygon pp.87-92

xvii Dinan, W. (2001) The General Election 2001 and the Scottish Press, unpublished note. McNair, B. and Hibberd, M. (2001) 'Punchy coverage still fails to knock out apathetic public', *The Sunday Herald*, Business, 10 June 2001, p.8.

#### **ENDNOTES: UK Intergovernmental Relations**

xviii *The Sunday Times*, 10.06.01, D. Smith and K. Farquharson, p.1

xix *The Sunday Times*, 24.06.01 J. Robertson, p2

xx <http://www.bcomm-scotland.gov.uk>

xxi *The Herald*, D. Summers 27.06.01, p. 6

xxii *Scotland on Sunday*, 29.07.01, J. Allardyce, p. 1

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## ENDNOTES: Scotland – EU Relations

<sup>xxiii</sup> Scottish Parliament, Official Report, May 9 2001, Col 471

<sup>xxiv</sup> Joint submission by Scottish Executive and COSLA to the European Commission, March 2001: Appendix A

<sup>xxv</sup> Colloquium of the Constitutional Regions: "Reinforcing the role of the constitutional regions in Europe", Brussels, 22 February 2001, <http://www.flanders.be/public/authority/government/news/index.asp>

<sup>xxvi</sup> Political declaration of the constitutional regions Bavaria, Catalonia, North-Rhine Westphalia, Salzburg, Scotland, Flanders and Wallonia on the strengthening of the role of the constitutional regions in the European Union, 28 May 2001 Brussels, <http://www.flanders.be/public/authority/search/index>

<sup>xxvii</sup> European Commission, White Paper on European Governance, COM (2001) 428 25.7.2001, p. 14 <http://europa.eu.int/comm/governance>

## ENDNOTES: Relations with local government

<sup>xxviii</sup> Scottish Executive Press Release E1194/2001 MACKAY SIGNS LOCAL GOVERNMENT PARTNERSHIP FRAMEWORK WITH COSLA 3 May 2001 <http://www.scotland.gov.uk/news/2001/05/se1194.asp>

<sup>xxix</sup> Ibid

<sup>xxx</sup> *Scottish Local Government's Self-Review of its Political Management Structures Report of the Leadership Advisory Panel* <http://www.scotland.gov.uk/library3/localgov/rlap-00.asp>

<sup>xxxi</sup> *A Modern Complaints System. Consultation on Proposals for Public Sector Ombudsmen in Scotland.* Laid before the Scottish Parliament by the Scottish Ministers July 2001SE/2001/139 <http://www.scotland.gov.uk/consultations/localgov/ppso-00.asp>

## ENDNOTES: Finance

<sup>xxxii</sup> Official Report, Local Government Committee, 8 May 2001; c1916.

<sup>xxxiii</sup> Scottish Parliament Official Report, Thursday 28 June 2001, The Budget Process 2002-03, Col 2054]

<sup>xxxiv</sup> <http://www.scotland.gov.uk/library3/government/mad-00.asp>

<sup>xxxv</sup> [http://www.scottish.parliament.uk/official\\_report/ctee/finance-00/fir00-16-01.htm](http://www.scottish.parliament.uk/official_report/ctee/finance-00/fir00-16-01.htm)

## ENDNOTES: Devolution dispute & litigation

<sup>xxxvi</sup> *The Herald* quoted a Privy Council spokesperson as saying "this is the first case of its kind. We have had devolution appeals before, but this is the first time the terms of an act of the Scottish Parliament have been in question" ("Killers put Scottish Parliament powers to the test", *Herald*, 10.7.01)

<sup>xxxvii</sup> <http://www.scotland-legislation.hmsso.gov.uk/legislation/scotland/acts1999/19990001.htm>.

<sup>xxxviii</sup> *Scotland Act 1998 s29(2)(d)*. It being the first Bill before the Scottish Parliament, it can be assumed that the relevant lawyers in both the Executive and the Parliament would have taken particular care in ensuring that these statements of competence would stand up to any scrutiny or challenge.

<sup>xxxix</sup> *A v Scottish Ministers* 2001 SC 1; also available on the 'court opinions' section of the Scottish Courts Service website, [http://www.scotcourts.gov.uk/pages/opinions\\_intro.htm](http://www.scotcourts.gov.uk/pages/opinions_intro.htm)

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xi *Whaley v Lord Watson of Invergowrie* 2000 SLT 475; also available on the Scottish Courts Service website.

xli “Blair’s all-women shortlists hit by Scots case”, *Financial Times*, 24.7.01

xliii The appeal judgment in the case of Lorraine Mann is reported on the EAT judgements website: <http://www.ukonline.gov.uk/online/ukonline/external?destination=http://www.employmentappeals.gov.uk/>

xliiii <http://www.scottish.labour.co.uk/>

xliiv <http://www.snp.org.uk>

xliv <http://www.scotlibems.org.uk/>

xlvi <http://www.scottish.tory.org.uk/>

xlvii <http://www.scotsocialistparty.org.uk>

## ENDNOTES: Public Policies

xlviiii 3<sup>rd</sup> report 2000, SP Paper 90, 29 March 2000: [http://www.scottish.parliament.uk/official\\_report/cttee/trans-00/trr00-03-01.htm](http://www.scottish.parliament.uk/official_report/cttee/trans-00/trr00-03-01.htm), and see the Committee’s press release: [http://www.scottish.parliament.uk/whats\\_happening/news-00/ctran00-008a.htm](http://www.scottish.parliament.uk/whats_happening/news-00/ctran00-008a.htm)

xlix [http://www.scottish.parliament.uk/official\\_report/session-00/or060602.htm#Col525](http://www.scottish.parliament.uk/official_report/session-00/or060602.htm#Col525)

l See the consultation paper, November 2000: <http://www.scotland.gov.uk/planning/consult/rtcp-00.asp>, and the related Executive press release: <http://www.scotland.gov.uk/news/2000/11/se3032.asp>

li See the relevant Executive press releases:

<http://www.scotland.gov.uk/news/2001/06/se1534.asp>, (25.6.01) and

<http://www.scotland.gov.uk/news/2001/07/se1735.asp> (20.7.01).

lii *A Modern Complaints System: Consultation on Proposals for Public Sector Ombudsmen in Scotland*, SE/2001/139, <http://www.scotland.gov.uk/consultations/localgov/ppso-00.asp>

liii *Modernising the Complaints System*, SE/2000/84, <http://www.scotland.gov.uk/consultations/misc/mctcs-00.asp>

liv In addition to the Parliamentary, local government and health service schemes, it will now also include the Housing Association Ombudsman, but will not be able to include other ‘ombudsman’-type offices, such as the Scottish Information Commissioner.

lv *s91, Scotland Act 1998*.

lvi *Scotland Act 1998 (Transitory and Transitional Provisions) (Complaints of Maladministration) Order 1999*, SI 1999 no. 1351, and see the SPCA’s website: <http://www.ombudsman.org.uk/pca/scotland/index.html>

lvii As is the case in the UK PCA scheme, but not in the local government ombudsman scheme. Complaints would still be permitted to be made in this way, as required by *s91* of the Act.

lviii As under the interim scheme, the Scottish Parliamentary Corporate Body is itself to be a body subject to investigation by the Ombudsman. This would seem to permit anyone, including MSPs, their staff and parliamentary staff, to make complaints about certain administrative matters within the Parliament. This is in stark contrast to the position of the House of Commons Commission, but appears to have attracted no comment.

lix See his statement to the Parliament, SPOR 21 June 2001, cols 1832-44, ([http://www.scottish.parliament.uk/official\\_report/session-01/sor0621-02.htm#Col1832](http://www.scottish.parliament.uk/official_report/session-01/sor0621-02.htm#Col1832)).

MacKay recalled, at the outset of his statement, the embarrassment of his previous attempt to make a parliamentary statement on this topic in January, when the Deputy Presiding Officer refused to allow him to speak, on the grounds that it had been leaked in advance to the press.

lx See *Public bodies: proposals for change*, Scottish Executive, June 2001, <http://www.scotland.gov.uk/library3/government/pbpreview.pdf>

lxi Or, as in the case of Scottish Homes, conversion into an Executive Agency

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lxii “MacKay announces fewer, fitter, fairer public bodies for Scotland”, *SE press release SE1502/2001*, 21.6.01: <http://www.scotland.gov.uk/news/2001/06/se1502.asp>. See also the minister’s article in the *Scotsman* of 16 July, “Fundamental reforms for the quangos that have escaped the axe”

lxiii Not all such controversial legislative proposals may end in legislation, as has been demonstrated by Mike Watson’s attempt at enacting his Protection of Wild Mammals (Scotland) Bill. After a prolonged inquiry, lasting well over a year, the Rural Development Committee has recommended (by a majority of 6-3) that the Parliament rejects the general principles of the Bill (10<sup>th</sup> report 2001, SP Paper 376, July 2001, [http://www.scottish.parliament.uk/official\\_report/cttee/rural-01/rar01-10-vol01-01.htm](http://www.scottish.parliament.uk/official_report/cttee/rural-01/rar01-10-vol01-01.htm)). This outcome does not, in itself, kill the Bill, and Watson has expressed confidence in the Parliament as a whole taking a different view when it votes at Stage 1, presumably some time in the autumn. However this committee decision may well ultimately prove fatal to the Bill, at least in its present form (see committee press release CRUR 5/2001, 11.7.01: [http://www.scottish.parliament.uk/whats\\_happening/news-01/crur01-005.html](http://www.scottish.parliament.uk/whats_happening/news-01/crur01-005.html), and “Hunting Bill MSP ‘optimistic’”, BBC News Online, 11.7.01: [http://news.bbc.co.uk/hi/english/uk/scotland/newsid\\_1433000/1433742.stm](http://news.bbc.co.uk/hi/english/uk/scotland/newsid_1433000/1433742.stm)).

lxiv Including the Conservative leader, David McLetchie. Sheridan himself had resigned from the group in October 2000.

lxv *A Consultation on ‘Striking the Balance - a new approach to debt management’*, Scottish Executive, July 2001 (<http://www.scotland.gov.uk/library3/justice/stbf-00.asp>; <http://www.scotland.gov.uk/library3/justice/stbf.pdf>)

lxvi “Sheridan angry at new debt collection scheme”, *Herald*, 7.7.01; “Warrant sales reform pans unveiled”, *BBC News Online*, 6.7.01 ([http://news.bbc.co.uk/hi/english/uk/scotland/newsid\\_1424000/1424857.stm](http://news.bbc.co.uk/hi/english/uk/scotland/newsid_1424000/1424857.stm))

lxvii May 2001 report, chapter 11, p52

lxviii See, for example, “‘Suffocating’ civil service smothers land reform bill”, *Sunday Herald*, 8.7.01, <http://www.sundayherald.com/16868>

lxix See “Unsavoury stramash rambles all over Skibo”, *Scotland on Sunday*, 15.7.01, and “Skibo owner’s threat to shut rich retreat”, *Sunday Herald*, 15.7.01, <http://www.sundayherald.com/16983>

lxx <http://www.scotland.gov.uk/consultations/social/fchs-00.asp>

lxxi <http://www.scotland.gov.uk/consultations/environment/llnp/lln-00.asp>. A more general leaflet on the consultation was also published: <http://www.scotland.gov.uk/library3/environment/lltnp-00.asp>

lxxii <http://www.scotland.gov.uk/consultations/education/seasb-00.asp>

lxxiii <http://www.scotland.gov.uk/consultations/justice/caps-00.asp>