



The Constitution Unit



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Nations and Regions: The Dynamics of Devolution

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Introduction: James Mitchell	3
1. Executive: Barry Winetrobe	5
2. The Parliament: Mark Shephard	11
3. The Media: Philip Schlesinger	18
4. Public Attitudes: John Curtice	20
5. UK Intergovernmental relations: Alex Wright	27
6. Relations with Europe: Alex Wright	30
7. Relations with Local Government: Neil McGarvey	34
8. Finance: David Bell	38
9. Devolution disputes & litigation: Barry Winetrobe	39
10. Political Parties: James Mitchell	41
11. Public Policies: Barry Winetrobe	46

Key Points

- Publication of insider's account of the McLeish's premiership by Peter MacMahon, McLeish's spin doctor;
- Jack McConnell outlines his priority as public service delivery and evidence that health is set to be key issue in next elections to the Scottish Parliament;
- McConnell promises to 'do more better', borrowing slogan from Jacques Santer's European Commission;
- Parliament asserts itself by voting for Tory MSP as Deputy Presiding Officer against expressed wishes of new First Minister who failed to convince all of his Labour colleagues to vote for Labour MSP.

Introduction

James Mitchell

The last quarter has been quiet, especially by the standards of the previous quarter which saw the resignation of the First Minister. The consequences of the change from 'Team McLeish' to a new cabinet under Jack McConnell have been the gradually taking shape. The most notable news about devolution emerged in a series of articles over three days in the *Scotsman* written by Peter MacMahon,¹ erstwhile chief spin-doctor for Henry McLeish. In these articles, MacMahon set out to give the 'inside story' of McLeish's fall and provide some insights to the operation of 'Team McLeish'. A less appropriate epithet would be difficult to imagine to describe the divided and incoherent Executive that was headed by Henry McLeish. The phrase 'in office but not in power' appears appropriate. Though the articles have been criticised throughout the media as 'self-serving',² they do nonetheless tell us much more about how devolution has operated than has been widely acknowledged and, undoubtedly unwittingly, MacMahon has highlighted some of the deficiencies of the current arrangements. The articles confirm or provide further evidence for much that has been reported and speculated upon in previous reports: the extent to which policy under McLeish was 'made on the hoof', especially care for the elderly; the extent of bitter divisions amongst Labour members of the Executive; Wendy Alexander's confrontational Ministerial style; McLeish's brand of populist politics; turf wars between the Scottish Executive and Scotland Office; and the events leading up to McLeish's downfall. More significant than the formal business of government is the insight given to the informal aspects of government. The extent to which London was involved or consulted in decision-making, the role of the spin doctor and the absence of idealism or principle from devolution under Scotland's second First Minister are striking. These few pages of journalism were roundly criticised in other media outlets, no doubt in part inspired by jealousy that the *Scotsman* got the scoop, but missed the important point that these represent the first real insider's account of how Scottish devolution is operating at the highest level. It is little wonder that a more realistic, occasionally verging on cynical assessment of devolution is emerging amongst the public in Scotland.

Much commentary in the media has focussed on Jack McConnell's new cabinet. Generally deemed to be more left-wing, though this seems more incidental than intentional, it remains unclear as to the direction it will take. McConnell's emphasis on service delivery chimes well with the New Labour message coming from London though relations between London and Edinburgh are widely expected to be more fractious though there is little evidence to back this yet. McConnell's promise to 'do less better' – a slogan borrowed from Jacques Santer's European Commission reflecting McConnell's European interests though this has gone unnoticed by the Scottish media showing its lack of European interest - has been enunciated though his intention to concentrate on five priority areas - health, education, transport, crime and jobs – suggests a substantial load. Debate in the Parliament and media coverage suggests that health will be central stage come the elections to the Scottish Parliament.

¹ *Scotsman*, January 25, 26, 28 2002.

² One of the most best critique was offered by Alex Bell, another journalist cum spin doctor, writing in the *Herald*, January 28, 2002.

McConnell's confrontations with John Swinney, SNP leader, have focussed particularly on health in the last quarter.

A significant development in Executive-Parliament relations occurred when the Parliament, including a number of Labour MSPs, refused to back McConnell's preferred candidate – a Labour MSP - for deputy presiding officer and opted instead for a Tory MSP who had already indicated his intention to stand down at the elections. This vote may signal difficulties ahead for Jack McConnell with his Labour colleagues, some of whom had voted against his wishes rather than Parliamentary assertion vis-à-vis the Executive.

The Executive

Barry Winetrobe

1.1 New First Minister and Ministerial Team

The early part of the quarter was dominated by the aftermath of McLeish's resignation as First Minister, as noted in the last report. The race for the post of First Minister was, strictly speaking, the election for a new leader of Scottish Labour, and, when, contrary to general expectations, the Enterprise Minister, Wendy Alexander, decided not to be a candidate, the Education Minister, Jack McConnell, had a clear run. After being formally made Labour Leader, he secured the support of the Liberal Democrats following some discussions, especially on PR for local government elections. He easily beat the two main Opposition leaders and Dennis Canavan for the Parliament's nomination as First Minister on 22 November.³

Despite suggestions to the contrary by McConnell himself, his ministerial reshuffle on 27 November was far more widespread than was expected, immediately dubbed the 'Night of the Long Knives' (or variations thereof). Four Labour cabinet ministers were dropped, and a fifth, Susan Deacon, chose to step down rather than be moved from health to social justice.⁴ Only Alexander survived from the Labour ranks of the cabinet (the 2 Liberal Democrats were untouched⁵), and she had conducted an open campaign to retain her portfolio intact, rather than having the lifelong learning aspects transferred to the education minister. There were also changes among the non-cabinet ministers.⁶ Some of the new faces, especially at the cabinet table, were seen to be there as friends of McConnell, rather than on their merits or experience.⁷ These nominations were approved by the Parliament on 28 November, in a debate where the Opposition parties took full advantage of the opportunity to denounce the choices as proof of Labour cronyism.

The ministerial team, with the main areas of responsibility, is as follows:⁸

³ McConnell: 70; Swinney: 34; McLetchie: 19; Canavan: 3.

⁴ She claimed that this was due to having to take on a new portfolio just before her 'maternity leave' early in 2002, not because she regarded the proposed switch as demotion.

⁵ Indeed, there was some criticism within Labour about the perceived overall enhancement of the Liberal Democrats within the Executive, as a result of the reshuffle.

⁶ This included a new Solicitor General, an appointment much trumpeted by the Executive as the first female, first procurator fiscal and the first solicitor ever to hold that post: http://www.scotland.gov.uk/pages/news/2001/11/p_SE4936.aspx, and see a profile: "Courting controversy", *Scotland on Sunday*, 20.1.02: <http://www.scotlandonsunday.com/spectrum.cfm?id=67182002>

⁷ As identified in the media, they were Patricia Ferguson, Mike Watson Andy Kerr, and Cathy Jamieson

⁸ "[Parliament approves new Cabinet](#)", SE press release 4939/2001, 28.11.2001. All ministers are Labour unless noted otherwise, and all members of the Cabinet, plus the 2 Law Officers, are (in terms of the Scotland Act) 'Members of the Scottish Executive'.

Scottish Cabinet:

- *First Minister: Jack McConnell:* Head of Scottish Executive. With the DFM, responsible for the development, implementation and presentation of SE policies.
- *Deputy First Minister and Minister for Justice: Jim Wallace (LD):* With the FM, responsible for the development, implementation and presentation of SE policies. External relations, especially development and implementation of links with Europe. Home affairs, including civil law and criminal justice, criminal justice social work services, police, fire, prisons, courts, law reform, freedom of information.
- *Minister for Education and Young People: Cathy Jamieson:* Pre-school and school education, children and young people.
- *Minister for Enterprise, Transport, and Lifelong Learning: Wendy Alexander:* The economy, transport, business and industry including Scottish Enterprise, Highlands and Islands Enterprise, trade and inward investment, energy, further and higher education, public transport, roads, lifeline air and ferry services, lifelong learning and training. Minister for Science.
- *Minister for Environment and Rural Development: Ross Finnie (LD):* The environment and natural heritage, renewable energy, land reform, water, sustainable development, rural development including aquaculture and forestry. Responsible for agriculture and fisheries.
- *Minister for Tourism, Culture and Sport: Mike Watson:* Tourism, sport, culture, and the Arts, the built heritage, architecture, Historic Scotland, lottery funding and Gaelic.
- *Minister for Social Justice: Iain Gray:* Social inclusion, housing and area regeneration including the promotion of sustainable urban development, cities, the land use planning system and building standards, equality issues and the voluntary sector.
- *Minister for Finance and Public Services: Andy Kerr:* The Scottish Budget, better public service delivery, modernising government including civil service reform, local government and European Structural Funds. Responsible for overseeing strategic communications.
- *Minister for Health and Community Care: Malcolm Chisholm:* Health policy; the National Health Service in Scotland, community care and food safety.
- *Minister for Parliamentary Business: Patricia Ferguson:* Parliamentary affairs and the management of Executive business in the Parliament and Parliamentary liaison, public appointments policy and quango governance. Responsible for the co-ordination of Executive policy and the management of cross-cutting issues.
-

Deputy Ministers:⁹

- *Deputy Minister for Justice: Richard Simpson:* With special responsibility for co-ordination of Executive policy in relation to drugs.
- *Deputy Minister for Education and Young People: Nicol Stephen (LD):* With specific responsibility for teachers and schools.
- *Deputy Minister for Enterprise, Transport and Lifelong Learning: Lewis Macdonald:* With specific responsibility for transport.

⁹ Deputy Ministers are those ministers not in the cabinet, and, currently, equate with 'Junior Scottish Ministers', in terms of the Scotland Act.

- *Deputy Minister for Environment and Rural Development: Allan Wilson*
- *Deputy Minister for Tourism, Culture and Sport: Elaine Murray:* With specific responsibility for arts and culture.
- *Deputy Minister for Social Justice: Margaret Curran:* With specific responsibility for housing.
- *Deputy Minister for Finance and Public Services: Peter Peacock:* With specific responsibility for budgetary monitoring and control.
- *Deputy Ministers for Health and Community Care: Hugh Henry and Mary Mulligan*
- *Deputy Minister for Parliamentary Business: Euan Robson (LD):* With particular responsibility for the Parliamentary handling of the legislative programme and management of cross-cutting priorities. Assists with the oversight of strategic communications.

Scottish Law Officers:

- *Lord Advocate: Colin Boyd QC*
- *Solicitor General for Scotland: Elish Angiolini.*

Some points worth noting include:

- *The absorption of transport into Alexander’s existing enterprise and lifelong learning portfolio.* Interestingly, this was seen generally not as a boost to Alexander’s ministerial power, especially as she also retained lifelong learning, but an attempt by McConnell to overburden her so as to keep her sidelined in the new inner counsels.¹⁰ There was also criticism inside and outwith the Parliament of the move, as a downgrading of transport as a major policy issue for the Executive allied to the perception that it made transport more an economic than an environmental matter. McConnell denied the latter charge at FMQs on 29 November: “To make sure that environmental issues are a top priority in the Administration and that they run across every department, I will personally chair the committee on sustainable development. We will ensure that we take environmental issues fully into consideration at all times, not just with transport, but with other areas of Executive activity.”
- *The creation of the ‘Public Services’ element of Kerr’s finance portfolio.* This was described in media reports as a ‘cabinet enforcer’ function, overseeing the main spending ministers, though much of that task could already be said to be within the finance portfolio. The disappearance of ‘local government’ from Kerr’s title, though not from his portfolio, could suggest some downgrading of the subject, which would be surprising at a time when local finance, election and service issues are so prominent. Note the governance responsibilities of the Minister for Parliamentary Business.¹¹
- *The ‘external affairs’ functions of the Deputy First Minister.* This move was unexpected, as it had been widely assumed that the new First Minister would

¹⁰ For a surprising, but possibly not entirely altruistic, expression of support from her SNP counterpart, Andrew Wilson, see “Wilson takes Wendy’s briefs to heart”, *Scotsman*, 22.1.02: <http://www.thescotsman.co.uk/index.cfm?id=80212002>

¹¹ In passing, note also the demise of the wholly inappropriate ministerial title of ‘Minister for Parliament’.

retain this key aspect of his previous ministerial portfolio, though notionally he was then reporting on such matters to the First Minister and Deputy First Minister.

1.2 Core Executive developments

Two examples of a possible new look to devolved executive government:

- From January, Cabinet meetings have been held at 9:30am on Wednesdays, rather than on Tuesdays,¹²
- A press report just before Christmas suggested that McConnell plans to appoint some MSPs as a 'PPS'-type tier of ministerial aides.¹³

The Executive continues to be accused of 'spinning' its policy announcements, contrary to its declared policy of transparency.¹⁴ Its Freedom of Information Bill is progressing through the Parliament, and has been subject to demands from various pressure groups for it to be strengthened.¹⁵ The Justice 1 Committee issued its Stage 1 report on 11 January, giving the Bill a broad welcome, though some members were concerned about the issue of the ministerial veto,¹⁶ and there was a lively Stage 1 debate in the Chamber on 17 January.¹⁷ Written answers on 20 November, 11 January and 14 January provided some information on the cost of Executive special advisers, and the shape of the present adviser team.¹⁸ Ministers continued to give prominence to aspects of the 'modernising government' agenda, with a series of speeches.¹⁹

¹² This apparently means that the Permanent Secretary, Sir Muir Russell, will no longer be able to attend the weekly meeting of his Whitehall counterparts in London on Wednesdays, which could symbolise a more autonomous devolved civil service.

¹³ "McConnell extends his power base with eight little helpers ... unpaid of course", *Sunday Herald*, 23.12.01: <http://www.sundayherald.com/21097>

¹⁴ See, for example, "More dark days for spin as executive is accused over midnight announcement", *Scotsman*, 27.11.01: http://www.thescotsman.co.uk/text_only.cfm?id=125393

¹⁵ See, for example, "Information Bill 'flaw' fears", *BBC News Online*, 27.11.01: http://news.bbc.co.uk/hi/english/uk/scotland/newsid_1677000/1677958.stm. See also written answers to Fergus Ewing and David McLetchie on the existing administrative scheme and the proposed impact of the statutory FoI scheme: 3 January (http://www.scottish.parliament.uk/official_report/wa-02/wa0103.htm) and 8 January (http://www.scottish.parliament.uk/official_report/wa-02/wa0108.htm) respectively

¹⁶ http://www.scottish.parliament.uk/whats_happening/news-02/cj102-001.htm. The report (which includes reports from the Equal Opportunities and Subordinate legislation Committees) is at http://www.scottish.parliament.uk/official_report/cttee/just1-02/j1r02-01-01.htm (1st Report 2002, SP Paper 488).

¹⁷ http://www.scottish.parliament.uk/official_report/session-02/sor0117-02.htm#Col5453

¹⁸ See http://www.scottish.parliament.uk/official_report/wa-01/wa1120.htm and http://www.scottish.parliament.uk/official_report/wa-02/wa0114.htm

¹⁹ Former Finance Minister, Angus Mackay and his junior, Peter Peacock, at the Community Leadership Forum, Edinburgh on 14 November: <http://www.scotland.gov.uk/pages/news/2001/11/SE4342.aspx>; Mackay at the CMPS 'Making a Difference' conference, Dunblane on 15 November: <http://www.scotland.gov.uk/pages/news/2001/11/SE4349.aspx>, and Peacock at a CBI

1.3 Ministerial-Parliamentary relations

Direct contact between MSPs and civil servants has been a thorny issue, and a parliamentary answer on 21 December shed some light on present practice.²⁰ Another controversial issue has been the Executive's adoption of the Westminster practice of using 'inspired' (or planted) questions from pliant members as a way of making policy announcements. To date, the Parliament has acquiesced in this use of the PQ process, and written answers by the new Minister for Parliamentary Business on 7 January demonstrate the extent of the technique.²¹

Proof that conventions are developing on the conduct of the core players in devolved governance, beyond statutory or other published formal rules or guidance, came courtesy of a newspaper diary item about the new junior culture minister, Elaine Murray. This suggested that she had removed her name from a Member's Motion on highly controversial cuts in the services of the National Library of Scotland because her ministerial post included library services. In a letter, Murray explained that,

I had to withdraw my support from all members' motions on joining the executive. Ministers are not permitted to sign members' motions, as they are selected for debate partially on their popularity with MSPs. Were members of the executive permitted to sign motions, they could, theoretically, gang up to sign motions that the executive wanted to be debated.²²

1.4 Public appointments

New impetus was given to the concerns over various aspects of the system of public appointments²³ by the Officegate affair and its aftermath, neatly packaged by the media and the Opposition parties as 'cronyism'. This term seemed to be used interchangeably for criticism of public appointments or awarding of public contracts,

Scotland/CMPS conference, Edinburgh on 4 December:

<http://www.scotland.gov.uk/pages/news/2001/12/SE4970.aspx>

²⁰ http://www.scottish.parliament.uk/official_report/wa-01/wa1221.htm

²¹ http://www.scottish.parliament.uk/official_report/wa-02/wa0107.htm

²² Letter, *Scotsman*, 24.12.01:

<http://www.thescotsman.co.uk/letters.cfm?id=1724182001>. The diary item appeared in the 19 December issue.

²³ See, for example, the concern raised about the announcement (including its timing) of the proposed board of Scottish Water - written answer, 18.12.01 (http://www.scottish.parliament.uk/official_report/wa-01/wa1218.htm); "Minister ignores democratic process over water appointments - Scott", Conservative party press release, 19.12.01

(<http://www.scottish.conservatives.org.uk/pressrelease.asp?ID=1719>);

"Scottish Water - Finnie treats Parliament with contempt", SNP press release, 19.12.01 (<http://www.snp.org/news/detail.php?rIID=59>); points of order, 19.12.01 (http://www.scottish.parliament.uk/official_report/session-01/sor1219-02.htm#Col4998).

On the wider but related issue of quangos see a written answer on 7 January by Andy Kerr: http://www.scottish.parliament.uk/official_report/wa-02/wa0107.htm

and for alleged abuses within the Labour strongholds in local government.²⁴ Ministers denied that they operated a policy of ‘jobs for the boys’, though much was made by the Conservatives of statistics given in a written answer to their leader on 20 November,²⁵ interpreted as showing a high concentration of appointments of Labour-supporting nominees.

While ministers have appeared to be willing to consider further tightening of the existing system, with greater independent, even parliamentary, involvement,²⁶ this did not extend to support for the current Member’s Bill, initiated by Alex Neil (SNP), which would set up a system of parliamentary confirmation of major nominations.²⁷ The Bill was eventually defeated (this will be discussed in the next monitoring report).

1.5 First Ministers and the Privy Council

It came as a surprise when Henry McLeish became a member of the Privy Council shortly after he resigned, as it may have been assumed that, as a serving First Minister, he had already received this honour. It emerged that he had been offered membership when he became First Minister, but had never taken it up. McConnell had no such hesitation, joining the Privy Council on 3 December.²⁸

²⁴ The latter was mainly discussed in connection with reform of the local government voting system.

²⁵ The Conservatives made much of figures in a written answer to its leader on 19 November. See “McLetchie slates “Labour crony state” - new figures show Labour tightening its grip on quangos”, Conservative Party press release, 20.11.01 (<http://www.scottish.conservatives.org.uk/pressrelease.asp?ID=1630>) and written answer (http://www.scottish.parliament.uk/official_report/wa-01/wa1119.htm)

²⁶ “Public appointments system”, SE press release 5163/2002, 15.1.02: <http://www.scotland.gov.uk/pages/news/2002/01/SE5163.aspx>. See also “Independent assessors re-appointed”, SE press release 5104/2001, 27.12.01: http://www.scotland.gov.uk/pages/news/2001/12/p_SE5104.aspx

²⁷ The Bill is at Stage 1, and was examined by the Equal Opportunities Committee on 11 December (http://www.scottish.parliament.uk/official_report/cttee/equal-01/eo01-2002.htm#Col1320) and the Local Government Committee on 15 January (http://www.scottish.parliament.uk/official_report/cttee/local-02/lg02-0202.htm#Col2614). The surprising call by the UK Conservative leadership for some form of parliamentary confirmation system at Westminster, can only add to pressure on Labour ministers in Edinburgh as well as London: “Tories attack quango system”, BBC News Online, 20.1.02: http://news.bbc.co.uk/1/hi/english/uk_politics/newsid_1771000/1771020.stm.

²⁸ No. 10 press notice, 3.12.01: <http://www.number-10.gov.uk/news.asp?NewsId=3188&SectionId=33> “McLeish enters Privy Council”, *Scotsman*, 16.11.01.

2. The Scottish Parliament

Mark Shephard

2.1 Parliament versus Jack McConnell

Following the resignation of Henry McLeish²⁹ on 8 November 2001, the Parliament's Presiding Officer, David Steel, once again designated the Deputy First Minister, Jim Wallace QC MSP, as the person responsible for the exercise of the First Minister's functions. This time, the transition period between the Labour Party's selection of their nominee and the Parliament's election of a First Minister was exactly two weeks. Having selected Jack McConnell as their nominee, Labour MSPs, in conjunction with Liberal Democrat MSPs, gave McConnell 70 (a majority) of the Parliament's votes. Other nominees for the post included the SNP leader John Swinney (34 votes), the Conservative leader David McLetchie (19 votes), and the Independent Dennis Canavan (3 votes).

The potential for initial opposition to Jack McConnell as First Minister is arguably stronger in the Parliament than it first was for his predecessor Henry McLeish. Whereas McLeish had to experience intra-party competition for his position and had a degree of cross-party sympathy following the death of Donald Dewar, McConnell was not only Labour's sole candidate for nominee, but he has succeeded a disgraced First Minister (McLeish). Evidence of the comparatively more difficult situation that McConnell faces vis-à-vis the Parliament has been apparent from the outset. In the nomination debates prior to the election of the First Minister, both David McLetchie and John Swinney were scathing of Labour's lack of both intra-party democracy and standards. While McLetchie spoke of the 'tawdry coronation' and the lack of criticism during the officegate affair, Swinney spoke of the 'murky swamp of Labour's Scotland'.³⁰

Beyond partisan banter, there is also mounting tangible evidence of the difficult position that McConnell faces in relation to the Parliament. A week after his election as First Minister, McConnell's preferred candidate for the post of Deputy Presiding Officer was thwarted as a majority of MSPs voted for the Conservative candidate. In a secret ballot, Conservative MSP Murray Tosh received 68 votes while Labour MSP Cathy Peattie received 45 votes. The vote for the post was triggered by McConnell's Cabinet reshuffle and the promotion of Patricia Ferguson from Deputy Presiding Officer to Minister for Parliamentary Business. Although the appointment of Deputy First Minister is a parliamentary as opposed to a party appointment, several MSPs expressed concern that McConnell had been too demonstrative in his request for support for Peattie. Having already faced criticism for their complicity in failing to scrutinise McLeish and for supporting the McConnell candidature in the election of First Minister, a significant number of Liberal Democrat MSPs chose to differentiate themselves from Labour over the Deputy Presiding Officer election. Not only did

²⁹ For a discussion of Parliament's role in the McLeish resignation see the November 2001 report.

³⁰ David McLetchie and John Swinney, *Scottish Parliament Official Report*, 22 November 2001, cols. 4155-4161, http://www.scottish.parliament.uk/official_report/session-01/sor1122-02.htm#Col4155

Tosh receive cross-party nominations (Liberal Democrat and SNP), but the size of his majority indicates significant levels of cross-party support as well. As a result, and for the first time, none of the Presiding Officers are Labour MSPs.

McConnell also faces the potential of more dissension from his own backbenches following his relatively extensive reshuffle of ministerial positions. Having effectively axed half of the people from the key posts in his inherited ministerial team, McConnell runs the risk of fuelling Labour backbench dissension on two accounts. First, those individuals who were replaced (for example, Sarah Boyack, Susan Deacon, Angus MacKay and Tom McCabe) are now on the backbenches. Facing little prospect of further career advancement under McConnell's leadership, there will be less incentive to adhere to the Executive line, and therefore more latitude for dissension. Second, such a major reshuffle means that much of the Executive will need time to adjust to the demands of new portfolios. Consequently, the Parliament should be temporarily advantaged in its scrutiny and influence of the Executive.

The opposition parties were quick to react to 'Jack the Knife's' reshuffle. McConnell's appointment, the reshuffle, and talk of 'Labour cronyism' have provided the SNP with an opportunity to make salient connections with political issues that they have been supporting through Members' Bill proposals. First, Alex Neil (SNP) is the proposer of a Public Appointments Bill that seeks parliamentary scrutiny over ministerial public appointments. Second, Tricia Marwick (SNP) is the proposer of a Bill advocating the introduction of proportional representation for local government elections. Combined, both Bills aim to correct the charge of Labour nepotism, whether through the introduction of parliamentary scrutiny of appointments to public bodies, or through the effective introduction of multi-party control of local government. The fact that both Bills have been introduced in the Parliament and are being considered at a time when McConnell has both been criticised for cronyism and has promised the Liberals 'greater urgency' on the introduction of PR, should mean that many voices in the Parliament have an added advantage in achieving some realisation of these issues.

Another consequence of McConnell's reshuffle has been the need for Labour to alter its committee memberships. As new members have joined the Executive, so they have had to relinquish parliamentary committee positions. New committee assignments have largely been allocated to those demoted from the Executive:

- Tom McCabe and Des McNulty replace Dr. Richard Simpson and Mike Watson on the Finance Committee;
- Sarah Boyack replaces Hugh Henry on the European Committee;
- Susan Deacon replaces Patricia Ferguson on the Procedures Committee and on the Standards Committee;
- Jackie Ballie replaces Cathy Peattie on the Education, Culture and Sport Committee;
- Angus MacKay replaces Andy Kerr on the Transport and the Environment Committee;
- Alasdair Morrison replaces Mary Mulligan on the Justice 2 Committee;
- Alasdair Morrison and Irene Oldfather to replace Cathy Jamieson and Dr. Elaine Murray on the Rural Development Committee; and
- Tommy Sheridan appointed to the Equal Opportunities Committee.

Ironically, Cathy Peattie not only lost her bid to become a Deputy Presiding Officer, later that same day she also lost out to her colleague, Jackie Baillie, who was allocated as her replacement on the Education, Culture and Sport Committee. In a self-confessed ‘spirit of cross-party co-operation’ the SNP’s Michael Russell expressed regret at the loss of Cathy Peattie from the Education, Culture and Sport Committee and appealed to the Minister for Parliamentary business to reconsider this particular alteration.³¹ To date there has been no reconsideration of the replacement.

2.2 More Parliamentary Firsts

On 5 November 2001, Peter Hain MP, the UK Minister for Europe, became the first UK minister to address a committee of the Scottish Parliament. Appearing before the European Committee, Hain was asked by Colin Campbell (SNP) MSP whether he could do anything to resolve the ‘lack of transparency in what the Parliament can discover about negotiations between the Scottish Executive and Westminster in meetings leading up to Council of Ministers meetings’.³² Having initially side-stepped this question, Hain replied that transparency was not always in Britain’s interests, and that this was more a matter for the Parliament to resolve with the Scottish Executive. However, he did concede that ‘we need to construct a way of working that allows the Parliament to be as informed as possible but which also protects our negotiating position’.³³

Another first for the Scottish Parliament this quarter was the launch of a new scheme to develop and provide opportunities for the promotion of better understanding between MSPs and the business communities in Scotland.³⁴ Entitled ‘The Scottish Parliament and Business Exchange’, the scheme aims to place MSPs in a range of commercial and not-for-profit organisations, generally for between 18 to 25 days, for the purpose of the mutual and meaningful exchange of knowledge and insights. The scheme is a variant of Westminster’s Industry and Parliament Trust and is intended to operate in a non-partisan and non-lobbying environment. One of the first MSPs to be involved in the scheme is Margaret Jamieson who will undertake a Company Programme with Pfizer Ltd.³⁵

³¹ Patricia Ferguson, Motion Without Notice, *Scottish Parliament Official Report*, 29 November 2001, cols. 4436-4437, http://www.scottish.parliament.uk/official_report/session-01/sor1129-02.htm#Col4436

³² Colin Campbell, *Scottish Parliament European Committee Official Report*, Meeting 14, 5 November 2001, col. 1277, http://www.scottish.parliament.uk/official_report/cttee/europe-01/eu01-1402.htm

³³ Peter Hain, *Scottish Parliament European Committee Official Report*, Meeting 14, 5 November 2001, col. 1277, http://www.scottish.parliament.uk/official_report/cttee/europe-01/eu01-1402.htm

³⁴ ‘MSPs Offered Business Experience through Placement Programmes’, *Parliamentary News Release*, 088/2001, 26 November 2001,

http://www.scottish.parliament.uk/whats_happening/news-01/pa01-088.htm

³⁵ ‘New Scheme Promotes Mutual Understanding between MSPs and Scottish Businesses’, *Parliamentary News Release*, 089/2001, 27 November 2001, http://www.scottish.parliament.uk/whats_happening/news-01/pa01-089.htm

Finally, on 4 December 2001, four MSPs (Cathie Craigie, Iain Smith, Margaret Ewing and David McLetchie) became the first Scottish Parliament representatives to take part in committee meetings of the British-Irish Inter-Parliamentary Body being held in Bournemouth. Although the Scottish Parliament received membership of the 11-year-old body at its last plenary meeting in February 2001, this was the first opportunity for MSPs to discuss matters of mutual interest between the UK and Ireland.³⁶

2.3 Committee Reports and Inquiries (1 November 2001 – 18 January 2002)³⁷

Report on Civic Participation Event on the Race Relations Acts, 5 November 2001, Equal Opportunities Committee

Stage 1 Report on the School Education (Amendment) (Scotland) Bill, 6 November 2001, Education, Culture and Sport Committee

Report on Legal Aid Inquiry, 7 November 2001, Justice 1 Committee

Regulation of the Legal Profession Inquiry: Regulation of the Legal Profession Submissions, 8 November 2001, Justice 1 Committee

Report on the Investigation of Unauthorised Disclosures, 8 November 2001, Standards Committee

Report on the Scottish Local Government (Elections) Bill, 9 November 2001, Local Government Committee

Report on the preparation for, and policy implications of, the Single Currency: a contribution to the Euro debate in Scotland, 12 November 2001, European Committee

Inquiry into Scottish Borders Council Education Funding, 14 November 2001, Education, Culture and Sport Committee

Stage 1 Report on the Sexual Offences (Procedures and Evidence) (Scotland) Bill, 14 November 2001, Justice 2 Committee

Report on Changes to the Standing Orders of Scottish Parliament, 14 November 2001, Procedures Committee

Report on Gypsy Traveller Civic Participation Event, 15 November 2001, Equal Opportunities Committee

Report on Complaint Against Tommy Sheridan MSP, 16 November 2001, Standards Committee

³⁶ 'MSPs Take Place on British-Irish Inter-Parliamentary Body Committees', *Parliamentary News Release*, 091/2001, 4 December 2001, http://www.scottish.parliament.uk/whats_happening/news-01/pa01-091.htm

³⁷ Excludes all reports on subordinate legislation.

Report on Stage 1 of the Community Care and Health (Scotland) Bill, 22 November 2001, Health and Community Care Committee

Report on the Budget (Scotland) Act 2001 (Amendment) Order 2001, 28 November 2001, Finance Committee

Report on the Inquiry into Scottish Ballet, 29 November 2001, Education, Culture and Sport Committee

Report on Stage 1 of the Water Industry (Scotland) Bill, 29 November 2001, Transport and the Environment Committee

Report on Governance and Financial Management at Moray College, 4 December 2001, Audit Committee

Gender Reporter Bound Volume, 6 December 2001, Equal Opportunities Committee

Health and Enterprise Committees call for Evidence on Tobacco Advertising and Promotion (Scotland) Bill, 6 December 2001, Health and Community Care Committee, and Enterprise and Lifelong Learning Committee

Consultation on the Race Relations (Amendment) Act 2000, 7 December 2001, Equal Opportunities Committee

Report on the Governance of the European Union and the Future of Europe: What Role for Scotland? 11 December 2001, European Committee

Report on Stage 2 of the 2002/03 Budget Process, 14 December 2001, Finance Committee

***Call for Written Evidence on Education (Disability Strategies and Pupils' Records) (Scotland) Bill*, 17 December 2001, Education, Culture and Sport Committee**

Consultation Letter: Taking Stock Meeting on Disability – January 2002, 17 December 2001, Equal Opportunities Committee

Report on the Gaelic Broadcasting Committee, 18 December 2001, Education, Culture and Sport Committee

Report on a visit by a delegation from the Public Petitions Committee to Berlin (24-25 September 2001), 18 December 2001, Public Petitions Committee

Interim Report on the Scottish Borders Education, 20 December 2001, Education, Culture and Sport Committee

Interim Report on the Licensing of Houses in Multiple Occupation, 20 December 2001, Social Justice Committee

Stage 1 Report on the Marriage (Scotland) Bill, 21 December 2001, Local Government Committee

Report on Complaint Against Lloyd Quinan MSP, 16 November 2001, Standards Committee

Report on Stage 1 Report on Freedom of Information (Scotland) Bill, 11 January 2002, Justice 1 Committee

Report on Overview of Further Education Colleges in Scotland 1999/2000, 17 January 2002, Audit Committee

Stage 1 Report on the Fur Farming (Prohibition) (Scotland) Bill, 17 January 2002, Rural Development Committee

Call for an advisor to the Inquiry – “Gender Equality and Best Value”, 18 January 2002, Equal Opportunities Committee

2.4 Parliamentary Bills (1 November 2001 – 18 January 2002)³⁸

Executive Bills in Progress (latest stage reached):

- Community Care and Health (Scotland) Bill (Stage 2)
- Education (Disability Strategies and Pupils’ Records) (Scotland) Bill (Stage 1)
- Freedom of Information (Scotland) Bill (Stage 2)
- Fur Farming (Prohibition) (Scotland) Bill (Stage 1)
- Land Reform (Scotland) Bill (Stage 1)
- Marriage (Scotland) Bill* (Stage 1)
- School Education (Amendment) (Scotland) Bill (Passed on 20 December 2001, awaiting Royal Assent)
- Scottish Local Government (Elections) Bill (Passed on 20 December 2001, awaiting Royal Assent)
- Scottish Public Sector Ombudsman Bill (Stage 1)
- Sexual Offences (Procedures and Evidence) (Scotland) Bill (Stage 2)
- Water Industry (Scotland) Bill (Stage 2)

* Bill initially proposed by a Member (Euan Robson MSP)

Members’ Bills in Progress:

- Protection of Wild Mammals (Scotland) Bill (Stage 2)
- Public Appointments (Parliamentary Approval) (Scotland) Bill (Stage 1)
- School Meals (Scotland) Bill (Introduced)
- Tobacco Advertising and Promotion (Scotland) Bill (Introduced)
-

Executive Bills Passed:

- Police and Fire Services (Finance) (Scotland) Bill: Passed on 1 November 2001, Royal Assent on 5 December 2001.

³⁸ Latest parliamentary stage recorded.

Committee Bills Passed:

- Protection from Abuse (Scotland) Bill: Passed 4 October 2001, Royal Assent on 6 November 2001.

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Proposals for Members' Bills

In the last quarter there have been five proposals by Members for Bills. On 1st November 2001, Robin Harper proposed a Bill to establish targets to increase the proportion of land that is certified organic. Also on 1st November, Iain Smith proposed a very specific Bill that would amend the Universities (Scotland) Act 1966 to allow the University of St. Andrews to introduce a postgraduate research degree for qualified medical practitioners. Two further Bills were proposed in late November. On 21 November 2001, Tricia Marwick proposed a politically opportune Bill to introduce proportional representation for local government elections based on the single transferable vote system. Meanwhile, on 26 November 2001, Margo MacDonald proposed a Bill to enable local authorities to designate prostitute tolerance zones. Finally, on 7 January 2002, Paul Martin proposed a Bill to require Health Boards to consult prior to any changes of use proposed for health service premises. All of the four 2001 proposals mentioned have received enough supporting signatories to date to be introduced to Parliament.

2.5 Cross Party Groups

The number of Cross-Party Groups that have been approved by the Standards Committee grew by three in the last quarter to 45. The three new Groups are the Cross-Party Groups on Cuba, Palestine, and Visual Impairment.

3 The media

Philip Schlesinger

3.1 Scottish news and current affairs

The Scottish Affairs Committee of the House of Commons has begun to take oral evidence in its inquiry into post-devolution news and current affairs broadcasting in Scotland. The terms of reference, first announced on 31 October 2001, consist of a terse one line: 'The effects of devolution on the structure of news and current affairs broadcasting in Scotland'.³⁹ The prime mover of this potentially sensitive inquiry is Eric Joyce, MP (Labour, Falkirk West).

Lined up to give oral evidence are Scotland's main broadcasting bodies. In London, the committee will first interrogate BBC Scotland and the Broadcasting Council for Scotland (the official advisory body under the BBC's Charter). They will be followed by the commercial broadcasters: Scottish Media Group (owners of Scottish Television and Grampian Television), Border Television and Scottish Radio Holdings. A hearing in Glasgow will take evidence from outside commentators and members of the Scottish Parliament's Education, Culture and Sport Committee. Back in London, the inquiry will include with a session with Dr Kim Howells, Minister of State at the Department of Culture, Media and Sport.

It is known that Scottish MPs are very sensitive about their perceived disappearance from the airwaves in Scottish-based programmes. Insiders also say that there is a wish to test whether or not there is still life in the idea of a 'Scottish Six' - a Glasgow-originated news intended to replace BBC1's networked bulletin. This has not been popular at Westminster and was opposed by Scottish members of the Cabinet when originally proposed. The BBC is also under particular scrutiny for the performance of *Newsnight Scotland*, the twenty-minute opt-out of the networked *Newsnight* on BBC2, which has become a major plank for discussion of Holyrood.

3.2 Whither *The Scotsman*?

When in 1996 Andrew Neil became editor-in-chief of Scotsman Publications (owned by the reclusive millionaires David and Frederick Barclay), he threw down the gauntlet to Scotland's establishment. In his autobiography, *Full Disclosure*, he wrote:

I had laid down that our titles must broadly be in favour of the market economy, defenders of the union between Scotland and England and prepare to tackle the many outdated shibboleths and collectivist attitudes which still dominate north of the border.⁴⁰

Since his appointment, Neil has controlled *The Scotsman*, its Sunday stable-mate *Scotland on Sunday* and the *Edinburgh Evening News*. Neil is widely considered to have changed *The Scotsman* from being a supporter of devolution into a devo-sceptic paper, and then, once devolution was implemented in 1999, to have consistently

³⁹ Scottish Affairs Committee (2001), 'Post devolution news and current affairs broadcasting in Scotland', London: House of Commons Committee Office, 31 October.

⁴⁰ Neil. A (1997), *Full Disclosure*, London: Macmillan, pp. xvii-xviii.

influenced the paper to attack the new political institutions and political class. He has also presided over a medium-term decline in the paper's fortunes, as it has progressively alienated key elements of its core readership by its strident down-market approach. In 1997, *The Scotsman* was selling around 80,000 copies daily. After falling sales, severe price-cutting campaign took sales up to over 100,000 in 2000, but last year they had dropped back to below 80,000.

What once again excited the media cock-pit was the dismissal on 19 December 2001 of *The Scotsman*'s editor, Rebecca Hardy. The fifth appointment since Neil took over the group, Hardy had lasted twenty months, considerably longer than some of her predecessors. Neil's new appointee is Iain Martin, who at 30 is the youngest of the platoon of recent editors. Martin was both political editor and deputy editor of *Scotland on Sunday* and assistant editor of *The Scotsman* and is reputedly close to Neil in his thinking. The big questions now are whether editorial change at *The Scotsman* will solve its problems and just how long the Barclay brothers will continue to shore up its finances. The same is true of *Scotland on Sunday*, where sales have slipped to below 90,000, a loss of 10,000 in 12 months.

References

Jaspan, A. (2001) 'News in focus', *Sunday Herald*, 23 December, p.10

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4. Public attitudes and elections

John Curtice

4.1 Attitudes towards devolution

Scottish Social Attitudes Survey

1997, 1999: As a result of having a Scottish Parliament will...

2000: Is having a Scottish Parliament going to give...

2001: Do you think having a Scottish parliament is giving...

	1997	1999	2000	2001
Scotland have a stronger voice in The UK	70	70	52	52
Ordinary people more say in how Scotland is governed	79	64	44	38
Increase standard of education in Scotland	71	56	43	27

As a result of having a Scottish Parliament will...

	1997	1999	2000	2001
Scotland's economy become better	64	43	36	43
No difference	24	37	45	43
Worse	12	12	12	10
NHS in Scotland will become				
Better	65	49	na	45
No difference	28	41	na	42
Worse	6	4	na	9

na not asked.

1997 figures from the Scottish Referendum Study

No commercial polling on attitudes towards devolution was published this quarter. As a result, despite much speculation about what the impact might have been, we have no evidence on whether the events surrounding Mr McLeish's resignation had an adverse impact on perceptions of the Scottish Parliament or support for the principle of devolution.

However, very early results from the National Centre for Social Research's Scottish Social Attitudes 2001 survey – conducted in the immediate wake of the 2001 general election – were made available at a seminar on declining turnout held at Holyrood on

14 February.⁴¹ These suggest that, with one exception the decline in evaluations of the performance of the Scottish Parliament detected by the 2000 survey appears at least to have bottomed out during the parliament's second year, although they still remain well short of expectations at the time of the 1997 referendum.

For example, whereas in 1997, no less than 79% of Scots believed that the Scottish Parliament would give ordinary people more say in how they were governed, two years into its life just 38% thought that that had happened. But at least that latter figure was only six points down on the proportion who twelve months earlier thought the parliament was going to achieve that goal. Meanwhile, as many Scots believe that the Scottish Parliament will improve the Scottish economy now as did so at the time of the 1999 elections - although again the figure is still 21 points down on 1997. However, it appears that the SQA crisis has dampened perceptions so far as improving education in Scotland is concerned. Just 27% believe that the parliament has improved the standard of education, no less than 16 points down on the proportion who twelve months earlier still thought the parliament was going to achieve that goal.

Equally unchanged however are perceptions that it is the UK government rather than the Scottish Parliament that has most influence over what happens in Scotland. No less than 66% take that view, exactly the same as in 2000 but far higher than the 39% who anticipated such an outcome at the time of the 1999 election. Devolution still appears to be struggling to be making as big an impact on public perceptions of Scottish political life that had been anticipated by many of the advocates (and indeed opponents) of devolution.

4.2 Attitudes towards other issues

System Three/Herald 3-9/1/02

From 1 January 2002, most of the other countries in the European Union have been using the Euro as their only currency. Do you support or oppose Britain also changing to the Euro as its only currency within the next five years.

Support	37
Oppose	42
Undecided	22

Scottish Opinion Ltd/Scotland on Sunday 6-10/1/02
(N=575)

⁴¹ For further details of the Scottish Social Attitudes survey see J. Curtice, et. al. (eds.), *New Scotland: New Society? Are Social and Political Ties Fragmenting?* Edinburgh: Polygon, 2001.

If the Government were to hold a referendum now, would you vote for or against Britain replacing pounds Sterling with the single European currency, or Euro?

For	29
Against	48
Unsure	22

As in Britain as a whole, the launch of the euro notes and coins in most of the European Union was accompanied by attempts to ascertain what impact the launch might have had on hitherto sceptical opinion in the UK. The Herald was first off the block on 12 January with a front page headline, 'Big rise in support for the Euro'. The story was highly misleading. True, the poll found 37% supporting the adoption of the euro, well up on the 25% who did so when System Three last addressed the topic in June 2001. But what was not made clear was that System Three asked a very different question this time around than it did in July 2001. In July it simply asked respondents how they would vote if a referendum on the euro were to be held tomorrow. As can be seen from the table, in January in contrast System Three both reminded their respondents that the euro had just been adopted in most of the rest of the EU, and asked about adopting the Euro over a five year time horizon rather than as a result of a referendum tomorrow. Both changes can be expected to induce higher support for the Euro, in the latter case because the time horizon puts off the evil but perhaps inevitable day (if that is what it is). Indeed the System Three poll reaffirmed that whatever their personal preferences most Scots (55%) believe that Britain would join within five years.

Indeed, a second poll published the following day by Scotland on Sunday painted a very different picture. When simply asked by Scottish Opinion Ltd. whether they would vote for or against the euro in a referendum held now, only 29% said they would vote in favour, nine points less than in the System Three poll despite heavy overlap between the two organisations' fieldwork dates. This was the first time that Scottish Opinion had published figures on this subject so it cannot give a definitive picture of whether support for the euro did rise in Scotland in the immediate wake of the euro's launch either (or indeed whether opinion in Scotland is now more or less opposed than it is south of the border). Still, the 19 point lead for the anti-euro camp compares with leads of 22 and 28 points recorded by System Three and ICM in June/July 2001 in response to questions that also asked respondents about how they would vote in a referendum tomorrow. There may thus have been at least a small swing in favour of the euro during this period, a conclusion that would be in line with the evidence of British polls.

4.3 Elections and Attitudes towards Parties

Holyrood Vote Intentions

System 3/Herald poll

	Con		Lab		LD		SNP		
Others Vote	1	2	1	2	1	2	1	2	1 2
22-28/11/01	11	11	40	35	11	13	32	31	5
3-9/1/02	10	11	39	33	12	15	32	29	6
31/1-6/2/02	9	9	40	33	13	17	31	30	6

The Other votes are divided as follows:-

	SSP		Green	
Vote	1	2	1	2
22-28/11/01	3	6	1	3
3-9/1/02	3	6	2	5
31/1-6/2/02	4	6	1	3

Westminster Vote Intentions

System 3/Herald Poll

	Con	Lab	LD	SNP	
Others					
22-28/11/01	14	47	10	25	3
3-9/1/02	15	46	12	23	5
31/1-6/2/02	16	47	13	24	4

The principal Other votes are for the SSP, who scored, 2% in November , and 3% in early January and February.

The polls published in this quarter give us the first indication of the impact, if any, that Henry McLeish's resignation and the creation of a new administration under Jack McConnell has had on party popularity. Labour's poll ratings were indeed consistently lower in this quarter than in the previous quarter. For example, at 40% its average share of the first Holyrood vote this quarter is four points lower than in the previous quarter. However this means that it is still in line with Labour's ratings immediately before and after the UK general election in June 2001. So any damage that may have been inflicted by then events surrounding Mr McLeish's resignation cannot be considered to have been severe. Moreover there is no sign that the SNP has profited from Mr McLeish's misfortunes.

Indeed if there is any party that might feel satisfaction from its poll ratings this quarter it would appear to be Labour's coalition partners, the Liberal Democrats who continued to outpoll the Conservatives on both Holyrood votes in this period,

maintaining a pattern established at the time of the June 2001 election (when the Liberal Democrats outpolled the Conservatives in the UK general election) but which had not previously been a regular feature of System Three's polls. Even allowing for the tendency of opinion polls to underestimate Conservative support, the party evidently has reason to worry that it could become Scotland's fourth party at Holyrood in May 2003 unless the long awaited Conservative revival across the UK as a whole has begun to materialise. Certainly the party appears to have profited little from having been the party that did most to undermine Mr McLeish's position.

The Boundary Commission for Scotland issued its long awaited provisional recommendations for new constituency boundaries at the beginning of February. (Full details can be found at <http://www.bcomm-scotland.gov.uk>.) These recommendations were the first to be made since the Scotland Act provided for a reduction in the number of constituencies by requiring the average Scottish constituency to be of the same size as the average English one. As had previously been suggested might be the case, however, in the absence of any minimum guarantee in the number of Scottish constituencies at Westminster, the commission interpreted the rules for redistribution in the more relaxed manner that had previously been applied by the English.⁴² This meant that in taking cognisance of the requirement in the redistribution rules to take into account special geographical factors the commission felt able to allow rural Scotland to be over-represented without at the same time cutting the representation of the central belt. Together with the requirement in the Scotland Act that Orkney and Shetland should not be joined with the mainland, this meant that instead of recommending 57 constituencies, that is the figure that would have required to make Scotland's representation proportional to England's, it recommended 59.

As the Scotland Act stands this recommendation would also require a reduction in the number of Holyrood seats to 104. However, as reported last quarter, the Secretary of State for Scotland is currently undertaking a consultation exercise about whether the size of the Scottish parliament should be cut or not. Little appreciated in this debate however is the fact that even if the provisions of the Scotland Act are applied to the Scottish Parliament, the decision of the Boundary Commission to recommend 59 rather than 57 seats means that the size of the Scottish Parliament (and indeed the number of Scottish MPs at Westminster) is likely to start to increase again at the next and subsequent reviews.⁴³ The reluctance of politicians to undertake a systematic review of the technical deficiencies of the rules for redistribution is doubtless a reflection of the political sensitivity of the subject amongst all parties. But it has left rather a muddle.

⁴² J. Curtice, 'Should Britain follow the Caledonian Way?' in I. McLean and D. Butler (eds.), *Fixing the Boundaries: Defining and Redefining Single-Member Electoral Districts* Aldershot: Dartmouth. 1996; J. Curtice, 'Reinventing the Yo-Yo? A comment on the electoral provisions of the Scotland Bill', *Scottish Affairs*, no. 23, 1998, 41-53.

⁴³ Curtice 1998.

4.4 Local Government by-elections

SNP	Change in % vote since May 1999			
	Con	Lab	LD	
29/11/01 Argyll & Bute/South Kintyre	+13.8	-1.8	+11.1	-
11.2 Highland/Thurso East	*	I	*	*

I Did not fight seat in 1999

* Did not fight seat in by-election or in 1999

There have only been two local by-elections in this period, in part because until the passage of the Scottish Local Government (Elections) Act 2002, a full round of local elections were due to take place in May 2002 which meant that by-elections would not normally be held from January 2002 onwards. As reported last quarter, the Act provides for the postponement of those local elections until May 2003 so that they will coincide with the next Scottish Parliament elections. A number of council vacancies should not be filled in the coming months.

4.5 The Leaders

System Three/Herald 22-28/11/01

How does Jack McConnell's admission of adultery affect his suitability as First Minister?

A positive effect	8
A negative effect	21
No effect at all	66
Don't Know	5

Scottish Opinion Ltd./Scotland on Sunday 15-17/11/101
(N=525)

Jack McConnell is about to become First Minister for Scotland. This week he admitted one extra marital affair.

Do you think Jack McConnell will be a good First Minister for Scotland?

Change on previous week		
Yes	41	-9
No	23	+7
Unsure	36	+3

If it were revealed that Jack McConnell has had more than one extra marital affair do you think he should be required to resign as First Minister for Scotland?

Yes	38
No	49
Unsure	13

The very beginning of this quarter was marked by Jack McConnell's revelation that he had had an extra marital affair and his election a few days later as Scotland's third First Minister. The revelation inevitably sparked speculation about whether it affected Scots views about the suitability of their new First Minister for high office. It would appear that the revelation did some harm, but did not cause serious political damage. Scottish Opinion Ltd found that there was a nine point drop in the proportion who thought he would make a good First Minister compared with the position a week prior to the revelation. Even so, approaching twice as many Scots still felt he would make a good First Minister as thought he would not. Similarly a System Three poll found that while rather more people's opinion of Mr McConnell's suitability to be First Minister was adversely than positively affected, for two thirds of Scots it made no difference. The episode appears to confirm that politicians who have not attempted to claim the high moral ground and who are open about any past marital infidelity are now relatively invulnerable to such revelations.

5. UK Intergovernmental relations

Alex Wright

5.1 The Presiding Officer and the Scotland Act

Sir David Steel, the Parliament's Presiding Officer has been increasingly critical of the extent to which Holyrood's affairs are circumscribed by *The Scotland Act*. Sir David has complained that under the Act MSPs do not have the authority to elect a third deputy presiding officer.⁴⁴ He was more forthright, when he provided evidence to the Parliament's Procedures Committee on 20 November 2001. When asked by a member of the committee whether the Parliament could express a view on the Secretary of State's consultation exercise on the future number of MSPs following the boundary review, he replied

There is one problem with the constitution of the Parliament, which is still set up under the Scotland Act 1998. One has to go back to that Act if one wants to make any changes to our structure. I do not think that, in the long run, that is a sensible way to proceed. Apart from anything else, even if we in the Parliament agreed on sensible changes, we would have to persuade both Westminster Houses that they must give time to change the Scotland Act 1998. The argument over whether there should be 129 MSPs has illustrated that difficulty clearly.

On how we proceed, the Secretary of State has announced a consultative process. I hope that soon the Parliament will have a chance to debate the issue and come to a view on what we want to put into that consultative process. I do not think there is any reason why we should not do so as a Parliament.⁴⁵

Every time the Scottish Parliament believes that some aspect of the Scotland Act requires revision then it is not only reliant on the good will of Westminster regarding such a proposal but also that there is sufficient time available to deal with it. Although it made sense for the Holyrood's competence to apply to any areas not reserved to Westminster under the Act, little thought was given to whether there would need to be some fine-tuning a year or two after the Parliament first re-convened. If the Parliament debated any changes to the number of MSPs following the boundary review this could set the scene for a confrontation between Holyrood and Westminster in the coming months.

5.2 House of Lords Committee on the Constitution

The House of Lords Committee on the Constitution is conducting an inquiry into 'Devolution: inter-institutional relations in the United Kingdom'. The purpose of the inquiry is to: assess the system of inter-institutional relations as it presently is; consider how well it works and how it is developing; and suggest what changes might

⁴⁴ The Herald 26/11/01, Murray Ritchie, p,6.

⁴⁵ Procedures Committee, Meeting 11 2001, Scottish Parliament, Official Report, 20 November 2001, col 1008.

be made particularly at United Kingdom level, to improve its working and how well it might respond to future challenges.⁴⁶

Assessing the role of the Secretary of State for Scotland (along with Wales and Northern Ireland) fuelled reports in the media that the Scotland Office may have had its day. Douglas Henderson, a former minister whose constituency lies in the North of England is one of a group of MPs calling for the ‘abolition of separate cabinet representation for Scotland and Wales’, the underlying rationale being that once England had its own assemblies, all parts of the UK should have equal treatment (except Northern Ireland presumably because of the origins of the devolution settlement). Mr Henderson is reported as saying:

It follows from devolution that you can’t in the long term, sustain a separate Secretary of State. The Northeast of England is almost as big, in population terms, as Scotland, and it doesn’t have a separate minister to put its case in cabinet. In any event cabinet government barely exists. It’s a presidential system where the prime minister’s office has huge influence over all departments.’⁴⁷

In some respects Mr Henderson’s words are rather contradictory in as much as if Britain does have a presidential system and cabinet government barely exists then it does not matter much at present if Scotland retains its Secretary of State or not. Conversely, as has been suggested in earlier reports, the office holder is custodian of the Scotland Act – and as we have seen above, the Act is already a bone of contention amongst MSPs. It will be interesting to see what the Committee on the Constitution has to say about the post.

The Lords Committee will also be assessing: How appropriate are ‘Sewel’ motions and their use to date? Is this consistent with the principles of devolution? Should there be any change in the legislative relationship between Westminster and Holyrood? What issues arise from Westminster legislation for Scotland not involving the Sewel convention, such as the creation of criminal offences in Scots law arising from reserved matters?⁴⁸

The Sewel motions were mentioned in the previous Devolution Monitor Report (they can be employed by Westminster if a particular piece of legislation was to be applied across the UK even though this may relate to areas which have been devolved to territorial governments). Some officials maintain that they are of benefit because they prevent duplication of effort (i.e officials at the devolved tiers and the UK level do not have to draft separate legislation for a similar Bill). It has also been suggested that if the Scottish Parliament was not content with a Westminster Bill (which was a by-product of a Sewel Motion), there is nothing to prevent Holyrood from introducing a Bill amending it after Royal Assent.⁴⁹ Nonetheless, as with the Secretary of State, Sewel remains extremely contentious not least because if it is used too frequently it

⁴⁶ House of Lords Committee on the Constitution, an inquiry into ‘devolution: inter-institutional relations in the United Kingdom, calls for evidence.

⁴⁷ The Sunday Times 20/01/02.

⁴⁸ House of Lords Committee on the Constitution, an inquiry into ‘devolution: inter-institutional relations in the United Kingdom, calls for evidence.

⁴⁹ Information provided by an official at the Cabinet Office.

calls into question the worth of having a Scottish legislature. Here too, the Lords Committee may well expose potential pitfalls in its present and future usage.

5.3 First Minister and Constitutional Change

It is apparent that the First Minister is keen to build bridges with MPs at Westminster after increasingly hostile stories surfaced in the media (see previous Monitor Reports). Within days of his appointment he visited London and met Labour MPs no doubt to secure allies there. During an interview with *The Herald* Mr McConnell stated:

I believe firmly in the devolution settlement agreed in the referendum. I don't believe we should be arguing about the powers of the Scottish Parliament for the next five or six years. We should get on with the business of delivering improved public services. For that to happen requires a partnership with our colleagues at Westminster, so my first message will be that we have to make the partnership that we have spoken about at times a living reality.⁵⁰

This may be because he needs their help if the boundary review does have an impact on the number of MSPs at Holyrood. But as far as 'arguing about the powers of the Parliament' is concerned, as was clear from Sir David's comments, the debate has already begun.

⁵⁰ The Herald, 13/12/01 Catherine MacLeod, p.7.

6 Relations with Europe

Alex Wright

6.1 The Liege Declaration and Governance in the EU

In November 2001 Scotland was a participant at the Second Presidential Conference of the Regions with legislative power – which culminated with the ‘Liege Resolution’. Liege was essentially the successor to the Flanders Declaration of May 2000 but there were marked differences between the two. At Flanders only seven ‘regions’ participated, whereas at Liege the number had increased to fifty-two – the growth in support was very much in line with what the ‘Flanders group’ had hoped for. But the Resolution was a rather watered down version of the earlier Declaration. Whilst the Declaration demanded that the constitutional regions should have the ‘*right* (author’s italics) to refer directly to the European Court of Justice when their prerogatives are harmed’,⁵¹ the Resolution stated that, ‘consideration should be given to a right of direct appeal to the European Court of Justice in case their powers are violated, while respecting each national Constitution.’⁵² There were two explanations for the different phraseology. First, the constitutional status of the participants was considerably more divergent at Liege with some having much less autonomy than Scotland - for example they might not have a Parliament. Second, there was agreement that there was little point in replicating word for word the May Declaration. Third, it reflected how things were evolving within the European Union (EU). By this time the member states had agreed to establish a Convention which would prepare the ground for the next inter-governmental conference in 2004. However, there was to be no direct involvement on the part of the regions (each ‘national’ delegation was to comprise one government representative and two ‘national’ parliaments’ representatives). The Resolution therefore demanded that ‘all Governments [should] include regional representatives in the national delegations at the Convention’.

In the event this was to have little effect on the heads of Government and state at the next EU summit at Laeken. But they did agree that the Committee of the Regions could send six delegates to the Convention as ‘observers’. Consequently Scotland’s main entrée to the Convention remains the UK government and the two parliamentary representatives. As far as the governmental side is concerned the Executive would be consulted by the UK government when necessary. Mr Straw, the Foreign Secretary, has also agreed that should any significant developments arise as a result of the Convention the ‘Joint Ministerial Committee Europe’⁵³ would meet to consider this.⁵⁴ Ministers at the Scotland Office would have an involvement in promoting Scotland’s interest in the relevant cabinet committees but as much of this lacks transparency it is difficult to assess how productive this might be.

⁵¹ 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.

⁵² Resolution, Second Presidential Conference of the Regions with Legislative Power, Liege, 15 November 2001.

⁵³ The Joint Ministerial Committee enables UK Government ministers and their colleagues from the devolved governments to consult one another in a formal setting and co-ordinate their activities. It lacks executive powers.

⁵⁴ This information was provided by an official at the Scottish Executive.

Despite speculation in the media that the Scottish Executive had exceeded its remit by involving itself in the Flanders group (see previous monitor reports), this had not deterred it from participating in its successor – albeit that, as we have seen, the Resolution is a somewhat weaker version of the Declaration. Even so, from the Executive’s perspective there was nothing remiss in endorsing calls for ‘the reinforcement of the role of constitutional regions within the European Union’ or demanding that there should be ‘a more precise delimitation of powers’ on the basis of ‘subsidiarity’.⁵⁵ In the Executive’s view this was perfectly reasonable because as the Concordat affirmed, the Executive would have a legitimate interest in those EU policies which affected matters that had been devolved to Scotland. It should therefore be entitled to question whether it was appropriate for the EU to act in a given area of policy or whether it should be left to the Executive to formulate its own legislation. Jim Wallace, Deputy First Minister reiterated this view, when he provided oral evidence to the Parliament’s European Committee in December 2001. He told MSPs, ‘On governance we favour wider consultation at an early stage with Administrations such as the Scottish Executive, less European Union regulation where measures could be better taken at the Scottish level and greater flexibility in their implementation.’⁵⁶

The underlying issue was that there had been too many occasions when the European Commission had formulated legislation when the matter could have been better dealt with in Scotland. This was exacerbated by the extent to which such legislation was so finely detailed that there was little opportunity for the Executive to apply some discretion over its application in Scotland. Officials at the Executive therefore believe that the Commission should produce framework legislation vis-à-vis a given policy and then where this applies to Scotland, the Executive could then formulate the detailed legislation itself. Such a development, it is hoped, would not be the product of treaty change. Instead it would be subsumed under ‘governance’. The Executive is also calling for closer consultation by the Commission at the pre-legislative stage in case the issue under consideration is flawed.⁵⁷

Accordingly, the call for a more direct engagement with the EU is not ‘expansionism’, in the sense that the Executive is intruding into areas which have been reserved to Westminster such as foreign policy. Rather, from the Executive’s perspective, there have been too many occasions when the Commission has involved itself in areas which have been devolved to Scotland when it had no need to do so and when its legitimacy to do so was questionable.

6.2 European Committee of the Scottish Parliament

The Committee published its Report during December entitled ‘The Governance of the European Union and the Future of Europe: What role for Scotland?’ The report made a number of recommendations. These included:

⁵⁵ Resolution, Second Presidential Conference of the Regions with Legislative Power, Liege, 15 November 2001.

⁵⁶ European Committee, Scottish Parliament col 1298 04 December 2001 Meeting 15 2001, Official Report.

⁵⁷ This information was provided by an official at the Scottish Executive.

In the case of the UK we endorse the view that there should be a White Paper on the IGC [in 2004].

The current EU Treaties are simplified and rationalised as part of the preparatory work for the IGC.

That serious consideration is made to the creation of “partners of Union status” for bodies such as the Scottish Parliament.

That the IGC considers what systems might be necessary to enforce the subsidiarity concept including the merits of a subsidiarity panel or the Supreme Court route.

That consideration be given to the creation of a ‘Regional Affairs Council’ involving ministers from the various constitutional regions with legislative powers for the Committee of the Regions to enjoy observer status in relevant Council of Ministers meetings.

The committee also suggested that the Concordats should be re-written with a view to ensuring that more information about the meetings of the Joint Ministerial Committee entered the public domain. It called for Scottish ministers to be automatically entitled to attend the Council of Ministers ‘when devolved matters are being discussed’ and that there should be a Scottish ‘scrutiny reserve’. This would apply to the Executive and Parliament. The reserve would come into play when a Scottish minister was due to attend one of the sessions of the Joint Ministerial Committee or when he or she was due to attend the Council of Ministers. The Minister could not agree a final position with their UK counterpart in advance of such a meeting, should the European Committee or other committee wished to express its view on a matter under discussion.⁵⁸ In sum the report is extremely ambitious both in the breadth of its content and its calls for reform in the context of the EU, the UK and Scotland. It remains to be seen whether it has much effect on the Executive.

The Committee has undergone further changes of membership as a result of Hugh Henry’s elevation to the Executive and it looks set to revise its procedures again – including the possibility of establishing the Scrutiny Reserve – referred to above.⁵⁹ That MSPs are once more reviewing the committee’s role and its procedures is indicative of the onerous task facing its members. All too often they are attempting to influence events, much of which are for the most part determined many miles from Edinburgh.

6.3 Committee of the Regions

Scotland has eight members of the committee – there are four full time and four alternates. Under the terms of the White Paper the Executive was duty bound to set its recommendations before the parliament. It was suggested that of the four full timers, two would be nominated from within the Convention of Scottish Local Authorities and that the other two would be MSPs – of these – one would be a minister in the Executive. It was therefore suggested that Nicol Steven would be the full time

⁵⁸ European Committee, 9th Report 2001, Volume 1 – Main Report, Scottish Parliament.

⁵⁹ European Committee, Agenda 1st Meeting 2002 Session 1, 15 January 2002. 7. Relations with Local Government.

member with Jack McConnell as the alternate. At the time this made sense because they were both responsible for the EU portfolio in the Executive. Following McConnell's election as First Minister this arrangement remains unchanged. In a number of respects it makes good sense. There may be an occasion when Scotland's senior politician should attend a meeting of the CoR, despite its relative powerlessness. Although there are grounds for suggesting that Jim Wallace should be the full time member as he currently holds the EU portfolio that would have meant both of Scotland's most senior politicians would have been involved in a body which only has limited influence over EU matters.

7. Local Government

Neil McGarvey

This quarter has been relatively quiet for local government with few major policy announcements or events of note. The report therefore focuses on the implications for local government of the November 2001 election of Jack McConnell to the office of First Minister and the subsequent cabinet re-shuffle. The second section of the report reviews the implications of devolution for central-local government relations in Scotland more generally.

7.1 The McConnell Re-shuffle

The elevation of Jack McConnell to the office of First Minister may have significant repercussions for local government. It was widely reported that as part of the 'deal' to keep the coalition intact that the Liberal Democrats had gained a promise of proportional representation in local council election for 2007. If this is the case it is rather ironic that it stems from political scandal at central government level after years of such scandal at local level. John Curtice has reworked the results of the 1999 local government elections - held on the same day as the Holyrood elections - and projected them on a PR system. Labour is the only party that loses. It would be forced into coalition in seven councils in which it currently holds a majority.¹

It should be remembered that McConnell was a key player in the 'votes for trips' affair. This was when, as general secretary of the Scottish Labour Party, he failed to remove from office the then Lord Provost of Glasgow City Council, Pat Lally, and his deputy, Alex Mosson, the current Lord Provost, after it was taken to the Court of Session.¹

The cabinet re-shuffle that followed McConnell's election as First Minister has resulted in various new ministers with responsibilities for local government:

- Andy Kerr has taken over as Minister for Finance and Public Services (including local government)
- Cathy Jamieson is new Minister for Education and Young People
- Iain Gray is Minister for Social Justice
- Malcolm Chisholm is Minister for Health and Community Care

The main 'casualties' of relevance to local government were Angus MacKay (Finance) and Jackie Baillie (Social Justice). What this means for local government is difficult to say but it would be difficult to argue against an interpretation that the new ministers are more left of centre than their predecessors.

Andy Kerr has a local government background with experience as strategy and development manager in the land services department of Glasgow City Council. He also served as an adviser in the office of the then Glasgow City Council leader, Frank McAveety. As convenor of the Parliament's Transport and Environment Committee, he broke party ranks when he headed the opposition to proposals to award road maintenance contracts to the private sector. It is difficult to see both he and Cathie Jamieson (new Minister for Education and Young People) pursuing PFI/PPP schemes in the schools building programme with much vigour¹.

Jamieson was on the editorial panel of *Scottish Left Review*¹ which is fiercely critical of such schemes. When Tony Blair ditched Clause 4, she became one of the founding members of the Grassroots Alliance to campaign against the party's move to the right. Six months after her election she signed a parliament motion initiated by Linda Fabiani of the SNP, supported by Tommy Sheridan, SSP leader, and others on the left condemning the potential of the global economy to open the door to privatisation of schools and hospitals. Another new minister with leftward leanings is Malcolm Chisholm, the new health minister, who resigned as a junior minister at the Scottish Office over a cut to benefits for single mothers.

Iain Gray is the only one of the new ministers mentioned who does not warrant the 'left of centre' label. He has served as deputy minister for community care and, more recently, as deputy minister for justice to Jim Wallace and is seen as having a proverbial safe pair of hands.¹

It was reported that in the first McConnell Cabinet meeting the emphasis was placed on public services¹. Ministers were also told to get rid of any diversions and spend as much time as possible out of the office, meeting people involved at the front line in their particular remits. It is too early to call what this re-shuffle may mean for local councils – politicians often change their perspective on issues once in office – but it is likely PFI/PPP will be subject of some sort of review.

7.2 Devolution and local government

An article in *The Herald*¹ during the First Minister's Leadership Contest raised questions about the calibre of leadership in Scottish local government. It was a rather misty-eyed piece that referred back to the 'heydays' of ex-council leaders John Wheatley (Glasgow Corporation) and Dick Stewart (Strathclyde Regional Council). The suggestion was that,

The next Dick Stewart will probably avoid local government and follow power straight to Westminster, Europe, or Holyrood at a pinch. Scottish local government no longer seems the spawning ground of leaders, perhaps because it is now so overshadowed by Holyrood.

There is perhaps some justification in this line of analysis. Anecdotal evidence of the low status of Scotland's local government leaders is reflected in the fact that in the annual awards for Scottish politician of the year (a ceremony held in December 2001) of the seven awards none are for individuals in local government. The Parliament has 'sucked up' some of the many ex-council leaders. The new First Minister himself is a former leader of Stirling District Council in the early 1990s. In McConnell's new ministerial team, Peter Peacock (new Deputy Minister for Finance & Public Services) was leader of Highland Council until his election to the Parliament and Hugh Henry (Deputy to the Minister for Health and Community Care) was leader of Renfrew Council. Of Scotland's 129 MSPs nearly 40% have been recruited from the ranks of local councils.¹ It is perhaps inevitable that this will leave at least temporarily a leadership vacuum in local government.

Although similar ‘partnership’ rhetoric has dominated the language of central politicians and policymakers in Scotland and England, this has tended to mask significant differences in approach to central-local relations.¹ The Scottish Executive has focused on central-local relations as a topic in its own right, unlike the DETR/DLTR which has tended to view them as simply a by-product of policy changes in other areas. Since devolution Scotland’s new governing institutions have to hand a report with an exclusive focus on Parliament-local government relations (McIntosh), another dealing with local democracy (Kerley) and a third examining managerial change (MacNish). It has overseen Best Value and Community Planning Task Forces bringing together Executive and local government interests, published a Partnership Framework as well as review financial relations (albeit not comprehensively) with COSLA.

Another difference with England is that the regulatory oversight arrangements are more ‘light touch’. The Accounts Commission does not have the same Best Value inspectoral remit as the Audit Commission. There is no Housing Inspectorate in Scotland. Best Value remains a voluntary exercise and has yet to appear on the statute book, reform of political structures via the Leadership Advisory Panel has been governed by suggestion and guidance not instruction. Informal guidance as opposed to formal instruction has been the order of the day.

Despite, the ‘light touch’ regulatory approach noted above, the Scottish Executive has imposed a clear agenda on local councils. Viewed from local government, we have now had the Scottish Executive, via the Leadership Advisory Panel, recommending how councils should organise themselves internally, the Best Value policy imposing one managerial blueprint for all and the financial reforms dictating how new monies should be spent whilst capping powers are retained. The Scottish Executive would appear to be just as concerned to dictating how councils operate internally, even if its strategy of imposing its agenda is more subtle. Detailed prescriptive and direct control is evident in Scotland, if a little harder to detect.

Attention in Scottish politics, as at the UK level, is now beginning to focus on public service ‘delivery’. This will increase the focus on local councils. Moreover, the electoral timescale involved in Scotland is more acute than in the UK – visible signs of improvement are necessary by 2003 if the current Scottish Executive is to gain any electoral benefit.

7.3 Ongoing Developments

Other ongoing developments this quarter to be noted:

- As reported last quarter residential care for elderly people remains high on the political agenda in Scotland. This quarter new national standards of residential care for elderly people in Scotland were launched. The 34,000 Scots who live in state or private residential and nursing care homes will be able to have the quality of their care assessed and guaranteed against the new national standards.¹
- COSLA expressed 'total disbelief and bitter disappointment' at Executive claims that councils are to receive an additional £350m in resources for next year and 11% rise on last year. It claimed the figures were being used to 'camouflage the realities of another difficult financial settlement for local government'. Glasgow City Council went further describing the figures as a 'confidence trick'.¹ COSLA claimed a lot of the money will go straight into funding long term care of the elderly, care home fees and the teacher's pay settlement.
- THE general principles of the executive's plan to create one Scottish public water authority from the present three were approved by the Scottish Parliament. A total of 112 voted in support, with only Tommy Sheridan, the Scottish Socialist member, and Dennis Canavan, the Independent MSP, opposing the bill's progress. SNP members, however, warned their continued support depended on guarantees being written into the legislation to rule out "backdoor privatisation" of the industry.
- The Scottish Local Government (Elections) Act received Parliamentary approval. It combines further local government polls with elections to the Scottish parliament and allows councils to run pilot schemes aimed at improving turnout.

8. Finance

David Bell

Nothing to report this quarter

9. Legal disputes Barry Winetrobe

9.1 Challenge to Executive action

A well-publicised challenge to a ministerial order seeking the end of self-governing status for a school failed in the Court of Session in December.⁶⁰ Review was sought on ECHR grounds, based on Articles 2 (right to education) and 14 (right to enjoy Convention rights without discrimination), there being no suggestion that Ministers' action in the matter had not breached any domestic law or procedure. The campaign, and legal action, had been strongly backed by the Scottish Conservatives.⁶¹ The transfer of control has been put back several months by the Executive, from early January to 1 April, presumably to allow for any appeal by the aggrieved parents.⁶² An appeal was begun on 18 January in the Court of Session, and has been supported by the Conservatives.⁶³

9.2 Possible flaws in Act

There were press reports in late December that an Act of the Parliament had been inadequately drafted, causing legal difficulties which may have to be resolved in the courts. It is suggested that the *Mortgage Rights (Scotland) Act 2001*, based on a Member's Bill introduced by Cathie Craigie, is inadequately drafted in its provisions affecting repossession, and that emergency legislation to correct the flaws may be required. According to the reports, Executive lawyers are currently examining the matter urgently.⁶⁴

9.3 Legal discourtesy

A senior judge publicly criticised Lynda Clark, the Advocate General for Scotland (the UK Government's Scottish Law Officer) in a judgment in the Court of Session. This was all the more embarrassing because the judge was Lord Hardie, the former

⁶⁰ The transcript of the case of *Dove* is on the Scottish Courts Service website: <http://www.scotcourts.gov.uk/index1.htm>; "Opted-out school loses legal battle", BBC News Online 14.12.01: http://news.bbc.co.uk/hi/english/uk/scotland/newsid_1711000/1711519.stm. Initial press reports suggested that the legal challenge was to the relevant primary legislation itself, the *Standards in Scotland's Schools Act 2000*, which had overturned the self-governing status scheme of earlier Conservative legislation: "Education act 'discriminatory' claim", *Scotsman*, 24.11.01: http://www.thescotsman.co.uk/text_only.cfm?id=124789

⁶¹ "Legal ruling on future of St Mary's Episcopal Primary School statement from Brian Monteith MSP", Scottish Conservative press release, 14.12.01: <http://www.scottish.conservatives.org.uk/pressrelease.asp?ID=1704>

⁶² "Opt-out school gets 'reprieve'", *BBC News Online*, 20.12.01 http://news.bbc.co.uk/hi/english/uk/scotland/newsid_1720000/1720451.stm

⁶³ "Parents lodge their appeal for St Mary's", *Scotsman*, 18.1.02: <http://www.thescotsman.co.uk/scotland.cfm?id=64722002>; "Monteith backs St Mary's legal appeal", Conservative party press release, 17.1.02: <http://www.scottish.conservatives.org.uk/pressrelease.asp?ID=1769>

⁶⁴ "Blunder in mortgage law will halt evictions", *Herald* 21.12.01. For an outline of the Act, see its Explanatory Notes: <http://www.scotland-legislation.hms.gov.uk/legislation/scotland/en/2001en11.htm>

Lord Advocate, and so a fellow Labour law officer until recently. He regarded as unsatisfactory her apparent decision not to appear in a case with possible constitutional consequences, though apparently reserving her position about appearing in any later stage, such as an appeal. Lord Hardie apparently took this as meaning that while she was unwilling to appear in the case before him, she would consider appearing later if she was unhappy with the outcome of the case. He said:⁶⁵

.... For my part I considered that the position of the Advocate General was unsatisfactory. While it is, of course, a matter for the Advocate General to determine in which cases she wishes to be represented, I venture to suggest that it is particularly unfortunate that the Advocate General should not appear in cases which she considers to be of major constitutional significance. It might have been helpful for the court to have the benefit of her submissions as it is clear that a decision in this case could have implications not only for the Secretary of State for Scotland but also for other United Kingdom Ministers exercising a jurisdiction in Scotland. I also wish to record my disapproval of any practice whereby the Advocate General elects not to appear before this court, but chooses thereafter to intervene in proceedings before the House of Lords or the Privy Council, as the case may be, if the decision of this court does not meet with her approval. Such a practice has numerous disadvantages including the risk that the position of the United Kingdom Government is never judicially considered in the event of neither party proceeding with an appeal to the House of Lords or the Privy Council as the case may be. There is the further consequence that this court, in reaching its decision, does not have the benefit of arguments on behalf of the United Kingdom Government, whereas the decision might subsequently be criticised by the Advocate General on grounds which she did not have the courtesy to advance before this court.

⁶⁵ See “Advocate General attacked by law lord after constitutional case”, *Scotsman*, 22.12.01 <http://www.thescotsman.co.uk/scotland.cfm?id=1718062001>. The transcript of the case (*Davidson*) – the substance of which concerned the interpretation of technical, but potentially important, aspects of administrative law and procedure arising from a prisoner’s claim against Scottish Ministers for a transfer out of conditions of detention which he alleged would were contrary to his ECHR rights under Article 3 of the Convention -- was published on the Scottish Courts Service website on 18 December: <http://www.scotcourts.gov.uk/index1.htm>. General information of the post of Advocate General appears on the Scotland Office website: <http://www.scottishsecretary.gov.uk/ags.htm>

10. Political Parties

James Mitchell

10.1 'Team McConnell'

It was inevitable that Jack McConnell would take advantage of his new position to make changes in the Scottish Executive but few anticipated the extent of the changes he brought about. Internal Labour Party politics explains much that happened and accusations of 'cronyism' have been heard from McConnell's enemies inside his own party. As discussed elsewhere in this report (see 2.1 in the Parliament section), the new Executive is very much in the image of the new First Minister. While efforts have been made to identify an ideological shift, and there has been a discernible move to the left, this is probably more incidental than intentional. Though he had promised there would be no night of the long knives, the only cabinet ranked Labour member still standing after the reshuffle was Wendy Alexander, with an expanded brief. Ironically, she was the person deemed most likely to challenge the new First Minister for the office.

Into the cabinet came close allies of McConnell including his campaign manager Andy Kerr as Finance Minister and Lord (Mike) Watson as Culture and Sports Minister. The term 'night of the long knives' is normally associated in British politics with Harold MacMillan's July 1962 reshuffle when seven out of twenty Cabinet Ministers were dismissed. There are two significant differences between that and McConnell's reshuffle. First, the extent of the clear-out is far greater (only one Labour member of McLeish's cabinet remains in office). Second, MacMillan acted well into his premiership while McConnell's came at the very outset. For these reasons, McConnell's reshuffle looks more like a show of strength rather than a weakness as became the accepted interpretation of MacMillan's reshuffle.

The repercussions have been considerable. The considerable extent to which some of those removed were embittered has been privately acknowledged in various conversations and interviews. The bitterness of relations between some of McLeish's closest allies was made evident in an article by Peter MacMahon, who had been chief spin doctor for the disgraced First Minister. MacMahon tells how McConnell turned up during the crisis preceding McLeish's resignation at a private meeting attended by Tom McCabe and Angus MacKay (two Ministers later dismissed by McConnell):

Jack McConnell, narrowly defeated by McLeish for the Labour leadership and still his political rival, turned up unannounced. MacKay bristled when he saw McConnell. No-one seemed to know why he was there. The tension was palpable as the man most likely to succeed him, saw McLeish and expressed his condolences.⁶⁶

Relations between McConnell and Wendy Alexander, the one remaining Labour member of the Dewar/McLeish Executive have long been poor. These two had been the front-runners for the leadership and Alexander had led her supporters up the hill with the promise of contesting the leadership only to lead them back down again when she withdrew. A stream of media reports since has focused on the poor relations

⁶⁶ Peter MacMahon, 'So, are you corrupt or just incompetent?', *Scotsman*, 25 January 2002.

between the two and particularly the large number of responsibilities that Alexander now has (see section 1.1 above). Speculation has been rife that McConnell has attempted to keep her busy or even force her to resign/retire.

McConnell's main challenge over the next year may prove to be maintaining unity within his party. He will be aided in this by the coming Scottish elections. No figure, especially a senior figure, will want to rock the boat at this time and Labour's performance in the elections will be the major factor in the internal politics of Scottish Labour.

10.2 Swinney's critics

John Swinney came under attack from within his party in a whispering campaign following the demise of Henry McLeish. His critics maintained that it had been Tory leader David McLetchie who had scored points in Parliament against the former First Minister. Swinney supporters maintain that the SNP leader had adopted a dignified position and had placed the reputation of the Parliament first rather than attempt to score cheap points. There was substance to both positions. Since his election as SNP leader, John Swinney's performances at First Minister's Questions have had little impact even against the hapless previous First Minister. However, before Christmas, he was highly successful in tackling First Minister McConnell over health waiting lists. The confrontation between McConnell and Swinney looks set to be more lively and entertaining in the manner of Westminster theatricals than the Scottish Parliament experienced during Henry McLeish's period as First Minister. Nonetheless, Swinney's strengths do not include Parliamentary debating as even his strongest supporters privately concede.

The more significant task ahead for Swinney is positioning the SNP as a serious alternative party of government and professionalising the SNP as an organisation. Commentators were struck by the slickness of the SNP machine in the first week of the general election and while the party failed to get its central message across as successfully as it might have done, it was credited with having the most professional launch in Scotland.⁶⁷ In terms of policy, the evidence suggests that the SNP leader intends to change the party's position on a number of key issues. The events of September 11 meant that the first stage in this process had to be postponed. At the SNP annual conference scheduled at that time there were to have been moves to alter the party's defence policy and adopt a pro-Nato position (see section 10 in November 2001 report). Since then, a working group under the chairmanship of deputy leader Roseanna Cunningham has been considering the party's defence and foreign policy. On nothing like the scale of New Labour's various reviews of policies, the SNP appears to be attempting to review policy as a means of altering the party's image, making it more electable. The SNP's long-standing commitment to nuclear disarmament – a position consistently held since the early 1960s – and doubts about NATO will ensure that any effort to alter policy will meet with strong opposition and an attempt to change policy would be a major gamble for the leader especially as a final decision would have to be taken at SNP conference in September, the last before the 2003 general election.

⁶⁷ James Mitchell and Fraser Nelson, 'Barnett and the 2002 General Election' *Elections and Parties Yearbook 2002*, forthcoming.

10.3 Liberal Democrats and Coalition

Jim Wallace, leader of the Scottish Liberal Democrats and Deputy First Minister, has taken pleasure in seeing his party's share of the vote as well as number of seats rise above the Tories in the general election and looks forward to the Scottish elections with some confidence. Membership of the coalition has not damaged the minor partner. Coalition has proved good for Liberal Democrat fortunes in Scotland. The immediate challenge before the party is to win further concessions from its partner under the new leadership of Jack McConnell and in particular see progress toward electoral reform for local government. The problem for Wallace is that emphasising the importance of a policy that is at the heart of Liberal Democrat aims may build up expectations and lead to disillusionment, even despair if some more proportional system is not adopted. Failing to give it prominence might provoke internal criticisms and certainly allow its opponents to present it as 'Labour's poodle'.

In an interview with the Herald on November 2, Jim Wallace announced that he could not envisage the SNP being strong enough to ask the Liberal Democrats to form a coalition after the next Scottish elections. Elaborating on this in a letter to the *Herald*, the Scottish Liberal Democrat leader satisfied his Labour colleagues that the Liberal Democrats should not be too difficult to deal with after the next Scottish elections by maintaining that the choice would be between Labour forming a minority government as the largest party and a continuation of a Labour-Liberal Democrat coalition. In evidently bullish mood, Wallace maintained that his party had come within four points of the SNP at the 2001 general election and he would 'not concede that they have any prospect of pulling away from us'.⁶⁸

The Liberal Democrat strategy that is emerging is clearly to attempt to rerun the 2001 general election in which the SNP were presented by all opponents as irrelevant and to portray the Liberal Democrats as the stabilisers of Scottish politics. In one respect this is the obvious strategy. As a small party yet to confirm its position as Scotland's third party ahead of the popular vote in elections to the Scottish Parliament, the Liberal Democrats know that claiming that they have a chance of being Scotland's first party would lack credibility. Additionally, they appreciate that there is little point pretending that they are more than likely to want to continue as part of the coalition. The prospect of playing Labour off against the SNP would be unlikely to work because it lacks credibility especially at a time when they are in coalition with Labour. However, there are a number of problems with this strategy. First, the party is signalling its weakness and this will have an input in negotiations with Labour (though given the lack of choice, it might be argued that each party will be negotiating from a position of weakness). More significantly, the claim that the SNP is irrelevant will be much more difficult to sustain in the Scottish elections not least because the Liberal Democrats and others were at least implicitly conceding that the SNP are relevant in Scottish elections in what they were saying in the 2001 general election. Related to this, the claim that the SNP will have difficulty pulling ahead of the Liberal Democrats seems a grossly over-hyped interpretation of the general election results. The SNP looks set to remain Scotland's second party and the Liberal Democrat leader may have stumbled into a mistake commonly made in the past by SNP leaders in

⁶⁸ Herald, 2 and 5 November 2001.

making predictions that will be very difficult to sustain. The prospect of the SNP-Liberal Democrat difference in share of the vote being less than 4 points seems unlikely.

10.4 Tories, devolution and masons

Last Summer, David McLetchie, the Scottish Tory leader had faced strong criticisms from within his own ranks but these were dispelled when he made some cutting remarks during questioning of former First Minister Henry McLeish prior to the latter's resignation. His standing has risen considerably since then as his Parliamentary performances have become more assured. McLetchie has found a style in the debating chamber that wins the approval of his backbenchers and applause from the media corps. However, McLetchie appears to be suffering from what might be called William Hague Syndrome: outwitting political opponents in the Chamber but failing to connect with the public. His standing amongst Scotland's journalists is evidently higher than amongst voters. One newspaper commentator wrote that McLetchie ought to win the annual 'Scottish Politician of the Year' Award,⁶⁹ a view not shared by the awarding panel.

The inability of the Tories to connect with Scotland was confirmed in last year's general election and consistently poor performance in the opinion polls (see section 4 above). An indication of the Tories enduring problem was highlighted in November when McLetchie answered the simple, direct question of how he would vote if there was a referendum again tomorrow on Scottish devolution. His response was that he would again vote No, No. In this respect at least, McLetchie differs from Hague. In Hague's first conference speech after his election, the former British Tory leader emphasised the need to admit errors and acknowledge that the political landscape had changed. In stating that he would still vote No, No, McLetchie resurrected images of the Tories as a party out of tune with contemporary Scotland. His opponents in other parties will no doubt bring this to the attention of the public as the elections to the Scottish Parliament come closer. The more astute response to this question which has subsequently been adopted by some of his colleagues, is Harold Wilson's version of pleading the Fifth Amendment by refusing to answer a hypothetical question. Unfortunately for David McLetchie, it is too late to do that.

Further problems arose when four Tory MSPs announced that they were masons following pressure for disclosure of membership of the freemasons, Knights of St. Columba and other secret organisations by Tricia Marwick, SNP MSP in a debate in the Parliament's Standards Committee.⁷⁰ The first to come out of the masonic closet was Keith Harding followed by Phil Gallie, Jamie McGrigor and Brian Monteith.⁷¹ Only Tories have so far declared masonic links. David McLetchie initially insisted that he was not a mason but he was 'outed' when it was suggested that this was not the case. He conceded that he had been a mason but that his involvement with the masons had ended a decade ago and he had not paid his subscriptions or attended any meetings. The Scottish Grand Lodge, however, put out a statement disagreeing, maintaining that it was impossible to stop being a mason and that someone whose

⁶⁹ Iain MacWhirter, Sunday Herald, 11 November 2001.

⁷⁰ Tricia Marwick, Standards Committee, 30 January 2002, col.958.

⁷¹ Herald, 1 and 2 February 2002.

membership had lapsed due to non-payment of dues could at any time rejoin.⁷² On this latter occasion, McLetchie had erred too far in the opposite direction by disclosing too little. The Tory leader's Parliamentary skills, honed as a lawyer, remain underdeveloped for the world of everyday politics even if these make him an assured Parliamentary debater.

⁷² Herald/Scotsman, 7 February 2002.

11. Public Policies

Barry Winetrobe

11.1 Policy stance of the new administration

The major changes in the ministerial team, and the end of 2001, provided politicians and pundits alike with a great opportunity for indulging in retrospectives of the year past and previews of 2002.⁷³ A think tank accused the Executive (and Scotland generally) of a ‘poverty of ambition’ in its policy programme.⁷⁴ McConnell was determined to signal a change in both direction and style, with greater priority on policy delivery, a challenge he appeared to issue to the Parliament as well as his own administration. His speeches in the Parliament in support of his candidacy as First Minister, and following his election, set the tone,⁷⁵ and his approach was given full expression in the first parliamentary debate of the year, on the Executive’s priorities.⁷⁶

In that 9 January speech, his theme was to do less, better (not, as the SNP mischievously put it, ‘to do less better’), and to concentrate on 5 priority areas - health, education, transport, crime, and jobs - the improvement of which, he claimed, was why “people of Scotland ... wanted the Parliament in the first place.”⁷⁷ Inevitably, the Opposition parties scoffed at this approach, emphasising what they saw as the Executive’s record of failure in the 5 priority areas.

11.2 Health and personal care

As a key priority area, health policy has remained at the forefront of devolved politics.⁷⁸ The Executive has shown some signs of a pragmatic approach to the modes

⁷³ See, for example the ‘New Year messages’ of the various party leaders and ministers, and the range of useful retrospectives on the BBC News Online website

⁷⁴ “‘Poverty of ambition’ mars country”, *Scotsman*, 15.11.01, http://www.thescotsman.co.uk/text_only.cfm?id=122954. The report is on the Scottish Council Foundation site: <http://www.scottishpolicynet.org.uk/scf/publications/paper19/frameset.shtml>

⁷⁵ cols 4152-5 and 4164: http://www.scottish.parliament.uk/official_report/session-01/sor1122-02.htm#Col4152

⁷⁶ http://www.scottish.parliament.uk/official_report/session-02/sor0109-02.htm#Col5129. His speech was also reproduced in an Executive press release: <http://www.scotland.gov.uk/pages/news/extras/00005200.aspx>

⁷⁷ The speech was well trailed in the media - even if much of that ‘spin’ did not actually appear in the final text - with suggestions that the First Minister planned a ‘bonfire of bureaucracy’, and that all spending would have to meet specific tests linked to his 5 priority areas or be vetoed by the Finance Minister: “McConnell pledges to light a fire under the Executive”, *Sunday Herald*, 6.1.02: <http://www.sundayherald.com/21345> and “Veto threat on spending plans of ministers”, *Scotsman*, 9.1.02: <http://www.thescotsman.co.uk/index.cfm?id=28312002>

⁷⁸ “Scottish health review 2001”, BBC News Online, 29.12.01: http://news.bbc.co.uk/hi/english/uk/scotland/newsid_1733000/1733568.stm; “Health Service progress report”, SE press release 5043/2001, 14.12.01: http://www.scotland.gov.uk/pages/news/2001/12/p_SE5043.aspx; *Our*

of provision of health services, seeking to produce discernable improvements that will satisfy a sceptical criticism, regardless of whether they derive from NHS, private or mixed PPP/PFI facilities. However this pragmatism, criticised by unions and ‘Old Labour’, still seemed to others to fall short of the approach south of the border.⁷⁹ Waiting lists and waiting times were the main currency of the debate. A National Waiting Times Unit was created by the Executive, and £20m was announced as being available to tackle bed-blocking.⁸⁰ The issue of whether there were ‘closed waiting lists’ in Scotland embarrassed ministers, not least the First Minister, who was accused of misleading the Parliament in successive FMQs.⁸¹

The funding of personal care for the elderly remained a difficult issue for the Executive, with persistent suggestions, despite official denials, that the new McConnell administration was seriously reviewing the plans for full implementation from this spring.⁸² A delay was announced in mid-January, putting the date back from 1 April to 1 July, prompted ultimately by the failure of the Executive to secure the £23m of attendance allowance funding withheld by the UK Government, because of the financial rules of the new scheme.⁸³ Despite a valiant attempt at putting a positive spin on the announcement,⁸⁴ the delay was a humiliation for the Executive, something

National Health: Delivering Change, 14.12.01:
<http://www.scotland.gov.uk/library3/health/onhdc-00.asp>

⁷⁹ See, for an example of this - which betrays an interesting slant on the ‘devolution/diversity’ debate - “Why the silence on using private hospitals?” and “The English patients”, *Sunday Herald*, 20.1.02 (<http://www.sundayherald.com/21647> and <http://www.sundayherald.com/21666>)

⁸⁰ “New Unit to cut NHS waiting times”, SE press release 5024/2001, 12.12.01: <http://www.scotland.gov.uk/pages/news/2001/12/SE5024.aspx>; “New unit tackles waiting times”, SE press release 5129/2002, 8.1.02: <http://www.scotland.gov.uk/pages/news/2002/01/SE5129.aspx>; “Action plan to avoid bed blocking”, SE press release 5136/2002: <http://www.scotland.gov.uk/pages/news/2002/01/SE5136.aspx>

⁸¹ See the exchanges on 20 December: http://www.scottish.parliament.uk/official_report/session-01/sor1220-02.htm#Col5086

⁸² “Setback likely in free care for the elderly”, *Herald* 10.1.02. Ministers’ problems were increased by a related funding crisis between local authorities and care homes. Tony Benn has urged McConnell to resist any Treasury attempts to have the policy diluted or scrapped: “Benn calls for McConnell to stand firm on free care for elderly”, *Herald*, 22.1.02

⁸³ See, for example, the rather deadpan Commons written answer on 21 January by the junior Scotland Office minister, George Foulkes: http://www.publications.parliament.uk/pa/cm200102/cmhansrd/cm020121/text/20121w12.htm#20121w12.html_sbhd8. Annabelle Ewing, the SNP MP who received the answer, denounced the Scotland Office for supporting the UK Government rather than the Scottish Executive (hardly a surprising approach by a UK Department), and joined the calls for abolition of the Office.

⁸⁴ “Free personal care timetable extended”, SE press release 5162/2002, 15.1.02 (<http://www.scotland.gov.uk/pages/news/2002/01/SE5162.aspx>), and written answer, 15.1.02 (http://www.scottish.parliament.uk/official_report/wa-02/wa0115.htm). Ministers were criticised – even, indirectly, by the Presiding Officer – for making the

swiftly exploited by the Opposition parties, both in Edinburgh and at Westminster. The Community Care and Health (Scotland) Bill is currently having its Stage 2 scrutiny by the Health and Community care Committee.

11.3 Education and young people⁸⁵

The appointment of Cathy Jamieson as Minister for Children and Young People was very controversial, with much sneering about her inexperience, which was compounded when it appeared that she would not be lead minister for the education half of her portfolio.⁸⁶ Perhaps in response to such criticism, McConnell revealed the creation of a Ministerial Committee for Children, in line with his stated desire to prioritise such issues,⁸⁷ and a ‘national debate on education, to begin formally in the spring, was announced.⁸⁸ New appointments were announced to the Board of the Scottish Qualifications Authority,⁸⁹ which followed shortly after a brief reminder of the earlier problems of the SQA, the apparent solution of which had helped McConnell to reach the top job in the Executive.⁹⁰

11.4 Enterprise and jobs

announcement by press conference and planted written answer rather than by a ministerial statement: points of order on 16 January (http://www.scottish.parliament.uk/official_report/session-02/sor0116-02.htm#Col5371).

⁸⁵ “A year in Scottish education”, BBC News Online, 26.12.01: http://news.bbc.co.uk/hi/english/education/newsid_1725000/1725021.stm

⁸⁶ “Education minister promises continuity”, *BBC News Online*, 1.12.01 (http://news.bbc.co.uk/hi/english/uk/scotland/newsid_1686000/1686376.stm); “Row grows over minister’s handover of schools to deputy”, *Scotsman*, 3.12.01 (http://www.thescotsman.co.uk/text_only.cfm?id=126712), and a motion lodged by SNP on 4 December (http://www.scottish.parliament.uk/agenda_and_decisions/bb-01/bb-12-04f.htm)

⁸⁷ “Children at heart of Executive Agenda”, SE press release 4964/2001, 2.12.01: <http://www.scotland.gov.uk/pages/news/2001/12/SE4964.aspx>, and see McConnell’s New Year Message, which emphasised the need to deliver better services for young people: “First Minister’s New Year Message”, SE press release 5109/2001, 30.12.01: <http://www.scotland.gov.uk/pages/news/2001/12/SE5109.aspx>

⁸⁸ “National education debate”, SE press release 5070/2001, 19.12.01: http://www.scotland.gov.uk/pages/news/2001/12/p_SE5070.aspx. There was much speculation in the media in January about the future of the schools inspectorate, denied by McConnell at FMQs on 10 January.

⁸⁹ “SQA appointments announced”, SE press release 5107/2001, 28.12.01: <http://www.scotland.gov.uk/pages/news/2001/12/SE5107.aspx>. Opposition MSPs criticised the timing of the announcement during the parliamentary recess. A new Chief Executive for the SQA had been announced on 5 December (see <http://www.sqa.org.uk/>)

⁹⁰ “Increase in students’ appeals to SQA”, *Scotsman*, 21.12.01: <http://www.thescotsman.co.uk/index.cfm?id=1712362001>. See also “Student to sue exams body”, BBC News Online, 10.1.02: http://news.bbc.co.uk/hi/english/uk/scotland/newsid_1752000/1752472.stm

It was another difficult period for the Scottish economy, with further job losses, and high-profile strikes on the ferries and the railways,⁹¹ most of which landed on the desk of Wendy Alexander. While the Executive remained publicly determined not to become actively involved in what it said was an industrial dispute on the West Coast ferries, it appeared that political pressure,⁹² forced some ministerial action, which led to a solution just before Christmas.⁹³

Ministers had to face criticism when it was announced that Scotland was following the moves south of the border in suspending the Individual Learning Accounts scheme.⁹⁴ This move came on the last sitting day before the parliamentary recess, and the SNP sought unsuccessfully (though not without causing some procedural embarrassment to both the Executive and to the Presiding Officer) to have the matter debated that day.⁹⁵ Alexander had already made an emergency statement earlier that afternoon on the closure of the NEC semiconductors factory in West Lothian.⁹⁶

11.5 Land reform and rural issues

The land reform legislation was finally published at the end of November, after a prolonged and animated consultation process.⁹⁷ The Bill contains a number of significant changes from the published draft Bill, listed in the Executive press release, and was generally welcomed by the various interests involved. However, much scope remains for intense parliamentary debate, as the Bill progresses, on controversial elements, such as ‘right to buy’ and ‘right to roam’, with claims from both sides of the

⁹¹ The rail policy debate was broadened following the publication of the strategic rail plan in January, and arguments as to whether Scotland had been treated fairly and equitably by the UK authorities.

⁹² Including calls from a local MP, Brian Wilson (a Government Minister, and former Scottish Office transport minister), and even resort to an emergency question in the Parliament, on 20 December: http://www.scottish.parliament.uk/official_report/session-01/sor1220-02.htm

⁹³ “McConnell orders new ferry talks”, *Scotland on Sunday*, 23.12.01: <http://www.scotlandonsunday.com/scotland.cfm?id=1721282001>;

“Agreement ends CalMac ferry strike”, *BBC News Online*, 24.12.01: http://news.bbc.co.uk/hi/english/uk/scotland/newsid_1727000/1727410.stm

⁹⁴ “Closure of ILAs in Scotland”, SE press release 5088/2001, 20.12.01: <http://www.scotland.gov.uk/pages/news/2001/12/SE5088.aspx>; “Flagship training scheme scrapped”, *BBC News Online*, 20.12.01: http://news.bbc.co.uk/hi/english/uk/scotland/newsid_1722000/1722415.stm;

exchanges at FMQs on 10 January: http://www.scottish.parliament.uk/official_report/session-02/sor0110-02.htm#Col5282

⁹⁵ http://www.scottish.parliament.uk/official_report/session-01/sor1220-02.htm#Col5098;

⁹⁶ http://www.scottish.parliament.uk/official_report/session-01/sor1220-02.htm#Col5057

⁹⁷ With the Executive practice of an autumn launch of its ‘annual’ legislative programme (as noted in the last Report, para 1.3), the last quarter of the year was likely to see the introduction of a number of major programme bills.

argument about potential or predicted harmful consequences of them.⁹⁸ McConnell has transferred responsibility for this policy from the Justice Minister to the Rural Development Minister.

The Member's Bill on hunting continued its parliamentary progress through the Parliament despite strong and consistent opposition from affected interests. This has manifested itself in various demonstrations in support of hunting and other rural issues, especially a major rally in Edinburgh on 16 December.⁹⁹ The resumption of hunts after the lifting of foot-and-mouth restrictions, especially on Boxing Day, provided the opportunity for media examination of the legislation's prospects.¹⁰⁰ Parliamentary opposition is currently focussed on the question of compensation for any consequential job losses.¹⁰¹ The Executive's public stance on the bill can be gleaned from written answers on 20 December.¹⁰²

11.6 Public sector ombudsman

The Executive Bill to create a single public sector ombudsman was introduced on 22 November.¹⁰³ The Local Government Committee is the lead committee and has begun its Stage 1 scrutiny of the Bill.

11.7 Debt recovery

⁹⁸ "Land Reform Bill published", SE press release 4395/2001, 28.11.01 (listing the main changes arising from the consultation): http://www.scotland.gov.uk/pages/news/2001/11/p_SE4395.aspx. The Justice 2 Committee is undertaking its Stage 1 scrutiny of the Bill, and see written answers to Fergus Ewing (SNP) on 17 January: http://www.scottish.parliament.uk/official_report/wa-02/wa0117.htm, and, for a rather bizarre instance, "Why sledgers could have to pay a white fee", *Herald*, 22.1.02.

⁹⁹ A demonstration outside Bute House on 16 January, including the deposit of manure on the doorstep, led to a war of words on whether it was the Executive or the protestors which was out of touch with rural Scotland: "FM responds to countryside protest", SE press release 5172/2002, 16.1.02 (<http://www.scotland.gov.uk/pages/news/2002/01/SE5172.aspx>) and "First Minister 'out of touch' with rural Scotland", Conservative press release, 16.1.02 (<http://www.scottish.conservatives.org.uk/pressrelease.asp?ID=1760>)

¹⁰⁰ "Bill expected to be on statute book by Easter" *Scotsman* 27.12.01: <http://www.news.scotsman.com/topics.cfm?tid=40&id=1728852001>.

¹⁰¹ "Last-ditch bid to ease loss burden from fox-hunt ban", *Scotland on Sunday*, 20.1.02: <http://www.scotlandonsunday.com/politics.cfm?id=73022002>; FMQs on 20 December (on the rural economy generally): http://www.scottish.parliament.uk/official_report/session-01/sor1220-02.htm#Col5086

¹⁰² http://www.scottish.parliament.uk/official_report/wa-01/wa1220.htm.

¹⁰³ "Public Sector Ombudsman Bill", SE press release 4904/2001, 23.11.01: <http://www.scotland.gov.uk/pages/news/2001/11/SE4904.aspx>; "Plan outlined for national super-ombudsman", *Scotsman*, 24.11.01: http://www.thescotsman.co.uk/text_only.cfm?id=124916; SE summary of responses to its consultation exercise: <http://www.scotland.gov.uk/library3/social/spcob.pdf>

The detailed implementation of the abolition of poindings and warrant sales, under the legislation initiated as Tommy Sheridan's Member's Bill, took a step forward when the Justice Minister set out his thinking in a speech in Glasgow on 6 November.¹⁰⁴ Further elucidation came in a written answer on 19 December, supporting the *Striking the balance* report's recommendations and funding some debt advice services.¹⁰⁵ However, the Executive's proposals have come under strong criticism from anti-poverty groups and concerned parliamentarians.¹⁰⁶

11.8 Euro 2008

One high-profile example of the new approach to public policy of the new McConnell regime appears to be a shift away from outright support for a Scottish bid for the 2008 European Football Championships. The First Minister, presumably aware of the public reaction to various prestige sporting and other projects north and south of the border, said:¹⁰⁷

"One of the criticisms of the parliament over the last two-and-a-half years was that occasionally we have made decisions without thinking through the implications. We are not going to do that on this issue. If there is a bid, with backing from the Scottish Parliament and Scottish Executive for Euro 2008, either for Scotland to go it alone or Scotland and Ireland to go together, it will be a bid that is properly costed and thought through. If we cannot justify it economically, we will not back it and won't do it. If we can, we will give it our full and enthusiastic backing."

While the SNP appear to be supportive of a bid, the Conservatives seem to be opposed. As with such prestige projects (the Holyrood Building itself being the prime contemporary Scottish example), ministers face a delicate choice between appearing irresponsible and profligate on the one hand, and timid and short-sighted on the other.

11.9 Human Rights Commission

On 10 December, the Justice Minister, Jim Wallace, announced that, following a consultation exercise which ended on 30 June, the Executive had decided in principle to establish a Human Rights Commission, and that more detailed proposals would be

¹⁰⁴ "Executive moves on debt reform" SE press release 4288/2001, 6.11.01: http://www.scotland.gov.uk/pages/news/2001/11/p_SE4288.aspx

¹⁰⁵ http://www.scottish.parliament.uk/official_report/wa-01/wa1219.htm.

¹⁰⁶ See "Warrant sales replacement row", *BBC News Online*, 6.11.01: http://news.bbc.co.uk/1/hi/english/uk/scotland/newsid_1640000/1640160.stm

¹⁰⁷ "Fresh doubts over bid for Euro 2008", *Herald*, 31.12.01. A poll has suggested that two-thirds of the Scottish public support a bid: "Poll: Two in three back Euro 2008 bid", *Scotsman*, 22.1.02: <http://www.thescotsman.co.uk/index.cfm?id=79212002>. An outbreak of violence at a Premier League game on 19 January was immediately interpreted as harming the chances of a successful bid, as may have the furore over remarks in a BBC interview by the Northern Ireland Secretary, John Reid, broadcast on New Year's Day, on the possible move of Rangers and Celtic away from the domestic Scottish Premier League. The content of his comments were denounced by politicians and the media as sectarian.

made during 2002.¹⁰⁸ In response to a written answer on 18 January, he said that no decisions had yet been made on the timetable for the creation of the proposed body, nor on its structure, membership or location. He was determined that the Commission should not in any way cut across the remits of the existing statutory equality bodies, but that it would work closely with them, and he envisaged that it would wish to draw up a memorandum of understanding with these bodies.¹⁰⁹

¹⁰⁸ http://www.scottish.parliament.uk/official_report/wa-01/wa1210.htm. The announcement was welcomed, in particular, by the Conservatives: “Douglas Hamilton welcomes Human Rights Commission plan”, Conservative party press release, 10.12.01: <http://www.scottish.conservatives.org.uk/pressrelease.asp?ID=1684>

¹⁰⁹ http://www.scottish.parliament.uk/official_report/wa-02/wa0118.htm