



The **Constitution** Unit



Nations and Regions: The Dynamics of Devolution

Quarterly Monitoring Programme

Scotland

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Key points

- The Executive's legislative programme was announced for the next year on 30 May 2002 (section 1.1)
- Public opinion remains fairly stable though poll evidence is presented challenging accepted thinking on Scottish attitudes towards England and the English around the time of the football world cup (section 4.1)
- First Minister Jack McConnell continues to take an active interest and an independent line on European affairs (sections 6.1 and 6.2)
- The SNP had bruising contests for selecting its regional lists for next years election with Margo MacDonald losing out and other prominent figures falling down the SNP lists (section 10.1)
- Crime, law and order, drugs and justice were important matters and caused divisions within the Executive (section 11.1, 11.2,11.3).

1. Scottish Executive **Barry Winetrobe**

1.1 The legislative programme

The First Minister made his statement to Parliament on 30 May on the Executive's forthcoming legislative programme (see section 7.2 below).¹ There were suggestions from Opposition parties and the media that this timing was unusual, as the 'normal' date for this devolved version of the 'Queen's Speech' was in September. In fact, though the last two such statements, in 2000 and 2001, were in September, the first was in June 1999, and the next will presumably be in May/June 2003, after the next elections. The relevant Standing Order refers to a statement on the programme for the 'parliamentary year', which is currently May-May. As noted in the November 2001 Report (chapter 1.3), the switch to September seemed to be based on an Executive desire to institute a Westminster-style autumn-to-autumn annual legislative cycle.

The programme was intended to run up to the elections next spring, and so was as much a review of what had been achieved legislatively since 1999, as what was planned for the final months of this first parliamentary session. As such it was inevitable that it would be regarded by supporters and opponents alike (notwithstanding an intriguing section of the speech seeking cross-party consensus over legislative ideas to improve 'quality-of-life' issues, such as graffiti, litter and neighbour nuisance) as a prelude to the 2003 election campaign. It was criticised as un-ambitious and even unbecoming for a governmental legislative programme to be presented to a parliament. The programme comprised six main Bills—including the annual Budget Bill—two draft Bills, and consultation and preliminary work in preparation for a further two (Crofting Reform and Planning). Background details of the following proposals were set out in an Executive press release:² Public Appointments And Public Bodies (Scotland) Bill; Building Bill; Protection Of Children Bill; Title Conditions (Scotland) Bill; Mental Health (Scotland) Bill; Homelessness Bill; Agricultural Holdings Legislation, and Water Environment And Water Services Bill.

1.2 Updated Executive guidance

A new edition of the Executive's *Guide to collective decision-making* was issued in June, replacing the original version of August 1999.³ The *Guide* is a substantial statement of guidance on the operation of the devolved government, especially in the context of its coalition basis, and its contents complement much of the guidance to individual ministers in the *Scottish Ministerial Code*. It "outlines the arrangements for supporting collective decision-making within the Scottish Executive; explains the role of the First Minister and Deputy First Minister in the decision-making process; and explains the role that the Cabinet Secretariat plays in supporting these arrangements" (para 1.1).

1.3 Executive recruitment and related matters

A huge row exploded in mid-June when adverts appeared in newspapers seeking recruitment of 40 'policy analysts' (see section 5.4 below), at salaries between £35,000 and £45,000, by the Executive. Opposition parties accused the Executive of boosting its pre-election manifesto-writing capacity through these new civil servants. The rattled First Minister, who was not told directly of the move, demanded a meeting with the Permanent Secretary to discuss it, prompting the Opposition and the media also to accuse ministers of seeking politicisation of the Executive administration. Though the immediate crisis was defused by revelations that most of the posts were not new, but the filling of existing vacancies, and by a

carefully crafted joint statement by McConnell and Sir Muir Russell, the episode did open up more general issues such as the ultimate control of the Executive's officials by the UK Government (as the Civil Service is itself a reserved matter under the Scotland Act); the overall size and cost of the devolved government, and official-ministerial relations at the heart of the Executive.⁴

In response to a WPQ from Alex Neil, the junior Finance and Public Services Minister, Peter Peacock, provided on 16 July some background detail on the First Minister's powers over the appointment of Executive civil servants:⁵

Powers in relation to personnel issues such as the recruitment and appointment of staff outside the Senior Civil Service, discipline and the termination of employment of civil servants are delegated to the First Minister under the Civil Service (Management Functions) Act 1992. These powers are exercised on the First Minister's behalf by civil servants in accordance with the rules and principles set out in the Civil Service Management Code and in the Civil Service Commissioners' Recruitment Code.

The Executive announced in its media briefing on 8 July that it would be taking no legal action against the former Executive special adviser, Peter MacMahon, following the series of 'revelatory' articles he wrote for the *Scotsman* in late January, especially concerning the First Ministership and downfall of Henry McLeish: "the Executive had concluded that the articles did not contain any significant breach of confidential government information. On that basis, we have decided that legal action could not be justified. We therefore regard the matter as closed."

Following allegations of civil service politicisation based on press reports in late May that the Executive was advertising for an agri-environment officer post, the salary of which would be paid in part by the RSPB, some clarification was provided in a written answer of 5 July:⁶

No civil service posts in the Scottish Executive are funded by charities at the current time. The Scottish Executive is currently conducting an exercise to recruit a project officer to provide guidance and environmental information to farm conservation advisers. This is to take forward a project of joint interest to the Scottish Executive, Scottish Natural Heritage and the Royal Society for the Protection of Birds (a charity), and will be jointly funded by each of these organisations.

1.4 Public appointments and quangos

Following the publication in May of a report on the consultation exercise on the proposed legislation on public appointments and quangos,⁷ the Public Appointments and Public Bodies (Scotland) Bill was introduced on 18 June.⁸ This measure, said by ministers to be part of the Executive's strategy to make devolved government more open and accountable when taken with the FoI and Public Sector Ombudsman Acts, has the following main objectives:

- To establish a Commissioner for Public Appointments in Scotland;
- To abolish five Non-Departmental Public Bodies, namely the Scottish Conveyancing and Executry Services Board, the Ancient Monuments Board for Scotland, the Historic Buildings Council for Scotland, the Scottish Hospital Trust, and the Scottish Medical Practices Committee;
- To establish notarial powers for independent qualified conveyancers; and,

- To recreate the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS) as a national statutory body.

The main functions of the proposed Commissioner would be to

- Regulate the appointments process, by prescribing and publishing a Code of Practice for Public Appointments;
- Oversee compliance with a Code of Practice by the Scottish Ministers, including power to inform Parliament if the Code is breached;
- Monitor the appointments process by appointing, training and evaluating the performance of Independent Assessors;
- Conduct ad hoc inquiries into appointing policies and practices;
- Investigate complaints; and
- Promote diversity.

The Local Government Committee, as lead committee for Stage 1 of the Bill’s passage, has called for evidence, with a view to beginning its formal scrutiny in September. The Executive has also announced further measures, such as work shadowing programmes, to encourage wider diversity in public appointments,⁹ and has published a guide, and an associated website, to the work of quangos in devolved Scotland, *A Guide to Public Bodies in Scotland*.¹⁰ Unfortunately for the Government, an old ‘cronyism’ case of 3 years ago resurfaced when the chairman of the ferry group, Caledonian McBrayne, was reappointed by the Executive on 12 June, without any public advertisement.¹¹ The Executive claimed that its procedures for the re-appointment were in line with the existing Office of the Commissioner for Public Appointments (OCPA) guidance “which permits Ministers to reappoint for a second term, without public advertisement or a new competition, a chairman who they believe is performing well in his post.”¹² A few weeks later, the OCPA’s annual report identified the Scottish Executive as one of a number of departments which has “poor performance assessment systems” and noted, more seriously

During the audit of appointments made by the Scottish Executive, the auditors came across one appointments exercise where the Executive had failed to follow the Code of Practice in several key respects. In particular, appointments to the body were not advertised but simply offered to certain individuals. Such actions not only run counter to the Code of Practice but undermine the public appointments process as a whole.¹³

1.5 MPA reshuffle

One interesting ripple from the resignation of Wendy Alexander was the limited reshuffle in mid-June among the ranks of the newly-created Ministerial Parliamentary Aides.¹⁴ Paul Martin became MPA to the Finance Minister, in place of Frank McAveety, who had rejoined the administration as a junior minister. The change in Enterprise Minister from Alexander to Iain Gray resulted in Scott Barrie replacing Elaine Thomson as the MPA. However, notwithstanding the change of Social Justice Minister from Gray to Margaret Curran, Rhoda Grant remained as MPA, presumably because Curran had previously been the relevant deputy minister.

1.6 Cabinet meeting outside Edinburgh

The Scottish Cabinet met in Aberdeen on Tuesday 28 May, during the Parliament’s sojourn there, the first such time the Cabinet had met outside Edinburgh. An Executive briefing stated that “Mr McConnell wants to hold many more cabinet meetings outside the capital..... Doing

so will allow the cabinet and executive to demonstrate that the parliament [*sic*] can engage locally with the people of Scotland and that it is responsive to their needs and opinions."¹⁵

1.7 Ombudsmen

The latest (and final) report of the Scottish PCA (Ombudsman) was published on 19 June. Of 93 cases during 2001-02 (67 new, 26 carried forward), 11 received a full investigation, of which the complaint was upheld in 4 and rejected in 7 cases. 14 cases were carried forward.¹⁶ Following the enactment of the Scottish Public Services Ombudsman Act 2002 (asp 11) on 23 April, the Parliament agreed on 27 June to the appointment of Professor Alice Brown, a politics expert at Edinburgh University, as the first Scottish Public Services Ombudsman, having been recruited by a parliamentary selection panel, and the post's terms and conditions having been set by the SPCB.¹⁷

1.8 Officegate—the return

After a period of relative quiet in the Officegate saga which had brought down Henry McLeish last autumn (other than reports on the implications for future activity by local councils), the scandal reignited in July. First there were complaints that the Fife police had not yet completed its investigations into the matter (leading to expressions of sympathy from the SNP about the effect of the drawn-out affair on McLeish himself!).¹⁸ This was followed, potentially more damagingly, by the linking of the McLeish's repayment of the £38,000 to the Commons Fees Office with his acceptance of a £30,000 severance payment when ceasing to be an MP. Not only was this portrayed as the taxpayer in effect funding most of McLeish's 'debt' repayment, it was also alleged that the former First Minister had promised the Parliament during FMQs on 16 November 2000 that he would not accept such a severance payment:¹⁹

This is a serious subject and I have made my position clear. I will not benefit from what it has been suggested that certain MPs will get from Westminster. I also defend the right of every MSP who is also an MP to consider their own situation and make a judgment. I do not want to pry into the financial affairs of any member, but I put on record that I will not take financial advantage of the situation. I hope that David McLetchie will acknowledge that that is an honest response, which leaves it open for other members to make individual judgments on the matter.

All this has raised speculation that the end of McLeish's parliamentary career is close, either voluntarily or by the Labour Party finally refusing to endorse him as a candidate for next year's elections.

2. The Scottish Parliament

Mark Shephard

2.1 Does the Parliament Matter?

In this quarter, the Scottish Parliament completed its third year amid further reports of disillusionment over parliamentary achievements to date. This section discusses this disappointment with reference to both MSP attitudes and MSP performance in the legislative arena over the first three years.

In terms of attitudes, a 3 year panel study of a small group of MSPs (N=15) conducted by the *Scottish Council Foundation* found that there has been a divergence between the initial expectations of the Parliament and perceptions of its achievements.²⁰ MSP concerns on the workings of the Parliament included, low quality debates, lack of focus and organisation, high degrees of party influence and control (for example, over committee voting and selection of convenor) and concerns over Executive control over Bills and the parliamentary timetable. Further disillusionment was reported on the achievements of the Parliament in the decision-making process. One of the MSPs was quoted as saying that the Parliament is seen as a tool of the Executive. Among the proposed reforms needed to improve the position of Parliament *vis-à-vis* the Executive were the need to increase the status and independence of committees (for example, convenors to be selected by committee members and not party managers), and the possibility of working alongside a minority single-party Executive—the hope being that the Executive would then have to share more power with the Parliament.

In terms of performance, the Parliament has so far passed 44 Bills (36 Executive Bills, 6 Member Bills, and 2 Committee Bills). The imbalance in favour of the Executive masks additional Executive influence in the success of amendments to these bills. In an initial study of the first ten bills passed by the Parliament, it was found that whereas 99 per cent of Executive MSP amendments were successful, only 15 per cent of non-Executive MSP amendments were successful.²¹ These findings are broadly comparable with existing research on Westminster. In a 1969-71 study of the House of Commons, J. A. G. Griffith found that whereas 99.9 per cent of Ministerial amendments were agreed to, the figures for backbenchers varied between a low of 4.3 per cent for opposition backbenchers to a high of 11.2 per cent for government backbenchers.²² Such findings are interesting given that the Scottish Constitutional Convention envisaged a way of politics in Scotland that was different from that of Westminster—more about power-sharing between the Parliament and the Executive than Executive dominance. Preliminary results from the Scottish Parliament suggest that the Executive is dominating much more than it is sharing. However, when we distinguish between successful non-substantive and successful substantive amendments we find that 43 per cent of the substantive amendments are non-Executive MSP in origin. As the above indicates, assessing the impact of the Scottish Parliament very much depends upon what is measured. If we narrow our focus to the success of Members Bills, for example, then a more pessimistic picture arises.

During the first three years of the Scottish Parliament 34 MSPs have proposed 43 Members Bills (see Table below). Of these, 39 have received enough supporting signatures to be considered by the Scottish Parliament. However, long reviews of proposals combined with Executive control over the legislative timetable has meant that few proposals to date have been introduced for parliamentary consideration. To date, only 12 out of 39 supported proposals have been introduced for consideration by Parliament. Of these, six have so far been passed by Parliament (see previous reports), three are currently being considered by Parliament (see section 2.5 below), two have failed (Alex Neil's Public Appointments

(Parliamentary Approval) (Scotland) Bill, and Tommy Sheridan’s School Meals (Scotland) Bill), and one has been withdrawn (Robert Brown’ Family Homes and Homelessness (Scotland) Bill).

Members Bill Proposals—The First Three Years (07/99-07/02)

Party	Number of Proposals	Requisite Signatures	Withdrawn/ Introduced	Passed	Failed*
Labour	(6)	6	2	2	0
LibDem	6 (6)	5	3	2	1
SNP	19 (15)	16	4	1	1*
Con	7 (5)	7	1	N/A	N/A
Green	2 (1)	2	0	N/A	N/A
SSP	3 (1)	3	2	1	1*
Ind	0 (0)	N/A	N/A	N/A	N/A
Total	43 (34)	39	12	6	3

Numbers in parentheses indicate the number of MSPs involved in proposing Members Bills. Requisite signatures refer to the number of proposals that received at least 11 supporters (the requisite number of supporting signatures required for a proposal to be approved for consideration by the Parliament). Two members Bills (one SNP and one Conservative) have been introduced, but have yet to pass or fail or be withdrawn.

Most proposals for Members Bills (31 out of 43) have come from Members from the opposition parties. Moreover, whereas no Member from the Executive parties has proposed more than one Members Bill in the first three years, some of the Members from all of the opposition parties have. While this might be expected for the one-member parties of the Greens and the SSP, what is interesting is the degree to which some of the Members from the SNP and Conservatives are using Members Bills as an avenue for agenda setting and legislative influence. However, to date four out of the six Members Bills that have been passed by the Parliament have been proposed by Members from the Executive parties. Moreover, the Executive have recently introduced the Debt Arrangement and Attachment (Scotland) Bill designed to tackle anomalies claimed to have been left by the abolition of poindings and warrant sales (the successful SSP sponsored Members Bill). There have been only two real successes that the opposition have had with Members Bills to date—Tommy Sheridan’s Abolition of Poindings and Warrant Sales legislation and the Leasehold Casualties Bill proposed by Adam Ingram (SNP).

Frustration is not limited to opposition MSPs and delays in introducing Members Bills have prompted MSPs to use other parliamentary procedures to achieve their objectives. Donald Gorrie’s Members Bill on Protection from Sectarianism, for example, received enough supporting signatures to be introduced in June 2001, but Gorrie has been frustrated with the lack of attention accorded it by the Executive. In response to Gorrie’s Bill, the Scottish Executive established a working group to evaluate and produce a report on the proposals. Concerned by the lack of meetings of the working group and the delay in producing a report,

Gorrie has decided to add an amendment to the Criminal Justice Bill that is currently being considered in Parliament.

2.2 Parliamentary News

Making way for the Church of Scotland's annual General Assembly, Parliament met in King's College Conference Centre, University of Aberdeen (28-30 May 2002) this quarter. While in Aberdeen, and as part of her Golden Jubilee tour of Scotland, the Queen became the first UK sovereign to address a UK Parliament while it was in full session. Recorded in the *Official Report*, the Queen's address was interesting given its decidedly pro-devolution and pro-Scottish Parliament tone. The Queen not only praised the Parliament for the volume of work so far completed, but called on people to give the Parliament more time to settle down before passing judgement.²³

Sheridan later suffered a double defeat on his School Meals (Scotland) Bill. In the 14th June 2002 Stage 1 report, a majority on the Education Committee recommended that the full Parliament should not agree the general principles of the Bill. Unlike Mike Watson's Protection of Wild Mammals (Scotland) Bill (see November 2001 report), the Parliament did not overturn the Committee's decision (see section 2.5 below) and so the Bill fell on 20th June 2002 at the first stage. However, the Committee's report has recommended that the Executive address a range of issues related to Sheridan's Bill including all-day access to free drinking water, free milk for key age groups, improvement of nutritional content of meals and the possibility of introducing payment facilities such as card-swiping that would not distinguish between those who received free meals and those that did not.²⁴

Also in this quarter, the Parliament passed the Scottish Parliamentary Standards Commissioner Bill (see section 2.5 below). The Bill establishes an independent Standards Commissioner with independent powers to investigate complaints against MSPs. The Standards Commissioner will be guided by the existing Code of Conduct, will be able to carry out investigations independently of the Standards Committee, and will have statutory powers to summon witnesses and compel the production of evidence.²⁵ Adverts for the post appeared in July 2002 in Scottish newspapers.

At the same time as the Standards Commissioner Bill was being considered by Parliament, concerns were raised over the first dealings with the Business Exchange scheme (see February 2002 report). Fearing that a 10 year confidentiality agreement between Margaret Jamieson MSP and pharmaceutical company Pfizer could compromise lobbying guidelines in the Code of Conduct, the Chief Executive of the Parliament, Paul Grice, announced that he was going to write to the Standards Committee to 'clarify the scheme's commitment to openness and transparency'.²⁶ Critics of the way the confidentiality agreement had been dealt with included Tricia Marwick MSP who argued that not only should the agreement have been referred to the Standards Committee before it was signed, but that the operation of the scheme should be accountable to the Standards Committee.²⁷

2.3 From Private Bills to Heading North—More Parliamentary Firsts

The first Private Bill was introduced in the Parliament on 28th June 2002. The Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Bill seeks to limit navigation in the vicinity of a new wind farm in the Solway Firth. Private Bills are proposed by outside individuals or organisations requiring parliamentary legal sanction.²⁸ Prior to devolution, the House of Commons and House of Lords considered all Private Bills. Post-devolution, the Scottish Parliament has responsibility for Private Bills in devolved areas.

As well as the Parliament meeting for the first time in Aberdeen in this quarter, parliamentary committees continued to break new ground with first-time visits to the Orkney and Shetland Islands. In May, the Finance Committee met in the Council Offices of the Orkney Islands Council, Kirkwall, to discuss expenditures for the 2003/04 budget.²⁹ In June, the Enterprise and Lifelong Learning Committee hosted a committee meeting in Lerwick, Shetland and conducted two case study visits to investigate niche tourism and micro-business.³⁰

2.4 Committee Reports and Inquiries (01 May 2002—31 July 2002)³¹

Submission to the Committee on Standards in Public Life, 1 May 2002, Standards Committee

Overview of National Health Service in Scotland, 2 May 2002, Audit Committee

Report into the EC Water Framework Directive: the Scope for Differential Implementation in Scotland, 9 May 2002, European Committee

Report on Lifelong Learning Inquiry: Submissions following the Interim Report, 10 May 2002, Enterprise and Lifelong Learning Convention

Budget Process 2003-04 Stage 1: Submission to the Finance Committee, 14 May 2002, Local Government Committee

Stage 1 Report to the Finance Committee on the 2003/04 Budget Process, 15 May 2002, Equal Opportunities Committee

Moving to Outcome Budgeting, 16 May 2002, Finance Committee

Budget Process 2003-04 Stage 1: Submission to the Finance Committee, 16 May 2002, Health and Community Care Committee

Budget Process 2003-04 Stage 1: Report to the Finance Committee, 16 May 2002, Social Justice Committee

The Scottish Executive Budget 2003/04 Report, 17 May 2002, Enterprise and Lifelong Learning Convention

Report on Budget 2003/04, 17 May 2002, Justice 1 Committee

Report on Budget 2003/04, 17 May 2002, Justice 2 Committee

Report on the 2003/04 Budget, 17 May 2002, Rural Development Committee

Report on Stage 1 of the 2003/04 Budget Process, 17 May 2002, Transport and the Environment Committee

Stage 1 Report on the University of St. Andrews (Postgraduate Medical Degrees) Bill, 23 May 2002, Enterprise and Lifelong Learning Convention

Response to the Scottish Executive's Draft Consultative Statement on Fuel Poverty, 27 May 2002, Social Justice Committee

Justice 1 Committee calls for evidence on Title Conditions (Scotland) Bill, 10 June 2002, Justice 1 Committee

Stage 1 Report on the School Meals (Scotland) Bill, 14 June 2002, Education, Culture and Sport Committee

Stage 1 Secondary Committee Report to the Education, Culture, and Sport Committee on the School Meals (Scotland) Bill, 14 June 2002, Health and Community Care Committee

Scottish Executive Budget Process 2003-04—Stage 1 Report to Finance Committee, 18 June 2002, Education, Culture and Sport Committee

Stage 1 of the 2003/04 Budget Process (Vol. 1) and Evidence (Vol. 2), 18 June 2002, Finance Committee

Race Reporter's Report, 21 June 2002, Equal Opportunities Committee

Response to the Scottish Executive Consultation Renewing Local Democracy—the next steps, 21 June 2002, Local Government Committee

Report on Phase 2 of the Inquiry into Aquaculture, 27 June 2002, Transport and the Environment Committee

Report on Financial Memorandum for the Criminal Justice (Scotland) Bill, 1 July 2002, Finance Committee

Report on the Prison Estates Review, 2 July 2002, Justice 1 Committee

Report on Proposed Commissioner for Children and Young People Bill, 3 July 2002, Education, Culture and Sport Committee

Consultation on Cross-Party Groups in the Scottish Parliament, 3 July 2002, Standards Committee

Report on Replacing the Members' Interests Order: Proposal for a Committee, 3 July 2002, Standards Committee

Report on the Inquiry into the Future of Cohesion Policy and Structural Funds Post 2006, 4 July 2002, European Committee

Report on Public Accounts, 5 July 2002, Audit Committee

Inquiry into Mainstreaming Equality in the Committees of the Scottish Parliament, 8 July 2002, Equal Opportunities Committee

2.5 Parliamentary Bills (1 May 2002—31 July 2002)³²

Executive Bills in Progress (latest stage reached):

- Criminal Justice (Scotland) Bill (Stage 1)
- Debt Arrangement and Attachment (Scotland) Bill (Stage 1)
- Land Reform (Scotland) Bill (Stage 2)
- Local Government in Scotland Bill (Stage 1)
- Public Appointments and Public Bodies etc. (Scotland) Bill (Stage 1)
- Title Conditions (Scotland) Bill (Stage 1)
- Water Environment and Water Services (Scotland) Bill (Stage 1)

Members' Bills in Progress:

- Dog Fouling (Scotland) Bill (Stage 1)
- Proportional Representation (Local Government Elections) (Scotland) Bill (Stage 1)
- School Meals (Scotland) Bill: Failed Stage 1 on 20 June 2002 (for 37, against 74, abstentions 0).
- Tobacco Advertising and Promotion (Scotland) Bill (Stage 1)
- University of St. Andrews (Postgraduate Medical Degrees) Bill (Passed on 26 June 2002, awaiting Royal Assent)

Committee Bills in Progress:

- Scottish Parliamentary Standards Commissioner Bill (Passed on 27 June 2002, awaiting Royal Assent)

Private Bills in Progress:

- Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Bill (Stage 1)

Executive Bills Passed:

- Freedom of Information (Scotland) Bill: Passed on 24 April 2002, Royal Assent on 28 May 2002
- Scottish Qualifications Authority Bill: Passed on 2 May 2002, Royal Assent on 6 June 2002

2.6 Proposals for Members' Bills

In the last quarter there have been six proposals by Members for Bills. On 21st May 2002, Scott Barrie (Lab) proposed a Bill to provide local authorities more power to deal with complaints concerning high hedges. On 29th May 2002 David McLetchie (Con) proposed a Bill to amend the Solicitors (Scotland) Act 1980 to allow delegation of the Council of Law Society functions. On 7th June 2002, Elaine Smith (Lab) proposed a Bill to make it an offence to prevent a mother from breastfeeding her baby in public. On 11th June 2002, Kenneth Gibson (SNP) proposed a Bill to ensure adequate local authority provision of home safety officers. On 18th June 2002, Michael Russell (SNP) provided a revised proposal to facilitate greater official recognition and equality between the Gaelic and English languages. Finally, Kenny MacAskill (SNP) proposed a Bill to regulate the provision of bus services in Scotland. To date, all of these proposals with the exception of bus re-regulation have received enough supporting signatories to date to be introduced to Parliament.

2.7 Cross Party Groups

The number of Cross-Party Groups that have been approved by the Standards Committee grew by one in the last quarter to 47. The new Group is the Learning Disabilities Cross-Party Group which aims to provide a forum for influence for people with learning disabilities in Scotland, as well as for their families and carers and the agencies in the voluntary and independent sector who support them. A further Cross-Party Group on Kidney Disease has been proposed but has yet to be approved by the Standards Committee.

3. The Media

Philip Schlesinger

3.1 The draft Communications Bill

Published on 7 May 2002, the draft Communications Bill³³ looks set to liberalise broadcasting markets and to concentrate ownership and control across the media. It is no accident that Part I of the Bill devotes itself to the setting up of the new regulatory body, OFCOM, whose presence permeates the rest of the provisions. OFCOM will replace five existing regulators across broadcasting and telecommunications. It expresses the UK government's confidence that we are on the threshold of a 'convergent' media economy, in which broadcasting, telecommunications and computing are coming together to create the basis for an 'information society'. OFCOM will have the difficult task—freely acknowledged by regulatory insiders—of pulling together the diverse organisational cultures of the previous regulators. In this it will face the particular difficulty of straddling the big divide between broadcasting (mainly concerned with issues of programme content) and telecommunications (mainly focused on matters of signal carriage).

The Bill is strongly driven by consumer and competition thinking, especially the latter. Like predecessor legislation in 1990 and 1996, deriving from the Thatcher and Major years, much is made of a 'light touch' approach to regulation. The first policy aim is 'to make the UK the most dynamic and competitive communications market in the world'.³⁴ Against the backdrop of the foundering dot.com revolution, difficulties for mobile telephony, and the government's need to relaunch digital terrestrial television in July 2002, such aspirations should be taken with a pinch of salt. Behind the legislation lies the belief that bigger is better, and especially in the case of consolidated ownership in ITV, that bigger will mean a more effective global player, capable of hitting the export markets. On the basis of previous—admittedly less far-reaching—attempts to consolidate ITV, we may doubt that greater concentration of ownership will lead to efficiency gains and greater dynamism.³⁵ It will, however, certainly lead to greater concentrations of media power, which becomes a political matter. In Scotland, where SMG owns both Scottish TV and Grampian TV, as well as the *Herald* newspapers, any take-over of the ITV1 stations would have considerable repercussions.

Once set up, OFCOM, with its vast array of powers, will inevitably come into the political limelight and be under the spotlight of media attention too. One key provision is the new body's right to review media ownership rules every three years. This is a sensitive matter. Given the interest that invariably accompanies decisions by ministers about media ownership, it will be agreeable for them to depoliticise this aspect of communications policy and hive it off to quangoland. However, the corollary is the undoubted temptation to exercise informal political pressure on the regulator when key public interest questions arise. It is also of note that a power that could be discussed in Parliament will become a bureaucratic one and less open to scrutiny.

Just how fraught these matters are was shown when the Bill was first published. Then there was considerable speculation that its provisions had been written to facilitate the eventual purchase of Channel 5 by Rupert Murdoch's BSkyB.³⁶ Since then, Mr Murdoch has earned good citizen brownie points by joining the BBC in the rescue of digital terrestrial television.

There is a specific Scottish interest in how OFCOM works. There has always been a Scottish member on the Independent Television Commission (ITC), which will be absorbed into OFCOM. The BBC, although coming under OFCOM's aegis for certain purposes, will continue to have territorial representation from the nations and English regions on its Board

of Governors. However, the new smaller board of OFCOM (with a reported maximum of six members) will abandon territorial representation at this level.

The First Minister, Jack McConnell was reported to have taken exception to this change. He wanted Scotland to have a seat on the OFCOM main board, but this move was rejected by Tessa Jowell, the Culture Secretary at Westminster. As we noted in our May report, broadcasting is a ‘reserved’ power and Edinburgh has no policy locus, although that has not precluded a consistent expression of interests, most notably in broadcast news. Mrs Jowell’s view is that Scotland (along with the other nations) should be represented at the less strategic level of the proposed Content Board.

Mr McConnell has also raised the issue with Helen Liddell, the Scottish Secretary. According to his spokesman, the First Minister was exercised about the ‘cultural and democratic importance’ of broadcasting to Scotland and wanted the OFCOM board to ‘take into account Scottish interests and circumstances’.³⁷ McConnell’s intervention—the outcome of which is still pending, at least publicly—followed an earlier comment from the SNP’s media spokesman, Mike Russell, MSP. Russell maintained that Scotland needed a parliamentary debate on how it would be affected by the new legislation. He was supported in this by Michael Shea, Scottish member of the ITC who said, ‘While broadcasting in Scotland is not a devolved power, Scots ought to be interested in what’s going to happen in terms of ownership and in terms of content of Scottish coverage’.³⁸ So far, McConnell has taken the lobbying route rather than that of opening up a national debate.

3.2 Nations and regions—again

In its response to the draft Bill, the ITC (which will provide some of the key personnel for OFCOM’s broadcasting division) made the following observations:

Ownership liberalism may bring in new players and may increase consolidation. Regional centres should not become mere “branch offices” of a London-centric or international operator. We advocate a Charter for the Nations and Regions to sustain programming made and for the regions and accessible to audiences, regional investment and greater local accountability.³⁹

The ITC had put its finger on anxieties in the commercial TV world. In recent years, decentralised television production for commercial TV has been an important factor in building up capacity in Scotland, and particularly in confirming Glasgow as a key UK production centre. The BBC has also increasingly decentralised its production. The commitment to produce north of the border (as elsewhere in the UK) is crucial for the local creative economy. The ITC has also made a pitch to retain its existing offices in the nations and regions by arguing that the Content Board should play a representative role for the different parts of the UK and ‘effectively address social and cultural concerns’.⁴⁰

The ITC followed up its comments with a Charter for the Nations and Regions.⁴¹ This noted that ITV had committed itself to an annual investment target of 50 per cent of expenditure on out-of-London originated programmes. A further commitment was made to extensive regional news coverage at peak time. According to the ITC, the ‘reforms ensure a concentration on core regional values: news and current affairs; diversity for local needs and interests; a distinctive and comprehensive alternative to the BBC’. At least 90 per cent of Scottish regional programmes are to be produced in Scotland. The Charter marked a shift from hours of programming to levels of investment. Some independent producers remain

sceptical about how the Charter will impact on their businesses, although the key broadcasters in Scotland have welcomed it.⁴²

More generally, we might wonder about whether OFCOM will be able to ensure that its obligations to pluralism hold in check the competitive forces the Bill promises to unleash. The Campaign for Press and Broadcasting Freedom (CPBF) has sounded a sceptical note and in particular, has questioned the impact the Bill will have in Scotland. According to Rory MacLeod, CPBF Scottish spokesman, ‘The majority of media in Scotland...could end up being owned by companies with no Scottish connection, thus leading to the disappearance of a Scottish identity within programming and media’. He too called for debate on the implications in the Scottish Parliament.⁴³

3.3 Regional news under threat?

There can be little doubt that TV audiences throughout the UK value their regional programming and that diversity would be ill-served if this were to be threatened. Recent research by the ITC and the Broadcasting Standards Commission (BSC) has shown that interest in local or regional news programmes is over 70 per cent throughout the UK (91% in Grampian, 79% in Central Scotland, 76% in Border). Since 1998, however, the BBC has pulled ahead of ITV in its local news provision, and markedly so since ITV rescheduled its early evening news.⁴⁴ At an ITC/BSC seminar on news and current affairs in the nations and regions, held in Cardiff on 27 June, senior news executives from across the UK noted that print journalism was especially strong in attracting local audiences. Concern was expressed at the risks posed to the future of regional news on ITV by increased competition resulting from the draft Bill and it was widely argued that means had to be found to secure its position in the schedules.

At present, aside from the political interventions already discussed, the Bill’s implications are hardly entering public debate in Scotland. What politicians have said, has in any case been only briefly reported and the overall context for debate is exceedingly complex. Hence the need for the Scottish Parliament to take the initiative, or failing that, for some other body to intervene and secure some wider civic engagement. There can be little doubt that the broadcasting map is being redrawn without paying more than cursory attention to the new political map of the UK. Exceptionally, an occasional forum for articles on the Communications Bill has been provided by the *Sunday Herald*’s Business section. There, Scottish Television’s managing director, Donald Emslie, has argued in favour of the Bill’s provisions, whereas detractors, the present writer included, have raised questions about its impact on pluralism.⁴⁵

3.4 The Scotsman—staggering on?

In our January report, we noted the continuing problems being experienced by Scotsman Publications. Andrew Neil, editor-in-chief and then publisher since October 1996, had just appointed his sixth *Scotsman* editor. The big questions remain the same: will editorial change at *The Scotsman* solve its problems and just how long will the Barclay brothers, owners of European Press Holdings, the mother company, continue to shore up its finances. According to the *Sunday Herald*—a consistent critic of Neil’s reign—*The Scotsman*’s editor, Iain Martin, returned from holiday to learn that Neil had planned to merge the paper operationally with *Scotland on Sunday*, its stablemate, and to sack significant numbers of staff. Reportedly, *Scotsman* sales have now fallen to some 68,000, down from 85,000 the previous year. Profits in the group have also fallen to below £1m.⁴⁶ Both SNP and Labour Party spokesmen have

expressed their concern about the group's future and in particular about the 185-year-old *Scotsman*.⁴⁷

4. Public Opinion

John Curtice

No polling evidence on attitudes towards devolution has been published this quarter.

4.1 Identity

In England's matches in the World Cup, will you support England, their opponents, or don't you care much either way?

Ditto the Republic of Ireland's matches

	England	Ireland
	%	%
Support England/Ireland	29	52
Support their opponents	18	2
Don 't care either way	53	47

Source: Scottish Opinion/Scotsman 23-27 May 2002 (N=750)

Would you say that most Scots like the English, or most Scots dislike the English?

	Age Group						All
	18-24	25-34	35-44	45-54	55-64	65+	
	%	%	%	%	%	%	%
Most Like	33	42	36	47	47	52	43
Most Dislike	55	32	47	35	32	21	36
Unsure	12	26	17	19	22	26	21

Source: Scottish Opinion/Scotsman 23-27 May 2002 (N=750)

The World Cup finals in June provided an occasion for the media to worry about Scottish attitudes towards their English neighbours in the wake of devolution. Did people in Scotland, with their own team having failed to qualify for the Finals, exhibit an antipathy towards the English by wanting to see England lose? Or were the bonds of Britishness strong enough that people in Scotland wanted England to win? Anyone who has visited a pub in Scotland on an occasion when an English team is playing a non-British opponent will be aware that certainly some football fans in Scotland fall into the former camp.

The *Scotsman* undertook a poll at the beginning of the World Cup and to its evident surprise discovered that more people in Scotland were supporting England than were supporting their opponents (*The Scotsman*, 30 May 2002). In truth its surprise was unwarranted. Other polls taken in previous years have found that, contrary to the folklore of the public house, more people in Scotland back England than their opponents. At the time of the last World Cup a

ICM/Scotsman poll found that 53% would back England should the English team survive longer in that year's tournament than Scotland, while 44% said that they would not. And at the time of the 2000 European Championship, NOP/Sunday Times found that 36% of Scots with an interest in the tournament would be pleased if England won while only 17% would be displeased. In short, a small majority of Scots at least have consistently been favourable towards the English football team.

True, an apparently contradictory result was obtained by System Three for *The Herald* at the end of May when just 26% said they would be backing England and 65% that they would not. But alas this poll appears to have failed to discriminate between those who were backing England's opponents and those who were simply indifferent, and thus gave a misleading impression in suggesting that most people in Scotland wanted England to lose. Indeed, one of the key messages from the *Scotsman* poll was that over half of Scots did not care whether England won or lost, indicating that even in a country as football crazy as Scotland is often alleged to be only a minority are concerned about the fate of the 'Auld Enemy'. Footballing passions may not be a good guide to Scots-English relations after all.

Still, one other finding of *The Scotsman* poll indicates that while it may only be engaged in by a minority, anti-English feeling is a feature of Scotland's footballing passions. For just 2% said that they would be backing the Republic of Ireland's opponents during the course of their progress in the World Cup, compared with the 18% who were backing England's opponents. This finding is particularly remarkable given the continued association of the Irish team with Catholic identity in Scotland (including Glasgow Celtic football club), a feature that might have been thought to have made the Irish team unattractive to those of a Protestant persuasion.

Moreover, the same poll also found further evidence of mixed feelings amongst Scots towards the English when almost as many people said that they felt that most Scots disliked the English as said they felt that most liked them. Moreover, those in the younger age groups were for the most part more aware of hostility. Anti-English feelings may not be strong enough to pose a threat to the Union, and may not be more common now than before devolution, but it is evidently not something that can be considered to be wholly absent from Scottish society.

4.2 Attitudes towards other issues

Which do you think is best for Scotland? To have a King or Queen who inherits the position for life, or a President who is elected every five years or so?

	Age Group		All
	18-45	45+	
	%	%	%
King or Queen	41	62	52
President	41	27	34
Unsure	17	11	14

The Queen is the second person to be called Elixabeth to be Queen of England, but only the first to be Queen of Scotland. In Scotland do you think she should be called Elizabeth I, Elizabeth II, or don't you care much either way?

	%
<i>Elizabeth I</i>	21
<i>Elizabeth II</i>	13
<i>Don't care much either way</i>	66

Do you agree or disagree that the Queen is out of touch with the concerns of ordinary people in Scotland?

	<i>Age Group</i>		
	<i>18-45</i>	<i>45+</i>	<i>All</i>
	%	%	%
<i>Agree</i>	63	51	57
<i>Disagree</i>	26	45	36
<i>Unsure</i>	11	4	8

Source: Scottish Opinion/SoS 29 May—1 June (N=521)

The Scottish leg of the Queen's Jubilee tour took place towards the end of May, just before the main celebrations in London at the beginning of June. This gave rise to some discussion of Scots' attitudes towards one of the key symbols of the Union, the Royal Family.

A Scottish Opinion/Scotland on Sunday poll conducted at the conclusion of the Queen's Scottish tour confirmed previous evidence about the potentially lukewarm nature of public support for the monarchy in Scotland. Asked to choose between having a King/Queen or an elected President only just over half opted for a monarch and as many as one third for a President. Moreover, the two options were equally attractive amongst under 45s, suggesting that the ability of the Crown to maintain public support will not get any easier in future years.

The level of support for a republic recorded in this poll was far higher than that recorded by British polls conducted at around the same time. For example in May MORI found just 19% in favour of a republic. Some of the gap may reflect differences in wording (in contrast to many other polls this poll did not ask people whether they wanted to 'get rid' of the monarchy but instead described the two options in equivalent terms) but the gap is also consistent with previous evidence that support for the monarchy is weaker in Scotland than it is in England.

However, the poll laid to rest the suggestion that one of the reasons for the unpopularity of the Crown north of the border might be because the current Queen is mis-styled Elizabeth II

in Scotland. (Elizabeth I was the last person to sit on the English Crown before the Union of the Crowns under James I of England and VI of Scotland in 1603.) The suggestion that the Queen should be known as Elizabeth I had been made by Winifred Ewing MSP, the hero of the SNP's victory in the 1967 Hamilton by-election. However the poll found that only 13% of Scots backed Ms. Ewing's idea, and that no less than two-thirds simply did not care either way. More important to the popularity of the Crown it would seem is a much more general sense of it being out of touch. No less than 57% of respondents to the poll said that the Queen was out of touch with the concerns of ordinary people in Scotland

Thinking about the Government's plans to hold a referendum on joining the single European currency or euro, how do you intend to vote when this referendum is held—for or against joining the euro?

	%
<i>For</i>	36
<i>Against</i>	45
<i>Don't Know</i>	18

Source: System Three/SNP 20-26/6/02

This monitor normally ignores polling work undertaken for campaigning organisations as it often includes questions that are designed to produce a particular answer. Given the importance of the subject, the publicity that the poll received (see *The Sunday Herald*, 7 July 2002) and the lack of apparent bias in the question wording, it is however worth considering the results of a poll on Scots' attitudes towards the euro undertaken for the SNP by System Three (and administered to the same sample as System Three's May poll for *The Herald*).

As can be seen from the above table, it is still the case that more Scots are opposed joining the single currency than favour it. Nevertheless, the poll was reported as showing a swing in favour of the euro. This was done by comparing the results of this poll with a poll undertaken in January by Scottish Opinion for Scotland on Sunday, which found that just 29% said they would vote in favour of the euro now while 48% were against. However, the SNP conveniently ignored the results of another poll conducted by System Three themselves at exactly the same time as the Scottish Opinion poll which found only 42% opposed to the euro and 37% in favour. As discussed in the February monitoring report, the discrepancy between the two findings in January can be accounted for by differences in wording, and the same is true of the difference between the result of the SNP poll and the Scotland on Sunday poll. The SNP poll asked people how they might vote in future rather than how they would vote now. And it made no reference, as the Scotland on Sunday poll did, to the euro replacing the pound. In truth we will remain uncertain about whether there is any change in Scots' attitudes towards the euro until one or more pollster asks the same question over time.

The SNP poll also ascertained the long repeated finding that most people (60%) think that whatever their personal preferences they will be using the euro in Scotland within the next five years. Moreover, rather more (45%) feel that membership of the euro zone would be in Scotland's long-term interests than take the opposite view (35%). Scots may thus be open to persuasion to vote for the euro, come a referendum campaign. But for the most part the poll did not suggest that Scots believed that was more important for Scotland to join the euro than it was for the rest of the UK, with just 24% taking that view (and 15% saying it was less

important). It thus seems unlikely that Scots will be any easier to persuade than their neighbours south of the border.

4.3 Party Fortunes

System 3/Herald poll

Holyrood Vote Intentions										
	Con		Lab		Lib Dem		SNP		Others	
Vote	1	2	1	2	1	2	1	2	1	2
	%	%	%	%	%	%	%	%	%	%
23-29/5/02	10	10	40	34	14	15	29	29	7	12
20-26/6/02	12	11	37	32	12	15	32	29	6	12

The Other votes are divided as follows:-

	SSP		Green	
Vote	1	2	1	2
	%	%	%	%
23-29/5/02	5	6	1	4
20-26/6/02	3	8	2	4

Westminster Vote Intentions					
	Con	Lab	Lib Dem	SNP	Others
	%	%	%	%	%
23-29/5/02	13	49	13	21	5
20-26/6/02	15	46	11	23	5

The principal Other votes are for the SSP who scored 4% in May and 3% in June.

Local Government by-elections

	Change in % vote since May 1999			
	Con	Lab	Lib Dem	SNP
6/6/02				
East Ayrshire/Crookedholm etc.	-2.9	-5.6	I	+4.0

Source: www.gwydir.demon.co.uk/byelections

British polls taken in May and June suggested there were some signs that Labour's electoral position was beginning to weaken somewhat. System Three's poll for *The Herald* in May, however, showed no sign of this happening north of the border. And while there was some erosion in June, Labour's position was still stronger than it was as recently as March. There thus seems no reason to believe that Jack McConnell's administration is proving to be particularly unpopular. As a result, Scottish electoral politics still appear to be very stable. Nevertheless, the SNP continue to be more popular when people are asked how they would vote in a Holyrood election than they are when asked about a Westminster contest. And while the question marks that have been raised about the quality of John Swinney's leadership and the rows about the formation of the party's regional lists for next year's elections (see section 10.1 below) are unlikely to have done the party any good, equally there is no sign that they have brought about any immediate erosion of the SNP's position. The SNP sits like a cat waiting for the moment that the Labour bird falls from the tree. What remains in question is whether it will still be waiting until after next year's Scottish Parliament election.

5. Scotland/UK Relations

Alex Wright

5.1 The Boundary Commission

According to *The Herald*, the proposed boundary changes remain something of a challenge for the Labour Party, not least because it poses a threat to John Reid, the Northern Ireland Secretary, Alistair Darling the Work and Pensions Secretary and Lewis Moonie at the MOD. It would appear that a deal has been cut in London that if 40% of their previous constituency is included in the new one (i.e the one proposed under the boundary changes) the sitting MP ‘would automatically be selected for the new constituency’. However, this might be subject to amendment where ‘exceptional circumstances’ applied as could be the case with Reid, Darling and Moonie.⁴⁸

To date there seems to have little dissent within the other political parties over the proposed boundary changes but evidently it has been something of a dilemma for Labour. Given that this is the governing party in the UK, it is surprising that they had not foreseen such an outcome and that apparently only now are they endeavouring to find a satisfactory solution—all of which suggests that they had not thought through the ramifications of *The Scotland Act*.

5.2 English Regions and Scottish Parliament

In the previous devolution monitor report it was suggested that as the regional assemblies for England could have relatively few members, this could have repercussions for maintaining the status quo of 129 MSPs at Holyrood. John Prescott, the deputy prime minister has since advised that the proposed assemblies would each have 25 members⁴⁹—a figure which stands far below the potentially reduced number of MSPs (106) following the boundary review of Westminster constituencies earlier this year. Whilst the power of these assemblies falls well short of the Scottish parliament, it remains to be seen whether their size will be used by those at Westminster who wish to see Holyrood cut down to size.

5.3 Scotland Office

Following Tony Blair’s recent reshuffle of his cabinet, Helen Liddell, the Secretary of State now has a new deputy. George Foulkes has been replaced by Anne McGuire but whereas the former was a ‘Minister of State’ the latter is a ‘Parliamentary Under Secretary of State’, which prompted *The Times* to observe that it ‘was taken as a sign in Westminster that Mr Blair was effectively down grading the job’.⁵⁰ However, McGuire was quick to defend not only her position but also the Scotland Office. She said on her first day on duty:

We should never assume that because the Scottish Executive has a whole range of powers, there is no role in Scotland for either a Scotland Office or UK government. I think sometimes people look at the surface of the iceberg without actually realising what is beneath the surface. The Scotland Office acts on behalf of Scotland within the UK government and has representation on somewhere around 22 cabinet committees. Government is not always just about high-profile issues. It’s also about a great deal of other legwork .. and I do know that George (Foulkes), in his capacity, worked very hard on behalf of Scotland, as does Helen (Liddell). Helen has amply explained and amplified the work that she does on behalf of Scotland in the UK Government. And certainly from the briefing that I had this morning it doesn’t look as though I am going to be sitting twiddling my thumbs or taking out my knitting.⁵¹

Despite McGuire's belief that the Scotland Office still has a key role to play, its worth remains debatable in part because of the suspicion that its ministers have insufficient work to do. For instance, according to the Scotland Office's web site the Secretary of State has made only one speech since May 1st 2002, during which she defended the constitutional status quo. She said:

There is an element of risk in unscrambling even an unwritten Constitution, in disturbing the balance of powers. That risk is all the greater when there are political forces eager to capitalise on tensions created by change, to prise open any fissure in pursuit of the dismemberment of the United Kingdom. These factors were carefully considered in advance, not just by the Government but by, in Scotland's case, a Constitutional Convention representing important sectors of opinion and civic life. And three years into the new arrangements, the Government and the Scottish Executive are working seamlessly in partnership and the United Kingdom has, if anything, been strengthened.⁵²

Whilst this extract from her speech is very much what we would expect Scotland's Secretary of State to say, the fact that she stressed that the relationship between the Executive and the (UK) Government was 'working seamlessly' is worth emphasising here. With the introduction of a new tier of government in Scotland there was always the risk that there could have been damaging disputes between it and its counterpart in the UK. Certainly, there was an uneasy relationship between Donald Dewar, Scotland's first First Minister and Dr John Reid during 1999. When Mr McLeish succeeded Dewar, there were no public spats with Liddell, Reid's replacement, but McLeish increasingly alarmed senior figures at Whitehall and Westminster over his expansionism into areas that were reserved to London (see earlier monitor reports). It is fair to say that there was growing tension between him and the UK Government by mid 2001 which rather contrasts with the current situation—where it would seem that there have been no significant fall-outs between Mr McConnell, the current First Minister and his colleagues in London.

It remains to be seen how the relationship between the two governments will change when other parties are in power north and south of the Border and when that comes to pass that could have far reaching consequences for the Secretary of State. This was touched upon by David McLetchie MSP, the leader of the Scottish Conservatives, when he reiterated an argument which had been advanced by William Hague in the run up to the 2001 UK election. Mr McLetchie warned:

We have a situation where Scottish Executive ministers and officials may attend meetings of the council of ministers when items of importance to Scotland are on the agenda and may on occasion speak for the UK delegation. However, far too little attention has been paid to how this relationship might work following a change in political complexion of either the UK government, to which we all aspire after the next general election, or the Scottish Executive.

Political realities suggest the Labour government at a UK level would not be too happy to allow a Conservative or an SNP first minister here in Scotland to speak on its behalf. The same would surely apply with a Conservative UK government and a Labour socialist first minister here in Scotland.

That is why I believe that with different parties in power at Westminster and in Scotland the burden of bringing about a close liaison and ensuring that Scottish interests were properly represented would have to fall on the office of the Secretary of State for Scotland.⁵³

The Scotland Offices responsibilities are already wide ranging. Its web site advised that its reserved responsibilities include:

The constitution, foreign affairs, defence, international development, the civil service, financial and economic matters, national security, misuse of drugs, trade and industry, various aspects of energy regulation (e.g. electricity, coal, oil and gas, nuclear energy), various aspects of transport (e.g. regulation of air services, rail and international shipping), abortion, genetics, surrogacy, medicines, broadcasting and equal opportunities.⁵⁴

5.4 The Prime Minister and Scottish Civil Servants

When the Scottish Executive advertised for 40 policy analysts during early June (see section 1.5 above also), this led to something of a furore when it was widely reported that the First Minister ‘was angry with Sir Muir Russell (the Permanent Secretary) at not being consulted beforehand’. Ostensibly the underlying explanation was that Jack McConnell did not want to be seen squandering Scotland’s resources on recruiting more civil servants in the run up to the election in 2003, when the escalating costs of the new parliament building at Holyrood had already led to charges of financial ineptitude. It soon became clear, however, that 32 of the 40 posts were replacements and that only 8 were for additional analysts.

The story soon ran its course but not before *The Herald* claimed that ‘Jack [McConnell] can hire but only Tony [Blair] can hire’ on the basis that under section 52 part two of the Scotland Act, Scottish ministers have the right to appoint staff to the executive but that ‘any civil service management function shall be exercisable by the minister for the Civil Service [i.e. the UK Prime Minister].⁵⁵

Whilst the tenor of this report was partly written in jest, it does highlight the extent to which the Scottish civil service remains a part of ‘Home Civil Service’ (i.e. a pan-UK institution) and it does raise the issue of what exactly are the powers of the Prime Minister in relation to the appointment and dismissal of Scottish civil servants. The Scotland Act provides little guidance on this save to mention under section 51 that ‘the “civil service management function” means any function to which section 1 of the Civil Service (Management Functions) Act 1992 applies and which is vested in the Minister of the Civil Service’. Presumably, therefore, as would be the case with other ministers in the UK, whilst Scottish civil servants, would be answerable to ministers in their departments and if needs be to the First Minister, their ultimate loyalty lies with the Prime Minister in London. That may not matter now but it would be interesting to see how this might come under stress when different parties are in power north and south of the Border and they have radically different views on Scotland’s future governance.

In the meantime it has been claimed that Sir Muir has been unable to attend weekly meetings of UK permanent secretaries in London because they coincide with sessions of the Scottish cabinet.⁵⁶ The implication is that this was by no means accidental, the underlying aim being to ‘distance’ him somewhat from his UK colleagues. Whether that is really so is questionable not least because considerable powers remain in Whitehall and presumably, therefore, senior Scottish civil servants, along with their ministers, remain important in the UK political arena. It would therefore make more sense if Sir Muir retained good contacts with his counterparts in London and it is open to doubt whether a First Minister with only a few months experience would have placed in jeopardy such a potentially valuable back-channel to the UK civil service elite.

5.5 Tony Blair and Euro referendum

There has been speculation in the media that if Tony Blair decides to hold a referendum on the Euro in the UK he may opt for May 1st 2003, which as it happens is the date for both the Scottish Parliamentary and Local Government elections. Consequently, the association of electoral administrators have written both to Jack McConnell and Helen Liddell to warn of impending problems including ‘voter confusion’ and the ‘possibility of a delay to the Scottish election result’. According to *The Herald*, Ms Liddell is against ‘a triple poll’ but Mr Hain, Minister for Europe, believes that it could ‘increase turnout’. Apparently one reason why the Scottish result would be delayed is that as the referendum is a UK-wide poll it takes precedence over the one in Scotland.⁵⁷

As we near 2003 attention is turning to the turnout at the Scottish elections, one fear is that there will be a sharp drop in voting with potential consequences for the parliament’s legitimacy. So, it is understandable that there are strong arguments for and against holding the Euro poll on the same day. However, if the UK Prime Minister does hold a poll on that day it would surely complicate the Scottish election campaign and in so doing it risks overshadowing the electioneering of Scottish parties on devolved matters—which no doubt will be food for thought in the governing coalition.

6. Scotland/International Relations

Alex Wright

6.1 Commission for Constitutional Affairs and European Governance

As he is one of Scotland's alternate members of the Committee of the Regions (CoR), Mr McConnell has played an active part in helping to formulate the CoR's response to the EU's convention on its future governance. As a member of the CoR's Commission for Constitutional Affairs and European Governance he is responsible for helping to draft an opinion by the CoR on 'More democracy transparency and efficiency in the European union'. He demanded that there should be 'a series of measures to open up European decision making' including:

Greater involvement for public bodies closest to the citizens, including devolved Governments. More systematic, early dialogue between the Commission and implementing bodies. That the Council of Ministers meet in public when agreeing EU legislation. Greater use of framework legislation leaving the detail to implementing authorities such as Member States and devolved Governments.

He warned:

The European Union is the key to our security and our economic and social well-being. We must ensure that those affected by EU decision making have greater ownership of laws and policies agreed at European level. Making European government more transparent will improve European laws and build a stronger, more effective Europe for the future.⁵⁸

The demand for transparency is extremely laudable but that same could be said in relation to the new institutions which are a by-product of constitutional change in the UK. The Joint Ministerial committee, the British Irish Council and Minicor are all outside the public domain and lack transparency.

6.2 McConnell calls for a 'Subsidiarity Council' in the EU

Speaking at Scotland House and coinciding with one of the sessions of the Convention on the EU's future, Mr McConnell told his audience that there should be a new 'Subsidiarity Council'—the underlying intention being that 'it would act so that bodies such as national and the Scottish parliaments are left free to frame legislation so that it meets our own needs'. Mr McConnell suggested that:

The new Subsidiarity Council would be able to stop the EU from interfering in areas better handled [at] a more local level. The new Europe should be more diverse, less centralised, recognising that we all have a part to play in its future.

We need to be sure that the drive to devolve legislative power within member states is not negated by a drift towards centralised decision making within the EU.

The Subsidiarity Council would give an authoritative view before EU legislation is adopted. Its members could be selected by those involved in the implementation of EU legislation, including national and regional Parliaments. It should be small and should take quick decisions.⁵⁹

The call for a council was very much McConnell's own idea rather than the Executive's official policy (though apparently some in the Cabinet were privy to it) and as such it can be viewed as 'blue sky thinking'. It is an alternative to bringing a case before the ECJ for infringement of subsidiarity which proved controversial when it formed a part of the Flanders Declaration in May 2001. In part that was because there was the concern that member states might be brought before the court which had implications for their internal constitutional mechanisms (though as intimated in an earlier monitor report both Mr Hain, the UK Minister for Europe and Mr McConnell agreed that this scenario would not apply to Scotland and the UK). In addition there was the practical problem that the court did not have the time to become embroiled in infringements over subsidiarity and if it did its judgements would take far too long. So the Council is something of a logical alternative, save for the fact that it was unclear whether it would have advisory status, in which case its opinions might count for nought, or whether it might have some form of judicial authority which would be binding on those involved. If the latter applied it would be interesting to see what the UK government's position would be on such an institution.

6.3 Deputy First Minister and the EU

Mr Wallace spent two days in Munich where he held talks with Dr Manfred Weiss, Bavaria's justice minister. In a speech at a breakfast meeting, Mr Wallace reiterated his belief that the regions had a key role to play in the legitimisation of the EU. He said:

The voice of the regions will be crucial in giving the European Union greater legitimacy in the eyes of its citizens and I am looking forward to productive discussions with my Bavarian counterpart about how we can best secure this in the forthcoming negotiations on the future of Europe.⁶⁰

Although there was no explanation as to how best the 'regions' could influence the future of Europe debate the implication is that Wallace views them as players rather than mere observers. In so doing it rather takes the wind out of the sails of those who criticise the Executive for failing to play a more prominent role in EU affairs (e.g not attending EU summits such as Nice). But more likely than not the main aim of the two day visit was to stimulate links between the two countries—part networking (i.e. establish/maintain a sound report with opposite number)—and part trade. In so doing this would be a continuum of the functional collaboration with other regions in the EU that has begun to emerge over the last year—the most recent examples being Catalonia and Tuscany (see previous monitor report).

6.4 Declaration on Future Governance of the EU

On May 10 Scotland joined nine other regions in signing a declaration on the future governance of the EU. The nine were Aquitaine (France), Emilia-Romagna (Italy), Hessen (Germany), Marche (Italy), Skane (Sweden), Tuscany (Italy), Flanders, Wallonia and Wales. Mr Wallace, who signed the declaration explained:

The declaration which we are launching to day is an important statement of the views of European Sub-Member State Administrations. By working in partnership with other powerful European regions we can play our part in helping to connect the EU to ordinary citizens. We aim to improve the way the EU is run. For example, we have backed a Code of Practice on Consultation which will give more opportunities for Scottish bodies to influence the development of EU policies at their earliest stage. We also support the greater use of framework legislation which will allow greater flexibility to take into

account regional needs and circumstance. Today's event is a further example of the Scottish Executive making a significant contribution to the debate on EU reform.⁶¹

This particular network first met in Fontanellato at the invitation of the Emilia-Romagna Government in September 2001. Its constituent members agreed a common declaration on European Governance in March 2002 (which presumably is the one 'launched in May'), which included the following demands:

We support the Commission's call upon each Member State to develop, where it does not already exist, an adequate mechanism for wide internal involvement of their subnational implementing authorities in preparing national positions on EU policies with a regional impact.

However, a complementary response at EU level is needed as well to open perspectives for the regions to participate more actively in EU policy formulation, while respecting the different constitutional realities of each member-state.

The necessity to reduce and simplify legislation, which is in line with the overall demand for better regulation and flexibility. This should of course, also be applied to those areas where regions have responsibility for implementing EU regulations and directives. We believe greater use should be made of framework legislation, which leaves more room for taking into account the regional needs and circumstances and which creates more flexibility for regions. We propose that at the start of the decision making process, a full analysis—taking account of impact assessment and wider consultation—would be made of the consequences of implementation of Commission proposals for subnational authorities. This should respect the subsidiarity principle and each national Constitution.⁶²

The Executive had already signed the Flanders declaration and Liege Resolution during the previous year or so and there is little indication whether these have yielded much, save for the fact that they demonstrate that the constituent members share common goals in relation to the EU's governance. Although the context is somewhat exceptional given that the EU is deeply involved in assessing its future governance, it is evident that the Executive is keen to forge alliances with a number of regional networks and in so doing this must draw heavily on the resources of those of its civil servants who are responsible for external relations (See section 6.7 below).

Of greater concern is the extent to which these developments seem to be circumventing the Scottish parliament. According to one official, the Parliament was unaware of the March/May declaration and little information if any was available about what was agreed. If true that calls into question the Executive's commitment to accountability and transparency as advocated by Mr McConnell in his draft report for the CoR (see above).

6.5 N. Ireland and Scotland

On June 20th David Trimble, Northern Ireland's First Minister and Deputy First Minister

Mark Durkan visited Edinburgh where they met Jack McConnell and Jim Wallace. According to the press release the underlying purpose was to 'discuss the practical experience of devolution in Scotland and in Northern Ireland and the 'issues under discussion' included arrangements with the UK government. To-date, although there has been collaboration between the Scottish and Northern Irish administrations and between the Assembly and the Parliament, it has enjoyed a relatively low profile. This discussion was

significant not just because of the fact that both First Ministers were present, or even that UK relations was on the agenda but more particularly that they agreed that there should be one or two such meetings each year between the three devolved administrations.⁶³

There are a number of reasons why this is of interest. First, it could be argued that the background to devolution is quite distinct, as far as Northern Ireland and Scotland are concerned. Whilst Ulster Unionists wish to retain close links with the UK, most Scots, including those in Scottish Labour, wanted greater political autonomy from London. Given that there has been a growing relationship between the governments in Dublin and Edinburgh, it is worth noting that there are signs of a developing relationship with Belfast as well. Although it is early days, clearly all sides are keen to build up bilateral links which could have interesting consequences in the future, if say, the SNP become the governing party in Scotland. Second, part of the discussions included 'Europe'. Although there is no further detail on exactly what was said or agreed it does indicate a commonality of interests and it is quite conceivable that both Edinburgh and Belfast may mount a joint lobby in London or Brussels over a mutual interest such as fisheries or agriculture. Third, the release stated that it was agreed by the ministers present 'that it would be a good idea if the three devolved administrations met once or twice a year'. Presumably the 'third administration' is Wales but as no one was present from Cardiff, presumably ministers from the Welsh administration must have already given their consent to this before the meeting in Edinburgh.

Looking to the future, should these three administrations hold regular summits what will happen when England's devolved assemblies are established? Will they join the three administrations or will they have their own summits?

6.6 EU policies' impact on Scotland

This is not the place to offer the reader a detailed analysis of the Common Fisheries Policy (CFP) but the mid term review of the policy does merit a brief mention. Right from the moment the parliament was re-established fisheries has been a contentious issue. It was one of the first areas of policy debated in the parliament and it was over fisheries decommissioning that the Executive was defeated at Holyrood. Although the fishing sector only contributes a very small proportion towards Scotland's GDP, the CFP reform is an emotive issue. In part this is because a number of communities on Scotland's periphery are dependent on fishing—and some of those communities have tended to support the SNP. The reform of the CFP is something of a challenge for both the Executive and to a lesser extent the parliament, where it was the subject of debate on June 13, 2002. Whilst there was support for the Executive's approach to the reform proposals to date, it remains to be seen what will be decided in Brussels. In a previous review in 1992 there was a degree of brinkmanship and back room deals in the face of pressure from the Spanish government and much the same looks certain to re-occur this time around. Even though foreign affairs is a reserved power, should Scottish ministers fail to secure a fair result when the review is settled, the blame can no longer be apportioned to Westminster but Holyrood, thereby potentially raising the question of the Scottish parliament's powers.

The CFP is not the only EU matter that is of concern to Scotland. The Common Agricultural Policy looks set to undergo further change prior to the forthcoming enlargement and as already been mentioned above, a European Convention is meeting to consider the EU's future governance. As far as the EU is concerned, the Executive has enjoyed a relatively easy passage to date—that may well change in the next six to twelve months if events do not go Scotland's way—which could become a bone of contention at the 2003 election.

6.7 Whitehall, the Scottish Executive and EU Council meetings

The SNP claimed that government departments in London have deliberately been withholding information on 'pre-council [of ministers] letters and provisional agendas [of the council]. By way of evidence it cited a letter from Department for the Environment Food and Rural Affairs to the Commons European Scrutiny Committee and a letter from the Foreign Office admitting that it had failed to pass details of the EU's General Affairs Councils to the Devolved Administrations.⁶⁴

This is by no means a new problem, civil servants at the former Scottish Office discovered that Scotland could be forgotten altogether when departments in London issued consultation papers in response to proposed legislation from the EU. The fact that this is now being highlighted by political parties can only be for the good because providing it gets the necessary documents there nothing to prevent the Scottish Executive from ensuring MSPs are adequately briefed on its position on a particular EU proposal.

6.8 The EU Convention on the EU's future governance

In a bid to engage Scotland's civic society, the Parliament's European Committee will be hosting its own convention on the future of Europe on Monday 16th September. Although it is difficult to see what this will achieve in practice given the diversity of those who are likely to be present, the underlying principle is sound. During the last couple of months MSPs have expressed their concern that there has been minimal consultation amongst wider society regarding the work of the convention and it was felt that the Committee did not wish to contribute to the 'wider debate on the EU' until it had had the opportunity to listen to the Scottish people first. In the meantime the Executive is conducting its own consultation exercise on the Convention with a view to producing a draft consultation paper in the early autumn. When he appeared before the Committee recently, Jim Wallace announced that MSPs should have a copy of the draft paper so that there can be some discussion with the Executive before the final version is agreed.⁶⁵

6.9 Scrutiny of Executive's implementation of EU policy

As mentioned in a previous Monitor Report, members of the Committee agreed to scrutinise how effectively the Executive implemented EU policy in Scotland. This was set against the background of complaints from the European Commission that the Executive had failed to implement a number of EU regulations satisfactorily and risked being fined as a result. MSPs therefore decided to oversee implementation on the grounds that implementation failure could incur financial penalties which would have to be met by tax payers in Scotland.

When the Committee met on May 21 2002, there was a brief discussion on implementation part of which is worth referring to here. Although the Executive's response to the Committees' (previous) concerns over implementation were not available on the Parliament's web site, it was clear from the MSPs comments that there had been some substantive problems. For example Ben Wallace MSP observed:

It is interesting that there are some pretty direct responses from the Executive saying that there appears to have been mistakes throughout. That just illustrates the under-resourcing in the Scottish Executive and the Scotland Office of monitoring and understanding the implementation of directives post-devolution. When the responses come back to the committee and the clerk and legal advisers get their hands on them, they do not usually hold up to much scrutiny. That shows that the Executive is perhaps struggling to cope with

monitoring the situation. It was an honest response to say that mistakes have been made but there are too many mistakes, and that must be pointed out.⁶⁶

On the eve of devolution, senior officials involved in international relations thought that Scottish politicians would not become too deeply immersed in foreign affairs, partly because they stood to be re-elected on the performance on domestic matters such as health and education, and partly because the pursuit of a wide ranging foreign affairs agenda would be a drain on human resources. That may well now have come to pass. Following the furore over the recruitment of new policy analysts—as mentioned above—some of whom apparently were to work on EU matters—the issue of staff recruitment is clearly a political hot potato. But if ministers are going to involve the Executive in declarations and resolutions with other legislative regions or become deeply engaged with the the Convention on the EU—and as MSPs require considerably more information on EU matters so as they can hold Scottish ministers to account (e.g. at the meeting on May 21, MSPs expressed their contentment that they were now getting pre and post council briefings from the Executive)—in sum this requires sufficient human resources. If that is not available—and the signs are from the evidence above that ‘mistakes’ are occurring—then at some point something has to give.

7. Relations with Local Government

Neil McGarvey

Reflecting a quiet quarter with few major developments in the local government field this quarter's report will take the opportunity to reflect on the impact devolution has had on local government. The main body of this report (Section 7.1) draws on Joseph Rowntree Foundation sponsored research into this matter. Section 7.2 reports on the new Executive legislative programme and its relevance to local government, 7.3 notes developments that are likely to have significant implications for the council tax in the future, while 7.4 reports the latest developments with regard to the local government issue which is likely to have significant repercussions for the Executive coalition: PR in local election.

7.1 Central-Local Relations Post-Devolution

Joseph Rowntree Foundation sponsored research into central-local relations in Scotland post-devolution was published this quarter.⁶⁷ This study was based on 120 interviews and surveys of Scottish ministers, civil servants, councillors and officials from 11 local authorities as well as bodies such as the Society of Local Authority Chief Executives and Senior Managers (SOLACE), the Association of Directors of Education, the Association of Local Authority Chief Housing Officers and the Scottish Local Authority Economic Development Group.

Amongst the key findings of the reports were

- • Almost unanimous support amongst local government interviewees for devolution in general although there were a number of areas where there was dissatisfaction with how devolution has worked out in practice. The Scottish Executive was criticised more than the Parliament.
- • Almost half councillors (48%) thought devolution had reduced the importance of local government. There were significant differences between the parties. Whilst 73% of Conservatives and 55% of nationalists thought this, only 38% of Labour and 46% of Liberal Democrat councillors agreed.
- • Whilst relations on the political side between local government and the Executive were generally much improved (with more openness and accessibility) compared with those before devolution, relations with the civil service were often marked by mutual distrust. Over 52% of councillors agreed that the Scottish Executive was more open than the Scottish Office with only 28% disagreeing.
- • Westminster has become much less important to the day-to-day operations of Scottish local government although its control over policy and financial frameworks and UK party political links remained important
- • Forty per cent of councillors thought that COSLA had been too close to the Scottish Executive in policy-making terms and only 28 per cent thought that COSLA represented all councils' interests fairly and equally. There were concerns that COSLA-Executive relations were 'too cosy' and that this compromised the organisation's campaigning role. It was referred to as "the Scottish Executive's little helper" in a "one party state". The finding probably reflect the difficulty in COSLA managing its dual role as local government campaigner on one hand and policymaker on the other.

Many of the interviewees felt that local government were very much junior partners in the relationship with government. Directors of Education reported the best relationship with the

Executive (this may reflect the implementation of the McCrone Report) with other service directors were generally less positive. Few councils reported having positive relations with their List MSPs (this probably reflects that these MSPs are likely to be from a different party from the one controlling the local council).

Overall the report acknowledges that although the pre-devolution doomsday scenario of ‘the end of local government as we know it’ has failed to materialise, the alternative scenario of a reinvigoration of local government has also not been evident. Consistent with other reviews of post-devolution relations the report acknowledges that whilst many hoped devolution would produce a ‘new politics’ it has yet to free itself from the ‘old politics’ of the past.⁶⁸

7.2 New Legislative Programme

The new Executive legislative programme was launched while the Parliament was sitting in Aberdeen. Of relevance to local government include Bills designed to boost child protection, reduce homelessness and improve educational support for children with special needs. The programme was welcomed by COSLA as one that will make a ‘real difference to real people’. As has previously been the case the main talking point (from a local government perspective) was what was not included, namely a bill introducing proportional representation for local government elections (see 7.4 below).⁶⁹

7.3 Council Tax

As reported last quarter the average council tax rise for 2002-3 was 4.5%—well above inflation. There were signs this quarter that next year’s rise could be even higher. Thirteen local authorities have asked the Executive for extra funding claiming they have been ‘short-changed’ in funding the McCrone teachers pay deal.⁷⁰ Other pressures on council tax are likely to come from pay increases (firefighters recently launched a claim of 50%),⁷¹ the Budget hike in employers national insurance contributions, the Executive rejection of a return of the business rate to local control and the creation of additional council tax bands⁷² and recent stock market falls which resulted in the 11 Scottish local authority pension funds losing £2.4 billion since March 2002.⁷³

7.4 Local Government Elections and PR

The issue of local government elections and PR has been a ‘sleeper’ issue in Scottish politics post-devolution. It has always been there in the background threatening to undermine the Labour and Liberal Democrat coalition. This quarter the issue bubbled to the surface yet again with the Scottish Labour Executive’s submission to the proposed Local Government White Paper. The paper, drafted after consultation with party membership, rejects PR arguing that minority parties should not be given “disproportionate power” by an electoral system. It suggests that discussion of PR is a distraction to the key priorities of the Scottish Labour Party which are concentrating on issues such as health, education, crime, transport and jobs. The Liberal Democrats expressed disappointment but no real surprise whilst the SNP suggested it was “a massive slap-down” to First Minister Jack McConnell. However, in a sign that the Scottish Labour Party is preparing itself for some form of PR it was acknowledged that in the event of a PR voting system being implemented it would favour one that prevents disproportionate power to minority parties and preserves the link between councillors and their wards.⁷⁴

The issue has appeared periodically on the Scottish political agenda since devolution but a final outcome is imminent with consultation on the white paper due to end at the beginning of

August. The Executive is likely to set out the next steps in relation to future legislation when the Parliament reconvenes in September.

7.5 Public-Private Partnerships

The issue of public-private partnerships was once again on the political agenda this quarter. A leaked Scottish Executive report suggested the possibility of transferring some of the Highlands and Islands fire service to private companies. This would create another local service to which the PPP template could be applied. So far schemes have included schools, hospitals and prisons. As expected the fire brigade unions were very critical labelling the proposal 'private gain from public pain'.⁷⁵

The fire brigade scheme is the latest on a long list of public-private partnerships post devolution. Perth and Kinross Council are the latest to unveil a Public Private Partnership project for their schools.⁷⁶ It should be noted, however, that both West Dunbartonshire and Falkirk have recently rejected PPP as a means of financing major public building projects in their areas.⁷⁷

As noted in the November 2000 report the Scottish Executive has declared its commitment to the Blairite public sector modernisation programme, a key part of which involves PPP projects. In Scottish local government there have been schemes in Glasgow, Falkirk, East Renfrewshire and Stirling amongst other councils. Recently published research has suggested that many local councils in Scotland appear ill-prepared to manage the risk transfer process inherent in PPP.⁷⁸ Many Scottish local authorities are ill-prepared to address risk transfer considerations associated with PPP, unlike private sector partners, which leaves them at a substantial disadvantage in the arena of risk transfer negotiations. Since the demise of the Municipal Mutual Insurance Company in the early 1990s local authorities have tended to take risk management far more seriously but there is little evidence of a sufficient consideration of it in PPP transfers to date.

8. Finance

David Bell

The most significant financial event in the last quarter was the publication of the Comprehensive Spending Review (CSR) by the Treasury. The outcome of the CSR will affect spending plans in all three devolved administrations from financial year 2003-04 through to 2005-2006. But it has been driven primarily by English concerns over the delivery of public services particularly in health, education and transport. Spending on public services will rise by £24 billion in 2003-04, £40 billion in 2004-05, and £61 billion in 2005-06. This implies an average real growth rate of 5¼ per cent per year. Of the £61 billion of additional spending in the UK by 2005-06, more than half will go on increased expenditure on education, health and transport in England.

The devolved territories will also receive funding increases; £4.1bn in Scotland, £2.4bn in Wales and £1.2bn in Northern Ireland by 2005-06. But their percentage increase is smaller than that in England; against an annual UK growth rate of 5.2 per cent, the additional resources being provided to Scotland will increase by 4.4 per cent, while those in Northern Ireland will increase by only 3.3 per cent. Wales comes off best in the sense that the rate of growth of spending that it will experience is 5.1 per cent – just short of the overall figure for the UK.

No special provision has been made in the spending review for Scotland and as a result the “Barnett Squeeze” will reduce its resources relative to England. The implication of this is that the government is content for Scotland’s share of UK public spending (or at least that part that is contained within Departmental Expenditure Limits) to drift slowly downward. Wales receives an additional £106m per annum to meet its EU Objective 1 funding requirements, while Northern Ireland will receive around £60m per annum to support the EU funded PEACE programme. But only in Wales is the rate of growth close to that in the UK as a whole.

This has implications for the ability of the Scottish Executive to fund increases in expenditure programmes at the same level as those occurring in England. Commitments to match the same rates of increase in England in Scotland will inevitably result in squeezes in other components of the Scottish budget. Take health as an example: the draft 2002-03 Scottish Budget, which was published before the CSR, proposed an increase of £444m in health expenditure in 2003-2004. As a result of the CSR, the Executive propose to spend a further £224m, implying an annual growth rate of 10 per cent. This increase will be applied on top of levels of health spending that are already well above the EU average. The latest OECD statistics¹ show expenditure per head on health in EU countries averaging \$2009 per capita in 2000, with the UK at \$1763, lagging the EU average by 12 per cent. However, applying Scotland’s traditionally higher levels of health spending suggests that per capita levels of health spending in Scotland were already 6 per cent above the EU average at that time.

Adding growth of 10 per cent in 2003-04 will further increase the gap between levels of health spend in Scotland and the EU average, since few European countries have sufficiently robust economies and/or such a strong commitment to increased health expenditure as the UK. The Executive has proposed further increases of £634m and £718m for 2004-05 and

¹ The EU countries for which the OECD published data for 2000 were Austria, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Portugal, Spain and the UK.

2005-6. Although health accounted for only 36 per cent of the Scottish Executive's Departmental Expenditure Limit² in 2001-02, these increases mean almost 40 per cent of the DEL will be spent on it by 2005-06. Given that public expectations have been raised not only in health, but also in programmes such as education and transport, the ability to deliver on these fronts will be constrained by this rapid growth in health spending. The way in which Executive will deal with this issue will be laid out in September, when the next spending announcement is made.

A further aspect of the current CSR, which is highly significant for devolution, is the fact that it is accompanied by a detailed set of public service agreements (PSAs). These lay out in detail measurable targets that the Whitehall spending departments are expected to achieve in order to justify their additional resources. But these agreements are limited to the Whitehall spending departments – there are no equivalents for Scotland, Wales and Northern Ireland. This might make the devolved administrations vulnerable to criticism of lack of accountability compared with English spending ministries unless they follow a similar target-based for their own spending departments. Andy Kerr, the Finance Minister, intends to bring forward proposals in September for increasing performance and accountability to the public.

One of the PSAs covers the English regions. John Prescott's Office and the DTI have agreed with the Treasury “ to make sustainable improvements in the economic performance of all English regions”. As well as being somewhat disturbing for the devolved administrations, the existence of this PSA may ring alarm bells among supporters of devolution in England, since it is difficult to see how the long-term future of devolution can be assured when lines of accountability for programme delivery extend to both the local electorate and Her Majesty's Treasury.

² In 2001-02 the Executive's Departmental Expenditure Limit (DEL) accounted for 82 per cent of the Executive's total budget (Total Managed Expenditure).

9. Legal Disputes

9.1 Hunting Act Challenge

The last Quarterly Report noted the intention of pro-hunting forces to mount a legal challenge to the anti-hunting Act passed by the Scottish Parliament (section 9.1). This action was finally launched, and was heard before Lord Nimmo Smith in the Court of Session in early July. No result has been announced at the time of writing, though the judge had indicated that he would seek to release a preliminary opinion by the end of July, i.e. before the Act comes into force on 1 August. At present, the main sources of information on the progress of the case, other than the general media, are the opposing sides of the hunting argument. While this means that such material has to be handled with some caution, the websites of the Scottish Countryside Alliance and the League Against Cruel Sports both contain detailed reports of the relevant court documents and daily progress of the hearing respectively.⁷⁹

At the risk of making rash predictions (which may be shown to be false even by the time this Report is published!), it can be suggested that this challenge could well go ‘all the way’ to the Judicial Committee of the Privy Council, but with the same ultimate outcome as the first challenge to the validity of an Act of the Scottish Parliament, that against the mental health legislation.⁸⁰ While it may be expected that the validity of the Hunting Act will be upheld, it is possible, given the particular circumstances of the present case, that it will afford the judges more opportunity than did the mental health case for judicial consideration of more general legal aspects of their treatment of ‘devolution issues’. These could well include aspects such as

- *who are the appropriate parties ‘defending’ the validity of an Act*—initial argument in the present case considered whether, for example, the UK Government (in the shape of the Advocate General) should be a party, and there has also been some examination of the extent to which the Scottish Parliament itself is a relevant party once a Bill has been enacted. These raise potentially interesting issues of ‘responsibility’ for the validity of Scottish Parliament legislation (especially, perhaps, when it derives from a non-Executive Bill?). There would seem to be little reason for the Parliament to be a party as such (other than in terms of providing information as to relevant legislative proceedings) in a post-Assent challenge, as its ‘responsibility’ would have ended, and the Scotland Act makes it clear that “the validity of an Act of the Scottish Parliament is not affected by any invalidity in the proceedings of the Parliament leading to its enactment” (s28(5)).⁸¹ Presumably any challenge to the legislative process (such as the validity of the Presiding Officer’s statement of legislative competence; the parliamentary proceedings themselves, or the sending of the Bill by the PO for Royal Assent) should have been mounted prior to Royal Assent. Again, the ‘responsibility’ of the UK Government would seem to relate primarily, if not exclusively, to the pre-Assent period, when it can intervene through a s33 or s35 challenge by its Law Officer or a Secretary of State respectively. If it is suggested that the UK Government (or indeed the Westminster Parliament) has some ultimate responsibility for the ‘devolved’ statute book—which is clearly the case in strict constitutional theory—this could undermine the whole basis of the devolution ‘settlement’ and the practical extent of the Scottish Parliament’s legislative power

- *what are the grounds for challenging the validity of devolved legislation*—While the specific grounds for defining the legislative competence of the Parliament contained in s29 of the Scotland Act (especially the ECHR and EU compatibility grounds in s29(2)(d)) may well encompass most, if not all, potential ‘administrative law’ grounds of challenge, the present case does seem to be being argued fundamentally on grounds of core public law concepts of fairness, abuse of power and unreasonableness. The judges in the mental health case were extremely careful to avoid consideration of these more general aspects, as that case could be decided on relatively narrow ECHR grounds, but if their colleagues in the present case wish to be more ‘activist’, any such dicta could well have a significant impact on the status of devolved legislation, and the future shape of Scottish devolution.

10. Political parties

James Mitchell

The political parties have been in the process of candidate selection for next year's Scottish elections. Labour and the Liberal Democrats have predictably had least trouble as most MSPs from these parties have been and most likely will again be elected as constituency members. It has been the choice of candidates for the regional lists and where candidates find themselves on the party lists that has caused most controversy. This has affected the SNP and the Conservatives. Whether deliberate or unintended this has been one of the consequences of the electoral system chosen by Labour and the Liberal Democrats when they met in the Constitutional Convention in the years leading up to devolution. Choosing candidates for first-past-the-post constituency seats has been less difficult for two main reasons: first the political parties have so much experience of this and second because incumbency is straightforward. The relative novelty of the list system, potential for central party managers to use it to control candidate selection and ambiguities surrounding incumbency make selection for the list more troublesome. Sitting list MSPs are often not the sole incumbent for the region and battles over retaining or improving position are much more open.

10.1 SNP lists

The SNP has had few major problems with regard to selection of candidates for constituencies. It has selected its constituency candidates but these were of relatively little significance given that 28 of the 35 were elected from the lists last time. The process that was adopted for selection of the list candidates was the same as last time with the added tensions caused by having 28 incumbents. Selection meetings were held at which delegates decided on the ranking of candidates. Delegates were chosen on a similar basis as those chosen for annual conference—with branch size determining the number of delegates. This system had been in operation in the SNP for years, indeed decades.

A number of SNP MSPs had announced that they did not intend to stand again or failed to secure the necessary nominations to be put forward—Winnie Ewing, Duncan Hamilton (both in Highlands and Islands), Kay Ulrich, Lloyd Quinan and Colin Campbell (West of Scotland) and Dorothy-Grace Elder (Glasgow). Ewing and Hamilton (the oldest and youngest MSPs) had both announced that they would step down. Quinan had tried to get selected in Lothians after falling out with members in the West of Scotland but failed to get a constituency nomination and could not find the necessary support to be mounted for the Lothians SNP List. Campbell had also fallen foul of local activists but decided not to seek nomination elsewhere. His decision not to seek nomination had, therefore, been made for him. Dorothy-Grace Elder had resigned from the SNP group after a disagreement with the party managers in the Parliament when they proposed to remove her from the Health Committee to allow another SNP MSP to take up the place as she had previously announced her intention to stand down from the Parliament.

The remaining MSPs were seeking high places on the regional lists in order to maintain membership of the Scottish Parliament. Regional hustings were held in each of the eight regions of Scotland for places on the SNP lists. Votes were counted by the Electoral Reform Ballot Services and announced on 18 June. Most media attention focussed on Margo MacDonald's slip from the first place in Lothians in 1999 to fifth in next year's election. The contest for places on the SNP's Lothians list had been more strained than any of the others. MacDonald accused fellow MSPs Kenny MacAskill and Fiona Hyslop of waging a campaign against her in the region in an effort to have her deselected. There was little doubt that relations between MacDonald and her fellow SNP MSPs was strained and she herself had not

hidden her contempt for members of her own party, especially the leadership. That appears to have contributed to MacDonald's fall from grace within the party. Activists appear to have taken the view that Margo MacDonald saw herself as above party and were disinclined to give her anything approaching the same level of support that they had in 1999. MacDonald's recent political record critical of the leadership of John Swinney and Alex Salmond had merely picked up from where she had left off after she resigned from the SNP in 1982. She soon announced that she would also resign as candidate for the Edinburgh South constituency and had immediately encouraged speculation that she might stand as an Independent. It later transpired that she has Parkinson's disease and she insisted that this information had been leaked by the leadership though this seems improbable given that it was news to them, the initial report appeared in the vehemently anti-SNP Daily Record and the news could only win her public sympathy. The most likely explanation is that the Daily Record had worked out the nature of her ill-health, evident to all who had even the most limited knowledge of MacDonald and the most limited medical knowledge. MacDonald's departure will evoke a sense of *déjà vu* amongst a generation of students of Scottish politics. Having lost office as senior vice chairman of the party in 1979, MacDonald spent the following three years attacking her successors, ultimately leaving the party and attempting to damage it electorally at the 1983 election.

There were a number of other significant outcomes from the SNP lists. In Glasgow, Sandra White jumped from fourth place to first ahead of Nicola Sturgeon, Health Spokesman and much touted as the next party leader. In the Highlands and Islands, Jim Mather, party treasurer, came top of the list with Fergus Ewing outpolling his wife Margaret Ewing. With two Highlands and Islands SNP MSPs standing down at the election and the Ewings both holding constituency seats, the prospects look good for Mather to be joined by Rob Gibson, a long-standing Highlands activist.

In Central Scotland, Alex Neil topped the list again followed by Michael Matheson with Andrew Wilson, shadow Enterprise Minister, falling from second to fifth place. In Mid-Scotland and Fife, John Swinney topped the list and Bruce Crawford, Shadow Environment Minister, came second followed by Tricia Marwick with Roseanna Cunningham, coming in fourth—the same position she was in last time. George Reid has fallen from second to fifth place no doubt partly due to his low party political profile in his role as Deputy Presiding Officer.

In the West of Scotland, Campbell Martin topped the poll having not stood last time with hardliner Bruce McFee, leader of SNP group in West Renfrewshire Council, coming in second. Fiona McLeod fell to seventh place and has little prospect of being returned again given that she is contesting the Strathkelvin and Bearsden constituency—not fertile territory for the SNP. In North-East Scotland Richard Lochhead emerged top of the list with Andrew Welsh, a veteran former MP, dropping from second to fifth place though he should be secure in his constituency seat. Irene McGugan, widely regarded as an effective Parliamentarian and able deputy Education spokesperson, has dropped to seventh place and will only be returned if she wins the highly marginal Dundee West constituency from Labour. In the South of Scotland, Mike Russell, Education Shadow Minister, dropped from second to fourth place with Christine Graham rising from fourth to first place.

Interpreting the pattern of voting is difficult. There is evidence that MSPs who have been active locally, both within the party and on local community issues, have fared well even better in some cases than some with higher profiles nationally. In some cases, personal ambition has not been rewarded with more modest, local candidates faring better—as evidenced in Glasgow and South of Scotland. There is also evidence that internal tensions

were significant in Lothians, Central Scotland and West of Scotland. Overall, it is difficult to assess the likely differences that might follow if one-member-one-vote had been adopted though it seems fair to assume that some better known national figures would have fared better. The challenge for many of the SNP's better known figures may lie in how well the Scottish Socialist Party and other smaller or independent candidates perform on the lists. John Swinney made it clear that the system used would be replaced as it had caused a 'cauldron of tension' inside the SNP in the run-up to the selection meetings. He had 'lost confidence' in the process and suggested one-member-one-vote in its place. The party is to look again at how it selects its candidates for Holyrood after next year's elections.⁸²

10.2 Conservatives choose method of selecting List candidates

The Conservatives also rely heavily on the lists for representation in the Parliament. The party which has traditionally allowed constituencies considerable autonomy in the choice of candidates for first-past-the-post seats adopted a highly centralist approach in choosing List candidates in the run-up to 1999. David Mitchell, Scottish party chairman, wanted candidates chosen at regional hustings at which party members would listen to and decide who should be candidates. However, this met with strong opposition including David McLetchie and almost the entire contingent of Scottish Tory MSPs who wanted a postal ballot of members. Delegates at a special conference in Perth in June voted in favour of one-member-one-vote postal ballot by 182 to 64 votes.⁸³

Bad news for the Scottish Tories came out of its annual conference the previous month with reports that some members wanted to maintain strong opposition to devolution. After McLetchie's statement that he would vote against devolution again in another referendum (see report in last quarter), the party has been having difficulty overcoming its anti-Scottish, anti-devolution image. Kenneth Ferguson, a former vice president of the Scottish Tories argued that the Parliament's powers ought to be cut back and noted that one or two people felt that candidates standing on an abolition of the Parliament ticket would get a 'sizeable vote'.⁸⁴ Evidence that the Tories continue to have a major problem with its history of opposition to devolution was also to be found in Iain Duncan Smith's speech to conference in which he urged party members to abandon their contempt for devolution. He argued, 'For those who opposed the parliament, the temptation is to say 'I told you so', but that is a temptation we must resist. In the overwhelming result of the 1997 referendum, the will of the Scottish people was made clear and that will stay unchanged.'⁸⁵ Given Duncan Smith's previous hardline position even after the referendum, this call may lack credibility with the electorate but may prove more convincing to Tory activists opposed to devolution who have a leader with whom they can empathise. Coming from the hard-line devo-sceptic wing, Duncan Smith has credibility amongst that section of the party.

10.3 Labour's local difficulties

Labour's problems with selecting candidates arose in different contexts this last quarter. First it has had some problems in its selection of candidates for local elections in Edinburgh. The process of candidate selection had to be halted when it turned out that one prospective candidate had been given a copy of the questions that were to be asked at the interview. Thirty-four applicants out of 77 had been chosen when this was uncovered and the process had to be halted and started afresh. However this is unlikely to have more than a local impact and even then it is far from certain that these problems will be remembered when it comes to the elections next year.

Labour's other controversy has been around the issue of women candidates. Scottish Labour has led the way in the gender equality debate. The decision to abandon all-women short-lists in the next elections to the House of Commons provoked opposition. The reason for this proposal was to ease the transition to the reduced number of Scottish MPs at Westminster under the provisions of the devolution legislation. With a number of MPs losing their seats, this provision was designed to protect existing MPs rather than having a deliberate gender bias. However, after adverse reaction, the Scottish party announced that it might pull back from that decision and that some constituencies would be exempt from the abandonment of all-women short lists.⁸⁶ Further problems have arisen with the changes in Parliamentary boundaries and reduction in the number of seats at Westminster as reported elsewhere (see section 5.1 above).

10.4 Greens

The Scottish Greens announced that they intended to field 69 candidates at next year's Scottish elections. Its best chance is in holding its Lothians seat though if Margo MacDonald stands as an Independent that might undermine Robin Harper's chances.

11. Public policies

Barry Winetrobe

11.1 Youth crime

Youth crime has become one of the hottest political topics, not just between the parties, but even within the Executive itself, and again demonstrated how, even for a relatively pragmatic and cautious First Minister as McConnell, the direct identification of apparently populist policy initiatives with the head of government rather than departmental ministers can backfire. It appeared to lead to friction between the two coalition partners, when it was reported in May that the Justice Minister, Liberal Democrat leader, Jim Wallace, had been kept out of a policy group, to be led by the (Labour) Education Minister, Cathy Jamieson. Despite official Executive briefing that this did not amount to any formal change in ministerial responsibility for the topic (the ad hoc ministerial group was formally chaired by the First Minister), it was widely interpreted not just as an attempt by Labour to make law and order a 'Labour' issue, but also was linked to the abortive attempts to reshuffle Wallace out of the Justice portfolio.⁸⁷

Matters worsened for ministers with a very embarrassing outburst by the junior Justice minister, Dr Richard Simpson, winding-up for the Executive during a Conservative-led parliamentary debate on youth justice on 13 June. He described the experience of juvenile courts in England in the following terms:

Secondly, although juvenile courts might be an alternative I inform our Conservative colleagues that the juvenile courts system in England is a disaster. Even with fast tracking, it is an absolute disaster, and they look with considerable envy at the hearings system, even with its flaws. England looks with considerable envy at our children's hearings system, despite its flaws. To suggest that courts are going to be the solution is not the answer.

Not surprisingly, these remarks led to much media and Opposition comment that (as well as being inappropriately blunt about policy south of the border) the administration was completely split over youth justice policy, especially over some sort of youth court scheme apparently favoured by the First Minister himself just a few weeks previously, but viewed with suspicion by Liberal Democrats and others who saw the undermining of the children's hearings system. There was much clarificatory spin by ministers over the following days, not least during FMQs that very afternoon, much to the First Minister's embarrassment.⁸⁸

Ministers sought to regain the initiative (and to restore some coalition cohesion) a fortnight later with the announcement of a 10-point action plan on 27 June,⁸⁹ though Opposition parties continued to claim that the Executive was still not doing anything to deliver improvements in youth justice or to stamp out youth crime. The Conservatives were worried that the Executive's approach was, if anything, too liberal, with potentially serious crimes by young people being handled by specialist children's hearings rather than by the ordinary courts, and the SNP focussed on the shortage of secure accommodation for young offenders, with its leader, John Swinney, promising to double the existing provision.⁹⁰

11.2 Prisons

The issue of prison facilities is primarily one of private finance and private provision, such as at the prison at Kilmarnock (the subject of waves of parliamentary questions by MSPs⁹¹). The public battle over the Executive's prison estate review has been symbolised by the proposed

closure of Peterhead Prison in the north-east, with its specialist sex offenders unit, with a well-run campaign to save the facility, including an 18,000 signature parliamentary petition and a lobby of the Parliament on 30 May. The Justice 1 Committee examined the whole issue, and the Justice Minister, Jim Wallace, and the Chief Executive of the Scottish Prison Service, Tony Cameron, faced hostile questioning when appearing before it on 23 May.⁹² When the Committee published its report on 2 July, it proved to be a devastating critique of the policy, and of the main players. The Committee's approach can be gleaned from the following short paragraph:

17. The Committee found the evidence of the Chief Executive of the SPS extraordinary and unconvincing on the issue of buildings, staffing and the space required and found his comments about the inefficiency of his organisation astonishing.

Some MSPs, and the SNP, have called for the removal of Cameron, who appears to be being groomed as the potential scapegoat, especially as he seems to have made many MSPs unhappy by his approach to their scrutiny of his Service. Parallels have been drawn between the issue of the prison estate review and the role of the private sector, and that of the abolition of poindings and warrant sales in 1999-2000, in that if the Executive decide to proceed with its policies in the face of clear, cross-party parliamentary opposition (as expressed through the committees), it would face open rebellion and probable defeat.

The private prison issue was thought to have sealed the fate of the Chief Inspector of Prisons, Clive Fairweather, who has not been reappointed, and is to be replaced from October by Rev Andrew McLellan, a former Moderator of the General Assembly of the Church of Scotland. He has spoken out publicly against private prisons, and there was lively media coverage of an alleged split between the First Minister and his deputy, the Justice Minister, over Fairweather's fate (the former being said to be supporting reappointment, whereas Wallace wanted him out), which was assisted by public statements from the outgoing Chief Inspector expressing his unhappiness at not being retained. The new appointee immediately made clear his doubts over private prisons and the proposed closure of Peterhead,⁹³ which suggests that his appointment can be interpreted as either a ministerial 'own goal' or as preparing the way for an Executive policy retreat.

11.3 Other law and order issues

Drugs policy provided an interesting public policy area from a devolution perspective, given that it is a reserved matter (in terms of core aspects such as classification), but which has an inevitable effect on devolved areas such as criminal justice. The Home Secretary's statement on 10 July (a response to the recent report of the Commons Home Affairs Committee), especially the reclassification of cannabis from Class B to Class C, provoked much reaction in the media and among affected organisations, such as fiscals, police and prison officers. There was much speculation on how the formal change, and the wider policy shift it could signal, would be implemented in Scotland with its different legal system from the rest of the country. Ministers were quick to emphasise that reclassification did not mean decriminalisation or legalisation, and senior police officers insisted that the law would continue to be enforced.⁹⁴ The SNP sought to exploit the matter in terms of UK governmental ignorance of distinctive Scottish factors, or failure to consult the Executive over the policy change. When questioned by Peter Wishart (SNP) on the impact of the new policy on Scotland, the Home Secretary said:⁹⁵

The hon. Gentleman makes a fair point. That is one of the joys of devolution. As we talk to Ministers in the Executive, we need to ensure that there is clarity and continuity. I am sorry that people in Scotland have reacted in a different fashion, but I hope that we can get very similar messages across so that we are all batting on the same wicket in terms of reducing drug trafficking and drug use.

Nelson Mandela visited the jailed Lockerbie bomber, Abdelbaset Ali Mohmed al Megrahi, in Barlinnie Jail in Glasgow on 10 June, and said that he should serve out his jail sentence in a Moslem country. The Scottish legal establishment has thus far congratulated itself over the trial and conviction of the Libyan suspect, and Mandela's intervention in support of him—added to the recent revelations of a correspondence between the prisoner and a former Scots soldier, who was traumatised by his experiences in the immediate aftermath at the crash site in Lockerbie, and of the opening of a Libyan consulate in Glasgow to liaise with al Megrahi—will keep the international focus on the fairness and efficiency of the Scottish legal system at a time when it must have been hoped that the Lockerbie saga had finally ended. Tam Dalyell has continued to raise his concerns at Westminster, though often procedurally impeded by the devolved nature of much of the issue, and had an adjournment debate on Lockerbie on 23 July.⁹⁶

11.4 Health

The matching of supply and demand continued to dominate health policy, with continuing political arguments over the Executive's performance in reducing waiting lists and/or times, a debate that is developing as similar to those on crime or jobs in its concentration on the relevant statistics and on alleged changes ('fiddling the figures'; 'massaging the numbers' and so on) to the methods or bases of these statistics.⁹⁷ The Executive bought a private hospital, the HCI in Clydebank, to provide extra resources, and there was a critical Audit Scotland report on waiting lists management.⁹⁸ A draft Mental Health Bill was published by the Executive on 28 June.

The most significant date of the period was 1 July, the implementation date of the much-heralded free personal care scheme for the elderly, after many months of political argument and administrative preparation.⁹⁹ As one of the most visible examples of a distinctive devolved policy stance, it was inevitable that pressure groups south of the border would use this milestone as an argument for a similar approach in the rest of the UK, even arguing that a separate policy was discriminatory.¹⁰⁰

11.5 Transport

The new Transport Secretary, Alistair Darling, being a Scottish MP from Edinburgh, raised many political eyebrows, even being described graphically by Lord Tebbit in the Lords on 27 June as "the West Lothian question incarnate", though the PM's Official Spokesman said, in a No. 10 briefing on 29 May, in response to the recent trend of Scottish transport ministers, that "nationality should not be seen as an issue in this case." There were suggestions that this appointment may assist Scotland's case in those areas of transport that are substantially reserved, such as air travel, an area whose prominence in Scottish politics is growing both in Edinburgh (such as an SNP-led debate on Scotland's air links on 29 May) and at Westminster (especially in terms of the airports statement on 23 July).¹⁰¹ Darling's appointment also raises the profile of the proposed Edinburgh £2-a-day congestion charge scheme.¹⁰²

Rail remains a key policy area, especially in the aftermath of the Scotrail strikes and proposals for new lines in the Central Belt, especially to Edinburgh and Glasgow Airport.

Matters are proceeding in the allocation of the Scottish rail franchise,¹⁰³ amid continuing calls (renewed after the Potter's Bar accident) from the SNP that rail should be fully devolved.¹⁰⁴ Being a part-devolved, part-reserved issue,¹⁰⁵ there was much Scottish involvement in relevant Westminster proceedings on rail.¹⁰⁶

11.6 Education

The 'National Debate on Education', formally launched at the end of March, ended its consultation phase, with claims from ministers that it has been a success, with 15,000 responses.¹⁰⁷ However a sour note came when the union representing education support staff, Unison, claimed that its members had been ignored in the National Debate. The viability of the McCrone settlement for teachers remained a point of political contention, with the Executive denying that it is failing to deliver improved efficiency, despite the significant costs of boosting teachers' pay and cutting their working hours. Some councils were accused of 'diverting' some of their extra McCrone money to other services, and teachers' unions' spring conferences provided a convenient platform for the teachers' response to such criticism.

The Conservatives called at their Scottish spring conference for more direct funding of schools, and some demands there for more faith-based schools led to SNP criticism that the Tories were supporting creationist schools. The Education Minister announced proposals, in a parliamentary statement on 9 May, on new national qualifications. The SNP published its proposals for education on 7 May. Tommy Sheridan's controversial Member's Bill on free school meals was rejected by the Parliament at Stage 1 on 20 June, following an adverse report by the Education Committee on 14 June, and despite some prominent expert support about the positive impact it would have on children's health. Interestingly, in mid-July the Executive published proposals for consultation on improving school meals.¹⁰⁸

¹ http://www.scottish.parliament.uk/official_report/session-02/sor0530-02.htm#Col12383

² For full background details, see <http://www.scotland.gov.uk/pages/news/extras/00007700.aspx>

³ <http://www.scotland.gov.uk/library5/government/gcdm.pdf>

⁴ "Civil Service recruitment campaign", SE press release, 18.6.02: <http://www.scotland.gov.uk/pages/news/2002/06/SENW046.aspx>; Executive media briefing on 19 June; FMQs on 20 June: http://www.scottish.parliament.uk/official_report/session-02/sor0620-02.htm#Col12968; "Holyrood's uncivil war", *Sunday Herald*, 23.06.02: <http://www.sundayherald.com/25689>

⁵ http://www.scottish.parliament.uk/official_report/wa-02/wa0716.htm

⁶ http://www.scottish.parliament.uk/official_report/wa-02/wa0705.htm

⁷ http://www.scotland.gov.uk/library5/government/SCPA_consultation_report.pdf

⁸ "Public Appointments & Public Bodies Bill", SE press release, 18.6.02: http://www.scotland.gov.uk/pages/news/2002/06/p_SEfd034.aspx

⁹ "Encouragement to seek public appointments", SE press release, 30.5.02 (http://www.scotland.gov.uk/pages/news/2002/05/p_SEFD026.aspx), and Question by Jackie Baillie on 30 May (in what appeared to be an example of an inspired/planted *oral* question). See also an article by the Finance Minister on the accountability of public bodies, "The spark to more quangos accountability", *Scotsman*, 24.5.02: (<http://www.thescotsman.co.uk/index.cfm?id=561002002>).

¹⁰ <http://www.scotland.gov.uk/pages/news/2002/07/SEfd044.aspx>, <http://www.scotland.gov.uk/library5/government/gpbs-00.asp>, and <http://www.scotland.gov.uk/government/publicbodies/> The *Guide* is at the website at

¹¹ “SNP set to challenge executive on CalMac chief”, *Herald*, 14.6.02

¹² <http://www.scotland.gov.uk/pages/news/2002/06/SEET051.aspx>

¹³ <http://www.ocpa.gov.uk/reports/ocpa07.pdf>

¹⁴ On which see generally the May 2002 Report, chap 1.3. The reshuffle was announced in the Executive media briefing on 13 June.

¹⁵ Those interested in the more arcane aspects of the constitution may wish to look at the Executive’s media briefing on 23 May, which explained the First Minister’s dual role during the Queen’s visit to Scotland, as ‘minister in attendance’ and ‘Purse Bearer to the Sovereign’.

¹⁶ <http://www.ombudsman.org.uk/pca/scotland/document/spar02/index.htm>; <http://www.ombudsman.org.uk/pca/scotland/document/spar02/pr1402.htm>. This report was published by the Clerk of the Parliament, following a resolution on 12 June.

¹⁷ Parliament press release, 26 June: http://www.scottish.parliament.uk/whats_happening/news-02/pa02-049.htm; short debate on 27 June: http://www.scottish.parliament.uk/official_report/session-02/sor0627-02.htm#Col13195

¹⁸ “McLeish affair police force rapped”, *Scotsman*, 19.7.02: <http://www.thescotsman.co.uk/index.cfm?id=775802002>

¹⁹ http://www.scottish.parliament.uk/official_report/session-00/or090202.htm#Col162. See generally “McLeish expenses row resurfaces”, BBC News Online, 22.7.02: <http://news.bbc.co.uk/1/hi/scotland/2144276.stm>

²⁰ For further details of the findings from this study see, *Rethinking Representation*, Synopsis for *The Scotsman*, Wednesday 26th June 2002, Scottish Council Foundation.

²¹ Mark Shephard and Paul Cairney, ‘Is Scotland a Consensual Democracy?’. Paper prepared for the Third Scottish-Nordic Research Network Conference, Ardoe House Hotel, Aberdeen, 24-25 May 2002.

²² J. A. G. Griffith, *Parliamentary Scrutiny of Government Bills*, London: Allen and Unwin Ltd., 1974.

²³ Address by Her Majesty the Queen, *Official Report*, 28 May 2002, cols. 12128-29, http://www.scottish.parliament.uk/official_report/session-02/sor0528-02.htm#Col12125

²⁴ ‘Education Committee Rejects School Meals (Scotland) Bill’, *Committee News Release*, CED 009/2002, 14 June 2002, http://www.scottish.parliament.uk/whats_happening/news-02/ced02-009.htm

²⁵ ‘Final Hurdle for “Standards Commissioner” Bill’, *Committee News Release*, CSTAN 05/2002, 26 June 2002, http://www.scottish.parliament.uk/whats_happening/news-02/cstan02-005.htm

²⁶ ‘Business Exchange Statement’, *Parliamentary News Release*, 052/2002, 28 June 2002, http://www.scottish.parliament.uk/whats_happening/news-02/pa02-052.htm

²⁷ ‘Secrecy Deal to be Minimised’, *BBC News Online*, 29 June 2002, http://news.bbc.co.uk/1/hi/english/uk/scotland/newsid_2074000/2074103.stm

²⁸ For more information see, ‘Parliament Introduces and Publishes its First Ever Private Bill’, *Parliamentary News Release*, 050/2002, 28 June 2002, http://www.scottish.parliament.uk/whats_happening/news-02/pa02-050.htm

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- ³⁰ 'Enterprise Committee Announces Agenda Details for Shetland Meeting', *Parliamentary News Release*, CENT 006/2002, 11 June 2002, http://www.scottish.parliament.uk/whats_happening/news-02/cent02-006.htm
- ³¹ Excludes all reports on subordinate legislation.
- ³² Latest parliamentary stage recorded.
- ³³ DTI/DCMS 2002, Draft Communications Bill (London, HMSO).
- ³⁴ www.communicationsbill.gov.uk/policynarrative/550806.html, p.1
- ³⁵ Doyle, G., Media Ownership, London: Sage 2002.
- ³⁶ Cassy, J. 'BskyB eyes Channel 5', The Guardian, 11 May 2002, p.26.
- ³⁷ MacLeod, 'McConnell fights for Scots voice in broadcasting body', The Times, 22 May 2002, p.10.
- ³⁸ Fraser, D., 'Move for TV debate in Holyrood', Sunday Herald, 12 May 2002, p.2
- ³⁹ ITC, ITC Bulletin, No. 18, May 2002, p.2.
- ⁴⁰ Ibid.
- ⁴¹ ITC, 'ITC agrees new Charter for Nations and Regions', News Release, 27 May 2002.
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- ⁴⁶ Kemp, K., 'Anger as Neil's "gamble" fails to revive Scotsman', Sunday Herald, Business, 14 July 2002, p.8.
- ⁴⁷ Khan, S., 'Scotsman in crisis as merger looms', The Observer in Scotland, 14 July 2002, pp.1-2.
- ⁴⁸ The Herald 21/05/02, Catherine MacLeod, p.6.
- ⁴⁹ The Times, 10/05/02, Jill Sherman, p.13.
- ⁵⁰ The Times, 30/05/02, Angus McLeod, p.12.
- ⁵¹ The Herald, 31/05/02, Keith Sinclair and Deborah Summers, p.8
- ⁵² Secretary of State, 'A risky business', speech to the industry forum conference, London, May 22 2002.
- ⁵³ The Herald 25/06/02, Murray Ritche, p.8.
- ⁵⁴ <http://www.scottishsecretary.gov.uk/what.htm>

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- ⁵⁵ The Herald, 18/06/02, Robbie Dinwoodie, p 6.
- ⁵⁶ Sunday Herald, 23/06/02, p 15.
- ⁵⁷ (he Herald, 27/05/02, Michael Settle, p.1.
- ⁵⁸ Scottish Executive. News Release SEFM043/2002, 09/07/2002. Call for Transparency in European Governance.
- ⁵⁹ Scottish Executive. News Release: Senw037/2002. New Subsidiarity Watchdog proposed. 06/06/2002. See also www.TheEPC.be
- ⁶⁰ Scottish Executive. News Release: SEJD056/2002, 24/06/2002. Deputy First Minister on visit to Bavaria.
- ⁶¹ Scottish Executive. News Release: SEJD038/2002. 13/05/2002. A declaration on the future governance of the EU.
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- ⁶⁵ Scottish Parliament, Official Report, European Committee, June 18 2002, Meeting number 9, Col 1579.
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- ⁷⁴ See ‘Labour opposes PR calls’ http://www.news.bbc.co.uk/hi/english/uk/scotland/newsid_21260000/2126983.stm, ‘Allardyce, J. and M.MacLeod (2002) ‘McConnell to ignore party calls on PR’ *Scotland on Sunday* 14.7.02.
- ⁷⁵ See ‘MacDonnell, H. (2002) ‘Fire service privatisation plan denied’ *Scotsman* 24.6.02, MacKay, N. ‘PPP accepted as the only way to save ramshackle brigades run with out-of-date equipment’ *Sunday Herald* 23.6.02, MacKay, N. ‘Unions anger as consultants recommend private finance to bail out under-resourced service’ *Sunday Herald* 23.6.02.
- ⁷⁶ See ‘Huge schools PFI plan’ *Municipal Journal* 31.5.02.
- ⁷⁷ See ‘PPP rejection welcome’ *Municipal Journal* 14.6.02.

⁷⁸ See Hood, J. and N. McGarvey (2002) 'Managing the risks of public-private partnerships in Scottish local government' *Policy Studies* Vol.23 No.1, J. Hood and P. Young 'A Risky Business' *Public Finance* 28.6.02.

⁷⁹ http://www.scottishcountrysidealliance.org/campaigns/watson_bill.html and <http://www.league.uk.com/>. There appear to be other parallel challenges to the Act, lodged at the same time, but these have not to date received any substantive coverage.

⁸⁰ *A v Scottish Ministers* 2001 SLT 1331, examined in the November 2001 and May 2002 Reports.

⁸¹ All sorts of administrative law questions, relating to 'ouster' of the jurisdiction of the courts in cases of fundamental invalidity, could arise as to the extent of the protection afforded by this provision, especially in relation to procedural defects that may arise directly from statutory requirements (such as those relating to the required legislative stages) rather than from more 'internal' requirements in Standing Orders or guidance. There is a brief, but useful, discussion of this in the relevant General Note to s28 in Himsworth & Munro, *The Scotland Act 1998*, 2nd ed., 2000, p36.

⁸² Sunday Herald, 9 June 2002.

⁸³ Evening News 17 June 2002.

⁸⁴ Sunday Herald, 19 May 2002.

⁸⁵ Ibid.

⁸⁶ The Herald, 18 July 2002.

⁸⁷ See, for example, "Wallace facing a fight for his turf", *Scotsman*, 17.5.02, (<http://www.news.scotsman.com/topics.cfm?id=531752002&tid=307>), and FMQs on 16 May.

⁸⁸ http://www.scottish.parliament.uk/official_report/session-02/sor0613-02.htm#Col12619 (at col 12652); FMQs that day: http://www.scottish.parliament.uk/official_report/session-02/sor0613-02.htm#Col12706

⁸⁹ WA, 27 June: http://www.scottish.parliament.uk/official_report/wa-02/wa0627.htm, and Executive's Youth Crime Review: report and statement on recommendations <http://www.scotland.gov.uk/pages/news/extras/00008300.aspx>. See FMQs that day: http://www.scottish.parliament.uk/official_report/session-02/sor0627-02.htm#Col13215

⁹⁰ "SNP will be tough on young offenders", *Herald*, 19.7.02

⁹¹ On which see the WA to Rosanna Cunningham from Jim Wallace on 10 July (S1W-26085): http://www.scottish.parliament.uk/official_report/wa-02/wa0710.htm

⁹² http://www.scottish.parliament.uk/official_report/cttee/just1-02/j102-2202.htm#Col3746

⁹³ "New jails inspector will not soften criticism", *Scotsman*, 23.7.02: <http://www.thescotsman.co.uk/politics.cfm?id=790232002>

⁹⁴ "Reclassification of cannabis", SE press release, 10.7.02: http://www.scotland.gov.uk/pages/news/2002/07/p_SEJD063.aspx

⁹⁵ http://www.publications.parliament.uk/pa/cm200102/cmhansrd/cm020710/debtext/20710-09.htm#20710-09_spnew1

⁹⁶ http://www.publications.parliament.uk/pa/cm200102/cmhansrd/cm020723/debtext/20723-33.htm#20723-33_head4

⁹⁷ “Political row over hospital waits”, *BBC News*, 30.5.02 (http://news.bbc.co.uk/hi/english/uk/scotland/newsid_2016000/2016781.stm). See also the Executive-led debate on 16 May.

⁹⁸ “Executive set to buy HCI at Clydebank”, SE press release, 20.6.02: http://www.scotland.gov.uk/pages/news/2002/06/p_SEHD103.aspx; statement, http://www.scottish.parliament.uk/official_report/session-02/sor0620-02.htm#Col12941; FMQs on 20 June: http://www.scottish.parliament.uk/official_report/session-02/sor0620-02.htm#Col12968; debate on waiting lists on 26 June: http://www.scottish.parliament.uk/official_report/session-02/sor0626-02.htm#Col13063

⁹⁹ “Free personal care now on stream”, SE press release, 1.7.02: http://www.scotland.gov.uk/pages/news/2002/07/p_SENW052.aspx; FMQs on 20 June: http://www.scottish.parliament.uk/official_report/session-02/sor0620-02.htm#Col12968

¹⁰⁰ See “Free care divide splits the nation”, *Scotsman*, 1.7.02: <http://www.thescotsman.co.uk/politics.cfm?id=710322002>, and Lords questions on 2 July (http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds02/text/20702-02.htm#20702-02_star0)

¹⁰¹ http://www.publications.parliament.uk/pa/cm200102/cmhansrd/cm020723/debtext/20723-05.htm#20723-05_head0. See also the Westminster Hall debate on 2 July: http://www.publications.parliament.uk/pa/cm200102/cmhansrd/cm020702/halltext/20702h01.htm#20702h01_head0

¹⁰² See FMQ by Brian Adam (SNP) on 13 June: http://www.scottish.parliament.uk/official_report/session-02/sor0613-02.htm#Col12706

¹⁰³ “Executive outlines Scottish rail plans”, SE press release, 12.6.02: http://www.scotland.gov.uk/pages/news/2002/06/p_SEET052.aspx; the reaction of the Transport Committee on 21 June: http://www.scottish.parliament.uk/whats_happening/news-02/ctran02-009.htm, and *Directions & Guidance to the Strategic Rail Authority from the Scottish Ministers*, 8.7.02: <http://www.scotland.gov.uk/library5/transport/strategicrail.pdf>

¹⁰⁴ See its debate on 20 June: http://www.scottish.parliament.uk/official_report/session-02/sor0620-02.htm#Col12869

¹⁰⁵ See the Lords WA on 16 July, “Railway activity in Scotland”: http://www.parliament.the-stationery-office.co.uk/pa/ld199900/ldhansrd/pdvn/lds02/text/20716w01.htm#20716w01_sbhd3

¹⁰⁶ For example, a Westminster Hall debate on railways on 13 June: http://www.publications.parliament.uk/pa/cm200102/cmhansrd/cm020613/halltext/20613h01.htm#20613h01_s_pnew46, and another in the same forum on the East Coast Main Line, initiated on 26 June by a Dundee MP, Iain Luke (Lab): http://www.publications.parliament.uk/pa/cm200102/cmhansrd/cm020626/halltext/20626h03.htm#20626h03_s_pnew0

¹⁰⁷ “Over 15,000 take part in education debate”, SE press release, 17.7.02: <http://www.scotland.gov.uk/pages/news/2002/07/SEEd070.aspx>

¹⁰⁸ “School meals makeover”, SE press release, 17.7.02: <http://www.scotland.gov.uk/pages/news/2002/07/SEED069.aspx>; *Hungry for success*—A Whole School Approach To School Meals In Scotland*: <http://www.scotland.gov.uk/consultations/education/hfsc-00.asp>