



The **Constitution** Unit



UNIVERSITY OF
STIRLING



Nations and Regions: The Dynamics of Devolution

Quarterly Monitoring Programme

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Introduction
James Mitchell

Following the election, Labour and Liberal Democrats reached agreement on a new coalition. The key issue was agreement on electoral reform for local government (see 5.7, 7.3 and 11.1). This is likely to create tensions within the Labour Party including amongst Labour MSPs. That apart, this has been a quiet quarter following the excitement of the election campaign.

The other main matter affecting Scotland was the establishment of the Department of Constitutional Affairs, incorporating the Scotland Office in Whitehall (see 5.1, 5.3 and 9.1). The First Minister's comment that the Scottish parliament should not worry about 'bureaucratic' matters such as its relations with London suggests that the neglect of the importance of the link with the political centre which preceded devolution remains an enduring feature of territorial politics that would not be found elsewhere.

1. Scottish Executive

Barry Winetrobe

1.1 Forming the new coalition

The coalition's partnership agreement, *A partnership for a better Scotland*, was published on 15 May, after a relatively short period of inter-party negotiations (though significantly longer than the weekend it took in 1999).¹ It contained the following joint statement from the Labour and Liberal Democrat party leaders, which sums up the nature of the coalition agreement intended to carry the two party's through what may be a more difficult 4-year session compared with the 1999-2003 period:

In the next four years of the Parliament, there is a great deal of work to do. Work to encourage and stimulate economic growth. Work to tackle poverty and disadvantage, to improve and sustain our environment and to help all our communities live in peace and safety. Scotland needs the stability of a strong and determined government and a vibrant parliament to deliver the change and the improvement her people deserve. This Agreement represents the determination of two parties to work together to provide stability and innovative government. It is more than the combination of the two party's manifestos. It sets out our vision for a Scotland where enterprise can flourish, where opportunity does exist for all and our people and our country have confidence to face the challenges of a global society. It provides a strong foundation for improvement, for progressive change and for the inclusion of ideas from all those who want to contribute to the process of making Scotland a better place. In the next four years we are determined, together, to improve public services and tackle the real issues that matter to people in Scotland. We are determined to deliver on the promises that we have made. The people of Scotland expect our Parliament and the Executive to listen to their concerns, respond to their wishes and make a positive difference to their daily lives. This Agreement sets out the policies and the direction for government to meet that expectation.

The particular policies and promises are dealt with elsewhere in this Report. Of relevance here is chapter 5 of the Agreement dealing with the maintenance of the coalition itself, summed up in its introduction:

The partnership parties' objective is to form and maintain the devolved Government of Scotland until the dissolution of Parliament before the election in 2007. To achieve this they will make every effort to resolve any disagreements which may arise and threaten its continued operation. To work effectively and deliver their programme the partnership parties will need goodwill, mutual trust and agreed procedures which foster collective decision making and responsibility while respecting each party's identity. Close consultation between the First Minister and the Deputy First Minister, other Ministers and the MSPs of the two partnership parties will be the foundation of the Partnership's success. In the working of the Partnership, the principle of fairness will underpin both partnership parties' approaches to all aspects of the conduct of the Executive's business, including the allocation of responsibilities, the Executive's policy and legislative programme, the conduct of its business and the resolution of disputes.

The principle of collective responsibility is defined, and the two relevant guidance documents, the *Scottish Ministerial Code* and the *Guide to Collective Decision Making*, are to be published in updated form. The arrangements for the allocation of ministerial portfolios is set out, including the principle that "the partnership party with fewer MSPs shall have a share of Ministerial appointments at least equal to its share of partnership MSPs." The roles of the First Minister and Deputy First Minister are described. Both are to be responsible for and engaged in policy and presentation across all portfolios, and both "will have appropriate official, political and specialist support to enable them to discharge their roles effectively." Finally, the means by which the two parties will ensure that their parliamentary groups will support Executive policy are described.

1.2 The new ministerial team

Ratification of the partnership agreement meant that Jack McConnell could be put forward to the Parliament as its nominee for First Minister, and he was approved by the Parliament on 15 May and formally installed on 19 May.² There was only one ballot, with voting almost exactly along party lines: Jack McConnell (Lab): 67 votes; John Swinney (SNP): 26; David McLetchie (Con): 18; Robin Harper (Green): 6; Tommy Sheridan (SSP): 6; Dennis Canavan: 2; Margo McDonald: 2; no abstentions. The announcement of the rest of the ministerial team on 20 May, as approved by the Parliament in terms of changes of personnel on 21 May, produced few surprises, certainly nothing on the scale of the mass reshuffle in late 2001 when McConnell first came to power.³ The new team, with their responsibilities, is:

First Minister:

Jack McConnell

Deputy First Minister and

Minister for Enterprise & Lifelong Learning:

Jim Wallace (LD)

With FM, responsible for development, implementation and presentation of SE policies. As Enterprise Minister responsible for economy, business and industry, including Scottish Enterprise, Highlands and Islands Enterprise, European Structural Funds, trade and inward investment, energy (including renewable energy), further and higher education, lifelong learning, training and science.

Deputy - Lewis Macdonald

Minister for Justice:

Cathy Jamieson

Responsible for criminal Justice, youth justice, victims support, criminal justice social work, police, prisons, sentencing policy, courts, law reform, including civil law and fire services.

Deputy - Hugh Henry

Minister for Education and Young People:

Peter Peacock

Responsible for school education, nurseries and childcare, Gaelic, children's services, social work, HMIE, HMSWI and SQA.

Deputy - Euan Robson (LD)

Minister for Health and Community Care:

Malcolm Chisholm

Responsible for the NHS, community care, health service reform, health improvement, health promotion, allied healthcare services, acute, primary and mental health services, addiction services, pharmaceutical services, performance, quality and improvement framework and food safety.

Deputy - Tom McCabe

Minister for Environment and Rural Development:

Ross Finnie (LD)

Responsible for environment and natural heritage, land reform, water, sustainable development, agriculture, fisheries, rural development including aquaculture and forestry.

Deputy - Allan Wilson

Minister for Finance and Public Services:

Andy Kerr

Responsible for the Scottish Budget, public service delivery, modernising government including civil service reform, local government, cities and community planning.

Deputy - Tavish Scott (LD)

Minister for Communities:

Margaret Curran

Responsible for anti-social behaviour, poverty, housing and area regeneration, the land use planning system and building standards, equality issues, voluntary sector, religious and faith organisations and charity law.

Deputy - Mary Mulligan

Minister for Parliamentary Business:

Patricia Ferguson

Responsible for Parliamentary affairs and the management of Executive business in the Parliament.

Deputy - Tavish Scott (LD)

Ministers attending the Cabinet but receiving Deputy Ministers Salaries.

Minister for Tourism, Culture and Sport:

Frank McAveety

Responsible for tourism, culture and the arts, sport, built heritage, architecture, Historic Scotland and lottery funding.

Minister for Transport:

Nicol Stephen (LD)

Responsible for transport policy and delivery, public transport, road, rail services, lifeline air and ferry services.

Law Officers

Lord Advocate:

Colin Boyd QC

Solicitor General:

Elish Angiolini QC

Some early comments can be made on this new administration. There are fewer women ministers, now only 5 (including the Solicitor General), with 3 in the Cabinet. Despite much media speculation, there

was no return to office for Wendy Alexander. The Liberal Democrats gained an extra Cabinet Minister, giving them 5 of the 20 ministers overall. Probably, the most high-profile departure was that of Mike Watson, the former Culture and Tourism Minister, who had had difficulties in publicly supporting Executive hospitals policy in recent months. Peacock, McAveety and Stephen were promoted to the Cabinet, and McCabe, a former Cabinet Minister, and Scott returned to office in junior capacities. Despite there being no legal or statutory limitation on the number of ministers, McAveety and Stephen are to be paid as Deputy Ministers, though they will attend Cabinet, and seem to be regarded as ‘non-departmental Cabinet Ministers’. When explaining this in a media briefing on 21 May, the FM’s official spokeswoman, asked if they could vote in Cabinet, said that “this was a hypothetical situation as Cabinet decisions are almost always reached by consensus. In all the time the First Minister has been First Minister there has never been a vote in Cabinet.”⁴ The Lord Advocate has returned to Cabinet (after a period outside, though attending it), making a Cabinet of 12, including the FM, and the two non-departmental cabinet ministers. At the time of writing, no Ministerial Parliamentary Aides have been appointed; this may await the publication of the revised *Scottish Ministerial Code*, the last edition of which contain guidance on MPAs.

1.3 Ministerial resignation

The Enterprise Minister, Iain Gray, who was defeated in the election, formally resigned as a minister on 5 May. The Scotland Act appears (though the wording of s47(3)(e) has been queried by some) to allow Ministers to remain in post in such circumstances, because they ceased to be an MSP “by virtue of a dissolution.” This resignation, in advance of the formation of a new Executive, and not in conjunction with a new appointment to the post, may create a precedent for ministers defeated at an election.⁵

1.4 Permanent Secretary

As had been widely expected, it was announced on 3 June that John Elvidge would replace Sir Muir Russell as Permanent Secretary, from 4 July. This followed an open competition described in a media briefing:⁶

The appointment board, which was chaired by the First Civil Service Commissioner, Baroness Prashar, has recommended John Elvidge. The FMOS said Sir Andrew Turnbull, Head of the Home Civil Service, Sir John Shortridge, Head of the National Assembly for Wales, Susan Rice, Chief Executive Lloyds TSB and Peter Daniels, Chief Executive East Renfrewshire also sat on the interview panel. She said that the interview panel was a demonstration of the use of both private and public sector expertise.

A few days after taking up his post, Elvidge spoke to his staff, and, through a webcast, to the wider world. He said that civil servants could take pride in their public service, and emphasised the need for change in how the Executive operates: “The Scottish Executive and our partners in the wider public service must embrace change, view it as a positive force, an inspiring challenge. Change, of course, is not a purpose in itself – it is a means to an end. Our purpose is the delivery of better public services, better legislation, better government.”⁷

1.5 Administration issues

The plan to transfer around 300 Scottish Natural Heritage from Edinburgh to Inverness continues to provoke opposition from workers and MSPs, including threats of legal action, not helped by a leaked letter in which Environment Minister, Ross Finnie, apparently did not rule out compulsory redundancies for those refusing to be transferred.⁸ In a Written Answer on 30 June, the Finance Minister said: “The Executive is committed to the dispersal of public sector jobs. When relocation is being considered, no parts of the country are targeted, nor are any ruled out. Each relocation review is viewed on its own merits and decisions are reached on a case-by-case basis.” A departmental breakdown of Executive staff numbers was provided in WAs of 3 and 19 June, and the annual staff survey was published.⁹ Recent WAs explained the handling of planning applications during periods of election purdah (9 June); the Executive’s secondments policy and practice (17 June), and the cost of Executive publications (16 July), the last of which provoked outrage amongst opposition parties.¹⁰ The former Prisons Chief Inspector, Clive Fairweather, settled his claim for unfair dismissal before it went before an industrial tribunal. The Executive’s powers over NDPBs (summary information on which is contained in the Cabinet Office’s newly-published *Public Bodies 2003*) was explained in some detail in WAs of 3 and 10 June.¹¹

1.6 Special advisers

Following the election there have been changes in the Executive's system of special advisers, and have caused negative comment in the media and from opposition parties. These were detailed in a media briefing on 21 July.¹²

... the issue of Special Adviser support has been revised in light of the new administration and the Partnership Agreement, and ... the Principal Special Adviser to the First Minister, Mike Donnelly is to return to his previous appointment at Paisley University at the end of August after a leave of absence working for the First Minister - this has always intended to be the case. ... [T]he FM intends to appoint another Special Adviser to his team in the near future, the details of which will be made known as soon as they are finalised. When asked if this would be the appointment of a new Principal Adviser, the FMOS said that no, the new Special Adviser is likely to deal with the Environment and Rural Affairs portfolio and speech writing... [T]here will not be a new Principal Special Adviser, and ... the duties of Mike Donnelly will be dispersed amongst the Senior Labour Special Advisers - Douglas Campbell, Jeane Freeman and Rachel McEwen. ... [T]here was a fourth Senior Special Adviser, Sam Ghibaldan, who worked to the Deputy First Minister... Matthew Clarke had been appointed to work to Deputy First Minister Jim Wallace on policy areas, and .. the new arrangements are aimed at helping to deliver the commitments set out in the Partnership Agreement. When asked if there are to be further appointments, the FMOS said that the maximum number of Special Advisers allowed is 12, and with the appointment of Matthew Clarke, the current total would be 10. With the FM having stated his intention to appoint one more Special Adviser, we are, at present, looking at an overall increase of one, but that the FM will, of course, keep his whole team under review. .. The FM's commitment which he made when he first became FM to cut the salary bill remains. .. [W]hen Jack McConnell took over from Henry McLeish as First Minister, the total salary bill for 2001/02 was around £800,000 with 11 Special Advisers, and the bill for 2002/03 was £603,000. She said that this figure was not expected to change much under the new arrangements outlined today. The FMOS gave a brief outline of the FM's Senior Special Advisers' responsibilities:

Jeane Freeman's main responsibilities, in addition to sitting in Cabinet, include portfolio responsibilities - Justice, Health, Spending Review, and is the main link with the UK Government
Douglas Campbell - responsibilities for strategic and tactical communications and liaison with the media

Rachel McEwen - management of FM's priorities, co-ordination of major speeches, in addition to having responsibility for the Enterprise and Lifelong Learning portfolio and Highlands and Islands issues

1.7 FoI

The detailed implementation of the statutory FoI scheme by January 2005, a year earlier than required by the Act, was announced on 9 June, and it was confirmed that, in the meantime, "The *Code of Practice on Access to Scottish Executive Information*, which informs decisions made on whether or not to disclose information, will remain in place until the statutory Freedom of Information regime is brought into force on 1 January 2005."¹³ *A consultation began on a draft Code of Practice on how bodies carry out their function under the new Act.*¹⁴ There was some adverse comment on allegations that the new Scottish Information Commissioner, Kevin Dunion (the former head of Friends of the Earth Scotland), had used a publicly-funded event to promote his new book.

1.8 UK Government reshuffle

It was much reported that the Executive coveted Dover House, following the absorption of the Scotland Office into the new Department for Constitutional Affairs. However, the junior Scottish Minister, Anne McGuire, said in Written Answers on 17 July: "Dover House is the headquarters of the Scotland Office and the Office of the Advocate-General, which are now part of the Department for Constitutional Affairs ... The Scottish Executive continues to occupy accommodation in Dover House on the basis of an agreement with the Scotland Office."¹⁵

2. The Scottish Parliament

Mark Shephard

2.1 Committees and committee memberships

To reflect the changes to ministerial briefs, the Parliament has responded by altering and rearranging committee remits. The number of committees has been reduced from 17 to 16, with the main change being the removal of the Transport and the Environment Committee. The transport remit has been attached to the Local Government Committee (now called Local Government and Transport Committee) and the environment remit has been attached to the Rural Development Committee (now called Environment and Rural Development Committee). Further changes in remit include the creation of a Communities Committee (which replaces and extends the remit of the former Social Justice Committee), while the Enterprise and Culture Committee picks up the arts, culture and sport remits from the Education Committee. The Minister for Parliamentary Business (Patricia Ferguson) defended the changes:

We have aligned the committees' remits a little more with ministerial portfolios for the ease of committees that do scrutiny work and to ensure that ministers can attend meetings and be fully held to account. The revised structure and make-up of committees will give them more balanced and meaningful remits, which should in turn help with the job of scrutiny and should enhance the opportunity for scrutiny. (*Official Report*, 4th June 2003, col. 371)

Prior to moving a Parliamentary Bureau motion on the establishment and membership of committees for Session 2, Patricia Ferguson (Minister for Parliamentary Business) noted how the work of the committees in the first four years had become 'one of the jewels of devolution'. Little wonder then that the changes to committee numbers, remits and memberships provoked heated debate in the chamber, especially since the Executive managed to secure its objective of having a majority of its MSPs on all committees (see table below for details). While 15 places were identified for members not in the four major parliamentary parties, the SSP and the Greens were quick to raise objections.

Tommy Sheridan (SSP) objected to the Executive's control over the membership of committees. In particular, he noted how membership of the Health Committee, one of the most important committees, had eluded either the SSP or the Greens. While the SSP and the Greens have substantially increased their representation in Session 2 (see last report), the appointment of Dr. Jean Turner (an independent MSP elected on a specific health-related issue) to the Health Committee has meant that the SSP and the Greens have been excluded. According to Sheridan, the rationale behind this exclusion was the Executive's desire to maintain its majority position on all committees. Testing this theory, Sheridan moved an amendment to extend Health Committee membership from nine to ten to permit representation of the SSP. The amendment was disagreed on a vote in which most of the SNP MSPs abstained (For 16, Against 79, and Abstentions 24).

For the Greens, Mark Ballard raised several concerns over the new committee arrangements. First and foremost he argued that:

We think that it was a fundamental mistake effectively to abolish the Transport and the Environment Committee and to split its work between a local government committee and a rural development committee. We feel that a combined Environment and Rural Development Committee will find it hard to scrutinise properly the Executive's proposed green agenda—the so-called green thread. (*Official Report*, 4th June 2003, col. 376)

Other concerns raised by Ballard included the lack of time that the combined Environment and Rural Development Committee would give to rural affairs especially since:

The committee faces a workload of at least eight bills, excluding member's bills. It will have to deal with three big environment bills—on strategic environmental assessment, nature conservation and water services—two rural development bills, on crofting and the protection of animals, and I believe that there may be further bills on fishing issues. That is a huge workload for one committee, and will leave it with little time to consider anything other than legislation. (*Official Report*, 4th June 2003, col. 377)

In terms of the changing personnel of committees there has been some considerable change from Session 1. Out of the 132 places on committees (down three from Session 1), only 34 (25%) have any past experience from Session 1 committees with their current remit(s). While there has been some turnover in membership of the Parliament since Session 1 (26 new MSPs) that partially accounts for this, most of the change is explained by the rotations of continuing MSPs.

One of the consequences of such dramatic personnel change on committees is the loss of legislative experience and subject knowledge from one session to the next. This concern was raised by Liberal Democrat MSP Donald Gorrie during the Parliamentary Bureau Motion debate, and it will be interesting to see how long it takes for the committees to bed down again in their effective scrutiny and influence of the Executive. More important, 26 out of the 34 (76%) with past committee experience of their remit(s) are Labour or Liberal Democrat MSPs. Consequently, not only has the Executive ensured that it has majorities on all committees, but that it has the most experienced and knowledgeable legislators on these committees as well. Interestingly, one of the few committees not to retain any MSP experience from Session 1 is the Procedures Committee. To recall, one of the main achievements of the Procedures Committee from Session 1 was a highly critical report on the practice of the four principles - most notably highlighting the relative weakness of the Parliament vis-à-vis the Executive over the power-sharing principle (see discussion in section 2.2 of last report).

Further to the changes mentioned above the new state of the committees is as follows:

Committee	Number of MSPs		Composition by Party		
	Session One	Two	Session One	Two	
Audit	7	7	Lab	3	3
			LDs	1	1
			SNP	2 [^]	1
			Con	1	1 [^]
			Green	0	1
Communities*	7	9	Lab	3 [^]	4 [^]
			LDs	1	1
			SNP	2	2
			Con	1	1
			Green	0	1
Education*	7	9	Lab	3 [^]	4
			LDs	1	1 [^]
			SNP	2	2
			Con	1	1
			SSP	0	1
Enterprise and Culture*	11	9	Lab	5	4
			LDs	1	1
			SNP	3 [^]	2 [^]
			Con	2	1
			Green	0	1
Environment & Rural Development*	11	9	Lab	4	4 [^]
			LDs	2	1
			SNP	3	2
			Con	2 [^]	1
			Green	0	1
Equal Opportunities	9	9	Lab	4 [^]	4 [^]
			LDs	1	1

			SNP	2	1
			Con	1	1
			Green	0	1
			SSP	1	1
European & External Relations	9	9	Lab	4 [^]	4
			LDs	1	1
			SNP	2	2 [^]
			Con	1	1
			DC	1	1
Finance	7	9	Lab	3 [^]	4 [^]
			LDs	1	1
			SNP	2	2
			Con	1	1
			SSCUP	0	1
Health*	9	9	Lab	4	4
			LDs	1 [^]	1
			SNP	3	2 [^]
			Con	1	1
			IND	0	1
Justice 1	7	7	Lab	3	3 [^]
			LDs	1	1
			SNP	2 [^]	2
			Con	1	1
Justice 2	7	7	Lab	3 [^]	3
			LDs	1	1
			SNP	2	1
			Con	1	1 [^]
			SSP	0	1
Local Government & Transport*	7	9	Lab	3 [^]	4 [^]
			LDs	1	1
			SNP	2	2
			Con	1	1
			SSP	0	1
Procedures	7	7	Lab	3	3
			LDs	1	1 [^]
			SNP	2	1
			Con	1 [^]	1
			Green	0	1
Public Petitions	7	9	Lab	3 [^]	4 [^]
			LDs	1	1
			SNP	2	2
			Con	1	1
			SSP	0	1
Standards	7	7	Lab	3	3
			LDs	1 [^]	1
			SNP	2	2 [^]
			Con	1	1
Subordinate Legislation	7	7	Lab	3	3 [^]
			LDs	1	1
			SNP	2 [^]	2

Session 1 figures are based on last available listings.

*Committees where titles and remits have changed. Main changes: the Communities Committee extends the remit of the former Social Justice Committee. The Education Committee loses the arts, culture and sport and the Enterprise and Culture Committee pick these up. Rural Development gains the Environment and Local Government gains Transport as the Transport and the Environment Committee is disbanded.

^ Indicates party with convenor position.

2.2 Gay Marriages

After the vehemence of the public debate on the removal of Section 28 (2a in Scotland) in Session 1 (see previous reports for details), the Parliament is set to debate 'gay marriages' (as civil partnerships are presented in the media). On 12th May 2003, Patrick Harvie (Green MSP) proposed a Civil Registered Partnerships (Scotland) Bill that would establish the right to civil partnership registration for couples in committed relationships. The aim of the legislation is to provide civil registered partners with legal protection, rights and responsibilities similar to those provided to married couples. There were calls in July 2003 by the Vatican for all Catholic politicians to vote against any legislation leading to (or retrospectively having created) gay unions. The timing of the Vatican's announcement is unfortunate for Harvie, the Scottish Executive and the UK Government, as some form(s) of civil partnership legislation looked inevitable in the coming year. That said, the public have yet to be stirred into a frenzy on this issue by the tabloids (as they had been over Section 28 in 2000) and the reaction of Catholic MSPs has been more measured than that of the Vatican with emphasis being given to the importance of conscience voting and constituency representation ahead of Vatican dictate.¹⁶

2.3 The Queen and Neds

The Queen addressed MSPs on 3rd June 2003 for the third time in its history and met with leaders of five of the six main parties. The SSP and a handful of other MSPs including Roseanna Cunningham (Deputy Leader of the SNP) either boycotted the event or could not attend.¹⁷

MSPs also devoted a day-long debate in June to the issue of youth priorities in Scotland. The debate was a reaction to the Executive's plans to devote a large part of this Session to the issue of tackling youth crime and provoked a heated debate over the positive and negative contributions of youths in Scotland. Once again, Rosie Kane (SSP) seemed to attract most attention when she called on the Scottish Parliament to cease its usage of the term 'neds' (originally meaning 'non-educated delinquent') on the basis that it is derogatory and most often levelled at the poorest of youths. Kane appeared to receive little support from the Parliament, as many of the MSPs preferred to sympathise with the victims of youth crime. As Labour's Duncan McNeil argued, 'The way to stop adults referring to some young people as neds is to stop some young people behaving like neds'.¹⁸

2.4 Committee Reports and Inquiries (07 May 2003 – 31 July 2003)¹⁹

Call for Evidence: Scottish Solutions – Inquiry into the Impact of England's University Tuition Fees on Scottish Higher Education, Enterprise and Culture Committee

Report on Cross-Cutting Expenditure in Relation to Children in Poverty, 29 June 2003, Finance Committee

2.5 Parliamentary Bills (07 May 2003 – 31 July 2003)²⁰

Executive Bills in Progress (latest stage reached):

National Health Service Reform (Scotland) Bill (Introduced 26 June 2003)

Primary Medical Services (Scotland) Bill (Introduced 23 June 2003)

Vulnerable Witnesses (Scotland) Bill (Introduced 23 June 2003)

Private Bills in Progress:

Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Bill: Passed on 26 June 2003 (awaiting Royal Assent)

Stirling-Alloa-Kincardine Railway and Linked Improvements Bill (Introduced 15 May 2003)

Executive Bills Passed:

Education (School Meals) (Scotland) Bill: Passed on 11 June 2003, Royal Assent on 7 July 2003

Proposals for Members' Bills (07 May 2003 – 31 July 2003)

Besides Patrick Harvie's Bill to establish civil partnership registrations for couples in committed relationships (see section 2.2 above), there have been a further 16 proposals for Members' Bills (all of which have already gained enough support from other MSPs to merit being considered by the Parliament). The full list of proposed Members' Bills and their proposers in order of date lodged is:

Gaelic Language (Scotland) Bill (Alex Neil, SNP)
Direct Elections to National Health Service Boards (Scotland) Bill (Bill Butler, Lab)
Prohibition of GM Crop Planting (Scotland) Bill (Bruce Crawford, SNP)
Local Governance (Scotland) Bill (Stewart Maxwell, SNP)
Warm Homes (Scotland) Bill (Robin Harper, Green)
Civil Registered Partnerships (Scotland) Bill (Patrick Harvie, Green)
Free School Meals (Scotland) Bill (Rosie Kane, SSP)
Free Nursery and Primary School Milk (Scotland) Bill (Michael Matheson, SNP)
Third Party Planning Rights of Appeal (Scotland) Bill (Sandra White, SNP)
Abolition of NHS Prescription Charges Bill (Colin Fox, SSP)
Health Boards Requirement to Consult Bill (Paul Martin, Lab)
Charities (Scotland) Bill (Jackie Baillie, Lab)
Culpable Homicide by Corporate Bodies Bill (Karen Gillon, Lab)
Prostitution Tolerance Zones (Scotland) Bill (Margo MacDonald, Ind)
Liability for Release of Genetically Modified Organisms (Scotland) Bill (Mark Ruskell, Green)
Child Health and Breastfeeding (Scotland) Bill (Elaine Smith, Lab)
Proposed Regulation of Smoking Bill (Stewart Maxwell, SNP)

The volume of Members' Bills proposed is unprecedented (by comparison there were only 45 proposals in the whole of Session 1). While part of the legislative flurry can be explained by the reintroduction of some Members Bills from Session 1 (Free School Meals and Prostitution Tolerance Zones, for example) the opposition parties do seem more prepared and quick to pursue this avenue than in Session 1. Given the party status of the proposers, part of this vigour in utilising this procedure during Session 2 has to be the increased representation of the Greens and the SSP. However, as yet, none of the proposals have been timetabled for introduction. Since the number of committees has decreased (see above) while the number of Members' Bills has increased, the pressure for timetabling is likely to increase in this Session.

2.6 Cross-Party Groups

All Cross-Party Groups that wanted to continue to be recognised by the Parliament had to re-register by 5th August 2003. By the end of July 2003, all Cross-Party Groups from Session 1 had re-registered. In addition to the 49 Groups from Session 1, a fiftieth Group has been proposed on the Scottish economy. As of 1st August 2003, this Group had yet to be approved by the Standards Committee.

3. The Media **Philip Schlesinger**

3.1 *The Herald* is sold

The new buyer of the *Herald*, *Sunday Herald* and *Evening Times* is Gannett UK Ltd, a wholly-owned subsidiary of the US company, Gannett Co., Inc., a major media corporation. The papers are of importance for west of Scotland readerships and the outcome of the sale has been of some concern to both the political and blethering classes. As we noted in our last report, the Competition Commission was looking into the disposal by SMG of its newspaper assets. Under Section 57(3) of the Fair Trading Act, the Secretary of State for Trade and Industry is obliged to initiate such a procedure where an existing proprietor by acquisition of a new asset will control a daily circulation in excess of 500,000 copies.²¹ The Commission reported by the due date of 10 March and found in favour of the purchase. The recommendation was accepted by the Secretary of State. Gannett is now the UK's third-largest publisher of regional and local newspapers. The Competition Commission judged that as Gannett did not currently operate in Scotland, the transfer would not alter the structure of the Scottish market. Nor did it think there would be any other adverse impact on competition in Scotland. The Commission was further satisfied that Gannett would maintain the existing editorial freedom enjoyed under SMG. It also noted that the company intended to manage the papers in Scotland under a separate regional division and the editorial stance was not expected to change for reasons of competition and the company's interest in its reputation²²

3.2 Ofcom peers through the mist

The regulatory revolution that faces broadcasting, telecommunications and telephony still awaits its final shape as the Communications Bill continues to be debated at Westminster. Meanwhile, the shadow body that will replace the existing five regulators once the Act is passed, Ofcom (the Office of Communications), is still in the process of formation. Ofcom has been appointing its Content Board, which will take over many of the functions of the ITC. One member will represent Scotland, in much the same way as the Scottish national governor of the BBC, or the present national member on the ITC. But there is a key difference. The Content Board is a second tier body, responsible to Ofcom's main board, which has oversight of the whole range of the new regulator's functions. Scotland's effective representation (like that of the other devolved nations) has been downgraded. Some Scottish interests are pressing strongly for further consultative arrangements to be embodied in the law, fearing a loss of 'Scottish voice'. We shall have to wait and see whether relevant amendments will be made to the Communications Bill.

On 24 April, Richard Hooper, chairman of the Content Board, visited Glasgow to speak to some 30 media decision-makers, policy wonks and academic specialists under the auspices of the Royal Television Society. He noted the appointment of Matthew MacIver as Scotland's man on Ofcom's Content Board. MacIver was chairman of the Gaelic Television Committee and is a prominent educationist, but he is not noted for his contribution to recent debates about broadcasting. Without being more specific, Hooper, who appears to have sniffed the prevailing wind, intimated that some sort of Scottish consultative body might be set up. He also underlined the importance of what he called 'regional' production for the new regulator's remit. In Scotland, broadcasters think of Scotland as 'national', within what is now the accepted umbrella term of 'nations and regions'. This formula has been used for the past few years to describe production outwith London and the M25 belt. So talk of 'the regions' in Glasgow does not strike the right note. While trying to reassure his audience that diversity would be protected, Hooper also noted the importance of competitive forces. He recognises that Ofcom will be in the eye of the storm as public interest and market-driven approaches battle it out in the future. Hooper's talk left some unsure of whether or not he believed in the viability of 'clusters' of production activity outside London.²³ This is now the obligatory way of thinking about the cultural industries. To raise questions about whether Scotland's capacity is sustainable could hardly be a touchier subject for the producers' lobby, or the broadcasters.

3.3 Viable clusters?

But it is not just those most directly interested in making and selling programmes that will be watching how Ofcom discharges its duties. Hooper's unanswered question will also be on the agenda of the national moving image agency, Scottish Screen (of which the present writer is a board member). The agency is awaiting an audit of the screen industries from the media consultants, David Graham & Associates. The report has been commissioned by a bevy of agencies with their fingers in the cultural pie: the Scottish Executive (Scotland's government), PACT Scotland (the independent producers'

body), Scottish Enterprise (the industry and business agency, which has been pursuing a clusters development strategy), Highlands and Islands Enterprise (SE's counterpart), and Scottish Screen. The audit is to be published in June and will give an account of the volume of activity across the audio-visual industries in Scotland. These include television, film, animation, radio, screen-related new media, video production, and ads. As the Scottish Executive once again starts to think about a national cultural strategy, it will be timely to address the constraints and the opportunities that face Scottish producers in the context of the wider UK and global media industries. Some new data should help public debate and the policy process. The audit, and any ensuing debate, will be covered in our next report.

4. Public Attitudes and identity

John Curtice

4.1 Attitudes towards devolution

A significant new body of evidence on Scottish political attitudes at the time of the Scottish Parliament election at the beginning of May was published at the end of June. This was a survey conducted by ICM for the Electoral Commission with 1,100 respondents between 2nd and 5th May.²⁴ The principal aim of the survey was to understand the motivations behind voting and non-voting in the election, but in so doing it covered a wide range of attitudes towards devolution. Moreover many of the questions on the survey had previously been asked either by ICM themselves on previous surveys for *The Scotsman* or by the Scottish Social Attitudes series, thereby often making it possible to use the survey to assess the development of public attitudes over the life course of the first Scottish Parliament.

The survey confirmed much previous evidence of the difficulties that the Scottish Parliament has faced in winning a place in the hearts of the Scottish public while also providing some new signs. Thus, the survey found that twice as many people believe that the UK government has most influence over the way that Scotland is run as believe that the Scottish Parliament does. While the percentage taking the latter view has risen from 15% to 24% since 2001, perhaps because of the greater prominence accorded the parliament by the election campaign, it still remains well below the 41% who in 1999 thought that the parliament would have the most influence. Meanwhile, a clear majority, 57%, believe that the Scottish Parliament has made no difference to the way that Scotland is governed, in line with the findings of more specific questions about the impact of the parliament previously reported by the Scottish Social Attitudes survey (see May monitoring report).

As for new signs, the survey provided some suggestion that not only has the parliament failed to meet the public's expectations but that also support for the principle of Scotland having her own parliament may now be being eroded a little. At 24%, the proportion saying that Scotland should not have its own parliament is higher than that recorded in any previous ICM survey since the 1997 referendum. It remains to be seen whether this rise is confirmed by the 2003 Scottish Social Attitudes survey, results from which h will not be available until early next year.

At the same time the survey suggested that not only did fewer people think that the outcome of a Scottish Parliament election matter than was the case four years ago, but also that in contrast to the position in both 1999 and 2001 the proportion believing that the outcome of Scottish Parliament elections matter was less than the proportion believing that the outcome of House of Commons elections makes a difference. Thus just 42% now say that who wins a Scottish Parliament election makes a 'great deal' or 'quite a lot' of difference, down from 56% in 1999 and lower than the 52% who currently hold that view about Scottish Parliament elections. Of course the answers to this question may well reflect the public's views on the extent of the policy differences between the parties (on which see insert-cross ref in this report) as well as the powers of the institution itself, but the gap between perceptions of the impact of the outcome of House of Commons elections and those of Scottish Parliament elections, both of which are fought by the same parties, is difficult to account for by this consideration.

But not all of the evidence from the survey was negative for devolution. It appears that people in Scotland are only a little less likely to feel that they know what the Scottish Parliament does than they are to be aware of what the House of Commons does. A quarter say they know 'a great deal' or 'quite a lot' about what the Scottish Parliament does, compared with 30% who say the same of the Commons. Meanwhile the proportion who claim to know 'a great deal' or 'quite a lot' about how the electoral system for Scottish Parliament elections works is exactly the same as the proportion who claim to know what the Commons does.

ICM Electoral Commission Survey

Thinking about the running of Scotland as a whole, which one of the following would you like to see?

Scotland being independent of England and Wales, but part of the EU
Scotland remaining part of the UK but with its own devolved Parliament with some taxation and spending powers
Scotland remaining part of the UK but with no devolved parliament.

	Feb. 98	May 98	Jan. 99	Feb. 99	Jan. 00	Feb. 00	Sep. 00	Feb. 01	May 01	May 03
Independence	28	33	26	24	23	27	24	27	25	22
Devolution	48	48	53	54	54	46	55	53	56	52
No Parliament	21	17	18	18	19	22	18	16	17	24

Source: ICM

1999: Which do you think will have most influence over the way Scotland is run?
2000 -2003: Which do you think has most influence over the way Scotland is run?

		1999		2000		2001	2003
		%		%		%	%
Scottish Parliament		41		13		15	24
UK government	39		66		66	50	
Local councils		8		10		9	9
European Union	4		4		7	10	

Source: 1999-2001; Scottish Social Attitudes survey; 2003 ICM/Electoral Commission

Would you say that having the Scottish Parliament has improved the way Scotland is governed, made it worse or made no difference one way or the other?

	%
Improved it a lot	7
Improved it a little	22
Made no difference	57
Made it a little worse	5
Made it a lot worse	6
Don't know	2

Source ICM/Electoral Commission

How much do you feel you know about what the does?

	House of Commons	Scottish Parliament
	%	%
A great deal	6	5
Quite a lot	24	20
Some	25	26
Not very much	32	34
None at all	12	14
Don't know	*	1

Source: ICM/Electoral Commission

How much do you feel you know about how the voting system for Scottish Parliament elections works?

	%
A great deal	8
Quite a lot	22
Some	25
Not very much	28
None at all	16
Don't know	1

Source: ICM/Electoral Commission

Some people say it makes no difference which party wins in elections, things go on much the same. How much of a difference do you think it makes who wins in elections to the Scottish Parliament? Would you say a great deal, quite a lot, some, not very much or none at all?

And how much of a difference do you think it makes who wins in general elections to the UK House of Commons?

Perceived Difference 2003	Scottish Parliament Elections			House of Commons Elections		
	1999	2001	2003	1999	2001	
	%	%	%	%	%	%
Great Deal	28	15	23	27	16	29
Quite a Lot	28	28	19	28	29	23
Some	19	22	19	18	19	15
Not Very Much	18	25	24	22	25	22
None at all	5	8	13	4	8	10

Source: 1999, 2001: Scottish Social Attitudes survey; 2003: ICM/Electoral Commission.

4.2 Newspaper Polls

Newspaper polling about attitudes towards devolution this quarter has focused on the continuing argument about and the rising cost of the new parliament building and the Executive's decision to ask former Tory Scottish Office Minister, Lord Fraser of Carmylie, to conduct an enquiry into the subject. System Three's poll revealed a high degree scepticism about whether Lord Fraser's enquiry would get at the truth of what happened – only 19% said they were 'very confident' or 'confident' that he would. Meanwhile, although the finger of blame for the cost of the building is currently being pointed at a wide range of people, the damage that the cost of the new building is capable of inflicting on the reputation of the parliament is suggested by the finding that the single most popular group to be blamed comprises 'all MSPs'.

Who is principally to blame for the rising cost of the Scottish Parliament building at Holyrood?

	%
All MSPs	30
Contractors	26
Westminster/The Treasury	20
Civil Servants	15
Architect	15
Donald Dewar	13
Jack McConnell	13
Henry McLeish	7
None of these/Don't Know	23

Of course the hope of the parliament itself is that once the new building is opened it will be thought to have been worth the expense after all. The possibility that public might be persuaded of this view is suggested by the fact that 54% believe that the parliament building will eventually be something of which Scotland can be proud, and indeed as many as 39% say that they will visit the building once it has been opened.

When the project is completed, will Scotland have a parliament building of which it can be proud?

	%
Yes	54
No	34
Don't Know	12

Source: NFO System Three/The Herald 26 June-2 July

4.3 Identity

ICM's survey for the Electoral Commission gave us the first information on trends in national identity over the course of the whole of the first parliamentary session. However, it confirms previous evidence for the 1999-2001 period that the pattern of national identity in Scotland shows little sign of changing in the wake of the creation of a Scottish Parliament.

	Apr. 97	June 98	Apr. 99	Jan.00	May 03	%	%
	%		%		%		
British not Scottish	7		7		11	9	9
More British than Scottish	3	3		3		3	
Equally British and Scots	22		26		26	27	28
More Scots than Brit	26		33		32	28	30
Scottish not British	37		26		25	32	28

Source: ICM

4.4 Attitudes towards other issues

The ICM/Electoral Commission survey also provide a range of evidence on trends in Scots' attitudes towards politics in general and in what ways the 2003 Scottish election campaign did and did not make an impression upon the Scots electorate. First, the survey provided little evidence to support the view that the public's reluctance to vote in the Scottish Parliament election could be accounted for by any wider 'disengagement' from the political process. Around a third say they have 'a great deal' or 'quite a lot' of interest in politics, similar to the level found in previous social attitudes and election surveys. Moreover, at 28%, the proportion which evince 'a great deal' or 'quite a lot' of interest in the work of the Scottish Parliament is only slightly lower than the proportion who say they are interested in politics generally. Meanwhile although the level of trust in government remains lower than it was in the 1980s, there is no evidence to suggest that it has experienced any further in recent years. And at 70% the proportion of the ICM survey who said that "it's everyone's duty to vote" was very similar to the 69% who gave the same response in the 2001 Scottish Social Attitudes survey.

There is however evidence that the way in which people followed the Scottish Parliament election campaign was rather different from what happens in a UK general election. It has become almost commonplace to assert that television is the most important source of information for voters in modern elections. Survey work conducted by MORI for the Electoral Commission across Britain as a whole affirmed that assertion for the 2001 election, with more people saying they had watched coverage of the election on television than saying they had engaged in any other election activity. But according to the ICM survey this was not true of the 2003 Scottish Parliament election campaign during which it appears slightly more people read newspaper than watched TV coverage. It seems possible at least that the domestic Scottish and heavily editorialised London press were more successful at bringing the election to public attention than were television stations whose schedules give more prominence to London than to Scottish originated news programming. Meanwhile we might note that with just 5% using the internet to access information about the Scottish election, this medium still has a long way to go before it becomes a mechanism for the distribution of political information to a mass audience.

The ICM survey also attempted to ascertain whether people would have been more likely to vote if a number of alternative ways of voting had been available to them, all of them methods that have been used in experiments in recent local elections on both sides of the border. It is notable that in each case the proportion saying they would have been more likely to have voted was rather lower than the proportion who said so across Britain as a whole after the 2001 general election. This suggests perhaps a greater underlying reluctance to vote in a Scottish Parliament election than there is in a UK general election, a reluctance that is unlikely simply to be overcome by the introduction of new ways of voting.

ICM Electoral Commission Survey

How much interest do you generally have in what is going on in politics?

	1997	1999	2001	2003
	%	%	%	%
Great Deal	9	6	7	11
Quite a lot	18	17	19	22
Some	35	36	33	28
Not Very Much	30	31	27	25
None at all	7	9	13	14

Sources: 1997: Scottish Election Survey; 1999 and 2001: Scottish Social Attitudes Survey; 2003 ICM for the Electoral Commission

And how much interest do you generally have in what is going on in the Scottish Parliament?

	%
A great deal	9
Quite a lot	19
Some	27
Not very much	28
None at all	16
Don't know	*

Source ICM/Electoral Commission

% trust governments of any party to place the needs of the nation above the interests of their own political party 'just about always'/'most of the time'

Mid 1980s	Mid 1990s	1997	2000	2001	2003
37	29	29	13	27	25

Sources: 1980s: 1987/87 British Social Attitudes survey (Scottish respondents only); 1990s: 1994/1996 British Social Attitudes survey (Scottish respondents only); 1997: Scottish Election Study; 2000, 2001: Scottish Social Attitudes survey. Note that these earlier surveys asked about 'British governments'. 2003: ICM/Electoral Commission

	Britain 2001	Scotland 2003
	%	%
Watched TV coverage	89	56
Read about election in newspapers	74	60
Discuss election with friends and family	75	53
Listened to radio coverage	39	34
Watched a party election broadcast	55	49
Used the internet	7	5

For 2003 the first four rows report the % saying did ‘a lot’ or ‘a little’ rather than ‘hardly anything at all’, while the last two rows report the % saying they did the activity at all. For 2001, all rows are the % saying they did the activity at all

Source: 2001 MORI/Electoral Commission, 2003: ICM/Electoral Commission

% saying more likely to vote if

	Britain 2001	Scotland 2003
Voting at weekends	36	26
Voting using the internet	40	34
Voting using the phone or mobile	66	49
Voting by post	51	48

Source: 2001 MORI/Electoral Commission; 2003 ICM/Electoral Commission

4.5 Marches

Orange and republican marches are a familiar sight in parts of Scotland in the summer, and especially so in the West. For their critics they are symbols of the kind of sectarianism to which the First Minister, Jack McConnell, has voiced his opposition. For others such marchers have as much right to express their views and identities as any other group in a democratic society. They certainly appear to be controversial. A System Three poll for The Sunday Herald found that nearly a half of all Scots would support an outright ban on all such marches, and that opposition to such marches is particularly high in the West of Scotland itself.

Would you support a ban or oppose a ban on all marches in Scotland during the summer, by groups such as the Orange Order and the Irish republican movement?

	All	West	East/South	North
Support	47	52	40	47
Oppose	35	36	37	30
Don't Know	19	12	24	23

Source: NFO System Three/Sunday Herald 26 June-2 July

4.6 Elections and Attitudes towards Parties

Criticised along with other polls for its record during the election and appearing rather academic in the immediate post-election environment, System Three’s regular monthly reading of vote intentions only restarted at the end of July. It found that there had been an erosion of Labour’s support since the election, an erosion that has also been reported by most British polls over that period. People in Scotland will have been just as exposed to the political difficulties of the UK Labour government as people elsewhere in the UK during this period, including not least the row about the BBC’s reporting of the failure to date to find any weapons of mass destruction in Iraq. Indeed, according to that same System Three poll, 24% say the government bears ‘a lot’ of the responsibility for the death of the weapons expert, Dr. Kelly, who had been the principal source for the BBC reporting to which the government had objected, while only 8% say the same of the BBC. But while Labour’s difficulties were enough to propel the SNP into a narrow lead in Holyrood vote intentions, no single party has been the main beneficiary of Labour’s decline. Thus, for example, on Westminster vote intentions, both Conservative and SNP vote intentions are up two points on the last System Three reading at the end of

April while the Liberal Democrats are also up a point. Still, the poll doubtless came as some relief to the SNP leader, John Swinney, following the announcement in July that he was to face a challenge for the party leadership at the party's conference in September (see 10.1 below).

Party Fortunes

Holyrood Vote Intentions										
	Con		Lab		Lib Dem		SNP		Others	
Vote	1	2	1	2	1	2	1	2	1	2
	%	%	%	%	%	%	%	%	%	%
24-31/7/03	13	9	31	26	15	16	31	27	9	22

The Other votes are divided as follows:-

	SSP		Green	
Vote	1	2	1	2
	%	%	%	%
24-31/7/03	5	9	2	8

Westminster Vote Intentions					
	Con	Lab	Lib Dem	SNP	Others
	%	%	%	%	%
24-31/7/03	15	40	14	24	7

The principal Other votes are for the SSP who scored 4%.
Source: System Three/The Herald

One of the possible explanations for the low turnout in the May election that was pursued by the ICM/Electoral Commission survey was the possible impact of perceptions of the parties. After all, during the election many commentators had been exercised by the apparent similarity of the main party platforms while the main party leaders appeared to lack charisma (see also May monitoring report). Two key findings emerged. The first is that fewer people thought there was much difference between Labour and the SNP than had done four years earlier, while the proportion thinking the same of Labour and the Conservatives remained relatively low. If perhaps the campaign may not have persuaded voters anew that there was little difference between the parties it evidently did little to change what was already a widespread perception that there are currently few major differences between the parties. Meanwhile, the survey found that whereas voters were no more likely to say they did not receive enough information about the parties' policies or indeed the candidates – including the regional list candidates – than were voters across Britain as a whole in the 2001 UK general election, they were markedly more likely to say that they did not receive enough information about the party leaders. This appears to be striking confirmation of the low collective public impact of the current senior leadership in the Scottish Parliament. Moreover, multivariate analysis indicates that this perception was particularly important in discouraging those who voted in the 2001 Westminster election from doing so in 2003.²⁵

On the other hand, the survey did not suggest that the parties had any particular difficulty in mounting their constituency campaigns. As many as 21% said that they had received a 'personal call from a representative from any political party', similar to the 19% across Britain as a whole who said that they had received a 'personal call' during the 2001 election. However, this figure is down on figures of 30-32% obtained by MORI across Britain as a whole in the 1987 and 1992 election campaigns, so parties in Scotland do appear likely to have lost some of their ability to mobilise voters over the longer term.

Perceived Difference between the parties

	1992	1997	1999	2001	2003
Conservative and Labour	%	%	%	%	%
Great	53	32	30	21	24
Some	28	44	35	39	36

Not Much	17	20	32	38	37
SNP and Labour					
Great	-	-	41	33	37
Some	-	-	40	42	37
Not Much	-	-	15	19	23

Source: 1992, 1997: Scottish Election Study; 1999, 2001, Scottish Social Attitudes survey; 2003: ICM/Electoral Commission

% saying they received too little information in the election campaign about

		Scotland	Britain
2001			
The party leaders	49		24*
The parties' policies		47	44
Constituency candidates	52		55
Regional list candidates	47		-

* One-third of the sample was asked about 'the party leaders', the same question as was asked in our survey; 25% said they did not have enough information. The remaining two-thirds were asked about 'what the party leaders were doing'; 23% said they did not have enough information.

- Not asked

Source: 2001 MORI/Electoral Commission; 2003 ICM/Electoral Commission.

5. Scotland/UK Relations

Alex Wright

5.1 Department for Constitutional Affairs

On June 12th, following a ministerial reshuffle, it was announced that there would be a new 'Department for Constitutional Affairs' (DCA) in London. At the time of writing there is little information on its website and those who require information relating to Scottish matters are referred to the Scotland Office's site. The creation of the new department came without warning and there was a degree of confusion concerning the new department's responsibilities (see below). According to reports in the media it would assume control for work undertaken by the Lord Chancellor's department, as well as devolved matters including the Wales and Scotland Offices, together with those responsibilities for the English regions which formerly came under the office of the Deputy Prime Minister, John Prescott. According to *The Herald*:

The official line from number 10 was that the changes were appropriate because 'devolution had bedded down successfully' and there was no longer a need for full time cabinet ministers representing Scotland and Wales.²⁶

The new department will be headed by Lord Falconer, who has now become Lord Chancellor, replacing Lord Irvine. One of Falconer's tasks, it was announced, would be to oversee the creation of a new 'Supreme Court'.

5.2 The Supreme Court

The proposals for the Supreme Court are currently out for consultation – the deadline being November this year. The opening paragraph of the consultation document stated:

The Government will legislate to abolish the jurisdiction of the House of Lords within the UK's judicial system. The functions currently performed by the Appellate Committee will be vested instead in a new Supreme Court, quite separate from the Parliament.²⁷

One of its key aims was to separate parliament from the judiciary. The paper explained:

The argument in favour of this transfer is that there would no longer be any perceived conflict of interest in which a party with an interest about jurisdiction – the UK Parliament – was apparently sitting in judgement over the case.²⁸

But the proposals led to controversy in Scotland. In part this related to the right of appeal. Previously, Scottish civil appeals could have been brought before the House of Lords. According to Lord Hope of Craighead, a Scottish Law Lord the proposal could fall foul of the 1707 Treaty of Union which stated that 'no cases in Scotland can be heard by the Courts of Chancery, Queen's Bench, Common Pleas or any other Court in Westminster Hall'. Lord Hope observed that:

The House of Lords did not sit in Westminster Hall, nor was it a court of 'the like nature' as those which were prohibited from appearing appeals from Scotland.

Hence any new institution could 'not be a part of the Royal Courts of Justice or was financed or run by the Court Service'. Lord Hope added, 'The organisational structure must be quite distinct from the English legal system.'²⁹

Nicola Sturgeon (SNP), the shadow justice minister attacked the proposals, claiming that appeals should be held in Scotland. She said:

We have a separate legal system from England. Labour should now recognise that there is no good reason why the final appeal in civil cases could not be heard by the Scottish courts. Sending cases to the House of Lords was a practice set up to deal with the constitutional landscape of the eighteenth century. It has no place in a modern legal system.³⁰

Sturgeon was by no means a lone political voice. According to *The Herald*, Gordon Jackson, a Labour MSP and QC, demanded that 'the new body should be able to challenge legislation passed by Westminster in the same way as the law lords currently can for Scotland.'³¹ This had been prompted by the DCA's consultation paper which stated:

The separation of the Supreme Court from the UK Parliament raises the question of whether to transfer to it the jurisdiction of the Judicial Committee of the Privy Council over devolution issues. The decision to refer devolution cases to the Judicial Committee was deliberately taken at the time of the devolution Acts. The present arrangements have not been in existence for very long and are working well. They have the advantage that the panel of available judges for the Judicial Committee is wider than for the Appellate Committee and therefore there are more opportunities to have Scottish and Northern Ireland Judges sitting on devolution issues.³²

The establishment of the new court accordingly gives us the opportunity to restore a single apex to the UK's judicial system where all the constitutional issues can be considered. It would ensure that there is no longer a danger of conflicting judgements arising, for example on human rights cases which might have come to the Judicial Committee as devolution issues and to the House of Lords as ordinary appeal cases. It should be remembered that the judgement of the Judicial Committee in these matters is binding on all courts. Arrangements can and would be made to provide for additional judges to be involved where that appeared to be appropriate, although the composition of the panel for a particular case would be a matter for the president of the Court.³³

The paper continued:

On balance, the Government believes that it would be right to transfer the jurisdiction on devolution cases from the Judicial Committee to the new Supreme Court with arrangements which enable additional Scottish and Northern Ireland judges to sit in cases raising devolution issues where that is appropriate.³⁴

Responding on BBC Scotland to the demand that the Scottish Parliament should be entitled to bring cases before the new court, Lord Falconer explained that this would not be possible for 'constitutional reasons'. He said:

You don't want a court that can strike down what the UK parliament says. We're not going down that route here because we think the right constitutional settlement is to leave the UK parliament supreme. The position is currently that where there is a dispute as to whether or not it's a Westminster matter or a devolved matter, is currently dealt with by the Judicial Committee of the Privy Council. We think the right course in relation to that ... is that power should be transferred to the Supreme Court of the United Kingdom. It wasn't given to the House of Lords because it was felt wrong that Parliament should be resolving issues about whether it or the Scottish Parliament has the right powers.³⁵

Hence, the new court would not be akin to the Supreme Court in the USA or constitutional courts on the Continent. As the consultation paper explained, should that have been so it "would be a departure from the UK's constitutional traditions", where:

In our democracy, Parliament is supreme. There is no separate body of constitutional law which takes precedence over all other law. The constitution is made up of the whole body of the laws and settled practice and convention, all of which can be amended or repealed by Parliament.

5.3 The Secretary of State for Scotland

As a result of the ministerial re-shuffle, Helen Liddell was replaced by Alistair Darling, who also retained his transport portfolio. On the day of the announcement there was confusion for a while as to whether the post would remain at all. Though that was resolved quickly, doubts persisted in the media concerning who the ministers at the Scotland Office would report to – the Scotland Office now being a part of the DCA, headed by Lord Falconer. *The Times* reported that:

Lord Falconer appeared to confuse the issue further when he said on BBC's Breakfast with Frost that although Mr Darling would 'politically lead' former Scotland Office officials in the DCA, he would be Mr Darling's 'boss' on Scottish issues, but that Mr Darling would look after the interests of Scotland.³⁶

It has now been confirmed that ministers at the Scotland Office will report to Mr Darling³⁷. When he appeared before parliament in his role as Transport Secretary, he was asked by Tam Dalyell, Labour MP for Linlithgow, 'Are there not situations likely to arise where you may have to go to yourself and tell yourself that you have no case?' Darling replied, 'I have made a habit of not talking to myself for the last forty nine and a half years. As my mother would say, 'if I'm spared, I intend to continue that practice'.'

The Times also reported that when he gave evidence to the Commons Select Committee on Scottish Affairs that same day he implied that there was no reason why one day the post-holder should not be an MP sitting in an English Constituency – which up until now has not been the case. He also told members of the committee that it would have been 'totally undesirable' for a junior Scottish minister to have led the Scotland Office as the individual concerned should be a member of the Cabinet.³⁸ The new arrangements drew praise from Jack McConnell, Scotland's First Minister. Interviewed by Sky News he said:

I think it is a good thing for the Scottish parliament because it gives us a chance to grow and flourish. There is no need for a full-time person or department. What we need to do is allow the

Scottish Parliament to develop and not to worry about the bureaucratic relationship with Westminster.³⁹

With Mr Darling's blessing he subsequently instructed Scottish ministers to by-pass the Secretary of State, where appropriate and deal direct with UK ministers and their departments. Mr McConnell's spokeswoman explained to *The Times*:

The First Minister told the Cabinet that the new arrangement presented them with more opportunity to have more direct links with UK departments and he urged them to extend these links as soon as possible.⁴⁰

5.4 Scottish ministers in 'English' Departments

John Reid, who has now held five ministerial portfolios, was appointed Health Secretary as a result of the ministerial re-shuffle. This attracted some controversy as Health matters are devolved to the Scottish Executive. Thus a Scottish MP headed a department which dealt with English matters. This drew criticism from Liam Fox, the Conservative Shadow Health Secretary. He said:

The absurdity of John Reid's appointment is that we now have an MP representing a Scottish constituency telling us how to run the NHS in England when he has no say over health policy in Scotland because the issue is devolved. How can this possibly be in the best interest of the NHS?

Tam Dalyell added:

It is an extraordinary piece of casting to put a Scot in charge of the English health service. Dr Reid has no say whatsoever in health matters pertaining to those who sent him to the Commons.⁴¹

As *The Herald* intimated, however, Mr Reid was not necessarily the first Scot to head a department, the remit of which related primarily to English matters. That laurel rested with Mr Darling who held the transport portfolio⁴².

5.5 Foundation Hospitals and the West Lothian Question

The UK Government's Health and Social Care (Community Health and Standards) Bill came before the House of Commons at the beginning of July. This had been a source of controversy within sections of the Labour Party for some because of the proposal for foundation hospitals. Although the Government won the day, the result was extremely close with 286 MP's voting for the Government's proposal and 251 against.⁴³ However, that was somewhat overshadowed by the fact that the vote was carried by 'loyal Scottish and Welsh MP's' including John Reid, the new Health Secretary. A spokesman for Dr Reid explained:

John Reid is an elected Member of Parliament who was chosen by Tony Blair to be health secretary. The House of Commons does not have two classes of MPs. Members of Parliament are members who debate and vote on everything that comes before Parliament. It is quite right that all Members of Parliament vote on all issues.⁴⁴

This was by no means the first time that this had arisen (see previous monitor report regarding the vote on the Hunting Bill). But this time around it provoked rather more dissent because of the Government's predicament. If it had not secured the support from its Scottish and Welsh MPs, so it was argued, the Bill would have fallen. Peter Duncan, Scotland's sole Tory MP declined to vote on the grounds that it 'did not apply north of the Border'⁴⁵. Other Scottish MP's voted against the Government. Lord Thurso, the Liberal Democrat MP for Caithness and Sutherland explained that he and his fellow MP's voted against. He told the BBC:

We are elected as UK MPs and as long as this is the case we will vote on legislation. There is a fault in devolution because England has not been properly devolved – devolution is asymmetric.⁴⁶

The SNP also voted against because it believed the proposal could have 'implications' for the Barnett formula. Mike Weir MP, the SNP Westminster spokesperson observed:

As the SNP spokesperson, I found myself in the rather unusual position of speaking and voting on Foundation Hospitals which on the face of the Bill were referred to as a purely English matter. The underlying implications of this policy were, however, much more widespread and could have a major impact on future health spending in Scotland.

The reason why this policy could have an impact in Scotland relates to the way in which services provided by the Scottish Parliament are funded by a block from Westminster. If there is any increase in public spending in England on any matter which is devolved in Scotland then a set proportion of that increase is allocated to Scotland. This is the (in)famous Barnett Formula. However, if the increase in England was generated by private [money] only then no consequential resources would be available to Scotland.

As the UK Government look at ever more ways to increase private funding into public services this is going to become an ever greater problem. Although Scotland had rejected the idea of

foundation hospitals we could find that we are either facing an ever more severe squeeze on health funding as more and more of England's health funding is by means of private money, or we will be forced to go down the route of establishing foundation hospitals in Scotland.⁴⁷

A spokesman for the Scottish Executive told the BBC, 'The philosophy on health is the same in England as it is in Scotland. But we feel that in Scotland the aims will be better achieved by integrating care and devolving down.'⁴⁸

5.6 The Boundary Review

In response to a letter from Alex Salmond MP, the SNP leader at Westminster, the Prime Minister affirmed that the number of Scottish MP's would be cut. He replied, 'We made that commitment very clear and of course will carry it through.'⁴⁹ The Boundary Review drew nearer its conclusion when the Boundary Commission published its plans on Wednesday July 30th. One of those whose constituency would go is Chancellor, Gordon Brown's seat – Dunfermline East.⁵⁰ The final proposals are not due to be submitted to the Scottish Secretary of State until 2006 after which they would take effect following agreement by both Houses of Parliament. They would then come into effect at the next election. The issue has long been a source of contention in Scotland (see earlier monitor reports) because at present the constituencies of MSP and MPs are the one and the same (Orkney and Shetland being the exception). The Boundary Commission has recommended that the number of MPs should be reduced (the figure being from 72 to 59), but that would result in a commensurate reduction in the number of constituency MSP's. During her period in office Ms Liddell agreed that this would not be so, and it was decided that at some point the Scotland Act would have to be amended accordingly. This will now be undertaken by Mr Darling, or his successor, who may then some 'interference' from Labour backbenchers in the Commons.

5.7 Labour MP's and Scottish Local Government

In the aftermath of the 2003 Scottish election there were a series of trade-offs between the Liberal Democrat and Labour before they agreed to form a coalition government at the Scottish Executive (see also 7.2 below). One of the more controversial agreements was that McConnell would lend his support for legislation leading to the introduction of a PR voting system for local government. This proved to be provocative for some Scottish Labour MP's. *Scotland on Sunday* reported that:

Labour MP's are threatening to tear up the Scottish Parliament's voting system in an act of revenge against Jack McConnell unless he ditches plans to reform local elections. Tempers at Westminster have reached boiling point over the First Minister's deal with the Lib Dems, who secured just 13% of the popular vote but won a commitment to proportional representation and five ministerial posts. Now MP's are warning that unless McConnell performs a U-turn on voting reform for local government, they will table a raft of amendments to the Scotland Act which could see a cut in the number of MSPs and a new method of electing them.⁵¹

Brian Donohoe, the Cunninghame South Labour MP, warned:

If there is to be an emphasis on PR for local government there is a clear entitlement for Westminster to look at Holyrood's system. It is not wrecking talk, it is they who are on course to wreck the equilibrium which exists within local government.⁵²

Scotland on Sunday also stated that 15 of 47 MP's who have signed Commons motion calling for local elections to continue to be decided by the current first-past-the-post system were Labour.⁵³ The so-called 'First Past the Post Group' was considering calling for a special Labour conference so that McConnell could explain himself.⁵⁴ However, *The Herald* subsequently reported that:

The first minister rejected demands for a special Scottish Labour Conference to debate this opposition to proportional representation and reminded his critics that the Scottish Parliament had a majority for electoral reform 'regardless of whether there is a coalition or not'.⁵⁵

6. Scotland/International Relations

Alex Wright

6.1 The First Minister

Jack McConnell gave a presentation in Brussels on July 14, during which he announced that there would be a new strategy which would enable ‘Scotland to speak with one voice’. He said, ‘What I want to see is Scotland speaking with one voice. Fragmentation of our message hurts us, be it in Brussels, the US or anywhere else.’ He added that there would now be, ‘A coherent strategy that ensures all of our schemes pull together and deliver a strong, effective message in terms of promoting Scottish interests and in influencing the EU and other institutions.’⁵⁶ *The Times*, explained that this was due to ‘the recent change in status’ of the Scotland Office. Under Helen Liddell, a ‘Friends of Scotland’ network had been established with 400 members in 25 countries. The creation of this network had led to some tensions between the Scotland Office and the Scottish Executive over which institution would oversee the such networks, along with the so-called Tartan Day celebrations in the USA – much of which was intended to tap into the Scottish Diaspora. The Scottish Executive has now assumed overall responsibility for this and McConnell has written to members of Friends of Scotland. He has informed them there will be ‘greater synergy between the various programmes now in place such as GlobalScot, Scotland Europa and bodies dealing with export promotion, inward investment and tourism’.⁵⁷

McConnell explained:

The key is an integrated approach. We need to link tourism to exports to the way Scots live and work so that we can promote Scottish interests to the maximum abroad.

Over the last four years we have established Scotland as a serious player, on the European scene.

We have a good relationship with the UK permanent representation and with the European Commission and we have started to forge political links with other big devolved governments.

Now we need to build on that.⁵⁸

During the past twelve months McConnell has called for the creation of a Subsidiarity Council, greater consultation by the Commission before it drafts legislation and greater use of framework legislation (see below). As far as the latter is concerned the intention is that the Commission could draft legislation setting out in principle what is desired, but give state and sub-state administrations greater discretion over how it should best be implemented. Now that the Convention on the Future of Europe has finished its deliberations, its recommendations will be considered by the Member States. McConnell has warned the EU governments not to ‘water down’ those rights which would give the regions more influence over EU policy making.⁵⁹

6.2 The Executive’s Policy on the Future of Europe

The Executive’s website includes a section on the future of Europe. It includes the following key proposals:

The need to set out the division of powers between the EU on the one hand and the Member States and Sub-Member State Administrations (SMSAs) on the other.

Higher profile and better definition of the principle of subsidiarity and the introduction of a political ex-ante mechanism to ensure that the important principle of subsidiarity is better applied in the EU. Decisions by the Council would be taken quickly before EU legislation is passed and be authoritative.

Assessment of the potential financial impact of EU legislation compared to the value of the benefits.

Greater involvement for SMSAs in the EU decision-making process.

Commission should consult with implementing authorities at the pre-legislative stage, based on a code of practice.

Greater use of framework proposals rather than rigid legislation to allow flexible implementation that is sensitive to local and regional circumstances.

Review of role and status of the Committee of the Regions

Operation of the Commission should be constrained by the strict observance of the following:

Act within the powers conferred by Treaties.

The principle of subsidiarity.

The principle of proportionality.

Obligation to respect national identity of Member States, which includes identity/cultural diversity of the regions.

Enhance the accountability, effectiveness, proximity and transparency of the European decision-making process.⁶⁰

6.3 Tuscany ‘Action Plan’

During November a co-operation agreement was signed by leaders in Scotland and Tuscany. In June an Action Plan was signed. This was but one of a number of agreements – for example a protocol was signed with Catalonia in May 2002. Much of this is related to the promotion of trade and the exchange of best practice. But transcending this is the legal status of such agreements. As Scotland is not a state in its own right potentially it does not possess the authority to conclude ‘diplomatic’ agreements with third countries or other territories. But as the number of such agreements has grown over the last couple of years, there has been some concern as to their legal standing and the obligations incumbent on the Executive. The matter was finally resolved after Richard Lochhead (SNP) submitted a written question to the Scottish Executive inquiring as to their status. In a written reply Tavish Scott explained, ‘Neither the Action Plan nor the Agreement is a legally binding document and there are no penalties for non-compliance.’⁶¹ Hence, agreements such as these cannot be categorised as being akin to quasi-treaties.

6.4 JMC Europe

Ms Patricia Ferguson, in a written answer to Richard Lochhead, provided a summary of Scottish Executive ministerial attendance at all plenary and functional group sessions of the Joint Ministerial Committees. As is evident from the table below JMC Europe features heavily on the list with 7 sessions to-date, compared to 5 for Health, 3 on poverty and 2 on the knowledge economy.⁶² These meetings are confidential.

Subject	Date	Venue	Scottish Minister
Plenary	1 September 2000	Edinburgh	First Minister and Deputy First Minister
Plenary	30 October 2001	Cardiff	First Minister and Deputy First Minister
Plenary	22 October 2002	London	First Minister and Deputy First Minister
Europe	1 March 2001	London	Minister for Education, Europe and External Affairs and Deputy Minister for Education, Europe and External Affairs
Europe	8 November 2001	London	No Scottish Minister was able to participate
Europe	7 March 2002	London	Deputy First Minister
Europe	11 June 2002	London	Deputy First Minister
Europe	27 September 2002	London	First Minister
Europe	22 October 2002	London	First Minister & Deputy First Minister
Europe	30 January 2003	London	Deputy Minister for Education and Young People
Health	7 April 2000	Cardiff	First Minister and Minister for Health and Community Care
Health	5 June 2000	London	Deputy First Minister and Minister for Health and Community Care
Health	16 June 2000	Glasgow	Deputy First Minister and Minister for Health and Community Care
Health	26 October 2000	Belfast	Minister for Health and Community Care
Health	22 October 2001	London	Minister for Health and Community Care
Knowledge Economy	11 February 2000	Edinburgh	First Minister and Deputy Minister for Enterprise and Lifelong Learning
Knowledge Economy	26 May 2000	Edinburgh	Deputy First Minister and Minister for Enterprise and Lifelong Learning
Poverty	9 December 1999	London	Minister for Children and Education and Deputy Minister for Communities

Poverty	26 May 2000	Edinburgh	Deputy First Minister and Minister for Communities
Poverty	18 September 2002	London	Minister for Finance and Public Services and Minister for Social Justice

6.5 European and External Affairs Committee

Richard Lohead MSP will be the new convener of the Parliament's European and External Affairs Committee. Hitherto, the conveners have been members of the Labour party.

7. Relations with Local Government

Neil McGarvey

Following last quarter's report which reported the results of the May 2003 local election results, this follows by reporting on the administrations formed in each council following coalition negotiations in hung councils. It then goes on to review the implications for councils of the new coalition partnership agreement before reviewing the latest developments for the Convention of Scottish Local Authorities.

7.1 Council Administrations formed post-election

Of Scotland's 32 councils 13 are controlled by the Labour Party, 11 have no overall control, 6 are under independent 'control' and the SNP and Liberal Democrats control one council each. In the 11 councils with no overall control administrations have been formed by either minority parties or in coalition between two or more parties. The Labour Party has formed a minority administration in three councils (East Renfrewshire, Fife, South Ayrshire) and is a coalition partner in Dundee and Perth and Kinross. In South Ayrshire the cutting of cards between Labour and the Conservatives decided the new provost and political control of the council.

The Liberal Democrats have formed a minority administration in East Dunbartonshire and are coalition partners in five councils – Aberdeen (with Conservatives), Aberdeenshire (with independents), Dumfries and Galloway (with Independents and the SNP), Dundee (with Labour) and Perth and Kinross (with Conservatives, Labour and independents). The SNP are coalition partners in Dumfries and Galloway and Falkirk, while the Conservatives are partners in Aberdeen, Perth and Kinross and the Scottish Borders.

Following on from the commentary in last quarter's report it is worth noting that in some local areas (e.g. Fife and South Lanarkshire) the success of single issue candidates paralleled developments nationally. The turnover of councillors was lower than previously – 25% of ward councillors changed compared to 30% in 1999. There was little movement in the number of female councillors, whilst those from ethnic minority backgrounds increased marginally.⁶³

7.2 The Coalition Partnership Agreement

The key part of the Coalition agreement was the decision to introduce a Local Governance Bill introducing a new electoral system for local government as well as a 'modern' remuneration system for councillors (see also 5.7 above). However, other parts of the agreement are also worth highlighting. All four sections – Growing Scotland's Economy, Delivering Excellent Public Services, Supporting Stronger, Safer Communities and Developing a Confident, Democratic Scotland have initiatives that impact on local councils. The Agreement has 400 commitments – around 350 of them will involve local government.

The legislative programme for 2003-4 includes bills on anti-social behaviour, the reform of special education needs and the extension of ministerial powers to intervene as a last resort in failing schools (see 7.4 below).

7.3 COSLA

Clackmannanshire and Glasgow City Councils rejoined COSLA in the post-election period – the organisation now represents 31 of Scotland's 32 councils (only Falkirk remain non-members). It also solidified its support services for councils. It merged with the Scottish Local Government Information Unit bringing Scotland's national local government research and consultancy expertise under one roof. It agreed to work in partnership with the Local Authorities Coordinators of Regulatory Services which will provide COSLA with policy, legal and technical advice on trading standards, consumer advice, food safety and animal health and welfare. In its first full meeting since the election it re-elected Councillor Pat Watters (South Lanarkshire) as its President, as well as electing councillors Andrew Campbell (Dumfries and Galloway) and Corrie McChord (Stirling) as deputies.⁶⁴

COSLA appears to have stabilised itself in the past year. In this quarter it also reported a surplus from its annual subscription fees of £435,500. A series of cost-cutting reforms and the return of two councils have improved the financial position at COSLA.⁶⁵ COSLA has re-affirmed its position in favour of the status quo and against movement towards electoral reform (though acknowledging a committed minority view in favour of electoral reform). Its position is that electoral reform is a

diversion from the real issues facing local government (a line often heard in recent years from opponents of constitutional reform).

Relations between COSLA and the new Scottish Executive have not got off to a good start. The COSLA President has accused the First Minister of having “a wilful disregard for local government”. COSLA was not impressed with three new policies announced in crime, transport and education which all involved the Executive giving itself increased powers.

7.4 Other developments

- According to press reports the Scottish Executive are considering a change in education policy to allow it to send in ‘hit squads’ to take over failing local authority schools. Labour's manifesto for the Scottish parliamentary elections said only that under-performing schools could face direct intervention where necessary. Former Education Minister Cathie Jamieson first mooted the possibility of taking failing schools out of direct local authority control when she published the Scottish Executive's response to the national education debate.⁶⁶
- The growing litigation culture in Scotland is costing councils the equivalent of £24 for every council tax payer in Scotland. Scottish councils paid out £6.3m for housing and transport claims alone. According to Audit Scotland figures, Glasgow City Council's bill came to £994,404, Edinburgh City Council was close behind on £878,620 but North Lanarkshire made the biggest payouts at more than £1.5m.⁶⁷
- The Glasgow Campaign Against Stock Transfer remains ongoing with campaigners urging tenants not to sign new tenancy agreements. Members of the Glasgow Campaign Against Stock Transfer occupied offices of the Glasgow Housing Association to highlight problems it claims tenants have had since the GHA took over Glasgow's 82,000 council houses in March.⁶⁸
- Despite Jack McConnell referring to the possibility of designing a new council tax banding system during the election campaign, it would appear a revaluation is unlikely before 2007 or 2008. The Scottish Executive suggested it would be addressed as part of a more far-reaching review of local government finance.⁶⁹
- On 3 July Finance and public services minister Andy Kerr announced a £90m Cities Growth Fund which Scotland's six cities would share. Glasgow benefits the most with £40m, Edinburgh got £24.2m, Aberdeen £11.5m, Dundee £9.3m, Inverness £3.1m and Stirling £1.9m. The cash is designed for regeneration and projects designed to improve the ‘quality of life’ for urban residents. Responding to the initiative, Glasgow City Council welcomed it but argued a better permanent arrangement for cities.⁷⁰

8. Finance

David Bell

8.1 Budgetary process

There has been an hiatus in the Scottish budgetary process. Due to the election, Stage 1 of the process has not happened. The Annual Expenditure Report would normally have been delivered in early April, but in 2003, this would have impinged on the electoral period of "purdah". A complete first stage of the budget process should have included:

1. Publication of Annual Expenditure Report with a description of the Executive's spending plans and priorities.
2. Subject committees to comment on policy areas, reporting to Finance Committee.
3. Finance Committee to report to Parliament, Parliament debates Report.

However, the election has thrown the process into disarray. In effect it means that the incoming administration has to submit a budget without any strategic overview of how it plans to allocate resources in its first year of office. Unless something is done to alter the procedure or timing of the budget, this will occur once every five years. The Executive intends to produce a budget by the middle of August, but appears to be running late on this promise.

What would have been Stage 2 will in fact be the first stage of this year's budget. This stage is supposed to allow the subject committees to consider the published budget and then report back to the Finance Committee. The Finance Committee will then consider the draft budget, and under the current rules, is empowered to propose an alternative. Quite what this would mean is unclear: if the Finance Committee received support from the Parliament for its alternative budget, presumably the Executive would resign, since its role would be reduced to merely implementing the Finance Committees proposals.

Nevertheless, the Finance Committee, under its new chairperson, Des McNulty, will have to work particularly hard to manage its brief during the Stage 2 process, which is supposed to be completed in December. It is further handicapped by the lack of experience of some of its new members. The committee now comprises Wendy Alexander, Ted Brocklebank, Fergus Ewing (Deputy Convener), Kate Maclean, Jim Mather, Elaine Murray, Jeremy Purvis and John Swinburne along with Des McNulty.

In June it was revealed that Executive departments had underspent their budget allocations by a total of £500m. This is the so-called end-year flexibility, which will be rolled forward into the present financial year to meet electoral pledges made by the Lib-Lab coalition. Although the money comprising the "end-year flexibility" is not lost to Scotland, and probably arises because public sector managers are careful not to exceed their annual budgets, there is still a concern that this underspend contribute to weakened demand in the Scottish economy, which is again teetering on the brink of recession. COSLA were quick to suggest that, as last year, some of the money would be given to local authorities and then written into their baseline budgets for future years.

8.2 Glasgow's housing debt

In May, Gordon Brown stepped in to pay the early repayment charges on Glasgow's housing debt. These charges amounted to a further £196m pounds to completely release the city from a debt of £900m. The Executive had expected to pay these charges, and must be delighted with Gordon Brown's generosity, given that this charge was substantially more than the Executive set aside to pay for free personal care for the elderly last financial year.

8.3 Cost of new Parliament building

The furore over the cost of the Parliament continues, with latest projections implying a total cost in excess of £400m. George Reid, as Chair of the Presiding body in his monthly report to the Finance Committee, noted that fee reductions with some of the consultants have been agreed. However, problems over the glazing of the building have impacted on the completion times of other components and so pushed back the completion date. As a result costs continue to rise.

9: Legal Disputes

Barry Winetrobe

9.1 UK Supreme Court

While a UK Government reshuffle in the early summer had been expected, its constitutional scope and impact, including the surprise proposal for a UK Supreme Court, certainly were not:⁷¹

Creation of a new Supreme Court to replace the existing system of Law Lords operating as a committee of the House of Lords. The new Secretary of State will not be a member of the Supreme Court. The Government will publish a consultation paper on proposals for a Supreme Court before the summer recess.

This proposal, if implemented, could have a significant effect, not only on devolution (through 'devolution issues', currently handled by the Judicial Committee of the Privy Council), but also on the treatment of Scottish domestic appeals. Matters were not helped when it was admitted that no prior consultations had taken place with the Scottish Executive, the Scottish Parliament, or, apparently, with other relevant Scottish legal or political interests. This meant that little detailed thought had been given in London to the particular impact of a Supreme Court on Scotland, thereby worrying senior legal figures and providing an open goal for the Opposition north and south of the border. Pending the promised consultation in mid-July, ministers in London and Edinburgh had to play a very straight bat to questions on how the new court would work in practice in relation to Scotland.⁷² Officially, devolved ministers welcomed the reform, with the Lord Advocate saying that "it promises to produce a more coherent and rational structure for the supreme court of the United Kingdom. It will secure that the judiciary is separated from the legislature in fact as well as in principle."⁷³

At present, only appeals in civil cases from Scotland go to the House of Lords: criminal cases do not (though most of the devolution issues going to the Judicial Committee have been on criminal matters).

Lord Hope of Craighead, a Scottish Law Lord, raised two possible problems with a supreme court:

- Such a new court that was *de facto* part of the English legal system, rather than being a UK body, could be in breach of the 1707 Treaty of Union, and
- A new body highlights the anomaly between civil and criminal appeals, leading to the possibility of either criminal cases going to the new court, or (as the SNP have suggested) civil cases no longer going beyond the domestic Scottish courts.

The new Department of Constitutional Affairs (apparently known in Whitehall, within hours of its creation, as DECAFF) published the promised consultation paper on 14 July.⁷⁴ It confirmed that the new court would be a UK body, legally separate from the court system of England & Wales, and operating as the supreme court of both Scotland and Northern Ireland also. As Lord Falconer, the Lord Chancellor, said in his foreword, "accordingly it is important that during the consultation period the Government works closely with the Scottish Executive and Judiciary." Though the Court would be administratively supported by the DCA, which operationally is mainly an 'English law' department:

Like most other departments, it can fulfil both a UK jurisdiction where the law requires it, and an England/Wales one (only) where the law requires that. Its responsibility for the constitutional settlement is already a UK-wide function and responsibility for the Supreme Court would be consistent with that. The new Court will have jurisdiction throughout the UK which will be defined in statute. In the Government's view, therefore, this will be a sufficient guarantee of separation from the judicial system in England and Wales to be compliant with the terms of the Act of Union with Scotland.

On the key question of the Judicial Committee's current devolution jurisdiction:

The paper examines whether the jurisdiction of the Judicial Committee of the Privy Council over issues which raise questions about the powers of the devolved administrations should be transferred to the new Court. On balance, the Government favours that move. Apart from this change, it does not propose any alteration in the functions of either the House of Lords Appellate Committee or of the Judicial Committee. The Judicial Committee would continue to exist and to undertake its work for various Commonwealth and overseas and dependent territory jurisdictions.

The paper appears to support the status quo in relation to Scottish non-devolution appeals, with civil cases continuing to go to London, but with criminal continuing not to do so. On the appointment of judges to the proposed court, the paper examines various options, including a dedicated Appointments

Commission. If the arrangements required the Prime Minister to advise the Queen on appointments, whether directly or on the recommendation of a Commission, that should take place following consultations with the First Minister (and the FM and DFM of Northern Ireland), and, apparently, not just for 'Scottish' appointments. On the 'territorial' background of such appointments, the paper said:

Because the Court will be the Supreme Court for the whole of the United Kingdom, it is important that it should include persons of knowledge and experience in the law in the different jurisdictions. There is a long-standing convention that there should be two Scottish Law Lords. In recent years there has also been a Northern Ireland Law Lord. Such arrangements should certainly continue. The Government would be interested in views on whether they should be expressed as a formal quota. Ensuring adequate representation from each jurisdiction will in any case be a guideline to those responsible for selecting members. There are various ways of setting such guidelines: the Government can do so purely administratively; they can be set out in a Code of Practice which is subject to parliamentary approval; or they can be set out in the legislation.

Initial reaction has reflected the responses to the original proposal a month previously. The Executive officially welcomed the proposals, including the arrangements for consultations over appointments, and retention of the existing appeals jurisdictions. The First Minister "committed the Executive to work closely with Scotland's judicial and legal community, other Scottish interests and the UK government to ensure that Scotland's constitutional position and the unique nature of the Scottish justice system are maintained and enhanced by the creation of a UK Supreme Court." The SNP called for all Scottish final appeals to be heard in Scotland, not London. A leading Scottish lawyer/MSP, Gordon Jackson, even suggested that the opportunity be taken to give the new court the power to strike down UK statutes in particular circumstances, although that has, not surprisingly, been rejected by the Government. The consultation period ends on 7 November.⁷⁵

9.2 Anti-Hunting Act

Further challenges have been made to the validity of the Protection of Wild Mammals (Scotland) Act 2002. The appeal was heard in early June to the challenge raised by the Scottish Countryside Alliance, which had been rejected by the Court of Session in July 2002 (*Adams*),⁷⁶ and judgment is awaited.

The Act on hunting was again upheld by the courts on 20 June, in a different case, one raised by two representatives of the Union of Country Sports Workers.⁷⁷ This challenge was based on ECHR grounds, but ones which were intended to be different from those rejected in the *Adams* case. Giving judgment, Lord Brodie agreed with a description by counsel "that the Scottish Parliament is governed by what is, in effect, a mini-constitution. By that I took him to mean that, in the Scotland Act, the Convention and Community law, there are written sources of law which have primacy over what the Scottish Parliament may purport to enact." He also rejected as irrelevant contentions based on the facts that the Parliament had no second chamber to participate in the legislative process, or that the relevant committee, the Rural Development Committee, had recommended to the Parliament that it reject the bill at Stage 1:

The Scottish Parliament is constituted as it is constituted. Neither are its powers reduced nor are the powers of the court increased by the fact that the Parliament is a unicameral rather than a bicameral body. The court does not, as Mr Friend submitted it did, "serve the function of an upper chamber". That is not a power conferred upon the court but, in any event, "serve the function of an upper chamber" is an entirely meaningless expression when used of a unicameral institution. No criticism is made in this petition of the procedures by which the Protection of Wild Mammals Act was enacted. The Parliament was entitled to reject the recommendations of the Rural Affairs Committee. In any event, in terms of section 28 (5) of the Scotland Act, 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.

10. Political Parties

James Mitchell

10.1 SNP Leadership challenge

The poor SNP performance at the Scottish elections in May provoked a challenge to John Swinney's leadership of the party. Under the SNP constitution, any ordinary member can stand for national office – including the national convenorship (popularly called 'Leader' though officially termed 'National Convenor') – with the backing of only one SNP branch. This extraordinary constitutional arrangement for a party that sees itself as an alternative party of government was last used in 1969 when Billy Wolfe successfully challenged the incumbent Arthur Donaldson. SNP leaders since Wolfe have served for around a decade before standing down. The challenger – Dr Bill Wilson - is a little known activist who unsuccessfully contested the Maryhill seat in Glasgow and was not even on the SNP's list of candidates in the city.

The SNP constitution is that of a non-Parliamentary party. As the party developed and became a serious force in politics it modified its constitution, usually by adding new offices, but there has been no major reform since the early 1960s. Annual conference is supreme with activists having considerable power, as compared with other modern political parties in advanced liberal democracies. Despite devolution and the advent of the SNP as a serious contender as an alternative party of government for the first time in its history, its pre-Parliamentary constitution remains unreformed. Even had the SNP come to power in May, its leader could have faced a challenge annually instigated by less than a dozen members. Criticisms of the party's structure were, in fact, powerfully articulated in a doctoral thesis completed in 1982 by Robert Crawford. Crawford had been SNP research director and went on to become head of Scottish Enterprise, a post from which he recently announced his resignation. However, within the SNP leadership, there has been little interest in the party's organisation and structure. There is an irony in a party whose *raison d'être* is constitutional reform treating its own constitution as unimportant.

Swinney's challenger is a former member of the Labour Party. On his website for the 1999 Scottish elections, when he stood in Glasgow Maryhill constituency, Wilson stated that he campaigned for Labour in 1987 but 'faced with ever increasing evidence of Labour's betrayal of its principals' and the importance of independence in Europe, he joined the SNP in 1990.⁷⁸ Wilson has now detected a betrayal of SNP principals. His leadership website accuses the SNP leadership of watering 'down our commitment to independence, the one clear difference between ourselves and the other parties'.⁷⁹ Swinney stands accused of the 'New Labourisation' of the SNP. As he is a failed candidate in the recent elections and with the public support of only one SNP MSP – recently elected Campbell Martin (who topped the list in the West of Scotland) - Wilson starts off from well behind. Margo MacDonald and Jim Sillars, who together have changed their political allegiances eight times.⁸⁰ have voiced support though it is unclear whether this will help or hinder Wilson's campaign). Indeed, he has stated in public on numerous occasions that he does not expect to win but wants to stimulate debate.

Wilson's credibility as a leadership candidate is difficult to take seriously. Along with his inexperience, his views are unlikely to win much support inside the SNP. He has stated that the SNP should not simply be about 'power' and that the SNP was most successful when pressuring Labour into making concessions.⁸¹ This is unlikely to win support amongst hardliners. The parallel he draws with the Greens is unlikely to appeal to many SNP activists. But his views are likely to be irrelevant in this contest which will be a vote of confidence in John Swinney.

The issue that faces the SNP is whether the SNP conference which meets in Inverness in late September will undermine Swinney and essentially make the SNP a leaderless party until September 2004, the next opportunity it will have to choose a new leader, unless Swinney was to resign. The only issue in this campaign will be whether Swinney can win sufficient support to prevent him becoming a lame duck leader. Swinney has stated that he expects to win by a two-to-one majority. The issue over the Summer is likely to become an expectations game – with opponent of Swinney and the SNP arguing that a much higher share of the vote is required for the incumbent to maintain his authority. It is no surprise that Swinney has argued for one member one vote and an overhaul of the SNP's ancient constitution.

11. Public Policies Barry Wintrobe

11.1 The legislative programme

The First Minister set out the Executive's legislative and policy programme for the coming parliamentary year on 28 May, and it was debated in plenary the following day.⁸² 14 Bills were announced, 4 to be introduced before the summer recess:

Vulnerable Witnesses – To improve the way that vulnerable witnesses are treated by the justice system and assist them to give their best evidence.

NHS Reform – To improve the effectiveness of health services, legislate for NHS reform, abolish NHS Trusts and establish Community Health Partnerships.

Primary Medical Services (GP Contracts) – To implement the new contract for providers of General Medical Services.

Education (School Meals) – To make a technical amendment to section 53 of the Education (Scotland) Act 1980, to ensure that entitlement to free school meals is not adversely affected by changes to the benefits system.

The other 10 to be introduced, in what the Executive press release erroneously calls the '2003-04 parliamentary session', are:

Court Reform: Modernising Justice – To improve the efficiency with which justice is delivered through the High Court.

Anti-Social Behaviour – To introduce ASBOs for under-16s; Parenting Orders requiring parents to fulfil their responsibilities in respect of their children; tagging for under 16s; and ban the sale of spray paint to under-16s.

Education (Additional Support for Learning) – To reform provision for special educational needs. To end bureaucratic hurdles; provide mediation and tribunal services; give parents and carers a greater say; introduce flexibility to make sure children's education best meets their needs.

Education (Ministerial Powers of Direction) – Where the established steps of inspection, professional support and development do not secure the improvements identified for the local authority, to extend Ministerial powers to intervene, as a last resort and on the recommendations of the Inspectorate, to ensure that the action identified by the Inspectorate as necessary is taken by the local authority.

Nature Conservation – To deal with the conservation of biodiversity, reform of the SSSI (site of special scientific interest) system and build upon the successful delivery of custodial sentences and other wildlife crime measures in the Criminal Justice (Scotland) Act 2003.

Water Services – To establish a regulatory framework for public water and sewerage services that enables public health, environment protection and social policy objectives to be safeguarded as competition in the industry develops.

Strategic Environmental Assessment – To ensure that the full environmental impacts of all new strategies, programmes and plans developed by the public sector are properly considered.

Local Governance – To renew local democracy and widen the range of people who become involved in local government.

Fire Services – Subject to the outcome of the current dispute, to legislate for a modern Fire Service updating the current legislation which dates back to 1947.

Budget – Annual Bill to give statutory authority to the Scottish Executive to spend out of the Scottish Consolidated Fund in the financial year 2004-05.

In addition, the Executive is committed to:

Consult on legislation to modernise the laws of personal bankruptcy and diligence – To strike a better balance between supporting business risk and protecting the rights of creditors.

Bring forward proposals for the establishment of a new Strategic Transport Authority, with legislation following later in the life of this parliament – To work within a framework of policy direction set by Ministers to deliver improvements in our transport infrastructure.

Legislate to provide secure status for Gaelic, with a consultation on the draft legislation, as promised, in the autumn of this year. This legislation will introduce a national language strategy to guide the development and support of Scotland's languages, including British Sign Language and ethnic community languages.

It is interesting to see how the programme, including early Bills, cover the main public services – law & order, health and education - where the extent and nature of policy delivery over the coming years

will presumably determine the fate of the current coalition. The breadth of the proposed legislative programme appears to confirm the trend seen during devolution's first 4 years – that, for better or worse, governments appear to be measured (not least by ministers themselves) by the legislation they seek to enact. Any thought that the second and future sessions would see less emphasis on legislation than a first session inevitably loaded with legislation that were building up from the pre-devolution era appears to have been long abandoned. The emphasis on legislation will largely determine how both the Executive and the Parliament will operate over the next four years.

11.2 Public services

The Executive remains committed to the use of PPP/PFI in delivery of public services, as seen in a speech by the Finance Minister, Andy Kerr, on 26 June.⁸³ The Partnership Agreement said: People deserve and expect public services that are of the highest possible quality and offer the greatest possible choice. We will continue to use the record level of investment in our public services to secure new and better facilities, particularly for our schools and hospitals. We will also match this investment with continued reform so that our public services are designed and delivered around the needs of individuals and the communities within which they live. To make certain that everyone across Scotland can be sure of the quality of service they can expect, we will set, where appropriate, national standards to be met or, ideally, exceeded. The interests of the pupil, the patient, the passenger and the victim of crime will always come first. We will continue the process of reform by bringing forward legislation to improve the effectiveness of health, education, fire, police and criminal justice services, and take forward social work reform across Scotland. To ensure that services match the needs of individuals and communities, we will continue to devolve decision making to the most local level wherever possible. We want frontline staff to be empowered and local communities to have the freedom to take local decisions wherever practical. Community Planning will continue to be one of the main methods through which we promote and share best practice in the planning and delivery of public services. And our Best Value arrangements will ensure that every public body tests its services against the highest standards in other public bodies. We will invest in and reform public services to cut through bureaucracy, simplify funding and ensure services are flexible and focused. We will monitor progress by both regular and targeted independent inspection of performance and action against common standards, to ensure good practice is shared and to identify poor performance. We will evaluate all new spending commitments for their economic and social impact and value for money.

Along with UK ministers, the Executive has expressed its relief and pleasure at the settlement of the long-running fire dispute. In a WA of 10 June, it explained its position on its own proposed fire services bill, and its genesis in the Bain Report and its own consultation document: "The two are not mutually exclusive. A number of the Bain report recommendations, particularly those on risk management and community fire safety, chimed with proposals in our policy document. We will take both into account as we take forward our work on the fire services bill for Scotland, which we plan to publish in the first year of this session."⁸⁴

11.3 Rural and environmental matters

The GM controversy continues, boosted no doubt by the publication of the recent report for the UK Government on the economic viability of GM, with pressure on the Executive to prevent commercial growing in Scotland, and a proposal for a Member's Bill to impose liability on seed companies for damage due to release of GM crops receiving sufficient support from MSPs for it to be introduced as a bill.⁸⁵ The fate of Scottish fishing has been discussed largely in the context of Europe, with Labour and the SNP arguing over the potential impact of the draft EU constitution on the ability of the UK and Scotland to run domestic fishing policy.⁸⁶ Details of Executive bills on water services, nature conservation and strategic environmental assessments were published.⁸⁷ The progress at Westminster of the UK Government's bill on hunting, and the recent legal developments in Scotland (noted in Chapter 9 of this Report) have re-focused attention on the enforcement of the hunting ban in Scotland.⁸⁸ The Executive launched a consultation, on 22 July, on agricultural support for Scottish agriculture following recent changes to the CAP.⁸⁹ A Written Answer of 16 July set out the application of the 'polluter pays' principle in devolved Scottish policy.⁹⁰

Some Scottish legislation requires polluters to pay for damage to the environment. For example the Water Environment and Water Services (Scotland) Act 2003 sets out a framework for improving Scotland's water environment, underpinned by the principle that the polluter will pay for the required improvements. The secondary legislation currently being developed shall also promote this fundamental principle, as will any charging schemes developed under the provisions of the act. This will be balanced by the need to take into account the social and economic impact of enforcing full cost

recovery on business or industry. The contaminated land regime established under Part II A of the Environmental Protection Act 1990 enshrines the principle that those responsible for causing pollution of land should pay to clean it up. A framework for establishing who is responsible for remediation costs is set out in the legislation, alongside arrangements for taking into account hardship issues. The Scottish Environment Protection Agency also recovers the cost of its regulatory duties through charges levied on holders of environmental permits and licences.

The Scottish Executive is currently monitoring the passage of the Environmental Liability Directive through the European legislative process to see what change might be required to our domestic arrangements.

11.4 Economic policies

As usual, economic data showed a mixed, often confused picture, of the Scottish economy, with some small positive trends (tourism being a bright spot), amid continuing manufacturing job losses.⁹¹ The creation of a separate Scottish national statistics service, which could provide impartial and expert data on economic and other issues has been suggested by the Fraser of Allander Institute.⁹² The coalition agreement stated that “growing the economy is our top priority. A successful economy is key to our future prosperity and a pre-requisite for building first class public services, social justice and a Scotland of opportunity,” and The Enterprise Minister, Jim Wallace, has been working himself into his new job.⁹³ Business leaders are pressing the new Executive on three structural issues - business rates, water charges and reform of the planning system – some of which they claim are, along with interest rates policy, putting Scotland at a competitive disadvantage with the rest of the UK. A survey suggested that half of Scotland’s business leaders favoured abolition of the Parliament, and three-quarters felt it had made no difference at all.⁹⁴ The focus on Scottish Enterprise continued with the resignation of its chief executive, Robert Crawford. There has been discussion of the potential for large-scale growth in ‘green industries’ if the Executive focuses its strategy on them. Concerns about Scotland’s declining population were renewed with official figures showing that the population at its lowest since 1947, at just over 5 million.⁹⁵

11.5 Health

There are signs at last of some policy delivery in health, with reductions in delayed discharges, and the launch of the latest NHS reform plan at the end of June, with publication of the National Health Service Reform (Scotland) Bill.⁹⁶ UK Government interference was blamed by some for the breakdown in negotiations on Scottish consultants’ contracts.⁹⁷ As with transport, the assumption of a Scottish MP, John Reid, to the UK cabinet portfolio has kept ‘West Lothian Question’ issues at the forefront of political debate north and south of the border, especially over the ‘imposition’ of foundation hospitals.⁹⁸ A proposal for a Member’s Bill to regulate smoking in food premises was lodged on 3 July.⁹⁹

11.6 Law and order

Law and order was a central election issue, and will surely dominate much of the parliamentary agenda in the coming session. On 26 June, a consultation paper on tackling anti-social behaviour (including wider electronic tagging of children) was published, and a Vulnerable Witnesses (Scotland) Bill was introduced on 24 June.¹⁰⁰ A white paper on High Court reform was published on 19 June, and a summary of responses to the 2002 review on which it was based was published in mid-July.¹⁰¹ However this burst of official activity was dented by revelations of a huge surge in the number of prosecutions dropped before they reached the courts, and rises in serious crimes.¹⁰² The firearms amnesty in April yielded almost 3,400 firearms and 700 other weapons in Scotland. The dropping of a case against an MS sufferer who treated her condition with cannabis has led to calls for changes in the drug laws, especially for medicinal use, and a senior judge has called for the legalisation of cannabis.¹⁰³

11.7 Transport

Transport promises to be an interesting policy area following the UK Transport Secretary, Alistair Darling (a Scottish MP), becoming also Scottish Secretary in the reshuffle. This was seen in Scottish Question Time on 24 June on questions about air transport.¹⁰⁴ The growth in road usage may lead the Executive to apply variable speed limits in the worst congestion spots, or even introduce forms of road pricing, and ministers are being urged to press the UK Government to ease motoring costs in rural areas, such as the Highlands and Islands.¹⁰⁵ The announcement of several new routes from Edinburgh Airport seems to have exacerbated the rivalry between Glasgow and the capital over airport expansion in central Scotland,¹⁰⁶ and in its report on aviation policy, published in mid-July, the Commons Transport committee recommended that “request from the Scottish Executive for an enhanced PSO

network for the Highlands and Islands should be immediately accepted by the United Kingdom Government. Such a network would provide useful lessons about the extent in which air transport can be improved by selective subsidy”. As the Executive issued tender documents for the Scotrail franchise in late July, new proposals from the Strategic Rail Authority may have a negative impact on the Scottish network.¹⁰⁷ The Executive plans to spend around two-thirds of its transport budget (excluding capital charges) on public transport over the next 3 years.¹⁰⁸

11.8 Education

In education, concerns continue about the impact of English policy on student finance, and the Education Committee announced on 2 July an inquiry into the issue.¹⁰⁹ The Executive’s education policy has been criticised, not least by its former minister, Sam Galbraith, as lacking ambition, and there have been criticisms of proposals for remedial ‘hit squads’; the apparent failure to reduce class sizes; the reported lowering of the pass mark for the Higher English exam, and policy to tackle illiteracy. Legislation was rushed through the Parliament to rectify anomalies in rights to free school meals, which provide MSPs with an opportunity to propose a much wider entitlements policy.¹¹⁰

11.9 Social issues

Early fears that ‘civil partnerships’ legislation, such as the Greens’ proposed Member’s Bill on 13 May, could be another ‘Section 28’, may have been largely defused by the UK Government’s plan for its own legislation. However it increases the pressure on the Executive to follow suit either with its own Bill or by latching on to a UK Bill through a Sewel Motion, though the issue is complex with devolved and reserved matters intertwined.¹¹¹ On the other hand, the UK Government’s apparent rejection of a smacking ban has been widely ascribed to the mauling the Executive had received when it tried to legislate on this subject. Charity law reform is on the agenda following the problems of a Scottish charity highlighting the rather loose regulatory system in Scotland, a good example of an unexpected policy issue which could consume much Executive and parliamentary time in the next couple of years.¹¹² Proposals for a Human Rights Commission south of the border will have to take account of separate provision in Scotland,¹¹³ and the Greens have claimed that plans for ‘ID cards’ in Edinburgh and London are in conflict. Though asylum is a reserved matter, the treatment of asylum-seekers while in Scotland, including education for children and the state of the detention centre at Dungavel has provoked much criticism from pressure groups and from MSPs and MPs.¹¹⁴ It appears that steps are to be taken to ensure that Executive policies fully recognise the perspectives and issues of women.¹¹⁵

¹ *A Partnership for a Better Scotland*: <https://www.scotland.gov.uk/library5/government/pfbs-00.asp>; SE PN, 15 May: <http://www.scotland.gov.uk/pages/news/2003/05/SENW509.aspx>

² <http://www.scottish.parliament.uk/plenary/or-03/or051502.htm#Col18> and <http://www.scotland.gov.uk/pages/news/2003/05/SENW511.aspx>. For a guide on the parliamentary procedure on election of ministers, including selection of nominee as FM, see <http://www.scottish.parliament.uk/news/news-03/pa03-029.htm>

³ <http://www.scottish.parliament.uk/plenary/or-03/or0521-02.htm>; SE PNs, 20 May: http://www.scotland.gov.uk/pages/news/2003/05/p_SENW513.aspx and <http://www.scotland.gov.uk/Topics/?pageID=61>

⁴ <http://www.scotland.gov.uk/pages/news/weekly/000373.aspx>

⁵ “Resignation of Enterprise Minister”, SE PN, 13 May: <http://www.scotland.gov.uk/pages/news/2003/05/SEFM126.aspx>

⁶ SE PN, 3 June: http://www.scotland.gov.uk/pages/news/2003/06/p_SENW538.aspx; SE Media Briefing, 3 June: <http://www.scotland.gov.uk/pages/news/weekly/000380.aspx>

⁷ “New Permanent Secretary takes up post”, SE press release, 8 July: <http://www.scotland.gov.uk/pages/news/2003/07/SENW548.aspx>

⁸ “SNH dig heels in over move”, BBC News, 15 July: <http://news.bbc.co.uk/1/hi/scotland/3066685.stm>; “The Heritage Trail”, Sunday Herald, 20 July: <http://www.sundayherald.com/35388>

⁹ <http://www.scottish.parliament.uk/business/wa-03/wa0603.htm> and <http://www.scottish.parliament.uk/business/wa-03/wa0619.htm>; <http://www.scotland.gov.uk/cru/resfnds/grf11.pdf>

- ¹⁰ <http://www.scottish.parliament.uk/business/wa-03/wa0609.htm>;
<http://www.scottish.parliament.uk/business/wa-03/wa0617.htm>;
<http://www.scottish.parliament.uk/business/wa-03/wa0716.htm>; “Parties attack propaganda cost”, *BBC News*, 19 July: <http://news.bbc.co.uk/1/hi/scotland/3077707.stm>
- ¹¹ <http://www.scottish.parliament.uk/business/wa-03/wa0603.htm> and
<http://www.scottish.parliament.uk/business/wa-03/wa0610.htm>; *Public Bodies 2003*:
<http://www.cabinet-office.gov.uk/agencies-publicbodies/publicbodies/pb2003.pdf>, which, curiously,
states, in a section on the Commissioner for Public Appointments, “Proposals to establish a Scottish
Commissioner for Public Appointments are underway and the Scottish Executive aims to appoint a
Commissioner by the end of 2003”, when the SCPA is actually a royal appointment on the nomination
of the Parliament. Coincidentally, these arrangements are mentioned in the recent report by the
Commons’ Public Administration Committee, *Opening up the patronage state*, 4th report, 2002-03, HC
165, July 2003, at paras 97-107:
<http://www.publications.parliament.uk/pa/cm200203/cmselect/cmpubadm/165/16502.htm>
- ¹² <http://www.scotland.gov.uk/pages/news/weekly/000410.aspx>; “Wallace criticised for hiring his third
spin doctor”, *Scotsman*, 21 July: <http://www.thescotsman.co.uk/politics.cfm?id=788842003>; *SE media
briefing, 4 August*: <http://www.scotland.gov.uk/pages/news/weekly/000414.aspx>;
“McConnell appoints 11th special adviser”, *Scotsman*, 5 August:
<http://www.thescotsman.co.uk/politics.cfm?id=844392003>
- ¹³ <http://www.scottish.parliament.uk/business/wa-03/wa0609.htm> and
<http://www.scottish.parliament.uk/business/wa-03/wa0625.htm>; SE PN, 9 June:
<http://www.scotland.gov.uk/pages/news/2003/06/SEFD238.aspx>; Progress Report:
<http://www.scotland.gov.uk/government/foi/reportprogressfoi.pdf>. See also, “Executive not ready for
era of freedom, says study”, *Herald*, 21 July.
- ¹⁴ <http://www.scotland.gov.uk/library5/justice/fia02-00.asp>
- ¹⁵ http://www.publications.parliament.uk/pa/cm200203/cmhansrd/cm030717/text/30717w43.htm#30717w43.html_dpthd0
- ¹⁶ See article by Keith Sinclair, ‘Vatican’s Hard Line on Gay Marriage Attacked’, *The Herald*, 1 August 2003, p.10
- ¹⁷ ‘Queen of Scots Visits Holyrood’, *BBC News*, <http://news.bbc.co.uk/1/hi/scotland/2956670.stm>
- ¹⁸ *Official Report*, 5th June 2003, col. 454.
- ¹⁹ Excludes all reports on subordinate legislation.
- ²⁰ Latest parliamentary stage recorded.
- ²¹ DTI Press Release, ‘Newspaper merger Reference to the Competition Commission’, 10 December 2002.
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- ²⁷ www.lcd.gov.uk/consult/supremecourt/index.htm#ch3, para 18.
- ²⁸ www.lcd.gov.uk/consult/supremecourt/index.htm#ch3, para 20.
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- ³¹ The Herald, 15/07/03, SNP on attack as plans for Supreme Court are unveiled, D Summers, p.6.
- ³² www.lcd.gov.uk/consult/supremecourt/index.htm#ch3, para 19.
- ³³ www.lcd.gov.uk/consult/supremecourt/index.htm#ch3, para 20.
- ³⁴ www.lcd.gov.uk/consult/supremecourt/index.htm#ch3, para 21.
- ³⁵ BBC Scotland, cited in The Herald, 15/07/03, SNP on attack as plans for Supreme Court are unveiled, D Summers, p.6.
- ³⁶ The Times, 16/06/03, Reshuffle shows ‘confidence’ in devolution, A MacLeod, p.4.
- ³⁷ This was confirmed to the author by a spokeswoman at the Scotland Office on 31/07/03.
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- ³⁹ The Times, 16/06/03, Reshuffle shows ‘confidence’ in devolution, A MacLeod, p.4.
- ⁴⁰ The Times, 19/06/03, Executive told to bypass Darling, our Scottish Political Correspondent, p.10.
- ⁴¹ The Herald, 13/06/03, Tories attack Reid’s new health role, M Settle, p.7.
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- ⁴⁷ Weir@Westminster, circa July 2003.
- ⁴⁸ <http://news.bbc.co.uk/1/hi/Scotland/3054562.stm>
- ⁴⁹ The Times, 17/07/03, Blair promises to cut Scots at Westminster, own correspondent, p.2.
- ⁵⁰ The Herald, 31/03/03, Chancellor to lose Dunfermline East seat, own correspondent, p.6.
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- ⁵⁹ The Times, 15/07/03, McConnell plans a united strategy to promote Scotland, R Watson, p.9.
- ⁶⁰ www.scotland.gov.uk/about/FCSD/ExtRel1/00014768/page598851166.aspx
- ⁶¹ Scottish Parliament, Written Answer, Tavish Scott to Richard Lochhead, 17 July 2003.
- ⁶² Scottish Parliament, Written Answer, Patricia Ferguson to Richard Lochhead, 30 July 2003.
- ⁶³ See Cosla Connections Issue 1 June 2003 for full details of the 2003 election results available from <http://www.cosla.gov.uk>.
- ⁶⁴ See <http://www.cosla.gov.uk> and ‘Watters back as COSLA President’ *Municipal Journal* 3 July 2003.
- ⁶⁵ ‘COSLA posts surprise surplus’ *Municipal Journal* 26 June 2003

⁶⁶ R.Dinwoodie and E.Buie ‘Failing schools face takeover by McConnell’s hit squads’, *Herald* 28th May 2003

⁶⁷ J.Johnston ‘No win, no fee cases could add £24 to every council tax bill’ *Sunday Herald* 8 June 2003

⁶⁸ B. Briggs, ‘Housing transfer campaigners in protest over level of service charges’ *Herald* 17th July 2003

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⁷⁰ ‘Cities boosted by £90m injection’ *Municipal Journal* 10 July 2003

⁷¹ Number 10 lobby briefing, 12 June: <http://www.number-10.gov.uk/output/Page3894.asp>

⁷² See, for example, questions to the Advocate General in the Commons on 24 June (<http://www.publications.parliament.uk/pa/cm200203/cmhansrd/cm030624/debtext/30624-02.htm>);

⁷³ “Creation of Supreme Court”, *SE press release*, 24 June: <http://www.scotland.gov.uk/pages/news/2003/06/SEco104.aspx>

⁷⁴ *Constitutional reform: a supreme court for the United Kingdom*: <http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmselect/cmlcd/902/90203.htm>. This appeared as part of a package of consultations on mainly-English legal reforms, including judicial appointments, on which see the interesting comparative report from the LCD Committee, *Judicial Appointments: lessons from the Scottish experience*, 2nd report of 2002-03, HC 902, 4 July: <http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmselect/cmlcd/902/90203.htm>

⁷⁵ “Proposals for UK Supreme Court”, *SE press release*, 14 July: <http://www.scotland.gov.uk/pages/news/2003/07/SEjd278.aspx>; “Scots courts should hear Scots cases”, *SNP press release*, 14 July: <http://www.snp.org/html/textonly/news/newsdetail.php?newsID=1291>; “Call for US-style court”, *BBC News*, 14 July: <http://news.bbc.co.uk/1/hi/scotland/3063053.stm>

⁷⁶ On which, see Chap 9.1 of the August 2002 Report

⁷⁷ “Court overturns hunting ban fight”, *Scotsman*, 21 June: <http://www.thescotsman.co.uk/scotland.cfm?id=680312003>; *Whaley and Friend v Lord Advocate*, court judgment: http://www.scotcourts.gov.uk/opinionsv/p672_02.html; UCSW press release, 20 June: <http://www.ucsw.org/newver56.htm>

⁷⁸ <http://gdl.cldr.strath.ac.uk/aspect/snp/snpgma.htm>

⁷⁹ <http://.billwilson.plus.com/>

⁸⁰ Sillars was a Labour MP who defected to set up his own Scottish Labour Party in 1976 after falling out with Labour then joined the SNP in 1980 when this failed and backed his wife Margo MacDonald as an Independent in the recent elections having been a consistent critic of the SNP over a number of years. MacDonald was very briefly an SNP MP (November 1973 – February 1974) who resigned in 1982 and subsequently urged electors to vote Labour in 1983, rejoined the SNP before devolution to allow her stand as an SBP candidate before leaving to stand as an Independent in 2003.

⁸¹ *Sunday Herald*, 27 July 2003.

⁸²⁸² <http://www.scottish.parliament.uk/plenary/or-03/sor0528-02.htm#Col179> and <http://www.scottish.parliament.uk/plenary/or-03/sor0529-02.htm#Col167>; SE PN, 28 May: http://www.scotland.gov.uk/pages/news/2003/05/p_SENW517.aspx. Detailed briefing on each bill appears on the Executive website.

⁸³ <http://www.scotland.gov.uk/pages/news/2003/06/SEfd242.aspx>

- ⁸⁴ <http://www.scottish.parliament.uk/business/wa-03/wa0610.htm>. On the proposed bill, see <https://www.scotland.gov.uk/pages/news/2003/05/SENW525.aspx>, and see also *Fairness and Equality: Guidance Framework for Fire Services in Scotland*, Revised ed., published July 2003: <http://www.scotland.gov.uk/library5/justice/fairness.pdf>
- ⁸⁵ Green Party press release, 10 July: <http://www.scottishgreens.org.uk/news/2003/july/100703bid.htm>. The SNP have also lodged, very early in the new session, a proposal for a Member's Bill to prohibit planting in Scotland: <http://www.scottish.parliament.uk/business/bb-03/bb-05-13g.htm>. See generally, "Ministers lobbied over GM crops", *BBC News*, 10 July: <http://news.bbc.co.uk/1/hi/scotland/3054403.stm>
- ⁸⁶ See, for example, the controversy over the draft EU constitution on fishing powers, FMQs on 29 May: <http://www.scottish.parliament.uk/plenary/or-03/sor0529-02.htm#Col250>; the subsequent points of order on 11 June: <http://www.scottish.parliament.uk/plenary/or-03/sor0611-02.htm#Col555>; Rural Affairs questions in the Commons on 19 June: http://www.publications.parliament.uk/pa/cm200203/cmhansrd/cm030619/debtext/30619-01.htm#30619-01_sbhd2. More generally, see *Economic Report on Scottish Agriculture, 2003 Edition*: <http://www.scotland.gov.uk/library5/agri/ersa03-00.asp>
- ⁸⁷ <https://www.scotland.gov.uk/pages/news/2003/05/SENW526.aspx>, <https://www.scotland.gov.uk/pages/news/2003/05/SENW528.aspx> and <https://www.scotland.gov.uk/pages/news/2003/05/SENW532.aspx>
- ⁸⁸ "Scottish police not equipped to pursue packs", *Times*, 3 July: <http://www.timesonline.co.uk/newspaper/0,,173-733454,00.html>; "***Hunt row rages one year on***", *BBC News, 1 August*: <http://news.bbc.co.uk/1/hi/scotland/3115619.stm>
- ⁸⁹ "Future of farming following CAP reform", *SE press release*, 22 July: <http://www.scotland.gov.uk/pages/news/2003/07/SEEN565.aspx>
- ⁹⁰ <http://www.scottish.parliament.uk/business/wa-03/wa0716.htm>
- ⁹¹ ***See, for example, "Figures show 0.3 per cent fall in GDP", SE press release, 30 July:*** <http://www.scotland.gov.uk/pages/news/2003/07/SEel033.aspx>. For the Executive line on poor manufacturing export data, see "Performance reflects global downturn", *SE press release*, 9 July: <http://www.scotland.gov.uk/pages/news/2003/07/SEel019.aspx>
- ⁹² "The Executive finds safety in its own numbers", *Scotsman*, 11 July: <http://www.thescotsman.co.uk/opinion.cfm?id=753242003>
- ⁹³ See his oral answers and WAs on 29 May and 3 June, respectively: <http://www.scottish.parliament.uk/plenary/or-03/sor0529-02.htm#Col237> and <http://www.scottish.parliament.uk/business/wa-03/wa0603.htm>
- ⁹⁴ "Business rejects Scottish devolution", *Scotsman*, 12 July: <http://www.timesonline.co.uk/newspaper/0,,175-742831,00.html>. See also "Scots firms claim red tape is their biggest problem", *Scotsman*, 14 July: <http://www.thescotsman.co.uk/business.cfm?id=764352003>, and the contributions from SNP and Tory MPs about the Scottish situation to the Opposition Day debate on small businesses on 2 July: http://www.publications.parliament.uk/pa/cm200203/cmhansrd/cm030702/debtext/30702-23.htm#30702-23_spnw10
- ⁹⁵ ***See the Registrar General's Annual review of demographic trends, 1 August:*** <http://www.scotland.gov.uk/pages/news/2003/08/SEjd285.aspx>
- ⁹⁶ NHS reform bill launched, *SE PN*, 27 June: <http://www.scotland.gov.uk/pages/news/2003/06/SEDH445.aspx>. See also another Executive Bill on health, Primary Medical Services (Scotland) Bill; an Executive-led debate on 18 June: <http://www.scottish.parliament.uk/plenary/or-03/sor0618-02.htm#Col803>, and FMQs on 19 and 26 June: <http://www.scottish.parliament.uk/plenary/or-03/sor0619-02.htm#Col976> and <http://www.scottish.parliament.uk/plenary/or-03/sor0626-02.htm#Col1201>
- ⁹⁷ Consultant contract talks halted, *BBC News*, 25 June: <http://news.bbc.co.uk/1/hi/scotland/3019232.stm>

⁹⁸ For No. 10's view to the Reid appointment, see the lobby briefing on 13 June: <http://www.number-10.gov.uk/output/Page3916.asp>

⁹⁹ <http://www.scottish.parliament.uk/business/bb-03/bb-07-07g.htm>

¹⁰⁰ SE PN: <http://www.scotland.gov.uk/pages/news/2003/06/SEc272.aspx>; *Putting our communities first: A Strategy for tackling Anti-social Behaviour*: <http://www.scotland.gov.uk/consultations/social/pocf-00.asp>.

¹⁰¹ SE PN, 19 June: <http://www.scotland.gov.uk/pages/news/2003/06/SEjd265.aspx>; Modernising Justice In Scotland: The Reform Of The High Court Of Justiciary: <http://www.scotland.gov.uk/library5/justice/mjis-00.asp>; Summary of responses: <http://www.scotland.gov.uk/library5/justice/jcsr-00.asp>, and see "Judges split over plans to reform Scottish courts", *Times*, 16 July: <http://www.timesonline.co.uk/newspaper/0,,172-746965,00.html>

¹⁰² See McConnell's speech to ACPOS on 29 May: <http://www.scotland.gov.uk/pages/news/2003/05/SEnw534.aspx>; FMQs on 5 June: <http://www.scottish.parliament.uk/plenary/or-03/sor0605-02.htm#Col491>; and an Executive debate on 25 June: <http://www.scottish.parliament.uk/plenary/or-03/sor0625-02.htm#Col1047>

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¹⁰⁴ <http://www.publications.parliament.uk/pa/cm200203/cmhansrd/cm030624/debtext/30624-02.htm>. More generally see "Call to get transport on track", *BBC News*, 28 May 2003: <http://news.bbc.co.uk/1/hi/scotland/2942286.stm>, and an Executive-led debate on 12 June: <http://www.scottish.parliament.uk/plenary/or-03/sor0612-02.htm#Col741>.

¹⁰⁵ "Executive faces new calls for road pricing", *Scotsman*, 8 July: <http://www.thescotsman.co.uk/scotland.cfm?id=741062003>; "Multi-speed motorways to cut congestion", *Sunday Times*, 13 July: <http://www.timesonline.co.uk/article/0,,2090-744045,00.html>; "Call for Executive help against rural travel costs", *Scotsman*, 15 July: <http://www.thescotsman.co.uk/scotland.cfm?id=768312003>

¹⁰⁶ Member's Business debate, 19 June: <http://www.scottish.parliament.uk/plenary/or-03/sor0619-02.htm#Col1028>; "Ministers accused of favouritism over airport routes", *Herald*, 1 July; 6th report of 2002-03, HC 454, paras 169- 172: <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmtran/454/454.pdf>

¹⁰⁷ **"Scotland's passenger rail franchise", SE press release, 30 July:** <http://www.scotland.gov.uk/pages/news/2003/07/SEtd021.aspx>; **"Ministers oppose plans to cut spending on Scotland's rail network", Scotsman, 2 August:** <http://www.thescotsman.co.uk/scotland.cfm?id=831992003>

¹⁰⁸ WAs to Fergus Ewing, 21 July: <http://www.scottish.parliament.uk/business/wa-03/wa0721.htm>

¹⁰⁹ Committee PN: <http://www.scottish.parliament.uk/news/news-03/cent03-001.htm>, and see intervention by Pete Wishart during a Commons debate on tuition fees on 25 June: http://www.publications.parliament.uk/pa/cm200203/cmhansrd/cm030625/debtext/30625-11.htm#30625-11_snews0 (at cols 1074-5).

¹¹⁰ See the *WHISP* Bill Focus: <http://www.scottish.parliament.uk/business/whisp-03/wh008-01.htm#billfocus>. Both SSP and SNP MSPs have already introduced proposals for Member's Bills on this subject. The Bill received royal assent on 7 July. For debate on wider aspects of the apparent impact of changes in UK social security and tax measures, see FMQs on 19 June: <http://www.scottish.parliament.uk/plenary/or-03/sor0619-02.htm#Col974>; an SNP PN that day: <http://www.snp.org/html/textonly/news/newsdetail.php?newsID=1241>, and "McConnell denies benefits failure", *Times*, 20 June: 20 June

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¹¹¹ <http://www.scottish.parliament.uk/business/bb-03/bb-05-13g.htm>; "Will Scots spoil the gay party?", *Sunday Herald*, 6 July: <http://www.sundayherald.com/35071>; "Scottish gay couples to get marriage rights", *Sunday Times*, 6 July: <http://www.timesonline.co.uk/article/0,,2090-736702,00.html>; **"Reject gay rights move", BBC News, 1 August:** <http://news.bbc.co.uk/1/hi/scotland/3115313.stm>

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¹¹³ Westminster Hall debate on 15 May on the 6th report of the Joint Committee on Human Rights, especially the opening speech by the Committee chair, Jean Corston: http://www.publications.parliament.uk/pa/cm200203/cmhansrd/cm030515/halltext/30515h01.htm#30515h01_head0 (the Report was published in March: <http://www.publications.parliament.uk/pa/jt200203/jtselect/jtrights/67/6703.htm>); Green Party press release, 7 July: <http://www.scottishgreens.org.uk/news/2003/july/070703clarity.htm>

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¹¹⁵ “Executive to put feminist ideals at core”, *Sunday Herald*, 20 July: <http://www.sundayherald.com/35396>