



The Constitution Unit



UNIVERSITY OF
STIRLING



Nations and Regions: The Dynamics of Devolution

Quarterly Monitoring Programme

Scotland

Quarterly Report
August 2004



The Leverhulme Trust

The monitoring programme is jointly funded by the ESRC and the Leverhulme Trust

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1. The Scottish Executive

Barry Winetrobe

1.1 The devolved government five years on

The quarter saw a series of notable anniversaries, reflecting five years of devolution. This prompted much media reflection, but little in the way of official celebration or even acknowledgement by the Parliament or the Executive. This did not go unnoticed, the assumption being that both institutions were all too aware of the public perception of their performance thus far, and it did not prevent the pundits from pronouncing their own verdicts.¹ These generally negative views were, not surprisingly, not shared by the Executive itself, which preferred to concentrate on the achievements of the last year (the first of the second parliamentary session), as the following extract from the 30 June media briefing shows:²

The First Minister's Official Spokeswoman (FMOS) opened the briefing by informing journalists that Cabinet met this morning for the last time of this session. The FMOS said the First Minister acknowledged that Ministers had achieved the goals they set out at the start of the Parliamentary year in terms of the legislative programme. She said the First Minister singled out the Anti Social Behaviour and Local Governance Bills as ones that had been particularly controversial, but that had been passed by winning the argument as well as the vote. The First Minister told colleagues:

"We should not forget in this multi party Parliament that winning the argument as well as the vote is possible."

The FMOS said he went on to outline to colleagues that it was critical to build on this in the next session of Parliament, and that Ministers must continue to focus on delivery of policies to ensure people saw and experienced the changes being made. She said he reinforced the need for them to raise their game, commenting:

"We must use the opening of the new parliament to raise our game, and the game of Parliament, and build further confidence in devolution."

1.2 The Ministerial Team

Several of the leading Executive ministers have been under sustained pressure in recent months, as was noted in the last Report.³ The problems of the Justice Minister, Cathy Jamieson, have not diminished, as is noted in Chapter 11.⁴ Those of the Culture Minister, Frank McAveety, seem to be growing, and not just in his substantive policy areas of tourism culture and sport.⁵ He was reprimanded by the

First Minister for being late for Question Time on 24 June, and then claiming he was delayed on ministerial business, whereas he was having a lunch of pie and chips in the Parliament canteen. Inevitably the affair became known as ‘Porky Piegate’, and came just days after a sheriff scoffed at the minister’s expressed fears of being terrorised in the street by two anti-war protestors.⁶ The FM himself seriously gaffed when initially refusing to attend the D-Day commemorations in Normandy because he had a golf club dinner engagement, and then having to change his mind when the decision was heavily criticised.⁷

Nevertheless, McConnell appears to have rejected the idea of a summer reshuffle. This was reinforced by an Executive media briefing on 1 July.⁸

Asked if the First Minister would be having a reshuffle during the summer, the FMOS said that while she would not respond to speculation about a reshuffle, she pointed journalists to the First Minister's comments during his briefing this morning. She that he took questions from journalists on this topic and that he answered with a firm no.

An imminent reshuffle may be unappealing to the Executive (and to Scottish Labour in particular) for a number of reasons, not least the risk of deflecting public and media attention from the potential political benefits of a divisive SNP leadership election. Nevertheless, some ministers, especially McAveety, and even close McConnell ally Jamieson, may be on a final warning, where any future ‘events’ (such as a mass prison escape) could force ministerial changes, and the persistent lack of visible improvement in portfolios like health may cost veterans like Malcolm Chisholm their jobs. As the current mood, even within the Executive, is downsizing government, the loss of McAveety could conveniently allow McConnell to cut the Cabinet by one, as the Culture post is a semi-detached one, being paid as a deputy minister. While coalition necessities will ensure that Wallace will not suffer for any perceived failings in his stewardship of the Enterprise and Lifelong Learning portfolio (and a switch after barely a year in post would be a humiliation),⁹ the time may have come for a move by Ross Finnie, who has held the same job through the whole life of devolution. And it must not be forgotten that when McConnell took over as FM in late 2001 the scale of his ministerial reshuffle came as a huge surprise. A ‘refreshing’ of the ministerial team may have some attractions if synchronised with the much-trumpeted fresh start for devolution following the move to Holyrood, and could assist Labour’s defence of its Westminster seats in the expected UK general election next year.

1.3 Devolved civil service: dispersal, relocation and cuts?

As noted in the last Report,¹⁰ the devolved administration itself (both the core civil service, and the wider public service) is under scrutiny and review. Relocation – whether of Executive posts out of Edinburgh and the Central Belt, or UK jobs to north of the border) – is a hot topic, as the saga of the move of Scottish Natural Heritage to Inverness demonstrates, and one which can be a zero-sum game, with one area’s job gain being another’s job loss. On 24 June, the Parliament’s Finance Committee published a substantial report on relocation, which¹¹

is critical of the Executive’s existing policy. The report raises concerns over inconsistency in the way that criteria were used in assessing previous relocations and has strongly questioned the lack of transparency in the decision to move Scottish Natural Heritage’s headquarters to Inverness.

The Committee also found that because of flaws in the way in which relocation reviews are conducted, some areas of Scotland may have been unfairly excluded from opportunities to benefit from the relocation of public sector jobs. The policy has not had as significant an impact on areas of deprivation as may have been suggested by the Executive, due to precedence given to perceived ‘operational effectiveness’ considerations.

The report recommends that the Executive must be realistic about what relocation can achieve and that it should explain carefully the full potential and limitations of its current policy. The committee also proposes a new approach to relocation, which builds upon the strengths of the existing policy, but which is more open and transparent.

The Executive’s detailed response will be interesting, but in the meantime, the official line is set out in a WA of 28 June:¹²

The Executive is committed to the dispersal of public sector jobs and wants to see all areas of Scotland benefit from the policy, including areas of most need. When relocation is being considered, no parts of the country are targeted, nor are any ruled out. Each location review is viewed on its own merits and decisions are reached on a case by case basis.

A WA of 23 June provided details of the location of Executive officials by local authority area.¹³ Scottish MPs have continued to be active on the issue, primarily from the UK perspective, based on the recent Lyons Report, as can be seen, for example, at Scottish Questions on 25 May and a Westminster Hall debate on 22 June.¹⁴ The Chancellor’s Spending Review statement on 12 July included the announcement of just under 100 DfID jobs to be moved to East Kilbride.

The Finance Minister’s statement on ‘efficient government’ on 24 June, reinforced the growing focus on the size and cost of the public sector and the core Executive in

particular, in part due to fiscal and policy pressures from London.¹⁵ The Conservatives in particular have run strongly on the policy of ‘smaller government’, both in terms of ministers and officials.¹⁶ It is not yet clear to what extent, if at all, the Executive will implement public sector jobs cuts as part of the Chancellor’s proposed reduction of 20,000 from the devolved administrations and English local government, or whether its own Efficient Government Review will focus on other means of obtaining savings.¹⁷ Expenditure on ‘quangos’ was criticised in late June, and a WA on 4 June provided details on the number of NDPBs.¹⁸ The Executive has set a target of 98% of bills to be paid within 30 days, by the end of this year.¹⁹

1.4 FoI, public appointments and other administrative issues

FoI implementation moved on with further public access rights coming into force on 2 June, and the Executive published its 2nd annual report on progress on implementing the new FoI legislation.²⁰ A major test of the existing non-statutory open government scheme came with publication of an edited version of the commercial contract with Reliance for prisoner escort services, following well-publicised intervention by the Scottish Information Commissioner, Kevin Dunion.²¹ The Parliament agreed on 6 May to the nomination of Karen Carlton as the first Commissioner for Public Appointments in Scotland.²² A new website, Scottish Neighbourhood Statistics, is designed to provide a range of localised information throughout Scotland.²³ Details of Executive support for the Scottish Civic Forum were provided in a WA on 2 June.²⁴ WAs during the period provided information on Executive matters as diverse as inward and outward secondments; use of private recruitment agencies; regulation of civil servants’ meeting with outside bodies and people, and spending on external consultancies.²⁵ The Executive published a research report on ‘partnership working’.²⁶ A series of PQs has been investigating the use made of Bute House.²⁷

2. The Scottish Parliament

Mark Shephard

2.1 More Executive Control over Legislation? New Procedures for Members' Bills

On 1st July 2004, the Procedures Committee published a report outlining a new procedure for Members' Bills. The report follows an inquiry into the current system of Members' Bills that was precipitated by the increasing pressures that the Non-Executive Bills Unit (NEBU) have faced over time. The current system places few limits on MSPs in the proposal of Members' bills and has resulted in the stretching of NEBU resources and consequently unequal possibilities for assistance per bill. Other pressures have arisen, most notably for business managers of the legislative timetable. Perceived pressures have risen during Session 2 as 39 Members' Bills have so far been proposed.

Currently, for a Members' Bill to be eligible for introduction, the MSP proposing a Bill must provide a title and short description and secure the support of at least 11 other MSPs within one month (Rule 9.14.5). The only other limit is that no MSP may introduce more than two Members' Bills in one session (Rule 9.14.2). The recommended changes to the procedure are summarised in the introduction to the report and are as follows:

- A requirement to consult on an initial proposal for a minimum of 12 weeks (or to give reasons why consultation on the proposal is not considered necessary, subject to approval by a committee);
- A higher threshold of support for a final proposal - 18 supporters drawn from at least half the parties or groups represented on the Bureau;
- A mechanism to enable the Executive to intervene in cases where it or the UK Government are planning similar legislation; and
- A limit on the number of proposals or Bills that each member can have in progress at any time²⁸

Clearly, the proposed changes will have serious repercussions for the operation of the Members' Bills system. The partisan breakdown of the 39 proposals for Members' Bills in the first year of Session 2 is as follows: Labour, 8; Liberal Democrats 2; SNP 13; Conservative 3; Green 5; SSP 7; and SCUP 1. Most likely to be affected by the proposed changes are the smaller parties, namely the Greens and the SSP who have not only been disproportionately active in the proposal of Members' Bills but who have also struggled to reach the current 11 supporters rule. Indeed, if we take the proposed number of supporters (18) and apply this rule retrospectively to Session 2 Members' proposals we find that the Greens would not be successful in four out of five cases (compared with one out of five under the current rules).²⁹ In the case of the SSP, none of their seven proposals would meet the required number of supporters (compared with seven out of seven under the current rules). Not surprisingly, the SSP have been most critical of the proposed changes. Tommy Sheridan (SSP MSP) has referred to the current system as the 'jewel in the crown' which 'must be defended'.³⁰

Other parties likely to be affected by the proposed increase in the supporter hurdle based on current levels of support are the SNP and the Scottish Conservatives, not to mention the three independent Members.

Moreover, considering the four Members bills that have been introduced in Session 2 it is interesting to note how three of the four (Fire Sprinklers in Residential Premises (Scotland) Bill, Prohibition of Smoking in Regulated Areas (Scotland) Bill, and Prostitution Tolerance Zones (Scotland) Bill) failed to garner 18 supporters. Had the new rules applied from the beginning of Session 2, several pieces of legislation may never even have been eligible for consideration by the Parliament.

Comparing the Executive parties with the opposition parties reveals that nearly three quarters of the proposals for Members' Bills come from opposition MSPs. Increasing supporter hurdles, requiring a level of Bureau support, and creating provision for Executive intervention, arguably tilts the balance firmly in the direction of the Executive parties - something the report glosses over in terms of 'getting an appropriate balance'.³¹ Most non-Executive commentators on the proposals feared that involving the Bureau in decisions over Members' Bills would lead to a politicisation of the process. Even the less contentious of proposals such as requiring prior consultation met with some concern, especially when such consultation on a proposal had already taken place.

2.2 Report into Cross-Party Groups Unveiled

On 11th June 2004, the Standards Committee published a report on research commissioned during Session 1 into aspects of the cross-party group system. The main objective of the research was to investigate the extent to which the practice of the cross-party groups coincided with expectations of their operation. The key findings of the report included:

- MSPs have very little time to devote to their activities in cross-party groups
- While MSPs generally knew what the purposes and functions of their own cross-party groups were, there was less knowledge about what the purpose and function of the cross-party group system was
- A lack of detailed information on the activities and achievements of cross-party groups
- Groups had to rely on outside staffing assistance
- Lack of knowledge among some MSPs over the regulatory framework for cross-party groups

Key recommendations from the investigation included a need for the Standards Committee to more clearly define the:

- Role of the cross-party group system so that all parties can more easily understand the process, and
- Objectives of cross-party groups

Other recommendations included strengthening the regulation of cross-party groups (for example, introducing a mandatory annual return of achievements) and provision of more support staff to promote good practice among groups.³²

2.3 Other Issues

On 20th May 2004 right before First Minister's Questions, Carolyn Leckie (SSP MSP) became the first MSP to be asked to leave the chamber following a dispute with the Presiding Officer over her attempts to force a point of order on the nursery nurses strike. Defending his decision to suspend Ms. Leckie, George Reid said, 'I have a duty to maintain good order in the chamber and I will not have First Minister's Question Time hijacked'.³³ On 24th June 2004, Reid had to deal with 'porky-pie gate' following claims by Frank McAveety (Minister for Tourism, Culture and Sport) that he had appeared late for Question Time because he was detained on ministerial business. Raising a point of order, Bill Aitken (Con MSP) challenged the minister's account of his lateness by revealing that McAveety had in fact been eating lunch in the cafeteria when he was reminded by another minister that he should be in the chamber. Alasdair Morgan (SNP MSP) raised a point of order accusing the minister of 'serious error' demanding a 'serious response'.³⁴ In response, McAveety apologised unreservedly for 'inadvertently misleading Parliament' to which George Reid effectively closed the matter by asking the Parliament to leave the matter 'in a spirit of solidarity and forgiveness'.³⁵

Finally, the Dalai Lama visited the Parliament in June where he was the speaker in Time for Reflection. Following his address to a packed Parliament he received a standing ovation before going on to a question and answer session with MSPs.³⁶

2.4 Committee Reports and Inquiries (01 May 2004 – 31 July 2004)³⁷

Executive Response to Transport and the Environment Committee Report on PE377 by Michael Kayes on Polluting Activities in Built-Up Areas, 4 May 2004, Environment and Rural Development Committee

Scottish Enterprise: Special Audit Examination, 6 May 2004, Audit Committee

National Health Service Reform (Scotland) Bill as Amended at Stage 2, 6 May 2004, Subordinate Legislation Committee

Annual Report of the Audit Committee for the Parliamentary Year 7 May 2003 to 6 May 2003, 7 May 2004, Audit Committee

Annual Report of the Communities Committee for the Parliamentary Year 7 May 2003 to 6 May 2003, 7 May 2004, Communities Committee

Annual Report of the Education Committee for the Parliamentary Year 7 May 2003 to 6 May 2003, 7 May 2004, Education Committee

Annual Report of the Enterprise and Culture Committee for the Parliamentary Year 7 May 2003 to 6 May 2003, 7 May 2004, Enterprise and Culture Committee

Annual Report of the Environment and Rural Development Committee for the Parliamentary Year 7 May 2003 to 6 May 2003, 7 May 2004, Environment and Rural Development Committee

Annual Report of the Equal Opportunities Committee for the Parliamentary Year 7 May 2003 to 6 May 2003, 7 May 2004, Equal Opportunities Committee

Annual Report of the European and External Relations Committee for the Parliamentary Year 7 May 2003 to 6 May 2003, 7 May 2004, European and External Relations Committee

Annual Report of the Finance Committee for the Parliamentary Year 7 May 2003 to 6 May 2003, 7 May 2004, Finance Committee

Annual Report of the Health Committee for the Parliamentary Year 7 May 2003 to 6 May 2003, 7 May 2004, Health Committee

Annual Report of the Justice 1 Committee for the Parliamentary Year 7 May 2003 to 6 May 2003, 7 May 2004, Justice 1 Committee

Annual Report of the Justice 2 Committee for the Parliamentary Year 7 May 2003 to 6 May 2003, 7 May 2004, Justice 2 Committee

Annual Report of the Local Government and Transport Committee for the Parliamentary Year 7 May 2003 to 6 May 2003, 7 May 2004, Local Government and Transport Committee

Annual Report of the Procedures Committee for the Parliamentary Year 7 May 2003 to 6 May 2003, 7 May 2004, Procedures Committee

Annual Report of the Public Petitions Committee for the Parliamentary Year 7 May 2003 to 6 May 2003, 7 May 2004, Public Petitions Committee

Annual Report of the Standards Committee for the Parliamentary Year 7 May 2003 to 6 May 2003, 7 May 2004, Standards Committee

Annual Report of the Subordinate Legislation Committee for the Parliamentary Year 7 May 2003 to 6 May 2003, 7 May 2004, Subordinate Legislation Committee

Report on the Implementation of the Reform of the Common Agricultural Policy in Scotland, 8 May 2004, Environment and Rural Development Committee

Report on the Financial Memorandum of the Breastfeeding etc. (Scotland) Bill, 12 May 2004, Finance Committee

Report on the Financial Memorandum of the School Education (Ministerial Powers and Independent Schools) (Scotland) Bill, 12 May 2004, Finance Committee

Report to the Finance Committee on the Scottish Executive Budget 2005-06, 18 May 2004, Environment and Rural Development Committee

Report to the Finance Committee on the Annual Evaluation Report, 18 May 2004, Health Committee

Constitutional Reform Bill, 27 May 2004, Justice 2 Committee

Stage 1 Report on Tenements (Scotland) Bill, 27 May 2004, Justice 2 Committee

Report on the Financial Memorandum of the Emergency Workers (Scotland) Bill, 26 May 2004, Finance Committee

Civil Partnership Bill - UK Legislation, 1 June 2004, Justice 1 Committee

Joint Report with the Justice 2 Committee on the Budget Process 2005-06, 2 June 2004, Justice 1 Committee

Report on Broadband in Scotland, 20 May 2004, Enterprise and Culture Committee

The 2002-03 Audit of the Scottish Parliamentary Corporate Body, 9 June 2004, Audit Committee

Two Minor Changes to Standing Orders, 10 June 2004, Procedures Committee

Changes to Section 10 of the Code of Conduct for Members of the Scottish Parliament, 10 June 2004, Standards Committee

Report on Research Commissioned in Session 1 on Behalf of the Standards Committee of the Scottish Parliament into Aspects of the Cross-Party Group System, 11 June 2004, Standards Committee

Scottish Executive's Further Response to 2nd Report 2004: Report on Scottish Water, 14 June 2004, Finance Committee

Stage 1 Report on School Education (Ministerial Powers and Independent Schools) (Scotland) Bill, 15 June 2004, Education Committee

Antisocial Behaviour etc. (Scotland) Bill as Amended at Stage 2, 15 June 2004, Subordinate Legislation Committee

The Repatriation of European Regional Development Funding and the UK Government's Proposals: An Inquiry into the Impact in Scotland, 17 June 2004, European and External Relations Committee

Stage 1 of the 2005-06 Budget Process, 18 June 2004, Finance Committee

Local Governance (Scotland) Bill as Amended at Stage 2: Delegated Powers Scrutiny, 18 June 2004, Subordinate Legislation Committee

Report on the Financial Memorandum of the Prohibition of Smoking in Regulated Areas (Scotland) Bill, 23 June 2004, Finance Committee

Relocation of Public Sector Jobs, 24 June 2004, Finance Committee

Complaint Against Kenny MacAskill MSP and Tricia Marwick MSP, 29 June 2004, Standards Committee

Renewable Energy in Scotland, 30 June 2004, Enterprise and Culture Committee

A New Procedure for Members' Bills, 1 July 2004, Procedures Committee

Overview of the National Health Service in Scotland 2002-03, 2 July 2004, Audit Committee

Interim Report on the Area Tourist Board Review, 2 July 2004, Enterprise and Culture Committee

Reporter's Report into the Decision of the European Commission in the Case of Ryanair and Charleroi Airport: Initial Findings, 7 July 2004, European and External Relations Committee

Report on the Scottish Executive's Implementation of Recommendations of the "It's Everyone's Job to Make Sure I'm Alright" Report, 8 July 2004, Education Committee

Stage 1 Report on the Breastfeeding etc. (Scotland) Bill, 20 July 2004, Health Committee

2.5 Parliamentary Bills (01 May 2004 – 31 July 2004)³⁸

Executive Bills in Progress (latest stage reached):

- Emergency Workers (Scotland) Bill (Stage 1)
- Fire (Scotland) Bill (Introduced: 28 June 2004)
- Local Governance (Scotland) Bill: Passed on 23 June 2004, awaiting Royal Assent
- School Education (Ministerial Powers and Independent Schools) (Scotland) Bill (Stage 2)
- Tenements (Scotland) Bill (Stage 2)
- Water Services etc. (Scotland) Bill (Stage 1)

Members' Bills in Progress (latest stage reached):

- Breastfeeding etc. (Scotland) Bill (Stage 1)
- Fire Sprinklers in Residential Premises (Scotland) Bill (Stage 1)
- Prohibition of Smoking in Regulated Areas (Scotland) Bill (Stage 1)
- Prostitution Tolerance Zones (Scotland) Bill (Stage 1)

Private Bills in Progress:

- Edinburgh Tram (Line One) Bill (Preliminary Stage)
- Edinburgh Tram (Line Two) Bill (Preliminary Stage)
- Stirling-Alloa-Kincardine Railway and Linked Improvements Bill: Passed on 1 July 2004, awaiting Royal Assent
- Waverley Railway (Scotland) Bill (Preliminary Stage)

Executive Bills Passed:

- Antisocial Behaviour etc. (Scotland) Bill: Passed on 17 June 2004, Royal Assent on 26 July 2004
- Criminal Procedure (Amendment) (Scotland) Bill: Passed on 28 April 2004, Royal Assent on 4 June 2004
- Education (Additional Support for Learning) (Scotland) Bill: Passed on 1 April 2004, Royal Assent on 7 May 2004
- National Health Service Reform (Scotland) Bill: Passed on 6 May 2004, Royal Assent on 11 June 2004
- Nature Conservation (Scotland) Bill: Passed on 5 May 2004, Royal Assent on 11 June 2004

Proposals for Members' Bills (01 May 2004 – 31 July 2004)

Five Members' Bills have been proposed this quarter (all have gained enough support from other MSPs to merit being considered by the Parliament). The five proposals in order of date lodged are:

- Sale of Homes to Pay for Residential Accommodation Bill (John Swinburne, SCUP)
- Commissioner for Older People (Scotland) Bill (Alex Neil, SNP)
- Nutritional Composition and Value of Food and Drink (Scotland) Bill (Shona Robison, SNP)
- Proposed Local Government Elections Bill (David Mundell, Conservative)
- Proposed National Register of Tartans Bill (Jamie McGrigor, Conservative)

As of 31st July 2004, legislative time has been found to consider four of the 39 Members' Bills that have gained enough support this session to be considered by the Parliament (see last report for details).

2.6 Cross-Party Groups

The number of cross-party groups approved by the Standards Committee increased from 47 to 49 this quarter as both the cross-party group on Tackling Debt and the cross-party group on Funerals and Bereavements joined the list of groups approved by the Standards Committee. The Standards Committee published a report on 11th June 2004 outlining research findings commissioned in Session 1 into aspects of the cross-party group system (see discussion above).

3. The Media

Philip Schlesinger

3.1 A Gaelic channel?

On 9 June, Tessa Jowell, the UK culture secretary accepted that overall responsibility for Gaelic broadcasting lay with her ministerial portfolio. This represented a noteworthy lobbying success for the Gaelic lobby, which has been advocating the development of a digital channel. The secretary of state had come under increasing pressure to meet the UK's obligations under the European charter on minority and regional languages. The Gaelic channel is to come under consideration as part of the BBC's current charter review and Ofcom's review of ITV licensing and of digital broadcasting. Because broadcasting is a reserved power, there has been a lack of clarity about the precise role to be played by the UK government and the Scottish Executive in Gaelic broadcasting's further development. Campaigners are looking for a boost to the Gaelic media fund, which is handled by Edinburgh and for further resources from London. Gaelic's relative disadvantage compared to that of Welsh language broadcasting does not play well in Brussels.³⁹

3.2 A bigger network stake for Scotland

A better deal for Gaelic broadcasting is only part of the agenda now being pursued by the Scottish Screen Industries Summit Group. This is a lobby that draws in support from across the TV, film and games industries and which has been forging close links with the Scottish Executive, and in particular culture minister Frank McAveety, in order to try and present a coherent agenda for developing Scotland's creative industries.⁴⁰ The SSISG has urged the regulator, Ofcom, not to allow BBC Scotland to become the only provider of Scottish-specific public service broadcasting, arguing that ITV, Five and Channel 4 should continue to provide such programming. The group have also argued that Scotland should receive a 'proportionate' share of funding, asking for terrestrial broadcasters to buy 9 per cent of their commissions from Scottish producers by 2009. At present, Scotland's share of terrestrial network production is 3 per cent. Scotland's population is 9 per cent of that of the UK. Another policy plank has been to press for children's production in the BBC and ITV to be relocated to Scotland. The SSISG are also pressing for a Channel 4 commissioning department to be located in Scotland and for Five to set up an office north of the border. As we have already reported, there is increasing nervousness in Scotland about Manchester becoming the main broadcasting centre outside London.⁴¹

3.3 Pacific Quay by 2007

On 8 June, Glasgow City Council gave the final go-ahead for the BBC's Clydeside Pacific Quay development. Some 1200 staff will decamp from their West End fastness at Queen Margaret Drive, where the BBC has been headquartered since the 1930s. The BBC's new building is estimated to cost over £120m. As predicted, it is proving a major draw and will be the linchpin of the emerging media village on Clydeside. Scottish TV will be joining the BBC on Pacific Quay. Clydeside is already attracting independent producers who are now basing themselves nearby at the former Govan Town Hall.⁴²

3.4 Ups and downs at the BBC

The appointment of Mark Thompson as the new Director-General of the BBC has brought changes at the top of the organisation's management. The executive board has been slimmed down substantially. On the previous 17 person board sat Pat Loughrey, director of BBC nations & regions, with oversight, inter alia, of BBC Scotland. With the new board now only 9 in size, like others Loughrey has been shifted to one of the subordinate committees, in his case the Journalism board. Doubtless, this committee is of key importance for the BBC's output. However, it is one step away from the top tier and this has caused some anxiety among Scots Beeb-watchers, who see a possible demotion of the nations & regions remit. The Journalism board is chaired by deputy D-G Mark Byford, who was at the heart of the Scottish Six farrago in 1998, when he was director of regional broadcasting.⁴³

3.5 Easier does it?

ITV has been lobbying for a reduction in its public service obligations in order to compete more effectively in the multichannel, digital environment. Religious broadcasting does not any longer fit that picture. Nor for that matter do the arts. ITV managing director Mick Desmond has said that programming should concentrate on news, current affairs and regional programming. The regulator Ofcom has signalled a new regime for commercial TV in its recent phase 1 review of television broadcasting. It is expected that Ofcom will allow ITV to slim down its obligations when the licences are renewed at the end of 2004. At present, a key issue is what the licences will cost and the extent to which this might be driven up as public service broadcasting obligations decline. A change in the remit could be assumed to increase audiences and advertising revenues, though it is doubtful matters will be so simple.⁴⁴ It remains to be seen what the outcome of Ofcom's review of ITV will bring. But many observers increasingly see public service broadcasting being centred on the BBC and Channel 4. As Channel 4 continues to signal interest in some kind of merger with Five, we might find that PSB programming is mainly located at the BBC.

3.6 Got you taped, continued

As the Fraser inquiry into the spiralling costs of the Holyrood building project wound to a close, the BBC was attacked for withholding potentially vital evidence by John Campbell QC, the inquiry's counsel. As already reported, *The Gathering Place*, a documentary series on the building project, had taped interviews with key protagonists, First Minister Donald Dewar and architect Enric Moralles, both now deceased. Mr Campbell said that members of the inquiry had watched three hours of edited interviews with these men but attacked the BBC for arrogance and failing to recognise the public interest because it withheld all the original taped interviews. He further suggested that the powers of future inquiries might need to be strengthened. The BBC's lawyer reiterated its argument to the inquiry that it would not surrender material that might compromise its sources and its independence; nor would it break its promises to interviewees.⁴⁵ Following this legal assault, Wark Clements, the independent production company making the programme for the BBC, agreed that any reasonable request to see untransmitted footage would be met after the programmes had been broadcast later this year. This offer followed Ken McQuarrie, Controller of BBC Scotland, saying that he thought disputed footage should be

handed over after broadcast. This line had not been taken by his predecessor, John McCormick.

3.7 Media names in the news

After a long and complex series of negotiations and court cases, the Barclay brothers, owners of Scotsman Publications, have finally secured ownership of the Telegraph group. Much speculation surrounds the future role in the Barclays' new acquisition of Andrew Neil, publisher of the Scotsman group, and widely seen as a controversial figure in Scotland for his stringent views on devolution and Scotland's political class. Will the acquisition of the Telegraph titles affect the content of the Scotsman? As speculation about Neil's role continues, one of his chief detractors, Andrew Jaspán, editor of the *Sunday Herald*, is set to decamp to Australia, to become editor-in-chief of the *Melbourne Age*. Jaspán has been a strong, if often critical, supporter of Scotland's devolved system.

Meanwhile, at a crucial time for the BBC, given the UK government's charter review and Ofcom's public service television review, Sir Robert Smith, national governor for Scotland, has announced that he is stepping down after five years. The new appointment will be a key one at a time of major change in broadcasting, and not least, the many challenges faced in defining the proper scope of public service.⁴⁶ Some of the issues now facing BBC Scotland have been addressed in a collection of charter review essays, published recently in Glasgow.⁴⁷

4. Public Attitudes

John Curtice

4.1 Attitudes towards devolution

The Scottish Parliament has the ability to impact on the people of Scotland across a range of areas. How much impact do you think it has had so far on each of these areas?

%	Huge Impact	A little impact	No impact	Don't Know
Health & Social Work	6	48	38	14
Education and training	7	50	37	13
Justice	5	41	42	17
Environment, Rural Affairs, Farming, Forestry & Fishing	6	41	38	21
Transport	3	41	43	16
Economic Development, Tourism, Natural & Built Heritage	7	43	35	22
Local Government, Housing, Planning	6	40	37	23
Sport & the Arts	5	41	36	23
Social Justice, Equality, Regeneration of Communities and Tacking Poverty	5	42	40	18

Since its inception, the Scottish parliament has passed over 60 Acts. With this in mind do you agree or disagree with the following statements?

%	Agree	Disagree	Don't Know
The Scottish Parliament has had a positive impact on Scottish Life	30	56	14
The Scottish Parliament has had a positive impact on your life	15	75	11
I had expected that the Scottish Parliament would have had a more positive impact	70	18	12
The influence of minority parties such as the Scottish Socialists and the Green parties is good for Scotland	49	26	25
The coalition between Labour and the Liberal Democrats leads to too much compromise of policies	47	27	26

Source: MRUK Research/Scotsman 3-9/11/03

Should Scottish MPs be allowed to vote on English issues in the Westminster Parliament?

	%
Yes	37
No	51
Don't Know	12

Source: System Three/The Herald 27/11-4/12/03

A poll undertaken for The Scotsman in November, albeit only reported at the beginning of January, indicated that the Scottish Parliament is so far thought to have had relatively little impact on life in Scotland, and that such impact as it has had has not met the expectations that people had of it when it was first created. Only 30% reckon that the parliament has had a positive impact on Scottish life, while just half that number think that it has had a positive impact on their own lives. Of course, the degree to which any political institution is thought to have a direct impact on people's lives might be doubted, and certainly it should not be assumed that those who do not think it has a positive impact necessarily believe that it has had a negative impact rather than simply none at all. Indeed previous findings from the Scottish Social Attitudes series have suggested that the predominant view is that the parliament has not made much difference either way (see May 2003 monitoring report). But the finding that 70% state that they expected the parliament to have more impact than it has had in practice is certainly in line with the findings of previous research.

The poll found relatively little differentiation when respondents were asked to evaluate how much impact the parliament has had on specific policy areas. At one end of the spectrum 57% reckon the parliament has had an impact on education and training, at the other 44% think it has had an impact on transport. This narrow range suggests that many people do not have a detailed view about the record of the parliament but rather simply a general overall impression. And in any event it should be noted that the poll failed to establish whether the impact the parliament is thought to have had is considered to be positive or not.

The poll suggested considerable sympathy still exists for Scotland's smaller parties and that some doubts exist about the compromises made by the coalition Executive. But it should be noted that both these questions elicited a high level of don't knows, suggesting a low level of public awareness about the validity of either proposition. At the same time these questions (along with the other items in the second table) were administered using a four point scale and thus respondents could not indicate that they neither agreed nor disagreed, an often popular response on a low salience item. In fact the most common response to the questions was simply to agree (33% and 31% respectively), and it may well be that this was the easy answer chosen by many of those with no particular view on the subject.

A System Three poll for the Herald at the end of November confirmed previous poll findings that people in Scotland would be quite happy for their MPs to eschew voting on English matters in the House of Commons. The poll was taken following a Commons vote in which the votes of Scottish Labour MPs were vital in securing the passage of legislation introducing foundation hospitals in England, and in anticipation that the votes of Scottish MPs might be important (as indeed they proved to be) in securing the second reading of legislation to introduce so-called 'top-up fees' in English universities. It seems that the West Lothian question is not a potential source

of tension between public opinion on the two sides of the border because a majority of people in Scotland agree that there are better things that their MPs can do with their time than voting on English legislation.

%	Ethnic Pakistanis	English Born
Recalled referendum vote		
For	52	39
Against	5	22
Think Scottish Parliament has worked well	62	52
Scotland would be better independent	63	21

Source: Hussain and Miller (2003)

First results of an academic survey of those of Pakistani origin and those born in England who now live in Scotland were presented at a conference at the Royal Society of Edinburgh in November.⁴⁸ Perhaps unsurprisingly the survey found that those who were born in England, who constitute 8% of the population resident in Scotland, were less likely than most people in Scotland to have supported devolution in 1997 or to favour independence for Scotland. More intriguingly, Scotland's Pakistani population (which constitutes 0.6% of the Scottish population and is the country's largest visible minority) were heavily in favour of devolution in 1997 and are more likely to favour Scottish independence than are Scots in general.

4.2 Identity

%	Ethnic Pakistanis	English Born
Scottish, not British	15	1
More Scottish than British	34	7
Equally Scottish and British	35	24
More British than Scottish	6	18
British, not Scottish	5	45

Source: Hussain and Miller (2003)

Recent research south of the border has ascertained that while many from an ethnic minority background are willing to call themselves British, they are reluctant to consider themselves English. The former it seems is regarded as a more inclusive category than the latter.⁴⁹ The same is evidently not true north of the border. Hussain and Miller's survey suggests that nearly a half of ethnic Pakistanis consider themselves to be more Scottish than British. Moreover, although somewhat lower than amongst those who were born in Scotland, a sense of Scottish identity is also common amongst those ethnic Pakistanis who were not born in Scotland. Evidently those who have aimed to develop a civic rather than an ethnic sense of Scottish national identity have had some success so far as Scotland's largest visible minority is concerned. However, it should be noted that national identity has a relatively low

salience for most of Scotland's Pakistani population; 60% say they feel more Muslim than any of Pakistani, British or Scottish.

People born in England, however, are markedly less willing to adopt a predominantly Scottish national identity, even though many have relatives born in Scotland. Indeed nearly one in four consider themselves to be English more than they do British or Scottish. Moreover, no less than 45% say that you have to have been born in Scotland to be 'truly Scottish', a statement with which only 24% of ethnic Pakistanis agree. Evidently many of those born in England still adopt an ethnic view of national identity.

4.3 Attitudes towards other issues

How do you feel about the amount of money given to the arts in Scotland?

	%
Too much	21
About the right amount	30
Too little	25
Don't Know	24~

Source: System Three/The Herald 5/1-11/1/04

Which arts should receive the most public funding?

	%
Theatre	36
Traditional music	31
Classical Music	4
Opera	2
Ballet	2
None	11
Don't Know	15

What should be the main objective of arts spending?

%	All	Men	Women
Boosting jobs and tourism	46	50	41
Increasing the involvement of children	35	29	41
Creating art of international standard	9	8	9
None	2	2	2
Don't Know	8	10	7

Source: System Three/The Herald 5/1-11/1/04

Arts funding in Scotland has been the subject of some controversy in recent months. On the one hand there has been a successful campaign to establish a national theatre in Scotland, albeit one that 'brands' productions by existing theatre companies rather than establishes a new national company. On the other hand, Scottish Ballet has opted to become a modern dance company while Scottish Opera appears to be heading for yet another financial crisis that may require it to reduce staff, leading to accusations in

some quarters that these arts are inadequately funded and their fate is an indication of a tendency towards small mindedness amongst Scottish Parliament politicians. At first glance a System Three/Herald suggests the position of the Executive matches the public mood. Theatre is reckoned the most deserving of arts funding while few think that opera or ballet should receive the largest slice of the funding cake. But whether even lovers of ballet or opera think it should consume the *largest* slice of arts funding is perhaps to be doubted. Still those who argue that the Scottish Arts Councils should receive more money in order to give more generous support to Scottish Opera and Ballet do not appear to have public support for their views. Equally with only one in ten feeling that the aim of arts funding should be to produce work of international quality, claims that Scottish Opera should receive more funds so that it can repeat the success of its recent critically acclaimed Ring Cycle are evidently not widely persuasive.

In recent weeks Scottish Ministers have seemingly been testing the water by giving unattributable briefings about the possibility of introducing a ban on smoking in public places following a consultation on the subject to be launched in the summer. At the same time the Chief Medical Officer for Scotland has called publicly for such a ban while a private members bill that would ban smoking in pubs and restaurants has begun its passage through the Scottish Parliament. A System Three poll undertaken for The Herald in January found that 52% were in favour of a ban on smoking in public places while only 36% were opposed. There are however sharp differences of view between different sections of the population. No less than 73% of those in the AB social grades support a ban compared with only 39% of those in the DE groups. Meanwhile those aged 55 plus (59%) are evidently more in favour than younger people (44%). Evidently while such a ban might be widely welcomed it would still be the subject of some considerable controversy, and courting such controversy has not been a prominent feature of the current administration.

4.4 The Scottish Six

In providing news between 6pm and 7pm for viewers in Scotland, there are two alternatives I'd like you to consider.

OPTION 1, the first option is for one programme running from 6pm-7pm that is produced and presented in Scotland which covers both the main news from Scotland as well as the main UK and international news, edited to reflect a Scottish perspective. How interested would you be in this?

OPTION 2, the second option, is the current arrangement of the two programmes between 6pm and 7pm, where the 6 o'clock news is produced and presented for the whole of the UK, followed by Reporting Scotland, which is produced and presented in Scotland. How interested would you be in this?

55% said they would be interested in option 1, 63% in option 2.

If you could choose just one of these options, which one would you prefer? OPTION 1, one programme from Scotland, or OPTION 2, the current arrangement of two programmes?

Option 1, 38%; Option 2, 45%, Don't know, 17%.

Source: Simon Priest Associates for BBC Scotland, June-October 2003

Just before Christmas BBC Scotland announced the results of a review of its journalism. As part of this review the corporation revisited the question as to whether a separate version of the Six O’Clock News should be broadcast from Glasgow in place of the programme made in London. This issue was the subject of some considerable controversy in the late 1990s, with the advocates of a ‘Scottish Six’ arguing that a London based programme would not provide adequate coverage of the distinctive debates and news agenda that would be created by the advent of a Scottish Parliament. As part of its review BBC Scotland commissioned some survey research. This found a narrow majority in favour of keeping the London based news followed by BBC Scotland’s ‘Reporting Scotland’ evening news bulletin rather than having a Scottish Six; 45% backed the status quo, 38% a Scottish Six. Perhaps more important however was the finding from qualitative research that, despite the passion the subject has generated in some quarters, the issue is not a high profile one for most members of the public. In any event this apparent lack of enthusiasm, in combination with the fact that Reporting Scotland currently outperforms its ITV equivalents, was enough to persuade the BBC to retain the status quo although it has promised to keep the subject under review.⁵⁰

4.5 Party Fortunes

Holyrood Vote Intentions										
	Con		Lab		Lib Dem		SNP		Others	
Vote	1	2	1	2	1	2	1	2	1	2
	%	%	%	%	%	%	%	%	%	%
27/11-4/12/03	15	13	35	28	11	14	30	28	9	17

The Other votes are divided as follows: -

	SSP		Green	
Vote	1	2	1	2
	%	%	%	%
27/11-4/12/03	7	8	1	4

Westminster Vote Intentions					
	Con	Lab	Lib Dem	SNP	Others
	%	%	%	%	%
27/11-4/12/03	17	42	12	24	5

The principal Other votes are for the SSP who scored 4%.

Source: System Three/The Herald

System Three has undertaken regular polling of vote intentions for The Herald since 1974 when the SNP made its first major electoral breakthrough, and Scottish politics no longer appeared simply to be a sub-species of British politics. But in recent years System Three’s record has been widely criticised, seemingly unable or unwilling to overcome an anti-Conservative bias in its polling figures, while Labour’s dominance of the electoral landscape has often meant that The Herald has struggled to generate interesting copy from the polls. At the same time the new owners of The Herald, NewsQuest, have been seeking to reduce costs. Thus the paper has decided to terminate its regular polling contract with System Three. As no other news

organisation now regularly commissions polls this decision means that Scotland will be bereft of any regular measure of voting intentions for the first time in thirty years.

Ironically, System Three's final poll of voting intentions, undertaken in late November following the replacement of Iain Duncan Smith by Michael Howard as UK leader, produced the best figures ever for Scottish Parliament voting intentions in any poll the company has ever conducted, thereby enabling the party to supplant the Liberal Democrats from third place. For all the distinctiveness of Scottish politics evidently developments south of the border can still have an impact on the country's political landscape.

So it seems can international events too. Miller and Hussain's survey of ethnic Pakistani's suggests that this group deserted Labour in droves at the time of the 2003 Scottish Parliament election, which took place immediately after the invasion of Iraq. Whereas 70% said they voted Labour in 2001, just 34% did so in 2003. The principal beneficiaries appear to have been the anti-war SNP for whom support rose from 17% to 45%. This is in stark contrast to recent research in England which suggests that the Muslim community there has switched heavily to the Liberal Democrats.⁵¹ Coupled with the evidence on the willingness of ethnic Pakistanis to embrace a Scottish national identity and independence, this appears to be further evidence of a distinctly civic flavour to Scottish nationalism.

4.6 Local Government by-elections

15/1/04 South Ayrshire, Dundonald	% vote	Change in % vote since 2003
Conservative	55.8	+2.4
Labour	26.4	-1.1
Liberal Democrat	5.2	I
SNP	12.6	-6.5

Turnout 62.0 (+4.4) (All Postal Ballot)

I Fought by-election, did not fight May 2003 election.

Source: <http://www.gwydir.demon.co.uk/byelections/>

One by-election held this quarter has also provided some encouraging news for the Conservatives. The party retained the South Ayrshire seat of Dundonald, recording a slight increase in its share of the vote despite the intervention of a Liberal Democrat candidate. The result means the council remains hung between the Conservatives and Labour with 15 seats apiece. The by-election was held by post, and as on previous occasions, this appears to have stimulated a turnout well above the norm for a local government by-election.

5. Scotland/UK Relations

Alex Wright

5.1 Scottish Parliament (Constituencies) Act 2004

On July 22nd 2004 the Scottish Parliament (Constituencies) Act 2004, received Royal Assent. This brings to an end the long running saga over the number of MSPs at Holyrood (see previous Monitor reports). Under the Scotland Act (1998), the number of Scottish MPs at Westminster was due to be cut, because prior to devolution, Scotland had been over-represented. Now the population of each Westminster constituency would be similar to that of England. As a consequence there would be 59 instead of 72 Scottish MPs. However, as the boundaries for Holyrood's constituency MSPs were based on those of their colleagues at Westminster, it followed that if the latter faced a cut back, the same would apply to MSPs. That would have meant that the number of MSPs would have been reduced from 129 to 106.

The possibility that there would be fewer MSPs caused consternation amongst sections of Scottish society and that led to a consultation exercise during between December 2001 and March 2002. According to the Scotland Office 'a clear majority was in favour of retaining the Scottish Parliament at its current size'. The Scottish Parliament (Constituencies) Act 2004 replaces Schedule 1 of the Scotland Act (1998), however the number of MPs will be cut as planned. The Boundary Commission has until December 2006 to submit its final recommendations to the Scottish Secretary.⁵²

5.2 New Commission on Boundaries and Voting Systems

Although the decision has been taken not to cut the number of MSPs at Holyrood (see above), that still leaves the twin issues of constituency boundaries and voting systems. One reason why the issue of boundaries had proved to be so contentious during the last few years was that if there was a reduction in the number of MPs but not a corresponding cull of MSPs then those constituencies which stood to be affected would not longer be coterminous (see previous Monitor reports). At the same time there was the concern that the Scottish electorate has to master a variety of voting schemes, including perhaps the Single Transferable Vote for local elections. This could be a recipe for confusion, with the risk that it might contribute to a decline in turnout.

Alistair Darling, therefore decided to establish a commission on Boundaries and Voting systems. The Commission will be chaired by Professor John Arbutnott. On July 21 the remaining 10 members of the Commission were appointed under the guidance of the Office for the Commissioner of Public Appointments. The individuals concerned have not been appointed in a representative capacity but come from diverse backgrounds, including Mike Russell, a former SNP list MSP who is standing for the leadership of the SNP.⁵³

5.3 Attendance of UK Ministers at Committees of the Devolved Legislatures

From time to time committees at the Scottish Parliament have invited UK ministers to attend and provide oral evidence. One such example occurred during the early years of devolution, when the then-European Affairs Committee invited John Reid, the former Secretary of State to appear before it. He declined on the grounds that he was already answerable to MPs and if needed he would appear before the relevant committees at Westminster. For the most part Holyrood can only 'invite' UK ministers, who then can decline if they so wish.

In the past five years, there have only been two occasions when UK ministers appeared before a Holyrood committee. In both instances the individual was the Minister for Europe and each time the person concerned, 'addressed' the committee for Europe and External Relations (see previous Monitor reports). In so doing, they avoided crossing a line by appearing to give oral testimony. However, this has not deterred ministers from the Scottish Executive occasionally appearing before Westminster. In his book *Year Zero*, Mike Watson noted that Wendy Alexander, then a minister in the Executive had herself given evidence to the Scottish Affairs select committee at the Commons. He then observed:

*There is a lack of consistency in the matter which needs to be resolved. As Convenor of the Finance Committee, I can say that we were unanimously of the opinion that our inquiry into EU funding could not be completed without Treasury evidence. The Committee eventually had to accept this in writing, while the European committee completed its report without any UK-level input, a conclusion which was less than satisfactory. Sooner or later this tug-of-war will re-occur.*⁵⁴

The issue of ministerial attendance has re-surfaced in recent months, as Lord Watson thought it would. One such example related to the Parliament's European and External Relations Committee. The committee had been conducting an inquiry into the EU's structural Funds, which as far as Scotland is concerned, look set to decline. When Gordon Brown, the Chancellor, was invited to appear he was apparently unable to do so due to diary commitments. The same applied to Ruth Kelly, the Financial Secretary to the Treasury, who indicated that her primary accountability was to Westminster, whilst Patricia Hewitt, the Trade and Industry Secretary was unable to attend due to other commitments. When the committee offered to send some of its members to London, instead, so they could still meet ministers, this too was rejected. Richard Lochhead, the committee's convener observed:

In carrying out this inquiry, we were disappointed that ministers from the Treasury and the UK Department for Trade and Industry were not prepared to accept our invitation to address the committee in Edinburgh, or even meet informally in London to clarify this uncertainty. This would have helped us understand the issues better, particularly how the 'financial guarantee' would work in practice. We feel this hindered our inquiry and was unreasonable on the part of UK ministers, given the flexibility shown by the committee in offering to meet them in any place and at any time.⁵⁵

As a member of the SNP, it is perhaps unsurprising that Mr Lochhead complained, but the committee was unanimous in its concern, four of whom were members of the Labour party.

Brown, Kelly and Hewitt were by no means the only UK ministers to choose not to appear before a Holyrood committee, Lord Falconer, the Lord Chancellor chose not to give oral evidence to the Justice 2 committee during May. The committee was interested in the Constitutional Reform Bill and its impact on Scotland. Replying to the request to give evidence, he explained:

I believe you readily appreciate that my accountability is to the Westminster Parliament and that it is rightly a matter for Scottish Ministers to account to the Scottish Parliament for the devolved matters within the Bill.

However, his department will provide a memorandum on the Bill, after consultation with the Scottish Executive has been completed.⁵⁶ Devolution Guidance Note 12, offers an insight as to how UK ministers should respond to invitations to appear before committees of the devolved legislatures. The note contained the following missives:

If Ministers are invited to attend in circumstances where they cannot be required to do so then it is a matter for them as to whether they attend or not. Ministers will wish to consider each case on its merits taking into account the following considerations.

1. Ministers' primary duty of accountability is to the UK Parliament, which retains sole authority for non-devolved matters;
2. The relationship between the Minister's responsibilities and the subject of the devolved legislature's enquiry (i.e. how closely linked are the issues? Are there ramifications within devolved areas of UK Ministerial decisions?);
3. Whether the Minister or another UK Government representative has recently attended to give evidence on the same or a closely related topic; or, in the case of the Scottish Parliament, where a Minister has recently given, or been invited to give, evidence to a Commons or Lords Select Committee on the same or a closely related subject;
4. Whether there are particular aspects of the issue which weigh in favour of attendance (e.g. providing an opportunity for the UK Government to explain its policies or position; a high level of media interest in the devolved area or a specific case which has acquired a high profile);
5. Whether the devolved legislature might acquire the information by some other means (evidence may have recently been given to a Westminster Select Committee on the subject or if it is seeking mainly factual material might a memorandum be provided, at least in the first instance);
6. The effect on the Minister's other duties and other calls on his or her time

In an annex on the legal position, there was the conclusion that:

The power of the Scottish Parliament to summon Ministers and civil servants appears to be quite limited.

The note ended with the following instruction:

On all occasions and whatever the intention as regards attendance, Ministers and their officials should deal with the devolved Committees with the same courtesy, respect and promptness as they would use in dealing with Westminster Select Committees. The

Government wishes the devolved arrangements in Scotland, Wales and Northern Ireland to continue operating effectively within the new constitutional frameworks that have been provided. Behaving in the proper way towards the devolved legislatures' Committees is one way of achieving this aim.⁵⁷

5.4 Scottish Legislative Proposals giving devolved powers and functions to UK bodies

There could be occasions where Acts of the Scottish Parliament could under certain circumstances give powers or functions to UK Government Ministers, UK Departments of other UK bodies. Consequently the Scottish Executive and the UK Government have agreed on protocol which sets out the procedures were this to occur. The relevant Guidance note explained:

There can be advantages in such powers or functions being included in the Acts of the Scottish Parliament, not least in terms of ensuring that the legislative effect is transparent to those affected. Examples of the likely use of such powers include requirements that UK Government departments receive information and have the opportunity to act on that information. But at the same time, the UK Government Minister, department or body concerned will need to be confident that its use of such powers is not likely to be challenged by a third party on the grounds that they are outside the Scottish Parliament's legislative competence.

It continued:

In line with the commitments in the Memorandum of Understanding, the Scottish Executive will consult the relevant UK Government department at an early stage when it is considering the possibility of legislation which might give devolved functions to UK Government Ministers, Government departments or other UK bodies, with the aim of securing agreement as to:-

Whether it is appropriate for the Minister, department or body to carry out the task concerned;

If so, which of the alternative approaches is the most suitable in the specific circumstances of the case; and

Arrangements to cover the additional costs which will be incurred in carrying out the tasks, in line with the Treasury's Statement of Funding Policy. Plus related audit and accountability arrangements.

These consultations should also involve the Scotland Office, the Office of the Solicitor to the Advocate General and DCA.⁵⁸

Given the interest in the usage of Sewel motions (see previous Monitor reports), whereby Westminster may enact legislation, with the agreement of Holyrood and the Executive, on matters devolved to Scotland, it will be interesting to see what will be the reaction of MSPs when this procedure is invoked.

5.5 House of Lords Ruling on Scottish Ministers

According to *The Herald*, following a ruling in the House of Lords, Scottish ministers could lose Crown Immunity. The origins of the case relate to a prisoner who secured a judicial review over slopping out conditions at Barlinnie prison. The case is highly complex as on the one hand it would appear that the law cannot force ministers to do something against their will. But the report indicated that the Lords ruled that whether or not Scottish ministers should retain Crown immunity in relation to a given issue, should rest with the Court of Session.⁵⁹

5.6 Former Scottish Minister Criticises the Executive

Brian Wilson, formerly a minister at both the Scottish Office and at the Scotland Office aired his concerns that civil servants exercise too much control at the Scottish Executive. He warned:

There has been a disappointing shortage of creative, innovative ideas during these five years. For those of us who have had an inside view of St Andrew's House, a great deal of what ministers put forward has the stamp of the civil service all over it - cautious, hedged with caveats and uninspiring. My suspicion is that officials are much more firmly in control of policy than they were prior to devolution. The same is true of appointments. I saw a short list recently of names being put forward for a key public post. Three out of the four names were what the civil service was trying to punt as 'safe pairs of hands' seven years ago when I was in the Scottish Office. The Edinburgh-approved magic circle has changed little but the chances of getting ministerial agreement seem to be a little higher.⁶⁰

Mr Wilson is well known for his sceptical views on the worth of devolution. However, he is but one of a number of senior figures in Labour north of the Border who in recent years have maintained that ministers have at times been out-flanked by their officials.

5.7 Constitutional Futures

For some time, the Conservatives have been considering the idea that Scotland might one-day secure fiscal autonomy. Mr David McLetchie, the leader of the Scottish Conservatives, has indicated that he is interested but has recognised the potential pitfalls (see previous Monitor reports). Now Oliver Letwin, the Shadow Chancellor, has declared his support in principle if the circumstances warranted it. In an interview with *Holyrood Magazine*, he said:

If I were Chancellor of the Exchequer, and if the Scottish people came to the conclusion that fiscal autonomy was the right answer, and if the Scottish Conservatives had that view, I would recommend to my colleagues that we accept it.[...] I think this is a matter for our Scottish party. We have accepted the logic of devolution, which is that David McLetchie and his colleagues need to make decisions about what are appropriate applications of basic Conservative principles to the Scottish situation. It is very important that we don't start substituting our judgement for theirs. David has established himself as a major national figure and we have to be sufficiently mature to let him make those judgements.⁶¹

The Conservatives are by no means alone in potentially favouring such a policy, so too are the Scottish Liberal Democrats (see previous reports), although it remains to be seen whether the Liberal Democrats as a whole will give their blessing to this.

Michael Howard, the leader of the UK Conservative party, told fellow party members at their spring conference at Dundee that the Scottish Parliament is 'here to stay'. In anticipation of a Conservative Government in London and a Labour one in Edinburgh he said that the relationship between the two would be based on 'partnership, fairness and mutual respect'. He added, however, that the West Lothian Question had to be resolved and that Scottish MPs could not vote on purely English matters such as foundation hospitals.

6. Scotland/International Relations

Alex Wright

6.1 The First Minister

Speaking at an event to mark the entry of 10 new states to the EU at the Signet Library in Edinburgh, Mr McConnell advised:

Enlargement will bring new challenges to all the governments involved in making the EU work. Persuasion, co-operation and collaboration will be the order of the day. Devolved governments, especially those like Scotland with legislative powers, will have a key role to play in making sense of a growing complexity of decision-making. We are close to the people but also close to the Union. We can not only help the 25 member states to make the right decisions; but also help to make them happen.

An enlarged Europe can be peaceful and prosperous. But if it is to have genuine participation, the EU needs to learn to decentralise too.⁶²

On May 10 the First Minister gave another speech on the EU at a Breakfast Meeting at the European Policy Centre. The speech touched on a number of issues such as Enlargement and the draft Treaty on the constitution of the EU. Given that he is currently the president of RegLeg, a group of regions with legislative powers, it is unsurprising that he was keen to promote the involvement of the regions in the EU. In so doing, however, Scotland's interests were at times subsumed within that of RegLeg – something that is a continuum of the First Minister's approach to foreign affairs. Mr McConnell told his fellow diners:

Regions clearly matter. They have been important throughout our shared history and they will continue to have a crucial role to play for tens of millions of people around Europe.

That is why REGLEG has been working hard under both my Presidency and Franz Schausberger since the Convention on the Future of Europe to secure references in the draft Treaty on the role of the regions and on the protocol on subsidiarity.

This will be the first time that the identity of the regions with legislative powers will have been recognised on the face of a European Treaty. This is important for a number of reasons. It's important that we respect the diverse politics of the regions and ensure that these don't compete with the politics of the European Union. And it's important that the Member States and the legislative regions should be allowed to take responsibility for the policies affecting the citizens they represent.

McConnell then conceded that as far as the regions were concerned, the draft treaty could have been a little bit more explicit about their involvement. He said:

The Treaty references are welcome but they give only a hint of the role of the regions. Of how the regions can contribute to issues at EU level – and about how the EU can adapt to take on board the views of all tiers of government.⁶³

He then cited a number of instances where there was a regional dimension to policy making in the EU, such as the newly established Regional Advisory Council under the Common Fisheries Policy or through the Scottish Drugs Enforcement Agency's involvement in EUROJUST. The First Minister then re-iterated a concern which for

some time now has vexed the Scottish Executive – the centralisation of decision making within the European Commission and the need for greater consultation with the regions at the pre-legislative stage. He observed:

The regions aren't simply making demands of the Union. Instead, we want to contribute constructively and be involved where a regional approach is the most appropriate and effective way to tackle issues of concern to us all. These are the ways in which the regions can play their part – and it's important that the EU acknowledges and respects these roles. That's why we welcome the Commission's move – as part of its Governance initiative – to consult the associations of local and regional authorities, the Commission is acknowledging that talking with the other tiers of government in Europe could bring benefits all round.

It also shows a confidence at EU level to seek to harness those benefits that a decentralised approach can bring. And those benefits could be substantial. But to make this work, we need more than just another mechanism from the Commission – we need a change in culture. We need a change in attitude. Decentralisation needs to be part of the basic thinking of the Commission. That is why, as First Minister of Scotland and President of REGLEG, I will, while welcoming today's meeting, push for the Commission to do more than simply develop mechanisms to engage with the regions. Since the very outset REGLEG has called for consultation with the regions at a pre-legislative stage when our knowledge and experience of delivery issues can be used in shaping future strategy.

In essence, Mr McConnell was warning the Commission against tokenism. In effect, whilst there were references in the Treaty implying that the regions would be more closely involved in policy making, where appropriate, the views of the regions needed to be taken on board – and for that to happen there had to be a change in attitude at the Commission. One of the problems that the Executive has encountered over the years, is a 'one-size-fits-all' approach to EU policy making which not only failed to take account of local needs but which could be wholly disproportional in outcome. For example, a regulation on the purity of river water might have criteria, which were more appropriate to slow moving rivers on the continent, but were less applicable to Scotland, where rivers flow faster for shorter distances⁶⁴. There is also the bureaucratic dimension; transposing EU law can be a drain on the Executive's time and resources. McConnell therefore highlighted that Scotland had its own legal system and that the Commission needed to take this into account:

Scotland, for example, has its own legal system which is of great historical and cultural significance to our people. It is only right that European legislation should be framed in ways which recognise that difference but right also, of course, that Scotland plays its part in delivering European objectives. The time for the EU to reflect on the particularities of the Scottish system is when Commission officials first begin to consider a new proposal – not when the difficulties of transposing a new directive become apparent.

The implication, regarding the final sentence is that there have been a number of problems in the past. As with previous speeches on foreign affairs there was a reference to the value of the Union with the UK. He said:

Both in UK and European terms, Scotland knows that working together within Unions is a source of strength.⁶⁵

In so doing, there could be no chance that Scotland's foreign affairs agenda or McConnell's involvement in the Presidency could be misconstrued as a nascent alternate foreign policy to that of the UK government – something which had proved something of a millstone for his predecessor Henry McLeish (see previous monitor reports).

6.2 The promotion of Scotland Worldwide

The First Minister will be heading a delegation on a visit to China later this year. Those attending will include members of Scotland's business community and representatives from the universities. This is one of a number of such initiatives which are intended not only to raise Scotland's international profile but generate economic dividends as well. Ministers in the Executive will also be targeting 50 countries 'to exploit existing connections'.⁶⁶ The First Minister has also launched a summer offensive to target the international media and tourists who visit the capital during the Edinburgh Festival and the Fringe.⁶⁷ This is a response to a survey which found that people in other countries held Scotland in affection but did not wish to live or work there. Initiatives such as this (and the Fresh Talent Initiative) are intended to encourage migrants to come to Scotland, because population trends suggest that the country's population is gradually declining, with attendant repercussions for the provision of public services.

6.3 D-Day Commemorations

The First Minister found himself on the wrong foot when it became public knowledge that he would not be joining D-day veterans in Normandy to commemorate the allied landings. Instead he was to attend a golf dinner with Prince Andrew in St. Andrews. He was quoted as left 'hanging in the wind' in the face of a public outcry.⁶⁸

6.4 First Minister's London Visit

During July Jack McConnell undertook his first visit to City Hall, where he met the London Mayor, Ken Livingston. During his meeting with the Mayor, he looked at how Livingston has responded to devolution⁶⁹. The Mayor and the Greater London Authority have less power than McConnell and the Scottish Executive, but in the absence of other devolved bodies in England, this marks something of a first step towards possible collaboration and sharing best practice with bodies outwith Wales and Northern Ireland.

6.5 Scottish Executive EU Office Annual Report 2003-4

The Scottish Executive's EU office at Scotland House in Brussels has published its annual report for 2003-4. The report detailed those occasions when Scottish Ministers attended the EU as 'full members' of the UK delegation at the Council of Ministers. These were as follows:

Ross Finnie, Minister for the Environment and Rural Development attended the Environment Council on 2 occasions and the Agricultural and Fisheries Council of 5 occasions, including one session extending over three weeks in Luxembourg to agree reform of the Common Agricultural Policy;

Allan Wilson, Deputy Minister for the Environment and Rural Development, attended the Agricultural and Fisheries Council on one occasion;

Peter Peacock, Minister for Education and Young People, attended the Education, Culture and Youth Council;

Jim Wallace, Deputy First Minister and Minister for Enterprise and Lifelong Learning attended the Competitiveness Council;

Andy Kerr, Minister for Finance and Public Services also attended the Competitiveness Council; and

Cathy Jamieson, Minister for Justice, attended the Justice and Home Affairs Council.

There was also a reference to other visits. For example, Jack McConnell held meetings with Romano Prodi, the President of the European Commission and with Neil Kinnock, a Vice President of the Commission. He also met Commissioner for the Environment, Margot Wallstrom, and NATO Secretary-General Lord Robertson. The publication of this report, was partially in response to the 5th Report of the European and External Relations Committee of the Scottish Parliament. The committee had been concerned that there was too little information about the work of the Executive's EU office. A number of Scottish MEPs had also criticised the work of the Brussels office (see previous Monitor reports).

The section on 'Information Gathering and Dissemination' identifies this as a 'key task' for the office and that 'much of its work involves tracking the work programme of various formations of the Council of Ministers which deal with devolved matters'. The Councils which were of the most relevance to devolved matters were:

- Agriculture and Fisheries Council
- Competitiveness Council
- Education, Youth and Culture Council
- Employment, Social Policy, Health and Consumer Affairs Council
- Environment Council
- Justice and Home Affairs Council

Transport, Telecommunications and Energy Council

As far as reserved matters were concerned, it focused on the following Councils:

- Financial Affairs Council
- General Affairs and External Relations Council

The report also explained that the office had been re-structured during 2003-4, 'to provide greater resource for the organisation of events to increase the visibility of both the office and Scotland. It also stressed that working as part of a 'Team Scotland' was 'paramount'. This last point reflects the concern that in the past Scotland had tended to adopt a piecemeal approach to influencing the EU and that success would be more likely if there was more focus and greater collaboration between those involved.⁷⁰

6.3 European and External Relations Committee

The committee is still to complete its inquiry into the promotion of Scotland world-wide. This was always going to be one of the committee's major projects for the parliamentary session given the breadth of the inquiry's remit. Aside from focusing on the Executive's international affairs' strategy, the committee is also looking at initiatives such as 'Fresh Talent' and Tartan Day.

During the last few months the committee has been involved in something of a stand-off with the First Minister. A committee, where appropriate can 'require' a minister to attend and give evidence or it can 'invite' the minister. The former is obligatory and must be justified legally, the latter is voluntary. The Committee has for some time now been inviting Jack McConnell to attend the committee and give evidence about his role as President of RegLeg. It would appear that he is unwilling to do so. That could be because RegLeg is fairly inactive at the moment (e.g. its website is virtually empty – but see below regarding Sub Rosa). Either way, McConnell might face a legal summons if he continues to avoid attendance at the committee. The situation is complicated further in that he offered to send Andy Kerr, in his place. Mr Kerr does have EU related responsibilities but it would appear that formally he does not hold the EU portfolio (for instance in section 6.2 above, he has not been assigned any such title by the Scottish Executive office in Brussels in their annual report). Keith Raffan, a Liberal Democrat MSP, had indicated that MSPs on the committee were considering requiring him to appear during September, under the terms of the Scotland Act (1998) – a power that so far has not been used.⁷¹

Some MSPs on the committee were vexed when they assembled on May 25. Richard Lochhead, the convener, told his colleagues

We have received a response from the First Minister to our invitation to appear before the committee to speak about his current role as president of the regions with legislative powers group. Unfortunately, as members will note, the First Minister has declined our invitation and suggested that it would be more appropriate for Andy Kerr, the minister with responsibility for external relations, to speak to the committee about Releg's activities.⁷²

This prompted Phil Gallie, a Conservative MSP to remark:

Once again, I find it surprising that the First Minister is not prepared to appear before the committee. His decision seems fairly discourteous to the Parliament, of which this committee is a constituent part. Irrespective of that, I would like some information on this issue. I want to know how many meetings of Regleg have taken place; how many sub-groups the organisation has set up; who, besides the First Minister, has attended Regleg meetings; how many meetings have been attended by Andy Kerr; and what the First Minister and Andy Kerr regard as the positive outcomes of Regleg's establishment.⁷³

It remains to be seen if McConnell will attend but in the meantime it has become clear that in practice he did not 'decline' to attend, instead he simply volunteered an attendance by Andy Kerr. MSPs therefore elected to write to the First Minister once again, in order that he would confirm his non-attendance. When they met on June 22 they were no better off. The minutes of the meeting stated:

Progress with the invitation to the Scottish Executive to brief the Committee on the work of the Regions with Legislative Power Group (Regleg). Members noted the response from the First Minister and noted the Committee's written

questions to him had still to be answered. Members agreed to ask the Clerk to contact the First Minister's office to advise the First Minister of their discussion and agreed to pursue the questions with a view to having them answered in time for their first meeting after the summer recess. Members also asked the Clerk to liaise with the Executive to ensure a Minister appears at the Committee at its first meeting in the autumn.⁷⁴

Whilst this may be little more than a storm in a tea-cup a number of issues are at stake. First, there is the issue of ministerial accountability. Andy Kerr is not President of Releg and it could therefore be supposed that he would be ill-equipped to answer questions about it. Second, by avoiding 'declining to attend' the First Minister seems to have circumvented the issue of whether or not he would be 'obliged' to attend. It remains to be seen what happens in the autumn.

6.4 Sub Rosa

The Executive, it would appear now has its own *Sub Rosa* confidential, high level European Policy Forum, sponsored by an informal partnership between Executive, Scottish Enterprise and Highlands and Islands Enterprise. The Executive's website advises:

The Exercise is intended as a Scotland-led contribution to the EU policy formulation process. It is not part of any lobbying strategy. The aim is to provide a facility where senior European Commission officials might have an opportunity – in *a totally confidential* setting (the Executive's italics) – to exchange views with, and receive ideas from, key players selected from a wide range of Member States and regions, including Acceding Countries. The forum is for officials rather than politicians.

It would appear that the most recent meeting was held in April 2004 where the emphasis was on subsidiarity. Participants included members of the Executive, the European Commission, the European Council, the Committee of the Regions, the European Court of Justice, the Council of Europe, National Governments, Brussels' offices of the regions in the Association of regions with legislative powers (Releg), representatives of local and regional authorities, and academics. Given that officials were present from democratically elected bodies such as the European Parliament and local government, it seems odd to say the least that apparently no officials were present from Scotland's own parliament – given that Sub Rosa is a 'Scottish led initiative'.⁷⁵

7. Local Government

Neil McGarvey

Key events in local government this quarter have been developments in education policy – the largest item of expenditure on municipal budgets, Gordon Brown’s CSR announcement and its implications, the latest developments on electoral reform for local government and the establishment of an independent review on council tax.

7.1 Scottish Education policy

The Convention of Scottish Local Authorities, which represents 31 of the country's 32 councils, accused the Scottish Executive of not trusting local government to do its job on schools. COSLA were not impressed with ministerial plans to follow the lead of the Department of Education in England and give ministers new powers to intervene in ‘failing’ schools. These plans form part of the School Education (Ministerial Powers and Independent Schools) (Scotland) Bill. COSLA defended the existing system based around the Inspectorate of Education and argued that the new powers reflected the ‘centralising agenda’ (see previous quarterly reports). At present, there is no statutory power either for the Inspectorate of Education or ministers to ensure an authority or manager of an independent school implements recommendations made in inspection reports. At present ministers can intervene only if a local authority or school board breaches a specific statutory duty on the provision of education. Ewan Aitken, Cosla education spokesman, said the scheme had been announced without warning and risked undermining the positive relationship developed between central and local government since devolution.⁷⁶

In a separate development, plans by the Department of Education to remove significant funding powers from councils south of the border would increase the differentiation in policy north and south of the border. The proposals are designed to give English secondary schools greater freedom from local authority control and head-teachers and boards of governors increased powers on the curriculum, the appointment over teachers, and staff pay. In Scotland the local government education lobby lined up against similar policies being introduced in Scotland, with the Association of Directors of Education in Scotland, COSLA, EIS and Head Teachers' Association of Scotland all commenting negatively. They need not worry as the Education Minister, Peter Peacock, said he had no plans to remove education authorities' current powers.⁷⁷

The approach to education reform in Scotland would appear to be less radical. There are at present three major reviews on the curriculum, assessment, and teachers' training, and a major consultation on parents' role in the classroom. Also private sector investment in the school-building programme is higher in Scotland than any other part of the UK. Moreover, it has been reported this quarter that Jack McConnell has agreed to accept the principle of private sector funding from a small number of leading entrepreneurs for a new model of school in Scotland's most-deprived communities.⁷⁸ Whilst there have been no policy announcements as radical as Charles Clarke’s plan for 200 city academies by 2010 in England it would appear the Scottish Executive may be moving in that direction albeit at a much slower pace.

7.2 CSR and public sector cutbacks

The Chancellor's July Comprehensive Spending Review announcement of public sector staffing and expenditure cutbacks was pre-empted in Scotland with ministers announcing the expectation of efficiency savings for all public bodies, including local councils. Andy Kerr warned COSLA that councils would be expected to meet targets by sharing overhead costs in services like IT, payroll and pensions. This was in the context of a three-year plan to attack "waste, bureaucracy and duplication in Scotland's public sector" and make sure every pound had a positive impact. In a separate speech Jack McConnell emphasised that better productivity in the public sector in Scotland was vital for the economy. These announcements echoed moves by Gordon Brown to cut 40,000 Civil Service jobs across the UK by 2008. It was noted by some commentators that Scotland's councils have not been growing at the same rate as other public sector bodies post devolution. Council workforce has grown by a quarter of the rate of the executive and its public bodies, rising by 4.3% to 244,393 in 2003.⁷⁹

7.3 STV

The long and slow journey to electoral reform for local elections that has been ongoing since 1999 took a step forward this quarter when the final stage of the bill to bring single transferable vote to local elections was passed. The Local Governance (Scotland) Bill finished its passage through the Scottish Parliament. The Scottish Executive comfortably saw off last-minute attempts by the SNP, Scottish Socialists, Tories and two Labour rebels to derail it. The move is expected to produce more hung councils, with Labour, which has outright control of 13 of the country's 32 councils, set to end up the biggest loser. The law also lowers the minimum age for councillors from 21 to 18, and introduces severance payments for councillors who stand down before 2007. It also allows local authorities to give councillors a salary and pension - at present they receive a basic allowance of £7000 a year and no pension. The bill was passed at stage three by 96 votes to 18 - a surprisingly large majority given the opposition and controversy it has caused in local government. In an effort to influence MSPs, 'Fairshare' - a pro-reform all-party group - published survey findings just prior to the vote suggesting around 72% of respondents agreed with PR for local elections with only 9% disagreeing.⁸⁰

7.4 Council Tax

Council tax continues to remain high on the Scottish political agenda. New figures released this quarter reveal that the average council tax bill has increased by 50% since local government reorganisation in 1996. The average bill for a Band D home rose from £708 in 1996-97 to £1009 in 2003-4.⁸¹ In an effort to diffuse the issue the Executive has announced an independent review of council finance. Surprisingly the membership of the review body did not include any representative from COSLA - the Executive argued that it should be independent of both local and central government. The review was part of the partnership agreement between the coalition partners. There is scope for the issue to cause tension between the Liberal Democrats and the

Labour Party – the former has long campaigned for some form of local income tax while the latter appears to be more comfortable with tinkering with the present council tax.⁸²

In a separate announcement the Executive finance minister, Andy Kerr outlined plans to reconsider the 50% rebate given to owners of second homes. He did this at a social housing project in Largoward, Fife an area where first-time buyers are finding it hard to get on the property ladder due to high price and the high numbers of holiday homes in the area. Councils such as Highland have long campaigned for a review of the 50% local tax rebate for second homes.⁸³

Other news of note

- Edinburgh City Council is to be the first in the UK to appoint an anti-social behaviour ‘czar’. This reflects this issue’s continued prominence on both the local and national policy agenda.⁸⁴
- Five Scottish councils could start housing asylum seekers next year, sharing the responsibility with Glasgow. According to the Scottish Refugee Council, Edinburgh, Fife and West Dunbartonshire local authorities have all been in discussions with the National Asylum Seeker Support Service (Nass) since last year. Aberdeen and South Lanarkshire are also thought to have had discussions with Nass about options after Glasgow City Council's five-year contract to house asylum seekers ends next March. At present, Glasgow is the only one of Scotland's 32 councils to house asylum seekers under the Home Office's dispersal programme, which is designed to relieve pressure on services in London and South-east England.⁸⁵
- In a reversal of the Thatcherite right-to-buy housing policy South Ayrshire is about to become the first council in Scotland to ban its tenants from buying their homes to safeguard its dwindling stock of social housing. The council is due to confirm an official move to suspend the right to buy for 1449 council houses for five years. If the Scottish Executive endorses the application, the ban will start on October 1. Councils were given the right to apply for pressured area status under the Housing (Scotland) Act 2001. After losing more than 40% of its housing stock through the right to buy, it now has one of Scotland's lowest levels of social housing - 20% of all housing against an average of 32%.⁸⁶

9. Legal Disputes

Barry Winetrobe

9.1 Hunting Act judgment

The main legal story this quarter was the judgment in the Court of Session on the validity of the *Protection of Wild Mammals (Scotland) Act 2002*.⁸⁷ This challenge had been rejected at first instance the day before the Act came into effect in the summer of 2002,⁸⁸ and the Act had meantime been upheld on different grounds in June 2003.⁸⁹ While it was not surprising that the Court of Session again rejected the pro-hunt lobby's challenges on ECHR grounds, what was said by the Lord Justice Clerk, Lord Gill, is potentially important for the future judicial treatment of challenges, especially on the ground of breach of Convention rights, both to Acts of the Scottish Parliament (ASPs) and even to non-legislative actions and proceedings of the Parliament itself.

The legislative competence of the Scottish Parliament is defined in the *Scotland Act 1998*, especially in s29, which lays down five grounds on which an Act can be outwith competence, and therefore not valid law. Though most of these grounds can probably be applied by the courts fairly straightforwardly – e.g. does the Act deal with Schedule 5 reserved matters, purport to relate to matters outwith Scotland, modify any Acts protected from modification by Schedule 4? – the idea that a devolved statute (or a provision within it) is “incompatible with any of the Convention Rights” potentially requires a more subjective and substantive form of judicial scrutiny. This is because the ECHR rights are written, as is common with ‘Bills of Rights’, in very broad terms (eg ‘right to life’; ‘freedom of expression’), and some of the more important ones are subject to qualifications described in equally general terms (eg ‘necessary in a democratic society’). How courts go about testing the compatibility of legislation is a sensitive ‘separation of powers’ issue, involving the fundamental constitutional relationship between judiciary and legislature/executive.

For UK Acts, the *Human Rights Act 1998* sets out guidance on interpretation (s3) and, because courts cannot quash Westminster statutes, provides a mechanism whereby they can declare them incompatible with Convention rights (s4). This is a process which is designed to preserve the constitutional doctrine of the legislative supremacy (commonly described as ‘sovereignty’) of Parliament, while putting pressure on legislators to amend the offending provisions. The situation is different for devolved legislation, where the combined effect of the Human Rights Act and the Scotland Act means that the courts, though still encouraged to find a compatible (and so

legislatively competent) interpretation of a challenged ASP, can declare an incompatible ASP *ultra vires*. In this important sense, the courts have a power of judicial review more akin to that of the US Supreme Court, and it is they, not the Scottish Parliament, which has ‘the last word’ on devolved legislation.

This power, together with the parallel ability to review the actions and proceedings of the Parliament as it is, unlike the Westminster Parliament, a creature of statute with no ‘parliamentary privilege’, puts the courts in a very powerful position vis-à-vis the devolved parliament and the legislation it passes. How the judges carry out their judicial scrutiny functions in particular cases therefore can, in practice, have crucial consequences for devolved governance. If they regard the Parliament as essentially a statutory body, and the legislation it passes as a form of subordinate legislation, this could result in (a) regular challenges, by external individuals and groups as well as by aggrieved MSPs, to the internal affairs of the Parliament, including plenary and committee proceedings, and (b) any controversial ASP being regarded as little more than ‘potential’ legislation until scrutinised by the courts.

On the other hand, the judges could see the Scottish Parliament as not just a statutory body, but as a democratically elected representative parliament, whose activities, including passing legislation, should not be interfered with by the courts other than to ensure that the Parliament does not stray beyond its legal powers or limits. This approach would treat devolved parliamentary governance as worthy of the same respect as UK governance, whatever the details of their respective legal characteristics.

As noted, this is essentially a constitutional question of the proper relationship in a mature representative democracy of the judicial and legislative/executive branches of government (whether national or devolved). In the limited jurisprudence of the first five years of Scottish devolution, the former, more limited judicial perception has been expressed by the then Lord President Lord Rodger in the first major devolution case, *Whaley v Lord Watson* in 2000, when he said, for example:⁹⁰

Some of the arguments of counsel for the first respondent appeared to suggest that it was somehow inconsistent with the very idea of a parliament that it should be subject in this way to the law of the land and to the jurisdiction of the courts which uphold the law. I do not share that view. On the contrary, if anything, it is the Westminster Parliament which is unusual in being respected as sovereign by the courts ... By contrast, in many democracies throughout the Commonwealth, for example, even where the parliaments have been modelled in some respects on Westminster, they owe their existence and powers to statute and are in various

ways subject to the law and to the courts which act to uphold the law. The Scottish Parliament has simply joined that wider family of parliaments.

By contrast, Lord Nimmo Smith in the Adams case at first instance in 2002 took a robust view of the status of ASPs, especially whether they (and their passing by the Parliament) could be challenged on conventional judicial review grounds like irrationality:⁹¹

But, despite the reference in the Human Rights Act to Acts of the Scottish Parliament being subordinate legislation, such Acts have in my opinion far more in common with public general statutes of the United Kingdom Parliament than with subordinate legislation as it is more commonly understood. ... The Parliament is a democratically-elected representative body. It has under section 28(1) a general law-making power, except in relation to reserved matters and the other matters specified in section 29(2). In consequence of this, it can not only pass its own Acts, it can amend or repeal, in their application to Scotland, pre-devolution acts of the United Kingdom Parliament. An Act of the Scottish Parliament, once passed, requires Royal Assent to become law. It is of a character which has far more in common with a public general statute than with subordinate legislation, though it might be preferable to regard it as being *sui generis*.... [T]he Scotland Act is clearly intended to provide a comprehensive scheme, not only for the Parliament itself, but also for the relationship between the courts and the Parliament. ... It necessarily follows that traditional common law grounds of judicial review are excluded, and that there is no room for the implication of common law concepts in considering the legislative competence of the Parliament. This means that it is not open to this court to find that an Act of the Scottish Parliament (or a provision of it) is not law, unless it is outside the legislative competence of the Parliament in one of the respects provided by section 29, that is to say, for present purposes, incompatibility with Convention rights.

In other words, this latter approach would not permit a challenge to an ASP which was based on the ground that, even if it was within the Parliament's legislative competence, it was an unreasonable or improper exercise of the Parliament's limited legislative powers.

Readers will prefer whatever approach most closely matches their perspective of the proper relationship of the courts and the 'political' institutions of government. Those who fear the unrestrained exercise of state power, and the tyranny of temporary majorities, will tend to support the restraining intervention of the judges to preserve

the rule of law and (through the new human rights regime) protect individual rights. Those who take a more positive view of democratic governance, and its power to 'do good', will wish to minimise interference by unelected judges in the political process.

In the most recent case, what may be of lasting importance in the evolving devolution jurisprudence, is the way in which Lord Gill apparently applied the conventional judicial tests to the scrutiny of the legislation passed by a parliament (tests largely devised for the Westminster Parliament) so as to uphold the 2002 Act, but using language which could well open the door to greater judicial intervention in future, potentially more difficult cases. As a flavour of this, see the following extracts from his opinion:

In our assessment of the scope of the Parliament's legitimate discretion in this case, the principal issues are (1) whether the Parliament had before it any proper factual basis for the conclusion that mounted foxhunting with dogs was cruel *per se*; and whether, if it had, it was entitled to make the judgment that the infliction of such cruelty by such means for the purpose of sport and recreation should be proscribed by law; and (2) whether the likely impacts of the legislation would be such that it should not be enacted.

And

The history of the 2002 Act shows that all of these issues were before the legislators at every stage of its progress. Our own conclusion is that there was adequate factual information to entitle the Parliament to conclude that foxhunting inflicted pain upon the fox and that there was an adequate and proper basis on which it could make the judgment that the infliction of such pain in such circumstances constituted cruelty.

Is it appropriate or even correct to regard a parliament acting legislatively as 'exercising a discretion', or being 'entitled to decide' whether to legislate in a particular situation? What happens to the stability of the devolution scheme when a court examines the parliamentary proceedings on a highly controversial Bill that is passed by the Parliament but attacked by outside bodies unhappy with its provisions as breaching their Convention Rights, and decides that the Parliament did not have 'adequate factual information' or the 'proper factual basis' to enable it to exercise its legislative 'discretion' in the way it did? This new judgment may have made such a scenario that bit more likely.

10. Political Parties

James Mitchell

10.1 SNP Leadership campaign

The resignation of John Swinney as SNP leader on 22 June following poor results for the SNP in the European elections has resulted in a leadership contest under the SNP's new constitution. The new constitution provides that the leader and deputy leader are elected by one member one vote and candidates must be nominated of by least a hundred members drawn from at least twenty branches. Single transferable vote is used. In his resignation statement, Swinney stated that 'relentless speculation over my position is obscuring – and ...will continue to obscure – the political objectives of the SNP.' Swinney had won the leadership with 68 per cent of the vote in 2000 and easily defeated a challenge in 2003 (see earlier reports) but was constantly undermined by a few internal opponents and a hostile media. Campbell Martin MSP was suspended for publicly attacking the leader and threatening to leave the party. Press suggestions that Martin's suspension would lead to a splinter group, however, proved imaginary.⁹²

Roseanna Cunningham MSP for Perth, deputy leader, announced her intention to seek the leadership. This meant that there would be elections for both offices by one member OMOV and the SNP announced that its membership stood at 8,209. Initially, two others announced they would stand – Mike Russell who had been a List MSP for the South of Scotland during the first Parliament but lost his seat in 2003 and Nicola Sturgeon MSP, List Member for Glasgow. Alex Neil MSP, List Member for Central Scotland, who had contested the leadership unsuccessfully against John Swinney in 2000, hesitated before announcing that with 'deep regret and reluctance' he would not stand. He stated that he felt he could win but that his leadership would be undermined after announcements by former leader Alex Salmond MP and Fergus Ewing MSP that neither would work with him as leader.⁹³ In a statement, Neil stated, 'In effect, Alex Salmond and Fergus Ewing have vetoed my candidacy.' The irony of someone who refused to serve under John Swinney and undermined Swinney throughout his leadership making this point was not lost on commentators and SNP MSPs.⁹⁴ Neil, previously regarded as a fundamentalist, a term which has lost much meaning post devolution,⁹⁵ disappointed many of his erstwhile supporters from the 2000 contest, when he was defeated by Swinney, suggesting a comparison with Michael Portillo who prepared for a leadership contest challenging John Major but decided against and thereby lost credibility amongst erstwhile supporters. However, the most significant event of the contest was the late decision by Alex Salmond to stand for the leadership despite resolutely ruling himself out immediately after Swinney stood down. Sturgeon withdrew from the leadership contest and announced she would instead stand for the deputy position while supporting Salmond. Pressure on Salmond to stand had come from a number of senior party figures and ordinary party members who had bombarded Salmond with messages urging him to stand.

Initially, three candidates emerged for the post of deputy leader: Fergus Ewing MSP, Christine Grahame MSP and Kenny MacAskill MSP. The last stood on a slate with Nicola Sturgeon but announced he would stand down when Sturgeon announced that she would instead stand for the deputy's post. The deputy's post became important given the likelihood that Salmond will win the leadership and his deputy will have to

lead the SNP's group in the Scottish Parliament. Grahame was associated with Alex Neil's leadership bid in 2000 and throughout the campaign has been highly critical of Salmond, stating she had no intention of being subservient to a leader outside the Scottish Parliament. That a former fundamentalist should now place so much importance on the devolved Parliament is testimony to the death of fundamentalism, even if fundamentalists remain alive and kicking (especially the kicking). Fergus Ewing is seen as on the right-wing of the SNP but has consciously avoided setting a collision course with Alex Salmond during the contest. Early in the campaign, Salmond made contact with Ewing while insisting that he continued to endorse Sturgeon's candidacy. The expectation is that, assuming a Salmond victory, the victory of Grahame for deputy would create serious problems for the SNP but that Ewing would be able to work well with Salmond though not as closely as would Sturgeon. Grahame stated that she would not defer to a London-based leader.⁹⁶

Over twenty hustings have been held throughout Scotland attended by the candidates for both posts. For the most part these have been internal party matters but in a number of cases no effort has been made to keep the wider public or media out. These hustings, as indeed the campaigns generally, have been fairly polite affairs and certainly less bitter than any of the recent four SNP leadership campaigns (in 1979, 1990, 2000, 2003). Predictions of a 'Summer of blood letting' proved wrong.⁹⁷ Differences and jibes have been heard but have been coded. The key issue to have emerged in the contest for the leadership has been whether the leader should be a Member of the Scottish Parliament. Roseanna Cunningham MSP has, inevitably, made much of this. Cunningham has stressed her left-wing credentials but has made little of her republicanism. However, though she is frequently described in the press as 'known as Republican Rose' this is a phrase that is, in fact, very rarely used to describe her ('Republican Rose' is more often seen with the prefix 'known as' than without) and she herself has never made much of her anti-monarchy views. Her campaign team consists of a number of allies from the old '79 Group, a left grouping that was active in the early 1980s which included Alex Salmond as a member. However, she has little support amongst her fellow MSPs. She argued that 'Salmond is from the past' and that she offered a future for the party.⁹⁸ However, her poor performance on a BBC Question Time panel undermined the start of her campaign. Her supporters include Linda Fabiani MSP, Sandra White MSP and Rob Gibson MSP but she also has the dubious endorsement of former SNP member Jim Sillars, noted now only for his carping from the sidelines.

Mike Russell is in the weakest position as a leadership candidate holding no elected position and with no clear path back into the Scottish Parliament. He lost his seat last year having fallen in his place on the party's list. He maintains that he will return to the Parliament at the earliest opportunity though whether this means he would contest the first by-election remains unclear. His position is particularly weak as any by-election which he failed to contest would be seen as a sign that the SNP did not expect to win. It is likely that if he was elected leader he would be able to top the list somewhere in Scotland in order to return to the Parliament. However, the fact that he slipped in internal elections in the last contest for the South of Scotland list suggests that his support is limited. Russell undermined John Swinney's leadership, most notably prior to the European elections when he suggested that if the SNP did not do well 'men in grey kilts' would let Swinney know his time was up. This lack of loyalty and his penchant for gossip amongst journalists may not have endeared him to

the wider membership's patronage. Russell is a former party chief executive and as such understands the workings of the party. However, Russell owed his position as chief executive, as indeed much of his political career, to Alex Salmond. Russell's platform has included a 'top to bottom' reform of the party, though this has not been spelled out in detail, but include supporting membership of NATO and allowing MSPs more freedom.⁹⁹ Russell has not support amongst SNP MSPs.

Alex Salmond's decision to stand for the leadership again was only announced on 15 July, one day before close of nominations. After Swinney stood down, Salmond had quoted General Sherman, 'If nominated, I'll decline. If drafted, I'll defer. And if elected, I'll resign.' However, pressure to stand built up and a week before his decision the signs were beginning to emerge, though not a single journalist in Scotland noticed these, that Salmond was going to stand. Close supporters were aware that he was preparing a bid. Commentators were caught off guard and Labour-supporting journalists who had talked up Salmond to argue that there was no-one else of Salmond's calibre in the SNP were particularly hard hit. Opinion pieces by commentators hostile to the SNP struggled to provide a coherent argument as to why Salmond was not fit to run the SNP.¹⁰⁰ In his statement announcing his decision to stand, Salmond stated, 'I am not just launching a campaign to be SNP leader. Today I am launching my candidacy to be first minister in Scotland.'¹⁰¹ Salmond had the support of all of his Westminster colleagues and easily more MSPs than his competitors combined, though not all MSPs declared their voting intentions. In addition, he won the support of Jimmy Reid, former UCS shop steward and well known commentator. The current convenor of shop stewards at Govan shipyard trades union, though not an SNP member, indicated his support for Salmond and Sturgeon on the grounds that both had a record campaigning for the yard and would improve the quality of Scottish politics.

In what at first sight appeared an unusual endorsement, Alex Neil gave his support to Salmond.¹⁰² However, he also endorsed Christine Grahame's bid for the deputy leadership. In effect, Grahame is the candidate for deputy who Salmond would least like to win and a Salmond-Grahame combination could only spell division at the most senior level inside the SNP. Neil's decision to back Salmond is less supportive than it might at first appear. However exotic the endorsement appears, it will provide Neil with a response in the future to suggestions that he is undermining Salmond.

The expectation is that Salmond will win the leadership comfortably but less certainty surrounds the post of deputy. Whether Salmond's endorsement of Sturgeon will carry her to victory may depend on whether SNP members want to 'balance' Salmond's leadership with someone more critical and then, if so, how critical. The expected performance of the three deputies in the Scottish Parliament, facing Jack McConnell at First Minister's Questions may be significant. Each candidate is a lawyer and has skills associated with that profession.

The leadership contest has resulted in an increase in SNP members, though none of the new or renewing members will have a vote in this contest, improved morale and appears to have helped the SNP's electoral fortunes (polls conducted for the party by a polling organisation suggest that its support is considerably up and the party has recently held a local government seat and taken two others). Swinney's decision to

stand down allied with his reform of the party constitution may prove his most important contribution to the party.

June 22: John Swinney announces he would stand down as SNP leader

July 16: Nominations for leader and deputy leader closed

August 13: SNP members receive ballot papers

August 31: Deadline for return of ballot papers

September 3: Results are announced.

11: Public Policies

Barry Winetrobe

11.1 Change in the Public Services

Public services reform and delivery in Scotland remains highly controversial, especially by comparison with what is perceived to be happening south of the border, and it may be that both policy and financial pressures may be forcing the devolved government to fall more in line with UK policy.¹⁰³ This will encourage the Conservatives, whose leader, David McLetchie, set out his vision of a more individualist devolution.¹⁰⁴ However the Executive's private finance policy for public services is still criticised on grounds of principle and cost.¹⁰⁵ A bill to reform fire services, the Fire (Scotland) Bill, was published on 29 June, based on a consultation exercise last autumn.¹⁰⁶

11.2 Education

Education is an area where more radical reform may appear, with private sector investment in schools.¹⁰⁷ Tertiary education continues to be a big issue for the Executive. Ministers appear to be backing down on controversial plans for the higher and further education sectors, denounced as 'abolishing universities', and the complexities of student finance once top-up fees are introduced south of the border continue to be examined, with further details emerging of how they will treat students under the forthcoming differential university finance regimes north and south of the border.¹⁰⁸ Because of the cross-border impacts, these developments are being closely watched south of the border.¹⁰⁹ A new 4-year pay deal for teachers, worth just over 10%, may cause financial problems for some councils. Education legislation is proceeding apace, as the Education (Additional Support for Learning) (Scotland) Act 2004 received Royal Assent on 7 May 2004, and the School Education (Ministerial Powers and Independent Schools) (Scotland) Bill passed its Stage 1 scrutiny on 24 June.¹¹⁰

11.3 Economy

As usual, economic statistics provided a mixed picture for Scotland. Growth seems to be speeding up, and forecasts seem positive, but concerns remain as to sectors such as manufacturing and financial services, and unemployment seems to be picking up.¹¹¹ The impact of population decline and Scotland's image abroad remain critical issues in the overall economic mix, but in both areas Executive policy has been much criticised.¹¹² The Executive's plan to tackle the population problem (notwithstanding a surprise rise recently due to net immigration), the Fresh Talent Initiative, suffered a blow when it emerged that the Scottish Graduate Scheme to retain foreign graduates may be a pilot scheme for wider UK adoption, rather than a tailored Scottish scheme.¹¹³ The SNP has highlighted what it claims to be a regionally diverse immigration policy in Australia as a model for the UK which could benefit

Scotland.¹¹⁴ The regional aspect of economic performance is not being ignored,¹¹⁵ nor is the vital tourist industry. with the former FM, Henry McLeish, urging greater ambition.¹¹⁶ Scottish Enterprise sparked controversy by suggesting that it should not have a major 'social inclusion' role, a policy switch which seems to be supported by ministers.¹¹⁷

11.4 Transport

Transport policy is complex with potential conflicts between social, economic and environmental demands. Talk of integrated transport policies is easy, but delivery of an acceptable, economic and efficient mix between public and private transport is not. Thus, for example, while road-building proceeds, ministers may becoming more sympathetic to forms of direct pricing, influenced partly by developments in England, such as the apparently successful London congestion charging scheme and the proposed new M6 toll extension between Birmingham and Manchester.¹¹⁸ A transport policy white paper was published on 16 June, confirming the creation of a national transport agency.¹¹⁹ It appears that more rail policy will be devolved.¹²⁰ The likely award of the Scotrail franchise to the First Group, which runs much of Scotland's buses, caused surprise and some concern about possible commercial conflicts which could arise in some localities between the company's bus and rail routes.¹²¹ There was much media discussion in the spring of a new high-speed rail link between Glasgow and Edinburgh, but this is unlikely to happen in the near future, though some additional rail capacity is being developed, and the first private rail bill has been passed by the Parliament.¹²² The controversial tolls on the Skye Bridge are to be abolished at some point.¹²³

11.5 Culture & Sport

Cultural policy is suddenly proving to be a real headache for the Executive, as the arts financing is always guaranteed to attract media scrutiny, with its political overtones of national heritage and pride mixed with issues of subsidising elite interests. The Executive's policy of establishing a review by a Culture Commission seems to be back-firing, and this has been exacerbated by the damaging Scottish Opera crisis.¹²⁴ The latter even reached the top of the Executive, as a story about arts subsidy exploded into a political crisis when it was alleged that the First Minister had leaked unpublished information about assistance to Scottish Opera to a newspaper to deflect critical stories about their policy. The FM did not appear to deny the charge unequivocally at FMQs on 20 May.¹²⁵ Scotland may be considering a bid for the Euro 2012 football championships, after the unsuccessful joint bid with Ireland for the 2008 finals.

11.6 Rural & Environmental Issues

Attempts by the SNP to secure a deal on fishing in return for support in any EU constitution referendum, which had appeared likely in late April, again failed following later talks between Alex Salmond and Jack Straw. Scottish MPs had the

chance to debate fishing policy in a Westminster Hall debate on 29 June.¹²⁶ Both the SNP and the Greens highlighted a GM ban in their European election campaigns, with the Scottish Lib Dems having to defend the different approaches to the issue in the Scottish and UK parties. The Environment and Rural Development Committee published a report on the Executive's implementation of CAP reform.¹²⁷ The Court of Session has again rejected a challenge to the validity of the anti-hunting legislation.¹²⁸ The Executive is consulting on the new Water Services etc (Scotland) Bill, introduced on 14 June alongside its response to the Finance Committee's recent report on the water industry.¹²⁹ Much to the anger of some, and despite a current consultation exercise, the Executive seems to be backing off the idea of a third-party right of appeal in planning applications, heeding warnings by industry and commerce.¹³⁰ The Nature Conservation (Scotland) Act 2004 received Royal Assent on 11 June.¹³¹

11.7 Social Justice Issues

The new Commissioner for Children and Young People, Kathleen Marshall, has been vocal in her early days in office, on matters such as children in the Dungavel Removal centre, and is seeking talks with minister on Dungavel about her concerns. However the Home Secretary has visited the removal centre and praised its work.¹³² Transfer of council housing stock to 'community ownership' is to be extended to Edinburgh, but concern has been expressed at housing policy generally, and the availability of affordable housing in particular.¹³³ A new anti-poverty initiative was launched on 12 July, with the creation of a Community Regeneration Fund, to absorb schemes such as Social Inclusion Partnerships.¹³⁴ The Sewel Motion on the Civil Partnership Bill was debated and agreed on 3 June, and family law was discussed in plenary on 16 June.¹³⁵ The Executive published its draft Charities and Trustee Investment (Scotland) Bill on 2 June for consultation.¹³⁶ As part of a UK Government plan to integrate various equalities bodies (a reserved matter), Scotland is to have a separate commissioner and committee within the proposed Commission for Equality and Human Rights.¹³⁷

11.8 Law & order

Criminal justice has been a troublesome issue for ministers over the quarter,¹³⁸ with the continuation of various prisons related problems, such as escapes and erroneous releases (and the partial publication of the contract with Reliance),¹³⁹ the use of temporary judges,¹⁴⁰ and embarrassing administrative blunders over appealing the 'slopping out' judgment.¹⁴¹ The Scottish Prison Service wants short prison sentences abolished to cut overcrowding and reduce re-offending.¹⁴² The integrity of the rape laws has been under scrutiny.¹⁴³ On the brighter side, the flagship Antisocial Behaviour (Scotland) Bill was passed by the Parliament on 17 June, as the Lib Dems have generally fallen in line with Labour despite obvious misgivings among them, and criticisms from senior police officers and clergy; overall crime rates are falling, and the Lord Advocate is more upbeat on progress in reforming the criminal justice system.¹⁴⁴ The Criminal Procedure (Amendment) (Scotland) Act 2004 received Royal Assent on 4 June.

11.9 Health

Huge inflows of public spending fail to be mirrored in obvious improvements in performance, as (notwithstanding some Executive spin) recent rises in waiting times demonstrate,¹⁴⁵ and an Audit Committee report has questioned whether Ministers are able to measure the effectiveness of their NHS reforms.¹⁴⁶ Concerns grow about a health gap between rich and poor, and public health issues, such as a ban on smoking in public, and tackling obesity, are rising up the political agenda in Scotland as they are in the UK generally.¹⁴⁷ The SSP MSP, Colin Fox, is promoting his proposed Bill to abolish prescription charges, as the Executive's review of the issue is due to be announced after the recess.¹⁴⁸ The National Health Service Reform (Scotland) Act 2004 received Royal Assent on 11 June.

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² <http://www.scotland.gov.uk/pages/news/weekly/000671.aspx>, and see FM/DFM's on-the-record briefing, 28 April: <http://www.scotland.gov.uk/pages/news/2004/04/SENW2388.aspx>

³ May 2004 Report, chapter 1.2

⁴ Interview, *Sunday Herald*, 4 July: <http://www.sundayherald.com/43107>

⁵ See Chapter 11

⁶ Question Time, 24 June: <http://www.scottish.parliament.uk/plenary/or-04/sor0624-02.htm#Col9552>, and points of order during the rest of the sitting; "Minister apologises for late arrival", SE PN, 24 June: <http://www.scotland.gov.uk/pages/news/2004/06/SETCSap.aspx>; "Minister is left eating humble pie", *Scotsman*, 25 June: <http://thescotsman.scotsman.com/scotland.cfm?id=727952004>; "Sheriff ridicules minister's fear", *BBC News*, 17 June: <http://news.bbc.co.uk/1/hi/scotland/3813485.stm>

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⁸ <http://www.scotland.gov.uk/pages/news/weekly/000673.aspx>; "McConnell rules out summer reshuffle", *Scotsman*, 2 July: <http://thescotsman.scotsman.com/politics.cfm?id=755512004>

⁹ "Labour ministers turn on 'monumentally useless' Wallace", *Scotland on Sunday*, 11 July: <http://scotlandonsunday.scotsman.com/politics.cfm?id=793272004>

¹⁰ May 2004 Report, chapter 1.3

¹¹ *Relocation of public sector jobs*, 6th Report, 2004: <http://www.scottish.parliament.uk/finance/reports/fir04-06-vol01-01.htm>; Finance Committee PN, 24 June: <http://www.scottish.parliament.uk/news/news-04/cfin04-002.htm>. On the SNH move, see WA, 11 June: <http://www.scottish.parliament.uk/business/wa-04/wa0611.htm>

¹² <http://www.scottish.parliament.uk/business/wa-04/wa0628.htm>

¹³ <http://www.scottish.parliament.uk/business/wa-04/wa0623.htm>

¹⁴

<http://www.publications.parliament.uk/pa/cm200304/cmhansrd/cm040525/debtext/4052>

- [5-01.htm#40525-01_sbhd0](#);
http://www.publications.parliament.uk/pa/cm200304/cmhansrd/cm040622/halltext/40622h05.htm#40622h05_head0
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- ¹⁷ SE Media Briefing, 12 July: <http://www.scotland.gov.uk/pages/news/weekly/000677.aspx>; “Brown pledges improved services”, *BBC News*, 13 July: <http://news.bbc.co.uk/1/hi/scotland/3888469.stm>; “Executive chiefs use e-mail to reassure worried staff”, *Herald*, 14 July: <http://www.theherald.co.uk/politics/19992.html>
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- ²⁰ <http://www.scotland.gov.uk/about/FCSD/MCG-NW/00018022/2004minrep.pdf>; Scottish Information Commissioner PN, 2 June: <http://www.itpublicknowledge.info/pressrelease5.htm>
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- ²² <http://www.scottish.parliament.uk/plenary/or-04/sor0506-02.htm#Col8253>; SP PN, 6 May: <http://www.scottish.parliament.uk/news/news-04/pa04-029.htm>; SE PN, 6 May: <http://www.scotland.gov.uk/pages/news/2004/05/SEFD389c.aspx>
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- ²⁵ 4 May: <http://www.scottish.parliament.uk/business/wa-04/wa0504.htm>; 14 May: <http://www.scottish.parliament.uk/business/wa-04/wa0514.htm>; 18 May: <http://www.scottish.parliament.uk/business/wa-04/wa0518.htm>; 27 May: <http://www.scottish.parliament.uk/business/wa-04/wa0527.htm>
- ²⁶ <http://www.scotland.gov.uk/library5/government/supwr-00.asp>
- ²⁷ See, for example, <http://www.scottish.parliament.uk/business/wa-04/wa0518.htm> and <http://www.scottish.parliament.uk/business/wa-04/wa0527.htm>
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- ³¹ *Ibid.* p.6.
- ³² For more details of the report see, *Standards Committee*, '4th Report 2004: Report on Research Commissioned in Session 1 on behalf of the Standards Committee of the Scottish Parliament into Aspects of the Cross-Party Group System', 11th June 2004, access via <http://www.scottish.parliament.uk/standards/index.htm>
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- ³⁵ *Ibid.* col. 9624.
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- ⁸⁹ *Whaley v Lord Advocate*, 2004 SC 78, discussed in August 2003 Report, chapter 9.2
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- ⁹¹ *Adams v Advocate General* 2003 SC 171 at 201
- ⁹² Douglas Fraser, 'SNP faces threat of splinter group after rebel suspended', *Sunday Herald*, 9 May 2004.
- ⁹³ *The Herald* July 5, 2004.
- ⁹⁴ *Ibid.*
- ⁹⁵ The terms fundamentalist and gradualist were introduced into Scottish political vocabulary by the author of this piece in the late 1980s as the key fissure within the SNP. The fissure related to attitudes towards devolution with fundamentalists opposing devolution seeing it as a means of blocking independence while gradualists embracing it as a stepping stone to independence. Prior to the introduction of these terms into political debate, the Scottish media and commentators viewed the key tension as being between the left and right. Devolution has altered the internal debate within the SNP though this has yet to be reflected in media coverage where the terms fundamentalism and gradualism are still used – loosely and uncritically.
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- ⁹⁷ *Scotsman*, 23 June 2004.
- ⁹⁸ *Scotsman* 17 July 2004.
- ⁹⁹ *Scotsman* 29 June 2004.
- ¹⁰⁰ See Douglas Fraser, 'Is King Salmond Still Fit to Rule?', *Sunday Herald*, 25 July 2004. This piece has the hallmarks of a disgruntled opponent of the SNP put out by Salmond's decision to stand but struggling to undermine the leadership bid.
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