



The Constitution Unit



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# Nations and Regions: The Dynamics of Devolution

Quarterly Monitoring Programme

Scotland

Quarterly Report  
February 2004



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**The Leverhulme Trust**

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

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## **Chapter 1 Scottish Executive**

### **1.1 The First Minister**

Jack McConnell has been First Minister for more than two years (a record tenure), and the anniversary in November sparked media comment on his record and the prospects for a more ambitious and successful future.<sup>1</sup> This includes the public re-emergence of his predecessor, Henry McLeish, who is producing a book on his political career, including the recent devolution period.<sup>2</sup> The First Minister had his first internet chat session on 14 January, and policy on FM/Deputy FM on-the-record, on-camera briefings has been set out.<sup>3</sup>

### **1.2 Ministers**

The junior Finance Minister, Tavish Scott - who had resigned as a junior minister in early 2001 over fisheries policy - was under fire again for appearing to come out publicly against membership of the Common Fisheries Policy, contrary to the conventions of collective ministerial responsibility.<sup>4</sup> The Environment and Rural Development minister, Ross Finnie, is taking a leave of absence following heart bypass operation on 20 January, and his junior, Allan Wilson, is substituting for him in the meantime. Finnie is expected to return to duty after Easter.<sup>5</sup>

### **1.3 Civil Service**

The civil service has been the subject of some scrutiny and reform. The idea of a fully-devolved Scottish Civil Service rumbled on.<sup>6</sup> At the UK level, the Commons Public Administration Committee produced its draft Civil Service Bill (though its provisions, and the Committee's deliberations, virtually ignored the Scottish devolved administration, except formally in terms of definitions and in connection with the appointment of special advisers, despite notionally examining the unity of a GB-wide service), and there were also reports of the end of the tradition of permanent posts.<sup>7</sup> The recent industrial action in various UK departments may remind Scotland about the existence of the large bloc of UK civil servants in the country, handling non-devolved matters.

### **1.4 Dispersal**

The relocation policies of the UK Government and the Executive (the latter generally and in relation to the long-running Scottish Natural Heritage move to Inverness), are still being questioned and challenged. Inevitably, in addition to more elevated aspects such as 'value for money' and impact on the individual officials affected and their families, elected parliamentarians wish to see new jobs coming to their area and others wish to prevent existing jobs leaving theirs.<sup>8</sup> Ministers announced its dispersal policy for other bodies:<sup>9</sup>

- Scottish Further and Higher Education Funding Councils, with a decision during 2004;
- Royal Fine Arts Commission for Scotland (Architecture and Design Scotland), with a decision by the end of 2004.

In addition, consideration is being given to setting up the following new bodies:

- Proposed single agency to deliver custodial and non-custodial sentences in Scotland;
- Proposed National Transport Agency.

The Finance Committee has been examining the policy closely, initially through a petition, and latterly through a proposed full inquiry.<sup>10</sup>

### **1.5 Management and administration issues**

The new Permanent Secretary, John Elvidge, gave an interview to the *Times* on 19 November.<sup>11</sup> A non-executive director of the Executive's Management Group has been re-appointed for a further two years, and the Executive finally established its Performance and Innovation Unit, headed by a senior figure from the private sector, Nick Parker.<sup>12</sup> A WA of 11 November provided much detail of civil servant numbers in devolved Scotland since 1999, and the Executive's performance in handling ministerial correspondence in the last quarter was revealed in a WA of 26 November.<sup>13</sup> A new special adviser on poverty and social inclusion was appointed, bringing the adviser team up to 11.<sup>14</sup> The Executive has come under fire for being a late payer; its ministers have been told to economise, and its 2002-03 resource accounts for have been published.<sup>15</sup>

### **1.6 Fraser Inquiry**

There has been much discussion of how the first phase of the Fraser Inquiry could force changes in civil service culture and practice in Scotland.<sup>16</sup> On the Executive's approach to cooperation with the Fraser Inquiry, see the Finance Minister's WA of 19 December:<sup>17</sup>

The Scottish Executive's general arrangements for the availability of counselling support for staff in a variety of circumstances, as part of our commitment as an employer to exercise a duty of care towards our staff, are available to Scottish Executive witnesses, if they wish to take up the service. The costs will depend on take up and will be met from the Scottish Executive occupational health budget within the overall Scottish Executive administration budget.

## **2. The Scottish Parliament**

### **Mark Shephard**

#### **2.1 Procedural Innovations to Improve Executive Scrutiny**

The Procedures Committee proposed a new format for Question Time in its December 2003 report on *Oral Questions in the Chamber* (see 2.4 below). The main recommendations include the extension of Question Time from 40 minutes to one hour, and the introduction of in-depth 'thematic' questioning of Executive Departments on a rota basis that covers all themes/ministers once every 3 weeks.<sup>18</sup> In conjunction with the Committee, the Executive proposed six subject themes:

- Enterprise, Transport and Lifelong Learning (Minister for Enterprise and Lifelong Learning; Minister for Transport)
- Education, Tourism, Culture and Sport (Minister for Education and Young People; Minister for Tourism, Culture and Sport)
- Justice and Law Officers (Minister for Justice; Lord Advocate and Solicitor General)
- Environment and Rural Development (Minister for Environment and Rural Development)
- Finance and Communities (Minister for Finance and Public Services; Minister for Communities)
- Health and Community Care (Minister for Health and Community Care)

The main objective of the change is to permit greater depth of questioning and hence better parliamentary scrutiny of the Executive. To balance depth with topicality and salience of questioning, the Procedures Committee recommends that for each week an hour's questioning should be divided between an in-depth focus on two themes (40 minutes), and general questioning of all ministers as before (20 minutes). The Committee also proposed the extension of oral questioning to include members of the Scottish Parliamentary Corporate Body (SPCB) who are responsible for the administration and costs of the Parliament. This recommendation happened to precede the Auditor General's report in January to the Audit Committee of 'key weaknesses' and 'important shortcomings in the corporate body's internal financial controls'.<sup>19</sup>

In a subsequent report on *Oral Questions and Time in the Chamber* (see 2.4 below), the Procedures Committee recommended scheduling Question Time at 2pm on Thursdays while continuing with the experiment of First Minister's Question Time (FMQT) at 12 noon on Thursdays. By keeping the two question periods separate from each other the main objective is to emphasise the distinctive nature and importance of each question period. As the Convener of the Procedures Committee (Iain Smith, Lib Dem) argued:

Our Committee regards Question Time and FMQT as distinct items. By scheduling them at separate times, Question Time will be able to build a separate identity and not simply be a prelude to FMQT.<sup>20</sup>

Proposals from both reports are to be discussed in Parliament on 12<sup>th</sup> February 2004.

#### **2.2 Disorderly Behaviour and other Agenda-Setting Tactics**

The Scottish Socialist Party (SSP) has tried a number of agenda-setting tactics this quarter. In December 2003, SSP MSPs were warned of removal by the Presiding Officer (George Reid) for applauding a demonstration in the public gallery against George Bush's visit to Britain. The demonstration by a member of the SSP interrupted First Minister's Question Time. Responding to a subsequent point of order raised by Duncan McNeil MSP (Lab), George Reid ruled that:

I deplore any action by members of the Parliament that encourages interruptions from the public gallery. Members will remember that the clear dividing line on conduct in the chamber falls between disrespectful and discourteous behaviour, which earns a rebuke, and disorderly behaviour, which may produce sanctions. I cannot think of anything more disorderly than members in the chamber encouraging disorder in the public gallery. I make it clear that, on any future similar occasion, I shall not hesitate to apply the sanction - members know what that means (*Scottish Parliament Official Report*, 20/12/03, Col. 3492)

A month later, in January 2004, a press officer with the SSP was removed from the public gallery for demonstrating against the attendance in the Parliament of the Saudi Arabian ambassador to the United Kingdom. Four SSP MSPs are on record as having risen in protest of the attendance. Testing the prior ruling of George Reid, the SSP MSPs were asked to sit down and refrain from demonstrating. SSP leader Tommy Sheridan was even asked to sit down twice.<sup>21</sup>

Two weeks later, following criticism that the First Minister 'has a problem with honest answers',<sup>22</sup> Tommy Sheridan was accused by the Minister for Parliamentary Business (Patricia Ferguson, Lab) of being engaged in a 'sustained period of misconduct'.<sup>23</sup> At the request of both Ferguson and Sheridan, George Reid reluctantly agreed to investigate Sheridan's behaviour further. Reid's rather generous patience with Sheridan reflects his concern that the Parliament ought not be brought into further disrepute with the public:

I do not want a period of sustained guerrilla warfare in the Parliament; it does none of us any good. (*Scottish Parliament Official Report*, 05/02/04, Col. 5594)

Another agenda-setting tactic employed by the SSP this quarter was through the deployment of Members' Bills. Out of the six Members' Bills proposed this quarter half of these were proposed by the SSP (see 2.5 below for details).

Not all SSP publicity has been of its making however. In a November debate on poverty in Scotland, SNP MSP Stewart Stevenson derided the participation rate of SSP MSPs with most emphasis placed on the attendance and participation record of SSP MSP Rosie Kane:

The SSP's participation record has been woeful. Rosie Kane promised us mayhem and madness, but she has been at just over half the meetings of Parliament and at only one of the eight meetings of the Local Government and Transport Committee. She has spoken fewer than 5,000 words since becoming an MSP, and the cost of those words is £5.59 per word. (*Scottish Parliament Official Report*, 20/11/03, Col. 3419)

The attack prompted Kane to publicly acknowledge her clinical depression and to take recovery time from the 'macho boys' club'.<sup>24</sup>

## 2.3 Other Issues

Following the passage of the Commissioner for Children and Young People (Scotland) Act at the end of Session 1, the Parliament opened a recruitment competition in November 2003 for the appointment of Scotland's first Commissioner for Children and Young People. The holder of the post will have responsibilities for the promotion and safeguarding of the rights of children and young people up to 18 years and up to 21 years in certain circumstances.<sup>25</sup>

Also in November, the Parliament debated the March 2003 Procedures Committee Report on the *Founding Principles of the Scottish Parliament*. The Parliament took note of the report, endorsed the four principles, and several members noted how the Parliament needed to be more experimental with its procedures and less beholden to the Westminster way of things.

## 2.4 Committee Reports and Inquiries (01 August 2003 – 31 October 2003)<sup>26</sup>

*Stage 2 Report to the Finance Committee on the 2004/05 Budget Process*, 5 November 2003, Equal Opportunities Committee

*Report on the Financial Memorandum of the National Health Service Reform (Scotland) Bill*, 5 November 2003, Finance Committee

*Stage 2 Report to the Finance Committee on the 2004-05 Budget Process*, 5 November 2003, Communities Committee

*Call for Written Evidence - Prostitution Tolerance Zones (Scotland) Bill*, 11 November 2003, Local Government and Transport Committee

*Stage 1 Report on Vulnerable Witnesses (Scotland) Bill*, 13 November 2003, Justice 2 Committee

*Inquiry into the National Waste Plan*, 18 November 2003, Environment and Rural Development Committee

*Report on the Financial Memorandum of the Nature Conservation (Scotland) Bill*, 19 November 2003, Finance Committee

*Report on the Financial Memorandum of the Criminal Procedure (Amendment) (Scotland) Bill*, 20 November 2003, Finance Committee

*Committee Response to the Scottish Executive Consultation on Civil Partnership Registration*, 28 November 2003, Equal Opportunities Committee

*Report of the Informal Meeting on the European Year of Disabled People*, 2 December 2003, Equal Opportunities Committee

*Stage 2 of the 2004-05 Budget Process*, 10 December 2003, Finance Committee

*Primary Medical Services (Scotland) Bill as Amended at Stage 2*, 12 December 2003, Subordinate Legislation Committee

*Stage 1 Report on the Nature Conservation (Scotland) Bill*, 16 December 2003, Environment and Rural Development Committee

*Report on the Financial Memorandum of the Education (Additional Support for Learning) (Scotland) Bill*, 17 December 2003, Finance Committee

*Report on Scottish Solutions Inquiry*, 18 December 2003, Enterprise and Culture Committee

*Oral Questions in the Chamber*, 22 December 2003, Procedures Committee

*Reporters Investigation into Executive Relocation Policy - Submissions Received*, 8 January 2004, Finance Committee

*Individual Learning Accounts in Scotland*, 8 January 2004, Audit Committee

*Stage 1 Report on Education (Additional Support for Learning (Scotland) Bill*, 23 January 2004, Education Committee

*Supporting Prescribing in General Practice - A Progress Report*, 28 January 2004, Audit Committee

*Oral Questions and Time in the Chamber*, 30 January 2004, Procedures Committee

*Report on Emergency Bills*, 30 January 2004, Procedures Committee

## **2.5 Parliamentary Bills (01 November 2004 – 31 January 2004)<sup>27</sup>**

Executive Bills in Progress (latest stage reached):

- Antisocial Behaviour etc. (Scotland) Bill (Stage 1)
- Budget (Scotland) Bill (Introduced: 20 January 2004)
- Criminal Procedure (Amendment) (Scotland) Bill (Stage 1)
- Education (Additional Support for Learning) (Scotland) Bill (Stage 1)
- Local Governance (Scotland) Bill (Introduced: 21 November 2003)
- National Health Service Reform (Scotland) Bill (Stage 1)
- Nature Conservation (Scotland) Bill (Stage 2)
- Tenements (Scotland) Bill (Introduced: 30 January 2004)
- Vulnerable Witnesses (Scotland) Bill (Stage 2)

Members' Bills in Progress (latest stage reached)

- Breastfeeding etc. (Scotland) Bill (Introduced: 16 December 2003)
- Fire Sprinklers in Residential Premises (Scotland) Bill (Introduced: 17 November 2003)
- Prostitution Tolerance Zones (Scotland) Bill (Stage 1)



#### Private Bills in Progress:

- Edinburgh Tram (Line One) Bill (Introduced: 29 January 2004)
- Edinburgh Tram (Line Two) Bill (Introduced: 29 January 2004)
- Stirling-Alloa-Kincardine Railway and Linked Improvements Bill (Consideration Stage)
- Waverley Railway (Scotland) Bill (Pre-Preliminary Stage)

#### Executive Bills Passed:

- Primary Medical Services (Scotland) Bill: Passed on 18 December 2003, Royal Assent on 27 January 2004

#### Proposals for Members' Bills (01 November 2003 – 31 January 2004)

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

- Scottish Railway Company Bill (Tommy Sheridan, SSP)
- Transportation and Sale of Puppies (Scotland) Bill (Christine Grahame, SNP)
- Community Based Drug Facilities (Scotland) Bill (Rosemary Byrne, SSP)
- Christmas and New Year's Day Trading in Scotland Bill (Karen Whitefield, Lab)
- Single Vaccinations for MMR (Scotland) Bill (Carolyn Leckie, SSP)
- Human Organ Transplantation (Register) Bill (John Farquhar Munro, Lib Dem)

As of 31<sup>st</sup> January 2004, legislative time has been found to consider three of the 30 Members' Bills that have gained enough support this session to be considered by the Parliament. The three Members' Bills currently under consideration are Margo MacDonald's proposed bill on prostitution tolerance zones, Elaine Smith's proposed bill on breastfeeding rights, and Michael Matheson's proposed bill on the required installation of fire sprinklers in residential premises.

#### **2.6 Cross-Party Groups**

The number of cross-party groups approved by the Standards Committee increased from 42 to 44 this quarter as both the Cuba Group and the Sexual Health Group were approved by the Standards Committee. The proposed Wastes Management Group and Tibet Group are awaiting approval.

### **3. The Media**

#### **Philip Schlesinger**

#### **3.1 The Scottish Six – the end?**

On 17 December 2003, BBC Scotland published its *Journalism Review 2003*.<sup>28</sup> This 40-page document offered a self-assessment of the BBC's output in Scotland since May 1999 and the establishment of the Scottish Parliament. Led by the Controller of BBC Scotland, John McCormick, the review group presented its findings to the national advisory body, the Broadcasting Council for Scotland (BCS) on 5 December, which approved the report. Conscious of the increasing fragmentation of the news market, the BBC had surveyed its audience. It found extensive appreciation for its efforts in radio (although some worrying evidence of low recognition here) and in television. However, the report concluded that there was nonetheless a need to 're-engage the audience in issues that impact on the democratic process and on daily lives'; this was coupled with an audience demand for more analytical news.<sup>29</sup> According to the *Journalism Review*, like other news providers the BBC finds itself struggling with a declining interest in institutional politics. Significantly, there is also a widespread feeling that Scotland's regions are being neglected at the expense of the central belt. This has led BBC Scotland's chiefs to acknowledge the need for more proximity to local audiences. It is a telling shift of perspective and represents quite a challenge for BBC Scotland.

The report has yet to be debated in public. What grabbed the headlines – predictably enough – was its interment of the long-debated Scottish Six, the regular subject of previous reports. The evidence was rather equivocal. Two options were canvassed – an integrated Scottish-edited news broadcast between 6-7pm, and the present arrangement whereby the 6pm news is UK wide followed by *Reporting Scotland*. Of the 1000 people surveyed, 55% of respondents said they were interested in one single programme, 63% favoured the current arrangement. Pressed to choose between the two, 38% chose the integrated news (the Scottish Six) whereas 45% opted for the status quo, with 17% don't know. The research certainly uncovered some doubts about the relevance of news from London.<sup>30</sup> But the conclusion drawn, nevertheless, was that while 'the case for an integrated Scottish news hour does not appear strong enough to justify the change being made, the position should remain under review'.<sup>31</sup> The door is not quite closed, but it is on the way to being shut.

There were suspicions that the BBC had buckled under political pressure from the Labour Party, which two days before the report became public had warned the corporation against 'being parochial' (a phrase first used by the late Donald Dewar in connection with the Scottish Six). However, the Controller maintained that the decision had been 'audience-led', with Labour's comment coming well after the report had been written. Unconvinced, the SNP's media spokesman accused the BBC of 'running scared of the government'.<sup>32</sup> If the Scottish Six has indeed finally died a death, the BBC – not least in a post-Hutton report climate – will be relieved that the government now has one less stick with which to beat it.

#### **3.2 Fraser, again**

We last reported that the Fraser inquiry into the galloping Holyrood building costs had not succeeded in prising the Dewar and Miralles tapes from BBC Scotland. The stand-off has refused to go away. Just before Christmas, Lord Fraser was seemingly given the option of a private viewing. However, the names and identities of third parties shown in footage of a meeting between Donald Dewar and his officials were to be blacked out. This proved unacceptable.<sup>33</sup> After resurfacing again in January 2004, the problem clearly remains on the agenda of BBC Scotland's Controller, John McCormick, until his retirement in April 2004.

### **3.3 After McCormick**

The Controller of BBC Scotland is a major figure in Scottish life and a pillar of the national establishment. He – just chaps, so far – is Scotland's man in London and London's man in Scotland. The corporation's Scottish top dog can be a significant broker in the political and cultural power plays of the UK's devolved order. So who next sits in the hot seat is bound to excite speculation.

John McCormick steered the corporation's northern outpost under two quite diverse directors-general, transiting smoothly from John 'producer choice' Birt to Greg 'cut the crap' Dyke. He will now leave during the Byford interregnum (though that too might prove to be a regime). McCormick – once the BBC's Secretary - has understood what kind of deal could be cut for Scotland in an organisation that remains quintessentially British, achieving a substantially enhanced TV and radio production capacity, a greater presence in the network's output, and the HQ's move to Glasgow's Pacific Quay in late 2007. The three tipped to be his likely successor are Colin Cameron, BBC controller of network development, nations and regions; Blair Jenkins, BBC Scotland's head of news and current affairs; and Ken MacQuarrie, BBC Scotland's head of programmes.<sup>34</sup>

### **3.4 Questions about regions**

The precise future of regional broadcasting continues to be in doubt, as the fifty-year ITV model of federated regions rapidly atrophies. The merger of Carlton and Granada has raised concerns about the future resourcing of news programmes. Union leaders have signalled their fears of cuts in the vulnerable regional services – the backbone of ITV's public service commitment. Internal tensions at ITV over merging its head of news job with that of the editor-in-chief of ITN caused concern among news executives.<sup>35</sup> How ITV approaches networked news and current affairs will have an influence on the SMG companies, which still remain independent, but linked to the network.

### **3.5 Whither Ofcom Scotland?**

Ofcom finally succeeded its predecessor regulators on 29 December 2003. It has set up advisory councils for the nations and regions and at present members are being recruited for the national council for Scotland. The membership should be known by March. However, while Ofcom's advisory body north of the border may shortly be in place, it has still failed to recruit a director for Scotland to run its Glasgow office. Press coverage suggests that so far no-one with the requisite combination of telecommunications and broadcasting expertise has been found,

although equivalent posts in Northern Ireland and Wales have already been filled. With the rolling out of broadband, the concentration of ITV, the public service broadcasting review and BBC Charter renewal, whoever sits in the Caledonian hot seat will have his or her hands full.<sup>36</sup>

### **3.6 Meltdown at SMG, continued**

Last year, SMG sold off the *Herald* group of newspapers to Newsquest. 2004 began with another major sale. After Scottish Radio Holdings (the country's largest radio group) rebuffed a merger proposal from SMG, the latter sold its 28% stake to Emap for just over £90m. SMG has long cast covetous eyes at SRH. However, city sources see the shrinking media group as chronically troubled by debt. No surprise then that Don Cruikshank, SMG's chairman, is on the way out of the boardroom by the summer to another lucrative pasture. His expansion strategy has been a resounding failure. Whether SMG can now long survive is a matter of regular speculation in the City. The outcome will have major consequences for the Scottish media landscape, where Scottish TV and Grampian TV have been longstanding fixtures.<sup>37</sup>

### **3.7 After Hutton**

Lord Hutton's excoriation of the BBC's journalism – and exoneration of the Blair government – has placed some question marks over the future of the BBC. The corporation's chairman, Gavyn Davies, and its director-general, Greg Dyke, have been shown the door. The board of governors' credibility is in doubt. The BBC is facing Charter renewal in 2006. The Royal Charter is the legal instrument that governs the BBC. Since 1927, it has ensured its special status as a public corporation charged with public service obligations and generally kept at arms length from direct interference by government. Coupled with the licence fee – a dedicated tax whose level is set by the Westminster government – this is the edifice on which the BBC's reputation for independence has been built.

While the Charter and licence formula undoubtedly has major imperfections, it has been durable, surviving from the BBC's monopoly days into the multi-channel era. But now the corporation's governance and the future of the licence fee are under unprecedented threat.

Undoubtedly, the BBC's system of governance has been deeply damaged by Lord Hutton's verdict. He found that the board of governors had not acted as an effective regulator of the BBC's management. Instead of holding management to account over some flawed reporting, the governors defended the corporation's independence.

Whatever the wider defensive context in which it occurred, this notable system failure has been grist to the mill of those already calling for the BBC to be made more accountable. Under the Communications Act 2003, the BBC for the first time lost some powers to Ofcom, which now regulates much of the corporation's content and standards, along with those of all broadcasters.

Should Ofcom now fully regulate the BBC? Should the governors be dispensed with, or somehow reconfigured to fit a new model? The BBC is firmly on the back foot and inside it opinions are divided. Some senior figures think that they could live with

Ofcom regulation provided that corporate independence and the licence fee are guaranteed. Others argue that a campaigning public case needs to be made afresh for self-regulation.<sup>38</sup>

Ofcom is engaged in the first phase of its own public service broadcasting (PSB) review. This will be very radical and aims to produce a definition of PSB that will provide a yardstick for what all broadcasters ought to do. Ofcom's contribution to the BBC's Charter review run by the DCMS will therefore be very influential.

Under the acting director-general, Mark Byford, a mood of caution appears to be taking hold at Broadcasting House.<sup>39</sup> What happens in London has implications for Scotland, and the present mood will probably shape the selection of the next Controller of BBC Scotland. Byford will chair the selection panel and a candidate needs to be found four weeks before McCormick quits on 2 April.<sup>40</sup> If the BBC's governance is in increasingly in question, this in turn will raise questions about the future role of the national governor for Scotland as well as his advisory body, the Broadcasting Council for Scotland. Ofcom Scotland's importance can only increase, in line with the regulator's likely growth of power in London.

## 5. Scotland/UK Relations

Alex Wright

### 5.1 Scottish Ministers at JMCs

The Joint Ministerial Committees (JMC) are a by-product of the Memorandum of Understanding, which itself underpins the current constitutional arrangement between the UK and the devolved administrations. By virtue of the confidentiality which surrounds inter-governmental relations, there is a minimum of parliamentary scrutiny of the work of the JMCs. However, in response to a question from Richard Lohead (SNP), an MSP for North East Scotland, Andy Kerr, a minister at the Executive gave the following breakdown of the Executive's attendance at JMCs.<sup>41</sup>

Year	No of JMC meetings	No of meetings attended	% attended
1999*	1	1	100
2000	8	8	100
2001	4	3	75
2002	6	6	100
2003**	2	2	100
Total	21	20	95

\* July-December

\*\* January-October

### 5.2 The Supreme Court

The ramifications of the proposed Supreme Court has for some while now led to tensions within Scotland's legal establishment (see previous Monitor reports). During January, Colin Boyd, the Lord Advocate warned:

There is no future for this country and this legal system, in looking to the past...I believe that we in Scotland should welcome and embrace these developments. From a Scottish perspective it gives us the opportunity to rationalise the present byzantine and archaic procedures which take devolution issues to the Judicial Committee of the Privy Council and other appeals to the House of Lords.<sup>42</sup>

In an interview with *The Herald* the Lord Advocate maintained that things had to change. He observed:

The fundamental issue is whether or not you believe it is right to take judges out of the House of Lords. I think it is a cardinal feature of a modern democratic state that you do actually have a separation between the judiciary and the legislature. There is a view that if it ain't broke don't fix it. I think that is the wrong approach. The European Convention on Human Rights and new legislation has obliged us to take a stricter view on issues to do with the judiciary. There are examples of judges sitting on matters of regulation and covert surveillance and coming out at lunch time and being lobbied in a debate on exactly the same topic and that places them in an awkward position...I think people are right to say the Supreme Court

should not be part of the English judicial system or for that matter the Scottish judicial system. I don't think there is any danger of Scots law disappearing.<sup>43</sup>

Alistair Darling also sounded a reassuring note. He commented:

The decision was not made due to a lack of time, but was a deliberate decision to maintain the status quo as far as possible. The function of civil appeals to the Privy Council would be transferred to the Supreme Court.<sup>44</sup>

However, some figures in Scotland's legal elite have misgivings both about the lack of proper consultation and the ramifications for Holyrood. Appearing before the Commons, Constitutional Affairs Committee, Lord Hope, a former president of the Court of Session told MPs:

It ought to have been done with much greater consultation, much more time given to it and an opportunity for the matter to be properly discussed in Scotland. I think there are extremely important issues, particularly about Scottish participation in the new arrangements which, in the ideal world, would be debated at Holyrood. Much of private (civil) law, indeed all Scots private law, really is devolved to the Scottish Parliament and for the Parliament not to be able to debate it fully, given proper time to do, I think would be unfortunate.

He did agree, however, that 'Scotland would not lose some of its legal powers'.<sup>45</sup> Lord Hope was by no means a lone figure. When Lord Cullen of Whitekirk, the Lord Justice General of Scotland, gave evidence to MPs on the constitutional committee he too had his doubts. He cautioned:

I am concerned, and have expressed concern, that in the Supreme Court there will be a growing influence of English law on Scottish cases. I would like to see enshrined within the bill provisions to ensure that decisions on English cases will not bind in Scotland. And more generally, that the separate identity of Scots law is recognised and safeguarded.<sup>46</sup>

He also advised that the present arrangement whereby two of the twelve law lords are Scots should be carried over to the new arrangement.

Despite Lord Hope's concerns that the Scottish Parliament might be left on the sidelines, MSP held a debate on the Supreme Court on January 29<sup>th</sup> 2004. Opening the debate for the Executive, Cathy Jamieson, the Justice Minister claimed that it was time to modernise and that the proposals did not pose a threat to Scots law. She told MSPs:

It is important to remember that the new court will take on responsibility for appeals from Scotland on devolution issues and in other civil appeal cases and so is of significance and importance for Scotland, the Scottish people and the Scottish Parliament.

Here in Scotland we take pride in our unique legal system, which I believe is of central importance in making devolution work and in making this parliament effective. We all recognise the importance of maintaining a distinctiveness and

independence of the Scottish legal system. However that is not what this is about. Scots law is not under attack... We should recognise that a UK-wide jurisdiction will remain necessary for resolving devolution issues. It cannot be right for a Scottish court alone to determine UK-wide, constitutionally important issues on matters such as the reserved-territorial divide... It is important to respect the treaty of union fully and ensure that it is not infringed upon. A new Supreme Court, taking cases from all the legal jurisdictions of the UK, is consistent with the treaty of union.<sup>47</sup>

The minister subsequently dismissed the need for a artificial quotas of Scottish judges. At the conclusion of the debate amendment to the Executive's motion from members of the SNP and the Scottish Conservatives 'disagreed'.

### **5.3 UK Civil Contingencies bill**

The Executive announced that provisions for Scotland would be included in the UK Civil Contingencies Bill which would be enacted at the Westminster parliament. According to the Executive's press release this piece of legislation would 'introduce statutory duties for organisations that respond to emergencies and to co-operate in this planning'. Although Scotland has its own measures already in situ, the new arrangements cover 'the extraordinary and unlikely'. In a statement Cathy Jamieson explained:

The Executive consulted with the stakeholders in our emergency services and in local authorities in 2003 on how civil protection arrangements may be enhanced. This process indicated that there was value in providing a single statutory framework for civil protection in the UK. This would ensure that our capability to plan for emergencies are consistent across the country.

The Civil Contingencies Secretariat which is based at the Cabinet Office is responsible for preparing the Bill.<sup>48</sup>

### **5.4 Financial Autonomy**

On the eve of a debate on financial independence, senior figures in Labour and the SNP set out their positions. Andrew Kerr, the minister responsible for finance warned that it 'would be a constitutional gamble too far'. He warned:

Financial independence or fiscal autonomy, however, would cut Scotland adrift from the rest of the UK and destabilise the sound macro-economic environment Scots families enjoy. Economic growth would be at risk with businesses faced with different fiscal arrangements from their main trading partner and reduced investment in skills and transport.<sup>49</sup>

Predictably, John Swinney, the SNP leader, who was responsible for moving the debate was more up-beat. He commented:

There is now a growing body of opinion that our financial powers need to be revisited. We are into a new phase in the debate about the parliament and there is



a consensus now that the devolution settlement does not meet the needs of Scotland.<sup>50</sup>

Opening the debate, Swinney told MSPs:

The debate on the powers of the Parliament is dynamic; it is indeed a process. The purpose of this debate is to establish how much consensus exists in the Parliament on moving on from the clear limits of devolution which, week by week, are becoming apparent to the people of Scotland.<sup>51</sup>

Tavish Scott, the deputy minister for finance and public services, in response, argued in favour of the status quo. He said:

First, we already have full autonomy in our spending decisions [...] Secondly, we already receive more funds through the block grant than we would be able to raise ourselves.<sup>52</sup>

David McLetchie, the leader of the Conservatives was more ambivalent about the need for the Parliament acquiring more financial powers. He observed:

My view has always been that we should introduce any changes in the light of experience of how the new devolved settlement has worked in practice. We must dismiss the two extreme positions on the one hand, seeking full financial powers – that is a Trojan horse for independence – and, on the other hand, the equally daft idea that we cannot touch the Scotland Act.

There are perfectly good arguments for having a better balance between the Scottish Parliament's spending and its revenue raising. If we are honest, as Mr Swinney pointed out fairly, we know that there are members of all parties who are concerned that the current virtual reliance on a block grant from Westminster is not a healthy state of affairs.

McCletchie then argued that this helped cultivate a 'spend, spend, spend mentality' and he therefore called for 'further analysis of the implications of the Parliament raising more of its revenues'. When pressed by Swinney as to whether he had any particular areas where he would like to see the Parliament acquire more financial powers McCletchie declined on the basis that this would be considered best by 'a Royal Commission or some other independent body'.<sup>53</sup>

The SNP's motion was disagreed and the Executive's amendment was agreed at 63 votes, with 50 against and one abstention.

## **5.5 The West Lothian Question**

During the last three months the West Lothian Question has again been the focus of attention. It arose during November 2003 over the vote on Foundation Hospitals and again in January 2004 in relation to top-up fees for Higher Education. Faced with rebellion from within his own ranks Tony Blair was reliant on the votes of his Scottish MPs, even though both legislative proposals related primarily to England.

## Vote on NHS Foundation Hospitals

Although Labour has a 161 seat majority in the House of Commons, this plummeted to just 17 when MPs voted on the Health and Social Care Bill on Wednesday November 19<sup>th</sup>. Forty-four Scottish Labour MPs voted in favour, 2 against and 8 abstained. Without the support of the 44 MPs the Bill would not have been carried, thereby threatening to undermine Tony Blair's authority. Scottish Labour MPs were not alone in participating in the vote. Five SNP, nine Lib Dems and George Galloway, Independent Labour, all voted against, whilst one Lib Dem abstained. One reason why the SNP chose to vote was the implications that Foundations Hospitals would have for public spending in Scotland. Mike Weir (SNP) observed:

This was a disgraceful vote by Scotland's Labour MPs, who gave the government their wafer-thin majority for English foundation hospitals. Scots Labour MPs have driven a stake to the heart of the NHS in Scotland because of the squeeze that will be applied to Scottish public spending as a result of privately-financed English foundation hospitals.<sup>54</sup>

David Stewart (Labour) who is a PPS for Alistair Darling, the Secretary of State, explained the rationale as to why he voted in favour of the Bill. He said:

Of course, NHS reform in Scotland is a matter for the Scottish Parliament and it would be wrong of me to make prescriptive decisions for Scotland, but I would support any development that would make the NHS more effective.<sup>55</sup>

The Conservatives, however, objected on the grounds that Scottish MPs did not have the right to vote purely on English matters. Tim Yeo, shadow health secretary, told the Speaker of the Commons:

The government's greatly reduced majority has been obtained through Scottish members of parliament. What advice do you have for those of us whose constituents will regard this as a constitutional outrage?<sup>56</sup>

From the perspective of the Conservatives the situation was exacerbated further because the Secretary of State for Health was none other than Dr John Reid who himself is a Scottish MP.

## Tuition Fees

Just two months later Mr Blair was again reliant on votes of Labour MPs north of the Border. Once again his authority was on the line and on this occasion had he not managed to carry the day, it was widely believed that his position as Prime Minister would have been placed in jeopardy. The issue at hand was the Higher Education Bill, a central element of which would allow English Universities to charge their students variable fees up to £3,000. In the days immediately leading up to the vote it appeared that the Government was going to lose. But in the event it just scraped through, with 316 MPs voting in favour and 311 against. Of those Scottish MPs who voted in favour, 46 were from Labour and ten were from the Lib Dems. Of those who voted against, five were from Labour, five from the SNP – they were also joined by George Galloway, Independent Labour. Of those who abstained one was from the

Conservatives – which left four others (of whom one was ill and another was the Speaker Michael Martin).<sup>57</sup>

Although the Bill related primarily to England, the issue of tuition fees is topical in Scotland where MSPs had opted for a different approach – a graduate endowment scheme – whereby graduates would repay £2092. Although the Bill still has some way to go, pressure mounted on Jack McConnell to address the issue of university funding north of the Border. Although he refused to be drawn on the issue when he faced MSPs on January 29<sup>th</sup> did he not rule out the possibility of changing the current arrangement in Scotland. David McLetchie, the leader of the Conservatives at Holyrood, told MSPs

The first minister has now ruled out top-up payments for Scottish students. The bottom line is that they will pay more and no amount of semantics by the first minister can hide that fact. The major question left unanswered is how much more will Scottish students pay.<sup>58</sup>

### Conservatives call for voting constraints on Scottish MPs

Following the votes on foundation hospitals and top-up fees, the Conservatives are currently drafting proposals which it is hoped would finally resolve the West Lothian Question. According to *The Times*, Michael Howard, the Conservative leader at Westminster is in favour of Scottish MPs participating in debates on purely English matters (i.e. those that are devolved to the Scottish Parliament) but they should be prohibited from actually voting on them. However, it was also reported that he was not in favour of Scottish MPs being paid less than their English colleagues on the grounds that they had less work to do (as some in his party had suggested), nor was he in favour of Scottish MPs being banned from holding cabinet portfolios ‘that deal only with England’ – as is currently the case with Dr Reid, the health secretary.<sup>59</sup>

However, Peter Duncan, the Conservative shadow Scottish secretary of state appeared to diverge slightly concerning the issue of ministerial portfolios. He said:

To have Scottish MPs holding English departmental briefs like health seem to be a patent anachronism and it is something we are looking at for the next manifesto.<sup>60</sup>

### The Secretary of State

Responding to calls for the reform of the voting rights of Scottish MPs, Alistair Darling mounted a robust defence in favour of the status quo. Writing in *The Sunday Times* he stated:

All MPs have a fundamental right to participate in all matters before parliament as a matter of constitutional principle. They are playing a role in one of the fundamental parts of the work of parliament: the provision of funds by which government can work. This is not just because this is a matter reserved to Westminster by the Scotland Act, but something which is a main purpose of parliament: authorising government by providing it with money to carry out its programme. Taxation is, of course, paid by UK taxpayers as whole and they should be represented by MPs from the UK as a whole...Even more

fundamentally, it would make a nonsense of the way in which we choose a government and hold it to account. There is no separation of the legislature and executive in the UK. If we had two classes of MP we could be faced with the prospect of a government elected for the UK unable to deliver its programme over parts of the UK. A government with a majority in the UK but not in England... Those who argue for two classes of MP and the classification of bills have to face the consequences of what they advocate. Should there be two executives, depending on what is being considered? How do they propose a government would be formed? Would it have to form and reform while enacting legislation, parts of which apply to the UK and other parts apply only to England? Doesn't this lead to federalism or even independence?<sup>61</sup>

Despite Alistair Darling's defence of the *status quo*, the West Lothian Question is of concern to Scots. A NFO System Three Poll during December 2003 revealed that 51% of those questioned believed that Scottish MPs should not vote on English matters compared to 37% who thought that the practice was acceptable. 12% did not know.<sup>62</sup> Even so, there is no sign that the matter will be resolved in the immediate future. In response to a question from Tam Dalyell, Michael Martin, the speaker of the Commons, affirmed that he 'did not possess the power to certify bills that relate exclusively to England so that Scottish MPs were prevented on voting on them and that legislation would be required to set this in train'.<sup>63</sup>

## **5.6 Electoral Reform and the Scottish Parliament (Constituencies) Bill**

The Scottish Parliament (Constituencies) Bill was published on 27<sup>th</sup> November 2003. The intention of the Bill is to amend the Scotland Act (1998) in order that there should not be a commensurate reduction in MSPs, following the work of the Boundary Commission which is set to cut the number of Scottish MPs from 72 to 59. This has long been a source of controversy (see previous Monitor reports), in part because of the attendant risk that opposition parties would use the bill a vehicle for their own agendas. For instance Peter Duncan MP (Conservative) told *The Herald* that there should be a reduction in MSPs also. He said:

A cut in MSPs would represent a crucial move towards the leaner, fitter government which Scotland so badly needs.

Alex Salmond (SNP), for his part, called for 'financial independence for the Scottish Parliament'.<sup>64</sup> Consequently the bill has been drafted as tightly as possible in order to prevent it being amended by the other parties. However, Mr Darling talked down any likelihood that it would result in wider reforms. He told reporters:

We said we would open up the Scotland Act for one purpose only and that was to maintain the 129 members.<sup>65</sup>

Despite the Secretary of State's reassurances at his press conference, some Labour MPs have their own ideas, not least that that Holyrood's electoral system needed to be reformed. At present, 73 MSPs are elected by first past the post (based on the current Westminster constituencies, save Orkney and Shetland) and 56 by a list form of PR (the additional members system). Under the new proposals being mooted by some

Labour MPs, the list element should be largely abandoned. Instead two MSPs would be elected by each constituency by first past the post (i.e. based on the revised Westminster constituencies – of which there would be 59 seats, thus making 118 MSPs in total), leaving just 11 to be elected under the list system. Ian Davidson MP who is chair of the Scottish Labour Group at Westminster claimed that there was an ‘overwhelming majority of his colleagues in favour of such a scheme’. Brian Donohoe, the Labour MP for Cunninghame South, also suggested that each of the two seats should be split by gender to ensure equal representation by men and by women.<sup>66</sup>

George Foulkes, a former minister at the Scotland Office, who is due to stand down at the next election submitted an amendment during January 2004 to the Scottish Parliament (Constituencies) Bill, which contrasted slightly with Ian Davidson’s proposals. Although he too agreed that it made sense for Holyrood’s constituencies to be the same as those of Westminster (i.e. be coterminous), and that it could be resolved by having 2 members elected per constituency, he suggested that they should be elected by a form of PR, with the Electoral Commission having the final say on which system to use. He too agreed that 11 MSPs would continue to be elected via the list system.<sup>67</sup>

Shortly thereafter the Scottish Affairs Committee published its own report entitled *Coincidence of Parliamentary Constituency Boundaries in Scotland and the Consequences of Change*. The ensuing report recommended that the number of list MSPs should be cut to 11, with two MSPs being elected per constituency, thereby reflecting the position of the Labour MPs (referred to above). The report explained:

Such a dramatic reduction in the number of list MSPs could resolve the perceived problem of regional list MSPs ‘muscling in’ on the territory of constituency MSPs and causing extra work for local government officials.

It would be left to the Electoral Commission to determine which voting system should be used. MPs on the committee also voiced concern that the current situation at Holyrood was unsustainable and that if the matter was not resolved soon (i.e. in readiness for the Scottish elections in 2007) then the committee could act accordingly. The committee warned:

If we consider the necessary decisions are taking an inordinate amount of time, we will (following the recent precedent set out by the public administration committee) consider introducing an appropriate bill ourselves to establish coterminous boundaries for elections to Westminster and to Holyrood.<sup>68</sup>

Although the issue of coterminosity of Westminster and Holyrood constituencies has long-vexed MPs, proposals such as these touch on a number of issues. First, by virtue of the PR system, parties other than Labour have capitalised on this – not least the Scottish Socialist Party. Second, despite its drawbacks for Labour, such a system lends itself to coalition government, thereby reducing considerably the chance that the SNP will become the sole governing party in Scotland. Third, it also serves to highlight the extent to which Holyrood was, and remains today, the creature of the parliament at Westminster.

## **5.7 Peer calls for the abolition of MSPs**

Lord Forsyth, who was the Conservative Scottish Secretary of State prior to 1997, has called for the abolition of the Scottish Parliament. He told his fellow Peers:

Could the government consider getting rid of the 129 MSPs altogether and ask the Westminster MPs to sit in the Scottish Parliament, say on Mondays and Tuesdays, when Westminster could discuss English 'devolved' business. Then on Wednesdays, Thursdays and Fridays they could come down and discuss UK business. That would save us 129 MSPs plus all the costs and doing for the hard-pressed taxpayer, who is having to pay for the farce of the Scottish Parliament.<sup>69</sup>

This was a rather more radical response to the Scottish Parliament (Constituencies) Bill.

## **5.8 The Queen and Holyrood**

*The Sunday Times* alleged that the Queen has no fondness for the new Scottish Parliament building which is but a stone's throw from her palace at Holyrood. One of her dinner guests is supposed to have claimed:

The Queen and the Duke did say how monstrous it was, a parliament within earshot of the palace.<sup>70</sup>

It was announced that the Monarch would open the Holyrood Parliament this October.<sup>71</sup>

## **6. Scotland/International Relations**

**Alex Wright**

### **6.1 The Scottish Executive**

Since the Scottish election in 2003, Jack McConnell's international profile has dropped slightly and this applies to the Executive more generally. That is not to say that external affairs has been neglected. But so far there have been no attendance at 'world summits' as was the case with the one in South Africa. There have been no high profile audiences with the US President (as was the case with Henry McCleish) and formal visits to Dublin, which in Dewar's day risked taking on the trappings of a state visit complete with motor cycle out-riders. Arguably in the aftermath of the election, the First Minister has focused more on domestic matters – though that now looks set to change. For example, he has now become the President of RegLeg, a grouping of regions with constitutional powers, whose origins can be traced to 2000 (see previous Monitor reports concerning the Flanders Declaration and the Liege Resolution).

When McConnell assumed the Presidency in November 2003, he issued the following statement:

As the European Union develops there is a much bigger role for devolved nations and regions in shaping and applying EU legislation. I want Scotland to be at the forefront of the new Europe, influencing decisions and championing the cause of devolved governments. The proposals for the draft treaty on the future of Europe, which is currently being considered by the Intergovernmental Conference, can help deliver a much more accountable and efficient set of European Union institutions, and I am proud that Scotland has played an important role in getting to this stage.

But we must continue to champion the regional role in shaping and applying EU law, particularly in areas such as the environment and justice. Decisions that are made in the right place are much more likely to be the right decisions. And just as Scotland is stronger and richer within a devolved UK, then we will all be stronger and richer within a European Union that recognises the role of devolved nations and regions.

This last passage is very much a reiteration of the line he has taken ever since he became First Minister – namely, the emphasis that although Scotland can play a leading role in Europe this runs in tandem with its devolved status in the UK - thereby stressing the value of the union. In so doing it prevents the First Minister from being accused of formulating a distinctively Scottish foreign policy, which risks being at odds with that of the UK – something which Mr McCleish's critics' claimed in May 2001 (see previous Monitor report).

Much of the rest of the statement replicated the Executive's position with regard to the (then) forthcoming Intergovernmental conference (IGC) which was scheduled to take place in Rome, during December 2003.<sup>72</sup>

During his inaugural speech at Salzburg on November 12<sup>th</sup> 2003 he pointed out that 56% of the EU's citizens lived in regions which possessed legislative powers.

At the time there was no sign (in public at least) that the IGC would turn into the debacle that it did in Rome, the following month. Understandably, therefore, the First Minister was keen to emphasise the positive ‘gains’ for the regions, which had stemmed from the Constitutional Convention on the future of the EU – the body which had published a draft treaty. Once again, however, whilst praising what the regions and stateless nations had achieved, he was quick to tell his fellow ministers that this was not at the expense of the member states. He said:

So although I think it is true to say that we as a group, and the regional cause as whole, have achieved more than might have been thought possible when we set out to influence the Convention process, that has been good news all round. The ‘gains’ made by the regions should not be seen at the expense of the Member States but to the benefit of all.<sup>73</sup>

The gains he had in mind included a protocol on Subsidiarity in the draft treaty, as well as a reference to the role of the regions in the EU. As such, he therefore viewed the IGC as a ‘window of opportunity’. However, for the moment at least that remains closed (see section below on the Parliament’s European and External Relations Committee).

McConnell’s single year as President will conclude with a RegLeg conference in Edinburgh in December 2004.

## **6.2 The Deputy First Minister**

During January 2004 Jim Wallace, the Deputy First Minister, visited Boston, New York and Houston in the USA. The trip was concerned primarily with promoting Scottish business interests and thus related more to his enterprise portfolio. Mr Wallace met senior figures at the New York Stock Exchange and he also met Kofi Annan, the Secretary General of the UN – the latter delivered an inaugural Robert Burns Memorial lecture.<sup>74</sup> Thus, as has been the case with his previous overseas visits, so far as external relations is concerned, Mr Wallace has for the most part focused on areas of ‘low politics’ such as culture and trade, with matters tending towards ‘higher politics’ such as RegLeg remaining more with Jack McConnell.

## **6.3 Education minister chairs EU Council**

Peter Peacock, the minister for young people ‘spoke on behalf of the UK’ at a meeting of the Education Youth and Culture Council of the EU. That Scottish ministers have led for the UK is by no means a new development, as Mr Peacock was quick to stress. He said:

Scottish Ministers often lead the discussion for the UK in the EU Council meetings and I am delighted to have the opportunity to speak on behalf of the UK in the EU on some of the most important issues affecting young people.

Scotland is an outward looking country, fully aware of its place in the UK, Europe and the wider world. The issues being discussed by European Ministers at this meeting are some of the most challenging facing all European countries.

Scotland is leading the way in many areas of education and youth policy and it is right that we share these ideas with others.<sup>75</sup>

Statements such as this touch on a number of issues. When Scottish ministers do take the lead for the UK to-date this has been primarily in areas of ‘low politics’ – as in



this instance when the items on the agenda related to ‘how best to encourage schools to become open learning institutions and combat disaffection among young people’. But when fisheries negotiations are underway, whilst a Scottish minister may well be present, that individual is a part of the UK delegation, the delegation being led by a UK minister from London.

#### **6.4 The Auld Alliance**

Scotland plans its own celebration of the Auld Alliance with France when the 100<sup>th</sup> anniversary of the Entente Cordiale between France and the UK will be commemorated. Joining the British ambassador to France and the French consul general in Edinburgh, Mr McConnell said:

There has been a strong bond of friendship between Scotland and France for the last 700 years, and the Entente Cordiale centenary celebrations are an excellent opportunity to strengthen that relationship. We have much to gain from forging a new alliance for the 21<sup>st</sup> Century. France is one of Scotland’s most important business partners, reflecting the long-standing relationship between the two countries... Next month, the French National Assembly will give the French regions more say over their affairs. There has already been considerable interest in our experience, and over the coming months I want to develop a dialogue.<sup>76</sup>

It remains to be seen what will become of this but given the historic roots of the Auld Alliance and the combination of business links, the Executive could conclude some by-lateral agreements with French regions. However it remains to be seen what will become of decentralisation in France. When he appeared before the Parliament’s European and External Relations Committee on January 7<sup>th</sup> 2004 Dr Denis MacShane, the UK minister for Europe, told MSPs:

The French Prime Minister, Mr Raffarin, has proposed quite significant decentralisation and devolution reforms [...] The proposals have met with some opposition from what one might call the more centralising ideology in France.<sup>77</sup>

The First Minister will visit Paris in February 2004 to launch the Scottish celebrations after which he will host a reception for leading figures in politics, business, the media and culture.

#### **6.5 Scotland signs Hague Convention**

Scotland signed the Hague Convention in November 2003. It was permitted to do so, ‘when the UK took advantage of a federal states clause to ratify a Convention for one part of its territory’. In this particular instance the matter at hand was ‘an instrument of ratification which dealt with the Hague Convention of the protection of Adults’.

The Executive’s news release stated:

This was the first time that the United Kingdom has taken advantage of the so-called federal states’ clause to ratify a Hague Convention for one part of its territory. Furthermore, the United Kingdom is the first state to ratify this Convention.

Scotland had been able to ratify the Convention because of the provisions contained in the Adults with Incapacity (Scotland) Act 2000. [...] The more recent Hague Conventions have a standard clause allowing States to ratify separately in respect of territorial units with different legal systems. This is sometimes used by certain states such as Canada.<sup>78</sup>

## 6.6 The European and External Relations Committee

Dr Denis MacShane, the UK minister for Europe appeared before the committee on January 7<sup>th</sup>. As such, he is the third UK minister to ‘visit’ the Scottish Parliament and the second to appear before this committee. His predecessor, Mr Peter Hain, did so in November 2001. The minister was present so that MSPs on the committee could learn about the IGC, which had broken up in some disarray in Rome the month before. Dr MacShane told the MSPs:

There is general agreement that we need a period of reflection. The Irish presidency will consult member states to report back to the spring European Council in March about the best way forward.<sup>79</sup>

He was, however, unable to give a date when the IGC might be re-launched – some members of the committee speculated that this might not be until 2005. He was subsequently asked whether the UK Government would continue to support the protocol on subsidiarity ‘throughout the negotiating process’. He replied:

The protocol on subsidiarity and proportionality the new language for Parliaments in the draft treaty were definite steps forward. We have to be honest and admit that different countries have different constitutional arrangements. The German federal state, or Bundesrepublik, gives considerable powers to the Land Governments. There is a distinct problem when we want to discuss cultural policy in Europe because there is no German cultural secretary of state or minister. Those issues are reserved to the Land Governments. The strong involvement of regional political representatives in the debating process in the past few years has underlined the fact that people want Europe to be devolved and decentralised. They do not want a superstate.<sup>80</sup>

When he was asked if the Executive was involved throughout the IGC he said that it was. He was then asked if the Scottish Parliament would be involved in the ratification process of the next EU treaty. He said:

An international treaty is, to use the technical jargon, a reserved matter. We should be clear that we are signing a solemn international treaty with 24 other member states of the European Union, just as we sign treaties through the World Trade Organisation, and international treaties that give effect to international law that we then transpose into domestic law. The body that will debate and decide on the transposition into law will, of course, be the Parliament of the United Kingdom.<sup>81</sup>

MacShane also touched on the committee’s current inquiry into the promotion of Scottish interests globally; he confirmed that his officials would be submitting testimony soon. He also added:

Generally, the Foreign Office's global network of posts has been active in working with the Scottish Executive and other Scottish bodies to promote Scottish interests around the world since 1999. I believe that I am right in saying about half our diplomatic staff are Scottish. That is probably why the Foreign Office is the most effective and successful of the Whitehall departments.<sup>82</sup>

## **7. Local Government**

### **Neil McGarvey**

#### **7.1 The New Local Governance Bill**

The Local Governance Bill received its first airing in Parliament this quarter. This Bill includes provisions to amend the first-past-the-post electoral system in favour of one based on the single transferable vote method. It also includes provisions for the introduction of a new system of remuneration for councillors. Councillor groups have been campaigning to have pension provision incorporated into these arrangements. There were 172 respondents to a COSLA consultation exercise: 81 opposed to the change and 65 in favour. As discussed in previous quarterly reports, the electoral system is one that causes major division in the Scottish Labour Party. A new voting system, if implemented in 2007, is likely to cause a high number of forced retirements among Labour's ranks of local councillors.

#### **7.2 Scotland's Councillors**

According to two surveys published this quarter this may not necessarily be a bad thing. They reveal that local councillors are overwhelmingly male, middle-aged and white and not particularly representative of the communities they serve. The Scottish Executive has outlined an aspiration of 'improving democratic participation and widening the range of people involved in local government'.<sup>83</sup>

The figures reveal 27.6% of the candidates were women and 21.8% of Scotland's councillors are women. No party comes close to equal gender representation and the figures are lower than those for the Scottish Parliament where around 40% of the MSPs are female. The figure is broadly similar to the position in England, where 29.4% of councillors are female.<sup>84</sup>

The vast majority of candidates were in the 35 to 64 age bracket. The average age of councillors in Scotland is 55, five years lower than the average in England. Only 13% of candidates were aged under 35 compared to a quarter of Scotland's population. Scotland's ethnic minority population were represented by 2% of candidates, roughly proportional to the population. Candidates and councillors tend to have higher incomes than the general population. Degree qualifications are held by 36% of councillors. Three-quarters of candidates are in the higher A, B and C1 class categories compared to 50% of the population. The figures also showed that, compared to the general population, councillors were more likely to hold a professional qualification, own their own home and have their own transport. Nearly 64% of candidates are in employment, while 23% are retired. Around 70% of those in employment are in professional or managerial occupations.

Councillors consider their main roles to be ward representative and to deal with the concerns of individual constituents. Councillors claimed good understanding of the roles and functions of councils, their council's organisation, management and decision-making processes but were less certain of issues of local government finance, personnel issues and the new ethical framework. The average workload is 34 hours per week. Councillors who classify themselves as full-time spend 43 hours per week on council business, 'part-timers' average 27 hours per week.

Service delivery improvement/modernisation and education were the top two priorities for councillors (for their own councils). At a wider level they suggested the top two Scottish Executive priorities should be reform of local government finance and establish an equal and fair relationship with councils.

Overall the figures tend to confirm the stereotype of a Scottish councillor – white, middle-aged and middle class. The data and results from the Scottish Executive Survey have been made available to the Widening Access to Council Membership Progress Group whose remit is to take forward work on how to make council membership more attractive to a wider cross-section of the community within the current legislative framework. The likelihood is that any proposals forthcoming from this group will be tinkering – the introduction of a new electoral system in 2007 is likely to have the most significant impact on the next cohort of councillors. The surveys revealed that the candidate profile in minority parties such as the Scottish Socialists were quite distinct from the established parties.

### **7.3 Council Tax**

The English anti-council tax group, ‘Is It Fair?’ extended its campaign to Scotland in the form of a new pressure group, ‘Scottish Action Against Council Tax’. The group is trying to collect one million signatures for its petition to scrap the tax. The Scottish Executive (as well as COSLA) has indicated that they are not in favour of any change, although the Local Government Finance review (established in line with the Executive’s 2003 Partnership Agreement) is looking at the council tax as part of its wider review of finance. A more likely outcome of this review is a widening of council tax banding with nearly 50% of all properties falling into the A and B bands.<sup>85</sup>

The latest figures release for council tax collection rates show that councils have, yet again, improved for performance. The Accounts Commission figures highlight a year-on-year improvement in the aggregate figures for all years since reorganisation in 1996. 26 of Scotland’s 32 councils collect over 90% of the tax with the average figure 91.5%. Orkney Council was the best performing with a 97.7% rate, Glasgow City Council had the lowest collection rate (83.7%).<sup>86</sup>

### **7.4 Other developments**

Other developments worth noting this quarter:

- A new Local Govt Improvement Service has been established in Scotland. Its role is to establish and disseminate examples of good practice around Scotland’s 32 councils. Its membership is drawn from the Scottish Executive, COSLA and the Scottish Branch of SOLACE.
- A new ‘parentzone’ website was launched which will allow parents to have access to key data on individual school performance such as exam results, attendance rates etc.

- The Scottish Executive document emerging from the Cities Review (as discussed in previous quarterly reports) *Building Better Cities: Delivering Growth and Opportunities. Ten Year City visions* was the subject of a debate in the Parliamentary.

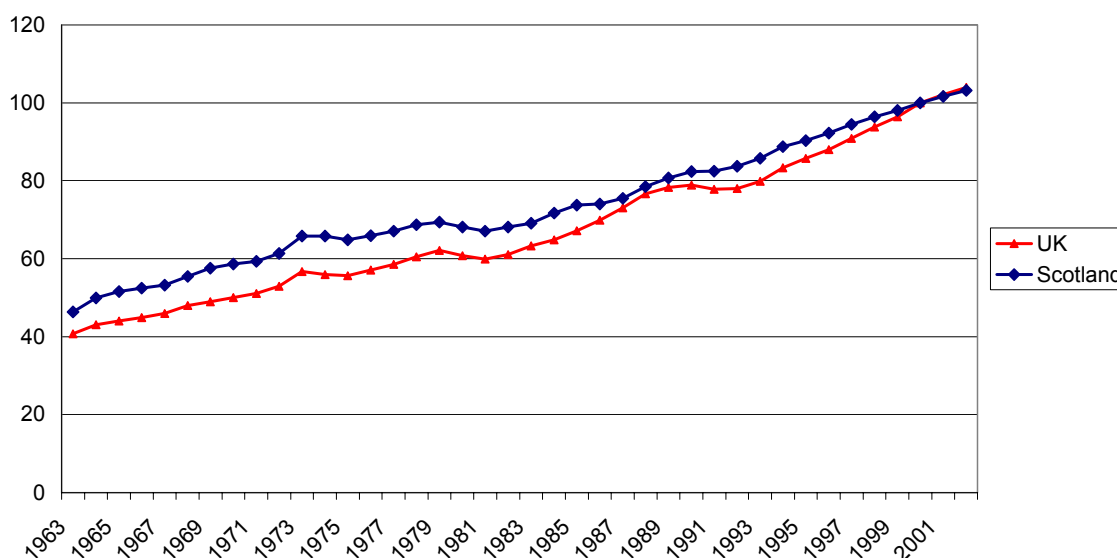
## 8. Finance and the Economy

David Bell

### 81.Scottish GDP

The Executive recently produced new figures on Scottish GDP, using a new method which regularly updates the “weights” applied to the output from each industry, rather than the old method which relied on historical weights. The new method is more in line with international best practice and has recently been adopted by the UK as a whole. But the new data indicate a quite different interpretation of Scotland’s recent economic history. Instead of Scotland’s economic growth lagging well behind that in the UK as a whole, in fact Scotland has been growing at broadly the same rate as the rest of the UK (see Figure 1). The Labour - Lib Dem Partnership Agreement starts: ‘In the next four years of the Parliament, there is a great deal of work to do. Work to encourage and stimulate economic growth.’ Improved growth performance is the first priority of the Executive. Yet the recent data indicate how closely Scotland’s economic performance has been tied to the UK as a whole and therefore to existing Westminster-based fiscal and monetary policies. History therefore suggests that Scotland tends to move largely in line with the UK as a whole even though a wide variety of regional policies have been applied in Scotland between 1963 and 2002. Perhaps they have all been effective and minimized the differential between Scotland’s growth rate and that in the rest of the UK. Another possible interpretation, however, is that their effect has been at the margin and that what has really mattered in determining Scotland’s growth rate has been the performance of the UK economy as a whole.

Figure 1: Scottish And UK Gross Value Added  
1963-2002 (Index 2000=100)



The debate on free personal care for the elderly was recently revived by former health and education minister, Sam Galbraith. Claiming that £80 million of the £150 million used to finance the policy annually was taken from the cancer treatment budget, he argued that an ageing population will eventually make the policy unsustainable. The Liberal Democrats sought to defend this policy which they had championed, while some Labour sources admitted unease with the policy because of its inbuilt support

for the more affluent elderly. The Executive has undertaken a review of the costs of the policy which will report later this year, while those lobby groups supporting the frail elderly argue that free personal care means that those with dementia are treated analogously to those with cancer.

Changes to the arrangements for tuition fees in England and Wales will have major implications for the Scottish university sector. Scottish universities have received a declining share of the Executive budget since devolution and argue that the introduction of tuition fees will further disadvantage them. Tuition fee payments will help English universities plug their funding gap and so improve the quality of both their estate and their staff, placing Scottish universities at a competitive disadvantage when attracting students and staff. Universities Scotland argues that without increased funding the long term consequences for the bodies which are central to the economic strategy described in “Smart Successful Scotland” will be dire. However, their case for an additional £100 million funding has not been well received within the Executive. While some politicians might be prepared to accept an increase in the graduate endowment and a diversion of these funds from student support to funding the universities, the dynamics of the Labour /Liberal Democrat coalition are such that such change is unlikely. Jim Wallace insists that there will be no top up fees in Scotland and pointed out that the graduate endowment is ring fenced by law and cannot be switched to university support without changing legislation.. And although 46 Scottish Labour MPs voted with the Government in favour of the introduction of top up fees south of the border, Jack McConnell ruled out top up fees in Scotland for as long as he remains First Minister. Increased funding may come about as a result of the review of higher education which the Executive is currently conducting, but it appears that once again the Executive’s approach will favour funding from general taxation rather than from user charges.

In February Jack McConnell launched a new policy under the rubric “New Scots: Attracting Fresh Talent To Meet The Challenge Of Growth”, which is intended to promote Scotland as a place to live and work. The Executive argue that migrants comprise only 8 per cent of the Scottish population, but produce 10 per cent of Scottish GDP. Hence, the attraction of migrants is viewed as a method of improving Scotland’s economic growth, while also preventing its population from declining. One of the key components of the policy is that overseas students studying at Scottish Universities should be allowed a two year work permit following graduation from a Scottish university. The Executive document puts it thus:

We have reached an agreement with the Home Office which will allow overseas graduates from Scottish universities, who express the intention of living and working in Scotland, to stay on for two years beyond the current October date, to seek employment. They will be allowed to remain in Scotland following graduation and seek any type of work during this time. After two years or earlier, graduates can switch into work permit employment or other legal migration routes for which they qualify. The scheme will be up and running by summer 2005, and will apply to those graduating that year<sup>87</sup>.

Migration is a reserved power. Hence the new policy can only be introduced with the agreement of the Home Office, the relevant Whitehall Department. But there are already queries about the legality and viability of this approach. First, there is the issue of discrimination against students studying at English universities, who may argue that it is unjust they are not granted similar benefits to those studying in



Scotland. Second, there is the problem that work permits will be granted to those who express an intention to stay in Scotland to work. But within a non-discriminatory labour market, it is difficult to envisage any sanctions that could be introduced, should students choose to move from Scotland to work elsewhere in the UK. This policy introduces further uncertainty to Scotland's university sector: as with the unintended consequences of the introduction of tuition fees, its effect may be a substantial increase in demand for university places in Scotland relative to England, this time from the overseas market.

The proposed Scottish budget for 2004-05 was published at the end of January 2004 (See Table 1). It includes a number of presentational changes which should assist in understanding the balance of revenue and capital spending more clearly.

Unfortunately comparisons with previous years are rendered more complex as a result. However, the latest data do give some useful information on the relative magnitudes of spending. The Executive expects to spend around £899m on capital projects itself in 2004-05, but it will also fund spending of £24m by NDPBs, £356m in by local authorities, £413m by the private sector and £392m in Private Public Partnerships (PPPs). Thus PPPs will account for just less than 19 per cent of all capital spending funded by the Executive. Thus, less than one fifth of Scottish capital spending is paid for by long-term agreements with private sector providers and the financial sector. The vast bulk of the remaining four fifths will be financed by the traditional government sources of finance – taxation and borrowing. Scotland is in fact investing a slightly greater proportion of its Departmental Expenditure limits that is the UK as a whole, based on the December 2003 Pre-Budget Report. While capital spend amounted to 9.6 per cent of overall UK DEL, it is expected to account for 11.1 per cent of the Scottish DEL.

The draft budget shows a total resource spend of £23.8bn in 2004-05. The budget is presented in resource rather than cash terms, which is a result of the adoption of the system of resource accounting and budgeting. Resource accounts are based on accruals – expenditure is recorded *when* it is incurred, not when it is paid out, and income as it is earned, not when it is received. Thus they provide a more accurate and useful picture of the government's consumption of resources. They also provide incentives for the public sector to manage its assets more efficiently.

Table 1: Draft Scottish Budget 2004-05

Scottish Executive - Departments	DEL	AME	Outside DEL/AME	Total
Environment and Rural Affairs	716,809	400,721	91	1,117,621
Development	825,312	396,962	0	1,222,274
Education	772,519	0	0	772,519
Enterprise, Transport & Lifelong Learning	3,374,157	351,321	184,786	3,910,264
Finance & Central Services	5,387,640	2,859,817	0	8,247,457
Health	8,061,680	0	-1,405,546	6,656,134
Justice	1,290,405	0	0	1,290,405
Administration	234,102	0	0	234,102
Crown Office	89,151	0	0	89,151
General Register Office for Scotland	8,205	0	0	8,205
National Archives of Scotland	8,258	0	0	8,258

Forestry Commission (Scotland)	75,104	0	0	75,104
Food Standards Agency	9,600	0	0	9,600
Scottish Parliament Corporate Body	111,317	0	0	111,317
Audit Scotland	7,105	0	0	7,105
Scottish Estimates	20,971,364	4008,821	-12206629	23,759,516

Source: Scottish Executive , Budget Scotland (No 5) Bill

Unfortunately, it is difficult to determine the comparability of these figures with those from previous budget rounds due to the change in accounting conventions, but in general it can be seen that the health budget now accounts for more than one third of Scottish Executive expenditure, while education – which is partly included in the Finance and Central Services budget, which provides much of the funding for local authorities and so schools, and partly in the Enterprise and Lifelong Learning budget which supports most tertiary education. By comparison with these, other forms of expenditure in Scotland are relatively modest.

## 9: Legal Disputes

### 9.1 UK Supreme Court

One of the main constitutional consequences of the surprising June 2003 UK Government reshuffle was the proposal for the creation of a UK Supreme Court, on which the Government issued a consultation paper in mid-July. The August 2003 Monitoring Report (chapter 9.1) discussed these developments, and some of the constitutional, legal and political issues for Scotland. The last quarter has seen the pace hot up in this matter, alongside the flood of other proposed constitutional changes, some related, some not. At Westminster, the Supreme Court proposal was considered in the Scottish Grand Committee on 12 November, as part of a wide-ranging constitutional debate initiated by the Liberal Democrats,<sup>88</sup> during the Lords' Constitution Committee's session with the Lord Chancellor,<sup>89</sup> and as part of the Commons' Constitutional Affairs Committee's inquiry into the Government's judicial reforms.<sup>90</sup> Within Scotland, there was some controversy over whether the Executive would 'allow' the matter to be debated substantively in the Parliament, but eventually there was a full debate, on an Executive motion, on 29 January.<sup>91</sup> As if in preparation for that debate, the Lord Advocate devoted a whole lecture to the subject at a Law Society Conference on 21 January.<sup>92</sup>

Alongside these parliamentary deliberations has been the continuing discussion focussed on the Government's consultation paper itself, and the responses of bodies such as the Executive, the Faculty of Advocates and the senior Scottish judiciary.<sup>93</sup> The Scottish media has reproduced the various concerns raised in these responses and in the reaction of the various parties. The critical concerns have concentrated, for example, on:

The perceived anomaly of civil appeals going currently to a court in London (currently the House of Lords, proposed to be the new Supreme Court), whereas criminal cases do not.<sup>94</sup>

While there has been minimal support for the idea that this should be regularised by allowing Scottish criminal appeals to be heard in the new Court, the SNP has been pushing for the opportunity to be taken for civil appeals to be 'repatriated'. Executive ministers have found it as difficult as did the UK Government's consultation paper to argue logically or convincingly for the status quo, other than a desire not to upset an arrangement that they claimed was working well.

Allegations that the establishment of a Supreme Court, to be administratively supported by the Department for Constitutional Affairs (which, as the successor to the Lord Chancellor's Department, had significant responsibility for the court system and service in England and Wales), breached the 1707 Union legislation and (though this has not been argued so forcefully) the earlier Claim of Right, by being in reality an 'English court'. A Liberal Democrat MSP wrote to the Lord Chancellor suggesting that the new Court be based in Edinburgh, but ministers have suggested that, though the Court should be based in the national capital, "that will not preclude it from sitting in other parts of the country from time to time."<sup>95</sup>

The extent of Scottish membership on the Court itself, and the means of appointing them. The processes of judicial appointment both north and south of the border has been developing towards greater transparency and less direct political involvement,

because of general human rights and separation of powers concerns, and the Supreme Court proposal (allied inevitably to the Lords reform proposals, in respect of the Law Lords or membership of the new Court's judges in the second chamber) has thrown these issues into greater focus.

It is unlikely that these and other issues will not continue to be expressed when the relevant Westminster Bill is introduced and debated, and when the inevitable Sewel Motion on it is discussed in the Scottish Parliament. However, a general undercurrent of broad support for what seems to be a sensible measure (especially in the removal of the judicial function of the House of Lords) can be detected, notwithstanding these particular concerns, which should ensure enactment of the legislation, unless it is caught up in more controversial parallel constitutional changes affecting the House of Lords, the judiciary or devolution itself. The perils of uncoordinated constitutional reform....

## **10. Political Parties**

**James Mitchell**

### **10.1 Labour troubles, SSP opportunities**

A simmering dispute between the trade unions and the Labour Party since 1997 came to a head in early February when the Rail, Maritime and Transport (RMT) workers' union split from the Labour Party after a special meeting in Glasgow.<sup>96</sup> RMT's predecessor (the Amalgamated Society of Railway Servants) had been involved in the foundation of the Labour Party in 1899. It marks the first union to break with Labour since 1961 when the Electrical Trades Union was expelled for ballot-rigging. The RMT leader, Bob Crow had been highly critical of the New Labour leadership. By a 42 to 8 vote, the union refused to back down in a row with the Labour Party. Labour had insisted that the union should not allow any of its local or regional branches to affiliate to any other party. Last year, the union had allowed local branches to affiliate to other parties and the Scottish regional council to affiliate to the Scottish Socialist Party. Bob Crow had spoken at the Scottish Socialist Party's conference and made clear his support for the party, and indicated that he was relaxed about the SSP goal of Scottish independence.

Differences between the union and party had included the issue of rail privatisation. RMT wanted to renationalise the railways against Labour policy and opposed the privatisation of the London Underground. Ian McCartney, Labour's British chairman, had taken the party into open confrontation with the union. RMT insisted that it had not left Labour and would seek to affiliate at UK-level to Labour leaving up to the party whether it cashed its cheque for affiliation.

The SSP leader Tommy Sheridan was extremely pleased and pointed out that RMT had a formal link with his party although details regarding affiliation fees and the precise role in policy-making had still to be worked out. The SSP's base of support had come through the anti-poll tax movement and in its early days – as Scottish Militant Labour prior to becoming the SSP – had little support amongst the trade unions. In this respect, Scottish Militant had differed markedly from the Militant Tendency in Liverpool at the height of its powers in the 1980s. Militant in Liverpool had been less a grass-roots political movement than an entryist organisation with significant support in the trades unions in the city.<sup>97</sup> The SSP, by contrast, has based its support in community activism, including environmental protest, opposing water privatisation and various local campaigns before establishing links with the unions. The party was prominent in its support for the firemen's union during their recent pay dispute. Sheridan was quoted saying that the RMT affiliation was the first it had received and was the most important event in the SSP's four year history.<sup>98</sup>

Earlier in the week, the 4,500 Communication Workers Union (the postal workers union) in Scotland had voted to affiliate to the SSP if the RMT was expelled by Labour for not allowing branches to affiliate to the SSP. Reports also suggested that there were moves for the Fire Brigades Union (FBU) to disaffiliate from Labour led by Strathclyde branch of the union.<sup>99</sup> Bob Thomson, a former chairman and Treasurer of the Labour Party in Scotland and full time trade union official, warned his party, 'Either Labour goes back to its roots and re-engages with the mass of workers or it will go into decline.' He gave his party 12-18 months to change course

or cease to be a true 'Labour' party, noting that the RMT affiliation to the SSP had given the SSP a 'credibility and respectability it has lacked'.<sup>100</sup>

The Scottish National Party attempted to take advantage of Labour's discomfort and John Swinney, its leader, held talks with Bob Crow on Thursday 5 February, the day before the RMT voted against backing down in its dispute with Labour. But Crow made it clear that the union had no plans to give the SNP money though was willing to work with them. The shift towards the centre within the SNP, following the trend in the Labour Party, has made it more difficult for the Nationalists to take advantage of union disenchantment with the trade unions. That opened up the opportunity for the SSP who see the RMT as the first but not the last union that will give it support.

## **10.2 SNP's belated modernisation**

Following the disappointing election last year and the challenge to his leadership from a relatively unknown ordinary member, John Swinney instituted an enquiry into the SNP's constitution. The leadership challenge was heavily defeated and served two functions. It re-established his leadership (at least for the next year as the results of the European elections may determine whether he will face a more serious challenge this year) and it highlighted the inadequacies of the SNP constitution which allowed any party member with only a handful of backers to challenge the incumbent, even had the incumbent been Scotland's First Minister.

The new draft constitution is to be debated at a special conference on 23-24 February and can be viewed on the party's website ([www.snp.org.constitution](http://www.snp.org.constitution)). The new constitution involves modifications to the existing constitution rather than a major overhaul. The SNP constitution is very open and democratic offering little scope for leadership against the wishes of ordinary party membership. Swinney appears to have learned from the Labour Party in accepting the need to modernise the party's constitution before embarking on any major overhaul of policy, should that be his intention.

The first change was designed to appease SNP hardliners by altering the party's aims to include 'Independence for Scotland' though this is defined in substantially the same way as the existing aim of 'self-government'.<sup>101</sup> The 'self-government' aim had been adopted at the party's foundation in order to bridge the divide between those seeking outright independence and those seeking a more modest form of home rule. This might be seen as a concession to hardliners who argue that the party plays down its commitment to independence and even question whether the leadership is committed to independence.

Branches remain the 'primary level of organisation for the Party'<sup>102</sup> and national conference the 'supreme governing body of the Party'.<sup>103</sup> National conference's functions remain as before though there is acknowledgement here, as throughout the new draft, of the changing context with the advent of devolution. The composition of the national executive committee is set to change with two ordinary members (in addition to any elected to other national offices and thereby serving on the NEC) elected from amongst its contingent of MSPs, MPs and MEPs, chosen by delegates at national conference. National conference will also elect six members who are not

MSPs, MPs, or MEPs. In addition, it will include a member each of the groups of MSPs, MPs and MEPs selected by each Parliamentary group, a member of Nationalist Councillors as well as a member of Young Scottish Nationalists/Federation of Student Nationalists and SNP Trade Union Group.<sup>104</sup> The difference is that in the future, SNP members elected to public office will have more influence over decision-making in the future.

The proposals involve the formal adoption of the term 'Leader'. Under the existing constitution, the SNP has no 'leader' as such but a National Convenor (previously National Chairman). As with some other proposed changes, this is a symbolic change but nonetheless significant. The possibility of the Leader being a member who is not an MSP remains open though assuming that the Party Leader is an MSP, she or she will automatically be the leader of the Parliamentary group.<sup>105</sup> Candidates for leadership (meaning the Party Leader or Deputy Leader) will be required to have the nominations of at least a hundred members who must be drawn from at least twenty branches.<sup>106</sup> This is the new clause that will provoke criticisms from grass roots activists who argue that Swinney is simply attempting to protect his own position and make it more difficult for members to challenge him.

During its history, the party dealt with increased pressure as its membership grew and it gained electoral support without a concomitant increase in its finances or full-time personnel by adding new Vice Chairmen (or Vice Convenors as they were later styled). The growth in vice convenors to deal with policy, organisation, publicity, local government, administration, youth affairs, fundraising meant that much of the activities otherwise conducted by professional staff were in the hands of voluntary party members elected to these positions. These posts are consolidated or done away with and functions subsumed under fewer elected office-bearers. At present, there are three Vice Presidents in addition to a National President, largely honorary positions though all elected. It is proposed that there will be only one honorary position - National President.

Another innovation is that the NEC will be chaired by a new officeholder – the Business Convenor – who will be in charge with internal party organisation similar to the chairman in the Conservative or Labour Parties. As with these parties, the Business Convenor will be appointed by the Leader but drawn from the membership of the NEC with the approval of the National Council, the supreme decision-making body between national conferences.<sup>107</sup> This strengthens the position of the Leader freeing him or her up to concentrate on public matters though the power of patronage for the SNP leader remains considerably less than that of either the Labour or Conservative Leaders. The section dealing with the selection of Parliamentary candidates refers to 'ensuring a balanced list of candidates, particularly in regard to gender'.<sup>108</sup> How this will operate in practice is unclear though it is notable that the term 'balanced list of candidates' is used in preference to 'gender equality'.

The proposals appear designed to streamline a constitution that was designed for an earlier era when the SNP was largely an extra-Parliamentary party. It takes account of the changed context of devolution placing more control in the hands of members elected to public office – councillors, MSPs, MPs and MEPs – while still giving considerable power to ordinary members.

## 11. Public Policies

Barry Winetrobe

### 11.1 Higher education finance

University finance was by far the major educational policy issue of the last quarter, as the debate down south develops, and fears grow of a detrimental impact on the Scottish sector.<sup>109</sup> Further pressure was added by the Enterprise & Culture Committee's report on the subject.<sup>110</sup> The Executive continues to try to hold its line, based on the coalition deal reached in the early days of devolution, citing its 'third phase' of its higher education review due shortly, and any additional 'substantial' funding in the forthcoming spending review. The First Minister, at FMQs on 22 January, declared that "I want to make one thing perfectly clear: there will be no top-up tuition fees for Scottish higher education students as long as I am First Minister, elected by this chamber to represent this country—Mr Swinney should be in no doubt about that.", but he has also argued that, though higher education funding is "an important priority for us" in the forthcoming spending review, it must be "balanced against important decisions in other priority areas."<sup>111</sup>

With the First Minister apparently not ruling out rises in the endowment 'charge' that is to be paid by graduates (though this revenue goes to fund students rather than universities), the suggestion first raised at the time of the coalition compromise a few years ago, that Scottish students are burdened by tuition fees by another name, has re-emerged.<sup>112</sup> At FMQs on 22 January, he said (emphasis added):  
Fourthly—and most important—I am absolutely convinced that we are right to ask Scottish students, when they have finished their degrees, to contribute to the welfare of their peers in years to come through the graduate endowment *or any other contribution*. That is an important principle, which is, I think, widely accepted by both students and taxpayers across Scotland.

The coalition may come under real strain, as the Liberal Democrats are determined to stick to the tuition fees deal reached in the early days of devolution, though that may become unsustainable in the new circumstances.<sup>113</sup> Within Labour, the political difficulties, of what we students of devolution sometimes blithely describe as 'devolution diversity and divergence', of the party having two different policies in London and Westminster, were exacerbated by the importance of the Scottish MPs' contribution to the Commons proceedings on the 'English' bill. Even apart from the 'West Lothian' and Barnett consequential aspects of this complex policy area (which are discussed elsewhere in this Report, clear and very public differences have emerged within Scottish Labour, with some senior figures supporting the UK line and thereby criticising, implicitly or otherwise, the Executive's policy, whether for reasons of UK party loyalty or out of genuine belief.<sup>114</sup>

### 11.2 Other education developments

Amid all this activity over university funding, it was difficult for other aspects of education policy to get much of a look-in.<sup>115</sup> The issue of school league tables rumbled on, and eventually a new website was launched to provide relevant data.<sup>116</sup> Ministers published plans to take powers to deal with 'failing schools'.<sup>117</sup> Red faces appeared at FMQs on 11 December when John Swinney appeared to catch the First



Minister out over teachers' qualifications.<sup>118</sup> The challenge of denominational schools to the much-trumpeted devolution principles of social inclusion and equal opportunities has arisen over practical problems with shared campuses between state and Catholic schools.<sup>119</sup> The Education (Additional Support for Learning) (Scotland) Bill had its plenary Stage 1 debate on 28 January.<sup>120</sup> The Audit Committee published a highly critical report on the Individual Learning Accounts fiasco, and the Executive announced proposals for a new scheme.<sup>121</sup> Proposals were announced to extend the Scottish Public Services Ombudsman's remit to further and higher institutions.<sup>122</sup>

### **11.3 Rural and environmental matters**

Rural policy was dominated, as is usual at this time of year, by the EU fishing negotiations, which are so important to the Scottish fisheries industry. Ross Finnie defended the outcome, but the SNP has attacked it in Holyrood and Westminster (including presentation of a Private Member's Bill by Alex Salmond to take the UK out of the Common Fisheries Policy). While ministers are trying to 'renegotiate' aspects of the deal, it appears that illegal protest action could be taken by the industry, in addition to legal challenges.<sup>123</sup> A food scare about farmed Scottish salmon caused general outrage. More general environmental policies were published and regularly debated within the Parliament. The Greens led plenary debates on sustainability and on agriculture on 6 November, and there also was an Executive-led debate that day on CAP reform; in reply to a question on 8 January, ministers set out their environmental priorities for 2004; Stage 1 of the Nature Conservation (Scotland) Bill was agreed the previous day, and proposals for a scheme of Strategic Environmental Assessment have been published.<sup>124</sup>

### **11.4 Economic policies**

For a change, there were generally positive statistics on the Scottish economy over this period. However, concerns for the future of call-centre and other financial services employment are being voiced in Scotland, as they are throughout the UK, and population decline continues to be explored, with the argument that the economic threat of decline can be countered by targeted immigration being attacked.<sup>125</sup> With the New Year, much punditry was devoted to a need for greater political focus on the economy.<sup>126</sup> For a restatement of the Executive's economic policy, see the Enterprise Minister's WA on 6 November, and speech on 21 January.<sup>127</sup> A Labour MSP has lodged a proposal for a Member's Bill banning large retailers from opening on Christmas Day and New Year's Day.<sup>128</sup> The Scotland Office has tried to show that it is also fully engaged with Scottish economic issues, with the Scottish Secretary giving a speech in late January in Edinburgh on the importance of the financial services sector, and the Department inviting views on the Pre-Budget report and the Scottish economy.<sup>129</sup> A new Chief Executive was appointed for the troubled Scottish Enterprise, just as a critical Auditor-General report into the body was released. The outgoing chief executive defended the organisation before a parliamentary committee and in the media. The announcement of a new chair for SE came as a surprise, as the assumed appointee, deputy chair, Neil Hood, was passed over in favour of Sir John Ward.<sup>130</sup>

### **11.5 Health**

Health statistics can be subject to diverse analysis, as was demonstrated when the First Minister sought to concentrate on average waiting times, rather than the median times preferred by the Opposition parties.<sup>131</sup> Press reports claimed that health costs in Scotland had risen significantly, and a Tory MP tried to tease out of the Scottish Secretary why foundation hospitals were good for England but not for Scotland.<sup>132</sup> The Primary Medical Services (Scotland) Bill received royal assent on 27 January. The NHS Reform Bill is proceeding through the Parliament, and other legislative developments include the reintroduction of a Member's Bill on breastfeeding, and proposals for Member's Bills on single vaccinations for MMR and on Human Organ Transplantation Registration. The controversy over the siting of a medium secure unit in Central Scotland reached FMQs on 18 December.<sup>133</sup> The announcement of a UK-wide scheme of compensation for Hepatitis C sufferers provoked some controversy in Scotland.<sup>134</sup>

### **11.6 Law and order**

The Parliament debated alternatives to custody, based on a Justice 1 Committee report, on 12 November and youth justice on 8 January.<sup>135</sup> The membership of the new Sentencing Commission has been announced.<sup>136</sup> An example of how the same policy developments can be viewed in diametrically opposite ways was the response to the extent of use of confiscation orders to seize assets of criminals. Trumpeted by ministers as a good news law and order story, opposition politicians chose to emphasise that half of the sums seized went to the UK Treasury rather than being retained in Scotland.<sup>137</sup> Tackling crime effectively as opposed to tough rhetoric can be tricky for ministers, and the Executive has been running into trouble over their flagship Antisocial Behaviour bill, and in their policy of temporary judges for the High Court.<sup>138</sup> Drugs policy is generally reserved, but law enforcement is devolved, so the impact of the recent reclassification of cannabis is being watched closely for any differences north and south of the border.<sup>139</sup>

### **11.7 Transport**

Transport policy was debated on 5 November on an Executive motion.<sup>140</sup> The First Minister's public support for a proposed Glasgow motorway has raised claims of conflicts of interest within the Executive, and this has added to financial and environmental concerns about this project.<sup>141</sup> The UK Government's airports white paper, which contained some support for Scottish expansion, was generally well received.<sup>142</sup> The advantages of greater Scottish control over the railways was discussed, and Tommy Sheridan (SSP) lodged a proposal to renationalise the railways in Scotland.<sup>143</sup> Two private bills for tram services in Edinburgh have just been published.<sup>144</sup>

### **11.8 Social issues**

The proposed civil partnership legislation is making its way through Westminster, and has been scrutinised by the Equal Opportunities Committee, as part of the parallel devolved policy development effort.<sup>145</sup> At FMQs on 13 November, the First Minister appeared not to give full-hearted support for UK plans for ID cards, when asked about the element of compulsion involved in this policy.<sup>146</sup> Charities reform has progressed, with the new regulator becoming operational in December.<sup>147</sup> Social

inclusion/exclusion remains a stated priority for the devolved administration, with details being released of the Cabinet Delivery Group on Closing the Opportunity Gap, and the Parliament debated poverty on 20 November on an SSP motion.<sup>148</sup> There has been a flurry of activity on the housing front, with a draft Private Sector Housing bill published; a bill being introduced on rights of tenement flat owners, and housing policy debated on 8 January.<sup>149</sup>

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- 2 "McConnell needs more vision says McLeish", Scotland on Sunday, 30 Nov: <http://www.scotlandonsunday.com/politics.cfm?id=1318542003>
- 3 Transcript: [http://www.scotland.gov.uk/\\_interviews/default.asp?id=5](http://www.scotland.gov.uk/_interviews/default.asp?id=5); "McConnell goes online to field questions from public", Herald, 15 Jan: <http://www.theherald.co.uk/politics/8020-print.shtml>, and for the relevant rules, see [http://www.scotland.gov.uk/\\_interviews/terms.asp](http://www.scotland.gov.uk/_interviews/terms.asp); SE media briefing, 6 Jan: <http://www.scotland.gov.uk/pages/news/weekly/000516.aspx>;
- 4 FMQs, 6 Nov: <http://www.scottish.parliament.uk/plenary/or-03/sor1106-02.htm#Col3013>; SE media briefing, 6 Nov: <http://www.scotland.gov.uk/pages/news/weekly/000475.aspx>; "Rebel LibDem MSP holds on to office", Herald, 7 Nov: <http://www.theherald.co.uk/politics/4136-print.shtml>
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