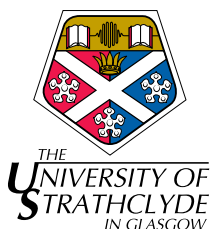




The Constitution Unit



Nations and Regions: The Dynamics of Devolution

Quarterly Monitoring Programme

Scotland

Quarterly Report
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Introduction: Curling Alone

James Mitchell

The Procedures Committee of the Scottish Parliament has been taking evidence this quarter considering the extent to which the principles set out by the Consultative Steering Group are being realized in the actual operation of devolution. Its four principles were: sharing power between the people, the legislators and the Executive; accountability of the Executive to the Parliament and both accountable to the people; access and participation of the people and legislators in decision-making; promotion of equal opportunities for all. At a time of disenchantment with politics and low turnout in elections these principles are highly relevant. These are relevant to problems afflicting liberal democracies across the globe. The concern that social networks are breaking down leading to disengagement from politics is not confined to Scotland or the UK. One of the most significant political science works in recent years has been Robert Putnam's *Bowling Alone* (London, Touchstone 2000) in which the author considers the collapse and revival of community in America. The themes outlined in that book – the demise of social capital and efforts to rebuild it – are themes of this quarter's report.

The establishment of the Scottish Parliament might be seen in itself as an ambitious effort in developing social capital. It was recognised by its supporters that the institutions themselves would only succeed if other changes were brought about simultaneously. The four guiding principles were central to this. Trust in politicians has been damaged by a series of events associated with devolution since its establishment. Turnout in elections has declined. Towards the end of this quarter, Scottish Parliamentarians have debated issues of law and order with particular reference to youth crime raising questions about the social cohesion of Scotland. As we have reported in previous reports, there may be disquiet about aspects of devolution but judging by opposition to the status quo ante public satisfaction with devolution is solid. That remains an important base from which to build the social capital referred to by Putnam.

There are problems and the Parliament's Procedures Committee investigation is timely. Philip Schlesinger, both in his contribution and in evidence to the committee, highlights an 'identity problem' suffered by the Parliament. A number of issues that surfaced during this quarter, some long-running, including the escalating cost of the new Parliament building and the row over MPs salaries (see Mark Shephard's section for the latter) have not helped project a positive image of politics. As journalists giving evidence conceded, they are in business of reporting news and bad news for the Parliament is good news for the media.

However, not all is negative. As Neil McGarvey notes, the response rate in the ballot on Glasgow's housing stock transfer was 58%, around the same level as in the Scottish Parliamentary elections in 1999 and the general election in Scotland last year. It may be surmised that when an issue is seen to be directly relevant to their lives, people are more inclined to participate. It is too early to say where stock transfer will

take us but it has the potential to alter Scotland radically – whether for good or ill. We also report the first postal election in this section. In a local government by-election in Stirling there was a turnout of 63.2%. However, a downside of devolution is that we now have more elections and it now seems that as soon as one election is over we move into the next election campaign. This constant campaigning encourages a negative image of the political process, most notably the role of political parties.

In the conclusion to his book, Putnam challenges his fellow Americans to find ways to ensure that by 2010 many more Americans participate in public life. A more immediate challenge can be set for the Scottish Parliament: to ensure that next year's elections are conducted in a manner that encourages voters to go to the polls.

Bowling is a popular sport in Scotland but the more dangerous analogy may relate to another national sport that has been prominent in the news' headlines this last quarter. The Scottish women's curling team that won gold medals at the Olympics in Salt Lake City suffered a fall-out. At least one team member looks set to be curling alone. Devolution is probably not in danger of moving from the high hopes to the rancour and despondency of Scotland's women's curling team. Those few initiatives mentioned here and the outcome of the Procedures Committee's investigation are part of an ongoing effort at rebuilding social capital.

1: Scottish Executive

Barry Winetrobe

1.1 Ministerial changes

The surprise resignation of Wendy Alexander, the Minister for Enterprise, Transport and Lifelong Learning, on 3 Mayⁱ necessitated a mini-reshuffle of the Executive. Over recent months she had been denying publicly persistent press reports that she was intending to quit because of the impossible nature of her political position and her ministerial workload. However, in her resignation letter to the First Minister, Jack McConnell, she claimed that she was “acting on a decision that I took at the turn of the year, but I was committed to first fulfilling the task you asked of me in preparing the new transport strategy and I was also determined to avoid adding unnecessary pressures on colleagues in your Administration’s early months.” The latter point raised some eyebrows, coming as it did, not only over a holiday weekend, but also in the middle of the SNP’s public embarrassment over the resignation from the party of its maverick MSP, Dorothy-Grace Elder.

Her portfolio had been the subject of much criticism as being made deliberately unwieldy (with the addition of Transport to the already substantial and diverse Enterprise and Lifelong Learning brief) by the new First Minister on his accession last November, so much so that she was generally known as ‘Minister for Everything’. However, it was retained in its entirety, as, presumably, to break it up on her departure, would have made it patently clear that it had been designed by McConnell expressly to over-burden his erstwhile Cabinet rival. It was bequeathed the following day (a Saturday) to Iain Gray, the Social Justice Minister. His Cabinet portfolio was given to his deputy, Margaret Curran, who enters the Cabinet for the first time. Hugh Henry, the junior Health Minister, transferred to Social Justice junior ministerial brief, and his place was taken in turn by Frank McAveety, who returns to ministerial office after having been junior local government minister under Dewar.ⁱⁱ

Initial reactionⁱⁱⁱ has ranged from speculation at the ‘true’ reasons for the Alexander resignation, and the impact it will have not only on Labour and on the devolution project itself, to the suitability of her successor to fill her business-focussed post and the apparent lack of available talent on the Labour backbenches. Both McConnell (in his reply to Alexander’s resignation letter), and the new Enterprise Minister, have been quick to reassure the business community that the ministerial change does not presage any downgrading of economic and enterprise issues in the priorities of the Executive, amidst all its concentration recently on public services and social justice matters. This latest example of ministerial turnover means that McConnell is now the only Labour cabinet minister to have stayed at the top table throughout the first three years of devolution. This can either be regarded, from a governmental perspective, as healthy organic development at the heart of government, or, as some media detractors were quick to suggest, evidence of the inherent instability and immaturity of Scottish devolution in practice. It also suggests some serious divisions within Scottish Labour itself. As with the aftermath of the mass ministerial clear-out last

November, much will depend on how a major figure such as Alexander, who has stated her determination to remain as an MSP, will act on the political back-benches, both in the run-up to the general election next year and in the longer term.

1.2 Times for reflection

The landmarks of devolution's 1,000 days and of the McConnell Administration's 100 days provided further opportunities for critical appraisal of the performance of the Executive and its ministers, with criticism of the Executive's lack of vision and ambition,^{iv} some of which even came from ex-ministers.^v The First Minister's own view, as transmitted at the 26 March lobby briefing, was that "during the first 1000 days there have been good days and bad days, some successes and some disappointments as well. I think all the MSPs have to work much harder in the second 1000 days to win the confidence of the people of Scotland. We need to concentrate on the priorities and make sure we have the health services, law and order and transport services that are fit for the 21st Century."

The First Minister was briefly indisposed on 7 March, requiring the Deputy First Minister, Jim Wallace, yet again to take over the role as 'Super-Sub', including standing in for McConnell at First Minister's Question Time that afternoon. This latest, if rather short, stint by Wallace as 'Acting First Minister' was achieved purely informally and administratively, as had been his first such temporary elevation during Dewar's illness in the spring 2000, rather than being designated by the Presiding Officer under the Scotland Act procedure,^{vi} as had been necessary following Dewar's death and McLeish's resignation in late 2000 and late 2001 respectively. These opportunities, added to the relative stability and safe performances of the Liberal Democrat ministers, will added to that party's credibility in the run-up to next spring's elections.

1.3 *Scottish Ministerial Code* and Ministerial Parliamentary Aides

A revised *Scottish Ministerial Code* was published on 26 February, portrayed by the Executive as being, generally, an updating of the 1999 edition rather than any major or substantive shift in the nature or workings of the devolved government.^{vii} It did, however, include procedures for the appointment and role of 'Ministerial Parliamentary Aides', a new form of political life resembling a devolved version of the Westminster PPS:^{viii}

4.9 Ministerial Parliamentary Aides are not members of the Executive and they should be careful to avoid being spoken of as such. They should be afforded as great a liberty of action as possible; but their close and confidential association with Ministers imposes certain obligations on them. Ministerial Parliamentary Aides may serve on Parliamentary Committees but they should not serve on Committees with a substantial direct link to their Minister's portfolio. Similarly, while they may table Parliamentary Questions, they should not table oral Parliamentary Questions on issues for which their Minister is responsible. While, subject to those exceptions, they retain broadly the same freedom of action as

other Executive backbenchers - for example, to make representations to Ministers on constituency issues and to table amendments to Bills - their position as Ministerial Parliamentary Aides means that they must support the Executive on key policy issues.

This development, which had been foreshadowed in a little-noticed press report just before Christmas,^{ix} was immediately denounced by the Conservatives,^x and, during plenary consideration on 21 March of some changes to parliamentary committee memberships, the SNP business manager, Fiona Hyslop, criticised the nomination to committees of one of the newly-created MPAs, Elaine Thomson.^{xi} She may have been thinking of similar conflicts of interest at Westminster, such as on the Standards and Privileges Committee when it was investigating complaints against ministers in their parliamentary capacities. The Minister for Parliamentary Business, Patricia Ferguson, defended the nomination, partly on the basis that the SNP apparently saw no conflict of interest in some of its front-benchers sitting on committees with the same remit as their shadow portfolios. At a time when the very size of the Parliament is under formal review, this extension of the 'payroll vote' (to adopt a Westminster term), albeit informally, makes the balance between 'front-bench' and 'back-bench' in the Parliament even more problematic. Much will depend on whether the MPAs operate in practice like Westminster PPSs, especially within the policy and administrative structures of the Executive, as well as in the Chamber and in parliamentary committees.

The list of the 8 initial MPAs, all Labour MSPs and attached to Labour cabinet ministers only (and which will inevitably change to accommodate the ministerial reshuffle of 4 May), were:^{xii}

Michael McMahon – to assist First Minister

Elaine Thomson – to assist Minister for Enterprise, Transport and Lifelong Learning

Sylvia Jackson – to assist Minister for Health and Community Care

Frank McAveety – to assist Minister for Finance and Public Services

Rhoda Grant – to assist Minister for Social Justice

Janis Hughes – to assist Minister for Tourism, Culture and Sport

Ken Macintosh – to assist Minister for Education and Young People

Karen Whitefield – to assist Law Officers

1.4 Public appointments and quangos

The Executive finally managed to beat off proposals that sought to give the Parliament an integral role in public appointments, when Alex Neil's Member's Bill was defeated at Stage 1 on 7 February.^{xiii} However, in so doing, it had to concede a greater parliamentary role in such appointments than it had originally envisaged, when it published its draft Bill for consultation in February,^{xiv} and, in late March, ministers announced further proposals aimed at making the arrangements more

accountable and transparent.^{xv} The consultation process ended on 11 April and the Public Appointments and Public Bodies (Scotland) Bill is due to be introduced shortly, before the summer recess.^{xvi} The Executive remained under close parliamentary and media scrutiny over its public appointments system and there was an embarrassing admission that procedures for recording political affiliations of appointees had not been adequately followed.^{xvii} There was press reaction to reports of large salary increases for senior staff in Scottish public bodies,^{xviii} and the alleged extent of Labour's continuing dominance in Scottish public life.^{xix}

Freedom of information

One of the Executive's (especially the Liberal Democrat section of it) flagship legislative proposals was finally passed by the Parliament on 24 April when the Freedom of Information (Scotland) Bill navigated its Stage 3 scrutiny relatively smoothly.^{xx} While existing divisions of opinion on the Bill remain – the Conservatives regarding it as unnecessary and expensive, and some in the coalition, in the other Opposition parties and in the various FoI campaigns thinking that it still doesn't go far enough^{xxi} - there were important ministerial assurances, following probing amendments from the Convener of Justice 1 Committee, that the Bill does not affect or restrict the Parliament's existing powers to gather information, especially under s23 of the Scotland Act.^{xxii}

1.6 Some administrative developments

The Executive itself signed a Memorandum of Understanding or concordat with the STUC, described in the opening paragraph as “one of a number of bi-lateral agreements which the Scottish Executive has with a range of social partners across Scotland.”^{xxiii} However, much of the media reporting was in terms of the relationship between the Labour Party and the unions, again emphasising the extent to which the Executive is seen generally to be a Labour administration, with Liberal Democrat support.

Advertising campaigns proved problematic for the Executive during the quarter, with ministerial embarrassment when an advertising campaign on domestic violence was withdrawn after the Advertising Standards Authority found it contained misleading statistics,^{xxiv} and an SNP MSP lodged a parliamentary motion on 8 February criticising the 'Central Belt' bias of its press advertising.^{xxv} Some detail on how the Executive plans its advertising and information strategies was given by the Finance Minister during Question Time on 25 April.^{xxvi}

The Scottish Public Services Ombudsman Act 2002 (asp 11) received Royal Assent on 23 April 2002, and SPCB has advertised for the posts of Scottish Public Services Ombudsman, and several Deputies.^{xxvii} The Executive also gave details of its contracting-out arrangements in a written answer on 29 April,^{xxviii} and, the following day, of its policies to encourage greater participation by women in public life.^{xxix} The Finance Minister, Andy Kerr, also had to deal with questions about the Executive's release of information to the Parliament,^{xxx} and civil servant appointment processes.^{xxxi} There was a reshuffle of Executive departmental heads,^{xxxii} and details

of secondments from and to the Executive, and the make-up of the Executive's staff, were given in written answers by the Finance Minister on 25 March.^{xxxiii} The Executive has also been questioned about its plans for limiting its more sensitive activity in the period before the May 2003 elections.^{xxxiv} A new website giving access to Scottish statistics was launched.^{xxxv}

A special adviser to the First Minister was appointed,^{xxxvi} with a strong emphasis by the Executive that the role of Douglas Campbell would be one dealing with political communications strategy. Clearly sensitive to the controversy in London over special adviser/civil service relations in the wake of the Jo Moore-Martin Sixsmith furore at Stephen Byers' DTLR, the Executive media briefing on 20 March stressed that

“His main role would be to advise the FM on speeches, political lines when appropriate, and long term strategic communications work. He would be available to speak to journalists on certain stories but the FM had made it absolutely clear that his day to day communications work would continue to be conducted through the civil service and on the record briefings.... Mr Campbell would not provide a parallel service to that offered by the press office and would not be giving comment on all the stories of the day. He would work closely with the SE's Strategic Communications Branch in the press office but would not have the power to give instructions to civil servants.”

2. The Scottish Parliament

Mark Shephard

2.1 A New Voice in the Land?

On 26 March 2002, the Parliament celebrated its first 1000 days by releasing a short film entitled *A New Voice in the Land*. In that time the Parliament has enacted 30 Bills, received 480 petitions and over 150,000 visitors to its Visitor Centres, and has held 28 full formal Committee meetings outside of Edinburgh.^{xxxvii} The film focuses on the personal experiences of several citizens with the Scottish Parliament and is just one part of a concerted and multi-faceted campaign to connect more Scots with their Parliament. However, selling the Scottish Parliament has proved difficult from the outset. This quarter is no exception as the Parliament has had to contend with resignations, controversy over MSP pay rises, disagreements over the numbers of MSPs, allegations of Executive undermining of the committee system, threats of backbench revolt and ejection from Parliament, allegations of sexism, as well as arrests at Faslane. There may be a 'new voice in the land' but it seems to have the same Westminster accent.

Dorothy Grace-Elder resigned from the SNP on 2nd May 2002, joining Dennis Canavan as the Parliament's second independent member. Her resignation was prompted by her party's insistence that she stand down from the Health and Community Care Committee. Citing Rule 6.3 of the Parliament's Standing Orders (namely that members, not parties decide on resignation) Grace-Elder refused to stand down. Consequently, the SNP parliamentary group voted to suspend her by 25 votes to one. She accused her party of 'stupid, arrogant and bullying behaviour' and John Swinney, her party leader, asked her to resign from the Parliament. Swinney was not the only MSP to challenge the legitimacy of Grace-Elder's tenure in the Parliament. On a point of order, Annabel Goldie (Conservative) asked David Steel, the Presiding Officer, whether it was 'competent' for an MSP elected from a party list to remain a member of the Scottish Parliament when she had resigned from that party. Steel replied that Grace-Elder was fully entitled to remain as an MSP because the Scotland Act 1998 clearly stated that an MSP could only be removed by resignation, death, or disqualification and none of these 'circumstances' had occurred.^{xxxviii}

The tone of the point of order is interesting as it once again raises questions concerning the legitimacy of the list MSP versus the constituency MSP. By mentioning the list, Goldie is making a qualitative distinction between list and constituency MSPs. However, the real issue is the consequence for the Parliament of a resignation from a party. There is a perception that list MSPs are more the property of party than are constituency MSPs.

The day after Grace-Elder resigned from the SNP, Labour's Wendy Alexander resigned from the Scottish Executive (see Executive section above). Also, in February 2002, Duncan Hamilton, the Parliament's youngest member, announced that he

would not be seeking re-election in 2004. His rationale for standing down was that 'the best parliamentarians have real-life experience outside elected politics' and that this was what he wanted to attain before he contemplated continuing as an elected representative.^{xxxix}

One of the most controversial issues this quarter has been the decision by MSPs to award themselves pay rises of 13.5 per cent taking their annual salaries to £48,228 from 1st April 2002. Accepting the independent Senior Salaries Review Body (SSRB) recommendation that MSP and Ministers' pay be pegged at 87.5 per cent of that of MPs and UK ministers respectively, the rise was approved by 89 votes to 15, with 15 abstentions on 21st March 2002. Breakdowns of the vote and analysis of the debate show that there was some cross-party unease at both the rate of the pay increase and the level of the pay vis-à-vis other sectors of society. SNP MSP Shona Robison lodged an unsuccessful amendment to limit the increase to take account of inflation. In defending her inflation only amendment, Robison argued that the 13.5 per cent rise would do nothing to help build trust and respect between the Scottish public and their Parliament. Meanwhile, SSP MSP Tommy Sheridan MSP lodged an unsuccessful amendment to reduce MSP salaries to the average skilled wage in Scotland of £25,000. Sheridan argued that the proposed extra £5,735 per annum on top of overpayment already was an insult to public service workers who had been asked to accept 3 per cent increases. The vote in favour of the 13.5 per cent increase provoked a media backlash and a public attack from Labour's MP for Glasgow Ballieston, Jimmy Wray. Labelling the Scottish Parliament as an 'odds and sods parliament', Wray argued that MSPs did not work the hours of the Westminster MPs and so they should not draw comparisons when it came to pay.^{xi}

As well as MSP salaries, the SSRB also initially recommended a £32,422 annual salary for the leader of the largest non-Executive party. The recommendation reflected a similar arrangement at Westminster for the Leader of the Opposition but was rejected in December 2001 by the SNP leader John Swinney. Instead, the leaders of the main opposition parties agreed to share the amount as an allowance to support their parliamentary activities. The formula that has been approved is that non-Executive parties that are represented by 30 or more members shall receive an annual allowance of £21,000, while non-executive parties that are represented by 15 to 29 members will receive an annual allowance of £11,000. The allowances are not to be used for party-political purposes and will only be released provided expenditures are transparent and receipted.^{xli}

The question of the appropriate number of MSPs was also raised following the Boundary Commission's recommendations that the number of Scottish MPs be reduced from 72 to 59. The Scotland Act (1998) specifies that the number of MPs and MSPs should be reduced commensurably as part of the devolution settlement. How to do this in the case of the Scottish Parliament is arguably more controversial for a number of reasons. First, if the reductions are made in the number of list members, this could have a profound effect on the representation of the Conservatives and SNP in the Parliament. In turn, this could backfire on the parties in power as it could be perceived as a political move against the opposition parties. Also, by focusing on a

reduction of list seats this would make for more discordance between the boundaries of the constituency seats for Westminster and the Scottish Parliament. A consequence of this discordance could be increased confusion among the public concerning not only their representatives, but also their constituencies. Alternatively, a reduction of constituency seats could also backfire on the current Executive as it could reduce the representation of the Labour and Liberal Democrat parties. This could then alter the Executive/Parliament dynamics in favour of the Parliament and make for weak and unstable government.

In addition a cut in the number of MSPs would also have implications for the working dynamics of the Scottish Parliament. In particular, this could have the potential of emasculating the committee system with knock-on effects on the scrutiny and influence of the Executive, not to mention the capacity of the Parliament to introduce its own legislation. Given the current experience of the Parliament as a primarily reactive force to Executive legislation, a reduction in numbers could mean that there is even less latitude for parliamentary initiative. One way of getting round the Scotland Act (1998) is to amend it to maintain the status quo of 129 MSPs and this seems to be the prevailing view held by the main parties with the exception of the Conservatives. The Conservatives currently advocate a reduction from 129 MSPs to 108, a reduction that would also require legislation.

Other alleged threats to the effectiveness of the committee system also surfaced this quarter as SNP MSP Alex Neil criticised the Local Government Committee for rejecting his Public Appointments Bill that would have given Parliament the right to veto appointments to posts on quangos. Neil claimed that ‘the majority of the committee members had been dragooned by the Executive’^{xlii} into rejecting the bill at the committee stage. The Public Appointments (Parliamentary Approval) (Scotland) Bill subsequently failed Stage 1 in the chamber on 7th February 2002 (50 for, 63 against, and 0 abstentions). The division split along party lines with Labour and the Liberal Democrats against the Bill and the SNP and the Conservatives in favour of it.

However, Labour unity did not extend to the Executive decision to build three new private prisons. Defending the Prison Estates Review the Ministers for Justice (Jim Wallace and Richard Simpson) came under sustained criticism from the Labour backbenches on a number of fronts including questions concerning the threat of prison closures, pay and pension cuts, and quality of rehabilitation and costs. Indeed, each of the seven Labour MSPs invited to speak in the debate raised concerns suggesting that the Executive has a future fight on its hands over prison reforms.

Other heated exchanges in the Parliament this quarter included the near ejection from the chamber of Labour MSP Johann Lamont and the subsequent allegation that the Presiding Officer, David Steel, ‘distinguishes’ between male and female MSPs. Having been asked to ‘resume her seat’ by the Presiding Officer during Question Time, Johann Lamont continued with her ‘point’ and nearly became the first MSP to be asked to leave the chamber. On a subsequent point of order, Labour MSP Helen Eadie questioned Steel’s decision to interrupt Lamont, claiming that ‘it is perceived by women that you distinguish between men and women.’^{xliii} The Scottish

Parliament may have a greater proportion of female politicians than Westminster, but it appears that a climate of sexism is still evident.

Members of Scotland Against Crooked Lawyers (SACL) were not as fortunate as Johann Lamont. Giving evidence to the Justice 1 Committee during the Legal Profession Inquiry, their co-ordinator, Stuart Usher, refused to listen to the Convener of the Committee who had already suspended the meeting. Encouraging fellow campaigners in the gallery to perpetuate the meeting, security guards were ultimately instructed to remove the protesters.^{xliv}

The Parliament also faced considerable protest from the pro-hunt lobby in February over the decision to pass Labour MSP Mike Watson's Protection of Wild Mammals (Scotland) Bill. Having led a concerted protest against the Bill, it now looks likely that the hunt lobby will now resort to challenging the legislation in the courts.

Finally, protest was not limited to lobbyists this quarter. SSP MSP Tommy Sheridan and SNP MSP Lloyd Quinan were both arrested on 11 February 2002 during an anti-nuclear protest at the Faslane nuclear submarine base. Quinan also caused a diplomatic stir in April when, without Israeli backing, he attempted to visit Yasser Arafat's compound in the West Bank town of Ramallah. The visit culminated in gunfire from the Israeli Defence Force and Quinan was heavily criticised by the Israeli authorities for not clearing the meeting with them first. Working with the Red Crescent and the International Solidarity Movement in the delivery of aid, Quinan also justified the week-long trip on the basis of both constituency concern and the fact that he is Vice-Convener of the recently approved Cross-Party Group on Palestine. The incident raises interesting questions over the jurisdiction of the Scottish Parliament and MSPs in foreign affairs matters that are the reserve of Westminster. Admitting that 'we do not have the power to do anything', Quinan nonetheless believed that he had a duty to his constituents and Cross-Party Group to gain an 'eye-witness account' of events in the Middle-East.^{xlv}

2.2 Other Parliamentary News

The Parliament was recalled from its Easter break to offer condolences to the Royal Family following the death of the Queen Mother. The motion of condolence was moved by the First Minister, Jack McConnell with contributions from the SNP leader, John Swinney, the Conservative leader, David McLetchie, and the Liberal Democrat leader, Jim Wallace. An estimated 83 MSPs were in attendance, with notable absences of some known to have republican sympathies.^{xlvi}

Visits to the Parliament this quarter had an Iberian flavour with visits from the President of the Portuguese Republic in February and from the Prime Minister of Catalonia at the start of May. The visit by the Prime Minister of Catalonia is particularly interesting given the claimed similarities between Spanish and UK devolution, not to mention the bilateral agreements for co-operation that have been entered into by the Scottish and Catalan governments.

2.3 Committee Reports and Inquiries (19 January 2002 – 30 April 2002)^{xlvii}

Report on Changes to the Standing Orders of the Scottish Parliament, 28 January 2002, Procedures Committee

Report on Budget (Scotland) (No.3) Bill, 28 January 2002, Subordinate Legislation Committee

Report on the Enlargement of the European Union and the Challenges and Opportunities Facing Scotland, 30 January 2002, European Committee

Stage 1 Report on the Scottish Public Sector Ombudsman Bill, 25 January 2002, Local Government Committee

Report on Community Care and Health (Scotland) Bill as Amended at Stage 2, 6 February 2002, Subordinate Legislation Committee

Call for Written Evidence – Opencast Coal Mining, 6 February 2002, Transport and the Environment Committee

Report to the Lead Committee at Stage 1 of the Land Reform (Scotland) Bill, 7 February 2002, Rural Development Committee

Report on Lobbying, 8 February 2002, Standards Committee

Consultation Letter: Taking Stock meeting on Race April 2002, 13 February 2002, Equal Opportunities Committee

Report on Scottish Parliamentary Standards Commissioner Bill, 13 February 2002, Finance Committee

Report on Protection of Wild Mammals (Scotland) Bill as Amended at Stage 2, 13 February 2002, Subordinate Legislation Committee

Report on Inquiry into the Need for a Children's Commissioner in Scotland, 14 February 2002, Education, Culture and Sport Committee

Scottish Executive's Response to the Equal Opportunities Committee's Report on its Consultation on the Implementation of the Race Relations (Amendment) Act 2000, 14 February 2002, Equal Opportunities Committee

Report on Water Industry (Scotland) Bill as Amended at Stage 2, 14 February 2002, Subordinate Legislation Committee

Stage 1 Report on the Education (Disability Strategies and Pupils' Records) (Scotland) Bill, 18 February 2002, Education, Culture and Sport Committee

Report on Replacing the Members' Interests Order: Interim Proposals for Consultation, 19 February 2002, Standards Committee

Report on Scottish Borders Education, 26 February 2002, Education, Culture and Sport Committee

Developing a Framework for Assessing the Contribution to Rural Sustainability of Public Policy in Support of Agriculture, 26 February 2002, Rural Development Committee

Report on Marriage (Scotland) Bill as Amended at Stage 2 Delegated Powers Scrutiny, 27 February 2002, Subordinate Legislation Committee

Public Attitudes Towards Sentencing and Alternatives to Imprisonment, 7 March 2002, Justice 1 Committee

Report on Inquiry into the Voluntary Sector, 7 March 2002, Social Justice Committee

Report on Petition PE327 by the Blairingone and Saline Action Group on Organic Waste Spread on Land, 7 March 2002, Transport and the Environment Committee

Report on Substitution on Committees of the Scottish Parliament, 8 March 2002, Procedures Committee

Stage 1 Report on the Scottish Qualifications Authority Bill, 13 March 2002, Education, Culture and Sport Committee

Disability Reporter's Report, 14 March 2002, Equal Opportunities Committee

Report on Phase 1 of the Inquiry into Aquaculture, 14 March 2002, Transport and the Environment Committee

Stage 1 Report on the Land Reform (Scotland) Bill, 15 March 2002, Justice 2 Committee

Report on Complaint Against Alex Johnstone MSP, 18 March 2002, Standards Committee

Interim Report on the Lifelong Learning Inquiry, 19 March 2002, Enterprise and Lifelong Learning Committee

Report on Inquiry into Local Government Finance, 20 March 2002, Local Government Committee

Monitoring the Impact of the Housing (Scotland) Act 2001, 21 March 2002, Social Justice Committee

Report on the Education (Disability Strategies and Pupils' Records) (Scotland) Bill, 26 March 2002, Subordinate Legislation Committee

Report on Freedom of Information (Scotland) Bill, 15 April 2002, Subordinate Legislation Committee

2.4 Parliamentary Bills (19 January 2002 – 30 April 2002)^{xlviii}

Executive Bills in Progress (latest stage reached):

- 1 Criminal Justice (Scotland) Bill (Introduced on 26 March 2002)
- 2 Freedom of Information (Scotland) Bill (Passed on 24 April 2002, awaiting Royal Assent)
- 3 Land Reform (Scotland) Bill (Stage 1)
- 4 Scottish Qualifications Authority Bill (Stage 3)

Members' Bills in Progress:

- Public Appointments (Parliamentary Approval) (Scotland) Bill: Failed Stage 1 on 7 February 2002 (for 50, against 63, abstentions 0).

- School Meals (Scotland) Bill (Introduced on 4 November 2001)
- Tobacco Advertising and Promotion (Scotland) Bill (Stage 1)
- University of St. Andrews (Postgraduate Medical Degrees) Bill (Introduced on 17 April 2002)

Committee Bills in Progress:

5 Scottish Parliamentary Standards Commissioner Bill (Stage 1)

Executive Bills Passed:

- Budget (Scotland) (No. 3) Bill: Passed on 14 February 2002, Royal Assent on 15 March 2002.
 - Community Care and Health (Scotland) Bill: Passed on 6 February 2002, Royal Assent on 12 March 2002.
 - Criminal Procedure (Amendment) (Scotland) Bill: Passed on 27 February 2002, Royal Assent on 8 March 2002.
 - Education (Disability Strategies and Pupils' Records) (Scotland) Bill: Passed on 28 March 2002, Royal Assent on 30 April 2002.
- 6 Fur Farming (Prohibition) (Scotland) Bill: Passed on 6 March 2002, Royal Assent on 11 April 2002
- Marriage (Scotland) Bill*: Passed on 27 February 2002, Royal Assent on 4 April 2002.
- 7 School Education (Amendment) (Scotland) Bill: Passed on 20 December 2001, Royal Assent on 22 January 2002.
- Scottish Local Government (Elections) Bill: Passed on 20 December 2001, Royal Assent on 22 January 2002.
 - Scottish Public Services Ombudsman Bill**: Passed on 21 March 2002, Royal Assent on 23 April 2002.
 - Sexual Offences (Procedures and Evidence) (Scotland) Bill: Passed on 6 March 2002, Royal Assent on 11 April 2002
- 8 Water Industry (Scotland) Bill: Passed on 14 February 2002, Royal Assent on 1 March 2002.

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

** Bill introduced as the Scottish Public Sector Ombudsman Bill

Members' Bills Passed:

- Protection of Wild Mammals (Scotland) Bill: Passed on 13 February 2002, Royal Assent on 15 March 2002.

Proposals for Members' Bills

In the last quarter there have been two proposals by Members for Bills. On 6th February 2002, John McAllion proposed a Bill to prevent delays in those criminal trials in which a child is to be cited as a witness. On 8th February 2002, Brian Monteith proposed a Bill to enable parents to withdraw a child from school on the understanding that they will write to the relevant local authority stating that they will be responsible for the required education. Both of these proposals have received enough supporting signatories to date to be introduced to Parliament. Meanwhile, Paul Martin's January 2002 proposal for a Bill requiring Health Boards to consult prior to any changes of use proposed for health service premises has also received enough supporting signatories to be introduced to Parliament.

2.5 Cross Party Groups

The number of Cross-Party Groups that have been approved by the Standards Committee grew by one in the last quarter to 46. The new Group is the International Trade and Investment Cross-Party Group which aims to act as a discussion forum for MSPs and others to develop awareness and promotion of international trade and investment matters.

3. The Scottish media and two parliaments

Philip Schlesinger

3.1 A 'reserved' power: broadcasting in Scotland

Under the Scotland Act (1998), which sets out the terms of the devolution settlement, broadcasting has been defined as a 'reserved' power. A distinct Scottish interest is recognised, however. The Independent Television Commission has an office in Glasgow which oversees the activities of the Scottish ITV licensees. The BBC tables an annual report before the Scottish Parliament on its Scottish output and policy. Although the national Scottish dimension is institutionally underpinned in these ways, it remains the case that broadcasting policy and regulation operate from London. This contrasts to other countries in which high levels of autonomous government obtain. For instance, in Catalonia there is a specific regulatory body, the CAC (Consell de l'Audiovisual de Catalunya), to oversee the activities of the state broadcasters there. The Audiovisual Council regulates radio, cinema and television and is a legal creation of the Catalan parliament, which appoints the members.

3.2 An old debate reignited – but very discreetly

After disappearing for some three years, the debate over how well Scotland is being served by television and radio news has been reopened by politicians both in London and Edinburgh, raising some questions about how hard and fast the distinction between 'reserved' and 'devolved' powers will prove. In 1998, there was much sound and fury over whether or not BBC Scotland should produce a 'Scottish Six', that is a Scottish television news broadcast at 6pm to replace the UK network news on BBC1. This proposal was regarded as highly contentious by the UK Cabinet, most of the BBC's Board of Governors and the corporation's top management, and was blocked.^{xlix} Since then, quiet has reigned concerning this matter.

However, as we noted in our last report, the Scottish Affairs Committee at Westminster had signalled its intention to examine 'post devolution news and current affairs broadcasting in Scotland' well before the new year. The committee took evidence in January and February 2002 (twice in London, with its last session held in the City Chambers, Glasgow). Its report was published on 21 March, and astonishingly, has received no critical discussion or attention.¹

Industry witnesses represented BBC Scotland and the Broadcasting Council for Scotland, Scottish Media Group, Border Television and Scottish Radio Holdings. Independent witnesses included David Hutchison of Glasgow Caledonian University, Nigel Smith, formerly of the Broadcasting Council for Scotland, and the present writer. Evidence was also taken from three MSPs, Frank McAveety (Labour, Glasgow Shettleston), Mike Russell (SNP, South of Scotland) and Robert Brown (Liberal Democrat, Glasgow). The broadcasters mentioned above all submitted memoranda of evidence as did Channel 4 Television, The Radio Authority and the DCMS.

The committee had originally intended to take oral evidence from the Department of Culture, but this was dropped. However, in its written evidence, the DCMS noted that to devolve the present UK system of regulation ‘would risk impairing the competitiveness of the UK broadcasting industry’ and also reaffirmed the importance of regionality as delivered by Channel 3 (ITV) and the BBC.^{li}

In its summary overview, the Scottish Affairs Committee welcomed the ITV contractual arrangements intended to improve ITN’s regional coverage. It also approved of the BBC’s appointment of a Europe correspondent intended mainly for Scotland. The committee wanted to see more ‘quality, in-depth discussions, such as can be found on *Newsnight* or *Channel Four News*’ featured earlier on the ITV and BBC schedules in Scotland.^{lii} The clear implication is that the main evening news bulletins are seen as too lightweight. The BBC’s performance was broadly endorsed, although the corporation was urged ‘to include additional items in its news bulletins which reflect the progress of devolution’.^{liii} Crucially, in light of the sleeping debate over the ‘Scottish Six’, the committee observed:

‘the evidence from the BBC clearly showed that there was no technical reason why a news programme mixing international, UK-wide and Scottish news made and edited in Scotland could not be produced, although some practical difficulties were identified.’^{liv}

The committee was plainly aware of the political implications of the proposed far-reaching review of its news output by the BBC following the next Scottish parliamentary elections in 2003, and urged widespread consultation.^{lv} Nonetheless, it is noteworthy that its willingness to countenance a change in broadcasting practice produced no spirited press commentary. To all intents and purposes, this finding has been ignored in public discussion in Scotland.

Noting ‘concern about the dominance of the Scottish Media Group in broadcasting and print journalism in Scotland’, the committee went on to ask that ‘consideration should be given to making necessary changes in the Broadcasting Act to allow commercial companies in Scotland to broadcast their own equivalent of a “Scottish Six”, if they wished to do so’.^{lvi}

Taken in the round, the committee’s findings have confounded those critics who imagined that it would simply bemoan the lack of representation of MPs on the Scottish airways, although it did comment with a little asperity on this point.^{lvii} In fact, it has ranged well beyond a narrow representational focus. Instead, it has given a quite radical endorsement to the idea that the Scottish public sphere is underserved by its present news provision and that broadcasting needs to raise its game. The committee wants the service to Scots improved, but crucially, it wants this done by emphasising Scotland’s place within the UK and the interconnections between Edinburgh and London politics, with an eye on Brussels too. An outward-looking view is embedded in its recommendations. Interestingly, the committee has also given a decisive riposte to fears at the highest levels of the British political and broadcasting establishments that liberalising the news agenda in Scotland’s television would lead to the collapse of the UK state. Surely, these are views worthy

of comment. That said, they are now a matter of record to be revisited, when – as will surely happen – the news debate once again acquires wings.

3.3 The media interest on the Mound

But how the news plays in Scotland is certainly not just the preserve of Westminster. On 29 January, quite independently, the Scottish Parliament's Procedures Committee also looked into media performance, here including the press as well as broadcasting. The Scottish Parliament has been examining the implementation of the Consultative Steering Group's principles and its concern with access and openness has led it to ask how the Parliament is being reflected in the media. It is no secret that, taken in the round, the Scottish political class believes that it has had a hostile press, as do some independent commentators.

The desire to establish the Parliament as a central Scottish institution led last year to a little-known initiative, although it has become public knowledge recently. The present writer led a team at Stirling Media Research Institute that undertook a communications audit of the Scottish Parliament. The initiative was taken by the Scottish Parliament Corporate Body, its top administrative instance. Although the report itself remains strictly confidential,^{lviii} the main recommendations were aired in public by the present writer (with official permission) in evidence given to the Procedures Committee on 29 January.^{lix}

The communications audit was premised on the Parliament's need to connect with the Scottish public at a time of falling electoral participation and disaffection with the political process. It covered a wide range of communications functions, including the parliamentary website and educational outreach. Of particular note in the present context was that an open media relations policy was advocated, and in particular, frankness about the difficulties attendant upon the Holyrood building project. The audit also recommended that the Parliament's committees travel more around Scotland in order to connect better with the population outwith Edinburgh, and more generally, those not concentrated in the central belt.

In parallel with the Scottish Affairs Committee, the Procedures Committee quizzed a range of media representatives. Strikingly, politicians in Edinburgh, as in London, were concerned about the future of institutional politics. Evidence was taken from the Scottish Daily Newspaper Society, the Society of Editors (Scotland), BBC Scotland and the NUJ. Central to the MSPs' questions was their concern that Scottish Parliament was suffering from an 'identity crisis' and how to counter Holyrood's negative portrayal. There was considerable doubt that the public had fully grasped the post-devolution political geography and that the distinction between the Parliament and the Scottish Executive was well understood.

3.4 Are we being served?

Yet a further indication of underlying debate within policy circles was the publication on 25 January of a report from the Scottish Consumer Council.^{lx} *Reaching Out* – also largely ignored by the media and therefore occasioning very little public notice – attempted to set out a consumer perspective on communications in Scotland.

The UK government has decided to set up a new, comprehensive regulatory body, Ofcom, to cover both broadcasting and telecommunications, and this has implications north of the border. The follow-on step, the long-awaited Communications Bill, will undoubtedly become the focus of wider debate in Scotland. At present, however, debate about the new dispensation has largely taken place in private between interested parties. In future, the new institutional framework will make it difficult to discuss broadcasting and telecommunications separately, although it is evident from discussion so far in Scotland that these two sectors do sit very uneasily alongside each other, and continue to raise quite distinctive policy issues.

Among its recommendations in the broadcasting area, the SCC^{lxi} argued for a 'devolved peak-time national news programme' and also expressed concern about the effects of market consolidation on 'regional identity, plurality and choice'. The Council further argued that Ofcom had been constructed without due attention being paid to devolution and to the special issues of representation in decision-making and advice that this entails.^{lxii} Private soundings indicate that no special recognition of a Scottish interest is likely. More than any other body to date in Scotland, the SCC has underlined the contradictions between the UK's regulatory approach, which is driven by market considerations and devolution, which is subject to a political logic.

The SCC's concern about Scotland falling behind in the 'communications revolution' has more recently been echoed by joint research from the ITC and the Broadcasting Standards Commission. The Commission's survey of viewing habits in the UK, *The Public's View 2001*, 'reveals that whilst the number of people with Internet access in the UK has almost doubled, 67% of Scots can still not access the Internet'.^{lxiii} Scottish digital take-up is also trailing all other parts of the UK, with 65% not having access. In anticipation of the new regulatory order, the ITC is now undertaking research into the 'health' of regional TV production (that which occurs outside London). This is a key issue for effective cultural industry devolution. We may assume that such questions of communication 'equity' will come more sharply into focus and become more politically sensitive as the year proceeds.

4. Public Attitudes

John Curtice

4.1 Attitudes towards devolution

First results from the third annual Scottish Social Attitudes survey were released at the beginning of March when the survey held its annual conference in Edinburgh. The survey included major module of questions on attitudes towards devolution and feelings about national identity as part of the ESRC Devolution and Constitutional Change programme.

Constitutional Preference					
	1997GE	1997Ref	1999	2000	2001
	%	%	%	%	%
Independence outside EU	8	9	10	11	9
Independence inside EU	20	28	18	19	18
Parliament with Tax powers	44	32	50	47	54
Parliament without Tax powers	10	9	8	8	6
No Parliament	18	17	10	12	10

1997 GE: 1997 general election; 1997 Ref. 1997 Referendum

On the whole do you think that England's economy benefits more from having Scotland in the UK, or that Scotland's economy benefits more from being part of the UK, or is it about equal.

	1997	1999	2000	2001
	%	%	%	%
England benefits more	50	36	43	38
Scotland benefits	11	22	16	18

more				
Equal	31	36	36	39

Compared with other parts of the UK, Scotland's share of government spending is...	2000 %	2001 %
Much more fair	2	2
Little more than fair	8	8
Pretty much fair	27	36
Little less than fair	35	32
Much less than fair	23	15

Source: Scottish Social Attitudes Survey. The National Centre for Social Research Scotland interviewed a random sample of adults aged 18+ between June and October 2001. Further details about the Scottish Social Attitudes survey can be found in Curtice et al (2002) and at <http://www.natcen.ac.uk>.

So far as public opinion is concerned devolution continues to fail to put the nationalist genie back in the bottle – or to put Scotland on the slippery road towards independence. At 27% the latest reading on support for independence is almost identical to the 28% support obtained by the 1997 Scottish Election Study. However if the debate about independence has not been laid to rest, the advent of devolution does seem to have ended the argument about whether Scotland should have some kind of parliament at all. Just one in ten Scots now say that there should not be a parliament at all. Whatever disappointment Scots may feel about what the parliament has delivered (see previous quarterly report), this has evidently not undermined the perceived legitimacy of the institution.

Meanwhile, the responses to two other questions in the survey provide further support for the view that devolution has not undermined the foundations of the Union. The 2000 survey had suggested that perhaps perceptions of who benefits most economically from the Union were returning to the pre-devolution position

when half of Scots believed that England benefited most while little more than one in ten believed that Scotland did. The former group still outnumbers the latter by around two to one, but the 2001 survey suggests it is also still no bigger than it was two years ago. In addition, the proportion believing that Scotland gets less than its fair share of public spending has fallen over the last twelve months from 58% to 47%.

Other Surveys

		Age	
Should there be a Scottish Parliament?	All %	Under 45 %	45 Plus %
Yes	69	80	58
No	20	11	30
Unsure	11	10	12

		Age	
Should a Scottish Parliament have tax-varying powers?	All %	Under 45 %	45 plus %
Yes	64	71	57
No	24	19	29
Unsure	12	10	14

Source: Scottish Opinion/Scotland on Sunday. 23-26/4/02 (N=530)

The number of Scottish MPs at Westminster is to be reduced from 72 to 59. Would you support or oppose a similar reduction in the number of MSPs in the Scottish Parliament in Holyrood?

Support	32%
Oppose	35%
Neither/no feelings/DK	32%

Source: System Three/Herald, 21-27/2/02

A Scottish Opinion survey conducted for Scotland on Sunday in April confirmed the continued high level of support for the Scottish parliament, with those favouring its existence outnumbering the latter by more than three in one. Equally support for the parliament’s as yet unused tax-varying powers remains strong. This poll was the first

to ascertain Scots' views about their parliament since Henry Mcleish's resignation as First Minister last autumn, and the results suggest that the allegations that surrounded that resignation may not have done any permanent damage to the institutions' perceived legitimacy. However the survey did find that opposition to the parliament was rather higher amongst older people, replicating a pattern evident at the time of the 1997 referendum (Surrige and McCrone, 1999).

Helen Liddell's decision to hold a consultation on the provisions of the Scotland Act that would produce a cut in the numbers of MSPs in 2007 has resulted in considerable debate in political circles about whether the Scottish Parliament does or does not need 129 members. But a System Three poll in February revealed that this issue does not exercise the public. Nearly one in three Scots neither support nor oppose a reduction in the number of MSPs. And with opinion apparently divided down the middle amongst those who do have a view, it is not evident that public opinion gives the Secretary of State much guidance on what she should do.

Identity

Scottish Social Attitudes 2001

Forced Choice National Identity							
	1979	1992	1997 GE	1997 Ref	1999	2000	2001
	%	%	%	%	%	%	%
Scottish	57	72	72	83	77	80	77
British	39	25	20	23	17	18	16

Moreno National Identity						
	1992	1997 GE	1997 Ref	1999	2000	2001
	%	%	%	%	%	%
Scottish not British	19	23	33	32	37	36
More Scottish than British	40	38	33	35	31	30

Equally Scottish and British	33	27	29	22	21	24
More British than Scottish	3	4	3	3	3	3
British not Scottish	3	4	3	4	4	3

While the advent of devolution may not have served to undermine the level of cognitive support for the Union, it remains far from clear that the same can be said of affective support. The proportion of Scots who give priority to a sense of Britishness over a sense of Scottishness continues to be low. Although the most recent survey does not show any further increase in feeling Scottish compared with the previous year, it still remains higher than it was in any survey conducted prior to the devolution referendum.

Some people say that whether they feel British or Scottish is not as important as other things about them. Other people say their national identity is the key to who they are.

If you had to pick just one thing from this list to describe yourself – something that is very important to you when you think of yourself, what would it be: –

(most popular answers only)

Mother/father	24%
Scottish	18%
A working person	10%
A woman/man	10%
Working Class	9%

Meanwhile, the relative importance of national identity for Scots is confirmed by a new question administered on the 2001 survey. Respondents were presented with a long list of possible identities and asked to identify which one was most important to how they thought of themselves. Being Scottish was the second most commonly cited identity. Only being a parent was chosen more often. Indeed being Scottish was chosen almost as often as were either of two working class/occupational descriptions, suggesting that their national identity has as at least as much importance for Scots as any class identity they may have.

I am going to show you two flags. First of all, here is the Union Jack. When you see the Union Jack, does it make you feel proud, hostile or do you not feel much either way?

Ditto Saltire

	Union Jack	Saltire
	%	%
Very proud	12	40
A bit proud	20	31
Do not feel much either way	60	28
A bit hostile	5	1
Very hostile	2	*

* less than 0.5%

Not only do people in Scotland feel Scottish, but they also respond to distinctly Scottish symbols. No less than 71% say that they feel proud when they see the Saltire. In contrast no more than a third say the same about the equivalent symbol of Britishness, the Union Jack. Not that Scots are hostile to Britishness. No less than 60% simply say they do not feel much either way when they see the Union Jack. It appears that the principle threat to the Union is indifference rather than hostility.

Attitudes towards other issues

Scottish Social Attitudes 2001

On the whole do you think there should be separate schools in Scotland for Catholic children, or that this system should be phased out ?

	1992	1997	2001
	%	%	%
Should be separate schools	20	18	13
System should be phased out	76	79	81

Scottish society has long been marked by a divide between its Protestant and Catholic communities. Although many would argue that that divide is no longer as important as it once was, one traditional feature of the Scottish educational system that allegedly sustains a social gap between the two communities remains in place – separate schooling. The public school system maintains a parallel system of Catholic and non-denominational schools with the result that the children of Catholic parents commonly attend Catholic schools while those of from a Protestant background (or none at all) attend a non-denominational one. Survey evidence has long indicated

that separate schooling is unpopular, yet all of the political parties still uphold the system of Catholics schools.

Even though the finding was far from new, *Scotland on Sunday's* decision to headline Scots' apparent opposition to separate schooling generated considerable controversy (*Scotland on Sunday*, 3 March 2002). And indeed the survey did suggest that there has been further erosion of public support for the system over the last decade. Just 13% now say there should be separate schools, compared with 20% in 1992. Moreover, the survey also suggested that even Catholics themselves no longer favour separate schools, with just 36% in favour and 59% opposed. In contrast ten years ago there was still a small majority (51%-47%) in favour. Only those Catholics who attend church every week apparently still support the system, though even amongst them no more than 53% are in favour and 44% opposed.

Attitudes towards legalisation of cannabis				
Age				
Which of these statements comes closest to your view?	All	18-24	25-34	35+
	%	%	%	%
Taking Cannabis should be legal without restrictions	4	6	9	3
Taking Cannabis should be legal, but it should only be available from licensed shops	46	67	55	41
Taking Cannabis should remain illegal	47	26	35	53

Should doctors be allowed to prescribe cannabis for people with serious illnesses?	
	%
Definitely should	48
Probably should	36
Probably should not	5
Definitely should not	5

The public debate about drugs has undergone a sea change in recent years. The apparent failure of the threat of imprisonment to stop significant numbers of people from taking allegedly dangerous drugs has begun to stimulate a rethink of public policy. Indeed the Scottish Executive has now accepted that a programme of public

education about drugs is preferable to one of moral condemnation. The uncertainty of politicians is reflected in public opinion. The public are now divided down the middle on the suggestion that cannabis should be legalised. However there is clear majority support for legalisation amongst younger people, suggesting that support for legalisation may grow. And even at present there appears to be relatively little appetite for prosecuting users – only 36% believe that those in possession of small amounts should be prosecuted while 52% disagree.

Meanwhile, there is clear support for cannabis’ use for medicinal purposes, suggesting that public opinion will not be a barrier should current UK government sponsored investigations into the medical value of cannabis result in a recommendation that the drug be made available on prescription

From which sort of landlord would you prefer to rent?	Council Tenants
	%
Housing Association	8
Local Authority or Council	87
Private Landlord	2
Scottish Homes	3
Some other landlord	*

In March, the tenants of Glasgow City Council voted in favour of adopting Glasgow Housing Association as their landlord in place of the council. They were offered significant financial inducements to do so. That these may have played a significant role in the outcome is suggested by the fact that no less than 87% of council tenants across Scotland as a whole say that they would prefer to rent from a local authority or council.

Other Surveys

- (a) *Do you think there are too many immigrants in Scotland?*
- (b) *Do you think it is too easy for immigrants to gains access to the UK?*
- (c) *Do you think immigrants make a positive contribution to Scottish society?*
- (d) *Do you think there should be a repatriation programme for immigrants?*

	(a)	(b)	(c)	(d)
	%	%	%	%
Yes	34	58	46	46
No	41	21	27	28
Unsure	25	21	27	26

Source: Scottish Opinion/Scotland on Sunday. 23-26/4/02 (N=530)

It is often argued that Scotland is a relatively tolerant country that avoids the some of the possible dangers of narrow nationalism. That image was challenged to some degree last year by the controversy that surrounded the housing of a group of asylum seekers on a Glasgow housing estate, including one incident where an asylum seeker was murdered. It was apparently challenged in April by a poll conducted for *Scotland on Sunday* in the immediate wake of M. Le Pen's success in coming second in the presidential election in France. The poll found that pluralities of Scots believed that it was too easy for immigrants to gain access to the UK and that there should be a 'repatriation programme' for immigrants. At the same time, however, pluralities also said that immigrants make a positive contribution to Scottish society and denied that there were too many immigrants in Scotland. Probably the most sensible reading of the poll is that while Scots may not endorse the idea of an open multicultural society to the degree that some have claimed, there is little evidence either that it is particularly prone to hostility to outsiders.

Support/Oppose British participation in US military strikes against Iraq					
		Party Preference			
	All	Con	Lab	LD	SNP
	%	%	%	%	%
Support	38	40	44	23	46
Oppose	43	39	40	56	41
Neither	9	12	6	12	6

Source: System 3/Herald 21-27/3/02

In March *The Herald's* System Three poll imitated a number of British polls in ascertaining views about the possibility of a military strike against Iraq, a move that has been suggested as a possible sequel to the military action in Afghanistan in the 'war against terrorism'. In line with contemporaneous British polls, the poll found there was considerable hostility to British involvement in any such action. More surprising perhaps, given the party's historic opposition to NATO, was that SNP supporters were no more likely to be opposed to action than were Scots in general.

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4.2 Elections and Attitudes towards Parties

Party Fortunes

System 3/Herald poll

Holyrood Vote Intentions										
	Con		Lab		Lib Dem		SNP		Others	
Vote	1	2	1	2	1	2	1	2	1	2
	%	%	%	%	%	%	%	%	%	%
21-27/2/02	10	11	39	34	13	15	32	30	7	11
21/3-27/3/02	12	9	36	28	15	19	32	30	7	13
25/4-1/5/02	12	11	40	31	13	16	27	28	7	13

The Other votes are divided as follows:-

	SSP		Green	
Vote	1	2	1	2
	%	%	%	%
21-27/2/02	3	6	2	3
21/3-27/3/02	3	6	2	5
25/4-1/5/02	4	6	2	5

Westminster Vote Intentions					
	Con	Lab	Lib Dem	SNP	Others
	%	%	%	%	%
21-27/2/02	13	46	12	24	3
21/3-27/3/02	14	41	15	26	3
25/4-1/5/02	14	47	14	21	4

The principal Other votes are for the SSP who scored 2% every month

Local Government by-elections

	Change in % vote since May 1999			
	Con	Lab	Lib Dem	SNP
7/3/02				
South Lanarks/Whitehill	I	-11.1	I	-14.2
14/3/02				
Glasgow/Springburn	-2.3	-5.6	I	-4.9
Shetland/Whalsay-Skerries	*	*	*	*
Moray/Lossiemouth East	I	*	*	-6.6
Moray/Lossiemouth West	I	*	*	+2.5
Western Isles/North Benbecula	*	*	*	*
18/4/02				
East Ayrshire/Dalmellington	I	-7.1	*	+22.2
Fife/Thornton, Stenton, etc	-6.4	-16.0	+8.9	+5.7
Stirling/Teith	-0.8	-6.4	+1.1	+2.8
2/5/02				
Borders/Eyemouth & District S	-4.7	*	-10.9	I
Borders/Kelso Central	+22.9	*	-38.3	-6.5
Borders/Old Selkirk	*	*	I	+5.3

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

I Fought by-election but did not fight 1999 election

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

The polls have continued to give much the same message over the last quarter as they have since last year's UK general election – although that message is not always well understood. Labour remains the dominant party so far as voting intentions for Westminster are concerned. But it also remains far less popular in Holyrood voting intentions than it is for Westminster. As a result while Labour is still Scotland's most popular party, its lead over the SNP in Holyrood voting intentions is a relatively narrow one, and especially so on the second party list vote. It is unwise to assume that Labour will necessarily emerge as the most popular party in next year's Scottish election. Unless it can close the gap between its Westminster and Holyrood popularity it could be vulnerable to any decline in the popularity of the UK Labour government over the next year. Certainly in the April System Three poll – conducted

at a time when there was a temporary dip in Labour’s UK popularity – indicated just how such an eventuality could begin to see the SNP emerge as the first party on the second vote.

The nationalists themselves however remain becalmed. Indeed their Holyrood poll rating at the end of April was their worst yet in the System Three poll since the 1999 Scottish election. The pressure on the uncharismatic John Swinney to raise his profile is likely to grow, especially with the announcement that his predecessor, Alex Salmond (currently a Westminster MP), intends to return to Holyrood in 2007. The two parties that do seem to be making electoral progress are the Liberal Democrats who continue to outpoll the Conservatives and the Scottish Socialist Party which is now persistently running at a level of support on the second vote that suggests it could add to its single representative in the next parliament. The SSP also continues to make an impression in local government by-elections, especially in traditional Labour areas in the west of Scotland. The party secured, for example, 15.9% of the vote in Whitehill, 12.0% in Dalmellington and 8.4% in Springburn, figures that help account for Labour’s continuing loss of support in local by-elections.

One other feature of this quarter’s local government by-elections should be recorded. The first all postal ballot to be held in Scotland was held in Teith at the beginning of April. At 63.2% the turnout was well up on the norm for local by-elections, adding further weight to the evidence from English local elections that this method of conducting local contests can increase turnout.

The Parties

Has the Labour government made this a better country to live in?

Very much better	5%
Slightly better	37%
No difference	30%
Slightly worse	16%
Very much worse	9%

Source: System 3/Herald 25/4-1/5/02

In May the System Three poll imitated British polls in securing Scots verdict on the record of the Labour government, five years after it was first elected into office. Scots evidently continue to have a relatively favourable view of the Blair administration, with 42% saying that it had made Britain a better place to live in, and only 25% that it had made it worse.

In contrast no polling organisation has as yet asked questions that enable us to ascertain how voters evaluate the First Minister, Jack McConnell or the administration he formed only last autumn. This is undoubtedly an important gap in

our knowledge about the state of public opinion in Scotland as the 2003 election begins to loom on the horizon.

5. Scotland/UK Relations

Alex Wright

5.1 The Boundary Commission

Following the Boundary Commission's deliberations over Scotland's constituencies at Westminster, parliamentary seats will be reduced from 72 to 59 with the number of electors per seat at slightly less than 70,000 (save for the Western Isles, Orkney and Shetland) which is akin to the size of English constituencies.^{lxiv} This is relatively uncontroversial save for Glasgow and its environs, where a number of high profile MP's including George Galloway are vulnerable. However, it also followed that the number of 'constituency' MSPs would be similarly reduced, as their constituency boundaries were identical to the ones at Westminster, prior to the Commission's findings.

The issue attracted considerable speculation in the media during February and March and it would appear that a deal had been cut. An early report in *The Herald* caught the mood, when it stated that 'senior Labour politicians believe the number of members of the Scottish Parliament should be reduced' and that 'under *The Scotland Act* the number of MSPs would be reduced to 106' from the current figure of 129.^{lxv} This would have a few consequences - including the risk that it might provoke a back-lash from Labour MSPs (who hold the majority of constituency seats) and it had already attracted criticism from Sir David Steel, the presiding officer (see previous devolution monitor report). So it came as little surprise that within a matter of weeks, Jack McConnell, the first minister, voiced his concern about any reduction in the number of MSPs. He declared:

"Given all the events that have taken place, we need four years up to 2007 giving attention to the priorities of Scotland. Any attempt to reduce the number of MSPs or reconfigure constituencies or change the system of electing MSPs will be a distraction from what we should be concentrating on."^{lxvi}

The next day *The Herald* reported that, 'McConnell appears to have persuaded the majority of Labour colleagues in the Commons and Lords to throw their weight firmly behind the retention of 129MSPs at Holyrood and that the Scotland Act would be amended so that the existing 73 constituency MSPs would be retained for the 2007 election'. After that an electoral commission would consider the options - but these would not come into effect until after the next election in 2011.^{lxvii}

Should the number of MSPs remain the same, there is still room for controversy. As Lord Ewing (who chaired the Scottish Constitutional Convention in the 1990s) observed:

"We cannot have different boundaries for MPs and MSPs. It is a recipe for confusion and conflict. I would like to see the Scottish Parliament use the new Westminster boundaries and elect two MSPs from each."^{lxviii}

If Holyrood's constituencies diverged from those of Westminster that would pose logistical problems for the political parties as they would have to draw on the support of differing electorates at UK and Scottish elections. If each constituency had to provide two MSPs that might offer a solution but it might have its drawbacks too. Why would that be a problem? The problem arises in terms of the changes in degree of proportionality.

These and other reports in the media exemplify the extent to which Holyrood's future is dependent on parliamentarians south of the Border – and they extend to which they keep a watchful eye on Holyrood – as would be expected with legislative devolution. It is reasonable to suppose that McConnell would not have taken such a public stand on the issue without the tacit consent of the Prime Minister himself. Even the earlier report by the Herald mused that 'Downing Street advice until recently at least favoured a retention of the 129 and that it anticipated that the Scotland Office would find a 'solution'.^{lxxix} Fourteen days later, we were informed that 'although the Prime Minister is waiting until the Scotland Office's consultation process ends at the end of March before making any public comment it is understood he is likely to support the present number'.^{lxxx} A week or so later *The Herald* 'revealed' that a way had been found to 'introduce "a very tight" amendment' to the original Scotland Act.^{lxxxi} The underlying concern being that if the Act was revisited, then other political parties, especially the SNP might use the occasion to attempt to enhance Holyrood's powers. The following day *The Times* affirmed that the Prime Minister had 'changed his stance and given his blessing to keeping the Scottish Parliament at its present size in defiance of devolution legislation'.^{lxxxii}

5.2 The Scotland Office

The Scotland Office attracted criticism during February. Doug Henderson, a former defence minister was reported as arguing that Helen Liddell, the Secretary of State, and George Foulkes could 'no longer justify the jobs that they were doing' and that 'Scotland and Wales should not have separate cabinet representation'.^{lxxxiii} Despite his Scottish roots, Henderson holds a constituency in the North of England – a part of the country which has increasingly demanded some form of devolved government. It can therefore be supposed that in anticipating such a development and by demanding parity with Scotland and Wales (at least in relation to no cabinet representation), his message is aimed not so much at the Scots, or the Welsh, or Blair for that matter – but his own constituents in England. That said, it signifies the extent to which parliamentarians in England, especially in the North, believe that representation in the cabinet gives Scotland an unfair advantage. Whether that is so remains debatable (see earlier devolution monitor reports) but the issue and the sensitivities it can arouse remains contentious.

5.3 Devolution and 'Reserved Matters': Now You See It, Now You Don't?^{lxxxiv}

The White Paper on Scotland's parliament identified 'some' of the powers that would be reserved to the UK Parliament, though in some respects it was rather vague on this. It indicated that these matters would include 'the constitution, UK foreign

policy, UK defence and national security, the stability of the UK's fiscal, economic and monetary system, common markets for UK goods and services, employment legislation, social security and most aspects of transport safety and regulation'. It added, however, that 'the legislation setting up the Scottish parliament will specify those powers which are reserved to the UK parliament'.^{lxxv} Understandably, therefore, *The Scotland Act (1998)* was not only much more detailed regarding the content of the reserved powers but also in relation to their scope – which was rather wider than that portended by the White Paper. For instance they can encompass the funding of political parties, the Civil Service, misuse of drugs, data protection, firearms, immigration and nationality, energy, transport extradition, consumer protection, media and culture, health and safety and, outer space. All of which suggests that the parliament at Westminster retains a considerable degree of competence over Scotland's governance.^{lxxvi}

Yet, there remains some ambiguity over which tier of government has competence for a particular policy issue - which from time-to-time has been the source of controversy. When David Blunkett, the UK home secretary agreed to adopt the new pan European arrest warrant system, there was little room for Scots to object. A figure in the Executive explained that 'extradition was a reserved issue so it will apply in Scotland'.^{lxxvii} The fact that Scotland has its own police, its own judicial system and a parliament, is of little consequence. But when the Scottish Police Federation voted for the right to strike at their annual conference in April, there was a slight degree of ambiguity over what should happen next. In a reference to *The Police Act (Scotland) 1967*, the Executive warned that strike action was prohibited and *The Times* reported that 'sources made clear that ministers are not in favour of changing the law'.^{lxxviii} Presumably this refers to UK ministers rather than those in the Executive.

Nuclear power was another bone of contention. Following the publication of the Cabinet's PIU report on energy policy, there seemed to be a division of opinion between two Scottish UK ministers over where competence lay over nuclear power stations.^{lxxix} Following debates both at Westminster and Holyrood on the matter, the Prime Minister wrote to Alex Salmond, the SNP's leader at Westminster, that 'Scottish ministers, answerable to the Scottish Parliament, have the final say over approving or rejecting nuclear power stations in Scotland'.^{lxxx}

Although immigration and nationality are reserved matters that did not prevent a cross party group of MSPs from calling for an end to the detention of asylum seekers children in the Dungavel detention centre.^{lxxxi} Whilst this may have little immediate effect it is indicative of the fact that collectively MSPs can condemn UK policy and demand its abolition – now that Scotland has its own parliament this will become more commonplace.

GM Crop Trials also attracted controversy when it appeared that the Executive was quite content for competence to be re-assigned to UK bodies. Shadow, Depute Environment Minister, Fiona McLeod MSP, of the SNP complained that:

“Ross Finnie [the Executive minister responsible for the environment and rural matters] sneakily laid a draft statutory instrument before Parliament on the last

day before the Easter Recess. If passed, this will give the ability to exercise powers ‘in relation to processing applications to release Genetically Modified Organisms’ to Westminster under an agency agreement”.^{lxxxii}

The MSP warned that she would be submitting a motion in parliament annulling this transfer of power to Westminster.

This and the other examples might all sound relatively minor issues but they exemplify the fluidity surrounding the allocation of competencies between Holyrood and Westminster. Opposition parties in Scotland will need to keep a watchful eye on the Executive’s ministers, if powers which by right belong to Scotland are not to be re-assigned to London.

5.4 The House of Lords: So Strange?

Scotland’s constitutional future became the focus of interest in the Lords after Lord Palmer introduced a Scottish Parliament (Referendum) Bill, the underlying intention of which was to hold a referendum on the abolition of the Scottish Parliament. Lord Palmer told *The Times*:

“They introduced a fur farming Bill but there isn’t any fur farming in Scotland. But what really gets my goat is the estimated cost of the new parliament building. If I were an MSP I would not be able to look my constituents in the eye. I love Scotland dearly and I want to ask people if they are happy with what is going on”.^{lxxxiii}

In the ensuing debate in the Lords, Baroness Strange, who like Palmer has a residence north of the Border called for Scotland to be cut in half. She said:

“Perhaps we should be a bit more devolved still [...] Perhaps we should cut Scotland in half, north of the Forth and Clyde, leaving the Scottish parliament where it is. The new £4bn building with its £400,000 rose gardens and landscaping would make a splendid new hospital of which we have great need in Scotland”

She also suggested that there could be a smaller parliament situated ‘possibly’ in Perth for the north of the country which would be “supported by a large national lottery, tickets being sold abroad by all Scotsmen who live around the world....”^{lxxxiv} Whilst this extract from the debate was clearly delivered with some irony (surely?), it affirms how parliamentarians at Westminster enjoy the authority to call into question Scotland’s constitutional future, even when some of those parliamentarians have not even been democratically elected.

The Lords also demonstrated its relevance to Scotland when Robin Cook called for a ‘Scottish quota of peers elected indirectly from Holyrood to a reformed House of Lords.’^{lxxxv} The issue of Scotland having some form of representation in the Lords is by no means new. This was touched upon by the late Donald Dewar but it provoked something of a furore at the time because it coincided with the inception of the new parliament at Holyrood. A few issues arise from this. First, it is difficult to avoid the impression that such a proposal relates more to England than Scotland, where

regionalism is asymmetric. Second, at some point in the future a different party in government in London might attempt to give the Lords a bigger role in relation to devolved legislative proposals, if there was *in situ* quotas of peers from the UK's regions and stateless nations. That would risk eroding the autonomy Scotland possesses to-date.

6. Scotland/International Relations

Alex Wright

6.1 The Convention on the EU's Future Governance

According to *The Herald*, Jack McConnell had attracted criticism for failing to ensure that Scotland was directly represented in the Convention, the task of which, is to prepare a report in advance of the 2004 IGC on the EU's future. Struan Stevenson MEP (Conservative) called it a "stitch up". Whilst Richard Lochhead MSP (SNP), declared:

"I fear the Scottish Parliament will have no front line representation whatsoever and that is something that concerns me deeply. The Germans for example, are sending someone specifically to represent their devolved legislatures, so why can't we have someone from ours? Everything will be agreed by consensus on this convention. There will be no votes which means that states which are not yet members of the EU will have more say on what happens than Scotland – and that is ridiculous. As things stand, we will have no one and there is a serious danger that Scotland could end up being represented by a councillor from England who sits on the CoR. That would be unacceptable."^{lxxxvi}

Just a couple of days later, the Herald reported that no Scottish MPs would be present at the Convention (each of the two from the Commons were English, though Lord MacLennan, who was formerly the Lib Dem MP for Caithness, will be one of two appointees from the House of Lords). So in the absence of MSPs being permitted to attend, Scotland's representation (aside from MacLennan) was left to Professor Neil MacCormick MEP (SNP) and Councillor Keith Brown (SNP), who is a member of the CoR - which *The Herald* described as "an embarrassing gaffe by Labour".^{lxxxvii}

Whether this does amount to an 'embarrassing gaffe' is a moot point. First it rather presupposes that the Convention really will be the architect of the EU's future constitution. That may not necessarily be so, as the Convention is supposed to produce its opinions well in advance of the 2004 IGC – so that the Governments of the member states – who are the constituent members of the IGC *then* decide on the EU's future. It might be the case that the Convention's views may have a considerable bearing on what is agreed at the IGC. But a cynic might suggest that the Convention, for all its worth, is partly designed to reassure the EU's citizens – or more particularly their parliaments. In theory at least, they will not be confronted with a *fait accompli* as occurred at Maastricht in the early 1990s when the EU's leaders agreed the final terms the Treaty on European Union behind closed doors.

Second, as the member states' governments are the authors of any treaty changes then the primary route for Scottish representation is via inter-governmental mechanisms such as the Joint Ministerial Committee Europe (JMCE). As mentioned in the previous monitor report, if significant developments occur within the convention then this would be addressed at the JMCE. We can glean a little of what it planned from an exchange between MSPs on the European Committee and Jim

Wallace, deputy first minister whose portfolio includes the EU and external relations, during its session on March 26th 2002. Dennis Canavan asked:

“Earlier this month in a written answer to Richard Lochhead, the minister referred to a meeting on 7 March of the joint ministerial committee on Europe. He stated that the meeting agreed a set of mechanisms to ensure the full involvement of the devolved administrations in the development of the UK’s position as the European convention on the future of Europe moves forward. What are those mechanisms?”

Mr Wallace replied:

“The mechanisms are to ensure that the channels of communication are open – not least by using the government intranet – and that information can be readily exchanged between the UK Government and the devolved administrations, including those in Wales and Northern Ireland. The Secretary of State for Foreign and Commonwealth Affairs has given his support to ensuring that the devolved Administrations are properly consulted on the UK Government’s position. As part of that process, he wants to visit Cardiff, Belfast and Edinburgh to talk to ministers, and more widely, to gauge views on the subject. There is an indication that the devolved Administrations want to ensure that they talk to one another not only as part of the formal joint ministerial committee on Europe, but as part of the discussions in the margins.”^{lxxxviii}

When asked by Canavan how the Executive proposed to inform the Parliament and the committee about ‘its success or otherwise in feeding in views, directly or indirectly, to the Convention’, Wallace was sanguine. He described the Convention as ‘something of a moveable feast but that MSPs would have the opportunity to put questions and air their views as and when’. He did assure them though that ‘we want to make what could be described as a substantive presentation of the Scottish Executive’s position’. He also added that consideration is being given as to how best to put this in the public domain – the minister might make a speech on the issue or he could instigate a debate on it. Furthermore he promised that:

“Much of what we are doing is not exactly a secret. Enough has been said on issues of governance and the future of Europe to allow everyone to gauge where we are coming from. There will not be any surprise rabbits coming out of the hat. I want to ensure that the position that the Scottish Executive feeds in – that will happen sooner rather than later – will be given prominence.”^{lxxxix}

When asked by Ben Wallace whether or not someone from the Executive was present in Peter Hain’s delegation to the Convention the previous week, Jim Wallace said that there was not but ‘we have an official who co-ordinates with that office. He was not present on that occasion, but I think that observers were.’^{xc} This is a telling exchange because on the one hand ‘no one was present’ but ‘observers were...’ which rather raises more questions than answers about the status of these ‘observers’. They could have been from Scotland House in Brussels (though Wallace was uncertain about this) and in this instance presumably they had no direct input but were simply intelligence gatherers – which if correct – would suggest that from

time-to-time, inter-governmentally, Scotland can be rather semi-detached from the Convention.

6.2 McConnell and External Affairs: Change and Continuity

In something of a *volte face*, compared to his predecessor, Mr McConnell announced that plans to post officials from the Executive in UK embassies had been put on hold – although one would remain in the embassy at Washington for the time being. He explained:

“We should be making sure that what the UK government is doing is operating in Scotland’s interests. There is a job to be done by the UK across the world if the union is going to mean something to Scotland. Our job is to try to harness that which already exists, to make sure it is as well focused as can be and make sure that Scotland’s goods and services are being promoted and that Scotland is being promoted as a destination in every corner of the world”.... “It would be easy to get short-term headlines by advocating a series of individuals around the world who would represent Scotland. The impact of that would be minuscule in the longer term in comparison to a sustained effort to focus the work of Scottish agencies and to ensure that British agencies don’t forget their responsibility to Scotland...”^{xcii}

There are a number of possible explanations for the reverse of course. For instance it could be the case that human resources in the Executive were stretched already (which is true) and that this work could be handled by other agencies akin to Locate in Scotland. It might also be the case that the Foreign and Commonwealth Office was not too keen on this being extended to ‘Europe, Australia and the Far East’, as it would not only be straying onto its turf but it might also have set a precedent which would have opened the door to other devolved administrations in the UK. Another possibility is that it could have been political gamesmanship by McConnell. There had been mounting unease amongst Labour MPs over his predecessor’s ‘expansionism’ into areas which they perceived were reserved to Westminster. Almost immediately he became first minister, McConnell sought to reassure them at a meeting in London. This might be an example of translating words of reassurance into substance.

Nevertheless he did not change tack over the EU. He warned:

“In Europe there is a different context. A substantial part of the devolved responsibilities are affected by European legislation, so we need to influence that legislation and influence it directly. That is a position we have laid out very clearly. We want to make sure that we can influence European legislation at its source” ... “If we are going to have a mature devolved settlement within the UK we are going to have to discuss these issues.”^{xciii}

This statement tallies with earlier comments by the first minister. But it should not be taken to imply that, for the moment at least, the Executive expects representation in the Council of Ministers – which is the key decision making body in the EU – though it could be that the group of Constitutional Regions (of which Scotland is currently a

member) might call for that in the future. Rather, the Executive is more concerned with being consulted by the European Commission before it drafts legislation. Although he did not mention the Commission by name, this was the implication during Mr Wallace's evidence to the European Committee on March 26th. He observed:

"I have made it clear in the past – and I did so as recently as last week when I met the committee's House of Commons counterpart, the European Scrutiny Committee – that Europe can better connect with citizens through the involvement of sub-member state Administrations such as ours, in which the Parliament and the Executive are responsible for implementing European legislation, at a much earlier stage in the preparation of that legislation. In doing so, difficulties at a later date can often be avoided."^{xciii}

Therefore, for the time-being at least calls for a more direct involvement with the EU relate to functional prerequisites (i.e. ensuring that EU legislation does not have adverse consequences for Scotland in terms of cost or impracticality, for example), as opposed to political empowerment (i.e a seat on the Council). As such this is something of a continuum of the Executive's policy on the EU since 2000 (see previous monitor reports).

6.3 The Scottish Executive's Priorities for External Relations

During the European Committee's meeting on March 26, MSPs were provided with a briefing paper on the Scottish Executive's priorities for external relations. The document stated:

The Scottish Executive's over-arching policy interests for its external relations work are as follows:

1. To promote Scottish devolved policy interests in the EU and internationally;
2. To build mutually beneficial links with other regions and countries in the EU and beyond; and
3. To promote a positive image of Scotland overseas;^{xciv}

The issue of links with other regions and countries attracted the interest of MSPs on the European Committee, one of whom asked Mr Wallace by what criteria were contacts and partnerships established. He replied:

"If you are asking whether there is a procedure that we can pull off the shelf, in which we tick boxes, the answer is no. The procedure has developed in response to specific initiatives that have taken off and progressed. If one criterion is important, it is – as I said in my introduction – that the areas are sub-member states with legislative powers, which are in a similar position to Scotland in relation to the member states. Examples would be Catalonia, Bavaria, some of the German Lander and Tuscany. When an invitation has come from a country, or if there has been a relationship in the past – some of the links with Bavaria go back to pre-devolution, Scottish Office days – we have built on that. We have taken individual policy issues and worked them up, and the paper reflects the fact that

there are at least two areas where we would like to have more formal memorandum of co-operation before May.”^{xcv}

Aside from its membership in the group of constitutional regions - which is of political significance, (see earlier monitor reports) - these bi-lateral contacts with regions and countries are essentially functional. They are designed to maximise the potential for EU funding or the exchange of best practice in relation to given areas of policy, for example.

6.4 Links between Scotland, Catalonia and Tuscany

Jack McConnell and Artur Mas, the Calalonian PM signed a protocol of operation on Wednesday May 2. Mr McConnell said; “This is an historic day. This agreement concentrates on the things we can do to work together, swap ideas, initiate joint action and influence those elsewhere” Artur Mas commented:

“Both Catalonia and Scotland are two of the leading regions in Europe and we want to be involved in the future of Europe will developing our respective countries in the best possible way.”^{xcvi}

A few days later *The Sunday Herald* reported that ‘Jack McConnell met Tuscan president Claudio Martini 10 days ago in Brussels when they agreed to build closer links on issues such as economic development and arts and culture’. McConnell observed:

“It’s all about practical projects, not just talking to people. It’s practical co-operation in areas where we can get mutual benefits”^{xcvii}

This is indicative of the functional collaboration which was referred to in the previous section (even though Mas told *The Herald* ‘the idea is to have a stronger voice in Europe’). It is interesting to note, however, that it would appear that the First Minister is playing a leading role in cultivating and ratifying these new pan-European links, in a way which is not dissimilar to Tony Blair’s grand-standing on the global stage. Moreover, each leader seems to leave the minister who holds the foreign affairs portfolio somewhat in the shade at such times.

6.5 The European Committee and the Scottish Parliament’s debate on Scotland and Europe

Given that the Executive’s external relations remit is fairly wide it comes as little surprise that the European Committee has requested that it should also include external relations within its ambit (thereby conceivably changing its name to the European and External Relations Committee). In the meantime the committee has continued to fulfil its arduous remit.

On February 12th, members of the Committee discussed how they should enhance their influence before and after meetings of the council of ministers. This might sound mundane but it is potentially far-reaching. For example, were Scottish ministers bound to appear before the committee before and after meetings of the Council, would such sessions of the committee be conducted in private because of the confidentiality of the information being discussed? For that matter would

ministers be authorised to impart such information given the confidentiality surrounding the concordats and the JMCE? The author recently asked the Cabinet Office if any information on the JMCE in the public domain, to be informed that the answer was no – only to find briefings on its work on the Welsh Assembly’s European Committee web-site.

Equally, as John Home Robertson, an ex-minister explained it would be ‘counter-productive if the committee tied ministers’ hands too tightly.’^{xcviii} In the aftermath of McConnell’s ‘night of the long knives’ last year, the committee has acquired another ex-minister, Sarah Boyack. She made a number of interesting suggestions but one observation in particular is worth repeating here. She warned that ‘the trick is also partly about getting the Executive to see that the committee might be useful’.^{xcix} That implies that for the moment the reverse is nearer the case, which if true suggests that better bridges still need to be built between the two.

In the meantime the committee has made some headway, despite the difficulties it has to face as a result of Scotland’s relatively indirect relationship with the EU. During the course of the last year it has placed less emphasis on scrutiny because this was too time consuming and relatively unproductive. It has begun to involve itself more in scrutinising the implementation of EU policies in Scotland and it has conducted inquiries into issues that are of strategic interest – such as its recent report on Scotland’s role in Europe. The latter was as much as a declaration of principle, inasmuch as it made a series of demands (see previous monitor report), including calls for ministers to be bound by some form of scrutiny reserve before they participated in the JMCE. This was touched upon during the ensuing debate on the report. However, when MSPs convened in plenary session, Irene Oldfather, the committee’s convenor told MSPs that the call for a scrutiny reserve had been rejected by the Executive.^c It will be interesting to see if this issue returns to the political agenda in the years ahead.

In a reference to subsidiarity, Mr Wallace indicated that the principle retained its relevance to Scottish/EU relations. He said:

“In putting forward its view, the Executive has concentrated on a series of practical measures that it believes will realise a more open, effective and relevant European Union. There should be a statement of subsidiarity principles to ensure that the EU acts only when its action would be more effective than the action at the Member State or Scottish level. To ensure that subsidiarity is properly applied, we have proposed the introduction of an independent subsidiarity watchdog. Although we have an open mind on the form that that body will take, our preference is for a political body, as subsidiarity is a political concept. That body should have the power to act before legislation is finalised and should have the benefit of a direct link with democratic structures.”^{ci}

This is not the first time that subsidiarity has been an issue for the Executive (see previous monitor reports relating to the constitutional regions) but it does flesh out where the Executive’s thought processes are headed. Presumably, to be truly independent such a body should not only scrutinise subsidiarity between the EU and the UK-Scotland but also between the UK and Scotland as well.

Despite the setback over the scrutiny reserve, the committee did make some headway with Jim Wallace at its meeting on March 26th. He agreed to appear before the committee at the start of each [EU] presidency'.^{cii} Again, this might sound a minor detail but it is indicative of how the committee's incremental strategy of calling for greater scrutiny over, and more influence over, the Executive's EU policy is yielding tangible results.

6.6 Scotland and Middle Eastern Affairs

Early in March *The Herald* reported that 'Scots are not prepared to back a new war against Iraq'. According to an NFO System Three opinion poll, 38% supported a US led campaign, 43% were against and 19% were undecided.^{ciii} This may well be similar to public opinion elsewhere in the UK but now Scotland has its own parliament. Despite the fact the foreign affairs is reserved to Westminster, there is nothing to prevent MSPs from debating such an issue and subsequently passing a resolution condemning the UK government's position on the matter.

In the meantime one MSP has already become directly involved in Middle Eastern affairs. Lloyd Quinan, the vice convener of the parliament's cross party group on Palestine (see previous monitor reports on such groups), but in this instance acting as a member of the Red Crescent and the International Solidarity Movement tried to see Mr Arafat whilst he was under siege at Ramallah. He subsequently told the BBC that stun grenades were thrown by Israeli troops, shots were fired over his head and his Saltire flag torn up. His second attempt met with no more success but on that occasion the outcome was more peaceful.^{civ} Nevertheless, his presence angered the Israeli Defence Force and should he have been killed or seriously injured, the consequences could have been substantial for Israeli/UK relations.

7. Relations with Local Government

Neil McGarvey

The broad theme of this quarter's report is local democracy with various developments to report on. The major development was Glasgow's long awaited housing stock transfer referendum. This quarter's report reviews the outcome and what it means for Glasgow and analyses more broadly what it may mean for local government in Scotland. Another development related to local democracy was Scotland's first ever officially sanctioned postal by-election in Stirling. This quarter has also seen the launch of the Labour Campaign for Electoral Reform, the National Debate on Education and Audit Scotland's probe into the Fife Council Third Age affair which was related to the demise of the ex-First Minister Henry McLeish. Other notable developments were the annual announcement of council tax bills and the COSLA Annual Conference.

7.1 Glasgow Housing Stock Transfer

Glasgow's Housing Stock Transfer Referendum originally planned for November 2000 has finally gone ahead (after four postponements) with the results announced on March 25 2002.^{cv} A majority of those eligible to vote amongst the city's 77,808 tenants approved as the transfer of their landlord from the council to the new Glasgow Housing Association (GHA). The result announced by Electoral Reform Ballot Services, the independent organisation commissioned to undertake the ballot, stated that 58% of the tenants who had returned their ballot papers voted in favour of transfer. A total of 50,082 votes were cast by post over the last three weeks. Turnout was 64.4%, impressive in a city with the worst record in Scotland of apathy at the polls.

Under the scheme all of the council's housing property will be transferred to the Glasgow Housing Association (GHA), the privately financed not-for-profit Registered Social Landlord. The GHA has plans to invest £4bn in the city's core housing stock of 70,000 homes over 30 years. As landlord, GHA will deliver housing services locally through contracts with a network of 78 tenant-led Local Housing Organisations. The GHA will be registered with and regulated by Communities Scotland (previously Scottish Homes) which is directly accountable to Scottish Executive Ministers. The GHA will be obliged to comply with Communities Scotland performance standards and this includes the requirement to keep rents affordable. The GHA has given eight-year rent guarantees for existing tenants of increases at no more than inflation plus 1%.

The referendum campaign was fiercely fought. On the 'Yes' side were the Scottish Executive, Glasgow City Council, the leadership of the Scottish Labour Party (although there was substantial disquiet over the policy among many party members) as well as the Glasgow Housing Association.^{cvi} On the 'No' side were trade unions such as Unison, the Scottish Socialist Party and the Glasgow Campaign Against Housing Stock Transfer.^{cvi} The Glasgow Campaign Against Housing Stock

Transfer complained about the dependency of public subsidy on the outcome of the result.^{cviii} It campaigned against the transfer of the city's housing to a "privately-financed, unelected quango". The UK Treasury has agreed to write off Glasgow's £900m council housing debt. This commitment was dependent on a 'Yes' vote and they argued amounted to a bribe to Glasgow's tenants. Borrowing restrictions and debt repayments have meant that the council has been unable to afford improvements and repairs to upgrade houses. Around 40p in every pound of rent goes to paying off the old debt.

The Large Scale Voluntary Transfer (LSVT) in Glasgow is likely to be replicated in other council areas. Three other local authorities in Scotland (Dumfries and Galloway, Borders and Shetland Islands) are progressing proposals for the transfer to community ownership of all of their housing stock.

The Scottish Executive packaged the transfer of housing stock as a key plank in its strategy to spur social and economic regeneration in Glasgow arguing a 'Yes' vote could help modernise housing, develop community ownership and improve the health and welfare of residents in Glasgow. Glasgow, however, remains unhappy with the grant it receives from the Scottish Executive under the present system. According to the council the grant allocations fail to reflect Glasgow's city status, nor adequately account for the poverty, unemployment, deprivation and poor health that exists in the city. According to a report by the Child Poverty Action Group, the city is home to four of the poorest and most deprived constituencies in Britain - Shettleston, Springburn, Maryhill and Ballieston.^{cix}

It has commissioned Joseph Convitz, a cities expert with the Organisation for Economic Co-operation and Development (OECD), to carry out a six-month investigation into Glasgow's economy. If reports are to be believed, his analysis is going to suggest that Glasgow's economy has improved recently despite, rather than because of, central government.^{cx} The city (along with Edinburgh) has also attacked VisitScotland's tourism strategy arguing that its predominant focus on rural Scotland neglects the fact that the vast majority of overseas tourists come to visit Scotland's two major cities.^{cxii}

These developments are part of Glasgow's lobbying with regard to the ongoing Scottish Executive inquiry into Scotland's five cities.^{cxiii} The City Council has argued that an 'impossible timetable' and a 'weak' remit, which has left out key issues such as health, education and social inclusion, are handicapping the review. The review is due to publish a report to ministers in June 2002 –this will be reviewed in next quarter's report.

7.2 Council Tax

Glasgow's financial plight is reflected in its council tax. Its Band D tax is £1141 which, despite four consecutive years of below inflation rises, remains the highest in Scotland. The average council tax rise for 2002-3 is 4.5%, substantially above the rate of inflation but less than last year's average rise of 6%. The most controversial budget set this year was that of Borders Council were the coalition administration (of Liberal Democrat and Independents) was forced to make significant cuts in services after the

discovery of a £3.9 million overspend in education last year.^{cxiii} Audit Scotland this quarter also published details of council performance in council tax collection with 23 councils (out of 32) improving performance. Six councils were criticised for reporting lower collection rates.^{cxiv}

Interestingly the council tax and its reform may become an issue in coming months. A Labour Party policy forum document approved at the Scottish Labour Party conference this quarter stated that the party is “especially keen to establish a fairer and more progressive council tax banding system”. Only 22% of Scotland’s homes are in the high E to H bands, while 66% fall in the lowest a to C bands. The suggestion is that more bands at the higher end should be created so that those in properties worth £212,000 or more pay more. This would be linked with a revaluation of property to take into account recent movements in house prices.

7.3 Cosla Annual Conference

The Convention of Scottish Local Authorities is backing such a reform of council tax. It held its annual Spring conference this quarter. Major issues discussed including PFI and more broadly the issue of council capital investment. There were suggestions from the Executive that they may be willing to relax council borrowing controls.^{cxv} Cynics have suggested that this may be the first part of a series of sweeteners designed to loosen council resistance to PR for the 2007 local elections (This quarter some Labour MSPs launched the Labour Campaign for Electoral Reform arguing in favour of change.^{cxvi})

The COSLA Conference also witnessed a call from First Minister Jack McConnell to draw a line under previous tensions in the relationship between the Executive and councils. Emphasising the twin focus on quality public services to form the basis of the partnership and a “new beginning” he suggested there needed to be “national standards on which local excellence can be built”.^{cxvii} Beyond the usual evangelical political rhetoric it is difficult to judge what this actually means for relations but there are suggestions of the Executive being willing to loosen controls on councils it sees as well managed, not dissimilar to the ‘beacon council’ idea south of the border.

7.4 Audit Scotland

Audit Scotland have announced they will investigate the Third Age controversy in Fife that led to the downfall of Henry McLeish.^{cxviii} The council’s own external auditors and Fife police are also investigating the Affair. On a wider scale Audit Scotland has announced its intention to launch a comprehensive overview of how councils fund outside bodies such as charities and voluntary groups to provide services. Regular breaches of the existing code of good practice has led them to believe a review of council monitoring procedures is necessary.

Audit Scotland also published a report outlining Scotland’s 32 council’s performance in meeting 73 key performance targets. The report was used as political capital by the SNP when it compiled a performance league table showing that 8 of the 10 worst performing councils were Labour controlled, with Falkirk run by a combination of

SNP and independent councillors emerging as the best run. Unsurprisingly the Labour Party dismissed the SNP's table as 'artificial'.^{cxix}

7.5 Scotland's first postal election

This quarter witnessed Scotland's first election conducted entirely by post in a by-election for a vacant seat on Stirling Council. Despite no polling stations and no ballot boxes there was an impressive turnout of 63.2% which compares favourably to turnout at the last council Stirling Council by-election – 43%. Postal elections were also used in the English local elections in May with turnout also increasing. As pilot exercises it would appear postal elections have been a success and are likely to feature more prominently at forthcoming elections.^{cxx}

7.6 The National Debate on Education

Another new initiative launched in March 2002 was the National Debate on Education, which is designed to involve as wide a range of people as possible in consultation over the future shape and direction of education in Scotland.^{cxxi} It was launched at the same time that a growing number of state schools (following private schools) are dropping Standard Grade exams in some subjects.

8. Finance

David Bell

Health continues to dominate the finance debate in Scotland. The introduction of free personal care for the elderly is due on July 1st following the passage of the passage of the Community Care and Health (Scotland) Bill. The July start is three months later than that originally proposed by the Care Development Group. The delay will save the Executive an amount approximately equivalent to the £23 million lost because the Department of Work and Pensions have refused to pay Attendance Allowance to those receiving free personal care. An implementation group was set up to produce guidance for local authorities, the NHS and other service providers. The Executive launched an information campaign using newspaper advertisements and leaflets to explain how the personal care payments will be made and who is eligible. Payments are dependent on an assessment made by local social work departments. About 70,000 assessments have to be carried out ahead of the first payments on July 1st. In addition local authorities and the NHS must agree on the local provision of personal care services before July.

The relative smoothness of the process in Scotland has highlighted the difficulties south of the border. Although free nursing care has been available in England since October 2001, there are widespread complaints that the policy is not effective. Age Concern argued that there was total confusion when the policy was introduced, pointing out that a few days before the system was due to start, final Government guidance had still not been issued. The English scheme involves assessment by an NHS nurse and payment from NHS trusts direct to nursing homes. But an investigation for the BBC discovered that private homeowners are keeping some or all of the money intended for nursing care to boost their flagging incomes. The homes argue that many of them have already been driven out of business because current fees are too low to maintain standards. The funding crisis was highlighted in March by the case of Rose Cottle, a 102-year-old retired teacher, who delivered a 5,000 signature petition to Prime Minister Tony Blair to prevent her being evicted

from a residential care home. Irrespective of issues relating to nursing and personal care, recent events have highlighted the difficulties confronting private care homes, particularly those in the South-East, for whom alternative uses of their buildings and land are likely to be far more profitable.

The issue of free care for the elderly came top of the viewers' poll on the BBC's NHS day series of programmes on Wednesday with 150,000 votes - far more than other health service priorities. And a UNISON-commissioned MORI poll found that 75% of adults think the government should provide free personal care for all elderly people who need it. Thus, there is considerable popular pressure to adopt the Scottish policy, even though it is substantially regressive in the sense that it benefits the affluent elderly more than those who are unable to pay for their care and receive it free anyway. This is one of the most interesting examples of the interplay between policies in different parts of the UK since devolution was introduced. If Scottish policies help motivate popular support for change in England that the Treasury eventually finds difficult to resist, then the impact of devolution on the centre will have been much more profound than was ever contemplated at Westminster.

At a more global level, health also dominated the April Budget, with the government agreeing to immediately allocate £2.4 billion of the new Departmental Expenditure Limit to UK health spending, and providing for an average annual 7.4 per cent real terms increase in UK spending on the NHS up to 2007-08. The interesting point here is that the commitment is to UK spending on health – even though health is an issue for the devolved administrations. In contrast to the example of free personal care, where policy in Scotland may be having an effect on the centre, the Budget appears to be “bouncing” the devolved administrations into a particular health funding profile. This is partly due to the Wanless report, which was commissioned by the Treasury (not the Department of Health) to consider “the technological, demographic and medical trends over the next two decades that may affect the health service in the UK as a whole.”^{cxxii} Although the terms of reference include a statement that “the report will take account of the devolved nature of health spending in the UK and the Devolved Administrations will be invited to participate

in the Review”, the report does little to acknowledge that the Scottish Parliament could choose to adopt a quite distinctive health policy. And tellingly, the starting point of the report is “the set of principles, for England, established in the NHS Plan and developed in subsequent National Service Frameworks (NSFs)”.

The increased health spending announced in the Budget was immediately matched by the Executive. The Budget was announced on the 17th of April and on the 18th the First Minister announced an additional £3.2bn to be spent on health in Scotland over the next five years. Unfortunately this announcement was made two weeks after the Executive had announced their budget proposals for 2003-04.^{cxxiii} Hence it is difficult to ascertain the precise health budget for financial year 2002-03, though this does suggest that perhaps the timing of the budget process is somewhat awry. Nevertheless, taking these announcements at their face value and assuming that the nominal growth in the Executive’s budget will average 5 per cent during the next five years (2.5 per cent real growth and 2.5 per cent inflation) suggests that over the next five years, health will expand as a share of the Executive budget from 32.2 per cent to 37.3 per cent, even though Scotland already spends more than 21 per cent per capita above the UK average on health and social services.^{cxxiv} Health expenditure per head in Scotland will rise from £1347 per annum to £2040 per annum, well above current levels of spending in high-income countries. Whether this is economically sustainable remains to be seen, given that there are competing demands for resources in areas such as transport, enterprise and education.

However, the immediate reaction of the Executive to the Budget announcement does not suggest that the full implications of following the same health-spending trajectory as that in England had been fully evaluated. Spending per capita in England is already significantly lower level of spending than that in Scotland. For the Executive, maintaining the differential in per capita spend on health between Scotland and England will come at the cost of much lower growth in other public services as a result of the Barnett Squeeze. Perhaps the short-run political costs of not following the English approach were deemed unacceptable. However, slavishly following English policy stances may entail more long-term political costs for the

Parliament if it is not being seen to add a distinctive twist to policy in the way that it has done with free personal care.

9: Legal disputes

Barry Winetrobe

Hunting Act

The Member's Bill banning forms of hunting, which had been passed by the Parliament on 13 February, received Royal Assent on 15 March,^{cxxv} and is due to come into force on 1 August,^{cxxvi} but it is clear that the battle is far from over. In addition to any collateral impact that the Scottish Act may have on proposed anti-hunting legislation at Westminster, it is still expected that the new Act will be challenged in the courts in some way.^{cxxvii}

There had been widespread complaints both within and outwith the Parliament about the Parliament's legislative scrutiny of the Bill and the quality and efficacy of the Bill as passed^{cxxviii} However, it should be noted that there appeared to have been no suggestion of any attempt by the relevant Law Officers or the Secretary of State to block submission of the Bill as passed for Royal Assent, as they could have done under sections 33-35 of the Scotland Act. The Conservatives had called for the Bill to be referred to the Privy Council for a determination of its validity.^{cxxix} Neither was there any apparent attempt at a more generalised pre-Assent challenge from any other source, such as an attempt at judicial review of the Parliament's actions or the Presiding Officer's submission of the Bill for Royal Assent. Conventional legal wisdom assumes that the courts would not consider any modes of challenge beyond those provided for expressly under the Scotland Act, even though the Parliament, as a creation of statute, is presumably subject to judicial review. This remains to be properly tested.

The Scottish Countryside Alliance, the main opponents of the proposed hunting ban, has said frequently that there would be a legal challenge to the legislation. Despite press reports in late March that such an action would be launched "within the next month", and a statement from the SCA on 10 April, following the Executive's announcement of the Act's implementation date, that it would happen "in the next few weeks", no challenge has yet been submitted.^{cxxx} The SCA said that it had made representations to the Executive requesting that no commencement order be made until its legal challenge to the Act is concluded, so that the legality of the Act can "be finally established by the courts." This is a useful reminder of the potential policy and administrative uncertainties in the validity of a subordinate parliament's legislation being open to such legal challenges. The grounds of any such challenge seem to be that the Act breaches ECHR rights, and so, in terms of the Scotland Act, is invalid law.^{cxxxi} However it was reported that one respected legal academic, Professor Robert Black of Edinburgh University, doubted that the Bill could be challenged successfully on such grounds.^{cxxxii}

9.2 Role of Advocate General in devolution matters

The widespread scepticism about the scale of Scottish representation in UK central government extends to the new post of the Advocate General for Scotland as the UK

Scottish Law Officer. The brief segment of the monthly Scottish Question Time in the Commons provides an opportunity for that scepticism to be aired, and for Lynda Clark to defend her role by emphasising her work in ‘devolution issue’ cases and, especially, in scrutinising Scottish Parliament Bills prior to Royal Assent under her powers in s33 of the Scotland Act. The exchanges on 12 February and 30 April give a typical flavour of this debate.^{cxxxiii}

9.3 Mental Health Act validity case

The November 2001 monitoring report considered the Judicial Committee’s decision in the first direct challenge to the validity of an Act of the Scottish Parliament. The full reports of this landmark case are now available.^{cxxxiv}

10. Political Parties

James Mitchell

10.1 Labour

The last quarter has been a difficult one for Scotland's principal governing party. Relations with the trade unions, the ongoing saga of 'Officegate' and the resignation of Wendy Alexander from the Executive contributed to a sense of beleaguement but the polls showing Labour continuing to dominate the field (see section 4) will console Jack McConnell. The annual conference of the Scottish Trades Union Congress was supposed to reaffirm Labour's traditional links with the trade unions. In Scotland, the Labour-trade union link is generally still deemed to be politically advantageous to Labour. At Labour's Scottish party conference in February, Jack McConnell had 'faced down the trade unions in Blairite fashion on the issue of private finance initiative.^{cxxxv} A conciliatory approach, more in keeping with Scottish labour traditions, was to be the order of the day at the STUC conference when a Memorandum of Understanding was signed between the Executive and the trade unions.^{cxxxvi} This brief document is another example of the tendency towards fairly vacuous codification of existing practice in UK politics.^{cxxxvii}

However, this attempt to portray labour relations in a positive light was undermined by rows around the conference. John Edmonds, GMB leader, attacked New Labour at the conference for its support for privatisation and PFI. He warned that unions would not support Labour candidates at the Scottish elections next year if they backed PFI/PPP.^{cxxxviii} GMB has already cut its contribution to the Labour Party by £2m over a number of years. The issue which brought this to the fore at the conference was the Executive's prisons policy – including plans to build three new private prisons (see section 11.1 below). The Scottish Prison Officers' Association (SPOA) went further than Edmonds and suggested that it might back SNP MSPs in next year's Scottish elections. An emergency resolution was passed unanimously at the conference against the Executive's prisons' plans. Bill Spiers, STUC general secretary, summed up the mood of the conference,

I am not aware of anyone talking about seriously disaffiliating from the Labour Party, but potentially you could see unions looking at supporting an independent candidate here and there. But at the moment they're still very much concentrated on trying to maintain their influence in the Labour Party.^{cxxxix}

This was far from the impression that the signing of the Memorandum of Understanding was intended to project. First Minister Jack McConnell was heard in silence when he spoke to conference and received only polite applause from delegates.^{cxli} Divisions on the issue have also surfaced amongst backbench Labour MSPs.^{cxlii} The SNP were present at the STUC conference with leader John Swinney speaking at a fringe meeting and Struan Stevenson MSP for Banff and Buchan, with a constituency interest in the future of Peterhead prison, in attendance for the emergency debate on prisons. SNP presence at STUC and trade union conferences is

no longer seen as remarkable as it would have been less than a decade ago. A further embarrassment for Labour came when the Scottish Police Federation voted at its annual conference shortly after the STUC conference to take the first steps to overturn an 83-year ban on industrial action. This not only undermined Labour's relations with public sector unions/professions but also undermined faith in its law and order policy.

The fall-out from 'Officegate' and the resignation as First Minister of Henry McLeish continues to bring bad news for Scottish Labour. A 27-page report issued by Fife Council in March criticised the Labour Party 'cronyism' involved in the local authority.^{cxlii} Though McLeish had been renominated to stand again as Labour candidate in his Central Fife constituency at next year's Scottish elections by twelve votes to one, his hopes of returning after the election were put on hold when Scottish Labour's executive refused to ratify the nomination. McLeish is reportedly seen by the leadership as an electoral liability. His presence on the ballot paper may damage the party in the run-up to the elections. However, the executive has not yet rejected the nomination but is awaiting further developments. The problem that Jack McConnell is facing is that any move by him to strip McLeish of his candidacy might encourage his predecessor to be even more openly critical of aspects of policy and be portrayed in some circles as kicking someone when he is down. On the other hand, his failure to act allows this problem to fester with potential to damage the party. Evidence of electoral damage came in a by-election caused by the resignation of a former close associate of McLeish in a local government by-election in Fife. The SNP took the seat with an eleven per cent swing (see section 4).

10.2 Scottish National Party

A distinct change of emphasis in SNP campaigning – though barely noticed by Scotland's journalistic community- has been emerging in recent months.^{cxliii} Over the years under Alex Salmond an emphasis had been placed on challenging assumptions about Scotland's contribution to the Exchequer. Indeed, the statistical battle between the SNP claiming that Scotland put more into the Exchequer than it took out and its opponents has been a constant theme of Scottish politics since the advent of the SNP as a major political force. In recent months, there has been a discernible shift towards an emphasis on what the SNP believes could be achieved by independence without entirely abandoning the long-running statistical battle. The Nationalists appear to be widening out the battle ground. A team of SNP members including Andrew Wilson, its Economic spokesperson and Jim Mather, party treasurer and spokesperson for 'Business for Independence', have been speaking at private meetings with business people around Scotland selling the new message. The message involves promising a comprehensive review of taxation and efforts to reduce tax on business with the Irish 'tiger economy' very much in mind. To date, the strategy has had little impact on public consciousness though the party were delighted when Sir Tom Farmer, founder of Kwik-Fit car repair chain, announced his support for independence which he believed was inevitable.^{cxliv} Farmer said he had no intention of joining the SNP though this did not dent SNP pleasure at Farmer's public support for its aim. It does suggest that at the election next year parties is likely to include a bidding war in

which each party attempts to lay claim to the largest number of or most significant business people.

The SNP, however, needs to balance this against its efforts to win over working-class voters, that section of the Labour-supporting electorate most likely to defect to the SNP. As noted above, John Swinney spoke at a fringe meeting at the SUUC conference at which he attacked Labour's support for privatisation. In addition, the SPOA were in talks with the SNP about sponsoring candidates at next year's Scottish elections.^{cxlv} Derek Turner, SPOA general secretary confirmed that his union had been considering this but decided against taking what would have amounted to a dramatic shift in relations between the trade unions and political parties in Scotland. The possibility did give rise to debates within the SNP with some members expressing concern at too close a relationship. In the event, the SNP did not need to discuss the matter formally.

With next year's elections already dominating party political activity, the SNP has seen internal manoeuvring for candidacies. Given the high proportion of MSPs elected by party list (28 out of 35), maintaining support amongst the rank and file is of importance as it is the members who will determine the ranking of candidates. Much of the attention has focussed on the Lothians List. Lloyd Quinan, MSP for West of Scotland, has fallen out of favour with members in his region and decided to try his luck in Lothians (see section 2.1 for Quinan's exploits in the Middle East). Carpet-bagging of this sort seems unlikely to be successful especially as the leadership have seen Quinan as too much of a loose canon associated with Margo MacDonald and Alex Neil and will do nothing to assist him. In addition, Kevin Pringle, former SNP communications director who moved to work with the SNP MPs in Westminster following Alex Salmond's decision to stand down as leader, won the nomination to contest Edinburgh Central. He will also seek a high position on the party's Lothian List. Pringle is widely acknowledged to have been the most impressive communications officer of all Scotland's parties and, if elected, is set to be given a prominent position in the next Parliament. Coming from the pragmatist wing of the party his decision to stand has been interpreted as a challenge to those around Alex Neil, most particularly Margo MacDonald, who topped the SNP Lothians list last time.

SNP preparations for next year's election continue apace but it is not clear whether they have given any thought as to how to combat the hostile media coverage that it received in 1999. Then, Alex Salmond decided during the election that the party needed to issue its own newspaper at some considerable cost to the party with little impact in an effort to reach beyond Scotland's vehemently anti-SNP media. A taste of what lies ahead emerged in this quarter when the *Daily Record*, Labour's main outlet in Scotland, targeted Sean Connery, the SNP's best known supporter. It claimed that there was a rift between the new SNP leader John Swinney and Connery and that the actor had lost confidence in the party since Alex Salmond stood down as leader. It had previously attacked the actor for his meanness, claiming that he had tipped a car valet a mere dollar while contributing £50,000 a year to the party. The tactics were as crude as they were transparent and familiar to those who watched the assault on

the Labour Party by sections of the media in the 1980s: a distraction, however, irrelevant from substantive politics, that requires a rebuff that keeps the issue alive combined with personal assaults on individuals

10.3 Liberal Democrat Party

The Liberal Democrats met in conference in April in Perth. The party is now having to confront the stresses of governing. The party's activists are demanding that the Executive should deliver the Single Transferable Vote system for elections to local government. The conference demanded a local elections bill before next May's Scottish elections and supported a resolution that implied that the Liberal Democrats would not enter coalition again with Labour without STV for local government. Mike Rumbles MSP stated unambiguously, 'I, for one, have to say I would not support a future coalition if they blocked this reform.'^{cxlvi} Richard Leonard, Labour's Scottish chair, has added to tensions. Leonard has argued that opposition to PR within the Labour Party is overwhelming and has pointed out that the agreement signed by Donald Dewar and Jim Wallace does not mention PR but only 'talks about progress towards electoral reform'.^{cxlvii} Leonard has suggested that it was time for Labour to be 'less cosy' with the Liberal Democrats and that the coalition did not have universal support.^{cxlviii} Tensions between Labour and the Liberal Democrats on this issue will have to be managed by both the leadership of both parties though each is dependent on the other, making a break-up of the coalition unlikely.

Other issues gave the Liberal Democrats' leadership a headache at the conference. The annual conference passed a resolution by two to one in favour of a moratorium on field testing and commercial growing of GM crops in Scotland. This vote was particularly embarrassing as Ross Finnie MSP is the Liberal Democrat Minister responsible for Rural Affairs and the Environment. It also undermined claims by party leader Jim Wallace that the environment was one the Liberal Democrat Party's key themes.^{cxlix} Similar embarrassment was caused when the party criticised Executive policy on private prisons. Two emergency resolutions were submitted to the conference, one critical and the other less critical. These were combined into a compromise watered-down resolution expressing 'concern' at the plans.^d The leadership had succeeded in limiting criticism of Executive policy under the remit of Jim Wallace.

Despite the tensions over electoral reform for local government, the prospect of any change in the governing coalition before or after the Scottish elections is remote as evidenced by this party conference. However, the precise make-up of the coalition remains open. Malcolm Bruce MP, Scottish Liberal Democrat president, suggested in his closing speech that the party should push for an additional Minister in the coalition. Commentators may view the Scottish elections as a foregone conclusion as far as continued Labour-Liberal Democrat coalition is concerned but the precise composition remains uncertain.

An internal constitutional change passed by the party alters the leadership structure of the party. A ballot for party leader and deputy leader is to take place in the Autumn. Further elections will take place a year later, after elections to the Scottish

Parliament, and thereafter every four years following the Scottish Parliamentary elections. Jim Wallace, who has served ten years as leader, is unlikely to be challenged but the question of his deputy is open. Under its constitution, the Scottish deputy will have to be an MP. Favourite to win is Michael Moore, MP for Tweeddale, Ettrick and Lauderdale.

11: Public policies

Barry Winetrobe

11.1 The public/private divide

The future of public services - especially their financing and mode of delivery and its impact on Labour's relations with the public sector unions - remained at the forefront of devolved policies as well as of UK politics.^{cli} Executive ministers made several major speeches on these themes during the month.^{clii} The declared pragmatism of the McConnell Administration has come under pressure in a number of sensitive areas.

These include

- Health: This was symbolised by the controversy over whether the Executive would be purchasing the HCI private hospital facility at Clydebank.^{cliii}
- Prisons: The Prison Estates Review was debated in the Parliament on 18 April,^{cliv} and the private prisons policy was attacked, not just by Labour and the unions, but also by the Liberal Democrats, who gave their Justice Minister, Jim Wallace, a difficult time at their party conference in April. The Justice 1 Committee visited Scotland's only private prison, HMP Kilmarnock, on 22 April.^{clv}
- Firefighting: An Executive policy paper in late April opened the door to financing through PPP/PFI schemes.^{clvi}

The Finance Minister gave evidence to the Finance Committee's PFI/PPP inquiry on 23 April.^{clvii} In his opening remarks he said that "PPP remains in our armoury because it makes good sense. To use an apolitical tenet, it provides an effective response to important public needs and that is why it is there for the Executive to use. PPP answers the need for increases in resources and infrastructure in the public sector." He also sought to minimise the role of PPP in the overall financing of the public services:

Although it plays an important role, it makes fairly modest demands on the Executive budget. To give some scale, we have increased conventional capital spending by more than 25 per cent between 2001 and 2004. In relation to that, PPP is only 10 per cent of the total capital spend. Although debates go on about PPP being the only show in town, at 10 per cent, it does not quite meet that accusation. The important thing is that PPP meets some of the additional expectations that our communities have about public services. The total whole-life cost and the effect that it has on the revenue budget in Scotland is less than 2 per cent of the Scottish block. The accusation that PPP is the only show in town is, therefore, again misplaced.

11.2 Education and children

As foreshadowed in December, the Executive launched its ‘national education debate.’^{clviii} Significantly, the Parliament’s Education Committee decided to launch a parallel consultation itself on the same day.^{clix} In a Sunday newspaper interview, the new Education Minister, Cathy Jamieson, attacked continued criticism of herself, claiming that it was grounded in establishment snobbery.^{clx} There was particular focus during the quarter on the issues of streaming^{clxi} (even embarrassingly dragging in the First Minister himself during question time on 28 March^{clxii}) and on the future of Standard Grade examinations.^{clxiii} Further doubt was placed on the robustness of the McCrone pay settlement for teachers, amid claims that teachers have not been fulfilling their side of the bargain.^{clxiv} The bill reforming the SQA was passed by the Parliament on 2 May. A further consultation paper on the review of higher education was published.^{clxv}

In a related matter, the Executive has supported the creation of a Children’s Commissioner,^{clxvi} which had been proposed by the Education Committee in a report issued a report on February calling for the creation of such a post. The Committee declared its intention of preparing for a Bill to implement this proposal.^{clxvii}

11.3 Health

It appeared that the long-running financial dispute between care homes and local and central government was finally resolved.^{clxviii} The legislation dealing with the policy on free personal care for the elderly was passed by the Parliament on 6 February,^{clxix} and enacted on 12 March, and an information campaign was launched in advance of the introduction of the scheme in July.^{clxx} However, the real test will come with implementation.

Ministers confirmed that waiting times, rather than waiting lists (which continued to be the subject of Opposition criticism), would be the benchmark of the Executive’s health policy’s performance,^{clxxi} and produced further initiatives to tackle bed-blocking and waiting lists.^{clxxii} The SNP continued to press this issue, with a major parliamentary debate on 14 March,^{clxxiii} and by trying to demonstrate divergent views on this policy north and south of the border.^{clxxiv}

Transport

Rail dominated transport policy with the long-running Scotrail dispute overshadowing the formulation and announcement of the Executive’s much-heralded transport strategy.^{clxxv} Statistics were released showing the continued dominance of road over rail travel,^{clxxvi} and, in April, the Executive outlined its policy towards the Scotrail franchise.^{clxxvii} The Parliament debated transport on 28 March, on a Conservative motion,^{clxxviii} and the Transport Committee announced the terms of its proposed inquiry into the industry.^{clxxix}

11.5 Enterprise and the economy

It was a quarter of mixed economic news, with indications that the overall Scottish economy, including manufacturing, was bumping along fairly sluggishly, but with recent signs of a rise in business optimism.^{clxxx} There were several major blows to employment, especially in what are wholly or substantially ‘reserved areas’, such as the naval dockyards, the post office and coal mining.^{clxxxii} A significant shift in economic policy was signalled by the then Enterprise Minister, Wendy Alexander on 12 February, with a new emphasis on nurturing home-grown enterprise rather than relying so heavily on inward investment.^{clxxxii} This is a perennial debate in Scotland.

The SNP released details of its economic policy, seen by its opponents and some commentators as signalling a retreat from its previous stance,^{clxxxiii} and there was much lively debate between SNP and Labour front-benchers over whether independence could provide a better economic climate for Scotland.^{clxxxiv} Not surprisingly, in response on 8 April to an SNP PQ on Executive representations to the UK Government for ‘full fiscal autonomy’ for Scotland, the Finance Minister said that “the Scottish Executive has not, and does not, plan to make representation to the UK Government on this matter.”^{clxxxv} The Conservatives used one of their plenary debates on 28 March to criticise the Executive’s enterprise policies,^{clxxxvi} and both Opposition parties criticised aspects of the UK Budget, such what they saw as the twin blows of the NIC increases and the additional tax on North Sea oil enterprises.^{clxxxvii} The Enterprise and Lifelong Learning Committee published a major report on the importance of universal lifelong learning and training.^{clxxxviii}

Environment & rural affairs

The First Minister set out a major initiative on what he called ‘environmental justice’ in a speech on 18 February,^{clxxxix} followed by further initiatives in April on sustainable development policies.^{cx} The Liberal Democrat leader, Jim Wallace, also made the environment a priority for his party.^{cxci} The Executive’s controversial land reform legislation continued its progress through the Parliament, passed its Stage 1 scrutiny on 20 March,^{cxcii} despite strong opposition from the Conservatives, and concerns elsewhere.^{cxci} This was compounded by the publication of further related, and potentially as controversial, draft legislative proposals.^{cxci} Another example of possible divergence in post-devolution policy is the proposal for an ‘animals bill of rights’ south of the border.^{cxci} The new single water authority, Scottish Water, came into operation on 1 April, following the passage of the Water Industry (Scotland) Act 2002,^{cxci} though there was controversy over ‘payoffs’ to former senior staff.^{cxci}

However the controversial policy of GM crop trials provided the core of political debate, with developments ranging from further attacks on GM crop fields;^{cxci} dissent from the Liberal Democrat Conference to the policy of ‘their’ Environment Minister, Ross Finnie;^{cxci} action by the Transport and the Environment Committee over an anti-GM petition,^{cc} to SNP claims that the Executive was handing over its functions over GM crop trials to the UK Government through trying to slip an Order through the Parliament just before the Easter recess.^{cci}

11.6 Housing and social justice

The local vote on the proposed transfer of Glasgow's municipal housing stock was extremely controversial (see also Section 7.1 below), and generally seen as a turning-point in Labour's approach to municipal politics.^{ccii} The ballot resulted in a substantial vote in favour of de-municipalisation,^{cciii} by 58%-42% on a 64% turnout, a notable contrast with the outcome of a similar ballot in Birmingham. The Executive regarded the vote as an endorsement of its policies, and a move towards "warm, dry homes, fit for the 21st century".^{cciv} Other social justice initiatives included an Executive commitment to end fuel poverty within 15 years,^{ccv} and homelessness within a decade.^{ccvi}

11.7 Euro 2008 and smacking

Two policies which appear to contradict the McConnell Administration's carefully promoted culture of post-McLeish policy realism are the bid to host the 2008 European football championships, and reform of the law on the physical chastisement of young children.

The last Report noted the Executive's compromise decision on a Scottish bid for the Euro 2008 football championships, and the possibility that it could backfire on ministers, especially the First Minister. This was demonstrated by the apparent lack of enthusiasm among Irish politicians and sports officials, leading to much media speculation that no agreement to bid would be available by the UEFA deadline of the end of February.^{ccvii} Ultimately, matters appeared to be patched up sufficiently at the eleventh hour to allow a joint bid to proceed,^{ccviii} but it still appears to be a policy which could further undermine the McConnell Executive's 'new realism', with hiccups such as the problem of the Irish being able to provide the two necessary stadia. McConnell is still giving his personal backing to the joint bid, even attending a UEFA Congress in Stockholm in April to promote it.^{ccix}

An area where policy may diverge across the border^{ccx} is the law on 'smacking' of young children, despite survey evidence showing that parents (though not children themselves) were opposed to Executive proposals to ban smacking of children under 3 years of age, contained in the Criminal Justice (Scotland) Bill.^{ccxi} The Opposition parties clearly expect that this policy has the potential to be another 'Section 28', in the sense of being depicted as an irrelevant, unnecessary, 'politically correct' issue which could cause the Executive much grief, as can be seen in exchanges at First Minister's Questions on 28 March between McConnell and the Tory leader, David McLetchie.^{ccxii}

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