



The **Constitution** Unit



UNIVERSITY OF  
STIRLING



# Nations and Regions: The Dynamics of Devolution

Quarterly Monitoring Programme

Scotland

Quarterly Report  
November 2002



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**The Leverhulme Trust**

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## **Key points: James Mitchell**

- First Minister Jack McConnell became embroiled in an embarrassing internal constituency row over local party funds;
- Culture Minister Mike Watson broke collective cabinet responsibility by speaking out—but not voting—against Executive health policy fearing that he might lose votes in the forthcoming Scottish elections;
- Herald newspaper went up for sale with the prospect that it will be bought by owners of Scotsman rivals.

# 1. Scottish Executive Barry Winetrobe

## 1.1 Collective responsibility

The application of the doctrine of collective responsibility has been under the spotlight in the Glasgow hospitals issue. The Culture Minister, Mike Watson, has been a leading public opponent of the reorganisation plan, but voted with the Executive in a debate on the issue on 12 September. His MPA, Janis Hughes, put herself in an even more unusual position, by abstaining on the Executive amendment to the critical SNP motion, but then voting for the as-amended motion. The First Minister refused to sack either, on the basis that they had both adhered to collective responsibility by their votes. Another MPA, Ken Macintosh, voted against the Executive in both divisions, and resigned his quasi-government post. Opposition parties claimed that the Executive's stated adherence to collective responsibility—a cornerstone of the coalition agreement and set out prominently in the *Scottish Ministerial Code* and the *Guide to Collective Decision Making*—was being flouted, and even 'new politics' Labour backbenchers like John McAllion, as well as a former head of the Scottish Office, Sir William Kerr Fraser, expressed anxiety at the effect that the episode could have on the effectiveness of devolved governance.<sup>i</sup>

This is a difficult issue, in that, as has been clearly demonstrated over the decades at UK level, application of such unwritten constitutional conventions and doctrines are essentially a matter for the head of government. Such decisions are usually made on pragmatic, political grounds, depending on factors such as the strength of the 'dissident' ministers and their relationship with the head of government, the views of the parliamentary party, as well as media and public reaction. It seems clear that the Executive's initial particular focus on collective responsibility arose from the coalition nature of the new administration, and the desire to provide disciplines on the two groups of ministers. It is therefore somewhat ironic that this novel notion of 'collective coalition responsibility' has arisen now in the more traditional context of an individual minister's conflict between Executive policy and constituency interests.

## 1.2 Permanent Secretary and Executive administration

The Permanent Secretary, Sir Muir Russell, announced his departure from the civil service to become principal of Glasgow University, a move viewed by Opposition parties and some of the media as the result of a rift between senior officials and ministers, and perhaps also to Russell's failure to gain the vacant Cabinet Secretary post recently.<sup>ii</sup> Russell will leave after the May elections, probably next summer or early autumn, and no appointment will be made until then. He said that, by then, would have been Permanent Secretary for 5 years, and that Cabinet Office guidance was that 5-7 years was the right term in the top job.

Much was also made of the formal statutory/constitutional position that the appointment of a successor is a matter for the Prime Minister, as the home civil service is a reserved matter under the Scotland Act. The Executive's spokesperson explained the process at the 14 August media briefing, which, in view of the post-devolution novelty of this, is set out below:

"The FMOS said that Head of the Home Civil Service will run the competition for the recruitment process but the crucial point is that the First Minister will be consulted on the appointment. The First Minister's agreement is required for any proposed appointment. The FMOS confirmed that the First Minister could veto an appointment. We don't know at this stage quite how it will happen in this case as arrangements for the recruitment have not yet been decided, but that the First Minister's opinion is that the appointment should be through an open competition. The recent pattern has been for Permanent Secretaries to be appointed by open competition, as indeed was Sir Muir.

Asked about the role of Civil Service Commissioners, the FMOS said that, should there be an open competition, one candidate would be recommended by the Commissioners to the First Minister who then has the right of veto. Formal responsibility for Permanent Secretary appointments lies with the Prime Minister.

Asked whether the right of veto is enshrined in law, the FMOS said no, it is by convention. Though this appointment has never happened post-devolution, this is the way that it is done across Whitehall and across the Civil Service. He highlighted that the Secretary of State for Scotland had the right of veto pre-devolution and stated that Sir Muir was appointed under open competition."

More generally, a very short piece by the ex-minister, Susan Deacon, as part of a feature on 'reforming the Executive' in *Holyrood*, was picked up by the media and by the SNP as calling, not only for radical reform of

the civil service in Scotland, but for the devolution of the service itself. What she wrote on the latter point was: “I wonder also if the time is right to look at cutting the umbilical cord with Whitehall. The current relationship looks increasingly anomalous as devolution beds in.”<sup>iii</sup> Opposition parties continued to use PQs to scrutinise the appointment and size of the Scottish Administration.<sup>iv</sup> A survey revealed the extent of stress among Executive staff.<sup>v</sup> The First Minister has promised that public sector job dispersal would benefit rural communities, but this was ridiculed by the SNP, who claimed that Labour had been promising such dispersal since 1997.<sup>vi</sup>

### **1.3 Opposition pre-election contacts**

The First Minister has authorised the main Opposition parties to make contact with the Permanent Secretary and other very senior Executive official in the run-up to the May 2003 election. While the SNP naturally publicised this as their preparation for assuming office, the Executive made it clear that such contacts were in accordance with the usual UK practice. The arrangement would apply only to parties represented on the Bureau, but not in the Executive, i.e. the SNP and the Conservatives. The details were set out in an Executive media briefing on 29 October.<sup>vii</sup>

### **1.4 Public appointments, quangos and Ombudsmen**

The Executive published a circular on the new Public Services Ombudsman scheme, and refused to get involved in questions of the location of the PSO’s office, on the grounds that she is statutorily independent of the Executive and the Parliament.<sup>viii</sup> The Local Government Committee published a report on 4 October endorsing the general principles of the Executive’s Public Appointments and Public Bodies Bill, and the Parliament debated and approved it at Stage 1 on 31 October.<sup>ix</sup> There was a short-lived furore when the Tories accused Scottish Enterprise of political bias by campaigning against the party’s views. This was settled by a meeting of the Tory leader, the Enterprise Minister, Iain Gray, and Scottish Enterprise executives, where the quangos apologised and the Executive said it would bring forward a code of conduct to deal with such matters in the future.<sup>x</sup> Written answers on 29 August to Alex Neil provided substantial background detail behind the critical remarks about the Executive in the Commissioner for Public Appointments’ annual report (see para 1.4 of the last Report), and a further answer to Neil on 14 October listed the bodies which are contacted under the parliamentary notification scheme since May 2002.<sup>xi</sup>

### **1.5 Performance improvement**

Details were given in August of the First Minister’s plans for a ‘Performance Improvement and Innovation Unit’, the aim of which was “to get the public sector achieving the highest-levels of performance and value for money.” The Unit would be made up of a team of civil servants and secondees, and a voluntary panel of senior business and public sector figures—chaired by a senior business person, working in an advisory capacity, and reporting to the First Minister—would map out the direction for this work. It is envisaged that the proposed Unit would “certainly not be a massive bureaucracy,” would be designed to suit Scotland, and should be established by the autumn and start to deliver improvements by early 2003. The initiative was to be seen as part of the First Minister’s stated desire to drive up the quality of public services, and the aim was to provide some strategic overview and to complement existing individual performance measuring. Civil Service unions expressed concerns that this initiative, by reporting to the First Minister and involving the private sector, could lead to politicisation of the devolved administration, and sought some form of union involvement.<sup>xii</sup>

At a QMW public policy seminar on 30 September, the Finance Minister, Andy Kerr, described how the Executive was “taking part in a new approach to deliver improvements in Government Departments. This involves the Executive benchmarking itself against external organisations, taking stock of where a focus on improvement is most needed, and coming up with a structured plan for implementing change. This reform programme is about making sure that there are modern hospitals, prisons, roads and railways, schools and economic programmes which are fit for purpose.” Kerr said: “In our recent Budget announcement, we set out targets and are harnessing expertise to meet those targets. This is part of our drive to secure improved performance across the public sector. We must get as much as we can out of every pound we spend.”<sup>xiii</sup>

### **1.6 Ministerial matters**

During an Executive media briefing on 9 September, it was explained that Jim Wallace was attending an air transport conference because “as DFM he had a cross-cutting role across all portfolios.”<sup>xiv</sup> A list of ministerial sub-committees was given in a WA on 2 October by the First Minister.<sup>xv</sup> The irrepressible Mike Russell (SNP) lodged a motion on 25 October commending (the recently-resigning UK cabinet minister) Estelle Morris’ view

“that ministers should constantly assess their performance in office and should resign if they believe that they are no longer doing an effective job and commends this approach to the current ministerial team in the Scottish Executive.”<sup>xvi</sup> The deputy justice minister, Richard Simpson, was under fire for apparently seeking to cut back his ministerial duties so as to concentrate on holding his parliamentary seat in the 2003 elections.<sup>xvii</sup> It was reported in the press that the Liberal Democrats were considering a cut in the number of ministerial posts as part of its election manifesto.<sup>xviii</sup>

### **1.7 MPAs activities**

A WA of 27 September by the First Minister on the activities of ministerial parliamentary aides (MPAs) gave the following information:

“Civil servants’ contact with ministerial parliamentary aides is limited to occasions when the aide is supporting a minister in the minister’s official capacity. This can be contact at meetings or by telephone or e-mail. No central record is kept of the amount of time or occasions where contact has been made.”<sup>xix</sup>

### **1.8 Executive advertising**

The Executive made it known in mid-August that it planned to control its advertising and information expenditure, by centralising control of such budgets through the Finance Minister, with the aim of cutting costs by up to 25%. This followed figures published in a written parliamentary answer showed sharp rises over recent years, from £1.38m in 1999-2000 to £6.6m in 2001-02.<sup>xx</sup> Further WAs to the SNP shadow minister, Michael Russell, on 21 October led to accusations from Opposition parties that the Executive was ratcheting up its advertising spend in advance of the parliamentary elections, as a form of publicly-funded electioneering, and Russell called for some form of independent scrutiny of Executive advertising. Matters were not helped by reports that some of its public service advertising campaigns had produced relatively few positive results.<sup>xxi</sup>

### **1.9 McConnell’s Officegate?**

As the former First Minister, Henry McLeish, announced that he would be standing down as an MSP at the forthcoming general election, following his demise last autumn over the ‘Officegate’ affair, a new financial controversy exploded around his successor, Jack McConnell. Aside from the coincidence of First Ministerial crises occurring each autumn with eerie regularity, ‘Wishawgate’ (so-called by some in the media and elsewhere as it concerns, at least initially, the financial affairs of his local constituency party) has the potential to dominate Scottish politics, as the Opposition and media scent another ‘Officegate’. This could have very serious consequences not just for the fate of McConnell (who has portrayed himself as a post-Officegate clean and transparent politician) and the Scottish Labour Party (as further allegations of sleaze within its local strongholds damage its public image prior to the spring elections), but also for public faith in devolution itself. The loss of a third First Minister would test the robustness of the devolution scheme, not just within Scotland, but perhaps at UK government and media level.<sup>xxii</sup> The affair is unfolding, and it is unclear at the time of writing just how serious it might become, as the search for a ‘smoking gun’ continues which can link McConnell directly to any financial wrongdoing (perhaps through his entry in the parliamentary register of interests), and official watchdogs, such as the Electoral Commission, become involved. As all are aware, this searching for financial minutiae is almost bound to reveal some irregularities, however trivial or technical they may be in isolation, which could snowball out of political control. This will, doubtless, be examined further in the next Report.<sup>xxiii</sup>

## 2. The Scottish Parliament

### Mark Shephard

#### 2.1 Parliamentary scrutiny and some influence

Parliament's pressure on the Executive paid off on a number of fronts this quarter. Influence was most notable in relation to the Executive's policy u-turn on the closure of Peterhead Prison, the rejection of the Executive's position on smacking of children under three, and in relation to the First Minister's register of interests. In the case of the proposed closure of Peterhead Prison, Justice Minister Jim Wallace conceded in Parliament on 5 September 2002 that, following consultations, the prison would not now face closure. As well as noting the impact that the prison staffs, in-mates families and local community had had in the decision, Wallace also noted the role of Parliament in influencing the decision. Wallace accorded the Parliament further praise in his announcement that more resources would be made available to facilitate the ending of slopping out, and to reduce levels of overcrowding:

"The measures have not been easy to shape, but I believe that they have benefited from the scrutiny that the Parliament is here to provide."<sup>xxiv</sup>

However, Executive praise for the Parliament quickly dissipated in October following parliamentary pressure on First Minister Jack McConnell to come clean over accounting irregularities within his Motherwell and Wishaw constituency party. Quick to draw parallels with the former First Minister Henry McLeish and 'Officegate', the opposition parties called for an independent inquiry (as opposed to the internal investigation initiated by the Labour Party itself). As questions surfaced in the media over both the extent of the irregularities and McConnell's explication of the nature and timing of events, the SNP led the charge that the First Minister had misled Parliament. Subsequent details concerning the failure of the local party to declare union donations and their use towards McConnell's leadership bid in 2000 contributed to further parliamentary pressure on the First Minister to clarify matters in Parliament.

Continued parliamentary and media pressure of 'Wishawgate' has prompted the Scottish Labour Party to investigate all of its constituency parties for accounting irregularities. It has also contributed to Labour's decision to invite independent auditors in to examine the accounts of the Motherwell and Wishaw constituency party, and the announcement by the First Minister that he would endeavour to uphold the principles of transparency and openness in the Parliament:

"Yesterday, I met the clerk to the Standards Committee. I am happy not simply to ensure that my register of interests is correct, but to exceed the Parliament's requirements and ensure that my register of interests contains more than is needed, because I am interested in transparency and openness in the Parliament."<sup>xxv</sup>

The lessons of 'Officegate' have not been wasted on the Presiding Officer. When 'Officegate' was at its peak in October 2001, the Presiding Officer's inconsistent rulings on the admissibility of questions and statements were criticised and Steel admitted having made some errors. This time around, the Presiding Officer has been more reluctant to intervene. For instance, at the first First Minister's Question Time (FMQT) after the story of 'Wishawgate' broke, David Steel did not verbally intervene in the exchanges between John Swinney and Jack McConnell. Although the transcript of *The Official Report* suggests that he did shake his head following Swinney's opening question on the irregularities of McConnell's local party<sup>xxvi</sup> (lack of connection to parliamentary business), restraint in direct intervention provided Jack McConnell the opportunity to defend his position through a 'parliamentary' lens. Moreover, in the run up to the subsequent FMQT, McConnell, again under pressure from Swinney, stated that the Presiding Officer had reminded him that local party accounting was 'not a matter for parliamentary business'.<sup>xxvii</sup> That said, the Presiding Officer permitted an exchange between the two leaders on the subject. Consequently, compared with 'Officegate', the actions of the Presiding Officer this time around have not contributed to any undue escalation in friction between the Parliament and the Executive.

While on the subject of friction between the Executive and the Parliament, the Parliament gained a concession on smacking from the Executive in September following the Justice 2 Committee's Stage 1 Report on the Criminal Justice (Scotland) Bill. The Executive favoured a ban on smacking for children under three while the Committee's Report did not. Fears over the prosecution of parents using moderate physical punishment contributed to the Committee's position. Speaking for the Executive, Jim Wallace agreed to concede on the issue while promising that alternative measures would be pursued to ensure the protection of children.<sup>xxviii</sup>

## 2.2 Parliamentary scrutiny and little influence?

While parliamentary pressure on Jack McConnell contributed to a statement that he would ‘exceed the Parliament’s requirements’ in his registration of interests, parliamentary pressure on Phil Gallie MSP to register his membership of the Freemasons culminated in Gallie publicly decrying the proposed new rules on the registering of non-financial interests. Gallie argued that his membership of the Freemasons has no impact on his actions in the Parliament.

Indeed, the SNP have been somewhat relentless in their pressure on the Executive this quarter. Over the summer recess, the SNP’s Business Manager, Fiona Hyslop, requested the recall of Parliament to discuss the state of Scotland’s economy. Hyslop’s written request for the recall was prompted following the release of GDP figures indicating that Scotland’s economy had declined for two successive quarters. Presiding Officer Sir David Steel rejected the request on grounds that the figures, although serious, did not constitute an emergency demanding urgent attention.<sup>xxix</sup>

The SNP returned from the summer recess in fighting form. Nicola Sturgeon managed to embarrass the Environment Minister over her presentation of evidence that sheep were still grazing next to Loch Katrine. In an earlier attempt to assuage fears over water safety, Ross Finnie had asserted that sheep were no longer located around the Loch. Although SNP calls for the resignation of the minister were unsuccessful, Finnie’s position has been dented by the incident.<sup>xxx</sup>

Other SNP actions have included a range of initiatives, that although make little immediate impact, nonetheless continue to raise questions concerning the extent of the powers and the meaning and role of the Parliament under devolution. Among these initiatives were a motion to discuss September 11<sup>th</sup> and the War on Iraq, pressure for the Parliament to oversee the regulation of Scottish media, and calls for the Executive to have more of an input in the Council of Ministers over issues such as fishing policy.

## 2.3 Rumbles over the Scottish Parliament and Business Exchange Scheme

The Standards Committee raised a number of concerns this quarter over the operation of the Scottish Parliament and Business Exchange Scheme. The Scheme is described as an ‘educational charity’ that exists to promote mutual understandings between MSPs and the business community in Scotland. Within its first year, 28 MSPs had participated in the scheme.<sup>xxx1</sup> Citing the official organisational principles of the Scheme as ‘non-lobbying, non-partisan, transparent, and open’, Tricia Marwick (SNP) questioned whether the activities of the Scheme to date had in fact contradicted these principles given that five of the seven first placements from business represented the lobbying interests of companies.<sup>xxxii</sup> Paul Grice, the convener of the Scheme, admitted that this was ‘a fair point for consideration’ although he did argue that there had been no MSP complaints of wrong doing and that those involved in the Scheme did have to sign an undertaking that they would not engage in lobbying.<sup>xxxiii</sup> In response, Marwick argued that lobbying was a practical inevitability since the scheme would involve the exchange of information. Since information provision to third parties was a role of lobbyists, then this would contradict the Committee’s and the Parliament’s definition of lobbying, and so by default, the Scheme’s commitment to ‘non-lobbying’. The dilemma raised by Marwick poses a number of questions. First, can the Scheme ensure that there are enough safeguards to check the potentials for abuse? Even if lobbyists do adhere to the principles while in the Scheme, to what extent can their subsequent behaviour beyond the Scheme be scrutinised? Second, it shows that in making the placements, the Scheme’s board has paid insufficient attention to the ramifications of the Committee’s and the Parliament’s definitions of lobbying.

## 2.4 Committee Reports and Inquiries (01 August 2002—31 October 2002)<sup>xxxiv</sup>

*Responses to the Call for Evidence on the Water Environment and Water Services (Scotland) Bill*, 2 September 2002, Transport and the Environment Committee

*Mandatory Licensing of Housing in Multiple Occupation (HMOs) Consultation on Possible Changes to Exemptions: Response by the Social Justice Committee to Scottish Executive Consultation*, 6 September 2002, Social Justice Committee

*Stage 1 Report on the Debt Arrangement and Attachment (Scotland) Bill*, 10 September 2002, Social Justice Committee

*Stage 1 Report on the Criminal Justice (Scotland) Bill*, 13 September 2002, Justice 2 Committee

*Annual Report of the Audit Committee for the Parliamentary Year 12 May 2001 to 11 May 2002*, 16 September 2002, Audit Committee

*Annual Report of the Education, Culture and Sport Committee for the Parliamentary Year 12 May 2001 to 11 May 2002*, 16 September 2002, Education, Culture and Sport Committee



*Annual Report of the Enterprise and Lifelong Learning Committee for the Parliamentary Year 12 May 2001 to 11 May 2002*, 16 September 2002, Enterprise and Lifelong Learning Committee

*Annual Report of the Equal Opportunities Committee for the Parliamentary Year 12 May 2001 to 11 May 2002*, 16 September 2002, Equal Opportunities Committee

*Annual Report of the European Committee for the Parliamentary Year 12 May 2001 to 11 May 2002*, 16 September 2002, European Committee

*Annual Report of the Finance Committee for the Parliamentary Year 12 May 2001 to 11 May 2002*, 16 September 2002, Finance Committee

*Annual Report of the Health and Community Care Committee for the Parliamentary Year 12 May 2001 to 11 May 2002*, 16 September 2002, Health and Community Care Committee

*Annual Report of the Justice 1 Committee for the Parliamentary Year 12 May 2001 to 11 May 2002*, 16 September 2002, Justice 1 Committee

*Annual Report of the Justice 2 Committee for the Parliamentary Year 12 May 2001 to 11 May 2002*, 16 September 2002, Justice 2 Committee

*Annual Report of the Local Government Committee for the Parliamentary Year 12 May 2001 to 11 May 2002*, 16 September 2002, Local Government Committee

*Annual Report of the Procedures Committee for the Parliamentary Year 12 May 2001 to 11 May 2002*, 16 September 2002, Procedures Committee

*Annual Report of the Public Petitions Committee for the Parliamentary Year 12 May 2001 to 11 May 2002*, 16 September 2002, Public Petitions Committee

*Annual Report of the Rural Development Committee for the Parliamentary Year 12 May 2001 to 11 May 2002*, 16 September 2002, Rural Development Committee

*Annual Report of the Social Justice Committee for the Parliamentary Year 12 May 2001 to 11 May 2002*, 16 September 2002, Social Justice Committee

*Annual Report of the Standards Committee for the Parliamentary Year 12 May 2001 to 11 May 2002*, 16 September 2002, Standards Committee

*Annual Report of the Subordinate Legislation Committee for the Parliamentary Year 12 May 2001 to 11 May 2002*, 16 September 2002, Subordinate Legislation Committee

*Annual Report of the Transport and the Environment Committee for the Parliamentary Year 12 May 2001 to 11 May 2002*, 16 September 2002, Transport and the Environment Committee

*Common Fisheries Policy—the Committee’s Recommendations on Scotland’s Priorities for Reform*, 18 September 2002, Rural Development Committee

*Tourism Inquiry: Evidence*, 23 September 2002, Enterprise and Lifelong Learning Committee

*Stage 1 Report on the Local Government in Scotland Bill*, 23 September 2002, Local Government Committee

*Report on Overview of Further Education Colleges in Scotland 2000/2001*, 25 September 2002, Audit Committee

*Report on Financial Memorandum for the Water Environment and Water Services (Scotland) Bill*, 25 September 2002, Finance Committee

*Report on Monitoring the Impact of the Housing (Scotland) Act 2001—Research Stages 2 and 3*, 26 September 2002, Social Justice Committee

*Analysis of Routine Scrutiny of Legislation*, 2 October 2002, Equal Opportunities Committee

*Report on Public Private Partnerships*, 2 October 2002, Finance Committee

*Report on Changes to Standing Orders concerning the Scottish Parliamentary Standards Commissioner, European Committee remit, Private Legislation, Temporary Conveners and the Journal of the Scottish Parliament*, 3 October 2002, Procedures Committee

*Stage 1 Report on the Public Appointments and Public Bodies etc. (Scotland) Bill*, 4 October 2002, Local Government Committee

*Reporters’ Report on Highlands and Islands Ferry Services (pdf)*, 8 October 2002, Transport and the Environment Committee

*Inquiry into Gender Equality and Best Value*, 9 October 2002, Equal Opportunities Committee

*The Committee’s Recommendations on Issues Affecting the Scottish Scallop Industry*, 11 October 2002, Rural Development Committee

*The Committee’s Recommendations on the Draft Designation Order for the Cairngorms National Park (pdf)*, 15 October 2002, Rural Development Committee

*Report on Inquiry into the Rail Industry in Scotland*, 15 October 2002, Transport and the Environment Committee

*Report on Social Inclusion Inquiry*, 16 October 2002, Social Justice Committee

*Report on the Water Environment and Water Services (Scotland) Bill*, 17 October 2002, Transport and the Environment Committee

*News Release—Parliament's Robin Rigg Committee to Hold Meeting in Dumfries*, 22 October 2002, Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Bill Committee

*Final Report on Lifelong Learning*, 28 October 2002, Enterprise and Lifelong Learning Committee

*Stage 2 Report to the Finance Committee on the 2003/2004 Budget Process*, 30 October 2002, Equal Opportunities Committee

## **2.5 Parliamentary Bills (01 August 2002—31 October 2002)<sup>xxxv</sup>**

### **Executive Bills in Progress (latest stage reached):**

Agricultural Holdings (Scotland) Bill (Stage 1)

Building (Scotland) Bill (Stage 1)

Criminal Justice (Scotland) Bill (Stage 1)

Debt Arrangement and Attachment (Scotland) Bill (Stage 2)

Homelessness etc. (Scotland) Bill (Stage 1)

Land Reform (Scotland) Bill (Stage 2)

Local Government in Scotland Bill (Stage 1)

Mental Health (Scotland) Bill 7(Stage 1)

Protection of Children (Scotland) Bill (Stage 1)

Public Appointments and Public Bodies etc. (Scotland) Bill (Stage 1)

Title Conditions (Scotland) Bill (Stage 1)

Water Environment and Water Services (Scotland) Bill (Stage 1)

### **Members' Bills in Progress:**

Council of the Law Society of Scotland Bill (Stage 1)

Dog Fouling (Scotland) Bill (Stage 1)

Organic Farming Targets (Scotland) Bill (Introduced on 30 September 2002)

Proportional Representation (Local Government Elections) (Scotland) Bill (Stage 1)

Prostitution Tolerance Zones (Scotland) Bill (Introduced on 28 October 2002)

Tobacco Advertising and Promotion (Scotland) Bill (Stage 1)

### **Private Bills in Progress:**

National Galleries of Scotland Bill (Introduced on 28 October 2002)

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

### **Proposals for Members' Bills**

In the last quarter there was one proposed Members' Bill. On 10<sup>th</sup> October 2002, Shona Robison (SNP) proposed a Bill to amend the Civic Government (Scotland) Act 1982 by extending licensing requirements to retailers of fireworks. The proposal acquired its 11<sup>th</sup> supporter on 10<sup>th</sup> October 2002 and is now eligible for introduction. In terms of the progress of existing 'successful' proposed Members' Bills, three proposals have been introduced in this quarter. David McLetchie's proposed Bill to amend the Solicitors (Scotland) Act 1980 to allow delegation of the Council of Law Society functions was introduced on 6 September 2002 and is now at Stage 1. Robin Harper's proposed Bill to establish targets to increase the proportion of land that is certified as organic was introduced on 30 September 2002, and Margo MacDonald's proposed Bill to enable Local Authorities to designate prostitute tolerance zones was introduced on 28 October 2002.

## **2.6 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 48. The new Group is the Kidney Disease Cross-Party Group which aims to 'consider the current service provision, assess the prevalence, determine the need, disseminate good practice, and apply current knowledge from research to prevention of kidney disease'<sup>xxxvi</sup>. A further Cross-Party Group on Textiles, Clothing and Footwear has been proposed but has yet to be approved by the Standards Committee.

## 3. The Media

### Philip Schlesinger

#### 3.1 The Communications Bill—not quite good enough

Changing the communications landscape is a serious matter. So much so that Westminster set up a Joint Committee of the Lords and Commons to scrutinise the provisions of the Draft Communications Bill. Chaired by Lord (David) Puttnam, the Joint Committee reported on 25 July with a serious and searching appraisal.<sup>xxxvii</sup> As we have noted in previous reports, communications are not a devolved matter. However, there are implications for Scotland and the other devolved nations of any UK legislation in the field. One of these has to do with how the new communications regulator, Ofcom, relates to the nations and regions.

The Puttnam committee expressly considered the ‘representation of nations and regions’. It noted that by scrapping the existing five regulators and replacing them with OFCOM (see our July report), which is to have a very small executive Board, the government intended to bring some coherence into the representation of different parts of the UK. Puttnam noted:

‘The Government has resisted the notion that that this should entail a distinct representational role for the main Board, and we support the Government’s approach. In the absence of such provision, a significant representational burden falls upon the Content Board and Consumer Panel.’<sup>xxxviii</sup>

The committee then went on to ask the UK Government to strengthen its existing provisions in respect of these two subordinate committees:

‘We welcome the proposal for national and regional Councils reporting to the Content Board through the designated national members and we recommend that formal provision for their establishment be made on the face of the Bill. We further recommend that, in establishing such Councils, OFCOM be required to have regard to the views of the relevant devolved institutions.’<sup>xxxix</sup>

The committee also recommended strengthened representational capacities for the Consumer Panel, which, it said, should ‘be granted a power to establish such committees as it considers appropriate. We expect that this power be exercised to establish consumer committees for Scotland, Northern Ireland and Wales.’<sup>xl</sup>

The committee further called on the Government to honour its pledge to maintain the existing regulatory presence in the devolved countries, recommending that ‘OFCOM be placed under a statutory duty to maintain offices in Scotland, Wales and Northern Ireland’.<sup>xli</sup> The committee showed its sensitivity to the existence of devolved bodies by also recommending that ‘OFCOM be required to include in its annual report accounts of its activities in Scotland, in Wales and Northern Ireland.’<sup>xlii</sup>

The report did not neglect to mention the lack of any explicit mention of Gaelic broadcasting in the Bill’s provisions. Here, the committee was not especially prescriptive but did urge that there was ‘a compelling case for ensuring that the relevant provisions facilitate rather than inhibit the future development of a Gaelic television service’.<sup>xliii</sup>

One interesting observation in the report concerns the issue of radio ownership and regional cross-media ownership. The Government has proposed that in every ‘local area’ there will be at least three separate owners of local radio services in addition to the BBC (the so-called ‘three plus one’). Quite how this is to be implemented is less than clear and the Government was called on by Puttnam to establish an objective and measurable definition of a ‘mature’ market.<sup>xliv</sup>

The importance for Scotland of this provision is that the desired plurality of voices in radio ‘is to be complemented by a system of regional or local cross-ownership rules, which can be summed up as requiring “three distinct media voices”’. SMG expressed concern about this to the committee. They clearly perceived a threat to their holdings as a media group with major radio, television and newspaper interests in Scotland. The government proposes that the restrictions on a major newspaper owner in a particular region owning the relevant Channel 3 licence be brought together with the restrictions on a commercial television or newspaper company with a significant voice in a local area. Owning a radio station—unless at least two other stations were to compete—would become impossible.<sup>xlv</sup> No doubt, this worry partly explained SMG’s decision to sell off *The Herald*, *Sunday Herald* and *Evening Times* (see below).

Puttnam rightly detected a lack of clarity in the Government’s thinking, and while supporting the idea of a plurality of voices in the commercial sector ‘at a sub-United Kingdom level’, the committee asked for more thought.

Buried away in Annex 7 of the report is an intriguing little letter to Putnam from Professor Lord Norton, the chairman of the House of Lords Select Committee on the Constitution. In it, he remarks:

‘Our current inquiry is into the working of devolution within the United Kingdom. We have received evidence to the effect that United Kingdom non-departmental public bodies since devolution have been losing direct Scottish and Welsh representation. You may wish to consider whether the responsibility for sub-state cultural diversity should be provided for by direct representation on the board of the Office of Communications (Ofcom) or by specifically charging Ofcom with the responsibility. This is an issue outside the call for evidence of our current inquiry.’<sup>xlvi</sup>

Putnam’s committee rejected the view that the OFCOM Board should have direct representation. However, Lord Norton had clearly put his finger on an important effect of devolution: the troubling issue of falling representation from the devolved nations at the centre of UK affairs. What happens in OFCOM is part of a wider, emergent, constitutional issue. As the great and the good of Scotland (and Wales) lose their seats, we may expect the volume of their protests to rise. We may also assume that the struggles around the Communications Bill will be fought in other sectors of the transforming post-devolutionary British state.

Meantime, we shall have to wait for the Queen’s Speech in November to see exactly how the Government will respond to the Putnam committee’s well-reasoned criticisms.

### 3.2 Wannae buy some papers, pal?

All those in the know have been waiting for debt-ridden SMG to divest itself of its television holdings. Senior executives have repeatedly pointed to the lack of profitability in that division and it has been widely assumed that SMG has been waiting for a single, dominant, ITV player to emerge south of the border willing to buy up the relatively small Scottish TV and Grampian TV. Wrong. Instead, it is *The Herald*, *Sunday Herald* and the *Evening Times* that are on the market. Not only were the pundits taken by surprise, but so too were most of those working for the SMG newspapers. There is anger and bitterness among the group’s journalists. Given the poor advertising market, and the generally parlous state of ITV, it is a bad time to be selling television holdings.<sup>xlvii</sup> So to deal with the company’s £400m debt mountain, off go the papers. They are profitable but the advertising market is depressed for print too. Perhaps SMG’s debt is not the only consideration, given the uncertainty attendant on how ownership concentration will be handled in the Communications Bill.<sup>xlviii</sup>

On 10 September—perhaps not the most coincidental of dates, given the news blitz about the twin towers that was to follow next day—SMG reported pre-tax profits were down by 43% in the past six months. They were now asking for more than £200m for the company’s publishing division, which includes some specialist magazines and online services, as well as the papers. SMG’s publishing division is profitable and the announcement brought an appreciable surge in the company’s shares. The SMG TV and radio holdings have lost some two-thirds of their value in the past two years.<sup>xlix</sup>

There have been two main reactions. First, there is the predictable response from politicians. Jack McConnell, the Labour First Minister, Mike Russell, the SNP’s media and culture spokesman, and a spokesman for the Scottish Tories all called for the newspapers’ independence to be secured. Russell lodged a motion with the Scottish Parliament, calling for more diversity of ownership north of the border—again, underlining the importance of the Communications Bill.

Which brings us to the second reaction: the flurry of speculation about who will buy the titles. Given the pivotal opinion-forming role of the *Heralds*, especially for the west of Scotland, but also for the devolved political system, much hangs on what happens next. The decision will be taken in the DTI under competition legislation. The present writer should declare an interest, though not a pecuniary one. He is a member of the *Sunday Herald* editor’s advisory committee and took the lead in calling for editorial independence in the group to be properly defended in any sell-off.<sup>1</sup> When the list of bidders is considered, in some cases at least, there is good cause for concern.

At this time of writing those tabling an offer in the first round of the bidding process include Barclay Brothers, owners of Scotsman Publications, the Guardian Media Group, the Daily Mail & General Trust, Newsquest, the Johnston Press, Eastern Counties Press and the venture capitalists 3i. SMG hope to raise some £200 million from the sale and are known to want a quick sale.

### 3.3 A risky business

On 17 September, a report was released on the problems faced by regional, independent television production companies.<sup>li</sup> The research was conducted at the Research Centre for Television and Interactivity with major support from Scottish Enterprise. The present writer must declare another interest. Stirling Media Research Institute, for which he works, also co-funded and steered the project with Channel 4 Nations and Regions.

Although of considerable concern to Scotland, the research actually has a UK-wide database, and draws on empirical case studies conducted by Alison Preston (of the Research Centre and Stirling University) of eight independent TV companies. The central issue is this: which factors enhance the growth of creative SMEs and which stand in the way of growth? Preston carried over 100 in-depth interviews across a representative sample of companies and also talked to key players in the industry.

She concluded that small and medium sized companies in the sector face some major challenges. These are: responding to risk; developing strong relationships with programme commissioners; developing good reporting systems and internal structures; making a virtue of regionality by attracting and retaining staff outside London; and achieving an optimal mix of breadth and depth in genres and products to spread risk. Television production is inherently risky and the right kinds of risks have to be taken to enter a virtuous circle of growth and development.

The report will certainly be debated inside the industry and has considerable policy implications for the cultural sector in Scotland, as elsewhere in the UK. It can be accessed on the Research Centre's website.<sup>lii</sup> Thus far, it has received a warm welcome from the independent producers' body, PACT for revealing some little-analysed structural problems and at least going some way to suggesting possible solutions. It was also welcomed by independent producers, commissioners and other industry figures who discussed the report at a closed seminar in Glasgow on 17 September. The meeting was chaired by Barry Cox, deputy chairman of Channel 4. Cox believed that the study went straight to the heart of the tensions between creative individualism and corporate managerialism in television.

Without devolution, this kind of research into regional production across the UK would probably not have been conducted. It needed Channel 4 first to set up its Nations and Regions office in Glasgow, with a remit to help fulfil the company's statutory independent regional production quota. The building of a modest industry-focused research capacity has followed in its train.

### **3.4 'Scottish Six' to be revisited?**

After next year's Holyrood elections, proposals for a separate Scottish Six O'Clock News will be revisited. Gavin Davies, chairman of the BBC's board of governors, has said that the corporation will take another look. This has been an issue that refuses to lie down, as earlier reports have indicated. What the outcome of the BBC's review in 2003 will, remains a matter of conjecture.<sup>liii</sup> But we can expect the debate to continue, at all events.

## 4. Public Attitudes and Identity

### John Curtice

#### 4.1 Attitudes towards devolution

Do you agree or disagree that the Scottish Parliament rather than Westminster should be responsible for raising taxes to cover public spending?

	Party Preference				
	All	Con	Lab	LibDem	SNP
	%	%	%	%	%
Agree	57	43	61	45	70
Disagree	30	51	29	42	21
Neither	12	6	10	13	9

Source: System 3/Herald 26/9-3/10/02

System Three's end September poll confirmed previous survey findings that a clear majority of Scots believe that the Scottish Parliament should be responsible for raising taxes in Scotland, and that support for this proposition is almost as high among Labour as it is among Nationalist supporters. This mood despite the fact that many commentators believe that taxation would have to rise if all of Scottish public spending (including its share of UK expenditure on defence etc.) had to be financed out of taxes raised in Scotland. The symbolism of a stronger parliament appears to be more powerful than arguments about its possible impact on the pocket book.

#### 4.2 Identity

None

#### 4.3 Attitudes towards other issues

Support/Oppose British participation in US military strikes against Iraq		
	August	March
	%	%
Support	30	38
Oppose	57	43
Neither	13	9

Source: System 3/Herald 22-29/8/02

Support/Oppose firefighters' strike action to obtain a 40-% pay increase	
	%
Support	46
Oppose	43
Undecided	11

Source: System 3/Herald 24-31/10/02

The relative quietude of Scottish politics is exemplified by the fact that much of The Herald's polling this quarter has been about UK rather than Scottish issues. A poll at the end of August indicated, as did contemporaneous British polls, that support for British involvement in a military attack on Iraq had waned since earlier in the year. This finding has of course largely been overtaken by the decision of the United States and the UK to seek a further UN resolution and the re-entry of arms inspectors in Iraq. Meanwhile, a poll taken at the end of October before the first firefighters strike found Scots evenly divided in their attitudes towards the possibility of strike action in support of a 40% claim.

#### 4.4 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
	%	%	%	%	%	%	%	%	%	%
22-29/8/02	11	9	38	34	15	15	28	28	7	14
26/9-3/10/02	10	10	38	28	16	16	28	29	9	19
24/10-3/11/02	12	10	37	29	15	19	30	30	7	12

The principal Other votes are as follows:-

Vote	SSP		Green	
	1	2	1	2
	%	%	%	%
22-29/8/02	4	8	2	4
26/9-3/10/02	4	9	3	6
24/10-3/11/02	4	5	2	4

Westminster Vote Intentions					
	Con	Lab	Lib Dem	SNP	Others
	%	%	%	%	%
22-29/8/02	14	46	13	23	4
26/9-3/10/02	11	47	15	21	6
24/10-3/11/02	13	45	16	22	5

The principal Other votes are for the SSP who scored 2% in August, and 3% in both September and October. There has been a slight erosion of Labour's electoral strength during this quarter, as measured by System Three's regular monthly poll. Even so, its position in the most recent poll taken at the end of October is no worse than it was in March this year. Most importantly the polls still point firmly to a renewed majority for the existing Labour-Liberal Democrat coalition, so long of course as those parties can agree terms.

Yet it would be a mistake to assume that next year's Scottish election holds no interest. There appears to be a chance at least that three important developments could take place if System Three's polls are correct: -  
i) The SNP could overtake Labour on the second party list vote. It is perhaps surprising that so little notice has been taken of System Three's finding that the SNP were slightly ahead of Labour in the last two System Three polls. When similar results were obtained in System Three's polls in the second half of 1998 they lead to considerable speculation about the possibility of an SNP breakthrough. It is perhaps a mark of the relatively high expectations that are now held of the SNP that poll results that suggests they could win more votes than Labour now pass without comment.

There are though two important differences between the position now and that which obtained in the latter half of 1998. First, the SNP's share of the vote is both lower than it was then and has not been increasing in recent months. At the end of October 1998 the SNP stood at 35% on the party list vote, having been 40% or more just a few months earlier. Now the party stands at 30%, just as it did in February and March of this year. Second, while the SNP are neck and neck with Labour on the second vote they still trail significantly (as they did not in 1998) on the first vote. Indeed rather an unusually large gap has now opened up between the two votes so far as Labour are concerned. Whether this is because voters see the second vote as a means of expressing dissatisfaction with Labour, a realisation that outside the Highlands & Islands a Labour party list vote failed to help get anyone elected in 1999, or less well informed respondents giving pollsters a second preference when asked twice about how they would vote in a Scottish Parliament election must at this stage remain speculative. These explanations have of course rather different implications as to whether the gap is likely to be sustained through to next May or not.

In any event as Labour currently secures nearly all of its representation in the constituency contests, its continued relative strength in those contests—at a level little short of the 39% it won in 1999—means that it can look forward to winning more or less as many seats as it did in 1999 despite its apparent difficulties on the second vote. However, one myth about the strength of Labour's electoral position should be dispelled. This is that the party need not be concerned about losing constituency seats because any losses in the constituency contests will be compensated by extra party list seats. Even if we leave aside Labour's currently low performance on the second vote which itself casts doubt on this proposition, this claim ignores the fact that the party did so well in the constituency contests that in four regions, Central Scotland, Glasgow, Lothians and West of Scotland, Labour won more than its proportionate share of seats (Curtice and Steed, 2000). So in these regions at least any Labour loss of a constituency seat would not be automatically compensated for by an extra party list seat even if the party were to do as well in the party list vote in 1999. And of course if losses of

constituency seats were to be accompanied by a decline in Labour's party list vote, this would mean that any losses of constituencies in other regions may not be compensated by party list seats either.

Still, at present there appears to be little likelihood of a significant decline in Labour's level of representation. The party's apparent difficulties on the second vote represents rather a potential threat to its moral authority. If the nationalists were to outpoll Labour on the second vote, they would be able to claim to be the most popular party in Scotland and could taunt a Labour First Minister with the argument that he or she had no mandate to govern. That could at least help provide a springboard for a more substantial nationalist challenge in 2007.

ii) The Liberal Democrats could enjoy a significant increase in their representation. The party's current poll ratings are at least on a par with 1999 on the first vote while it is no less than seven points higher on the second vote. The party now consistently outpolls the Conservatives on both votes, as indeed it did in the 2001 UK general election with 16% of the vote. Best placed to gain extra seats on the party list vote rather than in constituency contests, the Liberal Democrats current poll rating was estimated by *The Herald* itself to be worth an extra six seats, putting the party on 23 seats.

Such a performance next year would contradict the rule that junior coalition partners tend to be punished at the polls. Rather, it would help strengthen the relative position of the Liberal Democrats in the coalition, especially if it were to be accompanied by two or three Labour losses. A tougher Liberal Democrat stance in coalition talks with Labour, including perhaps a demand for a third seats in cabinet, could be expected to follow.

iii) The SSP and the Greens could increase their representation. The de facto threshold for securing a party list seat in a region is usually between 5 and 6%. The SSP has begun to poll regularly at or above that level on the second vote across Scotland as a whole, while the Greens are only a little below. If these recent poll performances were to be reflected in next May's poll, the SSP in particular must be headed for significantly enhanced representation in the Scottish Parliament. Even their rather lower 5% reading in the most recent poll is estimated by *The Herald* to be worth four seats. Such a development would mean that the current Scottish four party system would be fragmenting into one with five or perhaps even six significant players, a development that some will doubtless will attribute in part to the adoption of a more proportional electoral system.

Who would suffer most from an enhanced SSP performance must remain somewhat speculative. Even if it is the case that many are disillusioned Labour supporters, it may be the case that some would otherwise have voted SNP as a means of registering their protest. In any event when it comes to seats it seems to be more likely to be the SNP that has the more reason to worry. Not only is the SNP, unlike Labour, primarily dependent on party list seats for its Scottish Parliament representation, but in 1999 it won the last party list seat in no less than five of the eight regions.

Reference

J. Curtice and M. Steed (2000), 'And now for the Commons? Lessons from Britain's First Experience with Proportional Representation', *British Elections and Parties Review*, 10: 192-215 .

#### Local Government by-elections

	Change in % vote since May 1999			
	Con	Lab	Lib Dem	SNP
12/9/02				
Edinburgh/Balerno	-6.6	-9.3	+13.5	-0.6
19/9/02				
Aberdeenshire/Durn	I	*	-3.5	-15.0
Aberdeenshire/Gamrie-King Edward	I	*	-8.1	+1.8
3/10/02				
Fife/Kincardine Curloss & Low Valleyfield	I	-44.1	I	-16.0
17/10/02				
North Ayrshire/Irvine Townhead	+8.6	-14.1	I	-7.0
7/11/02				
Aberdeen/Newhills	-8.9	W	+36.4	-9.3
Scottish Borders/Earlston etc.	+24.1	*	-8.5	+0.0

I: Fought by-election but did not fight ward in 1999.

W: Fought wards in 1999, but did not fight by-election

\* Did not contest ward in 1999 or the by-election

Source : [www.gwydir.demon.co.uk/byelections](http://www.gwydir.demon.co.uk/byelections)

Recent local government by-election results provide few additional clues to aid our understanding of the standing of the parties. True, Labour continue to lose ground consistently, suffering the usual by-election fate of governments in office. Most notable was its loss of the Kincardine ward in Fife where the no less than 44 point



drop in its share of the vote meant that the party lost control of the council that had been at the centre of the storm that surrounded the resignation of Henry McLeish as First Minister. The by-election was won by a well known local Independent. But none of Labour's competitors have been consistently successful in registering advances in their position. It has though been notable that the Conservatives have at least put in an organisational effort and fought every by-election in the last quarter. This is in stark contrast to the SSP which fought just the Irvine Townhead ward in North Ayrshire where it did however manage to add 4.7 points to the share of the vote it recorded in 1999.

The by-election in the Earlston ward in the Scottish Borders was an all-postal ballot, only the second such ballot to be held in Scotland. At 65.8%, the turnout was far higher than in any other local government by-election held this quarter. This is consistent with the results of previous all postal ballots conducted on both sides of the border.

## 5. Scotland/UK Relations

### Alex Wright

#### 5.1 Boundary Review

The implications of the recent boundary review remains a running sore for the Labour party in Scotland. The review recommended that the number of MPs in Scotland should be cut from 72 to 59 now that Scotland has its own parliament (see earlier devolution monitoring reports). Although this is clearly of consequence for the entire country the effects are particularly noticeable in the Central belt where there is the greatest number of constituencies—some of which return senior Labour party figures.

Helen Liddell has also found herself in an uncomfortable position. In theory she is unaffected by the proposed boundary change in North Lanarkshire, where it has been proposed that five Westminster seats will be reduced to four. John Reid, another North Lanarkshire MP, and recently appointed Labour chairman, risks ending up with no seat whatsoever. According to *The Sunday Times*, Reid has been working hard to produce alternative proposals to the Boundary Commission, thereby ensuring the retention of a new Hamilton and Bellshill seat. However, although Reid's proposal apparently secured the support of the Labour party in Scotland, there was some resistance from Liddell's local party.

The waters were further muddied a few days later when other parliamentarians in Lanarkshire (Bill Tynan MP, Jimmy Hood MP and Tom McCabe MSP) objected to the Commission's proposals during an inquiry<sup>liv</sup>. Lanarkshire is well known for its factionalism and whilst Helen Liddell can delay publicly siding with one group or the other, she cannot avoid being drawn into the fray. For the moment at least, whatever decision she takes will invite criticism from one faction or the other.

The review of Scottish constituencies at Holyrood has also been exercising the Secretary of State's mind. As mentioned in an earlier report—if seats at Westminster are cut in Scotland, that is of consequence for those MSPs whose seats are coterminous with Westminster constituencies. When she gave oral evidence to the House of Lords (see below) select Committee on the Constitution, she explained,

“We still have legislative responsibility for electoral law. There is one big issue which has been consuming myself and my department and will continue to do so for some time, and that is the size of the Scottish Parliament. If at the end of that process of examination we conclude that the Scotland Act requires to be re-opened to bring about that change, then the legislative burden will be there as well.”<sup>lv</sup>

She added that she had received 222 representations on size of Scottish parliament but it was evident that she would not be rushed into making a decision:

“I am not going to be in a position for some months to publish my conclusion. There are significant issues. There is the issue of stability on the one hand in relation to the size of the Scottish Parliament and the other much more arcane issue of coterminosity of constituency boundaries. That is something that I will require to reflect upon and I would not expect within the next few months to be able to publish my conclusions.”<sup>lvi</sup>

#### 5.2 Scotland Office

On January 9<sup>th</sup> 2002, the Select Committee on the Constitution at the House of Lords called for evidence concerning ‘devolution: inter-institutional relations in the United Kingdom. One element of this related to ‘the roles of the Secretaries of State for Scotland, Wales and Northern Ireland’. The secretaries of state duly appeared before the committee on Wednesday April 10 2002. Helen Liddell, the Secretary of State made a number of interesting points during the session. When asked by Lord Norton of Louth,

“Does the Secretary of State see his or her role as representing the United Kingdom Government in the area of the United Kingdom for which you have responsibility, or the other way round, are you essentially the voice of your area within the Government of the United Kingdom?”

Liddell replied,

“That is a question we are often asked and the answer is, we are actually both. I certainly view myself as both. It is my job to be the voice of Scotland within the Cabinet and also to promote the Government's policies in Scotland, but the main part of my job is ensuring that the devolution settlement is successful. [...] Whilst I always have to be conscious to ensure that Whitehall departments are aware of the Scottish consequences of legislation or the development of policy simultaneously, in view of the fact that 50 per cent of Government expenditure in Scotland is in the reserved areas, it is my job also to promote the Government's strategy overall in Scotland.”<sup>lvii</sup>

Lord Norton (question originally put to Mr Murphy, then Secretary of State for Wales):

“One of the points we are interested in, is not just how you see your role but from that how you allocate your time. Are you mainly taken up with dealing with United Kingdom legislation or are you particularly involved in reserved matters?”

Liddell answered after Mr Murphy:

“I was a Minister of State in the Scottish Office prior to devolution and we were dealing with a blank sheet of paper and to some extent because devolution was new and so exciting all of the emphasis was on how the Scottish Executive would function, and I do not think we truly gave sufficient attention to what the role of the Scotland Office would be, but in the course of the three years, it has emerged as a very different beast from what I think we originally anticipated it would be. There is the necessity for the Scotland Office to actually do a complete *tour d’horizon* of the issues which are confronting the Government. I and my officials have to watch at all times the spectrum of Whitehall issues and other departmental issues which are coming in front of colleagues to look for the Scottish dimension. There are also huge issues which can emerge with no notice, like for instance, the anti-terrorism legislation. The tensions that I have experienced which were, to some extent, identified first by John [Dr Reid], are that we did not put in place initially the policy back-up within the Scotland Office to allow us to do that kind of analysis, but we are now building up to that.”<sup>lviii</sup>

When asked if one incumbent should replace the Scottish and Welsh Secretary of States, Mrs Liddell was adamant that the status quo should prevail. She warned,

“As to whether or not any future Prime Minister would seek to change the arrangements, that is a matter for that Prime Minister, but certainly at the moment I believe that the stability that we can bring and I can bring through the arrangements that I have with the Scottish Executive and within the Cabinet is something that adds to the good governance of Scotland.”<sup>lix</sup>

“...My job is very much brokering good arrangements behind the scenes, talking to people, ensuring that the input to legislation is taking place, ensuring the input to Cabinet committees is taking place.”<sup>lx</sup>

### **5.3 ‘Scotland’s Devolution Settlement’ and ‘Devolution in Practice’**

The Scotland Office’s web site contains a number of interesting items, which merit a mention in this report. Under a section entitled ‘Scotland’s devolution settlement’, it is reported that ‘more than half the Bills in the 2001-2 Westminster’s relevance to Scotland despite the existence of a Scottish parliament.

### **5.4 Friends of Scotland**

*The Herald* reported that the Scotland Office’s ‘Friends of Scotland’ initiative may have stalled. Friends of Scotland was set up to cultivate links with people in other countries who would like to have a connection with Scotland—especially those who were a part of the Scottish Diaspora. However, according to the Herald, only two of the 136 ‘Friends’ are publicly known. One is Charlie Wheelan, Gordon Brown’s former spin doctor and the other is Helen Clark, the New Zealand Prime Minister. When asked to comment why he became a friend, Mr Wheelan commented,

“(The Scotland Office) asked me to. It seems like quite a good idea. As an Englishman living in Scotland, it seems Scotland never really promotes itself enough in England”<sup>lxi</sup>

The report goes on to point out that the Executive and Scottish Enterprise established another network in April 2002, entitled ‘Globalscot’ and that currently this had 500 participants.

### **5.5 Secretary of State and Scottish representation in the EU**

David McLetchie, the leader of the Scottish Conservatives called for the Secretary of State to represent Scotland’s interest in the EU if different parties were in power north and south of the Border. *The Herald* reported that,

‘He [Mr McLetchie] said the Scottish Secretary and not ministers from the Scottish Executive should push Scotland’s interests in Europe if Labour failed to maintain its grip on power in London and Edinburgh. Such a shift in authority over European issues would be necessary because political realities would make it difficult to maintain the status quo.’<sup>lxii</sup>

This is by no means a new suggestion by the Conservatives—William Hague made the same point when he led the UK party in the run up to the May 2001 election.

## 5.6 The Sewel Convention

The Sewel Convention (referred to in previous reports), is based on the premise that although Westminster has the competence to legislate in areas of policy which are devolved to Scotland, it would not normally do so. But there might be occasions where this would be expedient and in such cases a parliamentary device referred to as a ‘Sewel motion’ would come into play. During her evidence to the Select Committee on the Constitution, Hellen Liddell was fulsome in her praise of Sewel. She declared,

“I think that the use of Sewel motion is actually a sign of a mature and working devolution partnership. It is very much for the Scottish Executive to decide after having had discussions with Whitehall colleagues and ourselves whether they wish to propose a Sewel motion to the Scottish Parliament. At the end of the day the Scottish Parliament has the ability to agree or disagree. If they disagree with the Sewel motion really we do not proceed along those lines. I think it is a sign of the maturity of the Scottish Parliament and indeed the relationship that exists between the Scottish Parliament, the Scottish Executive and ourselves that Sewel motions are used.”<sup>lxiii</sup>

From this evidence the Scottish Parliament is entitled to disagree with the use of a Sewel motion and in such an instance then it would not be used. The Scottish Executive made a brief reference to Sewel in a memorandum to the Committee. This outlined the circumstances when it might apply:

“There are three main circumstances in which the Scottish Executive will invite the Parliament to agree that provisions which extend to Scotland and relate to devolved matters should be included in a Westminster Bill

- where it would be more effective to legislate on a UK-wide basis, for example to put in place a single regime (e.g. for confiscation of the proceeds of crime, or measures to combat terrorism), or
- where the UK Parliament is considering legislation which the Executive considers should be brought forward in Scotland, but no parliamentary time is available at Holyrood: or
- where the provisions in question, although relating to devolved matters are minor and uncontroversial.”<sup>lxiv</sup>

## 5.7 Scottish Civil Servants and Constitutional Change

One of the conundrums Scottish Civil Servants face, is that they remain part of the ‘Home Civil Service’ (i.e. British) but they must interface with a different political leadership to that of their colleagues in London. In its memorandum to the Select Committee on the Constitution, the Scottish Executive highlighted that ‘the Civil Service Code had been amended to take account of devolution’:

“Civil Servants in the devolved administrations remain subject to exactly the same duties and responsibilities as their counterparts in the Government. However, the Code expressly provides that civil servants in the devolved administrations owe their loyalty to the administration which they serve, not the UK Government.”<sup>lxv</sup>

The reference to ‘loyalty’ is an interesting turn of phrase, because first and foremost they are employees of the Crown, rather than simply the government of the day, whether devolved or in London. Civil servants are supposed to advise ministers impartially, and the Concordats and Joint Ministerial Committee are designed to ensure that there is a high degree of collaboration between officials in the different tiers of government. Nevertheless the time will come when different parties *are* in government at the devolved and UK levels (albeit that there is a Labour-Liberal Democrat coalition in Scotland and this is not the case at the UK tier).

## 5.8 The Prince of Wales and Scottish Ministers

During the early autumn it emerged that the Prince of Wales had written to a number of UK ministers about matters which were of concern to him. This provoked a mixed reaction in the media. On the one hand it was viewed as quite acceptable because he was speaking up for certain sections of society such as the farmers, some of whom risked destitution. Conversely there was a ground-swell of criticism that that this was an inappropriate use of his rank and that ministers had better things to do than correspond with the Prince. For a while the story became something of a cause *celebre* with accusations that No 10 had leaked the Prince’s missives in an act of defiance.

Apparently he not only lobbied UK ministers but Scottish ones as well. *The Sunday Times* reported that, “The Prince of Wales asked former first minister Henry McLeish to change the Land Reform Bill, which will give members of the public the right to roam feudal estates, including the royal estate at Balmoral. The revelation that the prince intervened in the political process in Scotland to influence a bill which would affect the private interests of the royal family has fuelled the debate about his constitutional role. Yesterday it emerged that he has regularly corresponded with Jack McConnell, the first minister, seeking to influence a range of policies including the ban on fox

hunting. He also wrote to Donald Dewar complaining about the design of the new Scottish parliament building at Holyrood.”<sup>lxvi</sup>

## 6. Scotland/International Relations

### Alex Wright

#### 6.1 The Convention on the future of the EU

A Convention on the future of the European Union is underway chaired by the former French President Giscard D'Estang. It is expected that the Convention will submit its report during the Spring of 2003 and although this will not have a legal base as such it could form the template for the future institutional and procedural architecture of the European Union. It has already resulted in the production of a draft constitution (see below) and as such the Convention is of consequence not just for the member states but also their regions and stateless nations. As has been mentioned in previous Monitor Reports both the Scottish Executive (sometimes in tandem with the Convention of Scottish Local Authorities) and the Scottish Parliament have taken a keen interest in the Convention's work. During the early autumn of 2002 both institutions set out to engage Scotland's civic society on the debate about the EU's future.

Jim Wallace, the Deputy First Minister outlined the Executive's consultation exercise on the Convention during July 2002. He explained on the Executive's web site 'what the Executive was doing:

"Our aim is to make the European Union more open, coherent, effective, accountable and relevant to the people of Scotland and elsewhere. We want to secure a Europe that is genuinely closer to the citizen, this enables us all to benefit from European growth and promotes peace and security elsewhere in the world . [...] The intention is for the Executive to take into consideration all views expressed in preparing a position paper on the Future of Europe, to be submitted to the Convention later in the year." <sup>lxvii</sup>

Members of the public were invited to email the Executive, which with their consent would be placed on the web site's notice board. A month later Mr Wallace formally announced the start of a consultation exercise. The Executive would write to 'major NGO's in Scotland seeking formal written comments on the future of Europe issues and medium and small sized NGOs had been invited to participate in three regional conferences in Edinburgh, Perth and Dumfries during the autumn'. The latter would be organised by the Scottish Civic Forum. Those with internet access were invited to contact the Executive and those without were advised to use computer facilities at libraries. In addition leaflets and posters would be distributed to libraries with the provision of free post for those who wished to send their comments on the future of the EU to the Executive. Schools would also be encouraged to take part in the debate. The Executive was undertaking one of its most wide-ranging consultation exercises <sup>lxviii</sup>.

McConnell is one of the Scottish delegates to the Committee of the Regions (CoR) and although his membership of the CoR is quite recent, he was appointed rapporteur by the Commission for Constitutional Affairs and Governance for a report on More Democracy, Transparency and Efficiency in the European Union (it is intended as a contribution to the work of the Convention on Europe). A draft report was produced on September 7<sup>th</sup> 2002, part of which touched on subsidiarity. An explanatory statement at the end of the submission called for the 'production of an expanded statement [by the EU which] would have the effect of enhancing the status and importance accorded to subsidiarity'. It continued,

"The intention behind an expanded statement is not to curtail the ability of the Union to take at all times urgent action when necessary, but simply to provide better clarity on roles and responsibilities. This should extend beyond Member State level in recognition of the fact that many states have chosen to devolve responsibility for enacting or implementing EU legislation to sub-Member State administrations and local government. We need to be sure that the drive to devolve legislative power within Member States is not negated by a drift towards centralised decision-making within the EU. A greater understanding of the role of the variety of EU actors and of the legitimacy of EU activity, can only serve to improve perceptions of democracy and transparency"

The submission then refers to how subsidiarity should be policed. The submission stated,

"The policing of the principle of subsidiarity is one of the most significant topics to be raised in the Future of Europe debate. A range of suggestions have been put forward by different contributors to the debate. The Scottish government believes that judgements on subsidiarity are a political issue, that would best be dealt with by a small body of Member State and sub-Member State representatives. We have also said that it should be possible to make an appeal before a law has been finally adopted, and that there should be some sort of threshold to limit an excessive number of appeals." <sup>lxix</sup>

The above line of argument (i.e. political rather than legal) is very much a continuum of the approach adopted in November 2001 when Mr McConnell spoke at a meeting in Edinburgh on Scotland and Europe (see earlier Monitor Report). Nor is this the first time that McConnell has called for a subsidiarity watchdog. What is evident however, is the extent to which he is having an impact on the CoR's deliberations on the EU's future governance—this is in stark contrast to the era prior to legislative devolution when Scottish members of the CoR who were local councillors had a much lower profile. In practice their views tended to be subsumed into a pan-UK position which in turn was further diluted by the CoR when it agreed an Opinion. In this instance Scotland's input is quite distinct and things have therefore changed.

There is virtually no mention of the regions and stateless nations in preliminary draft constitutional treaty. Under Title I which is concerned with the 'Definition and Objectives of the Union, the emphasis is on member states not sub-member states. Article 1 refers to a 'Union of European States' and of 'recognition of the diversity of the Union'. Title III relates to Union competences and action. Here too there is no reference to sub-member states. Article 8 states

"This article establishes the principle that any competence not conferred on the Union by the constitution rests with the Member States"

Title IV covers the Unions institutions and article 23 refers to the Economic and Social Committee and the Committee of the Regions as organs possessing advisory powers.<sup>lxx</sup>

In sum therefore, there appears to be nothing here for the regions and stateless nations and there seems to be something of a gap between this document and Mr McConnell's draft submission for the CoR.

## 6.2 The Executive and the EU

In an address to the Holyrood Summer School, Jim Wallace spoke about the 'enhanced role of Scotland in Europe as a result of devolution'. Responding to recent criticism that Scottish ministers had rarely attended the Council of Ministers, he commented,

"It is estimated that the work of the EU affects 80% of the functions devolved to the Scottish parliament. Issues such as Agriculture, Fisheries and the Environment are obvious areas where the EU affects our work.

"Under the devolution settlement, Scottish Ministers are able to attend an EU Council meeting when devolved matters are being discussed. They have taken part in 28 meetings so far. Scottish Ministers are also able to lead the UK delegation at Council (in other words, to act as the UK's primary spokesperson, and have done this on several occasions too).

"Some have chosen to criticise our level of participation. I strongly disagree. We have attended 10% of all Council meetings—many of the meetings we haven't attended have dealt with issues which do not have a Scottish dimension. It would not represent value for time or money were Scottish ministers to attend Council meetings where we do not have any interest or a significant and distinctive point to make. And we are of course represented by the UK at all Council meetings. So I am firmly of the view that Scotland is well served in Europe through the UK's representation. Being part of the UK gives us power and influence we would never have as a small country."<sup>lxxi</sup>

Scotland House was established as a result of legislative devolution. Its primary role is to provide high grade intelligence for the Executive on events in the EU but an allied remit is to promote Scotland's interests in Europe. During September *The Sunday Herald* reported that Scottish MEPs were concerned about its 'low profile'. Labour MEP Bill Miller commented that, "Basically they are bag carrying for ministers at the moment. I think they should be more hands-on in dealing with the Commission and politicians." David Martin MEP and senior vice president of the European Parliament was even more scathing. He observed,

"My reservation is with the civil service half [the other half being Scotland Europa], which has a tendency to be too enthralled with the UK representation in Brussels and to accept the UK line when perhaps they might be tougher in presenting the Scottish case."<sup>lxxii</sup>

To some extent such criticism is open to question because under the devolution settlement Scottish officials remain part of the 'Home' civil service (see Scotland-UK report above). Consequently they are likely to have a close working relationship with UK officials at UKRep in Brussels, since the latter are one of the key links between Brussels and the UK. Moreover, as relations with the EU, formally are reserved to Westminster that constrains the extent to which Scotland House enjoys meaningful autonomy. What is at issue is whether the Scottish presence should be increased in Brussels and how far if at all the parliament can monitor the EU's institutions at first hand (see below).

### 6.3 Scottish delegation visit to Sweden

Ministers and officials visited Sweden in October. The aim was to promote Scotland, the underlying rationale being that it would boost trade between the two. Jim Wallace explained,

“This will be a programme of events designed to promote the Scottish Executive’s business objective’s in Sweden, which is our largest market for manufacturing exports. A number of events are planned under the banners of biotechnology, tourism, governance, sport and food and drink. In addition there is a comprehensive cultural programme showing a modern, contemporary, Scotland.”<sup>lxxiii</sup>

This is but one of a number of links the Executive have forged with regions and countries elsewhere in Europe during the last few years (see previous monitor reports)

### 6.4 Jack McConnell raises Scotland’s international profile

Mr McConnell attended the Earth Summit in South Africa during September. From a political perspective this was a success as far as the First Minister was concerned as it enabled him to demonstrate that Scotland (and its senior politicians) could play a role on the global stage without falling foul of the fact that international affairs are reserved to Westminster. *The Herald* reported that Scotland would be twinned with the Eastern Cape in South Africa<sup>lxxiv</sup>. It was also reported that the First Minister would be representing the ‘northern governments’ of the world in a Friends of the Earth Seminar. Although this related to ecological and environmental matters it is indicative of how much Mr McConnell enjoys the global stage. This story attracted just the kind of favourable headline the First Minister was seeking—‘McConnell backs green energy plan for Africa’.

### 6.5 McConnell and the Agent General

Jack McConnell referred to Quebec during a speech at the Labour party’s conference at Blackpool but this led to a diplomatic spat. McConnell cited the Nationalists’,

“fondness for making international comparisons with Scotland. He went on: ‘Well, here’s one they don’t often talk about. Quebec had a referendum on independence in 1995. And just like Quebec then, our country would be threatened by currency devaluation, a leap in interest rates, a falling market and companies pulling back from their plans to invest.’ He went on to predict that companies with headquarters in Scotland would start looking for sites elsewhere in Europe, sectors of the economy would be threatened, emerging businesses would be damaged and there would be ‘confusion and instability’ sown by the Nationalists.”<sup>lxxv</sup>

This prompted the following riposte from Quebec’s agent general in London.

“Dear First Minister,

It is with interest, and surprise, that I read your speech at the Annual Labour Conference in Blackpool in which you refer to Quebec. As Agent General, I feel compelled to remind you of certain facts. During and after the 1995 referendum, there has been no currency devaluation, no leap in interest rates, no falling stock markets (notwithstanding market volatility since September 2001), and no disinvestment. Since 1995, Quebec’s GDP has outpaced the average GDP of the G-7 countries. Moreover, Quebec’s per capita GDP is higher than the United Kingdom’s US\$27,800 compared to US\$24,500. Private investment in Quebec has increased at a greater pace than the rest of Canada: the growth rate of private investment per capita in Quebec was on average above 5%, whereas it was 3% in the other provinces. Furthermore, according to Statistics Canada, more than 128,000 new jobs were created between January and June 2002. The strength of Quebec’s economy and the sound management of its public finances are attested to by the excellent ratings given to the government of Quebec by all major rating agencies, both in North America and in Europe. This unprecedented economic growth coincides with a period during which Quebec has sought to achieve greater recognition of its distinctiveness and greater control over its political future. Some arguing for sovereignty, others for a renewed relationship with the rest of Canada. Discussing one’s political future is not detrimental to one’s economic well-being. Quebec’s own experience for more than 40 years shows the opposite. Since my appointment as Agent General, I have experienced first-hand the extent to which our two nations have in common—historically, economically and culturally. I shall endeavour to contribute all I can to this relationship. I would very much welcome the opportunity to further discuss these issues with you. Daniel Audet, Agent General.”<sup>lxxvi</sup>



## 6.6 Ross Finnie and the Common Fisheries Policy

As mentioned in the previous Monitor Report, the Common Fisheries Policy (CFP) has begun to climb up the political agenda. Fish stocks are at an all time low according to the Marine Scientists at ICES who advise the European Commission on the coming year's Total Allowable Catch (TAC). This year the situation looks to be so severe that there have been calls for a 10 year moratorium on fishing for cod in the North Sea and Western Waters including the Irish Sea. As cod is a relatively large fish any ban on catching cod would mean that the mesh size would be too large to catch other fish such as haddock. The result would be that fishing would virtually cease, the Scottish fishing industry would face collapse and the communities that are sustained by fishing in the North and East of Scotland as well as the Highlands and Islands would face ruin.

The CFP has long been a challenge. Prior to legislative devolution ministers at the former Scottish Office and their colleagues in London were lobbied by Scottish fishermen in the run up to the crucial December meetings of the Council of Ministers when the TAC's were agreed. What is of concern in this instance is not with the CFP *per se* but with Finnie's status at the Council of Ministers. This caused a political storm at the Parliament at the end of October.

Formally, Scottish Ministers do not have the automatic right to attend the Council but require the consent of the lead department in London. If a Scottish Minister leads the delegation he or she would be representing the UK not Scotland. However, Finnie found himself in an even more embarrassing position. Although he has physically been present within the UK delegation, EU documentation at the Council had not recorded him as being in attendance as he had not been officially designated as a UK representative at the Council by the UK Government. This only served to add to the confusion as to where Scottish ministers stand in the Council of Ministers and it rather contradicts the version given by the Deputy First Minister to the Holyrood Summer School (see above).

## 6.5 The European Committee of the Scottish Parliament

On September 7 2002 the Network of Regional Parliamentary European Committees (NORPEC) was set up. In part this was in response to the work of the Conference of the Presidents of Regional Legislative Assemblies of Europe (CALRE). The Scottish Executive has had an involvement with CALRE for some time now (see previous monitor reports) and it had also participated in the ad hoc grouping of legislative regions which had issued the Flanders Declaration. Although NORPEC will only meet from time to time, it amounts to one more link forged between Scotland's Parliament and similar institutions in the EU (in this instance the Flemish Parliament and the Catalan Parliament). The aims of the forum are:

“To share ideas and experience on parliamentary procedures and best practice and to begin to discuss views on policy issues. The first phase of [the] network will be to work together to produce a common submission to the EU Convention on the Future of Europe by January 2003. The next phase will be to deepen [its] collective engagement in other areas of common interest.”  
lxxvii

Scrutinising the EU's legislative proposals has long been problematic for the Scottish Parliament's European Committee. So it makes good sense to share best practice with similar committees on the continent. The fact that one of their primary goals is to present a 'common submission' to the Convention by January 2003, suggests that they are intent on ensuring that when the Convention refers to 'national parliaments' having a role to play (see section 6.1 on the Convention), this also embraces sub-state parliaments as well. That aside, this new network is in direct response to COSAC. This is an umbrella body for the member state parliaments and it does enjoy formal status within the EU. As mentioned in an earlier Monitor Report, when MSPs on the Parliament's European Committee attempted to secure observer status on COSAC they were rebuffed. COSAC's existence coupled with the First Ministers involvement with the CoR and the Flanders Group prompted Irene Oldfather MSP (the European committee convener) to ask,

“Is there a need for the 'workhorses' of our parliamentary institutions at regional level—its committees—to forge closer links and to model ourselves on the *raison d'être* and objectives of COSAC? In the Scottish parliament we could argue there is.”  
lxxviii

## 6.6 The Executive and the Presidency

The Deputy First Minister appeared before the European committee at the start of the Danish Presidency. This was in response to a request from the Committee and as such has set something of a precedent for the future.

## 6.7 Inquiry into Scotland's representation in the EU

The European Committee is currently conducting an inquiry into Scotland's representation in the EU. This is quite wide ranging and includes the adequacy of Scotland House in Brussels (see 6.2) and the channels used by

those Scottish interest groups who wish to influence EU policy. One of the issues that it has considered is whether the Parliament should have its own representative at the EU. Though the Committee has yet to issue its report, it was announced that the Parliament and the Executive would ‘share’ a newly created post at the EU (this has yet to be formally approved by the Executive and McConnell has yet to secure his colleagues support for this)<sup>lxxix</sup>.

## 7. Relations with Local Government

### Neil McGarvey

#### 7.1 Electoral reform and local government

Yet again there are further developments to report on the perennial local government issue in Scottish politics: proportional representation for local elections. As reported in previous quarters this issue has been one that has shadowed the Labour-Liberal Democrat coalition since 1999. It not only threatens the unity of the coalition but also, and probably more importantly from Jack McConnell's perspective, the Scottish Labour Party. It is widely reported that there are divisions amongst Labour ministers. Ministers such as Peacock and Gray are said to favour electoral reform while others such as Jamieson, Kerr and Watson are against. Such division is replicated on the back-benches with MSPs such as McAllion and Boyack backing PR with others such as Martin and Peattie against.

The consultation period for the Executive's White Paper on the matter, *Renewing Local Democracy*, ended this quarter. Press reports suggest 94% of the responses to it favour PR. Those against include some key interests in local government, most notably COSLA that has argued that 'electoral reform is not the Holy Grail to save local government'. In a sign of the growing disquiet in relations between COSLA and the Executive, COSLA urged a 'significant change' in the terms of their present relationship with the Scottish Executive.<sup>lxxx</sup>

Glasgow City Council, in its response to the consultation, reported that its citizens favour the present electoral system by 2-1. The Scottish Labour Party's own 30-member executive has also rejected PR. It is of course not very surprising that local Labour councillors are actively campaigning against PR, as any move towards PR in local elections will hit the Labour Party hardest. At the last election, the party gained 74 of 79 wards in Glasgow City Council despite gaining less than 50% of the vote in the city.

It appears that the Executive has ruled out lessening the pain of PR's introduction by introducing special payments to councillors who lose office if electoral reform is brought in. It was thought the idea of bringing in 'severance' payments gave McConnell the chance to manage the issue within his own party, however fears over public reaction led him to rule it out. In rejecting the introduction of severance pay, McConnell has chosen not to use it as a tool to sugaring the medicine of PR and make it more palatable for councillors in his own party.<sup>lxxxi</sup>

It would appear that electoral reform is finally coming to a head. It was discussed at cabinet level in October and the leaders of the respective coalition partners McConnell and Wallace are reported to have shaken hands on a deal.<sup>lxxxii</sup> The electoral system said to be favoured is single transferable vote (STV). The 'deal' involves the Scottish Executive publishing a Bill without the formal support of the First Minister or the Labour Party, thus allowing Labour Party members free to campaign against it.<sup>lxxxiii</sup> Just how this will play out with the Scottish electorate as we enter the countdown period for the May 2003 elections is difficult to predict. It is unlikely that any Bill will make it through the Parliament before then. This is likely to leave electoral reform hanging in the air as one that could dominate both the election campaign and any coalition negotiations thereafter. The SNP (the party with most to gain from electoral reform is likely to seek to exploit Labour divisions on the subject).

#### 7.2 Local Govt Bill

A new Local Government Bill is going through Parliament at the moment. It will introduce a new statutory duty of Community Planning and new Power of Well Being to local councils. Essentially the Bill seeks to introduce a statutory framework to underpin existing practice. The Bill will also reconstitute the Best Value Taskforce which will incorporate Executive, local government, civic, professional and direct labour force interests. The specific details of the Bill will be discussed in a forthcoming quarterly report once it passes the various stages of the legislative process.

#### 7.3 National Association of Councillors

This quarter the National Association of Councillors stepped up its campaign for increased pay for councillors as well as new terms and conditions that will incorporate amongst other things entitlement to pensions and severance pay.<sup>lxxxiv</sup> It did so in the context of the Welsh Assembly's decision to support it in principle in Wales. Despite this the Scottish Executive has ruled out special payments to councillors who lose office if electoral reform is brought in (as discussed above).

The campaign has the backing of the cross-party *Fairshare* group that is campaigning for voting reform, but feels that only with proper pay, terms and conditions will the Executive be able to carry out its declared aim of attracting new people into politics.

## 7.4 Housing

Housing (Scotland) Act 2001 has just come into force bringing council and Housing Association tenants under the same tenancy agreement. All new tenancies will have a five year qualifying period with the discount starting at 20% and increasing by 1% per annum to a maximum of 35% or a maximum of £15,000 (whichever is less).<sup>lxxxv</sup> The new Homelessness etc (Bill) follows the Executive's endorsement of all 59 recommendations of homelessness task force. The Bill includes more categories of people who qualify as being in priority need and various other measures to combat homelessness. Reflecting their close involvement in the policymaking process the Bill was welcomed by Shelter Scotland as providing the country with the most progressive homelessness policy in the UK and arguably Western Europe.<sup>lxxxvi</sup>

Glasgow Housing Association was due to take over the regulation of Glasgow City Council's 128,000 strong housing stock in November. It will oversee a network of 128 local housing associations. However, due to numerous difficulties, not least the non-co-operation of a significant number of local housing association boards, the stock transfer has been delayed.<sup>lxxxvii</sup>

## 7.5 Other developments

- During this quarter the Labour Party lost overall control of Fife Council after they were defeated in a by-election. This is rather symbolic and reflective of the problems Labour has been having in this area of Scotland. Henry McLeish, the deposed First Minister is a member for the area. Of 78 seats half are now Labour, 21 Liberal Democrats, 11 SNP, 3 Conservative, 1 Democratic Left, 1 Communist and 2 independents.<sup>lxxxviii</sup>
- The Scottish Parliament's Finance Committee endorsed the principles of PFI/PPP but has called for new employee safeguards for PFI contracts. It also called for clear guidelines to assist local councils in deciding what type and scale of projects are most likely to be suitable for funding via PPP.<sup>lxxxix</sup>
- The timetable for the construction of the long-awaited 'missing link' of the M74 motorway through the south-side of Glasgow has been published.<sup>xc</sup>

## 7.6 Finance

The Scottish Executive published its budget plans for 2003-2006 on September 12th. These describe an upward trend in spending on non-reserved issues over the next 4 years. Overall, Total Managed Expenditure is expected to increase by 4.6 per cent in real terms over the next four years. This will provide the next Scottish government with a strong resource base on which to promote the growth of public services during most of the course of the next Parliament. Provided that these increases in resources can be translated into increases in front-line delivery, this will place the winner of next May's election in an unusually strong financial position from which to consolidate political support. The only potential fly in the ointment will be in assuring the delivery of services, but more of that later.

The spurt in public spending in Scotland is entirely the result of actions taken at Westminster by the Treasury and in particular stems from last July's Comprehensive Spending Review. In it, Gordon Brown promised a period of rapid growth in public spending from 2003 to 2006, while still adhering to the fiscal rules that he had set at the outset of his reign as Chancellor. He was able to do this because of (1) the continued health of the UK economy even during a period of worldwide economic uncertainty, (2) the restraint that the Labour administration showed during the early years of its first Parliament and (3) modestly optimistic forecasts of revenue growth in the future.

The Spending Review showed the total Departmental Expenditure Limit (DEL) of the Scottish Executive rising by 19.6 per cent from £17.3 bn in 2002-03 to £20.7bn in 2005-06. Although UK DEL is scheduled to rise by 23 per cent, the additional £576m that Scotland would have received if it maintained its 2002-03 share of the UK budget seems relatively small in relation to the overall increase in resources available to the Scottish Parliament. The Barnett squeeze will always be a difficult issue to communicate to the electorate since it concerns *relative* levels of spending between Scotland and the Rest of the UK. When the Executive can point to significant increases in *absolute* levels of spending in Scotland, this will be an issue of second-order importance to most voters.

Departmental plans have subsequently been published. These show how the Executive intends to allocate its windfall over the next four years and are shown in Table 1. Presumably these may be amended if the complexion of the Scottish Executive changes next May. Nevertheless, on present plans, the clear winner is health. Its budget will increase by £1.4bn between 2002 and 2006. To put this in perspective, the combined increase in spending on local authorities (including schools), further and higher education, transport and enterprise will be less than the increase in the Scottish health budget. This spending profile seems to reflect priorities south of the Border. And it is difficult to judge how the spending increases can be translated into

improvements in service provision when Scotland starts from a per capita spend on health that is already 20 per cent higher than the UK level.

	2002-03	2003-04	2004-05	2005-06	Average
		New Plans	New Plans	New Plans	Increase
Justice	742	754	768	772	1.3%
Crown Office and Procurator Fiscal Service	63	85	85	86	10.7%
Education and Young People	219	276	332	342	16.0%
Tourism, Culture and Sport	199	203	223	235	5.8%
Health and Community Care	6,596	7,114	7,501	7,972	6.5%
Social Justice	800	818	877	878	3.1%
Enterprise, Lifelong Learning and Transport	3,324	3,518	3,615	3,742	4.0%
Environment and Rural Development	1,089	1,112	1,106	1,105	0.5%
Finance and Public Services	7,532	8,016	8,176	8,428	3.8%
Administration	236	236	237	238	0.3%
Scottish Parliament and Audit Scotland	150	134	84	82	(-18.2)%
Contingency Fund		20	28	40	131
Total	20,976	22,296	23,044	24,011	4.6%

Source: Building a Better Scotland: Spending Proposals 2003-06, Scottish Executive

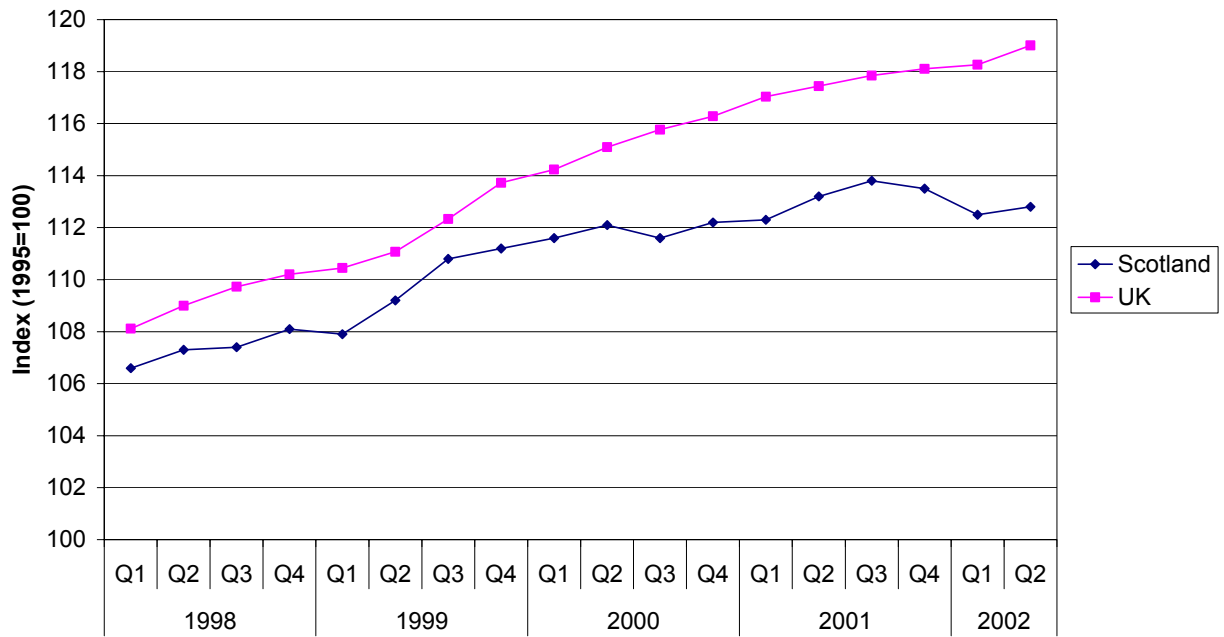
The approach that the Executive is taking to improving services is closely modelled on the Public Service Agreements that the Treasury has agreed with Westminster spending departments. These are agreements on precise deliverables that can be expected in return for increased funding. The Scottish version of these was published in October in a document entitled “Closing the Opportunity Gap”. It is clearly driven by concern with equity rather than economic performance. This is evident in comparisons between it and the UK Spending Review. The word “productivity” does not appear in the Executive document: there is a chapter devoted to productivity in the Spending Review. Economic growth is referenced twice in “Closing the Opportunity Gap”: it is not linked to any specific spending programmes. In contrast, the Spending Review states that:

“Public expenditure has a central role to play in supporting productivity growth, helping to create an environment in which businesses, entrepreneurs and individuals can flourish. In particular, individual spending programmes play a key role in enforcing the UK’s competition regime; supporting start-up and small businesses, particularly in deprived areas; facilitating science and innovation through the Science Budget; developing skills through the education and training systems; and investing in the UK’s transport infrastructure and housing stock.”

HM Treasury (2002) Spending Review 2002, Ch 2, p 2

The danger for the Executive is that the perception that it is concerned with distribution rather than with growth and with improving the living standards of the Scottish people will continue to grow. Scotland’s economic performance is directly measurable and a picture of that performance during the first term of devolved government is beginning to emerge. Figure 1 shows relative trends in GDP in Scotland and the UK as a whole from 1998 to 2002. It shows that the Scottish economy teetered on the brink of recession in late 2001 and early 2002, with real declines in GDP in two successive quarters. In contrast the UK economy has grown steadily and more rapidly than in Scotland. Between 1995 and 1998 living standard in Scotland grew 1 per cent slower than in the UK as a whole. Between 1998 and 2002, the gap grew by a further 6 per cent. It is difficult to avoid the conclusion that the Scottish economy has actually performed relatively worse since devolution than it did in the immediate pre-devolution period.

**Figure 1: Scottish and UK GDP 1998(1)-2002(2)**



The media and business interests are already highlighting this issue and are likely to use it to make life increasingly uncomfortable for the Executive in the run-up to the May 2003 election.

## 9. Legal Disputes

### Barry Winetrobe

#### 9.1 Hunting Act Challenge

The last Quarterly Report reported on the legal challenge to the anti-hunting Act passed by the Scottish Parliament (Chap 9.1). The challenge was rejected, following many days of legal argument (*Trevor Adams, petitioner*<sup>xci</sup>). Although the result may have been expected (subject to any appeals there may be), Lord Nimmo Smith's judgment on 31 July, which enabled the Act to come into force as planned the following day, is of great significance for the future of the overall devolution scheme.<sup>xcii</sup> As with the initial judgment in the original Hunting Bill case in 1999-2000 (*Whaley v Lord Watson*), its approach was one of recognising the democratic basis of the Scottish Parliament, and the consequent need for the judiciary to be very cautious in any review of its proceedings or decisions. Such a notion of a broad margin of appreciation was rejected by the Court of Session on appeal in *Whaley*, preferring to emphasise the statutory, and therefore legally limited, basis of the Parliament. It remains to be seen whether any appeal, either by the Court of Session or the Judicial Committee, will adopt this approach, or uphold what must surely be regarded as a necessary area of discretion in parliamentary activity, which, at Westminster, is provided by the concept of parliamentary privilege. The Scottish Countryside Alliance announced on 21 August that it had lodged an appeal. However, at the time of writing, no date has been set for the hearing.

On the substantive hunting issue, there have been competing claims by both sides about the viability, enforceability and economic and social impact of the legal ban, arguments which are bound to continue as the ban begins to bite, and the debate in England proceeds.<sup>xciii</sup> There have been press reports about how hunts are coping with, and in some cases apparently getting round, the new law, which came into force on 1 August.<sup>xciv</sup>

## 10. Political Parties

### James Mitchell

Developments over the last quarter have focussed mainly on internal Labour Party problems and SNP and Liberal Democrat party conferences. Labour's problems arose with the disclosure of irregularities in the finances of Jack McConnell's constituency party and the leaking of a letter written by Wendy Alexander some months after she resigned as a Minister in May 2002. These kept Labour's Scottish spin-doctors busy.

#### 10.1 Labour's local difficulties

First Minister McConnell's reputation as 'Jack the Lad' had been a factor in denying him the leadership of the party in October 2000. In his year as Education Minister he had gone some way to alter these negative perceptions and this had contributed towards him becoming First Minister. However, recent events have once again brought back old images. Hugh Mulholland, the auditor for the Motherwell and Wishaw Constituency Labour Party had raised questions concerning irregularities in its accounts. He had been in touch with McConnell twice since February concerning details of the accounts. In addition, reports suggested that there was an alleged '£11,000 black hole' in the accounts though there was no suggestion that McConnell was in any way directly involved.<sup>xcv</sup> Mulholland had been a front-runner for the Commons seat prior to 1997 but was defeated by Frank Roy with the support of McConnell. The news concerning the financial irregularities came at around the time of the anniversary of Henry McLeish's resignation encouraging speculative comparisons in the media. McConnell set out to distance himself from the problem. It was made clear that he was not a signatory of the bank accounts involved in the investigation that had been instigated by Lesley Quinn, Scottish general secretary and that this was an internal constituency matter. In addition, he attempted to deflect criticism by focussing on the issue of sectarianism in Scotland and demanding its eradication. However, it was inevitable that the media would not let an opportunity to report on 'sleaze' pass by especially when it involved the First Minister's constituency association.

A very confused set of stories emerged, only tangentially related to the issue of the auditor's original concerns. There was, however, no 'smoking gun' and the stories which dominated the media's coverage suggested that local party funds amounted to relatively large sums and had been mismanaged. Eyebrows were inevitably raised when it emerged that a local fund raising dinner had been attended by a local drug-dealer who was shortly afterwards killed in a gang-land feud. The ingredients did not add up to a major case of sleaze but neither did they do much for Scottish Labour's reputation in the west of Scotland. Public money was not involved, unlike the case that had brought about McLeish's demise.

In a letter to Lesley Quinn in October 2002, McConnell set out his position on these:

**Development Fund:** A development fund had been set up, funded by the Iron and Steel Trades Confederation (ISTC) union. There were four signatories to this account including Christina Marshall who had been McConnell's secretary who had worked for Beattie Media and been at the centre of the 'lobbygate' issue along with McConnell.

**Leadership campaign:** The development fund contributed towards McConnell's unsuccessful leadership bid in November 2000.

**Hotel bill:** McConnell and his wife had attended Labour's conference in March 2000 as had Christina Marshall, staying in the same hotel as the conference venue. The hotel bill was paid for from the development fund.

**Office equipment:** A number of items that were used in the constituency office shared with Frank Roy MP were paid for from party funds.

**Register of interests:** McConnell agreed to register the report he had prepared on his leadership campaign though there was no demand for this from Parliamentary authorities. The financial arrangement between the constituency and the ISTC was not required to be registered with the Scottish Parliament but McConnell proposed to do so given the interest expressed in these matters. In addition, money raised at a 'Red Rose' dinner would also be registered.

McConnell's involvement was tangential but media coverage was considerable not least because of the way in which his predecessor had been forced to resign but also because it resurrected the 'Jack the Lad' image. The involvement of Christina Marshall, who had been at the centre of the 'Lobbygate' affair, added to media interest. Miss Marshall had been an employee of Beattie Media and subsequently worked as an assistant for McConnell and she had been the witness who had testified that McConnell had not favoured his former colleagues at Beattie Media. Accusations that McConnell had misled Parliament were made by the Opposition but strenuously denied by the First Minister.

Labour admitted that it had broken rules introduced in February 2001 that demand that donations of over £1,000 in any one year from a single source must be declared to the Electoral Commission. The ISTC funds—£375 a



quarter amounting to £1500 per year—into the development fund had not been declared by Motherwell and Wishaw Constituency Labour Party and an enquiry into whether any other local parties were in breach of the rules uncovered further cases. External auditors were brought in to look at the local party's books. Enquiries by the party's UK and Scottish headquarters cleared McConnell but resulted in the police being brought into the investigate irregularities in local party funding.

Jack McConnell had been altering his image as 'Jack the Lad' but the events surrounding his constituency funds did little to enhance his image as a statesman. The SNP scented an opportunity to raise doubts about McConnell's integrity which might damage Labour in the run-up to the Scottish elections. There were significant differences between the McLeish affair and McConnell's difficulties though it was inevitable that opponents would highlight similarities. McConnell's explanation for his decision to decline to appear on BBC1's Question Time programme, the programme on which McLeish had come to grief a year before, in order to 'maintain the dignity' of the office of First Secretary, was generally felt to be unconvincing. A number of supporters argued that this episode had damaged devolution and 'given further ammunition to those who would happily see the Scottish Parliament disbanded' but there appears little evidence to back this up.<sup>xcvi</sup>

## 10.2 Alexander's leaked letter

Months after Wendy Alexander's resignation from the Executive a letter explaining her reasons was leaked to the press. Two extraordinary aspects of the letter provoked the ire of her Labour colleagues and will no doubt be used against her should she still harbour ambitions to lead Scottish Labour. First, the letter was written to Jim Sillars, *bête noir* of Scottish Labour and second she commented in very negative terms on the Scottish party's contribution to policy development. Sillars had been a Labour MP who defected to set up the Scottish Labour Party in the late 1970s before joining the SNP in 1981 and taking Glasgow Govan Commons seat from Labour in a by-election in 1988. Sillars' place in Scottish Labour demonology is more secure than Margaret Thatcher's. Alexander admitted that her 'decision [to quit the Executive] was every bit as much political as it was personal' indicating differences with McConnell that were denied at the time of her resignation. But her attack on her own party in a letter to one of its most bitter opponents was astounding, 'perhaps one of the last times the Labour Movement in Scotland made a real intellectual contribution to the UK Labour Party was around the rapid growth of the ILP following the establishment of Forward newspaper in 1906'. Labour historians were surprised by her understanding of political history, journalists remarked that she had attacked her erstwhile colleagues including Gordon Brown and Donald Dewar and Labour activists were amazed at her naivety.

## 10.3 SNP conference

The SNP met in Inverness for its annual conference. In keeping with pre-election conferences, it was more in the style of a rally than a policy-making forum. It passed off successfully and John Swinney's speech as leader was widely reported to have been the best of his career. Even Labour's press supporters conceded that that this had been a successful conference for the SNP leader. The Record's headline 'Supremely Nerveless Performer'<sup>xcvii</sup> followed earlier reports in the paper suggesting that Swinney still operated in the shadow of Alex Salmond, his predecessor.

## 10.4 Liberal Democrat's education policy

The Scottish Liberal Democrats published their education plan, 'Choices and Opportunities' calling for 'greater flexibility' to allow youngsters to leave school early at 14 years of age to study further education courses and also to start school later at 6 years of age with an extra year at nursery. Nicol Stephen MSP is Liberal Democrat Minister responsible for schools but it is unlikely that the policy will be implemented given the response of the First Minister. Jack McConnell insisted that it was in 'absolutely nobody's interest to encourage pupils to leave school at 14'. Published at this late stage in the electoral cycle the policy was bound to be caricatured and dismissed by its political opponents. The Labour-supporting Daily Record reported the item under the heading 'Lib Dems at Sixes and Sevens over schools'.<sup>xcviii</sup>

## 11. Public policies

### Barry Winetrobe

#### 11.1 Youth crime

Law and order issues retained their prominence, especially the running sore of youth crime.<sup>xcix</sup> Official figures suggested that fear of crime in Scotland, especially among the elderly, was not borne out by the actual levels of crime. The Sexual Offences (Procedure and Evidence) (Scotland) Act came into force on 1 November, which will protect alleged rape victims from being questioned directly in court by their accused attackers.<sup>c</sup> The Executive's Criminal Justice Bill successfully navigated its Stage 1 plenary debate on 18 September, following the Executive's immediate decision to drop its proposed smacking ban after it was rejected by the Justice 1 Committee in its Stage 1 report on 13 September.<sup>ci</sup> This episode was hailed as an example of the power of parliamentary committees to influence Executive policy and legislative proposals. The first judges chosen under the reformed judicial appointments system were announced on 1 November.<sup>cii</sup> Sectarianism has risen in the political agenda, following violence at a Rangers-Celtic game, with greater pressure on the Executive to legislate against it.<sup>ciii</sup>

#### 11.2 Prisons

The prisons controversy climaxed with the Justice Minister's much-trailed parliamentary statement on 5 September, reprieving Peterhead, announcing only one new private prison, and issuing a 'challenge' to the public sector to come up with a viable public option for a second new prison. While the Executive portrayed this policy as proof that it genuinely listens to its consultation exercises (especially the well-run Peterhead campaign), Opposition parties naturally claimed that it was a U-turn.<sup>civ</sup> The Parliament returned to the issue on 10 October, when it debated the Justice 1 Committee's 6th report, 2002, on the prison estates review, and the convener attacked the 'discourtesy' of the Justice Minister in sending the Executive's response to her committee's prison estate review report (published more than 3 months previously) to her by e-mail just the day before the plenary debate on the report.<sup>cv</sup> The outgoing chief inspector of prisons, Clive Fairweather, ensured that the question of prison conditions remained on the political agenda, by writing a long valedictory piece in the press with allegations that his final report, critical of the women's prison at Cornton Vale, was being suppressed by the Executive.<sup>cvi</sup>

#### 11.3 Fishing

Amid the continuing difficulties of agriculture, GM crop trials, water services provision, fluoridation, flood prevention, national parks and land reform, the beleaguered Rural Development Minister, Ross Finnie, was caught in the nets of the Common Fisheries Policy. Such issues, as always, involve EU policy, with much political controversy around arguments about whether Scottish ministers actually can 'lead' UK delegations to fisheries negotiations in Brussels, and the affair dominated parliamentary proceedings during the last week of October.<sup>cvii</sup> The threatened total ban on cod fishing that seems to be the consequence of recent EU research on fish stocks would be a serious blow to the Scottish economy and rural employment, and looked like the last straw for an industry that had already been highly critical recently of actions of ministers both north and south of the border.<sup>cviii</sup>

#### 11.4 Health

Other than the Glasgow hospitals' review, which led to the collective responsibility dispute concerning Mike Watson (see para 1.1, above),<sup>cix</sup> waiting times, waiting lists and bed-blocking continue to dominated the health agenda, with new initiatives appearing regularly in an attempt to produce better results than have been seen hitherto.<sup>cx</sup> Both the Liberal Democrats and the SNP published have published details of their health policies.<sup>cxii</sup> The former Health Minister, Susan Deacon, published an article setting out her prescription for health reform.<sup>cxii</sup> The Executive introduced its controversial Mental Health Bill on 17 September.<sup>cxiii</sup> Fluoridation has emerged as a controversial issue, following an Executive paper on children's oral health.<sup>cxiv</sup> Another front on the rising tensions between policies towards public services reform north and south of the border opened when Scottish consultants, unlike their southern colleagues, voted to accept a new contract, and the Executive may go it alone

in implementing these changes, contrary to the apparent tradition of a common national NHS approach on such issues.<sup>cxv</sup>

## 11.5 Transport

Transport was claimed by ministers to be a big winner of the Executive's spending review, but ministers remained under pressure over the issues of road tolls and congestion charges and the development of the railways and air transport.<sup>cxvi</sup> Edinburgh City Council agreed to hold a local referendum on its proposed congestion-charging scheme, following evidence on public unease, and Labour fears of a possible backlash in the May 2003 parliamentary and local elections.<sup>cxvii</sup> The Scotrail franchise competition began, with National Express apparently the favourite to retain it.<sup>cxviii</sup> The Transport & the Environment Committee published a substantial report on rail on 15 October, demanding a strategic plan for railways in Scotland and the creation of a concordat between the Executive and the Strategic Rail Authority.<sup>cxix</sup> Air transport was debated in the Parliament on 9 October but, if a Liberal Democrat press release of 23 October was accurate, there has been minimal response from Scotland to the UK Government's Scottish air transport consultation exercise (449 responses, a mere 1.2% of the 37,000 copies issued), and calls continued to be made for direct rail links to Glasgow and Edinburgh airports, and even for the building of a new Central Scotland airport.<sup>cxx</sup> The Enterprise Minister, Iain Gray, made a major speech on transport on 20 September, and the Executive published its annual transport statistics.<sup>cxxi</sup>

## 11.6 Education and young people

Contrasts between education policy north and south of the border were evident, as the Executive was forced to defend, in a WA on 20 August, its student finance policy against the Prime Minister's rather negative description of it at PMQs on 10 July.<sup>cxxii</sup> This boiled up further during the party conference season, when, despite the much-vaunted National Debate on Education, and the Education Minister's parliamentary statement on it on 9 October, the Executive was accused of failing to adopt as radical an approach to this key public service as the Prime Minister had apparently demonstrated in his recent comments on comprehensive education.<sup>cxxiii</sup> Education looks as if it will remain a key front in the 'devolution diversity' debate on the future direction of the public services.

The SNP has been revealing details of its education policy, promising, among other things, smaller class sizes and more vocational teaching.<sup>cxxiv</sup> The failure of some PFI-funded schools in West Lothian to open on time at the start of the new term caused some embarrassment, as did a UCAS blunder over the interpretation of some Scottish exam results for university entrance purposes, while a 2% drop in Higher exam passes produced the usual polarised debate (as would, presumably, a 2% rise).<sup>cxxv</sup> It has been reported that the teaching unions may merge so as to produce a united front against the local authorities and the Executive.<sup>cxxvi</sup> The Executive's Protection of Children Bill was introduced on 9 September.<sup>cxxvii</sup> On 25 September, the Parliament supported the Education Committee's proposal for a Committee Bill on creating a children and young person's commissioner.<sup>cxxviii</sup>

## 11.7 PFI/PPP

The financing of public services through PPP/PFI schemes remains a highly contentious political issue for devolved Scotland, fuelled, in part, by a Finance Committee report published on 2 October.<sup>cxxix</sup> Related to this, and of interest as an example of devolution diversity as noted above, was an apparent demand on behalf of the Prime Minister that the devolved administrations would have to follow his reform proposals for schools and hospitals, a claim which was rapidly withdrawn.<sup>cxxx</sup> The Scottish Secretary spoke about PPP in a speech in Sydney, Australia on 20 October.<sup>cxxxi</sup>

## 11.8 Shrinking Scotland

The condition of Scotland's economy became the main issue for a while as official figures put Scotland technically in recession, and other economic statistics were almost as gloomy. Something close to panic took hold for a while among politicians and the media, perhaps encouraged by the parliamentary recess.<sup>cxxxi</sup> The Executive responded by reactivating the Manufacturing Steering Group, which held its first meeting on 10 October.<sup>cxxxi</sup> The SNP unsuccessfully called for the Parliament's recall, and also pounced on official figures purporting to show significant disparities in earnings north and south of the border.<sup>cxxxi</sup> Further job losses in

foreign-owned factories seemed to be further proof of the failure of the old inward-investment strategies. The First Minister made a major economic speech to the Institute of Directors on 10 September, criticising innate pessimism within some sectors of Scotland, and the Scottish Secretary weighed in during a speech to the Institute of Directors on 28 October.<sup>cxxxv</sup> The junior Scotland Office minister, Anne McGuire, fuelled the debate during Scottish Questions in the Commons on 22 October by describing the bad economic data as a ‘temporary glitch.’<sup>cxxxvi</sup>

Publication of census figures, and annual population projections, showing a declining and ageing Scottish population (at just over 5m, 8.6% of the UK population) led to much debate about the impact, and to the need perhaps for encouraging more immigration to build up the economy.<sup>cxxxvii</sup> A good example of the sensitivities surrounding these economic and social issues was the reaction to comments in a speech by the Scottish-born head of the Stock Exchange, Don Cruikshank, that young Scots should consider leaving Scotland to gain wider experience.<sup>cxxxviii</sup>

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<sup>i</sup> “Minister ‘will not quit’ over hospitals”, *BBC News Online*, 22.08.02:

<http://news.bbc.co.uk/1/hi/scotland/2209218.stm>; 12 September plenary debate:

[http://www.scottish.parliament.uk/official\\_report/session-02/sor0912-02.htm#Col13633](http://www.scottish.parliament.uk/official_report/session-02/sor0912-02.htm#Col13633); “MSP quits post after rebel vote on hospital”, *Daily Telegraph*, 13.9.02:

<http://www.portal.telegraph.co.uk/news/main.jhtml?xml=%2Fnews%2F2002%2F09%2F13%2Fnsmp13.xml>;

“Minister denies vote ‘hypocrisy’”, *BBC News Online*, 15.9.02: <http://news.bbc.co.uk/1/hi/scotland/2259771.stm>;

FMQs on 19 September: [http://www.scottish.parliament.uk/official\\_report/session-02/sor0919-02.htm#Col13970](http://www.scottish.parliament.uk/official_report/session-02/sor0919-02.htm#Col13970);

“Watson aide breaks Executive rules”, *Scotland on Sunday*, 6.10.02:

<http://www.scotlandonsunday.com/politics.cfm?id=1106092002>

<sup>ii</sup> SE press release, 14.8.02: [http://www.scotland.gov.uk/pages/news/2002/08/p\\_SENW065.aspx](http://www.scotland.gov.uk/pages/news/2002/08/p_SENW065.aspx); *SE media briefing*, 14.8.02: <http://www.scotland.gov.uk/pages/news/weekly/000194.aspx>

<sup>iii</sup> “Reform agenda”, Holyrood, 21.10.02, p15. See “SNP Welcome Deacon’s Call for Devolved Civil Service”,

*SNP press release*, 24.10.02: <http://www.snp.org/html/news/printerfriendly.php?newsID=587>;

“Scots civil service ‘is failing’”, *Scotsman*, 24.10.02: <http://www.thescotsman.co.uk/politics.cfm?id=1176142002>;

“It’s a mistake to cut through the red tape”, *Sunday Times*, 27.10.02: <http://www.timesonline.co.uk/article/0,,2090-460100,00.html>.

The main articles in this feature were, P MacMahon, “Civil society” and W Dinan, “Open Scotland’s executive”.

<sup>iv</sup> See, for example, the series of WAs to Linda Fabiani (SNP) on 30 September

([http://www.scottish.parliament.uk/official\\_report/wa-02/wa0930.htm](http://www.scottish.parliament.uk/official_report/wa-02/wa0930.htm)), 1 October

([http://www.scottish.parliament.uk/official\\_report/wa-02/wa1001.htm](http://www.scottish.parliament.uk/official_report/wa-02/wa1001.htm)) and 8 October

([http://www.scottish.parliament.uk/official\\_report/wa-02/wa1008.htm](http://www.scottish.parliament.uk/official_report/wa-02/wa1008.htm))

<sup>v</sup> Results of the Scottish Executive Staff Survey 2002: <http://www.scotland.gov.uk/cru/resfinds/grf9-00.asp>

<sup>vi</sup> “Communities to benefit from jobs dispersal”, *SE press release*, 28.10.02:

[http://www.scotland.gov.uk/pages/news/2002/10/p\\_SEfm074.aspx](http://www.scotland.gov.uk/pages/news/2002/10/p_SEfm074.aspx); “Rural areas set to benefit from civil service

jobs dispersal”, *Scotsman*, 29.10.02: <http://www.thescotsman.co.uk/scotland.cfm?id=1203532002>

<sup>vii</sup> *SE media briefing*, 29.10.02: <http://www.scotland.gov.uk/pages/news/weekly/000241.aspx>, and “Swinney to

Meet Civil Service Ahead of Election”, *SNP press release*,

<http://www.snp.org/html/news/printerfriendly.php?newsID=603>

<sup>viii</sup> A modern complaints system: the new Scottish Public Services Ombudsman:

<http://www.scotland.gov.uk/library5/government/amcs-00.asp>; WA to Alex Neil, 14.10.02:

[http://www.scottish.parliament.uk/official\\_report/wa-02/wa1014.htm](http://www.scottish.parliament.uk/official_report/wa-02/wa1014.htm)

<sup>ix</sup> [http://www.scottish.parliament.uk/whats\\_happening/news-02/clg02-010.htm](http://www.scottish.parliament.uk/whats_happening/news-02/clg02-010.htm);

[http://www.scottish.parliament.uk/official\\_report/cttee/local-02/lgr02-15-01.htm](http://www.scottish.parliament.uk/official_report/cttee/local-02/lgr02-15-01.htm);

[http://www.scottish.parliament.uk/official\\_report/session-02/sor1031-02.htm#Col14871](http://www.scottish.parliament.uk/official_report/session-02/sor1031-02.htm#Col14871); “Public Appointments

Bill”, *SE press release*, 31.10.02: [http://www.scotland.gov.uk/pages/news/2002/10/p\\_SEFD116.aspx](http://www.scotland.gov.uk/pages/news/2002/10/p_SEFD116.aspx)

31/10/2002. See also the WAs to Alex Neil on 27 September:

[http://www.scottish.parliament.uk/official\\_report/wa-02/wa0927.htm](http://www.scottish.parliament.uk/official_report/wa-02/wa0927.htm)

<sup>x</sup> “New rules after bias bust-up”, *BBC News Online*, 29.8.02: <http://news.bbc.co.uk/1/hi/scotland/2223832.stm>

<sup>xi</sup> [http://www.scottish.parliament.uk/official\\_report/wa-02/wa0829.htm](http://www.scottish.parliament.uk/official_report/wa-02/wa0829.htm)

<sup>xii</sup> Executive media briefing, 19.8.02: <http://www.scotland.gov.uk/pages/news/weekly/000195.aspx>; “Union fear

in civil service shake-up”, *Scotsman*, 21.8.02: <http://www.thescotsman.co.uk/politics.cfm?id=923202002>

<sup>xiii</sup> SE press release, 30.9.02: <http://www.scotland.gov.uk/pages/news/2002/09/SEfd102.aspx>

<sup>xiv</sup> <http://www.scotland.gov.uk/pages/news/weekly/000205.aspx>

<sup>xv</sup> [http://www.scottish.parliament.uk/official\\_report/wa-02/wa1002.htm](http://www.scottish.parliament.uk/official_report/wa-02/wa1002.htm)

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- <sup>xvi</sup> Motion S1M-3496: [http://www.scottish.parliament.uk/agenda\\_and\\_decisions/bb-02/bb-10-25f.htm](http://www.scottish.parliament.uk/agenda_and_decisions/bb-02/bb-10-25f.htm)
- <sup>xvii</sup> “Minister accused of polling ploy”, *BBC News Online*, 3.9.02: <http://news.bbc.co.uk/1/hi/scotland/2233759.stm>; WA by McConnell: [http://www.scottish.parliament.uk/official\\_report/wa-02/wa0924.htm](http://www.scottish.parliament.uk/official_report/wa-02/wa0924.htm)
- <sup>xviii</sup> “Lib Dems want to cut Executive”, *Scotsman*, 9.9.02: <http://www.thescotsman.co.uk/politics.cfm?id=1002252002>
- <sup>xix</sup> [http://www.scottish.parliament.uk/official\\_report/wa-02/wa0927.htm](http://www.scottish.parliament.uk/official_report/wa-02/wa0927.htm). See also a WA of 3 September on the costs associated with MPAs: [http://www.scottish.parliament.uk/official\\_report/wa-02/wa0903.htm](http://www.scottish.parliament.uk/official_report/wa-02/wa0903.htm)
- <sup>xx</sup> “Executive to cut publicity bill”, *BBC News Online*, 14.8.02: <http://news.bbc.co.uk/1/hi/scotland/2192517.stm>, and a WA to Stewart Stevenson (SNP) on 13.8.02: [http://www.scottish.parliament.uk/official\\_report/wa-02/wa0813.htm](http://www.scottish.parliament.uk/official_report/wa-02/wa0813.htm)
- <sup>xxi</sup> [http://www.scottish.parliament.uk/official\\_report/wa-02/wa1021.htm](http://www.scottish.parliament.uk/official_report/wa-02/wa1021.htm); “Executive blows millions on ads with no impact”, *Scotland on Sunday*, 20.10.02: <http://www.scotlandonsunday.com/scotland.cfm?id=1160442002>; “Executive's advert bill rises”, *BBC News Online*, 20.10.02: <http://news.bbc.co.uk/1/hi/scotland/2344497.stm>;
- <sup>xxii</sup> It briefly featured at the end of PMQs on 16 October, through a question by Alex Salmond: [http://www.publications.parliament.uk/pa/cm200102/cmhansrd/cm021016/debtext/21016-03.htm#21016-03\\_dpthd0](http://www.publications.parliament.uk/pa/cm200102/cmhansrd/cm021016/debtext/21016-03.htm#21016-03_dpthd0)
- <sup>xxiii</sup> For an overview see the (regularly updated) *BBC News Online Timeline*: “Labour's cash trouble”: <http://news.bbc.co.uk/1/hi/scotland/2336039.stm>, and a useful analysis by Prof John Curtice, “Labour battle sleaze claims”, *BBC News Online*, 21.10.02: <http://news.bbc.co.uk/1/hi/scotland/2347605.stm>. See also FMQs on 10 October: [http://www.scottish.parliament.uk/official\\_report/session-02/sor1010-02.htm#Col14639](http://www.scottish.parliament.uk/official_report/session-02/sor1010-02.htm#Col14639), and “On the trail of the First Minister”, *Scotland on Sunday*, 13.10.02: “The Poisoned Chalice”, *Sunday Herald*, 20.10.02: <http://www.sundayherald.com/28547>; FMQs on 31 October: [http://www.scottish.parliament.uk/official\\_report/session-02/sor1031-02.htm#Col14862](http://www.scottish.parliament.uk/official_report/session-02/sor1031-02.htm#Col14862); “McConnell's local difficulty”, *Sunday Times*, 3.11.02: <http://www.timesonline.co.uk/article/0,,2090-468016,00.html>
- <sup>xxiv</sup> Jim Wallace, Ministerial Statement on the Prison Estates Review, *Official Report*, 5 September 2002, col. 13375, [http://www.scottish.parliament.uk/official\\_report/session-02/sor0905-02.htm#Col13371](http://www.scottish.parliament.uk/official_report/session-02/sor0905-02.htm#Col13371)
- <sup>xxv</sup> First Minister's Question Time, *Official Report*, 31 October 2002, col. 14864, [http://www.scottish.parliament.uk/official\\_report/session-02/sor1031-02.htm#Col14862](http://www.scottish.parliament.uk/official_report/session-02/sor1031-02.htm#Col14862)
- <sup>xxvi</sup> First Minister's Question Time, *Official Report*, 10 October 2002, col. 14639, [http://www.scottish.parliament.uk/official\\_report/session-02/sor1010-02.htm#Col14639](http://www.scottish.parliament.uk/official_report/session-02/sor1010-02.htm#Col14639)
- <sup>xxvii</sup> First Minister's Question Time, *Official Report*, 31 October 2002, col. 14862, [http://www.scottish.parliament.uk/official\\_report/session-02/sor1031-02.htm#Col14862](http://www.scottish.parliament.uk/official_report/session-02/sor1031-02.htm#Col14862)
- <sup>xxviii</sup> “Smacking Ban Thrown Out”, *BBC News Online*, 13 September 2002, <http://news.bbc.co.uk/1/hi/scotland/2254644.stm>
- <sup>xxix</sup> “Steel Rules Out Recall on Recession”, *BBC News Online*, 8 August 2002, <http://news.bbc.co.uk/1/hi/scotland/2180553.stm>
- <sup>xxx</sup> “Minister Apologises for Water Gaffe” *BBC News Online*, 4 September 2002, <http://news.bbc.co.uk/1/hi/scotland/2234870.stm>
- <sup>xxxi</sup> See Paul Grice's evidence to the Standards Committee, *Scottish Parliament Standards Committee Official Report*, 9 October 2002, col. 1112, [http://www.scottish.parliament.uk/official\\_report/cttee/stan-02/st02-1402.htm#Col1112](http://www.scottish.parliament.uk/official_report/cttee/stan-02/st02-1402.htm#Col1112)
- <sup>xxxii</sup> Tricia Marwick, *Scottish Parliament Standards Committee Official Report*, 9 October 2002, col. 1115, [http://www.scottish.parliament.uk/official\\_report/cttee/stan-02/st02-1402.htm#Col1112](http://www.scottish.parliament.uk/official_report/cttee/stan-02/st02-1402.htm#Col1112)
- <sup>xxxiii</sup> Paul Grice, *ibid.*
- <sup>xxxiv</sup> Excludes all reports on subordinate legislation.
- <sup>xxxv</sup> Latest parliamentary stage recorded.
- <sup>xxxvi</sup> *Cross-Party Group on Kidney Disease*, The Scottish Parliament <http://www.scottish.parliament.uk/msps/cpg/cpg-kidney.html>
- <sup>xxxvii</sup> House of Lords, House of Commons, Session 2001-02, Joint Committee on the Draft Communications Bill, *Draft Communications Bill, Volume I—Report*, HL Paper 169-I ; HC 876-I London: The Stationery office Limited, 25 July 2002.
- <sup>xxxviii</sup> *ibid.* p.20.
- <sup>xxxix</sup> *ibid.*
- <sup>xl</sup> *ibid.*
- <sup>xli</sup> *ibid.*
- <sup>xlii</sup> *Report*, p. 21.

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- <sup>xliii</sup> *Report*, p. 93.
- <sup>xliv</sup> *Report*, p. 70
- <sup>xliv</sup> *Report*, p.71
- <sup>xlvi</sup> *Report*, p.153.
- <sup>xlvii</sup> Martin Flanagan, 'SMG puts the Herald up for ale to cut debts', *The Scotsman*, 11 September 2001, p.19
- <sup>xlviii</sup> James Ashton, 'Regulatory regime played major role in decision', *Business A. M.*, 'News special', 11 September 2002, p.3.
- <sup>xlix</sup> Murray Ritchie, 'Herald for sale in £200m deal for SMG titles', *The Herald*, 11 September 2002, p.3.
- <sup>l</sup> 'A statement by the Sunday Herald editor's advisory board', *The Sunday Herald*, 22 September 2002, p.2
- <sup>li</sup> *Risky Business: Inside the Indies. Regional TV Independents & the Challenges of Growth*, Glasgow: The research Centre, September 2000.
- <sup>lii</sup> [www.researchcentre.co.uk](http://www.researchcentre.co.uk).
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