



The Constitution Unit



UNIVERSITY OF
STIRLING



Nations and Regions: The Dynamics of Devolution

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Key Points

- Henry McLeish resigned as First Minister on November 8 following the release of information that he sub-let part of his constituency office, when he was a Westminster MP between 1987 and 1991, while the House of Commons Fees Office paid for the full cost of the office;
- Jack McConnell, Education and European Minister, emerged as the sole candidate to replace McLeish as Scottish Labour leader and Scotland's third First Minister;
- Care for elderly policy continued to develop with the publication of the report of the Care Development Group (CDG), established by Susan Deacon, Health Minister, in September. The Executive accepted the report's recommendations of a weekly contribution of £145 to those requiring personal care in nursing and residential homes and £55 per week to the same group to meet the costs of nursing care with accommodation charges being the only part of care costs not paid by Executive.

Introduction

James Mitchell

The main item of news during the last quarter was the resignation of Henry McLeish, Scotland's First Minister. McLeish came under pressure to resign after it became known that he had sub-let part of his constituency office in Glenrothes in Fife, when a Westminster MP over a fourteen year period, to a series of different tenants while receiving money from the House of Commons Fees Office to cover expenses. The *Mail on Sunday* had first reported this issue in April and the issue was to have been the subject of an enquiry by Elizabeth Filkin, Westminster Parliamentary Commissioner for Standards, but was dropped because McLeish had stood down as an MP after his election to the Scottish Parliament. Enquiries eventually led to the disclosure that the case involved multiple tenancies and not, as had at first been assumed, one case of sub-letting. The First Minister was criticised throughout the media for his failure to provide a full and frank disclosure until pressure from Parliamentarians and the media forced him to make a statement, which was still not entirely full.

David Steel, Presiding Officer in the Scottish Parliament, had ruled out of order a Question put by David McLetchie (Conservative leader in the Parliament) to the First Minister on the affair, on the grounds that this concerned a Westminster matter but perversely allowed McLeish the right to make a statement on the subject. Steel subsequently admitted that this had been an error. McLeish was facing an Opposition-sponsored debate on Thursday, 8 November, the day of his resignation as well as First Minister's Questions later that day, but pre-empted the debate by announcing his resignation. Later that day, he made a personal statement in the chamber in which he repeated his claim that he was guilty of an error but not a criminal – it had been a 'muddle not a fiddle'.

McLeish had defeated Jack McConnell narrowly for the leadership of Scottish Labour with the strong backing of Gordon Brown and Labour's leadership in London following Donald Dear's death. He had been presented as a 'safe pair of hands' but proved an ineffective First Minister, incapable of providing firm leadership over a divided cabinet and prone to making policy statements without giving full consideration as to their implications – most notably in the case of care for elderly. Having failed to establish his authority during his first year in office, McLeish had few reserves of authority to draw upon when the crisis deepened and his failure to tackle criticisms openly served to undermine him further.

Following McLeish's demise, Jack McConnell was the front-runner from the start though Wendy Alexander, Enterprise and Lifelong Learning Minister, made preparations for a leadership campaign, reminiscent of Michael Portillo's installation of phone lines in the 1995 Conservative leadership contest, before deciding not to enter the race when it became clear that she would not win. Once more, Alexander's political antennae and judgement were seen to be faulty. Junior Health Minister Malcolm Chisholm announced his decision to stand but could not garner the nominations from amongst his

MSP colleagues to do so. In light of the background to the contest, McConnell decided that a Clintonesque public admission of an affair seven years before was necessary at the outset of his campaign. At a press conference accompanied by his wife, the sole candidate for the Scottish Labour leadership admitted to the affair and asked the media to concentrate on issues of 'policies and leadership'. This statement had been precipitated by the *Daily Record's* promise that it would investigate the private lives of all candidates. The *Record* is, of course, a slavishly loyal Labour newspaper with strong connections to Gordon Brown. If it had been an effort to force McConnell to withdraw from the contest, it failed. It also meant that any revelations it printed could only damage the leader of the party that it has long supported.

Dairy of 'Officegate'

April 1, 2001: Mail on Sunday disclose that since 1998, Henry McLeish received £4,000 a year from Digby Brown, a firm of solicitors with strong Labour connections that sublet part of his constituency office in Glenrothes, Fife.

April 22: Elizabeth Filkin, Westminster Parliamentary Commissioner for Standards, writes to McLeish in connection with sub-letting. Peter McMahon, McLeish's spin doctor says: 'The matter has been dealt with. The income in question was not for Mr McLeish's personal use, it went straight into covering the costs of running the office.'

October 23: McLeish issues a statement saying that he has paid £9,000 to the Commons' Fees Office. McMahon says the matter should now be considered closed.

October 25: MSPs are barred from questioning the First Minister in the Scottish Parliament by David Steel, Presiding Officer, who says it is a matter for Westminster.

October 28: Fife Constabulary confirms that an investigation has begun after a complaint made against the First Minister.

October 29: The First Minister refuses to answer reporters' questions while opening a hospital.

November 1: McLeish publishes details of his expenses, saying he paid the money back out of his own pocket and that the £9,000 figure was arrived at in agreement with the Commons' Fees Office. Later, on the BBC's *Question Time*, he admits he does not know the total sum received for various sublets at his constituency office but insists he made no personal gain from the rental.

November 2: John Swinney, SNP leader who had until then stood his distance from the affair, calls for McLeish's resignation following his 'humiliating' performance on *Question Time*.

November 4: It emerges that McLeish has instructed his accountant to hand over information about the row to the Inland Revenue.

November 5: David McLetchie says McLeish has three days to save his career before he faces a debate in the Scottish Parliament.

November 6: McLeish blames his troubles on an 'honest mistake'. He offers to pay back £27,000 to the Commons after it emerges that the total rental income for subletting since 1987 was £36,122.

November 7: The First Minister cancels all engagements to prepare with his aides for the next day's debate.

November 8: Tom McCabe, Parliament Minister, announces the First Minister's resignation to the Scottish Parliament at 11am.

Source: The Times, Friday 9 November 2001.

The lack of a contest meant that ‘policies and leadership’ were not scrutinised as they might have been. McConnell’s political background provides contradictory indications of where he might take Scotland. In his early days as a politician, as leader of Stirling District Council, McConnell had been on the radical left of politics. He had been a member of Scottish Labour Action, a nationalist grouping within the Labour Party that had emerged in Scotland out of the Labour Co-ordinating Committee (LCC), that advocated radical action in pursuit of Scottish home rule and a left agenda. In an interview in September 2000 with fellow Labour MSP Michael Watson, McConnell noted the formative impact of the first devolution referendum:

‘Those of us who cast our first adult vote in the 1979 referendum were shaped by the event and its outcome and developed a passion for Scottish politics which remains to this day. By the early 1980s, however, we wanted more than an assembly – we wanted a real parliament able to tackle social justice across Scotland, with its own identity and political dynamics.’¹

His rhetoric prior to taking up the post of general secretary of the Labour Party in Scotland had often been nationalist. However, he became a firm advocate of the modernisation of Labour under John Smith and Tony Blair. In the rivalry between Gordon Brown and Tony Blair, McConnell was a Blairite and had uneasy relations with Brown. He became Finance Minister under Donald Dewar and was given the curiously combined Education and European Affairs portfolio by Henry McLeish. In some quarters it was felt that the Education post was the political ‘black spot’, as it involved dealing with the Scottish Qualifications Agency, formerly Henry McLeish’s responsibility, which had overseen the most significant crisis in Scottish educational history when school exam results issued by the Agency in Summer 2000 proved incorrect or suspect. McConnell’s performance in the year proved that he was adept at dealing with a crisis. A poisoned chalice handled well can become a key to the door of the top job.

McConnell’s political career nearly came unstuck in late 2000 with the eruption of the ‘Lobbygate’ affair. An *Observer* journalist posing as a potential client had approached Beattie Media, a firm that had employed McConnell between his departure as Labour’s Scottish general secretary and becoming an MSP, and two of its employees (one the son of John Reid, then Secretary of State for Scotland) claimed that they could arrange a meeting with McConnell. The Parliament’s Standards Committee investigated, including an interview with McConnell, and exonerated him of any wrongdoing. It had, however, done little for his reputation and probably played its part in his failure to defeat Henry McLeish for the First Minister’s job in 2000.

Under McLeish, the Scottish Executive has made policy on the hoof and a number of spending commitments, though not biting immediately, will need to be addressed if this 41 year-old First Minister, presumably intent on a long career at the top, is not to run up against serious problems. One immediate

¹ Mike Watson, *Year Zero: An Insider View of the Scottish Parliament*, Edinburgh, Polygon, p.28.

problem will be dealing with problems with the care for the elderly policy he has inherited from his immediate predecessor. McConnell may wish to return to the position adopted by Donald Dewar and support a policy in line with that in England and Wales. However, expectations have been built up and that will prove politically difficult. He might have been expected to win the support of Susan Deacon as the Health Minister who made a reasonable job of managing the convolutions in Executive policy on care for the elderly while recognising the costs of McLeish's policy as well as its regressive nature. However, McConnell and Deacon had a bruising battle when he had been Finance Minister in the summer of 2000, which, again, may have contributed, to his defeat in the leadership contest.

The challenge for the new First Minister will be to provide the kind of leadership that McLeish failed to give the Executive and, indeed, Donald Dewar barely provided. McConnell's political past and the above quoted statement of his political roots, combined with owing little if anything to the party's London leadership, suggest that the politics of Scottish devolution may be about to become more interesting.

1 The Executive

Barry K Winetrobe

1.1. From Dewar to McLeish to?

The eruption, at the latter end of October, of the row over Henry McLeish's parliamentary expenses while a Westminster MP – swiftly dubbed 'Officegate' - overshadowed all other coverage of the Executive, both in the Parliament² and in the media. By the end of the quarter under scrutiny, it had led to the dramatic and sudden resignation of the First Minister just before he was due to defend himself against a parliamentary motion of no-confidence. The ghost of Alun Michael again stalks UK devolution. Other chapters of this report examine the parliamentary and party political aspects of the affair: this chapter simply notes the direct effect on the Executive.

When the Tories took up McLeish's challenge at FMQs at the end of October for an Opposition party to provide an opportunity for a parliamentary debate, the Officegate crisis came to a head. Despite frantic efforts by ministers and their advisers through media briefing and interviews, and public support from the two Executive parliamentary parties as well as from No. 10, the constant drip of new 'revelations' about the extent of the sublets of McLeish's constituency office in Glenrothes turned the affair from one about an accounting muddle/fiddle to one of incompetence at the heart of the Executive.

McLeish tendered his resignation to the Queen (as required under s45(2) of the Scotland Act) on the morning of Thursday 8 November. He made a personal statement to the Parliament that afternoon, the censure debate having been dropped by the Tories following the announcement of the resignation being transmitted to the Parliament in a point of order from the Parliament Minister, Tom McCabe. The Cabinet met thereafter, and recommended that the Deputy First Minister, Jim Wallace, be designated as 'Acting First Minister'. The Presiding Officer duly designated him, under s45(4) of the Scotland Act.³ If no person is nominated by the Parliament within 28 days, the Parliament would be dissolved early and an extraordinary general election held (ss3 and 45 of the Act). Wallace made public statements announcing 'business as usual'.⁴

² The complex affair dominated FMQs on both 25 October and 1 November, and has proved problematic for the Parliament and its procedural rules, given its Westminster provenance.

³ This was the second time the Liberal Democrat leader had been so designated, the first being on the death of Dewar the previous October. He had also operated as 'Acting First Minister' during Dewar's earlier illness, but had not been formally designated as such.

⁴ For the available formal course of events described here, see a series of SE press releases on 8 November (the text of which changed during the course of the relevant day, and so may not be as cited here) - 4310/2001, "First Minister resigns": <http://www.scotland.gov.uk/pages/news/2001/11/SE4311.aspx>; 4313/2001,

Prior to these events, the first anniversary of the change in First Minister had prompted much contemplation of the state of devolution in its first two and a half years,⁵ and especially in the year since McLeish succeeded Donald Dewar. The Executive itself was not immune from this trend, with the creation of a series of arts scholarships dedicated to Dewar's memory.⁶ Tributes were paid to Dewar by McLeish;⁷ the Scottish Secretary, Helen Liddell,⁸ and the Scottish Labour General Secretary, Lesley Quinn,⁹

"The constitutional arrangements": <http://www.scotland.gov.uk/pages/news/2001/11/SE4313.aspx>; 4314/2001, and "Jim Wallace appointed Acting First Minister": <http://www.scotland.gov.uk/pages/news/2001/11/SE4314.aspx>. See also two SE background releases – "What happens next?": <http://www.scotland.gov.uk/pages/news/extras/00004100.aspx>, and "Cabinet agrees on interim arrangements pending election of new First Minister": <http://www.scotland.gov.uk/pages/news/extras/00003900.aspx> - and a lobby briefing on 8 November: http://www.scotland.gov.uk/pages/news/p_dailybrief.aspx. From the parliamentary perspective, see the announcement in *Business Bulletin* 162/2001, "Resignation of the First Minister": http://www.scottish.parliament.uk/agenda_and_decisions/bb-01/bb-11-09an.htm, and Parliamentary press release 086/2001, "Presiding Officer designates Jim Wallace to undertake First Minister functions". The parliamentary proceedings are at http://www.scottish.parliament.uk/official_report/session-01/sor1108-02.htm#Col3768. See also the No. 10 Lobby briefing after the resignation at <http://www.number-10.gov.uk/news.asp?NewsId=2960&SectionId=30>; the reaction from the Scottish Secretary, Helen Liddell at http://www.scottishsecretary.gov.uk/News_%202001/ss0216.htm, and also "Business of governing Scotland must continue – Wallace", *Ananova Online*, 9.11.01: http://www.ananova.com/news/story/sm_445403.html?menu=news.politics.

⁵ Some interesting perceptions of the Executive among the public and within the Parliament are emerging from the survey work undertaken by MORI for the Procedures Committee's inquiry into the implementation of the CSG principles. Although primarily focussed on the Parliament, the survey research confirmed, for example, the public's failure to differentiate between the Executive and the Parliament. See the discussion with MORI representatives at the Committee's 23 October meeting: http://www.scottish.parliament.uk/official_report/cttee/proced-01/pr01-0902.htm#Col897

⁶ "Scholarships 'fitting tribute' to Donald Dewar" SE press release 4149/2001, 11.10.01: http://www.scotland.gov.uk/pages/news/2001/10/p_SE4149.aspx

⁷ "First Minister pays tribute to memory of Donald Dewar", SE press release 4144, 10.10.01: http://www.scotland.gov.uk/pages/news/2001/10/p_SE4144.aspx

⁸ "Helen Liddell pays tribute to Donald Dewar on the anniversary of his death", Scotland Office press release, 11 October 2001:

McLeish himself, having earlier delivered what was described as a keynote speech on the Executive's aims and values prior to the end of the Parliament's summer recess,¹⁰ had used the occasion of the anniversary to set out, in a series of interviews, his own perception of his first year in office, and the prospects for the future.¹¹ He admitted, for example, that he was rather unprepared to take over, and had found the job very difficult early on, though he believed he had improved as time went on. Much of the press comment was not so charitable, either about his performance, or his attempt to project himself as a good, honest guy.¹² Not surprisingly, his party's public view was more supportive.¹³

1.2 Policy delivery

Amid all these retrospectives and scrutiny of the Executive's competence, it was easy to forget that, in some key policy areas, including some persistent problems such as foot-and-mouth disease, this quarter saw great strides towards actual delivery. Two instances stand out – the SQA and free personal care for the elderly.

Following the schools exams fiasco in 2000, and widespread predictions of a repeat this year despite additional resources being pumped in, the consensus appeared to be that the 2001 diet went relatively smoothly, notwithstanding an

<http://www.scottishsecretary.gov.uk/Scotland%20Office%20website/Donald%20Dewar%20Tribute.htm>

⁹ "Scottish Labour remembers a true friend, Donald Dewar", Scottish Labour press release, 11.10.01: <http://www.poptel.org.uk/cgi-bin/cgiwrap/W000195/viewpr.pl?pr=http://www.scottishlabour.org.uk/pressrel/pr2001101114254.html>. See also Parliamentary motion S1M-2315, "First Anniversary of the Death of Donald Dewar", lodged by Bill Butler, Dewar's successor as MSP for Glasgow Anniesland: http://www.scottish.parliament.uk/agenda_and_decisions/bb-01/bb-10-12f.htm

¹⁰ *Devolution and after: the longer view*, speech at Glasgow University, 20.8.01, reproduced in "First Minister outlines Executive aims and values", SE press release 1927/2001: <http://www.scotland.gov.uk/news/2001/08/se1927.asp>

¹¹ See in particular, "First anniversary for FM", SE press release 4233/2001, 26.10.01: http://www.scotland.gov.uk/pages/news/2001/10/p_SE4233.aspx.

¹² For example, see "Spinning the media or the tunes, McLeish opens up to the public", *Scotsman*, 27.10.01: http://www.thescotsman.co.uk/text_only.cfm?id=119429; "Out of the shadows", *Sunday Herald*, 21.10.01: <http://www.sundayherald.com/19332>, and "Holyrood needs new voices", *Scotland on Sunday*, 14.10.01: http://www.scotlandonsunday.com/text_only.cfm?id=SS01040173.

¹³ "Marking the anniversary of Henry McLeish taking up office as First Minister of Scotland", Scottish Labour press release, 26.10.01: <http://www.poptel.org.uk/cgi-bin/cgiwrap/W000195/viewpr.pl?pr=http://www.scottishlabour.org.uk/pressrel/pr20011027104836.html>.

embarrassing but relatively minor gaffe about success rates.¹⁴ Attention then turned to the future of the SQA itself, with the SNP calling for its abolition. The Executive's proposals for retention but reform of the body were announced in a parliamentary statement by the Education Minister, Jack McConnell, on 13 September,¹⁵ and in a consultation document, enclosing a draft *Scottish Qualifications Authority Bill*, published on 12 October.¹⁶

The Executive announced on 24 September that it would implement the proposals on personal care for the elderly of its Care Development Group, whose report had been published on 14 September.¹⁷ The importance of the policy to the McLeish Administration was emphasised by the announcement being fronted by the First Minister himself.¹⁸ The Health Minister, Susan Deacon, made a statement in the Parliament on 26 September,¹⁹ and the policy was debated on an SNP motion the following day.²⁰ Legislative implementation of the policy began on 24 September with the introduction of the *Community Care and Health (Scotland) Bill*.²¹ Controversy continues over both the cost of the policy, estimated as £125m p.a., as from its start-date of April 2002, especially its impact on the Executive's overall budget, and the complexities of cross-border application of personal care policies.²²

¹⁴ Neatly summarised in "Soul of education has become merely academic", *Scotland on Sunday*, 19.8.01: http://www.scotlandonsunday.com/text_only.cfm?id=SS01030868.

¹⁵ http://www.scottish.parliament.uk/official_report/session-01/sor0913-02.htm#Col2455

¹⁶ *Scottish Qualifications - Delivering Success*: <http://www.scotland.gov.uk/library3/education/sqds-00.asp>, and see "SQA reforms proposed", SE press release 4160/2001, 12.10.01: <http://www.scotland.gov.uk/pages/news/2001/10/SE4160.aspx>. The consultation ends on 23 November.

¹⁷ *Fair Care for Older People*, <http://www.scotland.gov.uk/library3/health/cdgr-00.asp>. See the summary: <http://www.scotland.gov.uk/library3/health/cdgs-00.asp>.

¹⁸ "Free personal care within seven months", SE press release 4033, 24.9.01: <http://www.scotland.gov.uk/pages/news/2001/09/SE4033.aspx>

¹⁹ http://www.scottish.parliament.uk/official_report/session-01/sor0926-02.htm#Col2793

²⁰ http://www.scottish.parliament.uk/official_report/session-01/sor0927-02.htm#Col2871.

²¹ See the details in the SE press release: <http://www.scotland.gov.uk/pages/news/2001/09/SE4045.aspx>. The Bill is at http://www.scottish.parliament.uk/parl_bus/bills/b34s1.pdf, and see also its Explanatory Notes (http://www.scottish.parliament.uk/parl_bus/bills/b34s1en.pdf) and Policy Memorandum (http://www.scottish.parliament.uk/parl_bus/bills/b34s1pm.pdf). It is currently receiving its Stage 1 scrutiny, with the Health and Community Care Committee as lead committee.

²² On the latter, see, for example, "New row over McLeish's care plan" *Scotsman*, 10.9.01: http://www.thescotsman.co.uk/text_only.cfm?id=106497

1.3 The legislative programme

The First Minister made a statement to the Parliament on 5 September on the Executive's legislative programme for the parliamentary year.²³ 18 Bills were announced in this devolution equivalent of the 'Queen's Speech', including on mental health; public bodies; land reform; community care & health; criminal justice; water industry and local government.

The reaction of the two main Opposition leaders was predictable, mixing support for some particular proposals with overall criticism of its scope and ambition. John Swinney for the SNP said:

"The message from the First Minister's statement is that a substantial gulf exists in Scottish politics between those of us who have high ambitions for Scotland and those who are prepared to satisfy themselves with the mediocrity of the Government's proposed legislative programme."

David McLetchie (Con) said:

"However, I fear that, despite the volume of legislation that has been pledged, there is no sense of a coherent programme that will improve the lives of people in Scotland in the areas that really matter to them. That is regrettable, because the Scottish people will not fully accept this Parliament as a mature institution until they see that it makes a real difference to their lives."

1.4 Executive personnel

Amid all the persistent pre-Officegate speculation about ministerial reshuffles - including rumours of the voluntary departure of the Enterprise Minister, Wendy Alexander, and the wish of the Parliament Minister, Tom McCabe, for a shift to a spending department²⁴ - a novel sidelight was the call by the SNP for the retention of the Transport Minister, Sarah Boyack. During an SNP-initiated debate on railway investment on 25 October, Andrew Wilson, the party's

²³ http://www.scottish.parliament.uk/official_report/session-01/sor0905-02.htm#Col2194. See also the SE press release: <http://www.scotland.gov.uk/pages/news/2001/09/SE3034.aspx>, which contains links to summaries of each Bill. Note that, for the second successive year, this key statement has been made in September, and not on or before the start of a new parliamentary year in May. The Executive seems determined to develop a rhythm of an annual legislative cycle, and one running in practice from autumn to autumn (not unlike Westminster), even though this is contrary to the spirit of the CSG proposals for a 4-year, sessional cycle. If this practice of September-September legislative years takes firm hold, and nobody within or without the Parliament seems to be protesting this development, this could significantly affect the culture of the Parliament, and its distinctiveness from Westminster.

²⁴ "Parliament minister presses for new job as cabinet reshuffle speculation mounts", *Scotland on Sunday*, 9.9.01: http://www.scotlandonsunday.com/text_only.cfm?id=SS01034748

transport spokesperson, said that changes in ministerial powers were more important than changes of personalities in the Cabinet.²⁵ The Minister did not feel the need to respond directly to this 'compliment'.

On 17 August the Executive announced the appointment, for the first time, of two 'outsiders' to its Management Group, and of its Audit Committee.²⁶ This was, according to the press release, designed to

"bring an external perspective to the consideration of corporate management issues such as staffing, administration costs, monitoring of programme expenditure, training and development, accommodation strategy and relations with stakeholders..... Many Whitehall Departments have also appointed non-Executive members of their Management Boards. These appointments reflect the Executive's continuing commitment to developing strong leadership with a clear sense of purpose. This is a key strand of the wider programme of modernising government."

It was reported in August that the cost of the Executive's press officers was estimated at £1.5million a year. While the press reports carefully explained that Executive press officers were distinct from ministerial advisers, which they described as spin doctors (and whom they strongly criticised during the growing 'Officegate' row, described above), the overall impression was to aggregate these costs and other related expenditure, such as on government publicity and advertising, thereby suggesting a boom in the governmental propaganda effort since devolution.²⁷

The administrative competence of the Executive in general, and its transport division in particular, received a very public and embarrassing blow, when it was discovered that officials had neglected to ensure renewal of powers to levy tolls on the Erskine Bridge over the Clyde. An Emergency Bill, only the second in the Parliament's history, had to be rushed through in September to restore the situation. It was reported in October that the official found to be responsible had been disciplined but not dismissed.²⁸

1.5. Scottish Civic Forum concordat

²⁵ http://www.scottish.parliament.uk/official_report/session-01/sor1025-02.htm#Col3299. See "SNP call for minister not to be made a scapegoat 'we need a minister with full power over railways not a change of face'", SNP press release, 24.10.01: <http://www.snp.org/news/October01/2408.php>, and "Minister must stay says SNP", *BBC News Online*, 25.10.01: http://news.bbc.co.uk/hi/english/uk/scotland/newsid_1619000/1619066.stm

²⁶ SE press release 1923/2001, 17.8.01: <http://www.scotland.gov.uk/news/2001/08/se1923.asp>

²⁷ "The cost of executive spin doctors soars to £1.5m", *Scotsman*, 18.8.01: http://www.thescotsman.co.uk/text_only.cfm?id=99901; "Soaring cost of spinning Holyrood", *Scotsman*, 18.8.01: http://www.thescotsman.co.uk/text_only.cfm?id=99900;

²⁸ "Civil servant disciplined over bridge tolls", *Scotsman*, 16.10.01: http://www.thescotsman.co.uk/text_only.cfm?id=116537

The Executive and the Scottish Civic Forum signed a concordat on 11 October on working together towards accountable and inclusive policy-making. The Finance Minister, Angus MacKay and the SCF's convener both stressed the importance of this approach for devolved governance.²⁹ The text of the Concordat is reproduced on the SCF website.³⁰

1.6 The Executive and the CSG Principles

The Executive's contribution to the Parliament's Procedures Committee inquiry on implementation of the CSG principles emerged when the Minister for Parliament, Tom McCabe, appeared before the Committee on 30 October.³¹ He spoke to a detailed Executive Memorandum of Evidence, demonstrating how the devolved government had itself adhered to the 4 key principles of sharing the power, accountability, openness & accessibility and equal opportunities.³² The Memorandum's conclusion neatly encapsulates the Executive's perception of its commitment and its achievement:

"Two years on, much has been done to turn these principles into day to day reality. It is right that the Parliament - and the Executive - should look constantly at ways in which they can continue to improve. But we should not lose sight of how much progress has been made, and how much has been achieved, in a very short period of time. The Executive is committed to playing its own part in this process, by working in partnership with the Parliament and by reflecting the CSG principles in every aspect of our own work.... We will continue to do everything we can to live up to the high hopes which accompanied the establishment of the Scottish Parliament; the high standards which it has been set; and - perhaps most important of all - the high expectations of the Scottish people."

1.7 Executive website

Regular followers of Scottish devolution may wish to note that the Scottish Executive's website has been redesigned,³³ and now publishes a range of additional useful material, such as including *Lobby Briefings*,³⁴ and a *Weekly*

²⁹ "Concordat to add civic voice to policy development" SE press release SE4157/2001, 11.10.01:

<http://www.scotland.gov.uk/pages/news/2001/10/SE4157.aspx>; "Minister signs concordat with the Forum" SCF press release, 11.10.01: http://www.civicforum.org.uk/resources/evox/evox_pdf/current/currentevox.pdf

³⁰ <http://www.civicforum.org.uk/>

³¹ http://www.scottish.parliament.uk/official_report/cttee/proced-01/pr01-1002.htm#Col931

³² *Principles in the Scottish Parliament: memorandum by the Scottish Executive:* http://www.scottish.parliament.uk/official_report/cttee/proced-01/prp01-10.pdf

³³ <http://www.scotland.gov.uk/pages/default.aspx>. Many of the new features appear to have been inspired by the other UK and devolved administrations' websites, especially the No. 10 site.

³⁴ <http://www.scotland.gov.uk/pages/news/dailybrief.aspx>

*Review of Executive events and ministerial activity.*³⁵ It also hosts a range of background features on relevant policies. One of these, at the outset, outlined Scotland's constitutional development over the last 3 centuries, which, in its discussion of the more recent story of devolution, appears to be, to say the least, rather enthusiastic and opinionated for an official governmental production. It soon vanished from the index of these '*Executive extras*' pieces, though it still appears to be accessible directly.³⁶

³⁵ <http://www.scotland.gov.uk/pages/news/weekreview.aspx>

³⁶ "300 years of Scottish history":
<http://www.scotland.gov.uk/pages/news/extras/00001200.aspx> or
http://www.scotland.gov.uk/pages/news/extras/p_00001200.aspx

2 The Parliament

Mark Shephard

2.1 Testing the Limits of Parliament's Jurisdiction

On 8 November 2001, parliamentary business was suspended in an unprecedented move to allow a personal statement by Henry McLeish on his decision to resign as First Minister. Among other business that included First Minister's Question Time, the Parliament had been due to discuss a motion on the conduct of the First Minister in relation to undeclared rental monies from his Westminster constituency offices in Glenrothes. Although the contributing factors behind the First Minister's decision to resign are multiple and complex (for instance, the intensity of the media pursuit and the inability of the First Minister to provide full and consistent information early on) the Parliament itself also played a significant role. In particular, the Conservative leader, David McLetchie, pursued 'officegate' with a rigour that tested the limits of the Parliament's jurisdiction.

On 25 October, McLetchie was repeatedly ruled out of order when he attempted to question the First Minister on his expenses. The Presiding Officer, David Steel, had taken the view that McLetchie's questions were outside the First Minister's devolved responsibilities since they referred to Westminster and not Holyrood expense matters. Curiously, the Presiding Officer allowed the First Minister to make a statement on the matter that he had ruled out of order. Having tested the boundaries of the Parliament's standing orders, opposition leaders opted for an indirect line of questioning in the next Question Time that linked the issue of Westminster expenses to the much-recited high expectations of political conduct in Scotland. The SNP's John Swinney, linked his questioning to the expectations of the Scottish Ministerial Code of Conduct, while David McLetchie linked his questioning to the Consultative Steering Group's principles of integrity, honesty, openness and responsibility for decisions and accountability. Although the causes of the First Minister's resignation cannot solely be attributed to the actions of the Scottish Parliament, the high expectations of political conduct in Scotland combined with the constant pressure of the parliamentary opposition to play its part in the downfall of Henry McLeish. Notably, Steel admitted his error a week later.

The Parliament further tested the limits of its jurisdiction in this quarter in response to the war in Afghanistan. John Swinney called for the reconvening of Parliament to have an emergency debate on the war on terrorism and Scottish security issues. Although the Presiding Officer declined to reconvene Parliament on the basis that the UK Parliament had already been recalled and had jurisdiction on such matters, this did not stop Margo MacDonald (SNP) from subsequently tabling a motion for a debate calling for the cessation of bombing in Afghanistan. The Scottish Parliament's developing interest in foreign affairs was also noticeable this quarter following the submission of proposals for the creation of two Cross-Party Groups, one on Cuba and one on Palestine. Both of these Cross-Party Groups have yet to be approved by the Standards Committee.

2.2 Parliamentary Firsts

As well as testing the limits of its jurisdiction, the Parliament also performed a number of 'firsts' this quarter. The most noticeable of these were the Parliament's unprecedented rejection of a committee's recommendations that a bill be defeated, and the successful passage of the first Committee Bill. Other 'firsts' include an MSP seeking judicial review over alleged biased Executive assistance in the amendments process, and the first party list resignation and replacement.

On 19 September 2001, the Parliament considered the Rural Development Committee's Stage 1 Report on the Protection of Wild Mammals (Scotland) Bill – the 'fox-hunting' bill. Prior to this the Committee had agreed (six to five) that the general principles of the Bill should not be agreed to because it was unworkable. However, in a vote on the general principles (Stage 1) the Parliament voted against the recommendations of the Committee by 84 to 34 votes with one abstention. The decision of the Parliament over-rides that of the Committee and so the legislation has now returned to the Rural Development Committee for Stage 2 amendments.

Following the parliamentary vote Trisha Marwick (SNP) raised a point of order on whether it was logical to return a Bill to a Committee for amendment when that Committee had previously agreed that the Bill could not be amended.³⁷ Although this point raised an interesting dilemma for the Parliamentary Bureau, the Bill has been returned to the Rural Development Committee for Stage 2 amendments.

Aside from the Rural Development Committee, the Bill faces further hurdles to its progress after Ben Wallace (Conservative MSP) applied to the Court of Session in Edinburgh for judicial review over alleged bias in the Executive's provision of assistance to the Bill's sponsors in the wording of amendments.³⁸

Another controversy concerning the Protection of Wild Mammals (Scotland) Bill is the comparatively slow legislative progress it has made since it was formally introduced on 1 March 2000. During the parliamentary debate on the general principles, Mike Watson (Labour MSP and main sponsor of the Bill), argued that no other bill had taken longer than 107 days while his bill had taken 409 days and had yet to get past Stage 1 of the legislative process.³⁹ It appears that the Parliamentary Bureau is giving precedence to the committees' timetabling of Executive Bills over Members' Bills. Of those Bills

³⁷ Tricia Marwick, *Protection of Wild Mammals (Scotland) Bill: Stage 1 debate*, 19 September 2001, http://www.scottish.parliament.uk/official_report/session-01/sor0919-01.htm

³⁸ 'Legal Hurdle to Hunting Bill', *BBC News Online*, http://news.bbc.co.uk/hi/english/uk/scotland/newsid_1620000/1620705.stm

³⁹ Mike Watson, *Protection of Wild Mammals (Scotland) Bill: Stage 1 debate*, 19 September 2001, http://www.scottish.parliament.uk/official_report/session-01/sor0919-01.htm

introduced in the current session, all of the Executive's Bills are being considered ahead of the Members' Bills. That said, the first Committee Bill, Protection from Abuse (Scotland) Bill, was passed by the Parliament on 4 October 2001, just four months after its introduction on 4 June 2001.

Finally, on 10 August 2001, Conservative Nick Johnston became the first MSP to create a vacancy in a Parliament regional list. Resigning on grounds of ill health, he has been replaced by Murdo Fraser who was the next candidate on the Conservative list for Mid Scotland and Fife.⁴⁰

2.3 Theory and Practice of the Consultative Steering Group Principles

From the outset, the Scottish Parliament was designed to be different from Westminster. Four founding principles (power-sharing, accountability, openness and participation, and equal opportunities) were recommended by the Consultative Steering Group to underpin procedures and these were endorsed by the new Parliament. However, to what extent has practice matched the theory of these guiding principles? Investigating how well the practice has matched the theory, MORI Scotland presented results from a series of MSP self-completion questionnaires and qualitative interviews to the Procedures Committee on 23 October 2001.⁴¹

Based on the 52 (40 per cent) self-completion questionnaires that were returned MORI found that, 58 per cent of MSPs believe that the openness and participation principle is working well; 50 per cent believe that the accountability principle is working well; 37 per cent believe that the equal opportunities principle is working well; and that 33 per cent believe that the power-sharing principle is working well.⁴²

More detailed exploration of the power-sharing principle revealed that the key strength of the Parliament is felt to be the committee system, especially reports on the Executive and inquiries into issues raised by the Parliament. However, members reported that the unique power of committees to introduce legislation was working less successfully in practice than had been expected. In particular the opposition members were found to be critical of the degree of the Executive's power over the Parliamentary Bureau and its capacity to set agendas. Such findings add support to the preliminary exploration above that

⁴⁰ 'MSP resignation creates regional vacancy in Mid-Scotland and Fife', *Parliamentary News Release*, 056/2001, 10 August 2001, http://www.scottish.parliament.uk/whats_happening/news-01/pa01-056.htm and, 'Murdo Fraser formally returned as a new regional MSP for Mid-Scotland and Fife', *Parliamentary News Release*, 057/2001, 14 August 2001, http://www.scottish.parliament.uk/whats_happening/news-01/pa01-057.htm

⁴¹ For further details of the MORI Scotland findings see, *Meeting 9: Consultative Steering Group Principles*, Scottish Parliament Procedures Committee, 23 October 2001, http://www.scottish.parliament.uk/official_report/cttee/proced-01/pr01-0902.htm#Col897

⁴² *ibid.*

the timetabling and consideration of Executive Bills supersedes that of Members' Bills.

Meanwhile, more detailed exploration of the accountability principle revealed that while the debate of committee reports has been working well, there are concerns about the quality, depth and thoroughness of ministers' responses to questions, and concerns over the utility of general debates, the budget process and votes of no confidence.

In terms of the principle of openness and participation, MORI Scotland found that members were generally satisfied with the public's ability to influence and gain access to debates, but were less satisfied with the adequacy of consultation and opportunities to participate in debates. Finally, more detailed exploration of the equal opportunities principle revealed concerns that more had not been done to connect with excluded groups such as ethnic minorities and those with disabilities.

MORI's findings suggest a mixed picture in which some of the expectations of the Consultative Steering Group have been met and some not. However, what is clear is that the high expectations of a 'new kind of politics' at the outset have not been realised in practice. In particular, the findings suggest that the Scottish Parliament does not have the degree of power-sharing and accountability vis-à-vis the Executive that theory suggests it might.

These findings are interesting given that Westminster has been monitoring procedures of the Scottish Parliament for modernisation ideas. During September, Lord Williams of Mostyn, Leader of the House of Lords, and Robin Cook MP, Leader of the House of Commons, visited the Parliament to learn more about the working practices of the Parliament.

2.4 Committee Reports and Inquiries (1 August 2001 – 31 October 2001)⁴³

Petition PE327 by Blairingone and Saline Action Group – call for written evidence, 29 August 2001, Transport and Environment Committee

The Community Care and Health Bill – open call for evidence, 18 September 2001, Health and Community Care Committee

Report on Stage 1 of the Police and Fire Services (Finance) (Scotland) Bill, 21 September 2001, Local Government Committee

Inquiry into Language Development in Scotland – invitation to submit evidence, 24 September 2001, Education, Culture and Sport Committee

Inquiry into Scottish Ballet – invitation to submit evidence, 24 September 2001, Education, Culture and Sport Committee

⁴³ Excludes all reports on subordinate legislation.

Inquiry into Governance and the Future of the European Union: What Role for Scotland? – call for evidence, 26 September 2001, European Committee

Report on Scrutiny of European Documents: covering 26 January 2000 to 12 December 2000, 26 September 2001, European Committee

Report on Scrutiny of European Documents: covering 16 January 2001 to 19 June 2001, 26 September 2001, European Committee

Annual Report of the Education, Culture and Sport Committee for the Parliamentary Year 12 May 2000 to 11 May 2001, 2 October 2001, Education, Culture and Sport Committee

Annual Report of the Enterprise and Lifelong Learning Committee for the Parliamentary Year 12 May 2000 to 11 May 2001, 2 October 2001, Enterprise and Lifelong Learning Committee

Annual Report of the Justice 2 Committee for the Parliamentary Year 12 May 2000 to 11 May 2001, 2 October 2001, Justice 2 Committee

Annual Report of the Rural Development Committee for the Parliamentary Year 12 May 2000 to 11 May 2001, 2 October 2001, Rural Development Committee

Annual Report of the Social Justice Committee for the Parliamentary Year 12 May 2000 to 11 May 2001, 2 October 2001, Social Justice Committee

Annual Report of the Standards Committee for the Parliamentary Year 12 May 2000 to 11 May 2001, 2 October 2001, Standards Committee

Annual Report of the Transport and Environment Committee for the Parliamentary Year 12 May 2000 to 11 May 2001, 2 October 2001, Transport and Environment Committee

Annual Report of the Audit Committee for the Parliamentary Year 12 May 2000 to 11 May 2001, 3 October 2001, Audit Committee

Annual Report of the Equal Opportunities Committee for the Parliamentary Year 12 May 2000 to 11 May 2001, 3 October 2001, Equal Opportunities Committee

Annual Report of the Finance Committee for the Parliamentary Year 12 May 2000 to 11 May 2001, 3 October 2001, Finance Committee

Annual Report of the Health and Community Care Committee for the Parliamentary Year 12 May 2000 to 11 May 2001, 3 October 2001, Health and Community Care Committee

Annual Report of the Justice 1 Committee for the Parliamentary Year 12 May 2000 to 11 May 2001, 3 October 2001, Justice 1 Committee

Annual Report of the Local Government Committee for the Parliamentary Year 12 May 2000 to 11 May 2001, 3 October 2001, Local Government Committee

Annual Report of the Procedures Committee for the Parliamentary Year 12 May 2000 to 11 May 2001, 3 October 2001, Procedures Committee

Report on the proposed Common Position with regard to the proposal for a Directive of the European Parliament and of the Council establishing a general framework for informing and consulting employees in the European Community, 3 October 2001, European Committee

Report on Hepatitis C, 3 October 2001, Health and Community Care Committee

Consultation on the Water Industry (Scotland) Bill, 3 October 2001, Transport and Environment Committee

Annual Report of the European Committee for the Parliamentary Year 12 May 2000 to 11 May 2001, 4 October 2001, European Committee

Annual Report of the Public Petitions Committee for the Parliamentary Year 12 May 2000 to 11 May 2001, 4 October 2001, Public Petitions Committee

Annual Report of the Subordinate Legislation Committee for the Parliamentary Year 12 May 2000 to 11 May 2001, 4 October 2001, Subordinate Legislation Committee

Inquiry into Scottish Ballet, 5 October 2001, Education, Culture and Sport Committee

Report on Complaints Concerning a Meeting of the Rural Development Committee on 1 May 2001, 8 October 2001, Standards Committee

The School Education (Amendment) (Scotland) Bill – call for evidence, 12 October 2001, Education, Culture and Sport Committee

Aquaculture Inquiry – call for evidence, 12 October 2001, Transport and Environment Committee

Invitation to Submit Evidence on Scottish Borders Education Inquiry, 18 October 2001, Education, Culture and Sport Committee

Report on Conference, 22 October 2001, Subordinate Legislation Committee

Report on the Inquiry into the SHEFC Review of Teaching and Research Funding, 23 October 2001, Enterprise and Lifelong Learning Committee

Inquiry into Legal Profession – announcement of remit, 25 October 2001, Justice 1 Committee

Protection of Wild Mammals (Scotland) Bill – call for supplementary evidence, 31 October 2001, Rural Development Committee

Report on Police and Fire Services (Finance) (Scotland) Bill Stage 2 Amendments Delegated Powers Scrutiny, 31 October 2001, Subordinate Legislation Committee

2.5 Parliamentary Bills (1 August 2001 – 31 October 2001)⁴⁴

Executive Bills in Progress (latest stage reached):

1. Community Care and Health (Scotland) Bill (Stage 1)
 2. Freedom of Information (Scotland) Bill (Stage 1)
 3. Fur Farming (Prohibition) (Scotland) Bill (Stage 1)
 4. Police and Fire Services (Finance) (Scotland) Bill (Stage 2)
 5. School Education (Amendment) (Scotland) Bill (Stage 1)
 6. Scottish Local Government (Elections) Bill (Stage 1)
 7. Sexual Offences (Procedures and Evidence) (Scotland) Bill (Stage 1)
- Water Industry (Scotland) Bill (Stage 1)

Committee Bills in Progress:

Protection from Abuse (Scotland) Bill (Passed 4 October, awaiting Royal Assent)

Members' Bills in Progress:

Protection of Wild Mammals (Scotland) Bill (Stage 2)
Public Appointments (Parliamentary Approval) (Scotland) Bill (Introduced)

Executive Bills Passed:

Erskine Bridge Tolls Bill: Passed on 6 September 2001, Royal Assent on 13 September 2001

International Criminal Court (Scotland) Bill: Passed on 13 September 2001, Royal Assent on 24 September 2001

Proposals for Members' Bills

In the last quarter there have been two proposals by Members for Bills. On 29th August 2001, Mike Russell proposed a Bill to establish the principle of equal validity for Gaelic and English usage in Scotland. On 4th September, Bruce Crawford proposed a Bill on littering requirements and enforcement

⁴⁴ Latest parliamentary stage recorded.

powers of local authorities and occupiers and owners of land. Both proposals have received enough supporting signatories to be introduced to Parliament. Kenny Gibson's proposal for a Bill regulating smoking in enclosed public premises serving food (see August 2001 report) has subsequently received enough supporting signatories to be introduced to Parliament.

2.6 Cross Party Groups

The number of Cross-Party Groups that have been approved by the Standards Committee did not grow in the last quarter. There are currently 42 Cross-Party Groups.

3 The Media

Philip Schlesinger

One issue repeatedly on the Scottish media agenda and now once again in focus concerns regional coverage by ITV. When originally set up, ITV was constructed as a federal system, drawing on regional production centres throughout the UK. In recent years, ITV ownership has become highly concentrated. South of the border, the TV franchises are now owned by Carlton and Granada. In Scotland, the largest player is SMG (formerly the Scottish Media Group), which owns both Scottish Television and Grampian Television, as well as key holdings in radio and the press. SMG companies reach over 90% of the Scottish ITV audience. The rest is served by Border Television - which also broadcasts in the far north of England - and operates under Granada's umbrella.

In late autumn 2000, the regulatory body for commercial television, the ITC (Independent Television Commission) held two public hearings in Scotland on the question of regionality. Relatively little public dissatisfaction was expressed with the present state of affairs. The most vociferous voice was that of the Kirk, seeking to defend the continuing role of religious programming in the Grampian region.

There can be little doubt that regionality is in retreat as ITV heads towards further concentration and the much mooted industry ideal of a single company for Channel 3. Some senior ITV managers now believe that a slimmed-down version of regionality will be redefined simply as news and current affairs provision that is distinctive to the regions. Inside the ITC, it is recognised that further concentration is inevitable and that the regulator should attempt to manage the consequences rather than be completely outpaced by them.

In Scotland, both the press and politicians have been swift to identify the potential impact both on Scottish content and production capacity. The Mail on Sunday reported plans to 'axe Scottish ITV shows', suggesting that Scottish Television's output would be cut by up to 50 per cent and that Grampian Television would also suffer significant reductions.⁴⁵ Critics argued that such plans would infringe the 1990 Broadcasting Act which requires each of the 16 ITV franchisees to give a 'sufficient amount of time' to regional programmes and local news.

At Westminster, the Conservative Shadow Scottish Secretary, Jacqui Lait, MP, and at the Scottish Parliament, Mike Russell, MSP, the SNP's culture and broadcasting spokesman, each expressed concern. In Scotland's North-East, the Nationalist MSP Richard Lochhead said that 'companies that are driven by profit and nothing else must not be allowed to attack cultural diversity and regional identity throughout Scotland'.⁴⁶ He was supported by North-east

⁴⁵ Fidelma Cook, 'ITV plan to "Sabotage" Scots TV', *The Scottish Mail on Sunday*, 14 October 2001, pp.1,5.

⁴⁶ Quoted in Williamson 2001.

Conservative MSP Alex Johnstone, who said he would be campaigning in the Scottish Parliament to safeguard Grampian's distinctive output.

Tim Luckhurst, a former BBC Scotland and Scotsman journalist, noted that broadcasting remains a reserved power and that the Scottish Parliament and Executive could therefore have no effective say in policy made in London. He also argued that if ITV reduced its regional commitments, this could have a knock-on effect on BBC provision.⁴⁷

Faced with this deluge of criticism, SMG firmly denied that their regional programmes were going to be slashed. The company, however, had on 9 October offered all its 1700 staff voluntary redundancy in a cost-cutting move following a major fall in profits⁴⁸ and insiders have said that many staff are anxious about their prospects which are presently being discussed in meetings with managers inside the company.

In a speech in Edinburgh on 17 October, Sir Robin Biggam, the ITC's chairman, swept aside the critics' fears and said that the government should introduce interim legislation to give the ITC sufficient flexibility to address the imbalance in commercial broadcasting.⁴⁹ Sir Robin drew attention to the collapse in advertising revenues and the consequent problems for ITV as a public service programme provider (not least when competing with a relatively well funded BBC). He argued that the delay in the government's communications legislation was failing to address the need to rethink media ownership - thinly disguised code for facilitating the formation of a single ITV.

The UK government is evidently intending to get to grips with the regulation of cross-media ownership next year and as part of its preparation for a new communications bill has given the industry some time to lobby further. The government has the tricky task of balancing a commitment to pluralism and diversity with allowing further concentration of ownership. It will face heavy pressure not only from Granada and Carlton but also from Rupert Murdoch's media interests.⁵⁰

It has long been recognised that further concentration in ITV would affect programming in the nations and regions. 'With this in mind,' said the ITC's Chairman, the regulator was calling for 'a charter for the nations and regions which would reduce unreasonable constraints on business planning but would put in its place arrangements that can guarantee the contribution of a strong regional presence on our screens, based on significant resources in the

⁴⁷ Tim Luckhurst, 'We can bring back the death penalty...but we can't save Scottish TV from the axe'. *The Scottish Mail on Sunday*, 14 October 2001, p.26.

⁴⁸ Ashling O'Connor, 'SMG offers all its staff option of redundancy', *The Financial Times*, 10 October 2001, p.24.

⁴⁹ Sir Robert Biggam, 'ITC Chairman calls for fast legislation', ITC Press Release, 17 October 2001, http://www.itc.org.uk/news/news_releases/.

⁵⁰ Nicholas Watt and John Cassy, 'Jowell consults on media ownership', *The Guardian*, 23 October 2001, p.15.

regions'.⁵¹ ITC insiders explained that this meant that the regional mission might be refocused from a dominant concern with a specific range of broadcast content to requiring that regionally based production companies were better supported by commissions. In a contracting television market, though, the longer-term viability of this strategy might be questioned.

Anxious Scottish interests have been quick to stake out their positions. Steve MacIntyre, Chief Executive of Scottish Screen, the national moving image agency, has insisted 'We have to hold on to the notion of regional diversity whatever the ownership structure of ITV. The importance of Scottish programmes from Scottish companies cannot be overstated both industrial and cultural reasons.'

At present, however, it is unclear just to what extent the UK government's interest in safeguarding pluralism and diversity will extend to Scotland's distinctive television market.

Diversity of voice in Scotland's media also surfaced as an issue in two other contexts. Rather unexpectedly, the House of Commons Scottish Affairs Committee announced on 24 October that it was to begin a four-month investigation into the effects of devolution on television news coverage in January 2002. A mix of motives appears to be behind this move. Concern about Scottish news being too introverted (that is, ignoring Westminster and MPs at the expense of Holyrood at MSPs) figures large. But it could also serve a wider evidence-gathering role just as regionality comes into focus once more in the run-up to the Communications Bill.⁵²

But there was yet another twist in the tale of media ownership and diversity on 22 October. On *Newsnight Scotland* - a key offender in the parochiality stakes, say its MP detractors - Andrew Neil, publisher of Scotsman Publications (Holdings), suggested that in the adverse economic climate the Scotsman and Herald might merge. A few days later, the Scottish financial newspaper *Business a.m.* reported that Scotsman Publications had gone into the red for the first time since 1995, losing £1.3m in pre-tax profit in 2000.⁵³ This was in the context of broader losses of £13.5m for the media group as a whole.

Neil's modest proposal certainly had the defenders of the old east-west newspaper rivalry decrying the merger prospect.⁵⁴ If SMG came out the

⁵¹ Sir Robert Biggam, 'ITC Chairman calls for fast legislation', ITC Press Release, 17 October 2001, http://www.itc.org.uk/news/news_releases/.

⁵² Fraser Nelson, 'TV output under scrutiny', *The Scotsman*, 25 October 2001, p.7; William Tinning, 'SNP dismisses Westminster inquiry as "sour grapes"; MPs turn gaze to Scots news on TV', *The Herald*, 25 October 2001, p.7.

⁵³ James Shton, 'Secretive Barclay brothers' media empire suffers £13.5m in losses', *Business a.m.*, 31 October 2001, p.3.

⁵⁴ Arnold Kemp, 'Two into one won't go': A merger between the Scotsman and the Herald would be disastrous for both the papers and politics', *The Observer in Scotland*, 26 October 2001, p.33.

winner, or if the Barclay Brothers (owners of Scotsman Publications) did, this would be a matter of indifference for current UK legislation on media concentration. Scotland is a small media market from that point of view, and below the concentration radar. But it is also a small polity and the loss of a key opinion-shaping broadsheet would be of profound interest in Scotland to both the political and blethering classes.

4 Public Attitudes

John Curtice

4.1 Attitudes towards devolution

No significant poll data on attitudes towards devolution has been published during this quarter. However in October representatives of MORI gave a presentation to the Procedures Committee of qualitative research that had been commissioned by the Scottish Parliament Information Centre during the course of the summer.⁵⁵ The aim of this research was to tap public perceptions of the degree to which the parliament was upholding the four principles laid down for the parliament at its inception by the Consultative Steering Group that drew up the parliament's initial standing orders in 1998/9. These four principles are access and participation, accountability, equal opportunities, and power sharing.

The research appears to confirm claims that the parliament has so far made a limited impact on the public it seeks to serve. Unsurprisingly perhaps, few participants in MORI's focus groups demonstrated sufficient knowledge of the parliament to offer much comment on the degree to which it was meeting the four principles. Amongst the key points of MORI's presentation were:-

- Information about the parliament was not regarded as particularly easy to obtain, while people said that they were more likely to turn to their MP or councillor than their MSP if they needed help.
- The parliament's emphasis on equal opportunities was a source of disagreement amongst the focus group participants.
- The rows about the cost of building the parliament's new home have adversely coloured people's perceptions of the new institution
- People's expectations that the new parliament would exhibit a new consensual style of politics appear not to have been met
- The parliament is not perceived as different from or independent of Westminster as many people would like.

In short, the presentation appeared to confirm the evidence of some previous survey research, including the 2000 Scottish Social Attitudes survey, that the parliament has so far not made as much impact as people had been anticipating on its creation and that, in a climate of low turnout for all forms of election, there was little room for complacency about the likely level of turnout in the 2003 election.

Inevitably there was speculation that Henry McLeish's downfall at the beginning of November further eroded the public standing of the parliament if not support for the principle of devolution. One very early indication that it might have at least done so in the short term was a Progressive

⁵⁵ Scottish Parliament (2001a), *Scottish Parliament Procedures Committee Official Report, Meeting 9 2001* (Edinburgh: Scottish Parliament) Available at http://www.scottish.parliament.uk/official_report/cttee/proced-01/pr02-0902.htm.

Research/Sunday Mail poll conducted between 8 and 10 November (N=479) in which 58% of people said that they thought the McLeish affair had had a damaging effect on the Scottish Parliament while only 34% said that it had not.

4.2 Scottish Social Attitudes 2000

Further evidence of how the Scottish public reacted to the early experience of devolution will become available over the next few weeks as full results of the 2000 Scottish Social Attitudes survey are published. Inter alia, this survey confirms that over the first twelve months at least, the new parliament did not appear to fulfil people's initial expectations. Amongst the key findings are:

- Expectations of what the Scottish Parliament have fallen such that on most issues more people now think that the parliament will not make any difference than think it will produce an improvement
- Contrary to what they had anticipated prior to devolution, most people believe that Westminster has more influence in how Scotland is run than does the Scottish Parliament
- Support for the principle of devolution, however, remains undiminished. Indeed a majority of people say that they would like the parliament to have more powers.⁵⁶

4.3 Attitudes towards other issues

Taken from ICM/Scotsman 17 September 2001 (N=509):

For each of these three courses of action, please tell me whether you would support or oppose them.

	Support	Oppose
Military action by the USA in retaliation for the Attacks on the World Trade Centre and Pentagon	67	18
Military action by a coalition of countries, including Britain, in retaliation for the attacks on the World Trade Centre and Pentagon	71	18
Military, retaliatory action even if civilians are killed As a Result	40	45
A ground invasion of Afghanistan where terrorists		

⁵⁶ Further details can be found in Curtice, J. (2001), 'Hopes Dashed and Fears Assuaged? What the Public Makes of it So Far', in Alan Trench (ed), *The State and the Nations 2001: The Second Year of Devolution in the United Kingdom*, Thorverton, Exeter: Imprint Academic; Curtice, J. and Seyd, B. (2001), 'Is Devolution Strengthening or Weakening the UK?', in A. Park, J. Curtice, K. Thomson, L. Jarvis and C. Bromley (eds.), *British Social Attitudes, The 18th Report*, London: Sage. SurrIDGE, P. (2001), 'Society and Democracy: The New Scotland', in J. Curtice, D. McCrone, A. Park and L. Paterson (eds.), *New Scotland: New Society? Are Social and Political Ties Fragmenting?* Edinburgh: Polygon.

Like Osama Bin Laden are thought to be hiding out 63

26

How well do you think that Tony Blair has performed through the terrorist crisis?

Very well	39
Quite well	48
Not very well	6
Not at all well	3

Do you think that the Scottish Executive should have a say in whether or not BRITISH/SCOTTISH troops are used in any military, retaliatory action?

	British	Scottish
Yes	74	69
No	22	26

System Three/Herald. 25-31.10.01

% support for following options

Continued bombing and the use of ground troops	50
Stop bombing and use ground troops	18
Stop all military action	16
Bombing but not ground troops	6
None of these/Don't Know	10

As in the rest of UK, domestic politics, still largely quiescent after a summer general election, was largely put on hold in the immediate wake of the attacks on the World Trade Centre and the Pentagon on September 11th and the beginning of hostilities in Afghanistan. Indeed, Scots themselves proved to be largely as supportive of retaliatory action against Afghanistan as were those in the rest of the UK. A poll conducted by ICM for *The Scotsman* after September 11th but before the beginning of the Afghan War indicated widespread support for military action, albeit with reservations about the possibility of civilian casualties. In contrast to the Kosovo crisis, the SNP leadership were careful to avoid overt criticism of the government's actions and the views of the party's supporters appeared to differ little from those of Scots as a whole.

In view of past research that suggested support for increasing the powers of the Scottish Parliament, it was interesting to note that the same ICM poll found that nearly three-quarters of Scots believed that the Scottish Executive should have a say in whether British or Scottish troops were used in military action, a matter over which even members of the UK Cabinet have in practice apparently had little say. Whether Scots believe that that 'say' should be backed by any kind of co-decision power was not however explored by the poll.

4.4 Elections and Attitudes towards Parties

Holyrood Vote Intentions

System 3/Herald poll

	Vote	Con		Lab		LD		SNP		Others	
		1	2	1	2	1	2	1	2	1	2
23-29.8		11	11	43	36	11	14	28	32	6	9
27.9-3.10		11	9	43	36	11	15	29	29	6	12
25-31.10		8	7	45	37	12	15	30	29	5	12

The Other votes are divided as follows:

	Vote	SSP		Green	
		1	2	1	2
23-29.8	4	5	1	3	
27.9-3.10	4	7	1	2	
25-31.10	3	6	1	4	

Westminster Vote Intentions

System 3/Herald Poll

	Con	Lab	LD	SNP	Others
23-29.8	13	49	12	21	4
27.9-3.10	13	52	11	20	4
25-31.10	9	54	10	23	3

The principal Other votes are for the SSP, who scored, 3% in August and September and 2% in October.

Local Government by-elections

	Change in % vote since May 1999			
	Con	Lab	LD	SNP
30.8.01				
Dundee/Tay Bridges	-7.1	-22.9	+36.1	-6.8
6.9.01				
Inverclyde/No. 4	-1.6	+2.3	-15.7	+14.9
13.9.01				
Aberdeenshire/Strathbogie	+19.9	1	+7.2	-2.2
Dumfries & G/Solway Border	+22.3	+3.7	*	*
20.9.01				
Fife/Auchertool etc.	*	-32.9	+17.1	-1.2
Fife/Largo	+12.9	-7.0	-3.1	-2.8
Fife/St Andrew's Central	+11.5	-6.6	-0.8	-4.3
27.9.01				
Midlothian/Dalkeith/Woodburn	*	-22.3	+22.3	-4.7
11.10.01				
Edinburgh/Broughton	-3.9	-2.0	+4.7	-8.7

Sources: www.gwydir.demon.co.uk/byelections; www.aldc.org/Byelections

The opinion polls in this quarter continued to reflect the fall-out from the 2001 general election, with the Labour party well ahead of the SNP, even in respect of votes for a Scottish Parliament election, while the Liberal Democrats continued to vie with the Conservatives for the mantle of third place in Scottish politics. The war in Afghanistan if anything only appeared to reinforce the former pattern (much as it has done in MORI's British polls over the same period), with Labour recording a Westminster level of support of no less than 54% at the end of October, its highest Scottish rating since June 1997. How far that rating may have been damaged by the revelations surrounding the resignation of Henry McLeish must at the moment remain speculation, though a Scottish Opinion Ltd survey for *Scotland on Sunday* undertaken in the 48 hours after the resignation found that 17% of people said that there were less likely to vote Labour as a result while only 6% said they were more likely.

The continuing relative weakness of the SNP has also been reflected in an almost entirely consistent series of drops in support in local government by-elections during this quarter. Here it has been the Liberal Democrats who have captured the headlines with the capture of two seats from Labour (one in Dundee and one in Fife). But as the table reveals, a more careful comparison of all recent local by-elections results with the position in 1999 suggests the Liberal Democrat advance has been more patchy than the headlines have suggested, with the party tending to lose ground in places where it was already strong (costing the party a seat in Fife). Indeed on these figures despite their travails the Conservatives still cannot be ignored as an electoral force in Scotland.

The Scottish Socialist Party continues to demonstrate that it is now firmly the fifth party in Scottish politics, continuing to score around 6% in the all important second vote for the Scottish Parliament, sufficient to suggest it should be capable of adding to its current representation of one in the next parliament. The party averaged just over 3% of the vote in the four local by-elections it fought, none of them in particularly promising territory for the party.

While there may not have been any dramatic changes in the popularity of the parties during this quarter, there were two developments of import to the future conduct of elections in Scotland. The first of these was an announcement by the Scottish Secretary, Helen Liddell during Scottish questions on 6 November of a consultation on how many MSPs there should be in the Scottish Parliament.⁵⁷ Under the terms of the Scotland Act the number of MSPs is due to cut by at least twenty at the time of the 2007 election. This is because the Act provides for the elimination of Scotland's over-representation in the House of Commons on the occasion of the next review of parliamentary boundaries and at the same time requires that the boundaries of Scottish parliament constituencies should be co-terminous with those for Westminster.⁵⁸ Ms. Liddell's announcement implies a willingness to change at least one of these two provisions of the Scotland Act in response to claims that reducing the number of MSPs would endanger the ability of the Scottish Parliament to maintain its committee system.

Press speculation prior to Ms Liddell's announcement suggested that the government might respond to these claims by opting to remove or postpone the reduction in the number of Scottish MPs. Whatever the reaction might be to such a move in England, it would avoid asking Scottish MPs to amend the Scotland Act to save the jobs of MSPs while still insisting that some of their own careers be put at risk. However, Ms. Liddell indicated in a response to a question from the Shadow Scottish Secretary, Jacqui Lait, that she did not propose to change the rules under which the boundary commission is now operating or to postpone the publication of its report. (The commission began its latest review earlier this year, though no recommendations have yet been issued.) While her answer did not commit herself to implementing the commission's report, it thus appears most likely that the UK government is now willing to reconsider the requirement for Scottish and Westminster boundaries to be co-terminous.

The second development was the introduction of the Scottish Local Government (Elections) Bill introduced into parliament on 4 October.⁵⁹ This

⁵⁷ House of Commons (2001), *Hansard*, 6 November 2001: Cols. 91-94. (available at <http://www.publications.parliament.uk/pa/cm200102/cmhansrd/cm011106/debidx/11106-x.htm>)

⁵⁸ Curtice, J. (1998) 'Reinventing the Yo-Yo? A comment on the electoral provisions of the Scotland Bill', *Scottish Affairs*, no. 23, 41-53.

⁵⁹ Scottish Parliament (2001b), *Scottish Local Government (Elections) Bill* (Edinburgh: Stationery Office) (available at http://www.scottish.parliament.uk/parl_bus/legis.html#38)

affirmed and made provision for the Scottish Executive's decision that future Scottish local government elections should be held once every four years so that they coincide with ordinary Scottish parliament elections rather than once every three years. The bill also makes provision for the holding of experiments into alternative ways of conducting local ballots similar to those experiments that were first conducted in England in 2000. It is not clear however how such experiments can be conducted in local elections that are held at the same time as a Scottish parliament election without affecting the conduct of the latter in those areas where an experiment is due to be held. Geographical variation in the manner in which Scottish parliament elections may both be considered unacceptable and contrary to the rules for Scottish parliament elections which are laid down by Westminster. Certainly those local election experiments that had been planned for England in 2001 were abandoned when the UK government decided to hold the 2001 UK general election on the same day.

Equally notably the local elections bill makes no provision for any change to the electoral system for local government elections in Scotland, as recommended by the Kerley Committee. The Executive's response to that committee's recommendation that local elections should be held using the Single Transferable Vote is still awaited.

4.5 The Parties

The Leaders

System Three/Herald 23-29.8

Preference for UK Tory Leader

	All	Con voters
Clarke	38	43
Duncan Smith	20	40
Neither	23	8
DK	18	9

Scottish Leader Evaluations

ICM/Scotsman 17.9
(N=509)

Overall do you think Henry McLeish is doing a good job or a bad job for the people of Scotland?

	Sept.01	Feb.01	Dewar Sept.00
Good Job	54	43	46
Bad Job	18	19	36
Don't Know	28	37	18

Overall, do you think that John Swinney is doing a good job or a bad job for the people of Scotland?

	Sept. 01	Feb. 01	Salmond. June 99
Good Job	39	29	45
Bad Job	22	18	33
Don't Know	39	53	22

Scottish Opinion Ltd/Scotland on Sunday. 8-10.11
(N=612)

Do you think that Jack McConnell, the Minister for Education, would make a good First Minister for Scotland

Do you think Wendy Alexander, the Enterprise Minister, would make a good First Minister for Scotland

	McConnell	Alexander
Yes	50	22
No	16	39
Unsure	33	39

At the beginning of this quarter, the campaign for the leadership of the UK Conservative party was well under way, following the resignation of William Hague after his defeat in the June 2001 UK general election. At the end, the campaign had begun for the leadership of the Scottish Labour party, and thus the post of First Minister, following the resignation of Henry McLeish on 8 November. Ordinary public opinion looks likely to be reflected more faithfully by the outcome of the latter than it was by that of the former. As in the rest of the UK, Kenneth Clarke was the popular choice in Scotland to become the next Conservative leader. But as was also the case in the rest of the UK, his lead was much narrower amongst Conservative supporters than it was amongst the public as a whole, and it may be surmised that paid-up Conservative members in Scotland actually opted for Mr Duncan Smith as did their counterparts elsewhere.

Meanwhile an opinion poll undertaken by Scottish Opinion for *Scotland on Sunday* immediately after Mr McLeish's resignation clearly indicated that Jack McConnell was a far more popular choice to become Scotland's next First Minister than was Wendy Alexander, who was widely considered to be Mr McConnell's main rival for the post. In the event, within hours of the publication of the results of the poll Ms Alexander announced that after all she had decided not to stand for the position, leaving Mr McConnell simply to face a challenge from former Scottish Office junior minister, Malcolm Chisholm, standing on a left of centre platform.

The events surrounding Mr McLeish's resignation moved too fast for any scientific polling that assessed their impact on this reputation to be conducted prior to his resignation – though there seems little doubt from the evidence of phone-in polls and talk radio programmes that the damage was serious.

Certainly a Progressive Research/Sunday Mail poll conducted between 8 and 10 September immediately after Mr McLeish's resignation found that 72% thought that he was right to resign while only 20% were of the contrary view. But it should be recorded that for all the adverse press commentary that he received, Mr McLeish's popular ratings prior to his downfall were quite healthy. No less than 54% said in September that he was doing a good job, up eleven points on the position in February, while only 18% thought he was doing a bad job. Certainly, Mr McLeish's standing was higher in the eyes of ordinary Scots just before his downfall than was that of Donald Dewar just before his death, by which time much of Mr Dewar's previous high levels of popularity had begun to erode (for further details of Mr Dewar's popularity).⁶⁰

One of the SNP's key aims in the 2001 general election was to raise the profile of the party's new leader, John Swinney, about whom over half of voters had no clear view in February. It appears that it had only limited success. The proportion saying they did not know whether Mr Swinney was doing a good or a bad job was still as high as 39% in September, though it does appear that during the period between February and September the Scottish opposition leader persuaded more people that he was doing a good job than a bad one.

⁶⁰ Curtice, J. (2000), 'The People's Verdict: Public Attitudes to Devolution and the Union' in R. Hazell (ed.), *The State and the Nation: The First Year of Devolution in the United Kingdom*, Thoverton: Imprint Academic

5 UK intergovernmental relations

Alex Wright

5.1 Boundary Commission

Reports in the media indicate that the boundary review and its consequences for the Scottish Parliament remain divisive within the Labour Party. In August *The Times* reported that, senior figures in Blair's Government had told MSPs to stop 'badmouthing' their MP colleagues if they want to keep their present number of 129.⁶¹ Later reports suggested that UK Cabinet ministers felt that although the Commission will publish a preliminary report in the New Year, any prospect of the map changing before 2006 'is diminishing by the day' and that 'there is the growing prospect of the present number of Scottish MPs being left permanently unchanged'. It was also suggested that since this might provoke a backlash from English MPs, especially those in the North of England, their colleagues from Scotland might 'lend their support for a North of England Assembly'.⁶² If all this were true it calls into question not only impartiality of the boundary review process but also the *ad hoc* approach to constitutional matters. Helen Liddell's announcement on 6 November of a consultative exercise leaves the matter open for the moment.

5.2 The Sewel Convention

During the debate in the Scottish Parliament on the 'international situation', Henry McLeish advised MSPs that,

"The Executive has been in discussion with the UK Government about the anti-terrorism measures that are being developed for consideration by the UK Parliament. Final decisions have yet to be taken and we stay in close contact with the Home Office to ensure that those measures are applied consistently throughout the UK, either through legislation here or by means of the Sewel convention."⁶³

The Sewel convention is one of those devices favoured under the UK's unwritten (but 'codified') constitution. Essentially this is an informal mechanism which is supposed to prevent duplication of effort by the devolved legislatures (in Scotland and Northern Ireland) and the Westminster Parliament. If an issue arises - such as the desire for anti-terrorism legislation which technically falls under devolved power but which is also a pan-UK issue - then Westminster can be responsible for the legislative process (legally it is free to legislate on Scottish matters anyway if it so chooses).

The Sewel Convention is not without its critics, however. Writing in the *Scotsman*, Fraser Nelson observed,

"There is another way of tilting the power scales back towards London; a system that operates by stealth and is disguised by a technical, boring name. Who, after all, would suspect any menace in the innocent-

⁶¹ *The Times*, 31/08/01, p.1

⁶² *The Times*, 09/10/01, p.20.

⁶³ Scottish Parliament, Official Report, Thursday 25 October 2001

sounding Sewel Motions? These were included in the 1998 devolution settlement as a box of anti-devolutionary pills, never expected to be used. Each one gives Westminster power over a devolved area. They can be used to correct anomalies. One has been used, for example, to return unwanted powers over military police.

But Sewel is proving addictive. They have been used 26 times since the opening of the Scottish parliament. The first came with the Food Standards Agency's responsibility in Scotland. When Westminster lowered the age of homosexual consent, MSPs asked them to include Scotland in the legislation; saving themselves from taking sides in the controversial debate. It was not until April last year that Sewel Motions were christened (after Lord Sewel, their inventor). Most passed without debate. Westminster's plans for registering paedophiles were extended to Scotland, as were new race relations laws for police and council workers.

However, using Westminster as a good ideas catalogue has democratic drawbacks. House of Commons legislation has a habit of mutating several times over by the time it reaches the final draft. The result may not be what MSPs first expected. But as this change happens at Westminster there is no chance to trace this through the Holyrood committee system.

When the late Donald Dewar was steering devolution through the House of Commons, he had no such notion. "There is a possibility, in theory, of the United Kingdom Parliament legislating across devolved areas," he told the House of Commons in January 1998. "But it is not one we anticipate or expect."⁶⁴

Functionally there are good grounds for using the Sewel convention as legislatures at the territorial and UK levels already have a busy agenda. But as Fraser Nelson's article warns there is the fear that it could result in an absence of scrutiny or oversight of legislation by MSPs even though it may relate to matters which have been devolved to the Scottish Parliament.

The Lord Chancellor has published guidelines on how the convention should be applied together with advice on the involvement of the Scottish Executive and the Scottish Parliament. Cabinet note Devolution Guidance Note 13 stated under paragraphs 2.3 and 2.4:

"HMG has agreed with the Scottish Executive and the Northern Ireland Executive that each party will proceed in accordance with the convention that the UK Parliament would not normally legislate on devolved matters in Scotland or Northern Ireland without the consent of the Scottish Parliament or Northern Ireland Assembly, as the case may be.

...in practice, this means that HMG should not normally invite the House to enact legislation on devolved matters in Scotland or Northern Ireland unless:

⁶⁴ *The Scotsman*, 29 October 2001.

- it is for a non-devolved purpose and makes only incidental or consequential changes to Scots law or Northern Ireland law on devolved matters; or
- it is done with the consent of the Scottish Parliament or NI Assembly, as appropriate.

... The Government will not be concerned by the way in which the consent is given. The procedures of the Scottish Parliament and NI Assembly do not necessarily require a debate or a vote for consent. Consent relates to the UK Parliament legislating for a devolved purpose, not to the precise detail of each provision. The convention and the Memorandum of Understanding cover relations between UK Ministers on the one hand and Scottish or NI Ministers on the other.⁶⁵

Devolution guidance note 10 clarifies the role of the Scottish parliament when the convention is used:

“Although the convention refers to the Scottish Parliament, UK Departments will in practice deal with the Scottish Executive. Departments should approach the Executive to gain consent for legislation when appropriate. It will be for the Scottish Executive to indicate the view of the Scottish Parliament and to take whatever steps are appropriate to ascertain that view.”⁶⁶

The key passage is “It will be for the Scottish Executive to indicate the view of the Scottish Parliament. No consultation is required for other amendments tabled”, it will be interesting to see how this works over time. First it places the onus on the Executive to secure the view of the parliament and second there is no mechanism to ensure that this has actually occurred. The Sewel Convention superficially appears a good idea but as with so much else in the UK’s unwritten constitution it could lead to a dispute between Holyrood and Westminster at some point in the future.

⁶⁵ Devolution Guidance Note 13, Handling of Parliamentary Business in the House of Lords, the Lord Chancellor, 2000.

⁶⁶ Devolution guidance note 10: Post devolution primary legislation affecting Scotland. Privy Council Office, December 1999, DGN10 12/99 4

6 Relations with Europe

Alex Wright

6.1 The Scottish Executive, Scotland Week and the Flanders Declaration

Jim Wallace, Deputy First Minister, will be representing Scotland at two events at Liege during November. One media report suggested that this would result in a new territorial grouping but that remains to be seen.⁶⁷ At the time of writing it would seem that there will not be a new entity as such but that two distinct bodies are meeting on adjacent days because it is convenient to do so for those territories like Scotland which are members of both. One of these is the Conference of Presidents of Regions with Legislative power in Europe - which is connected to the Council of Europe - some of whose members are drawn from outside the EU. The other is the Constitutional Regions with Legislative Assemblies - this is the group which signed the Flanders Declaration in May 2001 (see below). Although their agendas will be distinct and we have yet to see the outcome, there are a number of conclusions to be drawn from this. First, it is clear that the regions and stateless nations are intent on having a voice in the run-up to the next Inter Governmental Conference in 2004. Second, the Belgian provinces see themselves as key players in the drive for greater territorial empowerment (Belgium currently holds the EU's presidency).

Scotland's role in the EU was the subject of debate during 'Scotland Week' in Brussels during early October.⁶⁸ In the event, although Scotland's relations with the EU were addressed in some detail during a series of seminars at Brussels there was little sign of any substantive shift in the Executive's approach to-date. McConnell's scepticism of aspects of European integration emerged. This related more to the concern that it 'meddled' too much in the affairs of ordinary citizens; the minister complained that "it was seen by many as remote, concerned with esoteric issues that have little relevance to their every day lives and often meddling in a way that seems designed simply to complicate life and increase bureaucracy". He continued, "Ordinary people from Lerwick to Palermo must not be made to feel the EU's aim is rigid uniformity throughout the length and breadth of the Union. Failure to heed this message will lead to distrust, alienation and ultimately to stubborn resistance to new ideas, no matter how sensible and beneficial the might be".⁶⁹

Up until now McConnell has been relatively up-beat about European integration but twelve months after he was first assigned the external portfolio he appears to have his doubts. One explanation is that by taking a critical line over the EU he aims to reassure the Foreign and Commonwealth Office that the Scottish Executive is not overly close to Brussels. Revealingly, in another media report he defended the signing of the Flanders declaration (see previous monitor report), on the grounds that by 'engaging with other "regions" of Europe it' stopped Brussels' power from becoming 'over-centralised', and

⁶⁷ *Sunday Herald* 23/09/01, p6

⁶⁸ *The Times*, 25/09/01, p. 16

⁶⁹ *The Times*, 25/09/01, p. 16

that such a scenario ‘was in the UK’s best interests’.⁷⁰ This suggests that the aim of the declaration was not to ensure that the member states infringed the competences of the constitutional regions with legislative assemblies but to prevent the EU from doing so.

Another explanation is the extent to which the EU has impacted on Scotland’s governance. It was claimed that the ‘European Commission had accused the Scottish Executive of 28 breaches of the law’.⁷¹ The report suggested that Scottish civil servants were using ‘confidential information to lobby behind the scenes’ in a bid to ‘evade European laws’. How far that occurs remains conjecture, although the report claimed the source was a leaked cabinet office memo. More revealing though is the image of a Scottish administration that in some instances is apparently failing to implement EU law as it is supposed to do under the Scotland Act. This and the fact that the EU is involved in all sorts of areas of policy which come under the devolved powers may have fuelled McConnell’s relative coolness towards the EU. As minister, not only would he be responsible for ensuring that EU law was implemented, he would also be aware of how little he can do to influence some aspects of EU policy, such as the ban on the export of beef products, which had such a detrimental effect to Scottish agriculture. Nonetheless, it is remarkable that Scotland signed the declaration given that it refers to the right of ‘constitutional regions’ to bring cases before the European Court of Justice (ECJ) if their prerogatives are threatened (the EU is yet to respond to the declaration at the time of writing).

When he addressed the annual conference of the European Movement in Perth on Saturday November 2nd, Henry McLeish, in one of his final speeches as First Minister, explained that Scotland’s membership of the Flanders Group was indicative of the Executive’s desire to influence the EU’s future governance. In an outline of the Executive’s EU strategy he said:

“From the outset the Executive has been keen to develop Scotland’s devolved identity in international circles. Our first act was to set up our own office in Brussels. Another important aspect of our engagement with Europe has been to seek to contribute in our own way to debates on the major issues facing the EU.

The bulk of our involvement so far has been channelled into three main initiatives all of which seek to define the important contribution which regional administrations can make to European governance:

The first of these was our joint contribution with CoSLA to the Commission’s Governance inquiry.

The second is our participation in a Flanders co-ordinated initiative which, as well as the host and ourselves, involved Nord Rhein Westphalia, Wallonia, Catalonia, Bavaria and Salzburg. Finally our

⁷⁰ *Sunday Herald* 23/09/01, p. 6

⁷¹ *Sunday Herald*, 07/10/01 p. 9

participation in the CLRAE Conference of Presidents last year in Barcelona and again this November in Liege.⁷²

Although he was unable to give a precise answer during 'questions' after his speech concerning the element of the declaration referring to the ECJ it appeared that all the other members of the group believed that this was an integral element in the declaration and Scotland had little option but to go along with it if it was to continue as a participant. That was subsequently affirmed by Jack McConnell during a discussion forum on Scotland and the EU with Peter Hain on November 5th in Edinburgh. McConnell explained that although Scotland was a signatory of the declaration he did not anticipate the Executive bringing cases on competence before the ECJ. For his part Mr Hain believed that the other signatories were pursuing the wrong track vis-à-vis the ECJ and that disputes over competence could best be resolved by politicians such as himself and McConnell rather than by the courts.⁷³

It remains to be seen what effect Mr McLeish's resignation will have on how Scotland's future relations with the EU. Despite his relatively short period in office the last twelve months have been quite dramatic as far as foreign affairs is concerned. As we have seen above, the Executive has increasingly involved itself in international territorial networks such as the Flanders group and it has called for more direct links with the EU. Although the next incumbent might be more cautious (especially if he or she is closely aligned to 'London' Labour), should Mr McConnell be chosen as first minister, we might expect more of the same, given his personal commitment to foreign affairs hitherto.

6.2 The European Committee of the Scottish Parliament

Peter Hain, the UK Minister for Europe appeared before the Parliament's European Committee on November 5th – he is the first Westminster minister to speak before a Scottish committee. In this instance the subject was on Governance of the EU and Scotland's role in Europe. This is an encouraging development as other UK ministers declined to appear before the committee (see earlier monitor reports). He subsequently confirmed he would be very content to appear before the committee in the future.⁷⁴

6.3 Committee of the Regions

The Executive has appointed 4 MSPs and 4 councillors to the Committee of the regions (Scotland has 4 representatives on the committee with 4 as alternates). This is something of a break with tradition as hitherto all the representatives have come from local government. When it was reported that Jack McConnell and Nicol Stephen would be alternate and full time representative respectively (the other MSPs being Hugh Henry as a full member and Irene McGuigan as the alternate) this provoked debate. First

⁷² Scottish Executive News Release: SE4276/200 03/11/2001

⁷³ A discussion on Scotland in Europe, hosted by Peter Hain and Jack McConnell, Edinburgh, November 5th

⁷⁴ A discussion on Scotland in Europe, hosted by Peter Hain and Jack McConnell, Edinburgh, November 5th

there has been criticism that MSPs should not be assigned to the Committee of the Regions as that might diminish the status of the parliament; MSPs would be sitting in the same forum as English councillors, for example. Second, it somewhat encroaches on what was formerly the preserve of Scottish Local Authorities; until now only councillors have sat on the committee. In so doing it may fuel the concern that following the re-establishment of the Scottish Parliament, the remit of local government might be eroded and this could apply especially to relations with the EU.

7 Relations with Local Government

Neil McGarvey

This quarter has seen no major developments in Executive/Parliament – local government relations. However, there has been a number of developments in related matters in which each institution has an interest. This quarter's report will thus flag up a number of policy areas, that as well as seeing developments this quarter, have seen interesting post-devolution developments in Scottish politics:

- Private Finance Initiative/Public Private Partnerships (PFI/PPP)
- Large Scale Voluntary Transfer (LSVT) of Council Housing
- Asylum Seekers
- Council Tax
- Local Elections

7.1 Private Finance Initiative/Public Private Partnerships (PFI/PPP)

In a keynote speech on August 20th First Minister Henry McLeish declared his commitment to the Blairite public sector modernisation programme⁷⁵. He emphasised the positive contribution of the private sector to public services, repeated the Blair message of pragmatism over ideology, arguing that “Even the best of the traditional public services could lose sight of their main goal – to serve the public – and often did”. PFI and PPP have been used in a wide variety of policy areas including prisons, transport, education and health-care⁷⁶.

In Scottish local government the largest schemes to date have been Glasgow's public-private partnership which involve the refurbishment of all of Glasgow's 32 secondary schools. Falkirk, East Renfrewshire and Stirling are among the councils that have signed contracts under the PPP. PFI/PPP is shaping up as one of the key political battlegrounds in Scottish politics. Local councillors and officials have been highly critical off the record arguing they have been presented with little choice by the Government⁷⁷.

⁷⁵ Andrew Pryde 'Scotland's First Minister endorses PPPs' *Public Finance* August 24-September 6th 2001; M.Ritchie and W.Tinning 'McLeish lays it on the line for public services' *Herald* 21 August 2001' *Herald* Leader 'A charming vagueness – First Minister is big on generalities, short on detail' 21st August 2001; H. MacDonnel 'McLeish ready for battle with unions over PPPs' *Scotsman* 21 August 2001.

⁷⁶ In this quarter more new projects were announced. See for example D.Montgomery 'Proposal for three schools to be built under £40m 'benchmark' PPP deal' *Herald* September 11th 2001 (See also www.scotland.gov.uk/pfi)

⁷⁷ See Isobel Lindsay, Editorial and other relevant articles on PFI/PPP www.scottishleftreview.com/html/Issue2/editorial.htm.

The policy sets up conflict between Scottish Labour and the trade unions, with Henry McLeish expressing more concern for the consumers rather than producers of public services. Unions in Scotland remain opposed to the Private Finance Initiative and Public-Private Partnerships (PFI/PPP) arguing that many of the schemes reflect short term solutions. Research produced for the GMB by the Labour Research Department showed the cost of the first 30 school PPPs is set to exceed £2bn in 'rental repayments' over the next 25-30 years, even though the capital value is only £800m.⁷⁸

7.2 Transport

In separate developments both of Scotland's major city councils made major announcements relating to transport. Glasgow City Council has joined forces with other European metropolitan councils to amend proposed EU legislation that expose the running of underground train services to competitive tender.⁷⁹ In Edinburgh the council launched a new 20 year blueprint for transport in the city which included 'congestion charging' – a requirement for motorists to pay for travelling across the city centre during peak periods. Other proposals include a new tram network, new rail lines and park-and-ride schemes.⁸⁰ Many of these schemes will be reliant on a significant injection of Scottish Executive funding.

7.3 Large Scale Voluntary Transfer of Council Housing

The issue of the transfer of council housing is one set to dominate local politics in Scotland over the coming year or so with tenant ballots on the horizon. Large Scale Voluntary Transfer (LSVT) is being 'sold' by the Scottish Executive as a way of councils paying off over £2bn of council housing debt allowing new housing associations the opportunity to improve living standards for tenants through refurbishment and rebuilding programmes.

The issue is most sensitive in Glasgow with the potential transfer of 82,000 homes to a new landlord. In this quarter an internal Glasgow City Council report has cast doubt on the new Glasgow Housing Association's ability to deliver on planned service improvements.⁸¹ A poll carried out by MORI

⁷⁸ 'Unison calls for public services shift' *Municipal Journal* 21 September 2001; M.Settle 'Union hits out at 'madness' of PPP schemes' *Herald* September 7th 2001

⁷⁹ J.MacCallum 'Glasgow Fights Euro threat to sell of tube' *Herald* September 5th 2001

⁸⁰ L.Robertson and R.Duncan 'Concern over Edinburgh's £3 road toll plan' *Herald* 5th September

⁸¹ See 'Doubts raised over transfer plan' *Municipal Journal* 5 October 2001; 'Transfer Ballot in the balance' *Municipal Journal* 21 September 2001; W.Tinning 'Tenants unmoved by housing plan' *Herald* September 11th 2001; J.MacCallum and T.Gordon 'Double blow for housing stock transfer' *Herald* 27th September 2001; J.MacCallum 'City officials cast doubt on housing revolution' *Herald* September 27th 2001; T.Gordon 'Big Bang could blow up in face of the executive' *Herald* September 27th 2001; T.Gordon 'Secrecy row over profits from housing transfer plan' *Herald* October 16th .

highlighted a significant increase in knowledge about the transfer – rising from 37% in November 2000 to 64% in September 2001. The poll showed 46% thought the new landlord would be ‘definitely better’ or ‘probably better’ with 46% saying they were unsure whether it would be better or worse.⁸² These figures highlight that any forthcoming referendum will be no formality for the Executive and council.

7.4 Asylum Seekers

The asylum seeker issue is one of those that highlight the complexity of multi-level governance today. It is an issue that can rise to the top of the agenda at all levels of government – from street level to supra-national institutions. Devolution has added to the complexity in Scotland. In this quarter Home Secretary David Blunkett announced a freeze on sending more asylum seeker’s to Glasgow’s Sighthill housing estate as he reviewed the settlement programme. This followed the murder of a Turkish Kurd and civil unrest in the area. Pressure has increased on other Scottish councils to share the burden of housing asylum seekers and several are reported to be in talks with the National Asylum Support Service. The Executive has responded by adding asylum issues to the social justice portfolio of Jackie Baillie. She pledged to work with the communities, local councils, health authorities and other bodies in a co-ordinated manner.⁸³

7.5 Council Tax

A study of Scotland’s council tax banding system has been commissioned by the Parliament’s local government committee. The current banding system is based on 1991 valuations of property. Appearing before the local government committee representatives of the Chartered Institute of Public Finance and Accountancy (CIPFA) argued that revaluation of property values was critical to the credibility of the council tax system. This was deemed necessary so that that the property values on which the council tax is based are regarded as realistic and fair.⁸⁴

7.6 Local Elections

The new Scottish Local Government (Elections) Bill introduced into the Parliament in this session includes provision for weekend voting and placing polling stations in supermarkets. It also includes proposals to increase local council terms from three to four years and allow councils to run pilot schemes to improve voter turnout and improve election administration.⁸⁵ It is possible

⁸² See <http://www.mori.com/polls/scotland.shtml>

⁸³ ‘Trouble shooter to ease relations’ *Municipal Journal* 17 August 2001, C.Watson ‘Visit to Sighthill stuns Swinney’ *Herald* 30th August 2001; D.Scott ‘Scotland gets own asylum minister’ *Scotsman* 10th September 2001

⁸⁴ ‘Scotland Set for Council Tax Study’ *Municipal Journal* 5 October 2001; D.Scott ‘Council Tax Payers could face soaring bills’ *Scotsman* 26th September 2001; D.Scott ‘Homeowners hit by tax review’ *Scotsman* 26th September 2001

⁸⁵ ‘Local elections set for revamp’ *Municipal Journal* 12 October 2001

that the new legislation could be used by councils to boost election turnout in 2003. However, it is what it did not include that grabbed most press attention. The issue of PR for local government elections remains sidelined in an Executive ministerial working group that does not seem to have progressed. As stated in previous reports it is likely that this issue will impose severe strains on the coalition in the months to come

8 Finance

David Bell

8.1 Care for the elderly

The decision by the Scottish Executive to proceed with the implementation of free personal care for the elderly has produced a wealth of interest for those interested in constitutional change. There are policy issues relating to the differences between the approaches adopted by Scotland and England for the provision of personal care. There are financial questions regarding the ability to fund free personal care in different parts of the UK. There are constitutional issues relating to the ability of the Department of Work and Pensions (DWP) to maintain a consistent set of social security regulations throughout the United Kingdom.

The background to free personal care goes back to the report of the Royal Commission on Long-Term Care, "With Respect to Old-Age: Long-Term Care, Rights and Responsibilities"⁸⁶ chaired by Lord Sutherland, which was laid before the UK Parliament in March 1999. The report recognised three components in the provision of care for the frail elderly: nursing care, personal care and hotel provision. It argued that nursing care should be free to the elderly in the same way that nursing care is free to NHS patients and further that

".. the distinction between the way care is offered for different diseases has no justification. The situation must be put right. The proposal to exempt personal care costs from means-testing would do that." (Section 6.34)

The report appeared just as the devolved institutions were being established. Health and community care is a devolved responsibility. The Executive therefore had to react and in October 2000 it argued

*" the Executive does not believe that making all personal care free would be the best use of resources, benefiting mainly 7200 people."*⁸⁷

The reference to the limited benefits of free personal care arise because of the rules set by DWP regarding charging for long-term care. Those with assets greater than £18,500 are expected to meet the full cost of their care (around £285 per week in residential homes and £346 per week in nursing homes). Those with less than £11,500 receive all of their services free, while those between £11,500 and £18,500 make a graduated contribution. The majority of residents in care homes are funded entirely by the state because their assets are less than £11,500. There are only a small number (around 7500) who meet care charges from their own resources. It is this relatively small group and their descendents that will mainly benefit from the provision of free personal care.

⁸⁶ <http://www.official-documents.co.uk/document/cm41/4192/4192.htm>

⁸⁷ <http://www.scotland.gov.uk/library3/health/lrcare.pdf>

However, this was not the end of the matter. In November 2000, the Health and Community Care Committee reported on the delivery of community care and argued once more in favour of free personal care:

*“It is persuaded however by the substantial body of evidence presented to it that there should be no charge for services assessed as being required to meet the personal care needs of an individual. It therefore recommends to the Executive that free personal care should be provided on the basis of assessed need.”*⁸⁸

On January 10th, faced with a possible rebellion by Liberal Democrats, the Executive caved in and accepted the principal of free personal care. By 14th February, Susan Deacon had set up the Care Development Group (CDG) whose remit included the bring forward of proposals “for the implementation of free personal care for all, along with an analysis of the costs and implications of so doing.” Policy had been reversed and the Executive was committed to the introduction of free personal care by April 2002.

The group reported⁸⁹ in September 2001 and the Executive quickly accepted all of its recommendations. These included a commitment to a weekly contribution of £145 to those requiring personal care in nursing and residential homes and £55 per week to the same group to meet the costs of nursing care. Accommodation charges are therefore the only part of care costs that will not be paid by the Executive. These still on average amount to £139 per week, and hence will still fairly rapidly deplete the capital assets of those on modest incomes.

However, the £145 per week contribution to free personal care contained one large assumption that the CDG were unable to resolve in the short time that they had to report to the Executive. This concerned Attendance Allowance (AA), which is payable usually at the rate of £55 per week to those in nursing home and residential homes. DWP rules state clearly that AA is a benefit that is mainly to defray the costs of personal care.

*Attendance Allowance is a benefit which is paid to people over 65 years of age who need help with personal care or who need supervision to avoid substantial danger to themselves or others.*⁹⁰

Crucially, the DWP rules also stipulate that Attendance Allowance, which is not means tested, will be withdrawn if any the individual receives any other form of assistance from the public purse for personal care. However, this rule only applies to care homes. One of the more arcane aspects of this policy is that those who receive personal care in their own homes will not have their Attendance Allowance withdrawn.

⁸⁸ http://www.scottish.parliament.uk/official_report/cttee/health-00/her00-16-02.htm#02

⁸⁹ <http://www.scotland.gov.uk/library3/health/cdgr-00.asp>

⁹⁰ <http://www.dss.gov.uk/publications/dss/2001/medical/dla.htm>

DWP is unwilling to make Scotland a special case, arguing that social security is a reserved issue and hence there is no obligation for DWP to modify its rules to accommodate Scottish Executive policy. Failure to agree this issue has increased the Executive's bill for free personal care by a further £20m. It is not entirely clear where this money will be found, given that Scotland's contingency reserve has largely been taken up by the cost overruns on the Scottish Parliament.

Meanwhile England has developed and introduced its own policy for free nursing care. The requirements of nursing home residents will be assessed and a weekly payment of £35, £70 or £110 will be made to the home to purchase NHS nursing services. Since this policy involve *nursing* and not *personal care*, DWP rules are not breached and hence Attendance Allowance will continue to be paid. Thus the gap in public contributions between Scotland and England to those in need of nursing care is somewhat less than the media have suggested. At the highest level of dependency, nursing home residents in England will receive £165 per week after Attendance Allowance is taken into account, compared with a maximum of £200 per week in Scotland. The average difference will be greater than £35 per week, but its value will depend on the implementation of the already heavily criticised assessment system for nursing care that the Department of Health is introducing in England.

This is one of the most significant policy divergences to emerge since the devolution settlement. If one thinks of devolution as a providing a structure for a policy laboratory, then this is one of the first real experiments. It will take some time for the results to be known. As yet it is not clear whether the Scottish or the English policy is likely to prove the more robust – financially, politically or practically.

8.2 Local authorities

In Scotland, the policy of free personal care will be delivered by local authorities. The extra resources that have been set aside will be allocated using the GAE(Grant Aided Expenditure) formula that is already used to distribute sources to local authorities. There may be funding difficulties in authorities that have a high proportion of self-funding care home residents whose personal care costs will have to be met by the local authority, but where social conditions are insufficiently adverse to generate an above average GAE settlement. The Executive is also insisting that these funds be ring-fenced in local authority budgets, cutting back on local authorities freedom of action. This is likely to lead to further complaints over Executive interference in local authority policy.

9 Devolution disputes & litigation

Barry Winetrobe

9.1 Validity of Act

The last quarterly report noted⁹¹ the legal action before the Judicial Committee of the Privy Council (JCPC), when three restricted patients at the State Hospital sought to have the key provision of the mental health legislation rushed through the Scottish Parliament in September 1999 declared invalid. The background is not repeated here, beyond noting that the legislation - *Mental Health (Public Safety and Appeals) (Scotland) Act 1999*⁹² - was not only enacted through the Parliament's Emergency Bill procedure, but was its very first Bill. The challenge was based on the Act's alleged incompatibility with ECHR rights, which if upheld, would make it invalid law under the Scotland Act. The Court of Session had rejected the challenge in June 2000, and the appeal was heard by the JCPC over three days in July this year.

The five law lords (including two Scottish judges) unanimously rejected the appeal on 15 October.⁹³ Thus the Executive and the Parliament has been spared the embarrassment of having their legislation overturned by the courts, with all the practical consequences that could have had for ministerial policy and for parliamentary processes.

That Ministers had been waiting for the outcome of this case can be seen from the speedy publication, a few days later, of the Executive's proposals for the review of mental health legislation, following a major review under a committee chaired by a former Scottish Secretary, Bruce Millan. The Executive's press release expressly referred to the "the decision of the Privy Council on Monday that legislation introduced after the Ruddle case in 1999 was ECHR-compliant"⁹⁴ as justification for maintaining the policy of the 1999 Act. The Executive policy document also made it clear that the court case, whatever its outcome would have an impact on future policy:⁹⁵

55. Before the Millan Committee completed its work, the Mental Health (Public Safety and Appeals) (Scotland) Act 1999 was introduced as emergency legislation. We made it clear at the time

⁹¹ See chapter 9.1 of the August 2001 report, pp38-39.

⁹² <http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/acts1999/19990001.htm>.

⁹³ The (advance copy) transcript of the case, *Anderson, Reid and Doherty v Scottish Ministers*, is available on the Judicial Committee judgments website: <http://www.privycouncil.org.uk/judicial-committee/2001/rtfjudgments/karlan~2.rtf>.

⁹⁴ "Radical overhaul of mental health laws unveiled", Executive press release SE4186/2001, 18.10.01: <http://www.scotland.gov.uk/pages/news/2001/10/SE4186.aspx>

⁹⁵ *Reviewing mental health law*, October 2001, chapter 7 (extracts): <http://www.scotland.gov.uk/library3/health/rhml-00.asp> (also <http://www.scotland.gov.uk/library3/health/rhml.pdf>).

that we would review the emergency legislation, in the light of the Millan and MacLean reports...

62. Since the Millan Committee reported, an appeal has been heard by the Judicial Committee of the Privy Council, concerning whether the provisions of section 1 of the 1999 Act are compatible with the European Convention on Human Rights. Until the outcome of this case has been fully considered, it would be premature to put forward firm proposals on how the issues addressed by section 1 of the 1999 Act should be dealt with in the new Act....

65. In the light of the Privy Council's judgment, we will consider how best to make provisions in the new Act which will balance the rights of patients with the legitimate interests of the community to protection.

MSPs and senior Parliamentary officials will also be relieved that the Parliament's legislative process, set out in the devolution legislation and in Standing Orders, has survived its first direct judicial challenge. The previous major case on the powers of the Parliament, that concerning Mike Watson's proposed anti-hunting Member's Bill,⁹⁶ had suggested that, at least in terms of internal, institutional powers, the Parliament was very much a creature of statute, and could only operate strictly within the limits of its statutory powers. If the courts had taken a similarly interventionist approach to the direct exercise of the Parliament's legislative competence, the effect on the overall Scottish devolution scheme could have been profound and destabilising. A reading of the JCPC's opinions suggests that it has taken a broader, more flexible approach to the reviewability of Scottish devolved legislation.

Taking the judgments at face value, the judges appeared to be content, even impressed, with the Parliament's Emergency Bill procedures. Parliamentary insiders were less sanguine about the operation of these procedures, contained in *Rule 9.21* of Standing Orders; they were not, for example, used a few months later for the expedited enactment of the *Census (Amendment) (Scotland) Bill*, and were not called upon until the Bill in September this year to rectify the administrative blunder over the Erskine Bridge tolls. Given the complexity of the statutory definition of 'legislative competence', especially as regards Convention rights or EU law compatibility, it would be difficult for the Parliament itself to examine such matters fully during the truncated legislative processes envisaged for Emergency Bills.

Of more general significance was the approach of the law lords to the interpretation of the statutory provisions being challenged. Faced with a relatively novel situation of being asked to strike down an Act of a domestic parliament (the rather unique precedent of Stormont notwithstanding), the law lords could have decided to tackle the (deliberate?) ambiguities in the status of Acts of the Scottish Parliament. Are they a particular form of primary legislation, which should be subject only to strict but narrow *vires* scrutiny? Or are they truly a special form of UK delegated legislation, reviewable on

⁹⁶ *Whaley v Lord Watson of Invergowrie* 2000 SLT 475 (Court of Session); also available on the Scottish Courts Service website: <http://www.scotcourts.gov.uk/index1.htm>

potentially wider public law grounds, such as natural justice, fairness or proportionality. The answer to these questions would clearly have a symbolic as well as practical importance for the structure of Scottish devolution.

The JCPC's approach appeared implicitly to be tending towards the former. While recognising that Acts of the Scottish Parliament had to meet the statutory tests of 'legislative competence, as set out in the Scotland Act, the judges did not, at least overtly, go out of their way to define such legislation as a subordinate species. Nevertheless, they did examine the provisions under attack very closely, in terms of their compatibility with European Convention rights. The judiciary are becoming more familiar with this sort of 'constitutional' review of legislation, in relation to EU law and ECHR rights.

In addition, the judges emphasised that the Scotland Act's web of safeguards designed to minimise the possibility of the passage of invalid legislation by the Parliament – such as the certificates of legislative competence, and the Law Officers' and Secretary of State's pre-assent right of challenge – did not oust any independent judicial review. As Lord Hope said, in respect of the certificates of competence, "important though these two safeguards may be in practice to the work of the Scottish Parliament, they are no more than statements of opinion which do not bind the judiciary."

So while the decision of the Privy Council may not have been as momentous as it could have been had the statutory provision been declared invalid, it may be that such a defining moment for devolution, its *Factortame* (to use the EU supremacy analogy⁹⁷), has merely been put off to another day.

9.2 Further challenge to Hunting Bill

Another legal challenge has been launched to the Member's Bill banning hunting. Pro-hunting supporters sought a judicial review in the Court of Session on 26 October, and it was reported that the action has been allowed to proceed. The challenge is against the Scottish Executive, which is alleged to have provided legal and other assistance to Mike Watson, the initiator of the Bill, but not to opponents of the Bill, contrary to ministers' stated policy of neutrality over the sensitive issue.⁹⁸

⁹⁷ The series of *Factortame* cases a decade, concerning the legality of UK fishing legislation under EU law, became famous in the media and in some political circles because they were thought to have decided, after nearly two decades of EU membership, that European law was supreme and overrode even Acts of the UK Parliament, thus toppling the cherished notion of parliamentary sovereignty.

⁹⁸ "Wallace launches legal challenge to anti hunting bill: 'healthcare not hunting' should be focus of Executive" *Scottish Conservative party press release*, 26.10.01: <http://www.scottishtories.org.uk/pressrelease.asp?ID=1567>; "Moves to block anti-hunt bill", *Scotsman*, 27.10.01: http://www.thescotsman.co.uk/text_only.cfm?id=119227

This is similar to the previous unsuccessful challenge in late 1999-early 2000, based on assistance given to Watson from anti-hunting groups (*Whaley v Lord Watson*), and, even if also unsuccessful, the action itself could well serve to hold up the Bill's already protracted and acrimonious legislative process. If only on this basis, it is a reminder of how the Parliament, unlike Westminster, is so susceptible to judicial interference in its legislative and other work.

10 Political Parties

James Mitchell

Little in the way of party political activity was anticipated at the start of the last quarter. In the event, changes in the leaderships of the (Scottish) Labour and (British) Conservative parties have brought the internal politics of these parties to the fore. At the same time, the events of September 11 overshadowed the annual conferences of both the Scottish National Party (SNP) and the Liberal Democrats. In each case, key internal debates – on defence and electoral reform in local government respectively – did not get the airing that would otherwise have happened. The most significant matter was the resignation of Henry McLeish as Scottish Labour leader and First Minister. The expected battle to replace him did not materialise but the politics following McLeish's resignation tell us much about internal Scottish Labour politics. The bitter internal politics of the Conservative Party were highlighted by two events: first, the resignation of one of its MSPs following acrimonious in-fighting; and second, the election of a new leader to replace William Hague.

10.1 Labour has its third Scottish leader

As discussed in the introduction, Henry McLeish resigned as First Minister on November 8. McLeish had not had a good year as Scottish Labour leader and he was incapable of preventing jostling for position within his cabinet amongst Labour Ministers. Throughout the year, there was speculation that any future leadership contest would be between Jack McConnell and Wendy Alexander. Within hours of McLeish's decision, both potential candidates sounded out support in the party. As is believed to have happened in the contest for First Minister a year ago, McConnell had strong support amongst backbench Labour MSPs. In the event he secured the nomination of 33 of Labour's 55 MSPs.⁹⁹ None of his Cabinet colleagues nominated him though four junior Ministers were amongst those nominating him. Wendy Alexander sounded out support but concluded that she could not win and announced on Sunday 10 November that she would not run. However, she had already won the support of a number of colleagues including three fellow Cabinet Ministers – Angus MacKay (Finance and Local Government), Jackie Baillie (Social Justice) and Sarah Boyack (Transport and Planning).

By close of nominations - 5.00pm Monday, 12 November - only Jack McConnell had received sufficient nominations to stand. Malcolm Chisholm, Deputy Minister for Health and Community Care, had announced his intention to seek to nomination but failed to secure sufficient nominations. John

⁹⁹ The 33 were: Scott Barrie, Rhona Brankin; Bill Butler, Cathie Craigie, Patricia Ferguson, Rhoda Grant, Iain Gray, Hugh Henry, John Home Robertson, Janis Hughes, Gordon Jackson, Sylvia Jackson, Cathy Jamieson, Andy Kerr, Marily Livingstone, Frank McAveety, Kate MacLea, Michael McMahon, Maureen MaMillan, Des McNulty, Kenneth Maacintosh, Paul Martin, Bristow Muldoon, Mary Mulligan, Elaine Murray, Irene Oldfather, Peter Peacock, Cathy Peattie, Richard Simpson, Elaine Thomson, Lord Mike Watson, Karen Whitefield, Allan Wilson.

McAllion, Labour MSP for Dundee East, made clear his desire to stand as a left-wing candidate but could not secure nominations. McAllion has become a likeable but fairly ineffective left-winger, the nearest equivalent to Dennis Skinner, the House of Commons' 'Beast of Bolsover' though without Skinner's expertise in Parliamentary procedures. McConnell and his wife, Bridget faced 70 journalists the following day to admit that he had had an affair seven years before. The next day the tabloids named the woman as a former Scottish Labour Party press officer and subsequently the *Record* reported that Labour MPs had been approached by McConnell to pay the salary of his 'lover'.¹⁰⁰ Any hope that he had that a public statement would end the matter appears at this stage (November 15) not to be working. As we go to press we await the decision on how McConnell will be formally adopted as Scottish Labour leader. The Liberal Democrats have asked for a meeting with McConnell and are suggesting that they will push for electoral reform for local government. However, as Jim Wallace recently told the *Herald* that he would not take his party into coalition with the SNP,¹⁰¹ his negotiating position is very weak.

10.2 Conservative leadership contest

The Scottish Conservative group of MSPs has been deeply divided from the outset. Tensions within the group surfaced during the quarter when Nick Johnston, List MSP for Mid Scotland and Fife resigned from the Parliament and attacked his erstwhile colleagues. Criticisms of David McLetchie during the Summer suggested that his position as leader of the Scottish Tory group was precarious. The chairman of the Scottish Conservative Candidates' Association accused McLetchie of a 'back stairs stitch-up' in August following a decision on the rules governing candidate selection for the 2003 Scottish elections. Sitting MSPs will not be challenged and other Tory hopefuls resent the bias in favour of incumbency.¹⁰² The *Scotsman* reported a 'groundswell within Scottish Tory ranks' determined to see McLetchie stand down as leader and, just after the Scottish Tories were meeting in conference, the *Sunday Mail* reported that he was 'doomed'.¹⁰³ After the Tory leadership race, McLetchie's future as Scottish leader was the most widely discussed matter on the fringes of the conference.¹⁰⁴ However, McLetchie's pursuit of First Minister McLeish over 'Officegate' towards the end of the quarter secured the Tory leader's position. Signs of a party lacking direction and leadership were all too evident in the run-up to the Scottish Tory conference when it transpired that Raymond Robertson, party chairman would not be attending as he had booked a holiday in the Caribbean.

The Tory leadership contest further highlighted differences in the party. As in England, Europe dominated discussions but a significant Scottish dimension emerged, something never known before in a Tory leadership contest. Ken Clarke attempted to 'play the English card', no doubt with English

¹⁰⁰ *Daily Record*, 15 November 2001.

¹⁰¹ *The Herald*, 2 November 2001.

¹⁰² *Sunday Herald*, 12 August 2001.

¹⁰³ *Scotsman*, 1 September 2001; *Sunday Mail*, 2 September 2001.

¹⁰⁴ *The Courier*, 3 September 2001.

Conservative party members in mind, by calling for only English MPs at Westminster to vote on English affairs. Peter Duncan, Scotland's sole Tory MP, had already announced that he would refuse to vote on legislation only affecting England and Wales.¹⁰⁵ More significantly, Clarke had promised in his manifesto to end the 'budgetary unfairness' between England and Scotland, claiming that 'England deserves better'.¹⁰⁶ This had provoked Brian Monteith, MSP and Duncan Smith supporter, to warn that a victory for Clarke would lead to a Tory 'wipe-out' at the Scottish elections.¹⁰⁷ In an interview with the *Herald*, Clarke appeared unaware of his manifesto statement and was forced to retract the 'unfairness' comment when the *Herald* supplied him with a copy. He maintained that he would not touch the Barnett formula 'unless a needs assessment made the case for doing so'.¹⁰⁸ Nonetheless, an NFO/Systems Three poll showed a 43-40% lead for Clarke over Duncan Smith amongst Conservative voters rising to 38-20% amongst all voters.¹⁰⁹

Duncan Smith's victory did not result in McLetchie's demise as some commentators had suggested. The Edinburgh-born new leader appointed Jacqui Lait, MP for Beckenham as new Shadow Scottish Secretary and David Mitchell as the new Scottish party chairman. Mitchell had been a prominent Scottish Tory in the late 1970s and early 1980s. He also invited McLetchie to attend Shadow Cabinet meetings. Under William Hague, McLetchie had attended these meetings occasionally.

10.3 Resignation and MSPs standing down

During the last quarter, Nick Johnston MSP stood down to be replaced by Murdo Fraser. Johnston was on the left of the Conservative Party and Fraser is firmly on the right. Johnston sent a bitter resignation email to his party and accused McLetchie of being aloof and surrounding himself with 'cronies'.¹¹⁰ As Johnston was a List MSP his resignation did not involve a by-election. In addition, a number of sitting MSPs have announced their intention not to seek re-election at the Scottish elections in 2003. Amongst Conservatives, the most prominent is Murray Tosh, South of Scotland List MSP and convenor of the Procedures Committee. He announced that he wanted to concentrate on standing for local government in Ayrshire where the Tories have hopes of forming an administration. Tosh was known to be disillusioned by the infighting in the Tory group and is on the left of the party.¹¹¹ In addition, three other Conservative MSPs have announced their decision to stand down at the next elections: Phil Gallie, Ben Wallace and John Young. Dorothy Grace Elder, SNP List MSP for Glasgow, also announced her decision to stand down with the intention of concentrating on journalism and campaigning.¹¹² Despite

¹⁰⁵ *Evening News, Evening Times*, 21 August 2001.

¹⁰⁶ *The Herald*, 21 August 2001.

¹⁰⁷ *Evening News*, 23 August 2001.

¹⁰⁸ *The Herald*, 12 November 2001.

¹⁰⁹ *The Herald*, 1 September 2001.

¹¹⁰ *The Herald*, 11 August 2001.

¹¹¹ *The Scotsman*, 13 October 2001.

¹¹² *The Herald*, 15 November 2001.

warm words for his party colleague, John Swinney, SNP leader was probably relieved that this maverick or eccentric member, who had been in dispute with the party over her contribution to funding the party's team of assistants in the Parliament, was standing down.

10.4 Party conferences and September 11

The set piece debate at the SNP conference was to have been on continued membership of NATO. SNP policy on NATO membership has changed at various times over the years. In the early 1980s against the backdrop of unilateralist campaigning the SNP shifted its policy opposing membership of NATO. SNP leader John Swinney, a former Defence spokesman for the party, was believed to be behind moves to alter the policy. However, events in New York on September 11 inclined the leadership to avoid a debate on the subject. A major internal battle was thus avoided. Similarly, it had been expected that some Liberal Democrat activists might have used fringe meetings at that party's conference to have urged the Scottish leadership to push harder for electoral reform for local government. Again, the backdrop of a tense international situation resulted in this issue being pushed down the agenda in the minds of activists.

11 Public Policies

Barry Winetrobe

11.1 Devolution ... and diversity?

The quarter saw a number of prominent policy issues which highlighted the demarcation of power, both administrative and legislative, between Scotland and the UK under the devolution scheme. Four examples noted here are nuclear reactors; rail transport and the demise of Railtrack; asylum-seekers and refugees, and tobacco advertising.

11.2 Nuclear reactors

Suspensions that the Executive were prepared to accept new nuclear power stations to replace ageing reactors, as part of a UK-wide energy review announced by the prime Minister on 25 June, bubbled along during this period. An exchange at FMQs on 28 June between the First Minister and the SNP Leader had not produced much light as to the Executive's stance or the extent of its direct participation in the review, partly because of warnings from the Presiding Officer about proceedings straying into reserved matters.¹¹³

When it emerged some weeks later that Scottish interests would be represented on the Energy Policy Advisory Group by the junior Scotland Office minister, George Foulkes, the Executive was accused by the SNP and anti-nuclear campaigners of misleading the Parliament; of turning down the chance of direct participation in the review, and even of supporting new reactors.¹¹⁴ Foulkes cited the energy issue as a good example of cooperation between the Scottish and UK administrations under devolution.¹¹⁵ The differences between the parties and others in Scotland over this sensitive issue can be seen in the submissions made to the review.¹¹⁶

¹¹³ http://www.scottish.parliament.uk/official_report/session-01/sor0628-02.htm#Col2131

¹¹⁴ "Nuclear cover-up claim by SNP", *BBC News Online*, 22.8.01: http://news.bbc.co.uk/hi/english/uk/scotland/newsid_1504000/1504594.stm; "McLeish at centre of nuclear row", *Scotsman*, 8.9.01: http://www.thescotsman.co.uk/text_only.cfm?id=106039; "Holyrood's nuclear relations with London", *Scotsman*, 8.9.01: http://www.thescotsman.co.uk/text_only.cfm?id=106007; Executive backs new N-power stations", *Sunday Herald*, 9.9.01: <http://www.sundayherald.com/18429>

¹¹⁵ "A good example of this is the way I represent Scotland's interests in the current Energy Review. I do so because energy is principally a reserved area but I do it in very close consultation with both Ministers and officials of the Scottish Executive": "devolution partnership paying off: Foulkes", Scotland Office press release ss0180, 15.9.01: http://www.scottishsecretary.gov.uk/News_%202001/ss0180.htm

¹¹⁶ See generally the home page for the review (<http://www.cabinet-office.gov.uk/innovation/2001/energy/energyscope.shtml>), which contains links to a range of relevant material including minutes of meetings with Executive, Scotland Office and other Scottish interested parties. The Executive's initial submission is at <http://www.cabinet->

The issue may be causing strains within the Executive coalition. Remarks made by the Deputy First Minister, Jim Wallace, at his party's Scottish Conference on 27 October were interpreted in the media as a warning shot against new reactors.¹¹⁷ However, there were suggestions at the end of the quarter that the UK review may come out against new reactors, thus sparing the Executive too much further internal and external difficulty.¹¹⁸

11.3 Transport

The fallout from the collapse of Railtrack in early October has again highlighted the difficulties for integrated public policy development in the fuzzy boundary between devolved and reserved matters.¹¹⁹ Inevitably the SNP has taken the opportunity to call for greater devolved control over rail,¹²⁰ and the Executive has responded by claiming that the situation provides an opportunity for innovative rail policy within the scope of existing powers.¹²¹ The Railtrack crisis has tended to overshadow wider transport policy, such as the announcement of the latest tranche of investment in public transport

office.gov.uk/innovation/2001/energy/submissions/ScottishExecutive%20sub.pdf, and see its press release, "Scotland contributes to UK Energy Review", SE3094/2001, 13.9.01: <http://www.scotland.gov.uk/pages/news/2001/09/SE3094.aspx>. The Scotland Office's submission contains a succinct summary of the impact of devolution (at para 5): <http://www.cabinet-office.gov.uk/innovation/2001/energy/submissions/ScotlandOffice.pdf>. For the SNP view see its press release on 17 September (<http://www.snp.org/news/September01/1702.htm>), and for the Scottish Conservative parliamentary group submission, see <http://www.cabinet-office.gov.uk/innovation/2001/energy/submissions/SCOTCONS.pdf>.

¹¹⁷ "I cannot see how you can embark on a new generation of nuclear power, when we have still not solved the problem of how we deal with the waste from the existing nuclear stations." The speech is reproduced on the news section of the party website: <http://www.scotlibdems.org.uk/>

¹¹⁸ "Government may ditch nuclear energy option", *Sunday Herald*, 4.11.01: <http://www.sundayherald.com/19781>

¹¹⁹ Much of rail policy is reserved under Section E2 of schedule 5 of the Scotland Act.

¹²⁰ See the exchange between John Swinney and Henry McLeish during FMQs on 25 October (http://www.scottish.parliament.uk/official_report/session-01/sor1025-02.htm#Col3383) and the debate initiated by the SNP that same day (http://www.scottish.parliament.uk/official_report/session-01/sor1025-02.htm#Col3299).

¹²¹ "Scotland to grasp rail opportunities", SE press release SE4177/2001, 16.10.01, quoting extracts of a speech by Transport Minister, Sarah Boyack, to a London conference: http://www.scotland.gov.uk/pages/news/2001/10/p_SE4177.aspx

projects, amounting to £75m.¹²² This announcement demonstrated how party politics operates under devolution, with both main Opposition parties supporting the investment, but each putting their own characteristic slant on the story.¹²³

11.4 Asylum/refugees

The issue of asylum-seekers and refugees has been at the forefront of devolved politics throughout the quarter since the high-profile killing of an asylum-seeker at the beginning of August in the Sighthill area of Glasgow, and the fallout from the September 11 events in the USA. The murder sparked a huge bout of activity from central and local government in Scotland,¹²⁴ despite much media criticism of official inaction.¹²⁵ There followed a series of initiatives targeted on asylum-seekers or refugees (or, in some case, at least highlighted as being so), such as community integration,¹²⁶ English language assistance¹²⁷ and legal advice and assistance schemes.¹²⁸

¹²² “Biggest single investment for public transport”, SE press release SE4196/2001, 22/10/2001: <http://www.scotland.gov.uk/pages/news/2001/10/SE4196.aspx>

¹²³ “Public transport fund announcement ‘Scotland must have full control over all transport issues’”, SNP press release, 22.10.01: <http://www.snp.org/news/October01/2203.php>; “Tosh: where is the money to come from?”, Conservative party press release, 22.10.01: <http://www.scottishtories.org.uk/pressrelease.asp?ID=1553>.

¹²⁴ See, for example, “Ministers in asylum seekers pledge”, *BBC News Online*, 8.8.01: http://news.bbc.co.uk/hi/english/uk/scotland/newsid_1479000/1479595.stm;

“McLeish demands action on refugees”, *Scotsman*, 22.8.01: http://www.thescotsman.co.uk/text_only.cfm?id=101266

“Executive appoints asylum minister “ *BBC News Online*, 9.9.01: http://news.bbc.co.uk/hi/english/uk/scotland/newsid_1533000/1533969.stm

¹²⁵ See, for example “The shame of the silence on Sighthill, *Scotland on Sunday*, 19.8.01: http://www.scotlandonsunday.com/text_only.cfm?id=SS01030899; “McLeish attacked for asylum ‘inaction’”, *BBC News Online*, 19.8.01: http://news.bbc.co.uk/hi/english/uk/scotland/newsid_1499000/1499344.stm.

The Parliament was in recess during August.

¹²⁶ “Financial aid to integrate communities”, SE press release 4009/2001, 19.9.01: <http://www.scotland.gov.uk/pages/news/2001/09/SE4009.aspx>

¹²⁷ “English language funding for newcomers to Scotland”, SE press release 4024/2001, 20.9.01: http://www.scotland.gov.uk/pages/news/2001/09/p_SE4024.aspx

¹²⁸ “Easier access to legal help for asylum seekers”, SE press release 4158/2001, 11.10.01: <http://www.scotland.gov.uk/pages/news/2001/10/SE4158.aspx>

At the end of October, the Social Justice Minister, Jackie Baillie, announced, during a parliamentary debate on asylum seekers and refugees, the creation of a Scottish Refugee Integration Forum.¹²⁹ The Forum's remit would be to:

“consider all matters required to assist refugees to integrate into life in Scotland; to feed into the national refugee integration forum, based on experience in Scotland, ways in which the UK Government strategy that is set out in the document *Full and equal citizens* might be developed and improved over time; to collect and disseminate good practice from around the country; to play a key role in promoting positive images of refugees as members of our society; and to make recommendations, in partnership with the Scottish Executive and in consultation with the wider public and voluntary sector interests, on the action necessary to enable the successful integration of refugees in Scotland and to provide more accessible, co-ordinated and good quality services.”

The need to track UK-led developments in an area such as this was evident in her speech:

“As members will be aware, David Blunkett made a statement in the House of Commons on Monday. That statement represents an important step in the development of UK policy on asylum seekers and sets out a comprehensive package. The proposals have a number of implications for Scotland, which we are clarifying and pursuing as we continue to work closely with our counterparts in Whitehall to influence the shape of the white paper. I very much welcome the package of measures that the Home Secretary announced.....

I also welcome the progressive removal of the voucher system. Not only was the system stigmatising and degrading,^[130] the benefit was paid at a very low level. That has now been uprated, and I welcome the increase in cash from £10 to £14, which is what was previously paid. The smart cards will also provide for automated cash transactions. That will start to address the situations that we have heard about, in which no change was given to asylum seekers and they lost the benefit of their voucher. The card may also be used

¹²⁹ http://www.scottish.parliament.uk/official_report/session-01/sor1031-02.htm#Col3465, 31.10.01; “New Refugee Integration Forum”, SE press release 4257/2001, 31.10.01: http://www.scotland.gov.uk/pages/news/2001/10/p_SE4257.aspx. The Parliament had had a shorter debate on the Sighthill killing and its aftermath in a Member's Debate initiated by the local MSP on 20 September: http://www.scottish.parliament.uk/official_report/session-01/sor0920-02.htm#Col2769

¹³⁰ Apparently a Labour minister in a devolved administration is not restricted, in the way that the Commons Speaker is, in commenting on UK Labour Government policy.

more imaginatively in future, as a way of accessing other support. We will feed in members' views to Whitehall....

I am especially delighted that the Home Secretary has responded positively to representation from the Scottish Executive and others that immigration appeals should be heard in Scotland.

Overall, the Home Secretary has put together a robust package that strikes the right balance between treating asylum seekers with dignity and respect and speeding up the process.”

Not unnaturally, the SNP had highlighted the split in policy responsibilities between Edinburgh and London, and demanded devolved responsibility of various aspects of public policy relating to asylum and refugees.¹³¹

11.5 Tobacco advertising

The continued failure of London to legislate for a ban on tobacco advertising has led to a tug-of-war between the two Parliaments. The Scottish Parliament had passed a 'Sewell Motion' in January consenting to proposed Westminster legislation on the subject, but this Bill fell at the UK general election, and no new Bill was promised in the Queen's Speech. In June Nicola Sturgeon, the SNP's health spokesperson, had introduced a proposal for a Member's Bill "to control the advertising and promotion of tobacco products." She published a draft Bill for consultation in September,¹³² and on 6 November formally introduced her Bill, while still pressing for UK-wide legislation.¹³³

Following press reports that the Executive were becoming frustrated with the apparent lack of progress at UK level, and remarks by the Scottish Secretary, Helen Liddell, that she was 'relaxed' about Scottish legislation being brought forward in Edinburgh,¹³⁴ Sturgeon questioned the First Minister directly during FMQs on 4 October. McLeish said that "the Executive has never ruled out a

¹³¹ "SNP seeks devolved asylum powers", *BBC News Online*, 15.8.01: http://news.bbc.co.uk/1/hi/english/uk/scotland/newsid_1492000/1492491.stm.

This split was well-publicised also in the media: "Stuck with the system: Scotland is powerless to reform voucher system", *Herald*, 24.8.01

¹³² "Sturgeon publishes tobacco ad ban draft bill: '300 lives can be saved each year in Scotland'", SNP press release, 17.9.01: <http://www.snp.org/news/September01/1707.htm>

¹³³ *Tobacco Advertising and Promotion (Scotland) Bill*: http://www.scottish.parliament.uk/parl_bus/bills/b40s1.pdf; "Tobacco ad ban gets parliamentary green light - Bill passes first parliamentary hurdle", SNP press release, 6.11.01: <http://www.snp.org/news/November01/0601.php>

¹³⁴ "Anger at delay on smoking ads ban", *Scotsman*, 24.8.01: http://www.thescotsman.co.uk/text_only.cfm?id=101900; "Liddell backs Scots tobacco ban", *BBC News Online*, 30.9.01: http://news.bbc.co.uk/1/hi/english/uk/scotland/newsid_1571000/1571723.stm "SNP seek tobacco ads ban", *BBC News Online*, 1.10.01: http://news.bbc.co.uk/1/hi/english/uk/scotland/newsid_1573000/1573253.stm

Scotland-only ban but believes that a UK-wide ban would be more effective and enforceable. We are anxious to see a ban in place as soon as practicable and will continue to press the UK Government to move quickly in that area.”¹³⁵

11.6 Aims and values and PPP

On 20 August at Glasgow University, the First Minister delivered what was described as a keynote speech on the Executive’s aims and values.¹³⁶ Though a wide-ranging speech designed to demonstrate, in 1990s Blairite language, that “the positive changes being delivered for Scotland by the Executive are driven by core aims, beliefs and values”, what came across more prominently was the future of public services and McLeish’s apparent defence of PPP, in defiance of the views of the unions and many in his party.¹³⁷

11.7 Freedom of Information

The Executive finally introduced its *Freedom of Information (Scotland) Bill* on 28 September.¹³⁸ It is currently undergoing its Stage 1 legislative scrutiny in the Justice 1 Committee, and the Executive’s intention is that it will be enacted by spring 2002.

Justice Minister, Jim Wallace (Lib Dem), for whom FoI was a key policy pledge, said:

"This legislation will establish an effective, robust Freedom of Information regime, appropriate for a modern and open democracy. People should have a legal right of access to information held by public bodies and this Bill will deliver that, taking forward our commitment to greater openness and accountability in public life."

¹³⁵ http://www.scottish.parliament.uk/official_report/session-01/sor1004-02.htm#Col3163

¹³⁶ *Devolution and after: the longer view*, speech at Glasgow University, 20.8.01, reproduced in “First Minister outlines Executive aims and values”, SE press release 1927/2001: <http://www.scotland.gov.uk/news/2001/08/se1927.asp>

¹³⁷ “McLeish call to public services”, *BBC News Online*, 20.8.01: http://news.bbc.co.uk/hi/english/uk/scotland/newsid_1500000/1500460.stm; “McLeish ready for battle with unions over PPPs”, *Scotsman*, 21.8.01: http://www.thescotsman.co.uk/text_only.cfm?id=100784

¹³⁸ http://www.scottish.parliament.uk/parl_bus/bills/b36s1.pdf, and see the Explanatory Notes (http://www.scottish.parliament.uk/parl_bus/bills/b36s1en.pdf), Policy Memorandum (http://www.scottish.parliament.uk/parl_bus/bills/b36s1pm.pdf) and the SE press release (<http://www.scotland.gov.uk/pages/news/2001/09/SE4072.aspx>). A summary of responses to the consultation exercise on the earlier draft Bill was published by the Executive in October: http://www.scotland.gov.uk/library3/misc/FOI_Summary_of_Responses.pdf

However, it is likely that those who wish to see changes to strengthen the FoI regime will be active during the Bill's parliamentary passage. Scottish FoI campaigners claimed that improvements demanded during the consultation on the draft Bill had not been incorporated,¹³⁹ and the media have continued to highlight alleged loopholes in the Executive's FoI policy.¹⁴⁰

¹³⁹ "Scotland's Information Bill welcome - but improvements still needed", Campaign for Freedom of Information press release, 28.9.01: <http://www.cfoi.org.uk/scotfoibill280901pr.html>; "Information bill veto questioned", *Herald*, 31.10.01.

¹⁴⁰ "Revealed: the government's 27 excuses to hide the truth", *Sunday Herald*, 21.10.01: <http://www.sundayherald.com/19325>; "Secret Scotland risks court action", *Sunday Herald*, 28.10.01: <http://www.sundayherald.com/19694>