

NATIONS AND REGIONS: THE DYNAMICS OF DEVOLUTION

Monitoring programme: first draft quarterly report

November 1999

1. The devolved governments

- organisation and operation of the core executive
- Policy Units

Organisation and operation of the core executive

The Scottish Cabinet, the junior ministers, and the civil service departments all make up the Scottish Executive. Figure 1 sets out the structure of the Scottish Executive Departments alongside the previous Scottish Office departmental structure.

The Scottish First Minister, Donald Dewar, heads a team of 22 ministers and junior ministers, as follows:

Donald Dewar, First Minister of Scotland

Head of the Scottish Executive. Along with the Deputy First Minister, responsible for the development, implementation and presentation of Scottish Executive policies.

Jim Wallace (Lib Dem), Deputy First Minister and Justice

Along with the First Minister, responsible for the development, implementation and presentation of Scottish Executive policies. Responsible for Home Affairs, including civil law and criminal justice, criminal justice social work services, police, prisons and courts, fire and emergency planning, law reform, land reform policy and freedom of information.

Henry McLeish, Minister for Enterprise and Lifelong Learning

Responsible for the economy, business and industry, including Scottish Enterprise, Highlands and Islands Enterprise, tourism, trade and inward investment, further and higher education, the science base, lifelong learning, training and the New Deal.

Wendy Alexander, Minister for Communities

Responsible for Social Inclusion, local government and housing. Lead responsibility for Executive policy on equality issues and the voluntary sector.

Sam Galbraith, Minister for Children and Education

Responsible for pre-school and school education, children, culture and the arts, the built heritage, sport and lottery funding.

Sarah Boyack, Minister for Transport and the Environment

Responsible for transport including the development for integrated transport policies for rural areas, the environment, natural heritage, sustainable development, strategic environmental assessments and the land-use planning system.

Ross Finnie (Lib Dem), Minister for Rural Affairs

Responsible for policy in relation to rural development including agriculture, fisheries and forestry.

Jack McConnell, Minister for Finance

Responsible for the Scottish Budget, including Local Government Finance, European Structure Funds and for resource allocation and accounting. Assists the First Minister and Deputy First Minister on the development and co-ordination of Executive policy.

Susan Deacon, Minister for Health and Community Care

Responsible for health policy, the National Health Service in Scotland and community care.

Tom McCabe, Minister for Parliament

Responsible for Parliamentary Affairs and the management of Executive business in the Parliament. Labour Whip.

Rt Hon Lord Hardie QC, Lord Advocate

Responsible for legal advice to the Scottish Executive; prosecution in the Scottish criminal courts; and tribunals.

JUNIOR MINISTERS

Nicol Stephen (Lib Dem)	Deputy to the Minister for Enterprise and Lifelong Learning with particular responsibility for training, lifelong learning and the New Deal.
Iain Smith (Lib Dem)	Deputy to the Minister for Parliament with particular responsibility for the Parliamentary handling of the legislative programme. Liberal Democrat Whip.
Frank McAveety	Deputy to the Minister for Communities with particular responsibility for local government
Jackie Baillie	Deputy to the Minister for Communities with particular responsibility for social inclusion. Responsible for co-ordination of Executive policy on equality and the voluntary sector.
Alasdair Morrison	Deputy to the Minister for Enterprise and Lifelong Learning with particular responsibility for Highlands and Islands Enterprise; the University of the Highlands and Islands; Tourism; and Gaelic.
Angus Mackay	Deputy to the Minister for Justice with particular responsibility for land reform and co-ordination of Executive policy in relation to drugs
Peter Peacock	Deputy to the Minister for Children and Education with particular responsibility for schools, educational standards, children and childcare.
Rhona Brankin	Deputy to the Minister for Children and Education with particular responsibility for culture, the built heritage, architecture, the arts and sport.

Iain Gray	Deputy to the Minister for Health and Community Care with particular responsibility for community care spanning health and social work.
John Home Robertson	Deputy to the Minister for Rural Affairs with particular responsibility for fisheries.
Colin Boyd QC	Solicitor General. Assists the Lord Advocate with particular responsibility for prosecutions.

Since July, the Scottish Executive have hardly given the impression of being a force to be reckoned with, but at the same time, it is legitimate that they should be given time to get used to the new situation, and on another reading of the situation they have actually been very busy. They have set up a policy unit, have produced a Programme for Government based on the commitments made in the Partnership for Scotland coalition document, and have agreed concordats and a memorandum of understanding with the UK Government and the National Assembly for Wales about how the three administrations will work together.

Figure 1

The Scottish Office Departments	Scottish Executive Departments
Home Department	Justice Department
Department of Health	Health Department
Agriculture, Environment and Fisheries Dept	Rural Affairs Department
Development Department	Development Department
Education Department	Education Department
Business and Industry Department	Enterprise and Lifelong Learning Department
Finance Group	Finance
Corporate Services	Corporate Services
Executive Secretariat	Executive Secretariat

The Scottish Executive Policy Unit

The table below sets out the responsibilities of the individual members of the Policy Unit. If a member of the unit is the lead adviser in a particular area, that area is shown in **bold**. As shown in the fourth column, where a civil servant in the Unit has the policy lead, a special adviser has been nominated to provide the political input. In addition, the First Minister, Donald Dewar has his own special adviser responsible for media matters, David Whitton.

POLICY UNIT MEMBER	POLICY AREA	CROSS-CUTTER	SPECIAL ADVISER
Brian Fitzpatrick Head of Policy	Justice Whitehall/europe/ Constitution Enterprise Social inclusion	Drugs Social inclusion Knowledge economy	
Philip Rycroft Deputy Head	Modernising government Finance Europe Environment	Modernising government Science Sustainable development	CW BF DM

John McLaren Special Adviser	Finance Economy Enterprise Pfi	Knowledge economy Social inclusion	
Chris Winslow Special Adviser	Parliament Modernising government Transport Lifelong learning Education, in particular: - new community schools	Digital Scotland Social inclusion, in particular: - Community participation - Regeneration Knowledge economy	
Duncan MacLennan Special Adviser	Social inclusion Housing Local government and local government finance Planning Transport Environment	Social inclusion Sustainable development	
Kenneth Hogg	Health and Community Care Rural affairs Equality Voluntary	Public Health Rural Development Equal Opportunities	JR BF BF JR
Joanna Young	Children Pre-school and school education	Children	CW
John Rafferty Principal Special Adviser	Parliament Modernising Government Health		
Philip Chalmers	Arts, culture, sport		

Jim Wallace has appointed his own special adviser, Sam Ghibaldi – not in post presently.

All the advisers are moving to St. Andrew's House from the Parliament because (allegedly) they don't want to be hassled by backbench MSPs.

2. The assemblies

- committee structure and operating procedures
- the legislative process, including secondary legislation
- partnerships with external bodies
- democratic engagement/public involvement (e.g. civic forums)

Committee structure and operating procedures

There are 16 committees of the Scottish Parliament. From the outset, there has been a heavy commitment to ensuring that everyone understands the importance of these committees. In the absence of a second chamber the committees are expected to perform an important revising role for Scottish Executive legislation. However they have much wider powers than this, and it is important not to underestimate the influence that the members of the committees have. Their other powers include:

- scrutiny of the activity of the Scottish Executive
- conduct of inquiries into matters as required by the Parliament
- initiating legislation
- scrutiny of financial proposals and the administration of the Scottish Executive
- power to call witnesses

The committees are divided up into those that are mandatory (ie set out in the Scottish Parliament Standing Orders) and those that are not. The mandatory committees are:

- standards
- finance
- audit
- procedures
- European
- equal opportunities
- public petitions
- subordinate legislation

The non-mandatory subject committees are as follows:

- transport and environment
- health and community care
- justice and home affairs
- enterprise and lifelong learning
- rural affairs
- social inclusion, housing and the voluntary sector
- education, culture and sport
- local government

Some of the subject committees met over the summer recess to receive internal briefings and familiarise themselves with their remit, but the real work of the committees only began in September. Of the mandatory committees, the Standards Committee has attracted the most attention because of its inquiry into issues raised by *The Observer* newspaper's coverage of the Beattie Media story, but the other committees have been out of the spotlight.

Inquiries going on at the moment in committees include the following:

Health and Community Care -	the Arbutnott report into Resource Allocation in the NHS
Transport and Environment -	the planning rules that apply to mobile telecommunication masts
European -	what does the EU mean to you?
Social Inclusion, Housing and Voluntary Sector -	the impact of drugs misuse on social exclusion
Enterprise and Lifelong Learning -	local economic development
Local Government -	McIntosh Commission Review of Scottish Parliament and Scottish Local Government
Rural Affairs -	changing employment patterns in rural communities.

The legislative process, including subordinate legislation

The normal process is as follows:

- Stage 1 - consideration of its general principles, and a decision whether they are agreed to (by Parliamentary Committee and by the Parliament)
- Stage 2 - consideration of the details of the Bill (by Parliamentary Committee)
- Stage 3 - final consideration of it and a decision whether it should be passed or rejected (by the Parliament)

The bills which have so far been introduced into the Parliament are:

The Mental Health (Public Safety and Appeals) (Scotland) Act, 1999 - this was rushed through as an emergency measure following the release of Noel Ruddle from the State Hospital in Carstairs in August. It was the first piece of legislation passed by the Scottish Parliament (on 8 September 1999) and received the Royal Assent on 13 September 1999.

The Public Finance and Accountability (Scotland) Bill - presently being considered by the Audit and Finance committees (Stage 2)

The Abolition of Poidings and Warrant Sales Bill – just about to start its Stage 1 consideration by the Justice and Home Affairs Committee

The Abolition of Feudal Tenure etc. (Scotland) Bill – at Justice and Home Affairs Committee (Stage 1)

The Adults with Incapacity (Scotland) Bill – being considered (at Stage 1) by the Justice and Home Affairs Committee and the Health and Community Care Committee.

Secondary Legislation

Secondary legislation often deals with matters which are too detailed to be included in primary legislation but they can contain important policy issues. Individual pieces of Scottish subordinate legislation are to be known as Scottish statutory instruments. Procedure for considering Scottish statutory instruments is at present governed by the Standing Orders of the Parliament and by the Scotland Act, 1998 (Transitional and Transitory Provisions) (Statutory Instruments) Order 1999 (SI 1999/1096).

There are different procedures depending on what kind of statutory instrument is being dealt with, and the detail on this is set out in Chapter 10 of the Standing Orders. Generally an instrument is lodged with the Clerk's office at least three weeks before it is due to come into force. The Clerk then refers the instrument to the relevant lead committee, and to the Subordinate Legislation Committee for consideration. The instrument can also be referred, on a motion by the Parliamentary Bureau, to the Parliament.

The Subordinate Legislation Committee has to consider whether the Parliament's attention has to be drawn to an instrument, generally on the basis that the committee is concerned that the instrument might not be within the Parliament's powers. The Subordinate Legislation Committee does not consider the matter on substantive merits or policy grounds. It has to report its decision to the lead committee and the Parliament within 20 days of it being laid.

There are different procedures for consideration by the lead committee depending on the type of instrument it is (ie whether it is subject to annulment, or whether it can be made without Parliamentary approval, or whether it requires it).

Since the Parliament assumed its full powers, the Subordinate Legislation Committee has considered upwards of 120 Scottish statutory instruments. They have had to deal with very many on the issue of amnesic shellfish poisoning, as well as orders relating to animal feedstuffs from Belgium, spreadable fats, the wearing of uniforms by parking attendants, optical charges, and pharmaceutical services, to name a very few.

Democratic engagement/partnership/public involvement

The Scottish parliament and executive from the beginning have stressed that they intend that the delivery of public services and the character of Scottish governance should be distinct and will foreground Scotland's democratic traditions.

This has begun to be more than empty rhetoric with the announcement by the Scottish Parliament's Deputy Presiding Officer George Reid that up to £50,000 is available to the Parliamentary Committees to ensure 'partnership with the people' in their work, part of a package of social partnership proposals, including £300,000 of funding from Finance Minister Jack McConnell for the Scottish Civic Forum over a three year period. According to Reid, some 600 organisations have already registered interest in the Forum which he sees as a key gateway between the Executive, the Parliament and the People.

Reid's press release announced that 'Among mechanisms available to Committees are the appointment of expert panels and assistance to their reporters in acting as a focal point on specific issues; citizens juries and panels to provide representative

feedback; deliberative polling and consensus conferences; and inputs to wider forums such as a Youth Parliament and an Older People's Parliament'.

At more or less the same time the Parliament itself started to make good on its stated desire to be more open and public than Westminster. The first committee to meet outside Edinburgh convened in Inverness on October 20 1999. The 11-member Enterprise and Lifelong Learning committee met in the Town House to take evidence from a number of organisations as part of its inquiry into local economic development in Scotland. The committee received briefing from the Gaelic development organisation, *Comun na Gaidhlig* and the Gaelic College, *Sabhal Mor Ostaig* – the first time that evidence had been given to the Parliament in Gaelic. To date this is the only committee that has convened a meeting outside the capital.

There appears to be a developing trend for hearing evidence in committee from outside organisations, where this is part of an inquiry being conducted by the committee or to help them form their views on the principles of a bill which is before them. At least one committee has appointed an adviser to sit in with them during evidence sessions (in the Health Committee's consideration of the Arbuthnott review of resources allocation in the health service), and one committee has held a full meeting outside Edinburgh (the Enterprise Committee went to Inverness). Several of the committees are appointing individual members to be reporters on particular issues, following the European Parliament mode.

3. *The media*

- media reporting of the new institutions
- government/parliament media strategy and implementation

The creation of the Scottish Parliament was accompanied by much institutional invention. The Parliament's relations with the media was no exception to this. This report concentrates on that theme, with subsequent reports addressing the distinct issue of the Executive's media relations and the fraught matter of broadcasting and devolved news.

One little-noticed offshoot of the Consultative Steering Group was the Expert Panel on Media Issues, whose work was published in May 1999. The panel was essentially a forum for working out the diverse interests of the Scottish press and broadcasting, steered by Scottish Office civil servants. Its media representatives came from the press, radio and television, both national and local.

Two forces shaped the proposals that emerged. First, the broadcasters' wish to show television pictures and conduct interviews from as many locations in the parliamentary campus as they reasonably could. And secondly, the newspaper political correspondents' desire to gain maximum access to politicians for background information.

The panel opted for minimal rules for broadcast proceedings from the floor of the house. The television camera has taken the notional position of the spectator in the public gallery. This has resulted in more fluid camerawork than presently comes from Westminster and a greater informality of style, which meshes well with the lack of pomp on the Mound. The Scottish Parliament is now part of the televisual wallpaper and the new-style coverage has given it a more accessible and contemporary look than we're used to as viewers of proceedings in the House of Commons.

The Expert Panel also decided to recommend considerable access to MSPs by accredited journalists. The group formally rejected 'the development of a two-tier system where some journalists are favoured over others'. The politicians on the Mound have certainly been cheek to jowl with the political correspondents, and as noted later, have not enjoyed the best of starts, particularly in terms of press coverage.

Wide accreditation - by contrast with the Westminster model - has been established to ensure that journalists from the Scottish weekly press and specialist correspondents reporting the parliamentary committees have their legitimate place. It remains to be seen how much local news coverage will impact on MSPs' relations with their constituents. It is also too early to evaluate coverage of the complexities of pre-legislative scrutiny. However, both are likely to be important in defining Scotland's distinctive political culture.

The media issues panel was clear that broader accreditation should be restricted only to 'bona fide' reporters. Behind the firm exclusion of 'single-issue journalists operating as lobbyists' lay correspondents' and editors' concern that some public relations professionals would misrepresent themselves and that the lines between reporting and advocacy will be blurred, opening up accusations of 'sleaze' as at Westminster. The panel

therefore recommended that journalists covering the parliament should sign up to a media code of conduct asking them to observe the house's regulations and accepting that they couldn't work for any lobbyists. This caution proved to be prescient.

The media issues panel tried to protect the parliament's dignity. On Westminster lines, broadcasters have been required to handle any disturbances in the debating chamber discreetly. And although the so-called 'gallery surrogate' model marks a step forward from the Commons' suspicion of television, the cameras are supposed to stick to a fairly tight grammar of shots while members are speaking. Extracts of speeches aren't to be allowed in entertainment programmes nor in broadcast satire, whereas members' spoken words will have to be judiciously edited so as not to distort them.

As it has turned out, it wasn't television coverage that most affected public perceptions of the Parliament, but rather some scathing press coverage. It is widely accepted that in the period from the first Scottish general election on 6 May to the state opening on 1 July by the Queen, the Parliament had a pasting in the press. Members' obsessions with allowances, seating, demarcation disputes between list and constituency MSPs, and their proposal to take a long vacation all encountered hostile reporting. The state opening, with its popular carnival atmosphere and relatively low-key style, song, poetry and humour, was something of a counterweight to the relentless barrage of criticism. But serious damage was done.

Concern in the political establishment was signalled in early September when Sir David Steel, the Scottish Parliament's Presiding Officer, made a speech attacking misrepresentation of the new legislature's approach to controlling costs, members' holidays and members' receipt of a commemorative medallion. He denounced the 'bitch journalism' of the tabloid press, in particular of the Daily Record, Scotland's largest selling daily. Complaints referred by Sir David to the Press Complaints Commission were not upheld, and predictably, his strictures led to several papers accusing him of seeking to gag freedom of expression and cover up the legislature's failings. But there was also measured support to be found elsewhere in the media. However, as the Record counterattacked, Sir David found himself rather isolated. He became entangled in a political row about whether he was speaking for himself or on behalf of the Parliament as an institution.

The Parliament was also severely tested by the so-called 'Lobbygate' scandal, which hit the fledgling institution, shortly after the Steel debacle. On this occasion, the politicians, and Parliament as a corporate body, seem to have come out ahead.

At the heart of the row was the allegation, made in an Observer story, that a prominent firm of lobbyists, Beattie Media, could improperly influence ministers. Beattie employed Kevin Reid, son of the Secretary of State for Scotland, Dr John Reid, as a lobbyist. The company had previously employed Jack McConnell, Minister of Finance in the Scottish Executive, in a public relations capacity. It was the alleged relationship between Beattie Media and McConnell that occupied centre-stage, though other ministers faced various accusations of possible impropriety. Beattie Media employees had supposedly had access to McConnell's official diary through yet another

ex-employee working as his constituency secretary.

The issue came before the Scottish Parliament's Standards Committee. The convenor, Mike Rumbles, MSP, initially decided on a private discussion, a position that was quickly changed as the potential damage to the Parliament's reputation became clear, and as the committee decided to pursue a detailed inquiry. Not surprisingly, 'Lobbygate' became a major story, with much reporting and commentary on 'sleaze' and the need to avoid Westminster's failings. The Scotsman decided to launch a petition to the Court of Session to force the Standards Committee's hearings to be open. At this time of writing, the petition still lies before the court, although the Standards Committee, having conducted the bulk of its work in public, has now reported, exonerating all ministers named of any wrongdoing.

4. ***Public attitudes and identity***

- public attitudes towards the performance of the new institutions
- reports of any occasional polls (e.g. Herald/System 3, HTV/NOP, Beaufort Research etc)
- attitudes to devolution, expectations, demands for further reform (*Project 2*)
- interim outputs from Project 1: national and regional identity

5. Relations with Westminster and Whitehall: UK intergovernmental relations

- role/interventions by the Secretary of State. Concordats. Bilateral/multilateral machinery
- links between the devolved governments *inter se*

The basic principles governing relations between the UK government and the devolved governments, and intergovernmental relations between the devolved governments, are set out in a Memorandum of Understanding and a series of Concordats, published on 2 October 1999.

The following clauses outline the basic position:

'4. All [four] administrations are committed to the principle of good communication with each other, and especially where one administration's work may have some bearing upon the responsibilities of another administration. The primary aim is not to constrain the discretion of any administration but to allow administrations to make representations to each other in sufficient time for those representations to be fully considered.

5. Against this background, and in confidence where necessarythe administrations will seek:

- a. to alert each other as soon as practicable to relevant developments within their areas of responsibility, wherever possible prior to publication;
- b. to give appropriate consideration to the views of the other administrations; and
- c. where appropriate, to establish arrangements that allow for policies for which responsibility is shared to be drawn up and developed jointly between the administrations.'

This background is also supplemented by a 'concordat between the administrations' which provides an agreed framework for co-operation. It states in particular that:

'the administrations will work together to ensure the provision of coherent, reliable, consistent and timely UK-wide statistics. The concordat also sets out the basis on which statistical information is to be exchanged and used (including requirements for confidentiality), associated costs and expertise are to be shared, and professional standards maintained. Each administration will aim to provide any information that may be reasonably requested by another administration to enable it to carry out its responsibilities effectively, provided that (a) this is practicable, (b) it would not involve disproportionate cost, and (c) the information is available in reasonably accessible form. The emphasis will always be on exchanging information where this proves possible. Where any of these three provisos is not met, problems will be resolved on a case-by-case basis'

However, it is clear - and stressed in these documents - that, as clause 13 puts it:

'The United Kingdom Parliament retains authority to legislate on any issue, whether devolved or not. It is ultimately for Parliament to decide what use to make of that power. However, the UK Government will proceed in accordance with the convention that the UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature. The devolved administrations

will be responsible for seeking such agreement as may be required for this purpose on an approach from the UK Government’.

In other words, the sovereignty of the (UK) parliament is not in any way affected by the powers that have been devolved to the other parliaments.

The key institutional setting for intergovernmental relations is now the *Joint Ministerial Committee (JMC)* consisting of Ministers of the UK Government, Scottish Ministers, Members of the Cabinet of the National Assembly for Wales [and Ministers in the Northern Ireland Executive Committee]. Its terms of reference are:

- ‘a. to consider non-devolved matters which impinge on devolved responsibilities, and devolved matters which impinge on non-devolved responsibilities;
- b. where the UK Government and the devolved administrations so agree, to consider devolved matters if it is beneficial to discuss their respective treatment in the different parts of the United Kingdom;
- c. to keep the arrangements for liaison between the UK Government and the devolved administrations under review; and
- d. to consider disputes between the administrations’.

Since the creation of the Parliament and transfer of resources and competence to the new Executive, the role of the Secretary of State for Scotland has become a key issue, in particular his relationship with the First Minister. The first few months of the new system have seen some clear teething problems in this relationship. In both formal policy areas (for example the division of responsibilities – and credit – in dealing with a threatened shipyard closure in Govan) and in less formal reactions to political crises and events (such as the alleged ‘Lobbygate’ scandal involving the Secretary of State’s son) there has been some difference between the First Minister’s response and the Scottish Secretary’s response. It remains to be seen whether this lack of harmony will settle down, whether it is purely personal, or whether there is something inherently unstable in the arrangements. There is certainly some worry within the Executive that the position of Secretary of State is achieving so much prominence and that this will come to be seen as the main channel for communication between the Scottish system and the Westminster system – ie a move closer to the Welsh model.

6. *Relations with EU*

- direct links with the EU
- European issues on which devolved govts/assemblies made representations

Direct links with the EU

The formal understanding of the evolution of the Scottish Parliament and Executive's relation with the EU also lies in the concordats. Essentially, relations with the EU remain the responsibility of the UK government in London. However, the Scottish Executive will be involved 'as directly and fully as possible in decision making on EU matters which touch on devolved areas'. What this will mean in practice is indicated by the further announcement that decisions on ministerial attendance at Council of Ministers meetings (that is Scottish ministerial attendance) will be taken by Whitehall (the UK 'lead minister') on a case by case basis.

As far as the scrutinising of EU issues is concerned (for example Commission activities relating to devolved business), the Scottish Executive and Parliament is free to create procedures to develop adequate scrutiny and discussion. The Parliament has appointed a European committee whose brief is both to scrutinise EU documents and legislative proposals and to debate issues relevant to Europe that do not fall under the competence of any of the departmental subject committees.

In Brussels itself, the Scottish Executive has created an office - Scotland House - which incorporates the older Scotland Europa. The role of the office was described as follows in a press release of 9 February:

' the office will assist the Executive in supporting the European responsibilities of the Scottish Parliament. It will provide information to facilitate scrutiny of European legislation; it will assist visits to Brussels by parliamentary committees; it will help to raise awareness among European decision makers of Scottish issues and perspectives; it will ensure that the Scottish dimension is fed in early ... It will work to build Scottish links with other European regions and their member states' .

European issues on which devolved govts/assemblies made representations

In the four months since the Scottish Parliament and Executive became active no major European issues have emerged in a distinctive Scottish context. However, the impact of European questions and decisions on the working of the Scottish Executive and Parliament is obvious. Two cases can be used as examples:

- The first was brought about because, under devolution, the Scottish courts have been required to implement the European Convention on Human rights 15 months earlier than their counterparts in England and Wales. This led directly to a major crisis, when the Court of Session in Edinburgh upheld an appeal by a lawyer who argued that temporary sheriffs were not 'independent and impartial' (as required by article 6 of the convention) because their contracts are only for one year and they can be hired or fired by the Lord Advocate, not only a member of the Scottish executive but also head of the Scottish prosecution service.
- A still more recent case followed the revelation that IMF loans were being used to provide subsidies in South Korea for its shipbuilding industry to help it undercut European yards. The Executive is now under pressure to seek to lead an EU attempt to end unfair subsidies in world shipbuilding.

7. *Relations with local government*

- formal and informal machinery for liaising with local govt
- main issues and areas of tension

Report of the Commission on Local Government and the Scottish Parliament

On 2 July the Scottish Parliament debated the McIntosh Commission's report. The recommendations of the Commission were wide ranging covering relations with the Parliament and Ministers; electoral arrangements and electoral reform; the conduct of council business; and the role of community councils. All these elements have an influence on relationships between local government and the Scottish Parliament and Scottish Executive. Indeed the last recommendation of the Commission was:

"Our final recommendation is that all those to whom the recommendations are addressed view them as a whole: we have deliberately designed them as a package, whose elements are intended to work together and reinforce each other."

Wendy Alexander, Minister for Communities, gave the Scottish Executive's response to the McIntosh report during the debate on 2 July – which was in fact the first debate following the official opening of the Parliament. In that debate the Minister accepted the overwhelming majority of the recommendations and made reference to the establishment of a Community Leadership Forum, a Renewing Local Democracy Working Group [the Kerley Group], a Leadership Advisory Panel [the MacNish Group], Champions for Change, and a forthcoming consultation document [published September 1999].

Relations with the Parliament and Ministers

The Executive's response to the 6 recommendations in the McIntosh report which are directly about the relationship between local government and the Parliament and Ministers is not yet clear. The 6 recommendations were:

- 'The Parliament and the 32 councils should commit themselves to a joint agreement – which we call a Covenant – setting out the basis of their working relationship.
- Parliament and local government should set up a standing Joint Conference to be a place where parliamentarians and local government representatives may hold a dialogue on a basis of equality.
- A formal working agreement should be established between local government and the Scottish Ministers.
- Legislation should be introduced to provide councils with a statutory power of general competence.
- An independent inquiry into local government finance should be instituted immediately.
- The option of transfer to local government should always be considered in any review of other bodies delivering public services; and likewise where new services are developed, prior consideration should always be given to whether local government should be their vehicle, subject to consideration of efficiency and cost effectiveness.'

In respect to the Covenant and the Joint Conference the Minister has invited the Local Government Committee of the Parliament "to inform the process and lead the public debate". The Convener of the Committee has in turn invited COSLA to prepare a first draft of the Covenant for discussion. This draft will be drawn on COSLA's submissions to the McIntosh Commission.

A working agreement between local government and the Scottish Office was drawn up soon after the general election in 1997. COSLA is monitoring the implementation of this agreement.

A Community Leadership Forum has also been established bringing together Ministers and Leaders of all 32 councils to engage in discussion on "an equal footing on an agenda of shared concerns and a desire for excellence in serving local communities" [Wendy Alexander MSP, 25 October]. The first meeting was held on 9 and 10 September and the Forum is expected to meet twice-yearly.

The proposal to provide councils with a statutory power of general competence is currently one of the issues being addressed in a Scottish Executive consultation paper. The outcome of this consultation will be reported on in the next monitoring report.

The Executive rejected the recommendation for there to be an independent inquiry into local government finance. In support of this decision Jack McConnell, Minister of Finance has stated that:

"there was not in his view a proven link between the percentage of money raised locally and the question of accountability. The scope for changing the percentage of locally raised income was limited; the main options were by localising business rates, cutting the levels of RSG and placing the burden on the local taxpayers, or centralising local authority services such as education. He suggested that none of these options were acceptable to the Executive. As an alternative he suggested that it would be better to look at the existing arrangements in an effort to make them more equitable". [16 July].

In relation to the last comment the Executive has announced its intention to press ahead on the reviews of the distribution arrangements which were begun after reorganisation in 1996 need to be completed as soon as practicable. In addition COSLA has launched a review of the allowance given to indicators of deprivation and poverty within the distribution system, a review of the capital finance system, and the revaluation of business rates, to take effect from 1 April next year.

In addition the Executive and COSLA have agreed to look jointly at:

- The innovative pooling of funding streams between central Government, local government and other public bodies, to deliver savings through joined-up government and to look at new ways of drawing in private sector resources.
- Ways of promoting greater long-term stability in the financing of local government.
- Ways of improving financial management in both local and central government and the scope for both sides to exchange best practice; and

- An examination of whether Business Improvement Districts could promote closer working between councils and businesses in their areas.

As regards the final recommendation – the option of transfer to local government in any review of other bodies – there is nothing to report. However, whilst Ministers have confirmed that they have no plans to take any major functions away from local government, this option is still being considered in relation to Criminal Justice Social Work Services.

8. **Finance**

- allocation of finance from central government (Project 10)
- distribution of finance between devolved policy areas
- changes in funding priorities
- revenue from sources other than central government

9. Devolution disputes and litigation

- dispute resolution: role of political channels, and of political parties
- nature and incidence of litigation

Dispute resolution: role of political channels, and of political parties

The main political channel for dispute resolution, if and when it occurs, is the *Joint Ministerial Committee*. The Concordats announced that:

'The UK Government and the devolved administrations commit themselves, wherever possible, to conduct business through normal administrative channels, either at official or Ministerial level' but that 'Where a dispute cannot be resolved bilaterally or through the good offices of the relevant territorial Secretary of State the matter may formally be referred to the JMC Secretariat subject to the guidance on the Committee's remit in the agreement on the JMC. Where this appears likely, the JMC secretariat should be consulted at an early stage in order to ensure a consistent interpretation of the devolution settlements, and to provide advice on handling of any differences of view'

Nature and incidence of litigation

The only piece of litigation known about so far has been the action for judicial review taken against the Scottish Parliament by *The Scotsman* newspaper at the end of September. The newspaper was very concerned during the investigation of the Beattie Media affair that the meetings of the Standards Committee should not be in private because this was going against the ethos of the Parliament. The judge did not make a ruling but his words prompted the committee the next time it met to go into public session very quickly. *The Scotsman* is still pursuing its judicial review action, but at a recent hearing the Scottish Parliament's legal representatives indicated that the action would be defended on the basis that the newspaper does not have title to sue.

10. Political parties and elections

- changes in strategy and organisation of political parties Autonomy of local parties
- by-election and local election results
- polling data on support for different parties

By-election and local election results

Since 1 July 1999 there has been only one Council by-election in Scotland. There has also been a Westminster by-election in Hamilton South.

The Council by-election took place in the Elie, St Monans & Pittenweem ward of Fife Council, on 26 August and the result was as follows:

Conservative 332 (22.0%)
SNP 282 (18.7%)
Lib Dem 279 (18.5%)
Independent 214 (14.2%)
Independent 183 (12.1%)
Independent 164 (10.9%)
Labour 39 (2.6%)
Green 15 (1.0%)

Majority 50 Turnout 44.2%

The seat had been held by Scotland's longest serving councillor Jimmy Braid who last retained the ward on May 6 with over 50% of the vote. He sat as an independent.

The ward is located in the North-East Fife parliamentary constituency, arguably the Lib Dems' strongest seat in Scotland, and which Menzies Campbell has held at Westminster since 1987. His former constituency aide Iain Smith comfortably retained the seat for the Lib Dems in the Scottish Parliament elections.

The Lib Dems hold most of the other wards in North-East Fife and had expected to win this seat. They had a strong local candidate (Marilyn Whitehead) and newly elected Federal Leader Charles Kennedy made his first official visit to Scotland to help her campaign.

The Conservatives were, understandably, elated by their victory. New Councillor Mike Scott-Hayward is a seasoned campaigner and already proving to be a vocal member of Fife Council's small Tory group.

Two other council by-elections are due before the end of 1999: Sidlaw East and Ashludie ward on Angus Council, on 25 November (a safe SNP seat which they should hold easily); and Rosyth East ward on Fife Council (which Labour should retain but the SNP are challenging hard).

Parliamentary by-election

The Hamilton South by-election took place on 23 September as a result of George Robertson's elevation to the House of Lords upon his appointment as Secretary-General of NATO. On paper it was a safe Labour seat, but the SNP's Annabelle Ewing challenged strongly from the start and came within just 556 votes of repeating

her mother's 1967 Hamilton triumph. It took one recount to decide the result and a swing of just one more per cent would have seen Labour's Bill Tynan beaten into second place.

On a 41.33% turnout, the final results were:

Bill Tynan (Labour) 7172
Ms Annabelle Ewing (SNP) 6616
Ms Shareen Blackall (Scottish Socialist Party) 1847
Charles Ferguson (Conservative) 1406
Stephen Mungall (Hamilton Accies home - Watson away) 1075
Ms Marilynne MacLaren (LD) 634
Ms Monica Burns (ProLife Alliance) 257
Tom Dewar (Socialist Labour Party) 238
James Reid (Scottish Unionist Party) 113
Alistair McConnachie (UK Independence Party) 61
George Stidolph (Natural Law Party) 18
John Drummond Moray (Status Quo) 17

Majority 556 Swing 22.6%

The television election night special programmes were, for once, an interesting spectacle. The politicians, who are normally briefed to the extreme for the likely outcomes, started to come away with varying messages as the evening's events unfolded. Douglas Alexander MP, Labour's last Scottish by-election victor in Paisley South in November 1997, remarked on several occasions on the BBC that the SNP had been well beaten quite early in the programme only to have to change his tune as the evening progressed.

It was well into the counting process before there was any indication of how close the result was going to be. It was clear that neither Labour nor the SNP believed that the result was anything other than a Labour win in four figures. Sources from both sides indicated that their party polling evidence showed Labour well ahead. Labour party workers were still being informed that things were not that close even after the recount had been called, with rumours circulating that the recount had been called in order to provide a better headline for the SNP and that the Hamilton Academicals thought they could save their deposit.

The most embarrassment for the evening, however, was reserved for the Liberal Democrats, Labour's coalition partners in the Scottish Parliament. Not only did they lose their deposit, they came sixth after the Scottish Socialist Party and the local Football team, Hamilton Academicals' candidate – all this on the day of Charles Kennedy's keynote speech to the Lib Dems UK conference. This was never fertile territory for the LibDems and the party is prone to being squeezed in such situations.

Labour made great play of the attention they had showed the electors bringing in over 100 MPs and MSPs including the Prime Minister, Deputy Prime Minister, Secretaries of State and the First Minister and his fellow Labour members of the Executive. In contrast, the SNP were not their usual selves with most key activists normally present being seen at their conference in Inverness. Many Labour activists pointed out that they had seen more of Tommy Sheridan's Scottish Socialist Party than the SNP. The combination of these factors makes the result even more interesting.

Certainly, Labour has been given a scare and are concerned at the fact that, despite all their effort in delivering devolution in Scotland, they should suffer such a slippage in support. However, by-election electorates are notoriously fickle and Labour has been here before. Dramatic wins for the SNP in Hamilton in 1967 and in Glasgow Govan in 1988 were just as dramatically reversed in subsequent General Elections.

The whole event was a complete contrast to the Wigan by-election also held on 23 September where Labour's Neil Turner (a local Councillor) received a 6, 729 majority over the Conservatives. The turnout was a mere 25% but Labour's 60% of the vote had nowhere near the same slippage as Hamilton. This indicates the difference in political situation between England and Scotland where the main opposition, the Conservatives, are not nearly as effective an opposition to Labour as the SNP.

Opinion Polls

Having had four elections in the first half of this year, polling organisations have understandably been a little wary of producing new data on voting intentions. Only a handful have been produced since 1 July and they have revealed little evidence of a rise or fall in any of the main parties' standing.

The most recent (System Three) Opinion Poll was published by *The Herald* at the start of November and confirms a general trend that Labour is holding its position against the SNP. Since the Scottish elections are conducted on two ballots, the first on the basis of a first past the post system (as used for Westminster) and the second on a form of PR, *The Herald's* survey echoes this by asking for responses on a first and second ballot. The results reveal a four point lead on the first ballot and a five point lead on the second. It would appear that the 4 point increase in the first ballot for Labour has mainly been at the expense of the smaller parties – the Liberal Democrats have dropped back from 12% to 10%, the Conservatives from 11% to 10% and the others (chiefly the SSP and Greens) have dropped one point. The SNP must be feeling quite pleased that their support has remained at substantially the same level, only dropping one point on the second ballot.

On Westminster voting intentions, Labour has again strengthened its support, with 45% saying they would vote for the party in a general election. The SNP support has dropped slightly, from 29% last month to 27% now saying they would vote for the party. The Liberal Democrats have stayed at 13%, and the Conservatives have dropped to 12%.

The details were as follows:

System 3, Herald, 1/11/99	Labour	SNP	Lib Dems	Conservative
Holyrood voting intentions	39% (Constituency vote)	35% (Constituency Vote)	10% (Constituency Vote)	10% (Constituency Vote)
	36% (Additional Member Vote)	31% (Additional Member Vote)	13% (Additional Member Vote)	9% (Additional Member Vote)

System 3, Herald, 1/11/99	Labour	SNP	Lib Dems	Conservative

Westminster voting intentions	45%	27%	12%	12%
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Candidate Selection for the Scottish Parliament

E.E. Schattschneider famously remarked, 'the nominating process... has become the crucial process of the party. The nature of the nominating procedure determines the nature of the party' and 'is therefore one of the best points at which to observe the distribution of power within the party'. The new Parliament with its new electoral system meant that each of Scotland's parties had to draw up a new list of candidates. This process tells us much about the distribution of power within the political parties in Scotland. The following remarks are based on a recent study of the process. There are a number of stages in the process of candidate selection and it would appear that different degrees of central control were evident at these stages in each of the parties.

Drawing up a list of potential candidates

The initial stage in each party was to draw up a list of approved candidates consisting of party members who would be eligible to stand as an official candidate if adopted by a constituency or on the regional list. The leadership of both the SNP and Labour were intent on ensuring that better quality candidates would emerge than had been the case in the past. In addition, critics of the leadership inside these parties feared that the process would be used not only to weed out less impressive candidates but also to block anyone deemed insufficiently loyal to the leadership. This proved highly controversial in the case of the Labour Party. Most notably, two sitting Westminster MPs (Denis Canavan and Ian Davidson) failed to be approved as potential candidates for the Scottish Parliament. In the event, Canavan stood as an independent and was elected for Falkirk West. None of the other parties suffered the same adverse publicity or controversy surrounding the process of drawing up the list.

Procedure for selecting constituency candidates

The second stage in the process was the selection of constituency candidates. In fulfilment of its commitment to 50/50 gender equality, Labour twinned constituencies with each pair of constituencies choosing a male and a female candidate. Inevitably, this meant some central control in order to ensure that constituencies were paired which were likely to return a Labour member. Some internal critics feared that this might be used to block certain candidates who had made it onto the approved list but whom the leadership did not want to see elected to the Parliament. None of the other parties adopted procedures for gender equality. In the event Labour exactly achieved its aim of 50/50 representation (SNP have 19 men and 16 women; the Conservatives 15 men and 3 women and the Liberal Democrats 14 men and 3 women). Labour's procedure for gender equality had been debated at length in the party and had few critics especially compared with Wales where a similar process took place. Around 85 per cent of Labour's approved list of candidates agreed with the arrangements for gender balance whereas 34 per cent on the SNP's list felt that special arrangements to ensure gender equality should have been adopted by the party. Amongst approved candidates, some 30 per cent of Labour's list felt that the leadership influence over the selection of constituency candidates was too great

compared with 12 per cent in SNP.

Procedure for selecting list candidates

The regional list was an innovation for the parties and required new procedures. As the parties have little if any formal structure at the regional level, some new structures were necessary, if only on an ad hoc basis, to choose candidates. As the lists were closed, i.e. the parties determined the order candidates appeared on the ballot paper, this potentially gave considerable power to the leadership of each party. The SNP and the Conservatives were set to gain most at this level with Labour and the Liberal Democrats unlikely to gain many list seats. Considerable controversy surrounded Labour's procedures with the leadership effectively determining the order on the list. By contrast, the SNP allowed its membership to choose the order of names for the list. Only 17 per cent of Labour's approved list of candidates thought that this stage was democratic and only half saw it as efficient. By contrast, almost 90 per cent of SNP candidates thought the procedures for selecting list candidates were democratic and 84 per cent thought they were efficient. Even more than in the previous stage, amongst Labour's list of approved candidates there was a feeling that the leadership's influence was too great.

Three reasons for seeking central control of the process of candidate selection were mentioned in debates on the processes to be adopted across the parties. First, there was a stated desire by most parties to increase the quality of candidates. It was felt that Scotland had been ill-served by poor quality representatives locally and in the House of Commons and the new Parliament offered an opportunity to make a difference. Experience will tell whether that has been achieved. Second, there was much talk of some vaguely defined 'new politics' and the need to attract people from a wider range of backgrounds into politics. The most notable success in this respect was in gender equality, especially within the Labour Party. However, few candidates from ethnic minorities succeeded in getting onto the approved lists of the parties and none were selected for a seat which was won by the party despite the existence of regional lists which might have facilitated this objective. In addition, selected and elected members were generally from the backgrounds we have come to expect. Third, it has been suggested that ideological tests were adopted to ensure that those selected and, more so, those elected were in tune with the thinking of the leadership of each party. This proved highly contentious within the Labour Party especially. However, the costs of facing criticisms for this may be outweighed by the ability to maintain group coherence in the Parliament.

From the study of candidate selection, power appears fairly diffuse within the Liberal Democrats as compared with the other parties. That party had stated its preference for increasing the proportion of women in politics but the lack of central control allied with membership reluctance to put this into effect resulted in few successful women Liberal Democrat MSPs. Labour appears to be the most centrally controlled party in Scotland. It has paid a cost in publicity terms in the short term but it may reap long term gains if those selected prove more loyal to the leadership than its less centrally controlled but potentially less cohesive opponents in the SNP.

11. Public policies

- new policy priorities. Education; health; economic devt; environment?
- legislative programme
- impact of new policies
- influence of groups outside govt, their views on priorities and impact of new policies
- innovations in major policies and service delivery

All the parties had detailed pre-election manifestos. The people of Scotland, as widely predicted, delivered an inconclusive result, which led Labour and the Scottish Liberal Democrats to form a coalition agreement. Although both parties appear largely in agreement with each other's basic policy priorities, we can see the clear beginnings of both co-operation and tension within the Partnership.

Education has been a number one priority for both parties in successive elections. Within a few weeks of the election, Finance Minister Jack McConnell acknowledged that an additional £80 million would be targeted into education as a direct result of "influence" from his Liberal Democrat colleagues.

An Education Bill was the first piece of legislation announced shortly after 1 July. The SNP have continued to make education a top priority and have raised the particular issue of class sizes regularly. The Education, Culture and Sport Committee has had a low profile.

Health continues to dominate the political landscape with the explosive combination of a dynamic, young, keen Minister (Susan Deacon, Labour MSP for Edinburgh West and Musselburgh) and an equally feisty, ambitious Convener of the Health and Community care Committee, Margaret Smith (Lib Dem MSP for Edinburgh West).

Susan Deacon has achieved a subtle PR coup by shifting policy emphasis away from waiting lists to waiting times (an idea 'copied' by UK Health Secretary Alan Milburn MP). She has taken a high profile within the Health and Community Care Committee and was just one of a series of expert witnesses who gave detailed evidence in response to a report from Sir John Arbuthnott into future resourcing of the National Health Service in Scotland.

Transport and Environment is proving to be quite a handful as a single Ministerial policy area, particularly as the Minister Sarah Boyack (Labour MSP for Edinburgh Central) has no junior minister. She has also had a decidedly rocky start with at least two significant policy U-turns – most recently on motorway toll charges – and a lacklustre style when speaking in the Parliament. Transport matters have dominated the policy priorities of this substantial department, and the policy debate over the last few months has been in danger of being overwhelmed by road charging and city centre congestion charging. The former has now been dismissed as an option, but congestion charging and possibly also work-place parking space taxes remain a possibility.

Sarah Boyack is passionately committed to finding alternatives to car use and next year she is likely to bring forward proposals to encourage more people to walk or cycle (which she does herself). She has already presented the long-awaited Strategic Roads Review and has tried to keep road developments to a minimum where they are needed for safety or infrastructure reasons. No new roads are likely to be built in Scotland for the foreseeable future and at least one major motorway proposal has now been firmly kicked out of play.

Environmental policy initiatives have taken a bit of a back seat in the first six months, although the Transport and Environment Committee has had an inquiry into the proliferation of mobile telecommunications masts.

Influence of groups outside govt, their views on priorities and impact of new policies

Donald Dewar has been keen to foster an environment of openness and accessibility since he became First Minister in May and, to a greater or lesser degree, his Ministerial team have been keen to follow suit. This willingness to meet and consult with groups outside government has extended to the all-powerful committees. Health and Community Care committee convener Margaret Smith MSP reckons she has met over 60 organisations already and her committee has met both formally and informally with representatives of all sectors ranging from health unions to NHS trusts.

Most public and private organisations that are either major employers and/or have a key role to play in service delivery have found access to Ministers and individual MSPs relatively easy to organise. The “lobbygate” debate has helped encourage this and it would be difficult to find any organisation who would say that they have been denied an opportunity to brief the relevant Minister and/or committee members.

It is less clear to what extent outside bodies who see themselves as having a pivotal role in the development of policy are actually starting to have an influence. There has been a great number of “keynote seminars” and debates since May, notably on Transport and Social Inclusion themes, and the respective Ministers have shown a willingness to participate and absorb what has been said at these events. The SCDI, Transport Research Institute, David Hume Institute, John Smith Institute and various Chambers of Commerce have all hosted at least one such event in the first six months.

There have been fewer on education and rural affairs topics (the latter may have some potential for external policy support given the Minister, Ross Finnie’s, enthusiasm to extend his interest in rural affairs far beyond simply agricultural matters).

Legislative Programme

The legislative programme for the first year of the Scottish Parliament was announced on 16 June 1999. The First Minister Donald Dewar announced a programme of eight bills, which since then, has been supplemented by the emergency Mental Health bill which was the first piece of legislation passed by the new Parliament.

Education

Education is the key priority for government. The Partnership for Scotland coalition agreement made a commitment to creating a world class education system, and the Administration’s Education Bill will impose a duty on local authorities to raise standards and tackle underperforming schools. The bill will also meet the government’s commitments on self-governing schools, and pre-school education. The Bill was out for consultation during the summer and the consultation period ended at the end of October. It has not yet emerged as a bill in the Parliament, but is expected to do so before Christmas recess.

Transport

Transport is also a key priority for government, particularly integrated transport to address environmental problems caused by congestion. A Transport Bill will provide "local solutions to local problems", by legislating to allow road user charging where it is sensible to do so, and to allow local authorities to introduce charging for workplace car parking. The bill will also give Quality Partnerships in bus transport a statutory basis, allowing local authorities to have a greater influence over the provision of bus services. There was a consultation over the summer "Tackling Congestion" following which the Minister for Transport and the Environment, Sarah Boyack said that the Executive had decided to drop the idea about motorway charging, but still to implement some kind of power to introduce congestion charging.

Local Government ethics

An Ethical Standards in Public Life Bill will establish a Scottish Standards Commission and a code of conduct for local government and for public bodies.

Land reform and national parks

There will be two land reform bills (including the Abolition of Feudal Tenure etc (Scotland) Bill which is now in committee (Stage 1). This is a highly technical law reform bill which will abolish Scotland's ancient and outmoded feudal landholding system, and will introduce a new system for ensuring continuing responsibility for common property. A Land Reform Bill will implement the Land Reform Policy Group's proposals on land reform. Donald Dewar described this Bill as providing "new hope and new opportunities", for those living and working in rural parts of Scotland. The Bill will provide for the right to have responsible access to land for recreation and passage. Legislation will also allow for the possibility of a community right to buy when property changes hands.

There will be a piece of enabling legislation allowing for the establishment of Scotland's first National Park in Loch Lomond. Further national park sites are still in discussion, notably the Cairngorms, where the government has indicated it is continuing to consult with the Cairngorms Partnership on arrangements.

Finance

This is the Public Finance and Accountability (Scotland) Bill, a highly technical piece of legislation which will implement the conclusions of the Financial Issues Advisory Group of the Consultative Steering Group. The Bill will establish a structure by which the Parliament can ensure proper scrutiny of the financial activity of the Scottish Executive.

Health

The only health measure to be introduced in the first year of the Scottish Parliament is the Adults with Incapacity (Scotland) Bill, which will reform the law regulating how the financial and other affairs of people suffering from mental incapacity are dealt with. The consultation document on this matter had engendered some controversy because it proposed to introduce legislation to allow for advance directives (or living wills), to cover the withholding or withdrawal of medical treatment, and non-therapeutic research.