



Nations and Regions: The Dynamics of Devolution

Quarterly Monitoring Programme

Scotland

**Quarterly Report
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Key Points:

- UK-wide matters tended to dominate Scottish politics, including affecting the politics of devolution
- General Election preparations and battles dominated Scottish politics and were played out within the devolved institutions
- Foot and mouth crisis required close cooperation in inter-governmental relations
- Scotland's troubled tourist industry affected by foot and mouth as well as mishandled appointment and immediate removal of new head of tourist authority
- Motorola's decision to close Bathgate plan requiring response despite much that this involved concerns matters retained at Westminster.

which this study makes available to a wide audience. In his contribution to this report, Philip Schlesinger picks up themes from his book and contributes further to our understanding of Scottish politics. One of the ironies of devolved Scotland has been that despite the stated emphasis on openness and because of the vastly increased resources poured into ‘communication’ there is a need for more sophisticated and professional interpreters of the political scene. It is difficult to avoid cynicism, as Professor Schlesinger makes clear in his contribution, in considering the media and politics in devolved Scotland, not least because cynicism has become such a hallmark of the process.

The foot and mouth crisis brings to mind debates from almost a century ago when a Scottish Board of Health was being set up before the first world war. Resistance to allowing Scotland a separate administration for agriculture at that time focussed on animal health. Animal diseases do not respect boundaries. Whitehall officials feared that a more lax regime for administering animal health would result in diseases spilling over the border (the assumption was always that the source would be Scotland, not England) with consequent dire repercussions. Consequently, even after a Scottish Board of Health responsible to the Scottish Secretary was established, animal health continued to be administered on a British-wide basis, it was in modern parlance a ‘reserved matter’. After forty years, Whitehall backed down and accepted the recommendations of the Royal Commission on Scottish Affairs (Balfour) and devolved animal health in Scotland to the Scottish Office in 1955. No doubt, Scottish officials from last century through to today could take some comfort from knowing that the source of the recent crisis was not to be found in Scotland.

The issue touches on contributions in this report under the Executive and public policy sections by Barry Winetrobe. David Bell also discusses the crisis in his contribution on finance. Notably, as was inevitable, the foot and mouth crisis touches on reserved and devolved matters making relations between Edinburgh and London important. One area of public policy directly affected has been Scotland’s troubled tourist industry. The industry and the Scottish Executive has not only had to contend with the impact of foot and mouth but the bizarre episode in the announcement and almost immediate withdrawal of the post of new head of Scottish Tourism to Rod Lynch. This embarrassing episode is best understood when viewed through a number of lenses: sections on the Executive, the media and public policy each deal with this from a different perspective adding up to a fascinating insight into one of the stranger stories from the last quarter.

As the local government section by Neil McGarvey makes clear from another angle, public policy matters can rarely be understood by focusing exclusively on one tier of government. The interaction of the Scottish Parliament and local government proves of great significance on a number of current issues ranging from those which attract much media attention and party political battles such as the annual announcement of council tax figures together with important, but neglected areas such as local government staffing. Once more, language and presentation require careful interpretation to understand the extent to which new initiatives are new only in presentation and amount to more than publicity stunts. It is as yet unclear, for example, to know what to make of the

Community Planning Initiative, described by the responsible Minister as a 'flagship policy'.

A further issue which strictly speaking comes under reserved matters was Motorola's decision to close its West Lothian plant with a loss of 3000 jobs. Just as the Scottish Office came to be expected by Scots to play some part in matters such as plant closures which were not strictly under its remit, so too the Scottish Parliament and Executive could not simply declare that this was a problem for London. The financial implications of the closure are discussed by David Bell and wider public policy concerns are discussed by Barry Winetrobe. For many Scots, the Executive's reaction and, more importantly, the impact of that reaction to crises such as Motorola as much as the handling of everyday devolved matters will determine how devolution is perceived to be operating. It may be unfair to expect that an Executive with limited powers, or even London with its more extensive powers, could do much to prevent the closure. It may even be too much to expect much in the way of ameliorating the impact of closure. But devolution was sold to Scottish voters in part as a 'solution' to crises and may, however unfairly, be judged accordingly.

The main theme of this last quarter is the manner in which events beyond the control of and outwith the remit of the Scottish Parliament and Executive had a significant input into the politics of devolution. Efforts to separate devolved and non-devolved issues is proving predictably difficult had a significant impact on the politics of devolution. Efforts to separate devolved from non-devolved issues is proving predictably difficult. That has also been evident in the electioneering during the last quarter which has been such a important backdrop to all that has gone on.

1. The Scottish Executive

Barry Winetrobe

The Scottish Executive was, as usual, fighting on two very different fronts this quarter. One was coping with ‘events’, in the guise of potential and actual job losses, especially in the ‘new economy’; the continuing problems of fisheries and education, and the dominant event of all, the foot and mouth crisis. The other was the ongoing development and implementation of its policy agenda. What made the three-month period very unusual in the young life of Scottish devolution was the near-universal expectation that the quarter would culminate, not only in the mid-point of the first devolution cycle, but also in a UK general election campaign in advance of a May 3 or June 7 polling date, a perception which dominated virtually all political activity, even in the devolved arenas. This could be seen very clearly in the context of the devolved government itself, where many of the arguments and events focussed on ministers themselves and their portfolios, and on the relationship between the coalition partners. Matters were fairly routine at the outset of the period, with an unsuccessful parliamentary motion of no-confidence in Transport Minister, Sarah Boyack over the trunk roads management affair on 15 February. Then the fun began.

Tavish Scott and fisheries

The intense parliamentary arguments over fisheries policy, discussed elsewhere in this report, led to the devolved government’s first explicit ministerial resignation on a point of policy. The Deputy Minister for Parliament, Tavish Scott, the Liberal Democrat MSP for Shetland, resigned following the Executive’s dramatic defeat in the fisheries vote on 8 March.² This was not, as may perhaps have been expected, as a consequence of any perceived failure on his part, as party business manager, to prevent a significant Liberal Democrat rebellion (he himself loyally voted with the Executive), but on his own initiative because of his disagreement with Executive policy. In a letter to his party leader, the Deputy First Minister, Jim Wallace, he explained his position:³

The decision to resign has not been made lightly but the Scottish Executive fisheries policy has made my position as a minister untenable. I have therefore decided that, in order to carry out my duties to my Shetlands constituents, I have no alternative but to resign...

I would however like to set on record my continuing support for the work of the Liberal Democrat team within the Partnership Scottish Executive... I am confident that we can and will achieve more, and I regret that my future contribution to this

² He had only joined the administration as part of the reshuffle following the change of First Minister last autumn.

³

work will be from the back benches. However, as you will understand, my commitment to the interests of my constituents and to one of Shetland's main industries has to come first.

Having received the letter, Mr Wallace (who is the MSP for Orkney, and whose Westminster seat includes Shetland) wrote back:

Thank you for your letter intimating your wish to resign from your position as Deputy Minister for Parliament. I know from our lengthy conversations in the course of today that your mind is set, and it is therefore with profound regret that I accept your resignation. I shall formally advise the First Minister to whom, I know, you have also written. Obviously I respect the reasons why you feel you have to leave the government. I know that you will continue to support our partnership goals, and I know you will continue to advocate Shetland's interests on the backbenches as you have within government.

This occasion neatly demonstrates the constitutional niceties of a coalition government, with the ministerial post being one in the gift of the junior partner, and to date held by that party's business manager (Euan Robson, Tavish Scott's successor, becoming the third such incumbent in the short life of the Executive). It also provided the opportunity for devolved Scotland's first ex-ministerial resignation speech in the Parliament a week later,⁴ when, despite very little time apparently available for backbench speeches, Tavish Scott was called briefly during the re-run fisheries debate on 15 March. The conclusion of his short speech is worth recording:

I resigned last Friday because I sought to convince ministerial colleagues of those arguments for more short-term aid, but I failed. I was not able to change colleagues' minds last week and then I witnessed a determined line against tie-up. As I was not able to support Government policy on fisheries, I had no alternative but to resign. Let me be clear: when one is a minister, one supports the Government. If one cannot support the Government, one resigns.

There has been positive movement, and I urge ministers to continue the dialogue with fishing leaders. I believe that the proposed short-term measures are still inadequate and, on that basis, I cannot support the Government. Therefore, I will vote for a tie-up scheme at decision time.

where new ministerial appointees tend to adopt their full departmental ministerial persona immediately and desist from any public ‘backbench’ activity. Whether this constitutes an intentionally more relaxed governmental approach to independent ministerial participation in the Parliament, rather than a breach of, or a one-off exception to, the Westminster/Whitehall conventions generally carried over to the devolved government under the *Scottish Ministerial Code* and other official guidance, remains to be seen.

Sam Galbraith and the environment

The other major ministerial change was the not unexpected departure on 20 March of Sam Galbraith, the Environment Minister, publicly on health grounds, but also possibly neatly coinciding with a clearing of the decks consequent on his departure from Scottish and UK politics in advance of the imminent UK general election. The Executive’s announcement contained the statement that “the First Minister said that Mr Galbraith’s portfolio responsibilities would be distributed between the existing Cabinet Ministerial team and that an announcement would be made shortly.”⁶ It was then reported in the Scottish media that the Enterprise Minister, Wendy Alexander, had refused to take the water segment of the reallocated portfolio, on the grounds that she was already fully occupied. This was a gift for the media and Opposition parties, involving a controversial minister, alleged splits at the heart of the Cabinet, a challenge to the First Minister’s authority, and alleged intervention from UK ministers. Added to this was the suspicion voiced by Opposition politicians that a major cause of her busy life was not so much the size of her ministerial portfolio, but her apparent role as Labour’s Scottish campaign manager for the forthcoming general election.

There was also unhappiness in some quarters, especially the Green Party's MSP, Robin Harper, that this reallocation had broken with the concept of a dedicated environmental portfolio, created only the previous autumn, and that the bulk of it had been added to a rural portfolio already grappling with the foot and mouth crisis, thereby producing potential conflicts of policy priorities. This highlighted a consequence of the devolution legislation that had not hitherto been debated so prominently, that though the Parliament has a direct statutory role in the appointment (and, through the no-confidence motion mechanism, removal) of ministers, it has no formal say either on the division of governmental business into particular portfolios, or of the allocation of ministers to these portfolios (see p.30 for Conservative Party and Malcolm Rifkind's views on cutting the number of Scottish Ministers). Opposition MSPs could only complain indirectly about

Whether this vote of confidence turns out to be no more than those often uttered by football club chairmen just before removing their team manager may become more apparent in the coming months.¹⁰

Devolved governance

On 1 February the Parliament approved the updated version of the coalition government's Programme for Government, *Working together for Scotland*. Various initiatives on the

more particular public policy issues,¹⁴ and this has tended to dilute any sustained and overall accountability of the Executive in these areas, whether of ‘big issues’ such as quangos or machinery of government developments, or of more specific issues, such as allegations of ministerial or official misconduct or inefficiency.

The forthcoming UK general election may herald a shift in this, from the Executive’s perspective, relatively comfortable situation. There are signs that a re-elected Labour Government in London is determined on a programme of significant public sector reorganisation, which will inevitably feed through to devolved Scotland, either directly through the civil service and its other reserved powers,¹⁵ or by adoption by the Executive. There have already been hints that recent events have prompted the Executive itself to look more fundamentally at these issues itself, as can be seen in a speech to CoSLA’s annual conference on 21 March, by the Deputy Minister for Finance and Local Government, Peter Peacock:¹⁶

The Scottish Executive is firmly committed to the modernising government agenda and will provide the leadership necessary to drive this forward. While we have made a good start on modernising central and local government in Scotland, I would hesitate to say we are far, let alone well down the road we need to travel. Our challenge is to serve our people better, in modern ways, meeting their needs at the first time of asking.

The Minister also signalled that reform of the Civil Service went hand in hand with the wider modernising government agenda.

The creation of the Scottish Parliament has meant changing attitudes to the delivery of public services in Scotland. All of us in public service, central or local, are going to have to think more creatively and imaginatively, work smarter and understand and anticipate our citizens needs better.

He made clear his determination to address the difficult departmental attitudes and organisational behaviours, which act against change in public services.

I do not believe we have had a better opportunity than the period of time we are now entering, with certainty in our finances and decent planning horizons within which to bring about real change. It is my firm intention to set a faster pace. The dividends to be had by making progress are very real.

The Parliament has grown visibly more confident in its dealings with the Executive over the past two years, and is closing the gap in knowledge and experience of governance issues between the two devolved bodies that was so evident in the early days of devolution. If it can devise sufficiently effective scrutiny and accountability mechanisms

¹⁴ There is no dedicated parliamentary committee on governance issues, such as the Public Administration Committee in the House of Commons, or (in a very different context) the Committee of the Centre in the Northern Ireland Assembly. Governance issues tend to be dealt in a more fragmented way, through the most appropriate committee (often the Finance and Local Government Committees) mirroring the relevant minister in charge of the particular issue, be it quangos, ethical standards, electronic government, ministerial conduct or whatever.

¹⁵ Any reorganisation of UK territorial departments and portfolios which may follow the UK general election will also have a potentially significant impact on the overall environment of devolved governance.

¹⁶ “Executive to move its modernising agenda up a gear”, SE press release 0754/2001, 21.3.01

for itself that enable it to be fully involved in the potentially radical public sector reforms ahead, then the aspiration of the Consultative Steering Group and others of the Parliament and the Executive sharing the power of devolved government as partners may become a step closer to reality.

One tool that may assist devolution researchers in understanding the legal and political basis of devolved governance may finally be about to be made available by the Executive. In written answers to PQs in the Parliament on 28 April and 4 October 2000, ministers had said that the Executive had been working on preparing explanatory 'Notes on Sections' to the *Scotland Act 1998*, which would complement the UK Government's 'Notes on Clauses' prepared for the Westminster passage of the Bill in 1998.¹⁷ When reminded again by a further PQ, the Finance and Local Government Minister, Angus MacKay, replied in a 30 April written answer that "Work on the Notes on Sections to the Scotland Act 1998 has been delayed because of other high priority commitments, but our objective is to complete and publish the Notes on Sections by the end of June."

¹⁷ And the more limited, and rather unstructured Cabinet Office guide to statutory devolved and reserved matters contained in Devolution Guidance Note 11, *Ministerial accountability after devolution*, July 2000: <http://www.cabinet-office.gov.uk/constitution/devolution/guidance/dgn.index.htm>.

2. The Parliament

Mark Shephard

The Scottish Parliament had another interesting quarter. The Executive faced its first ever parliamentary defeat in March, prompting questions over the nature and extent of parliamentary sovereignty, the role of the Presiding Officer in a casting vote, and a return to questions about coalition discipline, attendance and management, and the fallibility of the electronic voting system. Other issues raised in this quarter include the role of protesters in the Parliament and the conduct and socialisation of MSPs.

The Fishing Debacle

The big parliamentary story and focus for analysts of devolution in practice centred on the issue of timely compensation for fishermen dealing with quota cuts. In an effort to address the decline of white fish stocks, the Executive had announced a £27 million package primarily for long-term decommissioning of fishing fleets. However, the lack of short-term compensation measures, particularly for those engaged in voluntary tie-ups, led to fishermen protests in the Firth of Forth and outside the Scottish Parliament. Having lobbied both the Executive and the Parliament for more immediate financial assistance, the Conservatives moved a motion for more aid to the fishing industry. On the 8th March, a vote was held on an Executive amendment to this motion that removed the Conservative's call for more aid. The amendment was defeated (52 votes for and 55 against) and the Executive suffered their first parliamentary defeat. A subsequent amendment by the SNP that called for a compensated tie-up scheme was approved (55 votes for and 51 against). The Conservative's original motion, as amended by the SNP, then resulted in a tied parliamentary vote (55 votes for and 55 against) which had to be decided by the casting vote of the Presiding Officer. Facing the first tied vote in Parliament, David Steel, the Presiding Officer, opted to cast his vote in favour of the SNP amended motion.

While the Parliament had voted against the Executive's plans, the Executive decided to ignore the will of Parliament on the basis that it not only had the best interests of the fishing industry in mind, but that the resolution passed by the Parliament was only advisory, and therefore non-binding on the Executive. The actions of the Executive on the issue of fishing show a hardening of resolve *vis-à-vis* the Parliament, particularly since the issue of personal care for the elderly when Henry McLeish reversed the Executive's stance out of respect for the will of Parliament. Selling the Executive's position on fishing and attempting to defuse the issue of parliamentary sovereignty, McLeish talked of "the bigger will of Parliament" being the tackling of the industry's problems.¹⁸ Ultimately, however, the Executive did appear to have incorporated some of the Parliament's demands when a week later it announced pre-decommissioning assistance for fishermen. Whether this partial U-turn had more to do with the will of Parliament, the pressures of the fishermen, or the splits within the coalition that culminated in the resignation of the Liberal Democrat minister Tavish Scott (see

¹⁸ "Fish row strains coalition", *BBC News Online*, 9.3.01.

Executive section) is difficult to assess. From a parliamentary perspective, it appears that even a hardening of position by the Executive is not without its gains.

Questions raised by the fishing debacle

There are a number of questions that are raised by the fishing debacle. First, even if the Parliament is not technically sovereign when it comes to deciding the fate of resolutions, is it not largely sovereign in practice when the actions of the Executive subsequently address many of the original concerns of the Parliament? In the past, the Executive has conceded to the anticipated will of the Parliament (for example, abolition of warrants and poindings, and free personal care for the elderly). With the fishing issue, it has now shown itself willing to concede to the stated will of the Parliament, even when in theory it did not have to.

Second, the fishing vote raised the question of how the Presiding Officer should vote in the event of a tied vote. The Presiding Officer's Westminster counterpart, the Speaker, traditionally votes with the Government in the event of a tie. And yet in the first ever tied vote, the Presiding Officer chose to vote against the Executive. While there is nothing in the Standing Orders of the Scottish Parliament to state that the Presiding Officer should vote with the Executive, the actions of the Presiding Officer in his first casting vote do set an interesting precedent for future Westminster/Holyrood operational differences on similar procedural arrangements.

Third, and as with the last quarter, the independence of Liberal Democrat MSPs is making it difficult for the Executive to achieve its objectives in Parliament. On the fishing vote, four out of the 12 Liberal Democrats who voted on the Executive's amendment voted against the Executive. The Executive faces severe challenges when that dissent is compounded by other problems such as absence from the chamber during votes. Indeed, in the case of the fishing votes, the Executive defeat was triggered as much if not more by Labour MSP absences as it was Liberal Democrat rebellion. On the Executive amendment vote, for example, 13 Labour MSPs were marked as absent (several of who had been granted permission to attend the Labour Party Conference in Inverness). However, in future it is likely that the Labour Party will learn from this management mistake and will tighten whipping procedures for its own side. Indeed, the fishing debacle aside, the most pressing threat for the Executive is the seemingly relentless independence of some of the Liberal Democrats prompting much parliamentary and journalistic debate on the life expectancy of the coalition.

A final question raised by the fishing votes saga concerned the fallibility of the electronic voting system. Although there were three votes in fairly quick succession, the voting totals for each vote differ by up to four votes. Frances Horsburgh of *The Herald* notes how Labour MSP Cathie Craigie was marked absent on the register even though she insisted that she was present and voted.¹⁹ Similar complaints from at least one other MSP

¹⁹ "Minister cast adrift by presiding officer", *The Herald*, 9.3.01, p. 4.

(SNP) have prompted calls for both investigations into the technology used as well as for re-socialisation in the use of voting equipment.

Other issues

Other issues raised in this quarter include the role of protesters in the Parliament and the connected issues of the conduct of MSPs and the scope of Parliament to discuss matters reserved to Westminster. In April, a small group of anti-Trident demonstrators temporarily interrupted Question Time from the public gallery. The conduct of MSPs faced scrutiny from the Presiding Officer as several MSPs were rebuked for encouraging the demonstrators. Margo MacDonald MSP, who had joined the protesters in the public gallery, defended her actions by arguing that it was wrong for the Scottish Parliament to exclude itself from the discussion of nuclear weapons on Scottish soil because this was a reserved matter for Westminster.²⁰ Other signs that the Parliament is increasingly

Appendices to Parliament Section

3. The media

Philip Schlesinger

Spinning out of control?

It was going to be so different. In October 2000, when ‘Team McLeish’ took over at Bute House, Donald Dewar’s well-known disdain for spin-doctoring was to be replaced by a new sophistication. Out went Donald’s chief spinner, David Whitton, and the other passé special advisers. In came Henry’s Peter MacMahon and a new in-crowd of

civil servants joined the Greek chorus warning of disaster. Other political reporters used variants on the formula.²⁴

Dispelling misconceptions has become Mr McLeish's habit since taking office. In January 2001, for instance, he described the Executive as Scotland's 'government'. Donald Dewar had been careful to acknowledge that there was only one government in the UK - that in London - as part of the devolution settlement even though, of course, in a UK state that has long recognised local government as a legitimate competence. But

4. Public attitudes
John Curtice

Public Attitudes and identity

Attitudes towards devolution

ICM/SoS 14-15.02

From what you have seen or heard, do you think the Scottish Parliament has achieved a lot, a little, or nothing at all?

	Feb. 01	Sep. 00	Feb. 00
A lot	25	11	5
A little	56	56	64
Nothing at all	14	29	27

Thinking about the running of Scotland as a whole, which one of the following would you like to see?

Scotland being independent of England and Wales, but part of the EU

Scotland remaining part of the UK but with its own devolved Parliament with some taxation and spending powers

Scotland remaining part of the UK but with no devolved parliament.

	Feb. 01	Sep.00	Feb.00	Jan. 00	Feb. 99	Jan. 99	May 98	Feb. 98
Independence	27	24	27	23	24	26	33	28
Devolution	53	55	46	54	54	53	48	48

the result of the Scottish executive's policies in Edinburgh	6	20	2
Both Westminster and Edinburgh Equally	41	45	44

At present taxes in Scotland are mostly set and collected by the UK government which then makes a grant to the Scottish parliament. It has been suggested that instead taxes in Scotland should be set and collected by the Scottish executive who would then pay the UK government for the services it provides for Scotland. Who do you think should be responsible for setting and collecting taxes in Scotland?

The UK government in Westminster	27
The Scottish Executive in Edinburgh	63

System Three/Sun Herald 22.2-3.401

Should the Scottish parliament have more, fewer, or no changes to the powers it holds

	Feb. 01	Apr. 00
More	57	62
No change	31	22
Fewer	5	8

Which UK powers should become the responsibility of the Scottish parliament?

Taxation (include income & business taxes)	58
Social Security	54
Railways	38
Broadcasting	30
Defence	23
Foreign Affairs	21
Abortion	21
None of these	13

ICM/NoW 8-9.3

Do you think that London Labour has too much influence over the Scottish Parliament, too little influence over it, or just about the right amount of influence?

Too much influence	51%
About right	35%

Too little influence	6%
Don't Know	8%

The Scottish Parliament has the power to raise taxes in Scotland. Would you be willing to pay more tax if the money were spent on better services in Scotland?

Willing	66%
Not willing	27%
Don't Know	7%

If there were to be a referendum on independence for Scotland, how would you vote?

	Mar.01	Jan.00	May 99	
I agree Scotland should become an independent country	45		47	38
I don't agree that Scotland should become an independent Country		49	43	50

Scottish Opinion/Mail on Sunday, mid-April

Do you believe the Scottish Parliament has made an impact on your life?

Yes	25
No	67

Satisfaction/Dissatisfaction with the way the Scottish Parliament is being run

Satisfied	45
Dissatisfied	39

Market Research UK/Scotsman, Apr. 01

Will Scotland be independent?

Never	22
Sometime in future	51
Within next 20 years	6
Within next 10 years	11

What best describes you?

		(ICM)
		(Jan. 00)
More Scottish than British	81	(60)

Equally British & Scottish	13	(27)
More British than Scottish	4	(12)

Can people who immigrate into Scotland be considered Scottish?

Yes	15%
No	75%

In contrast to the previous quarter, this quarter has seen quite extensive polling about attitudes towards devolution and identity, largely as a result of polls undertaken in anticipation of the anticipated UK general election. Three clear points emerge from the various surveys:-

- Scots are beginning to feel that their new parliament is securing some achievements but would still prefer that it had more power. Moreover the continuing influence of Westminster on Scottish life is widely recognised.
- Devolution is not however proving to be the slippery slope towards independence though neither is it putting the nationalist genie back in the bottle

A year ago *The Scotsman* trumpeted the results of a poll which suggested that few Scots believed that their new parliament had achieved very much. A year later its sister poll, *Scotland on Sunday*, commissioned another poll which showed that quite a lot had changed in twelve months. Whereas in February of last year just 5% of Scots felt that the parliament had achieved a lot, twelve months later no less than one in four felt that way. The passage of time of course had given the parliament the opportunity to achieve something, including a number of high profile if not necessarily popular decisions such as the abolition of up-front university tuition fees, the abolition of Section 28 which had

that Scots may well be aware of the influence that Westminster has through its funding decisions.

Indeed, whatever Scots consider to be the limitations and shortcomings of their new institution, the remedy that they prefer appears to be to want to make it a more powerful body rather than less. It appears that they would prefer the two most important areas of domestic policy that still lie within Westminster’s remit – taxation and social security – to be in Holyrood’s hands instead. Indeed there appears to be a greater willingness amongst the public to support the use of the limited tax raising power that the parliament already has than there is inclination amongst Holyrood’s politicians to do so. But amongst other things they draw the line at defence and foreign affairs. Little wonder, then that when pitted against devolution only around a quarter say that they would back independence, although it remains the case that a far higher proportion say they would vote for Scotland to become an ‘independent country’ in an independence referendum and equally there is no sign on either measure that support for independence is declining.

If support for independence is unchanged, a Market Research UK survey for *The Scotsman* appeared to suggest that there has been a big increase in the proportion of people who feel Scottish more than they feel British. But in contrast to many previous surveys this survey asked the question as a three point scale rather than a five point one, and thus the apparent growth in Scottishness may well be a methodological artefact. But whatever the level of Scottish national identity, the poll did contain one piece of evidence that raises doubts about the oft repeated assertion that Scottish nationalism is a relatively open and inclusive form of nationalism. Only 15% of people in Scotland believe that people who immigrate to Scotland can be considered Scottish. It may be noted that the 1999 Scottish Parliamentary Election Study³⁰ (Paterson et al, 2001) also found that only just over a half of Scots believe that people who live in Scotland but were not born in Scotland should be entitled to a passport in an independent Scotland.

Attitudes towards other issues

ICM/NoW 8-9.3

If there were to be a referendum, would you vote to join the single European currency (the euro) or would you vote not to join

	Mar. 01	June 99	Jan. 99	GB Mar. 01
Vote to join	27%	30%	42%	21%
Vote not to join	61%	48%	44%	69%
Don’t Know	12%	22%	14%	10%

³⁰ L. Paterson, A. Brown, J. Curtice, K. Hinds, D. McCrone, A. Park, K. Sproston, and P. Surridge, (2001), *New Scotland, New Politics?* Edinburgh: Edinburgh University Press.

Market Research UK/Scotsman, Apr. 2001

Should Scotland join the Euro?

Yes	28%
No	48%
Don't Know	25%

What should be the future role of the monarchy?

Retain the monarchy as it is	42%
Keep the monarchy but remove its political powers	18%
Become a republic with no monarchy	26%

The constitutional debate in Scotland is heavily influenced by debates about the future of Europe. The SNP's policy is one of 'independence in Europe', a policy which implies that Scotland's access to European markets would be unaffected by independence. The SNP also supports in principle at least becoming members of the single European

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
February	12	12	36	29	9	13	38	36	6	10

Local Government by-elections

		Change in % vote since May 1999		
	Con	Lab	LD	SNP
South Lanarks/Stonehouse				
15/2/01	W	-21.4	*	+31.9

W Fought seat in May 1999 but not in by-election

- Did not contest seat in 1999 or 2001

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

The Leaders

ICM/SoS. 14-15/2

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

	%	Dewar Sept.00
Good Job	43	46
Bad Job	19	36
Don't Know	37	18

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

	%
Good Job	29
Bad Job	18
Don't Know	53

Scottish Opinion/Mail on Sunday, mid-April

What is the name of the First Minister of Scotland?

Henry McLeish	57
Other	8
Unsure	35

With the expectation of an election before the summer the focus of interest of political debate in Scotland has inevitably shifted somewhat from Holyrood to Westminster. Thus

although the SNP continues to challenge Labour's position as the most popular party in the public mind for Holyrood elections, occasionally coming ahead of Labour on at least the second vote, this has received relatively little attention compared with the fact that Labour appears to be heading for another comfortable victory at the next Westminster election north of the border in which the party would retain most if not all of its 56 seats.

What has been less commonly remarked upon however is that even the Westminster polls in Scotland have been somewhat less favourable to Labour in Scotland than they have been across the UK as a whole. During this quarter Labour's vote share has averaged 50% in the regular monthly British polls conducted by Gallup, ICM and MORI, up six points on its 1997 showing. In contrast its average rating in Scotland in this period has been just 47%, up just one point on 1997. If this pattern is maintained Labour may well secure a lower share of the vote in Scotland than in England in the 2001 election for the first time since the nationalist incursion of 1974. Quite why this may be the case is unclear, though there is evidence from ICM's British polling that it may constitute part of a wider closing of the North/South gap in Labour support across Britain as a whole, a consequence perhaps of New Labour's apparently greater interest with the concerns of the median southern voter than her northern counterpart.

This quarter also saw the first attempt to measure the public popularity of Scotland's new two principal leaders, the First Minister Henry McLeish who succeeded Donald Dewar in October, and the SNP leader John Swinney who took over that mantle from Alex Salmond in September.

Mr McLeish had encountered considerable criticism in the press for what many considered to be his rather maladroit handling of his administration in his early months. But his early months appear to have had a rather less unfavourable impact on the average Scots voter. Indeed his net rating of +24 (that is the difference between those saying he was doing a good job and those saying he was doing a bad job) was, better than the last rating, +10, secured by Donald Dewar in September 2000 shortly before his death – though admittedly this rating was the lowest ever secured by Mr Dewar during his period in ministerial office. But so far at least Mr McLeish's problem appears to be that he has to make much impact on Scots at all rather than that he is making an unfavourable impact. No less than 37% do not know how good a job he is doing, twice the proportion who were unable to rate Mr Dewar. Equally less than three in five Scots could remember the name of their First Minister when asked.

However the new SNP leader, John Swinney, has an even bigger visibility problem. Over half of Scots were unable to say in February whether he was doing a good or a bad job. He is inevitably going to find following Alex Salmond's star quality act a difficult one to follow.

One of the characteristics of Mr Dewar's administration is that it has been prepared to show a greater willingness to make different policy decisions than Westminster than was the case under Donald Dewar. It might be anticipated that this would help reduce the gap between Labour's Westminster and its Holyrood ratings, a gap which research suggests is

occasioned by a concern that Labour may be too reluctant to depart from Labour's UK wide policy. However so far at least there is little evidence that this is proving to be the case. Indeed the demands of the impending Westminster campaign may well discourage Labour in the immediate future from emphasising those differences that exist. It remains to be seen when the next Scottish Parliament election in 2003 comes into sharper focus.

5. UK intergovernmental relations

Alex Wright

With a UK election imminent, the role of Scotland's Secretary of State and by default the Scotland Office have become a topic of debate. Few believe that the post will be retained after the election. One scenario is that there will be a single Secretary of State for the Union³¹ – in effect this individual will be responsible for the UK's regions and devolved territories, with the exception perhaps of Northern Ireland where devolution has yet to bed down fully. But see also Robert Hazell's *Three into One Won't Go: the Future of the Territorial Secretaries of State*.³²

Now that Scotland has a new Secretary of State following the assignment of Dr. John Reid to Northern Ireland, will this amount to much? Prior to legislative devolution, Scotland's Secretary of state was responsible for 4,500 civil servants at the former Scottish Office but much of its work has been transferred to the Scottish Executive. Today there are just 110 staff supporting Helen Liddell the new Secretary of State, as well as George Foulkes, the Minister of State, and Advocate General, Lynda Clark.

The Scotland Office has three main functions. First, it promotes and defends Scotland's interests in the UK or more specifically within the UK Cabinet and its committees, of which the Secretary of State is a member. George Foulkes, as Minister of State, sits on seventeen sub-committees. Second, the Scotland Office is responsible for those matters that have been reserved to Westminster (e.g defence, foreign affairs), allied to which the Secretary of State acts as a rallying point for Labour's contingent of Scottish MPs in the House of Commons. Third, the Scotland Office keeps a close eye on how legislative devolution, is working in Scotland. As George Foulkes explained in January 2001,

The Scotland Act, is of course, an act of the UK Parliament, and devolution is the creation of the Government of the UK. We are the custodians of the Scotland Act, whose task is to support and uphold the devolution settlement in Scotland.

declined an invitation to give evidence to the Parliament's European Committee about the implementation of European funds in Scotland on the grounds that he was accountable primarily to MPs at Westminster. There are no hard and fast rules on this save the legal distinction between being 'required' to attend and being 'invited'. The Cabinet office advised,

While UK Ministers' over-riding responsibility is to the Parliament at Westminster, any request for a Minister to attend a Committee of a devolved legislature should be treated with as much care and courtesy as an invitation to attend a Commons or Lords Select Committee. [...] If Ministers are invited to attend in circumstances where they cannot be required to do so then it is a matter for them as to whether they attend or not.³⁴

Helen Liddell and George Foulkes have both expressed a strong desire to have a constructive relationship with the Scottish Parliament. If one of them was invited to attend one of its committees it would be interesting to see what would happen.

Should the Conservatives win the next UK election, William Hague has already made his position clear on this. He commented,

I am announcing that the next Conservative government will preserve the office of Secretary of State for Scotland. In recognition of the fact that the role has been substantially reduced by devolution.

mention of the possible reaction from MSPs (see the discussion in the section on the Executive earlier in this report on the allocation of Ministers by portfolio following Sam Galbraith's resignation). If the post of Secretary of State were abolished by Mr Blair after Labour won, then presumably Scotland's First Minister would have a bigger and more publicised role in fighting Scotland's corner within the UK political arena. That might explain the Conservative's position on the retention of the Scotland Office and its ministers.

Mr Hague also suggested that the Secretary of State could be "entitled to lead UK delegations to the Council of Ministers in Brussels", and ministers from the Executive would be invited along "as appropriate" - with fisheries being an example (Scotland on Sunday, 04/03/01, p. 17). That would potentially lessen the European role of ministers from the Executive (see below), and if the Secretary of State did lead a UK delegation in Brussels, *de facto* she or he would be a UK Minister not a Scottish one.

6. Relations with the EU

Alex Wright

Tartan Day

Foreign affairs remains an extremely lively issue and nowhere is this more so than during 'Tartan Day'. This seeks to emulate St Patrick's Day in the USA. In Scotland's case, Tartan Day is also designed to foster trade links and inward investment. Mr McLeish, Scotland's First Minister who was in the USA for the celebrations, subsequently enjoyed a brief audience with President Bush at the White House. He recounted,

As our car drove up to the real West Wing with myself and the British Ambassador, I did reflect on the fact that this was no small honour for our small nation. It became very apparent very quickly however that the President does have a special fondness for Scotland, stemming in part from time spent here in his youth.³⁷

Shortly after 'Tartan Day' it was announced that a Scottish official would be based at the

The Scottish Parliament's European Committee

That there has been something of a 'shift' in Scottish Executive's handling of external affairs was evident from Mr McConnell's evidence to the Parliament's European Committee on December 12 2000. He told MSP's,

Although members will be aware from informal discussions that I took some ministerial interest in European matters over the past 18 months, there is, obviously, a new job to be done. The new ministerial title, along with the profile and activity that the Executive intends, shows that the new First Minister was keen that, as an emerging legislature within the European framework, we should take on that challenge. We take the challenge very seriously indeed, not just because we have a political duty to do so as representatives, but because it is vital to our economy and society that Scotland is engaged with Europe.....It is also important that we recognise that our external relationships, as a Parliament and as an Executive, are not just with the European Union. We have a relationship with the EU, its member states and the regions in them, but we also have relationships with other external bodies. The inclusion of Europe and external affairs in my ministerial title makes it clear that we have relationships with Westminster, with Ireland and with the other devolved Administrations. Occasional relationships may also be required in the Commonwealth. Those relationships are clearly linked to our devolved responsibilities. They are not an attempt to develop some sort of alternative foreign policy, but are a clear indication that it is not possible to carry on government in Scotland without having some links with colleagues in the rest of the world. That is what we seek to do.

This may not be an 'alternate foreign policy' but it is indicative that under the Executive Scotland has its own distinctive foreign affairs agenda. Mr McConnell advised,

In the EU, we see a momentum for enlargement that will take a boost from the weekend's agreements at the Nice intergovernmental conference. As enlargement takes place, the member states may retain their identity and their sovereignty in many areas and pool their strengths in other ways, but I think that we will also see an increasing demand for regional

a whole at an education council meeting, and we have had a prominent role on the fisheries council during the year.⁴²

This last point is especially interesting for two reasons. First, if Scottish ministers have taken the 'lead' in Council of Ministers meetings, *de facto* they are UK ministers as they speak for the UK not just Scotland. But in practice they are only accountable to the

7. Relations with Local Government

Neil McGarvey

The last quarter has been a relatively quiet one in terms of Executive/ Parliament-local government relations. The most interesting things to report is what is not happening – the electoral reform issue remains sidelined in an Executive working party (probably until after the General Election) and the Leadership Advisory Panel has yet to publish its report on council reviews of their political and administrative structures. There are however other events to report this quarter:

- the future of COSLA after the resignation of 3 members.
- the announcement of this year's council tax figures and the movement towards 3 year budgeting in local councils.
- the announcement of the Staffing Watch figures which show an expansion in Scottish local government employees.

Before examining these it is worth reflecting on last quarter's report. It was based around a series of disputes in Scottish local government. The only substantive developments have been in relation to COSLA as reported below. Last quarter's report finished with the suggestion that we would look at substantive developments in areas such as best value and community planning. There is little to report in the field of best value, although Peter Peacock did report to the Parliament's local government committee that the Executive will publish detailed legislative proposals on best value in the autumn. He also suggested that it is considering what would be required in extending the best value regime to the rest of the public sector in Scotland.⁴³

Community planning was a key theme of the COSLA Annual Conference in March. It was based around the message, 'Delivering Today, Developing for Tomorrow' and included sessions on Community Leadership, Social Inclusion, 21st Century Government

⁴³ Local Government Committee Official Report 24 April 2001.

and local council's role in health care. The main announcement at the Conference was the Scottish Executive's launch of the Community Planning Task Force.

Community Planning was referred to by Angus MacKay (Minister for Local Government and Finance) as a "flagship policy" and "a key tool for bringing together partners at a local level to promote the economic, social and environmental well-being of our communities". The Taskforce, a national advisory body appointed by but independent of Scottish Executive Ministers, is chaired by academic Alice Brown and consists of representatives from business, the enterprise network, academia, the voluntary sector, police, NHS and auditing bodies.

COSLA

As reported last quarter, Glasgow City Council took the decision to leave COSLA following a 'best value' review of its membership (a similar review exercise in South Lanarkshire resulted in its continuing membership). Subsequently, three other councils voted to discontinue their membership of Scotland's sole umbrella organisation for local authorities – Dundee, Falkirk and Clackmannanshire. Dundee has recently voted to re-

Council Tax

As reported last quarter the Local Government Finance (Scotland) Order 2001 signalled the move towards three-year grant allocations. This is designed to allow Scotland's 32 councils to plan and budget beyond the narrow one year time-scale. It also facilitated the co-ordinated announcement of each council's level of council taxation in February (one month ahead of England and Wales). Council tax rises for 2001/2002 range from 2.4% (Glasgow) to 10% (Perth & Kinross/Aberdeenshire). The average was 6% - twice the rate of inflation. The council tax increases in the west of Scotland were overshadowed by the 19.4% increase in water and sewerage bills (which are paid in conjunction with council tax).

Local councils remain heavily dependent on grants from the Executive to finance their expenditure. Around 80% of their funding comes directly from Edinburgh – council tax, fees, charges and rents making up the rest. The most important decision in terms of finance for each local council is therefore out-with its control. It is the level (and distribution) of government grant that is the most significant factor in determining the level of council tax in each council. It is anticipated that the above inflation increases of this year are likely to be repeated in subsequent years. COSLA president Norman Murray argued that the increases were due to restrictions in the Executive's local government settlement, ring fencing and central direction built into the allocation system. There is little prospect of this changing.

Another factor hindering local council is low council tax collection rates. An Accounts Commission report *Benefits Finance and Corporate Issues* showed how councils collected on average 88% of their council tax due in 1999/2000.⁴⁴ This represents a marginal improvement on the previous year but is still much lower than collection levels in England which average 96%. The non-payment culture is usually explained as a

hangover from the poll tax. The problem is particularly acute in Glasgow with a collection rate of only 78.9%. This has resulted in Glasgow investing heavily in a TV and media 'Pay Up for Glasgow' campaign in which the council highlights the benefits of the range of services it provides funded by the council tax.

Local Government Staffing

Surprisingly in an era when academics are fond of emphasising the decline of local government and the increasing use of other organisations from the private and voluntary sectors to deliver local public services there is evidence in this quarter's 'Staffing Watch' figures that local government is an expending business. The June 2000 Joint Staffing Watch Survey (published jointly by the Scottish Executive and COSLA in April 2001), which monitors local authority staff numbers, showed an increase of some 2695 staff since June 1999, representing a jump of over 1%.⁴⁵ The comprehensive figures however mask some important shifts in particular sections of the local authority workforce.

In particular the 9.4% increase in staff numbers in education – reflecting the Executive's policy priorities of increased funding for pre-school and early school classroom assistants. The spin the Executive put on this news was one of improvement in service delivery – their press release referred to, "A marked improvement in local services is taking place in communities the length and breadth of Scotland". The Deputy Minister for Finance and Local Government, Peter Peacock, arguing,:

Councils deliver most of the services needed to achieve our objectives in education and social justice and we are providing more resources for them to employ the necessary staff. The money is getting through to the front line and numbers of staff have increased since June 1999 by a further 2695.⁴⁶

⁴⁴ An Accounts Commission report

In an era where much of the emphasis of the Blairite Government is doing more with existing resources such pronouncements reflect very old-style Labour sentiments within the Executive with the simple equation of more staff equals improved services.

Other notable developments this quarter include the Scottish Executive's review of public bodies. This is most commonly referred to in the press as the 'bonfire of the quangos'. Not surprising there is much local government interest in this review with the sentiment expressed that the number of such bodies should be reduced. One of the questions bodies are required to ask themselves is 'Could the function be put under local authority control?'⁴⁷ This was of course welcomed by COSLA, its stated position being that such bodies should wherever possible be brought under local democratic control.

The format of the electoral system for the local politicians who will effect that control remains on the fringes of the political agenda. During this quarter Scotland's biggest public sector union UNISON has backed the campaign for proportional representation in Scotland's local council elections. This is in line with the Kerley Report's recommendations which are presently being considered by a working party within the Scottish Executive.⁴⁸ This issue is of course one of a number that is likely to place increasing strain on the Labour/LibDem coalition with the introduction of PR facing strong opposition from many inside the Scottish Labour Party.

Finally, it is worth noting the forthcoming launch of The Executive and Local Government *Partnership Framework* document. At the time of writing Angus McKay, the Minister for Local Government and Finance and Norman Murray, President of COSLA had just signed the document which defines the working arrangements and consultation arrangements between the Scottish Executive and local government. A full review of the document will appear in next quarter's report. It is difficult to predict any significant developments next quarter although it is anticipated the Leadership Advisory

⁴⁷ <http://www.scotland.gov.uk/consultations/government/rpb-00.asp>

⁴⁸ The Report of the Renewing Local Democracy Working Group, <http://www.scotland.gov.uk/library2/doc16/rldw-00asp>

Panel will publish the details of each council's review of political and administrative structures and details of COSLA's internal review will be available.

8. Finance

David Bell

The Barnett Formula

Criticism of the Barnett Formula has re-emerged in the run-up to the election. The *Scotsman* reported that the Department of Trade and Industry was bringing forward proposals to replace the formula.⁴⁹ John Swinney argued that Mr Byers, Minister of Trade and Industry should be asked to give evidence to the Finance Committee of the Scottish Parliament on these proposals.

In similar vein, John Prescott floated a story in the *Guardian* that the formula, which results in government spending £5271 per head in Scotland compared with £4283 in England, would be scrapped.⁵⁰ He realises that further progress towards devolution in England will have to be based on a revised system of allocating finance to the English regions. The present system of Standard Spending Assessments (SSAs), which the DETR uses to allocate funds to local government within England, produces many anomalies in funding levels, even though unlike Barnett, it is ostensibly needs-based. Prescott believes that the development of regional authorities in England would require not only revision to the existing SSAs, but also the inclusion of Wales, Scotland and Northern Ireland in a comprehensive UK-wide, needs-based financing arrangement.

Denials that a review was imminent came from both No 10 and No 11 Downing Street. It was pointed out that last year's Comprehensive Spending Review had laid out budgets for the devolved administrations up to 2004. Hence no immediate review of the Barnett Formula was feasible. And of course it would be the Treasury, rather than the English spending ministries, which would direct any such review.

Meanwhile *Scotland on Sunday* has joined the SNP in arguing the case for greater fiscal autonomy for Scotland, although from a completely different perspective. Its argument is that greater fiscal autonomy would strengthen rather than weaken the Union. In particular, it argues that fiscal freedom would remove the damaging consequences to the Union of continued squabbling over the Barnett Formula and also impose greater fiscal discipline in Holyrood, reining in excessive spending commitments.

Foot and Mouth Disease

Foot and mouth disease has posed an interesting set of financial issues for the Scottish Executive. To set this issue in context, it is worth bearing in mind that agriculture comprises only 1.4 per cent of Scottish GDP and that the average Scottish farm received seven times more in subsidies last year than it made in income (see Table 1). These subsidies are paid mainly by the European Union under the Common Agricultural Policy.

⁴⁹ *Scotsman*, April 23, 2001.

⁵⁰ *Guardian*, April 24 2001.

Total subsidies to Scottish farmers have averaged just under £500m – just less than a tenth of Scottish health spending – for the last four years. The Executive has little discretion to vary this spending. Its role is mainly to act as the agent of the EU in distributing agricultural support.

	Net Farm Income	Direct Subsidies	Subsidies as % of Net Farm Income
Farm Type	£/farm	£/farm	%
Cereals	5,000	27,700	560
General Cropping	9,200	30,200	330
Dairy	1,000	8,800	850
Less Favoured Area (LFA) Sheep	300	23,800	-
LFA Beef	4,700	27,700	590
LFA Mixed Cattle & Sheep	3,700	33,200	910
Mixed	2,200	33,200	1490
All	3,800	26,600	700

Source: SERAD

The financial route from payments by Scottish taxpayers to payments to Scottish farmers

what services to cut in order to increase subsidies to agriculture or to compensate farmers for the effects of foot and mouth. This inevitably coloured the formation of policy, because the costs to the Executive of acceding to the farming lobby are relatively low. On the other hand, compensation to the tourist sector, which is much more important to the Scottish economy would have to come from the Barnett-determined Scottish Executive budget. The size of the contingencies fund that is applicable to all Barnett-related spending is approximately £55m, precluding any substantial interventions to aid tourism. *Business Strategies*, the economics consultancy, has forecast that the loss to Scottish tourism will be around £340m, cutting 0.6 per cent from economic growth this year.

The Global Turndown in Electronics

The recent downturn in the electronics sector in Scotland resulting from a global slowdown in this sector has exposed the vulnerability of the Scottish economy to global economic fluctuations. International electronics firms have long been a target for inward investment by Scottish Enterprise and its predecessors. The success of this strategy has been reflected in their substantial contribution to the overall growth of the Scottish economy during the last two decades. However, the dangers of selling Scotland on the basis of low-cost production have been exposed by the closure of the Motorola plant at West Lothian with the loss of 3000 jobs.

The Scottish Executive has no power to influence the demand for the products of these global companies. However, through the Enterprise and Lifelong Learning Department, it can influence policies which will determine whether mobile companies come to, and remain in, Scotland. It is now acknowledged that Scotland's long-term economic interests are not best served by trying to attract plants which are considering coming to Scotland because it offers low-cost production. Instead, the focus should be on companies that look to Scotland for greater value-added. This has significant implications for supply-side policies in Scotland and in particular for the development of human capital and management of innovation.

What difference does the existence of the Executive make to supply-side policy development? One might argue that the creation of the Parliament has increased the political impetus behind policy formulation. For example, the Framework for Economic Development, launched last year, now generally informs policy in this area. And although to an extent enterprise policy is based on a continuation of institutional memory from the Scottish Development Agency and Scottish Enterprise, the input from the Executive has been significantly enhanced compared with the pre-devolution position. Yet supply-side policies tend to act slowly and thus tend not to generate immediate political gains. In the short-run, the Executive can only hope to benefit politically from the stability brought about by the economic policies of the UK government. If the Executive and the UK Government did not broadly share the same political affiliations, the formulation of economic policy within Scotland would be considerably more difficult

and would inevitably lead to calls for a transfer of economic power from Westminster to the Executive.

9. Devolution disputes and litigation

Barry Winetrobe

This quarter has continued the pattern of all but the very early months of devolution, in that there are no legal disputes or cases to report arising directly from devolution itself. Much of the work of the founders of Scottish devolution over the last 15 years was devoted to the possibility, even probability, of a constitutional innovation of the scale of devolution leading to litigation, especially over the validity of legislation emanating from the Parliament. The *Scotland Act 1998* and its associated delegated legislation provide comprehensive codes as to how such litigation can arise and how it is to be handled. The Scottish and UK courts, up to the Judicial Committee of the Privy Council, were prepared for a steady stream of cases on ‘devolution issues’.

Yet apart from the two early cases involving the Parliament as a legal institution (in relation to committee meetings in private, and in relation to alleged breaches of members’ interests regulation prior to the introduction of a Member’s Bill on hunting), there has been an absence of actual, or even threatened, devolution litigation. Much of the legal fallout has been in relation to the early application of human rights legislation to devolved Scotland, which, though much of it has had profound legal and social consequences in many areas of public policy and administration, does not relate to devolution as such. To date, any devolution disputes have tended to be of the policy rather than the legal type, generally being divergences in policy between the Parliament and the Executive or between the devolved and the UK tiers, and these are examined in the relevant sections of the quarterly reports.

Only time will tell how typical these first two years turn out to be in this respect. Has the apparent absence of legislative litigation been due to the generally common policy approach of the Scottish Executive and the UK Government, and perhaps also to the unexpectedly frequent use of the ‘Sewel Convention’ whereby the Parliament consents to particular devolved matters to be dealt with in Westminster legislation? Was the devolution ‘settlement’ so watertight that there has been little need or scope for legal dispute? The next few years may provide some answers, especially if there are any changes of administration in either London or Edinburgh. In the meantime this section of the monitoring report will analyse any devolution disputes which

- !" result in, or involve, litigation, or the serious threat of litigation, or
- !" are of such a fundamental constitutional nature as to be more than, say, a serious public policy or intergovernmental dispute, but amount to a test of devolution itself.⁵¹

⁵¹ An example might be where the Sovereign receives directly contradictory advice on a relevant matter from her Prime Minister in London and from her First Minister in Edinburgh.

10. Political Parties

James Mitchell

The UK General Election has dominated party politics in Scotland during the last quarter. Campaigning has been gearing up in the Scottish Parliament, not least because it has become the main focus of the Scottish media. The prospect of performance in Edinburgh having an impact on elections to the House of Commons is a real possibility. More directly, the General Election will bring to an end the dual mandates of those MSPs who are currently also MPs.

Two MSPs have resigned from the Scottish Parliament. Alex Salmond, former leader of the SNP, has decided to contest his Banff and Buchan Commons seat. He is the only SNP MP to have chosen to stay at Westminster giving the party some continuity and ensuring that the newly elected SNP contingent after the General Election will include someone with experience of the Commons. Labour MSP Sam Galbraith has stood down from both his Westminster and Scottish Parliament seat in Strathkelvin and Bearsden. Galbraith's decision to stand down was on health grounds and Scottish by-elections will be held on June 7, the same day as elections to the House of Commons. Another MSP is contesting a Westminster seat but has not yet resigned from the Scottish Parliament. Phil Gallie, Conservative List MSP for the South of Scotland is standing for Westminster in Ayr, the seat he held at Westminster between 1992 and 1997 and which he fought unsuccessfully for the Scottish Parliament in 1999. However, Gallie's return to the Commons, should he unseat the Labour Member, would not involve a by-election. He will automatically be replaced by the next Conservative candidate on the South of Scotland list. This highlights one of the differences between constituency and List MSPs.

Liberal Democrat

Donald Gorrie
Jim Wallace

Edinburgh West*
Orkney and Shetland**

* Donald Gorrie is a Central Scotland List MSP and does not represent his Westminster constituency in the Scottish Parliament.

** Jim Wallace represents Orkney in the Scottish Parliament. The Westminster constituency he represented was split in two in a deal between Labour and the Liberal Democrats in the Scottish Constitutional Convention.

The relationship between Scottish and Westminster elections is proving symbiotic. On the one hand, the Scottish Parliament has been a focal point for election campaigning while simultaneously commentators and pundits have been considering how the results of the imminent general election will impact on the Scottish elections in two years time. A number of possible scenarios emerge. First, it is possible that the elections will prove entirely separate and that issues debated and impressions created in and around devolution will have no impact on the UK general election in Scotland. A second scenario is that there will be no difference and that voters will fail to distinguish between the institutions to which they are sending elected representatives. The only differences under this second scenario would be the timing of the different sets of elections and the different voting systems. Neither of these scenarios in its purest form seems likely. One reason for this, as is made clear in other sections of this report and has been a constant theme of devolution politics, is that devolved and non-devolved issues simply cannot be easily separated. There are few political issues that can simply be confined to one level of government. Moreover, the electorate is unlikely to distinguish between devolved and non-devolved issues when making up its mind. However, these observations tell us little about the relationship between the two elections. This will be a matter that will require careful study after the appropriate data becomes available.

For some parties in the Scottish Parliament, the Westminster elections are seen as an opportunity to build up a profile and base for fighting the Scottish elections in two years time. The Scottish National Party and Scottish Socialist Party view these elections as important at least as much as a means to this end as an end in themselves. Notably, John Swinney, the recently elected leader of the SNP, is fronting the SNP's Westminster campaign despite the fact that he is standing down from the House of Commons to concentrate on leading his party as the main opposition in the Scottish Parliament. This is part of the SNP's efforts to heighten Swinney's relatively low profile with the electorate so that he is in a stronger position to contest the Scottish elections as a potential First Minister.⁵² The Scottish Socialist Party⁵³ is seeking to win 100,000 votes in these elections to provide a base for the Scottish elections.⁵⁴ On May Day, the SSP announced that it was merging with the Socialist Workers' Party in Scotland increasing its membership by ten per cent to around 2,000.⁵⁵ The target of 100,000 votes represents

⁵² To follow SNP campaign, <http://www.snp.org.uk/>

⁵³ <http://www.scottishsocialistparty.org/>

⁵⁴ Robbie Dinwoodie, 'Rivals make pledge to be more sociable', *The Herald*, 1 May, 2001.

⁵⁵ *Ibid.*

around 3.5 per cent of the total number of votes cast in the 1997 General Election in Scotland. The SSP is openly admitting that it will not win any seats. In these elections it is possible, however, that the SSP will perform a similar function on the left of Scottish politics that the Referendum Party performed on the right in England in 1997. In a few seats, it is conceivable that an SSP intervention might alter the election result to either the SNP's or Labour's disadvantage. In addition, they are seeking to place a left-wing agenda on the political agenda.

Labour's strategy for these elections works on the assumption that the electorate will indeed distinguish between Scottish and Westminster elections. Labour is seeking to make their main opponents, the SNP irrelevant. Its campaign launch in Scotland included the use of a billboard with William Hague and Tony Blair's picture with the caption, 'One can win'.⁵⁶ Wendy Alexander, Scottish Executive Minister, is playing a key role in the campaign in Scotland and has provoked criticism from her political opponents who argue that she should concentrate on her Ministerial responsibilities (see p.7 in section on the Scottish Executive). The Conservatives objective is the opposite of the SSP's. They hope to use the base they won in the Scottish Parliament as a means of winning back support in the House of Commons. Though its Scottish Parliamentary leadership is involved in the campaign, it is less in the front line than the SNP's John Swinney or Labour's Wendy Alexander.

The Liberal Democrats are faced with a challenge as part of the coalition with Labour in Edinburgh while having to fight against its partner in the general election.⁵⁷ There are a number of seats in which Labour and the Liberal Democrats are fighting head-to-head in Scotland straining relations between the parties. Labour target seats in this election include the Liberal Democrat held seats of Tweeddale, Etrick and Lauderdale (where Labour needs a 1.91 per cent per swing to win); Caithness, Shetland and Easter Ross

11. Public policies

Barry Winetrobe

A. Policy making and development

(i) *Freedom of information*: March 1 saw the next stage of the Executive's programme for legislating on freedom of information with the publication of a consultation document containing a draft Bill, *Freedom of Information - Consultation on Draft Legislation*.⁵⁸ The consultation period ended on 25 May. The Executive press release summarised the main policy of the draft Bill:⁵⁹

A legal right of access for all to information held by a broad range Scottish public authorities including the Scottish Executive and its agencies, local authorities, the NHS in Scotland, educational institutions, and the police.

A fully independent Scottish Information Commissioner with strong powers to promote and enforce the legislation. The Commissioner would be appointed by The Queen, on the Scottish Parliament's recommendation, independent of the Scottish Executive.

The Commissioner would monitor the overall operation of the legislation ensuring that as much information as possible is available to the public. Where he or she considers that information should be disclosed there would be legal power to order disclosure.

A limited set of exemptions, providing proper safeguards against the disclosure of sensitive information. In most cases, authorities seeking to withhold information would need to show that there would be "substantial prejudice" if the information was released, and be required to consider the public interest in disclosure.

These proposals were debated by the Parliament on 15 March.⁶⁰ The SNP supported the principle of FoI legislation, but thought that the draft Bill was flawed in a number of areas, such as the scale of charges for FoI applications; the extent and nature of the exemptions, such as those afforded to the Crown Office, and the power of the First Minister to veto decisions by the Information Commissioner. The Conservatives expressed support for the principle of open government, but criticised the legislative approach as not necessarily providing greater substantive results than consistent adherence to a strong administrative policy of openness, and attacked the record of the coalition in this regard thus far.

⁵⁸ <http://www.scotland.gov.uk/consultations/government/dfib-00.asp>. Annex A of the consultation document consists of a comparison between the Executive's earlier proposals published in its first consultation, *An open Scotland* and the draft Freedom of Information Bill.

⁵⁹ *Freedom of information – opening up government*, SE press release SE0501/2001, 1.3.01

⁶⁰ Closurm o03s9.96 00Eo2ieuI4E0501/20pen Sco. -hformatE 2hformasrm60r 2hformasrmlir0msul(r4.96 0 TD[,mas)-.8.8m5

(ii) *Land Tenure*: On 22 February the Scottish Executive proposals for the next phase of

- !" proposals for a (UK) *Proceeds of Crime Bill*, 5 March, until 25 May:⁷⁵ Joint consultation by the Executive and the UK Government on new legislation on confiscation of proceeds of crime, including by way of civil action.⁷⁶ Any Westminster Bill, affecting devolved matters, would require the Parliament's consent by a 'Sewel Motion'.
- !" Human Rights Commission, 30 March, until 30 June:⁷⁷ Possible establishment and role of such a body in Scotland.

B. Events

The Scottish devolved institutions had to face a number of continuing problems, including the difficulties at the Scottish Qualifications Authority,⁷⁸ and in the fishing industry. Job losses continued to plague the Scottish economy, especially in the electronics/IT sector which had been regarded as a beacon of the 'new economy' (see discussion in Finance section). The latter situation came to a head in late April with the announced demise of the Motorola factory in Bathgate, affecting over 3,000 jobs, despite desperate attempts by Scottish and UK ministers, including the Prime Minister, to save it.⁷⁹ If the projected worldwide downturn, especially in the high technology sectors, can

containable. These measures were kept generally in line with those in the rest of the UK, because it was feared that the disease would spread to Scotland. In a statement to the Parliament on 28 February, the Minister said that “at this stage, it is impossible to say when a full return to normality might be possible.” He also announced that, in light of the seriousness of the situation, I should also advise the Parliament that, for the time being, I have decided not to proceed with the publication of the Executive's agricultural strategy, which was due to be launched next week. Clearly, it would be wholly inappropriate to launch the strategy during the current crisis. It remains important to identify ways of making progress on strategic issues, but I think that that can wait a little longer.

The Conservative spokesperson, Alex Johnstone, who is also convener of the Rural Development Committee and a livestock farmer, supported the cross-border approach of the Scottish and UK administrations:

I express my gratitude for the fact that the minister has dealt with the issue on a UK-wide basis. There are no boundaries for an infection such as foot-and-mouth disease. It is extremely important that regulations that are brought in apply across the UK.

The first Scottish cases were confirmed at two farms in Dumfriesshire on 1 March, and the total mounted steadily over the following weeks.⁸¹ Unlike the situation in England, the outbreak appeared to be almost entirely confined to the south-west, which made the crisis a little more manageable, and determined efforts were made to ensure that it would not spread to other parts of Scotland. Gradually measures were intensified, alongside those south of the border, with large scale slaughter of animals, involving the assistance

policy' crisis, with each administration adopting parallel policies, rather than a 'unitary policy' crisis, treated uniformly on a UK-wide basis directly from the centre. If the immediate emergency is seen to have been dealt with successfully, then this approach can be said to be a demonstration of the robustness of the devolution arrangements. On the other hand, if the crisis drags on into the summer (whether or not a general election takes place in June), it could provoke either more divisive divergences of policy or, alternately, criticisms that the devolved government has been unable or unwilling to take the necessary independent action.

(ii) Tourism: A major casualty of the foot and mouth outbreak was the tourist industry, a sector which was at the forefront of devolved politics for other reasons. Both the Parliament and the Executive had been participating in promotions, such as the 'Tartan Day' celebrations in the USA,⁸³ but such positive images of Scotland which had been created were damaged by the extent and effect of the outbreak. In addition, the affair of the abortive of the chief executive of the renamed Scottish Tourist Board, *visitscotland*, damaged the credibility of the Executive, and of the Enterprise Minister, Wendy Alexander, and a foreign holiday taken by the Tourism Minister, Alasdair Morrison, was politically unfortunate and untimely.

The *visitscotland* non-appointment affair was a particular embarrassment, because Wendy Alexander had been closely involved in initiating the head-hunting process the previous November, just after becoming Enterprise Minister, and she participated prominently in the public announcement of the appointment of Rod Lynch on 19 April. She was "delighted" at attracting such a "world-class leader" with "extensive business experience", whose "confident leadership, and international experience will be a major boost to our recovery efforts to kick start Scottish Tourism, and she predicted that "post Foot and Mouth the industry will never be the same again."⁸⁴ Almost immediately there was some controversy, when Mr Lynch revealed that he was going to America for an eight-day break, and it was reported that the Enterprise Minister had rejected suggestions from colleagues that the announcement be delayed. This was overtaken within days by the revelation of the extent of business links with an air cargo company that the new chief executive would be retaining, leading to *visitscotland*'s hasty withdrawal of the job offer on 23 April. The Executive, and Wendy Alexander in particular, came under immediate criticism from Opposition politicians and the media over their role in the affair, and this dominated First Minister's Questions in the Parliament on 26 April.

⁸³ Even there, the First Minister was criticised for appearing to dismiss the foot and mouth crisis as a 'little

While the Lynch affair may or may not have any long term consequences for the credibility of the devolved administration, and its leading ministers, it, and the various other tourism-related issues over the period, does highlight the potential pitfalls that apparent mishandling of policy can have on the 'real world' of the lives and livelihoods