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Introduction

Paul Cairney

The decision by Justice Secretary Kenny MacAskill to release the Lockerbie bomber, Abdelbaset al-Megrahi, from Greenock Prison on compassionate grounds stands out as the major event in this period. Indeed, it is difficult to think of any other 'Scottish' issue that would command such international attention or prompt so much analysis on the SNP's governing competence on the world stage. The issue is multi-faceted and still unfolding in the public domain. As such, we have witnessed a classic media process in which attention lurches from one aspect of the story to another.[1] In July, when much less was known (and there were rumours that MacAskill was 'minded' to release him), an administrative focus on how MacAskill conducted his inquiry was followed by claims that he would struggle to meet the deadline for a decision and that much depended on whether or not al-Megrahi would drop his appeal (al-Megrahi has since protested his innocence). We then had a period considering the extent to which MacAskill would be subject and vulnerable to a wide range of political pressure, from domestic media coverage (of the families of victims, members of the emergency services) to public opinion, opposition parties and international representations (particularly from the US, with figures such as US senators, the FBI director Robert Mueller and Secretary of State Hilary Clinton highly vocal on the issue) against al-Megrahi's release (with some speculation about reverse pressure from the UK Government to allow his release as a way to foster closer economic and political links between the UK and Libya).

Other periods focused on how this relates to wider forms of parliamentary political pressure on MacAskill following the recent prospect of a vote of no confidence in Parliament (although 3.1 shows that the Scottish Parliament only became involved formally *after* the decision was made) and how Scotland would look on the world stage. Then came the decision and an extended period of discussion on MacAskill's reasons for al-Megrahi's release. More could have been made of the Scottish-UK intergovernmental issue had MacAskill agreed to Megrahi's release under the UK-

[1]In the interests of space I have not included references to each media story. Instead, this discussion and further links can be found at http://paulcairney.blogspot.com/2009/10/release-of-lockerbie-bomber.html . See also Trench, September 2007: 47 for a discussion of Alex Salmond and the Scottish Government's criticism of the UK Government decision to sign a prisoner transfer agreement with Libya.

Libya prisoner transfer agreement devised in 2007, particularly since Alex Salmond was highly critical of then Prime Minister Tony Blair's involvement in the agreement and the absence of FCO consultation with the Scottish Government. However, if anything, the lack of Scotland-UK contact seemed the bigger issue. Instead, MacAskill released Megrahi on compassionate grounds, based on a principle in Scots law that prisoners should be eligible for compassionate release if they are terminally ill and close to death. This allowed him and Salmond to present a narrative based Scottish ministerial autonomy, leaving others to explore the degree of external interference. Indeed, a consistent focus throughout was on the extent to which this was a Scottish rather than a UK decision, and it became clear very early on that the UK Government was eager to be seen to take a hands-off role, respecting the principle of executive devolution. This appeared to backfire on Prime Minister Gordon Brown personally when he was roundly criticised for making no comment at all, particularly given the extent of the rumours about deals done ('in the desert') between the UK and Libyan Governments over business contracts (and, to a lesser extent, concerns about links between the decision and terrorism).

So far, although the decision initially appeared unpopular with Scots and potentially damaged the SNP's electoral chances, it has not undermined the status of the minority Scottish Government. Neither has it produced significantly greater pressure for MacAskill (already under parliamentary pressure over such issues as knife crime and court reforms) to resign as Justice Secretary. Much opposition party criticism has focussed on MacAskill's handling of the case, including not only his decision to visit al-Megrahi in prison but also his reliance on particular sources of medical advice to determine the severity of his cancer and the amount of time he had to live, and his rejection of other solutions related to compassionate release (including the prospect of housing and policing al-Megrahi in a care home or hospice in Scotland). Some eyes have also been raised when MacAskill's initial speech made reference to the links between compassion and religion. Yet, there was not a meaningful call for MacAskill's resignation. In part, this is because Alex Salmond went at great lengths to publicly back MacAskill (and because many figures, including Nelson Mandela, supported the decision). The SNP's position was also helped by growing criticism of the role of the UK Government.

Al-Megrahi's welcoming reception in Libya (with much of the crowd waving Saltires) threatened to stoke up the issue further and, for a short period, the international reaction was intense, even extending to some US campaigns to punish Scotland

economically. US President Obama was also said to be 'disappointed' by the decision. Yet, there are now signs that attention has moved on and that initial reactions have been tempered.

Lockerbie has overshadowed the other main issue in this period: the publication of the Calman report which is discussed at length in the next section.

1. The Scottish Constitutional Debate

Paul Cairney

Key Points

- Given its limited remit and the tone of its interim report, the final report of the Calman Commission is surprisingly ambitious.
- Its recommendations on finance, the further devolution of powers, intergovernmental relations and the role of the Scottish Parliament are substantive, providing the potential for further changes in the future.
- Most significant is the proposal to make the Scottish Parliament more accountable for income taxation
- Much of the report is consistent with SNP aims. This includes the call for more formal intergovernmental relations and to devolve responsibility for Scottish Parliament elections, airgun and drink-driving regulations
- While it was received well by its main audience (the Labour, Conservative and Liberal Democrat parties), no party has made any firm commitment to implement its recommendations.
- Indeed, the irony is that the party most critical of the report (the SNP) is also the keenest to see some of it implemented immediately.
- While the national Conversation has been relatively low key, the Scottish Government has reaffirmed its commitment to an independence referendum bill
- The House of Lords Select Committee on the Barnett Formula has recommended Barnett's abolition

1.1 The Calman Report's Recommendations[2]

The Calman Commission's final report was published on June 15th. While most headlines will be reserved for its substantial recommendations on fiscal accountability and the further devolution of powers, there are also some interesting recommendations to improve intergovernmental relations (IGR) and the legislative process of the Scottish Parliament. The main thrust of the report is that the

[2] Commission on Scottish Devolution (2009) *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century* http://www.commissiononscottishdevolution.org.uk/uploads/2009-06-12-csd-final-report-2009fbookmarked.pdf . To shorten the length of this report, I have not included all references to media coverage of some events described. Instead, these can be found at http://paulcairney.blogspot.com/2009/10/scottish-constitutional-debate_07.html

constitutional side of devolution has been a success but that change can improve the settlement. Of course, the proposed level of change falls short of any prospect for independence because the report was established by the SNP's opposition parties – Labour, Conservative, Liberal Democrat – and the UK Government to provide competition for the National Conversation.

Fiscal Autonomy

The most significant change can be found in its recommendations regarding the funding settlement. It argues that it would be difficult to maintain the Union if the UK Government granted full fiscal autonomy to Scotland. Therefore, macro-economic policy must remain reserved. While this is a defendable unionist position, it presents considerable problems when formulating further fiscal powers. The report also notes the limitations that it faces when making recommendations on the Barnett formula. Overall, we have a half-way house between fiscal dependence and autonomy (supplemented by its argument there should also be a common sense of social citizenship and minimum welfare rights, but only when the UK and Scottish Parliaments agree their scope). Barnett has the advantage of providing stability during devolution's first decade and should be maintained, but only until the UK Government commissions a needs assessment to determine a more equitable system of funding. There should also be more accountability for money spent in Scotland. Therefore, there should be a devolution of certain economic powers – the Stamp Duty on property transactions, the Aggregates Levy, Landfill Tax and the Air Passenger Duty - when differences would not undermine overall macroeconomic policy (in part because they largely affect local populations, with relatively little prospect of exit).

More importantly, the Scottish Parliament should be obliged to make a positive and more visible decision about its level of taxation in relation to the UK rather than benefiting from the relatively hidden status quo position in which it accepts the same levels by not using the tartan tax. Calman therefore recommends reducing UK income tax in Scotland by 10p in the pound (for the lower and higher income tax thresholds, with no ability to tax one but not the other) and reducing Scotland's grant accordingly, meaning that the Scottish Parliament would have to set the Scottish rate at 10p to stay the same as the UK (assuming that this would raise the same amount from a Scottish base). However, the Scottish Government would not be able to make the bigger decisions about the mix of tax bands or the overall structure of taxes set at the UK level. Therefore, this is effectively the introduction of a greater appearance of

accountability but primarily for assigned revenues (this is to be extended to a notional share of income tax on savings, to remove the administrative burden of identifying Scottish savers). There is also not a full link between accountability and economic policy in part because there is still a limited incentive for the Scottish Government to increase its own tax revenue by using economic levers to foster growth. There is a limited ability to compete to attract businesses or individuals through the modification of taxes. Overall, the measures may open up the old north/ south debate on UK macro-economic policy. While Scotland's GDP per capita is higher than most English regions, it is significantly lower than the south-east of England which brings overall English GDP per capita to a level higher than in Scotland. Therefore, the 10p tax rate in Scotland is likely to produce a slightly smaller overall level of revenue, perhaps prompting the Scottish Government to wonder why it should be accountable for the tax when it can not determine the amount fully.

On the other hand, the recommendations may mark the *beginnings* of a substantive shift in fiscal arrangements since the 10p would be based on identified rather than notional Scottish incomes and, for the first time, Her Majesty's Revenue and Customs (the HMRC) would be obliged to work on behalf of Scottish ministers in collecting devolved taxes (Scottish Ministers would also be consulted on appointments of HMRC Commissioners). This comes on top of three further recommendations:

1. To keep benefits such as housing/ council tax reserved but give much more scope for Scottish Ministers to amend their use when developing their own policies. This may be seen as an argument that the UK government should not only not interfere in issues such as the local income tax, but also that the UK Government and HMRC should do all they can to minimise the unintended consequences by cooperating on the effects on benefits (although note its very clear recommendation to keep Attendance Allowance reserved as a gateway to other reserved entitlements).
2. To allow the Scottish Government, like local authorities, to borrow on a Prudential basis (i.e. based on its capacity to repay debt) through the National Loans Fund or Public Works Loans Board. This system would perhaps allow the Scottish Government to fund the Forth Road Bridge in a more straightforward way.

3. To consider further tax devolution – on VAT and a share of fuel duty – when these recommendations have 'bedded in'. This suggests that, again, the recommendations do not mark the end of the Scottish 'settlement'.

Devolved and Reserved Powers

Perhaps the most interesting aspect of the report's recommendations on devolved powers is that it has not avoided issues that could be embarrassing to its UK Government sponsor and advantageous to the SNP Government's agenda. This includes a recommendation to devolve responsibility of the Scottish Parliament elections to the Scottish Parliament (following SNP criticism of the role of the Secretary of State in the ballot paper fiasco), allow Scottish ministers to appoint the Scottish member of the BBC Trust (although this falls far short of SNP calls for Scottish-specific broadcasting), devolve airgun regulation (an SNP demand which it partly inherited from the previous Scottish Executive) and drink-driving limits (in the context of SNP criticism of UK limits when promoting its overall, divergent, alcohol strategy). It also recommends devolving responsibility for the national speed limits, animal health funding, marine nature conservation (note that the issue of marine control has divided the UK and Scottish governments for some time), the Deprived Areas fund, discretionary elements of the reformed Social Fund and the prescribing of controlled drugs (e.g. heroin) to treat addiction (perhaps signalling, incidentally, a position on the balance between the medical and criminal treatment of illegal drug use).

The report recommends that many issues – such as charity law and regulation, food labelling and regulation, the regulation of all health professions and the UK Insolvency service - should remain reserved to preserve sensible administrative arrangements and levels of policy uniformity. In other cases it merely calls for better working arrangements to solve problems associated with devolved and reserved policy interaction or problems associated with the implementation of reserved issues in Scotland, including: the operation of the Health and Safety Executive; the scope for local variations in immigration law implementation; the issue of the wellbeing of children of asylum seekers; Welfare to work; and, the operation of Crown Estate. It strongly recommends that the UK Government maintains the principle of UK-wide Research Councils (which allow Scottish Universities to 'punch above their weight' and remain part of a wider pool of scientific funding) but also establish comparable 'government-funded' status for particular Scottish research institutions. Perhaps of most note is the absence of a recommendation to change the constitutional

settlement regarding nuclear power. This may in part follow the UK Government's acceptance of a Scottish veto on new nuclear power stations. It also follows a broader recommendation to accept that there will always be issues regarding devolved/ reserved boundaries and that they should be resolved through better intergovernmental relations.

Intergovernmental Relations

The report is critical of the informality of intergovernmental relations (IGR) between the Scottish and UK Governments and it makes recommendations for ministers, civil servants and the Parliaments. First, it argues that the Joint Ministerial Committee should become a body to foster close working and cooperation relationships (perhaps like the JMC Europe) rather than just dispute resolution. The JMC (Domestic) should meet at least annually, as should a new JMC Finance (to discuss macro-economic policy as well as taxation); and a JMCO (for senior officials). The JMC agendas should be published in advance to parliaments (and there should be an annual report). The JMC Europe should foster earlier and more engagement between Scotland and UK, with Scottish Ministers to be automatically part of UK delegation and to speak more on the agreed UK line. There should also be a greater expectation that Scottish MEPs attend Scottish Parliament committees. Second, it argues that there should be more training for UK civil servants to improve their knowledge of devolution and that the civil service code should be amended to ensure cooperation and mutual respect.

Third, although it suggests that the Sewel convention, in which Westminster will not normally legislate on devolved matter unless given permission by the Scottish Parliament, has been respected and works well, it must be used better to foster meaningful links between Parliaments (Sewel, or legislative consent, motions are primarily addressed through executives). The report makes a wide range of recommendations in this regard: the Sewel convention should be entrenched in standing orders of each House; there should be more parliamentary cooperation and discussion – perhaps by each passing motions for the other's attention; Westminster should debate devolved implications and establish a regular 'state of Scotland' debate; a 'standing joint liaison committee of the UK Parliament and Scottish Parliament should be established to oversee relations'; barriers to sharing information and inviting each other to committee meetings should be removed; the Secretary of State for Scotland should appear annually to a convenors' (committee chairs') group of the Scottish Parliament and in plenary to report on the devolved

implications of the Queen's speech; the First Minister should appear at Scottish Affairs Committee once per year generally and once per year to discuss how its legislation interacts with reserved matters; there should be Scottish MPs on any UK legislation that uses a substantive Sewel motion, followed by the potential for Scottish Parliament committees to invite the MPs to discuss their implications; and Scottish Parliament and Westminster committees should be given an answer on legislation as they would to their own committees. Further, Calman suggests that there should be a Westminster equivalent to the Sewel motion: 'A new legislative procedure should be established to allow the Scottish Parliament to seek the consent of the UK Parliament to legislate in reserved areas where there is an interaction with the exercise of devolved powers'.

Scottish Parliament recommendations

Finally, Calman makes some recommendations to improve the scrutiny role of the Scottish Parliament. To deal with the lack of a second chamber and the relative finality of its stage 3 legislative process, it recommends giving the power to the Presiding Officer to refer novel, substantive amendments at stage 3 back to committee before bill is passed (to give MSPs and stakeholders chance to look at implications). Or, an amendment to proceed to stage 4 can be proposed by MSPs. It also recommends that committees seek to minimise their MSP turnover (although this is still largely the decision of the parties themselves) and that committees should be able to decide themselves when to create sub-committees to deal with scrutiny overload.

1.2 Reactions to the Calman Recommendations

In some respects the overall reaction to the Calman report has been odd. For example, the initial media reception was fairly warm, with many references to the report's boldness.[3] Its immediate audience – the Labour, Conservative and Liberal Democrat parties – was also enthusiastic, with Jim Murphy keen to be photographed accepting the report from Calman and both the UK Labour and Conservative parties intimating that the report would find its way into their general election manifestos in some form.[4] Yet, things have been quiet since, with both parties suggesting that they

[3] G. Braiden 16.6.09 'Some reservations, but report widely praised' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2514567.0.Some_reservations_but_report_widely_praised.php; D. Maddox 16.6.09 'Critics confounded by radical reform plans' *The Scotsman* http://news.scotsman.com/politics/Critics-confounded-by-radical-.5367796.jp

[4] A. Macleod and P. Jones 11.6.09 'Labour and Tories to back new tax-raising powers for Scotland' *The Times* http://www.timesonline.co.uk/tol/news/uk/scotland/article6482001.ece; A. Macleod 16.6.09

need more time to digest the report and that its recommendations come as an overall, coherent package that would be difficult to implement incrementally. Of course, the more honest statement would be that constitutional reform in Scotland is way down the list of priorities for a UK Government.[5] The lack of progress appears to have frustrated Scottish Liberal Democrat leader Tavish Scott who has 'lost patience' with his colleagues in the other parties.[6] It has also produced an ironic turn of events: the party most critical of the report (the SNP) is now the keenest to see some of it (not surprisingly, the section recommending more devolved powers) implemented immediately.[7]

1.3 The National Conversation

The National Conversation itself (i.e. not including moves to introduce a referendum bill – see 1.4) has been relatively low key in this period, with the most notable development regarding opposition party criticism of its costs. This may arise again during negotiations on the annual budget (see 3.3).

1.4 The Referendum on Independence

The Scottish Government outlined in September its plans for a bill to enable a referendum on independence (as part of its overall legislative programme)[8]. Of course, whether or not this bill will be passed by the Scottish Parliament is another matter. The probability of this event has never been clear and it is no clearer now. While the main opposition parties were very quick to announce that they would not support the bill, whispers continue about various members of various parties being keen to see it go ahead. The parties may also have blundered by placing so much criticism on a discussion of constitutional change during a recession, suggesting that they may be more open to the prospect after an economic recovery.

1.5 The Barnett Formula

'Gordon Brown backs Calman's 'bold' tax-raising proposals for Holyrood' *The Times* http://www.timesonline.co.uk/tol/news/uk/scotland/article6506644.ece

[5] A. Macleod 26.6.09 'Scottish Conservatives step back from Calman Commission findings' *The Times* http://www.timesonline.co.uk/tol/news/uk/scotland/article6579498.ece; J. Allardyce and J. Robertson 12.7.09 'No new powers for Scotland until 2015' *The Times* http://www.timesonline.co.uk/tol/news/uk/scotland/article6689936.ece

[6] D. Maddox 18.9.09 'Labour and Tories not pulling their weight on devolution – Scott' *The Scotsman* http://news.scotsman.com/politics/Labour-and-Tories-not-pulling.5658851.jp

[7] A. Macleod 28.6.09 'Implement Calman proposals now, Salmond urges Brown' *The Times* http://www.timesonline.co.uk/tol/news/uk/scotland/article6597698.ece

[8] 3.9.09 'Programme for Scotland' *Scottish Government News Release* http://www.scotland.gov.uk/News/Releases/2009/09/02151308

Media attention to the Barnett formula was raised briefly during the summer following a Lord's report.[9] The report criticises the fact that a short-term measure has been in place for so long, with no real attempt to adjust the baseline according to population or to allocate money at the margins with reference to need rather than automatically. It recommends a needs assessment exercise followed by a system that provides clarity on how territorial funds are distributed. While David Cameron has in the past expressed similar aims, and the Treasury is in the process of reviewing the system,[10] a major reform is by no means inevitable because both have much higher priorities. Indeed, if there is anything that demonstrates the extent to which Scottish funding is small beer to the Treasury, it is the news that the effect of the recession is to reduce its tax take by more than the Scottish Government's annual budget.[11]

[9]House of Lords Select Committee on the Barnett Formula (2009) *The Barnett Formula*, HL Paper 139 (London: The Stationery Office)
http://www.publications.parliament.uk/pa/ld200809/ldselect/ldbarnett/139/139.pdf
[10] *BBC News* 10.9.09 'Funding rules 'unfairness' claim'
http://news.bbc.co.uk/1/hi/uk_politics/7606907.stm
[11] T. Crichton 21.7.09 'Tax take falls by £32bn amid economic downturn' *The herald*
http://www.theherald.co.uk/politics/news/display.var.2521111.0.Tax_take_falls_by_32bn_amid_economic_downturn.php

2. Public Attitudes and Elections

John Curtice

Key points

- There has been no marked movement in favour of independence. In fact, some recent polls record a significant decline.
- However, there is majority support for a referendum on constitutional change (including the implementation of Calman's recommendations).
- Although the SNP's wording would increase the 'yes' vote in a yes/no independence referendum, there is still not enough support.
- The most popular choice in a multi-option referendum would be 'devolution with some tax powers'
- While many more people think devolution has had a positive rather than a negative impact, most believe it has made no difference
- Since the election of the SNP, more people think that they are better represented in the Union and receive a fair share of UK spending. This may be ironic for a party seeking to foster a strong sense of grievance that might provide the basis of increased support for independence.
- People still do not think that independence is likely in the next twenty years.
- Devolution continues not to have any long-term impact on national identity
- Although the release of al-Megrahi was unpopular, it has created fewer difficulties for the SNP than some opposition politicians anticipated.
- The SNP still enjoys a lead over Labour in voting intentions for the Scottish Parliament, while the Greens may again emerge as an electoral force in 2011
- There is some prospect of significant SNP gains in Westminster in 2010 but little sign that the Conservatives are making the gains we see in England
- Labour's showing in the European Parliament elections was disastrous and its vote was down from 2007 in local government by-elections. In contrast, the SNP's share of the vote increased in both.
- Alex Salmond is still the most popular leader in Scotland and more popular than Gordon Brown and David Cameron
- There is little public support for both immigration and nuclear weapons

2.1 Attitudes towards devolution

2.1.1 Constitutional Preferences

The SNP have recently announced their plans for a possible referendum on Scottish independence in future. If such a referendum were to be held tomorrow, how would you vote?

	Aug. 07	Nov./Dec. 07	Mar./Apr. 08	June/July 08	Oct. 08	Jan/Feb. 09	May/June 09
	%	%	%	%	%	%	%
I agree that the Scottish Government should negotiate a settlement with the government of the United Kingdom so that Scotland becomes an independent state	35	40	41	39	35	38	36
I do not agree that the Scottish Government should negotiate a settlement with the government of the United Kingdom so that Scotland becomes an independent	50	44	40	41	43	40	39

state							

Source: TNS-BMRB System Three/The Herald; 27.5-2.6.09

The SNP wishes to hold a referendum on Scottish independence in due course. Voters would be asked whether they agree or disagree 'that the Scottish government should negotiate a settlement with the Government of the United Kingdom so that Scotland becomes an independent state. How would you vote if such a referendum were held tomorrow?

	July 08	Sept. 08	Oct. 08	Jan. 09	Mar. 09*	Aug. 09*
	%	%	%	%	%	%
I would vote YES (i.e. for Scottish independence)	36	34	31	29	33	28
I would vote NO (i.e. against Scottish independence)	48	50	53	55	53	57
Don't Know/Would not vote	16	15	16	16	14	16

* Introduction read '*If there is a referendum, the SNP government's planned referendum would ask voters whether…*'

Source: YouGov/Mail 24-6.8.09

In a referendum on independence for Scotland, how would you vote?
I agree that Scotland should become an independent country
I do not agree that Scotland should become an independent country

	1998						
	Jun(1)	Jun(2)	July	Sep(1)		Sep (2)	
Nov							
Agree	52	56	49	51	48	49	
Do Not	41	35	44	38	37	43	

	1999							
	Jan.	Feb.	Mar.	Apr.(1)	Apr(2)	Apr (3)	May(1)	May(2)
Agree	49	44	42	47	41	41	39	38
Do Not	42	47	47	44	48	46	48	50

	Jan 2000	Feb. 2001	Oct 2006	Feb. 2007	Mar. 2007*	Apr. 2007*
Agree	47	45	51	46	38	33
Do Not	43	49	39	44	44	46

	June 2009
For	38
Against	54

Source: ICM/BBC, 22-4.6.09

* Reading by Market Research UK. All others by ICM

Next year, the Scottish Government wants to hold a referendum to ask the people of Scotland whether they agree or disagree that:
'the Scottish Government should negotiate a settlement with the Government of the United Kingdom so that Scotland becomes an independent state'
Do you think you would vote for or against this proposal?

	%
For	42
Against	50

Source: ICM/BBC, 22-4.6.09

Who do you think should make most of the important decisions for Scotland about the National Health Service, the Scottish Government in Edinburgh or the UK Government at Westminster?
Ditto - Income tax, Old Age Pensions, Defence and Foreign Affairs

	NHS	Tax	OAP	Defence
	%	%	%	%
Scottish government	78	62	66	35
UK government	19	34	32	63

Source: ICM/BBC, 22-4.6.09

Which of the following comes closest to your view about how Scotland should be governed?
Scotland should become independent of the rest of the UK, with the Scottish Parliament able to make all decisions about the level of taxation and government spending in Scotland
Scotland should remain part of the UK, with the Scottish Parliament able to make some decisions about the level of taxation and government spending in Scotland
Scotland should remain part of the UK, with decisions about the level of taxation and spending in Scotland made by the UK Government.

	%
Independence	28
Devolution with some tax powers	47
Devolution with no tax powers	22

Source: ICM/BBC, 22-4.6.09

Both YouGov and TNS System Three have once again asked questions about attitudes towards independence that they have been asking on a regular basis since the 2007 election. At the same time the BBC Scotland commissioned ICM to undertake an in depth study of attitudes towards independence and devolution on the occasion of the 10th anniversary of devolution at the beginning of July, including asking a number of question that had been asked on previous surveys. We thus have considerable evidence on whether the SNP's expectation that the experience of nationalist government would foster support for independence is now being fulfilled.

It seems not. True, the levels of support for independence vary considerably depending on the question asked. Thus ICM found 38% backing independence in response to one question and 42% another. In contrast YouGov reported just 28% in favour. But none of the poll findings suggest there has been any marked movement in favour of independence.

The first of the two questions asked by ICM was initially asked by that company as long ago as 1998. It uses a wording that mimics the wording used on the ballot paper in the 1997 devolution referendum. It has on various occasions in the past, including as recently as February 2007, found a plurality if not indeed a majority in favour of independence. This time it found just 38% in favour, while 54% were against. This represented the largest lead for the 'No' camp ever recorded by this question. Similarly with 28% in favour and 57% against, YouGov too recorded the largest opposition lead since it first asked the same question in July last year. Meanwhile, although in line with its previous results TNS System Three uncovered only a small opposition lead, at 36% the level of support for independence it identified was the second lowest ever in its time series.

One of the concerns that has been expressed by the Labour party about the SNP's proposal for its independence referendum is that the question it proposes to ask is 'rigged'. Rather than being a straight vote for or against independence, it would be a

vote on whether the Scottish government should enter into independence negotiations. In part the wording is designed to ensure that the referendum complies with the Scotland Act, under which Scotland's constitutional status is a matter reserved to Westminster. But it might be thought to be a softer proposition that would be more likely to attract support.

The ICM/BBC poll attempted to assess the possible impact of this wording by including a question that posed the proposition that the SNP proposes to put on the ballot in as straightforward a manner as possible. The response to this question could then be compared with that to the simple question for or against independence that ICM has asked previously. The question based on the SNP's proposed wording elicited 4% more support for independence (and 4% fewer saying they were opposed), suggesting that the wording proposed by the SNP may indeed be more likely to generate greater support. On the other hand (and in contrast to the rather more complex formulation of the ballot paper question posed by System Three) it still suggested that the SNP's proposition would be defeated in any immediate ballot. At the same time it should also be borne in mind that the precise wording of the question on the ballot paper may make less difference once the subject has been thoroughly aired in a referendum campaign.

The same poll also attempted to elicit what the outcome might be of any 'multi-option' referendum in which voters were asked to choose between independence, devolution with greater taxation and spending powers than at present (as proposed in June by the Calman commission (see 1.1), and the status quo. The SNP have indicated they would be willing to accept such a referendum, rather than one on independence alone, should that be the price of securing the support of one of the opposition parties necessary for the passage of the necessary legislation. It suggested that devolution with more responsibility for taxation and spending than at present would be by far the most popular option in such a vote.

Are you in favour or against the idea of holding a referendum next year on whether Scotland should become independent?

	%
For	58
Against	37

Source: ICM/BBC, 22-4.6.09

Say it was proposed that while Scotland should remain part of the United Kingdom Scottish Parliament should have greater powers over taxation than at present. Do you think this change:
could only be made after it has been voted on in a referendum, or
could reasonably be made without holding a referendum

	%
Referendum	56
No referendum	37

Source: ICM/BBC, 22-4.6.09

The constitutional debate between the parties in Scotland centres not only on whether or not the country should become independent but also on whether a referendum on independence should be held in the first place – and especially so, according to the opposition parties, at a time of economic difficulty. The BBC poll found, however, that a clear majority remain in favour of holding a vote, though perhaps not as overwhelming a majority as sometimes suggested by the SNP.

Meanwhile, irrespective of the possibility of a 'multi-option' referendum the question has also been raised as to whether the proposals of the Calman commission to give the Scottish Parliament greater responsibility for raising its own finance (see 1.1) ought only to be implemented following a referendum, on the grounds that the proposals constitute a significant change to the devolution settlement that was endorsed by the public in the 1997 referendum. The results of the BBC poll on this subject suggest that public opinion is inclined to support that view.

2.1.2 Evaluations of Devolution

Since the Scottish Parliament was achieved in 1999, do you think it has achieved a lot, a little, or nothing at all?

	Feb. 00	Sept. 00	2001	2009
A lot	5	11	25	20
A little	64	56	56	53

Nothing at all	27	29	14	15

Source: TNS-BMRB System Three/STV, 23-6.09. Previous readings from ICM; wording in previous surveys was, '*From what you have seen or heard, do you think the Scottish Parliament has achieved a lot, a little, or nothing at all?*'

Scotland's devolved parliament has been in existence since 1999. Do you think devolution has been a good thing for Scotland, a bad thing, or has it made no difference one way or the other?

	2007	2009
	%	%
Good thing	39	41
No difference	40	46
Bad thing	11	9

Source: ICM/BBC, 22-4.6.09. Previous reading from ICM/Mail 5-9/1/07 (N=545)

Do you think that as a result of having the Scottish Parliament the health service in Scotland has got better, got worse, or has it not made much difference either way? Ditto – standards in Scotland's schools

	Health	Schools
	%	%
Better	33	29
No difference	52	41
Worse	9	12

Source: ICM/BBC, 22-4.6.09.

A poll conducted for STV at the time of the 10th anniversary of devolution attracted some negative publicity for the parliament on the grounds that it showed that a majority of people in Scotland believe it has only achieved 'a little'. Indeed in that respect the findings of the poll were not dissimilar to those of similarly worded polls conducted in the early years of devolution. Of course the poll could just as easily have been reported as showing that the vast majority of people in Scotland believe that devolution has at least achieved something.

Meanwhile, questions included on the BBC poll suggest that only around in ten people think that devolution has been bad for Scotland or has had a detrimental impact on public services. But, equally, the most popular view is that devolution has not made much difference one way or another, with only between three and four in ten believing that it has had a positive impact. Such findings are in line with the results of previous surveys (see for example May to August 2008 report).

From what you have seen and heard so far, do you think that having a Scottish Parliament is giving Scotland .....

... a stronger voice in the United Kingdom,

a weaker voice in the United Kingdom,

or, is it making no difference?

	2000	2001	2002	2003	2004	2005	2006	2007	2009
	%	%	%	%	%	%	%	%	%
Made Voice Stronger	52	52	39	49	35	41	43	61	55
No difference	40	40	52	41	55	50	49	32	34
Made Voice Weaker	6	6	7	7	7	6	6	4	9

Source: ICM/BBC, 22-4.6.09. Previous readings from Scottish Social Attitudes

*Would you say that compared with other parts of the United Kingdom, Scotland gets **pretty much** its fair share of government spending, **more** than its fair share, or **less** than its fair share of government spending?*

	2000	2001	2003	2007	2009
Compared with other parts of the UK, Scotland's share of government spending is…	%	%	%	%	%
Much more than fair	10	10	11	17	12
Pretty much fair	27	36	35	39	37
Less than fair	58	47	48	35	43

Source: ICM/BBC, 22-4.6.09. Previous readings from Scottish Social Attitudes

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

	2000	2001	2003	2005	2007	2009
	%	%	%	%	%	%
England	43	38	30	36	27	31
Equal	36	39	40	34	39	43
Scotland	16	18	24	21	25	21

Source: ICM/BBC, 22-4.6.09. Previous readings from Scottish Social Attitudes

One of the intriguing questions about the existence of a nationalist administration in Scotland is what impact it will have on the public's perceptions of Scotland's relationship with the rest of the UK. The current SNP government is markedly more willing than the previous Labour-Liberal Democrat administration to air its disagreements with the UK government in public. On the one hand the claims made by the SNP in these disputes might persuade people in Scotland that they are getting a poor deal out of the Union. On the other hand the sight and sound of an administration defending Scotland's interests within the UK might persuade people in Scotland that their country was now getting a better deal out of the Union.

Survey work undertaken by the Scottish Social Attitudes survey immediately after the 2007 election suggested that the latter proposition might be closer to the truth. After that election more people than ever felt that having a Scottish Parliament was strengthening Scotland's voice in the UK, while fewer than ever believed that Scotland got less than its fair share of government spending or that England's economy received a greater benefit from the Union than did Scotland's economy.

The ICM/BBC poll repeated a number of items on these topics that had previously been asked by the Scottish Social Attitudes survey. It suggested that some of the more favourable impressions of the Union uncovered in 2007 had rubbed off, but that attitudes were still relatively favourable as compared with those in most of the period prior to 2007. Thus 55% said that having the Scottish Parliament strengthened Scotland's voice in the UK, more than on any occasion between 2000 and 2006. Just 43% said that Scotland received less than its fair share of public spending, less than

on any of the three readings taken between 2000 and 2003. Meanwhile, 31% now feel that England's economy gets more out of the Union, a figure only matched on one occasion between 2000 and 2005. It is still far from clear that having a SNP government in power is helping to foster a strong sense of grievance that might provide the basis of increased support for independence.

2.1.3 Expectations of Independence

At any time in the next twenty years, do you think it is likely or unlikely that Scotland will become completely independent from the United Kingdom?

	1997	1999	2001	2003	2009
	%	%	%	%	%
Very likely	18	12	8	4	10
Quite likely	41	39	29	24	28
Quite unlikely	24	33	36	42	34
Very unlikely	15	14	24	27	24

Source: ICM/BBC, 22-4.6.09. Previous readings from Scottish Social Attitudes and Scottish Referendum Study 1997

Perhaps not surprisingly, however, having the SNP in power has made independence appear more likely, certainly as compared with the position after the 2003 Scottish election, when the SNP suffered what was widely regarded as a heavy defeat. Nevertheless, despite currently having a SNP administration in power, it seems that a majority of people still do not expect independence to happen any time soon, and that indeed it still seems less likely in their eyes than it did immediately after the 1997 devolution referendum or at the time of the initial establishment of the parliament.

2.2 National Identity

Which of the following best describes how you feel about your national identity?

	Apr. 1997	Sept. 1997	1998	1999	2000	2006	2007	2009

	%	%	%	%	%	%	%	%
British, not Scottish	7	8	7	11	9	10	10	9
More British than Scottish	3	2	3	3	3	4	5	4
Equally British and Scottish	22	28	26	26	27	29	24	29
More Scottish than British	26	30	33	32	28	29	26	31
Scottish not British	37	29	26	25	32	26	24	26

Source: ICM except 2006, NOP.

The ICM/BBC poll included a version of the 'Moreno' question on national identity that has been asked on numerous other occasions during the last decade or so. Although the proportion who said they were wholly or mostly Scottish was some seven points higher than in 2007, it was no different from what it had been in 1999. It seems that the existence of devolution continues not to have any long-term impact on national identity in a country in which Scottish identity was already far stronger than British identity before the Scottish Parliament was established.

2.3 Other Issues

2.3.1 Lockerbie

On balance do you tend to think that Abdelbaset al-Megrahi, the Libyan convicted of the Lockerbie bombing, is innocent or guilty?

	%
Definitely guilty	32
Probably guilty	28
Probably innocent	7
Definitely innocent	1
Don't Know	32

Source: Cello-MRUK/Sunday Times, 5-11.6.09

Given that he is terminally ill with prostate cancer and wants to spend the rest of his life in Libya with his family, do you think the Scottish government should…

	%
Agree to calls for him to be freed	8
Agree to calls for him to serve the rest of his sentence in Libya	31
Require him to remain in prison in Scotland	38
Don't Know	23

Source: Cello-MRUK/Sunday Times, 5-11.6.09

51% fair trail. 10% not, 39% DK

Do you think releasing Abdelbaset al-Megrahi was the right or the wrong decision to make?

		Westminster Vote Intention				Age		
		Con	Lab	LD	SNP	18-34	35-54	55+
	%	%	%	%	%	%	%	%
Right	43	30	39	57	59	37	37	53
Wrong	51	65	54	40	36	60	55	42

Source: YouGov/Mail, 24-6.8.09

Preamble mentioned conviction and cancer.

From what you yourself have seen and heard do you think the Scottish government was right or wrong to release Mr Al-Megrahi?

		Age					
		18-24	25-34	35-44	45-54	55-64	65+
	%	%	%	%	%	%	%
Right	32	24	30	27	31	37	42
Wrong	60	75	58	65	60	57	48

Source: ICM/BBC Scotland, 26-7.8.09

Mentioned conviction and release on compassionate grounds

Do you agree or disagree with the Scottish Justice Secretary's recent decision to release the man convicted of the 1998 bombing of the `Pan Am aeroplane over Lockerbie, in which 270 people died?

Vote Intention (unspecified)

			Con	Lab	LD	SNP
	%		%	%	%	%
Strongly agree	22}					
Tend to agree	20}	42	34	32	45	58
Neither	10					
Tend to disagree	8}	45	57	56	44	32
Strongly disagree	37}					

Source: MORI/Thomson Reuters, 20-31.8.09

Do you think the Scottish Justice Secretary Kenny MacAskill was right or wrong to release Abdelbasset Ali Mohmed al-Megrahi on compassionate grounds?

		Scottish Constituency Vote Intention						
		Con	Lab	LD	SNP	18-34	35-54	55+
	%	%	%	%	%	%	%	%
Right	45	28	39	57	64	39	39	55
Wrong	45	66	52	34	28	49	49	38

Source: YouGov/SNP, 1-2.9.09

The announcement by the Justice Secretary, Kenny MacAskill, that the Libyan man convicted of the Lockerbie bombing, Abdelbasset al-Megrahi, was being released on compassionate grounds because he had terminal prostate cancer gave rise to a furious domestic and international row (see the introduction to this monitor). It also produced a blitz of polling, designed to seek the public's views on the merits of the

apparently momentous decision. Overall this evidence suggests that while a majority of people in Scotland were opposed to the decision, that majority was far from overwhelming. Moreover, while the decision was thought to have damaged Scotland's reputation, a potentially serious accusation for a party that claims to be a strong advocate of Scotland's interest, the 'mistake' was not thought sufficiently serious to merit Mr MacAskill's downfall.

Although it played no role in Mr MacAskill's decision, one reason why some people might be willing to accept that Mr al-Megrahi should be released was that they had doubts exist about the safety of his conviction. A Cello-MRUK poll undertaken some weeks before Mr MacAskill's decision was announced found that while most people thought that Mr al-Megrahi was guilty, only one in three were definitely convinced of his guilt. Equally, while only 10% said that they thought that Mr al-Megrahi had not had a fair trial, only 51% said he had. Many evidently simply did not know one way or the other, but the decision to release Mr al-Megrahi was not visited upon a public that was overwhelmingly convinced that justice had previously been done.

After the announcement, four polls addressed the main question of whether the decision was right or wrong. Three found a plurality opposed to the decision. The poll that elicited the most negative reaction was conducted by ICM for the BBC. In it critics outnumbered supporters of the decision by nearly two to one. It might be thought that this result arose because in its introduction to the issue the poll advised respondents of Mr al-Megrahi's conviction but not of his cancer. However, this was equally true of a poll conducted by MORI, in which supporters and critics were almost evenly balanced, albeit with critics firmer in their views than supporters (Indeed the ICM poll found much the same response in answer to differently worded questions it also carried. Thus 57% felt that Mr al-Megrahi should have remained in prison until he died and 52% that he should never have been released rather than transferred to a Libyan prison (29%) or released but required to stay in Scotland (15%).) The MORI poll was conducted over a longer fieldwork period than the ICM poll and together with the result of a YouGov poll for the SNP at the very beginning of September, which found critics and supporters to be evenly balanced, it may indicate that some of the opposition abated as the row continued.

Two features of the variation in attitudes should be noted. First younger people were far more likely to be critical of the decision that older people; the latter's greater sympathy for the decision may reflect a greater awareness of their own mortality and

more experience of the death of others. Second, although a majority of Conservative, Labour and SNP supporters backed the stance on the issue taken by their party leaderships, it is far from clear that the decision of the Liberal Democrats to oppose the decision was in tune with the views of their supporters.

There is, though, little doubt that the decision was thought to have harmed Scotland's reputation. According to the YouGov/Mail poll just 10% thought it had improved Scotland's reputation, while 69% felt it had affected the country's reputation adversely. Similarly the ICM/BBC poll found that just 11% believed Scotland's reputation had been enhanced, and as many as 74% that it had been damaged. Scots seemed to be well aware of the anger that the sight of seeing the saltire waved in apparent triumph as Mr al-Megrahi walked down the steps of Tripoli airport would generate in much of the western world.

However, when the YouGov/Mail poll asked whether Mr MacAskill should resign, just 32% said that he should. As many as 42% said he had made the right decision in the first place, while another 20% said that although he had made the wrong decision it was not a resigning matter. Similarly the ICM/BBC poll found that only 36% thought the Justice Secretary should resign, while 56% felt he should remain in post. This is despite the fact that a majority (52%) also agreed with the opposition criticism that Mr MacAskill should not have visited Mr al-Megrahi in prison during the course of his consideration of Mr al-Megrahi's applications for release. The row undoubtedly caused the SNP political difficulties, but it was perhaps somewhat less explosive domestically than some opposition politicians had anticipated.

2.3.2 Other issues

In future the UK government is to give foreign workers more points towards obtaining UK citizenship if they stay in Scotland. Supporters of this idea say it is required to prevent a shortage of skilled workers in Scotland while critics say it will lead to too many immigrants coming to Scotland. Which view is closest to yours?"

	%
I approve of this idea because Scotland needs more skilled workers	16
I disapprove because Scotland already has too many immigrants	72

Source: Cello-MRUK/Sunday Times 7-13.8.09

The Labour government and the Conservative Party both support plans to replace Britain's nuclear weapon system, Trident, which is nearing the end of its lifetime. The new generation of nuclear weapons are likely to be based in Scotland. Would you support or oppose these nuclear weapons being based in Scotland?

	%
Support	24
Oppose	61
DK/No opinion	15

Source: Cello-MRUK/Sunday Times 7-13.8.09

A question about immigration and one about the location of nuclear weapons was fielded on a Cello-MRUK omnibus survey on behalf of The Sunday Times in August. The first found little support for encouraging immigrants to come to Scotland, the second apparent hostility to the location of British nuclear weapons in Scotland. Other people's workers and what, perhaps, are regarded as other people's weapons are not necessarily warmly welcomed in Scotland. In particular it is noteworthy that the concerns that many devolved politicians have expressed about the implications of a declining population for the health of Scotland's economy are evidently not widely shared amongst the general public.

2.4 Party Fortunes

2.4.1 Holyrood Voting Intentions

Fieldwork	**Con**	**Lab**	**Lib Dem**	**SNP**	**Green**	**SSP**	**Solidarity**	**Others**
	%	%	%	%	%	%	%	%
2-4.6.09	14/14	26/26	14/13	39/34	-/7	-/3	-/1	7/3
24-26.8.09	16/17	31/28	16/15	33/27	-/6	-/3	-/1	5/3

26-28.8.09	16/16	27/26	16/16	34/30	-/7	-2	-/1	6/2
1-2.9.09	16/17	28/26	14/12	36/30	-/7	-/4	-/1	7/4

Note: Separate figures for Greens etc. only available for regional vote. Constituency vote for Others includes these parties.

Source: YouGov//Sunday Times and YouGov/Mail/Mail on Sunday and YouGov/SNP

Fieldwork	**Con**	**Lab**	**Lib Dem**	**SNP**	**Green**	**SSP**	**Solidarity**	**Others**
	%	%	%	%	%	%	%	%
23-9.6.09	12/10	32/29	11/12	39/39	-/5	-/2	-/*	7/3

Note: Separate figures for Greens etc. only available for regional vote. Constituency vote for Others includes these parties.

Source: TNS-BMRB System Three 23-9.6.09

Fieldwork	**Con**	**Lab**	**Lib Dem**	**SNP**	**Green**	**SSP**	**Solidarity**	**Others**
	%	%	%	%	%	%	%	%
20-31.8.09	15	25	15	38	3	-	-	4

Source: MORI/Holyrood. Only constituency vote asked. Separate figures for SSP and Solidarity not available. Figures based only on those certain to vote.

Two polls taken in June suggested that the SNP continued to enjoy a lead over Labour in voting intentions for the Holyrood parliament, albeit perhaps still not on the scale that seemed to pertain in the summer of 2008 prior to the revival of Labour's fortunes in the autumn of 2008 in the wake of its handling of the financial crisis and its success in the Glenrothes by-election. However, the row about Mr McAskill's decision to release Mr Al-Megrahi led some to speculate that the decision would do serious damage to the SNP's electoral standing. Indeed, the first of a flurry of polls taken at the time of that decision, undertaken by YouGov for the *Daily Mail*, put the SNP narrowly behind Labour on the list vote, only the second time since 2007 that YouGov had done so. However, the result was not replicated by two further YouGov polls conducted shortly thereafter; these suggested that at most the decision had

been followed by a little narrowing of the SNP's lead, while a poll conducted at the same time by MORI suggested that the SNP still enjoyed a large lead.

Most polls suggest that the Greens are more popular than they were in 2007, and in most regions would be likely to pass the de facto threshold of 5-6% of the vote needed under the electoral system to win at least one list seat. It thus appears that the Greens have the potential to emerge as a relatively strong force once more in the next Scottish Parliament. Such an outcome might well, given the relatively weak showing currently of both the Conservatives and the Liberal Democrats, mean that the support of the Greens could still be crucial after 2011 to the ability of any SNP administration to secure the passage of its legislation.

2.4.2 Westminster Vote Intentions

Fieldwork	**Con**	**Lab**	**Lib Dem**	**SNP**	**Others**
	%	**%**	**%**	**%**	**%**
15-20.5.09	11	27	11	43	8

Source: Scottish Opinion/Mail on Sunday (N=650)

Fieldwork	**Con**	**Lab**	**Lib Dem**	**SNP**	**Others**
	%	**%**	**%**	**%**	**%**
2-4.6.09	17	28	16	31	8
24-26.8.09	19	33	16	25	7
26-28.8.09	20	30	18	26	6

Source: YouGov/Sunday Times and YouGov/Mail/Mail on Sunday

Fieldwork	**Con**	**Lab**	**Lib Dem**	**SNP**	**Others**
	%	**%**	**%**	**%**	**%**
20-31.8.09	18	27	14	33	8

Source: MORI/Holyrood. Figures based only on those certain to vote.

Although the SNP continue to be less popular for Westminster than for Holyrood, the party apparently still poses a considerable potential threat to Labour at the next UK general election, which has to be held by June 2010. A YouGov poll in early June put

the SNP narrowly ahead in Westminster vote intentions, the first time it had done so since early September 2009. Meanwhile two further polls taken in May and August put the SNP well ahead. On the other hand two YouGov polls taken immediately after the Lockerbie row suggested that the SNP were trailing Labour once more.

The SNP's hopes of making significant gains of seats at the next UK election would appear to be on a knife edge. The party needs just under a 11% swing from Labour compared with 2005 to emerge as the leading party in votes. Meanwhile there are only two seats that the SNP can hope to capture from Labour on swings much below 10% - while there are plenty that start to fall into the party's lap once the swing increases beyond that figure. In short, if the SNP is behind Labour across Scotland as a whole it may gain no more than a small handful of seats. But if it can establish anything more than a trivial lead nationally, then it could be expected to make significant gains.

Meanwhile, the Conservative party still only appears to be making limited progress in Scotland, and far less progress than it is achieving elsewhere in the UK. All four polls of Westminster voting intentions taken during this period point to only a small increase in its support beyond the 16% the party won in 2005. During the same period the party has recorded an average six point increase in its support since 2005 in Britain-wide polls. Still the party may well avoid coming fourth in votes again, a position that looks likely to be occupied once more by the Liberal Democrats, although the party's readings in YouGov polls during this period have shown some improvement on the 12% or so that has been the typical reading for the party for the last two years or so.

2.4.3 European Parliament Election

	Votes	% Votes	Change in % vote since 2004	Seats
SNP	321,007	29.1	+9.4	2
Labour	229,853	20.8	-5.6	2
Conservative	185,794	16.8	-0.9	1
Liberal Democrat	127,038	11.5	-1.6	1
Green	80,442	7.3	+0.5	0

UKIP	57,788	5.2	-1.5	0
BNP	27,174	2.5	+0.8	0
Socialist Labour	22,135	2.0	I	0
Christian Party	16,738	1.5	-0.3*	0
SSP	10,404	0.9	-4.3	0
Independent	10,189	0,9	I	0
No2EU**	9,693	0.9	I	0
Jury Team	6,257	0.6	I	0

I Did not contest the 2004 election

Turnout 28.6 (-2.1)

* comparison with Operation Christian Voice in 2004

** included Solidarity

Sources: news.bbc.co.uk; www.europarl.org.uk

As in the rest of the UK, the European Parliament election proved to be a disaster for the Labour party. Following on from its defeat in 2007, the party trailed the SNP in the nationwide vote. Indeed at a little under 21% it was the party's lowest share of the vote in a Scotland wide contest since it first began fighting elections as an independent party in 1918. Labour's only consolation was that, compared with the previous European election in 2004, its vote fell less heavily north of the border than it did in Wales or in six of the nine English regions, while it still did well enough to retain its two European Parliament seats.

The SNP were, of course, delighted in coming first for the first time in a European election. However, the party's performance was far from unprecedented. The 2004 contest apart, the party has typically performed relatively well in European elections, and its share of the vote this time around was still below the 33% it won in 1994. It was short too of the 31% it won on the list vote in the 2007 Scottish Parliament election. The party's success in coming first was more an indication of the weakness of Labour's performance than an indication of any new enthusiasm for the SNP.

The Conservatives, meanwhile, suffered another electoral disappointment north of the border. It was the party's second worst performance in European elections in Scotland; only in 1994, at the height of the unpopularity of John major's government, had it ever done less well. The one point fall in the party's share of the vote since

2004 contrasted with a two point increase in Wales and a one point increase in England. The party would not have succeeded in retaining its second European Parliament seat even if the number of MEPS elected in Scotland had not been reduced from seven to six.

The Liberal Democrats generally have a poor record in European elections, and this latest contest was no different. Still, at least the party managed to retain its one MEP and the one and half point drop in its vote was little different from the one point drop the party suffered across Britain as a whole. Meanwhile none of the three smaller parties that managed to secure representation elsewhere in Great Britain, and which perhaps profited from the MPs expenses scandal that rocked Westminster in the weeks leading up to the poll, managed to make a breakthrough north of the border. Both the Greens and the BNP secured a smaller increase in support than they did across the UK as a whole. UKIP's vote fell back in Scotland, whereas across Britain as a whole it held steady.

2.4.3 Local Government By-Elections

4/6/09 East Dunbartonshire, Bishopbriggs South	% 1st preference vote	Change in % 1st preference vote since 2007
Conservative	14.0	-0.1
Labour	39.2	-2.5
Liberal Democrat	20.6	+9.8
SNP	23.4	+3.3
SSP	2.7	I
Scottish Unionist		W
Independent	-	W

Turnout 44.2 (-14.3)

4/6/09 Glasgow, Drumchapel/Anniesland	% 1st preference vote	Change in % 1st preference vote since 2007
Conservative	5.9	+1.2
Labour	48.4	-12.0
Liberal Democrat	6.5	+2.5

SNP	28.3	+6.8
Green	5.1	+2.1
BNP	3.3	I
Independent	2.4	I

Turnout 26.9 (-17.3)

(SNP defending seat)

4/6/09 North Lanarks., Coatbridge North and Glenboig	% 1st preference vote	Change in % 1st preference vote since 2007
Conservative	8.8	-1.8
Labour	37.2	-10.6
Liberal Democrat	-	-
SNP	30.5	+1.1
Independent	13.5	+4.5
Independent	5.3	I
Green	2.8	I
SSP	2.0	-1.2

Turnout 29.3 (-19.4)

(SNP defending seat)

18/6/09 Inverclyde, Inverclyde South West	% 1st preference vote	Change in % 1st preference vote since 2007
Conservative	7.9	+3.6
Labour	22.6	-7.2
Liberal Democrat	21.0	-2.9
SNP	42.4	+19.2
Independent	3.1	-14.7
UKIP	2.3	+1.3
Free Scotland	0.1	I

Turnout 26.5 (-25.8)

(SNP defending)

I Party did not contest ward in 2007; W Party contested ward in 2007 but did not contest by-election

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

Three local government by-elections were held on the same day as the European elections, while a fourth was held just two weeks later. The results provided further evidence of the weakness of Labour's current position. Its vote was down on its vote in the last full local elections in 2007 in all four contests, in three cases by substantial amounts. The party only made two gains from the SNP (in Glasgow and North Lanarkshire) because the election was being held to fill a SNP vacancy in a ward in which Labour had enjoyed a commanding lead on the first preference vote in 2007. In contrast the SNP vote increased everywhere; a particularly strong advance in Inverclyde enabled the party to defend successfully a seat in a ward in which it had trailed behind both Labour and the Liberal Democrats in 2007.

2.5 Attitudes towards Parties and Leaders

2.5.1 Parties

Nothing to report.

2.5.2 Leaders

Which of the following do you think would make the best Scottish First Minister?

	Apr. 08	Sept. 08	Oct. 08	Jan. 09	Mar. 09	Apr. 09	Aug. 09
	%	%	%	%	%	%	%
Alex Salmond	43	41	38	35	36	36	32
Iain Gray	11*	3	13	15	17	7	12
Cathy Jamieson	-	7	-	-	-	-	-
Andy Kerr	-	5	-	-	-	-	-
Annabel Goldie	9	8	10	11	11	10	11
Tavish Scott	5**	5	6	5	6	4	6
Patrick Harvie	-	-	-	2	1	1	1
None/Don't Know	31	31	33	34	29	42	40

Note: Respondents were advised of the party of each leader.
* Figure for Wendy Alexander; ** Figure for Nicol Stephen
Party of leader included in response options except in April poll, when the question asked, '*Which ONE, if any, of the following Scottish political leaders do you think would make the best First Minister?*'
Source: YouGov/Mail, 24-6.8.09

How good or bad a job of running Britain do you think Gordon Brown is doing as Prime Minister?
Ditto – David Cameron David Cameron would do as Prime Minister?
Ditto - Alex Salmond is doing as First Minister?

	Brown	Cameron	Salmond
	%	%	%
Very good	9	3	12
Good	28	18	40
GOOD	*37*	*21*	*52*
Neither	29	33	27
Bad	17	20	12
Very Bad	16	16	6
BAD	*33*	*36*	*18*

Source: ICM/BBC, 22-4.6.09.

How satisfied or dissatisfied are you with way Gordon Brown is doing his job?
Ditto – David Cameron
Ditto – Alex Salmond

	Brown	Cameron	Salmond
	%	%	%
Satisfied	38	40	55
Dissatisfied	52	42	37

Source: MORI, 20-31.8.09

Mr Salmond continues to be a highly popular First Minister. Although there was a slight fall in the proportion saying he would be the best First Minister in a Yougov poll conducted at the height of the Lockerbie row, he still outdistanced all of his rivals by a long way. Iain Gray, the Scottish Labour leader, is still struggling to make much impact on the wider public.

Unsurprisingly Gordon Brown is less unpopular in Scotland than he is across Britain as a while, while Mr Cameron is more popular. (A MORI Britain wide poll in August that asked the same question of these two leaders as did that company's Scottish poll in the same month found that 28% were satisfied with Mr Brown and 65% dissatisfied. The equivalent figures for Mr Cameron were 47% and 38%.) Nevertheless, despite the Conservatives' continuing unpopularity north of the border, the two polls that asked about these two leaders during this period presented inconsistent findings about which was the less popular of the two. But what was clear and consistent is that Mr Salmond trumps them both.

3. The Scottish Parliament and Parties[12]

Paul Cairney

Key Points

- The Scottish Parliament was only permitted to debate the release of al-Megrahi after the decision was made.
- Alex Salmond has again been cleared of misleading the Scottish Parliament.
- The draft annual budget has been published. Although there are many likely flashpoints, previous experience of the budget crisis may reduce conflict this year.
- Most of the major parties have struggled to maintain an image of unity.
- Few motions in the Scottish Parliament have put pressure on SNP policy.
- The Westminster expenses scandal continues to cast a shadow over Holyrood.
- Scottish Parliament committees are not the 'motor of a new politics'. They favour headline-grabbing short inquires over high-impact long term inquiries. One of the notable exceptions is the agenda on parliamentary scrutiny of the annual budget.
- The number of Scottish Government bills has rise to 15, but many are short and only 6 can be traced directly and meaningfully to the SNP manifesto.

3.1 The recall of the Scottish Parliament

One of many interesting aspects of the Al Megrahi decision is that it was made with no direct reference to the wishes of the Scottish Parliament. Although the Presiding Officer Alex Fergusson did recall the Scottish Parliament for an extraordinary debate in August[13], and Justice Secretary Kenny MacAskill was no doubt subject to the most stressful parliamentary exchange of his career, the debate took place *after* MacAskill made his decision. Fergusson rejected the option of the debate taking place before the decision, stating that it was 'a matter for Scottish Ministers alone'.[14] While we

[12] To shorten the length of this report, I have not included all references to media coverage of some events described (and 3.2, 3.3, 3.4, 3.6 in particular; see also references to the visit of the Queen to the Scottish Parliament). Instead, these can be found at http://paulcairney.blogspot.com/2009/10/scottish-parliament-and-parties.html

[13] It has only been recalled in two other instances – following the deaths of Donald Dewar and the Queen Mother – Scottish Parliament News Release 20.8.09 'Presiding Officer Recalls Parliament' http://www.scottish.parliament.uk/nmCentre/news/news-09/pa09-044.htm

[14] Scottish Parliament News Release 17.8.09 'Presiding Officer's Statement On Request To Recall Parliament' http://www.scottish.parliament.uk/nmCentre/news/news-09/pa09-040.htm;

should not make too much of individual cases, it does seem to reinforce the feeling that the famous dictum of 'power sharing' masks a rather traditional Westminster tradition in which the government governs and Parliament reacts. Indeed, given that its European and External Relations committee does not enjoy the same 'scrutiny reserve' afforded to the House of Commons[15], we may be tempted to conclude that the Scottish Parliament is less involved in the policymaking process than its Westminster counterpart.

3.2 Who Decides If Ministers are Telling the Truth? Part 3

Alex Salmond referred a second complaint (this time by Iain Gray) about his conduct in Parliament to the new independent advisory panel (George Reid and David Steel). The panel's report concludes that Salmond did not mislead Parliament when he stated that 16 prisoners had absconded from Scotland's open prison estate in 2008/9.[16] The complaint does little to dispel the notion that opposition MSPs are using any alleged inaccuracies in ministerial statements to question their integrity.[17] This is part of a wider process in which MSPs appear far happier than in the past to question the veracity of statements made by their parliamentary colleagues.[18]

3.3 Political Parties and the Annual Budget

Given the events of the last two years, few expect a smooth ride when the Scottish Government attempts to pass its third annual budget bill through the Scottish Parliament. Yet, the unexpected consequence of the spectre of the budget crisis last time could be (touch wood) that the parties become much more willing to cooperate even when this relatively tight budget presents the most potential for conflict. So far, attention has focused on the Scottish Government's decision (in the draft budget) not to fund the £400m Glasgow Airport Rail Link, prompting the suggestion (reported much more in the Herald than the Scotsman) from Glasgow City Council leader Steven Purcell that it was being victimised (even though the Edinburgh equivalent

[15] House of Commons Information Office (2008) *EU Legislation and Scrutiny Procedures* http://www.parliament.uk/documents/upload/l11.pdf
[16] Independent Advisers to the First Minister (2009) *Scottish Ministerial Code Inquiry: Complaint From Iain Gray MSP About First Minister's Answers On Open Prison Absconds* http://www.scotland.gov.uk/Resource/Doc/1124/0084819.pdf ; Scottish Government News Release 5.8.09 'Ministerial Code Inquiry' http://www.scotland.gov.uk/News/Releases/2009/08/05103555
[17] A. Macleod 5.8.09 'MSPs rapped over point scoring at First Minister's Questions' *The Times* http://www.timesonline.co.uk/tol/news/uk/scotland/article6740314.ece
[18] See for example Scottish Parliament Official Report cols.18410-2 http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-09/sor0611-02.htm#Col18374 ; D. Maddox 6.8.09 ''Holyrood as bad as Westminster' – Steel' *The Scotsman* http://news.scotsman.com/politics/39Holyrood-as-bad-as-Westminster39.5528067.jp

has already been scrapped).[19] This now pits the SNP Government against Labour at three levels following Iain Gray's claim that a drop in inflation has boosted the Scottish Government budget by £1bn and the UK Government's insistence that the appearance of Scottish funding 'cuts' are caused by 'frontloading' (but not as much frontloading as the Scottish Government has requested) to boost the economy.[20] There are also some likely flashpoints regarding the cost of the National Conversation and preparation for a bill on an independence referendum, any costs borne by the Scottish Government (beyond the issue of council tax freezes) in preparation for a local income tax and the adequacy of money put aside for the building of new schools.

3.4. Political Parties and the Conference Season

This is a period in which the main parties seemed determined to shoot themselves in the foot. The SNP undermined its attempts to take the Glasgow-East by-election by struggling to elect a candidate and becoming mired in allegations about misleading campaign literature (which seems par for the course in elections) and using Scottish Government National Conversation and Cabinet meetings to drum up support. Meanwhile, the Labour Government gave the impression that it did not welcome another by-election by rejecting plans to accelerate Glasgow North-East and further delaying the prospect of Jack McConnell giving up his Scottish Parliament seat to become High Commissioner in Malawi. Attempts by Scottish Secretary Jim Murphy and Iain Gray to work together to reclaim ground from the SNP (in part in reference to nationalism and the Saltire, but also by focusing criticism on Salmond) were also overshadowed at times by the bigger issue of Gordon Brown's popularity. Murphy has continued his attempts to equate Salmond on his level (and therefore below Gordon Brown) by challenging him to a debate, while Salmond prefers the prospect of joining the UK leaders in a TV debate before the next general election. In many ways the more interesting party conference comes from the Liberal Democrats, not only because it raised issues of the extent to which the leadership consults the Scottish leader (particularly on the 'mansion tax') and the prospect of Liberal

[19] Similar claims on a different issue were made in 2001, culminating in Glasgow's decision to leave COSLA – see McGarvey, February 2001: 41-2.

[20] H. Mcardle 17.9.09 'Purcell claims Glasgow has been snubbed in budget round' *The Herald* http://www.heraldscotland.com/news/politics/purcell-claims-glasgow-has-been-snubbed-in-budget-round-1.920392; D. Maddox 25.9.09 'Inflation fall gives Scottish Government '£1bn budget bonus'' *The Scotsman* http://news.scotsman.com/politics/Inflation-fall-gives-Scottish-Government.5678644.jp; 24.7.09 'SNP attacks Labour's 'savage' cuts' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2521746.0.SNP_attacks_Labours_savage_cuts.php

Democrat support for an independence referendum (Tavish Scott maintains that the Liberal Democrats are still opposed), but also because it highlighted the party's dilemmas when presenting a unified policy stance. In particular, Nick Clegg's apparent suggestion that the Liberal Democrats would oppose tuition fees in principle but only abolish them when it was financially viable (which, in the eyes of many, may be never) is difficult to maintain when the policy has already been delivered in Scotland. The UK focus of the Conservative conference is in many ways the exception because David Cameron still seems the most keen to assure Scottish voters that he will govern them with respect.[21]

3.5 The New Politics of Voting[22]

Voting on parliamentary motions in this period reinforces the point that relatively few place the Scottish Government in a difficult position, many are proposed by the Scottish Government and backed by most MSPs (such as the motions in May praising NHS efforts to tackle swine flu and the 'Cashback for the Communities' scheme; the vote on the SNP's waste strategy was more mixed), and many others promoted by opposition parties seek to reinforce existing Scottish Government policies and place them higher on its agenda (such as the European missing children alert system[23]). This leaves a small number of notable debates which seek to change Scottish Government policy. Yet, some of these have been significant in this period. The issue on which the SNP seems most vulnerable is education and several motions in September on compulsory education call into question its record on teacher numbers and class sizes.[24] This supplements a Labour motion in May (passed with the help of the Conservatives and Liberal Democrats) to switch funding from student debt to student support (by providing more loans for the poorest students and leave open the reintroduction of the graduate endowment). Perhaps the SNP's defeat on the motion to welcome the Calman Commission[25] would have been more significant if backed by UK Labour and Conservative assurances on its implementation. The emergency debate on Al Megrahi was not linked to a motion,

[21] See, for example, the 28th September 2009 edition of *Holyrood Magazine*.
[22] For a full list of motions and votes, see BBC News 24.9.09 'How MSPs voted in the parliament' http://news.bbc.co.uk/1/hi/scotland/8236304.stm
[23] J. Allardyce 14.6.09 'Rapid alerts for snatched children' *The Times* http://www.timesonline.co.uk/tol/news/uk/scotland/article6493741.ece
[24] Scottish Parliament Official Report 24.9.09 cols.19895-926 http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-09/sor0924-01.htm
[25] Scottish Parliament Official Report 25.6.09 cols.18835-87 http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-09/sor0625-01.htm

but then opposition parties voted in September to criticise MacAskill's 'mishandling' of the case.[26]

3.6 Expenses

Although it is now much lower down the media agenda, the MP expenses scandal has still not run its course. Indeed, it seems to have provided a window of opportunity for wider constitutional reform (and perhaps a public debate on PR), which Gordon Brown has promoted alongside more focused measures regarding the transparency of MP behaviour. This may not be enough to draw attention from MPs with significant second jobs who employ family members and/ or 'funnel' expenses money to their local parties. As expected, although Holyrood continues to represent a potential source of policy learning,[27] the Westminster expenses scandal has prompted the Scottish Parliament to make sure that its own system is robust. A small (since the Langlands Review was only completed last year) independent review by Sir Neil McIntosh will be completed this year[28] and it may consider the practicalities of inviting MSPs to pay back any profits from the sale of their second homes.[29] The SNP is also seeking to use this window to promote political reforms as part of its National Conversation.[30] The expenses scandal has been used by opposition politicians to criticise Alex Salmond, focusing on his Westminster food expenses claims and the cost of his bid to 'impeach' Tony Blair (all in the context of pressure to force Salmond to resign as an MP).

3.7 Scottish Parliament Committees

[26] Scottish Parliament Official Report 2.9.09 col.19162 http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-09/sor0902-02.htm#Col19154

[27] M.Russel 7.6.09 'Mike Russell: Holyrood's miles better' *The Times* http://www.timesonline.co.uk/tol/news/uk/scotland/article6445180.ece; H. Macdonell 23.6.09 'Shamed MPs should have learned from Holyrood' *The Scotsman* http://news.scotsman.com/politics/Shamed--MPs-should-have.5390286.jp. Note also the evidence of Holyrood learning negative lessons when forming an agreement with the police on MSP office searches - R. Dinwoodie 26.6.09 'Agreement clarifies operation of Holyrood office searches' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2516556.0.Agreement_clarifies_operation_of_Holyrood_office_searches.php

[28] Scottish Parliament News Release 5.6.09 'Independent Examination To Be Carried Out On Holyrood's Expenses System' http://www.scottish.parliament.uk/nmCentre/news/news-09/pa09-017.htm

[29] P. Hutcheon 8.8.09 'Salmond backs scheme to force MSPs to repay second home profits' *The Herald* http://www.sundayherald.com/news/heraldnews/display.var.2524605.0.0.php

[30] J. Allardyce 7.6.09 ''Recall' plan could see unwanted MSPs ousted' *The Times* http://www.timesonline.co.uk/tol/news/uk/scotland/article6446185.ece

The experience so far of minority government is that the Scottish Parliament committees have still not become the 'motor of a new politics'. To some extent this could have been predicted because, although the Consultative Steering Group stressed the need for 'power sharing' between the Scottish Parliament and Scottish Executive, there was no equivalent move to share the resources (e.g. the vast majority of civil service resources are held by the Scottish Government) or the responsibility for policy initiation (with committees there to check that the Scottish Government consults with policy participants, scrutinise legislation when presented and, on rare occasions, initiate legislation when there is a perceived gap). From 1999-2007 there were additional reasons for a less-than-anticipated role for committees: the ability of the Labour/ Liberal Democrat coalition to dominate the parliamentary arithmetic in both plenary and committee undermined the ability of committees to pursue inquiries likely to be critical of existing policy, while the scale of legislation coming from the Scottish Executive undermined their ability to do anything but scrutinise government policy. Thus, the rallying cry of the committee legacy reports was for fewer government bills, to ensure that they also had time to set the agenda (although note that there were, of course, no equivalent calls for a reduction in party whipping to ensure that committees were businesslike). Yet, the reduction in legislation (in both numbers of bills and numbers of sections within them) and a consequent rise in free committee time has not produced the predicted results. The high-impact agenda setting inquiry is still a rare beast in the Scottish Parliament. Instead, opposition MSPs have focused on headline-grabbing, short term inquiries. There is also limited evidence to suggest that businesslike committees are making a difference to Scottish Government bills (the climate change bill may be the only exception so far). Instead, we find more examples of convenors using their casting votes along party lines rather than the once revered status quo, coupled with more examples of committee votes being overturned in plenary when the parliamentary arithmetic changes.[31]

As previous monitors have noted, the best bet for committees is to focus on valence issues that brook no realistic disagreement and/ or issues that do not involve poring over former Scottish Executive policies or set out to criticise existing Scottish Government policy. While this does not leave much room to manoeuvre (and the issues may be complicated further by the party affiliations of individual convenors –

[31] See for example 9.9.09 'Parliament supports state-funded lawyers at children's hearings' *The Herald* http://www.heraldscotland.com/news/politics/parliament-supports-state-funded-lawyers-at-children-s-hearings-1.918795

e.g. Finance is SNP-led while Audit is Labour-led), there are some useful examples of reports not subject to division in this period. Perhaps most impressive is the report by Health and Sport which criticises the lack of sufficient *implementation* of widely-agreed policies on child and adolescent mental health services. In other words, this represents an attempt to raise the Scottish Government's (and the Scottish Executive's before it) own policy higher on its own agenda (in part by highlighting the most newsworthy problems).[32] Local Government and Communities urges the Scottish Government (as Finance did to the former Scottish Executive) to take a more active role in any local authority attempts to coordinate their responses to Single Status (an agreement between local authorities and trade unions to harmonise the pay and conditions of male and female workers). European and External Relations identifies the problem of EU structural funds during a recession (they rely on matched funding from the private and public sectors which may be less forthcoming) and (among other things) explores the scope to learn from Welsh Assembly Government initiatives (this was also backed by a parliamentary motion in May)[33]. Finance (Strategic Budget Scrutiny) considers the adverse effect of recession on future public spending and recommends that subject committees begin to consider how cuts can be made in their areas. Public Audit provides a report which is highly critical of the way that Transport Scotland's chief executive (and Permanent Secretary John Elvidge) dealt with the fact that Transport Scotland's director of Finance and Corporate Services held shares in FirstGroup, the company negotiating with the Scottish Government to extend its rail franchise in Scotland. It has also requested that the Auditor General for Scotland examines the figures given to the committee regarding likely passenger numbers.[34] Rural Affairs and Environment also considers how best to support the pig industry in Scotland and ensure that more, affordable, housing is built in rural parts of Scotland (for example, though planning reforms) and that councils are given further powers to maintain stocks of social housing. There are also reports that do not betray much disagreement. For example, while Finance's main bone of contention is whether or

[32] Scottish Parliament News Release 23.6.09 'Committee discovers disturbing evidence of under-5s with mental health issues slipping through the net' http://www.scottish.parliament.uk/nmCentre/news/news-comm-09/cHandS09-s3-003.htm

[33] Scottish Parliament Official Report 21.5.09 http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-09/sor0521-02.htm#Col17695

[34] Scottish Parliament News Release 11.6.09 'Transport Scotland Criticised Over Serious Governance Failures' http://www.scottish.parliament.uk/nmCentre/news/news-comm-09/cau09-s3-005.htm; Scottish Parliament News Release 24.6.09 'Committee Convener Requests Auditor General Probe Into Rail Franchise Passenger Figures' http://www.scottish.parliament.uk/nmCentre/news/news-comm-09/cau09-s3-006.htm

not the Scottish Government's means of negotiating public sector pay with unions should be formalised (the Scottish Government position is that this relationship should be between employee and employer (e.g. the local authorities)), it agrees that a reform of the public sector 'bonus culture' should be reformed.[35] This seems less contentious than Economy, Energy and Tourism's internal disagreement over the need for new nuclear power stations to form part of Scotland's energy future. It is therefore all the more impressive that the EET produced such an extensive vision, based on a 12-month inquiry.

There have also been notable attempts by the Parliament to examine how it operates. For example, Public Petitions makes a range of recommendations (to itself) to make sure that the process is more widely known within Scotland, and has a good stab at listing the petitions it thinks have made a difference (see also the developing agenda on knife crime on the back of a petition[36]). Standards, Procedures and Public Appointments recommends a series of new standing orders to deal with forthcoming Scottish Government 'Hybrid Bills' (public bills which affect private interests – such as the likely Forth Crossing Bill). Most importantly, Finance examined the way that the budget process operates, as part of a broader review by the Standards, Procedures and Public Appointments Committee initiated in plenary in November 2007 (i.e. quickly following the establishment of minority government but before the problems that arose since). It suggests that, although the process compares favourably with budget processes in other countries (and Westminster in particular), it requires some revisions. In particular, while it recognises the basis for stage 1 discussion (to initiate a strategic overview of the budget by expert subject committees who feed into a finance committee report) it suggests that the process does not work effectively. Therefore, there should be a 'new budget strategy phase' to identify the government's aims and priorities and assess the extent to which they have been met. Further, this should be undertaken primarily by the finance committee, to allow more flexibility in the timing of the review and to make it easier to track cross-cutting themes. It also recommends that other committees should 'mainstream' financial considerations into their inquiries and that the Scottish Government should inform Parliament when new policy proposals would trigger significantly new spending

[35] B. Currie 23.6.09 'Holyrood call for review of bonuses' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2515859.0.Holyrood_call_for_review_of_bonuses.php; H. Macdonell 23.6.09 'MSPs call for end to big public-sector bonuses' *The Scotsman* http://news.scotsman.com/politics/MSPs-call-for-end-to.5390287.jp

allocations.[37] Perhaps most significantly, it recommends that significant resources should be available (for the new Financial Scrutiny Unit[38]) to let committees scrutinise budget plans more effectively. While the Scottish Parliament has always in theory had the power to make alternative budget proposals, it is only with such a resource that any significant suggestions could be reasonably made. Given that the imbalance of resources is the main reason that the Scottish Parliament cannot 'power share' with the Scottish Government, it will be interesting to see if this initiative makes a difference and sets a precedent for 'beefing up' the committee process as a whole (although note that the FSU will draw on existing SPICE staff).

3.8 Committee Reports and Inquiries (20 May 2009 – 28 September 2009)[39]

European and External Relations:

10 June 2009 1st Report 2009: The impact of the financial crisis on EU support for economic development

Finance:

29 June 5th Report 2009: Report on the Review of the Budget Process (Response from the Scottish Government)

22 June 4th Report 2009: Report on Public Sector Pay (Response from the Scottish Government)

9 June 2nd Report 2009: Strategic Budget Scrutiny

Public Audit:

11 June 2009 6th Report 2009: The First ScotRail passenger rail franchise

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[36] R. Dinwoodie 12.8.09 'Labour petition on knives goes to Holyrood' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2525073.0.Labour_petition_on_knives_goes_to_Holyrood.php

[37] 30.6.09 'Report recommends Holyrood spending alert' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2517248.0.Report_recommends_Holyrood_spending_alert.php

[38] Scottish Parliament News Release 24.9.09 'Parliament Creates Financial Scrutiny Unit' http://www.scottish.parliament.uk/nmCentre/news/news-09/pa09-049.htm

[39] Excluding most annual reports, financial memoranda, budget reports (which are brought together by the Finance Committee's stage 2 report) and reports on subordinate legislation (which can be tracked more systematically on the committee webpage). From this edition the lists also exclude reports on legislative consent memoranda (these can be tracked more easily from the Scottish Government's own records -http://www.scotland.gov.uk/About/Sewel/SessionThree) and stage 1 reports on proposed legislation (these can be tracked more easily in the Scottish Parliament's bills section - http://www.scottish.parliament.uk/business/bills/index.htm). In other words, the focus of this list is on non-routine publications such as committee inquiries conducted at their discretion. For the committee issues that the Scottish Parliament chose to publicise, see http://www.scottish.parliament.uk/nmCentre/news/index.htm

Public Petitions:
16 June 2009 3rd Report 2009: Inquiry into the public petitions process

Standards, Procedures and Public Appointments:
16 June 2009 7th Report 2009: Hybrid Bills

Subordinate Legislation:
29 June 2009 37th Report 2009: Report of Scottish Statutory Instruments laid in 2008

Economy, Energy and Tourism:
30 June 2009 7th Report 2009: Determining and delivering on Scotland's energy future

Health and Sport
22 June 2009 7th Report 2009: Inquiry into child and adolescent mental health and well-being

Local Government and Communities:
10 June 2009 12th Report 2009: Equal Pay in Local Government

Rural Affairs and Environment:
25 June 2009 10th Report 2009: The Pig Industry (Government response)
7 May 2009: 5th Report 2009: Rural Housing (Government response)

3.9 Parliamentary Bills (20 May 2009 – 28 September 2009)

Following a relatively significant flurry of legislative activity, the SNP is more difficult to describe as 'work-shy'. Since anything more than 50 bills in four years is considered excessive by Scottish Parliament committees (assuming that many are fairly complex and require significant scrutiny), particularly since many of the former Scottish Executive's policies did not require legislation, then 15 in just over two years may be approaching a respectable number under minority conditions. Yet, theses numbers may be misleading for at least two reasons. First, they may be relatively simple bills with few sections. Second, they may not be bills likely to set the heather on fire. For example, two were budget bills, four – preparing for the commonwealth games, reforming the judiciary and courts, reforming public health law, revising the law on sexual offences – were inherited, and three - on asbestos-related

compensation (which arose unexpectedly following a House of Lords ruling), convention rights (following a Lords ruling on slopping out), decoupling local and Scottish Parliament elections - arose unexpectedly in the course of the Parliament. This leaves six bills – abolishing bridge tolls and the graduate endowment, introducing health board elections, addressing climate change, addressing additional support needs in education, updating flood prevention legislation – that can be traced directly and meaningfully to the SNP manifesto.

Scottish Government Bills Passed:

- Climate Change (Scotland) Act 2009 – to set long term (2050) and annual targets for the reduction of greenhouse gases and confer powers on Scottish Ministers to help meet them (e.g. to impose duties on public authorities) (see 4.9).
- Convention Rights Proceedings (Amendment) (Scotland) Act 2009 – an emergency bill (stages 1 to 3 taken on the same day) to ensure that claims for compensation related to the Human Rights Act 1998 (consistent with the principles of the European Convention on Human Rights) can only be made within one year of the relevant breach of the Act. It was introduced to address compensation claims in Scotland made by prisoners made to 'slop out' (see previous monitors).
- Education (Additional Support for Learning) Act 2009 - to amend the Education (Additional Support for Learning) (Scotland) Act 2004 to reform the process in which parents of children with additional support needs make requests to place children in schools outwith their local authority area (and any subsequent appeals to the Additional Support Needs Tribunal if a request is refused).
- Flood Risk Management (Scotland) Act 2009 - to reform flood management by assigning greater responsibility to SEPA, requiring SEPA to produce flood risk assessments and management plans, and transpose the EU Floods Directive.
- Scottish Local Government (Elections) Act 2009 – to decouple local and Scottish Parliament elections following the spoiled ballot paper debacle in 2007 and subsequent Gould investigation.[40]

[40] The move is also consistent with proposals originally made in the McIntosh, Kerley and Arbuthnott Reports – see S. Herbert (2009*) Scottish Local Government (Elections) Bill*, SPICe briefing 09/21 http://www.scottish.parliament.uk/business/research/briefings-09/SB09-21.pdf

- Sexual Offences (Scotland) Act 2009 - to consolidate and clarify the law on sexual offences, largely in line with the Scottish Law Commission report (commissioned by the Scottish Executive in 2004, in part to address Scotland's low conviction rates for rape offences). Particular attention is given to the boundary between rape and sexual assault, sexual offences against children, sexual offences committed by young children (and in which venue they should be prosecuted) and consensual sexual activity between older children.

Scottish Government Bills in Progress:

- Arbitration (Scotland) Bill
- Criminal Justice and Licensing (Scotland) Bill
- Interpretation and Legislative Reform (Scotland) Bill
- Marine (Scotland) Bill
- Public Services Reform (Scotland) Bill
- Schools (Consultation) (Scotland) Bill
- Tobacco and Primary Medical Services (Scotland) Bill

Members' Bill Passed:

- Offences (Aggravation By Prejudice) (Scotland) Act 2009 (Patrick Harvie, Green, supported by the Scottish Government) – to extend existing provision for aggravated offences (racial or religious prejudice is already covered) to a victim's actual or presumed sexual orientation, transgender identity or disability.[41]

Members' Bills in Progress[42]

- Control of Dogs (Scotland) Bill

3.10 Sewel (Legislative Consent) Motions passed (20 May 2009 – 25 September 2009)[43]

None passed.

[41] See G. Ross (2009) Offences (Aggravation by Prejudice0 (Scotland) Bill, SPICe briefing 04/41 http://www.scottish.parliament.uk/business/research/briefings-08/SB08-41.pdf
[42] For a list of Members' Bill Proposals see http://www.scottish.parliament.uk/business/bills/membersBills.htm

4. Scottish Government and Public Policy[44]

Paul Cairney

Key Points:

- The neutrality and conduct of senior Scottish Government civil servants has come under considerable opposition party scrutiny
- The agendas on public spending and expenses have focused attention to the size and cost of the Scottish public sector
- There is still a clear difference in the UK and Scottish Government approaches to targetry
- The recession (and Diageo affair) has further exposed the limited levers the Scottish Government enjoys over the economy
- The swine flu pandemic has exposed intergovernmental disagreement over treatment funding
- The Scottish Government continues to build on tobacco controls and further the agenda on alcohol regulation
- The parties continue to disagree over short term sentencing and progress made on police numbers, but have worked well together on sexual offences legislation
- The SNP seems at its most vulnerable when defending its record on education
- Blame-avoidance may be more likely than earlier intervention in social work cases
- The Climate Change Act introduces new targets to reduce emissions
- Scottish crofting policy remains unresolved
- New council housing may not be enough to address bigger problems of affordable and social rented housing
- The new 'Scottish Six' may come from the STV, not the BBC

4.1 The Scottish Government

[43] A full list of motions and links to SPOR discussions is provided by the Scottish Government http://www.scotland.gov.uk/About/Sewel/SessionThree (but note that it lists all potential motions rather than those proposed and passed)

[44] To shorten the length of this chapter, I have not included all references to media coverage of some events described. Instead, these can be found at http://paulcairney.blogspot.com/2009/10/scottish-government-and-public-policy.html

As the introduction to this report suggests, most attention to the Scottish Government in this period was focussed on the release of the Lockerbie bomber. More recently, opposition parties (and Scottish Labour in particular) have explored the chance to criticise the Scottish Government through its civil service. Permanent Secretary John Elvidge has come under particular scrutiny in this period. Elvidge has been on Labour's radar for some time following his statement in 2007 suggesting that the Scottish civil service was effectively operating independently, his involvement in 2008 in debates between the Treasury and the Scottish Government about the adequacy of the Scottish budget and, in 2009, his involvement (criticised by the Public Audit Committee – see 3.7) in the governance of Transport Scotland.[45] In August, Labour complained about the tone of Elvidge's article to the Commonwealth Parliamentary Association, which suggested that the administrative reorganisation of the Scottish Government represented a marked improvement.[46] In September it pounced on the suggestion from a leaked Scottish Government minute that senior civil servants favoured using 'conflict and confrontation' as part of their overall strategy when dealing with UK Government departments.[47] It also alleges that Elvidge is taking the Scottish Government's side over the latest factual debate with the UK Government on the adequacy of the Scottish Government's budget[48] and on opposition party complaints that the SNP Government is using National Conversation events and holding cabinet meetings outside Edinburgh to further its by-election campaign.[49] Overall, there is some disquiet that neutral civil servants are supporting the biases of their political masters by, for example, articulating their priorities in relation to National Conversation aims. Yet, this is to present a skewed notion of the relationship between ministers and civil servants based on the unrealistic idea that the latter have some objective higher level of loyalty to the Crown. Rather, civil servants exist to implement the policies of the ministers they serve.

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[45] See previous monitors: Cairney, September 2007: 17; Cairney, January 2008: 10-11; Cairney, May 2009: 41.
[46] T. Gordon 3.8.09 'Sir John Elvidge in 'bias' row' *The Times* http://www.timesonline.co.uk/tol/news/uk/scotland/article4449102.ece
[47] E. Barnes 7.9.09 'Top civil servants plan for break-up of the UK' *The Scotsman* http://thescotsman.scotsman.com/latestnews/Top-civil-servants-plan-for.5622286.jp; A. Macleod 8.9.09 'Civil servants accused of stoking conflict with UK' *The Times* http://www.timesonline.co.uk/tol/news/uk/scotland/article6825340.ece The other, much less newsworthy strategies were competing, co-existing and collaboration
[48] D. Maddox 22.9.09 'Pressure piles on Scotland's top mandarin over 'Nationalist bias'' *The Scotsman* http://news.scotsman.com/scotland/Pressure-piles-on-Scotland39s-top.5666456.jp
[49] A. Macleod 6.8.09 'Salmond accused of using public funds to campaign' *The Times* http://www.timesonline.co.uk/tol/news/uk/scotland/article6741605.ece

There has also been a miscellany of stories continuing long-term themes: companies can pay the SNP to be in the presence of Scottish Government ministers; ministers do not use enough green transport; and, in this age of austerity (and expenses scandals), the Scottish Government is not doing enough to cut extraneous hospitality and travel costs. More substantively, the prospect of a reduced budget has focused attention on the overall cost of the public sector – in terms of the overall numbers of staff employed, the salaries enjoyed by key executives and the perennial issue of number and cost of quangos. While the Scottish Government line is that the number of quangos in Scotland is falling (see 5.5), we will not have the full picture without examining the number of employees and their costs[50] or, more ambitiously, a measure of what they deliver at a certain cost.[51]

4.2 Public Sector Targets

The UK Government's latest document on public sector reform was portrayed in *The Telegraph* as a U-turn on its previous commitment to stringent targets backed by strong central control.[52] As such, this would represent significant convergence with devolved government policies and policy styles. Yet, further inspection of this document suggests something else: that adherence to targets (particularly in the NHS) is so accepted in the UK public sector that the process no longer requires strong central direction. As such, they have become 'guarantees' that consumers of public services can count on (and complain about if they are not delivered). No such guarantees are provided by the Scottish Government's targets (although NHS targets are still being met), providing opposition parties with easy headlines (rather than a more mature debate on the effectiveness of targets).[53]

4.3 The Economy

Although it annoyed the unions when Scottish Enterprise Minister Jim Mather said it, the Scottish economy may be less hard hit (in terms of unemployment and growth)

[50] D. Maddox 27.6.09 'Quango row blamed on SNP' *The Scotsman* http://news.scotsman.com/politics/Quango-row-blamed-on-SNP.5407516.jp

[51] See also a similar debate regarding the UK Government – e.g. M. Settle 7.6.09 'Whitehall hits back at attack on quangos' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2518550.0.Whitehall_hits_back_at_attack_on_quangos.php

[52] HM Government/ Cm 7654 (June 2009) *Building Britain's Future* http://www.hmg.gov.uk/media/27749/full_document.pdf; P. Johnston 29.6.09 'The ultimate turnaround from Labour, the dying Government' *The Telegraph* http://www.telegraph.co.uk/comment/columnists/philipjohnston/5681147/The-ultimate-U-turn-from-Labour-the-dying-Government.html

[53] J. Allardyce 21.6.09 'Scottish government missing half of targets' *The Times* http://www.timesonline.co.uk/tol/news/uk/scotland/article6544131.ece

than the UK average.[54] However, it also grows more slowly than the UK average and so may take longer to recover from recession. Usually this is not worrying because the UK average masks much higher activity in the south and south east of England and Scotland does well compared to the rest. However, there is now some suggestion that regions with large public sectors (like the devolved territories) are the least well equipped to grow.[55] Perhaps the more pressing problem for a devolved government is the lack of policy levers to influence economic development (including control over North Sea oil revenues[56]). For example, there is still no resolution to the funding of the Forth bridge (which effectively needs Treasury approval), while the Scottish Futures Trust still does not look like a realistic way to get round Treasury rules on borrowing for capital projects. The Scottish Government's attempts to stop Diageo closing down key operations in Scotland proved unsuccessful[57] (while Whyte and MacKay cited alcohol policy reform as one reason for its decision to cut jobs in Scotland).[58] Following its deal with Scottish Labour in the last annual budget, one of its key levers is to fund and subsidise apprenticeships.[59] It also has the power to reform planning laws to aid building projects, relax the regulations on bankruptcy[60] and pay businesses promptly [61] and provides funding for employment-based training.[62] There have also been calls for colleges and universities to make a bigger contribution.[63] The recession has also highlighted another interesting connection

[54] A. Macleod 13.8.09 'Jim Mather rebuked by unions over Scottish unemployment claims' *The Times* http://www.timesonline.co.uk/tol/news/uk/scotland/article6793706.ece
[55] B. Jamieson 23.7.09 'Scotland 'will fall to 9th' in UK economic league table' *The Scotsman* http://news.scotsman.com/politics/Scotland-39will-fall-to-9th39.5485838.jp
[56] 26.7.09 'Time for oil fund - Finance Secretary' *Scottish Government News Release* http://www.scotland.gov.uk/News/Releases/2009/07/24154201
[57] B. Currie 10.9.09 'Scotland always at the mercy of global firms' *The Herald* http://www.heraldscotland.com/comment/brian-currie/scotland-always-at-the-mercy-of-global-firms-1.918928
[58] D. Maddox 5.8.09 'Whyte & Mackay axes sixth of workforce' *The Scotsman* http://news.scotsman.com/politics/Whyte-amp-Mackay-axes-.5523075.jp
[59] 18.6.09 'Modern Apprenticeships' Scottish Government News Release http://www.scotland.gov.uk/News/Releases/2009/06/18090631; S. Macnab 11.6.09 'Firms will be offered £2,000 to 'adopt' apprentices' *The Scotsman* http://news.scotsman.com/politics/Firms-will-be-offered-2000.5354644.jp
[60] 23.6.09 'Dealing with debt' *Scottish Government News Release* http://www.scotland.gov.uk/News/Releases/2009/06/23115155
[61] 19.6.09 'Prompt payment for businesses' *Scottish Government News Release* http://www.scotland.gov.uk/News/Releases/2009/06/19131609
[62] 19.6.09 'Funding to help people find work' *Scottish Government News Release* http://www.scotland.gov.uk/News/Releases/2009/06/19105402
[63] 2.6.09 'Help through the downturn' *Scottish Government News Release* http://www.scotland.gov.uk/News/Releases/2009/06/02153159; L. McIntosh and J. Sugden 9.7.09 ''Colleges must help employers find way through recession'' *The Times* http://www.timesonline.co.uk/tol/news/uk/scotland/article6677571.ece

between reserved and devolved issues, following UK Government measures to make sure that those with mental health problems retain their jobs.[64]

4.4 Healthcare and Public Health

The swine flu pandemic has raised an interesting issue regarding Scottish funding. While critical accounts of Scottish financial advantage suggest that the expense of initiatives such as free prescriptions (and the provision of expensive drugs often not provided by English health authorities) is met by the English taxpayer, recent developments suggest that the lack of equivalent policies for England allows the English NHS to maintain a relatively large surplus.[65] This has come in handy following calls by the Scottish Government for the Treasury to fund swine flu treatment as a national emergency. Instead, the Treasury has argued that the money should come from the NHS budget, knowing that this can be delivered in England.[66] If not for the swine flu, other issues such as C difficile (the Vale of Leven will now be subject to a public inquiry) and MRSA (a new screening process has been announced) may have received more attention. So too would drugs policy be higher on the agenda, particularly since there is still a battle of ideas taking place between critics of methadone treatments and harm reduction (including most notably the Scottish Conservatives) and those who recommend going further, to emulate pilots in England which prescribe heroin instead (the Scottish Government has announced that it will introduce a HEAT target on drugs in November[67]).[68] The battle of ideas is also raging in relation to the future of a free NHS.[69]

4.5 Cigarettes, Alcohol and Food

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[64] 24.8.09 'Help to keep the mentally fragile in work' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2526987.0.Help_to_keep_the_mentally_fragile_in_work.php

[65] R. Smith 27.8.09 'NHS set for record £1.75bn surplus as patients protest over cancer drugs ' *The Telegraph* http://www.telegraph.co.uk/health/2633064/NHS-set-for-record-1.75bn-surplus-as-patients-protest-over-cancer-drugs.html

[66] D. Maddox 24.6.09 'Swine-flu row erupts as Westminster rules out vaccination cash' *The Scotsman* http://news.scotsman.com/politics/Swineflu-row-erupts-as-Westminster.5394263.jp

[67] 1.6.09 'Target for drug treatment' *Scottish Government News Release* http://www.scotland.gov.uk/News/Releases/2009/06/01083004

[68] 15.9.09 'Expert in heroin prescribing call' *BBC* http://news.bbc.co.uk/1/hi/scotland/8256402.stm; M. Reid 13.8.09 'Scottish government accused of accepting steep rise in drug-related deaths' *The Times* http://www.timesonline.co.uk/tol/news/uk/scotland/article6793746.ece

[69] A. Pollock 22.6.09 'Rationing and charges would destroy NHS principles' *The Scotsman* http://news.scotsman.com/politics/Rationing-and-charges-would-destroy.5387033.jp; L. Moss 22.6.09 'Free NHS cannot survive, doctors told' *The Scotsman* http://news.scotsman.com/politics/Free-NHS-cannot-survive-doctors.5387065.jp

The BMA recently praised the Scottish Parliament as a forum to deliver innovative public health laws, citing the smoking ban as the most important policy in its ten years.[70] The ban has not only opened the door for further tobacco restrictions (the latest is a proposed ban on tobacco displays at point-of sale, while there are calls to criminalise the act of buying cigarettes for children[71]), but also other controls justified on public health grounds, such as the proposed (by an MSP) ban on trans fats[72] and the Scottish Government's agenda on alcohol policy (backed by some damning evidence of alcohol use in Scotland).[73] The key development in this period is the introduction of new licensing regulations (based on the Licensing (Scotland) Act 2005 passed by the previous Scottish Executive) giving licensing boards a wider remit when considering the fitness of someone applying to hold a license to sell alcohol, and to review existing license holders (in part by clarifying the rights of individuals and organisations to complain about particular premises).[74] Some reports have suggested that the regulations will be used to support minimum pricing 'by stealth' because in theory licensing boards could argue that (say) buy-one-get-one-free offers in supermarkets promoted anti-social behaviour. Yet, this has been countered by the Glasgow Licensing Board which argues that the regulations are not strong enough.[75] In any case, the Scottish Government has already accepted the need for parliamentary support on minimum pricing[76] (and, ideally, some degree of support from the drinks industry).[77]

4.6 Justice

[70] 30.6.09 'Praise for Holyrood 'maturity'' *The Scotsman* http://news.scotsman.com/politics/Praise-for-Hollyrood-39maturity39.5411864.jp
[71] D. Maddox 25.9.09 'Tobacco display ban moves a step closer with Holyrood vote' *The Scotsman* http://news.scotsman.com/politics/Tobacco-display-ban-moves-a.5678646.jp
[72] C. Sweeney 10.6.09 'Holyrood bid to banish trans fats from Scots diet' *The Times* http://www.timesonline.co.uk/tol/news/uk/scotland/article6474478.ece
[73] E.g. 30.6.09 'Alcohol-related deaths' Scottish Government News Release http://www.scotland.gov.uk/News/Releases/2009/06/30102232
[74] 30.8.09 'New licensing laws come into force' *Scottish Government News Release* http://www.scotland.gov.uk/News/Releases/2009/08/28142140
[75] E. Barnes 31.8.09 'SNP accused of drink crackdown by stealth' *The Scotsman* http://news.scotsman.com/politics/SNP-accused-of-drink-crackdown.5601936.jp; B. Currie 12.9.09 'Glasgow 'will not go out on a limb' over alcohol promotions' *The Herald* http://www.heraldscotland.com/news/politics/glasgow-will-not-go-out-on-a-limb-over-alcohol-promotions-1.919379
[76] D. Maddox 23.6.09 'Minimum prices for alcohol a step closer as Lib Dems hint at U-turn' *The Scotsman* http://news.scotsman.com/politics/Minimum-prices-for-alcohol-a.5390329.jp; 16.8.09 'Labour backing paves way for minimum pricing of alcohol' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2525813.0.Labour_backing_paves_way_for_minimum_pricing_of_alcohol.php
[77] *Scottish Government News Release* 22.6.09 'Alcohol Summit' http://www.scotland.gov.uk/News/Releases/2009/06/22102738

It now seems a very long time ago that Kenny MacAskill was coming under pressure regarding Brian Martin's escape from an open prison (see also 3.2 – this was the subject of a complaint made about Alex Salmond).[78] The issue of short-term prison sentencing ('one of the most bitterly contested issues since the SNP took power in 2007'[79]) is less likely to be short lived. MacAskill's stance has been bolstered in this period by further complaints about prison overcrowding which undermines rehabilitation efforts and new statistics which suggest that reoffending rates among short-term prisoners is high (3 of 4 reoffend within 2 years) and the continued support of former Labour First Minister Henry McLeish.[80] However, opposition parties (and Scottish Labour in particular) continue to use his stance as a sign of weakness, particularly when linked to the issue of knife crime.[81] There is similar conflict over the issue of police numbers, with Labour suggesting that the Scottish Government's success at meeting an interim target will be short lived given the financial crisis in the police force.[82] There is more consensus on the Scottish Government's sexual offences bill (see 3.9), with signs that MSPs are engaging in the details and the Scottish Government is open to amendments.[83] See also 3.9 on the resolution to claims made regarding slopping out.

4.7 Education

The SNP seems at its most vulnerable when defending its record on education, particularly when issues such as the number of teachers in work, school class sizes, the curriculum for excellence, the condition of the school estate, free nursery care, student debt and the long-term financing of universities are on the agenda (see also

[78] R. Dinwoodie 28.5.09 'Inquiry as MacAskill admits escapee should not have been in open prison' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2510828.0.Inquiry_as_MacAskill_admits_escapee_should_not_have_been_in_open_prison.php

[79] 4.7.09 'Justice secretary has an uphill struggle over short sentences' *The Scotsman* http://news.scotsman.com/politics/Justice-secretary-has-an-uphill.5429087.jp

[80] 31.8.09 'Reconviction rates' *Scottish Government News Release* http://www.scotland.gov.uk/News/Releases/2009/08/31095423 ; 31.8.09 'Most short-term inmates reoffend' *BBC News* http://news.bbc.co.uk/1/hi/scotland/8230215.stm; S. Naysmith 17.9.09 'Overcrowded prisons 'not able to offer rehabilitation'' *The Herald* http://www.heraldscotland.com/news/crime-courts/overcrowded-prisons-not-able-to-offer-rehabilitation-1.920390

[81] J. Quinn 12.8.09 'Labour leader accuses SNP of being soft on knife crime' *The Scotsman* http://news.scotsman.com/politics/Labour-leader-accuses-SNP-of.5544061.jp

[82] L. Mcintosh 3.8.09 'Cash crisis could derail SNP plans on policing' *The Times* http://www.timesonline.co.uk/tol/news/uk/scotland/article6736830.ece

[83] 10.6.09 'MSPs move to close loophole in new rape bill' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2513445.0.MSPs_move_to_close_loophole_in_new_rape_bill.php

3.5).[84] However, in many cases there are understandable problems, such as the choice between training more teachers and making sure that existing trainees can find work and balancing two potentially contradictory policy aims – such as the aim to produce national policies on class sizes and the curriculum, but also to foster local government autonomy which will inevitably produce territorial variations. As 5.1 discusses, there is also some confusion about the primary purpose of the Scottish Government decision to reduce the legal maximum primary 1 class size from 30 to 25 to reduce the ability of parents to appeal to 'close a legal loophole that has undermined the government's policy on class sizes' while giving local authorities some flexibility when trying to meet the target of 18.[85] Not surprisingly, the agenda on raising top-up fees in England has reignited calls for their introduction in Scotland.[86] As 3.5 suggests, this would be much more likely under a Labour-led Scottish Government.

4.8 Social Services and Social Work

The cases of Brandon Muir and Baby P have prompted calls for social workers to intervene more and take children into care quicker.[87] Yet, the main response may actually be what Hood et al call institutionalised 'blame-avoidance'[88] as social work departments react to media and political criticism.[89] A report by the Care Commission suggests that only half of all care homes meet national standards on

[84] L. Mcintosh 25.9.09 'Fiona Hyslop battered by universities on teacher training cuts' *The Times* http://www.timesonline.co.uk/tol/news/uk/scotland/article6847980.ece; L. McIntosh 8.7.09 'New school curriculum 'complete nonsense' says its creator' *The Times* http://www.timesonline.co.uk/tol/news/uk/scotland/article6670559.ece ; S. Johnson 28.9.09 'Alex Salmond accused of two years' 'paralysis' over school building' *The Telegraph* http://www.telegraph.co.uk/news/newstopics/politics/scotland/6240734/Alex-Salmond-accused-of-two-years-paralysis-over-school-building.html; W. Humes 25.9.09 'Education crisis a political and professional failure' *The Times* http://www.timesonline.co.uk/tol/news/uk/scotland/article6847981.ece ; F. Macleod 17.7.09 'Increase in free nursery hours not enough for critics' *The Scotsman* http://news.scotsman.com/politics/Increase-in-free-nursery-hours.5468792.jp

[85] A. Denholm 23.9.09 'Hyslop to enforce Primary 1 classes of 25 pupils' *The Herald* http://www.heraldscotland.com/news/education/hyslop-to-enforce-primary-1-classes-of-25-pupils-1.921623

[86] L. McIntosh 11.9.09 'Scotland 'must bring back tuition fees'' *The Times* http://www.timesonline.co.uk/tol/news/uk/scotland/article6830010.ece

[87] E. Barnes 12.8.09 'Call for children at risk to be taken in to care sooner' *The Scotsman* http://news.scotsman.com/politics/Call-for-children-at-risk.5544537.jp

[88] Christopher Hood, Will Jennings and Brian Hogwood, with Craig Beeston (2007) 'Fighting Fires in Testing Times: Exploring a Staged Response Hypothesis for Blame Management in Two Exam Fiasco Cases', Carr Research Paper 42 http://www.lse.ac.uk/collections/CARR/pdf/DPs/Disspaper42.pdf

[89] T. Maxwell 20.8.09 'Brandon Muir: media's obsession with child tragedies a danger, warns peer' T*he Times* http://www.timesonline.co.uk/tol/news/uk/scotland/article6802760.ece

nutrition.[90] While the introduction of 'free' personal care for older people in Scotland was a flagship policy for the former Scottish Executive it was not a panacea. Thus, the UK Government's Green Paper on the issue may reignite the agenda in Scotland.[91]

4.9 Energy, Transport and Environment

The biggest development in this period is the passing of the Climate Change (Scotland) Act 2009 (see 3.9). Following some negotiation with the Scottish Parliament, the Scottish Government brought forward its interim target from 2030 to 2020 and increased the proposed reduction in emissions from 34% to 42%.[92] The Scottish Government also has also opened consultation on waste targets.[93] The debate over the Beauly to Denny line continues despite some (much criticised) attempts by MSPs to speed up the process.[94] The Scottish Government is still hopeful that the high speed rail link will reach Scotland and that Scotland's road vehicles will be electric or low carbon within 10 years.[95] Civil servants in the UK and Scottish Governments have been accused of delaying renewable energy incentives and home lagging respectively.[96]

4.10 Agriculture, Fish, Food and Water

The Scottish Government has followed a long tradition in producing crofting policies not welcomed by crofters' representatives (or not implementing existing policy).[97] It

[90] C. Sweeney 17.9.09 'Elderly not fed properly at care homes' *The Times* http://www.timesonline.co.uk/tol/news/uk/scotland/article6838746.ece
[91] M. Beckford 14.7.09 'Care funding: pros and cons of the options' *The Telegraph* http://www.telegraph.co.uk/news/uknews/5827368/Care-funding-pros-and-cons-of-the-options.html
[92] K. Wright (2009) Climate Change (Scotland) Bill: Stage 3, SPICe briefing, 09/43 http://www.scottish.parliament.uk/business/research/briefings-09/SB09-43.pdf; BBC News 23.6.09 'Climate change targets 'tougher'' http://news.bbc.co.uk/1/hi/scotland/8114193.stm
[93] F. Urquhart 21.8.09 'Minister unveils plans for a 'zero waste' Scotland' *The Scotsman* http://news.scotsman.com/politics/Minister-unveils-plans-for-a.5575188.jp
[94] D. Ross 1.7.09 'MSPs under fire over Beauly to Denny line' *The Herald* theherald.co.uk/politics/news/display.var.2517421.0.MSPs_under_fire_over_Beauly_to_Denny_line.php
[95] 8.6.09 'High speed rail link' *Scottish Government News Release* http://www.scotland.gov.uk/News/Releases/2009/06/08144836; D. Maddox 29.6.09 'Scots vehicles to go electric in next ten years, vow ministers' The Scotsman http://news.scotsman.com/politics/Scots-vehicles-to-go-electric.5408964.jp
[96] A. Seager 12.7.09 'Civil servants accused of delaying renewable energy incentives' *The Guardian* http://www.guardian.co.uk/business/2009/jul/12/renewable-energy-feed-in-tariffs; D. Maddox 28.5.09 'Home lagging row rolls on' *The Scotsman* http://news.scotsman.com/politics/Home-lagging-row-rolls-on.5309418.jp
[97] D. Ross 14.7.09 'Crofters mobilising against 'oppressive' draft reform bill' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2519774.0.Crofters_mobilising_against_oppressive_draft_reform_bill.php

remains opposed to GM food.[98] The role of the EU continues to produce consternation – for example – the Common Fisheries Policy has come under further attack and sheep farmers are unhappy about electronic tagging.[99]

4.11 Housing and Homelessness

Although the SNP promise to build more council houses seemed like the end of an era (with more funding announced this year)[100], a bigger surprise would come from the implementation of Conservative promises to follow suit in England.[101] However, the numbers involved would struggle to make up for shortages in affordable and social rented housing allegedly caused by the right to buy, the rise in repossessions during the recession and the lack of funding available.[102] However, some progress has been made on homelessness targets.[103]

4.12 Culture and Media

The SNP has published its plans for broadcasting under an independent Scotland as part of its National Conversation.[104] More pressing is the funding and provision of broadcasting and newspaper services.[105] The longest running media issue since

[98] 11.8.09 'GM produce is back on the political menu, says minister' *The Scotsman* http://news.scotsman.com/politics/GM-produce-is-back-on.5540973.jp

[99] A. Philip 21.9.09 ''Failing fishing rules need urgent reform'' *The Scotsman* http://news.scotsman.com/scotland/39Failing---fishing-rules.5663510.jp; R. Dinwoodie 28.5.09 'Liberal Democrats flock to Holyrood to protest at 'unworkable' electronic tagging of sheep' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2510829.0.Liberal_Democrats_flock_to_Holyrood_to_protest_at_unworkable_electronic_tagging_of_sheep.php

[100] J. Quinn 27.6.09 '1,300 new council houses to be built in Scottish towns' *The Scotsman* http://news.scotsman.com/politics/1300-new-council-houses-to.5407523.jp

[101] M. Butterworth 12.7.09 'New era of council house-building proposed by Conservatives' *The Telegraph* http://www.telegraph.co.uk/news/newstopics/politics/conservative/5810475/New-era-of-council-house-building-proposed-by-Conservatives.html

[102] 10.7.09 'Right to buy slammed' *Scottish Government News Release* http://www.scotland.gov.uk/News/Releases/2009/07/09142119; 14.8.09 'Repossession figures' *Scottish Government News Release* http://www.scotland.gov.uk/News/Releases/2009/08/14105910; 1.9.09 'Charity calls for an extra £200m a year for housing in Scotland' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2528487.0.Charity_calls_for_an_extra_200m_a_year_for_housing_in_Scotland.php

[103] 5.9.09 'Councils on track to meet targets on housing homeless' *The Scotsman* http://news.scotsman.com/politics/Councils-on-track-to-meet.5620534.jp

[104] R. Dinwoodie 25.9.09 'Salmond defends his controversial broadcasting plans' The Herald http://www.heraldscotland.com/news/politics/salmond-defends-his-controversial-broadcasting-plans-1.922043

[105] D. Maddox 14.7.09 'Urgent call to safeguard the future of the Scottish newspaper industry' *The Scotsman* http://news.scotsman.com/politics/Urgent-call-to-safeguard-the.5455295.jp; M. Reid 6.8.09 'Culture Minister demands answers from broadcasters' *The Times* http://www.timesonline.co.uk/tol/news/uk/scotland/article6741678.ece

devolution took a new twist when STV announced it would run the 'Scottish Six'.[106] Although the Homecoming appears to be a success, it seems that the SNP and its opposition can not agree on which parts of Scottish history they should celebrate.[107]

[106] A. Brown and J. Belgutay 20.9.09 'Do we want all our news to be Scots-centric?' *The Times* http://www.timesonline.co.uk/tol/news/uk/scotland/article6841307.ece

[107] R. Dinwoodie 7.8.09 'Campbell pipes up in praise of devolution and Homecoming' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2524295.0.Campbell_pipes_up_in_praise_of_devolution_and_Homecoming.php ; D. Maddox 16.7.09 'SNP under fire for no plan to mark Reformation' *The Scotsman* http://news.scotsman.com/politics/SNP-under-fire-for-no.5464002.jp ; D. Maddox 14.9.09 'Homecoming for Bruce 'SNP brainwashing'' *The Scotsman* http://news.scotsman.com/politics/Homecoming-for-Bruce-39SNP-brainwashing39.5642990.jp

5. Government beyond the centre

David Scott

Key points

- While relations between Scotland councils and the Scottish Government continue to be positive there is unease over policies like classroom sizes.
- Key proposals have been published on affordable housing. There is concern over the availability of sufficient funding.
- A Bill on local government elections will allow the poll to be held on a separate day from Scottish Parliament elections.
- The Scottish Government has published pilot plans for the first direct elections to health boards.
- Audit Scotland has published reports on public sector purchasing and asset management as well as Best Value audit reports on individual councils.
- A Bill on public service reform aims to reduce the number of public bodies by eight and simplify the structure of the public sector.

5.1 Concordat

Relations between local authorities and the Scottish Government continued to be positive. The body that represents councils, the Convention of Scottish Local Authorities (COSLA), has adopted a low public profile and has publicly resisted criticising the Scottish Government. This is because it is keen to fulfil the partnership agreement it agreed with ministers when it signed the 'historic' Concordat, a document which commits both sides to working together to implement SNP manifesto policies and policies that take account of local priorities.[108] However, a number of individual councils have continued to be concerned about how they can implement key policies in accordance with the Concordat because of tight financial restraints which will become even more severe due to spending restrictions required by the Scottish Government in line with its 2010-11 budget. There are particular concerns in relation to the council tax freeze and the policy of reducing class sizes.

The Scottish Conservatives claimed[109] that more than two-thirds of councils had failed to include the lower class size pledge in their outcome agreements, a new

[108] Concordat between Scottish Government and local government', 14.ll.08 http://www.scotland.gov.uk/Publications/2007/11/13092240/concordat

[109] 'Scottish Tories Slam SNP's class size pledge' 27/07/09 *The Scotsman*

method of assessing whether policies have achieved the desired results. However, ministers denied that they had secretly abandoned the pledge[110]. It was reported that there was an agreement to end the 'universal delivery' of the policy across Scotland and some political opponents of the government suggested it was no secret that the class-size pledge, first made in the SNP manifesto, had been dropped. There was also controversy over a 'legal loophole' which allowed parents to send their children to schools outside catchment areas in classes with up to 30 pupils. Edinburgh City Council[111] called on the government to make the target limit of 18 for pupils per class in the first three years of school to be made legally binding.

In his statement on the draft budget,[112] the Finance Secretary, John Swinney, confirmed that the resources would again be provided for council tax freeze in 2010-11. It is far from certain whether, in the current economic climate, all councils will be able to maintain a council tax freeze for the third successive year. Those who decide not to increase council tax, however, would suffer the penalty of losing the extra grant which is again being made available for councils who co-operate with the no-increase policy.

5.2 Affordable housing

The Scottish Government, with the support of the Scottish Federation of Housing Associations, COSLA and Homes for Scotland, published a statement[113] on the future of affordable housing investment. Following a consultation on affordable housing, the statement outlined five key proposals shaped by input from the wider housing sector. These included: improving the efficiency and effectiveness of housing association activity across the board, including procurement; setting a standard for development performance; the awarding of three-year budgets to housing associations and groups of associations that are best placed to make use of these; and supporting collaborative groups as a way of bringing local authorities and housing associations together and a new focus on sharing best practice. The

http://thescotsman.scotsman.com/scottishnationalparty/Tories-slam-SNP39s-classsize-pledge.5495020.jp

[110] David Maddox 27.06.09 'SNP denies abandoning move to cut primary class size' *The Scotsman* http://thescotsman.scotsman.com/scotland/SNP-denies-abandoning-move-to.5407692.jp

[111] Fiona Macleod 17.06.09 'Demand for legal limit on class sizes' *The Scotsman* http://thescotsman.scotsman.com/scotland/Demand-for-legal-limit-on.5371778.jp

[112] Draft Scottish Budget 17.09.09, Finance Secretary's statement to the Scottish Parliament http://www.scotland.gov.uk/News/This-Week/Speeches/Weathier-and-Fairer/budget

[113] Scottish Government news release 05/06/09 'Housing investment reform' http://www.scotland.gov.uk/News/Releases/2009/06/25172013

Scottish Government also reacted to a report by Shelter (Scotland)[114] referring to the 'growing chasm' between the number of houses needed and the number available The report, 'Building Pressures' said there were now fewer homes available at any time since 1959. It claimed much of the decline had been as a result of Right to Buy. The survey by Shelter also showed that the number of council houses available to let had dropped dramatically since 2001. At that time there were 3.9 people on council waiting lists for every let. By 2008 it has risen to 6.6 per cent. In a statement,[115] the Scottish housing minister, Alex Neil, described the effects of Right to Buy as a 'dreadful legacy' for housing in Scotland. He detailed a number of steps being taken by the government to boost the number of affordable homes. These included investing record amounts in affordable housing – more than £1.5bn over three years; approving grants for a 'record breaking' 8,100 affordable homes and providing £50m to kick-start 'the largest council house building programme for 30 years.'

Official figures published by the Scottish Government showed that, while the number of new builds in the private sector had fallen during the economic down-turn, the number of affordable homes provided by the public sector was at its highest level since the mid-1990s. The number of builds by housing associations and councils now accounted for 23 per cent of new properties compared to just 13 per cent in 2006-07. Plans were also announced for the building of more than 1,343 new council houses with Scottish Government funding of £26m. Housing pressure groups, however, have been voicing concern at the effects of the 2010-11 budget on social housing.[116] The money to be spent on affordable housing is due to reduce from £525m this year to £352m next year.

5.2.1 Housing Regulator

[114] Shelter (Scotland) news release 10.07.09 'Scotland stares into the housing abyss with fewest number of affordable homes since 1959'
http://scotland.shelter.org.uk/media/press_releases/press_release_folder/2009/scotland_stares_into_housing_abyss_with_fewest_number_of_affordable_homes_since_1959
[115] Scottish Government news release 10.0709 'Right to Buy Slammed'
http://www.scotland.gov.uk/News/Releases/2009/07/09142119

[116] Katrine Bussey 20.09.09 ''Housing Casualty of SNP budget' but fight will go on.' *Scotland on Sunday*, page 11; Shelter (Scotland) Press release 16.09.09 'Battle for housing cash continues'.
http://scotland.shelter.org.uk/news/news/news_folder/2009/september_2009/battle_for_housing_cash_goes_on?SQ_DESIGN_NAME=print

The Scottish Housing Regulator published a report [117] which reviewed and commented on the performance of social landlords over the last five years. The review concluded that while 53% of the housing services the Regulator has inspected were good or excellent, just under half, serving 320,000 households, were either poor or only adequate. Scottish Housing Regulator Chief Executive Karen Watt said: 'We recognise that there is much strength and good practice amongst Scotland's social landlords in providing affordable housing. However, over half of tenants are receiving services which are poor or only adequate. Many landlords need to do more to get the basics right and focus on improving services in the future.' The Scottish Housing Regulator also published a progress report[118] in which Glasgow Housing Association (GHA) was criticised over its failure to address management weaknesses or set out a 'clear purpose and direction.' The Regulator said GHA, which inherited the city's former council houses, did not effectively lead a review which was ordered by the watchdog 18 months ago following an in-depth inspection. It also failed to consider all the options for its future and did not involve key bodies including tenants, Glasgow City Council and the Scottish Government.

5.3 Elections

5.3.1 Local Government

MSPs passed a Bill[119] that will lead to local government elections being held on a separate day from Scottish Parliamentary elections from 2012. Decoupling local government elections from the Scottish Parliament elections was one of the recommendations of the independent review of the Scottish Parliamentary and Local Government Elections 2007 (the Gould Report). Bruce Crawford, Minister for Parliamentary Business said local government elections were an important part of the democratic system in Scotland. He added: 'Our councils do a vital job and it is right that elections to these bodies are given their proper place, rather than

[117] Scottish Housing Regulator Press release 22.07.09 'Social landlords in Scotland need to get the basics right' says Scottish Housing Regulator. http://www.scottishhousingregulator.gov.uk/stellent/groups/public/documents/webpages/SHR_SOCIALLANDLORDSINSCOTLAND_.hcsp; Scottish Housing Regulator: 22.07.09 'Social landlords in Scotland – Shaping up for Improvement' http://www.scottishhousingregulator.gov.uk/stellent/groups/public/documents/webpages/shr_shapingupforimprovement.pdf

[118] Scottish Housing Regulator June 2009: 'Glasgow Housing Association progress report' http://www.scottishhousingregulator.gov.uk/stellent/groups/public/documents/webpages/shr_inspectionreports.hcsp

[119] Scottish Parliament official report 17.06.09 Scottish Local Government (Elections) Bill Stage 3 http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-09/sor0617-02.htm#Col18456

overshadowed by national elections on the same day … Holding the elections on different dates will help eliminate the voter confusion that was experienced in 2007 and give Scottish local government elections the prominence they deserve.'

5.3.2 Health boards

The Health Secretary, Nicola Sturgeon announced [120] that NHS Fife and NHS Dumfries and Galloway will pilot the first ever direct elections to health boards. For the first time members of the public will be able to stand for and vote in elections which will see elected members - including council representatives - form a majority on the health board. Also in a Scottish and UK 'first', 16 and 17 year-olds will have the right to stand and vote in a UK election. The minister revealed that two other boards, NHS Lothian and NHS Grampian, will run two non-statutory pilots which will test ways in which we can improve the existing engagement and involvement mechanisms between the public and the NHS. The selection of the pilots follows the Scottish Parliament's unanimous passing of the Health Boards (Membership and Elections) Bill. The choice of Fife and Dumfries and Galloway is designed to ensure that the pilots can test the full range of issues likely to be encountered by a health board in both predominantly urban and rural settings. Elections will take place in spring 2010 and run for at least two years before an independent evaluation. The elections will be carried out as all-postal ballots, along similar lines to elections to Scotland's National Park Authorities, with votes cast on a Single Transferable Vote basis to make sure every vote cast counts.

5.4 Audit Scotland

An Audit Scotland report on public sector purchasing[121] concluded that the public sector in Scotland is improving its purchasing and estimated it had saved more than £300 million since 2006 as a result. It could now make further savings through increased collaboration and better management. The report said the foundations are in place for Scotland's public bodies to further improve their spending on goods and services, worth £8 billion a year. There has been progress in recent years but it has varied across the country and slower than planned. The report considered progress with a programme that was aimed at reforming public procurement and making savings of about three per cent a year. The public sector estimates it has saved a

[120] Scottish Government Press release 16.06.09 Health board election pilots http://www.scotland.gov.uk/News/Releases/2009/06/16100021

[121] Audit Scotland July 2009 'Improving public sector purchasing' http://www.audit-scotland.gov.uk/media/

total of £327 million in the first two years of the programme, which has cost £61 million so far to implement. The public sector should increase the use of collaborative contracts, the report recommended. These are key features of the programme, but were being developed more slowly than expected. According to the report, the health sector had been the most successful in this, introducing 150 new contracts and saving £54 million in the two years to 2007/08.

An Audit Scotland survey on asset management found that many council buildings are in poor condition and others are unsuitable for the services being delivered from them. A report published by the commission [122] said councils needed better strategies and systems for managing their assets. Audit Scotland found that only around half of the local authorities had a council-wide strategy for asset management and although there was some good management information available it was not always used to support decision-making. The report focused on the 12,400 properties owned by Scotland's councils. In some, over 90% of buildings were in good condition. But across Scotland, one in four council buildings were in poor or bad condition and 23% were unsuitable for the services being delivered from them. Over 1,550 buildings (14%) failed in both respects.

Other reports included an audit of mental health services. In a report[123] on the services, Audit Scotland said some people had difficulty in getting the health services they need. Mental health problems caused considerable poor health in Scotland and much had been done to move services from institutions into the community. There now needed to be a better understanding of the care people receive and how resources to support this are best used, the report stated.

A number of Best Value Audit reports were published by Audit Scotland. A progress report on Aberdeen City Council[124] found that the council had made progress since the publication of a very critical report in 2008. A report on West Dunbartonshire Council[125] said there had been insufficient progress with key priorities. A report on

[122] Audit Scotland: 7/05/09 Asset Management in Local Government http://www.audit-scotland.gov.uk/docs/local/2009/nr_090507_asset_management_councils.pdf
[123] Audit Scotland: 14.05.09 Overview of Mental Health Serviceshttp://www.audit-scotland.gov.uk/docs/health/2009/nr_090514_mental_health.pdf
[124] Audit Scotland July 2009 'The Audit of Best Value and Community Planning: Aberdeen City Council progress report.'http://www.audit-scotland.gov.uk/docs/local/2009/bv_090730_aberdeen_city.pdf
[125] Audit Scotland July 2009 'The Audit of Best Value and Community Planning: West Dunbartonshire Council progress report.'

East Dunbartonshire Council[126] found that although council services had improved, there was positive leadership and good working relationships.

5.5 Public Services Reform

The number of public bodies in Scotland is due to be reduced by eight as a result of the Public Services (Reform) Scotland Bill.[127] Its main aim will be to 'simplify' public bodies and provide for the transfer of certain functions. It will provide for: the dissolution of certain public bodies; the transfer or delegation of certain specific functions between public bodies and the establishment of new national bodies, for health care and social work scrutiny and for the arts and culture, bringing together and improving the functions of existing separate bodies. New bodies include the arts and culture body, Creative Scotland (as a result of the amalgamation of the Scottish Arts Council and Scottish Screen).

The Bill will provide for the setting up of the Social Care and Social Work Improvement Scotland with scrutiny functions in relation to care services and social services and it will also establish Healthcare Improvement Scotland with scrutiny and other functions concerning services provided in the National Health Services and independent health care services. The Bill also imposes duties on scrutiny bodies in Scotland to co-operate and amends the corporate governance of Audit Scotland.

Many respondents to the finance committee said that the proposals invest too much power in the hands of current and future ministers. For example the Law Society argues that it would be inappropriate to increase ministerial powers over public bodies that require a degree of autonomy.[128] The view has also been expressed that the Bill represents a missed opportunity for more radical reform. The Chartered Institute of Public Finance and Accountancy (CIPFA) told the finance committee[129] that the title implies it is a 'tentative step only' towards some elements of reform and the simplification of the public sector landscape. CIPFA also argued that it believed

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http://www.audit-scotland.gov.uk/docs/local/2009/bv_090709_west_dunbartonshire.pdfJuly 2009-09

[126] Audit Scotland May 2009 ' The Audit of Best Value and Community planning: East Dunbartonshire Council'
http://www.audit-scotland.gov.uk/docs/local/2009/bv_090513_east_dunbartonshire.pdf

[127] Public Services Reform (Scotland) Bill
http://www.scottish.parliament.uk/s3/bills/26-PubSerRef/index.htm

[128] Public Services Reform (Scotland) Bill 08.09.09 Scottish Parliament Finance Committee scrutiny http://www.scottish.parliament.uk/business/research/briefings-09/SB09-55.pdf; C. Mackie 11.9.09 'Law Society warns over extra powers for ministers' *The Scotsman*
http://news.scotsman.com/politics/Law-Society-warns-over-extra.5638414.jp

[129] Scottish Parliament finance committee papers 8.09.09

there should be only one overall scrutiny body for Scotland as argued by Professor Lorne Crerar who carried out a major review of the system of regulation, scrutiny and inspection. In a statement, John Swinney, the finance secretary,[130] stressed that simplification of public services is saving money. He said that, as part of the simplification programme, the Scottish Government had already reduced the number of bodies from 199 to 162. The Public Services Reform Bill and the forthcoming Children's Hearings Bill would shrink that to around 120 bodies by 2011.

http://www.scottish.parliament.uk/s3/committees/finance/papers-09/fip09-19.pdf

[130] Scottish Government news release17.06.09 'Public Sector Reform
http://www.scotland.gov.uk/News/Releases/2009/06/17121059

6. Intergovernmental Relations

Alan Trench

6.1 Introduction

The period between May and September 2009 saw relatively little activity as regards intergovernmental relations in the narrow sense (though there were meetings of the plenary Joint Ministerial Committee and JMC (Domestic)). This is largely because the main areas of activity have been elsewhere. One has been the constitutional debate and issues arising from that (1.1). Another was the row about the release on compassionate grounds of Abdelbaset Ali al-Megrahi (see introduction). What has been notable about that is the lack of intergovernmental liaison: the matter was decided by Kenny McAskill, Justice Secretary, without any evidence of involvement from London (despite claims to the contrary in the press), and with a studious avoidance of comment on the matter by the UK Government.

6.2 Formal intergovernmental relations and high-level ministerial meetings

There were no meetings of the British-Irish Council (whether sectoral meetings or plenary ones) between May and September 2009. A meeting of the JMC (Domestic) took place in late May. Reportedly, it considered migration-related issues including 'Fresh Talent' and Scotland's demographic problems. No communiqué was issued.

The plenary meeting of the Joint Ministerial Committee scheduled for June 2009 was postponed, apparently because of the political difficulties in Westminster following the MPs' expenses scandal. A plenary meeting was, however, held on 16 September. The communiqué indicates that the main matters discussed related to the economic crisis and responses to it, and the co-ordination of intergovernmental relations.[131] A statement issued by the Scotland Office suggests that it also discussed implementation of the Calman commission – a matter of limited interest to the devolved administrations of Wales or Northern Ireland, and also to the Scottish Government which did not take part in the Calman process.[132]

6.3 The Calman Commission and its consequences

[131] Statement from the Joint Ministerial Committee, 16 September 2009. Available at http://www.cabinetoffice.gov.uk/newsroom/statements/090916-jmc.aspx

[132] Scotland Office News Release, 16 September 2009, 'Murphy: On track for Calman response this Autumn' available at http://www.scotlandoffice.gov.uk/scotlandoffice/12662.html

The Calman Commission published its final report on 15 June (see 1.1).[133] The report was immediately welcomed by Jim Murphy, Secretary of State for Scotland (who was present at the launch), and Gordon Brown, the Prime Minister (who was not).[134] Implementation of the report presents considerable practical difficulties, and for that purpose a Joint Steering Group based on members of the Commission was set up, supported by officials (several of whom had been members of the Commission's secretariat). Fiscal autonomy as recommended by the Commission presents particular complexities. The Group met on 7 September, and Murphy subsequently confirmed that further action was expected during the autumn.[135] Although both the form of such action and timescale remain vague, the intention appears to be publication of a white paper rather than a bill.

The Scottish Government sought to take the initiative on implementation, by laying before the Scottish Parliament orders under sections 30 and 64 of the Scotland Act 1998 to devolve the various matters that Calman recommended (though not those, like the legal definition of charity, that it recommended be returned to UK jurisdiction). This move was, however, rejected by the UK Government.[136]

6.4 Disputes and litigation

There have been no judgments or opinions in devolution-related cases in the Judicial Committee of the Privy Council or the Appellate Committee of the House of Lords since May 2009.

The devolution issues jurisdiction of the Judicial Committee ended on 30 September 2009. Further cases arising as 'devolution issues' will be considered by the new UK Supreme Court, established under the Constitutional Reform Act 2005, which started work on 1 October.

6.5 Adjusting the devolution settlement

[133] For further discussion of the Commission's report, see A. Trench 'The Calman Commission and Scotland's disjointed constitutional debates' [2009] *Public Law* (autumn) 686-96.
[134] Murphy's speech is at http://www.scotlandoffice.gov.uk/scotlandoffice/12182.html . See also Prime Minister's Office Press Statement 15 June 2009, 'Government welcomes report on Scottish devolution' available at http://www.number10.gov.uk/Page19641
[135] See Scotland Office News Release, 7 September 2009, 'Joint steering group meeting convened by the Secretary of State for Scotland', available at http://www.scotlandoffice.gov.uk/scotlandoffice/12601.html ; Scotland Office News Release, 16 September 2009, 'Murphy: On track for Calman response this Autumn' available at http://www.scotlandoffice.gov.uk/scotlandoffice/12662.html

Six orders amending the devolution settlement have been made since May 2009:

- The Scotland Act 1998 (Modification of Schedule 4) Order 2009, SI 2009 No. 1380
- The Scottish Parliamentary Pensions Act 2009 (Consequential Modifications) Order 2009, SI 2009 No. 1682
- The Scottish Parliament (Elections etc.) (Amendment) Order 2009, SI 2009 No. 1978
- The Judiciary and Courts (Scotland) Act 2008 (Consequential Provisions and Modifications) Order 2009, SI 2009 No. 2231
- The Adoption and Children (Scotland) Act 2007 (Consequential Provisions) (No. 1) Order 2009, SI 2009 No. 2233
- The Insolvency (Scotland) Amendment (No. 2) Rules 2009, SI 2009 No. 2375

The most significant of these is the Scotland Act 1998 (Modification of Schedule 4) Order 2009, SI 2009 No. 1380. This gives effect to the agreement reached to the problems posed by the Somerville judgment (discussed in previous Scotland Devolution Monitoring Reports). The order amends the 'excepted matters' set out in Schedule 4 to the 1998 Act so that the Scottish Parliament can pass legislation introducing a time limit for claims brought for breaches of rights protected under the European Convention on Human Rights (for which a time limit already exists under the Human Rights Act 1998).

6.6 Debates elsewhere

A number of important reports have been published during this period. The Commons Justice Committee published its report on *Devolution: A Decade On* on 24 May. The report considers Whitehall organisation for devolution, intergovernmental co-ordination and aspects of the English question. It is critical of many Whitehall practices and the lax coordination of intergovernmental relations, concludes that the Barnett formula is unfair, and that the English question presents sufficient complexities that 'English votes for English laws' is not an effective answer to the West Lothian Question.[137]

[136] See T. Gordon 'Westminster says "no" to SNP over Calman proposals', *Sunday Herald* 26 July 2009.
[137] House of Commons Justice Committee *Devolution: A Decade On* Fifth Report of Session 2008–09 HC 529 (London: The Stationery Office, 2009).

The Independent Commission on Funding and Finance for Wales chaired by Gerald Holtham published its first report in early July.[138] It applied methodologies used in England to assess the needs of health authorities and local government to conclude that Wales is appreciably underfunded in comparison with England (it presently receives 112 per cent of what areas with similar needs receive in England, but would receive 114 per cent if the English standards were applied). The Commission's further work will include considering fiscal issues and borrowing powers.

The Lords Select Committee on the Barnett Formula published its report on the Barnett Formula on 17 July.[139] It concluded that the formula was 'unfair and arbitrary', and recommended an alternative approach to calculating a grant based on relative need, using a small number of 'top-down' indicators, and an independent expert advisory commission to carry out such an assessment (see also 1.5).

[138] Independent Commission on Funding & Finance for Wales *Funding devolved government in Wales: Barnett & beyond* First Report, July 2009 (Cardiff: National Assembly for Wales, 2009). Available at http://new.wales.gov.uk/icffw/home/report/?lang=en

[139] House of Lords Select Committee on the Barnett Formula *The Barnett Formula* 1st Report of Session 2008–09 HL Paper 139 (London: The Stationery Office, 2009), available at http://www.publications.parliament.uk/pa/ld/ldbarnett.htm