

The **Constitution** Unit

**DEVOLUTION
MONITORING
PROGRAMME
2006-08**

Scotland Devolution Monitoring Report

January 2009

**Paul Cairney (ed.)
University of Aberdeen**



The Devolution Monitoring Programme

From 1999 to 2005 the Constitution Unit at University College London managed a major research project monitoring devolution across the UK through a network of research teams. 103 reports were produced during this project, which was funded by the Economic and Social Research Council (grant number L 219 252 016) and the Leverhulme Nations and Regions Programme. Now, with further funding from the Economic and social research council and support from several government departments, the monitoring programme is continuing for a further three years from 2006 until the end of 2008.

Three times per year, the research network produces detailed reports covering developments in devolution in five areas: Scotland, Wales, Northern Ireland, the English Regions, and Devolution and the Centre. The overall monitoring project is managed by Professor Robert Hazell at The Constitution Unit, UCL and the team leaders are as follows:

- Scotland: **Dr Paul Cairney**
University of Aberdeen
- Wales: **Prof Richard Wyn Jones & Prof Roger Scully**
Institute of Welsh Politics, Aberystwyth University
- Northern Ireland: **Professor Rick Wilford & Robin Wilson**
Queen's University, Belfast
- English Regions: **Prof Martin Burch, Prof Alan Harding & Dr James Rees**
IPEG, University of Manchester
- The Centre: **Prof Robert Hazell**, The Constitution Unit, UCL

The Constitution Unit and the rest of the research network is grateful to all the funders of the devolution monitoring programme.



WALES OFFICE



All devolution monitoring reports are published at: <http://www.ucl.ac.uk/constitution-unit/research/devolution/devo-monitoring-programme.html>

Scotland Devolution Monitoring Report

January 2009

Paul Cairney (ed.)

Introduction	6
1. The Scottish Constitutional Debate	8
1.1 Scotland's Rival Constitutional Forums.....	8
1.2 Differences in Style.....	9
1.3 The First Report of the Calman Commission.....	11
1.4 The UK's Constitutional Debates.....	15
2. Public Attitudes and Elections	17
2.1 Attitudes towards devolution.....	17
2.2 Other Issues.....	20
2.3 Party Fortunes.....	21
2.4 Attitudes towards Leaders.....	27
3. The Scottish Parliament and Parties	30
3.1 Who Decides If Ministers are Telling the Truth?.....	30
3.2 Political Parties.....	31
3.3 The Annual Budget.....	33
3.4 The New Politics of Voting.....	35
3.5 Scottish Parliament Committees.....	37
3.6 Committee Reports and Inquiries.....	39
3.7 Parliamentary Bills.....	41
3.8 Sewel (Legislative Consent) Motions.....	42
4. Scottish Government and Public Policy	44
4.1 The Economy: Money and Power.....	44
4.2 Health, Mental Health and Public Health.....	47
4.3 Justice.....	51
4.4 Education.....	53
4.5 Transport, Energy and Environment.....	56
4.6 Agriculture, Fish, Food and Water.....	57
4.7 Housing, Planning, Poverty and Homelessness.....	58
4.8 Culture and Media	58
4.9 Freedom of Information.....	59
5. Government Beyond the Centre	61
5.1 Scottish Futures Trust.....	61
5.2 Local Income Tax.....	62
5.3 Local Government Finance Settlement.....	64
5.4 Health Boards.....	65
5.5 Quangos.....	67
6. Intergovernmental Relations	69
6.1 Introduction and background.....	69
6.2 Appointment of new Secretary of State for Scotland, and Parliamentary Under-secretary.....	70
6.3 Formal meetings: the Joint Ministerial Committee and the British Irish Council.....	71
6.4 Litigation and the courts.....	72

6.5	Revisions of the devolution settlement.....	72
6.6	UK Government's Legislative Programme and further proposals.....	72
6.7	Financial issues: the UK Government's Pre Budget Report.....	73
6.8	European Union matters.....	74

Introduction

Paul Cairney

The tone of Scottish politics changed briefly following the global and domestic economic crises towards the end of 2008. However, after a period of consensus, the Glenrothes bye-election (in which Labour retained its seat and perhaps marked the end of the SNP's remarkable honeymoon period) highlighted traditional differences. This was accelerated by personalisation and the use of bye-elections as a gauge of Gordon Brown's government, which worked in Labour's favour this time. Brown became a 'safe pair of hands' and took centre stage in world politics by promoting a financial rescue plan that many countries welcomed. This allowed Labour to build on the message that small countries are vulnerable during global crises, that only the UK government could have bailed out the big banks and therefore that the Union was crucial to Scotland's economic stability. Similarly, the new Scottish Secretary Jim Murphy moved quickly from a promise to work closely with the First Minister to a position of party politics, particularly when replacing 'arc of prosperity' (Salmond's description of a range of nations, most notably Iceland) with the phrase 'arc of insolvency'.

The new image of Brown extended to a comparison with Alex Salmond. While Brown seemed able to lead the global agenda and intervene domestically, Salmond's role was often restricted to negotiations with banks over which he had no power. While this had the *potential* to support the SNP case for independence (on the basis that Scotland needs its own fiscal measures to deal with its own problems), it also did much to damage a carefully cultivated image of Salmond as a statesman on the world stage rather than a parochial figure unable to command powerful policy levers in Scotland. The SNP's national conversation also took a back seat to the Calman Commission's first report (discussed in a new section on constitutional reform issues). Yet, we know from history that these shifts of popularity and dominance are fleeting. Only time will tell if the independence agenda and public attitudes will come together at the same time.

The economic context served to downgrade a raft of issues which may otherwise have gained more attention. This includes: the decision to delay Jack McConnell's departure from the Scottish Parliament (in part to avoid another potentially damaging bye-election); the prospect of an end to the detention of children of asylum seekers at Dungavel,

reports of a rise in the number of people employed by Scottish quangos, the approval of (but continued uncertainty over) Donald Trump's golf course in Aberdeenshire (and the continued fallout over key members of Aberdeenshire council), the likelihood of a public inquiry into the deaths related to C. difficile at the Vale of Leven Hospital, David Cameron's non-Thatcherite attitude to Scottish independence and the decision not to transfer responsibility for Scottish Parliament elections to the Scottish Parliament.

1. The Scottish Constitutional Debate

Charlie Jeffery

1.1 Scotland's Rival Constitutional Forums

Scotland remains in the curious position of having two forums for debate about the constitution: the National Conversation of the SNP government; and the Commission on Scottish Devolution, widely known as the Calman Commission after its Chair Sir Kenneth Calman.¹ The National Conversation was up and running first, following its announcement in the SNP government's August 2007 White Paper on *Choosing Scotland's Future*.² The Calman Commission was first flagged in a speech made by the then Labour leader in Scotland, Wendy Alexander, at the University of Edinburgh on 30 November 2007, following which the Scottish Parliament (or at least its unionist majority) resolved on 6 December 2007 to establish 'an independently chaired commission to review devolution in Scotland'.³ The UK government signalled its support for the Commission in January 2008 (as did the Westminster leaderships of the Conservatives and the Liberal Democrats), and the Commission began its work on 28 April 2008.

The two forums are very different, not least in remit. The National Conversation is oriented around three options:

- Continuing with the current constitutional settlement with no or minimal change
- Extending devolved power in Scotland in areas identified during the National Conversation
- Taking the steps to allow Scotland to become a fully independent country.

The Calman Commission has a more constrained remit focused on:

- Enabling the Scottish Parliament to serve the people of Scotland better
- Improving the financial accountability of the Scottish Parliament
- Continuing to secure the position of Scotland within the United Kingdom.

¹ <http://www.commissiononscottishdevolution.org.uk/about/index.php>.

² Scottish Government (2008) *Choosing Scotland's Future: A National Conversation* <http://www.scotland.gov.uk/Resource/Doc/194791/0052321.pdf>.

³ Scottish Parliament Official Report 6.12.07 cols. 4133-85 <http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-07/sor1206-02.htm#Col4133>.

The latter point explicitly excludes independence as an option, reflecting the Calman Commission's genesis in discussions among the unionist parties in late 2007. Equally the National Conversation, reflecting the SNP's ambition of an independent Scotland, has no remit to 'secure the position of Scotland within the UK'. These partisan remits have led to official policies of distance between the two forums. The unionist parties have declined invitations to contribute to the National Conversation, and the SNP government has instructed its officials to provide assistance to the Calman Commission 'on factual matters'⁴ only. Whether Scotland's best interests are served in this way is a moot point discussed in earlier editions of this Monitor.⁵

1.2 Differences in Style

The two forums are also extremely different in style. The Calman Commission bears all the hallmarks of a UK independent commission: it is chaired by a senior figure in public life,⁶ its members have been picked to provide party-political balance, but also a range of expertise within and beyond formal politics;⁷ and it is serviced by the civil service.⁸ The Commission has worked so far through formal meetings, in part split into 'task-groups' with specific remits, and in part taking oral evidence from politicians, academics and other experts. An Independent Expert Group on Finance, chaired by the Heriot-Watt Vice-Chancellor Anton Muscatelli, was set up to advise the Commission on 'on how the financial accountability of the Scottish Parliament might be

⁴ <http://www.commissiononscottishdevolution.org.uk/uploads/2008-08-19-response-from-first-minister-to-chair.pdf>.

⁵ Scotland Devolution Monitoring Report January 2008, pp. 34-5 http://ucl.ac.uk/constitution-unit/files/research/devolution/dmr/Scotland_Jan08.pdf

⁶ Sir Kenneth Calman is Chancellor of the University of Glasgow, and was previously Vice-Chancellor of the University of Durham. He was Chief Medical Officer at the Department of Health from 1991-98, and before that Chief Medical Officer for Scotland at the Scottish Office from 1989-91. He was knighted in 1996, and is a Fellow of the Royal College of Physicians, the Royal College of Surgeons and the Royal Society of Edinburgh.

⁷ The full membership list is: Colin Boyd, Former Lord Advocate, member of the House of Lords (Labour); Rani Dhir MBE, Executive Director, Drumchapel Housing Co-operative; Professor Sir David Edward, Retired Judge of the European Court; Murray Elder, Member of the House of Lords (Labour); Audrey Findlay, Former Leader of Aberdeenshire Council, Convener of the Scottish Liberal Democrat Party; Jamie Lindsay, Former Scottish Office Minister, member of the House of Lords (Conservative), Chairman of the Scottish Agricultural College; John Loughton, Youth activist and former Chairman of the Scottish Youth Parliament; Murdoch MacLennan, Chief Executive, Telegraph Media Group; Shonaig Macpherson, Chair of the National Trust for Scotland and of the Scottish Council for Development and Industry; Iain McMillan; Director, CBI Scotland, James Selkirk, Former Scottish Office Minister, member of the House of Lords (Conservative); Mona Siddiqui, Professor of Islamic Studies, University of Glasgow; Matt Smith, Scottish Secretary, UNISON; Jim Wallace, Former Deputy First Minister, member of the House of Lords (Liberal Democrat).

⁸ Its secretary is Jim Gallagher, Director General, Devolution, Ministry of Justice; the administration is serviced by the UK's Scotland Office, part of the Home Office.

improved'.⁹ The Independent Expert Group comprises UK and international academics and other experts on territorial finance.¹⁰

The first phase of the Commission's work was based around the themes in consultation papers published in May and June 2008. The Commission invited evidence through written submissions on these consultations, and also held a number of local engagement events between September and November 2008. Evidence has been submitted by a wide range of institutions and individuals.¹¹ Perhaps the most remarkable was that by the UK Government, which produced a 126-page document in November 2008, with a chapter for each Whitehall department from which further powers might conceivably be devolved; none of those departments saw any compelling rationale for any further devolution.¹² In its interim report (see below) the Commission does not appear to have given this ultra-minimalist view of the constitutional situation any credence. On the basis of its deliberations, and informed by evidence presented to it, including a first report of the Expert Group on Finance,¹³ the Commission published an interim report in December 2008.¹⁴ This in turn spawned a consultation paper,¹⁵ around whose themes the second and final phase of the Commission's work will revolve. The Commission expects to issue a final report by mid-2009.

The very traditional approach of the Commission (tempered only by the concession of a Facebook page, which does not seem to be avidly used) contrasts starkly with the style of the National Conversation. The National Conversation has two main *modi operandi*. The first is a website¹⁶ with broad details about the SNP Government's constitutional policy, and a number of interactive platforms. These include a series of (currently twelve) 'Minister's Blogs', each prompting online debate on particular themes, another series of blogs prompted by themes in *Choosing Scotland's Future*, and a front page containing a number of 'conversation points' (mainly speeches and videos by SNP leaders, but also some by non-SNP figures or organisations) and a

⁹ http://www.commissiononscottishdevolution.org.uk/uploads/2008-12-15-hwu-first_evidence_report-web.pdf, p. i.

¹⁰ <http://www.commissiononscottishdevolution.org.uk/about/index.php>.

¹¹ <http://www.commissiononscottishdevolution.org.uk/engage/submissions-received.php>.

¹² <http://www.commissiononscottishdevolution.org.uk/uploads/2008-11-10-hmg.pdf>.

¹³ http://www.commissiononscottishdevolution.org.uk/uploads/2008-12-15-hwu-first_evidence_report-web.pdf

¹⁴ <http://www.scotland.gov.uk/Topics/a-national-conversation>.

¹⁵ <http://www.commissiononscottishdevolution.org.uk/uploads/2008-12-19-csd-a5-consult-bm.pdf>.

¹⁶ <http://www.scotland.gov.uk/Topics/a-national-conversation>.

further blog. The second has been a series of events, in part with civic organisations, in part attached to Cabinet 'roadshow' meetings in towns across Scotland, each with an introduction by the First Minister Alex Salmond and a debate with a local audience chaired by another Cabinet Secretary. Records of these events are also lodged on the website.

Though individuals are invited to contribute via the website or by more traditional means as they see fit, it is not clear what beyond the various blog entries has been submitted. As a result it is very difficult to see what themes are emerging from the public and civic contributions. No summary of contributions has so far been produced; nor (at least according to one senior voice) do there appear to be plans to provide any summary until the run-up to a referendum (should the Government find support in the Scottish Parliament to hold a referendum). It is therefore difficult to give any kind of informed evaluation of the National Conversation so far – except, as the blogs show, that it has enthusiastic support among those with pro-independence preferences.

In this reporting period there were no major new initiatives or publications under the aegis of the National Conversation beyond further meetings with civic organisations and local meetings held alongside a peripatetic Cabinet, a Minister's Blog on the Homecoming Scotland 2009 (a series of events led by the Scottish Government to engage the Scottish diaspora more fully with Scotland) and a meeting of young people to discuss the results of an on-line questionnaire fielded at 5,000 young people. The analysis of the questionnaire findings is not yet published.

1.3 The First Report of the Calman Commission

By contrast the unionist version of the constitutional debate entered a new phase with the publication of the first, interim report of the Calman Commission.

1.3.1. The First Report of the Independent Expert Group on Finance

This was prefigured by the first report of the Independent Expert Group on Finance on 17 November 2008. The Expert Group had met on a number of occasions over the late summer and early autumn 2008, drawing also on other international experts. Their report was substantial, though for some commentators disappointing¹⁷ as it did not

¹⁷ David Maddox 17.11.08 'Hopes of move on financial powers set to be dashed', *The Scotsman* <http://news.scotsman.com/thescottishparliament/Hopes--of-move-on.4699452.jp>.

make specific recommendations. Rather, it set out a number of issues in economic theory surrounding choices for different types of territorial financial arrangements, placed current UK arrangements against that background, and set out some of the alternative forms of financial arrangements used in other states to finance devolved government.

Two particular themes were prominent in the report:

1. That there is a trade-off between territorial financial arrangements focused on inter-regional equity (signalled in the widespread use in some parts of the UK of the terminology of compensating for different territorial 'needs' through UK-wide territorial financial adjustments), and arrangements focused on fiscal autonomy (which signalled a concern to adjust incentives, accountability and power relationships in the devolved setting).
2. That choices of particular systems of territorial finance, with differing balances of equity, autonomy or other variables, was rarely if ever a technical question guided by economic theory or driven by the properties of particular fiscal instruments. Rather such choices were *political*; they reflected and followed more fundamental decisions about the type of state a particular society wanted to have.

Two other contributions on territorial finance appeared at roughly the same time. The first was a David Hume Institute paper co-authored by Andrew Hughes-Hallett, Jeremy Peat (both also members of the Expert Group), Andrew Scott, Lesley Sutton and Fabian Zuleeg, published on 12 November 2008.¹⁸ The chapter by Hughes Hallett and Scott covered much of the same ground as the Expert Group report, with an evaluation of different approaches and instruments of territorial finance. It also took up at greater length two issues raised the expert group report:

- The need for devolved governments to have borrowing powers if there was a move away from a system of central government grant (as the UK currently has);
- The option of full fiscal autonomy, with full Scottish Parliament responsibility for raising tax revenues in Scotland (implying payments by the Scottish Parliament

¹⁸ <http://www.davidhumeinstitute.com/DHI%20Website/publications/hop/HOP%2080.pdf>.

to the UK Treasury for any UK services delivered in Scotland, and the absence of any grant or equalisation payments to Scotland from the rest of the UK). While Hughes Hallett and Scott envisaged full fiscal autonomy as possible within the UK (and discussed it also in the scenario of Scottish independence both within and outside the EU), the Expert group concluded that it 'is difficult to visualise how full fiscal autonomy for the Scottish Parliament might be consistent with the maintenance of the union'.¹⁹ This difference in perspective was significant given that the Commission had ruled out independence as an option for consideration.

The second prominent contribution on territorial finance came from a new Scottish think tank, Reform Scotland, in its paper *Fiscal Powers*, published on 20 November 2008.²⁰ This advocated a particular system of territorial finance much more strongly, arguing that the Scottish Parliament should be directly responsible for raising all of the money it spends. This would establish the Parliament as much more directly accountable to taxpayers in Scotland. This accountability would be achieved by a mixture of tax assignment (reserving set proportions of tax receipts from specified UK taxes to the Scottish Parliament) and tax autonomy (with the Scottish Parliament deciding tax rates for all other taxes).

1.3.2. *The First Report of the Calman Commission*

The First Report of the Calman Commission was published on 2 December.²¹ It was styled as an interim report. It set out the issues which it presumed would feature strongly in the second phase of its deliberations and in its final report. It did so at length, and with a companion volume of evidence²² (in addition to the Expert group's substantial report on finance). The sheer weight of the two volumes was perhaps intended as a deliberate contrast to the elusiveness of the findings so far from the National Conversation. The report begins with a discussion of the pre-history and content of the current devolution arrangements and a detailed exposition of its

¹⁹ http://www.commissiononscottishdevolution.org.uk/uploads/2008-12-15-hwu-first_evidence_report-web.pdf, p. 16.

²⁰ Ben Thomson, Geoff Madsley, Graeme Blackett and James Aitken, *Fiscal Powers*, Edinburgh: Reform Scotland, 2008, at http://www.reformscotland.com/include/publications/fiscal_powers.pdf.

²¹ http://www.commissiononscottishdevolution.org.uk/uploads/2008-12-15-hwu-first_evidence_report-web.pdf.

²² <http://www.commissiononscottishdevolution.org.uk/uploads/2008-12-01-volume-2-final.pdf>.

evidence-gathering for what it terms an approach 'rigorously based on evidence'.²³ The substantive part of the report has chapters on:

- The 'principles' of union
- The powers and functions of the Parliament
- Financial accountability
- Relationships with UK-level institutions.

The report avoids specific recommendations, apart from periodic reaffirmations that independence is not part of its remit, and excepting a number of points where the Commission is 'minded' to take some course of action. The report was not greeted with great enthusiasm in the Scottish media, which evidently wanted more red meat to chew on: 'Yesterday's report was frustrating as it was simply interim'²⁴; Sir Kenneth needs to be less intellectual and offer something that makes a difference'.²⁵ Yet the report has both substance and – potentially – significance.

While ruling out independence, it does set out perhaps unexpectedly wide parameters for the debate about further devolution: extending from a modest adjustment to the current powers of the Parliament, exercised within a more rigorously institutionalised UK union, to a form of 'devolution-max' which would establish a distinctive welfare state in Scotland funded by resources raised in Scotland. The devolution-max option would not look out of place in the discussion of further devolution within the union as set out in the SNP Government's White Paper on constitutional options.

Perhaps, by setting out wide parameters, the Commission is predisposing its final report to land somewhere in the middle, but nonetheless it has opened up a wide scope for debate and for evidence-taking in its second phase. The report sets out twelve areas where further debate on powers and functions should take place. These include the constitution (and elections administration in particular), energy (including

²³ http://www.commissiononscottishdevolution.org.uk/uploads/2008-12-15-hwu-first_evidence_report-web.pdf, p. 20.

²⁴ Michael Settle, 'Calman rules out fiscal autonomy for Scotland', *The Herald*, 3 December 2008, at http://www.theherald.co.uk/search/display.var.2472469.0.calman_rules_out_fiscal_autonomy_for_scotland.php.

²⁵ 'Sir Kenneth needs to find some bold solutions', *Scotsman*, 3 December 2008 <http://thescotsman.scotsman.com/opinion/Sir-Kenneth-needs-to-find.4754243.jp>.

the planning roles in areas of policy, such as nuclear energy, reserved to the UK government), broadcasting, immigration and social security which are politically highly sensitive. With the exception of the planning issue, most of the questions raised about these issues point to discussion about further devolution of powers.

On finance, the Commission accepts the Expert group's conclusion that 'the balance between conflicting principles [of territorial financial arrangements] should be determined not by technical considerations, but by the constitutional objectives that the funding is designed to support'.²⁶ In other words, establishing the 'principles of union' is prior to the definition of funding arrangements. The Commission called for further evidence on additional fiscal powers, including borrowing, which would be consistent with a more 'devolution-max' outcome, as well as discussion of grant-based arrangements that would serve the purposes of a more fully integrated union.

The final major section of the report was about institutional relationships between Scotland's devolved institutions and Westminster and Whitehall. The general thrust was that whichever principles of union might be adopted, more systematic institutional relationships for dispute resolution and for defining common interests across jurisdictions should be adopted or activated. The various calls for more evidence set out in the report – some 46 in total – formed the basis of the consultation paper *The Future of Scotland within the Union* which was published on 19 December 2008.²⁷ The consultation is open until 27 February 2009.

1.4 The UK's Constitutional Debates

Finally it is notable that constitutional debate is not simply fragmented between National Conversation and Calman Commission in Scotland. In the last reporting period the All-Wales Convention²⁸ and the Independent Commission on Funding and Finance²⁹ also began their work on, respectively, Welsh options for devolution (the status quo vs. full legislative powers), and possible alternative territorial financial arrangements for Wales. There appear to be no links between the Scottish and Welsh variants of constitutional debate, nor between these and the various Governance of

²⁶ http://www.commissiononscottishdevolution.org.uk/uploads/2008-12-15-hwu-first_evidence_report-web.pdf, p.64.

²⁷ <http://www.commissiononscottishdevolution.org.uk/uploads/2008-12-19-csd-a5-consult-bm.pdf>.

²⁸ <http://wales.gov.uk/awcsub/awchome/?lang=en>.

²⁹ <http://wales.gov.uk/icffw/home/?lang=en>.

Britain initiatives led by the UK Justice Ministry (which, oddly, are more or less silent on devolution).³⁰ Nor, in UK opposition, has the Conservative Party's Democracy Taskforce, done any thinking that explores and links issues across jurisdictions beyond its paper on the West Lothian Question.³¹ It appears doubtful that this kind of piecemeal approach to constitution-making, though characteristic of the UK, will establish lasting stability.

³⁰ <http://governance.justice.gov.uk/>.

³¹ <http://www.conservatives.com/~media/Files/Downloadable%20Files/Answering%20the%20West%20Lothian%20Question.ashx?dl=true> .

2. Public Attitudes and Elections

John Curtice

2.1 Attitudes towards devolution

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
	%	%	%	%	%
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
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 state	50	44	40	41	43

Source: TNS System Three/Sunday Herald; 22-29.10.08

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
	%	%	%
I would vote YES (i.e. for Scottish independence)	36	34	31
I would vote NO (i.e. against Scottish independence)	48	50	53

Don't Know/Would not vote	16	15	16
---------------------------	----	----	----

Source: YouGov/Sunday Times, 3-5.9.08 and 22-24.10.08

The UK Government has recently invested £37bn in Scottish banks to help them deal with the current economic crisis. Has this made you more or less likely to back Scottish independence?

	All	Yes	No
	%	%	%
Much/slightly more likely	16	46	1
Much/slightly less likely	28	10	39
No difference	55	44	60

Source: YouGov/Sunday Times 22-24.10.08

Does the current financial crisis make you more or less likely to support independence for Scotland?

	%
More likely	24
Less likely	42
Unsure	34

Source: Progressive Scottish Opinion/BBC News 11-19.11.08

Much of the debate about Scotland's constitutional future during this period was focused on what were thought to be the lessons of the banking crisis. Labour argued that the recapitalisation of the two Scottish banks demonstrated the value of the country's membership of the Union, as on its own Scotland would have lacked the resources to undertake such a rescue. In particular they contrasted this apparently successful rescue and the contemporaneous collapse of the Icelandic banking system, reminding us that Mr Salmond had once referred to Iceland as members, along with Ireland (whose banks

were also under severe pressure) and Norway, of an 'arc of prosperity' that an independent Scotland could hope to emulate.³²

This line of attack by Labour seems to have had some success. Two polls that had tapped attitudes towards independence not long before the financial crisis erupted did so again not long after the banking bail-out. They found that support for independence had fallen somewhat. TNS System Three observed a four point drop between the beginning of July and the end of October, while YouGov registered a three point drop. YouGov also found more people saying that the financial crisis had made them less likely to vote for independence than saying it had made them more likely to do so, as did a subsequent poll by Progressive Scottish Opinion for the BBC. However, we should bear in mind the possibility that many of those who said they were now less likely to vote for independence were not inclined to support it in the first place.

Nevertheless, while it may have had some impact, Labour's attack does not appear to have changed the contours of public opinion fundamentally. According to TNS System Three the proportion backing independence is still no lower now than it was in August 2007, while the level of opposition is still lower than it was then. Still, there is little evidence so far that the SNP's hope that by providing a spell of effective government the party will be able to persuade people to support independence in a referendum in November 2010 is being realised. Although the TNS System Three and YouGov polls differ in their estimate of the balance of opinion, taken together they suggest that plurality support for independence is still lacking.

It is often suggested that one reason why the SNP wish to defer any referendum until the second half of 2010 is that a UK general election has to be held by then. That contest might well result in the Conservative party winning power while securing little if any representation in Scotland (see section 2.4.2), a scenario that might persuade some people in Scotland to sue for divorce. In its October poll YouGov found that no less than 40% said that they would be more likely to back independence if the UK Conservative leader, David Cameron, were to win the next UK election, while only 10% said they would be less likely to do so. However, most of those who said they would be more likely to back independence indicated that they would already vote in favour in a referendum. Amongst those who said they were currently opposed to independence, just 24% said

³² See <http://www.snp.org/node/10359>

they would be more likely to do so. Equally, only 5% of those who said they would vote for independence indicated they would be less likely to vote in favour. If we recalculate the poll result on the assumption that these last two groups would in fact act on their reported likelihood, we still find that only 38% would be in favour of independence while 46% would be opposed.³³ The election of a Conservative government might make Mr Salmond's task of winning a referendum easier, but seems unlikely to guarantee him success. Much in any case is likely to depend on what attitude any new Conservative administration adopts towards its relations with Scotland.

2.2 Other Issues

Alex Salmond has announced that he wishes to replace Council Tax with an increase of 3p in the pound Income Tax, so that the standard rate would rise from 20p to 23p in the pound. Do you support or oppose this measure?

		List Vote			
		Con	Lab	LD	SNP
Support	46	29	27	38	73
Oppose	31	47	49	37	11
Don't Know	23	24	24	25	16

Source: YouGov/Sunday Times 3-5.9.08

In November the Scottish Government released details of the responses it received following the publication in March of a consultation on its plans to replace the current form of local government taxation, the so-called 'council tax' (in effect a property tax that also operates in England and Wales) with a local income tax. Those plans were also the subject of a parliamentary debate in October. One of the most controversial of the government's legislative proposals, it is far from clear that there is sufficient parliamentary support to secure the passage of any legislation. Labour and the Conservatives are vehemently opposed, the Greens want a different reform (site value taxation) while the Liberal Democrats want the rate of the local income tax to be set

³³ We assume that all those who said they would be much more (8% of those currently opposed) or much less likely (1% of those presently in favour) would act upon their current preference as also would half of those who said they would be slightly more (16% of those opposed) or slightly less likely (4% of those in favour). Those unable to say how they would vote in an independence referendum at present are excluded from our calculation. Note that YouGov's previous poll in September found only 18% of those currently opposed to independence would be more likely to vote in favour should Mr Cameron win the next election.

locally rather than, as proposed by the SNP, nationally. In the light of this continuing debate, YouGov tapped attitudes towards the proposed change, using a wording that seemed designed to minimise the level of expressed support for the proposal. Nonetheless, the poll still found more in favour than opposed, a result that underlines the evidence of previous surveys that the switch is relatively popular (see Sept-Dec. 2007 report) – primarily because SNP supporters are far more united in support of the idea than Labour and Conservative supporters are agreed on their opposition.

2.3 Party Fortunes

2.3.1 Holyrood Voting Intentions

Fieldwork	Con	Lab	Lib Dem	SNP	Green	SSP	Solidarity	Others
	%	%	%	%	%	%	%	%
3-5.9.08	14/13	26/25	15/14	42/35	-/6	-/4	-/1	4/2
22-24.10.08	14/16	31/29	12/11	39/32	-/6	-/4	-/1	3/2

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

Source: YouGov//Sunday Times

Two polls by YouGov that measured Holyrood vote intentions suggest that the SNP continue to enjoy a larger lead over Labour than the party secured in the ballot box in May 2007. However, in line with the party's recovery in British polls from late September onwards, the second poll, conducted in late October, found Labour support to be higher than at any time since April. The two polls are, however, also notable for suggesting that the Greens are now more popular than they were at the time of the last Scottish election (when the party secured just 4%), and at 6% of the list vote are at a level where they would expect to win representation in most of the eight Scottish Parliament regions. As a result, the SNP could not be confident of emerging in any immediate Scottish election with more seats than they secured in 2007.

2.3.2 Westminster Vote Intentions

Fieldwork	Con	Lab	Lib Dem	SNP	Others
	%	%	%	%	%
3-5.9.08	17	32	13	34	4
22-24.10.08	20	38	11	29	2

Source: YouGov/Sunday Times

YouGov's poll conducted in early September repeated the finding of two polls conducted in July and August that showed the SNP ahead of Labour in voting intentions for Westminster for the first time since the 1970s. By the end of October, however, the recovery in Labour's UK-wide poll position was reflected north of the border - the party emerged once again as most popular for Westminster. The result was a clear warning to the SNP that much of its electoral progress in previous months had been founded on dissatisfaction with Labour. Once that dissatisfaction began to disappear, the SNP soon suffered.

But if UK-wide trends have been evident north of the border, the distinctive character of electoral preferences in Scotland is also still apparent. Once again the two polls published during this period failed to register any significant advance by the Conservative party north of the border, in striking contrast to the position elsewhere in the UK. At the beginning of September, when YouGov's poll registered just a one point increase on the 16% the party secured in 2005, the party's British poll rating was averaging 46%, an increase of 13 points. And although by late October, at 43% the average Conservative support in British polls was only up ten points on 2005, this was still well above the four point increase registered by the second of YouGov's Scottish polls. It remains the case that any Conservative government elected in the immediate future would be likely to enjoy little representation in Scotland.³⁴

2.3.3 Westminster by-election

Glenrothes: 6/11/08	Votes	%	Change in % vote since 2005
Labour	19,946	55.1	+3,2

³⁴ This was confirmed by an extensive survey conducted in late July and early August by YouGov for the PoliticsHome web site of voters in marginal seats throughout Great Britain. See *PoliticsHome Electoral Index* available at www.politicshome.com (news for 21 Sept. 2008).

SNP	13,209	36.5	+13.1
Conservative	1,381	3.8	-3.3
Liberal Democrat	947	2.6	-10.1
SSCUP	296	0.8	I
SSP	212	0.6	-1.3
UKIP	117	0.3	-0.9
Solidarity	87	0.2	I
Scottish Pensioners	-	-	W
Turnout		52.1	-4.0

Source: news.bbc.co.uk.

I Party did not contest seat in 2005; W Party contested seat in 2005 but did not contest by-election

A Westminster by-election became necessary in Glenrothes following the death in August of the incumbent Labour MP, John MacDougall. After Labour's unexpected drubbing at the hands of the SNP in Glasgow East in July, the party's ability to defend the seat looked to be in severe doubt given that the swing required for a SNP victory, just over 14%, was far less than the 22.5% swing the SNP secured to take Glasgow East narrowly. Moreover, the SNP had successfully captured the nearest equivalent Scottish Parliament constituency, Central Fife, from Labour in the 2007 Scottish Parliament election, while analysis of the polling station level data for that election³⁵ revealed that the SNP had also been marginally ahead across the whole of the Glenrothes Westminster seat.

In sharp contrast to its tactics in Glasgow East, Labour waited a couple of months before moving the writ for the Glenrothes by-election, such that it only took place after all three UK party conferences and the SNP's annual conference had taken place. The delay provided propitious as Labour's electoral popularity improved significantly in the wake of its UK party conference, at which the Prime Minister's actions in the financial crisis to date were effectively marketed. At the same time the party was able to argue that the crisis demonstrated the financial risks that would face an independent Scotland (see section 2.1.1.). The party, however, also found a rich seam to mine locally. The SNP

³⁵ Unusually for an election in the UK, polling station level results for the whole of Scotland have been made available by the Scotland Office. See www.scotlandoffice.gov.uk (publications for April 2007).

candidate, Peter Grant, was leader of Fife council. Since taking over the running of the council from Labour in May 2007 the SNP-led administration had introduced charges for the provision of certain homecare and emergency alarm services. Though such charges were already common elsewhere in Scotland, including under Labour councils, Labour were able to portray the local council as hard hearted and intent on cutting local services. Moreover they were able to link this criticism with the SNP Scottish government's policy of freezing the council tax, a policy that Labour claimed was resulting in cuts to services.

Labour not only defended the seat successfully, but actually managed to increase its share of the vote by three percentage points - a rare feat for any incumbent UK government party in any by-election let alone one that had once appeared likely to lose. While the SNP vote still went up by far more (thirteen points) than did Labour's, the result was a severe disappointment for the nationalists and indeed it instigated a further revival in Labour's electoral fortunes across Britain as whole. While the result undoubtedly exaggerated the scale of Labour's electoral revival during the course of the autumn (see also section 2.4.4) its successful exploitation of the homecare charges issue indicated that it had found an effective line of attack on the SNP Scottish Government for the first time since it lost office in May 2007.

2.3.4 Local Government By-Elections

18/9/08 Glasgow, Baillieston	% 1 st preference vote	Change in % 1 st preference vote since 2007
Conservative	5.0	-1.5
Labour	41.7	-4.3
Liberal Democrat	3.1	-0.7
SNP	44.6	+11.4
Solidarity	1.4	-3.1
BNP	1.4	I
SSP	1.1	-1.1
Green	0.9	-0.8
Scottish Unionist	0.8	-1.3

Turnout 22.7 (-23.2)

6/11/08 Glasgow, Baillieston	% 1 st preference vote	Change in % 1 st preference vote since 2007
Conservative	4.7	-1.8
Labour	46.8	+0.8
Liberal Democrat	2.9	-0.9
SNP	42.1	+8.9
SSP	1.8	-0.4
BNP	1.0	I
Green	0.7	-1.0
Solidarity	-	W
Scottish Unionist	-	W

Turnout 20.7 (-25.2)

6/11/08 Edinburgh, Forth	% 1 st preference vote	Change in % 1 st preference vote since 2007
Conservative	17.3	-2.9
Labour	29.5	+0.5
Liberal Democrat	14.4	-3.5
SNP	27.0	+4.3
Green	5.0	-0.7
Independent	4.4	+3.0
Independent	0.4	
Solidarity	1.2	-0.6
SSP	0.8	+0.0

Turnout 31.6 (-21.8)

11/12/08 East Ayrshire, Ballochmyle	% 1 st preference vote	Change in % 1 st preference vote since 2007
Conservative	8.2	-1.0
Labour	47.9	-3.7
Liberal Democrat	2.8	I

SNP	33.8	+4.6
Solidarity	7.3	I
Independent	-	W
Green	-	W

Turnout 29.2 (-24.2)

11/12/08	% 1 st preference vote	Change in % 1 st preference vote since 2007
North Ayrshire, Kilbirnie & Beith		
Conservative	11.6	+1.7
Labour	33.7	-4.4
Liberal Democrat	3.4	+0.1
SNP	48.9	+25.5
Socialist Labour	2.4	I
Independent (4 candidates)	-	W

Turnout 24.8 (-27.7). I Party did not contest ward in 2007; W Party contested ward in 2007 but did not contest by-election. Sources: www.alba.org.uk; <http://www.gwydir.demon.co.uk/byelections>; relevant local authority web sites.

Some five by-elections held during this period provided unusually important and valuable pointers to the standing of the parties. The first was held in Glasgow Baillieston in mid-September and was occasioned by the resignation of John Mason following his election as MP in the Glasgow East UK parliamentary by-election in July. Labour had been the strongest party in the ward in 2007 and thus might have been expected to capture from the SNP the seat at stake in the by-election. Yet in a result that arguably was as remarkable as the SNP's victory in Glasgow East two months earlier, the nationalists narrowly retained the seat on just under an eight point swing from its (relatively strong) performance in May 2007.

In the meantime, however, a second by-election became necessary in the Baillieston ward following the death of one of the ward's two Labour councillors. Polling day was set for the same day as the Glenrothes by-election as was a further contest in the Forth ward in Edinburgh. Given the outcome in Baillieston in September the SNP now had hopes of capturing this seat. Meanwhile, as the nationalists only needed just over a 3%

swing to overtake Labour in Edinburgh Forth the party seemed to have a realistic chance of capturing the Labour seat that was at stake there too. But in a continuation of the disappointment of Glenrothes neither seat was captured by the SNP. However, the two results suggested that the setback to the nationalists' electoral prospects was less than that implied by the contrast between the 22.5% swing to the SNP in Glasgow East and the 5% swing in Glenrothes. SNP support was up on 2007 in both wards while Labour's share of the vote was little changed. Meanwhile, in Glasgow Baillieston the result represented a modest 3.8% swing from the SNP to Labour compared with September – but no more.

Two further by-elections held in Ayrshire in December confirmed that the nationalists are still riding relatively high. In the Ballochmyle ward in East Ayrshire there was just over a 4% swing from Labour to the SNP compared with the first preference vote in May 2007, while in the Kilbirnie & Beith ward in North Ayrshire a dramatic 25 point increase in SNP support (albeit in the wake of the absence of any independent candidates who between them won a quarter of the vote in 2007) enabled the party to defend successfully a seat in a ward in which it had trailed Labour by nearly 15 points on the first preference vote in 2007.

2.4 Attitudes towards Leaders

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

	Apr. 08	Sept. 08	Oct. 08
	%	%	%
Alex Salmond	43	41	38
Iain Gray	11*	3	13
Cathy Jamieson	-	7	-
Andy Kerr	-	5	-
Annabel Goldie	9	8	10
Tavish Scott	5**	5	6
None/Don't Know	31	31	33

Note: Respondents were advised of the party of each leader.

* Figure for Wendy Alexander; ** Figure for Nicol Stephen

Source: YouGov/Sunday Times 3-5.9.08 and 22-24.10.08

The YouGov poll conducted in late October was the first to be conducted since the election of Iain Gray as Labour's Scottish leader the previous month. It confirmed that the new Labour leader faces a considerable task in making himself popular amongst the Scottish public. Just 13% said he would make the best First Minister, little more than a third of the proportion who nominated the SNP leader, Alex Salmond. Although Mr Salmond's support was three points lower than in September, it was not apparent from this poll that the fallout from the financial crisis (section 2.1.1) had particularly harmed his personal reputation.

Given the current credit crunch and the problems of rising food and energy prices, who would you trust more to make the right decision to help Scottish people in their everyday lives, Alex Salmond or Gordon Brown?

	%
Alex Salmond	36
Gordon Brown	26
Neither	27
Don't Know	11

Source: YouGov/Sunday Times 3-5.9.08

Who would you trust most to steer Scotland through the current financial crisis?

Gordon Brown	42
Alex Salmond	23
David Cameron	8
Neither	17
Don't Know	10

YouGov/Sunday Times 22-24.10.08

However, there does seem to have been a change in the public's relative evaluations of Alex Salmond and the Prime Minister, Gordon Brown. In early September, before the financial crisis broke, it seemed that people in Scotland would far prefer to put their future in Mr Salmond's hands during a crisis than in those of the Prime Minister. But by

late October, albeit in response to a differently worded question, the position had sharply reversed. This change is consistent with British poll findings that show a sharp increase in the Gordon Brown's satisfaction ratings in the wake of the financial crisis.

3. The Scottish Parliament and Parties

Paul Cairney

3.1 Who Decides If Ministers are Telling the Truth?

The golden rule for UK Ministers is that they should not lie to Parliament. The strength of the convention is such that ministers will often resign if seen to *mislead*.³⁶ To a great extent this convention has been inherited by the Scottish Parliament, which explains why ministers, so used to presenting one-sided views of events in public, may put themselves at risk if they do not change tack in the chamber. This is the one aspect that has dominated the media reporting of Presiding Officer Alex Fergusson's decision to refer the 'veracity' of statements made in plenary to the Standards Committee:

I have said on numerous occasions that the Presiding Officer never has been, is not and cannot be responsible for the veracity of what is said in the chamber. That said, I note that such points of order are on the increase, which indicates to me a growing sense of frustration among members. I strongly believe that Parliament is, ultimately, ill served by that type of exchange. I also believe that all members must play their part in ensuring that we have the highest standards of probity, scrutiny and accountability. I have, therefore, today written to the Standards, Procedures and Public Appointments Committee asking it to launch an inquiry into the wider issue of the veracity of members' responses and how that is best policed.³⁷

Much has been made by Labour and the Liberal Democrats of Alex Salmond's statements on the numbers of nursery teachers in Scotland and the funding of the Scottish Inter Faith Council, while Scottish Labour has produced a file of 'misleading' statements by SNP ministers and more than 40 opposition MSPs have signed a parliamentary motion urging Salmond to apologise (the Conservatives have otherwise distanced themselves from such exchanges).³⁸ Yet, any inquiry would refer to the

³⁶ D. Judge (1993) *The Parliamentary State* (London: Sage).

³⁷ Scottish Parliament Official Report 15.1.09 cols. 14068-9

<http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-09/sor0115-02.htm#Col14070>

³⁸ R. Dinwoodie 17.11.09 'MSP says Salmond 'misled' on nursery teacher numbers' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2468500.0.MSP_says_Salmond_misled_on_nursery_teacher_numbers.php; 16.1.09 "Unprecedented" inquiry into ministerial statements

broader subject of MSP behaviour in the wake of minority government and the role-reversal of the main political parties. Indeed, a competing reason for the referral is that some opposition parties or MSPs may be exploiting the sensitivity of parliamentary convention and misusing parliamentary procedures for party political gain (note that the Standards committee is already investigating the misuse of points of order).³⁹ In this light, Salmond's decision to effectively refer his own behaviour (regarding the Inter Faith Council) to the two former Presiding Officers (following procedures under the new ministerial code⁴⁰) does not represent a duplication of effort.⁴¹

3.2 Political Parties

If most party conferences have shifted from decision-making to publicity-making events, then the SNP's was understandably the most successful and triumphalist, while Labour's was used to lick wounds and reflect on mistakes.⁴² Iain Gray won the Scottish Labour leadership contest in September, while Johann Lamont was elected as deputy leader.⁴³ Gray promptly included both of his leadership rivals in his shadow team, with Andy Kerr occupying finance and Cathy Jamieson taking on health. The most notable inclusion

welcomed" <http://www.holyrood.com/content/view/3450/10051/>; S. Johnson 16.1.09 'Alex Salmond's SNP administration accused of "downright disregard for the truth"' *The Telegraph* <http://www.telegraph.co.uk/news/newstopics/politics/scotland/4272584/Alex-Salmonds-SNP-administration-accused-of-downright-disregard-for-the-truth.html>; BBC News 15.1.09 'Probe into Holyrood comments row' <http://news.bbc.co.uk/1/hi/scotland/7830814.stm>

³⁹ *The Herald* 27.1.09 "Mischief-making' over claims Salmond misled parliament" http://www.theherald.co.uk/politics/news/display.var.2484794.0.Mischiefmaking_over_claims_Salmond_misled_parliament.php; 23.1.09 'Frustrations over parliamentary answers a result of minority government' <http://www.holyrood.com/content/view/3477/10051/>; S. Johnson 16.1.09 "Holyrood's 'Speaker' orders probe following claims Alex Salmond misled MSPs" *The Telegraph* <http://www.telegraph.co.uk/news/newstopics/politics/scotland/4248814/Holyroods-Speaker-orders-probe-following-claims-Alex-Salmond-misled-MSPs.html>

⁴⁰ See Scottish Devolution Monitoring Report September 2008, p6. http://www.ucl.ac.uk/constitution-unit/files/research/devolution/dmr/Scotland_Sept08.pdf

⁴¹ L. McIntosh 15.1.09 'Alex Salmond raises stakes in row over truthfulness at Holyrood' *The Times* <http://www.timesonline.co.uk/tol/news/uk/scotland/article5527494.ece>; see also Scottish Government News Release 3.11.08 'Trump golf resort gets go ahead' <http://www.scotland.gov.uk/News/Releases/2008/11/03123709>

⁴² H. MacDonell 15.10.08 'Two years ago no-one wanted to know...now SNP conference is the biggest show in town' *The Scotsman* <http://news.scotsman.com/politics/Two-years-ago--noone.4591665.jp>; D. Summers 22.9.08 'Scottish Labour leader tells conference about pain of losing power' *The Guardian* <http://www.guardian.co.uk/politics/2008/sep/22/labourconference.labour3>

⁴³ Although note that Gray becomes the leader of the Labour MSPs rather than the overall leader of the Labour Party in Scotland (see Scottish Devolution Monitoring Report September 2008, p86); 13.9.08 'Speech by Iain Gray on being elected as Labour's leader in the Scottish Parliament' <http://www.scottishlabour.org.uk/bd047975-e746-2d94-51ef-7f93b75eed95>; BBC News 13.9.08 'Gray becomes Scots Labour leader' <http://news.bbc.co.uk/1/hi/scotland/7614081.stm>; BBC News 28.7.08 'Q&A: Labour leadership election' <http://news.bbc.co.uk/1/hi/scotland/7481274.stm>

was Richard Baker's promotion to Justice.⁴⁴ The brief history since Gray's ascension has had its high and low points, with both regarding Westminster events largely out of his control. The high follows Labour's win in the Glenrothes by-election (see section 2.3.3). The low refers to the internal politics of MP selection in Gray's home patch of East Lothian. In November, Labour's National Executive Committee suspended its constituency business following a row over the selection of incumbent MP Anne Moffat. Moffat's position was largely ensured through the trade union vote, but undermined in the wake of an inquiry into her MP expenses. Four of six local branches did not support her continued selection and three pursued a no-confidence motion and the opening of a selection process to introduce a competing candidate. In the end, the NEC dropped any threat of disciplinary action on local activists, who in turn dropped their threat to field an independent candidate in the next general election.⁴⁵ The affair is perhaps only bettered as a 'village life' story by the continued row surrounding SNP Councillor Hanif⁴⁶, while the Conservative 'ban' on MSPs making statements to the Calman Commission (for fear of exposing splits, embarrassing David Cameron and tying his hands when in office) reminds us that Labour is not the only party with often-problematic organisational devolution.⁴⁷ On the Holyrood front, Gray perhaps stands out in two main ways – as a former minister willing to discuss in detail the mistakes made by Labour when in office,

⁴⁴ For a full list of positions see Scottish Labour (2009) 'The Scottish Shadow Cabinet' http://www.scottishlabour.org.uk/shadow_cabinet

⁴⁵ D. Maddox 20.11.08 'Labour NEC to run Gray's bickering local party' *The Scotsman* <http://news.scotsman.com/politics/Labour-NEC-to-run-Gray39s.4712512.jp>; R. Dinwoodie 20.11.08 'Labour suspends its party in East Lothian' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2469373.0.Labour_suspends_its_party_in_East_Lothian.php; A. Macleod 19.11.08 'Labour suspends East Lothian party over MP selection' *The Times* <http://www.timesonline.co.uk/tol/news/uk/scotland/article5192820.ece>; T. Crichton 24.11.08 "Embattled MP Moffat brands her Labour critics 'bullies'" *The Herald* http://www.theherald.co.uk/politics/news/display.var.2470169.0.Embattled_MP_Moffat_brands_her_Labour_critics_bullies.php; G. Peev 22.12.08 'Labour in bid to resolve feud in local party branch' *The Scotsman* <http://news.scotsman.com/politics/Labour-in-bid-to-resolve.4812844.jp>; H. Macdonnell 24.11.08 'Sexist Labour Party members don't like strong women – MP' *The Scotsman* <http://news.scotsman.com/politics/Sexist-Labour-Party--members.4722976.jp>; T. Crichton 24.11.08 'Embattled MP Moffat brands her Labour critics 'bullies'" *The Herald* http://www.theherald.co.uk/politics/news/display.var.2470169.0.Embattled_MP_Moffat_brands_her_Labour_critics_bullies.php; T. Crichton 22.12.08 'Bid to end East Lothian party row as ban on constituency is lifted' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2477014.0.Bid_to_end_East_Lothian_party_row_as_ban_on_constituency_is_lifted.php;

⁴⁶ 12.9.08 'Labour activist threatened with legal action over Hanif letter' <http://www.holyrood.com/content/view/2946/10051/>

⁴⁷ I. Harrison and J. Allardyce 23.11.08 'Tory MSPs silenced on Holyrood tax' *Sunday Times* <http://www.timesonline.co.uk/tol/news/uk/scotland/article5213506.ece> ; A. Cochrane 19.12.08 'Scottish Conservative Party is no longer nasty, but is 'stupid' any better?' *The Telegraph* <http://www.telegraph.co.uk/comment/columnists/alancochrane/3563732/Scottish-Conservative-Party-is-no-longer-nasty-but-is-stupid-any-better.html>

and as the first leader of a former-Scottish-Executive-coalition-party to deal well with Alex Salmond in First Minister's questions.⁴⁸ Tavish Scott, new leader of the Scottish Liberal Democrats⁴⁹, also gave portfolios to his leadership contenders, with Ross Finnie tasked with health and Mike Rumbles parliamentary business.⁵⁰ Robin Harper MSP and Alison Johnstone stood down as Green co-convenors in September 2008, paving the way for Patrick Harvie MSP and former MSP Eleanor Scott to replace them.⁵¹ No change in the Margo MacDonald party. The issue of elected representatives employing family members arose in November, but not to the heights we have seen in Westminster.⁵²

3.3 The Annual Budget

This year's budget round is ringing familiar bells. Last year, although the SNP courted support from the Greens and Conservatives, the concessions it made were complementary (the Greens perhaps act as the SNP's environmental conscience) and small compared to the overall budget.⁵³ The process was also marked by uncertainty about the position that Labour and the Liberal Democrats would take (in the end, Labour abstained on the final vote, prompting much hilarity on the SNP benches) and the threat by Alex Salmond to quit if the budget bill was voted down. This year, Finance Secretary John Swinney promised to join Salmond (although there is a general sense that the more serious economic context gives them more leverage). Most commentators assumed that Labour and the Liberal Democrats would vote against the bill at stage 3, particularly since the SNP rebuffed the latter's request for a 2p income tax cut. In this situation, the process gave disproportionate influence not only to the Conservatives (looking for assurances on fairly uncontroversial policies to regenerate towns, tackle

⁴⁸ 19.9.08 'Gray believes Labour had lost its way' <http://www.holyrood.com/content/view/2975/10051/>; M. Linklater 13.11.08 'Day the Brahan Seer of Buchan failed to see it coming' *The Times*

<http://www.timesonline.co.uk/tol/news/uk/scotland/article5151458.ece>

⁴⁹ Note that this leadership extends to the party as a whole in Scotland, as part of a federal UK arrangement. See Liberal Democrats (2008) 'The Constitution of the Liberal Democrats'

<http://www.libdems.org.uk/assets/0000/7925/Constitution.pdf>

⁵⁰ For a full list, see BBC News 16.9.08 'Scottish Lib Dem front bench'

<http://news.bbc.co.uk/1/hi/scotland/7619138.stm>

⁵¹ Scottish Green Party (2008) 'Green Co-convenors'

<http://www.scottishgreens.org.uk/site/6148/GreenCoConvenors.html>

⁵² D. Maddox 28.11.08 'Keeping it in the family: Fifth of MSPs have relative on their staff' *The Scotsman* <http://news.scotsman.com/politics/Keeping-it-in-the-family.4741516.jp>; R. Dinwoodie

28.11.08 'Matter of trust when MSPs give jobs to their relatives' *The Herald*

http://www.theherald.co.uk/politics/news/display.var.2471306.0.Matter_of_trust_when_MSPs_give_jobs_to_their_relatives.php

⁵³ *Scottish Devolution Monitoring Report*, January 2008, section 2.2, pp.18-19.

http://www.ucl.ac.uk/constitution-unit/files/research/devolution/dmr/Scotland_Jan08.pdf

hospital acquired infections and provide outdoor adventure training courses for school pupils) but also the Greens who sought major funding (£100m per year for 10 years) for the subsidised insulation of homes (although, if the Greens do not compromise, it may be cheaper to strike a deal on Labour's call for more modern apprenticeships).⁵⁴

At the time of writing, all but the Liberal Democrats approved the principles of the bill at stage 1 plenary, it was approved without amendment by the Finance committee at stage 2 (note that, unlike other bills, only Scottish Government ministers can propose amendments) but then rejected at stage 3. With Labour (46) and the Liberal Democrats (16) voting against, Conservative (16 without Alex Fergusson) and Margo MacDonald support provided only 64 votes. When the Greens voted against, this produced a 64-64 tie, with Fergusson following convention and voting for the status quo (effectively rejecting the bill). This should prove to be a temporary blip, since the Greens and SNP have agreed to a compromise of £33m per year and the latter now has to demonstrate merely that the money is 'new' and won't be lost to local authority discretion.⁵⁵ The Liberal Democrats have also agreed to drop their opposition in exchange for an SNP

⁵⁴ 8.1.09 'Greens in £1bn Scots home insulation deal' *The Times* <http://www.timesonline.co.uk/tol/news/uk/scotland/article5478188.ece>; A. Macleod 7.1.09 'Salmond to repeat budget threat to Opposition' *The Times* <http://www.timesonline.co.uk/tol/news/uk/scotland/article5469940.ece>; D. Maddox 8.1.09 'Labour tells Salmond: Go ahead and quit' *The Scotsman* <http://news.scotsman.com/politics/Labour---tells-Salmond.4854142.jp>; 7.1.08 'Lib Dems' disappointment over tax cut rejection' *The Scotsman* <http://news.scotsman.com/politics/Lib-Dems39-disappointment-over-tax.4853497.jp>; S. Carrell 8.1.09 'Scottish ministers close to crucial budget deal with Greens' *The Guardian* <http://www.guardian.co.uk/politics/2009/jan/08/scotland-budget-greens>; R. Dinwoodie 9.1.09 'Budget row signals start of political horse-trading' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2480257.0.Budget_row_signals_start_of_political_horse_trading.php; H. MacDonell 9.1.09 'SNP and Tories close to deal on budget' *The Herald* <http://news.scotsman.com/politics/SNP-and-Tories-close-.4859224.jp>; H. Macdonell 27.1.09 'Swinney in last-minute talks to win enough backing for budget' *The Scotsman* <http://news.scotsman.com/politics/Swinney-in-lastminute-talks-to.4914998.jp>. For a list of party demands see D. Maddox 28.1.09 'SNP's budget hangs in the balance as opponents refuse to strike deal' *The Scotsman* <http://news.scotsman.com/politics/SNP39s-budget-hangs-in-the.4919239.jp>

⁵⁵ R. Dinwoodie 15.1.09 'Victory for SNP as 'lifeline' Budget clears first hurdle' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2481808.0.Victory_for_SNP_as_lifeline_Budget_clears_first_hurdle.php; Finance Committee Official Report 20.1.09 cols.921-4 <http://www.scottish.parliament.uk/s3/committees/finance/or-09/fi09-0201.htm>; R. Dinwoodie 29.1.09 'Why Patrick Harvie felt he could not back the bill' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2485364.0.Why_Patrick_Harvie_felt_he_could_not_back_the_bill.php; H. Macdonell 29.1.09 'Budget analysis: From hero to zero in high-risk strategy' *The Scotsman* <http://news.scotsman.com/politics/Budget-analysis-From-hero-to.4924452.jp>; 28.1.09 'Scottish Government loses budget vote' *The Scotsman* <http://news.scotsman.com/politics/Scottish-Government-loses-budget-vote.4923945.jp>; BBC News 28.1.09 'Q&A: Scottish budget rejection' <http://news.bbc.co.uk/1/hi/scotland/7857087.stm>; M. Linklater 28.1.09 'All a big Budget misunderstanding for Scottish leadership' *The Times* <http://www.timesonline.co.uk/tol/news/uk/scotland/article5608304.ece>

assurance that it will engage with the Calman Commission on the issue of Holyrood borrowing powers and agree to a cross-party review of Scottish Government spending (while Labour could support the bill if assured on the funding for modern apprenticeships). We can therefore expect a bizarre turnaround in the fortunes of consensus politics, with the reasonable prospect of all-party support for a bill which will change only at the margins. The Scottish Parliament has until mid-February to vote again in time for the bill to come into operation by the start of the financial year.⁵⁶

3.4 The New Politics of Voting

As previous monitors have noted⁵⁷, although the number of votes going against the Scottish Government in plenary has increased significantly, turning the process from a ritualistic affair into key party political battleground, the substantive effect is unclear. Perhaps more importantly, there are signs of growing political maturity among the parties, with widespread support for Scottish Government or opposition motions reflecting a willingness to negotiate the wording and tone beforehand. This attitude informed debates on the economy, agriculture, bridge tolls, health boards, Homecoming, organ donation, forced marriages, child protection services and aquaculture. MSPs also agreed to the Scottish Parliamentary Pensions Bill and the general principles of the Flood Risk (Management) Scotland Bill and the Health Boards (Membership and Elections) (Scotland) Bill. This left a relatively small number of instances in which the parties disagreed – the Scottish Government's plans for offender management, the 'causes of crime', the leadership by the education secretary Fiona Hyslop and clarity of the new Curriculum for Excellence, how the Scottish Parliament should respond to the UK policy on drink driving and the adequacy of spending on health (plus an otherwise unanimous vote against UK ID cards that isolated Scottish Labour). In only one instance did the Scottish Government suffer a defeat which may come back to haunt it: a Conservative motion to keep the reform of the council tax as a realistic alternative to the

⁵⁶ D. Maddox 3.2.09 'All-party budget support now looks likely after meeting between SNP and Liberal Democrats' *The Scotsman* <http://news.scotsman.com/politics/Allparty-budget-support-now-looks.4938934.jp>; A. Macleod 3.2.09 'Salmond to drop hostility on Calman' *The Times* <http://www.timesonline.co.uk/tol/news/uk/scotland/article5645257.ece>; H. MacDonell 3.2.09 'End justifies the means in securing a universal Budget' *The Scotsman* <http://news.scotsman.com/politics/Hamish-Macdonell-End-justifies-the.4938944.jp>; R. Dinwoodie 3.2.09 'Fresh hope over deal to pass the Budget Bill after 'positive' talks' *The Herald* http://www.theherald.co.uk/news/news/display.var.2486508.0.Fresh_hope_over_deal_to_pass_the_Budget_Bill_after_positive_talks.php; P. Cairney 30.1.09 *Press and Journal*, p.9.; BBC News 3.2.09 'Scottish budget deal 'imminent'' <http://news.bbc.co.uk/1/hi/scotland/7866805.stm>

⁵⁷ See in particular *Scottish Devolution Monitoring Report*, January 2008, section 2.3, p19. http://www.ucl.ac.uk/constitution-unit/files/research/devolution/dmr/Scotland_Jan08.pdf

new local income tax.⁵⁸ Since the Finance committee is convened by the SNP's Andrew Welsh, there may also be opposition calls for the Local Government and Communities committee (convened by Labour's Duncan McNeil) to take the lead on any forthcoming bill.⁵⁹

In some cases the eventual outcome masks the level of debate (see also section 4.2 on the alcohol for under-21s motion). For example, although the parties (bar the Greens) eventually agreed on a form of wording welcoming the lack of road tolls on the new Forth road bridge, there was much debate on the way in which it will be financed. The main drawback is that the SNP's preferred alternative to PFI - the Scottish Futures Trust, designed to address the problem of 'excessive' profits to the private sector when building public projects – is not well-equipped to manage huge capital projects such as the new crossing. The Scottish Government has therefore announced a reduction in the scale and cost of the crossing (from over £3bn to £2bn) and has been looking for new ways to fund the project, including (as section 6.7 of this report discusses) asking the UK Government to finance it by effectively allowing the Scottish Government to 'borrow' against predicted future revenues. This has opened up the floodgates for criticism, led by Labour, about the lack of an SNP alternative to PFI, causing great economic uncertainty, difficult choices on public sector capital projects, and compromises in provision.⁶⁰ Interestingly, the Conservative offer to negotiate the details, based on the

⁵⁸ For a full list of motions and votes, see BBC News 25.1.09 'How MSPs voted in the parliament' <http://news.bbc.co.uk/1/hi/scotland/7616706.stm>

⁵⁹ D. Maddox 27.10.08 'Scramble in the corridors of power for control of LIT bill' *The Scotsman* <http://news.scotsman.com/politics/Scramble-in-the-corridors-of.4631016.jp>

⁶⁰ Scottish Parliament Official Report 15.1.09 cols. 14087-14135 <http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-09/sor0115-02.htm#Col14087>; S. Paterson 7.1.09 'Nationalists accused over lack of funding plan for bridge' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2479689.0.Nationalists_accused_over_lack_of_funding_plan_for_bridge.php; 6.1.09 'Swinney must answer over Forth 'mess', states Labour' <http://www.holyrood.com/content/view/3405/10051/>; R. Dinwoodie 15.12.08 'Labour accused of scaremongering over £2bn Forth crossing threat to hospital' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2475247.0.Labour_accused_of_scaremongering_over_2bn_Forth_crossing_threat_to_hospital.php; R. Dinwoodie 11.12.08 '£25bn plans to transport Scotland into future' *The Herald* http://www.theherald.co.uk/news/news/display.var.2474332.0.25bn_plans_to_transport_Scotland_into_future.php; S. Carrell 10.12.08 'SNP halves budget for new Forth bridge project' *The Guardian* <http://www.guardian.co.uk/politics/2008/dec/10/scotland-forth-bridge>; A. Macleod 10.12.08 'SNP asks London for £2bn to build new Forth bridge' *The Times* <http://www.timesonline.co.uk/tol/news/uk/scotland/article5321522.ece>; A. Philip 16.1.09 'Fears new bridge 'not up to the job'' *The Scotsman* <http://news.scotsman.com/latestnews/Fears-new-bridge-39not-up.4883416.jp>

assumption it will win the 2010 general election, was rejected by the SNP⁶¹ in part because anti-Conservative sentiments will be key to the independence referendum in 2010. The parties also clashed on the issue of home repossessions. While the UK Government plans to protect homeowners further against repossession, the Scottish Government position is (or was) that homeowners are already protected under existing legislation. This prompted heated debate and opposition demands for a 'three point plan' of action.⁶² Similarly, the statutory instrument required to introduce free school meals did not go through a smooth ride.⁶³

3.5 Scottish Parliament Committees

The previous monitor suggested that, given the effect of partisanship on committees, the saving grace may be for parties to agree to steer their efforts towards cross-party issues. This was achieved by the Justice committee which set out a 'vision' for community policing (which includes extra resources). It also agreed with the general principles of the Sexual Offences bill (albeit calling for more work on issues of sex between older children and the creation of a new statutory offence of rape with an object) and supported the continued provision for asbestos-related damages (but noting that the costs to the Scottish Government may be higher than its financial memorandum suggests). The Equal Opportunities committee also found this opportunity when considering Patrick Harvie MSP's bill addressing hate crimes based on sexual orientation, transgender identity or disability (note that Justice is the lead committee). In particular, it recommended to the Justice committee to find the best way to extend these

⁶¹ D. Maddox 7.1.09 'SNP rejects Tory offer of talks on Forth bridge cash' *The Scotsman* <http://news.scotsman.com/politics/SNP-rejects-Tory-offer-of.4849367.jp>

⁶² 23.10.08 'Sturgeon: New protection for Scots homeowners not needed' *The Herald* <http://news.scotsman.com/politics/Sturgeon-New-protection-for-Scots.4622024.jp>; D. Maddox 12.11.08 'MSPs put pressure on SNP to safeguard homes' *The Scotsman* <http://news.scotsman.com/politics/MSPs-put-pressure-on-SNP.4683970.jp>; R. Dinwoodie 12.11.08 'Holyrood opposition unites on repossessions' *The Herald* http://www.theherald.co.uk/news/news/display.var.2467445.0.Holyrood_opposition_unites_on_repossession.php; J. Horton, M. Settle and G. Smith 'Salmond pledges to shore up mortgage protection' *The Herald* http://www.theherald.co.uk/news/news/display.var.2462854.0.Salmond_pledges_to_shore_up_mortgage_protection.php

⁶³ Scottish Parliament Official Report 27.11.08 cols. 12926-35 <http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-08/sor1127-02.htm#Col12926>; A. Macleod 27.11.08 'Youngest Scots pupils can expect free lunch' *The Times* <http://www.timesonline.co.uk/tol/news/uk/scotland/article5248356.ece>; D. Maddox 20.11.08 'Salmond's free school meals plan scrapes through' *The Scotsman* <http://news.scotsman.com/latestnews/Salmond39s-free-school-meals-plan.4712379.jp>; Scottish Government News Release 2.10.08 'Free school meals' <http://www.scotland.gov.uk/News/Releases/2008/10/02082551>

provisions to the issue of violence against women and the effects of pornography. The health committee produced a fairly united view on the prospect of elections to health boards, arguing that the scheme should be piloted before any decision is taken (and noting the evidence for underwhelming support – see section 5.4).⁶⁴

However, no such luck for the Finance Committee considering the funding of capital investment projects. The (inevitably split) committee sought to ensure that the costs of all potential methods of finance were assessed fairly and systematically (presumably to stop the SNP making unfavourable comparisons between PPP and not-for-profit models) and criticised delays in the approval of projects necessary to keep the construction industry stable. Members divided (with the 3 SNP members losing out to the remaining 5 members) on the recommendation that ‘all methods of finance should be considered equally on their merits’, but Conservative MSP Derek Brownlee helped the SNP defeat the insertion of a paragraph arguing that the Scottish Futures Trust was unnecessary because it would not secure better value for money than existing methods of PPP and prudential borrowing.⁶⁵ There were similar divisions during the production of the committee’s stage 1 budget report. Members could not agree on statements: criticising the vague benefit of capital expenditure to the construction industry and wider economy; criticising the lack of a Scottish Government budget response to the recession (although it did agree to laud the general commitment to accelerate capital projects) and the lack of clarity of single outcome agreements with local authorities; and stating that decisions on cutbacks should be left to individual local authorities. Yet, presumably as part of Conservative support for the budget (and the nature and salience of the issue), members agreed to promote a new scheme to monitor hospital acquired infections.

⁶⁴ For a less sympathetic report see: 15.12.08 ‘Directly elected health boards to be piloted despite concerns’ *The Herald*

http://www.theherald.co.uk/politics/news/display.var.2475410.0.Directly_elected_health_boards_to_be_piloted_despite_concerns.php; S. Paterson 20.11.08 ‘Elections would not improve health boards, committee told’ *The Herald*

http://www.theherald.co.uk/politics/news/display.var.2469378.0.Elections_would_not_improve_health_boards_committee_told.php

⁶⁵ See also S. Johnson 17.12.08 ‘No evidence that Scottish Futures Trust is any better, finds Holyrood inquiry’ *The Telegraph*

<http://www.telegraph.co.uk/news/newstopping/politics/scotland/3795973/No-evidence-that-Scottish-Futures-Trust-is-any-better-finds-Holyrood-inquiry.html> ; R. Dinwoodie and S. Paterson 17.12.08 ‘Ministers urged to allocate new capital projects’ *The Herald*

http://www.theherald.co.uk/politics/news/display.var.2475875.0.Ministers_urged_to_allocate_new_capital_projects.php

The Public Audit committee (its title was changed from Audit following a Standards committee recommendation) sought to keep free personal care on the agenda by calling for better monitoring of its costs (in the light of reports by the Auditor General and Lord Sutherland), to ensure better planning and address the variations in charges by local authorities. It then made similar calls for palliative care services (again reflecting a report by the Auditor General). The standards committee has been busy in this period, considering the operation of cross-party groups, the use and misuse of points of order (see also 3.1), recommending the removal of standing orders favouring constituency MSPs as a point of contact (and obliging cooperation between MSPs in constituency cases), and ruling that Wendy Alexander did not breach the Members' code of conduct when publicising that she was being investigated by the Standards Commissioner. A new committee has been established to review the Scottish Parliament funded bodies (Scottish Public Services Ombudsman; Scottish Information Commissioner; Commissioner for Children and Young People in Scotland; Commissioner for Public Appointments in Scotland; Scottish Commission for Human Rights; and the Scottish Parliamentary Standards Commissioner).

3.6 Committee Reports and Inquiries (6 September 2008 – 25 January 2009)⁶⁶

Equal Opportunities Committee:

18 December [3rd Report 2008: the Offences \(Aggravation by Prejudice\) \(Scotland\) Bill](#)

Finance:

16 December [8th Report 2008: Inquiry into methods of funding capital investment projects](#)

10 December [7th Report 2008: Report on the Scottish Government's Draft Budget 2009-10 \(Response from the Scottish Government\)](#)

Public Audit:

14 January 2009 [1st Report 2009: Review of palliative care services in Scotland](#)

18 December 2008 [4th Report 2008: Free personal and nursing care](#)

Standards, Procedures and Public Appointments:

⁶⁶Excluding most annual reports, routine subordinate legislation reports, financial memoranda, budget reports (which are brought together by the Finance Committee's stage 2 report) and reports on subordinate legislation.

- 17 Dec 2008 [11th Report 2008: Review of Section 6 of the Code of Conduct \(Cross-Party Groups\)](#)
- 02 Dec 2008 [10th Report 2008: Points of Order](#)
- 27 Nov 2008 [9th Report 2008: Review of Section 8 of the Code of Conduct](#)
- 29 Sept 2008 [8th Report 2008: Audit Committee - Title and Remit](#)
- 26 Sept 2008 [7th Report 2008: Complaint against Wendy Alexander MSP](#)

Subordinate Legislation:

- 15 December [Report on Flood Risk Management \(Scotland\) Bill at Stage 1](#)
- 24 November [Report on Health Boards \(Membership and Elections\) \(Scotland\) Bill at Stage 1](#)
- 21 November [Report on Sexual Offences \(Scotland\) Bill](#)
- 10 November [Report on Scottish Parliamentary Pensions Bill at Stage 1](#)
- 5 November [Report on Education \(Additional Support for Learning\) \(Scotland\) Bill at Stage 1](#)
- 5 November [39th Report 2008: Supplementary Legislative Consent Memorandum on the Energy Bill](#)
- 12 Sept [Report on Disabled Persons' Parking Places \(Scotland\) Bill](#)
- 12 Sept [31st Report 2008: Judiciary and Courts \(Scotland\) Bill as amended at Stage 2](#)
- 08 Sept [Report on the Damages \(Asbestos-related Conditions\) \(Scotland\) Bill at Stage 1](#)

Economy, Energy and Tourism

- 6 November 2008 [7th Report 2008: Report on the legislative consent memorandum on the Energy Bill \(UK Parliament Legislation\)](#)

Health and Sport

- 15 December [7th Report 2008: Stage 1 Report on the Health Boards \(Membership and Elections\) \(Scotland\) Bill, Volume 1](#) [7th Report 2008: Stage 1 Report on the Health Boards \(Membership and Elections\) \(Scotland\) Bill, Volume 2: Evidence](#)

Justice

- 16 January [1st Report 2009: Stage 1 Report on the Sexual Offences \(Scotland\) Bill](#)
- 13 October [19th Report 2008: Stage 1 Report on the Damages \(Asbestos-related Conditions\) \(Scotland\) Bill](#)
- 3 October 2008 [18th Report 2008: Report on Inquiry into Community Policing](#)

Local Government and Communities:

13 November 2008 [11th Report 2008: Stage 1 Report on the Disabled Persons' Parking Places \(Scotland\) Bill](#)

Rural Affairs and Environment:

15 January 2009 [1st Report 2009: Stage 1 Report on the Flood Risk Management \(Scotland\) Bill](#)

3.7 Parliamentary Bills (6 September 2008 – 25 January 2009)

Noticeably absent from this list is the legislative vehicle for the new body Creative Scotland, which has been delayed until May.⁶⁷ The number of Scottish Government bills passed by the Scottish Parliament continues to be fairly small, with public policy often pursued using a combination of public expenditure decisions (in part following negotiations over the annual budget bill) and the existing statute book (using regulations or secondary legislation). As a result, the (primary) legislative process often seems to be more of an agenda-setting process, with some notable Members' bills – such as Margo MacDonald's proposal on assisted suicide – more likely to receive attention than MSP support and others – such as Paul Martin's proposal for free NHS parking (after the Scottish Government made an exception for PFI hospitals, based on the cost of buying out the contracts⁶⁸) and Murdo Fraser's on a presumption against the closure of rural schools (already a Scottish Government policy) – representing an attempt to keep the (non) delivery of Scottish Government commitments at the top of the agenda.

Scottish Government Bills Passed:

- [Judiciary and Courts \(Scotland\) Bill](#) – aims to improve the court system by strengthening the role of its judiciary. It restates the independence of the judiciary and the inappropriateness of Scottish ministerial attempts to influence judicial decisions, and establishes the Lord President as head of the judiciary with the power to direct sheriffs principal (in administrative matters rather than judicial decisions).

⁶⁷ P. Miller 22.1.09 'Jobs fears as arts body delayed by four months' *The Herald*
http://www.theherald.co.uk/news/news/display.var.2483518.0.Jobs_fears_as_arts_body_delayed_by_four_months.php

⁶⁸ D. Maddox 13.1.09 'Labour proposes to end all hospital parking charges' *The Scotsman*
<http://news.scotsman.com/politics/Labour-proposes-to-end-all.4868125.jp>

Scottish Government Bills in Progress:

- [Budget \(Scotland\) \(No.2\) Bill](#) t
- [Climate Change \(Scotland\) Bill](#)
- [Damages \(Asbestos-related Conditions\) \(Scotland\) Bill](#)
- [Education \(Additional Support for Learning\) Bill](#)
- [Flood Risk Management \(Scotland\) Bill](#)
- [Health Boards \(Membership and Elections\) \(Scotland\) Bill](#)
- [Sexual Offences \(Scotland\) Bill](#)

Committee Bill in Progress:

- [Scottish Parliamentary Pensions Bill](#)

Members' Bill Passed:

- [Scottish Register of Tartan⁶⁹s Bill](#) (Jamie McGrigor, Conservative) – establishes a statutory definition of tartan ('a design which is capable of being woven consisting of two or more alternating coloured stripes which combine vertically and horizontally to form a repeated chequered pattern') to facilitate a publicly held and funded system to register tartans.

Members' Bills in Progress⁷⁰

- [Disabled Persons' Parking Places \(Scotland\) Bill](#) (Jackie Baillie, Labour) (Stage 1)
- [Offences \(Aggravation By Prejudice\) \(Scotland\) Bill](#) (Patrick Harvie, Green) (Stage 1)

3.8 Sewel (Legislative Consent) Motions passed (6 September 2008 – 25 January 2009)⁷¹

89. Energy Bill (2) (13.11.08). A further motion was required to deal with late changes by the UK government to address concerns expressed in the House of Lords. The bill

⁶⁹ See also Scottish Government News Release 9.10.08 'Scottish Register of Tartans clears final hurdle' <http://www.scotland.gov.uk/News/Releases/2008/10/09171509>

⁷⁰ For a list of Members' Bill Proposals see <http://www.scottish.parliament.uk/business/bills/membersBills.htm>

⁷¹ A full list of motions and links to SPOR discussions is provided by the Scottish Government: <http://www.scotland.gov.uk/About/Sewel>.

still extends executive devolution ('reverse-Sewel') to regulate technologies related to renewable energy. It also provides a common legislative framework for renewable heat incentives. There was no debate or formal opposition in plenary.

4. Scottish Government and Public Policy

Paul Cairney

4.1 The Economy: Money and Power

As the previous monitor discusses, the SNP Government's legislative programme was sold in Alex Salmond's speech as part of a 'single overarching purpose - to increase sustainable growth'. Given the onset of economic crisis in the UK, the purpose may have shifted towards reducing the effects of recession. The main plank of this policy is likely to be non-legislative since the funding of major capital investment projects is one of the Scottish Government's most important economic levers.⁷² In this regard it is in the unenviable position of being attacked from all sides regarding delays to major decisions. While members of the Finance committee are urging it to invest more quickly by dropping its objection to PFI (section 3.5) and the UK government has so-far rejected calls to finance the new Forth crossing by allowing the Scottish Government to 'borrow' against predicted future revenues (6.7), a member of the Council for Economic Advisers described SNP policy as PFI 'with window dressing'.⁷³ Perceived delays in building hospitals and schools have also given new Labour leader Iain Gray much-needed ammunition during parliamentary debates (and Margo MacDonald is critical of the lack of

⁷² J. Swinney 21.11.08 'We're investing in the best so Scotland is ready for recovery' *The Scotsman* <http://news.scotsman.com/comment/We39re-investing-in-the-best.4717445.jp>; Scottish Government News Release 26.11.08 'Pre Budget Report' <http://www.scotland.gov.uk/News/Releases/2008/11/26155845>; R. Dinwoodie 4.12.08 'Swinney vows to support jobs with spending programme' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2472812.0.Swinney_vows_to_support_jobs_with_spending_programme.php

⁷³ 7.12.08 'Adviser knocks SNP's not-for-profit plans' *The Scotsman* <http://news.scotsman.com/politics/Adviser-knocks-SNP39s-notforprofit-plans.4769761.jp>

investment in Edinburgh's trams).⁷⁴ Problems of persuasion are also manifest in the interest group response to a local income tax (see also sections 2.2 and 5.2).⁷⁵

While the SNP could have been less ambitious in the short term (while calling for fiscal autonomy as part of a wider agenda for constitutional change), it has chosen to demonstrate its governing competence by making the most of its existing powers and building the Scottish Futures Trust on the back of local authority borrowing (based on the argument 'if we can succeed now, think how better we'd do with more power'). Yet, as the SNP well know, the potential drawback is that any problems with such innovations may expose a damaging image of Scottish ministerial powerlessness rather than the need for constitutional change to solve the problem. Indeed, much of the SNP's strategy to date has been to perform this balancing act between: (a) trying to do well to demonstrate competence; (b) exposing the limits of devolution; but (c) only in a way that keeps the constitutional question on the agenda without damaging the image of Scottish ministers (by making them seem parochial rather than the only people to defend Scotland's interests). This may be hard (or at least regular) work given the range of ways in which Scottish ministers can, at best, partly intervene: the UK government's efficiency savings agenda may determine changes to the Scottish Government's budget; Scottish ministers do not control the process of encouraging those on benefits into further education or the levers on fuel poverty; and negotiations with major employers such as banks (and the supermarkets on alcohol restrictions) depend more on persuasion than coercion.⁷⁶ Therefore, one of its main strategies is to deal (albeit on a

⁷⁴ R. Dinwoodie 19.12.08 'Gray: Plans for schools and hospitals 'dead in the water'' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2476465.0.Gray_Plans_for_schools_and_hospitals_dead_in_the_water.php; D. Maddox 18.12.08 'A bold financial vision crumbles – along with the nation's schools' *The Scotsman* <http://news.scotsman.com/politics/A-bold-financial-vision-crumbles.4803540.jp>; I. Swanson 14.1.09 'Extra trams cash 'can help city ride the credit crunch'' *Evening News* <http://news.scotsman.com/politics/Extra-trams-cash-39can-help.4873403.jp>; Scottish Government News Release 11.9.08 'Modern schools' <http://www.scotland.gov.uk/News/Releases/2008/09/11110406>; 24.10.08 'Cash for school building programme' <http://www.scotland.gov.uk/News/Releases/2008/10/24134129>; 9.11.08 'Pupils moving into new classrooms' <http://www.scotland.gov.uk/News/Releases/2008/11/09114503>; 30.12.08 'School building improvements' <http://www.scotland.gov.uk/News/Releases/2008/12/23115206>

⁷⁵ D. Maddox 28.11.08 'Rebellion over SNP finance package grows in public and private sectors' *The Scotsman* <http://news.scotsman.com/politics/Rebellion-over-SNP-finance-package.4741539.jp>; H. Macdonell 25.11.08 'From MoD to Help the Aged, critics lay into Salmond's income tax plan' *The Scotsman* <http://news.scotsman.com/politics/From-MoD-to-Help-the.4726613.jp>; compare with Scottish Government News Release 24.11.08 'Local Income Tax' <http://www.scotland.gov.uk/News/Releases/2008/11/24095808>

⁷⁶ H. MacDonell 25.11.08 'Scotland could lose £500m as 'efficiency savings' take effect' *The Scotsman* <http://news.scotsman.com/politics/Scotland-could-lose-500m-as.4726590.jp>; 1.12.08

relatively small scale) with the effects of other policies, by: administering EU structural funds and distributing regional assistance grants; helping to identify the Scottish recipients of benefits; and support bodies such as the Partnership Action for Continuing Employment (PACE), Debt Forum and credit unions (in the opposite direction, new legislation to make the bankruptcy process smoother has exacerbated the image of economic instability⁷⁷).⁷⁸ One quick win has been to transform a UK Government mistake into a positive Scottish policy initiative, by promising to maintain pension overpayments for former workers in the Scottish public sector.⁷⁹ There is also much

'Lack of cohesion on welfare and training since devolution'

<http://www.holyrood.com/content/view/3299/10051/>; 20.11.08 'New fuel poverty package for Scotland announced' <http://www.holyrood.com/content/view/3261/10051/>; 21.11.08 'Call for sharp rise in government spending to beat fuel poverty' *The Herald*

http://www.theherald.co.uk/politics/news/display.var.2459612.0.Call_for_sharp_rise_in_government_spending_to_beat_fuel_poverty.php; D. Maddox and A. Dalton 7.10.08 'Salmond in summit amid fears BA will quit Scotland' *The Scotsman* <http://news.scotsman.com/politics/Salmond-in-summit-amid-fears.4563972.jp>; T. Crichton 29.10.08 'Salmond left without pledge on HBOS jobs at Lloyds meeting' *The Herald*

http://www.theherald.co.uk/news/news/display.var.2463984.0.Salmond_left_without_pledge_on_HBOS_jobs_at_Lloyds_meeting.php; 5.12.08 'Salmond urges Herald & Times to reconsider restructuring plan' *The Herald*

http://www.theherald.co.uk/politics/news/display.var.2473061.0.Salmond_urges_Herald_Times_to_reconsider_restructuring_plan.php; 4.12.08 'MSPs voice concerns over BBC Scotland job cuts' *The Scotsman* <http://news.scotsman.com/politics/MSPs-voice-concerns-over-BBC.4761323.jp>; S. Paterson 10.11.08 'Supermarkets reveal opposition to government alcohol plans' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2466817.0.Supermarkets_reveal_opposition_to_government_alcohol_plans.php

⁷⁷ H. Duncanson 17.10.08 'More Scots are going bankrupt after rules ease path' *The Scotsman* <http://news.scotsman.com/politics/More-Scots-are-going-bankrupt.4602341.jp>

⁷⁸ 5.1.09 'EU funds delivered early 'to boost economy''

<http://www.holyrood.com/content/view/3401/10051/>; 20.1.09 'Latest RSA grants 'shot in the arm' for Scottish economy' <http://www.holyrood.com/content/view/3461/10051/>; 9.12.08 'Benefit check boosting pensioners' income, says Maxwell' <http://www.holyrood.com/content/view/3340/10051/>; 31.12.08 'Benefit checks reap rewards for pensioners'

<http://www.scotland.gov.uk/News/Releases/2008/12/24114436>; 13.1.09 'Debt Action Forum set up to advise Government' <http://www.holyrood.com/content/view/3439/10051/>; 12.1.09 'Credit union support grants unveiled' <http://www.holyrood.com/content/view/3434/10051/>; 12.1.09

'Redundancy support to be reviewed by Scottish Government'

<http://www.holyrood.com/content/view/3433/10051/>; Scottish Government News Release

24.11.08 'Combating poverty and income equality'

<http://www.scotland.gov.uk/News/Releases/2008/11/24100942>

⁷⁹ Scottish Government News Release 16.12.08 'Public pension overpayments'

<http://www.scotland.gov.uk/News/Releases/2008/12/16105251>; S. Johnson 17.12.08 'Fury over SNP decision to continue overpaying Scottish public sector pensions' *The Telegraph*

<http://www.telegraph.co.uk/news/newstopics/politics/scotland/3795987/Fury-over-SNP-decision-to-continue-overpaying-Scottish-public-sector-pensions.html>; H. Macdonnell 17.12.08 'SNP refuses to cut overpaid pensions in public sector' *The Scotsman*

<http://news.scotsman.com/politics/SNP-refuses-to-cut-overpaid.4799099.jp>; L. Davidson 16.12.08 'SNP under attack over pensions move'

<http://www.timesonline.co.uk/tol/news/uk/scotland/article5355727.ece>

hope for the galvanising effect of the Homecoming celebrations.⁸⁰ The SNP may also benefit again from a UK focus when the latter's stock is low. The fear of a need to nationalise the iconic Royal Bank of Scotland and stem the flow of housing repossessions, combined with the fall in the value of sterling (Salmond favours the Euro), all contribute to the SNP's (but not John Kay's) arguments that a Scottish Government would have been less 'reckless' (assuming that Salmond's reputation as an economic expert stays solid⁸¹). Finally, the Scottish economy may look relatively good during the economic crisis because Scottish growth and recession tends to be smaller than the UK average.⁸²

4.2 Health, Mental Health and Public Health

For a party so keen on public inquiries when in opposition, it is perhaps surprising that the decision to hold one on the deaths related to C. difficile at the Vale of Leven is taking so long. The alternative explanation is that opposition parties are always more in favour of inquiries than parties in government, in part because the latter are more subject to pressure from their own agencies to protect them, while the former are less tolerant of the need for 'due process'. In this case, the Scottish Government awaits a decision from

⁸⁰ S. Paterson 15.1.09 'Homecoming year 'will help Scotland through recession'' *The Herald* http://www.theherald.co.uk/news/news/display.var.2481752.0.Homecoming_year_will_help_Scotland_and_through_recession.php; 14.1.09 'Salmond calls on Scots to unite as recession takes hold' *The Scotsman* <http://news.scotsman.com/politics/Salmond-calls-on-Scots-to.4876838.jp>;

⁸¹ A. Macleod 22.9.08 'Salmond's 'unpardonable folly' revives Darien spirit' *The Times* <http://www.timesonline.co.uk/tol/news/uk/scotland/article4806243.ece>;

⁸² H. MacDonell 20.10.08 'Swinney defends economic case after unionist attacks' *The Scotsman* <http://news.scotsman.com/politics/Swinney-defends-economic-case-after.4607585.jp>; R. Dinwoodie 20.10.08 'Gloves come off in response to Labour attack on independence' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2461675.0.Gloves_come_off_in_response_to_Labour_attack_on_independence.php; A. Salmond 20.10.08 'Stand-alone Scotland could look after itself' *The Times*

http://www.timesonline.co.uk/tol/comment/columnists/guest_contributors/article4974312.ece; I. MacWhirter 20.10.08 'Like it or not, we're in this mess together' *The Herald* http://www.theherald.co.uk/features/featuresopinion/display.var.2461630.0.like_it_or_not_were_in_this_mess_together.php; T. Peterkin 19.10.08 'Salmond's adviser warns on going solo' *The Scotsman* <http://news.scotsman.com/politics/Salmond39s-adviser-warns-on-going.4606850.jp>; M. Flanagan and H. Rutherford 20.1.09 'RBS: How the mighty have fallen' *The Scotsman* <http://news.scotsman.com/latestnews/-RBS-How-the-mighty.4891968.jp>; 21.1.09 'Unemployment in Scotland 'below UK average'' <http://www.holyrood.com/content/view/3463/10051/>; A. MacLeod 24.9.08 'Scots economy 'in crisis' as the credit crunch bites' *The Times* <http://www.timesonline.co.uk/tol/news/uk/scotland/article4821632.ece>; Scottish Government News Release 22.10.08 'Economy continues to grow during global downturn' <http://www.scotland.gov.uk/News/Releases/2008/10/22100828>

the procurator fiscal (which is liaising with the Health and Safety Executive) about the likelihood of criminal proceedings (its report is due in March).⁸³

Health Secretary Nicola Sturgeon's 'battle of ideas' between public and private NHS provision continued with moves to bar commercial firms from bidding to provide GP services, but was complicated in December by her decision to remove the ban on patients, in exceptional cases, 'topping up' their medical provision.⁸⁴ While there was already pressure to make this change – focusing, in part, on the petition (on cancer drug access) to the Scottish Parliament in October⁸⁵ - it grew significantly when similar moves were announced by the UK Government in November.⁸⁶ The appearance of private treatment may be accentuated if top-up patients are treated in different wards.⁸⁷ Gordon

⁸³ H. Puttick 28.11.08 'Sturgeon reveals Vale of Leven C Diff inquiries' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2471339.0.sturgeon_reveals_vale_of_leven_c_diff_inquiries.php; D. Maddox 21.11.08 'Sturgeon accused of being sole obstacle to public inquiry into C difficile outbreak' *The Scotsman* <http://news.scotsman.com/politics/Sturgeon-accused-of-being-sole.4717595.jp>; A. Macleod 20.11.08 'Nicola Sturgeon rejects calls for superbug inquiry' *The Times* <http://www.timesonline.co.uk/tol/news/uk/scotland/article5202103.ece>; A. Cochrane 20.11.08 'Nicola Sturgeon would have screamed for review into Vale of Leven a year ago' *The Telegraph* <http://www.telegraph.co.uk/news/newstopics/politics/scotland/3490819/Nicola-Sturgeon-would-have-screamed-for-review-into-Vale-of-Leven-a-year-ago.html>; 23.11.08 'Minister close to U-turn over C.diff inquiry' *The Times* <http://www.timesonline.co.uk/tol/news/uk/scotland/article5219431.ece>; see also Scottish Government News Release 12.1.09 'Hepatitis C Inquiry' <http://www.scotland.gov.uk/News/Releases/2009/01/12150514>

⁸⁴ Scottish Government News Release 22.10.08 'Preventing commercialisation of GP practices' <http://www.scotland.gov.uk/News/Releases/2008/10/22092745>; 23.10.08 'Private firms face bar on GP services' *The Scotsman* <http://news.scotsman.com/politics/Private-firms-face-bar.4620845.jp>; BBC News 12.12.08 'NHS top-up care ban to be lifted' <http://news.bbc.co.uk/1/hi/scotland/7778947.stm>; BBC News 4.11.08 'Q&A: NHS top-ups' <http://news.bbc.co.uk/1/hi/health/7458908.stm>; Scottish Government News Release 1.10.08 'Review of co-payment guidance' <http://www.scotland.gov.uk/News/Releases/2008/10/30163542>; 12.12.08 'Health payment guidance' <http://www.scotland.gov.uk/News/Releases/2008/12/12101107>

⁸⁵ Scottish Parliament Official Report 1.10.08 cols. 11326-63 <http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-08/sor1001-01.htm>; 1.10.08 'Sturgeon pledges to review co-payment guidance' <http://www.holyrood.com/content/view/3027/10051/>; K. Foster 5.10.08 'Buying time - Should NHS patients be allowed to pay for life-prolonging 'wonderdrugs'?' *Scotland on Sunday* <http://scotlandonsunday.scotsman.com/opinion/Buying-time--Should-NHS.4559800.jp>

⁸⁶ S. Bosely 5.11.08 'Private treatment will no longer bar patients from NHS care' *The Guardian* <http://www.guardian.co.uk/politics/2008/nov/05/alan-johnson-nhs-nice-reforms>; G. Braiden 4.11.08 'Top-up cancer drugs 'to be considered' for Scotland' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2465623.0.Topup_cancer_drugs_to_be_considered_for_Scotland.php; L. Moss 5.11.08 'Scotland urged to act faster as England agrees NHS 'top-ups'' *The Scotsman* <http://news.scotsman.com/politics/Scotland-urged-to-act-faster.4660796.jp>

⁸⁷ K. Devlin 4.11.08 'Top ups: How they will work' *The Telegraph* <http://www.telegraph.co.uk/health/3380702/Top-ups-How-they-will-work.html>

Brown also signalled growing convergence with Scotland (and Wales) when exempting cancer sufferers from prescription charges.⁸⁸ We therefore have the interesting prospect of policy divergence in NHS structures but convergence in how they treat specific conditions. This extends to a Scottish Government focus on cancer waiting time targets (note that the previous Scottish Executive also made an exception for private healthcare provision when addressing cancer waiting times).⁸⁹ Health inequalities policies (however branded) also tend to display similarities as strong public health networks address 'wicked' problems with no easy solution.⁹⁰

The numbers game continues in health policy, with Sturgeon predicting that the NHS will meet the Scottish Government's 15 week waiting time targets, Labour attempting to turn the tables by accusing it of maintaining 'hidden' waiting lists, a mixed response to the publication of statistics on surgical performance (following a ruling in 2005 by the Scottish Information Commissioner), the announcement that the Scottish NHS has its largest staffing levels ever (to be followed by an increase in ambulance staff to end single-crewing), new targets on organ donors, a high take-up of the MMR vaccine, a greater-than-half take-up of GP extended opening hours, a new high in people registered with dentists and a debate on the adequacy of NHS funding which spilled over into England NHS comparisons during the Glenrothes bye-election campaign.⁹¹

⁸⁸ 24.9.08 'Gordon Brown's speech in full' <http://news.scotsman.com/politics/Gordon-Brown39s-speech-in-full.4520451.jp>; Scottish Government News Release 28.1.09 'Prescription charges' <http://www.scotland.gov.uk/News/Releases/2009/01/28095040>

⁸⁹ A. Campsie 28.10.08 'Cancer patients 'will get treatment within 31 days'' *The Herald* http://www.theherald.co.uk/news/news/display.var.2463728.0.Cancer_patients_will_get_treatment_within_31_days.php; 18.11.08 'Progress by NHS boards on cancer waiting times welcomed' <http://www.holyrood.com/content/view/3252/10051/>; Scottish Government News Release 27.10.08 'Action to support cancer patients' <http://www.scotland.gov.uk/News/Releases/2008/10/27101052>; 18.11.08 'Continued effort needed on cancer waiting times' <http://www.scotland.gov.uk/News/Releases/2008/11/18100635>

⁹⁰ L. Moss 16.12.08 'Practical steps to close health divide and keep Scotland well' *The Scotsman* <http://news.scotsman.com/scotland/Practical-steps-to-close-.4795456.jp>; 21.10.08 "Radical rethink' of public services to tackle health inequalities' <http://www.holyrood.com/content/view/3122/10051/>; 30.9.08 "Clear measures' announced to monitor health inequalities' <http://www.holyrood.com/content/view/3022/10051/>; Scottish Government News Release 30.9.08 'Tackling health inequalities' <http://www.scotland.gov.uk/News/Releases/2008/09/30122246>

⁹¹ Scottish Government News Release 6.11.08 'Reducing NHS waiting times' <http://www.scotland.gov.uk/News/Releases/2008/11/06110425>; 25.11.08 'NHS successfully cutting waiting times, says Sturgeon' <http://www.holyrood.com/content/view/3277/10051/>; L. Mackinnon 26.11.08 'Exclusive: NHS 'con' row over claim 100K patients removed from hospital waiting lists' *Daily Record* <http://www.dailyrecord.co.uk/news/scottish-news/2008/11/26/exclusive-nhs-con-row-over-claim-100k-patients-removed-from-hospital-waiting-lists-86908-20925284/>; A. Morris 8.10.08 'Surgeons' deaths list 'a danger' to patients' *The Scotsman* <http://news.scotsman.com/scotland/Surgeons39-deaths-list--39a.4569096.jp>; 16.12.08 'NHS

While Scotland may need a little push to create an ‘unstoppable momentum for public health improvement’,⁹² this will not come easily with alcohol control. The plans to stop under-21s buying alcohol has met with incredible resistance from parties and students and may now rely more on SNP tenacity than its ability to build a consensus. On the other hand, there is something perversely Scottish about the level of domestic opposition to the SNP’s wider package of measures (including plans for minimum pricing, a dedicated alcohol aisle, a reduction in the drink-drive limit and the discouragement of alcohol promotions and organised pub crawls) and the increasing positive interest from public officials elsewhere. In particular, interest from the UK government (combined with moves merely to lobby the UK to reduce the drink-drive limit rather than pursue Scottish legislation) may turn concerns about the legality of SNP policies into a red herring.⁹³

Scotland staffing levels ‘better than ever’ <http://www.holyrood.com/content/view/3373/10051/>;
 Scottish Government News Release 16.12.08 ‘Health staff numbers reach new high’
<http://www.scotland.gov.uk/News/Releases/2008/12/16095908>; 17.9.08 ‘Single-crew ambulances to end’
<http://www.scotland.gov.uk/News/Releases/2008/09/17150958> 6.11.08 ‘Funding invested in reducing NHS waiting times’
<http://www.holyrood.com/content/view/3198/10051/>; 17.11.08 ‘New organ donor target set by Scottish Government’
<http://www.holyrood.com/content/view/3247/10051/>; L. Davidson 21.11.08 ‘Johnson accuses SNP of stealing Labour’s clothes’ *The Times*
<http://www.timesonline.co.uk/tol/news/uk/scotland/article4981901.ece> ; Scottish Government News Release 9.9.08 ‘Rapid take-up of GP extended hours scheme’
<http://www.scotland.gov.uk/News/Releases/2008/09/09133207> ; 28.10.08 ‘Record numbers registered with NHS dentists’
<http://www.scotland.gov.uk/News/Releases/2008/10/28103224>;
 16.12.08 ‘MMR uptake breakthrough’
<http://www.scotland.gov.uk/News/Releases/2008/12/16104103>; 27.1.08 ‘NHS treatment targets’
<http://www.scotland.gov.uk/News/Releases/2009/01/27094922>
⁹² K. Mackintosh 15.12.08 ‘Scotland at “tipping point” for health, says CMO’
<http://www.holyrood.com/content/view/3367/10051/>
⁹³ Scottish Government News Release 8.9.08 ‘Over 21 alcohol pilot’
<http://www.scotland.gov.uk/News/Releases/2008/09/08094812>; H. MacDonnell 6.10.08 ‘New legal threat to SNP’s alcohol crackdown’ *The Scotsman* <http://news.scotsman.com/politics/New-legal-threat-to-SNP39s.4560404.jp>; H. MacDonnell 8.10.08 ‘Police criticise under-21 drink ban’
The Scotsman <http://news.scotsman.com/politics/Police-criticise-under21-drink-ban.4567975.jp>;
 R. Cahill 3.10.08 ‘Parliament signals disapproval for alcohol age rise’
<http://www.holyrood.com/content/view/3038/10051/>; H. MacDonnell 3.10.08 ‘SNP defiant after alcohol bill setback’
<http://news.scotsman.com/politics/SNP-defiant-after-alcohol-bill.4555260.jp>;
 A. Macleod 2.10.08 ‘Plan to ban under-21 drink sales goes on despite defeat’ *The Times*
<http://www.timesonline.co.uk/tol/news/uk/scotland/article4870990.ece>; G. Braiden 23.10.08 ‘MPs look north to tackle binge-drinking’ *The Herald*
http://www.theherald.co.uk/politics/news/display.var.2462593.0.MPs_look_north_to_tackle_binge_drinking.php;
 L. Moss 14.11.08 ‘SNP boost as study claims higher taxes mean fewer drink deaths’ *The Scotsman* <http://news.scotsman.com/politics/SNP-boost-as-study-claims.4694150.jp>;
 8.10.08 ‘Alcohol strategy consultation shows mixed responses’
<http://www.holyrood.com/content/view/3068/10051/>; J. Allardyce 3.10.08 ‘Councils to set alcohol age limit’ *The Sunday Times*
<http://www.timesonline.co.uk/tol/news/uk/scotland/article4882456.ece>; H. MacDonnell 7.10.08 ‘Salmond – and Scotland – at a turning point’ *The Scotsman*
<http://news.scotsman.com/politics/Salmond--and-Scotland-.4563858.jp> ; S. Johnson 18.12.08

There is also no easy solution to drug addiction and misuse, regardless of the calls for the Scottish Government to accelerate a reduction in methadone funding in the pursuit of 'recovery', address methadone use in prisons and cooperate with the UK Government to withdraw benefits for drug misusers.⁹⁴ More evidence of 'tipping' can perhaps be found in tobacco control, with public health officials able to pursue restrictions that they wouldn't have dreamt possible 10 years ago.⁹⁵ Parts of England have also emulated Scotland's healthy eating campaign.⁹⁶ The picture appears to be less rosy in mental health. Although devolution in Scotland allowed advances in mental health legislation, the service still struggles to cope with the provision of dedicated child services (now to be addressed with HEAT targets) and the treatment of mental illness in prisons.⁹⁷

4.3 Justice

As if to prove that the agenda-setting process is unpredictable, one of the biggest stories this period regarded Justice Secretary Kenny MacAskill's decision to be in Canada promoting Homecoming rather than in the Scottish Parliament debating knife crime.⁹⁸ The emphasis on moves to criminalise types of pornography also shifted unexpectedly,

'MSPs call on Government to almost halve the drink-drive limit' *The Telegraph* <http://www.telegraph.co.uk/motoring/3834353/MSPs-call-on-Government-to-almost-halve-the-drink-drive-limit.html> ; 'Use the existing laws to curb alcohol abuse, LibDem urges' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2472226.0.Use_the_existing_laws_to_curb_alcohol_abuse_LibDem_urges.php

⁹⁴ A. Philip 17.11.08 'Tories call for action as bill for methadone hits £25.7m' *The Scotsman* <http://news.scotsman.com/politics/Tories-call-for-action-as.4699440.jp>; 15.10.08 'Minister kicks off drug strategy visits' <http://www.holyrood.com/content/view/3093/10051/>; 7.10.08 'Prison chief rejects methadone claims' <http://www.holyrood.com/content/view/3065/10051/>; 27.1.09 'Q&A: Professor Neil McKeganey' *The Scotsman* <http://news.scotsman.com/politics/QA-Professor--Neil-McKeganey.4914948.jp> ; 21.1.09 'Q&A: David Liddell' *The Scotsman* <http://news.scotsman.com/health/QA-David-Liddell.4895810.jp>; 20.1.09 'Drug treatment funding boosted by Scottish Government' <http://www.holyrood.com/content/view/3460/10051/> ; M. Howie 20.1.09 'Cut methadone use or you won't turn tide of drug addiction, ministers are warned' *The Scotsman* <http://news.scotsman.com/latestnews/Cut-methadone-use-or-you.4892018.jp>

⁹⁵ 12.11.08 'Council bans smokers from fostering' *The Scotsman*

<http://news.scotsman.com/scotland/Council-bans-smokers-from-fostering.4684007.jp>

⁹⁶ Scottish Government News Release 13.11.08 'Scotland 'leading the way' on healthy eating' <http://www.scotland.gov.uk/News/Releases/2008/11/13112829>

⁹⁷ L. Adams 8.10.08 'Children placed in adult psychiatric wards with no specialist services' *The Herald*

http://www.theherald.co.uk/news/news/display.var.2458443.0.Children_placed_in_adult_psychiatric_wards_with_no_specialist_services.php; Scottish Government News Release 14.11.08 'New targets for healthcare' <http://www.scotland.gov.uk/News/Releases/2008/11/14104125>; M. Howie 4.12.08 'Poor jail care for mentally ill boosts crime' *The Scotsman*

<http://news.scotsman.com/latestnews/Poor-jail-care-for-mentally.4759611.jp>

⁹⁸ S. Johnson 22.1.09 'Kenny MacAskill told to consider resigning for snubbing knife summit' *The Telegraph* <http://www.telegraph.co.uk/news/newstopics/politics/scotland/4317536/Kenny-MacAskill-told-to-consider-resigning-for-snubbing-knife-summit.html>

from a Scottish Government focus on gender (with links to policies on domestic violence and rape) to the effect of the move on the arts (perhaps as a result of a more active arts community during the Creative Scotland debacle).⁹⁹ The numbers game, although less popular than in health, is often played by the parties when discussing justice issues. In this regard the most popular political football is the (now rising) number of police officers in Scotland, while the biggest issue is the problematic growth in prison numbers at a time when crime appears to be dropping.¹⁰⁰ For the SNP Government, one solution is to replace jail sentences below six months with 'tough' community sentences (while investigating why its new drug treatment orders have not been used as much as expected) – a policy criticised by Labour as likely to free the majority of knife-crime offenders.¹⁰¹ For the Chief Inspector of Prisons, a higher priority is to stop children being detained in adult prisons.¹⁰² At the other extreme, the Lord Advocate has signalled the

⁹⁹ S. Johnson 19.1.09 'Scots possessing 'extreme' pornography to face jail' *The Telegraph* <http://www.telegraph.co.uk/news/newstopics/politics/scotland/4291494/Scots-possessing-extreme-pornography-to-face-jail.html>; M. Howie 19.1.09 'Jail for downloading 'extreme' sex images' *The Scotsman* <http://news.scotsman.com/latestnews/Jail-for-downloading-39extreme39-sex.4888459.jp>; R. McQuillan 20.1.09 'Do extreme images put women's safety at risk?' *The Herald* http://www.theherald.co.uk/features/featuresopinon/display.var.2482934.0.do_extreme_images_p_ut_womens_safety_at_risk.php; Scottish Government News Release 22.12.08 'Tackling domestic abuse' <http://www.scotland.gov.uk/News/Releases/2008/12/19162806>; L. Adams 19.11.09 '46,000 to go on domestic abuse risk list' *The Herald* http://www.theherald.co.uk/news/news/display.var.2469084.0.46_000_to_go_on_domestic_abuse_risk_list.php; 18.11.08 'Benchmark' for rape investigations created' <http://www.holyrood.com/content/view/3250/10051/>; D. Maddox 20.1.09 'Art will suffer under porn ban, warns MSP' *The Scotsman* <http://news.scotsman.com/politics/Art-will-suffer-under-.4892027.jp>

¹⁰⁰ 2.12.08 'Scottish police numbers reach all-time high' <http://www.holyrood.com/content/view/3314/10051/>; 10.12.08 'Community safety funding boost for festive period' <http://www.holyrood.com/content/view/3345/10051/>; BBC News 30.9.08 'Scottish crime 'lowest since 80s'' <http://news.bbc.co.uk/1/hi/scotland/7643870.stm>; Scottish Government News Release 30.9.08 'Crime figures on downward trend' <http://www.scotland.gov.uk/News/Releases/2008/09/30100641>; C. Baillie 29.9.08 'Prisons chief issues warning over safety' *The Scotsman* <http://news.scotsman.com/politics/Prisons-chief-issues-warning-over.4536320.jp>; D. Henderson 29.9.08 'Prison service struggling to maintain order in jails, says chief' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2453975.0.Prison_service_struggling_to_maintain_order_in_jails_says_chief.php; 29.9.08 'Prisons struggle as overcrowding hits record high' *The Times* <http://www.timesonline.co.uk/tol/news/uk/scotland/article4842943.ece>

¹⁰¹ 9.12.08 'MacAskill backs "swift, tough and visible community sentences"' <http://www.holyrood.com/content/view/3341/10051/>; H. MacDonell 23.1.08 'Knife thugs 'will roam free under jail plans'' *The Scotsman* <http://news.scotsman.com/latestnews/Knife-thugs-39will-roam-free.4906316.jp>; 'Scottish Government urged to drop six month prison plans' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2480089.0.Scottish_Government_urged_to_drop_six_month_prison_plans.php; 9.1.09 'Government launches inquiry into DTTO drop' <http://www.holyrood.com/content/view/3418/10051>

¹⁰² M. Wade 4.11.08 'Jail system 'scarred by iniquity of locking up children'' *The Times* <http://www.timesonline.co.uk/tol/news/uk/scotland/article5084600.ece>; S. Ross 5.11.08 "Under-

need for longer sentences for murder (at the risk of appearing 'political' and to interfere in the independence of judges).¹⁰³

4.4 Education

As the previous monitor discusses (section 11.6), it is easy to form the impression that the Scottish Government has disengaged from compulsory education by merely providing the money, saying it is adequate, and leaving local authorities and the teaching unions to negotiate the details. Yet, this is not straightforward in high profile areas such as free school meals, class sizes, nursery education and teacher numbers. Each issue demonstrates the point that policy formulation is inadequate without effective implementation. All that remains is to decide what 'effective implementation' means. While for the UK government it may relate to meeting top-down objectives, the Scottish Executives and now Scottish Government have entertained an equally defensible bottom-up approach which accentuates local discretion.¹⁰⁴ This is the context in which to view the relatively top-down-focussed media coverage which suggests that the lack of progress on free school meals, reductions in class sizes and access to nursery teachers are threatening the Concordat and that the new school curriculum lacks direction (see also section 5.3, but note that this may not be the view of the profession). These issues, combined with difficulties in phasing-in new teachers as older teachers retire, are helping opposition parties put pressure on Education Secretary Fiona Hyslop to resign.¹⁰⁵

16s should not be sent to prison" *The Scotsman* <http://news.scotsman.com/politics/39Under16s-should-not-be-sent.4660809.jp>

¹⁰³ J. Robertson 18.12.08 'Lord Advocate: 'Life should mean life" *The Scotsman* <http://news.scotsman.com/latestnews/Lord-Advocate-39Life-should-mean.4803558.jp>; L. Adams 18.12.08 'Jail killers for longer, Angiolini tells judges' *The Herald* http://www.theherald.co.uk/news/news/display.var.2476167.0.Jail_killers_for_longer_Angiolini_tell_s_judges.php

¹⁰⁴ P. Cairney (forthcoming, 2009) 'Implementation and the Governance Problem: A Pressure Participant Perspective', *Public Policy and Administration*

¹⁰⁵ 2.11.08 'Labour hits out at 50% leap in teachers on the dole' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2465043.0.Labour_hits_out_at_50_leap_in_teachers_on_the_dole.php; K. Bussey 5.10.08 'Councils demand to know where funds for free school meals will come from' *The Scotsman* <http://news.scotsman.com/politics/Councils-demand-to-know-where.4559771.jp>; D. Maddox 9.10.08 'Get on with free school meals, councils told' *The Scotsman* <http://news.scotsman.com/politics/Get-on-with-free-school.4573517.jp>; F. Macleod 22.12.08 'Scottish teacher numbers falling – despite promise by SNP' *The Scotsman* <http://news.scotsman.com/latestnews/Scottish-teacher-numbers--falling.4812829.jp>; A. Denholm 11.12.08 'One in five newly qualified teachers now unemployed' *The Herald* http://www.theherald.co.uk/news/news/display.var.2474333.0.One_in_five_newly_qualified_teachers_now_unemployed.php; A. Denholm 17.10.08 'Pledge on class sizes hit by fall in teacher numbers' *The Herald* http://www.theherald.co.uk/news/news/display.var.2461115.0.Pledge_on_class_sizes_hit_by_fall_in_teacher_numbers.php; D. Maddox 16.10.08 'Is SNP's 'historic' concordat with councils in danger of falling apart?' *The Scotsman* <http://news.scotsman.com/comment/Is-SNP39s-->

The previous monitor linked these issues to very promising longer term education outcomes, with Scotland attracting the attention of other countries looking to learn from its success as 'one of the best performing amongst OECD nations'.¹⁰⁶ It is therefore odd that Scotland now appears to be falling behind according to a report by the HMIE and international 'benchmarking' exercises.¹⁰⁷ This may fuel the agenda towards testing primary and secondary school pupils for basic numeracy and literacy skills.¹⁰⁸ It will be

[39historic39-concordat.4596445.jp](http://www.theherald.co.uk/politics/news/display.var.2459290.0.SNP_claims_victory_on_free_school_meals.php); R. Dinwoodie 10.10.08 'SNP claims victory on free school meals' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2459290.0.SNP_claims_victory_on_free_school_meals.php; S. Johnson 9.10.08 'Scottish councils to call for scrapping of Alex Salmond's 'historic' concordat' *The Telegraph* <http://www.telegraph.co.uk/news/newstopics/politics/scotland/3167056/Scottish-councils-to-call-for-scrapping-of-Alex-Salmonds-historic-concordat.html>; A. Denholm 27.10.08 'Warning over teaching of history as schools drop subject' *The Herald* http://www.theherald.co.uk/news/news/display.var.2463453.0.Warning_over_teaching_of_history_as_schools_drop_subject.php; F. Macleod 27.10.08 'The new curriculum for excellence: No physics, chemistry or biology lessons – but pupils will study 'air'' *The Scotsman* <http://news.scotsman.com/latestnews/The-new-curriculum-for-excellence.4631001.jp>; H. MacDonell 18.12.08 'Parents 'will be furious at scheme for super-sized school classes'' *The Scotsman* <http://news.scotsman.com/politics/Parents-39will-be-furious-at.4803623.jp>; F. Macleod 29.9.08 'SNP accused of deceiving parents over key pledge on nurseries' *The Scotsman* <http://news.scotsman.com/politics/SNP-accused-of-deceiving-parents.4536325.jp>; 29.9.08 'Councils replacing teachers with nurses to cut school costs' *The Scotsman* <http://news.scotsman.com/politics/Councils-replacing-teachers-with-nurses.4536301.jp>; 10.12.08 'New Early Years Framework launched' <http://www.holyrood.com/content/view/3342/10051/>; Scottish Government News Release 31.10.08 'Timetable for new school exams' <http://www.scotland.gov.uk/News/Releases/2008/10/31143329>; 30.10.08 'Teacher workforce planning' <http://www.scotland.gov.uk/News/Releases/2008/10/30155147>

¹⁰⁶ Scottish Government News Release 28.8.08 'Education factfinders focus on 'impressive' Scots system' <http://www.scotland.gov.uk/News/Releases/2008/08/28094446> 28.8.08

¹⁰⁷ F. Macleod 16.1.09 'Pupils aged nine to 14 falling into 'black hole' of failure' *The Scotsman* <http://news.scotsman.com/latestnews/Pupils-aged---.4883420.jp>; A. Denholm 16.1.09 'Generation of pupils 'being let down by schools'' *The Herald* http://www.theherald.co.uk/news/news/display.var.2482120.0.Generation_of_pupils_being_let_down_by_schools.php; L. McIntosh 16.1.09 'Education watchdog pushes for action as pupils struggle in class' *The Times* <http://www.timesonline.co.uk/tol/news/uk/scotland/article5527495.ece>; R. Edward 10.12.08 'Minister orders crisis summit after Scots pupils fall behind in maths and science' *The Scotsman* <http://news.scotsman.com/latestnews/Minister-orders-crisis-summit-after.4777152.jp>; A. Denholm 10.12.08 'Call for action as Scots pupils fall behind in maths and science' *The Herald* http://www.theherald.co.uk/news/news/display.var.2474158.0.Call_for_action_as_Scots_pupils_fall_behind_in_maths_and_science.php; G. Paton 9.12.08 'Pupils soar in international league, but Far East leads the way' *The Telegraph* <http://www.telegraph.co.uk/education/3691561/Pupils-soar-in-international-league-but-Far-East-leads-the-way.html>

¹⁰⁸ 8.1.09 'Scottish primary pupils could be tested for literacy' *The Scotsman* <http://news.scotsman.com/latestnews/Scottish-primary-pupils-could-be.4854192.jp>; L. McIntosh 7.1.09 'Test pupils at 10 or younger' *The Times* <http://www.timesonline.co.uk/tol/news/uk/scotland/article5469929.ece>; F. Macleod 3.12.08 'Hyslop rethinks 'leaving certificate' tests; *The Scotsman* <http://news.scotsman.com/politics/Hyslop-rethinks-39leaving-certificate39-tests.4754353.jp>; B. Donnelly 3.12.08 'Education changes take shape' *The Herald*

interesting to see how this is managed, given that the Scottish style tends towards testing children when they are ready, rather than en-mass on the same day. The latter approach is increasingly under pressure in England, with the abolition of testing 14 year olds marking significant convergence with Scotland and Wales.¹⁰⁹ This may also be fostered by the common adoption of the baccalaureate-style qualification, the common 'crackdown' on independent schools with charitable status and the (potential) use by Scottish local authorities of independent schools to deliver some Advanced Higher courses.¹¹⁰

Hyslop is also the focal point for frustrations over higher education policy. While the Scottish Government's highest profile piece of legislation effectively abolished tuition fees, it is still under fire over a lack of progress on more ambitious plans to abolish student debt and reintroduce the kinds of grants that only senior academic staff remember.¹¹¹ Its response has been two-fold: to reiterate that its manifesto plans were based on a majority in the Scottish Parliament and an adequate funding settlement from the Treasury; and to point out that things are worse for students in England.¹¹² The problem with this argument is that, unless public funding increases dramatically, a better deal for students also means less money for Scottish Universities, contributing to the

http://www.theherald.co.uk/politics/news/display.var.2472473.0.Education_changes_take_shape.php

¹⁰⁹ 15.10.08 'Leading article: A test that deserved to fail' *The Independent*

<http://www.independent.co.uk/opinion/leading-articles/leading-article-a-test-that-deserved-to-fail-961305.html>

¹¹⁰ F. Macleod 13.1.09 'State pupils could go private as councils axe advanced courses' *The Scotsman* <http://news.scotsman.com/latestnews/State-pupils---could.4868126.jp>; T. Thompson 28.10.08 'Four private schools 'to lose charity status'' *The Scotsman*

<http://news.scotsman.com/latestnews/-Four-private-schools-39to.4634343.jp>; A. Denholm

27.11.08 'Baccalaureate scheme to expand' *The Herald*

http://www.theherald.co.uk/news/news/display.var.2471061.0.Baccalaureate_scheme_to_expand.php; F. Macleod 27.11.08 'New baccalaureate exam unveiled to boost language and science studies' *The Scotsman* <http://news.scotsman.com/latestnews/New-baccalaureate-exam-unveiled-to.4735986.jp>

¹¹¹ Scottish Government News Release 15.12.08 'Proposals for better student support'

<http://www.scotland.gov.uk/News/Releases/2008/12/15104356>; A. Denholm 16.12.08 'SNP under attack for cutting student cash plans' *The Herald*

http://www.theherald.co.uk/news/news/display.var.2475501.0.SNP_under_attack_for_cutting_student_cash_plans.php; A. Denholm 16.12.08 'Students throw the book at SNP over election pledges on debt' *The Herald*

http://www.theherald.co.uk/news/news/display.var.2475524.0.Students_throw_the_book_at_SNP_over_election_pledges_on_debt.php;

¹¹² 30.10.08 'SNP criticises student grant cuts south of the border'

<http://www.holyrood.com/content/view/3163/10051/>

perception that they are increasingly falling behind their English competitors.¹¹³ Such funding may in future be tied closer to Scottish Government economic priorities.¹¹⁴

4.5 Transport, Energy and Environment

The SNP Government's approach to energy is still clear: down with nuclear and up with renewables. The former suffered a blow after its Council of Economic Advisers recommended a rethink of nuclear as a way to safeguard electricity and reduce carbon emissions. An SCDI report argues that nuclear may have to be retained even if windfarms increase five-fold. Salmond has accepted the calls for an independent study, arguing that it will vindicate his position. Salmond also faced the tricky position of having to seek assurances on Scottish employment in existing but newly French-owned nuclear plants (Torness and Hunterston).¹¹⁵ On safer ground, the Scottish Government announced its intention to exceed EU targets on renewable energy (although Scottish Labour argues it is still not doing enough) and to plough on with plans for an underwater energy grid connecting allowing Scotland to export green electricity to Europe.¹¹⁶ The

¹¹³ A. Campsie 5.12.08 'Gap in funding means Scottish universities 'lag behind'' *The Herald* http://www.theherald.co.uk/news/news/display.var.2473045.0.Gap_in_funding_means_Scottish_universities_lag_behind.php

¹¹⁴ Scottish Government News Release 17.11.08 "New Horizons' for universities' <http://www.scotland.gov.uk/News/Releases/2008/11/17114051>; A. Denholm 13.1.09 'Universities furious at bid to tell them what to teach' *The Herald* http://www.theherald.co.uk/news/news/display.var.2481271.0.Universities_furious_at_bid_to_tell_them_what_to_teach.php

¹¹⁵ D. Maddox 25.9.08 'Fresh blow to 'Scotland plc' after French buy nuclear energy giant' *The Scotsman* <http://news.scotsman.com/politics/Fresh-blow-to-39Scotland-plc39.4525780.jp>; P. Jones 14.12.08 'Salmond 'must consider' nuclear option' *The Times* <http://www.timesonline.co.uk/tol/news/uk/scotland/article5342388.ece>; D. Maddox 16.1.08 'Independent study on nuclear power needs' *The Scotsman* <http://news.scotsman.com/politics/Independent-study-on-nuclear-power.4883378.jp>; P. Jones 8.12.08 'Five-fold increase in wind farms is urged' *The Times* <http://www.timesonline.co.uk/tol/news/uk/scotland/article5309799.ece>; R. Dinwoodie 9.12.08 'Increase in windfarms needed to reach 2020 target' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2473917.0.Increase_in_windfarms_needed_to_reach_2020_target.php; J. Haworth 9.12.08 'Scotland 'will have to treble number of wind turbines'' *The Scotsman* <http://news.scotsman.com/latestnews/-Scotland-39will-have-to.4773213.jp>; see also Scottish Government News Release 5.12.08 'Council of Economic Advisers' <http://www.scotland.gov.uk/News/Releases/2008/12/05120050>; 15.1.09 'Response to economic advisers report' <http://www.scotland.gov.uk/News/Releases/2009/01/15135203>

¹¹⁶ S. Paterson 7.10.08 'Salmond reveals renewables plan' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2457951.0.Salmond_reveals_renewables_plan.php; see also 22.1.09 "World-leading' wave station approved for Western Isles' <http://www.holyrood.com/content/view/3468/10051>; 19.12.08 'Business renewable heating grants unveiled by Government' <http://www.holyrood.com/content/view/3390/10051/>; 'Salmond urged to do more on energy front' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2472223.0.Salmond_urged_to_do_more_on_energy_front.php; Scottish Government News Release 12.11.08 'First Minister calls for North Sea 'supergrid' partnership' <http://www.scotland.gov.uk/News/Releases/2008/11/12170248>; D.

UK followed the Scottish lead on pollution by setting a target of reducing carbon emissions by 80% by 2050 (although only the Scottish target includes aviation and shipping emissions).¹¹⁷ However, of course, a target is almost useless unless there is enough progress towards it.¹¹⁸ The UK and Scottish governments also face the unintended consequences of emissions targets, such as the likely increase in fuel poverty when energy prices rise.¹¹⁹ Perhaps less clear is the SNP's attitude to the relationship between transport funding and the environment (although the M74 and Forth crossing decisions give some clue).¹²⁰ The cheaper and lesser-known Forth crossing was opened in November.¹²¹

4.6 Agriculture, Fish, Food and Water

EU discussions have begun on the future of cod, haddock and whiting fishing off Scotland's west coast (see section 6.8). The Cave Review has recommended that England and Wales follow Scotland's lead by introducing competition into water and sewerage supply.¹²² The Crofters' Commission is to be reformed yet again.¹²³ There will be a Scotland wide bluetongue vaccination programme in the wake of concerns over its

Maddox 13.11.08 'Salmond dives in with underwater power link to Europe' *The Scotsman*
<http://news.scotsman.com/politics/Salmond--dives--in.4689054.jp>

¹¹⁷ Scottish Government News Release 18.9.08 'Scotland's emissions challenge'
<http://www.scotland.gov.uk/News/Releases/2008/09/18103455>; 27.10.08 'Tackling climate change'
<http://www.scotland.gov.uk/News/Releases/2008/10/27131648>; B. Russell 17.10.08 'Loophole in minister's new emissions target' *The Independent*
<http://www.independent.co.uk/news/uk/politics/loophole-in-ministers-new-emissions-target-964301.html>

¹¹⁸ R. McQuillan 26.11.08 'Worrying gap' between emissions levels and Scotland's plans for cutting carbon' *The Herald*
http://www.theherald.co.uk/politics/news/display.var.2470738.0.Worrying_gap_between_emissions_levels_and_Scotlands_plans_for_cutting_carbon.php

¹¹⁹ J. Haworth 2.12.08 'Cost of going green – higher energy bills and 1.7m more in fuel poverty' *The Scotsman* <http://news.scotsman.com/politics/Cost-of-going-green-.4750173.jp>; 'Climate committee calls for huge emission cuts by 2020' *The Herald*
http://www.theherald.co.uk/politics/news/display.var.2472222.0.Climate_committee_calls_for_huge_emission_cuts_by_2020.php;

¹²⁰ S. Paterson 2.12.08 'Dilapidated transport system 'is costing Scottish economy billions'' *The Herald*
http://www.theherald.co.uk/politics/news/display.var.2472220.0.Dilapidated_transport_system_is_costing_Scottish_economy_billions.php

¹²¹ Scottish Government News Release 19.11.08 'New bridge over Forth opens'
<http://www.scotland.gov.uk/News/Releases/2008/11/19104310>

¹²² 18.11.08 'Cave Review recommends opening up water industry to competition'
<http://www.holyrood.com/content/view/3249/10051/>

¹²³ J. Ross 2.10.08 'Croft commission is saved from the axe' *The Scotsman*
<http://news.scotsman.com/politics/Croft-commission-is-saved-from.4549439.jp>; Scottish Government News Release 1.10.08 'Crofters take control of their destiny'
<http://www.scotland.gov.uk/News/Releases/2008/10/01145359>

spread in England and the rest of Europe.¹²⁴ The Scottish Government kept up its better-than-the-UK record on single farm payments.¹²⁵

4.7 Housing, Planning, Poverty and Homelessness

Plans to accelerate Scottish Government spending on housing continue, with £17m announced to help housing associations buy unsold private sector houses, on top of a £60m support package for first time buyers and continued plans to fund council houses and remove the right-to-buy.¹²⁶ The Scottish Government is also claiming success on flood insurance, homelessness and the planning system.¹²⁷ However, home reports have arguably added to the costs of selling houses during 'fragile' times, while fuel poverty is on the rise.¹²⁸

4.8 Culture and Media

Severe pressure from the TV digital revolution is cited as the main reason for Ofcom's reform of ITV, which includes a reduction in the need for STV to provide non-news based public sector broadcasting and the go-ahead for Border and Tyne Tees to merge

¹²⁴ Scottish Government News Release 3.11.08 'Preventing the spread of bluetongue' <http://www.scotland.gov.uk/News/Releases/2008/10/31142100>; 26.11.08 'Bluetongue detected in England' <http://www.scotland.gov.uk/News/Releases/2008/11/26114617>; 19.11.08 'Tighter controls to halt bluetongue' <http://www.scotland.gov.uk/News/Releases/2008/11/19134911>

¹²⁵ Scottish Government News Release 28.11.08 'Single farm payments' <http://www.scotland.gov.uk/News/Releases/2008/11/27103644>

¹²⁶ 'Scottish Ministers announce cash for affordable housing' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2484908.0.Scottish_Ministers_announce_cash_for_affordable_housing.php; 27.11.08 'New housing investment released by Scottish Government' <http://www.holyrood.com/content/view/3286/10051/>; G. Braiden 20.10.08 '£60m aid for first time home buyers' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2461673.0.60m_aid_for_first_time_home_buyers.php; Scottish Government News Release 19.10.08 '£60 million to help first time buyers' <http://www.scotland.gov.uk/News/Releases/2008/10/20091337>; 25.11.08 'Cash for councils to build housing' <http://www.scotland.gov.uk/News/Releases/2008/11/25144019>

¹²⁷ Scottish Government News Release 28.10.08 'Planning shake-up' <http://www.scotland.gov.uk/News/Releases/2008/10/28100001>; 29.10.08 'Swinney promises to speed up the planning process' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2463972.0.Swinney_promises_to_speed_up_the_planning_process.php; 29.9.08 'Government claims 'real progress' on homelessness' <http://www.holyrood.com/content/view/3016/10051/>; Scottish Government News Release 29.9.08 'Progress on homelessness' <http://www.scotland.gov.uk/News/Releases/2008/09/29102430>; 23.12.08 'Funding to tackle homelessness' <http://www.scotland.gov.uk/News/Releases/2008/12/23100122>; 18.12.08 'Historic agreement' on flood insurance reached' <http://www.holyrood.com/content/view/3382/10051/>

¹²⁸ H. MacDonell 1.12.08 'Home reports are 'like a new poll tax'' *The Scotsman* <http://news.scotsman.com/latestnews/Home-reports-are-39like-a.4746655.jp>; 27.11.08 'Fuel poverty continues to increase in Scotland' <http://www.holyrood.com/content/view/3285/10051/>; Scottish Government News Release 10.10.08 'Tackling fuel poverty' <http://www.scotland.gov.uk/News/Releases/2008/10/10095711>

their regional news. While Alex Salmond has backed the Scottish Broadcasting Commission's call for the UK Government to fund a new Scottish digital channel, Ofcom has instead suggested that a competitive fund be set up to provide Scottish wide content in a range of media.¹²⁹ The Creative Scotland mess continues, with opposition parties and arts representatives critical of its progress (see section 5.5).¹³⁰ With any luck this will be made up for by the success of the 2009 Homecoming celebrations: a series of events to 'highlight Scotland's great contributions to the world'.¹³¹

4.9 Freedom of Information

According to research conducted by the Scottish Information Commissioner: 'over two thirds of the Scottish population favour extending Scotland's freedom of information (FOI) laws to cover organisations other than public authorities, such as housing associations and privately run prisons'.¹³² The law will certainly extend to ministerial car

¹²⁹ C. Brown 26.9.08 'Green light for STV to slash Scottish programmes' *The Scotsman* <http://news.scotsman.com/latestnews/Green-light-for-STV-to.4531067.jp>; S. Purvis 26.9.08 'Why Border ruling is best option in tough times for television' *The Scotsman* <http://news.scotsman.com/comment/Why-Border-ruling-is-best.4531036.jp>; P. Miller 22.1.09 'Broadcasting chiefs call for fund to back Scots TV' *The Herald* http://www.theherald.co.uk/news/news/display.var.2483527.0.Broadcasting_chiefs_call_for_fund_to_back_Scots_TV.php; M. Reid and D. Sabbagh 21.1.09 'STV to cut local news to four hours a week' *The Times* <http://www.timesonline.co.uk/tol/news/uk/scotland/article5563475.ece>; S. Johnson 21.1.09 'Scots news coverage to be merged with England's as part of ITV overhaul' *The Telegraph* <http://www.telegraph.co.uk/news/newstopics/politics/scotland/4307999/Scots-news-coverage-to-be-merged-with-Englands-as-part-of-ITV-overhaul.html>; 22.1.09 'Ofcom proposes 'competitive fund' for Scottish broadcasting' <http://www.holyrood.com/content/view/3470/10051/>; 9.10.08 'First Minister backs 'revolution' in Scottish broadcasting' <http://www.holyrood.com/content/view/3073/10051/>; 9.10.08 'Salmond: UK should fund a new Scots digital TV channel' *The Scotsman* <http://news.scotsman.com/politics/Salmond--UK-should-fund.4573459.jp>; Scottish Government News Release 8.10.08 'Blueprint for Scottish broadcasting 'revolution'' <http://www.scotland.gov.uk/News/Releases/2008/10/08153900>

¹³⁰ A. Philip 9.1.09 'SNP under fire over arts merger 'chaos'' *The Scotsman* <http://news.scotsman.com/politics/SNP-under-fire-over-arts.4859201.jp>; P. Miller 6.1.09 '440 artists and writers call on MSPs to kill off Creative Scotland' *The Herald* http://www.theherald.co.uk/news/news/display.var.2479418.0.440_artists_and_writers_call_on_MSPs_to_kill_off_Creative_Scotland.php; 'Arts merger: Scottish Government accused of incompetence' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2480214.0.Arts_merger_Scottish_Government_accused_of_incompetence.php

¹³¹ See <http://www.homecomingscotland2009.com/default.html>

¹³² Scottish Information Commission (10.12.08) 'Public favours extension of freedom of information rights' <http://www.itspublicknowledge.info/home/News/20081012.asp>; S. Paterson 10.12.08 'Call to extend freedom of information laws' *The Herald* http://www.theherald.co.uk/politics/news/display.var.2474144.0.Call_to_extend_freedom_of_information_laws.php

journeys.¹³³ Recent evidence confirms the long term trend that, although awareness of freedom of information is growing, it is low among particular social groups.¹³⁴

¹³³ S. Paterson 18.11.08 'Rule change makes ministers' car trips open to public scrutiny' http://www.theherald.co.uk/politics/news/display.var.2468800.0.Rule_change_makes_ministers_car_trips_open_to_public_scrutiny.php

¹³⁴ Scottish Information Commission (17.12.08) 'Freedom of Information awareness remains lower within key groups' <http://www.itspublicknowledge.info/home/News/20081712B.asp>;
18.12.08 'Awareness of freedom of information continues to grow' <http://www.itspublicknowledge.info/home/News/20081712A.asp>

5. Government Beyond the Centre

David Scott

5.1 Scottish Futures Trust

The Scottish Government's plans to set up the Scottish Futures Trust (SFT) as a replacement for the current system of PFI/PPP has continued to be the subject of political controversy. In September, John Swinney, the Finance Secretary, announced in the Scottish Parliament¹³⁵ that Sir Angus Grossart, a leading merchant banker, had been appointed to head the new body which would have the aim of 'improving the major infrastructure procurement of Scotland.' Mr Swinney said the SFT would aim to release up to £150m each year for increased investment in infrastructure through greater partnership, improved preparation and handling of projects and better value finance including the use of the NPD (non-profit distribution) model of funding. It would also bring together the enterprise to enable a Scotland-wide municipal bond to fund future projects, provide opportunities for more effective investment in Scotland's public services infrastructure and allow lessons to be learned from previous PFI contracts 'to reduce the cost of financing' and deliver more effective investment planning and procurement.

The appointment of Sir Angus was seen by some¹³⁶ as an initiative that would bring credibility to proposals that had attracted widespread criticism. However, the Scottish Government was accused¹³⁷ of 'failing to get its act together' over the funding of major public projects as it had failed to provide a timetable showing when projects would be commissioned by the new body and there were signs that projects were being delayed as a result of uncertainty. It was reported¹³⁸ that the First Minister, Alex Salmond,

¹³⁵ Scottish Parliament Official Report, September 10, 2008

<http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-08/sor0910-01.htm>

¹³⁶ Robbie Dinwoodie, September 12 2008, 'Salmond brings in top financier to run public investment trust' *The Herald*

http://www.theherald.co.uk/news/news/display.var.2444579.0.Salmond_brings_in_top_financier_to_run_public_investment_trust.php; Douglas Fraser, September 12 2008, "Why Grossart's appointment is such a coup", *The Herald*
http://www.theherald.co.uk/politics/news/display.var.2444552.0.Why_Grossarts_appointment_is_such_a_coup.php

¹³⁷ David Maddox, September 12 2008, "Start funding new projects now or jobs and expertise will go" *The Scotsman*

<http://thescoatsman.scotsman.com/politics/-Start-funding-major-4480026.jp>

¹³⁸ Angus MacLeod, September 29 2008, 'Salmond to tap oil-rich Qatar for cash' *The Times* (Scotland)

planned to visit Qatar during 2009 in an effort to attract funding for public sector schemes in Scotland, this being seen as an initiative considered necessary because of increasing doubts about the SFT. In November, Mr Swinney announced¹³⁹ further details of the SFT including a hub initiative in two areas aimed at bringing together local authorities, NHS boards and other community planning partners in a joint programme of infrastructure investment. The announcement was greeted with reports¹⁴⁰ that councils had been unable to commission new schools in the past 19 months due to uncertainty over the SFT.

The SFT was one of the issues examined by the Scottish Parliament's finance committee. In a report¹⁴¹ published following its inquiry, the committee called on the Scottish Government to improve the way it costs and assesses all options for capital investment projects. On the SFT, the committee concluded there was insufficient information to judge whether the new body would be a mechanism for delivering improved value for money. This was reported¹⁴² as being a further blow to the future of the Trust.

5.2 Local Income Tax

A further area of controversy for the Scottish Government is its plan to replace the council tax with a local income Tax (LIT). In its programme for government¹⁴³ the Scottish Government announced the Council Tax Abolition Bill as one of 15 legislative measures to be introduced over the next year. The government has also published its response¹⁴⁴ to a consultation on LIT. In this, it reported that a majority of Scots thought that LIT was the fairest form of taxation. According to the published analysis, 55 per

<http://www.timesonline.co.uk/tol/news/uk/scotland/article4842958.ece>

¹³⁹ Scottish Parliament official report, November 13 2008

<http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-08/sor1113-02.htm#Col12403>

¹⁴⁰ David Maddox, November 14 2008, "Schools crumble as SNP fails to deliver funding system" *The Scotsman* <http://thescotsman.scotsman.com/scotland/Schools-39crumble-as-SNP-fails.4694117.jp>

¹⁴¹ Scottish Parliament finance committee report: December 16 2008 'Inquiry into methods of funding capital investment projects'

<http://www.scottish.parliament.uk/s3/committees/finance/inquiries/capitalInvestment.htm>

¹⁴² David Maddox, December 16 2008, 'Scottish Futures Trust deal funding blow' *The Scotsman* <http://thescotsman.scotsman.com/scotland/Quangos-now-employing-more-than.4803570.jp>

¹⁴³ Scottish Parliament official report, September 3 2008, 'First Minister's Statement: Scottish Government's Programme'.

<http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-08/sor0903-01.htm>

¹⁴⁴ Scottish Government Press release November 24 2008

<http://www.scotland.gov.uk/News/Releases/2008/11/24095808>

cent of the 430 individuals who responded thought LIT was the fairest form of taxation, with 25 per cent in favour of council tax; 57 per cent of individuals supported a nationally set tax rate (the SNP administration proposes a rate of 3p in the pound); 62 per cent of people felt the tax should be collected at source and 60 per cent of individuals and organisations supported collection of the tax by HM Revenues and Customs. Media reports¹⁴⁵ of the analysis pointed out that while most people backed LIT a number of organisations, like the Confederation of British Industry (CBI), continued to oppose it, arguing that the new tax would place a costly administration burden on firms operating in Scotland.

It was reported¹⁴⁶ that many practical problems remain before the timetable for a bill can become a reality, not least the lack of support among other parties at Holyrood. Labour and the Conservatives firmly oppose LIT while the Lib Dems remain strongly against a nationally-set LIT but would be likely to back a system that allowed the tax rate to be set by each of the 32 local authorities. There were indications¹⁴⁷ that the Scottish Government might be prepared to compromise on the setting of a national rate and agree to councils being able to vary the rate up to a maximum of 3p. Such a move is likely to be welcomed by the Convention of Scottish Local Authorities (COSLA). According to reports¹⁴⁸, however, it has been criticised by businesses leaders and opposition parties who argued that the setting of 32 different tax rates in Scotland would cause administrative chaos.

During a debate on LIT in the Scottish Parliament¹⁴⁹ Mr Swinney said the government was looking into concerns raised by a number of organisations about how the new tax would work. He also stated that the government was 'actively considering' whether to exempt students from the proposed new system.

¹⁴⁵ The Scotsman, November 24 2008, 'Most people back local income tax proposal'

<http://thescotzman.scotsman.com/counciltax/Swinney-Most-people-back-local.4725653.jp>

¹⁴⁶ Angus Macleod, November 25 2008, 'Nationalists defiant over local taxation after study reveals sharp fall in support' *The Times* (Scotland) P 11

¹⁴⁷ David Maddox, October 27 2008, 'SNP signals U-turn on local income tax' *The Scotsman*
<http://thescotzman.scotsman.com/counciltax/SNP-signals-Uturn-on-local.4631027.jp>

¹⁴⁸ Lorraine Davidson October 27 2009 'Anger at Swinney's U-turn over local income tax' *The Times* (Scotland) P 11

¹⁴⁹ Scottish Parliament official report, October 2 2008 'Local Government Finance'
<http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-08/sor1002-02.htm#Col11381>

5.3 Local Government Finance Settlement

The Scottish Government announced a funding increase of 5.1 per cent for councils in 2009-10. Giving details in the Scottish Parliament,¹⁵⁰ Mr Swinney said the £11.7bn settlement included money to deal with pressures like free personal care and police, fire fighter and teacher pensions. He also announced that 'to help households in a difficult economic climate' the Scottish Government was again making £70m available in 2009-10 to enable councils to freeze council tax. The minister said that in an attempt to help councils with deposits in Icelandic banks, the government would amend accounting rules to ensure no council had to make provision in their 2009-10 budgets for any potential loss. This would give councils time to adjust their financial plans once the position on recovering their money was clearer. Local government spokesmen claimed that, while the funding package might appear generous, the increase would mainly be taken up by the extra funding pressures facing councils because of the recession and other factors. The President of the Convention of Scottish Local Authorities (COSLA), Councillor Pat Watters¹⁵¹, said last year's settlement 'was tight and next year's settlement will be just as tight.'

Concordat

The 'historic' Concordat that was signed by the Scottish Government and COSLA showed signs of unravelling¹⁵² after ministers announced plans for smaller class sizes and free school meals for all pupils in primary 1-3. These flagship policies were included in the Concordat which gave greater freedom to councils in the use of their spending allocations by eliminating most of the ring-fencing measures that earmarked some of the grant for specific policies. In return, councils agreed to co-operate with the Government in implementing its overall policy objectives. However, some councils warned that they might be unable to deliver on policies like free school meals and smaller class sizes

¹⁵⁰ Scottish Government Press release, December 11 2008, 'Record Investment for councils' <http://www.scotland.gov.uk/News/Releases/2008/12/11155905>; Scottish Parliament official report December 11 2008 'Local Government Finance Settlement 2009-10' <http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-08/sor1211-01.htm>

¹⁵¹ David Scott, December 16 2008, 'Scottish councils face "tough" choices' *Public Finance* http://www.cipfa.org.uk/publicfinance/search_details.cfm?News_id=59479&keysearch=Scottish%20councils

¹⁵² David Maddox, October 16, 2008, 'Is the SNP's "historic" concordat with councils in danger of falling apart?' *The Scotsman*; <http://thescotzman.scotsman.com/scottishnationalparty/Is-SNP39s-39historic39-concordat.4596445.jp>; Angus Macleod, December 1 2008, 'Political Briefing' *The Times* <http://www.timesonline.co.uk/tol/news/uk/scotland/article5270596.ece>

because of financial restraints, while the Educational Institute of Scotland (EIS)¹⁵³ claimed that greater control handed to councils through the Concordat had led to damaging education cuts and would continue to do so in 2009. The Scottish Government argued¹⁵⁴ that the Concordat had resulted in a substantial reduction in ring-fenced expenditure, providing more flexibility to councils in their spending decisions and allowing them to keep efficiency savings to reinvest in front-line services for the first time.

Council pay dispute

After a long-running pay dispute involving council employees, members of the three local government unions involved, Unison, GMB and Unite, were urged to accept the 'best deal' on offer¹⁵⁵. This provided for an increase of 3 per cent for 2008-09, backdated to April, and 2.5 per cent for 2009-10. Members of Unison, the biggest local government union, decided (by a narrow majority)¹⁵⁶ to accept the offer. However, it was rejected by GMB and Unite members. This created an impasse in the Joint Negotiating Committee (JNC) which represents COSLA and the three unions involved. As a result, Glasgow City Council, Scotland's biggest local government union, decided independently to pay the amount due in back-pay prior to Christmas. The action was followed by similar decisions by nearly all of Scotland's other local authorities.¹⁵⁷ This resulted in the unusual decision of an offer being paid without agreement in the JNC and without an official circular going out to councils instructing them to pay the award.

5.4 Health Boards

A number of health boards and representatives of nursing and medical professions criticised the Scottish Government's plans to introduce direct elections to health boards.

¹⁵³ Andrew Denholm, December 27 2008, 'School cuts will go on under councils concordat, says EIS' *The Herald*
http://www.theherald.co.uk/news/news/display.var.2477949.0.school_cuts_will_go_on_under_councils_concordat_says_eis.php

¹⁵⁴ As reported in the above newspaper report

¹⁵⁵ Angus Howarth, October 24 2008, 'Accept "best deal" pay offer council leaders urge staff' *The Scotsman*
<http://thescoatsman.scotsman.com/uk/accept-39best-deal39-pay-offer.4626176.jp>

¹⁵⁶ Unison Press release, November 13 2008, "Scottish local government members accept two year pay deal"
<http://www.unison-scotland.org.uk/news/2008/novdec/1211b.htm>

¹⁵⁷ David Scott, December 12 2008, 'Scottish councils break ranks to pay staff 3 per cent' *Public Finance*

According to the Health Boards (Membership and Election) (Scotland) Bill¹⁵⁸ the future composition of the boards would include directly elected members and provide a statutory basis for the presence of local councillors as health board members. The bill makes provision for the holding of elections to health boards and provides that the plans be introduced on a pilot basis. The age to vote in health board elections would be reduced to 16.

Health board officials in areas including Ayrshire and Arran, Lothian and Tayside¹⁵⁹ warned in evidence to the Scottish Parliament Health and Sport Committee, that the proposals could destabilise the service and 'politicise' the NHS. Nursing and medical representatives suggested¹⁶⁰ that the plans to hold elections would not improve accountability or increase participation. In a report of its inquiry, the health committee¹⁶¹ gave conditional support to the proposals. However, it stated that no decision on the national roll-out of direct elections to health boards should be taken until pilot schemes had been completed and independently evaluated. The committee concluded that, while there was a need to improve public accountability, no 'overwhelming' case for direct elections had been made, nor was there widespread enthusiasm for the proposals. The Scottish Government argued that direct elections should be held for the running of what is a 'publicly owned' service.¹⁶² Nicola Sturgeon, the health secretary, said the NHS is an institution 'people rightly cherish as co-owners'; and she added: 'But we have to make sure people are fully involved and do not feel shut out of decision making as they have in the past.'

¹⁵⁸ Health Board (membership and Elections) (Scotland) Bill (SP Bill 13) Scottish Parliament Health and Sport committee

<http://www.scottish.parliament.uk/s3/committees/hs/HBelectionsbill/index.htm>

¹⁵⁹ "Health board elections attacked", November 12, 2008 BBC Scotland News

¹⁶⁰ Stewart Paterson, November 20 2008, 'Elections would not improve health boards', committee told, *The Herald*

¹⁶¹ Stage 1 report on the Health Boards (membership and Elections) (Scotland) Bill Volume 1 Scottish Parliament Health and Sport committee

<http://www.scottish.parliament.uk/s3/committees/hs/reports-08/her08-07-vol1.htm>

Stage 1 report on the Health Boards (membership and Elections) (Scotland) Bill Volume 2: Evidence Scottish Parliament Health and Sport committee

<http://www.scottish.parliament.uk/s3/committees/hs/reports-08/her08-07-vol2-00.htm>

¹⁶² Scottish Government Press release, June 26, 2008, 'Scotland's health boards'

Audit Scotland

An Audit Scotland report on an overview of the NHS¹⁶³ suggested that the financial position of the NHS continued to improve overall but the service faced challenging times in the near future. The overview found that the health service had an overall underspend of £26m on its £10.1bn budget for the financial year ending March 31 2008. This was the third consecutive financial year that the service had an overall underspend and during 2007-08 NHS bodies were less reliant than previously on non-recurring types of income to meet financial targets. The report pointed out that the coming years would be challenging. NHS bodies would receive smaller funding increases over the next three years than in recent years. At the same time they were expected to increase efficiency savings, although they would be able to re-invest these savings to support the deliver of front-line services. Most NHS bodies were found to have sound governance arrangements in place but Audit Scotland said the auditors of NHS Orkney and NHS Western Isles 'raised governance issues that those boards must address.'

5.5 Quangos

The agenda on abolishing or merging quangos continues, although the overall effect on funding and personnel is unclear.¹⁶⁴ The most newsworthy quango remains Creative Scotland. The Scottish Government's published its plans¹⁶⁵ for the setting up of Creative Scotland, a new national development body for the arts and culture. The new organisation will take over the functions of the Scottish Arts Council and Scottish Screen as well as having a wider set of responsibilities for developing the sector. The Culture Minister, Linda Fabiani, said Creative Scotland would begin life as a company limited by guarantee allowing a new board of directors and chief executive to take forward the final phase of transition.

The Creative Scotland Bill, which provided for the setting up of the new body, was defeated in June 2008 after some MSPs said they were concerned about the financial implications. The new organisation now forms part of the Public Services Reform Bill which is due to be presented to Parliament in 2009. The proposals continue to be

¹⁶³ Audit Scotland, December 4 2008, 'Financial overview of the NHS in Scotland 2007-08' http://www.audit-scotland.gov.uk/docs/health/2008/nr_081204_NHS_financial_overview.pdf

¹⁶⁴ Scottish Government News Release 6.11.08 'Improving scrutiny' <http://www.scotland.gov.uk/News/Releases/2008/11/06103757>; D. Maddox 18.12.08 'Quangos now employing more than a year ago' The Scotsman <http://news.scotsman.com/politics/Quangos-now-employing-more-than.4803570.jp>

¹⁶⁵ Scottish Government Press release, September 3 2008, 'Set up of Creative Scotland' <http://www.scotland.gov.uk/News/Releases/2008/09/03115220>

surrounded by controversy. According to reports¹⁶⁶ the Scottish Artists Union warned that the country faced a mass migration of its artists if the proposed new agency continued on its present course. It was suggested that the union's concerns are due to a lack of public consultation, a cut in public money available for the arts and the prospect of loans being introduced instead of grants.

Members of a national forum and cultural alliance, comprising chairmen and chief executives of arts organisations, in a letter to the First Minister, Alex Salmond¹⁶⁷ voiced their 'deep concern' especially in relation to a recently announced two-year freeze on funding levels. The group sought guarantees that transition costs for the formation of Creative Scotland would not be drawn from 'front-line' arts in Scotland. Despite their concerns, however, the group¹⁶⁸ supported the designing of the 'most imaginative, responsive and supportive new body for the arts in Scotland.' It was pointed out that the company charged with preparing for the setting up of Creative Scotland had been launched and that the board of the company was due to meet in January 2009.

¹⁶⁶ Edd McCracken 13 December 2008, 'Artists warns of mass exodus if bill is passed' *Sunday Herald*
http://www.sundayherald.com/news/heraldnews/display.var.2475088.0.artists_warn_of_mass_exodus_if_bill_is_passed.php

¹⁶⁷ Tim Cornwall, December 23 2008, 'Art attack; call to bring down the curtain over Creative Scotland' *The Scotsman*
<http://news.scotsman.com/opinion/Art-attack-call-to-bring.4817023.jp>

¹⁶⁸ Ruth Wishart, December 31, 2008, 'New arts body needs creative thinking to succeed' *The Herald*
http://www.theherald.co.uk/features/featuresopinon/display.var.2478486.0.New_arts_body_needs_creative_thinking_to_succeed.php

6. Intergovernmental Relations

Alan Trench

6.1.1. Introduction and background

The period since the summer of 2008 has seen relative quiet, at least on the formal front of intergovernmental relations. The overall climate has been overshadowed by three larger issues: the global financial crisis, the developing constitutional debate about Scottish devolution, and the aftermath of the by-elections in the Westminster constituencies of Glasgow East and Glenrothes. The UK Government has been willing to exploit these issues to undermine arguments of the SNP (particularly when related to volatile oil prices and the resources required to intervene in the banking crisis).¹⁶⁹ The SNP has sought to influence the response to the crisis and its effects in Scotland, in particular seeking to mitigate the possible effects of the HBOS/Lloyds TSB merger for Scottish jobs.¹⁷⁰ While generally less eager to attack the UK Government than Labour was to attack the Scottish Government, it has been critical of some aspects of UK Government action.¹⁷¹ That said, there have also been a number of occasions when the two governments have worked together to try to tackle the consequences of the crisis, as with the implications for local authorities that had lost money invested in collapsed Icelandic banks.¹⁷² Overall, however, it has been hard to avoid contrasting the ability of the UK Government to take dramatic, large-scale action in an attempt to tackle the crisis with the much more limited powers of the Scottish Government and the steps it could take as a result (see also section 4.1).¹⁷³

The developing constitutional debate led to the publication of a lengthy submission of evidence from the UK Government to the Commission on Scottish Devolution, on 10 November (see section 1). The submission includes information from most UK Government departments, including the Ministry of Justice and HM Treasury.¹⁷⁴ In introducing the evidence, the Secretary of State for Scotland said that the object of the Calman commission process was to secure greater financial responsibility and

¹⁶⁹ See 'Oil too volatile to underpin independence, insists Brown', *The Herald* 27 October 2008; 'Gordon Brown claims credit for rescuing HBOS' *The Herald* 31 October 2008.

¹⁷⁰ 'Salmond has 'positive and constructive' meeting over HBOS' *The Herald* 28 October 2008.

¹⁷¹ See e.g. 'Salmond implies Westminster indecisive on solution' *The Herald* 8 October 2008.

¹⁷² 'Scottish and UK Governments work jointly on Icelandic banking' *The Herald* 15 October 2008.

¹⁷³ E.g. 'Salmond demands "substantial" interest rate cut' *The Herald* 8 October 2008

¹⁷⁴ Available at <http://www.commissiononscottishdevolution.org.uk/uploads/2008-11-10-hmg.pdf>

autonomy for the Scottish Parliament.¹⁷⁵ However, the generally cautious tenor of the evidence resulted in a lukewarm reception. For example, a leader in the Herald said 'There is reason to conclude from the Westminster Government's submission to the Calman Commission inquiry into the Scottish Parliament's fiscal powers that what Whitehall departments want is the devolution settlement to exist as it did before Calman began its work. ... Unfortunately, the submission published yesterday does not give much in the way of hope that Westminster departments are prepared to think big or be creative and imaginative to help address the Holyrood disconnect. They could, and should, have done better.'¹⁷⁶ Most controversial were suggestions that, following the use by the Scottish Government of devolved planning powers to prevent new nuclear power stations being located in Scotland, such powers should be removed to prevent a recurrence.

6.2. Appointment of new Secretary of State for Scotland, and Parliamentary Under-secretary

Jim Murphy, MP for East Renfrewshire, was appointed as Secretary of State for Scotland, replacing Des Browne, as part of a UK Government reshuffle on 3 October. The junior minister at the Scotland Office had already changed: David Cairns had resigned as Minister of State on 16 September, in order to 'allow a leadership debate to run its course'. He was replaced by Ann McKeichin, MP for Glasgow North, who has the more junior rank of Parliamentary Under-secretary of State.

One early result of the change of ministers was that the UK Government abandoned its insistence on the using the term 'Scottish Executive', and has taken to calling the devolved administration the 'Scottish Government'. It also brought about a number of joint meetings with Scottish Government ministers about matters of concern relating to the economic crisis, and an announcement of an 'alternative to detention' for the children of failed asylum seekers presently held at Dungavel.¹⁷⁷ The new Secretary of State clarified his role in an interview with *The Herald* in early December.¹⁷⁸ He sought to emphasise that his role was not a party-political one, despite the deep differences

¹⁷⁵ 'Murphy: Scottish parliament must be "more accountable"' *The Herald* 9 November 2008.

¹⁷⁶ 'Devolution proposals', *The Herald* 11 November 2008.

¹⁷⁷ See Scotland Office Press Release, 23 October 2008, 'Pilot of alternative to detention for Dungavel children', available at <http://www.scotlandoffice.gov.uk/our-communications/release.php?id=3703>

¹⁷⁸ 'My role is not political ... it's doing the best for Scotland' *The Herald* 10 December 2008.

between Labour and the SNP, and that he was 'Scotland's man in the cabinet rather than the cabinet's man in Scotland'.

6.3. Formal meetings: the Joint Ministerial Committee and the British Irish Council

Despite the start made in June 2008 with the revival of the Joint Ministerial Committee, there have been no further meetings of the JMC (whether in plenary or the 'Domestic' format discussed at the June meeting).

There have been two meetings of the British Irish Council. A summit meeting took place on 26 September 2008 at Hopetoun House, outside Edinburgh.¹⁷⁹ The Scottish Government was represented by Alex Salmond, First Minister, and John Swinney, Cabinet Secretary for Finance and Sustainable Growth, and the UK Government by Paul Murphy, Secretary of State for Wales. According to its communiqué, the meeting discussed a lengthy agenda, including such issues as energy, demography, social inclusion, the knowledge economy, the misuse of drugs, and transport. It considered the work of a strategic review of secretariat arrangements for the BIC, with a view to setting up a standing secretariat, and agreed to consider these further at another meeting in early 2009. It also agreed to conclude work streams on tourism, the knowledge economy, and eHealth, to set up a work stream on early years policy (to be led by Wales), and to consider further setting-up of work streams on energy (as proposed by the Scottish Government), child protection, housing and collaborative spatial planning (proposed by Northern Ireland), and digital inclusion (proposed by the UK Government). The meeting also discussed the global financial crisis, and Ministers noted the value and importance of learning from and co-operating on measures taken and being considered in all BIC member administrations.

The First Minister invited the various leaders present to return to Scotland during 2009 for 'Homecoming' events.¹⁸⁰

A sectoral BIC meeting on the Misuse of Drugs took place in London, at the Home Office, on 20 November. It was chaired by John Curran, Minister of State with responsibility for the National Drugs Strategy in the Irish Government's Department of

¹⁷⁹ The meeting's communiqué is available at http://www3.british-irishcouncil.org/documents/edinburgh_summit.asp

¹⁸⁰ The Scottish Government's press notice for the meeting is at <http://www.scotland.gov.uk/News/Releases/2008/09/26082807>

Community, Rural and Gaeltacht Affairs.¹⁸¹ The Scottish Government was represented by Joe Griffin, Head of the Drugs Policy Unit. According to the communiqué, the ministers were of the view that the sharing of experiences provided a good opportunity to learn from each other, and resolved to continue to do so. They are to meet again in late 2009.

6.4. Litigation and the courts

There have been no 'devolution issues' cases decided by the Judicial Committee of the Privy Council since September 2008.

The impending establishment of the UK Supreme Court, which will assume the jurisdiction of the Judicial Committee of the Privy Council in 'devolution issues' cases, has led the Scottish Government to set up a review of the final appellate jurisdiction in the Scottish legal system. This is to be conducted by Professor Neil Walker, who holds the Regius chair of Public Law and the Law of Nature and Nations in the University of Edinburgh. Walker has been asked to report by 1 November 2009.¹⁸²

6.5. Revisions of the devolution settlement

No orders amending the Scotland Act have been made since September 2008.

6.6. UK Government's Legislative Programme and further proposals

The UK Government's legislative programme for 2008-09 was announced in the Queen's speech on 3 December 2008.¹⁸³ The programme contains 14 bills (and 7 draft bills). Only three of the bills in the programme contain substantive provisions relating to devolved matters (and so are likely to trigger legislative consent motions). These include the Policing and Crime Bill, which contains provisions regarding the seizure of the proceeds of crime which extend to Scotland, and the Local Democracy, Economic Development and Construction Bill which contains provisions regarding construction contracts. Most important, however, is the Marine and Coastal Access Bill which creates new rules for managing the UK's coastline (and therefore mostly applying only to England and Wales), as part of an agreement between the UK Government and

¹⁸¹ The meeting's communiqué is available at <http://www3.british-irishcouncil.org/documents/drugs6.asp>

¹⁸² Scottish Government News Release, 15 December 2008, 'Review of Civil Appeal', available at <http://www.scotland.gov.uk/News/Releases/2008/12/15093413>

¹⁸³ The text of the speech is available at <http://www.commonleader.gov.uk/output/Page2647.asp>

devolved administrations about the management of coastal waters, which will become the responsibility of the devolved institutions.¹⁸⁴

In addition, the UK Government has set out, in a White Paper, proposals for the reform of welfare benefits, with a bill expected to be introduced into Parliament during the coming session.¹⁸⁵ The overall goal of the proposals is to reduce dependence on welfare benefits (notably Job Seekers' Allowance and Incapacity Benefit) and to encourage the movement of claimants into work. The plans rely on extensive collaboration from the devolved governments in providing training services to support claimants in this transition, which it admits have yet to be reached. While the Scottish Government was studiously silent on the issue, Rhodri Morgan (First Minister of the Welsh Assembly Government) was publicly critical of the ideas lying behind these proposals, and their suitability in a Welsh context.¹⁸⁶

6.7. Financial issues: the UK Government's Pre Budget Report

The UK Chancellor introduced the Pre Budget Report to Parliament on 24 November.¹⁸⁷ Given the global financial crisis, this was a further-reaching report than usual. The package included a stimulus package of some £2 billion, bringing capital spending forward from 2010-11 to 2009-10 and 2008-09. The Report notes that, 'in the case of devolved areas of spending, the devolved administrations may reprofile spending in line with the Barnett formula in the normal way' (para. 6.13). According to the 'regional press notice' for Scotland, this will amount to £260 million for the Scottish Government.¹⁸⁸ Of particular importance for the devolved governments is the increased target set for efficiency savings by the UK Government (of £5 billion in 2010-11), which also apply to the devolved governments. Details of these will be set out in full in the 2009 UK Budget, but applying the usual population proportion to the figure of £5 billion (in accordance with the Barnett formula) this would suggest that the Scottish Government's budget will be

¹⁸⁴ See Joint Statement from the Joint Ministerial Committee, 25 June 2008, available at <http://www.scotlandoffice.gov.uk/our-communications/release.php?id=3676>, and Scottish Government News Release 'Devolved Scotland extends out to sea', 27 November 2008, available at <http://www.scotland.gov.uk/News/Releases/2008/11/27105536>

¹⁸⁵ Department of Work and Pensions *Raising Expectations and Increasing Support: Reforming welfare for the future* Cm 7506 (London: The Stationery Office, 2008).

¹⁸⁶ 'Ministers' benefit reform worries' *BBC News Online*, 10 December 2008. Available at <http://news.bbc.co.uk/1/hi/wales/7773960.stm>

¹⁸⁷ HM Treasury *Facing global challenges: Supporting people through difficult times. Pre Budget Report 2008* Cm 7484 (London: The Stationery Office, 2008). Available at http://www.hm-treasury.gov.uk/d/pbr08_completereport_1721.pdf

¹⁸⁸ http://www.hm-treasury.gov.uk/d/pbr08_pn_scotland.pdf

reduced by a further £504 million in 2010-11. In partial mitigation for this, the 'regional press notice' notes that further 'EYF (end year flexibility) drawdown' will be available to the Scottish Government in 2010-11 to mitigate the reduction in its baseline spending consequent on the revision of the Department of Health's capital spending budget that formed part of the 2007 Comprehensive Spending Review.

Rows over the proposed local income tax (with its implications for council tax benefit) and the proposed Scottish Futures Trust have rumbled on, but within Scotland and without an intergovernmental dimension between September 2008 and January 2009, apart from some Labour side-swipes (by both Holyrood and Westminster politicians) at the proposals for a local income tax during the Glenrothes by-election campaign. The proposed replacement Forth Road Bridge has raised more serious issues, especially as this is something that might have been funded by the Scottish Futures Trust had that been established in the way the SNP originally wished. These rather heated discussions have involved a request by the Scottish Government to allocate ('re-profile') the £2 billion capital cost of the bridge over 20 years, rejected by the Treasury inter alia on the ground that it could not allow the Scottish Government to 'borrow' against predicted future revenues from grants from the UK Government. This followed a scaling-down of the proposed size of the bridge, which reduced its cost significantly.¹⁸⁹ The impasse in direct negotiations between the Treasury and the Scottish Government led to a meeting with the Secretary of State for Scotland being arranged for late January 2009 – with the Scotland Office also suggesting it was appropriate for the Secretary of State to interest himself in such detailed matters as the design and size of the bridge.¹⁹⁰

6.8. European Union matters

Scottish Ministers attended a number of meetings of the EU Council of Ministers between September and December. Richard Lochhead, Cabinet Secretary for Rural Affairs and the Environment, attended three meetings of the Agriculture and Fisheries Council in Brussels (on 18–20 November, 27-28 October and 29 September), while Fergus Ewing, Minister for Community Safety attended the Justice and Home Affairs Council in Luxembourg on 24 October, and Frank Mulholland, the Solicitor General, was

¹⁸⁹ 'Salmond goes for cut-price bridge across Forth', *The Scotsman* 11 December 2008.

¹⁹⁰ 'Salmond 'not taking no for an answer' over Forth Bridge funding', *The Herald* 5 January 2009; 'Swinney hopes for Treasury deal to pay for £2bn Forth crossing', *The Herald* 6 January 2009; 'Date set for Westminster summit talks on £2bn Forth road bridge', *The Herald*, 12 January 2009.

at the Justice and Home Affairs Council on 25 September.¹⁹¹ The most notable substantive issue was the annual round of fisheries negotiations in Brussels shortly before Christmas, which resulted in an announcement that 'West coast fisheries [had been] saved from closure' and increases in quotas for a number of important catches including cod and mackerel, and standstills in others including prawns and haddock.¹⁹²

In addition, a number of overseas visits were made by Scottish Ministers, or visiting official delegations received. These included visiting delegations from Ireland, Schleswig-Holstein in Germany, Hungary, Catalonia in Spain, and Iceland, and official visits by the Europe Minister to Poland and the First Minister to Catalonia.¹⁹³

¹⁹¹ For further details, see <http://www.scotland.gov.uk/Topics/Government/International-Relations/Europe/Scotland-in-Brussels/Councils/Councils08>

¹⁹² See Scottish Government News Release ' West coast fisheries saved from closure' 19 December 2008, available at <http://www.scotland.gov.uk/News/Releases/2008/12/19142306>

¹⁹³ For details, see <http://www.scotland.gov.uk/Topics/Government/International-Relations/Europe/Current-European-Affairs/Bilaterals/Visits2008>