



Devolution in Scotland

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This note looks at the process and progress of devolution in Scotland. It highlights the notable features of the Scottish Parliament and Scottish Executive and examines opinion on the current state of devolution.

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A. A background to devolution in Scotland

Following unsuccessful attempts to introduce devolution in Scotland and Wales in the 1970s, many Scottish pro-devolution bodies joined together to form the Scottish Constitutional Convention.¹ Its first meeting was held on 30 March 1989 and it adopted a declaration to assert the right of the Scottish People to secure an Assembly or Parliament for Scotland.² The final report, *Scotland's Parliament, Scotland's Right*, published on 30 November 1995, contained a blueprint for devolution which was to have a considerable influence on future policy. The Labour Party promised in its 1997 general election manifesto to create a Scottish Parliament '...firmly based on the agreement reached in the Scottish Constitutional Convention', and when it came to power, the detailed proposals for a Scottish Parliament with law making and tax-varying powers were unveiled in the White Paper *Scotland's Parliament* (Cm 3658) on 24 July 1997.

The Scottish Referendum on devolution took place on 11 September 1997. The turnout was 60.4% of the electorate, with 74.3% voting for a Scottish Parliament and 60.2% voting for tax raising powers. This result was satisfactory enough for Tony Blair to declare, on 13 September 1997, 'Well done. This is a good day for Scotland, and a good day for Britain and the United Kingdom...the era of big centralised government is over!'³

The *Scotland Bill* was introduced on 17 December 1997, receiving royal assent and becoming the *Scotland Act* on 19 November 1998. This provided Scotland with a Parliament and Executive developed from the traditional 'Westminster' model. The Act created a Parliament of 129 elected members, known as Members of the Scottish Parliament (MSPs). It comprises 73 constituency members, who (with the exception of Orkney and Shetland, which are individual seats) represent constituencies with the same boundaries as Scottish House of Commons seats. Regional members are elected using the Additional Member System (AMS) form of proportional representation, which uses closed party lists to elect members in addition to constituency Members, who are elected using the standard First Past the Post System (FPTP).⁴ This ensures that the Scottish Parliament closely reflects the total number of votes cast for each political party.⁵ The Electoral Commission has recently published research on voters' views of the electoral process in May 2003.⁶ The Scottish Parliament Information and Research Centre (SPICe) has also published research from Professor John Curtice on the results of the elections.⁷

¹ Fuller background is contained in Library Research Paper 97/92, *Scotland and Devolution*

² Scottish Constitutional Convention, for background information, see, http://www.almac.co.uk/business_park/scc/backg.htm

³ Evans, Mark, *Devolution to Scotland and Wales: Is 'Power Devolved Power Retained'?* in Steve Lancaster (ed.) *Developments in Politics* Vol. 10, 1999, p68.

⁴ For full background on the AMS type of proportional representation, see Library Research Paper 98/112 *Voting Systems: The Jenkins Report*

⁵ *Whitaker's Scottish Almanack*, 4th edition, 2003, p4-5

⁶ *Scottish Elections Research May –June 2003* Martin Boon and John Curtice Electoral Commission 2003

⁷ *SPICe briefing 03/25 Election 2003* <http://www.scottish.parliament.uk/research/briefings-03/sb03-25.pdf>

B. Scottish Parliament

The first elections to the Scottish Parliament were held on 6 May 1999 and they met for the first time on 12 May and elected Sir David Steel (Lord Steel of Aikwood) as Presiding Officer. The role of the Presiding Officer is to be politically impartial, represent the interests of the members equally, preside over the Parliament to represent the Scottish Parliament in various settings both in Scotland and abroad.⁸ As no single party gained an overall majority at the elections, a coalition was negotiated between Labour (the largest party) and the Liberal Democrats (fourth largest party). On 14 May 1999 the Lab-Lib Dem *Partnership for Scotland* agreement was signed and transfers of power took place on 1 July 1999. Elections are held every four years, on a fixed term basis (other than extraordinary general elections in special cases) and the Parliament operates a 4 year sessional sitting cycle, rather than the annual cycle used at Westminster.

1. Powers

Under the *Scotland Act 1998*, the Scottish Parliament can make primary and secondary legislation in those areas not reserved to Westminster (which are specified in schedule 5 of the Act) or protected from modification (specified in schedule 4).

The list of reserved matters is lengthy and complex. In some areas legislative competence differs slightly from the executive powers devolved to the new administrations, as the Executive can be granted additional powers under s63 where the Parliament has no legislative competence. Below is a summary of reserved subjects:

- the constitution
- defence and national security
- fiscal, economic and monetary system
- trade and industry, including competition and customer protection
- transport (not particular to Scotland) including railways, transport safety and regulation
- social security
- medical ethics: abortion; human fertilisation and embryology; genetics; xenotransplantation and vivisection.
- broadcasting
- foreign affairs
- the civil service
- immigration and nationality
- energy: electricity, coal, oil, gas, nuclear energy
- employment
- equal opportunities

⁸ The Scottish Parliament, The Office of the Presiding Officer see, <http://www.scottish.parliament.uk/sp/po/index.htm>

Devolved subjects are those which do not fall under the reserved categories, or are otherwise outside the legislative competence of the Scottish Parliament. They include:

- health
- education and training
- local government
- social work
- housing
- planning
- tourism, economic development and financial assistance to industry
- some aspects of transport, including the Scottish road network, bus policy and ports and harbours
- law and home affairs, including most aspects of criminal and civil law, the prosecution system and the courts
- the police and fire services
- the environment
- natural and built heritage
- agriculture, forestry and fishing
- sport and the arts
- statistics, public registers and records³⁴

The Parliament can and does debate reserved matters, even though it cannot legislate on them. One of the surprises of the devolution settlement has been the extent of the use of the Sewel Convention. This enables the Westminster Parliament to continue to legislate on areas which are devolved, with the consent of the Scottish Parliament.⁹ The Parliament also has responsibility for agreeing its own methods of operation and adopting its own standing orders, which are then kept under regular review.¹⁰

The Scottish Parliament has a committee system that does not distinguish between standing and select committees, to use Westminster terminology. They undertake scrutiny of both legislation and policy and can initiate their own inquiries in subject areas within their remit. committees may also prepare and introduce their own bills. In practice, ministers of the Scottish Executives are not members of committees, although they can participate in their proceedings as witnesses or when in charge of bills being scrutinised by a committee. Details of the Committee system are set out on the Parliament website at, <http://www.scottish.parliament.uk/cttee.htm>.

2. First Session 1999-2003

The Procedures Committee of the Scottish Parliament produced a review of the ways in which the founding principles of the Parliament had been put into practice in the first session.

¹¹ These principles are commonly known as the Consultative Steering Group principles, after

⁹ See Library Standard Note 2084 *The Sewel Convention* and Alan Page and Andrea Batey, "Scotland's other Parliament: Westminster legislation about Devolved matters in Scotland since devolution, *Public Law*, Autumn 2002, pp501-523 for background

¹⁰ *Whitaker's Scottish Almanack*, 4th edition, 2003, p5

¹¹ Procedure Committee Third Report 2003, available from

the body set up by the Scottish Office to consider the procedures and practices of the new Parliament. The Procedures Committee produced a major report which made 135 recommendations to the Scottish Parliament and the Scottish Executive, and made one specific recommendation to both the Scottish Parliament and the Scottish Executive.¹²

Looking beyond the question of their own internal relations, perhaps the most important development task for the governance partners is to widen further the circle of political participation in Scotland beyond the current members of these partnerships and civil society, and to enable those voices to be heard in government. While this 'pathfinder' is the *raison d'être* of the Scottish Civic Forum, it is a responsibility shared directly by the Scottish Executive and the Scottish Parliament. We therefore recommend that the Parliament and the Executive should accept a commitment to extend participation in policy formulation and law-making as widely as possible in civic society.

The report was debated in November 2003. It outlined recommendations in each of the four CSG key principles: Access and Participation; Equal Opportunities; Accountability and; Power Sharing:¹³

Access and Participation:

Positive evidence was found that civil society believes the Scottish Parliament to be successful in providing access and participation, and ensuring that information is readily available through a wide range of media. However, the report does mention that parliament needs to find ways in which to broaden and deepen the level of participation so that all elements in Scottish society are able to engage fully with the Scottish Parliament, Scottish Executive and/ or Local Government.

Power Sharing:

The Parliament's petition system was recognised as a significant innovation, giving the people of Scotland an opportunity to influence the parliamentary and executive agendas. However, this could be developed further, with greater resources. To ensure further commitment to effective power sharing, closer executive-parliament co-operation is suggested.

The report highlights clear evidence that the committee system is under severe pressure of work and that consequently the quality of output will be threatened. The Executive must guarantee time for consultation; time for committees to process legislation thoroughly and at a pace which allows the other governance partners to participate fully and; time for post-enactment legislative scrutiny.

http://www.scottish.parliament.uk/S1/official_report/cttee/proced-03/prr03-03-01.htm

¹² For the summary of recommendations see,

<http://www.scottish.parliament.uk/procedures/misc/founding1.pdf>

¹³ Procedures Committee, 3rd Report, *The Founding Principles of The Scottish Parliament: the application of Access and Participation, Equal Opportunities, Accountability and Power Sharing in the work of the Parliament*, SP Paper 818, Session 1 (2003), Para 1002-1020, available at http://www.scottish.parliament.uk/S1/official_report/cttee/proced-03/prr03-03-01.htm

Equal Opportunities:

The issue of equal opportunities was found to be taken seriously in the Parliament. Several recommendations were made, including the suggestion that the Clerk/Chief Executive should produce an annual equality report, with consideration given to debating the report in Parliament's plenary session. A suggestion from the Commission for Racial Equality to have a 'champion' for equal opportunities on each parliamentary committee should be considered. Importantly the Committee recommended that the Equal Opportunities Committee should commission regular reports on all of the recommendations made in this area, and all related practices and initiatives.

Accountability:

In general the Parliament has been found to be performing effectively in its duty to scrutinise the executive. However the report considered that there were deficiencies. There were difficulties enabling sufficient consultation to take place as part of the legislative process; the Committee considered that the Parliament's committees should conduct as much of their proceedings in public as possible; it recommended a further development of the public petition system. The report grappled with the difficulties of reconciling the Westminster system with the aspirations of power-sharing set out in the CSG principles:

52. The obvious tensions between the Westminster model of governance and a more directly participative model were reflected in much of the evidence which we received. "The relationship between the Scottish Executive and the Scottish Parliament will be similar to the relationship between the UK Government and the UK Parliament" reflected a very traditional view of democracy, underlined by the former Minister for Parliament's observation that "...the Executive's first and foremost duty is to deliver the programme for government on which it was elected. That has involved, and will continue to involve, an ambitious and substantial legislative programme..." These perspectives give credence to the reaction from many external witnesses that, while the Parliament may be implementing the CSG principles, "... the Executive does not seem to have changed its culture much."

In addition, the Committee recommended that two bodies make their work and decisions more transparent. These are: the Scottish Parliamentary Corporate Body (SPCB), responsible for ensuring that the Parliament is provided with property, staff and services required for the Parliament's purposes) and the Conveners' Group (roughly akin to the Liaison Committee in the Commons).¹⁴

In the conclusion the Procedures Committee noted that:¹⁵

¹⁴ The Conveners' Group was formed in 1999 to enable Committee Conveners to have an informal forum where they could meet to facilitate liaison between the Committees, the Parliamentary Bureau and the SCPB

¹⁵ Procedures Committee, 3rd Report, *The Founding Principles of The Scottish Parliament: the application of Access and Participation, Equal Opportunities, Accountability and Power Sharing in the work of the Parliament*, SP Paper 818, Session 1 (2003), Para 1019, available at http://www.scottish.parliament.uk/S1/official_report/cttee/proced-03/prr03-03-01.htm

This report is, by its nature, primarily concerned with the systems and processes of governance. We recognise, however, that good process is a means to an end and not an end in itself and that the ultimate test of our effectiveness is simply *how* the Parliament operates but what it achieves. We believe that the recommendations contained within this report will help us to ensure that we make decisions, foster debate and enact legislation which is both relevant and effective and so will have a positive impact on the lives of the people of Scotland.

A major audit of the procedures of the Scottish Parliament in its first year has also been produced by the Constitution Unit.¹⁶

3. Second Session 2003-2007

At the end of the first session it was acknowledged that if the process of devolution was to move forwards then it was imperative that the knowledge gained from the first session was not lost in the transfer to the second session. Consequently, several initiatives were put into place to ensure this. The most significant of these initiatives was the introduction of legacy papers and the MSP induction workshops, available in party groups to provide support for new members. Legacy papers are documents which were produced by outgoing committee members of the first session, for the benefit of their successor committees. They covered the history, working practices and inquiry topics of the committee in the first session and any advice to be passed on.

The idea of legacy papers was unusual and departed from the Westminster model; they provided relevant briefing for new members, an opportunity for the staff on the committees to recommend working practices, and an opportunity to see what how other committees worked. But there was an inevitable lack of continuity amongst the membership of committees, and changes in remits, which meant that programmes of work began afresh.

The second elections to the Scottish Parliament took place on 1 May 2003. Overall, Labour gained 35% of the constituency votes, compared to 39% in 1999, and 29% on the regional lists, compared with 34% in 1999. This gave them a total of 50 seats, compared with 56 after the 1999 election. The Scottish National Party won 27 seats, the Conservatives 18, and the Liberal Democrats 17. The smaller parties greatly increased their representation: the Greens increased their number of MSPs from 1 to 7; and the Scottish Socialist Party from 1 to 6; the Scottish Senior Citizens Unity Party gained its first MSP. Three non-party-aligned MSPs were elected - including Denis Canavan, the former Labour MP, who retained his Falkirk West seat. Turnout in the 2003 election was 49%, compared with 58% in 1999.

This significant representation of the minor parties has had an impact on the operation of the Parliament. Both the Greens and the Socialists were entitled to be membership of the Parliamentary Bureau (the Parliament's business committee') making the arrangement of the

¹⁶ B.K Winetrobe, *Realising the vision: a Parliament with a purpose: an audit of the first year of the Scottish Parliament*, Constitution Unit, 2001

Parliament's business a more complex exercise. The allocation of committee membership and convenorships was also more problematic than in 1999, in trying to ensure a proportionate allocation of MSPs to the various committees. Commentators observed that the smaller parties were under represented on some committees because of the preferences for committee membership of the 4 larger parties.

There have been changes from September 2003 to First Minister's Question Time following a Procedures Committee report. It has increased in length from 20 to 30 minutes from September 2003, is held on Thursdays at noon and is now permanently decoupled from question time for other ministers.¹⁷ The Question Time period for other ministers has also been altered recently by the introduction of themed groups of questions.

There continues to be a record number of proposals for non-Executive Bills which has put pressure on time and resources, a matter which is currently being considered by the Procedures Committee.

Another difficulty facing committees is the high number of inquiries which have been launched since the beginning of the second session in May 2003. By the end of 2003, 15 inquiries have been launched with 220 meetings and hearing 630 witnesses. In addition, 13 Bills have been introduced as well as among 750 motions, 5174 parliamentary questions and 70 petitions, all within a year. This has led to a huge amount of work for the committees and consequently there is less time for the policy scrutiny aspect of their role.¹⁸

C. Scottish Executive

Once the Scottish Parliament has been formed, the members choose one MSP to become the First Minister. It is then the role of the First Minister to appoint the Executive and, with the exception of the Law Officers, they must be, and remain, MSPs.¹⁹ They exercise executive powers (ministerial functions) which have been transferred from Ministers of the Crown in Whitehall and they remain accountable to the Scottish Parliament.

1. Powers

For all devolved matters the Scottish Executive is the government in Scotland and at present, it is made up of 11 Scottish Ministers (excluding Deputy Ministers) including the First Minister, Jack McConnell, and the Deputy First Minister, Jim Wallace. Ministers are allocated specific subject portfolios, though these do not correspond exactly to the 8 Departments of the Executive: Development; Education; Enterprise, Transport and Lifelong Learning; Health; Justice; Environment and Rural Affairs; Finance and Central Services and

¹⁷ Procedures Committee *First Minister's Question Time and Minor Standing Order Changes* 29 August 2003

¹⁸ Data based on presentation to the Study of Parliament Group in January 2004

¹⁹ s47 of the *Scotland Act 1998*

Corporate Services.²⁰ Members of the Scottish Executive may not simultaneously hold office as a UK Government Minister.²¹

Under the devolution settlement, the departments of the Scottish Office became the Scottish Executive and the Scotland Office took over as the voice for Scotland at the UK Government level on reserved matters, such as foreign policy and employment.²² The Secretary of State for Scotland has responsibility for the Scotland Office, and on 12 June 2003 the Prime Minister announced that the Scotland Office would form part of the newly formed Department for Constitutional Affairs.²³

Various intergovernmental agreements (known as concordats) and official fora, such as the British Irish Council, operate to allow for administrative negotiation of cross cutting issues. These are described in Research Paper 03/84 *An Introduction to devolution in the UK*.

Finally guidance documents entitled the *Scottish Ministerial Code* and the *Guide to Collective Decision Making* offer equivalent guidance as in the *Ministerial Code* for the UK Government.²⁴

2. First Administration 1999-2003

Previously there have been two programmes (*Making it work together: A programme for government* and *Working together for Scotland*) which have set out a framework of both the short- and long-term objectives of the Executive to follow. In total 327 commitments were set out, covering a range of the key issues which the first devolved Scottish administration is facing.²⁵

The Scottish Executive's view of its progress in achieving these objectives is set out in the report *Recording Our Achievements*.²⁶ The report, which allows Scotland to see for itself how the Executive has been performing, discusses eight key issues the Executive is working to improve.²⁷

- **Education and young people** - Improving Scotland's schools and providing early support for children have been at the forefront of the Executive's pledge to give Scotland's children the best start in life.

²⁰ For further information on the departments of the Scottish Executive see, <http://www.scotland.gov.uk/topics/?pageid=200>

²¹ s44(3) of the *Scotland Act 1998*

²² *Whitaker's Scottish Almanack*, 4th edition, 2003, p10.

²³ *ibid*

²⁴ <http://www.scottishexecutive.gov.uk/about/FCSD/CabSec/00014944/MinisterialCode.aspx> and <http://www.scotland.gov.uk/library5/finance/gcdm-00.asp>

²⁵ *ibid*, p5.

²⁶ available at, <http://www.scotland.gov.uk/library5/government/roas.pdf>

²⁷ Scottish Executive, *Recording Our Achievements*, 2002, available at <http://www.scotland.gov.uk/library5/government/roas.pdf>

- **Enterprise, transport and lifelong learning** – the Executive pledges to create a highly skilled, learning, earning, connected and accessible Scotland, with a modern, efficient and sustainable transport system.
- **Environment and rural development** – working to sustain rural communities and the environment.
- **Finance and public services** – investment into public services from the Executive and the undertaking of reforms which will lead to a more open government and effective local government in Scotland.
- **Health and community care** – the Executive has worked to improve the health of Scottish people, rebuild the National Health Service, improve access to health care for patients and meet the specific needs of different care groups.
- **Justice** – in working towards a safer and fairer Scotland the Executive are tackling the issue of drugs, creating a more open and accountable system with a fairer and more effective justice system.
- **Social justice** – the Executive has worked towards closing the gap between the disadvantaged and the average in Scotland, by tackling poverty and promoting equality, by improving housing services.
- **Tourism, culture and sport** – progress is being made in several strategies which are in place to promote Scotland’s identity and to develop creative communities.

By 2005 the Scottish Executive is working to achieve freedom of information which will give the people of Scotland a right to information from the government and also the wide range of bodies which are involved in delivering public services.²⁸

3. Second Administration 2003-2007

The Executive formed after the 2003 elections was based on a coalition agreement between the Labour Party and the Liberal Democrats, *A Partnership for a better Scotland* published on 15 May 2003. The joint statement from the parties is as follows:²⁹

In the next four years if Parliament, there is a great deal of work to do. Work to encourage and stimulate economic growth. Work to tackle poverty and disadvantage, to improve and sustain our environment and to help all our communities live in peace and safety. Scotland needs the stability of a strong and determined government and a vibrant parliament to deliver the change and the improvement her people deserve. This agreement represents the determination of two parties to work together to provide stability and innovative government. It is more than the combination of the two party’s manifestos. It sets out our vision for a Scotland where enterprise can flourish, where opportunity does exist for all and our people and our country have confidence to face the challenges to global society. It provides a strong foundation for

²⁸ Scottish Executive, *Recording Our Achievements*, 2002, p3, available at <http://www.scotland.gov.uk/library5/government/roas.pdf>

²⁹ For the full text of the Joint Coalition agreement see, <https://www.scotland.gov.uk/library5/government/pfbs-00.asp>

improvement, for progressive change and for the inclusion of ideas from all those who want to contribute to the process of making Scotland a better place. In the next four years we are determined, together, to improve public services and tackle the real issues that matter to the people in Scotland. We are determined to deliver promises that we have made. The people of Scotland expect our Parliament and the Executive to listen to their concerns respond to their wishes and make a positive difference to their daily lives. This agreement sets out the policies and the direction for government to meet that expectation.

The updated guidance documents: the *Scottish Ministerial Code* and the *Guide to Collective Decision Making* both published in August 2003 set out the path for the Scottish Executive to follow in the second administration. Another move aiming to bring the Parliament and the Executive more in line with public opinion and help to restore voter confidence, was to slim down the size of the ministerial team. Before devolution, the Scottish Office had six ministers who took responsibility for the various departments and in the first administration the ministerial team comprises of 20 including deputies. Before the new ministerial team was announced at the beginning of the second session there was much speculation as to how many posts will be axed, but a Labour Party source commented that “there is no doubt that the Cabinet would be able to operate more effectively if there is a better alignment between the civil service machine and the Cabinet structure.”

The First Minister Jack McConnell answered speculation over the ministerial team by announcing a slimmer team of ministers, cutting the team from 20 to 18 (including deputies). In the same move the Cabinet was expanded from 10 to 11 MSPs. However the ministerial wage bill was cut from £720,458 to £660,192, because two ministers in the Cabinet are paid junior minister salaries instead of cabinet minister salaries.³⁰ The Minister for Tourism, Culture and Sport and the Minister for Transport are paid junior minister salaries because despite there being no legal or statutory limitation on the number of ministers, they will attend the Cabinet in as non-departmental Cabinet Ministers.³¹ The First Minister hoped that this move would be seen as a step towards a “smarter, quicker and sharper” government.³² This move also saw the number of Liberal Democrat MSPs in the Cabinet increase to three, giving them more influence in the Cabinet.³³ Support for this however, was not universal with the SNP leader John Swinney condemning the move, saying that “we have a ridiculous situation where there are still more Cabinet ministers than there are Scottish Executive departments”.³⁴

³⁰ “Jack and his pack; McConnell names slim line team and budget ministers.”, *Scottish Daily Record*, May 21st 2003

³¹ The Constitution Unit, University College London, “Nations and Regions: The Dynamics of Devolution”, *Quarterly Monitoring Programme Scotland*, August 2003, p6 available at http://www.ucl.ac.uk/constitution-unit/monrep/scotland/scotland_august_2003.pdf

³² “Jack and his pack; McConnell names slim line team and budget ministers.”, *Scottish Daily Record*, May 21st 2003

³³ “More seats at the top table for LibDems”, *The Herald (Glasgow)* May 21st 2003

³⁴ “Jack and his pack; McConnell names slim line team and budget ministers.” *Scottish Daily Record*, May 21st 2003

The core administration was reorganised under the new Permanent Secretary, John Elvidge, facing criticism on administrative costs.³⁵ It has established a Performance and Innovation Unit, headed by a senior figure from the private sector, Nick Parker.³⁶ The adviser team now has 11 members, following the appointment of an adviser on poverty and social inclusion.³⁷

A new study of the formation of coalitions in Scotland and Wales has been published by the Constitution Unit, covering the role of the coalition agreement and the internal management of coalitions.³⁸

D. The legal basis of devolution

During the passage of the *Scotland Act 1998* it was expected that there would be a series of legal challenges to the basis of devolution, involving questions about the boundaries between devolved and reserved competence. Special machinery was established to deal with the cases, culminating in appeals to the Judicial Committee of the Privy Council.³⁹ In the event, there have been only three challenges to an Act of the Scottish Parliament, and two of these involved one Act. This was the *Wild Mammals (Scotland) Act 2002*, a non-Executive Bill. None of the challenges has been successful, but the cases have raised interesting issues about the legal nature of Scottish legislation.⁴⁰ There have also been a number of challenges to the definition of ‘devolution issues’, in relation to action by the Executive but these have focused on questions relating to the fair trial requirements of Article 6 of the European Convention of Human Rights. The *Scotland Act 1998* included a requirement to ensure that legislation and executive actions were compatible with Convention rights.⁴¹

Finally, the case of *Whaley v Watson* illustrated difficulties in determining the scope for autonomy in the internal affairs of the Parliament. As a creature of statute, without the Westminster concept of parliamentary privilege, the Parliament is more subject to judicial review.⁴²

³⁵ For further detail see Constitution Unit Monitoring Report

³⁶ *Scottish Executive Press Notice* 8 January 2004

³⁷ *Scottish Executive Press Notice* 4 November 2004

³⁸ *Coalition Governance in Scotland and Wales* Constitution Unit March 2004

³⁹ The machinery is described in Chapter 8 of *A Guide to the Scotland Act 1998* by Alan Page, Colin Reid and Andrea Ross 1999

⁴⁰ The other legislation unsuccessfully challenged was the *Mental Health (Public Safety and Appeals) (Scotland) Act 1999*. For a full discussion and citation of the cases, see *Scotland's Constitution: Law and Practice* by CMG Himsworth and CM O'Neill pp512-18

⁴¹ S 57-58

⁴² This issue is discussed in more detail in *Realising the Vision: A Parliament with a Purpose* B. K. . Winetrobe Constitution Unit 2001

E. New Parliament Building

Since its establishment in 1999, the Parliament has been based in a series of buildings around the Royal Mile in Edinburgh' Old Town. The main Debating Chamber has found its temporary home in the General Assembly Hall of the Church of Scotland, on top of the Mound in Edinburgh. In addition four committee rooms have been designated in the Committee Chambers Building, for committee work to be carried out in.⁴³ Plans for a permanent parliamentary complex were set in train by the UK Government prior to the implementation of devolution. Background is set out in a Scottish Parliament Information Centre briefing in July 2003.⁴⁴

In January 1998 the site at Holyrood in Edinburgh was announced by the then Secretary of State for Scotland, Donald Dewar. Three other sites were looked at but, the site next to the Royal Palace of Holyrood House and Holyrood Park at the foot of the Royal Mile was chosen. In the following July Enric Miralles and RMJM Scotland Limited were appointed to design the new parliament building and at this point the project was estimated at costing £55 million plus VAT, fees and extras.⁴⁵

In the spring of 1999 pre-construction work at the Holyrood site began and on 1 June 1999 responsibility of the project was handed over from the Secretary of State to the Scottish Parliamentary Corporate Body. A few weeks later a parliamentary debate led to MSPs endorsing the go ahead of the building at Holyrood with an increased budget of £109 million, £62 million of which was for building construction costs. In June 2000 work finally started on construction of the new parliament building.⁴⁶

In December 2000 the Audit Committee published its 6th Report of 2000, on the New Scottish Parliament Building. The committee met from September to November 2000 and concentrated on the following aspects of the Holyrood project; project costs, cost reporting and fee incentives; risk management and accounting for risk; the state of the project at handover in June 1999 and the current state of the project.⁴⁷ The main conclusions of the report were that:⁴⁸

- The reporting systems in place were unsystematic and there should have been a greater level of transparency in the cost reporting arrangements for the project.
- It was unnecessary and wrong not to disclose the estimated full costs of the project once they were known.

⁴³ <http://www.scottish.parliament.uk/holyrood/dchamber.html>, 16 January 2004.

⁴⁴ <http://www.scottish.parliament.uk/research/briefings-03/sb03-52.pdf>

⁴⁵ <http://www.holyroodinquiry.org/holyrood-history.htm>, 16 January 2004.

⁴⁶ <http://www.scottish.parliament.uk/holyrood/hdesign.html>, 15 January 2004.

⁴⁷ Audit Committee 6th report, *The New Scottish Parliament Building*, SP Paper 227, Session 1 (2000), available at http://www.scottish.parliament.uk/S1/official_report/cttee/audit-00/aur00-06-02.htm

⁴⁸ *ibid*

- The Accounting Officer and Permanent Secretary, Muir Russell, was semi-detached from the process.
- The construction costs of the project escalated from £62 million to £108 million after the responsibility of the project passed from the First Minister (and former Secretary of State) to the Scottish Parliamentary Corporate Body in June 1999.
- There should have been an independent review of the project in June 1999, when responsibility for the project changed.
- The Spencely Report was a turning point for the project, and several indicators of improved management are now in place.

The Audit Committee also concluded that:⁴⁹

The Committee believes the new Parliament under construction at Holyrood to be the most significant building in modern Scottish history. The challenge for all those who have been involved has been to create a building of which we, as a nation, can be proud. Since the budget for this project comes entirely from public funds it is imperative that the highest standards of financial management are achieved. This project is an exacting assignment.

In addition, the report outlined recommendations for future projects within Scotland and it was mentioned in its conclusions that it had been advised that April 2003 was a realistic date for the building to be occupied.⁵⁰ However, in May 2003 the Holyrood project was still not complete and an inquiry into the Holyrood building project was announced. In June 2003 the First Minister Jack McConnell wrote to the Presiding Officer, George Reid, calling for an inquiry.⁵¹

“I believe that the investigation must provide the answers to the legitimate concerns that the public and MSPs alike have regarding the costs and construction of the new building. It must be independent of both the Scottish Parliament and the Scottish Executive, and it must examine the whole of the lifespan of the project.”

Lord Fraser of Carmyllie QC was appointed to carry out the independent inquiry and in July 2003 he outlined the form the inquiry would take at a press conference near the Holyrood site. He claimed that “The people of Scotland expect the truth, they deserve the truth and I am determined that they will get the truth.”⁵² The objective of the inquiry was to ‘provide the people of Scotland with answers to the questions which have been raised over the Holyrood project’. Lord Fraser has stated that the inquiry would be as open and transparent as possible and that if anything got in his way he would have no hesitation in ‘naming and shaming them’.⁵³ The length of the inquiry is unknown, although it will carry on until the parliament

⁴⁹ *ibid*, Para 7.

⁵⁰ Audit Committee 6th report, *The New Scottish Parliament Building*, SP Paper 227, Session 1 (2000), available at http://www.scottish.parliament.uk/S1/official_report/cttee/audit-00/aur00-06-02.htm

⁵¹ <http://www.holyroodinquiry.org/holyrood-history.htm>, 16 January 2004.

⁵² <http://www.holyroodinquiry.org/news-and-updates.htm>, 16 January 2004.

⁵³ <http://www.holyroodinquiry.org/inquiry-objectives.htm>, 16 January 2004.

building if finished and occupied. An interim report to the First Minister and Presiding Officer is expected by the middle of 2004 (assuming the building work is finished).⁵⁴

Also in July 2003 the Corporate Body, chaired by the Presiding Officer George Reid produced the first of monthly reports on the progress of the parliament building. As of January 2004, the final completion date is targeted for July 2004, at an overall cost of £389.4 million (with a programme contingency of £11.8 million). Full details of the monthly reports to the Parliament's finance committee can be found on the Scottish Parliament's website, <http://www.scottish.parliament.uk/news/index.htm#dec>.

F. Commentary

At the close of the first session of the Scottish Parliament, much of the commentary on its operation looked at the high and lows of its operation in practice and discussion on how to progress. Roger Blitz, of the *Financial Times* claimed that the 'real achievement' of the Parliament is its permanence, structure and modus operandi. In this sense, the regional government of Scotland has enabled greater access to participation for those outside the party system. However, the challenge to engage the public still remains stiff.⁵⁵

Critical analysis of the Scottish Parliament has focused on the operation of the Parliament. One critic has been Duncan Hamilton MSP whose views are outlined in various essays contained in the Policy Institute's paper '*What Future for Scotland? Policy options for Devolution*'.⁵⁶ Hamilton warned that the legitimacy of the Parliament would be questioned if the voter turnout fell below 50% and argued that the structures and composition of parliament are not working. He thought that a 'fresh start' was needed, including a replacement of the additional member system of proportional representation by the single transferable vote system of proportional representation.⁵⁷ Mr Hamilton subsequently stood down at the 2003 elections.

The current voting system for the Parliament has attracted criticism because it creates two types of Member – constituency and list- and there has been friction between the two.⁵⁸ The *Scottish Parliament (Constituencies) Bill* will ensure that the number of seats in the Scottish Parliament remains at 129, even though the number of Scottish MPs at Westminster will reduce to around 59, as a result of recommendations from the Parliamentary Boundary Commission for Scotland. This will bring an end to co-terminosity between the boundaries of Westminster and Scottish Parliamentary constituencies.⁵⁹ Following concern expressed by the

⁵⁴ *ibid*

⁵⁵ Assemblies' main success is permanence", *Financial Times*, February 25th 2003.

⁵⁶ Cited in "Hamilton calls for reform of parliament", *The Scotsman*, March 10th 2003, For full essay contact the Policy Institute at <http://www.policyinstitute.info>

⁵⁷ Cited in "Hamilton calls for reform of parliament", *The Scotsman*, March 10th 2003

⁵⁸ See for further details see *Changed Voting Changed Politics: Lessons for Britain's Experience of PR since 1997*, the final report of Britain's experience of PR since 1997 Independent Commission on PR March 2004

⁵⁹ For further detail see Research Paper 04/12 *The Scottish Parliament (Constituencies) Bill*

Scottish Affairs Select Committee, among others, the Secretary of State for Scotland, Alastair Darling, announced a review of the four voting systems in Scotland on 9 February 2004:

As the House will know, the Scottish Parliament is currently considering legislation that, if enacted, would lead to councils in Scotland being elected by the single transferable vote from 2007. Therefore, Scotland now faces the prospect of four different voting systems for an electorate of just over 3.8 million: for UK general elections, the first-past-the-post system; for European elections, a PR list system; for Holyrood, the additional member system; and, if the legislation goes through, STV for local government. In addition, the further complication exists that local government elections in Scotland are expected to take place on the same day as the Holyrood election.⁶⁰

The review would appear to reach into areas of devolved competence in Scotland and so careful handling is expected, to ensure that the devolution settlement is not put at risk.

*Anatomy of the New Scotland*⁶¹ examines the creation of a new Scottish establishment since devolution. It notes, for example how the Scottish Executive has opened up senior recruitment to outsiders to an unprecedented extent. On the other hand, the Executive has been criticised for failing to offer a strategic vision. In its first term, it suffered from a rapid turnover of First Ministers. There have been a number of high profile policy divergences from Whitehall's policy line, such as care for the elderly and fees for higher education, but in other areas, such as treatment of refugees, the Executive has not been able to offer a distinctly Scottish perspective.⁶²

In a move to answer his critics, Jack McConnell unveiled his future plans in the run up to the end of the first session. Although, noting that the Scottish Parliament has gone through 'four rocky years', and acknowledging that politicians are seen as overpaid, under worked and not reflecting public feeling and following a rigid pre-programmed party political structure, he is keen to move towards a structure which allows the development of ideas and a parliament more in tune with its people. To do this he has announced a fresh mandate which will give the 'opportunity to plan for four years ahead' giving a sense of 'urgency and imagination applied to a government that will really make a difference'.⁶³

Despite critical comments regarding the Scottish Parliament, many Scots appear to want the Parliament to have more powers (far more than want independence). The Financial Times writes that even though opinion polls routinely say that Scots are disappointed with Holyrood, only a small minority want constitutional change.⁶⁴ In a survey on constitutional change, 54 per cent of Scots in 2001 wanted to stay in the United Kingdom with a parliament

⁶⁰ HC Deb 9 February 2004 c1151

⁶¹ ed Gerry Hassan and Chris Warhurst 2002

⁶² For full analyses, see the annual publication *State of the Nations*, produced by the Constitution Unit. See www.ucl.ac.uk/constitution-unit

⁶³ "Jack's new deal for MSPs", *Scotland on Sunday*, April 13th 2003

⁶⁴ "'Pretendy parliament' shaking off detractors", *Financial Times*, February 25th 2003

that has taxation powers. This was compared with 27 per cent who wanted independence and nine per cent who wanted to stay in the UK with no parliament.⁶⁵ In addition although 37 per cent of Scots thought that it was likely that Scotland would become independent from the UK (down from 51 per cent in 1999), and 41 per cent thought that the Scottish Parliament would make no difference to the likelihood that this would happen (up from 27 per cent in 1999).⁶⁶

There has been much controversy over the Holyrood building project, which in July 2003 led to the start of the Fraser Inquiry. The public discontent is shown in a survey carried out by MRUK, for *The Scotsman*.⁶⁷ The survey found that 76% of the Scottish public felt that the way the Holyrood building project has been handled is a poor reflection of devolution, and 68% felt that the cost of the project was too high and also gave devolution a bad name. However, 55% did say that it was important to have a parliament building which ‘projects an image of Scotland as being modern, confident and outward looking’, but 41 per cent said that the Holyrood building did not project this image.

⁶⁵ Bromley, C et al, *Devolution – Scottish Answers to Scottish Questions?*, 2003, p19.

⁶⁶ Ibid, p20

⁶⁷ “Holyrood gives devolution a bad name”, *The Scotsman*, November 17th 2003