



## Chapter 2

### White Paper to the Passing of the Scotland Act 1998

#### The Ministerial Team

2.1. On 2 May 1997, after election with a landslide majority of 179 in the House of Commons, Tony Blair appointed Donald Dewar as his Secretary of State for Scotland. Donald Dewar had been the Labour Party Chief Whip while in opposition. His appointment came as a surprise to many. The Ministers of State at the Scottish Office were Henry McLeish and Brian Wilson, and the junior ministers included Sam Galbraith and Lord Sewel. All four gave evidence to the Inquiry. Mr Dewar appointed Ms Wendy Alexander and Mr Murray Elder (later Lord Elder) as his Special Advisers, both of whom also gave evidence.

#### The Civil Service Team

2.2. The Scottish Office Constitution Group, headed by a senior civil servant, Mr Robert Gordon, was charged with delivery of the manifesto commitment on devolution for Scotland. The Group comprised four teams:

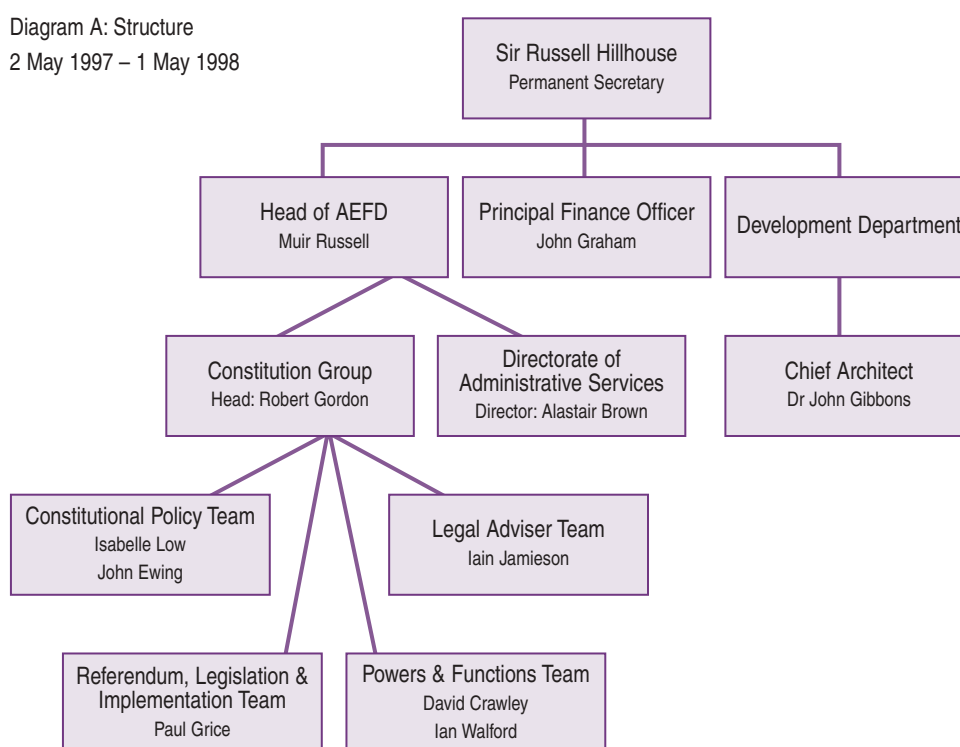
- The Constitutional Policy Team, led by Ms Isabelle Low with responsibility for co-ordination and editorial control of the White Paper and later for development of constitutional policy and electoral aspects of the Scotland Bill;
- The Powers and Functions Team, with responsibility for the functions of the Parliament and Executive, involving co-ordination across the entire Scottish Office and extensive negotiation with most Whitehall Departments to settle the

extent of the proposed Parliament’s legislative powers and the responsibilities of the proposed Scottish Executive;

- The Referendum, Legislation and Implementation Team, led by Mr Paul Grice with responsibility for the Referendum Bill and the conduct of the Referendum, co-ordination of the Scotland Bill and making the staffing and other preparations to allow the Parliament to become operational in May 1999;
- The Legal Advisers Team, with responsibility for providing legal advice, instructing legislation and drafting subordinate legislation.<sup>11</sup>

2.3. At that time Mr Gordon reported to Mr Muir (later Sir Muir) Russell, then Head of the Scottish Office Agriculture, Environment and Fisheries Department. Mr Russell, who had retained a particular responsibility for constitutional affairs since working in the Cabinet Office in 1992,<sup>12</sup> in turn reported to Sir Russell Hillhouse, the Permanent Secretary. The Scottish Office structure at that time is set out by Mr Gordon in a diagram which he presented to the Inquiry

Diagram A: Structure  
2 May 1997 – 1 May 1998



2.4. Working closely with Mr Gordon’s team was the Directorate of Administrative Services, the responsibilities of which included accommodation planning and services, and which was headed by Mr Alistair Brown who also reported to Mr Russell. Mrs Barbara Doig, then the Head of Accommodation Division, reported to Mr Brown. Similarly involved in consideration of accommodation for any new Parliament was Dr John Gibbons who held the position of Chief

<sup>11</sup> WS/18/001–010 – Mr Robert Gordon’s First Witness Statement, 4 November 2003

<sup>12</sup> Evidence of Sir Muir Russell on 5 February 2004, Para 13

## The Holyrood Inquiry

Architect and Director of Building.<sup>13</sup> In this capacity he was head of a multi-disciplinary group known as the Building Directorate which provided advice and support on building matters to all the Departments of the Scottish Office. He was also head of the Construction and Building Control Group which formed part of the Scottish Office Development Department and consisted of two separate Divisions, one of which, headed by the Chief Quantity Surveyor, Mr Alastair Wyllie, had responsibility for building procurement and project and programme advice.

- 2.5. On 1 May 1998 Sir Russell Hillhouse retired and was replaced as Permanent Secretary by Mr Russell. Mr Gordon continued as Head of the Constitution Group reporting directly to Mr Russell. Mr Gordon thereafter had managerial responsibility for the Directorate of Administrative Services, still headed by Mr Brown,<sup>14</sup> in addition to the four teams previously reporting to him.
- 2.6. Donald Dewar's private office was then headed by Mr Michael Lugton, his Principal Private Secretary, who was succeeded by Mr Kenneth Thomson on 8 September 1997.

### Drafting the White Paper – Site Selection

- 2.7 The Inquiry learned that, in anticipation of a Labour electoral success, civil servants had undertaken some rough drafting of a possible White Paper prior to the election.<sup>15</sup> On 3, 4 and 5 May 1997 Mr Gordon took part in lengthy discussions with Donald Dewar, Murray Elder and Wendy Alexander on the tactics of giving effect to the manifesto commitment to legislate quickly for a Scottish Parliament.<sup>16</sup> Thereafter officials undertook further work on draft chapters which were to be cleared with Scottish Office Ministers. Ms Low circulated a draft White Paper among civil servants on 7 May 1997, section 11.1 of which said:

'It is expected that the New Parliament House (the former Old Royal High School) and its ancillary buildings will, after purchase from the City of Edinburgh Council, house the Chamber, Committee Rooms and main offices of the Scottish Parliament. The refurbishment will need to be extensive to bring the building up to a standard appropriate for modern parliamentary use.'<sup>17</sup>

- 2.8 As more fully set out in paragraph 4.1, on 30 May 1997 Donald Dewar paid a visit to the Old Royal High School (ORHS) and expressed serious reservations about its suitability. From that time the presumption that had previously existed in favour of the ORHS site was displaced and it was accepted that a range of sites should be identified and evaluated; a situation which was

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<sup>13</sup> WS/17/001-015 - Dr John Gibbons' First Witness Statement, Para 3, 24 November 2003

<sup>14</sup> SE/2/1496 – Organisation Chart dated 1 May 1998 to 23 December 1998

<sup>15</sup> SE/1/087-092 – Minutes from Mr Paul Grice to Ms Isabelle Low, 16 April 1997

<sup>16</sup> WS/18/001-010 – Mr Robert Gordon's First Witness Statement, 4 November 2003, Para 12

<sup>17</sup> SE/1/073-075 – Minute from Ms Isabelle Low, Draft White Paper, 7 May 1997

reflected in subsequent drafts of the White Paper. As Mr Gordon put it in his first written statement to the Inquiry: ‘This was the point at which our previous assumption that the Parliament would be in ORHS was first questioned seriously’.<sup>18</sup>

- 2.9 Throughout June and July 1997 work continued on the White Paper. A new draft was produced on 4 July 1997 which included a passage as follows:

***‘A home fit for the Scottish Parliament***

**10.2** The building the Scottish Parliament occupies must be of such a quality, durability and civic importance as to reflect the Parliament’s status and operational needs; it must be secure but also accessible to all including people with special needs; it must promote modern and efficient ways of working and good environmental practice.

**10.3** It will be an important symbol for Scotland. It should pay tribute to the country’s past achievements and signal its future aspirations. It must be flexible enough to accommodate changes over time in operational requirements. Quality and value for money are also key considerations.

**10.4** The accommodation must allow Scottish Parliamentarians and their staff to work efficiently harnessing the best of modern technology. People must be able to see and meet their elected representatives and to watch the Scottish Parliament in operation. Provision needs to be made to permit easy reporting and broadcasting of Parliamentary proceedings so that people throughout Scotland can be aware of its work and decisions.

**10.5** Scotland’s Parliament will be in its capital city. Edinburgh is the natural centre of government in Scotland. The bulk of the staff who will transfer to the Scottish Executive and be answerable to the Scottish Parliament already work there.

**10.6** The Government are looking carefully at options available in Edinburgh which can best meet the criteria set out above. These will include new buildings as well as the conversion of existing ones. One of the options will be the Old Royal High School on Calton Hill. It is an existing building which has been widely regarded as the inevitable choice for the Parliament since it was prepared for this purpose in the 1970s. There are, however, serious disadvantages associated with the Old Royal High School. Public accessibility is poor - particularly for people with disabilities; there is little suitable space within the main building for people to meet their representatives; space is so limited that MSPs and their support staff would need to

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<sup>18</sup> WS/18/001–010 – Mr Robert Gordon’s First Witness Statement, 4 November 2003, Para 17

## The Holyrood Inquiry

have their offices elsewhere; and there is an inherent lack of flexibility in the accommodation.’<sup>19</sup>

2.10 This wording represented the final format for the White Paper which was published on 24 July 1997.

### Cost Estimates in the White Paper

2.11 The earliest cost estimate in relation to which evidence has been produced to the Inquiry was put before a pre-election meeting of Scottish Office officials on 11 March 1997. The minute of that meeting, which does not confirm who was present, records:

‘... there will be inevitable significant costs in capital for administration and additional running costs (the table attached contains the costings we put together in November 1995 in response to a *Scotsman* article .....on the eve of the Constitutional Convention’s proposals)...’<sup>20</sup>

2.12 An article in *The Scotsman* of 29 November 1995<sup>21</sup> had postulated costs of around £10.5 million for the acquisition and reconstruction of the Old Royal High School. The table<sup>22</sup> annexed to the note of the 11 March meeting gave figures as follows:

Capital Items	Costs	Notes
Parliament building	£12m	Purchase (£2m) and refurbishment (£10m) of Old Royal High School; listed building requires substantial expenditure to make wind and watertight and bring up to a standard appropriate for modern Parliamentary use
Offices for MSPs plus support staff	£10m	Assume that SAH used; <b>that major refurbishment is not included</b> ; but that the building is fitted out to a standard comparable to other Parliamentary buildings; that meeting and media facilities in line with Convention’s proposals are provided; and facilities for MPs at Westminster
Parliamentary staff offices	Inc in figs above	Assume most of Parliament’s staff will have to be located in SAH; some in ORHS (eg Speakers Department)
Additional offices for Scottish Office	£14m	Assume that Parliament requires all of SAH; 800 staff displaced and space required for additional staff (750 assumed in 1979 scheme); assume that new building(s) is/are leased rather than purchased outright; capital costs of fit out only.
<b>Total</b>	<b>£36m</b>	

<sup>19</sup> SE/1/049-051 – Minute from Ms Isabelle Low to PS/Secretary of State, 4 July 1997

<sup>20</sup> SE/1/138-140 – Minute of Meeting on Infrastructure Issues, 11 March 1997

<sup>21</sup> SE/1/141 – *The Scotsman* article “Adding up parliamentary bills”, 29 November 1995

<sup>22</sup> SE/1/138-140 - Minute of Meeting on Infrastructure Issues, 11 March 1997

*White Paper “Scotland’s Parliament” to the Passing of the Scotland Act 1998*

2.14 The identity of the originator of those figures was not the subject of evidence before the Inquiry and could not be clarified in correspondence with the Scottish Executive. The figures would seem likely to have come from within the former Scottish Office but there was in evidence the suggestion of an input from the City of Edinburgh Council, see paragraph 2.20 below. In the absence of clear evidence it is not for me to speculate as to their precise source.

2.15 The early drafts of the White Paper put together by civil servants in April 1997 prior to the election referred to costs in only the most general way. The draft of 16 April 1997 simply stated:

‘There will be initial capital costs in establishing the Scottish Parliament and with the refurbishment of both New Parliament House and St Andrews House accounting for a large percentage of the capital costs’.<sup>23</sup>

2.16 The first draft of the White Paper produced to the Inquiry which included actual estimated figures for capital expenditure was that dated 21 April 1997, Section 11.6 of which stated:

‘Overall the capital costs of establishing the Scottish Parliament – purchasing and refitting the New Parliament House and other buildings – are estimated to be between £24.5 and £34 million.....Detailed estimates are set out in Annex D’.<sup>24</sup>

2.17 No copy of Annex D to that draft of the White Paper had been retained and it was not available to the Inquiry. The range of figures between £24.5 and £34 million is the same as that provided in the briefing to incoming Ministers<sup>25</sup> which included a table in the following terms:

Function	Notes	Minimum cost	Maximum cost
Parliament Building	Purchase (£2-3m) from the City of Edinburgh Council and refurbishment (£8-10m) of New Parliament House: listed building assume substantial expenditure to make wind and watertight and to bring up to a standard appropriate for modern parliamentary use	£10m*	£13m*
Offices for MSPs’ support staff	Assume that SAH used; that major upgrading is not included; but building is fitted out to a standard comparable to other Parliamentary buildings; that members’ accommodation, meeting and media facilities in line with Convention’s proposals are provided and are similar to those at Westminster	£8m	£12m
Parliamentary staff offices	Assume that most will be located in SAH with some in NPH	Included in above figures	

<sup>23</sup> SE/1/085-087 – Minute from Mr Fergus Cochrane to Ms Isabelle Low, 16 April 1997

<sup>24</sup> SE/1/078-081 - Minute from Mr Fergus Cochrane to Mrs Barbara Doig, 21 April 1997

<sup>25</sup> SE/2/169-180 - Briefing from Mr Robert Gordon for Incoming Ministers, May 1997

## The Holyrood Inquiry

Offices for Executive (displaced from SAH plus additional staff)	Assumes between 250 - 500 additional staff required in Departments and a net displacement of up to 300 due to use of SAH for MSPs and support staff, more intensive use of existing buildings and min. new acquisition of leased building(s), capital costs of fit out only, temporary decant only	£6m	£8m
Offices for residual SofS staff	Assumes between 25-50 staff in separate self contained building in suitable locations	£0.5m	£1m
<b>Total</b>		<b>£24.5m</b>	<b>£34m</b>

\* Note these figures are very tentative estimates which require to be refined by more defined work.

2.18 This range of figures was confirmed, but without further information as to their source, in a minute from Mr John Graham, the Principal Finance Officer, to Donald Dewar of 13 May 1997.<sup>26</sup> In a minute of 20 May 1997<sup>27</sup> from Mr Brown to Ministers he put forward estimated overall costs of £19 to £28 million for the acquisition and refurbishment of ORHS and the fitting out of St Andrew's House and of £36.5 to £48 million to include additional works to St Andrew's House. He had not at that stage examined the costs of possible sites other than ORHS. The subsequent draft of the White Paper of 6 June 1997<sup>28</sup> referred in section 13.2 to the range of between £24.5 and £34 million as set out in Annex E,<sup>29</sup> the terms of which bear close resemblance to the table contained in the briefing to Ministers.<sup>30</sup> It is not clear why the figures given in Mr Brown's minute were not used at that time.

2.18 The draft of 13 June 1997<sup>31</sup> restated in section 10.15 the range of £25 to 34 million under reference to an Annex C in the same terms<sup>32</sup> and was the last draft to express figures in such terms. Further discussions as to the appropriate way for cost estimates to be expressed continued culminating in a minute dated 27 June 1997 from Ms Low to the Secretary of State's Private Secretary enclosing a briefing paper for Donald Dewar's use at the Devolution for Scotland, Wales and the Regions (DSWR) Cabinet Sub-Committee meeting on 1 July. In relation to costs Ms Low advised:

- 'We are currently working up our best estimates for capital and running cost expenditure. These are likely to be expressed as ranges.

<sup>26</sup> SE/1/030-032 - Minute from Mr John Graham to PS/Secretary of State, 13 May 1997

<sup>27</sup> SE/2/156-163 - Minute from Mr Alistair Brown to PS/Henry McLeish and PS/Secretary of State, 20 May 1997

<sup>28</sup> SE/1/009-011 - Minute from Ms Isabelle Low to PS/Secretary of State, 6 June 1997

<sup>29</sup> SE/1/011 - Annex E of Minute from Ms Isabelle Low to PS/Secretary of State, 6 June 1997

<sup>30</sup> SE/2/169-180 - Briefing from Mr Robert Gordon for Incoming Ministers, May 1997

<sup>31</sup> SE/1/016-19 - Minute from Ms Isabelle Low to PS/Secretary of State, 13 June 1997

<sup>32</sup> SE/1/019 - Annex C of Minute from Ms Isabelle Low to PS/Secretary of State, 13 June 1997

- We are inclined to drop Annex C to the current draft as a table of this nature might give the impression of spurious accuracy.’<sup>33</sup>

2.19 The next draft of this chapter of the White Paper to appear became available on 2 July 1997, paragraph 10.17 of which was in the following terms:

**“Costs**

It is not possible to say precisely how much the accommodation would cost until a final decision is made on where to locate and how to build or refurbish the Parliament building and on the most suitable funding option. **However the capital costs of establishing the Parliament are estimated to be between £10 million and £40 million...**”<sup>34</sup>

In a further draft circulated by Ms Low on 4 July 1997 this passage had been revised to read:

‘It is not possible to say precisely how much the accommodation would cost until a final decision is made on where to locate and how to build or refurbish the Scottish Parliament building and on the most suitable funding option. Because of the range of sites under consideration and the variety of funding methods potentially available it is necessary to express the cost as a range of between £10m and £40m.’<sup>35</sup>

This was the format which eventually found its way into section 10.7 of the final version of the White Paper which was published on 24 July 1997.<sup>36</sup> In other words, although an earlier minimum of £24.5 million had been identified, for the purpose of the White Paper the minimum cost was reduced to £10 million.

### The Origins of the £24.5 to £34 million Range

2.20 There was an absence of conclusive evidence before the Inquiry as to who had responsibility for the £24.5/£25 to £34 million range quoted in the annexes to the sequence of drafts prepared between 21 April and 13 June 1997. Mr Wyllie was asked in relation to Annex E of the draft of 6 June 1997<sup>37</sup> if he recognised the format as something for which he had responsibility.<sup>38</sup> He confirmed that he “had no involvement in the compiling of that set of figures” and that they “did not come from the Building Directorate”. He went on to suggest that they may have emanated from the City of Edinburgh Council or from The Edinburgh Development & Investment Limited (now known as The EDI Group Limited), the Council-

<sup>33</sup> SE/1/052-053 - DSWR Briefing Paper from MS Isabelle Low to PS/Secretary of State, 27 June 1997

<sup>34</sup> SE/1/087A-092- - Minute from Mr Paul Grice to Ms Isabelle Low, 2 July 1997

<sup>35</sup> SE/1/048-051 – Minute from Ms Isabelle to PS/Secretary of State, 4 July 1997

<sup>36</sup> White Paper <http://www.scotland.gov.uk/government/devolution/scpa-13.asp>

<sup>37</sup> SE/1/007-011 – Minute from Ms Isabelle Low to PS/Secretary of State, 6 June 1997

<sup>38</sup> Evidence of Mr Alastair Wyllie on 4 November 2003, Paras 98 *et seq*

owned property development company.<sup>39</sup> He thought that the costs related to St Andrew's House might have come from Accommodation Division. Support for the view that these figures might have emanated from the City Council is to be found in the written statement provided by Mr Brown prior to his evidence on 6 November 2003 in which he said:

"The source of the costings associated with the ORHS option in the submission of 20 May was the pre-election briefing prepared for incoming Ministers, which indicated that work to prepare a debating chamber and ancillary services would cost in the range of £8 million to £10 million. This estimate was prepared before I moved into the (*Directorate of Administrative Services*) post. However I believe that it would have been based on a condition survey of the ORHS buildings carried out a few years earlier on behalf of City of Edinburgh Council. Costs associated with the work on SAH would have been based on detailed assessments of the condition of SAH carried out by professional firms engaged by (*Accommodation Division*), who had in 1995 or 1996 prepared detailed, costed options for refurbishing the building and replacing building systems."<sup>40</sup>

### The Origins of the £10 million Figure

2.21 The evidence is inconclusive as to what the £10 million figure was intended to cover or as to the origins of that figure. A possible explanation for the figure is to be found in the evidence of Mr Wyllie who, when questioned about its origins, said:

"I do not know precisely; the only possible clue I have had subsequently is through reading other papers since the event. Clearly, at the time the new Administration was coming in, there was information from the City of Edinburgh Council and their consultants that it might cost around — I think £8 million to £10 million is the figure I recall..... — possibly around £10 million to refurbish the Royal High School building. So there is a figure of £10 million. Now whether it was that figure that was used or not, I do not know, but of course that was simply a minimum figure to refurbish the Royal High School. There would be additional costs on top of that for refurbishing St Andrew's House and adding whatever office accommodation was needed. That could be the £10 million, but I have no way of knowing."<sup>41</sup>

2.22 In his evidence Mr Brown suggested that the £10 million figure might have represented "whatever incidental one-off costs would have been associated with establishing a Parliament in a building which was provided by a developer and leased or rented or some such arrangement".<sup>42</sup> Mr Grice thought that the figures had been produced by colleagues from

<sup>39</sup> Evidence of Mr Alastair Wyllie on 4 November 2003, Para 108 *et seq*

<sup>40</sup> WS/15/001-013 – Mr Alistair Brown's Witness Statement, Para 2.4, 6 November 2003

<sup>41</sup> Evidence of Mr Alastair Wyllie on 4 November 2003, Para 224

<sup>42</sup> Evidence of Mr Alistair Brown on 6 November 2003, Para 256

“building/accommodation”,<sup>43</sup> which I understood to be a reference to the Building Directorate and/or the Accommodation Division. In the written statement given prior to his evidence on 4 November 2003, Mr Gordon referred to “the wide range of possible outcomes still under discussion at that stage including minimal work on ORHS/St Andrew’s House and/or private funding at the lower end of the range...”.<sup>44</sup>

- 2.23 On the evidence before me it is clear that, whatever may have been its source, the £10 million figure was intended to cover no more than a minimal refurbishment of the Old Royal High School. As such it would only have been sufficient to provide temporary accommodation for the Scottish Parliament and not a permanent home. Perhaps it could have been intended to cover the incidental costs associated with a leased building or one acquired by PFI/PPP or by some means other than conventional funding. As was confirmed by Sir Muir Russell in a letter of 24 October 2000 to David McLetchie,<sup>45</sup> the bottom end of the range of £10 to £40 million was effectively eliminated in October 1997 when it was decided to pursue options involving extensive building work. It thereafter became an irrelevance although the extent to which the Scottish public could have been expected to grasp this is unclear.

#### The Origins of the £40 million Figure

- 2.24 The evidence before the Inquiry is reasonably clear that this figure originally came from Mr Wyllie. On 10 June 1997 he minuted Mrs Doig with his costing of the option of constructing a new building on a greenfield site. Assuming a building with an area of 15,000m<sup>2</sup> gross (11,250m<sup>2</sup> net – a net to gross ratio of 25%) including 1,000m<sup>2</sup> for the Chamber, 3,000m<sup>2</sup> for Committees and Ministers and 11,000m<sup>2</sup> for the remainder, he put forward figures “in the order of £35-40 million”.<sup>46</sup> His minute made it clear that the figures included professional fees, fit out, furniture and VAT although the position in this respect contrasts with his written precognition<sup>47</sup> in which he said that his figures had “excluded site works, fit out, professional fees and VAT”. In a further minute of the same date to Dr Gibbons he elaborated on that range of figures as follows:

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<sup>43</sup> WS/22/001-005 – Mr Paul Grice’s First Witness Statement and Evidence of Mr Grice on 5 November 2003, Paras 55 and 56

<sup>44</sup> WS/18/001-010 – Mr Robert Gordon’s First Witness Statement, 4 November 2003, Para 18

<sup>45</sup> SE/1/039 – Letter from Sir Muir Russell to David McLetchie, 24 October 2000

<sup>46</sup> SE/2/1547-1548 – Minute from Mr Alastair Wyllie to Mrs Barbara Doig, 10 June 1997

<sup>47</sup> WS/23/001-012 – Mr Alastair Wyllie’s First Witness Statement, Para 12, 4 November 2003

**“Option 3 – New Building on Greenfield Site**

<b>Building Cost (inc siteworks, carpets + fees)</b>			<b>£m</b>
Chamber etc	1,000m <sup>2</sup> x £2,200av	=	2.2
Committee/Ministers	3,000m <sup>2</sup> x £2,200av	=	6.6
Office Space	<u>11,000m<sup>2</sup> x £1,500av</u>	=	<u>16.5</u>
Total	15,000m <sup>2</sup> x [£1,687av.]	=	25.3
Add VAT @ 17.5%			<u>4.5</u>
Total Shell Cost			29.8
<b>Fit Out and furnishing (inc.VAT)</b>			
As VQ allow 28% of net shell cost			<u>7.1</u>
			£36.9m

**Therefore Likely Cost (exclusive of land) in the order of £35-40m”<sup>48</sup>**

2.25 Mr Wyllie’s figures were expressed as subject to a number of caveats.<sup>49</sup> In particular he explained that the “building costs are based on unrated (Victoria Quay) shell costs for the basic accommodation and a 47% loading for the higher quality Chamber and Committee space (equivalent to recent Court building costs)”. As explained in his evidence, Mr Wyllie had proceeded by “using very broad assumptions about the likely cost required for different types of accommodation, and assuming a gross floor area that might be appropriate for a Parliament complex”.<sup>50</sup> Mr Wyllie’s purpose in putting forward these figures was as part of the exercise then in hand of evaluating the costs of the various potential sites then under consideration as described in Chapter 3.

2.26 In his written precognition Mr Brown said that in his minute to Ministers of 12 June 1997 he had advised that a new building on a greenfield site in Edinburgh would cost an estimated £35 to £40 million.<sup>51</sup> From his earlier note to Ministers of 6 June<sup>52</sup> it was clear that this estimate related to a building of about 120,000 square feet. I note that this equates to 11,148m<sup>2</sup> and is close to Mr Wyllie’s net figure of 11,250m<sup>2</sup>. He said that the £35 to £40 million figure for a 120,000 square feet building on a greenfield site at Leith was prepared at his request by Construction and Building Control Group colleagues, which I take to be a reference to Mr Wyllie. He recollected that the figure of 120,000 square feet represented the area of the Old Royal High School building (around 30,000 square feet) plus half of the net area of St Andrew’s House (approximately 90,000 square feet). This was not an attempt to make an assessment of the likely accommodation needs of a new Parliament but his intention was to show that the estimated cost of the greenfield option was broadly comparable in terms of floor space to the Old Royal High School/St Andrew’s House option, which at that stage assumed

<sup>48</sup> SE/2/1549–1551 – Minute from Mr Alastair Wyllie to Dr John Gibbons, 10 June 1997

<sup>49</sup> SE/2/1550 - Annex A of Minute from Mr Alastair Wyllie to Dr John Gibbons, 10 June 1997

<sup>50</sup> Evidence of Mr Alastair Wyllie on 4 November 2003, Para 158

<sup>51</sup> SE/2/092–100 - Minute from Mr Alistair Brown to PS/Henry McLeish and PS/Secretary of State, 12 June 1997

<sup>52</sup> SE/2/141–145a – Minute from Mr Alistair Brown to PS/Henry McLeish and PS/Secretary of State, 6 June 1997

that around half of St Andrew’s House would continue to be available for Scottish Executive use. He believed that Construction and Building Control Group had used a costing ready reckoner to derive an overall building cost from the floor area, treating the Debating Chamber as very high quality (High Court) standard, with the remainder of the space costed as office space. In his oral evidence to the Inquiry Mr Brown confirmed that he was “practically certain” that the estimate of £35 million to £40 million which “found an echo” in the White Paper, was an estimated cost drawn up by Construction and Building Control Group.<sup>53</sup>

2.27 In her evidence Wendy Alexander confirmed her understanding that the £40 million figure had emanated from the two minutes of 6 and 16 June 1997 referred to by Mr Brown.<sup>54</sup>

2.28 By contrast Mr Mark Batho, Head of one of the Scottish Office Finance Divisions, said in his evidence to the Inquiry:

“While the £40 million figure reflected an initial new build at Leith .....the figures had been rebased to a 1998 figure from a 1995 figure that had underpinned the White Paper £40 million figure.”<sup>55</sup>

His comments suggest that there might have been little in the way of fresh input apart from the rebasing of the 1995 figure referred to above, but it is unclear whether he was aware of Mr Wyllie’s input.

2.29 Mr Wyllie himself did not think that the £10 to £40 million range of figures had emanated from Building Division and was “surprised” that his figures might have found their way into the White Paper.<sup>56</sup>

2.30 The origins of the £10 to £40 million range were the subject of correspondence in 2000 between David McLetchie and Sir Muir Russell following the report of Mr Robert Black, the Auditor General for Scotland on the Project and the appearance of Sir Muir before the Audit Committee of the Scottish Parliament. In David McLetchie’s letter of 27 September 2000<sup>57</sup> he posed two questions. The first proceeded on the basis that as the Permanent Secretary of the Scottish Office he had presumably cleared the publication of the White Paper and asked if it was intended that the published estimate in paragraph 10.7 should be for construction costs only as this fact was not clearly stated. The second was as to when the £10 million estimate

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<sup>53</sup> Evidence of Mr Alistair Brown on 6 November 2003, Para 244

<sup>54</sup> Evidence of Wendy Alexander on 29 October 2003, Paras 259 to 261

<sup>55</sup> Evidence of Mr Mark Batho on 30 November 2003, Para 397

<sup>56</sup> Evidence of Mr Alastair Wyllie on 4 November 2003, Paras 222 to 225; WS/23/001-012 First Witness Statement, Para 12

<sup>57</sup> SE/1/040-041 - Letter from David McLetchie to Sir Muir Russell, 27 September 2000

was “eliminated as unrealistic by Ministers”. In his reply of 24 October 2000,<sup>58</sup> although not taking the point that his personal appointment as Permanent Secretary was not until 1 May 1998, Sir Muir clarified firstly that the £40 million was inclusive not only of construction costs but also fees, fitting out, furniture and land acquisition. In fact Mr Wyllie’s estimate of £35-£40 million was stated to be exclusive of the cost of land acquisition. Secondly, and in relation to the £10 million figure, Sir Muir made the point referred to above.

- 2.31 I have little difficulty in coming to the conclusion that, whatever may have been Mr Wyllie’s understanding as to the use to which his figures were to be put, it was the range of costs put forward by him in his minute of 10 June 1997 which informed the figure of £40 million which appeared in the White Paper.

### Was the Figure of £40 million Realistic?

- 2.32 In Mr Wyllie’s minute of 10 June 1997 to Mrs Doig he clarified that he was proceeding on a very general assumption that the hypothetical Parliament building of 15,000m<sup>2</sup> would, for general office space, have standards of shell and fit out comparable to Victoria Quay.<sup>59</sup> A “significantly higher” standard was assumed for the Debating Chamber and Committee rooms. In his minute to Dr Gibbons of the same date he had pointed out that his figures had been “very much ball park estimates”.<sup>60</sup> Mr Wyllie did not elaborate further in evidence as to the sort of building he had in mind. There was no evidence before the Inquiry to suggest that Mr Wyllie’s figures, nor the caveats to which they were subject, received any scrutiny before the decision was taken to include an upper figure of £40 million in the White Paper.
- 2.33 Although having no personal responsibility for Mr Wyllie’s figures, when it was put to Mr Brown that the £10 million to £40 million range which appeared in the White Paper were for what was described by one witness as “a bog standard new building”<sup>61</sup> he responded that the £40 million related “to a building that is a reasonably simple building in architectural terms” but which he would not describe as “bog standard”.<sup>62</sup>
- 2.34 It is instructive to compare the £40 million figure with the more detailed costings obtained by the Scottish Office from independent quantity surveyors as part of the site selection exercise later in 1997. In August and September Doig & Smith, Chartered Surveyors, were commissioned by the Scottish Office Construction and Building Control Group to produce various costings of the range of sites then under consideration. Their advice was contained in

<sup>58</sup> SE/1/039 - Letter from Sir Muir Russell to David McLetchie, 24 October 2000

<sup>59</sup> SE/2/1547-1548 - Minute from Mr Alastair Wyllie to Mrs Barbara Doig, 10 June 1997

<sup>60</sup> SE/2/1549-1551 - Minute from Mr Alastair Wyllie to Dr John Gibbons, 10 June 1997

<sup>61</sup> Evidence of Sam Galbraith on 28 October 2003, Para 193

<sup>62</sup> Evidence of Mr Alistair Brown on 6 November 2003, Paras 283 to 285

a report dated 30 September 1997.<sup>63</sup> Of those sites, Leith and Haymarket would both have involved “new builds” which might relevantly be compared with Mr Wyllie’s “new building on a greenfield site”. Doig & Smith were proceeding however on the basis of a new building of 20,000m<sup>2</sup>, including 3,600m<sup>2</sup> of car parking, as opposed to Mr Wyllie’s 15,000m<sup>2</sup> building. On 30 September 1997 Doig & Smith produced “indicative estimates” for a new build on the Leith site of £54.225 to £56.95 million and for Haymarket of £67.8 to £71.2 million. In both cases fees and VAT were included but there was no reference to site acquisition costs.

- 2.35 While I am not in a position to challenge the validity of the calculation put forward by Mr Wyllie or the assumptions upon which it was based, it is clear to me that the £40 million figure could never have been a realistic estimate for anything other than the most basic of new Parliament buildings. However, what can be stated clearly is that at the time £40 million was included in the White Paper, there was no clear understanding whether that was a total cost including professional fees or only a construction cost. It was certainly not explained to the Scottish public what the figure was anticipated to cover.

### Funding from the Scottish Block

- 2.36 One of the issues requiring to be addressed in the White Paper was as to whether the funding for any new Parliament was to be met out of the assigned budget or “Scottish Block” or whether it would be separately funded by the UK Government. The briefing presented to incoming Ministers pointed out that “The key question which the Government is going to have to decide is whether the capital costs of establishing the Scottish Parliament should be met from within existing Scottish resources or should be regarded as a new burden and funded by the provision of additional resources from the centre (i.e. Treasury)”.<sup>64</sup>
- 2.37 The question was focused in a minute of 13 May 1997<sup>65</sup> from Mr Graham who sought guidance from Donald Dewar as to whether the costs of setting up and running the new Parliament should be met from within existing Scottish resources or whether a case should be argued for United Kingdom funding. The tenor of Mr Graham’s advice was that Donald Dewar would “face an uphill struggle” in arguing for access to UK funds. He was concerned that to do so might provoke a wider review of Scottish funding arrangements. By 13 June 1997 it was being reported by Mr Batho<sup>66</sup> that the Secretary of State recognised that the prospects of getting extra money out of the Treasury were slight. No decision had been taken on the issue by 20 June 1997 when the Treasury indicated in a letter from Mr Mark Neale, Head of the Scotland,

<sup>63</sup> SE/2/1672-1685 – Fax from Doig & Smith to Mr Harry Watson, 30 September 1997

<sup>64</sup> SE/2/169-180 - Briefing from Mr Robert Gordon for Incoming Ministers, May 1997

<sup>65</sup> SE/1/030-032 – Minute from Mr John Graham to PS/Secretary of State, 13 May 1997

<sup>66</sup> SE/2/131 – Minute from Mr Mark Batho to Mr Henderson, 13 June 1997

## The Holyrood Inquiry

Wales and Northern Ireland Team, that it considered that the costs of establishing and running the new Parliament should fall on the Scottish Block.<sup>67</sup> His view was that the point should be explicitly covered in the White Paper. The point had not been conceded by Donald Dewar as at 25 June 1997 when in a minute from Mr Grice it was confirmed that the Secretary of State for Wales was bidding for extra resources.<sup>68</sup> The Treasury view was confirmed in a letter of 30 June 1997 from Alistair Darling, Chief Secretary to the Treasury, to Donald Dewar in which he said:

‘... I think it would be better to say explicitly that the setting up costs and the running costs of the Parliament will be met from the block budget.’<sup>69</sup>

- 2.38 Acceptance of the position in this respect appears to have been a matter of inevitability. When asked about the matter when giving evidence before the Inquiry, Sir Russell Hillhouse, himself a former Principal Finance Officer, said:

“He (Donald Dewar) was tempted to wonder if he should try to make an issue of it. As a former Principal Finance Officer of the Scottish Office who spent five years operating the block system, I have to say I didn’t think he had a snowball’s chance in hell of getting anywhere with it. The one thing that Treasury officials were interested in in this section of chapter 10 was whether we were going to try to make a bid for any special deal, and they were making it very clear to us that that would not be acceptable and, indeed, they would probably have liked us to say something more explicit about the way the block would work. So, after a good deal of thought, and perhaps a little bit of sounding out particularly, Donald Dewar decided that this was not one of the battles he was going to enter into. There were more important things he wanted to win than that. He didn’t, of course, know how much it would end up costing”.<sup>70</sup>

- 2.39 Discussions took place on 3 July 1997 involving Donald Dewar at which it was agreed to accept the position in this respect as confirmed in a minute from Ms Low of 4 July 1997.<sup>71</sup> The agreed redraft of section 10 of the White Paper provided for both start up and running costs to be met from the assigned budget, or the “Scottish Block”. The final position was accepted in terms of section 10.17 of the White Paper as published which confirmed that these costs would indeed be met from the assigned budget.

### PFI/PPP – Funding

- 2.40 Public Private Partnerships (“PPP”) embrace a wide range of co-operative ventures between the public and private sector which include the Private Finance Initiative (“PFI”) which was a

<sup>67</sup> SE/1/033-034(R) - Letter from Mr Mark Neale to Mr Kenneth Mackenzie, 20 June 1997

<sup>68</sup> SE/1/024-027 - Minute from Mr Paul Grice to PS/Secretary of State, 25 June 1997

<sup>69</sup> SE/1/035-038(R) – Letter from Alistair Darling to the Secretary of State, 30 June 1997

<sup>70</sup> Evidence of Sir Russell Hillhouse on 30 October 2003, Para 305

<sup>71</sup> SE/1/048-051 - Minute from Ms Isabelle Low to PS/Secretary of State, 4 July 1997

creation of the early 1990s. Under a PFI scheme, rather than procuring a capital asset directly, the public sector purchases services from private sector businesses which create and own the assets needed to provide them. Payments are then made for the services provided. The advantages of PFI include the transference of risks to the private sector but a high degree of certainty about a project is usually necessary before a private sector PFI provider is prepared to take on those risks.

- 2.41 The briefing for incoming Ministers did not make any reference to the alternative methods of funding potentially available but funding options were raised in Mr Brown’s minute to Ministers of 20 May 1997.<sup>72</sup> He raised in general terms the possibility of Millennium or lottery funding as well as PFI and pointed out in relation to the latter that it would be unlikely to deliver the Old Royal High School buildings in usable form by the dates then in mind of having a debating chamber available for the spring of 1999 and a completed building by April 2000.
- 2.42 By the time of Mr Brown’s next minute of 6 June 1997<sup>73</sup> investigations had been carried out into the possibility of Millennium or lottery funding which had revealed significant difficulties in that area. The possibility of PFI funding was further raised in a minute from Mr Batho of 13 June 1997<sup>74</sup> to his colleague Mr John Henderson of the Private Finance Unit from whom a discussion paper was requested. The Inquiry heard evidence from Wendy Alexander that Donald Dewar had on a number of occasions asked for advice on both PFI and indeed on the involvement of a private developer.<sup>75</sup>
- 2.43 On 16 June 1997 Mr David Rogers of the Private Finance Unit circulated a minute on the subject highlighting the requirement under PFI rules for a sufficiently significant transfer of risk to achieve “off balance sheet” accounting and for there to be demonstrably better value for money.<sup>76</sup> A draft paper was circulated by Mr Henderson on 20 June 1997 in terms of which he set out at length the perceived advantages and possible disadvantages of PFI.<sup>77</sup> He concluded that a well managed PFI procurement could well take 18 months from a Ministerial decision on the preferred option and procurement route to contract signature which, allowing for a construction period of a further 18 months, would leave the Parliament in temporary accommodation until 2000. Commenting on Mr Henderson’s draft in a minute of 23 June 1997, Mr Wyllie raised some concerns as to the appropriateness of a PFI approach and made the valid point that the benefit of less delay after starting in comparison with traditional

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<sup>72</sup> SE/2/156-163 - Minute from Mr Alistair Brown to PS/Henry McLeish and PS/Secretary of State, 20 May 1997

<sup>73</sup> SE/2/141-145a - Minute from Mr Alistair Brown to PS/Henry McLeish and PS/Secretary of State, 6 June 1997

<sup>74</sup> SE/2/131 – Minute from Mr Mark Batho to Mr Henderson, 13 June 1997

<sup>75</sup> Evidence of Wendy Alexander on 29 October 2003, Para 375

<sup>76</sup> SE/2/1541-1544 – Minute from Mr David Rogers to Mr Henderson, 16 June 1997

<sup>77</sup> SE/2/1521-1528 – Minute from Mr Henderson to Mr Grice, 20 June 1997

procurement did not make up for the long lead in time which he thought might have been understated by Mr Henderson.<sup>78</sup> It was the general thinking of civil servants at that time that a PFI approach would be incompatible with the very high priority attached by Ministers to the building being available very quickly.<sup>79</sup> The matter was discussed at a meeting on 27 June 1997 with Ministers.<sup>80</sup> Wendy Alexander is noted as having suggested that the range of possible figures then under consideration for insertion in the White Paper might be “very wide indeed if consideration was given to the use of a private developer”. Henry McLeish felt that it should be stated in the White Paper that this was one of the options under consideration and this was the approach eventually adopted.

2.44 Section 10.17 of the White Paper as finally published left all bets open by saying:

‘As part of the evaluation of sites for the Parliament, the Government are considering a range of funding options. The objective will be to secure suitable accommodation at a reasonable cost. The options include traditional funding, under which the capital costs would be met from public funds; using the Private Finance Initiative, under which responsibility for building the Parliament would be passed to the private sector; or some other form of joint public/private sector venture where the Scottish Parliament building itself would be publicly owned but where private sector partners would offset some of the costs of the Project’.<sup>81</sup>

2.45 The matter of potential funding methods does not seem to have received any further active consideration until 29 December 1997 when Mr Graham and other civil servants met to discuss the pros and cons of procuring the Scottish Parliament through PFI. After that meeting Mr Graham, circulated for comment a draft minute for Ministers.<sup>82</sup> The thinking of the civil servants was that there was a lack of experience of coping with PFI where design quality was critical and that an initial design competition, committing the PFI contractor to the winning entry, would be less likely to produce value for money.

2.46 After the finalisation of Mr Graham’s draft a lengthy and detailed minute went up to Ministers on 6 January 1998<sup>83</sup> in the name of Mr Gordon, who was at that time the Accounting Officer for the Project. The minute explored the key issues such as the implications for timetable, the difficulties of specifying in advance the precise services to be provided by a PFI contractor and

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<sup>78</sup> SE/2/1519-1520 - Minute from Mr Alastair Wyllie to Dr John Gibbons, 23 June 1997

<sup>79</sup> SE/5/027-034 – Minute from Mr Robert Gordon to PS/Henry McLeish and PS/Secretary of State, 6 January 1998

<sup>80</sup> SE/1/028-209 - Minute from Mr Michael Lugton to Mr Paul Grice, 27 June 1997

<sup>81</sup> White Paper <http://www.scotland.gov.uk/government/devolution/scpa-13.asp>

<sup>82</sup> SE/5/009, and SE/5/010-018 – Minute from Mr John Graham to Mr Robert Gordon and Draft Minute from Mr Robert Gordon to PS/Secretary of State and PS/Henry McLeish, 31 December 1997

<sup>83</sup> SE/5/043-050 – Minute from Mr Robert Gordon to PS/Henry McLeish and PS/Secretary of State, 6 January 1998

the possible difficulties of accommodating a design competition within a PFI procurement exercise. It also raised questions specific to the St Andrew’s House and Holyrood sites as well as political issues. The minute commented on the political or “Parliament on tick” objections and pointed out that civil servants had been unable to identify any other Parliament which has its main facilities in accommodation it did not own. After looking at funding and value for money considerations, Mr Gordon felt that he did not have any conclusive evidence as to whether PFI was likely to offer better value than conventional procurement.

2.47 In a prescient passage Mr Gordon said:

‘This project has many of the characteristics (one-off, high public interest in design, brownfield site, influential clients, time pressures) which have been associated with cost overruns on some public sector construction projects in the past. Although we would obviously put great effort into managing the Project effectively under conventional procurement and can point to a recent success in Victoria Quay, the risks under conventional procurement are real.’<sup>84</sup>

2.48 Mr Gordon’s conclusion was that it would be difficult to rule out further exploration of PFI on value for money grounds. However a key consideration, as ever with this project, was that of programme. Mr Gordon pointed out that on policy grounds Ministers might “conclude that delaying the operation of the Parliament in its permanent home by what seems likely to be a further 6 to 12 months or so is not acceptable”. He also advised:

‘Ministers could also conclude that in principle it was wrong for the Parliament building to be privately owned and operated. This may not be very logical, but it would be a robust basis for defending a decision not to explore PFI.’<sup>85</sup>

2.49 Mr Gordon invited the views of Ministers and clarified that in the event of Ministers concluding that conventional procurement was the preferred route officials would advertise the design competitions immediacy. If Ministers wanted PFI to be explored further the next step would be to draw up a formal public service comparator, including an assessment of the risks involved in conventional procurement and to explore informally the likely interest among potential bidders. At the end of this process which, it was estimated, might take two months, a final decision could be taken.

2.50 Mr Gordon’s minute was discussed at a meeting on 14 January attended by Donald Dewar, Henry McLeish and senior civil servants at which the decision was taken to opt for

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<sup>84</sup> SE/5/048 Minute from Mr Robert Gordon to PS/Henry McLeish and PS/Secretary of State, 6 January 1998, Para 21

<sup>85</sup> *ibid*, Para 26

conventional procurement. That decision is recorded in a minute from Mr Thomson of 23 January 1998 in which he said that Ministers had taken into account:

‘the fact that the PFI option would lengthen the timetable for the Parliament building. Ministers remain committed to having the Parliament building ready by the autumn of 2001 and concluded that this would not be possible under PFI;

the PFI option would mean specifying and entering into fairly long term agreements for services which, to judge from the Westminster experience, MSPs would regard as those which should be under the direct control and management of the Parliament, rather than a third party facilities manager;

the fact that PFI would be a novel procurement method for a Parliament building. Although PFI was relatively well developed as procurement methodology for other buildings, the Parliament would be (obviously) a one-off with very distinctive features in its design, use and operation. Experience suggested that PFI procurement was a learning process in which the first project so procured had to identify and solve problems which might well produce delay over and above that which could be foreseen.’<sup>86</sup>

- 2.51 The decision to adopt conventional procurement was the subject of consideration by the Auditor General in his report on the management of the Holyrood project published in September 2000.<sup>87</sup> The Auditor General made the valid point that the procurement strategy adopted at the outset should have included a more considered analysis of the different procurement options and the risks associated with each such option. While that is a view with which I strongly agree, I am unable to conclude that the decision to adopt conventional funding, rather than resorting to PFI procurement, was wrong and was the cause of the delay and cost which has plagued this Project. I cannot say with the same confidence that the later decision to follow a construction management route, a decision not put to Ministers, was without cost and delay consequences. I shall examine that in more detail later.

### Referendum and the Scotland Act

- 2.52 The Referendums (Scotland and Wales) Act 1997, the Bill for which had been introduced in May, received Royal Assent on 31 July 1997. In the ensuing referendum which took place on 11 September substantial majorities voted in favour of the setting up of a Scottish Parliament with tax varying powers. The Scotland Bill was published on 17 December 1997 and after a relatively uneventful passage through both Houses of Parliament the Scotland Act 1998

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<sup>86</sup> SE/5/025 - Minute from Mr Kenneth Thomson to Mr Robert Gordon, 23 January 1998

<sup>87</sup> Auditor General for Scotland's Report of September 2000, Paras 1.4, 3.16-3.19 (inc Exhibit 13)

received Royal Assent on 19 November 1998. The Act contained no specific provision in relation to the arrangements for the accommodation of the new Parliament. It did however, in section 21, make provision for the setting up of the Scottish Parliamentary Corporate Body (“SPCB”). The SPCB, with a membership to consist of the Presiding Officer and four MSPs to be appointed in accordance with Standing Orders, was to be charged with the provision of the property, staff and services required for the Parliament’s purposes. In terms of the Transfer of Property etc. (Scottish Parliamentary Corporate Body) Order 1999<sup>88</sup> made under the Act, provision was made for the transfer to the SPCB on 1 June 1999 of all rights and liabilities belonging to a former Minister of the Crown or government department in so far as relating to the new Parliament. This was the mechanism by which the contracts with architects, cost consultants and others entered into by the former Secretary of State in relation to the Project were legally transferred to the Scottish Parliament.

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<sup>88</sup> S.I. 1999 No 1106 - Transfer of Property etc. (Scottish Parliamentary Corporate Body) Order 1999