Influencing Family Policy in Post-Devolution Scotland:
the policy processes of the family law bill and the sexual health strategy

Evelyn Gillan
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Declaration

This thesis and the research described within have been completed solely by Evelyn Gillan.

It has not been previously submitted for a degree at this or any other university.

Where other sources are quoted, full references are given.

Signed.........................................................................................................................

Evelyn Gillan
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Abstract of Thesis

The promise of devolution was to ‘do politics differently’ by creating a more plural, consensual and participative political landscape underpinned by the Scottish Parliament’s founding principles of openness, accountability, sharing of power and equal opportunities. In this context, it might be expected that post-devolution Scotland would provide a fertile environment for fostering innovation in family policy-making. Using a case study approach to critically analyse the policy processes of both the family law reforms and the sexual health strategy, the research uses Kingdon’s multiple streams framework to explore:-

- the extent to which devolution has enabled civil society to participate in the policy process
- how political activity by civil society impacts on government policy
- whether or not devolution has fostered innovation in family policy-making.
- who is influencing the family policy agenda in post-devolution Scotland

The multiple streams framework offers a useful entry point for analysing the public policy process but Kingdon’s claim for the independence of the three streams of problems, policy and politics is problematic since these were found to be interrelated with a symbiotic relationship between the policy and politics streams. This supports work by Kendall (2000) which found a greater degree of connectedness between the policy and politics stream. The findings indicate that devolution has created a more fluid space for civil society participation in family policy-making but a paradoxical effect has been to increase the potential for interests to clash in the public sphere. And although progressive reforms were implemented in both cases, the formal policy instrument of primary legislation to implement the family law reforms facilitated engagement of a wider range of actors, enabled fuller debate of the issues and provided more checks and balances on the system than the informal policy instrument of the expert reference group used to develop the sexual health strategy. Devolution has not reduced conflict in family policy debates – the family continues to be a site of contestation and in the policy processes observed in one of the case studies, the combined forces of religion, politics and a distinctive media presence coalesced to create a ‘radioactive’ political climate. This had a direct effect on the policy process inside government which in turn, shaped the tone and content of the final policy output raising questions about the extent to which post-devolution Scotland can be regarded as providing a fertile environment for fostering innovation in family policy-making.
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Deciding to undertake a PhD inevitably impacts on those dearest and nearest and it is to them that I direct my most heartfelt thanks. Apologies are due first and foremost to my family who have had to live with distraction, mood-swings and rising stress levels for the last four years.

No change there then.

Tom especially, deserves thanks for unswerving support, particularly in the last few months. Jack, my sincere apologies you’ve had to describe your mother as a social scientist (“whatever that is”). Max the good news is the Barcelona trip is on – the bad news is now I’m finished, your studies will get my full attention.

Jacq Gillan – for, love, laughs and mutual moans and Margaret Ward – for making me glad to be in the family I am in. Lulu, Keke, Linda and Ronns – sorry I’ve been such a tedious bore these last few months. Margaret Petrie – where to start, treasured pal, critical thinker – you’re up next.
Contents

Abstract

Acknowledgements

Chapter one: introduction

Chapter two: concepts and literature

From government to governance
Public policy: stable, rational, incremental
Public policy: agenda-setting, chaotic and changing
Ideas, institutions and ideology
Ideas and ideology in family policy
Civil society in the policy process
Access, power and influence
Interest group activity in post-devolution Scotland

Chapter three: methods

Research design
Data collection
In-depth interviews
Ethics
Data analysis
Chapter four: influencing activity and the family law reforms

Background to the family law reforms
Influencing activity during the pre-legislative phase
Influencing activity during the parliamentary phase

Chapter five: the politics of the family law reforms

Policy and politics: a symbiotic relationship
Fault lines, frames and political discourse
Unstable paradigms and cross party consensus
The legacy of Section28/2A

Chapter six: the national sexual health strategy

Background to the national sexual health strategy
Policy and politics: a symbiotic relationship (again)
Policy and politics: the derailing potential
Problems and policy: finding the connection

Chapter seven: the promise of devolution

Doing politics differently: new governance structures
Doing politics differently: new policy processes
Unforeseen civil society activity
Scotland: Calvinist, catholic and sectarian
Politics and religion
Chapter eight: comparing the case studies

Policy and politics: a symbiotic relationship
Paradoxical civil society in post-devolution Scotland
Service providers or policy actors
Formal and informal policy instruments
Daily record politics
Checks and balances

Chapter nine: findings and implications

The paradox of participation
Power, influence and policy instruments
Putting the politics back into policy
Embedding ideology in family policy
Implications for theory, policy and research

Bibliography

Appendices
Chapter one: influencing family policy in post-devolution Scotland

Why does someone decide to do a PhD mid-way through a professional career that has spanned twenty-five years developing and influencing social policy? Discounting the practical difficulty of swapping a salaried position for a studentship (no small matter), mid-career is quite possibly the most intellectually productive time to embark on such an undertaking. A quarter of a century’s experience working in the inter-related policy areas of equalities, violence against women, health, parenting and family support can be called upon when considering conceptual frameworks, theoretical tools and other constructs – a much more engaging exercise for this researcher than it would have been had this research been attempted twenty-five years ago.
There are three main motivations underpinning this research which are all inter-linked and reflect the researcher’s interest in the interface between research, policy and politics. The first is a firm conviction that the public policy process is greatly enhanced when informed by a robust evidence base. The second is a long-held view that one of the most useful functions that academic enquiry can serve is to critically interrogate public policy processes, to question how policy is framed and defined, and to ask who benefits and who loses when particular policy paths are chosen in preference over other possible alternatives. The third and final motivation is a belief that the insights gained from such enquiry should not stay within the academy but should be made available to all who have an interest in the public policy process.

The family policy focus of this studentship was another incentive for undertaking this research as this had been an enduring policy area of interest over the years. Family policy has moved centre stage over the last decade, assuming a prominent position on the political agenda. When this research began in January 2004, New Labour had been in power in Westminster for seven years and a Labour/Liberal Democrat coalition government in power in Holyrood for five years. Both governments have implemented a wide range of family policy and legislative initiatives. The promise of the “new politics” in post-devolution Scotland added another important ingredient. Would the plural, participative, and consensual Scottish Parliament provide a fertile environment for innovation in family policy? When the research ended in January 2008, the political landscape had once again moved on, highlighting the fact that change is one of the few constants in political life. A new Prime Minister was ensconced in Westminster and a new SNP minority administration in government in Scotland.
Background

This research was funded by an ESRC CASE studentship supported by Scotland’s Families, a consortium of national voluntary organisations working in family support. The organisations involved in the consortium are – Relate Scotland (formerly Couple Counselling Scotland); Family Mediation Scotland; Scottish Marriage Care; One Parent Families Scotland and Stepfamily Scotland. Scotland’s Families was established in anticipation of the need for greater co-operation between the family support organisations following devolution. The organisations involved in the consortium saw the studentship as an opportunity to gain greater insights into family policy-making in the new political landscape opening up in Scotland.

The fact that this studentship was supported by the Scotland’s Families consortium provided a further incentive for this researcher given the motivations described earlier. The organisations involved in Scotland’s Families are directly affected by political decisions on family policy engaged as they are, on a daily basis, in delivering a range of services which support parents and families across Scotland. Having previously been a Co-founder and Co-director of a national charity working to prevent violence against women and children, this researcher was well aware of the considerable tensions, daily struggles, and funding crises that come with the territory of running a national voluntary organisation. That this research might provide useful insights for these organisations into family policy-making processes made it easier to take the decision to commit to the studentship.
These then were the factors that coalesced and led this researcher to temporarily trade the security of a salaried position for a PhD studentship.

**Two Stories about Sex and Marriage in Scotland**

From the outset, the promise of devolution was to ‘do politics differently’. This was envisaged through both the structures that would be put in place to govern Scotland and the way that policy would be made. The framers of devolution embedded the principles of openness, accountability, the sharing of power and equal opportunities into the workings of the Parliament and specified that the sovereignty of the Parliament resided with the people of Scotland. Some early questions that framed this research were:-

How might family policy-making develop in this potentially conducive environment?

Who would the influential voices be?

Would democratisation of policy processes lead to innovation in family policy-making?

There are two stories intertwined in this research. They occurred on the same stage, with many of the same characters appearing in both stories. The story told here is that of the family law reforms and the sexual health strategy, two of the first family policies to be identified by Ministers in the ‘new politics’ of post-devolution Scotland. Announced in 1999 and finally approved by the

The research outlines the findings of a critical case study analysis of the family law reforms and the sexual health strategy to explore the following questions:-

- How has devolution enabled participation by civil society in family policy-making?
- Who influences the family policy agenda in post-devolution Scotland?
- How does political activity by civil society impact on government policy?
- Has devolution fostered innovation in family policy-making?

Why Family Law and Sexual Health?

The decision to undertake a critical analysis of the two policy initiatives of family law and sexual health is discussed in detail in chapter 2. However, it is perhaps worth stating in this introductory chapter that the researcher’s background and contacts in both policy areas was an important consideration given that this research sought to go behind the policy reports and written records to hear key actors accounts of the processes involved in both case studies. As this would involve interviewing Ministers, MSPs, senior civil servants and key actors in civil society, access was an important
factor in selecting the family law reforms and the sexual health strategy as the two case studies for this research. The researcher’s contacts secured access to all the key actors’ involved in both case studies but it is recognised that the researcher’s ‘insider’ status whilst useful for securing access, raised other issues which will have impacted on the research process and these are discussed in chapter 2.

Limitations of the Research

The findings presented in this research tell the story of two of the first family policy initiatives to be identified by the newly elected administration of the Scottish Parliament in 1999. The story is an important one, coming as it does, at a time when the family continues to command considerable political attention; when questions pertaining to Scotland’s future governance dominate political discourse; and when the call for ‘civil society’ to be engaged in public and political life is embedded into the political lexicon. The research offers an in-depth look into the policy processes of two policy initiatives that appeared concurrently in the policy and political streams. However, the research does not make any claim other than that of telling the story of the two case studies, both of which happened at a particular point in the history of the Scottish Parliament. The research identifies who the influential voices were in the policy process; explores how Scottish civil society participated in both cases; considers what effect the participation by civil society had on the final policy and legislative outputs and poses questions about the implications of these findings for future family policy-making. The findings are presented in the hope that they will offer useful
insights for all who have an interest in family policy-making and the public policy process in post-devolution Scotland.

Overview of Chapters

Chapter 2 outlines the theoretical framework for the research and summarises the literature which is discussed in more detail, where relevant, in later chapters. Chapter 3 presents the research methodology, describing why a qualitative, two-case study critical analysis of the policy processes of the family law reforms and the sexual health strategy was chosen as the most appropriate research design for this research. The subsequent chapters present the findings of the two case studies.

The story of the family law reforms begins in chapter 4 which explores one of the primary research questions posed in this research – who is influencing the family policy agenda in post-devolution Scotland? This chapter tracks the pre-legislative, consultative phase and Stage 1 and 2 of the parliamentary phase of the legislative process. Moving from the public consultation process to the detailed scrutiny of the proposed reforms undertaken by the Parliament’s Justice Committee, this chapter identifies who the influential voices were at this early stage of the legislative process. Chapter 5 continues the analysis of the findings relating to the family law reforms addressing another primary research question – how does political activity by civil society impact on government policy? This chapter assesses the impact that civil society influencing activity had on the final legislative output and analyses Stage 3 of the legislative process where the story moves to the
chamber of the Scottish Parliament when the legislation is finally approved in 2005.

Chapter 6 presents the findings of the second case study – the national sexual health strategy, tracking the policy process, identifying the influential voices and assessing the impact of influencing activity on the final policy to explore the research questions posed in the previous two chapters.

Chapter 7 considers the findings of the previous three chapters in a devolutionary context to explore the final question posed in this research – has devolution fostered innovation in family policy-making? This chapter outlines the background to devolution, explores the extent to which the promise of devolution to ‘do politics differently’ has been realised and considers the relevance of contested concepts of civil society on the policy processes of the two case studies.

Chapter 8 compares the findings of the two case studies, assessing similarities and differences and drawing out the main analytical themes to emerge from this research.

Chapter 9 summarises the findings, offers some concluding comments and considers the implications of the findings for theory, policy and research.
Chapter two: concepts and literature

But it is not possible to ‘read’ the substance of social policies from the contents of White Papers, the manifestos of politicians, the guidance flowing from government departments, nor even the allocation of budgets across different programmes. A concern with the dynamic of the policy process itself, set in the context of contemporary theories of governance, power and the state, is essential for those seeking to analyse and understand what is going on in social policy (Newman 2002:353).

The research on which this PhD is based asks questions about who influences family policy in post-devolution Scotland; how devolution has enabled civil society to participate in family policy-making; how political activity by civil society impacts on government policy and whether or not devolution has fostered innovation in family policy-making through two case studies. The literature summarised in this chapter is – the nature of public policy processes; theories of government and governance; civil society and devolution and family policy developments. The research is primarily located in the policy-making literature although it was necessary to engage across different but cognate domains. As the research involved an iterative process between data and literature and theorising, it became easier to locate the specific aspects of the literature that were most useful as the research process developed.

Theories of governance provide an overall theoretical context for the research and lead into the policy-making literature which in turn leads into the
devolution and civil society literature. Interest group analysis offers useful insights as does an understanding of the contested nature of family policy debates and how these have been theorised. This chapter focuses on these concepts and summarises the literature which is discussed in more depth, where relevant, in later chapters.

**From Government to Governance**

This literature was explored for guidance on how to conceptualise and understand the policy process. When this research began in 2004, New Labour had been in government at Westminster for seven years and a Labour/Liberal Democrat coalition government had been in power at the Scottish Parliament for five years. The key themes of modernisation, institutional change and a new approach to governance have dominated the approach of the New Labour government at Westminster since taking office in 1997. Labour set out to modernise the policy processes seeking to address issues on a cross-cutting basis and developing new governance arrangements which sought to engage civil society in new partnerships (Newman 2002, 2004). At the same time, recent literature has seen a shift from ‘grand theories’ (pluralism, elitism, Marxism) towards theories of governance which offer a more de-centred-view of the state and analyse the policy process as a complex series of interactions across a dispersed field of power (Newman 2001, 2002).

*Government* refers to the main agent of collective power in society, while *governance* implies a network form of control, a process involving diverse actors with the state no longer occupying such a privileged position as
previously. Governance is what the state does when the boundaries between government, economy and society become blurred and when government authority is dispersed upwards and downwards and also between sectors. Governance is seen as both a political project being promoted by political actors, and a set of ideas being developed within the academic community (Daly 2003). The loss of the state’s powers is referred to as the ‘hollowing-out of the state’ (Rhodes 2000, Greenwood et al 2002, Rhodes 2003).

Bevir and Rhodes (2003) offer a decentred narrative in which there is no essentialist notion of governance but at least four conceptions each rooted in a distinctive tradition – tory, liberal, whig and socialist. Daly notes that while devolution and other developments spell a dispersal of some state authority to new settings, she questions whether this amounts to a loss of power for the state “as what one finds in practice is a great deal of central steering of decentralised networks and agencies” (2003:122). Glendining and Clarke (2002) note that much of the discussion of new governance arrangements has diverted attention away from the state.

Where the state is concerned, it is typically described as shrinking; surrendering power (to social partners); or being ‘hollowed out’ by a combination of globalising and localising tendencies (see Rhodes 1997). In contrast, we think it is worth considering how the changing processes of governance involve the remaking of state power and its extension through new means (see Clarke and Newman, 1997) (2002:45).

Newman (2001) contends that the governance narrative fails to capture the continued significance of the state through extended forms of direct control from the centre.
Much of the work on governance tends to dissolve notions of power and agency....While it is helpful to highlight the dispersal and fragmentation of power, this does not mean that it should disappear from the analysis (2001:20).

The governance literature was useful for this research in providing an overall theoretical context to academic debates which identify the power and authority of the political system breaking down under the complexity of modern life into a fragmented idea of governance. The theoretical debates can be seen alongside policy developments in the political process for example, devolution and democratisation of policy processes. However, Newman’s criticism that governance dissolves notions of power and agency is persuasive. The governance literature describes a complex decision-making landscape but offers no real explanation of why policy processes develop in the way they do or how the power relations within government and between government and different interest groups influence the policy process.

Public Policy: Stable, Rational and Incremental

The policy-making literature is particularly relevant as this research is critically appraising the policy process of the family law reforms and the sexual health strategy to explore who is influencing family policy in post-devolution Scotland and whether devolution has fostered innovation in family policy. The theoretical debate on policy process has traditionally centred on the discourse between the ‘top-down’ theorists who separate policy and implementation and those analysts who view policy as an iterative process in which policies are shaped and re-shaped in line with local pressures and circumstances (Newman 2004). The ‘top-down’ or rational-
linear model pictures the policy process as progressing through a series of key stages and posits that solutions follow-on from the analysis of policy. Rational choice involves selecting alternatives which are conducive to the achievement of an organisation’s objectives, the selection being made after a comprehensive analysis of all the alternatives (Simon 1957).

The rational model of policy-making has been widely criticised for presenting an overly-simplistic, logical and linear view of the policy process which fails to take account of the messy reality - in practice decision-making rarely proceeds in such a logical manner. Hill (2005) argues that although the concept of policy is vague and elusive, it is widely used to suggest a rational process. Hill suggests that we need to be sceptical about writing which takes for granted that a policy process is organised and has specific goals “it may be desirable that it should be like this, but whether it actually is or not must be an issue for research” (2005:10). A similar point is made by Newman (2002) who argues that much of the policy process literature can be viewed in terms of an ongoing debate with rational theory:

Policy discourse is dominated by the assumption that the policy process is rational and linear. The belief that policies are shaped and implemented in a systematic way, and that the policy process can be understood as a series of ‘stages’ from agenda-setting and initiation through to implementation and evaluation, has been a dominant feature of policy analysis despite an extensive critique of such assumptions in much of the policy literature. Indeed the literature can be viewed in terms of an ongoing debate with rational theory. An analytical separation between policy and implementation underpins the structure of most texts that follow a rational, sequential approach, with implementation receiving scant attention as the final – and least significant – stage (2002:348).

Lindblom (1968) developed an alternative model of the policy process. Incrementalism views the policy process as a series of complex interactions involving a wide range of actors’ not only traditional policy elites but also
interest groups, the media and citizens themselves. The decision-making process involves a series of small steps, perceived as disjointed and haphazard rather than a linear progression, the process has no beginning or end and no clear boundaries. Problems are defined according to the feasibility of their solution: what is both operationally and politically acceptable. Although the incremental model is more flexible than the rational-linear model, it has been criticised because groups and individuals involved in decision-making are not representative of all society, incrementalism does not recognise the inequality of power in the policy process and it cannot account for fundamental changes in policy (Etzioni 1967, Bulmer 1986).

Incrementalism derives from ‘pluralism’ political theory which defines state relations as a relatively fluid system incorporating a wide range of interest groups where power is widely distributed among different groups, no group is without power to influence decision-making and equally no group is dominant (Dahl 1958). Another framework associated with pluralism is ‘policy networks’ or ‘policy communities’. Definitions of policy networks range from tight policy communities to loosely integrated issue networks (Rhodes 2003) and policy network literature has developed alongside theories of governance (Adshede 2002). Policy communities are stronger versions of networks and Hill (2005) draws attention to Smith’s (1993) work which distinguishes networks and communities from simple pluralist clusters of organisations and identifies the reasons that the state has an interest in fostering them. Networks and communities facilitate a consultative style of government; they reduce policy conflict and make it possible to de-politicise issues; they make policy-making predictable and they relate well to the departmental organisation of government. Kooiman (2003) observes that
networks which are well-organised may have the power to resist political
governance and political will.

Wherever corporate governing actors, representing different societal domains, are able to
organise networks in which they combine resources from those domains for common
purposes, these networks will show strong self-governing tendencies (2003:83).

The concept of ‘policy networks’ is generally accepted but the framework has
come under criticism for offering a description of how policy decision
processes are organised but not any explanation of why they are organised in
that way (Hill 2005). This point is articulated by John (1998) in his
comprehensive critique of the public policy literature.

The all-encompassing nature of networks creates a problem. They are both everything and
nothing, and they occur in all aspects of policy-making. But the concept is hard to use as the
foundation for an explanation unless the investigator incorporates other factors, such as
interests, ideas and institutions which determine how networks function. The result is an
endless circle of argument whereby the network idea is extended to breaking point to try to
explain something it only describes (1998:85/6).

Rational choice/linear approaches to understanding public policy offer a
prescribed view of the policy process and have been largely discredited due
to the limitations they impose on the policy process, the actors engaged in
the process and a lack of empirical evidence that the policy process operates
in the rational manner described. Similarly, incremental approaches do not
offer particularly useful insights for this research as they are too limited in
scope and as the analysis of the case studies goes on to show, could not be
applied to the processes observed in this research. Policy network
approaches are perhaps of limited use having a primarily descriptive value.
Thus we are left with the more fluid, ideas-based and integrated organising frameworks to consider.

Public Policy: Agenda-setting, Chaotic and Changing

John (1998) notes that in the 1990’s, there was increasing criticism of the assumption of narrow self-interest which lies behind the network and rational choice approaches and that some theorists attempted to integrate approaches in a reaction against single approaches. He identifies three as particularly helpful - Sabatier’s policy advocacy coalition; Kingdon’s multiple streams approach and Baumgartner and Jones’s punctuated equilibrium model of agenda stability and change.

Sabatier and Jenkins Smith’s (1993) policy advocacy approach sees the policy process as involving an ‘advocacy coalition’ comprising actors from all parts of the policy system who share a set of policy beliefs about causation and value in public policy. They stress the importance of relationships within policy sectors as the key to understanding how decision-making works. Unlike the policy network account, participants bargain and form alliances within networks and the framework does not assume policy-making systems are consensual. The idea is that two to four competing policy advocacy coalitions compete for dominance in a sub-system – the coalition is a reflection of the ideas and interests about a set of policy issues. The coalition framework assumes ideas are stable unless they are disrupted by a major crisis. John (1998) argues that if the framework boils down to this formulation the model becomes too similar to policy-network theory and
therefore ends up as descriptive. And although an improvement on previous theorizing, John contends that the advocacy coalition framework is not as integrative as it claims as it neglects institutions and individual choices.

A more radical critique of rational and incremental frameworks for understanding the policy process can be found in the ‘garbage can model’ or ‘chaotic’ theories of policy-making (Cohen, Marsh and Olsen 1972). In contrast to rational-linear models, these posit that the policy process is essentially chaotic and often fundamentally irrational. In rational-linear models, solutions follow-on from the analysis of policy problems, in the ‘garbage can model’, problems and solutions get ‘dumped’ in a metaphorical garbage can and only link up at opportune moments. Kingdon’s policy streams approach first introduced in 1984 and then revised in 1995, derives from this approach to the policy process. Kingdon argues that both the top-down and incremental model are incomplete – events do not proceed neatly in stages, instead, independent streams flow through the system. The three streams of processes he identifies are – problems, policies and politics, which, he argues, operate largely independently of one another. He argues that the key to understanding agenda and policy change is their coupling as the three streams come together at critical times. A policy window is opened, a problem is recognised, a solution is available, and the political climate makes it the right time for change – the greatest policy change grows out of the coupling of problems, policies and politics. Kingdon replaces the ‘garbage can’ metaphor with ‘primeval soup’ in which forces coalesce and evolve to form something new, and attempts to provide a framework which helps to explain the policy process even if outcomes cannot easily be predicted.
Comprehensive, rational policy-making is portrayed as impractical for the most part, although there are occasions where it is found. Incrementalism describes parts of the process, particularly the gradual evolution of proposals or policy changes, but does not describe the more discontinuous or sudden agenda change. Instead of these approaches, we use a revised version of the Cohen-March-Olsen garbage can model of organisational change to understand agenda-setting and alternative generation. We conceive of three process streams flowing through the system – streams of problems, policies, and politics. They are largely independent of one another, and each develops according to its own dynamics and rules. But at some critical junctures the three streams are joined, and the greatest policy change grows out of that coupling of problems, policy proposals, and politics (1995:19).

In some situations where there is only partial coupling, for example when a policy proposal is attached to a pressing problem but without a receptive political climate, the opportunities to influence policy are reduced. Kingdon also highlights the role played by policy entrepreneurs. These could be politicians, civil servants or pressure group leaders who have issues they want to put on the public agenda and are waiting on a combination of public concern about an issue and political interest in doing something about it. He argues that an item’s chance of moving up the agenda ‘are enhanced by the presence of a skilful policy entrepreneur and dampened considerably if no entrepreneur takes up the cause, pushes it, and makes the critical couplings when the policy window opens’ (1995:207).

Kingdon’s work has been criticised for only having relevance in the United States but Zahariadis (1999) advocates for the relevance of Kingdon’s broad framework outside the US and suggests we examine the biases in the three streams – understand policy by examining the nature of policy communities and the systematic biases they introduce into the policy stream; the nature of party systems and the systematic biases they introduce into politicians’ incentives; and the nature of the problem forming mechanisms and the systematic biases they introduce.
John (1998) argues that it is the circumstances under which these streams combine to make policy happen that is crucial to the multiple streams approach. Kendall (2000) applies Kingdon’s framework to a study of the third sector in public policy in the late 1990s, examining the contribution of individual and collective actors in the policy, problem and political streams. Kendall reviews the literature including ‘grey’ literature generated from the third sector, policy statements including think tank literature and interviews key actors in the field. Kendall contends that the increased attention that the third sector has received from policy-makers, the most tangible expression of which is the development of a Compact between the government and the third sector, represents the mainstreaming of the third sector onto the public policy agenda. Kendall traces political developments following the election of the New Labour government keen to view the third sector as an integral part of civil society; policy developments and the availability of a critical mass of sectoral indicators but in doing so:

We have uncovered an apparently greater degree of connectedness between the policy and politics streams than suggested in Kingdon’s framework. That these streams were intimately intertwined is underscored by the way in which those policy reviews which are now achieving follow-through in the Compact were conducted in tandem, under the leadership of Deakin and Michael, in a conscious spirit of ‘convergence’ (2000:555).

Kendall’s study is discussed in more detail in chapter 6. Kingdon contends that the policy process environment is forever changing, agendas shift depending on what issues come to the fore, either through the media or the changing needs of politicians. The emphasis on continual change and adaptation against more traditional accounts of policy-making which emphasise the stability of policy-making in elite communities, is combined for Baumgartner and Jones (1993) who identify the presence of both change
and stability in policy-making. They argue that in a policy sector there are long periods of stability followed by periods of public interest, media scrutiny and public action and their interest is in the rapidity of the change between periods of partial equilibrium and of issue expansion – stable periods of policy-making are ‘punctuated’ by policy activism.

John (1998) notes that rather than being a refinement of incrementalism, the punctuated equilibrium model is about the shifts in the rate of policy change and why they occur at particular points of time - how agendas and policies move from periods of being highly stable to times of change and rapid fluidity. Ideas become prominent and institutionalised in a policy system and institutions and powerful elites ensure that a particular policy can remain in place supported by favourable reports in the media and supportive public opinion. In this case, policy changes only incrementally.

But agendas can shift rapidly creating a bandwagon effect between policy entrepreneurs, the media and public opinion which feed off each other and once an idea gets attention, it will expand rapidly. This process can come about when external events punctuate the equilibrium. Either political systems respond to the disturbance, and they respond with a different set of policy instruments, or there is a position change when a new party enters power. It’s not clear at what point these external processes impact on decision-making and like many of the other frameworks in the policy process literature, the model has been criticised for being primarily descriptive. Indeed, Hill (2005) contends that this is a problem with much of the policy process literature that much theory describes rather than explains.
As the subsequent analysis of the case studies shows, advocacy coalition approaches were a useful descriptive tool in helping to understand elements of the policy processes observed in this research – primarily the coalition of some faith groups around particular aspects of the family law reforms. Although like many of the other frameworks, was primarily descriptive and less useful as an explanatory tool.

Kingdon’s multiple streams framework proved more useful as it is one of the few models which takes seriously the agenda-setting phase of the policy process which was particularly helpful as this research explored who influences family policy-making in post-devolution Scotland. Kingdon’s framework is discussed in more detail in later chapters.

**Ideas, Institutions and Ideology**

Institutional approaches contend that institutions are the arena in which policy-making takes place. John (1998) critiques older institutional studies before documenting the rise of new institutionalism although Hill (2005) does not consider that such a clear distinction can be made between older and more recent work. Beland (2005) notes that historical institutionalism has emerged as one of the most influential theoretical perspectives in the field of social policy research with the contributions of Pierson (1994) and Skocpol (1992) frequently debated. In institutional approaches, political activities are conditioned by institutional configurations of governments and political party systems.
While recognising the relative autonomy of political actors from social and economic forces, institutionalist scholars analyse how institutions have an impact on political behaviour and strategies and have formatted the concept of policy feedback and path dependency (Pierson 1996, 2000, Mahoney 2000 cited in Beland 2005). John (1998) argues that it is easy to overestimate the role of institution and that institutional approaches fail because they are “a process not fine-grained enough to explain the variation in the politics between the sectors, over time and in space. In truth, there is no institutional approach, institutions are just one factor constraining public policy choices” (1998:65). Beland (2005) asserts that historical institutionalists tend to downplay the influence of ideas in policy-making but that social learning is one of the theoretical tools associated with historical institutionalism that favours the most direct reference to the role of ideas in policy-making. Hall (1993) contends that those theorists of the state who use the concept of social learning presented by Heclo (1974) emphasise the role of ideas in policymaking but “have yet to develop an overarching image of the way in which ideas fit into the policy process or a clear conception of how those ideas might change” (1993:276). Hall attempts to specify more fully the role that ideas play in policymaking by considering a series of different kinds of policy change and posing questions about the relationship between ideas and policymaking and how the ideas behind policy change course.

The cases he examines are all drawn from a specific empirical setting – macroeconomic policymaking in Britain between 1970 and 1989. Hall proposes that policy change occurs at three different levels which he refers to as first order, second order and third order. First and second order policy change - mechanisms (the nature of the policy instruments) and settings (the details of implementation for a particular policy instrument) adjusts policy
without challenging the overall terms of a given policy paradigm. (Paradigm in this case refers to the framework of ideas and standards that specify policy goals, instruments used to attain goals and the very nature of the problems they are meant to be addressing).

Third change, by contrast, is marked by the radical changes in the overarching terms of the policy discourse associated with a paradigm shift at the level of ideas (goals of policy). A more recent use of Hall’s framework is applied by Lewis and Campbell (2007) in their analysis of the Work/Family Balance (WFB) Policies of the New Labour government. The authors conclude that the incremental development of a range of policies over two terms of the Labour government has resulted in a policy package that amounts to a significant change in the sum of its parts. WLB policies show the extent to which it is possible to achieve a substantial policy change at the levels of policy goals and the whole policy package, by means of incremental change in instruments and settings.

Hall has been criticised for drawing an analogy between scientific and policy paradigms as ideological conflicts shape the social learning process itself (King and Hansen 1999) and for not taking into account how policy ideas are framed to appeal to the public (Campbell 1998). Beland (2005) proposes a more comprehensive theoretical perspective concerning the relationship between ideas, institutions and policy-making which takes Kingdon’s agenda-setting theory as a starting point. Beland argues that policy alternatives are rooted in specific policy paradigms, and that political actors frame these alternatives in order to sell them to the public while constructing the need for reform.
The political arena is a structured area of conflict in which ideological frames form “weapons of mass persuasion” related to existing social and institutional forces. In such a constraining environment, political actors must master the institutional “rules of the game” while manipulating the symbols available in existing ideological repertoires. Their behaviour reflects ideational and institutional structures that create political obstacles as well as opportunities for reform (2005:12).

Campbell (2002) notes that Hall (1993) assumes that either ideas or interests affect public policy, but not both whereas recent theorists now contend that the ideas that actors hold affect how they define their interests in the first place and that if we are concerned with understanding how ideas themselves affect policy-making, a more fruitful approach might be to focus on the nature of political discourse. Stone (1997) is a theorist who foregrounds the role of ideology and politics in the policy process taking issue with the model of policy-making in the ‘rationality project’ which fails to capture what Stone sees as the essence of policy-making in political communities – the struggle over ideas. The rational idea presupposes the existence of neutral facts.

....neutral in the sense that they only describe the world, but do not serve anyone’s interests, promote any value judgements, or exert persuasive force beyond the weight of their correctness. Yet facts do not exist independently of interpretive lenses, and they come clothed in words and numbers. Even the simple act of naming an object places it in a class and suggests that it is like some things and unlike others. Naming, like counting and rule-making is classification, and thus a political act (1997:309).

Stone states that no-one comes to the policy table value-free and that the enterprise of extricating policy from politics assumes that analysis and politics, can be, and are in some essential way, separate and distinct activities. She contends that political science hasn’t found a very convincing or satisfying explanation of how policy is made.
The fields of political science, public administration, law and policy analysis have a common mission of rescuing public policy from the irrationalities and indignities of politics, hoping to make policy instead with rational, analytical and scientific methods. I call this the ‘rationality project’ and it has been at the core of American political culture since the beginning (1997:9).

Stone’s central point is that whether portrayed as analysis or politics, the process of policy-making is political, representing a ‘struggle over ideas’. To summarise, rational choice/linear approaches offer a prescribed view of the policy process and have been largely discredited due to the limitations they impose on both the policy process, the actors engaged in the process and the lack of empirical support. Similarly, policy network approaches offer little in the way of an explanatory framework being largely descriptive. Of the three approaches identified by John (1998) as being helpful, as the analysis goes on to show, Kingdon’s multiple streams approach was useful as it is one of the few models that takes seriously the agenda-setting phase of the policy process and it is also one of the more fully articulated and internally coherent frameworks and has been applied empirically.

Stone’s (1997) contention that the policy process represented a ‘struggle over ideas’ Hall’s (1993) policy paradigm framework offer insights into the relationship between ideas and policy at different stages of the policy process. Conceptualising how political actors ‘frame’ policy issues in public policy similarly offers useful insights. These are discussed in more detail in later chapters. Newman’s observation (2002) in the quote at the start of this chapter that we need to go beyond the content of social policies to embrace the study of the processes through which policies are made and enacted is particularly illuminating and offered a useful entry point into the case studies explored in this research.
Much of the policy-making literature contains primarily descriptive frameworks which show how policy and political systems are organised. It is useful (up to a point) to understand the role of institution, to know that there are multiple actors and interests engaged in the policy process and that sometimes groups form coalitions to advance their interests but this does not necessarily explain why a policy process develops in the way that it does. Kingdon’s (1995) framework helps us to make sense of why issues come on the agenda, but for reasons that will become clear through the ensuing analysis, does not necessarily explain why they then fall off the agenda. Stone’s (1997) insistence that the policy process essentially boils down to a ‘struggle over ideas’ appears to be particularly applicable to family policy and it is to the role of ideas and ideology in family policy debates that we now turn.

The Role of Ideas and Ideology in Family Policy

Ideology is a significant feature in family policy debates as the ‘family’ is often the subject of fierce political debate and continues to be a multi-vocal site of contestation (Zimmerman 2001). The lack of a consensual model of family life upon which government can agree makes policy formulation inherently difficult and controversial. Family policies may be neutral towards different family or household forms, or seek explicitly to favour one family form over another (Wasoff and Dey 2000, Zimmerman 2001). In a comparative study of family policy across Europe, Hantrais (2004) notes that in countries where changing family trends and dissolution have been recognised, the issues being addressed were whether or not to legislate to
extend the rights and duties enjoyed by married couples to alternative family relationships including formalising contracts between same sex relationships. Hantrais argues that the frameworks established in legal provisions regarding marriage, family formation, parenting and unmarried cohabitation, tax and benefits systems and social services, directly or indirectly set the parameters for family life.

Family life and family structures have changed significantly over the last fifty years and family change in Scotland mirrors the changes happening in the rest of the UK and Europe with a growth in divorce, cohabitation and remarriage, delayed parenting, lone parenthood and living alone (Wasoff and Morrison 2005). These trends are likely to continue and the consensus is that by 2020 it will be very difficult to talk about a ‘typical family’ (Hantrais 2004, Williams 2004). Although the way in which we partner, create, and re-create families has changed, the evidence from successive British Social Attitude Surveys indicates that families are valued and will continue to be so. People will have different experiences over their lifetimes of marriage, cohabitation, and single parenthood but in many of these relationships, they are negotiating complex and deeply-held commitments. (Williams 2004).

Since coming to power in 1997, the New Labour government has implemented a range of family policy initiatives. Governments in both Westminster and Edinburgh have sought to respond to the significant demographic changes introducing a range of policy and legislative initiatives. Westminster family policy initiatives include Supporting Families (1998); Moving Forward Together (2002); Every Child Matters (2004); National Childcare Strategy (2007); Working Families Tax Credit; New Deal for Lone Parents; Sure Start; the Children’s Act 2004, Civil Partnership Act 2004; Children and Adoption Act 2006 and the Children’s Plan (2007). In Scotland, policy

In their policy and legislative programme thus far, the governments of both Westminster and Edinburgh have managed to promote marriage and two-parent households but also accepted non-traditional households (Wasoff and Hill 2002, Newman 2004). Smart (2005) argues that although the idea of a normative family being based on long term marriage is undoubtedly part of the British post-war imaginary, it cannot be dismissed as ‘mere’ imagination because this is how this particular generation, in the main, framed their lives. In a study which explores how divorce affects relationships across families and how people’s values may be changing in relation to family life, Smart explores how different generations manage the incongruence between families we live by (idealised and imagined families) and families we live with (actual families we live with) drawing on the work of John Gillis (1996, 2004).

The big question for policy-makers must be whether to frame policies to meet the demands of families we live with or whether to attend to the needs of the families we live by. It is perhaps fair to say that the Blair government strives to do both, although I do not suggest this is a conscious policy. In attempting (unwittingly) to do both, the policies the government has adopted have been criticised as being contradictory and lacking in overall clarity of purpose (Fox Harding 2000, Henricson 2003). This may be a misplaced criticism if we begin to recognise how complex and contradictory families are themselves. It may be that we should learn to tolerate complex and even contradictory policies (Ballock 1999; Lewis 2001) (Smart 2005:542/543).

Smart’s point is that whilst the New Labour government may be criticised for being contradictory in their support for both traditional and non-traditional families, families themselves may hold contradictory views, aspiring to an ideal concept of the families we live by, whilst at the same time living with a
less than ideal version. Smart quotes Lewis (2001) who argues that even where people hold on to certain values themselves, in matters of family life they are likely to be very reluctant to think it appropriate to force those on others or on the younger generation. Smart contends that while there may be a yearning for a golden age of family life, it could be entirely mistaken to assume that many people actually want the clock turned back.

Policies need to be aware of the many layers of meaning around ‘proper’ family relationships, and may also need to attend to the imagined as much as the actual. It is equally important to be aware of the way in which values change as contexts change. This means that even the views of the older generation should not be assumed to be static and unchanging. Voicing support for the supremacy of heterosexual marriage, while providing support for post-divorce families, offering tangible protection to cohabiters or initiating civil partnership legislation for same sex couples, may be exactly the kind of contradictions with which families are well adjusted to living (2005: 554).

The role of ideology in family policy debates was highlighted in a comparative study which investigated the recent history of policy-making on sex education in England and Holland (Lewis and Knijn 2002). This study was of particular relevance to this research given that one of the case studies explored is the policy process of Scotland’s first national sexual health strategy. As the politics surrounding sex education touch on the wider issues of family change and changes in sexual behaviour, the authors’ aim was to investigate the politics of sex education in the two countries to explore the nature of the debate. Focusing on parliamentary politics in both countries and also the role played by pressure groups and voluntary organisations, Lewis and Knijn state that they “follow those who argue that the struggle over ideas (and how it is managed) is central to policy-making (Hall, 1993; Stone, 1997; Kingdon, 1995; King, 1999)” (2002:671).
Researchers based in England and the Netherlands used documentary sources and interviews to investigate policy-making on sex education at the level of central government during the 1980s and 1990s. In respect of implementation, the authors compared a selection of key texts used in secondary schools with children aged 14-15, conducted observation in classrooms and interviewed teachers in four schools in England and three schools in Holland.

The study is discussed further in chapters 6 and 7 but to summarise, Lewis and Knijn (2002) found that the approach to sex education is in a large part determined by the struggle over ideas with regards to the wider issues of change in the family and sexuality. They note that while the debate has been fierce in the UK, it has been largely absent in the Netherlands. The concerns expressed in the UK reflect a number of deeper and wider anxieties – family breakdown, marriage, homosexuality, teenage sex and sexuality. And whilst the debate in the UK shows how difficult it is for policy-makers to come to terms with the huge changes that have taken place in respect of these key underlying issues, the Dutch show a much more pragmatic acceptance of change and a willingness to address the issues arising from it. The authors conclude that the struggle over ideas proved to be the decisive factor in the development of sex education policy in the UK.

The desire to send out a strong signal about what kind of behaviour is appropriate has been a feature of other debates in the vexed area of marriage and the family, which in the UK is seen as much, or more, as a moral issue than as a social issue....this approach to legislation necessarily entails an idea as to what kind of behaviour and what kind of values should be promoted, and assumes there is an already existing consensus on underlying moral values. In the Netherlands, it is assumed rather that cultural segmentation exists and should be respected by government, which then has the task of building consensus (2002:674).
Different ways of interpreting the change in family structures and the rise of fluid family practices in contemporary society have led to significant debate in recent literature. Some argue that family ties are no longer what they were with the trend in personal, family and intimate relationships towards individualisation (Giddens 1992, Beck-Gernsheim 2002). Individualisation shapes family experiences as people choose only those ‘pure’ relationships that promise them emotional integrity (Giddens 1992). Jamieson (1998) contends that rather than focus on whether the family is more special or whether it has been eclipsed by friendship, a much better way forward is to focus on the ‘practices of intimacy’.

Bauman (2003) counters that we are all ‘liquid moderns’ now. We prize fluid relationships and disposable goods - ties, bindings and bonds make us nervous as the liquid modern has neither need nor use for them. The notion of ‘family practices’ rather than an institutional approach to the family appears to be embedded in academic enquiry although ‘individualisation’ theories have come under increasing criticism. Smart (2007) views Bauman’s ‘liquid modern’ construct as particularly pessimistic and running counter to most empirical sociological studies of family and kinship in Britain. She sees Bauman, Beck and Beck-Gernsheim as ‘capturing a cultural Zeitgeist in which increasing despair about families is on the verge of becoming conventional wisdom’.

To summarise, the literature exploring the role of ideas in policy and the policy process as a ‘struggle over ideas’ complemented the family policy literature which foregrounds contested notions of the family and how these influence family policy debates. The study by Lewis and Knijn was of particular relevance to this research and is discussed in more detail in later chapters.
Civil Society in the Policy Process

This research is exploring how devolution has enabled the participation by civil society in family policy-making in post-devolution Scotland. The concept of civil society boasts a rich and diverse literature (Baker 2002; Ehrenberg 1999; Ferguson 1966; Etzioni 1995, 1996; Keane 1998; Putnam 2001; Putnam et al 1993) from discussions about the relationship between the state, the market and civil society (Green 1993, 2000; Deakin 2001; Walzer 1995; Schedter 2000) to Gramsci’s (1971) concept of civil society as a site of ideological struggle. Finding suitable definitions for complex concepts can be problematic but the definition of civil society used by the Centre for Civil Society at the London School of Economics offers a useful entry point into the debate:-

Civil society refers to the arena of uncoerced collective action around shared interests, purposes and values. In theory, its institutional forms are distinct from those of the state, family and market, though in practice, the boundaries between state, civil society, family and market are often complex, blurred and negotiated. Civil society commonly embraces a diversity of spaces, actors and institutional forms, varying in their degree of formality, autonomy and power. Civil societies are often populated by organisations such as registered charities, developmental non-governmental organisations, community groups, women’s organisations, professional associations, trade unions, self-help groups, social movements, business associations, coalitions and advocacy groups (Centre for Civil Society, LSE, March 2004).

An immediate issue to emerge from the literature is the extent to which the concept of civil society is contested in both historical and contemporary debates. Carothers (1999/2000) notes that the concept of ‘civil society’ can be traced through the works of Cicero and other Romans to the ancient Greek
philosophers, although in classical usage civil society was equated with the state. The author notes that the modern idea of civil society emerged in the Scottish and Continental enlightenment of the late eighteenth century with theorists from Paine to Hegel developing the notion of civil society as a domain parallel to but separate from the state. Carothers contends that the term fell into disuse in the mid-19th century and came back into fashion through the writings of Antonio Gramsci with people invoking his writing in opposition to dictatorships of all political stripes albeit Gramsci’s concern was with dictatorships of the right. In the 1990s, civil society ‘became a mantra for everyone from presidents to political scientists’:

The global trend towards democracy opened up space for civil society in formerly dictatorial countries around the world. In the United States and Western Europe, public fatigue with tired party systems sparked interest in civil society as a means of social renewal. Especially in the developing world, privatization and other market reforms offered civil society the chance to step in as governments contracted their reach. And the information revolution provided new tools for forging connections and empowering citizens. Civil society became a key element of the post-cold-war zeitgeist (Carothers 1999/2000).

Hall and Trentmann (2005) in a reader which traces historical and contemporary arguments about the nature of civil society, note that although there has been a great revival of interest in the concept of civil society over the last two decades, civil society is very distinctly not the same, conceptually or in terms of reality, as democracy. The authors note that civil society in the late nineteenth and early twentieth century was not particularly well-equipped to handle the demands or questions derived from popular politics.

Accordingly, civil society did not lose its central position in social theory for no reason; indeed, on the contrary, one can argue that many thinkers in the tradition of civil society assembled here did not concern themselves centrally with democratic politics. All in all, it
might not be wise to overburden the concept of civil society with contemporary projects or democratic renewal. This is not, however, to say that the concept has nothing to offer democratic theorists (2005:21).

Pietrzyk (2003) argues for the continued usefulness of the historic term ‘civil society’ stating that what makes civil society ‘civil’ is the fact that it is ‘a sphere within which citizens may freely organise themselves into groups and associations at various levels in order to make the formal bodies of state authority adopt policies consonant with their perceived interests’ (2003:39). Hall and Trentmann assert that global debates about civil society are not simply a new episode but they continue to engage with many of the problems and debates European societies had as well.

It is unwise to view the concept of civil society through some sort of Whiggish or evolutionary narrative of democratic perfection that advances with time. Most civil society ideas were developed as arguments about political society, and as such involved the state, be it as a secular governing authority or as a Christian state with a religious establishment. Civil society could be utilised by thinkers and social movements to reinforce ideas of nation state and imperial mission just as much as an emancipatory idea checking abuse of power. Either way, the idea of civil society developed in tandem with, not in isolation from, political society broadly defined (2005:21).

In a mapping exercise of civil society activity in five jurisdictions (Scotland, England, Wales, Northern Ireland and the Republic of Ireland) undertaken for the Carnegie Trust and based on an analysis of secondary sources as well as a number of contributions on specific topics provided by experts in the field, Daly and Howell (2006) identify some key theoretical approaches which seek to explain the concept of civil society. White (1994 cited in Daly and Howell) distinguishes between different conceptual approaches to civil society – a sociological definition which focuses on civil society as a set of organisations; a political definition which is concerned with the relationship
between civil society and the state, citizenship and so on; and an ethical definition which focuses on the moral/ethical dimensions of civil society.

Howard and Pearce (2002 cited in Daly and Howell) make the distinction between empirical and normative definitions of civil society which differentiate between an ideal vision of how civil society should be and how civil society actually is. The key point made by Daly and Howell in their summary of the literature is that there is no single normative vision of civil society but, rather a number of competing interpretations. The authors highlight Edwards (2004 cited in Daly and Howell) work which distinguishes between three main schools of thought on civil society:

- Civil society as the *good society* reflecting visions of what society should *ideally* be like.
- Civil society as *associational* life fostering a culture of civic engagement
- Civil society as the *public sphere* offering a space for discussion and debate.

Hodgson (2004) notes that discussions with contemporary civil society increasingly define it in normative terms as a set of institutions that perform the functions of inculcating morals and values that facilitate social cohesion (Etzioni 1995, 1996) or that enable individuals to act as ‘good’ or ‘active’ citizens aware of their civic duties. Others argue that voluntary activity within civil society is necessary for a healthy democratic society with Putnam (2001) concluding that the way to re-engage citizens is through the building of social capital. Another influential framework of civil society has been developed by Cohen and Arato (1999). In this framework, civil society is defined as a sphere of social interaction including the intimate sphere, forms of public communication and the associational sphere, including voluntary
organisations and social movements. It is characterised by conscious association, self-organisation and organised communication. Civil society is differentiated from the state and the economy, and from political and economic society.

Daly and Howell (2006) point to the restructuring of welfare states, the growth of new social movements and the emergence of grass roots activity in contrast to the more formal organisations like trade unions to illustrate that the boundaries between state and civil society are open to diverse interpretation and are also subject to change. The authors emphasise Deakin’s (2001) contention that civil society should be seen as a *dynamic* rather than static concept and pose some pertinent questions which challenge the ‘tripartite distinction between state, market and civil society’:-

- Where to position what have been regarded as part of the family sphere, such as the family and households
- Churches and other religious institutions present a particular problem since they are often as powerful as, but separate from, the state
- How to deal with those organisations on the borderline between market and civil society such as profit making, yet community orientated co-operatives and credit unions
- The ambiguous position of trade unions, what form will the organisation of employee representation take.

Daly and Howell (2006) make reference to the rise of non-institutional forms of civil society, for example animal welfare, anti-capitalism and farming and the countryside. For some observers, these trends represent the ‘reclaiming’ of civil society in contrast with concerns within the voluntary and
community sector that their independence is compromised due to the links many organisations have formed with government. Daly and Howell question the extent to which protest does aspire to these grand objectives given the single-issue focus of most campaigns and protests. Importantly, for the findings presented in this thesis, the authors underline the potential for interests to clash in the public sphere to the exclusion rather than inclusion of some groups representing the ‘shadowy’ side of civil society. Carothers (1999-2000) challenges prevalent ‘warm and fuzzy’ notions of civil society which suggest that civil society inherently represents the public good. Rather, he argues, that it is important to acknowledge that the public interest is a highly contested domain.

Clean air is a public good but so are low energy costs. The same could be said of free trade versus job security at home or free speech versus libel protection. Single issue NGOs such as the National Rifle Association and some environmental groups, are intensely, even myopically focused on their own agendas; they are not interested in balancing different visions of the public good. Struggles over the public interest are not between civil society on the one hand and the bad guys on the other but within civil society itself. Moreover, civil society is very much concerned with private economic interests. Nonprofit groups, from tenants’ organisations to labour unions, work zealously to advance the immediate economic interests of their members. Some civil society groups may stand for “higher” - that is, non-material principles and values, but much of civil society is preoccupied with the pursuit of private and frequently parochial and grubby ends (Carothers 1999-2000).

Seckinelgin (2006) similarly highlights the potential for civil society interests to clash in the public sphere citing the debate in Turkey on the wearing of Muslim headscarves. The author links the history of the mobilisation for democratic politics in Turkey with the development of a certain ideologically orientated civil society leading to a shared socio-cultural value system between the state and civil society in relation to the broader national identity. In such cases, the civil society ‘space’ is in practice very limited and the
general perception of civil society as a privileged space for social negotiation is problematised.

By questioning the limits of these assumptions about civil society, I argue that people do not participate publicly on the basis of consensus over values in the form of socio-cultural reflex, the assumed role of civil society becomes merely a rhetorical device (Seckinelgin 2004). The often assumed distinction between state and civil society needs to be closely examined by looking at intra-civil society contestation within certain power relations (2006:750).

The idea that civil society is dynamic rather than static and the critique in the literature which questions assumptions about the ‘inherent goodness’ implied in the concept of ‘civil society’ offers useful corrective to what Carrothers (1999/2000) describes as ‘warm and fuzzy’ notions about civil society. As chapters 4, 5, 6, 7, of this thesis go on to show, the ‘public interest’ was indeed a contested domain with competing ideologies visible in the civil society activity of different interest groups during the policy process of both the family law reforms and the sexual health strategy.

**Access, Power and Influence**

A number of interest groups came to the fore during the policy process of both the family law reforms and the sexual health strategy. Tracking the influencing activity of different interest groups as this research does, key themes which emerge as significant are access, power and influence. Pluralism political theory defines state relations as a relatively fluid system incorporating a wide range of interest groups where power is widely distributed among different groups, no group is without power to influence
decision-making and equally no group is dominant (Dahl 1958). Bacharach and Baratz (1962) contend that there are two faces of power, one operating at the level envisaged by Dahl – overt conflict over key issues; the other operating through a process of ‘non decision-making’ to suppress conflicts and prevent them from entering the political process:

They [pluralist theorists] have overlooked the equally, if not more important area of what be called “non-decision making,” i.e., the practice of limiting the scope of actual decision-making to “safe” issues by manipulating the dominant community values, myths, and political institutions and procedures. To pass this over is to neglect one whole “face” of power (1963:632).

Lukes (1974) goes further identifying three layers of power – power within political debate; power to set agendas; and power to keep things of the agenda:

...is it not the supreme and most insidious exercise of power to prevent people, to whatever degree, from having grievances by shaping their perceptions, cognitions and preferences in such a way that they accept their role in the existing order of things, either because they can see or imagine no alternative to it, or because they value it as divinely ordained and beneficial? To assume that the absence of grievance equals genuine consensus is simply to rule out the possibility of false or manipulated consensus by definitional fiat (1974:24).

Understanding the different layers of power provide an important theoretical context for analysing interest group activity in the public policy process. Wyn Grant, the leading British scholar on interest groups provides the following definition of a pressure group.

An organisation which seeks as one of its functions to influence the formulation and implementation of public policy, public policy representing a set of authoritative decisions taken by the executive, the legislature, and the judiciary, and by local government and the European Community (Wyn Grant 1989:9).
One of the most enduring concepts in interest group theory is the categorisation of interest groups as either ‘insiders’ or ‘outsiders’. Schattschneider (1935) made a distinction between insider groups who enjoyed privileged access to decision-makers and outsider groups who did not. Grant’s (1978) insider/outsider distinction was based on interest group strategies by which he meant the combination of modes of action used by an interest group to attain its goals.

It must be emphasised that the acquisition of insider or outsider status by a group involves both a decision by the government and a decision by the group concerned. The basic aim of such insider groups is to establish a consultative relationship whereby their views on particular legislative proposals will be sought prior to the crystallisation of the Government’s position (Grant 1978:2).

So whilst insider groups are seen to be those who have gained the ear of government, are recognised as legitimate political actors in the policy process and are able to play a role in policymaking, outsider groups are seen to be those that are excluded from government because of their unorthodox views or tactics. Insider groups seek inclusion in government decision-making whilst outsider groups tend towards unconventional political action although many outsider groups would become insider groups if it improved their chances of influencing government. Grant identified sub-divisions within each category.

Insiders

1. Prisoner Groups (dependent on government assistance/in the public sector).
2. Low Profile (emphasis on ‘behind the scenes’ activities).
3. High Profile (persuade government through appeals to public opinion).

Outsiders

1. Potential Insiders (desire insider status).
2. Outsiders by Necessity (lack understanding of the political system).
3. Ideological Outsiders (oppose the existing political order).

A third concept of ‘thresholders’ was introduced by May and Nugent (1982). Thresholders vacillate between insider and outsider strategies. Reviewing the literature, Craig et al (2004) initially concluded that the distinction between insiders and outsiders might be helpful. However, following the results of their own study which focused on the role the voluntary sector in the policy process, they concluded that a simple distinction between insider and outsider strategies did not reflect the reality of the policy environment nor the strategic choices made by voluntary sector organisations. The authors undertook a two year study which sought to analyse the different strategies adopted by voluntary and community organisations and their impact on both the policy process and on the individuals and organisations involved. The study comprised three phases: scoping; one national and four locality studies; and three case studies on policy issues covering the environment, older people and regeneration. They conclude that voluntary organisations benefit most from adopting both insider and outsider strategies at different times.

It is important for organisations to be able to understand the political environment and anticipate the opportunities it presents with some sophistication, to choose strategies
according to circumstance and to operate on a principle of division of labour which enables groups of organisations with similar goals to exploit opportunities (2004:237).

Maloney et al (1994) challenge the conflation of strategy and status in Grant’s framework, arguing that the two terms should be analytically distinct as strategy is (to a degree) a matter of selection by the group whereas status is conferred on the group by the governmental partner.

In this sort of discussion too much is lost if the distinction between inside status and insider strategy is conflated. We argue that consultation is the prominent policy making routine in British politics – a pattern scarcely touched by supposed Thatcherite antipathy to groups. Access to this system is not difficult and we see the major cleavage in the group world between groups with real influence and those without: too much of the literature assumes that the cleavage is between insider and outsider groups. This suggests that the outsider category is important because their exclusion by government is on ideological grounds. It is doubtful if this is a very relevant aspect. Our emphasis is on making distinctions about the influence of groups once they have met the minimalistic requirements for insider status (Maloney et al 1994:37).

Maloney et al contend that the problem is not access as this is available to groups, but what influence groups have once they have insider status. This is a useful perspective for this research as it is generally accepted that consultation processes have substantially increased following the election of the New Labour government in 1997 and the establishment of the Scottish Parliament in 1999 leading to greater access to the policy process by different interest groups. The question therefore becomes less of an issue of access, or whether or not a group is an insider or outsider, but what effect their influencing activity has on policy outcomes.

The problems associated with providing hard evidence of the effect of interest group influencing activity is foregrounded by Dur and De Bievre
(2007) who suggest that the recent demise of research on the influence of interest groups has come about as a result of the difficulties associated with operationalising the concepts of ‘power’ and ‘influence’, to construct reliable indicators, and to measure these empirically. The authors note that early studies of interest group power in the United States were criticised for their alleged failure to take into account the existence of different ‘faces of power’ (Bachrach and Baratz 1962) and later because some people may not be aware of their ‘genuine interests’ (Lukes 1974; Shapiro 2006 cited in Dur and De Bievre). With the theoretical literature on power becoming increasingly elaborate, the authors suggest that it became more difficult to study power empirically. They endorse a pragmatic response which acknowledges that no single analysis can consider all the different faces of power and therefore authors must show awareness that their choice limits the generalisability of their findings. This approach understands power as ‘control over outcomes’, with two other possible conceptualisations of power being ‘control over resources’ and ‘control over actors’.

We use the term ‘influence’ to denote control over political outcomes. Our approach regards actors as being powerful if they manage to influence outcomes in a way that brings them closer to their ideal points; thus, we are interested in studying the effect of power rather than in assessing power itself. A political outcome can come in two guises: the official position taken by public authorities or the actual implementation of that policy........The approach assumes that actors have clear preferences over outcomes. Of course, actors may not voice or have clear preferences at the onset of the policy process, or may change their preferences as a result of interactions with other actors. Despite these limitations, we consider the control over outcomes approach to be the epistemologically most sound and empirically most pragmatic route towards assessing interest group influence (Dur and De Bievre 2007:3).

Conceptualising influence as ‘control over political outcomes’ is particularly helpful for this research on family policy influence. The Scottish Parliament was founded on the principle of open participation by interest groups in
public policy which suggests that post-devolution Scotland would provide a fertile policy environment for interest group activity and innovation in family policy-making and it is these issues that are considered in the final section of this chapter.

**Interest Group Activity in Post Devolution Scotland**

A key focus for this research is exploring how devolution has enabled the participation by civil society in family policy-making in Scotland. In the lead-up to devolution, the Scottish Constitutional Convention and later the Consultative Steering Group sought to engender a different political culture which allowed for a new political balance between the parties and for different voices to be heard in the policy-making process.

A crucial feature was the clear intention to change the way in which public policy was developed in Scotland; it was acknowledged that the policy process may take longer if different voices and perspectives were built into the system but it was argued that it should result in ‘better’ policy....So civil society who had organised to help create the Scottish Parliament articulated their ‘right’ to influence how the parliament should run its affairs (Institute of Governance, University of Edinburgh, 2002).

Thus ‘civil society’ is credited with a crucial role in bringing the Parliament into being and also for creating structures and working practices designed to encourage participation in the policy process. A more detailed description of the background to devolution and the policy context it offers in Scotland is provided in Chapter 7 but it is worth flagging up in this chapter that the existence of a distinctive Scottish civil society is a recurring theme in literature on Scottish politics (Paterson 2002, Lynch, 2001). Paterson (2000) notes that the Union of 1707 did not take away from Scotland any of the
major institutions of civic life, notably the Church, the legal system, and the
system of local government establishing the precedent that what we would
now call social policy would be debated in Scotland by Scottish agencies.

Because of that, the Union allowed a distinctive social ethic to flourish. This started as a
sense of social responsibility that was a product of moralising Presbyterianism. It moved
through the socially responsible Victorian liberalism which Scotland espoused
enthusiastically, even while also embracing free trade and imperialism. And it culminated in
the consensual ground of “middle opinion” in the 1930s, laying the basis for the Scottish
acceptance of the welfare state. Scotland has always had its own manner of debating social
policy and its own way of accepting international political currents (2000:46).

Mooney et al (2006) assert that devolution is central to our understanding of
developments in social policy in the UK but that the growing devolution
literature has concentrated on the administrative and organisational aspects
of devolution, public attitudes to devolution and voting patterns. This has
limited the opportunities for developing a critical discourse as the cutting
dge has been absent from devolution ‘hurrah’ literature.

Lynch (2001) notes that although the phenomenon of pressure group politics
has attracted a growing literature within UK politics, there have been few
studies of pressure group activity in Scotland. The author notes that
devolution was likely to push the activities of a large number of pressure
groups into the public sphere given the openness of the legislative process of
the Scottish Parliament and the intention to facilitate pressure group
involvement in policymaking. Devolution introduced a much more
promising political environment for pressure group Scotland producing a
lengthy legislative process of guaranteed pre-legislative consultation,
multiple access points for discussing legislation with MSPs and opportunities
for further consultation with committees.
Put simply, under the old system, the executive in the shape of the Scottish Office was the dominant force within the policy process; under devolution, the Parliament itself offers an important alternative arena for influence over policy that Westminster was never able to achieve. Pressure groups do not merely seek to influence ministers through lobbying, they also offer an alternative source of expertise, information and policy analysis for ministers and civil servants alike, and can therefore break the civil service stranglehold on advice to ministers (Lynch 2001:122).

However, Lynch contends that to a certain degree, the campaign for devolution made a fetish of civic society and that support from civic Scotland would provide important checks on the power of government.

However, the classic pluralist interpretation of pressure groups and democracy is open to challenge. Rather than seeing pressure groups as equal participants in policy-making, it is often the case that some pressure groups are more equal than others when it comes to access to decision-makers (2001:128).

But for all its flaws,

The Scottish Parliament has provided a more accessible legislative process, pre-legislative consultation and a large number of opportunities for pressure group Scotland to exert an influence (2001:128).

Steven (2007) explores the place of religion in devolved Scottish politics and provides an interest group analysis of the Church of Scotland and the Catholic Church in Scotland. The author notes that while much political science research has been conducted on interest groups, and much conducted on the place of religion in politics, relatively little has been carried out on religious organisations when they act as interest groups, despite the fact that they often adopt this role. Steven contends that this is an important aspect to
the relationship between politics and religion and one that is under-
researched, particularly in the context of Scotland and highlights Grant’s
(2000) definition of the Church as a ‘secondary’ interest group when it
attempts to apply pressure on government over a certain issue. The Church’s
main purpose is defined as providing facilities, buildings and clergy for
worship and the administration of the sacrament in accordance with its
doctrinal beliefs, and to propagate its interpretation of the Christian gospel
(Grant 2000):

When it does speak out, however, it is both a ‘promotional’ group, in the sense that it makes
pronouncements on social and political issues, and a ‘sectional’ group, when it, for example,
criticised the Conservative government in the 1980s for not exempting its ministers from the
community charge. While Grant’s focus was the Church of England, it is not unreasonable
to look at the Church of Scotland and Catholic Church in this way as well – the prime
purpose of a church is, then, ‘a religious one, but it has a secondary function as a pressure
group seeking to influence public policy’ (Grant 2000:16). When such an organisation enters
the political arena, in an attempt to obtain political influence, its effectiveness can be
analysed in the same way as that of a ‘primary’ interest group (Steven 2007:99).

Steven’s makes the point that categorising groups as ‘cause’ or ‘sectional’ is
all very well, but that, ultimately, we should be interested in what sort of end
result is achieved, in terms of influence and addresses three questions –
whether the churches actually succeed in exerting influence in a specific
policy area; whether they show that they are capable of acting as effective
lobbyists in any case; and whether a suitably favourable political
environment exists for them to try in the first place. In posing these
questions, Stevens similarly acknowledges the point made by Dur and De
Bievre that hard evidence is the most immediately important of the three
‘tests of influence’ but that this is also the most difficult to gauge as it is
always the one we know least about.
No senior civil servant or politician is likely to officially admit that one interest group caused them to change their mind directly, and evaluating precisely how much credit a group can take on its own for any successful lobbying is equally uncertain. Writers in the field have tried to address the difficulties involved, although, as Whitely and Winyard argue, ‘the question of interest group effectiveness is probably one of the least adequately researched aspects of the study of pressure groups’ (1987:111). However, they believe it is important to speak to the groups themselves to ask them if they think they are effective, even if that is only a second-best solution to directly observing the decision-making processes (1987:114) (Steven 2007:102).

Mackay et al (2005) in a study of the influence of women’s groups on parliaments and governments similarly note that a major problem is that there is no clear or agreed definition of what constitutes ‘influence’. Increased access and voice have sometimes resulted in increased influence but this is not inevitable or automatic. The authors propose a provisional model for identifying influence using a ‘continuum of influence’ that leans towards an outcomes approach.

1. Recognition of legitimate voice.
2. Provoking reconsideration of the way others think.
3. Changes in terms of public and political debate.
4. Concrete changes in policy outcomes. (2005:10)

Key factors include the Capacity to influence - ability to respond quickly and effectively to opportunity and to act strategically will create the potential for a group to progress its agenda; collective action– ability to maintain internal cohesion and form alliances with other groups to draw on consensus and collective action; goal clarification – ability to set positive goals to effect change or negative goals to prevent change.
The issues of access, power and influence and the extent to which devolution has impacted on these issues are key themes for this research. The associated literature including critical perspectives in the devolution literature will be discussed in more detail in later chapters.

**Conclusion**

To summarise this chapter, the governance literature describes a complex decision-making landscape but offers no real explanation of why the policy processes of the two case studies explored developed in the way that they did or how the power relations within government and between government and different interest groups, influenced the policy processes observed in this research.

A similar shortcoming in much of the policy-making literature is that it offers primarily descriptive approaches to understanding the policy process. It was useful (up to a point) to understand the role of institutions, to know there are multiple actors and interests engaged in the policy process and that sometimes different groups will form coalitions to advance their interests. But as the analysis of the case studies will show, these approaches were not particularly illuminating with regards to the policy processes observed in this research. Kingdon’s multiple streams framework offered more useful insights and helped to explain why both the family law reforms and the sexual health strategy were identified as policy priorities by the new Scottish government. The framework was less useful in explaining what happened to
both policy initiatives following their initial successful positioning as policy priorities. Stone’s (1997) insistence that the policy process essentially boils down to a ‘struggle over ideas’ resonated strongly with the processes observed in this research. Kingdon and Stone are discussed further in chapters 4, 5, and 6.

Understanding the role of ideas and ideology in the policy process was particularly pertinent to this research given the contested nature of family policy. The considerable literature which focuses on changing family structures, family practices and intimate relationships provided a useful theoretical context within which to locate developments in family policy but did not offer particularly useful insights for the policy processes observed in this research or why some changes prompt policy responses and others do not. Of more immediate, practical relevance to this research was the study by Lewis and Knijn (2002) which provided empirical evidence of the significance of ideas in family policy debates and this study is discussed in more detail in chapters 6 and 7 and 8.

The civil society literature was helpful given that the role of civil society in family policy-making in post-devolution Scotland is a key focus for this research. The contested debate about the role of civil society, the foregrounding of the potential for interests to clash in the public sphere and the possibilities for intra-civil society contestation offered important insights for this research. Interest group analysis was similarly helpful, in particular, the need to conceptually distinguish between access and influence. Frameworks which defined influence as ‘control over outcomes’ helped to focus the direction of this research and some of this literature is discussed in more detail in subsequent chapters.
Locating this research in the context of the current devolution literature was equally important. Critical perspectives on the devolution literature and the contribution this research makes to this debate are discussed further in chapters 7 and 8 and 9. The work by Lynch (2001) on pressure group activity in post-devolution Scotland is helpful and discussed at different points in later chapters. Steven’s (2007) analysis of the influencing activities of the Church of Scotland and the Catholic Church offers extremely useful insights for this research and is also discussed in more detail in later chapters.

Engaging and making links between different but cognate domains was an early challenge for this research but it became easier to locate the specific aspects of the literature that were most useful as the iterative process between data, literature and theorising progressed.
Chapter three: methods

This chapter outlines the methods used to inform analysis of the findings of case studies of two policy-making processes - the national sexual health strategy and the family law reforms. The findings are based on analysis of data collected from documentary sources, observation of parliamentary debates and in-depth interviews conducted between 2004 and 2006. This chapter describes the methodological approach and the research design that has been employed for data collection and analysis and also considers the ethical issues and difficulties encountered during the research process.

Research Design

The primary research questions are as follows:-
- How has devolution enabled participation by civil society in family in policy-making in Scotland?
- Who influences the family policy agenda in Scotland post-devolution?
- How does political activity by civil society impact on government policy?
- Has devolution fostered innovation in family policy-making?

These questions require the researcher to delve into political processes and explore key actors’ accounts of the events that shaped the policy outputs. All of this suggested a qualitative approach as qualitative methods are more concerned with producing discursive descriptions and exploring social actors’ meanings and interpretations (Blaikie 2000). And although the positivist framework is appropriate for many kinds of research, it is less useful for hearing data and understanding meaning (Rubin and Rubin 1995). With no sampling frame for civil society, this research did not lend itself to a positivist approach.

A key strength of qualitative research is the emphasis on “people’s lived experiences” being “well-suited for locating the meanings people place on events, processes, and structure of their lives….and for connecting these meanings to the social world around them” (Miles and Huberman 2000:10). The positivist approach on the other hand contends that there is a ‘fixed’ reality out there “further that reality can be approached (approximated) only through the utilisation of methods that prevent human contamination of this apprehension or comprehension” (Lincoln and Guba 2000). Positivists assume that knowledge is politically and socially neutral and that such knowledge is achieved by following a precise, predetermined approach to gathering information and there can be only one version of events that is
‘true’ (Rubin and Rubin 1995). The interpretive approach by contrast is concerned with how people understand their worlds and how they create and share meanings about their lives.

The interpretive approach argues that not everything that is important can be measured with precision and that trying to do so is a distracting and inappropriate task. Similarly, searching for universally applicable social laws can distract from learning what people know and how they understand their lives. The interpretive social researcher examines meanings that have been socially constructed and consequently accepts that values and views differ from place to place and group to group. There is not one reality out there to be measured; objects and events are understood by different people differently, and those perceptions are the reality-or realities-that social science should focus on (Rubin and Rubin 1995:35). Some argue that the positivist and interpretive models are often characterised in too polarized a fashion. Hammersley (1995) recognises that the researcher can access an external social reality and rejects the notion that the researcher can act as a mirror on the social world.

The primary research questions posed in this research suggested that an interpretive, qualitative approach should form the basis of the design for this research.

As ‘family policy’ potentially covers a wide range of policy areas - health, education, justice, housing, it was necessary to define the unit of analysis in order to limit the boundaries of the study. The most effective way to answer the primary research questions would be to track the policy process of a particular family policy initiative, requiring the researcher to ‘hear’ key

The qualitative interview, particularly the in-depth variety, can get close to the social actors’ meanings and interpretations, to their account of the social interaction in which they have been involved (2000:234).

Scott and Russell (2005) exploring the potential for qualitative case studies for researching voluntary and community action, argue that while descriptive examples of qualitative case studies are relatively common, more analytical ones are rare. Case studies are valuable insofar as:

- They provide contextual detail about the different actors, agencies, events and processes
- They are able to demonstrate the dynamics of social and organizational relationships
- They are able to reveal hitherto undisclosed information
- They can locate their explanations within wider political and economic frameworks (2005:3/4).

Yin (2003) defines a case study as an empirical enquiry that investigates a contemporary phenomenon within its real-life context when boundaries between phenomenon and context are not clearly evident and multiple sources of evidence are used. Case studies offer the potential for theoretical generalisation about the potential of some phenomenon. Analytic induction refers to inferences made from one particular context to other comparable
contexts. Platt (1988) argues that “there is no reason to except case studies from the normal assumption that one can reasonably make generalisations from what one knows already until information inconsistent with this becomes available” (1988:18).

Scott and Russell (2005) identify the main criticisms levelled at case studies as unmanageability and generalisability. The authors contend that unmanageability is sometimes a valid criticism as when the volume of data grows, so does the potential to be blown of course. Nevertheless the authors’ state these are not reasons to abandon the qualitative case study – the researcher must instead retain a clear sense of the analytical themes at the core of the enquiry. Similarly, although qualitative case studies can rarely be defended by reference to large representative samples, they do have the capacity enable us ‘to look more subtly at apparent social and economic trends and their impacts, and particularly to remind us of the significance of context’ (2005:6).

The authors identify two contrasting approaches to case study analysis. Yin (1994, 2003) searches for empirically based explanation using case studies to test theories or hypotheses in a ‘deductive’ way. By contrast, Stake (1995, 2000) sees case studies as less theoretically-driven but used in a search for understanding by building hypotheses in a ‘bottom-up’ way. The difference is the extent to which they believe they can frame or direct the case study. Yin specifies the circumstances under which the greatest framing and direction can be achieved while Stake is more exploratory, hoping to generate insights from within the complex social worlds of his cases.

Yin (2003) states that multiple-case designs may be preferred over single-case designs.
In particular, if you can even do a two-case study, your chances of producing robust results will be better than using a single-case design. For example, analytic conclusions independently arising from two cases, as with two experiments, will be more powerful than those coming from a single case (or single experiment) alone (2003:135).

Having considered the criticisms of case study analysis, a qualitative case study was identified as the most appropriate research framework for this study and the argument by Yin that a two-case study increases the likelihood of robust results was persuasive albeit Stake’s exploratory approach was favoured over Yin’s ‘top-down’ approach.

At the time that the research was commencing, there were two particular family policy initiatives which emerged as strong candidates for a two-case study design - the national sexual health strategy and the family law reforms. Both initiatives were highlighted in the then Labour/Liberal Democrat coalition government’s partnership document (A Partnership for a Better Scotland, Scottish Executive, 2003) which stated that the Executive “will develop and implement a National Sexual Health Strategy” (2003:23) and “will legislate to reform family law for all of Scotland’s people” (2003:37). There was a degree of pragmatism involved in the selection of the two case studies. Sexual health and family law illustrate different dimensions of intimate relationships and family life with one representing a policy initiative with no legislative dimension (sexual health) and the other a policy initiative which took the form of primary legislation (family law). The sexual health strategy and the family law reforms were selected as suitable critical cases based on the following attributes:

- Both represented family policy initiatives identified by the coalition government early on in the first session of the new Parliament.
• Both cases offered the opportunity to explore the ‘new politics’ and the extent to which devolution might lead to innovation in family policy-making.

• Family law and sexual health offer two different aspects of family and intimate relations delivered through two different policy instruments.

• Both offered the opportunity to track the policy process from the start to the finish.

• Both were contested or controversial areas of family life.

• Both were likely to give the opportunity to examine the role of the family in society.

The ‘insider’ position of the researcher was significant in the selection of the two case studies. As the research would depend on gathering a wide range of insights from key policy actors, the researcher’s own contacts in both policy areas was an influential factor in the final decision to select the sexual health strategy and the family law reforms as the two cases. Having been invited by the then Health Minister to contribute to the Expert Reference Group charged with drawing up the first draft of the sexual health strategy, the researcher would have no difficulty accessing documentary sources or interviewing key actors’ involved in this particular policy initiative. The researcher’s position in relation to the sexual health strategy was certainly that of an ‘insider’, which in turn secured access to key participants. Although not directly involved in the policy process of family law reforms, the researcher had been in contact with many of the key players due to other professional links. This would similarly prove helpful in gaining access to a number of potential respondents. In addition to helping to secure access to
key actors, the researcher’s position offered some enhanced understanding of the policy processes pertaining to the case studies.

The research was undertaken through an ESRC CASE studentship which was supported by Scotland’s Families – a consortium of national voluntary organisations working in family support. The Scotland’s Families consortium was established in anticipation of the need for greater co-operation between the family support organisations following devolution and is made up of five organisations – Scottish Marriage Care, Couple Counselling Scotland (now Relate Scotland), Family Mediation Scotland, One Parent Families Scotland and Stepfamily Scotland. The consortium had collaborated on a number of initiatives including the Millennium Families Conference (1999); Scotland’s Families manifesto (1999); joint reception for MSPs (2000); multi-agency training (2002); and a research project on young people and family change (2004).

The organisations involved in Scotland’s Families were keen to understand the policy process better in order that they might more effectively influence family policy-making in post-devolution Scotland. However, during the four year period that the research was undertaken, significant changes occurred both for individual organisations and for the consortium as a whole. Couple Counselling Scotland and Family Mediation Scotland were working towards merging into one organisation and Stepfamily Scotland was working under the auspices of Scottish Marriage Care. One Parent Families Scotland’s sister organisation in the West of Scotland was forced to close following financial problems and the Edinburgh-based organisation assume responsibility for key services. By the end of the research period, Scotland’s Families no longer existed as a consortium.
Data Collection

Mindful of Yin’s definition of a case study as using multiple sources of evidence, the following methods were identified as data sources:-

- Literature Review
- Analysis of Documentary Sources
- Observation
- In-depth Interviews

The literature review was an ongoing and iterative process. A number of search strategies were used, these included:-

- database searches
- website searches
- Edinburgh University library catalogue
- following citation pathways from publications.

In addition, my own work in the field and personal contacts directed me to particular studies. Discussions with supervisors and attendance at academic seminars yielded further results. With regards to the documentary analysis, a wide range of documentary sources were associated with both case studies. Early policy reports relating to both the sexual health strategy and the family law reforms were analysed as were the various consultation reports. Analysis of these documents facilitated the mapping of the organisational and institutional interests influencing the policy agenda in the early stages of the policy process and to track changes in interest group activity as the
process unfolded. In addition, transcripts of Committee proceedings and Parliamentary debates were analysed to uncover:-

- how policy debate was framed
- which politicians were most visible
- any new voices emerging from civic Scotland.
- the impact of influencing activities on the policy process.

Similarly, documents emanating from groups and organisations out with Parliament were analysed to provide further insight into who was seeking to influence the policy agenda at different stages of the policy process. Final versions of both the national sexual health strategy and the family law reforms were compared with earlier drafts in order to track changes and assess the effect of interest group influencing activity on the final product. The documentary analysis was considered alongside the interview data to ensure the conclusions in the thesis were supported.

Finally, a watching brief was kept on print media coverage of both case studies and particular articles or features were highlighted if they illuminated or reinforced findings that emerged from other data sources. For example, if an item appeared in the media and received coverage, it was copied and logged with the date it had appeared. This meant that when respondents referred specifically to an article in the media, it was possible to go back and check the content in the context of comments made by respondents. This proved to be particularly important in the case of the sexual health strategy as the media coverage was commented on by a number of respondents.
Observation of Committee meetings and Parliamentary debates offered a further opportunity to apply the findings of the documents analysis providing insight into how the policy debates were being framed and which groups in Scottish civil society were visible in political debates. Observation facilitated the tracking of the policy process and also offered an opportunity to witness how both individual politicians and political parties were responding to the high profile activity in civil society and the media at different stages of the policy process.

In-Depth Interviews

The population of interest for this study was drawn from three main constituencies - key policy actors in Scottish civil society; politicians from across the party political spectrum in the Scottish Parliament; senior civil servants in the Scottish Executive. The research sought to explore the policy-making process of the two case studies selected and the events and individuals that were influential in the development of the policy. ‘Political Elites’ are defined as those with close proximity to power or policy-making including elected representatives; executive officers of organisations and senior state employees (Lilleker 2003). Interviewing political elites allows the researcher to illuminate activities that go on behind closed doors or out of public or media gaze but which shape policy processes and outcomes.

We can learn more about the inner workings of the political process, the machinations between influential actors and how a sequence of events was viewed and responded to do within the political machine (2003:208).
Hammersley’s (1995) assumption that it was possible to gain an understanding of the realities described by respondents influenced the approach of this research. Respondents were selected through purposive sampling which meant that individuals were identified who were known to have played a role in the policy process of either the national sexual health strategy or the family law reforms. Purposive sampling lends the researcher to “seek out groups, settings and individuals where….the processes studied are most likely to occur” (Denzin and Lincoln 1994 quoted in Silverman 2000:104).

To strengthen the reliability and validity of the findings, a wide range of insights were sought - “quality of balance, that is all stakeholders views, perspectives, claims, concerns, and voices should be apparent in the text” (Lincoln and Guba 2000:180). Lilleker (2003) contends that when interviewing political elites, the number of interviewees must be of a reasonable size and must be representative of the larger body to add greater depth to the analysis of an event/phenomenon. There was a clear advantage to identifying the sexual health strategy and the family law reforms as the specific cases for this study as the researcher’s contacts meant that it was possible to access a broad sample of respondents who were actively engaged in the policy process of both case studies. Having worked at a senior level in policy development in Scotland for a number of years prior to beginning the research study, the researcher had a wide network of contacts both within and out with government.

Power dynamics are potentially problematic in elite interviewing, particularly when the researcher is younger, or in the early stages of their career. The bulk of sociological research has largely involved analysing the powerless where the concern has been “with researching down rather than
up” (Puwar 1997). The position of the researcher with regards to age, gender, professional status, whether or not you are considered an ‘insider’ or an ‘outsider’ is important in an interview setting. As a mature researcher, with an established professional identity, problems with, for example, determining who was in charge were not encountered. However, the researcher’s own professional identity and working relationship with some of the respondents did raise other ethical issues which are discussed in the next section.

Having identified potential participants through purposive sampling, respondents were contacted by email and given an information sheet summarising the aims and objectives of the research study and given a broad indication of the questions that they would be asked. Participants were told that the interview was likely to take a minimum of 45 minutes and invited to select a time and place that best suited them. An interview schedule (appendix one) was prepared in advance containing broad topic headings which included the position of the respondent, their involvement in the policy process and reflections on influential events or individuals. However, this was used primarily as a guide as it was important to keep the interviews fluid and retain the ability to alter the line of questioning as necessary or explore an interesting issue raised by the respondent. For example, when interviewing politicians hearing individual accounts of particular events that occurred (in the politics stream) was important.

Interviewing civil servants may have led the researcher to seek clarification on particular aspects of the policy process. Similarly, Chief Officers of national voluntary organisations may have had a particular view on their experience of giving evidence to Parliamentary Committees. So whilst it was important to prepare an interview schedule in advance based on the key
themes that had emerged from documentary sources or observation of
meetings, it was necessary to retain a flexible approach to the interview
process. Elite interviewing reduces the potential for piloting. However, as
this study was being supported by the Scotland’s Families consortium, it was
possible to conduct a small number of pilot interviews with representatives
from the organisations represented on the consortium and this proved useful
in helping to refine the interview schedule.

A total of 26 semi-structured, in-depth interviews were undertaken and a key
strength of this study is the range of insights and the balance of views from
across the three main constituencies identified as the population of interest
for this research. Researchers conducting elite interviewing invariably
encounter access problems. Fortunately, this did not prove to be a problem
primarily on account of the researcher’s own contacts and networks. Two
former Health Ministers were interviewed as were key opposition politicians
who played a particular role in either the sexual health strategy or the family
law reforms bringing the number of MSPs from across the political spectrum
interviewed to six. The study also benefited from the participation of five key
senior civil servants who were actively involved in the policy process of
either the sexual health strategy or the family law reforms.

The study was further strengthened by the participation of representatives
from all the key interest groups in Scottish civil society identified as being
influential in the policy process with one exception. The Christian Institute
emerged as a key interest group during the policy process of the family law
reforms but declined to participate in the research stating that they were
unable to meet requests from researchers. However, a faith group
perspective was represented by respondents from both the Catholic Church
in Scotland and the Church of Scotland. All the national family support
organisations participated in the study as did representatives from other national voluntary organisations.

Representatives from three other interest groups who were highly visible in the policy process of the family law reforms - *Families Need Fathers, Grandparents Apart* and *Scottish Women’s Aid* also agreed to be interviewed. To summarise, the reliability and validity of the findings are strengthened by the broad range of insights and the balance of views providing a wide cross-section of the three main constituencies identified as the population of interest for this research (appendix two). All the main people involved in the policy process of both the family law reforms and the sexual health strategy were interviewed. With the exception of the Christian Institute, no main players were excluded.

**Ethical Issues**

The researcher sought to observe standards of good practice as outlined in the British Sociological Association and the Social Research Association ethical guidelines which include the need to work with professional integrity and to act responsibly towards research participants. All the interviews were digitally-recorded and although some scholars recommend telling the interviewee in advance that you would like to tape the interview (Lilleker 2003), the respondents’ permission was sought at the start of the interview. However, elite interviewing in specific policy areas raises particular issues of anonymity and confidentiality. For example, the MSPs would be relatively easy to identify given their individual roles either as a former Health Minister or as an opposition MSP tabling a key amendment to the legislation.
Other respondents including a former Moderator of the Church of Scotland would be similarly easy to identify. Confidentiality through anonymisation could not then be assured.

Given these potential difficulties, respondents were offered the opportunity to approve quotes attributed to them in advance and indeed many of the quotes used in the study are attributed to named individuals, with their consent. The respondents were generally happy with the quotes selected for inclusion with only very minor amendments suggested. For example, a respondent who had referred to a Minister by first name wanted the name replaced with ‘the Minister’. The exception to this general rule was the civil servants, all of whom requested that their quotes were anonymised. And although it is argued that both ethically, and in terms of the validity of the research, researchers should allow respondents to review drafts of chapters (Yin 2003), in this study, respondents received only their quotes and a few sentences outlining the context in which the quotes would be used.

The researcher’s contacts and networks meant that there were few access problems resulting in a broad range of insights and balance of views obtained from the population of interest. However, the position of the researcher in terms of professional identity and working relationship with a number of respondents did raise other ethical concerns. The interviews provided insight into social worlds within which respondents act but clearly the interviews were influenced by the interview context and the researcher’s position within it. The fact that the researcher was an ‘insider’ in the case of the sexual strategy with known views, and was professionally known to some respondents, means that there is a threat to the validity of some accounts - people will be self-censoring. Accounts given as part of the research may be toned down.
The positivist approach which assumes that social researchers can be *value-neutral* has been critiqued by feminist researchers who have argued that the positivist approach is anything but neutral and have argued for a more egalitarian base for research relationships (Finch 1984, Oakley 1981). These critiques have led to a recognition that the presence and personality of the interviewer are variables in the research process which affects the data at all stages. Scott and Russell (2005) note that many case study researchers endeavour to pursue a research approach which they see as being value-free – their own social and political values are rarely acknowledged or made visible. Some researchers insist on an explicit declaration of their values. Others argue for an intermediate position – recognise closeness to research subject, even whilst seeking to retain a degree of distance.

The search is, therefore, neither for a distanced academic nor the uncritical acceptance of insider knowledge; rather for what is described as a durable consciousness, which negotiates for indigenous data, yet maintains a critical and reflexive stance in relation to them (2005:35).

In this study, the same issues which facilitated access - professional identity and working relationship – seemed to encourage an ‘open’ response which facilitated a depth of insight but there was a danger that respondents would be too open. And indeed this did occur in some interviews when comments were made about events that happened or the actions of particular individuals which were potentially politically sensitive. The researcher had to be reflexive and take decisions about excluding particular comments if it was felt that they had been made primarily as a result of the trust and professional relationship between the researcher and the respondent rather than because they wanted the comment made public. The need to strike a
middle path between the feminist standpoint position of the researcher as collaborator/friend and understanding that the researcher does have a personal relationship with the respondent is discussed by Rubin and Rubin (1995):

Even though you may not become personal friends with the interviewee, the interviewing relationship still entails personal obligations. For the researcher, one obligation is to protect his or her interviewees from harm that might result from the study. You may not protect the interviewees out of love or friendship, but you still protect them out of obligation, because it is right, and because, by implication, you agreed to do so as a condition of the interview. (1995:41)

The researcher’s position had facilitated access and encouraged remarkably ‘open’ accounts from most of the respondents. However, this meant there was a responsibility not to abuse this privileged position. There were a number of comments made from different respondents which would have undoubtedly enriched the findings and, were they to be made public, almost certainly have generated media interest which would not necessarily have reflected well on the respondents [or indeed the interviewer]. In these circumstances, it was necessary to be reflexive and exercise judgement, listening again to taped interviews and deciding what was and was not appropriate for inclusion.

Data Analysis
This study was concerned with the influence of different phenomena, the relationships between them and the conditions affecting their influence. The ‘grounded theory’ mode of analysis was helpful in addressing the research questions as this approach offers the researcher both flexibility and control
during the analysis process (Glaser and Strauss 1967). This fitted well with the interpretive approach adopted for this study as no pre-conceived analytical frameworks are imposed on the data. Theory emerges through coding data, examining the relationships between codes and then exploring what conditions pre-determine those relationships. Grounded theory allows the researcher to trace the influence of particular phenomenon identifying “patterns of action and interaction between and amongst various types of social units” (Strauss and Corbin 1999).

This helps to reveal the relationship between patterns of interaction and the conditions affecting them. By constantly asking questions of the data, for example, ‘what is the influence of the external environment on the internal policy environment?’ it was possible to trace the influence of and relationship between different phenomena. As this was a two-case study, patterns that emerged in each individual case were compared to identify similarities and differences. Strategies associated with grounded theory ensure a close link is maintained between data and emerging theory throughout data analysis through coding data, memo-writing and constant comparison. The findings from the documentary sources, observation of meetings and interviews were constantly compared with each other to ensure that conclusions applied across all three data sources and these were then compared across the two cases. The conclusions presented therefore apply across the three data sources and between the two cases.

Constant comparative method ensures that all contrary cases are accounted for resulting in an account [which] accurately represents the social phenomena to which it refers (Hammersley, 1990 cited in Silverman 2000:175).
As the interviews progressed, it became clear that key events had affected the policy process in a number of ways. For example, the death of Donald Dewar led to a change in First Minister which, according to some respondents, resulted in a more cautionary approach to the policy process of the sexual health strategy. Similarly, the amendment by the Justice Committee to oppose Ministers’ recommendations regarding the separation period required prior to divorce in the family law reforms triggered a reaction both within and out with government. The analysis of interview data was therefore iterative and the procedure of constant comparison meant that it was necessary to constantly compare the phenomena being coded. The constant comparative method strengthens the validity of the conclusions in this study and by maintaining a close link between data and emerging theory, the grounded theory approach:-

Insofar as theory that is developed through this [grounded theory] methodology is able to specify consequences and their related conditions, the theorist can claim predictability for it, in the limited sense that if elsewhere approximate similar conditions obtain, then approximately similar consequences should occur. (Strauss and Corbin 1999)

All the interviews were tape-recorded and fully transcribed within a few days of the interview taking place. None of the respondents objected to the interviews being recorded although one respondent did ask for the tape recorder to be switched off at one point as he wanted to give an opinion of a particular issue off the record. Notes from both documentary sources and interviews were partially coded so that relevant themes appearing in both the documents and the interviews could be considered together. Some of the original codes became less and less relevant as the process of piecing together different narratives and evidence from documentary sources took
the findings in a particular direction. Interviews were listened to more than once to check one account with another.

The computer software Nvivo facilitated the analysis as this allowed a systematic and convenient way of coding the data, particularly in the early stages of the analytical process but subsequent analysis working with the coded sections and looking for relationships between sections was done on paper. To begin with, basic descriptive codes were developed to cover the three main constituencies in the population of interest with each constituency further coded to determine their status i.e. national voluntary organisation, faith group, pressure group. A broad conceptual coding based on the findings of the literature review was also used and covered key themes like ‘civil society activity’, ‘political activity’, ‘policy activity’. Fielding and Lee (1998) offer the following advice on coding:

An ‘analytic theme’ is no more than an idea relating to the social phenomenon upon which data has been collected and which one wishes to discuss in interpreting the phenomenon. What is the relationship between a theme and a ‘code’ (or ‘category’)? It is often the case that a theme draws on several ideas, each of which is represented by a code. Sometimes a theme is fully represented by a single code.....While some segments might exactly represent the sense of the code term the researcher is using, it is more likely that the segment will represent only an aspect or shade of meaning of the code. This is helpful to the researcher because it offers an agenda of nuances within the code which can be developed in writing up. Indeed it is this which lends qualitative analysis its richness, its ability to represent social phenomena from several angles (1998:86).

Conclusion

The decision to opt for a qualitative research design was appropriate given the nature of the research questions. A case study approach offered the best methodological framework and deciding to opt for a two-case design has strengthened the validity of the findings. The two case studies were useful in that different policy instruments were used in each case to implement the policy initiative and involved a different range of actors. There were both
similarities and differences between the two case studies which gave the research greater analytical purchase. The research benefited from securing participation from a wide range of policy actors from across the population of interest. The respondents were of sufficient range and stature to span the larger body and this has added immeasurably to the depth and richness of the analysis. However, the researcher’s position and professional relationship with a number of the respondents did raise particular ethical issues which had to be acknowledged and accounted for in the analytical process.

One of the difficulties encountered was working with a diverse literature which seemed to grow as the research process progressed. The early stages of the study involved immersion in the family policy literature which was useful in that it highlighted the different ways that governments address family policy and also offered useful insights into New Labour’s approach to family policy - for example, employment being seen as a route out of poverty. This also led to an engagement with the governance literature. And although useful for providing a context within which to consider the two case studies selected, the family policy and governance literature offered little in the way of understanding the policy process of the two case studies. Engaging with the literature on civil society helped to make sense of both historical and contemporary debates about the nature of civil society and provided a theoretical context for exploring the interest group activity observed in the policy processes studied in this research as did interest group analysis.

As the research process unfolded, the policy process literature was useful in informing the analytical focus of this study. This literature offered different frameworks for analysing public policy some of which were found to be
more useful than others. However, Hill’s (2005) observation that a problem running through studies of the policy process is that much theory describes rather than explains resonated particularly strongly with this researcher. Having worked for many years in policy development and policy influencing, it is perhaps inevitable that a more critical stance would be adopted than someone coming to this literature with a predominantly academic interest and little personal or professional experience in the field.

However, the extent to which the policy process literature offers primarily descriptive frameworks did come as something of a surprise to this researcher. Kingdon’s multiple streams approach, the framework that seemed most useful at the start of this study, in the end, was not sufficient to explain the policy processes observed in this research. Finally, it seems reasonable to assert that these findings support those theorists who see policy as an inherently political process and foreground the significance of ideology in family policy debates supporting Stone’s central contention that policy-making represents a ‘struggle over ideas’. These issues are explored in more detail in the chapters to follow.
Chapter four: influencing activity and the family law reforms

This chapter critically analyses the policy processes of the family law reforms to explore one of the primary research questions posed in this research - who influences the family policy agenda in post-devolution Scotland? Using data from three sources – documentary sources, observation of Parliamentary debates and in-depth interviews with key policy actors, the chapter outlines the background to the family law reforms, tracks the different stages of the policy process and identifies who the influential voices were at different stages of the process. As this study is focusing on the role of civil society in family policy-making post-devolution, the findings relate specifically to those measures in the legislation which generated the most activity in civil society. This research confines itself to the policy process in the period following devolution from 1999 until the Family Law (Scotland) Bill was presented to Parliament in December 2005.

Background to the Family Law Reforms

The proposals to reform family law were first raised in reports by the Scottish Law Commission Report on Reform of the Grounds for Divorce in 1989 and Reform of Family Law in 1992. A number of the proposed reforms were implemented between 1985 and 1995 with the recommendations relating to children enacted in the Children (Scotland) Act 1995. Against the backdrop of a changing social landscape, a new political landscape began to take shape in 1997 with the election of a New Labour government. A key aspect of the
government’s programme was new constitutional arrangements which led to the setting up of the Scottish Parliament in 1998.

A Labour/Liberal Democrat coalition government was elected in May 1998 and the new Scottish government signalled their intention to resurrect the proposals to reform family law relatively early on in the administration when they published the consultation document *Improving Scottish Family Law* in March 1999. The consultation document included most of the proposals contained in the two earlier reports by the Scottish Law Commission but as seven years had passed since the most recent report in 1992, the coalition government clearly needed to refresh thinking.

*Improving Scottish Family Law* was the Scottish Executive’s first consultation document on family law and was published less than a year into the new Scottish Parliament in March 1999. The legislative process of the Scottish Parliament involves three phases which Lynch (2001) describes as the pre-legislative phase, the parliamentary phase and the legal phase. In the first phase, the White Paper is subject to pre-legislative consultation between Ministers and parliamentary Committees and then open consultation once the draft Bill with accompanying policy and financial memoranda is published.

There are 3 stages involved in the second parliamentary phase. During this phase, the Bill is handed over to parliamentary Committees for consideration of the general principles and introduced into Parliament for a Stage 1 reading. This is followed by Stage 2 when the Bill is referred back to Committees for detailed consideration. The Committees undertake line-by-
line scrutiny, take evidence, prepare amendments to the legislation and produce a report. In Stage 3, the Parliament debates Committee amendments, suggests additional amendments and votes on the final Bill.

The third phase involves the Parliament’s law officers and the Advocate General at Westminster examining the legality of the proposal to determine whether it is consistent with the division of powers of the Scotland Act and whether it conflicts with the powers of Westminster. This research focuses on the first and second phase of the legislative process of the family law reforms.

The Scottish Executive published Parents and Children a year after the first consultation document in 2000. Kingdon (1995) identifies three main mechanisms that can bring issues to the attention of policy-makers – 1) focusing events 2) feedback from existing programmes and 3) indicator availability. Time trends data is often the most important aspect in sparking interest amongst policy makers – an indicator going the wrong way. The earlier reports from the Law Commission could be regarded as feedback and the changes in family structures arguably constitute time trends data. At this stage in the policy process the multiple streams framework appears credible with the problem of outdated family law coupling with the policy document Parents and Children and a policy window opening up with the election of a new Scottish Parliament.

However, following the publication of Parents and Children in 2000, the legislative process appears to come to a halt. There is no further action to progress the family law reforms for the next four years. The second Scottish
Parliamentary election occurs in May 2004 and the Labour/Liberal Democrat coalition are re-elected to govern Scotland. In June 2004, a full four years after consultation was sought on Parents and Children, a third consultation document Family Matters is published.

Kingdon’s (1995) multiple streams approach is being interrogated as his framework is particularly concerned with the agenda-setting phase of the policy process and this research is exploring who influences the family policy agenda in post-devolution Scotland. Kingdon asserts that to become a viable alternative in the policy stream, an issue usually undergoes a lengthy period of ‘softening up’ in a ‘primeval soup’ and that this period of gestation allows a solution to germinate in the policy stream and helps it to establish legitimacy. The issue of the family law reforms had been in the ‘primeval soup’ for some considerable time given the first report by the Scottish Law Commission was published in 1989.

The election of a New Labour Government and the establishment of the Scottish Parliament would suggest that a policy window did open although there was then a four year period before any further action was taken. Tracking the responses to the three consultation documents produced between 1999 and 2004 provides a useful starting point to begin to explore who the influential voices were during the pre-legislative, consultative phase of the policy process when the family law reforms came back on the public policy agenda in 1999.

Influencing Activity during the Pre-legislative Phase

Faith Groups
The table below lists the total number of responses for the three consultation documents issued by the Scottish Executive broken down into the different categories of respondents for each consultation.

**Table 1. Analysis of Responses to Consultations in 1999, 2000 and 2004.**

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>vol. sector</td>
<td>28</td>
<td>30</td>
<td>36</td>
</tr>
<tr>
<td>legal profession</td>
<td>22</td>
<td>19</td>
<td>12</td>
</tr>
<tr>
<td>individuals</td>
<td>17</td>
<td>184</td>
<td>216</td>
</tr>
<tr>
<td>faith groups</td>
<td>13</td>
<td>14</td>
<td>15</td>
</tr>
<tr>
<td>misc.</td>
<td>15</td>
<td>4</td>
<td>21</td>
</tr>
<tr>
<td>Total no. of respondents:</td>
<td>95</td>
<td>251</td>
<td>300</td>
</tr>
</tbody>
</table>

1. Summary of Responses to Improving Family Law, Scottish Executive, 2000
2. Analysis of Responses to the White Paper, Scottish Executive, 2000

There are two observations immediately apparent looking at this table. Firstly, both *Parents and Children (2000)* and *Family Matters (2004)* yielded almost three times more responses than *Improving Scottish Family Law (1999)*. One explanation could be that as devolution became embedded in the body
politic in Scotland, the democratic processes that had been put in place specifically to engage civil society began to bear fruit. This view would appear to be supported in the following account from a senior civil servant describing the new consultation processes:

When I compare the way we work now to the way we worked eight, ten years ago, the difference is really very marked. There is a far greater awareness of what good consultation means and even what shared policy development means in those areas where Ministers are happy for policy development to be shared at very early stages. I think there is a much greater concern to ‘face outwards’ to listen better to what individuals and organisations have to say, to tap into ideas and a lot of knowledge and to work with people out with the government arena while policies are being developed and then when they are being implemented.

CS-1

However, the most marked increase year on year, in the total number of respondents occurs between 1999 and 2000 (approximately 150%) with a much smaller increase (approximately 20%) between the 2000 and 2004 consultations. If the explanation for the increase in the number of people responding was simply a result of the natural evolution of the new Parliament’s consultation processes, one might expect to see a much steadier increase over the five year period as opposed to the 150% increase between 1999 and 2000 and the 20% increase between 2000 and 2004.

The second observation from the table above is the noticeable difference in the categories of people who respond between 1999 and 2000. Whereas the voluntary sector and legal profession represent the largest interest groups recorded in the 1999 consultation, the number of “individuals” responding increases by almost 1000% to become the largest category of respondents recorded in both the 2000 and 2004 consultations. This group accounts
almost exclusively for the 150% increase in numbers between 1999 and 2000.

A possible explanation for the marked increase in the number of individuals responding between 1999 and 2000 is alluded to in the analysis of responses to the 2000 consultation which notes that 165 out of 251 responses to Parents and Children ‘came from individuals, clergy or church groups as a result of a leaflet published by the Christian Institute’ (Analysis of Responses to the White Paper, 2000).

By the time Family Matters is published in 2004, respondents from the legal profession have gone from the second highest recorded category in 1999 to the smallest recorded category in 2004. The marked increase in the number of people recorded in the “individuals” category in the earlier document is also evident in Family Matters although like the Parents and Children consultation, some of these seem to be members of particular interest groups as noted in the analysis of responses to Family Matters:-

A significant minority of responses from individuals contained a degree of identical wording of phrases and sentences, indicating the likelihood of various campaigns and lobbying of views amongst some communities. From some of the comments made in such responses, it could perhaps be deduced that some respondents had not had sight of the consultation paper itself but had based their submissions on information provided to them by a third party (2004:2).

It seems reasonable to conclude from the documentary evidence available that in the year between the first consultation Improving Family Law being produced by the Scottish Executive in 1999 and Parents and Children in 2000, faith groups emerge as a significant interest group. The legal profession on the other hand, who appear to have been a key interest group and early policy driver for the reforms in 1989, almost disappear from view by the time
Family Matters is published in 2004. It is perhaps worth noting that the issues were framed more widely in the consultation and did go beyond ‘law’ and into more general areas of welfare and support. The reasons why faith groups emerge as a significant interest group at this stage of the policy process are explored in greater depth in the next chapter.

Emerging Fault Lines

Family Matters (2004) contained three firm proposals where a consensus had emerged from previous consultations. These were – 1) conferring parental rights and responsibilities (PRRs) on unmarried fathers who jointly register the birth of a child with the mother; 2) reducing the separation period required prior to divorce and 3) amending domestic abuse legislation to extend protection for cohabitees. As a consensus had emerged on these three proposals in the previous consultations undertaken, views were not sought on these issues which were presented as ‘firm proposals’.

Views were sought on a number of other proposals where a consensus had not been reached in the previous consultations i.e. legal rights for cohabitees; making it easier for married stepparents to secure PRRs and a right of contact for grandparents.

However, despite the three measures where a consensus had emerged being described as ‘firm’ proposals in Family Matters, the report on the responses to the document notes that it was two of the three ‘firm’ proposals (PRRs for unmarried fathers and reducing the timeframe for divorce) which generated the largest volume of responses. The breakdown of who was for and who was against these two proposals is highlighted in the table below.


<table>
<thead>
<tr>
<th>Table 2. Breakdown of Organisational and Individual Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Conferring PRRs on Unmarried Fathers</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>For:</td>
</tr>
<tr>
<td>Against:</td>
</tr>
<tr>
<td>2. Reducing the Separation Period Required For Divorce</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>For:</td>
</tr>
<tr>
<td>Against:</td>
</tr>
</tbody>
</table>

(Improving Family Law in Scotland: Analysis of Written Consultation Responses, Scottish Executive, 2004)

It is clear from the table above that the vast majority of respondents (both individuals and organisations) supported the reform which sought to confer parental rights and responsibilities (PPRs) on unmarried fathers. However, with regards to the second reform – reducing the separation period required for divorce, the respondents were split largely along individual and organisational lines. The vast majority of individual respondents were against the reform whilst two thirds of the organisations who responded were in favour of the reform.

The report on the analysis of responses states that the consultation drew much attention from respondents who strongly supported marriage and that
there was a requirement for greater efforts to be put into preparing for, supporting and working at marriage. It was noted that these views manifested themselves in the strong opposition to ‘fast track’ divorce. The most commonly raised theme under the ‘additional comments’ section was that respondents thought that the proposals may undermine marriage and threaten family life. Given that the analysis of the consultation responses indicated the likelihood of a co-ordinated lobbying effort by some faith groups, the status of ‘individuals’ in this context is clearly problematic.

It is worth contrasting the responses to the *Family Matters* consultation with the results of a specially commissioned module on family issues in the Scottish Social Attitudes Survey 2004 which was commissioned by the Executive at the same time to consider the public’s attitudes to family relationships to coincide with the family law reforms. The research found that the family law reforms were broadly in line with public opinion and the direction of change in public opinion. So whilst many of the individuals who responded to the *Family Matters* consultation expressed concern that the family law reforms would undermine marriage, the authors of the social attitudes module found:-

Overall the findings show the Scottish population report a high level of support or acceptance in its attitudes towards intimate relationships outside marriage, and sexual relationships outside marriage. A picture emerges of a high level of approval or acceptance of non-marital partnerships.......Where comparisons over four years, in 2000 and 2004, about attitudes towards sexual relations outside marriage can be assessed, the direction of change is, on the whole, towards greater acceptance, with the clear exception of under age sex and extramarital sex, where high levels of disapproval exist (Wasoff and Martin, 2005).

The disparity between the views of the individuals who responded to the family law consultation and the views of a statistically representative sample of the Scottish people more generally is perhaps not entirely unexpected. As
has already been said, the status of ‘individuals’ in the consultation is problematic given the co-ordinated lobbying effort of some faith groups. Data on religious affiliation in Scotland shows that 47% of the Scottish population describe themselves as having ‘no religion’.

**Table 3. Religious Identity in Scotland**

<table>
<thead>
<tr>
<th></th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>No religion</td>
<td>777</td>
<td>47.5</td>
<td>47.5</td>
<td>47.5</td>
</tr>
<tr>
<td>Presb/C of S</td>
<td>479</td>
<td>29.3</td>
<td>29.3</td>
<td>76.8</td>
</tr>
<tr>
<td>Rom. Catholic</td>
<td>202</td>
<td>12.3</td>
<td>12.3</td>
<td>89.1</td>
</tr>
<tr>
<td>Other Christian</td>
<td>151</td>
<td>9.2</td>
<td>9.2</td>
<td>98.3</td>
</tr>
<tr>
<td>Buddhist</td>
<td>4</td>
<td>.2</td>
<td>.2</td>
<td>98.5</td>
</tr>
<tr>
<td>Hindu</td>
<td>1</td>
<td>.0</td>
<td>.0</td>
<td>98.6</td>
</tr>
<tr>
<td>Islam/Muslim</td>
<td>16</td>
<td>1.0</td>
<td>1.0</td>
<td>99.5</td>
</tr>
<tr>
<td>Other non-Christ.</td>
<td>4</td>
<td>.3</td>
<td>.3</td>
<td>99.8</td>
</tr>
<tr>
<td>Refused/DK/NA</td>
<td>3</td>
<td>.2</td>
<td>.2</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Source: Scottish Social Attitudes Survey 2004

The family law reforms sought to update Scottish family law to reflect changes in society and to encompass a more inclusive notion of the different family forms that would now be recognised in law in modern-day Scotland. In doing so, perhaps inevitably, conflicting views of what constituted a ‘family’ came to the fore. When Scotland’s then First Minister, Henry McLeish launched the Scottish Executive’s first consultation document on the family law reforms in 1999, he made specific reference to the social changes taking place in society and said that it was vital that the Government’s approach to the family met the needs of Scotland’s families:-

The law must evolve and develop to suit the needs of and changes in society [italics added]. So,
as well as seeking views on how to implement recommendations which the Scottish Law
Commission made some time ago, this consultation asks consultees to consider other aspects
where it has been suggested the law needs to develop (Scottish Executive news release
0730/99).

In seeking to amend the law so that it would more adequately reflect changes
in society, the Scottish Executive faced criticism from individuals and groups
who did not see the changes in society as positive developments. The
conflicting views that came to the fore at this stage in the policy process
concerned the role of government in either ensuring the legislative
framework was ‘fit for purpose’ described here as the social realist position,
or, if you took the opposing view, that by updating family law to reflect
changes in society you were in effect, undermining marriage, the traditionalist
position. This could be described as the first ideological fault line in the
policy process lending credence to those theorists who view policy as a
political process involving a ‘struggle over ideas’ (Hall 1993, Kingdon 1995,
Stone 1997, King 1999, Lewis and Knijn 2002). This quote from a civil servant
involved in drafting the family law reforms illustrates the manifestation of
this key ideological fault line which emerged during the consultation
process.

The views were polarised…you had the Christian Institute who were totally against
anything which I would call socially modernist and then you obviously had the other
factions as well….there was an awful lot of individual responses which potentially
skewed the percentage figures. For the main planks of policy that we were firm on,
they were heartily endorsed by the main institutions.

CS-3

So what had begun life a decade earlier as an attempt by the Scottish Law
Commission to update family law was quickly re-framed into a moral issue
about the place of marriage in society. In post-devolution Scotland, civil
society was engaged at an early stage in the policy process. The literature review noted that although the concept of civil society is contested historically and in contemporary debates, a key aspect of New Labour’s modernisation agenda was to engage civil society in new partnerships (Newman 2001, 2002). The term ‘civil society’ has become accepted as part of the political lexicon although the elasticity of the term means that it can be stretched to fit diverse audiences and academic disciplines (Hodgson 2004).

Engaging civil society in the policy processes of the Scottish Parliament was a key principle identified by the Consultative Steering Group in the lead up to devolution (Arter 2006). The engagement of Scottish civil society in the family law reforms can be seen at this stage in the policy process primarily through faith group influencing activity which sought to re-frame the issue of family law reform away from concerns about inadequacy of current legal safeguards towards a moral discussion about the ‘family’ and the place of marriage in society. Nelson (2004) asserts that the framing of an issue can be pivotal in directing public opinion by making a case in favour of one of the two competing values and this issue is discussed in more detail in later chapters as ‘political frames’ emerged as significant in both case studies.

Fathers and Grandparents

In addition to faith groups, two other interest groups emerge as highly visible at the consultation phase of the policy process as this account illustrates.
There were two groups who weren’t really organised before then – grandparents and dads, and they seemed to escalate in terms of the number of people who wanted to have a voice about what was happening. I think in terms of groups who weren’t previously perhaps in a position to campaign as much, the interest there really escalated and I think they do tend to encourage their individual members to write in, and you have got a kind of pressure group there, people who are unhappy about something who then see an opportunity of being able to affect change. So I think they are much more inclined to be encouraged to write in and make their views known.

VS-1

The rights of fathers who were separated from their wives, partners and children had become much more high profile in the years leading up to the publication of the family law consultation documents following the policy influencing and direct action tactics of pressure groups like Fathers for Justice. In his interview, the representative from the campaign group Families Need Fathers acknowledges that his organisation viewed the Scottish Parliament as providing an opportunity for them to increase their profile in Scotland with the family law reforms providing a vehicle for putting their political influencing activities which had been honed in Westminster, into practice in Scotland.

We tried to make friends with particular individual politicians. We did mail shots for people and elicited where the sympathetic responses were and went to talk to them. And it has to be said that we have done this kind of thing for many years south of the Border. We have tried to be the reasonable face of fatherhood in a range of non-acceptable faces that are knocking about….everybody’s had a briefing at some stage.

VS-5

In their interview, representatives from the pressure group Grandparents Apart outlined a similar process of producing briefings, meeting with MSPs and using media opportunities to raise the profile of grandparents’ contact with their grandchildren. The Executive had previously come under pressure
to introduce a right of contact for grandparents. *Family Matters* made it clear that this was not considered appropriate but the paper sought views on promoting contact between children and the wider family where voluntary agreement could not be met. Nevertheless, the campaign group *Grandparents Apart* continued to lobby for their demands lodging a petition containing 2282 signatures in favour of grandparents having a legal presumption of contact with their children/grandchildren.

Neither fathers nor grandparents’ groups had a particularly high profile in Scotland prior to devolution, although fathers groups had been visible in family policy debates in England. However, the legislative processes of the Scottish Parliament guarantees access and involvement of pressure groups – they cannot be excluded from the process in its early stages, the government cannot be selective in only allowing access for certain groups although the government is not bound by the results of consultation (Lynch 2001). This reinforces one of the issues to emerge from the literature - the importance of making an analytical distinction between *access* and *influence*. This theme is discussed further in later chapters.

**Family Relationship Bodies**

The national family relationship bodies (Relate Scotland, Family Mediation Scotland, Stepfamily Scotland and Scottish Marriage Care) had very little visibility during the consultation phase of the family law reforms even although the document *Parents and Children* (2000) contained two proposals which directly affected them. The report stated that there should be a strategy for the funding of the family support organisations and this should
be underpinned by a statutory power. However, when *Family Matters* was published four years later, these proposals had disappeared and a new section was added:

We believe these services should now be developed on a more integrated and coherent basis. Service Users should have access to a range of services, to be able to move between them with ease, and to have confidence that services are consistent and quality-assured right across the country. We want to see the national bodies operate corporately to provide a clearer focus and strategic direction (Scottish Executive 2004:48).

Interviews with key actors from the national family relationship bodies revealed that behind the scenes, during the consultation phase of the family law reforms, the family relationship bodies were coming under considerable pressure from the Executive (both Ministers and civil servants) to work more collaboratively and had been given a clear message that new funding would only be available for collaborative work which became known as the Change programme. The suspicion at the time was that the Executive wanted the national family relationship bodies to merge and this quote from a senior civil servant interviewed at the time that these negotiations were taking place would appear to support this.

*My own sense is that in their relations with the Executive and perhaps even more so in their relations with other funders including local government funders, the family relationship bodies would gain immeasurably from a more joined-up attitude. If I put myself in the position of someone from local government I could see that in the welter of organisations that come at me under community planning, children’s services planning, If I am besieged by four different bodies pleading the case for stepparents, counselling, mediation and counselling mark two, I will wonder what it’s all about and will end up not listening to any of them.*

CS-1

The fact that the Change programme coincided with the consultation phase of the family law reforms may explain the relative invisibility of the family
relationship bodies at this early stage of the policy process. They appear to have been engaged in a rearguard action with the Executive to defend their individual operations. In this situation, policy influencing activity appears to take a back seat to securing funding for ongoing service provision. The enhanced role of the voluntary sector following New Labour’s focus on new governance and partnership working has created both opportunities and challenges for the sector with many of the challenges to be found in the funding arrangements and contract culture within which the sector operates (Taylor 2001, Craig et al 2004, Casey 2004).

In a study which examined the experience of ‘civil society’ groups’ participation in the policy process in Wales which involved visits to 40 groups, participant observation and documentary analysis, Hodgson (2004) notes that civil society, traditionally viewed as a sphere outside the state, now finds itself engaged in various types of ‘partnerships’ with both the state and the business community. The author contends that this has had the effect of redressing the boundaries between civil society and the state, concluding that civil society pays a high price for involvement with the state. The requirements imposed on the national family relationship bodies by the government to consider their internal structures and develop collaborative working would appear to have limited their ability to fulfil a policy influencing function in the early stages of the policy process of the family law reforms.

The impact of the influencing activities of the three interest groups identified as most visible during the consultation of the first two policy documents in 1999 and 2000 – faith groups, fathers and grandparents groups, could be seen
when the third consultation document *Family Matters* was debated in Parliament in June 2004. Opening the debate, Cathy Jamieson MSP, the Minister for Justice moved the following motion:-

The Parliament agrees that family law reform must safeguard the best interests of children; believes that stability in families should be promoted and supported and therefore supports the reform of family law so that it reflects the realities of families today (Official Report, Session 2, (2004) 16th June, 2004).

In her speech, the Justice Minister acknowledges that people may have strong views on the issues but says that the state should play little or no role in families that are strong and functioning well but should provide support when families hit a rocky patch. However, perhaps in recognition of the concerns that were being expressed in civil society by faith groups that the proposals would undermine marriage; the Minister clearly outlines the Executive’s views on the issue.

We recognise and value strongly the institution of marriage, but we also recognise and acknowledge that family composition is diverse. Legislation must be able to accommodate that diversity, support all family units and enable them to play a part in society. I do not believe that the special place of marriage – which is, indeed, very special for many of Scotland’s people – is undermined by any of our proposals.....I want Scotland to be a place in which “family” is a treasured word and concept that is supported by strong and modern legal frameworks (*ibid.*)

A number of speakers make reference in the debate to the fact that this issue was not a party political issue and both Conservative and Scottish Nationalist MSPs expressed concern that the proposals would undermine marriage. In both recognising the place of marriage in society and the diverse composition of families in Scotland, the Minister takes the same position that New Labour has adopted at Westminster – supporting both ‘traditional’ and ‘non-traditional’ family forms, promoting marriage and two parent households but also accepting non-conventional households (Wasoff and
During the debate, two amendments were proposed, one from the Scottish National Party which sought to reinforce legal protection for cohabiting couples and one from the Conservatives which sought to delete the last part of the Executive’s motion which refers to the need for the law to ‘reflect the reality of families today’. In this account, Margaret Mitchell, the Conservative MSP who moved the amendment explains why she proposed the amendment.

I wasn’t able to support the principles because I thought there was a gap in the three principles. For a supposedly child-centred bill, I didn’t think it was looking enough at what was right for a child – it was much more about reflecting changes in society……. They [Executive] didn’t accept that it [family law reforms] would necessarily undermine marriage and the thing that they didn’t get quite right was ‘reflecting society as it is’. I don’t think it’s necessarily a good thing to say well marriage is breaking down so we accept that and make it faster to divorce and let people move on. MSP-4

The competing value claims embodied in the two positions of social realist and traditionalist clearly collide in this debate as evidenced in the amendment which sought to delete the part of the Executive’s motion stating that the law should reflect the reality of families today. Similarly, the impact of the influencing activities of both fathers and grandparents groups was apparent in the debate with the majority of the interventions by MSPs addressing the rights of fathers and grandparents. Thus in the early stage of the policy process the interest groups identified in this section have secured access and have undoubtedly met the first criteria listed in the ‘continuum of influence’ model identified by Mackay et al (2005) – recognition of legitimate voice. The next section of this chapter focuses on the second, parliamentary phase of the
legislative process of the family law reforms using observational, documentary and interview data to consider the events following the conclusion of the pre-legislative phase when the Bill was handed over to the Justice 1 Committee for Stage 2 scrutiny before coming back to the Parliament for the final, Stage 3 debate.

Influencing Activity at Second Parliamentary Phase

Playing to the Gallery

The Family Law (Scotland) Bill that was presented to Parliament following the consultation process included most of the proposals outlined in Family Matters with the following exceptions – there would be no legal presumption of contact for grandparents although the Executive announced a non-legislative option in the form of a grandparents’ charter1 and there was no change to stepparents PRRs. Other non-legislative options announced included the introduction of a parenting agreement to help estranged parents work through disputes over the time each gets to spend with the children and a public information campaign to inform people of the changes to family law and signpost sources of help and support. The non-legislative options appear to address the particular needs of both fathers and grandparents, two groups who had been particularly active during the consultation phase. The Bill was referred to the Justice 1 Committee to be scrutinised and it is at this second stage of the parliamentary phase of the legislative process that we see the sands shifting, a re-positioning of interest groups, and an increase in

1.Originally conceived as a grandparents charter to encourage a more formal recognition of the role grandparents play in families, following discussion at the Family Law Stakeholders Group (a group set up to oversee the implementation of the non-legislative measures) it changed its name and became a grandchildren’s charter.
political influencing activity by groups who were not particularly visible during the pre-legislative phase of the process. The Justice 1 Committee was responsible for scrutinising the Family Law (Scotland) and as part of the Stage 2 process of the parliamentary phase of the legislative process, received both written and oral evidence from a wide range of organisations, interest groups and individuals. At this stage of the policy process, a key event occurred which offers some indication of the ongoing impact of the political influencing activities of key interest groups evident during the consultation phase. The Justice 1 Committee agreed an amendment to the Family Law Bill which rejected the time period required for separation prior to divorce proposed by the Executive. The original report from the Scottish Law Commission in 1989 had recommended reducing the separation period required for divorce from five years to two years when proceedings did not have the consent of both parties and from two years to one year when both parties consented to divorce. This was a firm proposal that the Executive had not sought views on although as we saw in the previous section, this was the measure that generated most comments during the consultation process.

Margaret Mitchell, a Conservative MSP on the Justice Committee proposed an amendment to the Bill that rather than reducing the time period from 5 years to 3 years and 2 years to 1 year as suggested by the Executive, the separation period should be 3 years and 18 months. In her interview, she explains the thinking behind this amendment.

So many people who had given evidence had talked about that period....one year...being like a bereavement process so it seemed sensible that to have that time [18 months] to reflect even although they had both consented to it because a lot of the family support organisations could tell you of couples who had embarked on divorce proceedings and then not gone through with it and some had even
remarried...the three years instead of two was really going on the advocates' submission...they said that when one of the parties was seeking a reconciliation two years just wasn’t long enough.
MSP-4

The committees have an in-built majority of MSPs representing the governing party (in this case the two coalition parties) and any proposal which went against Executive policy would require the support of MSPs representing the governing coalition to be passed. The amendment proposed by Mitchell received support from two Labour MSPs – Pauline McNeil, the chair of Justice 1 and Mary Mulligan. In this account, Marlyn Glen, a Labour MSP on the Committee who did not support Mitchell’s amendment describes her reaction when the amendment was approved.

I was totally shocked. It was an Executive proposal that was seen to be totally acceptable and I don’t think we took any evidence that was against that because people thought that 5 years was too long and that seemed to be agreed across the board yet when it came to the bit.....but I was in a minority with the lib-dems supporting the Executive’s view which was quite strange.....there was a lot of individual lobbying going on.......I think people’s personal beliefs came in rather than actually looking at it from what was supposed to be reflecting 21st century Scotland and its people and I found that very difficult that because of an individual’s background and circumstances that they would allow that to colour what they were deciding.
MSP-3

In her account, Margaret Mitchell does not indicate that her amendment was influenced by the political influencing activity being conducted by faith groups although this is suggested by other interviewees. The reference above to individual beliefs colouring an MSP’s policy position was commented on in this quote from a civil servant who was involved in the policy process.

The reason why they [Executive] lost it at the Committee was on religious
The interviewee is of the view that the activities of the Christian Institute influenced the amendment and the religious affiliation of the two labour MSPs who supported the amendment is seen as a significant factor in their decision to oppose the Executive position. The Christian Institute was found to be a key interest group during the consultation phase summarised in the previous section and the two Scottish Nationalist MSPs who are named—Fergus Ewing and Brian Adam are also known to have strong religious convictions. Brian Adam made media headlines when it was alleged that a number of American interns who were working at the Scottish Parliament at the time had been attempting to influence the policy process of the family law reforms. The internships had been arranged by Brian Adam through a Mormon College in Utah and it was suggested in media reports that he was acting inappropriately in facilitating American students from a Mormon college who were then, it was suggested, working out with the parameters of an internship by trying to influence policy. An investigation of these allegations is out with the scope of this research, but it would be fair to say that Brian Adam, in common with other MSPs who were visible during Stage 2 of the parliamentary phase of the legislative process, was known as a politician who had strong religious convictions. Neither Brian Adam nor Fergus Ewing, the other nationalist MSP mentioned,

2. The ‘wee frees’ refers to the small, fundamentalist churches concentrated in the Western Highlands and Islands.
are members of the Justice 1 Committee. However, the Parliamentary system allows any MSP to attend Committees as an observer. Both Brian Adam and Fergus Ewing made use of this provision attending a number of the Justice 1 meetings when the family law reforms were being discussed. The Labour MSP Mary Mulligan was a member of the Committee and as has been stated, was one of the Labour MSPs who opposed the Executive’s position on separation periods required prior to divorce. The influencing activities of faith groups during the consultation phase of the family law reforms were highlighted in the previous section. However, the possibility that these same interest groups would continue to seek to influence the policy process during the parliamentary phase of the process is one that appears to have come as a complete surprise to both Ministers and members of the Bill team as this account illustrates.

To be honest we never felt that it was going to be problematic and we were obviously horrified when we lost it at Stage 2...when I say it was a shock, it wasn't as much of a shock as it would have been 24 hours before. It was only in the last 24 hours because the Minister works his MSPs really well...and he became very concerned that we were going to lose it. But that just emerged in the last 24 hours.

CS-3

It is interesting in this account that neither the Minister nor the civil servants are aware that this amendment is going to go through until 24 hours before. It would seem that the influencing activities of the faith groups continued into the parliamentary phase of the legislative process and moved the faith groups up the ‘continuum of influence’ model described by Mackay et al (2005) and summarised in Chapter 2. Faith groups would appear to have met the first three criteria identified in the model – recognition of a legitimate voice; provoking reconsideration of the way others think; and changes in
terms of public and political debate. With an in-built majority on the Justice Committee, one would have expected any amendments opposing the government’s position to fall. The fact that the amendment was passed, is an indication of the effectiveness of the influencing activity undertaken by faith groups although the active support of particular MSPs was clearly a factor in this. However, two interest groups who had not been particularly visible during the consultation phase emerged as key actors at this point in the process – the national family relationship bodies and Scottish Women’s Aid.

Shifting Sands
All of the national family relationships bodies’ submitted written evidence to the Justice 1 Committee although only two organisations were invited to give oral evidence. When the Justice 1 Committee finished taking evidence, they concluded in their report on the Bill that there appeared to be considerable merit in examining whether the provision of relationship support services could be better delivered through a ‘one stop shop’ approach. The Committee favoured access to reconciliation services at an early stage should a relationship fall into difficulty, and mediation should attempts at reconciliation fail. However, the Committee stated that it did not wish to endorse a view that additional funding was required stating that “the Committee simply does not have the evidence to accept or reject such an amendment” (Justice 1 Committee, 8th Report, (Session 2) 2005:56). Instead, the Committee called for “a full review of existing relationship support services to establish what types of services are needed and to identify whether there are any structural and/or resourcing issues that should be addressed” (ibid).

Having had a low profile during the consultation period, the publication of
the Justice Committee’s report in July 2005 appears to have acted as an incentive for the family relationship bodies to dramatically increase their political influencing activities. Chapter 2 noted that much of the literature on the involvement of the voluntary sector in influencing public policy has until recently concentrated on variations of the insider/outsider perspective where there is a sharp distinction between state and society – actors are either ‘inside’ or ‘outside’ the state (Newman 2004). However, a simple distinction between insider and outsider strategies is no longer thought to reflect the reality of the policy environment nor the strategic choices made by voluntary sector organisations (Craig et al 2004).

Of the three interest groups most visible during the consultation stage of the policy process, fathers and grandparents groups could probably be regarded as operating predominantly outside the state as neither group receives state funding. The Christian Institute, as a fundamentalist evangelical Christian organisation, also operates largely outside the state. The Catholic Church on the other hand, adopts both insider and outsider strategies. The family relationship bodies would probably be regarded as ‘insiders’ given that they receive substantial government funding and are invited to participate in various policy forums. Similarly, the second interest group to emerge during the parliamentary phase of the legislative process – Scottish Women’s Aid, would be seen as operating largely within the state as they receive most of their funding from the Scottish Executive. However, the repositioning of these latter two groups during Stage 2 and 3 of the parliamentary phase of the legislative process suggests that even when operating largely inside the state, it is sometimes necessary to move outside. This reinforces the literature which problematises categorising interest groups as either insiders or outsiders. Following the publication of the Justice 1 Committee’s report, the
family relationship bodies felt that the report demonstrated a lack of understanding about counselling and early intervention. This concern appears to have acted as a catalyst for the family relationship bodies to embark on an intensive lobbying effort to influence the legislation at this relatively late stage of the process as this account illustrates.

We wrote to every MSP and then specifically targeted members of the Justice 1 Committee providing them with briefings and fact sheets. We wrote to the Convener of the Committee and although the stage for giving oral evidence was over, she met informally with representatives from the national bodies. I focused on three areas at that meeting – the confusing language used in the Committee’s report regarding early intervention, counselling and mediation; the benefits and outcomes of counselling and early intervention; and the need to focus on the cost of family breakdown rather than the cost of the family relationship bodies.

VS-3

The family relationship bodies were also involved in preparing amendments at both Stage 2 and Stage 3 of the parliamentary phase of the legislative process which sought to put a statutory duty on local authorities to provide family and relationship support services. Some of the organisations were involved in the drafting of the amendment; others were responsible for providing MSPs with information about other countries where local authorities have responsibility for providing relationship counselling in every community. This intense burst of influencing activity in the lead-up to the Stage 3 debate appears to have had an impact as can be seen from this comment:-

The Justice 1 Committee now understands the differences between the services that are provided, but I am not sure that everybody else understands them. Even Stewart Stevenson missed out one service that we discussed: pre-marriage advice. The other services are reconciliation services, mediation and family contact services, which all work differently, but
which all have a contribution to make when relationships break down......I thank Scottish Marriage Care for the information that it provided (Mary Mulligan MSP (Labour) 2005:21901).

This comment by a Labour MSP who was a member of the Justice Committee suggests that the family relationship bodies, like the faith groups, meet the first three criteria identified in the ‘continuum of influence’. Although the family relationship bodies had little visibility in the debate when Family Matters was launched in 2004, family and relationship support had a much higher profile in the Parliamentary debate fifteen months later in September 2005. There is also a subtle change in both the tone and content of the Minister’s statement to the Parliament in the Stage 3 debate. As with the previous debate in 2004, the Minister makes reference again to the “challenging task” that the Executive had set the national family relationship bodies, namely “to raise their game, to provide services in a more integrated and coherent way, to maximise their efficiency and to strengthen the local network of services”.

However, in the debate, the Minister highlights the role of local authorities in developing and supporting services for families that face relationship difficulties, stating that he knows “‘from the many letters that I have received that there are concerns that in many areas insufficient support is provided for these services” (Official Report, Session 2, (2005), 15th September, 2005). And again, unlike the previous debate where there was little reference to the services provided by the family relationship bodies, at least six MSPs made some reference to the services they provide.

The organisations that have briefed us on the bill make the case on human values for the work they do. They also make the case in hard cash terms. They tell us that the conflict that
their work tries to prevent or resolve costs the state far more than such services would (Patrick Harvie MSP Official Report, Scottish Parliament, 15th September 2005).

It seems likely that the increased profile of the family relationship bodies is primarily as a result of the political influencing work they conducted in the period between Stage 2 and the Stage 3 debate during the second parliamentary phase of the legislative process. The significant increase in the number of MSPs who made reference to mediation and counselling services in the debate suggests that local services were heavily involved in the political influencing work.

The second interest group to emerge at Stage 2 was Scottish Women’s Aid, the national voluntary organisation supporting women and children who have experienced domestic abuse. Scottish Women’s Aid was very concerned about the issue of safe contact for children whose parents were separating when domestic abuse was involved as this interviewee explains.

There had been this long drawn out policy process. In the earlier consultation there was reference to building in safeguards for children but when Family Matters came out there was nothing – no mention of domestic abuse in relation to contact. It was like all the evidence linking domestic abuse and abuse of children was ignored. The debate was skewed with everyone focusing on how the courts had a bias in favour of women. We felt we had gone through the proper procedures but it was the really emotive arguments being put forward by Families Need Fathers that were being listened to. They had encouraged their members to lobby individually and that was definitely reflected in the debate when Family Matters was launched.

VS-4

The interviewee above makes reference to the political influencing efforts of fathers’ groups during the consultation phase which, she suggests, is instrumental in framing the debate around the needs of fathers at the expense of women and children living with domestic abuse. It is interesting
that at this point it is the relatively new [in Scotland] pressure group *Families Need Fathers* who are perceived as setting the policy agenda and Scottish Women’s Aid, with their vast policy influencing experience, are struggling to have their voice heard. Chapter 2 made reference to theoretical conceptions associated with ‘framing’ policy issues much of which appears to relate to framing activities undertaken by political elites - experts or governments, as this quote from Campbell (1998) illustrates.

The framing process is indeed a strategic and deliberate activity aimed at generating public support for specific policy ideas. Moreover, the capacity to communicate ideological frames to the targeted audience is essential to experts and political actors who seek to legitimise existing policy decisions (1998:397).

What is interesting in the findings from the two case studies explored in this research is that the overt framing activities appear to comes from out with political elites. In the family law reforms, faith groups successfully re-frame the debate away from the frame initially provided by the government – the need to provide legal safeguards for vulnerable families. It is also suggested in the quote above from the respondent from SWA that fathers groups’ had framed the debate around the needs of fathers. The issue of framing is discussed in more detail in chapters 6 and 8 but the key point that fathers were one of the loudest voices at that stage in the policy process is supported in this account from Marlyn Glen, a Labour member of the Justice 1 Committee.

*What I found difficult was the fact that there were lots of witnesses [giving evidence to Justice1] who represented faith groups, fathers and grandparents but there was only Scottish Women’s Aid representing women’s interests….so I thought right from the start there was a huge bias in the evidence we took …but I’ve said to lots of groups since that they shouldn’t have left it to Scottish Women’s Aid. The
men’s groups were listened to with a great deal of sympathy which surprised me especially since we didn’t have a balanced viewpoint from a women’s group.

MSP-3

Glen goes on describe one session of the Committee which took evidence from an individual – a father separated from his wife.

…and there was a single person, I should have asked more questions about this at the time. There was one individual seemingly randomly chosen and he was a panel all to himself. He did bring in some interesting ….I’m not saying he didn’t bring in some interesting aspects and did as much as he could to keep his personal circumstances out of it but there wasn’t a balance to it. I wanted to hear the other side of the story. It didn’t persuade me but others stated that it was very persuasive.

MSP-3

Committees normally receive oral evidence in panels of witnesses so for example, representatives from two or three children’s charities might be heard at the same time in a single panel of witnesses. Other interviewees expressed surprise that one individual had been given a panel to himself as this account from a Chief Officer of a national voluntary organisation illustrates:

There was a single dad who gave evidence. I don’t know whether that would have happened before, but I think they [fathers] were doggedly determined and therefore they had enough people to be constantly lobbying, writing and emailing the people who were engaged in actually developing the legislation….so I think they made themselves highly visible and were hugely persistent as well.

VS-1

On the issue of safe contact for children, Scottish Women’s Aid had put forward the proposal that there should be a rebuttable presumption inserted into the Bill against contact in cases where domestic abuse had occurred. This
position clearly challenged the prevailing mood which had built up around
fathers’ rights and would appear to have received little support from the civil
servants drafting the legislation. However, as a highly experienced
campaigning organisation who spent their early years operating largely
outside the state, Scottish Women’s Aid very quickly moved into lobbying
mode, making alliances with other organisations i.e. children’s charities and
launching the ‘safe contact’ campaign. Malcolm Chisolm MSP, who was, at
that time, Communities Minister [with responsibility for equalities]
illustrates this in the following account:

The main reason that I have taken an interest in it [the Family Law Bill] is the
concerns of Scottish Women’s Aid. I haven’t had a detailed involvement in it but I
suppose that that’s quite an interesting area for me, because it’s like where I am
coming in as Equalities Minister saying that you really need to listen to what
Scottish Women’s Aid are saying on this and yet, the strong view from the Justice
civil servants which is being accepted by their Ministers, is that what Scottish
Women’s Aid is proposing on this is really not…..well I don’t know whether they are
saying it’s not practical, they are certainly saying it’s not desirable.
MSP-1

As with the issue of relationship support, safe contact had barely been
mentioned in the debate in Parliament when Family Matters was launched in
2004. When the Bill was debated again a year later in the first stage debate in
September 2005, it had moved much higher up the political agenda with the
Minister acknowledging in his statement to Parliament the concerns
expressed by Scottish Women’s Aid.

We are aware that Scottish Women’s Aid is deeply concerned about safe contact for children
and their mothers, and we share that concern, Domestic abuse is a scourge on our society.
When women and children escape an abusive situation, their continued safety and well-
being must be ensured. However, we also share the Committee’s concerns about the dangers
that are inherent in introducing presumptions into this aspect of family law. The welfare of
the child is the paramount consideration. Judges consider the facts and circumstances of
each individual case before concluding what is in the child’s best interests. We are considering the issues that were raised directly with Ministers and with the Committee during its evidence taking (Hugh Henry MSP, Deputy Minister for Justice, Official Report, Scottish Parliament, 15th September, 2005).

There are also calls from MSPs in the debate to consider the concerns that have been raised by SWA.

Scottish Women’s Aid is anxious that children should not be forced to meet a non-resident parent if there is chance of harm being done. The organisation’s campaign for safe contact seems to be a basic requirement and the issue has to be tackled. I urge the Minister to continue in dialogue with Scottish Women’s Aid so that the Bill will contain practical provisions to ensure the safety of children who are vulnerable (Marlyn Glen MSP (Lab) Official Report, Scottish Parliament, 15th September, 2005).

Clearly, the influencing activity conducted by SWA, like the family relationship bodies, was instrumental in increasing their visibility as an interest group and ensuring that their concerns began to be addressed in the policy process. The evidence would suggest that at this point in the policy process, like both the faith groups and the family relationship bodies, SWA fulfilled three of the criteria identified in the ‘continuum of influence’ model – recognition of legitimate voice; provoking reconsideration of the way others think; and changes in terms of public and political debate.

Conclusion

To summarise, the findings presented in this chapter cover the pre-legislative phase of the legislative process and stage 1 and 2 of the second parliamentary phase to explore who the influential voices are in the policy process of the family law reforms. The findings show different actors coming to the fore at different stages with faith groups, fathers’ and grandparent’s groups
identified as key actors during the early consultation period securing both access and influence and meeting the first three criteria identified in Mackay et al’s (2005) ‘continuum of influence’ model. This is evidenced in the documentary analysis of the consultation documents, observation of the parliamentary debate and in individual accounts by key actors.

Both *Parents and Children* (2000) and *Family Matters* (2004) yielded almost three times more responses than *Improving Scottish Family Law* (1999). Two thirds of the respondents in the 1999 consultation represented the voluntary sector, the legal profession and other professional groups with the remaining third made up of individuals and faith groups. This breakdown was reversed in the two subsequent consultations with individuals representing almost two thirds of respondents and voluntary, professional and other public groups representing one third of respondents. The analysis of responses to the 2000 and 2004 consultation documents indicates the likelihood of a co-ordinated lobbying effort by some faith groups rendering the status of ‘individuals’ in this context problematic.

And although many of the ‘individuals’ who responded to the consultations in 2000 and 2004 expressed concern that the proposals would undermine marriage, this would not appear to have been representative of the view of the Scottish people more generally. The consultation phase of the policy process also saw the emergence of the first ideological fault line associated with the family law reforms. The rationale for the reforms presented by the government was the need to update family law to reflect the reality of family life today. This generated a response from some faith groups in Scottish civil society who stated publicly that the proposed reforms would undermine
marriage. Thus the early stages of the policy process brought forth two contrasting viewpoints social realist versus traditionalist and this ideological fault line endured as the legislative process moved into the parliamentary phase.

Interest group activity continues during Stage 1 and Stage 2 of the second parliamentary phase of the legislative process but MSPs are the new actors at the policy table when the Justice 1 Committee begins to scrutinise the new legislation and the Parliament engages in the Stage 1 debate of the legislation. The ideological fault line which emerged in civil society during the consultation phase is echoed in the political stream with support for the two contrasting positions not delineated along party political lines. This culminates in the Justice 1 Committee supporting an amendment opposing the government position on separation periods required prior to divorce suggesting that the influencing activities of faith groups had been successful in reframing the debate away from legal safeguards towards the place of marriage in society. The Justice 1 Committee also grants an individual father a panel to himself during the Committee’s oral evidence sessions suggesting that fathers groups’ similarly met with success in framing the debate around the needs of fathers. There is a re-positioning of interest groups at this point with two new interest groups emerging – the family relationship bodies and Scottish Women’s Aid. Both of these organisations went from a position of virtual invisibility during the pre-legislative phase to becoming highly visible during the second parliamentary phase of the legislative process and moving centre stage in the lead-up to the Stage 3 debate in the Parliament. It is possible that both the family support organisations and Scottish Women’s Aid assumed that there was a consensus on the issues that concerned them –
funding for local family support services and safe contact for women and children who have experienced domestic abuse - when in fact there was none. Scottish Women’s Aid perhaps underestimated the impact of high-profile campaigns by fathers’ groups and the ability of Scottish fathers’ groups to galvanise their members and engage them in lobbying efforts. SWA launched their highly effective ‘safe contact’ campaign and managed to secure support from some of the main children’s charities.

The family relationship bodies have been around for some considerable time and may have assumed that there was political support for their services. They were also heavily engaged in the ‘change’ agenda during the consultation phase of the policy process and this was clearly taking up much of their Chief Officers’ time supporting suggestions in the literature that increased collaboration with government has brought challenges as well as opportunities. The family relationship bodies were assisted in their influencing efforts by their local services who successfully lobbied local MSPs. In contrast to earlier Parliamentary debates, the concerns of both the family relationship bodies and SWA were mentioned by the Minister and also a number of MSPs during the Stage 1 debate. All the interest groups identified in this chapter appear to have secured both access and influence meeting the first three criteria identified in the ‘continuum of influence’ model. The fourth criteria identified – concrete changes in policy outcomes is discussed in the next chapter.

Kingdon’s framework is primarily concerned with understanding the agenda setting stage of the policy process and the findings summarised in this chapter indicate that the multiple streams approach helps to explain how the
family law reforms came back onto the public policy agenda having first appeared in the policy stream a decade earlier. The problem of outdated family law initially coupled with a policy solution - the two policy documents produced by the Scottish Law Commission in 1989 and 1992. The documents produced by the Law Commission provided technical feasibility, meeting one of the criteria Kingdon identifies as essential for achieving successful coupling of the three streams. However, the second criteria identified by Kingdon - value compatibility, was not present in either 1989 or 1992.

The Conservative government at that time had been elected on a ‘back to basics’ manifesto which promoted the traditional nuclear family as the bedrock of society. And although the Scottish Office might have been able to diverge from this theme given Scotland had its own legal system and the Scottish electorate did not vote conservative in either 1989 or 1992, it would, arguably, have been more difficult. The prevailing political climate meant that successful coupling of all three streams of problems, policies and politics was not possible in 1989 or 1992. Fast forward seven years and a policy window opens with the setting up of the new Scottish Parliament. The criteria which prevented successful coupling first time round - value compatibility, is no longer a barrier. The people of Scotland elect a Labour/Liberal Democratic coalition government on a socially modernist manifesto and less than a year into the new Parliament, the Executive resurrects the Law Commission’s policy proposals publishing the consultation document Improving Family Law in Scotland. At this stage in the policy process, Kingdon’s framework is holding up, adding value to our understanding of the agenda-setting phase of the policy process of the family
law reforms.

The second policy document *Parents and Children* is produced one year after
the first consultation paper and it is at the point of the publication of the
second consultation document that the multiple streams framework runs
into difficulties. Having achieved the successful coupling of the three streams
of problems, policies and politics which, according to Kingdon, is the point at
which the greatest policy change occurs, the policy process appears to come
to a standstill with no further action for another four years. The next chapter
continues the analysis of the policy processes of the family law reforms
assessing the final Stage 3 debate and probing the relationship between the
policy and politics stream further to explore whether a greater
understanding of the relationship between these two streams might add to
the multiple streams framework and its ability to explain policy processes. It
is to the happenings in the political stream that we now turn.
Chapter five: the politics of the family law reforms

This chapter continues the analysis of the policy processes of the family law reforms addressing another primary research question posed in this research – how does political activity by civil society impact on government policy. The chapter focuses specifically on the impact of activity in the politics stream on the policy process; probing the relationship between the two streams of policy and politics; analysing the final Parliamentary debate on the family law reforms and exploring the effect that influencing activity in civil society had on the final policy output. The interest groups identified in the previous chapter continued to be visible in the policy process up until the family law reforms were finally approved by the Scottish Parliament on 15 December 2005. The findings presented in this chapter point to a symbiotic relationship between the policy and politics stream and illustrate how activity in the politics stream had a direct effect on shaping the final policy output.
Policy and Politics: A Symbiotic Relationship

Marriage as the ‘Gold Standard’

The previous chapter highlighted the key ideological fault line that emerged in the early stages of the policy process of the family law reforms and led to faith group influencing activity in civil society based on their concerns that the proposed reforms would undermine marriage. Clarence Stone (2005) notes the importance of those theorists like Putnam 1993, Brown 1999 and Neuenschvarde et al 2004, who ‘opened eyes’ to the importance of civil society and who showed how dependent public authorities can be on the cooperation of actors whose base of operation is civil society.

Stone claims that his own work on urban education has given him a strong appreciation of the extent to which public policy impact is a product of both governmental and non-governmental action. Non-governmental action in the case of the family law reforms can be seen through the influencing activities of faith groups - predominantly Evangelical Christian groups and the Catholic Church, who sought to re-frame the debate away from concerns about legal safeguards towards a moral debate about what constitutes a ‘family’ and the place of marriage in society. In this account, the Parliamentary Officer for the Catholic Church describes the influencing activity undertaken on this issue.

One of the things we tried to get over in one of our meetings...it was the Cardinal and I with Cathy Jamieson [Justice Minister] .....they [Executive] are terrified of being seen as preaching or moralising but they are quite happy to accept that if family life is degraded in any way then so is social life for the whole of society. We tried to link it …to the anti-social behaviour initiatives, the discipline problem in schools….there’s a whole area of policies..the sexual health strategy….so we tried to
show them that we need a strong basis for society, that a commitment to marriage is a very serious thing. So making it easier for people to walk away from it is, in our view, the opposite message. So it was really trying to get that message across to them.

FG-2

Just how successful faith groups were in lodging that particular message with politicians was evident in the final parliamentary debate on the legislation. The Family Law (Scotland) Bill was presented to Parliament at on 15th December 2005. The debate lasted all day and a large number of amendments were considered, many of which were technical amendments. In the lead-up to the debate, the activity in civil society moved up a gear with significant media coverage on the provisions within the Bill which sought to reduce the time of separation required prior to divorce. This of course was a key focus of the influencing activity in civil society throughout the policy process and received even greater media attention following the decision by the Justice 1 Committee to oppose the Executive’s recommendations for separation periods. Faith group influencing activity intensified and there was speculation in the media that the government would concede and agree to the new separation periods agreed by the Justice 1 Committee as this comment by Iain Macwhirter, political analyst for the Sunday Herald illustrates:

There seems to be a current of social conservatism running in Holyrood right now and, whether consciously or not, this is gradually narrowing the horizon of social reform...The next battle with the forces of conservatism is over the Family Law Bill....The Executive hasn’t decided whether to back her [Margaret Mitchell MSP] proposal to extend uncontested divorces from one year to 18 months and contested divorce from two to three......The suspicion is that Jack McConnell would like to accept the amendment, even though it goes against Executive policy, in order to placate the Church groups which are so influential in west central Scotland Labour politics. If he does so, it will overturn a decade of legal reform in family life.

Iain Macwhirter, Sunday Herald
In this extract, the commentator is coming out in support of the family law reforms but this was not the position taken by other Scottish newspapers. The role of the media was commented on by respondents in the last chapter and this is a theme that runs through both case studies. Schlesinger et al (2001) trace the relationships between journalists, lobbyists and politicians in post-devolution Scotland, identifying the small-country connections which, they argue, can tend to work against healthy detached reporting. “It cannot be denied that in the proposed transformation of the relationship between civil society and the state in Scotland, the news media and political reporting have been of prime importance” (2001:259). The role of the media is discussed in the chapters to follow. When Parliament convened to consider the Bill, the first discussion in the debate on the separation periods required prior to divorce occurred in the morning when SNP MSP Brian Adam proposed an amendment which sought to retain the 2 year period when there was consent putting forward the argument that when divorce laws are liberalised, the number of divorces increase.

I accept that we cannot make people stay together and I do not think that divorce should never happen – although that is a perfectly honorable position to take. I believe that there is a place for divorce, but we should not take steps that actively encourage it. When at Stage 2, I asked the Minister how the Bill’s provisions would support and encourage marriage his silence was deafening. In my view, section 10 will actively encourage more divorce (Brian Adam MSP (SNP) Official Report, Session 2, 15 December 2005:21776).

The amendments relating to a reduction in the separation period required prior to divorce account for a large part of the debate in the morning session. Observing the debate, it became clear that faith groups had succeeded in reframing the debate away from legal reform towards the place of marriage in society. Discussion about the role of marriage in society and the problems
that will ensue if marriage is downgraded dominate the debate. The number
of MSPs who used their intervention in the debate to comment on the place
of marriage in society lends credence to those theorists who elevate the role
of ideas in policy-making but it is Stone’s central assertion that policy-
making is essentially a political process involving a ‘struggle over ideas’ that
resonates most with the processes observed in this research. Stone argues
that the categories of thought behind reasoned analysis, are themselves
constructed in political struggle, and non-violent political struggle is
conducted primarily through reasoned analysis.

It is not simply, therefore, a matter that sometimes analysis is used in partisan fashion or for
political purposes. Reasoned analysis is necessarily political. It always involves choices to
include some things and exclude others and to view the world in a particular way when
other visions are possible. Policy analysis is political argument, and vice versa (1988:578).

The view of the world that dominated the final debate of the family law
reforms was that marriage was the ‘gold standard’, a position which received
support from a significant number of MSPs across the party political
spectrum as can be seen in the three cross-party contributions below.

One of the threads that must run through any such debate is what value we place on
marriage. I have no hesitation in saying that in relationships and in building stable families,
marriage is the gold standard. People who make other choices are perfectly capable of living
good, useful lives and of bringing up children who will be useful members of the
community, but the safest, most secure way of achieving those ends is through the bounds
of marriage (Stewart Stevenson (SNP) 05:21783).

Today the Scottish Parliament will send out an important and powerful message about how
we value the institution of marriage. The one-year and two-year periods have been referred
to as ‘quickie divorces’. That sends out the wrong message. It undermines the very
important institution of marriage and I earnestly urge colleagues to vote honestly with their
consciences and not just to follow blindly any party-political line (Margaret Mitchell MSP
(Con)05:21785).

If I thought that my decision to support a reduction in the time limits for divorce would
result in more divorces, I would not support it; I would support keeping the existing law. I am a Christian and a Roman Catholic and I am also a legislator, so I have thought seriously about what the country needs. I do not believe that short time periods on no-fault grounds will lead to more divorces (Pauline McNeill (Lab) 05:217851).

All three of the cross-party contributions to the debate make a point of signaling their support for marriage. In her contribution, Pauline McNeill, Labour MSP and convener of the Justice 1 Committee, makes it clear that if she thought that a reduction in time limits for divorce would result in more divorces, she ‘would not support it’. The other two MSPs similarly take the view that marriage represents the ‘gold standard’ of family relationships. This is an important observation when you consider that a key aspect of the family law reforms was the provision of legal safeguards for people who might be vulnerable precisely because they were not in a married relationship as the policy memorandum accompanying the Bill makes clear:

The Bill makes a range of provisions designed to address the legal vulnerabilities experienced by family members in Scotland today and to ensure that family law protects the best interests of children regardless of the type of family they belong to [italics added] (Family law (Scotland) Bill, Policy Memorandum, Scottish Executive, 2005:05).

It is the ideas behind the family law reforms - the recognition of diversity in family forms and the desire to protect vulnerable family members including children, regardless of the type of family they belong to, which give rise to the key ideological fault line around which the political debate is framed as this quote demonstrates.

I am concerned that the debate appears to be turning into a discussion of whether we value marriage and whether the bill undermines marriage. To my mind, we are required to ensure that the legislation exists to move the process on when a marriage is over (Margaret Jamieson MSP (Labour) 05:21792).
This quote illustrates the success of the faith groups in framing the debate, a clear influencing objective as this quote from the Catholic Church’s Parliamentary Officer illustrates.

We didn’t agree with divorce in principle but the other churches were in favour of giving rights to….well it sounds bad saying we didn’t want to give rights to people it sounds particularly harsh so I can imagine from a compassionate point of view that you must help people if they are having difficulties so I can understand where they were coming from but we had a more pragmatic point of view ….if you do that for cohabitation why would people bother getting married that was really the argument we put forward.

FG-2

The interviewee makes reference to the differences between the Catholic Church and other churches. It was certainly the case that it was primarily the Catholic Church and Evangelical Christians who opposed the family law reforms with the Church of Scotland adopting a more pragmatic response as this quote from Alison Elliot, who was the Moderator of the Church of Scotland at the time explains.

When it comes to separation periods we were much more focused on the care of children whereas 50 years ago it might have been a focus on the nature of marriage we now know that what looks like a healthy marriage could still mean that children were being abused and in serious trouble. Now that’s not somehow giving up on marriage it’s that the alternative principle, which is absolutely fundamental, is that you should care for the vulnerable. So having realised how vulnerable children can be, our concern was more for that and there is also the pastoral experience of seeing marriages breaking down and struggling along and not doing anything for anybody.

FG-3

This raises some interesting issues about the nature of the civic landscape in Scotland following devolution and the potential for some unexpected alliances for example, the Catholic Church and the Evangelical Christians. Steven (2007) notes that the onset of devolution seems to have motivated the
various Scottish churches to develop their political role even further and that despite the contemporary and historic links between religion and politics that have always existed in Scotland, no substantial body of literature exists on the political behavior of the Church of Scotland or the Catholic Church.

While much has been conducted on interest groups, and much conducted on the place of religion in politics, relatively little has been carried out on religious organizations when they act as interest groups, despite the fact that they often adopt this role (2007:108).

The author argues that this is an important aspect to the relationship between politics and religion and one that is under-researched. The relevance of Scotland’s historic and contemporary religious traditions to family policymaking in post-devolution Scotland is discussed in more detail in chapter 7. But whilst the success of the faith groups in re-framing the debate away from a discussion about legal safeguards into one about the place of marriage in society was clearly visible in the final debate, a small number of politicians did challenge this view as these two quotes illustrate.

One position is that marriage is simply better than anything else...I fundamentally disagree with that standpoint.....People should be given the support that they need to make their relationships work when they are working. We should not say that we will increase the value of marriage, civil partnerships or of any other relationships by locking people into relationships that have gone wrong (Patrick Harvie MSP (Green) 05:21791).

I have listened to many members talking about the longevity of their marriages, But I have lived with a partner for 17 long – long but good – years. We share two children, a home and a mortgage......Such relationships deserve no less recognition or protection than a marriage that has lasted a similar time.....Many cohabiting relationships demonstrate not only the financial characteristics and longevity, but the commitment, love and concern that many marriages demonstrate (Susan Deacon MSP (Lab) 05:21915).

The Executive’s response to the accusation that the proposals would undermine marriage was, as before, to recognise the special place of marriage in society but also to acknowledge that family law had to adapt to meet the significant social changes that had occurred in family and intimate
relationships.

We recognise its [marriage] special status and the value that it contributes to so many families in Scotland. The Executive has not, does not and will not undermine marriage, and we certainly do not do so with the proposals that we are considering today. However it is equally right to say that the state cannot force people to remain married (Hugh Henry MSP, Deputy Minister for Justice (Labour) 05:21778).

The success of the faith groups in re-framing the debate on the family law reforms leads us back to Stone’s notion of ‘losing is winning’. As was stated in the previous chapter, the majority of the Scottish population would appear to have been broadly supportive of the family law reforms being proposed by the Executive (Wasoff and Martin 2005). So whilst there were numerous interventions by MSPs from across the political spectrum about the special status of marriage, only one MSP, Marlyn Glen, made reference to the specially commissioned module from the Social Attitudes Survey which showed that the Scottish people were broadly supportive of the reforms being proposed. In her interview, Glen expresses her own surprise that more was not made of this research either in the Justice 1 deliberations or in the final Parliamentary debate.

There was a survey done, a proper academic piece of research and I thought that this represented the public’s view and that is what we should be mirroring…but I felt that the members didn’t appreciate the validity of the research and the number of people that had been surveyed. There was evidence given, one of the authors came to Committee but I felt that in the questions asked people were commenting on the numbers and the validity of the research and I thought come on, that should really be taken as read. What we should be concentrating on is what people were actually saying in the research. So I was disappointed about that but I think that there is a bias against that kind of social science research.

MSP-3

This report was available on the Justice 1 Committee’s website but the
apparent disinterest in the one piece of academic research which had captured a representative sample of Scots views on the reforms contrasts sharply with the positive reception that politicians gave to other evidence for example - the individual father who gave evidence. This raises questions about the extent to which academics should engage in contested public policy debates. In a recent seminar to consider the use of evidence in the public policy process in Scotland, Professor Jim Gallagher argued that the Scottish polity was short of the think tanks, forums of debate and the well-developed ideas, opinions and argument that give voice to a political conversation.

Goals are disputable and variable, and might change in light of new knowledge and understanding. That involves choices about values as well as facts and the process of gathering information, developing knowledge and understanding, creating the insights and knowledge that policy needs is anything but a neat, technocratic, rational process......adding evidence, knowledge or insight to the public policy process is not a bloodless, technocratic business. Far from it, it gets quite messy: and that has implications for how best to go about it (Gallagher 2007).

The suggestion is that people described by Gallagher as ‘custodians of particular expertise’ who wish to add evidence to policy debates will need to be prepared to engage in a ‘messy’ process. This is an issue which comes up in both case studies and is discussed in more detail in chapter 8.

Fault Lines, Frames and Political Discourse

The question which was at the heart of the key ideological fault line around which actors positioned themselves during the policy process was articulated by Hugh Henry MSP, Deputy Justice Minister.

The question for us, as legislators, is this: do we legislate for what we believe in, personally, individually, or religiously, or do we legislate for Scotland as we find it? Do we legislate in the best interests of people irrespective of what we think about the decisions that they
choose to make in whatever shape, form or form? That is what we as legislators need the
courage to do to reflect the best interests of Scotland and the rights of people, wherever they
are in Scotland and whatever they believe in (Hugh Henry MSP, Deputy Justice Minister,

Despite the influencing activity in civil society which undoubtedly had an
impact on both the tone and content of the final Parliamentary debate on the
reforms, the amendments which sought to extend the separation periods
required prior to divorce were, in the end, defeated and the government
position of 1 year (uncontested) and 3 years (contested) was approved. After
a day debating the various provisions in the Bill and considering a number of
amendments, the Family Law (Scotland) Bill was moved for adoption by the
Parliament by the Justice Minister Cathy Jamieson MSP. The Minister
acknowledged that the process had started some fifteen years earlier with the
report produced by the Scottish Law Commission and after thanking
everyone who had been involved in the lengthy process, she reiterated the
government position which recognised both the special place of marriage
and the reality of family life today.

The Bill proposes realistic and measured reforms that uphold our core values and recognise
the special place that marriage has for many people in Scotland and the fact that stable
family life gives children the best opportunity in which to realise their full potential. The Bill
also recognises the reality of the Scotland in which we live today. It addresses the need to
update the safeguards that are available to vulnerable people when relationships break
down and when families change shape as a result (Cathy Jamieson, Justice Minister, Official

Brian Adam MSP, one of the politicians who had been particularly vocal in
his opposition to the reforms accepted that the government had approached
the issue in a spirit of recognising the different kinds of relationships that
exist in Scotland but expressed himself disappointed with the outcome.

I am disappointed that the Executive has not shown leadership in saying that some
relationships should be valued to a greater degree than others. I know that that view will not be universally accepted. I am not saying that any relationship is not valid. However, the evidence will show that marriage and bringing up children within marriage are the most successful ways of allowing people to fulfill their potential.....I am disappointed with the outcome of today’s debates and the votes, and I am not going to vote in favour of the Bill (Brian Adam MSP (SNP), Official Report, Session 2, 15 December 2005:21949).

After a policy process which had begun some fifteen years earlier, a consultation period which lasted from 1999 until 2004, and a debate which lasted the full day, the motion by Cathy Jamieson MSP, Justice Minister that the Family Law (Scotland) Bill be passed was finally agreed by the Scottish Parliament with 104 MSPs voting in favour, 12 against and 6 abstentions. The findings presented so far suggest that whilst progressive reforms in family law were implemented, faith group influencing activity succeeded in reframing the issue away from legal safeguards towards the place of marriage in society. In the debate, the ideological position that marriage represents the ‘gold standard’ of family relationships received support from a wide group of MSPs from across the political spectrum. Nelson (2004) conceptualizes political frames as recognising competing value claims and making a case about the relative priority among them.

This approach to understanding framing effects assumes that the resolution of value conflict is deliberate, thoughtful and comparative. If the receiver feels torn between conflicting values, the frame can influence his or her opinion by conferring special priority on one. The intent is not simply to make the values temporarily more accessible, but to endow it with greater prominence than its competitors, at least for a particular issue. Like any political message, these frames might supply new information for some individuals and make certain thoughts or values accessible for others. Their signature action, however, is to make a claim for the special importance or relevance of a value. Such rhetoric abounds in public discussion of controversial issues after taking shape as a claim about the special importance of a particular policy goal (2004:584).

The fact that so many MSPs from across the party political spectrum made a point of publicly reiterating the special status of marriage, even when they were in support of the reforms, suggests that the frame of conferring special
priority on marriage endured right up until the final stages of the legislative process. Hall (1993) notes that interests acquire power by influencing political discourse.

Organised interests, political parties, and policy experts do not simply “exert power”; they acquire power in part by trying to influence the political discourse of their day. To the degree they are able to do so, they may have a major impact on policy without necessarily acquiring the formal trappings of influence. The resultant flow of ideas is an important dimension of the process in which policy is made (Hall 1993:290).

Faith groups did not succeed in their efforts to oppose the reduction in the separation periods required prior to divorce, the reform went through, but they did significantly influence political discourse. This process is to some extent, illustrated in this exchange, between two MSPs who voted in support of the family law reforms – Kenny MacAskill (SNP) and Patrick Harvie (Green).

KM: Although we normally celebrate Stage 3 debates and the passing of legislation, we will do so today in the knowledge that there are some aspects of family law we would rather not legislate for. However, we live in the real world which is why I support the Bill……..In recognising a new situation, we do not seek to exclude the position of marriage; it is accepted that marriage has a position in society. Like others, I disagree with Patrick Harvie, I believe it is important to recognise that marriage is the cornerstone and foundation....

PH: Can the member point to one occasion when I have criticised the institution of marriage or proposed some way of undermining it? I have always valued it, but I also value other relationships. That is the only difference.

KM: I did not suggest that Patrick Harvie criticised marriage. However, the majority of parties recognise that marriage has a special position; it is a pinnacle and should be treated as such, although that does not mean that it is necessarily deified or sanctified…..We should recognize that, because marriage brings with it obligations, it should have a special position. That does not mean that people should not be allowed to choose not to enter into marriage but to regulate their affairs in a different manner. However, we have to recognise that marriage is pivotal in our society and we should seek to protect it. Given those circumstances, I will be voting for the Bill (Kenny MacAskill MSP (SNP), Patrick Harvie MSP (Green) 05:217955/6).

What is interesting about this exchange is that although Kenny MacAskill
intends to vote in favour of the reforms, he clearly feels he has to publicly express his support for the special position of marriage in society and appears to want to disassociate himself from fellow MSP Patrick Harvie, one of the few MSPs to openly question the ‘special’ status of marriage in the debate. Patrick Harvie in turn, responds that he has always valued marriage but also values other relationships. Faith groups are clearly impacting on the policy process by influencing political discourse, highlighting the significance of ideas and ideology in the policy process of the family law reforms.

Unstable Paradigms and Cross Party Consensus

The multiple streams framework elevates the significance of ideas in public policy-making while at the same time seeking to explain how ideas emerge in terms of their adoption or rejection by the various decision-makers involved (Houlihan and Green 2006). A policy window opened in 1999 with the election of a new government in Scotland which facilitated successful coupling of the three streams enabling the family law reforms to be brought forward after a ten year delay. However, the same policy window which provided the vehicle for successful coupling also provided the opportunity for interest group influencing activity in opposition to the reforms.

Policy windows are an opportunity for policy entrepreneurs to advocate their proposals, to couple problems with solutions. In the case of the family law reforms, there would appear to be a reverse process at work. The original policy entrepreneurs advocating for family law reform – the Scottish
Law Commission, are barely visible when their policy solution finally makes it onto the public policy agenda. Instead, ‘policy entrepreneurs in reverse’ seek to derail the reforms on the basis of an opposing ideology. The respondent from the Family Law Association indicated in her interview that the debate in civil society over separation periods required prior to divorce did take the legal community by surprise.

_The Bill itself differed very little from the first report in 1989……the only surprise was bringing periods of separation up again. That was a really worrying time for us but I think politically, people had to be seen to be doing that. The issue was a political ‘hot potato’._

LG-1

However, the interviewee goes on to say that her own organisation which is made up of lawyers working in family law, was unable to reach a consensus on the issue of separation periods required prior to divorce.

_We had to be careful because our members were split on this. There was no consensus, we had a split view. That did surprise me. I was amazed at the deep-seatedness of their views, not just older members but younger members too._

LG -1

There was certainly effective exploitation of policy windows, initially by the Executive and the legal community in getting the family law reforms back on the agenda. However, this generated a reaction from interest groups operating from a faith-based perspective who sought to influence the policy process in opposition to the reforms. The literature review touched upon Hall’s (1993) policy paradigm model which offers useful insights for the processes observed in this research. Hall examines macroeconomic policy-making in Britain since 1970 and charts the move from a Keynesian mode of policy-making to one based on monetarist economic theory that characterized the government of Margaret Thatcher.
When monetarism replaced Keynesianism as the template guiding policy, there was a radical shift in the hierarchy of goals guiding policy, the instruments relied on to effect policy, and the settings of those instruments. Moreover, these changes were accompanied by substantial changes in the discourse employed by policymakers and in the economy on which policy was made. In short, the third order change in British policymaking that occurred during this period was accompanied by a wholesale shift in policy paradigms (1993:284).

It is possible that what is being observed in the policy process of the family law reforms is interest group responses to a policy paradigm shift. As has already been mentioned, the Conservative government in power when the initial reports from the Law Commission were published were working to a very specific policy paradigm which positioned the traditional, two parent nuclear family as the exemplar model upon which family policy was based. Non-traditional family forms i.e. single parent families, same sex partnerships, were more often than not, identified as contributing to the social ills bedeviling society.

The election of a new Labour government at Westminster and the Labour/Liberal Democrat coalition government in Edinburgh promoting a diversity discourse and identifying inequality and social exclusion as key barriers to economic participation may represent an attempt at a paradigm shift. However, these findings would suggest that the paradigm shift was not as secure as it might have appeared. Hall (1993) contends that the autonomy of the state in a given field of policy may depend on whether there is a coherent policy paradigm present.

Policymakers are likely to be in a stronger position to resist pressure from societal interests when they are armed with a coherent policy paradigm. If it does not dictate the optimal course for policy, at least it provides a set of criteria for resisting some societal demands whilst accepting others. Precisely for this reason, the presence of a coherent policy paradigm greatly enhanced the autonomy of the Thatcherite state in the economic sphere. Conversely,
when such a paradigm is absent or disintegrating, policymakers may be much more vulnerable to outside pressures, as the 1974-79 Labour government was once the Keynesian paradigm began to collapse (1993:290).

Hall highlights the role of ideas in policy and politics, and we see the significance of this perspective in the analysis of both the final debate on the family law reforms and the impact that the influencing activity had on the final policy output. In the UK, there is an underlying struggle, as with many other issues to do with the family, over whether family change should be acknowledged, or whether energies should be focused on ‘putting the clock back’ (Lewis and Knijn 2002). There is no doubt, observing the debates and analysing transcripts of Committee meetings that many politicians engaged with the policy process of the family law reforms on the basis of their personal ideology, sometimes informed by their religious beliefs. Politicians did not split along conventional party lines. The SNP, the Conservatives, the Greens and the SSP all had a free vote on the Bill with both Labour and the Liberal Democrats exercising party whips. However, not having a free vote did not prevent some Labour MSPs from openly questioning the need to reduce the time frame for divorce.

Why are we trying to reduce the time period? ....There is no evidence to support the claims made for shortening the time period, which was one of the problems we faced (Mary Mulligan MSP (Labour) 05:21785).

The non-party political nature of the debate is illustrated in this quote from an interview with Stewart Stevenson MSP, the SNP lead on the Justice 1 Committee where he indicates that Labour MSPs opposing the Executive’s position made a point of contacting him prior to the final vote.

I won’t embarrass anyone by naming names because it’s not necessary to do so. There were three members of the Labour Group who asked what I and certain other
members of the SNP were voting on certain amendments because they had literally taken the view that they identified with the broad policy position that we were espousing and they wished to vote the same way as us. So we told them how to vote....well....we told them how we were voting. That’s a little bit unusual. It’s really unusual for the Executive not to come down on people but I think what the Executive had done….they concluded that their policy position was not at risk by allowing a little leeway to some of their members who had particularly strong views on what in essence were matters of conscience.

MSP-5

This quote illustrates a tactical alliance between SNP MSPs and Labour MSPs based primarily on their religious beliefs, which were well-known and made them particularly susceptible to the influencing activities of faith groups. As has already been said, in the family law reforms, politicians did not adopt their policy position on the basis of their party affiliation but on their own ideology and sometimes, religious views. There were MSPs from the Conservative Party, the SNP and the Labour Party who opposed the Executive’s proposal to reduce the separation period required prior to divorce. And there were MSPs from across the party political spectrum that supported the reforms. Some MSPs who initially opposed the reforms, in the end voted to approve the new legislation. Margaret Mitchell, the Conservative MSP who initially proposed the amendment opposing the Executive’s proposals to reduce the separation period required for divorce at the Justice 1 Committee did in the end, vote to accept the Family Law (Scotland) Bill 2005 as she explains in this quote.

*Although I am totally in support of marriage, I recognised that it was unfair that many people over the years just hadn’t had that protection. Now you can take the very hardline view that it is up to them, they enter into it, and they know what they are getting into but I think that’s why we are here as politicians, to protect the vulnerable and to sort something when there has been an injustice and there was an opportunity to do that with the family law bill.*
The conflation of the moral and social in family policy has already been identified as one of the main reasons that family policy continues to be a site of contestation. But whilst faith groups were successful in framing the debate away from legal safeguards towards the place of marriage in society, the government strategy of framing the debate in the context of the welfare of children appears to have been influential in ensuring that the reforms were approved, despite the vociferous voices both inside and outside Parliament stating that the reforms would undermine marriage. The extract from the policy memorandum of the Family Law (Scotland) Bill 2005 quoted earlier in this chapter frames the legal recognition of non-traditional family forms in the context of the need to support children, regardless of the type of family they belong to. Enshrining the principle of the ‘best interests of the child’ into the legislature has been a key policy theme for the Scottish Parliament. One of the SNP MSP’s who opposed the reforms acknowledged that the arguments about the best interests of the child were, in the end, persuasive.

There was a rational argument there. It’s all very well to take a position viz a viz adults in a relationship where there are no children and say well, tough shit, you made choices except I don’t believe people make choices in quite that cold-blooded way, because I don’t think life is like that. But when there are children who are innocent parties to choices whether informed or casual, that are made by others, that are adversely affected, then it is entirely proper. And people broadly accepted that this was the case. Of course they did…of course they did.

MSP-5

One of the benefits of a qualitative case study approach is that it allows the researcher to explore the policy process in detail to bring to the surface happenings or events which key actors regard as significant but which might
not appear in policy documents or official transcriptions of events. The next section explores an issue identified by a number of respondents during face-to-face interviews as a significant political contextual factor which, they suggested, influenced the way that politicians engaged with the policy process of the family law reforms and was one of the influential factors in the high visibility of faith groups in the policy process.

The Legacy of Section 28/2A

The findings presented in the previous chapter identified a marked increase in civil society engagement in the consultation process of the family law reforms between 1999 and 2000. During this period there was a highly charged debate in civil society following the Executive’s announcement in October 1999 that they intended to repeal Section 28/2A of the Local Government Act (1986). Section 28/2A had been put in place by the previous UK Conservative government at the height of the political battle being fought in the eighties and early nineties between the Conservative government which had been elected on a ‘back to basics’ manifesto which promoted the traditional nuclear family and the network of labour-led local authorities who were promoting an equality agenda. Scottish Ministers proposed repealing the clause through the mechanism of the Ethical Standards in Public Life (Scotland) Bill.

Brian Souter, the owner of Stagecoach and an evangelical Christian, launched the Keep the Clause campaign in January 2000. The campaign was supported
by evangelical Christians, the Catholic Church and the Scottish School Boards Association. The campaign financed advertising hoardings across Scotland during a by-election in Ayr in March 2000 and Brian Souter personally financed a postal referendum. *Keep the Clause* campaign announced the result in May claiming that the majority of Scots supported retention of the clause. Lynch (2001) notes that despite having been a Labour-supporting newspaper for decades, the Daily Record, which had been much more critical of Labour immediately following devolution, gave extensive coverage and support to the *Keep the Clause* campaign.

The Daily Record shaped its attacks to reflect its support for Labour, stating in one editorial that ‘allowing the promotion of homosexuality in schools is not what the loyal Labour rank and file want or expect. The paper thus attacked Labour, while still supporting it, and carefully used its agenda-setting role within the media to align itself with a high profile political campaign that had huge interest within its readership – clever positioning for a tabloid and also important in retaining readers against the market penetration of the Sun (Lynch 2001:203).

However, as the earlier quote from Alison Elliot demonstrated, not all faith groups supported the *Keep the Clause* campaign. Steven (2007) notes that in comparison to the Catholic Church, the Church of Scotland’s attitude towards repeal was relatively positive, with the 2000 General Assembly voting to back abolition of the Clause, provided fresh safeguards were put in place which continued to emphasise the importance of marriage. The campaign was ultimately unsuccessful and Section 28/2A was repealed in June 2000. Nevertheless, a significant number of interviewees made reference to the ‘fall-out’ from Section 28/2A suggesting that this was one of the reasons that there was a four year delay between 2000 and 2004 over the Family Law Bill.

*The Family Law Bill, I suspect, got put into the long grass prior to the election*
because you don’t want the backlash from the right wing saying you’re in favour of quickie divorces and all the rest of it just prior to an election. I think they got their fingers badly burnt over Clause 28 and I think that put them off dealing with complex issues.

CS-2

The significance of Section 28/2A was commented on by interviewees from all three constituencies represented in this research – politicians, civil servants and key policy actors in civil society. The above account was from a Chief Officer in the voluntary sector. In the exchange below, Susan Deacon, former Labour MSP and Health Minister, reflects on the impact of Section 28/2A on the policy process inside government:-

SD: ...You were also into Clause 28 which changed the terms of engagement completely.

Int: Can you say a bit about how you think that changed the terms of engagement?

SD: Oh God....

Int: A number of people have mentioned it…

SD: It was terrible. When I say it was terrible I’m not bemoaning what it was like out there although that was pretty terrible as well. But I’m talking about how it changed things inside the government, to this day. Well, what happened… I suppose in a way this had to happen at some stage. It certainly brought to the fore very different views within the Executive, within the cabinet, about how social issues should be dealt with.

MSP-2

Deacon alludes to different views within the Scottish government coming to the surface during the Section 28/2A controversy. Lewis and Knijn (2002) highlight the competing value claims regarding the family and sex education that ‘re-surfaced’ during the Section 28/2A debates in the 1980s in the
Westminster Parliament even although, according to the authors, the idea of the existence of a universally accepted moral code was ‘to all intents and purposes buried in the UK when the law of marriage and divorce underwent major reform at the end of the 1960s’.

Lord Devlin’s (1965) effort to defend a commonly accepted moral standard based on Christian values as a means of protecting institutions such as marriage, which in his view secured social cohesion, failed in the face of arguments regarding the importance of morality that came from inside the individual rather being imposed from above in a pluralist society (e.g. Hart, 1963: Dworkin, 1971). However, traditionalist politicians who were mainly, but not exclusively Conservatives, echoed the arguments of Devlin in the debates over sex education in the 1980s and 1990s. In the debate over the 1986 Education Act, politicians argued over the meaning and implications of the ‘morality clause’ that traditionalist members of the House of Lords succeeded in putting into the legislation. The clause required local education authorities and school governors to ensure that sex education was delivered with ‘due regard to moral considerations and the value of family life’ (2002:674).

Lewis and Knijn state that the ‘old determination to instill traditional Christian morality in respect of the family using the vehicle of sex education in schools’ which re-surfaced during the 1980s and 1990s, contrasted with the Dutch approach which firmly rejected a moral approach. The moral approach adopted in Britain culminated in the passing of Section 28/2A in 1988 and the authors note that the New Labour government at Westminster attempted to repeal the clause in November 1999 (one month after Scottish Ministers announced they would repeal the clause). In order to convince traditionalists that sex education in the absence of Section 28/2A would remain moral, the Westminster government proposed new general legislation on sex education referring for the first time to the importance of marriage and debarring inappropriate, explicit materials from the classroom. Despite the UK Government’s efforts to build consensus around the repeal of Section 28/2A, traditionalists decided not to accept the compromise and the clause was retained in England.
Although the campaign in civil society to retain Section 28/2A was ultimately unsuccessful, Deacon’s account appears to be suggesting that there was a political cost to be paid which has had an ongoing impact on the policy process. Stone (1988) asserts that politicians have at least two goals – the first is a policy goal, the second is a political goal. One may achieve the policy goal, but not necessarily win the political goal and vice versa. Stone introduces the notion of ‘losing is winning’ in the policy process describing a Republican campaign in the House of Representatives in 1994 which resulted in the Republicans losing a vote but making some important political gains in the process. Stone argues that policy is inherently a political process:-

A model of political reason ought to account for the possibilities of changing one’s objectives, of pursuing contradictory objectives simultaneously, of winning by appearing to lose and turning loss into an appearance of victory, and most unusual, of attaining objectives by portraying oneself as having attained them (Stone 2002:9).

Whilst Stone uses the notion of ‘losing is winning’ in relation to politicians, arguably it could apply to other policy actors. Evangelical businessman Brian Souter ultimately lost his campaign to retain Section 2A/28 but it is suggested by a number of respondents in this research that the campaign had an ongoing effect on the policy process inside government and that politicians became much more cautious about taking on ‘controversial’ issues. The multiple streams framework envisages the three streams of problems, policies and politics as operating largely independently of one another. However, in the case of the family law reforms, activity in the politics stream continues to impact significantly on the policy process even after the three processes have successfully coupled.

A number of respondents suggested that the fall-out from Section 2A/28 had
contributed to the four year delay in putting the family law reforms on the statute and the significance of Section 2A/28 crops up again in the findings of the second case study which are presented in the next chapter. However, to fully answer the question posed at the start of this chapter – how do political processes shape policies, it is necessary to explore the extent to which the influencing activity highlighted in these findings translated into any ‘control over political outcomes’ for the interest groups involved in influencing activity.

Influencing Activity and the Final Product

The previous sections in this chapter have concentrated on the influencing activities of faith groups and the effect that this activity had on the policy process of the family law reforms. The findings suggest that although progressive reforms were implemented, influencing activity by faith groups succeeded in reframing the debate away from legal safeguards towards the place of marriage in society and embedding a key influencing message – marriage as the ‘gold standard’ of family relationships - into cross-party political consciousness as evidenced in the Parliamentary debate. But what of the other interest groups who were visible during the policy process? If we take two of the interest groups who were most visible at the start of the policy process - fathers and grandparents, there are both changes to the final legislation and a range of non-legislative options which would appear to have been designed primarily in response to the issues raised by these groups. In this account, a civil servant describes how a Ministerial request a few days before the final Stage 3 debate took everyone by surprise.

The Minister wanted a contact compliance officer in the next 48 hours, so he could
arrange it at Stage 3. The day before the Stage 3 debate, officials had to meet with
[names Edinburgh Sheriff] then report back to Ministers that the contract
compliance officer was possible.

CS-3

The new provision of the Contact Compliance Officer was designed to
ensure that court orders regarding contact for non-resident parents were
enforced. This was a key lobbying issue for Families need Fathers throughout
the legislative process. Sylvia Jackson MSP (Lab) had lodged three
amendments to the Family Law Bill at Stage 2 of the legislative process, all of
which sought to strengthen the enforcement of contact orders. The one that
was agreed by the Justice 1 Committee and inserted into the Bill as section
17B sought to compel the courts, when making or varying a court order, to
attach a notice warning of the consequences of failing to comply with the
contact order. Ministers proposed an amendment on the day of the final
debate which was approved which removed section 17B on the grounds that
such a notice could be unduly intimidating and could encourage one parent
to seek opportunities to threaten the other parent with the resident parent
facing harsher consequences than the non-resident parent.

During the debate, Hugh Henry MSP, Deputy Minister for Justice, gave a
commitment that the government would undertake research into post-
separation contact arrangements and would introduce the use of Contract
Compliance Officers as a pilot project. This action by Ministers came literally
at the last stage of the policy process, the day that the legislation was put
before Parliament, suggesting that the influencing activity of fathers groups
had been effective as this contribution to the debate from Sylvia Jackson MSP
(Lab) illustrates.
I ask the Minister to consider that the views of individuals, such as my constituent, and groups who have been most directly involved with the non-compliance of contact orders, are important. They should be consulted as part of the on-going work (Sylvia Jackson MSP (Lab) 05:21893).

The commitment to undertake research on post-separation contact, the Contract Compliance Officer pilot project and the non-legislative provisions - a parenting agreement and a public information campaign all suggest actual policy outputs gained as a result of the influencing activities conducted by fathers groups. The impact of the influencing activities of grandparents’ groups was also visible during the final debate. Rosemary Byrne MSP, (SSP) moved an amendment that sought to compel courts to take into consideration whether grandparents can play a role in children’s lives. The amendment was not approved by Parliament and the non-legislative solution of a grandchildren’s charter was the most obvious outcome of the influencing activity undertaken by grandparents’ groups.

The government established a family law stakeholders group which was charged with overseeing the development of both the parenting agreement and the grandchildren’s charter. An interesting point to note here is that although membership of the group included the ‘usual suspects’ - children’s charities, family relationship bodies and the Family Law Association – two new groups were invited to join the group, Families Need Fathers and Grandparents Apart. In this quote, a representative from Families Need Fathers describes his experience of being invited onto the group.

*On the stakeholder group with the parenting agreement, that was refreshing actually. I’m not sure why this happened….maybe it was an inspired decision by the Executive but the two people [civil servants] that they got to do the Parenting Agreement had no experience of family law….and I really think that helped, they
were relatively free of pre-conceived ideas. And Alan Finlayson, who wrote the agreement, was, certainly for a lawyer, particularly open-minded and on the whole, I was pleased with the result. It is a much better document than the one in England and I do feel that our input was taken very seriously.

VS-5

It is interesting that the representative from Families Need Fathers is of the view that his group’s contribution was taken seriously. Hodgson (2004) describes the characteristics of different groups operating within civil society as informal, formal or manufactured civil society depending on the group’s characteristics. Informal groups are those which have grown organically, with no particular structure or hierarchy; formal groups are those which have emerged from an interest group or local community base but are independently constituted and have funding; manufactured refers to those groups who have not developed organically, but have been ‘engineered, created or manufactured by the state’ (Hodgson 2004). Both the fathers and grandparents groups began the policy process of the family law reforms as organisations working predominantly ‘outside’ the state. However, by the time the policy process was coming to an end, both appear to be moving ‘inside’ the state. This supports the work by Craig et al (2004) which concluded that voluntary organisations benefit most from adopting both insider and outsider strategies at different times.

It is important for organisations to be able to understand the political environment and anticipate the opportunities it presents with some sophistication, to choose strategies according to circumstance and to operate on a principle of division of labour which enables groups or organisations with similar goals to exploit opportunities (2004:237).

The other two interest groups who re-emerged during the second,
parliamentary phase of the legislative process – the national family relationship bodies and Scottish Women’s Aid, appear to have adopted the same strategy in reverse. The national family relationship bodies and Scottish Women’s Aid clearly come into the category of ‘formal’ civil society. Having been established for a considerable number of years, they are regularly consulted by government and receive much of their funding from government sources. However, finding themselves marginalised in the early stages of the policy process, Scottish Women’s Aid quickly switched strategies launching their safe contact lobbying campaign despite realising relatively early on that they were unlikely to achieve their original aim of a rebuttable presumption of no contact in cases where domestic abuse was a factor.

Well, it became clear that we weren’t going to get this. But we felt that the debate had moved so far in the direction of fathers’ rights that we had to put a strong marker down to get the issue of domestic abuse and safe contact back on the agenda. That’s when we went off and running with our safe contact campaign. We met with Ministers; we met with the Bill team. We formed a broad alliance with the Children’s charities and kept MSPs informed all the way. We knew when the Minister mentioned us upfront in his statement to Parliament that we were beginning to make some headway. Our next step was to see if we could get an amendment put forward.

VS-4

The impact of the safe contact campaign was commented on by a number of interviewees. In this account, a civil servant describes how the lobbying campaign had a direct effect on the legislation.

They [Scottish Women’s Aid] are a very good lobbying group and it’s just like fathers and grandparents, domestic violence is up there, no government worth their salt can be seen to be giving in to domestic abuse. They lobbied very effectively, they have a lot of women MSPs who fight their case, no shortage of MSPs ready to lodge their amendments and it was really a case of wearing us down.....we held the line
but as with all things when we were told by Ministers that the line can no longer be held we had to give Women’s Aid something.

CS-3

Scottish Women’s Aid did not get the rebuttable presumption of no contact which they originally called for. However, a new welfare section was added to the Bill covering safe contact for children, an outcome which was very well received by Scottish Women’s Aid as this account illustrates.

We went to a meeting with the civil servants. We had drafted an amendment and so had they. We put them both on the table and actually the one written by the civil servants was better than ours. We were really pleased with it. We told them immediately that we were happy to go with their amendment.

VS-4

The welfare section of the Family Law (Scotland) Act 2006 offers a clear example of how political influencing activity had a direct effect on the policy output. This is particularly noteworthy when you consider that civil servants involved in drafting the legislation were of the view that the welfare section had no legal merit.

The welfare section had no legal merit…..as political expediency yes, it was perfect, but not from a legal viewpoint…They [Scottish Women’s Aid] were very happy. They got far more than they ever thought they were going to get.

CS-3

This quote, combined with the earlier quote where the civil servant talks about no longer being able to hold the line brings us back to the symbiotic relationship between politics and policy evidenced in this research. Despite the initial successful coupling of the three streams of problems, policies and politics, activity in the politics stream had an ongoing and direct impact on
the policy process suggesting that the multiple streams framework falls short by paying insufficient attention to the symbiotic relationship between the policy and politics streams.

The findings presented in both the previous chapter and this chapter, suggest that politics drove the policy process of the family law reforms and demonstrate a material gain following the influencing activities conducted by Scottish Women’s Aid with the late insertion of the welfare section to the Bill. A similar scenario exists for the family relationship agencies. On the day of the final, stage 3 debate, the Minister announced that £300,000 of new money would be available for ‘capacity-building in local family support services’. The Minister’s tone in relation to family support services appeared to be much more conciliatory than in previous debates where the emphasis was on the national bodies ‘raising their game’. The importance of relationship services was highlighted right at the start of the Minister’s contribution:-

I want to emphasize that relationship services are an important part of the Executive’s overall effort to support stable families and to give children the best possible start in life. I believe that the best way is early intervention, through counselling to help couples to save their marriages or other committed relationships, where those marriages or relationships can be saved. I accept, however, that where separation is inevitable, mediation can help to ensure that parents work together sensibly to look after the best interests of their children (Hugh Henry MSP, Deputy Minister for Justice (Labour) 05:21778).

The demands for greater integration are still there but the overall impression is that these demands have been tempered and are located in an overall context which is more supportive and more aware of the important work that the family support agencies do, possibly in recognition of the Executive’s own need for their services. However, the Minister does reiterate that the national bodies need to integrate their efforts to deliver more effectively and states that the new funding will ‘fund proposals by local
counselling and mediation services, acting together for capacity building, infrastructure development and joint working’.

The previous chapter made reference to the Change programme imposed on the national family relationship bodies by Ministers and civil servants which sought to increase collaborative working between the agencies, making new money conditional on collaborative projects. The national relationship bodies were immersed in this process when the family law reforms were first introduced into Parliament and this would appear to have limited their ability to engage with the policy process of the family law reforms in the early stages. This raises questions about the tension facing voluntary organisations who are both service providers and policy actors and the extent to which the conditions imposed for partnership may be undermining those very characteristics of the voluntary sector that give it its innovatory and democratic role (Williams 2004). Having been slow to respond to the family law reforms during the pre-legislative consultative phase given the internal issues they were facing, there is no doubt that the family relationship bodies quickly regained ground during Stage 2 and 3 of the parliamentary phase of the legislative process. In this account, a civil servant directly links the new money announced by the Executive to the influencing activities of the family relationship bodies.

All MSPs were lobbied hard by the family relationship bodies. Justice 1 became really trenchant about it and even the Conservatives and the SNP because they had been given a hard time by their local relationship bodies. There were a lot of amendments at Stage 2 and there were some really close votes.....all the amendments were to do with a lack of money from local and central government. Money had to be found. Ministers came to us and said ‘find money, we’ll lose’....and I think the Ministers must have got instructions from their backbenchers that if they didn’t come up with money for family support then they would vote these amendments in because the
amendments that were tabled at Stage 2 were tabled again at Stage 3.
CS-3

The Justice 1 Committee had taken a particular interest in the provision of family support services and had agreed to consider the matter at a future meeting. On the day of the final debate, Stewart Stevenson MSP (SNP) proposed an amendment which would ensure a statutory duty on local authorities to provide family support services. The amendment was rejected by Parliament but the impact of the influencing activities of the family relationships bodies was evident.

The briefings that we have had from Couple Counselling Scotland and Scottish Marriage Care show that when efforts are made to reconcile – the process is not easy – the success rate can be very high. Early intervention is important, as is the opportunity that the debate and the Bill offer to flag up the availability of those services. I hope the additional money will make them available in parts of Scotland in which they have not necessarily been provided.
Jim Wallace (Liberal Democrat) 05:21789

There were over 20 interventions by MSPs in the morning session and of those, more than half referred specifically to relationship support services including reconciliation, counselling and mediation with eight MSPs referring to two of the national organisations by name throughout the course of the day. Observing the debate and subsequently studying the transcript, there is a definite change in emphasis from the two previous debates with a much greater focus on relationship support services and in particular, early intervention.

I am sure that it is on behalf of the whole of Justice 1 Committee that I record a wholehearted welcome for the funding decision that has been announced this morning. The Minister has said that the Committee has argued hard for that, and it should be welcomed. Given that the debate is about divorce and relationships, will the Minister say whether, as well as the support for families, some of the additional funding could used to provide early intervention when there is evidence that a relationship can be saved if we intervene early? (Pauline McNeill MSP 05:21780/81).
And the Minister’s response:

Exactly – we want there to be local capacity building. We acknowledge the contribution of mediation, but mediation comes at the end of the process, when people are negotiating how to part. We want to focus more attention and funding on counselling and conciliation, to help people work through their difficulties (Hugh Henry MSP, Deputy Minister for Justice (Labour) 05:21781).

The family relationship bodies appear to have succeeded in using the focus on marriage to their advantage by making the case for greater service provision for couples and families facing difficulties. And like SWA, having found themselves somewhat marginalised in the early stages of the policy process, they recovered relatively quickly, securing significant gains both in terms of the increased funding announced by Ministers and the decision of the Justice 1 Committee to hold an inquiry into the funding of family relationship support services.

Conclusion

Having tracked the policy process of the family law reforms in the previous chapter to identify who the influential voices were during the pre-legislative, consultative phase and Stage 1 and 2 of the parliamentary phase of the legislative process, this chapter continues the analysis through to Stage 3, probing the relationship between the policy and politics streams. The findings suggest that interest group influencing activity in the politics stream continued right up until the final Stage 3 debate and had a direct effect on shaping the final policy output. Specific \textit{material gains} or \textit{outcomes} can be
identified for the interest groups most visible during the policy process – the new provision of contract compliance officers (fathers); the parenting agreement (fathers); the grandchildren’s charter (grandparents); the welfare provision (Scottish Women’s Aid); £300,000 pounds of new funding for local services and an investigation into the provision of family relationship services across Scotland (family relationship bodies). All of these groups would appear to have fulfilled the fourth criteria in the ‘continuum of influence’ model identified by Mackay and colleagues (2005) – concrete changes in policy outcomes or the conceptualization of influence favoured by Dur and De Beviere (2007) – ‘control over political outcomes’.

With regards to faith groups, the other key interest group identified in this research, although it is not possible to identify any material gains as a result of their influencing activity, a concrete outcome may be their success in influencing political discourse by re-framing the debate away from concerns about legal safeguards towards a debate about the place of marriage in society. This was evidenced by the conferring of ‘special status’ on marriage by Ministers, and MSPs from all political parties in the final Stage 3 Parliamentary debate.

By focusing on safeguarding the needs of children, recognising the ‘special’ place of marriage in Scottish society, but also acknowledging that family life had changed, Scottish Ministers were, in the end, able to secure support for the family law reforms. Progressive reforms were implemented, but a key faith group influencing message that marriage represented the ‘gold standard’ of family relationships was embedded into cross-party political consciousness, elevated in political discourse and dominated the final
Parliamentary debate on the family law reforms. By seeking to support both traditional and non-traditional family forms, the Labour/Liberal Democrat coalition government was perhaps working with an insecure policy paradigm which in turn, made the policy instrument vulnerable to pressure from outside interests. This pressure impacted on both political discourse and the actual policy output but did not in the end, prevent the reforms from being implemented.

Given that the adversarial nature of the party system at Westminster has been identified as contributing to a confrontational approach to family policy-making (Lewis and Knijn 2002), one might have expected that the consensus politics and coalition government envisaged for devolution would reduce the conflict normally associated with family policy debates and foster policy innovation in this much contested area of social policy. These findings would suggest that devolution has not reduced the ideological conflict associated with family policy debates. The extent to which devolution can be regarded as providing a fertile environment for fostering policy innovation in family policy-making is discussed in detail in chapter 7.

The findings of the second case study explored in this research are discussed in the next chapter.
Chapter six: the policy process of the national sexual health strategy

This chapter critically analyses the policy processes of the second case study in this research – the national sexual health strategy. As with the first case study, Kingdon’s multiple streams approach is interrogated to assess its utility in helping us to understand the policy process of the national sexual health strategy. This chapter outlines the background to the national sexual health strategy and identifies the influential voices and key events that shaped the policy process. The chapter also summarises the key differences...
between the draft strategy produced by the Expert Group and the final strategy presented to Parliament to assess the impact of influencing activity on the final policy output.

Background to the National Sexual Health Strategy

Sexual health was identified as one of four health priorities for the new Scottish Parliament in the Scottish Office’s Health White Paper Towards a Healthier Scotland published in February 1999 under Donald Dewar’s name as the then Secretary of State for Scotland. The national sexual health strategy was highlighted in the Executive’s partnership document (A Partnership for a Better Scotland, Scottish Executive, 2003) which stated that the Executive “will develop and implement a National Sexual Health Strategy” (2003:23). Susan Deacon MSP was the first Health Minister in the new Scottish Parliament and was identified by a number of interviewees as an early ‘issue champion’ for sexual health. The policy document Towards a Healthier Scotland emerges as a key driver in moving sexual health centre stage. In her interview, Deacon suggests that this document represented a paradigm shift in that it clearly differentiated the new administration’s approach to public health as distinct from the approach adopted by the previous Conservative government.

It was getting away from the Tory model of it all being about pulling your socks up and sorting out your lifestyle.....it was absolutely about recognising that people’s health is a function of their life circumstances above all of most things and a recognition that health was something that had to permeate every aspect of government policy.....it was a cross-cutting issue...There were four health priorities identified for Scotland – cancer, heart disease, child health and sexual health. And that really screamed out at me and I was frankly enthused and excited by the fact that child health and sexual health were in there. And I thought that was dead radical because everyone always hears about the three big killers – cancer, coronary
heart disease and stroke. And I’m not saying for a moment that it’s not important to address these things, but I thought it was really important that child health and sexual health was in there.

MSP-2

In this account, the background to the sexual health strategy is located in the context of a new administration keen to make the link between health and social and economic circumstances and a recognition that health ought to be a cross-cutting responsibility. Improving Scotland’s sexual health was identified by the new administration as a political goal right at the start of devolution. There was also a policy goal in that the new administration’s first health policy document Towards a Healthier Scotland announced that one of the four national demonstration projects would be sexual health. Deacon confirmed that sexual health was a priority in one of her first speeches as Health Minister at a conference organised by Population Concern. The speech received widespread coverage in the Scottish media and was well-received by the health policy community as this account from the Chief Executive of a national sexual health charity illustrates.

It was brave of Susan Deacon to try and tackle this in an adult way. Many of us in the field were very happy when Susan raised the issue of Scotland’s poor sexual health. She wanted to start a debate. You got the sense that she actually wanted to see societal change on this issue.

PH-4

Prior to devolution, the Health Education Board for Scotland (now NHS Health Scotland) had established a deliberative panel to consider the high levels of teenage pregnancy in Scotland. Trends in public health such as rising rates of STI’s and Scotland consistently topping the European teenage pregnancy league table had focussed attention on the issue of Scotland’s
sexual health and the new Parliament provided the opportunity to take action. The health policy community, the new administration and the new Health Minister all emerge as the key drivers in setting the agenda at this early stage of the policy process with sexual health being framed primarily as a public health/clinical issue. Kingdon (1995) identifies time trends data, particularly if an indicator is going the wrong way, as often the most important factor in sparking the interest of policy-makers. Certainly, the sexual health indicators were not going in the right direction, a fact which had been brought to Ministers attention by the health policy community.

However, agenda-setting is a complex, dynamic and non-linear process influenced by key actors and subject to interventions with political goals more like moving targets than fixed standards (Stone 1997, Bacchi 1999). The findings outlined in this chapter will show that the political goal of improving Scotland’s sexual health through the policy goal of producing a national sexual health strategy does indeed appear to have been a moving target.

**Policy and Politics: A Symbiotic Relationship (again)**

**Civil Society Stirs**

Kingdon (1995) distinguishes between agendas and alternatives. *Agenda* refers to the range of problems that which government and people closely associated with government are paying attention to at any given time. *Agenda-setting* is the process that narrows the list down to those policy areas that become the focus of attention. Agendas and alternatives are the product of the interaction between three autonomous streams through which social
and political actors mobilise in order to promote specific policy options. In the multiple streams framework, the key to understanding agenda and policy change is their coupling as the three streams come together at critical times.

An item’s chance of moving up the agenda is enhanced by the presence of a skilful policy entrepreneur and dampened considerably if no entrepreneur takes up the cause, pushes it, and makes the critical couplings when the policy window opens’ (Kingdon 1995:205). Deacon would appear to have filled this role in the early stages of the policy process. A policy window was opened with the publication of Towards a Healthier Scotland and this allowed a skilful policy entrepreneur and politician (Deacon) to propose a solution (sexual health strategy) and the new Scottish Parliament created an opportune political climate to move this agenda forward.

The early stage of the policy process shows a coupling of the three streams of problem, policies and politics. But like the family law reforms, the successful early coupling runs into difficulty and one of the political contextual factors that a number of respondents identified as significant in the policy processes of the family law reforms, similarly emerges as significant in the context of the national sexual health strategy. The effect that the campaign in Scottish civil society to retain Section 28/2A had on the government and the policy process of the sexual health strategy was commented on by a number of interviewees as this account from a senior civil servant illustrates.

*This was all influenced by this history early on in devolution of Clause 28 which the Executive stumbled into…..and so when the Health Department started talking about sex education and so on panic bells were ringing all over the place. The*
sensitivity of the Executive and the pressures that were brought on us from other parts of the Executive were entirely related to that experience, which was...I mean, it was a bad early experience in the Executive, so that’s the key, that’s one key thing.

CS-2

The campaign in Scottish civil society to retain Section 28/2A represents activity within the politics stream which, although initiated by policy actors out with government, appears to have influenced the policy process within government. Scotland’s sexual health had, up until then, been framed largely as a public health issue. The policy proposition (to address Scotland’s sexual health needs) had not changed, but the political context within which this debate took place had shifted. This highlights the relationship between policy and politics and the process by which the issue changed from a public health focus to a debate about morality. The re-framing of the sexual health strategy away from a clinical/public health focus on Scotland’s poor sexual health towards a ‘moral’ debate reflecting wider concerns about sexuality, teenage sex and the place of marriage has echoes in the findings presented in the previous two chapters and is a key theme to emerge from this research.

A Sudden Death

A key event occurred one year after the Executive announced their plans to abolish Section 28/2A - the sudden, unexpected death of First Minister Donald Dewar MSP. The death of Donald Dewar led to the election of Henry McLeish as First Minister. In this account, Susan Deacon, former MSP and Health Minister describes an early encounter with the new First Minister following media coverage of the launch of Healthy Respect (Executive’s sexual health demonstration project) which illustrates the impact that the Section 28/2A debate was having on the policy process.
I got summoned upstairs into Henry’s office and was told one-on-one, “this is not the kind of thing I want this administration to be associated with. At the same meeting he said that he had arranged a meeting with the Cardinal, and would I come along, he wanted to have a bonding session at Bute House which we subsequently had…..So I remember sitting debating with him and saying “Henry, this is not Section 28”. I said “Look, whatever our views about that, this is not about gay sex which gets a completely other reaction again. A lot of this is just dead common or garden stuff for your constituents, my constituents, and if we deal with it that way, it will be okay”. I got nowhere, absolutely nowhere. So that was Henry’s view – don’t want to be associated with this. What happened after that was all media bids for me on the issue were taken out of my Press Officer’s hands….I just wasn’t allowed to speak on the thing.

MSP-2

Henry McLeish’s tenure as First Minister lasted for just one year. He resigned in November 2001 following damaging media reports of his financial affairs. However, as was stated in the previous chapter, despite the high profile campaign in civil society, Ministers did, in the end, abolish Section 28/2A although the suggestion in these findings is that this was not without political costs.

A New Health Minister
At this point, another key event occurs in the politics stream - Jack McConnell is elected First Minister and replaces Susan Deacon with Malcolm Chisolm as Health Minister. It was now two years since Deacon had announced that there would be a national sexual health strategy. The key events which occurred in the politics stream appear to have had an impact on the policy process – politicians became more cautious following the campaign to retain Section 28/2A and Deacon’s role as sexual health policy entrepreneur was no more. For the first ten months of Chisolm’s leadership, nothing much appears to have happened to progress the national sexual
health strategy. In this account, the significance of Section 28/2A is acknowledged but the interviewee [a senior public health professional] also cites the Ministerial change as contributing to the delay.

*I think the Minister took a little time to be convinced in his own mind that this was a necessary piece of work and the fact that it was obviously all going to be controversial meant there was no great enthusiasm for moving it on. I was always aware that they [Executive] were always slightly cautious about this area…the political culture identified this as a problematic area so civil servants recognised that Ministers didn’t want something back quickly. Indeed if it took a little longer they weren’t going to be upset and the Minister had other priorities so in that sense, a somewhat unhurried, I wouldn’t say leisurely, but unhurried pace was set.*

PH-3

In September 2002, almost a year after taking on the health brief, Malcolm Chisolm announced that he was setting up an expert reference group to draw up the national sexual health strategy, three years after it was first announced by Deacon. The draft sexual health strategy produced by the expert reference group was presented to the Health Minister one year later in September 2003 and was subsequently put out for consultation by the Executive with a cut-off date for responses of February 2004.

Although many interviewees attributed the delay after Chisolm took the reins entirely to Section 28/2A, Chisolm himself offers a more nuanced account in his interview which took place approximately six months after he had ceased to be Health Minister.

*I suppose in retrospect, I’m almost asking myself why that period did take so long but I suppose there was general caution and almost nervousness about the strategy from a lot of people at the time. There was a change of administration as a whole, not just a change in the Health Minister and of course sexual health has always been something that has been of great interest to the administration as a whole, rather*
than something that was just hived off to the Health Department to do as it wished.....so I suppose in retrospect I might be critical, self-critical in regard to that so I see why people would be concerned about that......I am struggling to give an account to myself far less you, about why there was such a delay there. I suppose the reality of the Scottish Executive, particularly with Health, which was immersed in a whole series of issues and from day one in my case with the Beatson [Beatson Clinic treated cancer patients and had come in for severe criticism in the media due to shortcomings in service provision].

But you know all the rest cascaded very soon afterwards within my first 100 days. I remember waiting times crisis, hospital-acquired infection crisis, quite apart from the general cancer situation so I suppose the reality is that rightly or wrongly, it was not exactly top of the list in my mind at that time and equally the officials were not putting it up to me saying this is overdue and we need to decide this group by Easter. I think that is probably about as accurate a description as any so I don’t think anybody was trying to sabotage the group or the strategy, from my memory it just slipped down the order.

MSP-1

Chisolm states that he does not believe that anyone was trying to sabotage the strategy. However, as he delivers his account, he reflects further on how the delay might have been interpreted by some people

...but I am just thinking as I speak, well, I suppose people will always look at this in terms of election timetables, and I suppose the effect of the slippage was that the report[from the expert group] didn’t come out until after the election. I’m not conscious of that having influenced the decision but somewhere in the midst of all that it could have been a factor, but it is certainly not something I recall.

MSP-1

Chisolm appears to offer a reflexive account of why there was a delay in progressing the sexual health strategy when he took over as Health Minister citing other priorities taking precedence although, at the same time, acknowledging that this may be interpreted differently by others. It should be noted that Deacon, identified as an early product champion, also did very
little to progress the strategy in her first year of office. Ministers are required to function immediately with little time to familiarise themselves with the brief, this undoubtedly creates pressure on new Ministers. Arguably, as the new Health Minister, Chisolm had the power to keep sexual health off the Ministerial agenda.

Keeping things off the agenda is a form of power as important as getting them on (Lukes 1974, Stone 1997). A number of interviewees suggested that post-Section 28/2A, Ministers were cautious about engaging with another potentially controversial issue.

It seems likely that the significant activity that the campaign to retain Section 28/2A generated in the politics stream contributed to the delay in progressing the strategy but Chisolm’s account in particular, indicates that there were other pressures which may have contributed to the delay. However, it seems possible that the fall-out over Section 28/2A might have had the effect of temporarily derailing the policy process of the national sexual health strategy. The political force in this process is strong, but it is also subject to contingencies. For example, the death of Donald Dewar would appear to have shifted the direction of the political force, reinforcing the need to develop nuanced models to describe and analyse the policy process.

Politics and Policy: The Derailing Potential

The policy process of the sexual health strategy, like the family law reforms, brought to the fore conflicting views about both the scope and content of
government policy which seeks to address family, personal and intimate relationships. Professional rationality claims competed with morality claims as this account from a civil servant involved in drafting the strategy illustrates.

The Executive’s trying to walk a fine line between sort of …promoting the benefits of marriage without seeing it as an exclusive arrangement. And then on the other hand, there was a secular clinical left which wanted no part or nothing to do with marriage, commitment, relationships…..this was a strict public health issue, it was about preventing disease and infection and it had nothing to do with morals, ethics, families or anything else who adhered to a strict public health approach which was all about preventing disease and infection, nothing to do with morals. So the two extreme wings I guess were – this is all about family, spirituality, it has to defend…..put an end to promiscuity and alternative lifestyles versus - this has nothing to do with families and absolutely nothing to do with the moral sphere whatsoever, it’s a strict public health issue, and then every conceivable stage on that spectrum. It was quite a tippy toes ballet job for all the Ministers and officials trying to produce something that would work in a balanced way that didn’t water everything down to the extent that it had no impact….would get our objectives out there in a clear and unambiguous way while not putting everyone’s nose out of joint. CS-5

Thus the struggle over ideas in the policy process of the sexual health strategy was not just about conflicting ideas, but also highlighted the different ways that key actors chose to frame those ideas and the relationship between morality and ideas and politics. This also raises the question of the extent to which anyone can claim to have a value-neutral position. The ideas which are being contested in this debate relate to both the problem definition and the policy solutions being proposed i.e. the public health perspective that the best way to improve sexual health in Scotland is to offer comprehensive sex and relationship education supported by adequate service provision versus the faith perspective that a loose moral code and promiscuous behaviour is at the heart of problem and young people should
be encouraged to abstain from sex until marriage. Bacchi (1999) argues that how problems are defined, the assumptions and values of those describing the problem, and the attributions of cause and effect are crucial to policy solutions. The author views these interpretations as ‘interventions’ in themselves.

It makes no sense to consider the “objects” or targets of policy as existing independently of the way they are spoken about or represented, either in political debate or in policy proposals. Any description of an issue or a “problem” is an interpretation, and interpretations involve judgement and choices. Crucially we need to realize that interpretations are interventions since they have programmatic outcomes; that is, the interpretation will line up with particular policy recommendations (Bacchi 1999:2).

In the sexual health strategy, the problem of Scotland’s sexual ill-health is being attributed by the expert reference group at least in part, to a lack of comprehensive sex and relationship education. The expert reference group’s position is, as one might expect, informed by a significant evidence base. However, the problem definition and the proposed solution are rejected by key players in Scottish civil society namely, by faith groups who argue that both the interpretation and intervention are fundamentally flawed. It is interesting that this debate centres on different interpretations of what action it is appropriate for the state to take in the sphere of sexual and intimate relations.

The discourse around public/private policy divide with state intervention deemed appropriate in public areas but not in private or family matters has long been identified as problematic by feminists, particularly in relation to domestic violence policy (Dobash and Dobash 1992). But whilst moving the problem of violence against women into the public arena has led to a
significant re-positioning of the issue of domestic abuse in public policy in recent years, attempts to move sexual health into the public arena appears, on the basis of these findings, to have met with more resistance.

Much of the debate on the sexual health strategy was conducted within civil society with key actors framing their ideas through media interventions. And whilst evangelical Christians were a visible faith group engaging in the policy process of the family law reforms, the Catholic Church in Scotland is the most visible faith group engaging in the policy process of the sexual health strategy. Chapter 2 highlighted Lukes (1974) dentityion of the three layers of power – power within political debate, power to set agendas and power to keep things off the agenda.

In the policy processes observed in this research, the Catholic Church appears to set the political agenda at different stages of the policy process. With a fully-staffed media office, the Catholic Church can access more resources than other groups in civil society who may also have an interest in influencing the policy process of the national sexual health strategy. For example, many national voluntary organisations have no dedicated media staff and will frequently rely on their Chief Executive to undertake policy-influencing activities.

**Using the Media to Set the Agenda**

A key media intervention which has been identified by a number of interviewees as significant in terms of the impact it had on the policy process once again occurs in the politics stream albeit it is generated from out with government. In August 2004, Cardinal Keith O’Brien gave an interview to the
Sunday Times newspaper outlining his views on the Executive’s proposed national sexual health strategy. The Chair of the Expert Reference Group describes his thoughts on this particular intervention in the account below.

_I think the dimension I found most difficult was when they [Catholic Church] for instance, characterised the desire to have an integrated form of relationships and sex education which began at pre-school, which was transparently to do with relationships education for the first years of a child’s life, that they could then turn that round and talk about specific pornographic images for pre-school children. Now I sometimes sit and ask myself – does a sophisticated churchman really sit down and think that we would want to give dirty pictures to pre-school kids. Is that really what he thinks? And I find it hard to think that that’s really what he thinks, therefore one is forced to the conclusion that they employ the language knowing full well that wasn’t our intention because of their strength of feeling against what we were doing. In other words, to them, the end justifies the means. And I think that is a highly dubious position for them. The alternative is that they are just so poorly informed as to imagine that that is really what we wanted to do in which case, they are justified in making the complaint but they are guilty of just being ignorant. So in either way, it seems to be a poor position for moral and sophisticated people._

PH-1

In this quote, the Chair of the Expert Reference Group expresses his frustration at the criticism directed at the draft strategy from the Catholic Church. However, having clearly framed the issue of sex education as a ‘moral’ issue and therefore worthy of comment, the Catholic Church sees no difficulty with a media intervention like this. In this account, the spokesperson from the Catholic Media Office is asked to explain their approach to media relations and policy-influencing activities. The interviewee offers the example of the Sunday Times article to highlight how the Catholic Media Office tries to be pro-active on issues and set the agenda as opposed to constantly responding to other people’s agendas.
I’d rather we were doing the pro-active more but in reality you find you spend more time responding and reacting than actually setting the agenda but, you know, occasionally there are opportunities to go out and set the agenda. An example of that would be the article that appeared in the Sunday Times last September no…the year before, by Cardinal O’Brien….that Sunday Times piece was an example I think, of setting the agenda and that, if you like, is the mechanism that we would use to go out and say ‘here as we see it, are the issues’.

FG-1

The Sunday Times article is cited as an example of the Church ‘setting the agenda’ and if we consider Lukes (1974) definition of power, the Catholic Church is effectively exercising its’ power to influence political discourse through media intervention. There are similarities here with the Keep the Clause campaign which also used the media to ‘set the agenda’. The impact of the Sunday Times article is commented on by a civil servant working on the sexual health strategy who identifies the article as a key turning point in the policy process.

Most of the very high profile stuff was to do with Cardinal O’Brien and well…my particular favourite quote was…the one about state-sponsored child abuse. Well that’s…that’s a nice measured contribution to the debate and of course that then sets off…what I thought of as the clinical left…..so there were these kind of bombs going off on both sides and one bomb would mean there would be a retaliatory strike and a lot of the time it felt as though we were in there sort of trying to run up and down the touch lines and catch them…..and some of the stuff that was most interesting to me was where Ministers were trying behind the scenes to talk to everyone they needed to talk to without what they said in private meetings appearing on the front page of the Daily Record…which it did quite frequently and that was quite a disturbing aspect of this.

CS-5

Another key event occurred in the autumn of 2004. Shortly after the
Cardinal’s intervention in the debate in the Sunday Times article in August, Malcolm Chisolm was removed from the health brief and Andy Kerr, a west coast politician was installed as the new Minister for Health and Community Care. The fact that the new Minister was from the west coast was significant in that the historical links between the Catholic Church and the Labour Party in Scotland are particularly strong in the west coast and the Catholic Church had emerged as an influential interest group in the policy process of the sexual health strategy. The previous two Health Ministers, Deacon and Chisolm, were both east coast politicians and the differences are touched upon in this quote from Deacon.

There were things that...frankly...as an east coast politician...I just could not relate to. Labour MSPs from the west coast would tell me that they were coming under pressure when they went to mass on Sunday. It’s really hard coming from the east coast to get your head round that.
MSP-2

In this account, a civil servant also makes reference to the media coverage generated by the Catholic Church and the impact this had on politicians.

So that was a further sort of warning signal, if you like, for the politicians, there was religious opposition of course coming from the Evangelical wing as well....but I don’t believe that was of any significance. It’s the Catholic Church that is the big thing....the Labour Party did not want a row with the Catholic Church.
CS-4

The implication in these comments is that devolution has allowed the historic relationship between the Scottish Labour Party and the Catholic Church to come to the fore; that the Catholic Church is structurally embedded in Scottish politics and this will inevitably impact on the policy-making process in a devolved Scotland. Scotland’s particular religious traditions and how they
relate to the political process in post-devolution Scotland are discussed in more detail in the next chapter.

Andy Kerr was now the third Health Minister since Susan Deacon announced in 1999 that there would be a national sexual health strategy. A number of interviewees refer to the ‘radically different style’ of the new Minister in comparison with his predecessor and the civil servants were, as one might expect, particularly vocal on this as this account illustrates.

The big change was the change of Minister – that was one of two key things. The other was the over-the-top media coverage and stupid and reductive debate. I’ve been doing policy for five years and I’ve never seen anything like it – bombs going off, shrapnel hitting everywhere…..it had all been progressing as policy should i.e. it wasn’t hysterical and I would attribute that to Malcolm Chisholm’s calm hand. He was a steady pair of hands. Andy Kerr had a radically different style and he was very aggressive. He would say ‘do we even need that’ and seemed prepared to write off five years of sectoral expectation. We were being asked to put in briefings to his office twice a day. People who had seen Cardinal O’Brien’s headlines were phoning up the office. We had between five and ten phone calls a week from members of the public for three months and a whole raft of parliamentary questions from different MSPs…..we were getting a tide of Ministerial letters and had to read every single letter because we knew there was a distinct possibility that Minister’s responses to letters would end up in the paper…the Minister shifted his position a number of times.
CS-5

At this point in the policy process two observations are offered. Firstly, the issue of sexual health has been re-framed into a ‘moral’ issue rather than public health with faith groups using the media to drive this agenda and force politicians and civil servants to respond to them. It is perhaps not surprising that the interviewee uses military language to describe what was going on inside government as the civil servants do appear to be engaged in battle - fielding calls from the general public; responding to parliamentary
questions and of course responding to a new Minister with a very different style of operation. The language used to describe the effect on the policy process with words like ‘bombs’ and ‘shrapnel’ being used is echoed in the language used in a debate on sex education in the House of Lords highlighted by Lewis and Knijn (2002).

The key point is that sex education is not an adversarial matter [in the Netherlands]. The pleas made by some British peers for compromise and consensus – “this is not a war; there are no enemies; there are no battlefields. The debate is how we teach our children” (Lords Debate, 23/3/00) (2002:683 cited in Lewis and Knijn 2002).

The second observation is that the government no longer appears to be driving the agenda with debate in the media entirely focussed on the moral aspects of sexual health. The clinical and public health concerns appear to have disappeared from the public debate at least in the media. These difficulties are identified and described by Lewis and Knijn (2002).

The conflation of the moral and social in the UK has bedevilled many issues of family policy over the last two decades, for example, in respect of lone mother families, and has made it difficult to conduct debate over policy options. In the case of sex education, moral concerns have made sex education appear to be part of the problem rather than the solution, and contrast with the Dutch interpretation of teenage sexual activity as social change and of sex education as a means of encouraging responsible personal behaviour (2002:689).

In the midst of the mayhem, the new Minister announced to the civil servants in November that he wanted a radical re-working of the strategy and that he wanted it done by the end of the year. The civil servant quoted below describes personnel problems within the department which appear to have exacerbated the situation and suggests that senior civil servants, unable to cope with either the media onslaught or the increasing demands from the Minister’s office, abdicated responsibility resulting in middle-ranking and
junior civil servants being ‘thrown to the lions’.

Everything had to be looked at again, re-examined….I mean we are talking years of work by dedicated professionals and consultation and all that, and it had to be re-done from the ground up. But the kicker was that we were committed to having it out by the end of the year. This is in November remember. From the beginning of November through to the end of January, this put everyone through unbearable pressure to do the impossible. At the height of it, we were getting requests for new briefings in the morning from the Minister’s office and another request for a new briefing in the afternoon…..every day. I’ve never known anything like it. It made me physically ill and ….it destroyed our lives for three months. One of the most senior people in the department told me at the time that it was the worst thing he had ever worked on….but I think there was a failure at senior management level. Someone should have had the guts to say to Andy Kerr we cannot completely rework this strategy from the ground up, produce a new evidence base and do sound, joined-up policy-making in two months for something that’s been developed over five years and deliver it by the end of the year, it’s not possible. It was published on 27th January, I finished work about 4.30 on the Friday, was back at work around 8.30am on the Monday morning and found that Andy Kerr’s office was commissioning a new briefing from us on the strategy that had just been published.

CS-5

This quote offers a graphic illustration of the effect that media activity generated by key groups in civil society coupled with an administration already sensitive to potentially controversial issues and a very ‘hands-on’ Minister can have on the policy process. Further media intervention occurred in January 2005 when there was press speculation that the Executive were about to ‘cave-in’ to the Catholic Church by exempting them from parts of the strategy with Liberal Democrat sources being quoted as saying that the strategy had been ‘watered-down’. On the 23rd January, the Chair of the Expert Group, Professor Phil Hanlon, spoke publicly for the first time telling a Sunday newspaper that the Catholic Church was not treating other peoples’ views with enough respect. Key interest groups in civil society in Scotland pro-actively used the media in their endeavours to influence the policy process of both the family law reforms and the sexual health strategy.
This in turn raises questions about the extent to which some groups are better placed than others to take advantage of the policy influencing potential that devolution offers. Despite the increasing quantity and diversity of media outlets, Scotland still offers a relatively contained and distinctive media in comparison to England which, this research would suggest, has been utilised by key groups in their policy-influencing activities. The description of these events illustrates the effect that the activity generated by key interest groups in the politics stream was having on the policy stream. In his study of the mainstreaming of third sector into public policy in England in the late 1990s, summarised in chapter 2, Kendall finds that the policy and politics streams are exceptionally symbiotic in the third sector case:

The actors involved have been much more mutually aware and very consciously interdependent than is suggested by the thrust of Kingdon’s model, to the extent that the assumption of stream ‘independence’ which the latter emphasises seems to break down (2000:544).

Despite this, Kendall argues for the continuing utility of Kingdon’s categorisation even if, Kendall argues, in the process of applying it we expose what appears to be an inappropriate underlying assumption. The processes observed in this study support Kendall’s analysis of the exceptionally symbiotic relationship between the policy and politics streams. These findings go even further suggesting that activity in the politics stream both within and out with government, drove the policy process of the sexual health strategy. Thus the connecting line is clearly visible between the politics and policy streams and between the politics and problem streams, but there appears to be no clear line between the problem and the policy because the problem has been framed and re-framed at different stages in the policy process.
It is useful to conceptually distinguish the three streams of problem, policy and politics, but Kingdon’s claim that they operate largely independently of each other is not substantiated in this study. In the case of the sexual health strategy, what was being contested was primarily different visions of how the world should be. Ideas were being contested in the struggle of the sexual health strategy – ideas about sexuality and teenage sex, what information and services children and young people should have access to and the extent to which government should intervene in people’s personal and sexual relationships. This issue is touched upon in the evaluation of the Home Office’s teenage pregnancy strategy which observed that the UK is the only country in Europe where sex education is ‘mired in controversy and political resistance’ (Evaluation of Teenage Pregnancy Strategy, Home Office, Wellings, K 2005).

What emerges in the story of the sexual health strategy is the extent to which the political struggle influenced the policy process leading us back to Stone (1997) who identifies the essence of policy-making in political communities as a struggle over ideas.

Ideas are at the centre of all political conflict. Policy-making, in turn, is a constant struggle over the criteria for classification, the boundaries of categories and the definition of ideals that guide the way people behave (1997:11).

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**Figure 1: Problem, Policy and Politics – A Summary of the Links**

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Politics

176
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Problems and Policy: Finding the Connection

The draft strategy produced by the Expert Reference group Enhancing Sexual Well-Being in Scotland: A Sexual Health and Relationships Strategy (Scottish Executive, 2003) was just over ninety pages and contained over a hundred recommendations for action although a summary report was also produced. The strategy published by the Executive Respect and Responsibility - Strategy and Action Plan for Improving Sexual Health (Scottish Executive 2005) was 22 pages long and contained 28 recommendations for action and a practical plan for action which outlined the action that would be taken by the Scottish Executive; local authorities; NHS boards; NHS Health Scotland; NHS Education for Scotland; NHS 24; Health Protection Scotland; Scottish Prison Service; NHS Quality Improvement Scotland and Parents. Interviewees were asked if they thought there were any differences between the draft strategy and the final strategy and the responses ranged from ‘not that different’ to ‘much-diluted’ and ‘not worth the paper it’s written on’. This account is from a civil servant who was involved in writing up both the draft and the final strategy.

The final strategy isn’t that different but certain issues have become more prominent. We have lost the strong references in the original report to adopting a broad approach
to sexual health which takes account of social and cultural influences. There is much more emphasis on frontline services and there is more emphasis on marriage. And although the Executive did not adopt an abstinence-only approach to sex and relationship education, abstinence, or abstinence-plus as it is described, is more prominent in the final strategy.

CS-4

Some of the main differences between the draft strategy produced by the expert reference group and the final strategy published by the Executive are summarised in Table 4 at the end of this chapter. To summarise, three new values have been added to the final strategy – abstinence as a legitimate choice, reference to committed and stable relationships as the right setting for sexual relationships and acceptance of diversity of beliefs, values and moralities in Scotland. And whilst abstinence is primarily referred to in the draft strategy as a description (abstinence-plus) of comprehensive sex education, in the final strategy, it has much more prominence. In the section covering the media and mass communications in the draft strategy, there is a statement that media messages should promote an ethos that encourages relationships based on equality, maturity and respect. In the final strategy, the following has been added ‘with abstinence as a legitimate choice’ (2005:4). The prominence of abstinence in the final strategy was commented on by a number of interviewees. In this account, a Green MSP offers his interpretation.

The use of the phrase abstinence-plus is clearly a major concession to people who would like an abstinence-only agenda…..I mean, it’s almost a concession to the most extreme voices on sex education. They’re like…do you know the group Not With My Child? I mean, a tiny little group, only a handful of people…. Would we accept a group of parents who wanted any other aspect of health education withdrawn from their children’s education? Andy Kerr went out of his way to meet with this group. I don’t think we would teach our children that smoking is good for you which, you know, people used to say in the fifties and sixties…..There’s a gulf of understanding and some people genuinely do think that sex and relationships education is all about
what you stick where and a kind of…mechanistic approach to sex…and I hope that
doesn’t happen anywhere, that’s bad practice. The context of relationships is hugely
important…..it’s harder to measure……to pin down than targets for Chlamydia
testing….If people sat down and started working out from scratch what kind of
education should be included…..a lot of it would be common ground.

MSP-6

The group this interviewee refers to is the predominantly Catholic parents
group who set themselves up in opposition to the strategy following
Cardinal O’Brien’s condemnation of the strategy in the national media.
Indeed one of the differences between the draft strategy and the final
document is the enhanced role for parents. The draft strategy talks about
age-appropriate material and the final strategy reiterates this but adds that
work in nurseries and in the early years of primary school will ‘continue to
focus on relationships and how we care for one other, and will not involve
sex education’ (2005:8). The draft strategy summarises the evidence-based
components of successful sex education programmes as – multi-disciplinary;
flexible; teachers are supported and they are linked to relevant health care
services. In the final strategy a fifth bullet has been added that emphasises
delaying sexual activity until a young person is mature enough to participate
in a mutually respectful relationship. The change in tone and content was
commented on by Susan Deacon former MSP and Health Minister.

I also think that we have moved into this preachy mode now……I agree with this
thing about youngsters…y’know the downside to having sex too early and all this
kind of stuff. But having grown up frankly in my teens and twenties with the
current generation of the leaders of the nation, there’s a bit of me that thinks c’mon,
let’s get off this soapbox of preaching to children about how they have to be so careful
and sensible about all this. Now that doesn’t mean to say that we shouldn’t be trying
both as parents and policy-makers, teachers, whatever, to instil an understanding of
both the emotional and physical effects of personal…but I think we have crossed the
line. In answer to your question about the final document, I think the document itself
crosses into this preachy mode which I am very uncomfortable with.
MSP-2

The other key difference that was highlighted by a number of interviewees was the differences in the way each document refers to health services. Indeed this was one of the issues taken up in the media when the debate in civil society was at its most vocal. The media furore led Jack McConnell to state in an interview with the Catholic Observer (three months before the expert reference group had submitted their draft strategy) that the morning-after pill would not be handed out in schools. Other interviewees picked up on the emphasis in the final document on process at the expense of bringing about real and lasting change as this account from a civil servant illustrates.

I think the final document focussed very much on process. Now I’m not saying that process was not important….some of the proposals like for example, the requirement of each health board to appoint a lead clinician and a lead manager for sexual health was absolutely good, absolutely the right thing to do. But in a sense the process is a kind of comfort zone…it allows you to sort of avoid facing up to issues, so you appear to be kind of taking a decision but actually what you are doing is ….you’re really putting of a decision into further process…..I mean what was needed was a clarion call that said ‘here’s a problem, society has changed…government is not in the business of churches. It will respect the view of churches but it is in the business of dealing with society and life as it finds it and here is what we are going to do’ and that is precisely what the document….failed to do. It did not give the rallying call that was required.
CS-2

In terms of the recommendations for action, the majority of the recommendations in the draft strategy appear in the final strategy with the following exceptions: - the Executive did not accept the need for the appointment of a National Sexual Health Programme Co-ordinator. In the draft strategy, the National Co-ordinator has responsibility for overseeing a number of areas but this is delegated to the Health Department in the final
strategy. The draft called for local sexual health co-ordinators in every health board, in the final strategy this becomes the responsibility of the nominated NHS Board Executive Director.

There are some subtle differences in the language used in the recommendations referring to SRE and links to service provision. In the draft strategy, sex education is to be defined as “sex and relationship education and introduced in pre-school, built upon through primary school and developed through to school leaving age”. In the final strategy, SRE in pre-school and early primary “will focus entirely on family relationships and what it means to care for one another”. The task facing civil servants was to come up with language and phrasing that would satisfy what were effectively two opposing viewpoints. It is perhaps worth quoting at length, the response by the chair of the expert reference group when asked if he thought there were any key differences between the draft and final strategy as he was arguably, in a position to observe the various changes that the document went through in the policy process.

The draft strategy was recommending three or four things. The first thing it was recommending was that we had genuine national and local leadership and championing of sexual health issues......secondly, it was saying more resources for, and a more progressive model of health service provision ......the third thing we wanted was the kind of approaches to sex and relationships education not just in schools, but more widely, that were identified with models like Healthy Respect and SHARE which we characterised as being abstinence-plus.....and the final thing which has almost completely disappeared is that politicians, these newly appointed leaders and the social marketing processes of the Executive NHS Health Scotland should address sexual health in a manner that confronted it not as a behavioural issue but as a cultural issue. That was basically what we asked for.

Now the actual strategy delivers only on one of these elements and hardly at all even it. And it is subtle the way that it has changed but it has basically given money to
health boards to create some enhancement of service, some co-ordination, but it is clear that what they consider to be the McCabe educational settlement is unchanged and indeed they explicitly said as much. So basically there is no problem and here and we are not going to change and there is now no mention whatsoever of a wider cultural leadership exchange – political and professional leaders having a dialogue with the people of Scotland about sexual issues in general – openness, tolerance, all of these kind of issues. That’s just disappeared so in my view, it is a very much diluted strategy…..I don’t want to disparage what I think are important gains but I don’t think anyone can pretend that it is faithful to the spirit of the original report.

An interesting issue to arise here is the role of the expert group which would appear to be somewhat anomalous. The membership of the group was made up of representatives from public health, academia, voluntary sector and faith groups. The question is the extent to which the group could be regarded as ‘disinterested insiders’ or ‘partisan outsiders’, or indeed as having a dual role. For example, the Catholic Church was represented on the group and signed up to the draft strategy produced by the group but this did not prevent the Cardinal speaking out publicly against the strategy. Despite taking up the invite to be represented on the group, the Catholic Church clearly saw itself as being an ‘outsider’. The chair of the Expert Reference Group may be entitled to feel somewhat aggrieved that the Executive did not simply adopt the strategy which was produced by the Group and had been subject to detailed discussion and an extensive consultation process, but it would appear that the group could be neither fully functioning insiders nor effective outsiders. Being in both camps, the group’s status is problematic. However, in contrast to the account by the Chair of the Expert Group, a civil servant involved in the final drafting who was very vocal about the pressure on civil servants, nevertheless takes a more positive approach to the final document.
I’m actually oddly proud of that document because it did the impossible in no time at all and tried its best to redeem all the best features of the earlier strategy and cut out, I guess, what the Minister would consider to be the flab and what I would consider to be the nuance of discussions of a complex area…..what he wanted was something short, sharp and punchy and not long drawn out and civil-service and I could understand that.

CS-5

The final strategy published by the Executive is undoubtedly a leaner and punchier version in comparison to the draft report produced by the Expert Reference Group. This is perhaps not surprising given the obvious difficulties in producing a written document effectively by a committee. However, there are subtle differences in tone and content (see table 4) which would appear to have occurred as a direct result of the influencing activity undertaken by faith groups, principally, the Catholic Church. The potential implications that this might have are discussed in the next two chapters. Yet somewhat surprisingly, the respondent from Catholic Media Office, does not believe that the Catholic Church were successful in their influencing activities.

It was really hard to see any areas where the issues we had raised had been incorporated which was ironic if you like, against the backdrop of the church being constantly criticised in the media for having been too influential and being heard too often and listened to too much. I wanted to say to people give me an example. You show me a paragraph in this strategy where anything we have said has actually been accepted.

FG-1

As Table 4 illustrates, there are differences in both tone and content – increased focus on abstention, enhanced role for parents, downplaying education work with primary school pupils – all of which were issues that
the Catholic Church focussed on in their influencing activity. Whilst other interviewees identified the Church’s media intervention activities as having a direct effect on the policy process, the respondent from the Catholic Church as being ‘constantly criticised by the media’. However, in this account, a civil servant suggests that the sexual health professionals were also influential in the final policy output.

I could certainly understand it when Ministers want to present something to the world which makes sense to your average punter by which that means, in my fairly cynical opinion, the parents in denominational schools and the sexual health consultants because they were the people who shouted about the strategy all the way through.....I would say the Catholic Church in Scotland did influence the final document but I would similarly say that the work of the clinical secularists did in the same way ......the people who shout the loudest tend to be the people who have to be placated the most. Well that sounds very cynical but you have to take on board what they're saying and if you're not going to go in that direction, explain why you are not going in that direction.....so we had language in the strategy that talked about acknowledging the value of abstinence in a personal context but it would be essentially irresponsible for the government to promote an abstinence only sexual and relationships education policy.

CS-5

It is possible that the ‘clinical secularists’ prevented a major derailing of the sexual health strategy although the official quoted above seems to be suggesting that the government would never have been able to deliver the abstinence-until-marriage strategy that would presumably have been the desired outcome as far as the Catholic Church was concerned. However, the danger in trying to reconcile two essentially opposing viewpoints is that you end up pleasing no-one. The Chair of the Expert Reference Group, Deacon as ex-Health Minister, and senior health professionals were amongst those who appeared to be most critical of the final policy document.
It could be argued however, that they had reason to be critical – the report by
the Expert Group chaired by Professor Hanlon with many senior health
professionals involved in drafting the report, was substantially rewritten.
Deacon was removed from the health brief and was not given the
opportunity to follow through on her policy proposal. The civil servant
involved in drafting the final strategy is, on the other hand, ‘oddly proud’ of
the finished product and feels it was the best they could produce given both
the timescale and the brief that Health Minister Andy Kerr MSP had given
them.

The ideological struggle at the heart of policy process of the sexual health
strategy was, to a large extent, acknowledged by Health Minister Andy Kerr
MSP when he finally presented the strategy to Parliament on 27th January
2005. The Minister began by acknowledging that sexual health was a
controversial subject.

It touches on deeply held views on moral issues, it challenges us on cultural and lifestyle
diversity and it tests the strength of our tolerance (Official Report, Session 2. 27th January
2005).

He went on to note that the extensive consultation exercise had produced ‘a
diversity of strongly held and often opposing views’ and that the concept of
respect and responsibility are explicit in strong and stable relationships ‘with
marriage remaining a key pillar of our national life’. He acknowledged that
there were differing views on the place of marriage but that the right focus
for government ‘is on the quality of relationships, whatever form they may
take’. According to the Minister, the strategy was not value-free and the
Executive supported the approach of abstinence or ‘choosing to delay sexual
activity until a mature, respectful and loving relationship has been
established’. People should have the confidence to say no as well as yes and they should have the means to make their decisions and respecting their right to have such information ‘must not be limited by the choice that they make’. The Minister clearly stated what the strategy was not about.

The plan does not promote sexual relationships amongst children; it does not bypass or dismiss the critical role and responsibilities of parents and carers; it does not diminish or dismiss the importance of stable family relationships…..In essence, the message is delay until you are ready, and then be safe when you are active (Official Report, Session 2, 27th January, 2005).

The Minister used the opportunity of presenting the strategy to Parliament to clarify the Executive’s position and to address some of the criticisms that had been voiced via media intervention about the approach the Executive was adopting. He offered reassurance with regards to the Executive’s support for marriage but also stated that the government’s focus is on the quality of relationships ‘whatever form they may take’.

However, it could be argued that the policy-influencing activities of faith groups put pressure on the Minister to reiterate the Executive’s support for marriage as ‘a key pillar of national life’. This interpretation would support the findings of Lewis and Knijn (2002) who state that the recent history of sex education policy in the UK is a political battle which has seen ‘conservative traditionalists’ in the ascendency. A number of interviewees clearly felt that concessions were made to faith groups and in expressing this view, made reference to an article written by Archbishop Conti in a Scottish Sunday newspaper shortly after the strategy was published. In the article, Archbishop Conti states that the Executive deserve thanks.
To talk of the final strategy as victory for one side or another is provocative and unhelpful. To demean it as lacking a ‘big idea’ is superficial. The Catholic Church is far from alone in desiring to address the problems of sexual health holistically. I would define the victory, if victory there must be, as being one of good sense. For that the Executive deserves our thanks (Guest Vocals, Sunday Herald, 30th January 2005).

Some respondents expressed the view that this article made it clear that the Catholic Church were, in the end, happy with the final policy document and the effect that their influencing activities had on the policy process. However, the respondent from the Catholic Media Office did not appear to subscribe to this view when he offered this comment on the final policy document.

It has lifted a lot of the issues that were already in the consultation document and carried them forward, in spite of anything we might have said. True, some of the other issues, the quickening of the timescale for abortion didn’t make it into the final policy document although it was up for consultation. But whether that’s about anything we have said I have no way of knowing. But no, the view would be exactly the same as that on Clause 28. You can’t say the Catholic Church didn’t make their views known but neither can you say that they had an impact on the final result in terms of the policy that was passed.

FG-1

It may be that the Archbishop, as the figurehead of the Catholic Church in Scotland, has to present a particular public persona i.e. consensual and cooperative, which may be different from the policy-influencing role played by the officials working behind the scenes. Professor Phil Hanlon, the chair of the expert reference group, describes the effect of the influencing work undertaken by the Catholic Church as less about influencing the written word and more about creating a particular climate within which the debate took place.
What the Catholic Church didn’t do was go to the Minister and say ‘we want you to change that paragraph’, what they did was created a climate of pressure which I think had echoes of the Clause 28 debate which characterised the progressive position as being exploitative, and amoral rather than a different morality. And they made it clear that they expected politicians to be brave about this and do something different. And indeed if you look at what Archbishop Conti wrote about the policy when it was published, there is no doubt that he was quite pleased with the influence they had had.

PH-1

Conclusion

The findings presented in this chapter suggest that Kingdon’s framework continues to offer a useful model for analysing the policy process but that Kingdon’s claim for the independence of the three streams of problem, policy and politics is problematic since these were found to be interrelated. The three streams are conceptually distinct but do not operate independently with politics exerting a more powerful influence on events than policy. There is a symbiotic, asymmetric relationship between the policy and politics streams echoing the findings of the previous two chapters and the work by Kendall (2000). Activity in the politics stream drove the policy process of the national sexual health strategy with key groups in Scottish civil society successfully influencing both the process and the content of the final policy document.

And whilst the evangelical Christians and the Catholic Church in Scotland emerged as the two key faith groups influencing the policy process in the family law reforms, the Catholic Church stands out as the most visible faith group in the policy process of the sexual health strategy. The previous two chapters highlighted the role of ideas and ideology in the policy processes of the family law reforms. Ideology was similarly found to be at the heart of the
policy process of the national sexual health strategy giving credence to Stone’s (1997) view of policy-making as a ‘struggle over ideas’. Finally, the findings raise questions about the inevitable conflation of the moral and social in family policy (Lewis and Knijn 2002) and the extent to which family policy can ever be viewed as a rational process. The story of the national sexual health strategy began with the identification of a problem by a new, forward-thinking administration who wanted the people of Scotland to know that it viewed public health differently from its predecessor. Having listened to the concerns expressed by the health policy community in Scotland, the new administration decided that sexual health would be one of four public health priorities that they would seek to address.

The appointment of policy entrepreneur Susan Deacon MSP as Health Minister offered further confirmation that this policy agenda was moving centre stage and was confirmed when the new Health Minister announced that the Executive would produce a national sexual health strategy. Applying Kingdon’s model, we can say that the three streams of processes he identifies – problem (Scotland’s sexual ill-health); policy (proposal to produce national strategy); and politics (favourable political climate) came together at this early stage of the policy process. There was both technical feasibility and value compatibility, criteria which Kingdon identifies as important in deciding which policy ideas are selected. However, the findings presented in this chapter suggest that activity in the politics stream immediately following the initial successful coupling of the three streams had the effect of derailing the policy process of the national sexual health strategy for some considerable time. This perhaps highlights the fragility of the policy proposal in the face of political contingencies i.e. Section 28/2A, Donald Dewar’s death, which had
the effect of shifting the direction of the political force. In the policy processes observed in this research, other key events emerge as significant, all of which occurred in the politics stream. Kingdon’s model is useful in that it offers a credible analytical framework to explain why sexual health emerged as a policy priority in the first term of the Scottish Parliament. However, the model runs into difficulties almost immediately as it doesn’t allow for activity in the politics stream generated from *out with* government having an impact on activities *within* government.

In Kingdon’s model, as far as agenda-setting is concerned, ‘elected officials and their appointees turn out to be more important than career civil servants or participants outside government’ (1995:199 italics added). The findings presented here would suggest that in the case of the national sexual health strategy, participants *outside* government proved to be highly influential in affecting the actions of elected politicians and officials *inside* government.

One of the strengths of model-building and theorising is that it allows policy analysts to get underneath processes, resulting in greater clarity and offering insight into complex issues. However, a potential negative outcome of model-building is that in seeking to describe processes, important political contextual factors are stripped away and lost.

These findings have delved into the policy process of the sexual health strategy and uncovered activity in the politics stream that effectively delayed the policy process for some considerable time. But what was the effect, if any, on the final policy output? The research suggests that key groups in Scottish civil society successfully influenced both the process and content of the final
policy document. There were subtle but significant changes in general tone, language used and recommendations for action - primarily the emphasis on marriage, stable relationships and abstinence and the enhanced profile of parents in the final document – all of which constituted the primary focus of the activity in civil society on this issue.

The findings suggest that key groups outside government succeeded in setting the agenda at different stages in the policy process and were influential in re-framing the issue of Scotland’s sexual health away from a public health/clinical issue into a moral issue and shifted the emphasis and priorities of the final policy document without altering its substance to the same extent. But in the end did it matter?

The strategy was published and approved by Parliament and despite the changes made to the final document, the Health Minister stated clearly that although marriage remained ‘a key pillar of our national life’, the right focus for the government is ‘on the quality of relationships, whatever form they may take’. Faith groups, primarily the Catholic Church, clearly influenced the policy process, but according to one of the civil servants involved in drafting the final document, sexual health professionals were also influential in the final strategy. These issues are discussed in more detail in chapters in the chapters to follow.

Table 4: Summary of differences between draft and final strategy

<table>
<thead>
<tr>
<th>DRAFT STRATEGY</th>
<th>FINAL STRATEGY</th>
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<tr>
<td>&quot;Enhancing Sexual Wellbeing in Scotland – A Sexual Health and Relationships Strategy&quot;</td>
<td>&quot;Respect and Responsibility – Strategy and Action Plan for Improving Sexual Health&quot;</td>
</tr>
<tr>
<td>Values</td>
<td>Values</td>
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191
Parents and Sex and Relationship Education (SRE)
Active involvement of parents is important because their values influence a young person’s attitudes and beliefs; they are the principal source of continuing support to a young person; their relationships can be closely observed by a young person; schools are accountable to individual parents and the wider community (2003:8).

Parents and Sex and Relationship Education (SRE)
Parents play a key role in all aspects of their children’s education. It is essential that parents and carers are consulted on the development and revision of sex and relationships education as and when that arises; and parents and carers should be
Health Services and SRE
School-based SRE is most effective when linked to health services offering information, counselling and health services, including sexual health services, appropriate to young people. There is no single model to achieve this: it will depend on many factors and should be developed in consultation with young people and their families (2003:10).

Abstinence
Parents, teachers and professionals agree that sexual relationships are best delayed until a young person is sufficiently mature to participate in a mutually respectful relationship. SRE programmes described as ‘abstinence plus’ or ‘comprehensive’ programmes aim to delay sexual activity and combine this with skills development such as communication and negotiation skills, as well as information on sexual health services.

given the opportunity in advance to view key teaching materials and to ask questions about any aspect of a sex-education programme. Schools should also give pupils an opportunity to identify and express their own needs (2005:14).

Health Services and SRE
It is vital that sex and relationship education is supported by accessible health services for young people. While there is no single model for the development of links between services and schools, effective practice will involve collaboration and joint action between NHS boards and local education authorities in close consultation with the school community, in line with national guidance, with the aim of ensuring that pupils across Scotland have equitable information about sexual health services and how to access them. It remains our policy that, as at present, whilst advice on access to contraception is available, emergency hormonal contraception should not be made available in schools (2005:32).

Abstinence
Abstinence, or sexual activity which is delayed until a mature, loving, relationship is established, are approaches we support (Ministerial Foreword, 2005:iii).

Abstinence is a legitimate choice for any person and delayed sexual activity is a
and contraception. When delivered effectively, these can contribute to a reduction in unwanted pregnancies especially when closely linked to services for young people (2003:9).

positive choice for those who are not ready to form mature, stable and loving relationships (2005:2).

The strategy will … promote an ethos that encourages relationships based on equality, maturity and respect, with abstinence as a legitimate choice (2005:5).

Sex and relationships education programmes should take the form of comprehensive or ‘abstinence plus’ education (2005:8).

| NB The differences outlined in the table above are taken from the summary document produced by the Expert Reference Group as it is closer in length to the final strategy published by the Executive. |

| and contraception. When delivered effectively, these can contribute to a reduction in unwanted pregnancies especially when closely linked to services for young people (2003:9). | positive choice for those who are not ready to form mature, stable and loving relationships (2005:2). |
| The strategy will … promote an ethos that encourages relationships based on equality, maturity and respect, with abstinence as a legitimate choice (2005:5). | Sex and relationships education programmes should take the form of comprehensive or ‘abstinence plus’ education (2005:8). |
Chapter seven: the promise of devolution

This chapter considers the findings of the three previous chapters in a devolutionary context to explore a primary question posed in this research – to consider whether or not devolution has fostered innovation in family policy-making. This chapter outlines the background to devolution, exploring the extent to which the promise of devolution to ‘do politics differently’ has been realised; considers the relevance of contested concepts of civil society on the policy process of the two case studies; and explores the significance of Scotland’s religious traditions on family policy-making in post-devolution Scotland.

Doing Politics Differently: New Governance Structures

The Scottish Parliament was established in 1999 following most recently, a decade of campaigning by the Scottish Constitutional Convention (SCC) who published their Claim of Right Petition demanding home rule for Scotland in 1988. Membership of the SCC was drawn from the established civic institutions in Scotland - churches, trade unions, academia and the voluntary sector representing a civic tradition that can be traced back over a century (Paterson 2002). Following the union of 1707, Scotland succeeded in preserving important elements of its civil society - its own Church, separate legal and education systems, and universities adhering to a civic tradition not replicated at that time in England (Keating 2005).

In addition to being backed by Scotland’s civic institutions, the SCC was supported by two political parties - the Labour Party and the Liberal
Democrats. The Convention deliberated for six years (1989-1995) before producing their report which became the template for the Scotland Act (1998) which sought to embed the principle that the sovereignty of the Parliament resides with the people of Scotland. Following the passage of the Scotland Act (1998), the Consultative Steering Group (CSG) was established with members drawn from broadly the same civic institutions as the SCC and they proceeded to put in place the consultation principles on which the Parliament is based. From the outset, there was a desire to use the new constitutional arrangements in Scotland to ‘do politics differently’. This was envisaged through both the structures that would be put in place to govern Scotland and the way that policy would be made, all of which would be underpinned by the four founding principles of the Parliament - openness, accountability, the sharing of power and equal opportunities. Ensuring equal opportunities was a founding principle of the new Parliament and was the culmination of over a decade of campaigning by women activists who formed a broad coalition to campaign for 50:50 representation. Unlike Westminster, the working arrangements of the Scottish Parliament are designed to facilitate greater participation of women with the Parliament operating between 9 - 5pm and holidays generally coinciding with school holidays.

The desire to do politics differently would also be facilitated by the electoral system which was distinct from Westminster in that Members of the Scottish Parliament (MSPs) are elected by a mixture of first past the post and an additional member system resulting in a mixed system greatly reducing the likelihood of one party having an overall majority. Another key difference between the Scottish Parliament and Westminster is the Parliamentary
Committee structure in a unicameral system. Legislation requires three readings in the Parliament with revision undertaken through the Committee system.

The Committees have more power than their Westminster equivalent and can call the Scottish government to account, hold their own enquiries and initiate legislation. The membership of Committees must also take account of political composition in the Parliament. The key role of the Justice 1 Committee was discussed in chapter 5 which highlighted the Committee’s deliberations on the family law reforms both in terms of the opportunity it gave groups to influence the policy process, and also the action of the Committee in proposing amendments to the legislation. Devolution has led to a significant increase in legislative output with a four-fold increase in the policy business of the Parliament. The first session of the Scottish Parliament passed more than forty bills compared to six bills passed in the equivalent period in the old Scottish Office. Devolution has shifted influence both vertically, between the UK and Scottish levels, and horizontally, within a Scottish legislative system that has been opened up (Keating et al 2003).

The early promise of devolution therefore was an electoral system that would provide a more plural political landscape delivering coalition government, consensus politics and a greater representation of women. Elections to the Parliament in 1999 and 2003 indicated that in terms of representation, the promise of devolution would be realised with a Labour/Liberal Democrat coalition government elected on both occasions and the Scottish National Party (SNP) becoming the largest opposition party. In 1999, representatives from the Scottish Socialist Party and the Scottish
Green Party were elected to the Parliament and in the 2003 election both the Socialists and the Greens boosted their numbers to six MSPs each. The Socialist and Green MSPs were joined by an MSP representing the Senior Citizens party and three independent MSPs.

The representation of the smaller parties provided a more plural political landscape, but devolution also delivered greater representation of women. Whilst the campaigning aim of 50:50 representation was not realised, women made up 32.2% of the MSP intake in the 1999 election, the highest proportion of women in government in the UK and this increased to 39.5% in the 2003 election. But just as the notion of permanent coalition government and a multi-party system was beginning to embed itself in the Scottish polity, the 2007 election heralded significant changes. The SNP emerged as the largest party with a majority of just one and proceeded to form a minority government. Coalition government came to an abrupt end as did the multi-party system. The smaller parties were almost wiped out with no representation from the Scottish Socialist Party, the Scottish Green MSPs reduced from six to two and only one independent MSP elected. The percentage of women MSPs was reduced from 39.5% to 33.3%.

The election was the subject of much controversy for having the highest number of spoilt ballot papers ever recorded at over 100,000. The consensus that emerged following the election was that holding both the Scottish Parliamentary and local authority elections on the same day had led to widespread confusion given the different voting systems for both. Despite the specific difficulties associated with the 2007 election, it would seem that the promise of coalition government, multi-party politics and greater
representation of women may not be as fixed in the devolutionary granite as many had supposed.

Doing Politics Differently: New Policy Processes

The report by the CSG in 1999 envisaged an ‘inclusive democracy’ model for the Scottish Parliament which recognised and facilitated the plurality of voices which exist in Scottish civil society (Arter 2006).

Inclusivity involved giving a voice to those in the non-mobilised majority, as well as to marginalised and excluded minorities. Put simply, the inclusive democracy model was premised on the empowerment, and by extension, incorporation of the people of Scotland as a whole (and not simply the highly organised groups in civil society) into the decision-making processes. It had to do with the authentic voice of Scotland, the validity of non-aggregated opinion and the achievement of a participative Parliament (CSG, 1999:10) (2006:252).

The plurality of voices would lead to a different kind of politics, a move away from an adversarial style of policy-making to consensus politics. Confrontation would be replaced with co-operation and there would be a sharing of power - Scottish civil society which had fought to bring the Scottish Parliament into being would continue to be engaged in the political process. The Parliament would be open and accessible to the people of Scotland. On the question of accessibility, respondents in this study were virtually unanimous - devolution has met expectations in relation to openness and ease of contact with both politicians and civil servants as this account from a chief officer in the voluntary sector illustrates.

"I thought it [devolution] brought it a lot nearer home and you felt you had more direct access to key players.....a lot of people in the voluntary sector had had some
contact with new MSPs and people who were making key policy decisions. So I think it brought it closer to home and people felt they had more opportunity to help shape decisions that were taken about families across Scotland.

VS-1

The consultation mechanisms that are in place post-devolution bear virtually no resemblance to the system pre-devolution. As seen in the previous three chapters, both the sexual health strategy and the family law reforms were subjected to extensive consultation processes. The contrast with the previous system is described below by a senior civil servant whose career spanned both the old Scottish Office and the current Executive.

One of the things about the old style of government which I was a part was that you inhabited the top of an ivory tower and every two years you developed entirely out of your own head with no regard to the world at all a policy and you hurled it over the battlements and expected the great peasantry to seize it and act upon it and then you forgot about it. And three years later you came back and remembered it and wondered what had happened and were surprised to discover the answer was nothing.

CS-2

This quote suggests that the policy process of the previous system was very remote and top-down, with no emphasis on implementation, evaluation or indeed assessment of what works. All of these characteristics have previously been attributed to the policy process of the old Scottish Office with a long running debate on just how much autonomy Scotland possessed pre-devolution (Keating 2005). By contrast, respondents report an open, accessible Parliament which welcomes and facilitates participation in the policy process. However, delving deeper into this question of wider engagement in the policy process as this research has done, reveals a more nuanced and complex picture.
There is no question that the Parliament is thought to be accessible and open and the previous three chapters’ present evidence of engagement by key groups in Scottish civil society in the policy process of both the sexual health strategy and the family law reforms. However, a number of respondents have suggested that particular groups in Scottish civil society have wielded a disproportionate influence in the policy process of the two case studies presented in this research. Civil society activity around Section 28/2A was raised by a large number of respondents as having had a negative and long-lasting impact on policy-making post devolution.

**Unforeseen Civic Activity in Post-Devolution Scotland**

Chapters 4, 5, and 6 described influencing activity by both formal and informal groups in civil society during the policy process of the family law reforms and the sexual health strategy. The respondents in this research are generally representative of institutional interests although others who participated in the policy process did so as individuals – for example, the father who was given an oral evidence panel to himself during the Justice 1 Committee’s deliberations on the family law reforms. However, the status of ‘individuals’ was rendered problematic in both case studies. Chapter 4 described the huge increase in ‘individual’ respondents to the consultations on family law reforms between 1999 and 2000.

The analysis of the responses to the consultation documents found that the majority of the ‘individual’ responses submitted were linked to the lobbying efforts of some faith groups. During the policy process of the sexual health
strategy a group describing themselves as ‘mothers’ were similarly linked to the Catholic Church. And even the lone father who gave evidence to the Justice 1 Committee was linked to the group Families Need Fathers. But even although the status of ‘individuals’ was rendered problematic, the groups that the ‘individuals’ were linked to (Christian Institute, Catholic Church, Families Need Fathers) arguably all had a legitimate right to undertake influencing activities. The policy-influencing activities of millionaire businessman Brian Souter, who financed the Keep the Clause campaign, was seen as less legitimate by a number of respondents. Alison Elliot, former Moderator of the Church of Scotland, suggested in her interview that Section 28/2A had ‘unleashed’ a particular kind of activity in civil society that had not been envisaged by the key actors who drove the devolution debate.

The civic landscape in 1999 was dominated by the partners in the Scottish Constitutional Convention because they were the ones talking about devolution.....but the civic landscape has become much more varied since then and in principle that’s a good thing. And it’s a good thing if it’s done with some kind of level playing field. But one of the worrying things about Clause 28 was the money involved.

FG-3

Elliot, a representative of one of Scotland’s most established civic faith institutions, the Church of Scotland, appears to be suggesting that in seeking to widen participation in the policy process, devolution campaigners had in mind people who were disenfranchised in some way, hence the aspirations of the CSG that the Parliament should facilitate participation by ‘authentic’ civic society in Scotland. Devolution campaigners had clearly not considered the possibility that participation might come from those at the other end of the social and financial spectrum.
This raises an interesting question - in post-devolution Scotland, who or what constitutes authentic civil society? Chapter 2 noted that historically and in contemporary debates, the term ‘civil society’ is contested although its defining feature is that it is undertaken voluntarily without pressure or interference from others (Hodgson 2004). Arguably, Brian Souter was undertaking his campaign to retain Section 28/2A voluntarily and without pressure or interference from others, but the concern expressed by Elliot and other respondents, is that devolution may have facilitated a millionaire businessmen, motivated by his religious beliefs, to use his personal wealth to attempt to influence policy.

Yet powerful and wealthy individuals have always used their personal resources to buy political influence and such activities have been the subject of numerous inquiries and criminal investigations. Perhaps the *Keep the Clause* campaign causes unease for Elliot and other respondents because they see a powerful individual seeking to influence policy not in order to gain personally (as is the case for example in the recent ‘cash for honours’ inquiry which is investigating allegations that the Labour government at Westminster bestowed individual honours in exchange for generous cash donations to party funds) but to further a particular belief system based on religious convictions generally regarded as being on the fringes of mainstream religion. Mitchell (1999) contends that the debate on Section 28/2A highlights some of the difficulties many supporters of a more open policy-making process in Scotland have.

Advocates of this approach within the home rule movement have generally come from a liberal background. They are people who support the abolition of a clause deemed to encourage homophobia. However, they have had difficulty squaring this with support for greater participation in the policy-making process. The groundswell of public opinion
against changing the law on Clause 28 would have required strong political leadership willing to lead or challenge majority opinion on this. In the event, the amendment of the proposals, in an attempt to appease opponents and supporters, resulted in antagonising both sides (1999:617).

It may be debatable the extent to which the campaign to retain Section 28/2A genuinely reflected ‘majority opinion’ as suggested in the quote above given that Souter’s religious convictions (fundamental evangelical Christian) do not, on the basis of the table on religious identity summarised in chapter 4, reflect mainstream opinion in Scotland given that almost half of the Scottish population define themselves as belonging to ‘no religion’. But the central point remains - opponents of Souter’s campaign would probably be in favour of opening up the policy process but would not necessarily regard a millionaire businessman using personal wealth to attempt to buy policy outcomes as representative of ‘authentic’ civil society. But if Souter does not constitute ‘authentic’ civic Scotland, then who does?

Civil society would appear to be occupying a ‘fluid’ space in post-devolution Scotland. Chapters 4 and 5 described how the influencing activities of new interest groups (fathers and grandparents) helped to set the agenda and frame the debate during the early stages of the policy process of the family law reforms forcing more established interest groups like the family relationship bodies and Scottish Women’s Aid to undertake intensive influencing activity during Stage 2 and 3 of the parliamentary phase of the legislative process.

The inquiry report by the Parliament’s Procedures Committee in 2003 on the working of the CSG’s principles found that the ‘inclusive democracy’ model was not being realised sufficiently and recommended that the Parliament
and the Executive should accept a commitment to extend participation in
policy-formulation and law-making as widely as possible in civil society
(Arter 2006). More recently, one of the founders of the SCC and the person
generally assumed to be the key driver in mobilising civic Scotland to
campaign for devolution in the eighties and nineties, Canon Keyon Wright,
argued in a national newspaper for a new constitutional convention which
should be established not by Parliament alone, but by an authoritative group
representing all the major sectors of Scotland’s civil society. Kenyon Wright
suggests that it may be necessary to create a second revising chamber.

The Constitutional Convention created a monocameral Parliament, but anticipated a level of
real public participation in policy development that would provide the scrutiny and revision
needed. In effect, we expected the people to be the second chamber. That has not yet
happened, so the issue has become live once again (Herald, April 20th, 2007).

Devolution would appear to have delivered in relation to openness and
accessibility of politicians. What is less clear is the extent to which it has
genuinely opened up the policy-making processes to ‘authentic’ civil society
in Scotland particularly given the contested nature of the term ‘civil society’
and the difficulty in defining who or what constitutes ‘authentic’ civil
society. The comments by Alison Elliot suggest that mainstream religious
institutions like the Church of Scotland perhaps felt marginalised by the high
visibility of the evangelical Christians during the Section 28/2A campaign
and the activity around the family law reforms.

The first time I came across the family law reforms was through the Scottish Civic
Forum. They were holding a consultation meeting and wanted me as a church person
to get some church people to attend. When I suggested some official, trusted Church
representative, they said ‘no, you are coming up with people who are reasonable, we
want you to find people who will disagree….who will go out on a limb’ and this was
because of Clause 28. It was a disaster for the churches and it happened so early on in the Parliament.

FG-3

The implication in these comments is that the Scottish Civic Forum which was set up in 1999, with funding from the government, to facilitate an exchange of views between Parliament and civil society, is specifically seeking out people holding non-mainstream views which, it is suggested in the quote above, is a direct result of the high visibility of these views during the Section 28/2A campaign. Elliot goes on to say that although she believes that what the Civic Forum was trying to do was well-intentioned, her experience of the family law discussions have confirmed for her that in the ‘new Scotland’, the Parliament is less interested in aggregated opinion and therefore less interested in what the Church of Scotland Assembly might say. “They are not interested in what particular groups have come to think but they are interested in the lone voices that are getting through”.

Chapter 4 described an oral evidence session of the Justice 1 Committee during the family law deliberations which heard evidence from a father which some respondents suggested was highly unusual as most evidence sessions involve individuals representing organisations. In seeking to validate non-aggregated opinion, the Parliament, it is suggested, is deliberately seeking out non-mainstream views which are not reflective of the Scottish population as a whole. The respondent from Scottish Women’s Aid (SWA) expressed similar sentiments to Elliot.

The debate was definitely skewed. They were ignoring the research, the statistics linking domestic abuse and harm to children. We felt we were going through the proper procedures but it was the emotive arguments being put forward by individual
fathers that were being listened to.

VS-4

Brian Souter and the evangelical Christians who were highly visible during both the Section 28/2A campaign and the family law reforms do not, in the opinion of a number of respondents, represent authentic civil society in Scotland. In the quote above, the respondent from SWA seems to be suggesting that individual fathers were being listened to disproportionately. Yet both fathers and grandparents groups meet Hodgson’s (2004) definition of authentic civil society in that they have developed organically, are self-organising and receive no state funding. In Hodgson’s (2004) lexicon, the Church of Scotland clearly constitutes formal civil society in Scotland. And although not embedded in formal civic Scotland in the way that the Church of Scotland is, SWA has undoubtedly shifted in recent years from being an organic, self-financed, example of informal civil society in Scotland to becoming a fully-fledged member of formal civil Scotland. SWA now receives substantial funding from the government and even the organisation’s historic collective status has been abandoned in recent years in favour of a traditional, hierarchical management structure.

The respondent from SWA suggested that SWA struggled to have their voice heard due to the high visibility of fathers and grandparents voices during the early stages of the policy process of the family law reforms. That devolution has ‘unleashed’ activity in civil society that was unexpected by both the older and the more recently-established formal civic institutions in Scotland may of course be welcomed by some people.

Not everyone who supports the Scottish Parliament wants to find public policy expression for an existing political consensus and many of those who opposed devolution for fear that it
would consolidate the existing left of centre political consensus in Scotland now hope that the Parliament might facilitate challenges to this consensus (Mitchell 1999:619).

 Whilst Mitchell identifies the political consensus in Scotland as left of centre, Paterson (2002) describes a tradition of ‘civic caution’ which manifests itself in a broad alliance of civic institutions which support ‘cautious reformism’ as set against a competing tradition of radical nationalism/radical socialism. Paterson notes that, historically, cautious reform has won out and that renewing democracy in Scotland was always partly about re-establishing the networks that link civic institutions to the state.

 Perhaps invisibly to the mass of the population, it [Scottish Parliament] is in fact finding means by which the views of a much wider range of voices than hitherto can be brought into the policy process. That is an important achievement. It will almost certainly lead to worthwhile social reform, of the gradual type that characterised politics in Scotland from about the 1920s to the 1960s. It is the modernisation of Scottish middle opinion (2002:64).

 There is no doubt that civil society activity in the policy and legislative process has led to the kind of worthwhile social reforms envisaged by Paterson in a number of different policy areas. The Parliament’s legislation on land reform, mental health and homelessness is generally thought to represent some of the most progressive legislation in Europe. The historic ‘civic tradition’ in Scotland particularly of both the medical community and the education system may have been a factor in Parliament’s policy divergence from Westminster on some policy areas i.e. free personal care for the elderly, tuition fees and abolishing the internal market in the health service. Scotland has also led the way in the UK on banning smoking in public places.

 And in contrast to some of the negative sentiments expressed by respondents in relation to the harmful impact of the Section 28/2A campaign, Keating et al
(2003) find that the Scottish Parliament “showed more determination over Section 28/2A than had Westminster, and against more strongly mobilised opposition”. The authors state that the legislation prepared by both Westminster and Holyrood in anticipation of repeal and to assuage public concerns, displayed subtle differences but show Holyrood as being “rather more permissive and liberal, despite the strength of opposition to repeal Section 28/2A2.” However, in reaching this conclusion, the authors appear to concentrate on the evidence contained in documentary sources i.e. by comparing the relevant legislation produced by both jurisdictions although they do acknowledge that further study would be required to explore these phenomena further.

Scotland does have the ability to go its own way within the devolved sphere and diverge from law south of the border. There is also evidence of a shift within Scotland, with issues like land reform gaining more prominence. Interest group activity has increased in Scotland and this can be credited with changes in legislation from White Papers to Acts, although tracing this would require case studies of the passage of individual bills (Keating et al 2003).

If one examined both the family law reforms and the sexual health strategy primarily on the basis of the actual policy and legislative outputs, the Scottish Parliament would indeed appear to be “permissive and liberal” in its approach to social policy. However, what emerges from the case study approach to this research is a more nuanced and complex picture of the policy process. Both the sexual health strategy and the family law reforms were, in the end, implemented despite high profile campaigns in civil society opposing both initiatives. But what these findings suggest is that in the vexed area of family policy, Scotland’s particular religious traditions, distinctive media presence and participative policy-making processes all combined to facilitate interest group activity in civil society which created what one respondent described as a ‘radioactive’ public climate. This impacted on the
policy process in a number of ways and raises questions about the extent to which devolution will, in the future, provide a fertile environment for progressive reforms in family policy.

Scotland: Calvinist, Catholic and Sectarian

The campaign in civil society to retain Section 28/2A was one of the first examples of engagement of civil society in the policy process following devolution. Yet respondents in this research, many of whom would be supportive of the principle of wider engagement, expressed dismay that this particular campaign emerged so early in the life of the new Parliament. The fact that religion provided the motivation for the first campaign in civil society following devolution should perhaps have come as less of a surprise than it did given the historic role of religion in civic Scotland. Scotland boasts a contemporary identity of an increasingly secular country (Brown 1997, Walker 2002, Bruce et al 2004) albeit harbouring structurally-imbedded sectarianism (William and Walls 2000, Devine 2000). Steven (2007) however, contends that it is wrong to argue that the influence of religion in Scotland is in decline.

In his study of religion in Scotland since 1707, Brown (1997) highlights the role of religion, specifically Presbyterianism, in molding a distinctive civil society and civil consciousness in Scotland but finds the premise that Scottish Calvinism and the ‘democratic intellect’ “deployed in the historical narrative as emblems of Scotland’s identity and of her ‘distinctive’ civil and ecclesiastical society within Britain,” problematic. The author states that the
doctrinal influence of Calvinism within the churches is challenged from the 1740s onwards reducing its potential as a distinguishing feature of Scottish identity. Brown gives greater validity to the proposition that the Kirk played a significant role in Scottish national identity after 1707 noting that the democratic nature of Presbyterian church government meant that the general assembly of the Church of Scotland became a surrogate Scots Parliament after 1707 with its debates seen as the venue for the formation of public policy. Church discussions could be extremely influential in many areas of Scottish social controversy. Presbyterianism accounts for one key strand of religion and national identities in Scotland according to Brown with Protestant anti-Catholicism providing the second strand after 1707.

Protestant-Catholic antagonism in Scotland stretches back to the reformation and it is generally accepted that the main religious divide in Scotland is between Catholics and others (Paterson and Iannelli 2006). The Protestant-Catholic antagonism was enlivened in the 19th century by the immigration of both Protestants and Catholics from Ireland (Brown 1997). There is general agreement that Catholics mostly have their family origins in migrant labour from Ireland to Scotland in the second half of the 19th century and that there was a great deal of poverty among this group around this time (Paterson and Iannelli 2006). It is also generally accepted that there was widespread anti-Catholic attitudes which reached a peak in the 1930s with the rise of the British Protestant League (Brown 1997, Bruce et al 2004, Paterson and Iannelli 2006). The extent to which sectarianism continues to be a feature of Scottish public life continues to be contested. Some argue that sectarianism continues to form part of Scottish national identities.
Scottish national identity has never fully integrated Catholic and Protestant. In the late 20th century, there is still evidence of religious-based ethnic division which confounds a common identity. If secularisation has undermined popular Presbyterianism, it has thus far not destroyed sectarian identities in Scotland (Brown 1997).

Others argue that sectarianism has been much exaggerated and Scotland’s Catholics now enjoy social, political, and economic parity with non-Catholics (Bruce et al 2004) although a larger proportion of Catholic professionals than other professionals are found to have had their own origins in the working class (Paterson and Iannelli 2006). The historical perspective which highlights the role of Presbyterianism in civic Scotland and identifies the family origins of most Irish Catholics in migrant labour and the ensuing development of sectarian attitudes, helps us to understand the particular religious traditions that have shaped Scottish identities both historically and in contemporary debates. The poverty faced by Irish Catholics, a large number of whom were based in the west central belt of Scotland, provides a context for making sense of the historic relationship between the Labour Party and the Catholic Church in Scotland. It also helps explain the significance of the description used by a number of respondents in this study of a Labour politician being from the “west coast” to illustrate why they might be more sympathetic to policy influencing activity by the Catholic Church in Scotland.

The previous three chapters clearly identified the role of the evangelical Christians and the Catholic Church in influencing both the sexual health strategy and the family law reforms. Given the historic antagonism between Protestants and Catholics, it is worth noting that in the processes observed in
this research, there was evidence of a ‘coming together’ of the evangelical Christians and the Catholic Church. Indeed, the Catholic Church’s Parliamentary Officer in Scotland made the point in Chapter 5 that there had been a “rapprochement” with evangelical Christians as they saw each other as agreeing on many of the moral issues and being “the last institutions together on these issues”.

One interesting observation is that whilst both the evangelical Christians and the Catholic Church emerge as the key faith groups influencing the policy process of both case studies, the evangelical Christians appear to be most visible during the policy process of the family law reforms whilst the Catholic Church is most visible during the policy process of the national sexual health strategy. In his comprehensive history of the Scottish nation, Tom Devine (2007) reminds us that despite the radical traditions of early labour movement activists, the issue of sex and reproductive health has always been problematic for the Labour Party given its historic association with the Catholic Church in Scotland. The Catholic Church obtained promises from Independent Labour Party (ILP) candidates in the 1920’s that they would oppose birth control and indeed the Scottish Labour movement as a whole was far from supportive of the dissemination of birth control information. Devine notes that in 1927, a majority of Labour Councillors in Glasgow voted against allowing the magazine Birth Control News into the cities of public libraries.

Leading members of the ILP, including James Maxton, John Wheatley and Stephen Campbell were among those who campaigned against the provision of medical advice on contraception. As Minister for Health in 1924, for example, the Catholic John Wheatley refused to change existing policy which prohibited doctors or health visitors giving contraceptive advice. (2007:527)
Professor Phil Hanlon, the chair of the Expert Reference Group that produced the first draft of the sexual health strategy was one of a number of respondents who identified devolution as a key facilitating factor in giving voice to the Catholic Church.

*If this had been a UK national strategy, the Catholic Church in Scotland would have had to respond to it. Let’s be clear about that. Part of the problem is that many members of the Executive who are in key positions of power have Lanarkshire seats and there is a relatively open door of influence, and often of dialogue, and not particularly veiled threats about animosity if not electoral impact were made around all of this you know. So it seems to be transparently clear that the Catholic Church was able to use its influence to subvert the process.*

PH-1

The implication in these comments is that devolution has allowed the historic relationship between the Labour Party and the Catholic Church in Scotland to come to the fore. This was a view shared by a number of respondents who felt that the Catholic Church was *structurally embedded* in Scottish politics and this inevitably impacted on the policy process in a devolved Scotland. However, a historical perspective allows us to make sense of the significance of both the relationship between the Labour Party and the Catholic Church in Scotland and the role of Presbyterianism in shaping Scottish civic consciousness.

The symbiotic relationship between the Labour Party and the Catholic Church in Scotland is undoubtedly a significant factor in family policymaking in a devolved Scotland but it was an evangelical Christian who was the architect of the Section 28/2A campaign and the Christian Institute emerges as a key influencing group during the policy process of the family law reforms. Noting the role of key Catholic figures in the early labour
movement who were against birth control, Devine (2007) similarly reminds us that in 1918, the Church of Scotland demanded that the sale of anti-conception devices be ‘rigorously repressed’. As recently as 1972, the Church of Scotland’s Moral Welfare Committee stated of the sexual revolution “it is the promiscuous girl who is the problem” (Brown 1997).

And whilst many respondents made reference to the role of west coast Labour Catholic MSPs, it was two Presbyterian SNP MSPs (Bryan Adams and Fergus Ewing) who were most visible during the passage of the family law reforms. Indeed one of the MSPs, Fergus Ewing, hosted the Christian Institute briefing meeting which gave the Institute the opportunity to make their views on the proposed family law reforms known to MSPs during Stage 2 of the legislative process. The Church of Scotland offered support for the institution of marriage but did not align itself with the influencing activities undertaken by the Christian Institute and the Catholic Church. Indeed Elliot’s account indicates that the Church of Scotland felt marginalised in the debate that occurred in civil society.

Chapter 5 made reference to the Free Church of Scotland, commonly referred to as the ‘wee frees’ and primarily concentrated in the Western Highlands. The 1842 Claim of Right which gave rise to the creation of the Free Church in 1943 became the title of the public petition produced by the SCC in 1988 (Brown 1997). Thus evangelical groups like the Christian Institute who are not associated with a particular church, can tap into a fundamentalist, evangelical tradition in Scotland which can be traced back to the creation of the Free Church in 1943. Green MSP Patrick Harvie commented that participants at the meeting organised by Fergus Ewing MSP on behalf of the
Christian Institute were “subjected to a diatribe which was not even 1950s but more 1890s”. In the quote below, the interviewee from the Catholic Church makes reference to the briefing meeting.

*It was very well-attended, around a dozen MSPs, so that looked good as you normally only get about three MSPs at things like that.*

FG-3

Chapter 6 highlighted the study by Lewis and Knijn (2002) which investigated the politics of sex education policy in the UK comparing the debates on sex education in Westminster and the Netherlands. The authors noted the links between debates about family law and sex education.

Whereas British policy-makers have had difficulty acknowledging the separation of sex and marriage that took place as a result of the widespread use of the birth control pills of the 1960s, let alone the increasing separation of marriage and parenthood that has been the chief characteristic of more recent family change, their Dutch counterparts have accepted the rapid and dramatic changes in family form and have sought to address the new social reality (2007:677).

Indeed, Lewis and Knijn found that despite the existence of religious minorities with strong views on the subject and representation in the Dutch Parliament, policy-makers in Holland appear to have secured a consensus on sex education. The Dutch Family Council, an advisory committee to the government, set out three new principles for family policy in the Netherlands:-

(i) individual autonomy within the family
(ii) freedom of choice regarding family form
(iii) all family forms to be considered equal.
It remains to be seen whether or not the combination of the Labour Party/Catholic Church connection and the Presbyterian/wee free civic tradition, would make it difficult for the Scottish Parliament to ever agree that principles like the ones listed above should inform family policy-making in Scotland. Yet a key finding of the Lewis and Knijn (2002) study was that the adversarial nature of Westminster politics with the two-party system and ‘winner takes all’ attitude to policy-making, has ensured that the ‘struggle over ideas’ has been the decisive factor affecting the way Westminster policy on sex education is made. One might therefore have expected that in the ‘new politics’ following devolution, a different approach would be evident in Scotland. But what this research shows is that although in both case studies the reforms were implemented, the ‘struggle over ideas’ was as prominent in the consensual, coalition Scottish Parliament as it was found to be in the adversarial, two party environment of Westminster (Lewis and Knijn 2002). Brian Taylor, long-standing political correspondent for the BBC in Westminster and Scotland, claims he was never convinced of the notion of a new, consensual politics following devolution.

I thought this notion was piffle – and dangerous piffle at that. Yes, the Chamber and the Parliamentary committees should attempt to be different, should strive to avoid the ludicrous ranting and posturing which often masquerades as debate at Westminster. However, continual consensus mocks us all. Further, if this consensual construct is the overriding objective, it can tend to suppress the argumentative debate which is the core of democracy. If the parties are all predisposed to strike a comfortable deal, what place the people? (Taylor 2002:145)

Taylor is concerned about a potential ‘consensual construct’ between political parties within government which may, in some way, marginalise the role of the people of Scotland in public and political discourse. The findings presented here highlight the extent to which political influencing activity undertaken by interest groups from out with government impacted
significantly on the policy process *inside* government. However, the extent to which the groups highlighted in this research could be regarded as representative of the ‘people’ referred to in the above quote is clearly a contested issue.

In keeping with the findings of Lewis and Knijn, the previous chapters demonstrated that the struggle over ideas in both the family law reforms and the sexual health strategy were between groups who were fighting larger battles about family change and ‘family values’. And although the reforms were implemented, they were not unchanged from start to finish. The policy processes observed in this research were found to give disproportionate voice to a faith-based position which was not representative of mainstream opinion in Scotland. Steven (2007) contends that more than anywhere else in the UK, issues of an essentially ‘religious’ nature can quickly become important political issues as well, noting that the first major debate which took place in the Scottish Parliament focused on the need to repeal the Act of Settlement, the centuries-old law which bans Catholics from becoming, or marrying, the British monarch. In this research, the reverse is also true. Issues of a political or policy nature can quickly become important ‘religious/moral’ issues.

The re-framing of the issues of family law and sexual health away from concerns about legal safeguards for vulnerable families and public health indicators towards a moral debate about the place of marriage in society affected the political climate inside government which, as the evidence in the preceding three chapters demonstrated, had a *material* effect on the actual content of the policy and legislative outputs. It was also suggested by a
number of respondents that the adversarial nature of the policy process of both the family law reforms and the sexual health strategy has had an inhibiting effect on Ministers which could potentially impede efforts to secure progressive reforms in family policy in the future. Assessing the validity of the claim of an inhibiting effect is out with the scope of this study. However, a brief exploration of the events that unfolded in the year following the implementation of both the sexual health strategy and the family law reforms would, at the very least, appear to raise some questions about the potential for innovation in family policy-making in post-devolution Scotland.

Politics and Religion in Post Devolution Scotland

The Scottish Christian People’s Alliance is a new political party in Scotland that fielded candidates at the Parliamentary election in May 2007. The publicly stated aim of the Party is to ‘rid the country of its non-Christian Parliament’ (media release, 10th April, 2007). Representatives at the launch of the new Party included the Catholic Bishop of Paisley, Philip Tartaglia, Emeritus Professor of English at Glasgow University, Patrick Reilly and Bob Holman, an anti-poverty activist. Speaking to a national newspaper following the launch of the new party, the chair - Teresa Smith, described as ‘a disillusioned former chair of the Labour Party’s Dumfries constituency’, said that the Scottish Parliament had produced the most virulent and sustained attack on marriage and the traditional family ever witnessed in the UK:

“People are absolutely sick of a government at Holyrood which is politically correct to an extreme degree, is listening to the homosexual lobby, the feminist lobby and ignoring the wishes of the overwhelming number of ordinary people opposed to a raft of anti-family legislation.”
Some months later, towards the end of 2006, the Executive passed the Adoption and Children (Scotland) Bill 2006. Although there were a number of provisions in the Bill, civil society and media activity concentrated on the provision which allowed unmarried couples, including gay and lesbian couples, to jointly adopt for the first time providing they were in ‘an enduring relationship’. Given the findings of this research, it was perhaps not particularly surprising that during Stage 3 of the legislative process an amendment was proposed which would remove the right of same sex couples to adopt a child jointly. However, what was surprising was that it was SNP MSP Roseanna Cunningham who proposed the amendment. Cunningham is known as a left-leaning member of the SNP who, despite being a practicing Catholic, did not oppose either the sexual health strategy or the family law reforms.

It is of course possible that her actions were politically expedient given that the Parliamentary elections were just months away and the SNP has traditionally struggled to make inroads into the Labour heartlands of west central Scotland. Nevertheless, the fact that it was Cunningham who made the intervention came as something of a surprise to political commentators. There was considerable influencing activity by faith group representatives in the lead-up to the election in May 2007 and a second Christian Party announced that they too would be fielding candidates at the election. In early February 2007, Joe Devine, the Catholic Bishop of Motherwell wrote an article for a Scottish national newspaper calling on voters to impress on all parties the need to promote family stability.

My vote will go to the party that commits itself to detailed, credible and concrete policies that place marriage, committed parenthood and the family at the heart of its social
manifesto. And my public criticism will remain focused on those who do not.

Following the publication of his article, Bishop Devine announced that he
would be doing something that he had never done before; he would publicly
indicate the party that he would not be voting for. The Bishop announced
that he would not be voting for the Labour Party and he went on to say that
he would most likely be voting for the Christian Alliance Party adding “I’ll
not ask people to follow me but if they want to take that lead that’s fine
enough”. A few days before the election, the Scottish media carried the story
that head teachers at two Catholic schools in Glasgow and North Lanarkshire
faced possible disciplinary action over letters that had gone out to parents
urging them not to vote for the Scottish Green Party due to their opposition
to Catholic Schools. The Scottish Green Party responded that they were
disappointed that their ‘position appears to have been misrepresented’ as
they had stated that they were not suggesting any immediate action on this,
merely that there should be a debate on the issue.

There was a final twist in the pre-election posturing a few weeks before
polling day. The SNP announced that they had received a donation to their
election funds from businessman and evangelical Christian Brian Souter of
£500,000. The news generated significant media interest and was met with
dismay by Scotland’s main lesbian and gay campaigning organisation - the
Equality Network - who had led the opposition to Souter’s Section 28/2A
campaign. The Souter donation to the SNP was discussed in an editorial
which appeared in the Sunday Herald newspaper.

Accepting £500,000 from Souter and the baggage he brings to the SNP’s money table isn’t
effort but creates a sense of unease. Salmond will need to do more than simply offer
bland assurances that Souter’s half a million does not come with hidden costs that that would tie the SNP to ‘changes’ Souter would like to see. Souter’s Scotland - a country of reactionary beliefs - is one that should be consigned to history. His values have no place in a modern outward-looking culture which is not parochially restricted by out outdated and irrational fears. We can only hope the SNP agree.


As has been said earlier in this chapter, the 2007 Scottish Parliamentary election delivered a number of surprises with the Labour/Libdem coalition government replaced by a minority SNP administration. And having ruled local authorities across Scotland for the last fifty years, the Labour Party lost control of all but two local authorities located in the west central belt of Scotland - Glasgow and North Lanarkshire. Barely a month after the elections in May 2007, faith group involvement in the political process moved centre stage once again. Cardinal Keith O’Brien used the 40th anniversary of the Abortion Act to call on the new SNP administration to put pressure on Westminster to change the laws on abortion stating that the number of terminations in Scotland was the equivalent of two Dunblane massacres every day. Invoking Dunblane as a metaphor created a political backlash but his additional comments that Catholic politicians should not take Communion if they support the legislation in its current form (The Herald, 1st June, 2007) generated even more controversy.

What was particularly interesting about this intervention, unlike previous interventions outlined in earlier chapters, was that the Cardinal’s comments were headlined not just in the Scottish media, but received significant coverage in the UK-based media as they coincided with an attempt by Conservative MP Ann Winterton to introduce compulsory counselling and a seven day ‘cooling-off’ period for women seeking abortions. Shortly after Cardinal O’Brien’s intervention, Catholic Bishops in England and Wales
came out in support of his comments. Winterton’s move failed but there is no question that the Scottish Cardinal had succeeded in driving the political agenda not just in Scotland but at UK level also. The issue of abortion legislation came up in this research when it was raised independently by two Labour MSPs in relation to what could happen in Scotland if abortion was a devolved matter.

When the parliament was set up in the first place and they decided what was reserved and what was devolved, I sighed a sigh of relief because abortion law is still reserved. I thought at the time that if it [abortion] had been devolved we would have had a fight on our hands to stay where we are on abortion laws. MSP-3

In his interview, which occurred a number of months before the Cardinal made his comments on abortion, the respondent from the Catholic Church in Scotland, defended the idea that the Church had a role to play in supporting Catholic politicians.

We do have a role with people who are Catholics and go into politics because it’s a difficult role. How do you follow your conscience and how do you balance your responsibilities to your party, your government, your electorate, your family and to yourself. The belief of the Catholic Church is that if the Church teaches it then it is true. Everyone has an ultimate responsibility to the truth so you can’t go against what you believe to be true just because your colleagues, your party, your electorate would rather you sided with them for the sake of it. FG-2

A number of respondents in this study stated that the policy processes of both the family law reforms and the sexual health strategy gave disproportionate voice to a faith-based position which was not representative of mainstream opinion in Scotland. Chapter 5 highlighted the research commissioned by Ministers (Wasoff and Martin 2005) which indicated that
the family law reforms were broadly in line with the views of the Scottish population. It is out with the scope of this research to speculate whether or not the cumulative experience of civil society contestation over Section 28/2A, the family law reforms and the sexual health strategy will lead to politicians exercising more caution in family policy-making. However, it seems fair to say that in the ‘new politics’, the struggle over ideas is as prominent in family policy debates in post devolution Scotland as it was found by Lewis and Knijn (2002) to be in Westminster.

Conclusion

The findings in this chapter suggest that devolution has enabled civil society to participate in family policy-making in Scotland in ways that did not exist previously. The Parliament is generally perceived by respondents to be open and accessible in comparison with both Westminster and the old Scottish Office. Interest group activity in civil society was evident in the policy process of both the family law reforms and the sexual health strategy. However, assessing the extent to which the interest group activity could be said to be representative of ‘authentic’ civil society in Scotland is more problematic given the contested nature of debates about what constitutes civil society. The interest group activity by the ‘new kids on the block’ fathers’ and grandparents’ groups would indicate that a wider range of actors are making use of the more open, participative processes of the Parliament. However, the emergence of new actors in civil society has not necessarily been welcomed by the more established civil society institutions.

That devolution has ‘unleashed’ activity in civil society which has taken...
devolution campaigners by surprise, is worth noting. In Elliot’s account, the
established civic institutions that had fought so hard to bring about
devolution appear unsure about their ongoing role in post-devolution
Scotland. There is a sense in her account that some of the individuals and
groups who have come to the fore through campaigns like Section 28/2A
have come in from the margins to carve a place at the civic table, elbowing
out the more mainstream faith groups like the Church of Scotland. Similar
comments were made in chapter 4 by the respondent from Scottish Women’s
Aid in relation to fathers and grandparents groups coming in from the
margins and commanding considerable political attention.

Of the groups who were visible during the policy process of both the family
law reforms and the sexual health strategy, the fathers and grandparents
groups probably come closest to Hodgson’s (2004) definition of ‘authentic’
civil society in Scotland in that they are self-organised and receive no state
funding. However, their influencing efforts were not well-received by more
established or ‘formal’ civil society groups like SWA who perceive them to
be negative in their attitudes to mothers, and women more generally. A
theme is emerging that in the vexed area of family policy, a devolution effect
has been to give voice to groups who were previously regarded as being on
the margins (fathers, grandparents, evangelical Christians) of the civic
landscape. And whilst the Catholic Church cannot be said to be on the
margins of civic life in Scotland, the claim is that devolution has afforded the
Catholic Church a disproportionate influence in debates about family policy.

Yet devolution cannot be said to have prevented progressive reforms in
family policy from being implemented. Interest group activity in civil society
did not succeed in preventing either the family law reforms or the sexual health strategy from being implemented. However, as the previous chapters demonstrated, interest group activity did succeed in creating a ‘radioactive’ public climate which impacted on the political climate within government which had a *material* effect on the final content of the policy and legislative outputs which were less radical than originally envisaged. The claim was also made by respondents that interest group activity had had an *inhibiting* effect on Ministers which, it is suggested, could potentially impede efforts to secure progressive reforms in family policy-making in the future. Examining this claim is out with the scope of this research but events in the year after both reforms were implemented would appear to offer some support for this view. The transformative power of Scottish civil society to secure progressive reforms can be seen in other areas of social policy - land reform, education and health. However, these findings raise the possibility of that same transformative power being harnessed to potentially derail, rather than advance progressive reforms in family policy. Devolution has enabled progressive reforms in family policy to be implemented but is not found to have fostered innovation in family policy-making. In the ‘new politics’, the struggle over ideas in family policy is as prominent in the policy processes of post-devolution Scotland as it was found to be in Westminster.
Chapter eight: comparing the case studies

This chapter considers the similarities and differences and compares the different dimensions of the two case studies explored to draw out the main analytical themes from these findings. A key theme is the symbiotic link between the policy and politics streams in the policy processes of both the family law reforms and the sexual health strategy. Other key analytical themes include the enduring role of ideology in family policy-making and the further problematisation of civil society in post-devolution Scotland. The findings suggest that devolution has not reduced conflict in family policy debates - the family continues to be a site of contestation in the ‘new politics’ and while devolution has created more opportunities for civil society to participate in family policy-making in ways that did not exist previously, intra-civil society contestation has been a significant feature of the processes observed in this research. The formal policy instrument of primary
legislation used in the family law reforms facilitated engagement of a wider range of civil society actors, enabled a fuller debate of the issues and provided more checks and balances on the system than the informal policy instrument used to develop the national sexual health strategy.

Policy and Politics - A Symbiotic Relationship

Table 5, below, provides a summary timeline of the policy process of the family law reforms and the sexual health strategy, both of which appear in the policy stream within a month of each other in 1999, less than a year after the Scottish Parliament is established. There is no evidence to suggest that Ministers had any major concerns about either initiative at this early stage of the policy process. Similarly, early action on the family law reforms suggests that Ministers did not see any reason to delay progress on the proposals first identified by the Scottish Law Commission a decade earlier. As was elaborated in chapters 4, 5, and 6, all the indications were that the three streams of problems, policy and politics had come together in both cases in 1999. There was both technical feasibility and value compatibility fulfilling the criteria identified by Kingdon (1995) as important in determining the policy ideas that are selected for action.

Table 5. Policy and Politics Stream Timeline

<table>
<thead>
<tr>
<th>Policy Stream</th>
<th>Political Stream</th>
<th>Policy Stream</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family Law Reforms</td>
<td></td>
<td>Sexual Health Strategy</td>
</tr>
<tr>
<td>1989</td>
<td>Scottish Law Commission Report 1</td>
<td></td>
</tr>
<tr>
<td>1992</td>
<td>Scottish Law Commission Report 2</td>
<td></td>
</tr>
<tr>
<td>1995</td>
<td>Children (Scotland) Act</td>
<td></td>
</tr>
<tr>
<td>Year</td>
<td>Date</td>
<td>Event</td>
</tr>
<tr>
<td>------</td>
<td>------</td>
<td>-------</td>
</tr>
<tr>
<td>1999</td>
<td>October</td>
<td>Repeal of Section 28/2A announced.</td>
</tr>
<tr>
<td>1999</td>
<td>December</td>
<td>Anti-abortion activists picket Brook Advisory/Caledonia Youth.</td>
</tr>
<tr>
<td>2000</td>
<td>January</td>
<td>Keep the Clause launched</td>
</tr>
<tr>
<td>2000</td>
<td>March</td>
<td>Keep the Clause finance advertising hoardings during by-election</td>
</tr>
<tr>
<td>2000</td>
<td>May</td>
<td>Brian Souter announces referendum result</td>
</tr>
<tr>
<td>2000</td>
<td>June</td>
<td>Section 28/2A abolished</td>
</tr>
<tr>
<td>2000</td>
<td>November</td>
<td>Donald Dewar dies, Henry McLeish elected First Minister.</td>
</tr>
<tr>
<td>2001</td>
<td>November</td>
<td>Jack McConnell elected First Minister, Malcolm Chisolm replaces Susan Deacon as Health Minister.</td>
</tr>
<tr>
<td>2002</td>
<td></td>
<td>Malcolm Chisolm announces expert reference group has been established.</td>
</tr>
<tr>
<td>2003</td>
<td></td>
<td>September Draft strategy published.</td>
</tr>
<tr>
<td>2003</td>
<td></td>
<td>November Consultation on strategy launched with cut-off date February 2004.</td>
</tr>
<tr>
<td>2004</td>
<td>April</td>
<td>Archbishop Conti attacks sexual health strategy in the media.</td>
</tr>
<tr>
<td>2004</td>
<td>June</td>
<td>Parliamentary elections, Labour/LibDem coalition</td>
</tr>
<tr>
<td>2004</td>
<td></td>
<td>Consultation extended until April.</td>
</tr>
</tbody>
</table>
Parliament, amendment to delete part of motion referring to the 'reality of family life today'.

**August**
Cardinal O’Brien refers to sexual health strategy as 'state-sponsored child abuse'.

**September**
Catholic Church seeks six assurances from Ministers on the sexual health strategy.

**October**
Malcolm Chisolm replaced as Health Minister with Andy Kerr.

**December**
Andy Kerr meets with Cardinal O’Brien.

<table>
<thead>
<tr>
<th>Year</th>
<th>Month</th>
<th>Events</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>January</td>
<td>Stakeholders group established to produce Parenting Agreement and Grandchildren’s Charter</td>
</tr>
<tr>
<td></td>
<td>February</td>
<td>Family Law (Scotland) Bill introduced into Parliament.</td>
</tr>
<tr>
<td></td>
<td>March</td>
<td>Bill goes into stage 2, Justice Committee begins taking evidence.</td>
</tr>
<tr>
<td></td>
<td>July</td>
<td>Justice Committee report published.</td>
</tr>
<tr>
<td></td>
<td>September</td>
<td>Stage 1 Debate.</td>
</tr>
<tr>
<td></td>
<td>October</td>
<td>New welfare section announced.</td>
</tr>
<tr>
<td></td>
<td>December</td>
<td>Bill approved by Parliament and £300,000 for local family relationship services announced.</td>
</tr>
<tr>
<td></td>
<td>January</td>
<td>16th: press speculation that the government would 'cave-in' to pressure from the Catholic Church on the sexual health strategy</td>
</tr>
<tr>
<td></td>
<td>23rd:</td>
<td>Chair of Expert Reference Group speaks out against the influencing activity undertaken by the Catholic Church</td>
</tr>
<tr>
<td></td>
<td>30th:</td>
<td>Archbishop Conti states the strategy is a 'victory for common sense'.</td>
</tr>
<tr>
<td></td>
<td>January</td>
<td>27th: Sexual health strategy presented to Parliament.</td>
</tr>
</tbody>
</table>

However, despite the successful coupling of the three streams of problems, policy and politics in 1999, it is another three years before there is any further activity in the sexual health policy stream. And following the publication of a second consultation document in 2000, there is no further activity in the family law policy stream until a third consultation document is produced four years later in 2004. Exworthy et al (2002) note that many factors can
force the policy window closed – ministerial changes, departure of policy entrepreneurs, declining tax revenues and competing priorities “thus the policy window cannot be guaranteed to remain ajar” (2002:1918). The authors state that understanding the reasons for such openings and closings will explain the progress and pitfalls of policy. These findings point to events in the politics stream for an explanation of why the policy window closed (albeit temporarily) for both the family law reforms and the sexual health strategy.

Figure 4 shows that the new administration’s decision in 1999 to abolish Section 28/2A of the Local Government Act (1986) was announced approximately six months after the first policy documents pertaining to both family law and sexual health were published. Respondents in both case studies identified the decision to repeal Section 28/2A and the campaign launched in civil society to oppose repeal as a significant political factor which impeded the policy process of the family law reforms and the sexual health strategy. Lewis and Knijn (2002) identify the adversarial nature of the Westminster system as a problematic factor in the development of sex education policy in England and Wales noting the competing value claims about the family and sex education that ‘re-surfaced’ during the Section 28/2A debates in the 1980s at Westminster. In the plural, participative policy processes of post-devolution Scotland, one might have expected a less contested climate for family policy-making. And indeed in relation to Section 28/2A, Scottish Ministers did succeed in repealing the clause in June 2000, unlike their Westminster colleagues.
However, these findings suggest that despite the democratisation of policy processes in Scotland following devolution, the family continues to be a site of contestation in family policy debates. Although Ministers were ultimately successful in repealing Section 28/2A, opposition to repeal was most organised in Scotland (Bell and Cumper 2003). Figure 4 shows no activity in the policy stream of either case study during 2001, the year immediately after the Keep the Clause campaign was at its height. It was also at this point that Jack McConnell was elected First Minister and replaced Susan Deacon as Health Minister with Malcolm Chisolm. Malcolm Chisolm MSP describes the effect that this activity in the politics stream had on the policy process of the sexual health strategy.

*I think there was you know, a kind of general change...there was a change and some of that people obviously attribute to post-Section 28 and a nervousness about that kind of issue. But I think there was great sensitivity to the politics of this as it were, the handling of it, the reaction of various groupings, so there was certainly great caution from the administration as a whole.*

MSP-1

The conflation of the moral and social in policy debates on sex education in the UK observed by Lewis and Knijn (2002) and described in chapter 6, were largely mirrored in the debates and policy processes observed in the case studies explored in this research. The authors state that in UK the approach to sex education is in a large part determined by the ‘struggle over ideas’ with regards to wider issues of change in the family and sexuality - the struggle over ideas is the decisive factor in the development of sex education policy. Ideology was at the heart of the influencing activity undertaken during the policy processes of both the family law reforms and the sexual health strategy. Essentially, two opposing views on how the world should be
clashed in the policy reforms proposed by the new administration of the Scottish Parliament. The ‘social realist’ position can be described as the view that policy and legislation should respond to changes in social mores and behaviour and thus more accurately reflect the reality of people’s lives today. By contrast, the ‘traditionalist’ position can be described as the view that people who believed that such recognition is in itself contributing to the growing decline in social mores and morals perceived to be prevalent in contemporary society.

There is however, a difference in the degree to which these two opposing viewpoints were apparent in the early consultation phase. The rationale behind the family law reforms was that there was a need to update the law to reflect the reality of family life today and to provide some legal safeguards for people in non-traditional families. This position was challenged by faith groups who believed that the proposals would undermine marriage. And despite the family law reforms containing a wide range of measures within the legislation, the measure which sought to reduce the separation periods required prior to divorce became a key focus of faith group influencing activity. The provisions which sought to extend legal safeguards to cohabitants also served as an ideological dividing line for the two opposing positions although some people who adopted the ‘traditionalist’ position on the issue of reduction in separation periods did not necessarily oppose the provisions relating to cohabitants. In the account below, Margaret Mitchell, Conservative Party lead on the Justice Committee and the MSP responsible for the Committee’s amendment opposing the government’s position on separation periods outlines her position.

*The other huge part of the Bill was rights for cohabitants. You had people out with the*
Committee coming along and saying that to grant this would weaken the institution of marriage and I took quite a contrary view that in fact granting cohabitees some rights would do nothing to diminish marriage which I believe has a very special status – the public and legal commitment for life of a man and woman to each other to the exclusion of all others. It doesn’t always work out that way but the lifetime commitment status on which marriage is founded should entitle it to be protected by having special rights....Equally, however, I was aware that people in good faith, enter into relationships perhaps even believing it will be for life yet if the relationship ends or for example, if one party dies intestate, then as the law stood they wouldn’t get anything, there would be no provision. It seemed fair and sensible to recognise the long term relationships. Or in the case of death, that the deceased would have wanted their partner, with whom they had chosen to live, to have something which at the very least – were they to apply for provision – would be recognition of what they had put into the relationship.

MSP-4

Opposition to a reduction in the time periods required prior to divorce is observed as primarily ideologically-driven, whereas extending legal safeguards to cohabitees appeals to less loaded notions of ‘fairness’ and ‘justice’. The rationale behind the sexual health strategy was that Scotland needed a coherent, strategic approach to address Scotland’s sexual ill-health and this would be best achieved through the delivery of a national sexual health strategy. Faith groups challenged the basic rationale behind the policy proposal bringing to the fore contested ideas about sexuality, teenage sex and the kind of information and services young people should have access to. So whilst faith group influencing activity on the family law reforms was primarily directed at the provision seeking to reduce the separation periods required prior to divorce, and, to a lesser extent, the provisions relating to cohabitees, opposition to the sexual health strategy was directed at the basic premise on which the strategy was based namely, that young people should have access to information and services about sexual health and well-being.
Both proposals went through similar consultation processes although the sexual health consultation attracted almost three times as many responses as the family law consultation. Dudley and Sharp (2004) note that whilst a considerable number of respondents welcomed action to tackle Scotland’s sexual ill-health, there were key differences in attitudes on what action should be taken and on whether the strategy should, or could, be neutral.

Where some respondents felt that the Scottish Executive should take a ‘moral’ view and some questioned the absence of ‘love’ and marriage from the draft strategy, others felt that ‘the government cannot dictate for love’. Some felt that the draft strategy had in fact adopted an overly liberal approach to sex and relationships, and many considered that encouraging young people to delay the onset of sexual activity was the only solution. (Analysis of Consultation Responses to the Sexual Health Strategy, Scottish Executive 2005:2)

Thus the first ideological fault line associated with the sexual health strategy appears at the consultation phase of the policy process as it did with the family law reforms. And like the family law reforms, the site of contestation is marriage, specifically, the extent to which government should acknowledge and make provision for young people engaging in sexual activity out with a committed relationship like marriage. Professional rationality claims were pitted against religious/morality claims in both case studies. The family law reforms were re-framed from a debate about creating legal safeguards towards a discussion about the place of marriage in society. The sexual health strategy was similarly re-framed with clinical/public health concerns virtually disappearing from the debate and media discussion focussed entirely on the moral aspects of sexual health. Campbell (1998) describes the process of framing.
The framing process is indeed a strategic and deliberate activity aimed at generating public support for specific policy ideas. Moreover, the capacity to communicate ideological frames to the targeted audience is essential to experts and political actors who seek to legitimise existing policy decisions (1998:397).

In both case studies, faith groups sought to re-frame the issues of family law and sexual health in order to oppose rather than legitimise existing policy decisions, but were nevertheless concerned with communicating a clear ideological frame. The consultation process for the sexual health strategy began in November 2003 with an initial cut-off date of February 2004 which was later extended to April 2004. The reason given for the extension in the report analysing the written responses to the consultation was “because of the Executive’s desire to hold as wide ranging a consultation as possible” (Analysis of Consultation Responses, Dudley and Sharp 2004:3).

However, Table 5 shows that in February, when the consultation was due to end, Archbishop Conti of the Catholic Church attacked the government’s proposals on sexual health in the national media and a Parents Group linked to the Catholic Church went public with their opposition to the strategy. It’s not possible to conclude from the evidence presented in this research that the Catholic Church’s high profile media intervention was the reason the consultation period was extended. However, a number of respondents alluded to the ‘sensitive’ political climate at this point in the policy process with one respondent describing it as ‘radioactive’

The responses to the family law reforms were significantly less in number even although the scope of the reforms was considerably wider than that of the sexual health strategy. There was virtually no opposition to the measures which sought to extend parental rights and responsibilities for fathers which is perhaps indicative of the general trend in recent years towards conflict
resolution based on the child’s best interest and the assumption in law on contact. Fathers’ rights have also received much greater media attention over the last decade perhaps reflected in the growth of groups like Fathers Direct, Families Need Fathers and Fathers 4 Justice. Ideologically-driven opposition to the family law reforms was therefore less absolute than that directed at the sexual health strategy and the ‘social realist’ and ‘traditionalist’ positions were more fluid in the family law reforms with some ‘traditionalists’ opposing the proposed reduction periods required prior to divorce but supporting extending legal safeguards for cohabitees. The divergence between the two positions was therefore not as marked in the family law reforms as in the sexual health strategy but none the less two different ideological positions were apparent in both case studies.

In both case studies, progressive reforms in family policy were implemented. Chapters 4, 5, and 6 describe the specific outcomes of interest group influencing activity on both the family law reforms and the sexual health strategy. In the family law reforms, faith groups succeeded in re-framing the debate away from legal safeguards towards the place of marriage in society and embedding a key influencing message – that marriage was the ‘gold standard’ of family relationships – into cross-party political consciousness. Chapter 2 noted the conceptualisation of power favoured by Dur and De Bievre (2007) as ‘control over outcomes’ which the authors consider to be “the epistemologically most sound and empirically most pragmatic route towards assessing interest group influence” (2007:3) alongside two other possible conceptualisations of power – ‘control over resources’ and ‘control over actors’. Faith groups can be regarded as having achieved influence by re-framing the policy debate thus achieving control over political outcomes although they did not, in the end, achieve control over policy outcomes as the
proposal to reduce the separation period required prior to divorce was reduced.

Fathers and grandparents groups similarly achieved influence by securing some control over policy outcomes - a new provision of Contact Compliance Officer was inserted into the legislation at the last minute; a commitment to undertake research on post-separation contact; a parenting agreement and a public information campaign all suggest policy and legislative outputs achieved as a result of the influencing activities of fathers groups. Grandparents groups could point to the grandchildren’s charter as evidence of the impact of their influencing activity which, although not exactly what they asked for (legal right of contact), nevertheless took them ‘closer to their ideal point’ (Dur and De Bievre, 2007). Accounts by officials, politicians and Scottish Women’s Aid corroborate each other in relation to the insertion of a welfare section as a result of the influencing activity undertaken by SWA. Similarly, the £300,000 new funding was generally agreed by respondents to have come about as a result of the influencing activity undertaken by both national and local family relationship services. All of these interest groups can be said to have achieved influence using the ‘control over outcomes’ model.

Identifying the effect of interest group influencing activity on the sexual health strategy was not as straightforward a process as that undertaken for the family law reforms. However, it was possible to compare the initial strategy produced by the expert reference group with the final strategy presented to Parliament by Health Minister Andy Kerr. Key actors were also asked whether or not they thought there were any differences between the draft and final strategy and these accounts were analysed alongside the documentary sources.
Chapter 6 provided evidence of changes in both tone and content between the draft and final strategy. In the final strategy there is an increased focus on abstention, an enhanced role for parents and a downplaying of education work with primary school children – all of which were issues that the Catholic Church highlighted in their influencing activity. This would suggest that the Catholic Church achieved influence through control over both political and policy outcomes. However, unlike the family law reforms where key actors accounts generally corroborated each other regarding the effect of interest group influencing activity on the final legislation, key actors accounts on this aspect of the policy process of the sexual health strategy were more mixed. In this account, an official working in the area of young people’s sexual health, acknowledges that changes were made but is generally positive about the final product.

I think many people feel it’s been watered down and I would agree to a certain degree that it has.....There’s some phrases in the Minister’s introduction around stable family life and family values so I would say that kind of emphasis definitely comes from the lobbying [faith groups]. But we’ve also got stuff in there around things like sexual abuse and coercion, which again, was from other parts of the expert group. So I think it’s worked equally well for a number of groups if you like.

PH-2

This account reflects the sentiments expressed in other accounts, primarily those of officials involved in the process who acknowledged that changes had been made between the draft and the final strategy but believed that other groups had also been influential in shaping the final product. On the other hand, the chair of the expert reference group, Susan Deacon, former Health Minister, and Patrick Harvie, Green MSP, were among those who
believed the final strategy had been unduly influenced by faith groups. However, the respondent from the Catholic Church was reported in chapter 6 expressing the view that the Church’s influencing activity had had minimal effect on the final strategy. In this account, a civil servant suggests that it was perhaps necessary to modify the strategy in order to secure support from all stakeholders, a view which was most likely to be expressed by officials.

Everyone is on-side now but is it because the strategy is so bland? People can’t argue with what’s in it.....but the policy process is problematic, the way it develops is very ad-hoc, depends on the day of the week, what’s in the media, is subject to vagaries of what Ministers think.....if I was writing it would be much more radical but it’s a question of what you can get through.

CS-4

What emerges in these findings is the extent to which the policy processes of the two case studies developed in a climate of contestation and competing value claims albeit the views of the two camps were slightly less polarised in the family law reforms. Values play a key role in the policy-making process (Nutmey et al 2007) but when the debate is divided by competing value claims, which values should take precedence? Or put another way, what are the values that should inform public policy in family policy debates? It is unrealistic to expect policy to be value-neutral but given that the family continues to be a site of contestation, might family policy in post-devolution Scotland benefit from having an agreed, consensual value base to inform policy similar to the ‘three principles for family policy’ identified by the Dutch Family Council and described in chapter 7?
Lewis and Knijn (2002) note that the UK approach to legislation assumes there is an underlying consensus on moral values in contrast with the Netherlands model where it is assumed that cultural segmentation exists and should be respected by the government, which then has the task of building consensus. The Netherlands model endeavours to exclude morality from the policy process but the delineation between morality and values is perhaps not as clear cut as we might want. The Chair of the Expert Reference Group is quoted in chapter 6 as describing the approach of the Catholic Church as ‘characterising the progressive position as being exploitative and amoral rather than a different morality’. And this really is the heart of the matter – what one person classifies as amoral another considers to be a value-based position. In the case of the sexual health strategy, the progressive position referred to in the above quote is attributed to the clinical/public health interests who would see themselves as operating from a value-base which recognises that young people are entitled to have access to information about their sexual health and well-being. The Catholic Church on the other hand, believes that this position is essentially amoral.

In the case studies explored in this research, democratisation of the policy processes has not had the effect of reducing the role of ideology in family policy debates in Scotland. Chapter 7 considered the role of religion both historically, and in contemporary Scottish civic and political life. Ministers’ reforms to the adoption legislation following the implementation of both the family law reforms and the sexual health strategy proposing measures which would allow same sex couples to adopt providing they are in a stable relationship, similarly generated another ideologically-driven debate both within civil society and in the Parliament. Many of the issues raised echoed the debates that had occurred during the policy process of the two case
studies explored in this research. For example, the need to acknowledge and give privileged status to married relationships.

Paradoxical Civil Society in Post Devolution Scotland

Chapter 2 noted that the concept of civil society was contested in both historical and contemporary debates. In the two case studies explored in this research, devolution has enabled civil society to participate in family policy-making in Scotland in ways that did not exist previously but intra-civil society contestation is a significant feature of the processes observed in this research. As has been stated, a wide range of interest groups were involved in the policy processes observed in both case studies. The groups span the full spectrum of civil society - informal groups with no state funding (fathers, grandparents groups); formal groups (SWA, family support organisations); professional interests (legal community, clinical/public health); and institutional interests (Catholic Church, Christian Institute).

On the face of it, this should please devolution framers who embedded the principle of open participation in policy processes into the fabric of the Scottish Parliament. And indeed many respondents made specific reference to the more varied civic landscape following devolution. Yet what also came through in a number of accounts was a feeling that devolution had ‘unleashed’ a particular kind of activity in civil society, one not envisaged by devolution’s framers. Chapter 7 highlighted the similarities in the accounts provided by Alison Elliot and the respondent from Scottish Women’s Aid. The Church of Scotland, a long-standing member of established civil society

242
in Scotland, was clearly unprepared for the emergence and visibility of the fundamental evangelical Christians in both the Section 28/2A campaign and the public debate on the family law reforms.

Similar sentiments were expressed by the SWA respondent in relation to the emergence and visibility of fathers and grandparents groups in the early stages of the policy process of the family law reforms. Both the Church of Scotland and Scottish Women’s Aid, in their own distinctive way, represent the established face of civil society in contemporary Scotland albeit having come from very different historic roots. Both were unprepared for the way in which devolution has enabled ‘outsider’ groups, previously regarded as being on the margins of civil society in Scotland, to participate, and even lead the policy debate.

Keating (2005) contends that civil society in post-devolution Scotland should not be seen as a single entity, with a consensual view, “but a pluralistic arena in which different visions of public and private good can be played out” (2005:5). This is a key point made in Daly and Howell’s (2006) summary of the civil society literature highlighted in Chapter 2 - there is no single, normative vision of civil society but a number of competing interpretations opening up the potential for interests to clash in the public sphere to the exclusion rather than inclusion of some groups. The authors suggest that this represents the ‘shadowy’ side of civil society. There is no doubt that interests did clash in both the family law reforms and the sexual health strategy and indeed some respondents who expressed concern about groups coming in from the margins to carve a place at the civic table may well regard these groups as representing the ‘shadowy’ side of civil society.
This raises another question which is intrinsically linked to the earlier question relating to competing value claims – in the plural, participative civic landscape of post-devolution Scotland, how do we decide who has a legitimate claim on a contested policy issue? Two related questions, one applies to the different values that might be informing a particular policy position, the other applies to the agent making the claim. Seckinelgin (2006) poses this question in relation to the debate in Turkey on the wearing of Muslim headscarves.

How do we decide who has a legitimate claim among the many claimants within the system on this issue? Does every claim have legitimacy in the system? Deciding between claims for recognition and between various demands for resources is one of the central questions implicit in the foundations of democratic regimes (2006:749).

In both case studies explored in this research, a number of interest groups were staking a legitimacy claim on the policy reforms under discussion. The suggestion from some respondents was that particular groups (faith groups) exerted a disproportionate influence on the policy process. Malcolm Chisolm MSP, former Health Minister, commented on this issue in his interview.

*Some people feel that some lobbyists are getting too much disproportionate influence – well, who are these people? Because some people may might say that with the sexual health strategy, it was ordinary people striking back against the experts, whereas another view, which I think would have some legitimacy, is that we are actually thinking that the voices who are making a noise about this are more representative than they are. So there’s always a difficult analysis there about who is speaking for the majority.* MSP-1

Chisolm articulates the problematisation of civil society in post-devolution Scotland and this issue was also taken up by Patrick Harvie MSP. In a quote described in chapter 6, Harvie made reference to a meeting that the Health
Minister had with the campaign group of predominantly Catholic parents who had set themselves up specifically to oppose the sexual health strategy and questioned the judgement of the Minister in agreeing to meet with a group who were numerically, fairly insignificant. The Green MSP questioned whether we would allow parents to withdraw their children from any other aspect of health education making the point that in the fifties the argument was put that smoking was good for you, something which he suggests we would find completely unacceptable today.

The implication in the comments made by a number of respondents was that faith groups were afforded a greater legitimacy than they deserved given that almost half the Scottish population define themselves as not belonging to any religion. Concern was also expressed that the faith groups who were most visible (the Evangelical Christians and the Catholic Church) were themselves not reflective of mainstream religious opinion in Scotland. What emerges from this research is tension between ‘established’ civil society and some of the newer groups who have come to the fore following devolution. Post-devolution, some of those interests representing ‘old’ civil society in Scotland report feeling marginalised as new groups carve a place for themselves at the civic table as this quote from Alison Elliot, a representative from the Church of Scotland, illustrates this.

*It had been said that old civil society has this suffocating consensus at the village level – the doctor, the lawyer....but what happened after the election was that diverse Scotland came out and they were choosing to define themselves differently......there is a battle as to who owns civil society in post-devolution Scotland.* FG-3

Nutley et al (2007), examining how research can inform public services,
reminds us that when policy processes are democratised, policy discussions are likely to contain a greater variety of voices.

But this approach is not without its challenges and will involve acknowledging that the use of research in such pluralistic discussions is an inherently messy and political process. Evidence from social research is contested, not fixed, and like the policy process itself, is deeply infused with values (2007:260).

Conflicting values came to the fore in the intra-civil society contestation observed in the policy processes of the case studies explored in this research. The question posed by Seckinelgin (2006) is how do we decide in a democratic political system who has the greatest claim to legitimacy. A number of interest groups were asserting their claim to legitimacy in both the family law reforms and the sexual health strategy. The issue of who should be given more weight in a consultation process was raised by the representative from the Catholic Church who suggested that questions need to be asked about how active a group is and how big a constituency they represent when it comes to reaching judgements on balances of opinion.

It’s important when you are looking at any issues like these particularly with something like sexual health that there is some kind of balancing going on....we have these arguments with groups like the National Secular Society or the Humanist Society...the secular society is minute in comparison to the Catholic Church. That’s not to undermine their views...but what we happen to think is in tune with the belief of a quite a substantial number of people and well beyond actually, the boundaries of the Catholic Church and certainly the feedback we have had on some of these issues indicates that. Lots of people of other dominations and no faith come to us. A good example of that would be the Muslims for example, there’s quite a lot of communication with the Muslim groups who would think along very similar lines and would say when Cardinal O’Brien or one of the Bishops says something, they speak for us too. FG-1
In this quote, the respondent appears to be laying greater claim for legitimacy than other groups on the basis of numerical strength. Chapter 4 highlighted data from the 2004 Scottish Social Attitudes Survey which shows that forty seven per cent of the Scottish population define themselves as not belonging to any religion; twenty-nine per cent define themselves as Church of Scotland; twelve per cent as Roman Catholic; nine per cent as other Christian and one per cent as Islam/Muslim. In this quote, Labour MSP Marilyn Glen expresses her concern that politicians were basing their decisions on their religious affiliations.

I felt everybody was playing to different galleries....Committee members were deciding based on what religious groupings they were affiliated to and the lobbying was very effective. I personally was very disappointed because I think that Scotland is very secular.

MSP-3

With the Scottish population divided between forty-seven per cent non-believers and fifty-one per cent (collectively) believers, we might pose the question, can Scotland be regarded as a secular country? On the other hand, the Catholic Church (the faith group most associated with opposition to the sexual health strategy) although undoubtedly greater in number than the Humanist or Secular Society, represents a significantly smaller number of the Scottish population than those who define themselves as belonging to no religion. The extent to which faith groups can claim to be genuinely representative was questioned by Green MSP Patrick Harvie.
I think it’s very easy for lazy journalists to give attention to the most extreme positions or the most confrontational positions.....So when Archbishop Conti says that unmarried adoption is a dangerous social experiment or that the sexual health strategy is state-sponsored child abuse.....it’s very easy for a tabloid journalist to make something out of that. It’s also the case that the broad mass of people who identify as Christians or as Catholics or as Muslims don’t have a representative voice in that sense. They have a hierarchy that claims to speak for them but certainly does not speak on their behalf. I’m not saying it’s inappropriate for any organisation to exist like that but it shouldn’t be misinterpreted, it shouldn’t be misunderstood as representing the views of the people because that’s not what it is.

MSP-6

So whilst the data on religious affiliation in Scotland problematises the issue of whether Scotland is a religious or sectarian country, Harvie questions the extent to which (in this case) Archbishop Conti can even be regarded as representative of the views of the twelve per cent who define themselves as Roman Catholic. Seckinelgin (2006) notes that the implicit tension in Turkey has generated a need to establish openly ideologising civil society and indeed much of the tension in civil society influencing activity observed in this research is ideologically based. Another interesting aspect of the quote above is the reference to common or joint interests with other faith groups in civil society.

Chapter 7 described the historic religious traditions in Scotland which provide a context for analysing the faith group activity in both case studies, highlighting the alliance between the Catholic Church and the Evangelical Christians in the policy process of the family law reforms. In the interest group activity in civil society observed in the policy process of the sexual health strategy, Muslim parents join forces with Catholic parents in establishing a campaign group to oppose the strategy. What these findings suggest is that regardless of whether or not Scotland is considered as a
secular country, or whether people describe themselves as religious or not, religious institutions continue to be a live force in Scottish civic life and by implication thereof, in the public policy process. In making this point, this research supports the statement made by Steven (2007).

Religion continues to play an important role in western European and American society, and it would be wrong to argue as some do (for example, Brown 2001, Bruce 2995, 2002) that the influence of religion in Scotland is definitely in some sort of terminal decline (2007:108).

Service Providers or Policy Actors

Although devolution has enabled civil society to participate in family policymaking in ways that did not exist previously, an issue to emerge from this research is the extent to which some groups are better positioned than others to take advantage of the policy-influencing opportunities devolution offers. A related issue is the tension that arises for many voluntary sector organisations operating a dual role as service providers and policy actors in post-devolution Scotland. These issues emerged from the analysis of both the interview data and documentary sources.

For example, in the documentary analysis it was possible to track key media interventions by the Catholic Church at different stages of the policy process but it was more difficult to identify specific influencing activity undertaken by clinical/public health interests as this was not immediately obvious or visible. Although clinical/public health influences are visible in the draft strategy produced by the expert reference group as evidenced in chapters 4 and 5, it is more difficult to identify the clinical/public health influence after the publication of the draft strategy. However, according to the accounts by officials involved in the policy process, clinical/public health interests were
as influential in shaping the final strategy as faith groups. It is perhaps more
difficult for clinicians and public health professionals to undertake
influencing activities in the same manner as, for example, organisations like
the Catholic Church who have their own fully staffed media and
parliamentary office, a point that the respondent from Catholic Church
acknowledges.

Organisations like the Catholic Church, with our Parliamentary Office, we have
mechanisms, we can go straight away and fully participate in these consultations.
Not everyone can....What we do in the media office is effectively articulate and
disseminate the views of the Catholic Church on a range of social policy issues but
dissemination usually involves a bit more .....Also, we perform a monitoring role and
what we do here is look through the news media every day and we are trying to track
events and we are trying to predict issues as they come up.

FG-1

Although clinical/public health interests clearly have a very different
function from faith groups, the research raises issues about the parameters of
the clinical/public health role in contested policy areas. For example, a claim
made by faith groups during the debate in civil society was that sex
education had not succeeded in reducing the number of teenage pregnancies,
STIs or other sexual health indicators and this argument was used to advance
the case for ‘abstinence’ approaches to sex education despite the lack of
evidence of the effectiveness of such programmes. And whilst it was possible
to track the role of public health/clinical interests in summarising the
evidence base on these issues in the written documents, a public health
perspective on effectiveness or otherwise of sex education was largely absent
from the media debate.
Yet it is possible to identify other contested areas where public health/clinical interests engage fully in media debates despite the presence of a vocal opposition to the public health measures being proposed. For example, public health measures which seek to reduce the harm caused by alcohol and tobacco have met with vocal opposition from the tobacco and alcohol industries but the public health interest has been articulated effectively in media debates. There is a sense that the clinical/public health interests were somehow reluctant to engage in the ‘messy’ debate taking place in civil society over the sexual health strategy. The absence of the public health voice in the media debates was perhaps exacerbated by the fact that there were fewer civil society players involved in the policy process of the sexual health strategy and certainly fewer voluntary sector organisations.

By contrast, the interest group influencing activity associated with the family law reforms was a much more fluid process with different groups coming to the fore at different stages of the policy process. However, as chapters 4 and 5 demonstrated, key organisations with an interest in the family law reforms only became visible in the later stages of the policy process suggesting that they were, to some extent, out-manoeuvred by other interest groups. The difficulties facing voluntary organisations in fully executing their role as policy actors is illustrated in this account from the Chief Officer of a national voluntary organisation.

We could certainly do with more resources because at national level, influencing is one of our core functions and we don’t have a dedicated policy officer, we don’t have a press officer, so in general, it falls to some of our practitioners, to deal with press enquiries. And in terms of policy and lobbying, that just falls to me to do, you know, in my spare time.

VS-2
The earlier description by the respondent from Catholic Media Office outlines a relatively coherent approach to policy influencing, identified as a strategic function of the organisation and afforded the necessary staff and monetary resources to enable the organisation to deliver on this function. The Chief Officer of the national voluntary organisation similarly identifies policy influencing as a core function of the organisation but the above account suggests that the organisation has neither the staffing nor the organisational infrastructure to deliver on this.

In the ‘continuum of influence’ model (Mackay et al 2005) outlined in chapter 2, a key factor affecting a group’s potential to progress it’s agenda depends on their capacity to influence which is linked to their ability to respond quickly and act strategically. Many voluntary sector organisations cite lack of resources as a key barrier to undertaking sustained policy influencing activity. However, some of the groups who sustained an influencing presence for the duration of the policy process of the family law reforms were the least well-resourced. For example, fathers and grandparents groups have neither paid staff nor core funding. On the other hand, these groups do not have the same responsibilities in relation to service provision as organisations like Scottish women’s Aid and the family relationship bodies enabling them to respond quickly and act strategically.

Chapter 2 noted that although the political climate under New Labour has generally been favourable to the voluntary sector, the focus on governance and partnership working has created both opportunities and challenges for the sector, with many of the challenges to be found in the funding arrangements and contract culture within which the sector operates. There is no doubt that many voluntary sector organisations have to contend with
considerable constraints, but despite having increased their policy-making capacity in the wake of devolution and having had a significant influence on different legislation (Maxwell and Shaw, 2005), the sector’s ability to set rather than respond to policy agendas is more difficult to ascertain.

While voluntary organisations can claim a record of service improvement and innovation, they have not generally succeeded in translating their service experience into decisive contributions to policy agendas....They have been better at representing their causes and their constituency interests in the policy process than they have been at leading policy innovation (Maxwell and Shaw 2005:27).

This is an interesting observation and it’s worth noting that in the case of the family relationship bodies, their influencing activities were primarily concerned with gaining recognition and resources for local services. They appear not to have intervened to any great extent, in the ideological battle concerning the place of marriage in society albeit their written responses to the consultation documents generally do not elevate one family form over another but call for better services to support all families in transition. Scottish Women’s Aid, on the other hand, concentrated their influencing efforts on the ‘safe contact’ campaign which sought to redress the focus in the early stages of the policy process on fathers’ rights and remind policy-makers of the potential dangers facing women and children in contact cases where domestic abuse is a factor.

In drawing attention to the plight of women and children who experience domestic abuse, SWA were implicitly challenging the view being expressed by the ‘traditionalist’ position that married relationships represent the ‘gold standard’ of family form. SWA appear to have engaged in the ideological

253
debate in a manner not evident in the influencing activities of other interest
groups for example, clinical and public health interests and the family
relationship bodies.

Similarly, chapter 5 highlighted the fact that academic research which
showed that the Scottish population was generally in support of the family
law reforms barely featured in the parliamentary debates. And indeed
academics and other voluntary sector organisations with an interest in the
two policy areas of family law and sexual health were generally not visible in
either the public or political debate. These findings therefore raise questions
about the extent to which academics, voluntary sector organisations and
clinical and public health interests may be making effective use of the
opportunities that devolution offers to influence the public policy process.
On the more general issue of the role of academics in public policy debates,
whom he describes as ‘custodians of particular expertise’, Gallagher (2007)
offers some stark comments.

If our political class suffers from numptiness, our academic and intellectual classes – our
evidence-gathering class – seem to me to suffer as much from cowardice….Happy all too
often to stay in the academic closet, and timid about engaging in the messy, irrational
process of speaking truth to power….academics in particular have it seems to me substantial
ethical obligation to participate in relevant political debate, not just as citizens but as
custodians of particular expertise. (Gallagher 2007)

**Formal and Informal Policy Instruments**

Devolution provided the opportunity for both case study issues to be
selected for policy reform and although subjected to similar consultation
processes, a key difference was that the family law proposals represented
primary legislation whereas the sexual health strategy placed requirements
on health boards to include sexual health in their strategic planning but had no statutory powers attached to it. The use of two different policy instruments to implement the reforms in family law and sexual health affected both the range of interest groups who engaged in the policy process and also the site of influence. And whilst it was relatively easy to track the influencing activity of the interest groups involved in the family law reforms, it was more difficult to identify and track the influencing activity undertaken in the sexual health strategy.

The family law reforms went through the different phases of the Scottish Parliament’s legislative process and it was a straightforward task to track influencing activity through observation and documentary analysis of Parliamentary debates, Committee meetings and interviews with key actors. The sexual health strategy on the other hand, was drafted first by the expert reference group, went out to consultation and was then largely rewritten following the appointment of the new Health Minister Andy Kerr. Civil servants and politicians involved in the policy process made reference in their interviews to various meetings and discussions taking place behind closed doors and also the effect that the high volume of media coverage was having on events inside government.

These processes are more difficult to track and the researcher must piece together key actors’ accounts and available documentary evidence to try to fill in gaps and gain insight into why a particular action is taken at any given time. Tracking media coverage, documentary analysis of both the draft and final strategy and analysing interview data made it possible to build a picture of the policy process. However, these findings raise questions about the use of the expert reference group model as a policy instrument in contested areas of family policy. As was stated in chapter 6, the role of the
group was somewhat anomalous, raising questions about the extent to which
the group could be regarded as ‘disinterested insiders’ or ‘partisan outsiders’
or indeed having a dual role.

Adopting both ‘insider’ and ‘outsider’ roles is regarded as an effective
strategy for voluntary organisations seeking to influence policy (Craig et al
2002), but the expert reference group comprised a hybrid of representatives
from public health, academia, national voluntary organisations and faith
groups, all of whom presumably held quite different views regarding both
their own and their organisation’s policy-influencing role. The members of
the expert reference group were invited to become members of the group in
an individual capacity by the then Minister, Malcolm Chisolm, who offers his
perspective on the effectiveness of this model as a policy instrument.

I’ve had quite a few different experiences of that [expert groups] and it is certainly a
process that we have used and continue to use. I think people’s nervousness about it
is confidence in the group…..So I think if you set up an expert group, my view is that
you have to set up a group that you have confidence in but then you have to not
interfere and let them get on with their work. I suppose it is a risk in a sense if
people come up with things that are popular and attractive and then can’t be
delivered….. perhaps if the group comes up with spending commitments that can’t
be met. I suppose on the sexual health strategy there wouldn’t be concerns so much
about big public expenditure. There might have been concerns about the kind of
policies they were coming up with.

MSP-1

Although Chisolm has a track record in this area and his motivation in
setting up the expert reference group appears well-intentioned, ultimately,
the group constituted a reference group and Ministers were not obliged to
accept anything produced by the group. And indeed the accounts of civil
servants and the chair of the expert reference group described in chapter 6, confirm that following Malcolm Chisolm’s replacement as Health Minister by Andy Kerr, the new Minister instructed civil servants to substantially rework the strategy produced by the group. The expert reference group did not intervene during the heated exchanges in the media, perhaps reflecting the ambiguous nature of both individual and collective membership.

Conversely, the representative on the group from the Catholic Church signed up to the draft strategy produced by the group but senior figures in the Church spoke out publicly against the strategy when it was published. Father Joe Chalmers, the Catholic Church’s representative on the group was quoted in the media at the time as saying that despite being the Church’s representative on the expert reference group, no senior figures in the Church had consulted him before going public with their condemnation of the draft strategy. When asked in his interview, why the Catholic Church had publicly opposed the strategy after their representative had signed it off, the respondent from the Catholic Church’s media office offered this explanation.

*I think those comments of his [Father Chalmers] were to completely misunderstand what his own role was. As you know, these consultation documents are usually pulled together by an expert group....The remit of that expert group was to draft a consultation document on which we could have a consultation. It was not to write the strategy, that’s for Ministers to do.*

FG-1

The interviewee goes on to describe how Father Chalmers had refused to sign off an earlier draft because he was unhappy with some of the language used and that to some extent, his concerns were acted on and he proceeded to sign off the strategy.
He signed off as one of that number. He was not signing off saying I support everything in this document. He was saying I support this document as a basis on which we can consult. And that’s the key difference which I don’t think a lot of people in the media picked up so obviously there was going to be things in there that he was utterly opposed to. There were also things in there that he was quite happy with and agreed with. But he knew that the only type of document that he could have completely agreed with would have been one that the Catholic Church had written and that wasn’t an option. Neither should it have been because this was a public policy. So what he is saying is I agree that this document is the basis for consultation and that was fine. In a sense, in a very real sense, his part in the process ended there. We moved on, we had the public consultation it was then for others in the church to go ahead to then feed their responses into it.

FG-1

This is perhaps a plausible explanation but this perhaps only serves to highlight the ambiguous nature of such groups – the extent to which people are there as individuals in their own right or as representatives of institutional interests. Although Ministerial invitations always name individuals, it’s difficult to separate out the individual and the institutional interests. Kearney also appears to accept that the document could never fully reflect the views of the Catholic Church as this was ‘a public policy’. However, this viewpoint seems somewhat at odds with the influencing activities undertaken by the Catholic Church following publication of the draft strategy which sought specifically to amend the document to reflect the Church’s position.

Approximately three months before the strategy was presented to Parliament, Cardinal O’Brien sought ‘six assurances’ from Ministers (through the national media) and stated that if the Church’s concerns were not addressed, the government should expect a row bigger than the Section 28/2A controversy. The only response to the high voltage media coverage
from someone associated with the expert reference group was the intervention by Professor Phil Hanlon, the group’s chair, four days before the Health Minister presented the final strategy to Parliament. Hanlon is quoted in the press as saying that the Catholic Church was not treating people’s views with enough respect. As this intervention occurred days before the strategy was presented to Parliament, and Hanlon identifies what he feels are the shortcomings of the final strategy in his interview, we might make the assumption that Hanlon had already seen the final strategy prior to making his comments public.

The policy process of the family law reforms also included a group similar to the expert reference group. The family law stakeholders group was established after the Family Law Bill was introduced into Parliament. The group ran in parallel with stages 2 and 3 of the parliamentary phase of the legislative process and was charged with developing the non-legislative measures which had been agreed in addition to the legal measures outlined in the legislation. However, a key difference was that this group was convened after the major provisions of the legislation had been debated in full at the stage 1 debate in the Parliament in February 2005. It was therefore much more task-orientated, and was specifically required to oversee the production of the Parenting Agreement and the Grandchildren’s’ Charter.

There was a similar mix of representatives from the legal community, faith groups, academia and voluntary organisations including the two interest groups previously regarded as being ‘outside’ formal civil society in Scotland – fathers and grandparents groups. Another difference between this group and the expert reference group was the measures under discussion were considerably less controversial and did not generate the same polarisation of views as the sexual health strategy. Nobody on the Family Law Stakeholders
Group was opposed to the production of a Parenting Agreement or Grandchildren’s Charter. Indeed, as was reported in chapter 5, the respondent from Families Need Fathers was particularly positive about his experience on the group.

Daily Record Politics: The Media as Policy Driver

As with the sexual health strategy, two opposing views had emerged during the policy process of the family law reforms but whereas in sexual health they manifested themselves as either support for, or opposition to, the strategy as a whole; in the family law reforms the opposing views were most evident in the debate about the measure in the legislation which sought a reduction in the separation periods required prior to divorce and, to a lesser extent, the provisions relating to extending legal safeguards for cohabitees. Although there were clear ideological differences in the debate on the family law reforms, the public and political climate appears to be less ‘radioactive’ than observed during the policy process of the sexual health strategy as this quote from a public health professional involved in the expert reference group illustrates.

Sexual health was much higher profile you know, in terms of the media....I’ve been reading the papers and stuff and tried to keep abreast of what has been happening in family law and I’m finding it very difficult to find out what’s going through the Parliament....so it doesn’t feel as though the media is picking up on things as much. Maybe it’s not perceived as as controversial as the sexual health strategy. I don’t know if that means that it’s more acceptable, more palatable and therefore people are happy. PH-2

At the time that the media coverage on the sexual health strategy was at its most intense, the government appears to lose control of the policy process
with one ‘insider’ respondent stating that Ministers “would have dropped it [sexual health strategy] if they could”. These findings suggest that the media is an influential presence in family policy debates. Lynch (2001) identifies the media as a ‘fourth estate’ within Scottish politics.

The existence of a distinctive media has a number of functions in relation to the transmission of Scottish national identity, providing a forum for political debate and operating as a fourth estate within Scottish politics (2001:184).

The media acted as a conduit between the Catholic Church and Ministers but there was no obvious mechanism for responding to the issues raised in these media interventions. In this account, a chief officer from a national voluntary organisation who was a member of the expert reference group charged with drafting the strategy describes the impact of the high media profile.

There were some loud voices in the media raising concerns about the strategy before it was even published. A lot of what the expert group had been discussing got out but was reported in quite a distorted fashion. For example, we [expert group] were talking about the need to talk to young people at any early stage about relationships and not wait until it’s too late but that was reported as us wanting to provide sex education for very young children. This was a misrepresentation of our discussion but then controversy sells. Bad news sells better than good news.

PH-4

The respondent seems to be suggesting two things – firstly, that discussions taking place within the expert reference group were being leaked to the media and secondly, that the representation of these discussions was inaccurate. The negative effect that the media coverage had on the policy
process both in terms of the deliberations of the expert reference group and
the subsequent work undertaken by civil servants was commented on by a
number of respondents. The enhanced media profile most probably raised
awareness of the sexual health strategy and may have contributed to the
significant increase in the number of people responding to the consultation
document.

There is a sense of frustration in both the civil servants accounts and the
account by the Chair of the Expert reference group that they felt unable to
address the issues being raised in the media in a constructive manner. Civil
servants reported receiving between five and ten phone calls a week from
members of the public and three months of parliamentary questions when
the media coverage was at its’ most intense. As was stated in chapter 6,
activity in the politics stream is clearly driving the policy process of the
sexual health strategy and interest group activity appears to be more volatile,
given the particular role of the media.

However, the policy process of the sexual health strategy also appears to be
disproportionately affected by unforeseen events in the political stream for
example, the sudden death of Donald Dewar and the double changes in both
First Minister and Health Minister which a number of respondents indicated
had impacted negatively on the policy process. The role of the media in the
public policy process in post devolution Scotland was commented on more
generally by a number of respondents as this quote from Alison Elliot,
former moderator of the Church of Scotland demonstrates.

*That was one of the shocks of devolution. The media had been very supportive in the
lead-up to devolution but that changed when the Parliament was established. We had
a very telling meeting with people from the media, we were talking about how people
in poorer areas in Scotland would hope that the Parliament would deliver for them,
and then it was rubbed. The media employed a lot of political journalists so there*
were less specialists.......there is a lot of very innovative stuff that I am involved in which is not making it into the press.....I think it is the media who are stuck with a very adversarial way of presenting things.

FG-3

Elliot’s view that the media are stuck in an outmoded adversarial approach which focuses disproportionately on negative coverage of the Parliament has been well-aired by many public figures following devolution. However, in the case of the sexual health strategy, the media were not creating an adversarial situation but reporting on one that already existed albeit the high media coverage may well have contributed to creating what one respondent described as the ‘radioactive’ political climate around the sexual health service. And although the effect of media coverage on the policy process was less ‘radioactive’ in the case of the family law reforms, a number of respondents did make reference to the role of the media, and specifically, the effect that media reports have on politicians as this quote from a senior civil servant illustrates.

*I always use the term ‘daily record politics’. It’s the Daily Record that shapes policies in Scotland. A lot of people disagree with this.....but it’s this knee-jerk reaction to what the Mail says or what the Record says – and that is the driver for a lot of the policies in Scotland.*

CS-3

Both the family law reforms and the sexual health strategy began life in the policy stream but a symbiotic link between the policy and politics streams is found in both case studies although it is much more pronounced in the policy process of the sexual health strategy. Sabatier (1988) argues that Kingdon puts too much distance between the policy and political streams
and these findings would support this claim. Indeed these findings suggest that we need to develop more nuanced frameworks to help us understand the policy process which take account of the symbiotic relationship between the policy and politics streams and the vulnerabilities of the policy process to political contingencies.

**Checks and Balances**

The divisions and competing claims that characterised the debate in civil society observed in this research were mirrored within the Parliament with politicians lining themselves up on either side of the ideological divide. Support for the opposing positions in both case studies was not delineated along party political lines. Crucially, in the case of the family law reforms, the two opposing positions were debated fully by both the Justice committee and the whole Parliament at different stages of the legislative process. The sexual health strategy by contrast, was never subjected to a full debate in Parliament until six months after it had been implemented, when the Health Minister presented a progress report to Parliament. Neither was it discussed by any of the committees of the Parliament. It was finally agreed following a Ministerial statement to Parliament which provided limited opportunities for MSPs to raise questions or to comment on the content of the strategy.

Interest groups seeking to influence the policy process of the family law reforms had much greater opportunity to use the participative processes of the Parliament as the family law reforms passed through the various stages of the legislative process. Groups like SWA and the family relationship bodies were able to present evidence directly to MSPs. Tracking the debates
at the start and at the end of the process, it is clear that MSPs are better informed about the issues pertaining to these two organisations. The committee structure worked particularly well for both Scottish Women’s Aid and the national relationship bodies as this quote from a civil servant illustrates.

*What is interesting about the family support services is that the Justice Committee has been very tenacious on the issue of services. They have asked one of their Committee members to undertake an enquiry so the Minister is not off the hook with this. The local services were very effective – it’s the constituent argument, you are answerable to the people who elected you.*

CS-4

Chapters 4 and 5 illustrated how different interest groups came to the fore at different stages of the policy process. Fathers and grandparents groups were identified as highly visible interest groups in the early stages of the policy process as could be seen by the frequent references to both groups in the Stage 1 debate. Similarly, the effectiveness of the ongoing influencing efforts of faith groups became apparent when the Justice Committee agreed to reject the time periods required prior to divorce identified by the Executive (from five to two years in uncontested cases, and from two to one year in contested cases) and propose instead new, extended time periods of three years and eighteen months. Concerns held by other interest groups for example – that the focus on fathers’ needs was obscuring the safety needs of women and children experiencing domestic abuse and the need to ensure that family relationship services were adequately funded, did not emerge until the second and third stages of the legislative process.
However, the legislative system of the Parliament is such that it was possible for both Scottish Women’s Aid and the national family relationship bodies to articulate their concerns and undertake influencing activity as the legislation went through due process. As the sexual health strategy was not legislative, there was less opportunity to influence directly through Parliamentary procedures although there was a more intense media campaign which, as was illustrated in chapter 6, impacted on both politicians and policy-makers.

There were similarities in the Executive’s response to the influencing activity in civil society in both case studies although in the case of the sexual health strategy, the fact that there were three different Health Ministers, each with very different styles, impacted significantly on the policy process. In both the family law reforms and the sexual health strategy, Ministers adopted a position which recognised the special place of marriage in Scottish society but also acknowledged that the law had to adapt to meet the social changes that had occurred (Ministerial statement to Parliament on the family law reforms) and that the right focus for the government was on the quality of relationships, whatever form they may take (Ministerial statement to Parliament on the sexual health strategy).

What this suggests is that the legal status of the family law reforms provided more opportunities for different interest groups to influence the policy process at different stages, providing more checks and balances in the system and reducing the potential for any one group to have undue influence on the policy process. In this account, Labour MSP Marlyn Glen who was highly critical in her interview of the way the debate on the family law reforms had been re-framed into a debate about the place of marriage in society reflects that it was perhaps necessary to go through this process.
Because this [family law reforms] took a long time and they did it properly we did eventually get there. So perhaps the wobbles in the middle weren’t as important as they felt at the time. Although I still think that the whole civil partnership thing and making everyone equal.....I kept being surprised that I still had to argue it, that is what disturbed me.

MSP-3

Glen touches on a key issue which has arisen in the comparison of the policy processes of the two case studies. The importance of this process was also identified by Green MSP, Patrick Harvie.

It would have been difficult to imagine debating the Family Law Bill without thinking about what marriage is and why people do it and why the state endorses it.....You need to get to the underlying difference of opinion rather than just talk about the details. But when it gets to the point....when it moves from that into saying marriage is simply better and couples who choose to get married are doing the right thing, by implication people who don’t are doing something wrong, that’s when, I guess it’s the difference between ringing your own experience to bear and imposing your own world view on other people.

MSP-6

The policy process of the sexual health strategy provided less opportunity to directly influence the policy process and engage politicians and policy-makers in debate. Instead, debate was concentrated in the expert reference group, a group whose status was unclear and somewhat anomalous. This led to the debate in civil society on the issues being conducted primarily through the media providing limited opportunities to debate the issues being raised by faith groups. Faith groups who had both the resources and the political will to use these methods in their influencing activity succeeded in having their point of view aired publicly. Other interest groups, notably clinical/public health interests were much less successful in putting forward the public health perspective through the medium of the mainstream media.
Conclusion

A key finding of this research is the symbiotic link between the policy and politics streams of the public policy process. This was particularly pronounced in the policy process of the sexual health strategy. And despite the democratisation of policy processes in Scotland, the family continues to be a site of contestation. A key ideological fault line emerged at an early stage of the policy process in both the family law reforms and the sexual health strategy, manifesting itself in two opposing viewpoints. The ‘social realist’ position perceived the proposals outlined in both case studies as necessary to more accurately reflect the reality of people’s lives whilst the ‘traditionalist’ position believed the proposals would contribute to the growing decline in social mores and behaviour. This fault line endured throughout the policy processes of both case studies as professional rationality claims were pitted against religious/moral claims.

Ideologically-driven opposition to the family law reforms was less absolute than that directed at the sexual health strategy and the two opposing positions were more fluid in the family law reforms. The different policy and legislative processes associated with both the family law reforms and the sexual health strategy led to differences in the range of interest groups engaging in influencing activity; the focus of the influencing activity undertaken, and the effect on the final policy and legislative outputs.

There was a greater plurality of voices involved in the family law reforms but this is perhaps to be expected when you consider the wide scope of the legislation in comparison to the sexual health strategy. As chapters 4 and 5 demonstrated, all the interest groups who were visible had an interest in
influencing the policy process given the measures that were being proposed. Obtaining recognition of the rights of fathers and grandparents, protecting women and children experiencing domestic abuse, securing service provision for families in transition, these are all issues which lend themselves to advocacy by individuals and organisations.

Users of sexual health services on the other hand, are unlikely to self-advocate, leaving the case for sexual health education and services primarily in the hands of the clinical/public health community. This may partly explain why there was a greater polarisation of views observed in the consultation on the sexual health strategy in comparison to the equivalent family law consultation. It may also go some way to explaining the dominance of the Catholic Church in the debate in civil society on the sexual health strategy.

Devolution has enabled civil society to participate in family policy-making in ways that did not exist previously but intra-civil society contestation has been a significant feature of the processes observed in this research. There is a greater plurality of voices but devolution has ‘unleashed’ activity in civil society that was not envisaged by devolution’s framers. In the two case studies explored in this research, there has been a clash of interests in the public sphere raising questions about how we decide who has a legitimate claim in the public policy process. A devolution effect has been to further problematise civil society in Scotland with competing legitimacy claims by different interest groups in both case studies. The research suggests that some groups representing ‘established’ civil society in Scotland have felt marginalised at different points in the policy process with groups coming in from the margins to command significant public and policy attention. A key aspect of the problematisation of civil society is the opposing values embedded in the two positions of ‘social realist’ versus ‘traditionalist’. Some
groups appear to be better positioned to take advantage of the policy-influencing opportunities that devolution offers either through greater resources, or a clear identification of policy-influencing as a strategic function of the organisation. Other groups who have a more ambiguous identity in relation to their policy influencing role are perhaps less able to maximise the opportunities devolution offers to participate in the public policy process. Voluntary sector organisations in particular, may experience tension in their dual role as service providers and policy actors.

The policy instrument used (primary legislation) in the family law reforms facilitated engagement of a wider range of groups; allowing different interest groups to direct their influencing activity at different stages of the policy process and enabling a fuller debate of the issues contested. The family law reforms were approved virtually intact in terms of the original provisions but a number of measures (both legislative and non-legislative) were added and these can be linked to interest group influencing activity.

A smaller number of interest groups were visible in the policy instrument used (expert reference group/ministerial input) for the sexual health strategy but the strategy received a considerably higher media profile. Views were more polarised and there was less opportunity to debate the issues contested. By the end of the policy process, the final strategy had undergone significant revision with differences in tone, content, and language used when compared with the original strategy produced by the expert reference group. Frustrations about the ad-hoc, politically expedient nature of the policy process were expressed by respondents from all three constituencies represented in this research – politics, policy, and civil society - across both case studies.
The family law reforms benefited from going through the legislative process allowing groups like SWA and the family relationship bodies to present evidence directly to MSPs. Tracking the debates at the start and at the end of the process, it is clear that MSPs are better informed about the issues pertaining to these two organisations. By contrast, the debate on the sexual health strategy was conducted largely through the media, often initiated by the Catholic Church with no obvious mechanism for responding to the issues raised in these media interventions. There is a sense of frustration in both the civil servants accounts and the account by the Chair of the Expert reference group that they felt unable to address the issues being raised in the media in a constructive manner. The formal policy instrument of primary legislation used in the family law reforms provided more checks and balances on the system that the informal policy instrument used to develop the national sexual health strategy.

A key challenge will be the extent to which it will be possible to build a common value base for civil society activity in family policy-making in post-devolution Scotland. If establishing a common value base proves problematic, as these findings would suggest, the potential for innovation in the contested area of family policy will most probably be reduced. The implications of these findings for both policy and theory are discussed in the final chapter.
Chapter nine: findings and implications

This chapter is in two sections. The first section considers the findings in relation to the primary research questions posed. The second section considers the implications of the findings for theory, policy and research. The research asks questions about family policy-making in post-devolution Scotland through a critical analysis of the policy processes of two case studies – the family law reforms and the sexual health strategy.

The Paradox of Participation

The case studies demonstrate that devolution has enabled civil society to participate in family policy-making in a number of ways. A range of interest groups representing formal and informal civil society participated in the policy processes of both the family law reforms and the sexual health strategy although there was a wider range of civil society actors engaged in the policy process of the former. Devolution offers different entry points for participation by civil society in family policy-making with the legislative process and the Parliament’s committee structure in particular, delivering on the devolution promise of democratisation of policy processes.
However, engaging the ‘authentic’ voice of Scotland into the decision-making structures of the Parliament is rendered problematic as evidenced in this research. Civil society engagement in the policy processes observed in this research was dominated by competing value claims and intra-civil society contestation supporting the conceptualisation of civil society as a site of ideological struggle (Gramsci 1971) and the general consensus in the literature that there is no single, normative vision of civil society but a number of competing interpretations (Daly and Howell 2006, Hall and Trentman 2005).

The nature of the public interest in the two case studies explored was a highly contested domain (Carothers 1999) and the battle lines drawn saw both civil society actors and political actors assuming positions on either side of an ideological fault line which emerged early on, and endured throughout the policy and legislative process. Democratisation of policy processes has generated a greater plurality of voices but no-one comes to the policy table value-free (Stone 1997). This raises an important question – where there are competing value claims and intra-civil society contestation, how do we decide who has a legitimate claim in contested policy areas?

A key finding from this research is that devolution has created a more fluid space for civil society participation in family policy-making but a paradoxical effect has been to increase the potential for interests to clash in the public sphere – within civil society; between civil society and government; and within government.

Power, Influence and Policy Instruments
Both case studies support the assertion that devolution has delivered greater access to family policy-making structures for civil society. However, *access* is conceptually distinct from *influence* (Mackay et al, 2005, Maloney et al 1994) and whilst it may be a necessary condition of influence, it is not on its own sufficient. There were a number of influential voices in the policy processes explored in this research but key groups in civil society came to the fore in each case.

**Influential Voices**

Two faith groups – the Christian Institute and the Catholic Church - emerge as vocal, visible and influential voices in both the family law reforms and the sexual health strategy. In the former, they were highly successful in framing policy debate, elevating marriage as the ‘gold standard’ of family relationships in political discourse and embedding this key influencing message into cross-party consciousness. In the latter, they similarly influenced political discourse, using the media to set policy agendas and reframe the debate away from clinical and public health concerns towards concerns about morality and marriage. The Christian Institute was most visible in the family law reforms and the Catholic Church most visible in the sexual health strategy. The research posits that particular faith groups, who, on the basis of data on religious identity in Scotland, cannot be regarded as representative of mainstream opinion in Scotland, had a disproportionate influence on the policy process.

The face of power exercised by faith groups in both case studies was the power to set agendas (Lukes 1974) by influencing political discourse through political lobbying (family law reforms) and strategic media interventions (sexual health strategy). This research suggests that religious institutions are
a live force in family policy debates in post-devolution Scotland supporting Steven’s (2007) contention that it is wrong to argue (as some theorists do) that the influence of religion in Scotland is in some sort of terminal decline.

The media in Scotland emerges as a key conduit between civil society actors and government actors and has become an influential presence in family policy debates, either by supporting campaigning activity in civil society (Daily Record’s support of the Keep the Clause campaign) or giving voice to prominent actors (coverage of the Catholic Church’s views on the sexual health strategy). Other interest groups identified as influential in the policy process of the family law reforms were fathers and grandparents groups, family relationship bodies and Scottish Women’s Aid. All four interest groups achieved concrete changes in policy outcomes meeting the criteria identified in the ‘continuum of influence’ model (Mackay et al 2000). Evidence of clinical and public health influence in the policy process of the sexual health strategy was apparent in both the draft and final strategy but these interests were not visible in the high profile debate in civil society.

Absent Voices

However, in identifying the influential voices in the policy processes of the two case studies explored, the research inevitably illuminates the absence of certain voices at particular stages of the policy process. These included voluntary sector organisations and academics with an interest in both policy areas; the legal community in the family law reforms and clinical and public health interests in the sexual health strategy. In citing absence, the intention is not to suggest that such groups had disengaged from the policy process, but to highlight their relative invisibility in comparison to other interests at particular stages of the policy process.
The research brings to the fore questions about the tension inherent in the dual role of service provider and policy actor common to most voluntary sector organisations; the willingness of academics to contribute to contested policy debates as ‘custodians of particular expertise’ (Gallagher 2007); and the ability of clinical and public health interests to stay visibly engaged when the debate moves beyond concerns about public health towards concerns about public morality. The implicit suggestion in these questions is that some groups in civil society are failing to make use of the opportunities that devolution provides to influence public policy. However, it is acknowledged that some groups in civil society are better positioned than others to harness such opportunities for example, when policy influencing is recognised as a core, strategic function of the organisation (Scottish Women’s Aid, Catholic Church). Whilst acknowledging both the constraints and opportunities that new governance and partnership arrangements impose on many voluntary sector organisations, the following observation is offered. Two of the visible interest groups in the policy process of the family law reforms (fathers and grandparents) have very limited funding and, in the case of the grandparents’ group, have neither staff nor infra-structure. Nevertheless both groups maintained a highly visible influencing presence throughout the policy process of the family law reforms and although not all their influencing objectives were met, they did secure some concrete changes in policy outcome. It making this observation, it is recognised that the lack of a complex infra-structure and resources associated with significant service delivery provision may in itself enable these groups to respond quickly and act strategically thus increasing their capacity to influence (Mackay et al 2000).

Indeed there was more direct evidence of interest group influence in the policy process of the family law reforms than observed in the policy process
of the sexual health strategy. And key actors’ accounts of the impact of interest group influencing activity were more mixed in the sexual health strategy when compared with the accounts of key actors in the family law reforms which generally corroborated each other. The expert reference group provided a weaker policy instrument with regards to civil society participation in public policy and the policy paradigm (Hall 1993) framing the sexual health strategy appeared unstable making the policy process of the sexual health strategy more vulnerable to external pressure.

A key finding of this research is that the formal policy instrument of primary legislation to implement family law reforms facilitated engagement of a wider range of actors, enabled fuller debate of the issues and provided more checks and balances on the system than the informal policy instrument of the expert reference group used to develop the sexual health strategy.

Putting the Politics back into Policy

The findings presented in this research illuminate the different ways in which civil society interest groups can achieve influence and control over both policy and political outcomes through influencing activity in the politics stream. Control over outcomes is conceptualised as interest groups influencing political actors in a way that brings them (interest groups) closer to their ideal points - an approach which assumes interest groups have clear preferences over outcomes (Dur and Be Bievre 2007). This assumption can be made of the interest groups involved in both the family law reforms and the sexual health strategy.
In the two case studies explored, political influencing activity by faith groups who were either partially opposed (family law reforms) or fully opposed (sexual health strategy) to the proposed initiatives achieved control over *political* outcomes by setting the policy agenda; re-framing policy debate; and influencing political discourse. Faith groups achieved *influence* but not necessarily *control of policy* outcomes by punctuating the progression of reforms (family law and sexual health) and shaping the final policy output (sexual health).

Although the impact of influencing activity by interest groups opposed to both initiatives was significant, it did not prevent either proposal from being implemented although in sexual health, the strategy did not remain unchanged and was regarded as much diluted by some respondents. This suggests that lumping together *policy* and *political* outcomes in a generic ‘control over outcomes’ construct may not be sufficient to gain deeper insights into interest group interaction in the policy process. It may be more helpful to make an analytical distinction between the two and to begin a theoretical ‘unpacking’ of the term ‘control over outcomes’. As these findings show, interest groups can achieve political influence without necessarily achieving control over policy outcomes. Faith groups did not succeed in retaining the status quo in relation to the provision in the family law reforms which sought to reduce the separation period required prior to divorce. However, they achieved influence by embedding a key influencing message in political discourse which may have future effects on the development of family policy in Scotland.

Influencing activity by interest groups broadly in support of both policy initiatives who sought to add particular provisions based on their own area
of interest, achieved concrete changes in policy outcomes by securing specific provisions and gaining additional resources for services.

The research supports work by Kendall (2000) which found an ‘exceptionally symbiotic’ relationship between the policy and politics stream but goes further, suggesting that activity in the politics stream drove the policy process of both the sexual health strategy and the family law reforms. The findings point to civil society influencing activity in the politics stream on Section 28/2A changing the political context within which the proposed reforms on family law and sexual health would then be discussed. The three streams of problems, policy and politics were theoretically, still coupled, but political discourse had been ‘punctuated’ by the bruising battle in civil society over Section 28/2A and had moved on. The strength of theorising is gaining deeper insights into policy processes but sometimes, in the process, important contextual factors are stripped away.

A key finding of this research is the symbiotic relationship between the policy and politics stream supporting work by Kendall (2000) but going further, suggesting that activity in the politics stream drove the policy process of the two case studies explored in this research. This suggests that the multiple streams framework should be adapted to take account of the policy/politics axis.

**Embedding Ideology in Family Policy**

Devolution has facilitated implementation of progressive reforms in family policy but it is not possible, on the basis of these findings, to provide a definitive answer to the question of whether or not devolution has fostered
innovation in family policy. Lewis and Knijn (2002) found that the approach to sex education in England is in a large part determined by the ‘struggle over ideas’ (Stone 1997) and identified the adversarial nature of the Westminster political system as a key contributory factor. In the new, consensual politics of devolution, a different approach might have been expected. The findings in this research confirm that devolution has not reduced conflict in family policy debates and has paradoxically increased the potential for interests to clash in the public sphere.

Another paradox observed in the policy process of the family law reforms is that despite the implementation of progressive reforms which provide some legal rights for people who are unmarried, during the course of the policy process, the key political influencing message of faith groups - that marriage is the ‘gold standard’ of family relationships - appears to have successfully permeated cross-party political consciousness. Ideological frames form ‘weapons of mass persuasion’ (Beland 2005) and observing the final, Stage 3 debate, the paradox became apparent as one after another, politicians from across the party political spectrum voiced their preference for marriage whilst voting through legislation which sought to recognise other family forms. On the other hand, it may simply be as some respondents suggested, that being seen to support marriage, was a necessary precursor to securing the passage of the legislation.

These findings suggest that the ‘family’ continues to be a site of contestation in post-devolution Scotland which will perhaps comes as little surprise to most policy analysts. Nevertheless, the findings lead to niggling questions which, although straying into territory beyond the scope of these findings, are deemed worthy of airing. Various historical, cultural and political forces coalesced in the policy processes observed in this research – religion and
politics, an influential media and participative policy structures – to create a ‘radioactive’ climate in the case of the sexual health strategy. On this occasion, the policy initiative was implemented, although for some respondents, in a much diluted form. This raises the question of the potential for those same forces to coalesce in the future, reducing the potential for innovation, and acting as a barrier to the implementation of further progressive reforms in family policy. Might one speculate that a future devolution effect could be to further embed the role of ideology in family policy debates in Scotland?

A key finding of this research is that devolution has not reduced conflict in family policy debates. In post-devolution Scotland, the family continues to be a site of contestation and in the policy processes observed in one of the case studies - the sexual health strategy - the combined forces of religion, politics and Scotland’s distinctive and influential media coalesced to create a ‘radioactive’ political climate which had a direct effect on the policy process inside government which, in turn, shaped the tone and content of the final policy output.

Implications for Theory

*Policy Process*: Many of the frameworks for understanding the policy process in the policy-making literature are primarily descriptive (Hill 2005). Kingdon’s multiple streams framework was identified as the most useful model for this research because it is one of the few models that takes seriously the agenda-setting stage of the policy process. It also seeks to explain rather than simply describe and is one of the more internally
coherent frameworks and has been widely applied empirically. The multiple streams framework helped to explain why the family law reforms and the sexual health strategy came onto the policy agenda but was less helpful in explaining why both subsequently fell off the policy agenda and slowly came back on again.

The claim for the independence of the three streams of problems, policy and politics was not supported by the findings which identified a symbiotic relationship between policy and politics supporting work by Kendall (2000). However, these findings go further suggesting that politics drove the policy process of both the family law reforms and the sexual health strategy. And whilst Kingdon’s model is primarily concerned with how some policy issues are prioritised over others and subsequently acted on, it does not adequately consider the potentially transformative power of civil society to stall policy progression even after successful coupling of the three streams of problems, policy and politics has occurred.

*Interest Group Analysis:* These findings suggest that simple distinctions between insider/outsider groups provide inadequate theoretical tools. Models which conceptualise insider/outsider perspectives as *strategies* rather than *status* (Maloney et al 1994) are more helpful. It is also helpful to identify influence as a continuum ranging from ‘recognition of legitimate voice’ to achieving ‘concrete changes in policy outcome’ (Mackay et al 2000). A focus on ‘control over outcomes’ is similarly helpful although these findings suggest this model would be improved by making an analytical distinction between *policy* and *political* outcomes and that the term ‘control over outcomes’ should be theoretically unpacked.
It is further suggested that embedding influencing messages in political discourse should be regarded as a political outcome although not necessarily as control over political outcome. Models of interest group analysis must of course take account of frameworks which seek to explain the different faces of power as the power to set policy agendas and influence political discourse emerged as a key influencing outcome for interest groups observed in this research.

Civil Society/Devolution: This research contributes to the growing literature on civil society and devolution adding to the evidence base which highlights the contested nature of civil society in the contemporary era. The particular contribution of this research is to provide a case study analysis of interest group activity in a contested policy area in post-devolution Scotland. The findings contribute to critical discourse, sounding a cautionary note and acting as a corrective to other ‘hurrah’ devolution literature (Mooney et al 2006).

Implications for Policy

Policy Influencers

Democratisation of policy processes offers opportunities for interest groups to influence policy in quite fundamental ways achieving concrete policy outcomes and control over policy and political outcomes. However, this requires full engagement in policy processes, and for voluntary sector organisations, that will mean prioritising strategic policy influencing. Voluntary sector organisations may want to consider how they could further increase their capacity to influence policy and set policy agendas.
A more radical suggestion is that consideration is given to completely separating the two functions of service provision and policy influencing (in terms of funding arrangements, staffing and management structures). However, mechanisms would need to be put in place to ensure that service interests continued to inform policy-influencing activities. A further development of this model would be for voluntary sector organisations to form strategic alliances with other organisations which could result in a number of organisations working in the same policy area pooling their policy-influencing resources and delivering joint strategies. In making these suggestions, it is recognised that current funding arrangements which result in organisations working in the same policy area competing for funding, might present a barrier to moving in this direction.

Academics may want to consider Gallagher’s (2007) proposition that as custodians of particular expertise, they are ethically obliged to engage in messy, contested, public debates.

Clinical and public health interests similarly need to consider why it has proved easier for the public health interest to ‘come out’ and seek to influence other policy areas such as smoking and alcohol but has proved more difficult in the highly charged area of sexual health. All policy influencers engaged in family policy might consider the strategic importance that faith groups place on influencing activity associated with family policy (as indeed they are entitled to) and consider the extent to which they, themselves, afford influencing activity the same priority.

*Policy Makers*

Policy makers might want to consider both the policy paradigm within which a policy initiative is being developed and the policy instrument
proposed to deliver the initiative. These findings suggest that unstable paradigms and weak, informal policy instruments, particularly in contested areas of policy, may make successful implementation more difficult. This research suggests that formal policy instruments are more likely to secure participation from a wider range of civil society actors, enable a fuller debate and provide more checks and balances in the system.

Implications for Research

This research supports the call made by others for more analytical, qualitative case studies to gain a better understanding of public policy processes. The case study approach is particularly useful for revealing hidden processes and undisclosed information and locating issues of concern in their wider, political and social context. There is indeed a need, as Newman (2002) eloquently contends, to go beyond the content of policy reports and engage with the dynamics of the policy process itself to understand what is going on in social policy. There is also a need for more research on the influencing activity of interest groups, including faith groups, and their interaction with the policy process in post-devolution Scotland. A key ongoing task for researchers is to continue to question how policy issues get defined and framed, who the influential voices are and how they impact on policy.
Bibliography


Appendix One  Interview Schedule

1. Introduction (thank people for agreeing to be interviewed, discuss recording of interview and anonymity and confidentiality, confirm time allocated.

2. Interviewee details (position of individual within the organisation)

Questions (All Interviewees)

3. Can you tell me about your involvement in family-policy making in Scotland?

4. What do you think about the effect, if any, that devolution has had on family policy?

5. From your perspective, tell me about the policy process leading up to the publication of the sexual health strategy/family law reforms

6. What do you think of the committee structure and consultation processes of the Parliament?

7. What do you think about the different voices in the debate?

8. What or who do you consider to be the main drivers in the sexual health/family law agenda?

9. What do you think was the relationship between civil society and the policy process in the sexual health strategy/family law reforms?

Questions (Key Actors in Civil society and the Family Support Organisations)

10. Did you have any expectations regarding the opportunities that devolution provided to influence policy?

11. Did you try and influence the policy process with regards to the sexual health strategy/family law reforms?

12. How do you deal with different voices and viewpoints?

Closing Questions (All Respondents)

13. Is there anything else you would like to tell me?

14. Thank you for your time (confirm arrangements discussed at the start of the interview with regards to anonymity and confidentiality; ask if they would be prepared to participate in a second interview if required).
Appendix Two

Sectoral breakdown of interviewees

**Members of the Scottish Parliament:** 6
MSP-1
MSP-2
MSP-3
MSP-4
MSP-5
MSP-6

**Civil Servants:** 5
CS-1
CS-2
CS-3
CS-4
CS-5

**Voluntary Sector** 7
VS-1
VS-2
VS-3
VS-4
VS-5
VS-6
VS-7

Faith Groups 3
FG-1
FG-2
FG-3

Public Health 4
PH-1
PH-2
PH-3
PH-4

Legal 1
LG-1

Total: 26
Tables and Figures

**Table 1:** Analysis of responses to sexual health consultation

**Table 2:** Breakdown of organisational and individual interest

**Table 3:** Religious identity in Scotland

**Table 4:** Summary of differences between draft and final sexual health strategy

**Table 5:** Policy and politics stream timeline

**Figure 1.** Problems, policy and politics: a summary of the links