House of Commons

Public Administration and Constitutional Affairs Committee

The Future of the Union, part one: English Votes for English laws

Fifth Report of Session 2015–16

HC 523

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The Public Administration and Constitutional Affairs Committee

The Public Administration and Constitutional Affairs Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith; to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service; and to consider constitutional affairs.

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Contents

1 Introduction: EVEL and the Future of the Union

1. Our predecessor committee, PASC re-acquired its broader remit in the new Parliament, and has been renamed Public Administration and Constitutional Affairs Select Committee (PACAC) to reflect this.[1] During this Parliament, PACAC is undertaking a range of inquiries, which will address the broader consequences of devolution to the parliaments or assemblies of Scotland, Wales and Northern Ireland for the future of the Union of the United Kingdom of Great Britain and Northern Ireland, and decentralisation to London and other Local Government entities in England. This is urgent following the Scottish Independence Referendum of September 2014.[2] PACAC launched a multi-phase inquiry entitled 'The Future of the Union' on 21 July 2015.[3] This is the first of the series of Reports we will publish in the course of that inquiry.[4]

2. In 1979, the then Labour Government brought forward a set of proposals for devolution to Scotland and Wales. These proposals were subsequently defeated in referendums and the issue of devolution was put to one side at Westminster.[5] Following the 1997 General Election, the new Labour Government once again brought forward a set of proposals for devolution to Scotland and Wales. This time, the Government's proposals also included plans for a measure of devolution to Northern Ireland, and for the creation of a London Mayor and Assembly.[6] All were approved through referendums in 1997/98. The Government also later published plans for regional government in England and the creation of regional Assemblies in England. A referendum was held in the North East in 2004, but the proposals were rejected by a margin of 78% to 22%.[7]

3. Since then, the devolution settlements in Scotland and Wales have evolved: the Scotland Act 2012 granted further tax raising powers to the Scottish Parliament, while the Government of Wales Act 2006 and Wales Act 2014 devolved primary law making,

1 Standing Order No.146, as agreed by the House of Commons on 5 June 2015, reconstituted what was the Public Administration Select Committee as the Public Administration and Constitutional Affairs Committee. The Committee's remit is "to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith; to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service; and to consider constitutional affairs."

2 The Scottish independence referendum, held on 18 September 2014, saw voters in Scotland vote against independence by a margin of 55.3% to 44.7%. The turnout was 84.6%.

3 For the terms of reference for our inquiry into English Votes for English Laws and the Future of the Union, see: EVEL

4 In the current phase of this inquiry, PACAC is looking at Inter-institutional relations in the UK

5 In 1979, Scotland voted in favour of a devolved assembly (by a margin of 51.6% to 48.4%), however, as a result of the requirement that a yes vote should constitute at least 40% of the eligible electorate, the referendum failed to see the implementation of the 1978 Scotland Act (which was subsequently repealed). In contrast, Wales voted comprehensively against devolution, by a margin of 79.7% to 20.3%.

6 Devolution to Northern Ireland was one strand of the Good Friday process, the other two strands focused on Northern Ireland's relationship with the Republic of Ireland and the relationship between the United Kingdom and the Republic of Ireland. Two referendums were held on the implementation of the Good Friday Agreement, one in Northern Ireland and the other in the Republic of Ireland. The Northern Ireland referendum endorsed the Good Friday Agreement by a margin of 71.1% to 28.9%, on an 81.1% turnout. In London, the referendum on the creation of the Greater London Authority (consisting of a Mayor and Assembly) were approved by a margin of 72% to 28%, on a turnout of 34.6%.

7 On Thursday 4 November 2004, voters in the North East of England rejected the Government's proposal to establish a regional assembly by a margin of 78% to 22%. The turnout in this referendum was 47.8% of the region's 1.9 million voters.

and some tax raising, powers to the National Assembly for Wales (NAW).[8] However, until 2015, there have been no Government proposals to address the 'English' question and the anomaly created by national devolution to Scotland and Wales—that MPs representing constituencies in Scotland can vote in Westminster on policy issues which are devolved to Scotland—and where Westminster legislation only applies in England.[9]

4. Whilst in opposition, the Conservative Party undertook a series of internal reviews considering how to address the West Lothian question (see paragraph 15 of this Report), and what some now call the English question. The Conservative Government has since brought forward a series of proposals for decentralisation to Cities within England and has introduced a system of English Votes for English Laws through changes to the House of Commons' Standing Orders.[10]

5. However, the implementation of proposals to decentralise power to Cities and Combined Authorities in England does not address the anomaly created by devolution to Scotland, Wales and Northern Ireland i.e. the ability of those Members to vote in Westminster on policy affecting England only. This was brought into sharp focus in the debate leading up to the Scottish Independence Referendum in 2014.

6. On the morning of 19 September 2014, a few hours after Scotland had voted against Independence, the Prime Minister made a statement on the steps of Downing Street in which he announced the formation of the cross-party 'Smith Commission' to consider the further devolution of tax, spending and welfare powers to the Scottish Parliament.[11] In that statement, the Prime Minister also added an endorsement of the principle behind English Votes for English Laws (EVEL); "as the people of Scotland will have more power over their affairs, so it follows that the people of England, Wales and Northern Ireland

8 The Scotland Act 2012 provided the Scottish Parliament with the power to raise or lower income tax by ten pence in the pound, subject to a 'lockstep' whereby changes in one rate would also have to apply to the other two main rates of income tax, alongside the devolution of responsibility for minor taxes such as the landfill tax and stamp duty land tax, enhanced borrowing powers and increased competence over a limited range of areas including drugs and airguns The Government of Wales Act 2006 formally separated the National Assembly for Wales and Welsh Government as two separate bodies, banned dual candidacy on both the list and constituency ballots at Assembly elections, and provided a two stage approach for the Assembly to acquire primary law making powers. The first stage enabled the Assembly to bid for legislative competence to be devolved on a case by case basis by Westminster, via Legislative Competence Orders, so long as this bid fell within the subject areas already devolved to the Assembly. The Act provided that following a referendum, the Assembly could move to the second stage of legislative devolution, with legislative competence devolved outright in those devolved subject areas. The Wales Act 2014 devolved responsibility for minor taxes such as stamp duty land tax and the landfill tax to the Assembly and, pending a referendum, provided for the partial devolution of income tax powers.

9 The West Lothian Question also applies to MPs representing Welsh seats in relation to votes on policy matters that are otherwise devolved to the National Assembly for Wales (NAW), but it has been mostly associated with MPs representing Scottish constituencies.

10 The Cities and Local Government Devolution Bill (currently awaiting Royal Assent) allows for the delivery of bespoke devolution packages to Local Authorities in England that have agreed to form Mayoral Combined Authorities. The Greater Manchester deal, for example, provides for the devolution of powers relating to strategic planning, transport, business support budgets, the Apprenticeship Grant and Health and Social Care to the new Mayor of Greater Manchester and the Greater Manchester Combined Authority.

11 Other Committees in both Westminster and the Scottish Parliament have conducted inquiries into the Smith process. The Scottish Affairs Committee are currently conducting an inquiry into the Fiscal Framework that will be a key feature of the Scottish Parliament's new tax powers and have previously held an inquiry into the Smith Commission proposals. The Devolution (Further Powers) Committee in the Scottish Parliament has also inquired widely into the Smith Commission and the Fiscal Framework.

must have a bigger say over theirs".[12] For England this meant taking forward "the question of English votes for English laws… in tandem with, and at the same pace as" the process of extending devolution in Scotland.[13]

7. The UK has undergone major constitutional reform since 1997, which has radically altered the UK's constitution, but which has also resulted in some unintended consequences and anomalies.[14] During the course of this Parliament, PACAC will undertake a series of inquiries to evaluate these issues, to attempt to take a strategic overview of the UK's constitution.

8. The first strand of PACAC's inquiry into the UK's constitution, and the principal focus of this Report, is therefore how EVEL has been implemented via amendments to the Standing Orders of the House of Commons. On 2 July 2015, the Government published its initial set of proposed amendments to Standing Orders, with the intention for the House to debate and vote on these changes on the 15 July. Following an emergency debate on EVEL on 7 July, sought by Rt Hon Alistair Carmichael MP under SO No.24, the Government released an amended set of proposals on 9 July and announced that a vote would be postponed until after the House returned from the summer recess. A final set of proposals were tabled on 15 October and were approved, following a debate in the House of Commons, on 22 October 2015. PACAC launched this inquiry into the Government's changes to Standing Orders, and into the broader constitutional implications of the introduction of EVEL to the House of Commons, on 21 July 2015.

9. PACAC is one of three House of Commons Committees that has inquired into EVEL since July 2015. The Procedure Committee undertook an interim evaluation of the-then proposed Standing Orders, and published its Report *English votes for English laws Standing Orders: interim report* in October 2015. The Procedure Committee has committed to undertake a full technical evaluation of the new Standing Orders before the end of the 2015–16 Parliamentary session. The Scottish Affairs Committee has also taken evidence on the Standing Orders, but has not published a report to date.[15]

10. PACAC's inquiry has also explored the broader implications of implementing the principle of EVEL, public attitudes to EVEL, responses to EVEL and its potential constitutional implications. We took evidence from Professor Richard Wyn Jones, Professor the Lord Norton of Louth and two former Clerks of the House of Commons, Sir William McKay and Lord Lisvane. A full list of those who gave evidence can be found at the back of this Report. We thank all of those who gave evidence to this inquiry.

12 Scottish Independence Referendum: statement by the Prime Minister, 19 September 2014

13 The timetable outlined for further Scottish devolution (and by implication, answering the West Lothian Question) by the Prime Minister in his statement was for the Smith Commission to produce a cross-party agreement by November, with draft legislation to be published by January. The Smith Commission published its report on 27 November 2014, and on 22 January 2015, the UK Government published a Command Paper, *Scotland in the United Kingdom: an enduring settlement*, Cm 8990, containing draft clauses which aimed to take forward the Heads of Agreement contained in the Smith Commission Report. See paragraphs 22–32 of this report for the process which led to the passage of the new Standing Orders and the implementation of EVEL.

14 The 1997 Labour Government was elected on a manifesto pledging a package of constitutional reform including devolution to Scotland and Wales, the creation of a Mayor of London and Greater London Authority, legislating to allow referendums to be held, subject to local popular demand, on devolution to the regions of England, reform of the House of Lords and the incorporation of the European Convention of Human Rights in a Human Rights Act.

15 The Scottish Affairs Committee took evidence from Chris Bryant MP and Rt Hon Chris Grayling MP (Scottish Affairs Committee, Oral evidence: English Votes for English Laws, HC 399, 13 October 2015) and Michael Clancy OBE, Professor Charlie Jeffery, Sir William McKay, (Scottish Affairs Committee Oral evidence: English Votes for English Laws, HC 399, 8 September 2015)

2 Context: Devolution, the West Lothian Question and English Votes for English Laws

11. Though a variant of the West Lothian Question was first asked in the context of Irish Home Rule, its most famous iteration came in the guise of Tam Dalyell MP's contributions during the devolution debates of the late 1970s. In an intervention in the Commons' debate on the Gracious Address on 3 November 1977, Dalyell asked the-then Prime Minister Rt Hon James Callaghan MP:

> Under the new Bill, shall I still be able to vote on many matters in relation to West Bromwich but not West Lothian, as I was under the last Bill, and will my right hon. Friend be able to vote on many matters in relation to Carlisle but not Cardiff?[16]

Dalyell's argument was elaborated in much more strident fashion in the second reading of the Scotland Bill on 14 November 1977:

> For how long will English constituencies and English hon. Members tolerate not just 71 Scots, 36 Welsh and a number of Ulstermen but at least 119 hon. Members from Scotland, Wales and Northern Ireland exercising an important, and probably often decisive, effect on English politics while they themselves have no say in the same matters in Scotland, Wales and Ireland? Such a situation cannot conceivably endure for long.[17]

In the course of his contributions to this debate, the Rt Hon Enoch Powell MP would christen this 'the West Lothian Question', a label that has survived to the current day:[18]

> This afternoon the Secretary of State for Scotland [Rt Hon Bruce Millan MP] showed himself unable to explain what would be the function of Scottish Members in this House. But behind there looms the much larger question not of the function of Scottish Members in this House in regard to Scottish affairs, but of the whole functioning of this House, when 71 of its Members come from a part of the United Kingdom where the responsibility for a great range of legislation, and consequently of policy, is borne by elected representatives elsewhere.
>
> This is the question with which, by an iteration for which he should be praised rather than blamed, the hon. Member for West Lothian (Mr. Dalyell) has identified himself. It is not the fault of the hon. Gentleman that the Government cannot answer the question. Nor does it answer his question to say that if he goes on asking it he will not be allowed to vote. Nor does it solve the question, or resolve the dilemma, to tell the House that the measure is to be whipped through on a three-line Whip, or to whisper outside the Chamber about votes on matters of confidence…

16 HC Deb 03 November 1977 vol 938 c30
17 HC Deb 14 November 1977 vol 939 c123
18 HC Deb 14 November 1977 vol 939 c91

> …. Let us by all means devolve, and devolve to democratic assemblies, the administration of the laws which are made in this House and of the policies which are framed in this House. That we can do without incurring the curse which this Bill incurs. But if we go beyond that, there arises again the West Lothian question, to tell us "In that event you must resolve the Union into a federation unless you are to end up in inextricable contradictions and injustices in the House of Commons, which is the essence of our Parliamentary Union."[19]

12. As a result of the relative failures of the Scottish and Welsh devolution referendums in 1979, the West Lothian Question largely lay dormant until the 1990s when, as a result of national devolution to Scotland, Wales and Northern Ireland, it awoke once again as part of the new 'English Question(s)'.[20]

13. Notwithstanding these concerns, the then Labour Government, upon its election in 1997, proceeded to implement its manifesto commitments for devolution for Scotland and Wales without addressing the West Lothian Question. **It is highly regrettable that the 1997 Parliament voted to proceed with devolution to Scotland and Wales without proper consideration being given to the well-rehearsed West Lothian Question. It was a failure to do so then that has led to the difficulties that the present Government is now seeking to address through EVEL.**

14. The question of how England should be governed, post-devolution, has attracted a variety of different answers, ranging from an English Parliament to regional Assemblies.[21] A form of EVEL, however, has been the most prominent of these responses (see paras 15–19 of this Report below).

English Votes for English Laws: past proposals for reform

15. As Professor Michael Kenny and Daniel Gover have noted, "there is a spectrum of alternatives for implementing EVEL".[22] However, at its simplest it entails an amendment to House of Commons procedure so that English MPs are given a distinctive voice on matters which affect England, but are devolved to Scotland, Wales and Northern Ireland.

16. There have been a number of proposals for a scheme of EVEL. In 2000, for example, The Commission to Strengthen Parliament, (Norton Commission) established by the Conservative Party under the chairmanship of Professor the Lord Norton of Louth, proposed a variant of EVEL which recommended that Bills certified as either England,

19 HC Deb 14 November 1977 vol 939 cc 87 and 91

20 Following the election of the Labour Government in 1997, and as a result of policies developed in the party's latter years in opposition, the public in Scotland and Wales were offered another opportunity of devolved government. In Scotland, a primary law making parliament, with limited tax varying powers, was proposed. While in Wales, a model of executive devolution was proposed, which would see a National Assembly with secondary legislative powers established. The 1997 referendums, however, saw Scotland vote comprehensively in favour of a Scottish Parliament (by a margin of 74.3% to 25.7%) and for tax raising powers (63.5% to 36.5%), while Wales narrowly voted in favour of an assembly (50.3% to 49.7%). With power sharing for Northern Ireland following in 1998, as a result of the Good Friday Agreement, England, with the exception of the Greater London Authority established following the 2000 referendum in London, was the sole nation without a scheme of devolution, though a model of regional devolution in the North-East of England was rejected by the electorate in 2004.

21 For an overview of the different responses to the English Question, see the Fifth Report from the Justice Committee, Session 2008–09, *Devolution: a Decade On*, HC 529–I. *See also Hazell, R. (ed.) The English Question, 2006, Manchester University Press.*

22 *English Votes for English Laws: A viable answer to the English Question?*, Centre for Constitutional Change Research Briefing, p.1.

or England and Wales only would go through exclusively English/English and Welsh second reading, committee and report stages (though not applying to third reading, where all MPs would be able to vote).[23] In 2008, the Democracy Task Force, established by the Conservative Party under the chairmanship of the Rt Hon Kenneth Clarke MP, recommended a scheme of EVEL that would have seen certified Bills go through an English only Committee and Report Stage.[24] As Kenny and Gover explain, the Clarke proposals would have given "English MPs [the] exclusive right to amend such legislation, but requiring final approval from UK-wide MPs".[25]

17. Following the 2010 General Election, the Conservative-Liberal Democrat Coalition Government's Programme for Government, pledged the creation of a "commission to consider the 'West Lothian question'. In 2012, the Commission began its work under the chairmanship of Sir William McKay, a former Clerk of the House of Commons, and with the following terms of reference:

> To consider how the House of Commons might deal with legislation which affects only part of the United Kingdom, following the devolution of certain legislative powers to the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales.[26]

18. Reporting in 2013, the McKay Commission recommended that the following principle be adopted by a resolution of the House of Commons:

> Decisions at the United Kingdom level with a separate and distinct effect for England (or for England-and-Wales) should normally be taken only with the consent of a majority of MPs for constituencies in England (or England-and-Wales).

19. According to the Commission, adherence to this principle "would be facilitated by the declaratory resolution [outlined above] and changes to Standing Orders." With regards to the latter issue, the Commission proposed the following "menu of proposed adaptations to parliamentary procedure to hear the voice of England":

- an equivalent to a legislative consent motion (LCM) in Grand Committee or on the floor before second reading would be a useful procedure;
- use of a specially-constituted public bill committee with an English or English-and-Welsh party balance is the minimum needed as an effective means of allowing the voice from England (or England-and-Wales) to be heard; it would retain the opportunity at report stage for amendments to be made to a bill to implement compromises between the committee's amendments and the Government's view, or even – though we would expect rarely – overriding in the House what was done in committee;
- that procedure might however be disapplied in a particular case, provided that either (a) a motion under the LCM-analogy procedure or (b) a debatable motion dis-applying committal to a specially-constituted public bill committee had been agreed to;

23 *The Report of the Commission to Strengthen Parliament*, July 2000
24 The Conservative Democracy Task Force, 2008
25 *English Votes for English Laws: A viable answer to the English Question?*, Centre for Constitutional Change Research Briefing, p.1
26 *Report of the Commission on the Consequences of Devolution for the House of Commons*, 2013, p.7

- the English (or English-and-Welsh) report committee and the appeal after report to a similar report committee are practicable and no less effective than the other options, though they depart further than other suggestions from familiar bill procedures, perhaps rendering them more likely to give rise to controversy;
- a specially-constituted committee for relevant Lords Amendments would be straightforward in operation;
- pre-legislative scrutiny is also likely to be useful, but only when circumstances allow; and
- the double-count is a good indicator of the views of England (or England-and-Wales) MPs and the part of the UK from which an MP is elected should be shown in division lists, but its impact might be easily disregarded

Public Opinion

20. In addition to variants of EVEL being recommended by two Conservative Party policy reviews and the McKay Commission, the principle of EVEL also seems to command significant popular support in England. While, as Professor Wyn Jones noted, for much of the early years of devolution there was little evidence of an English backlash to Scottish and Welsh devolution, social attitudes data since 2011 appears to suggest a "really big shift in attitudes" in England. [27]

21. According to the findings of a series of surveys,[28] support for the constitutional status quo in England now commands the support of "only around one in five in England".[29] The Mile End Institute also highlighted a growing dissatisfaction about England's constitutional place within the UK "over recent years" and drew attention to the work undertaken in this area by the Future of England project.[30]

22. In terms of explaining how "benign indifference" had given way to a collapse in support for the status quo, Professor Wyn Jones, explained that "it looks as if there was a shift in attitudes in England around 2007 to 2008",[31] and that this shift "accompanied increasing awareness in England that public services were being delivered differently in Scotland and Wales".[32]

23. The picture that has emerged from the last four Future of England Surveys, is a sense, within the English public, "that England should be recognised".[33] Furthermore, "what seems to have happened over the last two surveys is that English votes for English laws has emerged as the favourite option in terms of the governance of England".[34] In the 2014 report, for example, 62% of respondents in England agreed that should Scotland vote no in the independence referendum, 'Scottish MPs should be prevented from voting on laws

27 Q 4 Oral evidence 27 October 2015
28 The Future of England project has published three surveys since 2011, a fourth is currently awaiting publication.
29 Q 13 Oral evidence 27 October 2015
30 EVE08 Mile End Institute
31 Q 5 Oral evidence 27 October 2015
32 Q 5 Oral evidence 27 October 2015
33 Q 8 Oral evidence 27 October 2015
34 Q 8 Oral evidence 27 October 2015

that apply only to England'.[35] In each of the three sets of institutional options for the future governance of England trialled in the 2014 survey, EVEL commanded plurality support.

Constitutional Preferences for England, 2014 Future of England Survey

	Option 1			Option 2			Option 3		
	All	British	English	All	English	British	All	English	British
Status Quo	18	17	21	25	21	32	22	17	27
EVEL	**40**	**43**	**41**	**31**	**37**	**27**	**36**	**44**	**35**
Regions	9	7	9	—	—	—	—	—	—
English Parliament	16	19	13	13	14	12	25	29	21
Independence	—	—	—	15	17	12	—	—	—
Don't Know	17	13	17	16	10	18	17	16	10

Source: Taking England Seriously: The New English Politics, the Future of England Survey 2014, p.19

24. However, there are "lots of interesting questions as to how much people understand about English votes for English laws" and in particular the minutiae of the different EVEL proposals that have been tabled in recent years.[36] As Professor Wyn Jones conceded, "frankly, surveys of the kind that we undertake are not good at getting into the nitty-gritty of whether people think the McKay Commission's version is better than what has just been passed and so on".[37]

25. Despite suggestions that EVEL might fuel division within the United Kingdom, data from Scotland and Wales, according to Professor Wyn Jones, suggests "on balance, that there is support for the principle of English votes for English laws in Scotland and in Wales".[38] While Professor Wyn Jones again stressed that "support for the general principle [of EVEL] is not necessarily the same as support for a particular version of English votes for English laws in action… it would be wrong to assume that English votes for English laws is necessarily seen as a threat by the Welsh and Scottish electorates".[39]

26. Pressed to respond to those "who don't want English votes for English laws and… don't think that we need to do anything to address this," Professor Wyn Jones identified "a genuine problem that needed to be addressed".[40] He continued, "only a quarter or even a fifth in England think that the status quo for England within the UK is acceptable," so "sticking one's head in the sand would be a big mistake".[41]

35 Taking England Seriously, p.13
36 Q 8 Oral evidence 27 October 2015
37 Q 8 Oral evidence 27 October 2015
38 Q 10 Oral evidence 27 October 2015
39 Q 10 Oral evidence 27 October 2015
40 Q 27 Oral evidence 27 October 2015
41 Q 27 Oral evidence 27 October 2015

27. The issue of Scotland's influence on England's affairs became even more significant during the 2015 General Election campaign. With polling indicating a hung Parliament and the return of a substantial bloc of SNP MPs, the Conservative Party's campaign emphasised the possibility of a minority Labour administration, dependent for its survival on the Scottish National Party.[42] The Prime Minister, for example, during a pre-election interview with Andrew Marr warned that a Labour-SNP deal:

> …would be the first time in our history that a group of nationalists from one part of our country would be involved in altering the direction of our country and I think that is a frightening prospect.[43]

This strategy was criticised by a number of unionist politicians in Scotland, including the Conservative peer and former Secretary of State for Scotland, Lord Forsyth who described it as a "short term and dangerous view which threatens the integrity of our country".[44]

28. **As devolution from the UK level to Scotland, Wales and Northern Ireland continues to develop, there is a growing body of evidence that suggests an increasing impatience with the constitutional anomalies to which this gives rise in England. This was amplified during the 2015 General Election campaign, in which the Conservatives focused voters' minds on the possibility of SNP MPs holding the balance of power. Of all the potential remedies to the "English Question" that have arisen from devolution, the principle of English Votes for English Laws commands consistent and substantial popular support. Put simply, there appears to be a strong English demand for English Votes for English Laws. As we heard from Professor Wyn Jones, "on balance, [the data suggest] that there is support for the principle of English votes for English laws in Scotland and in Wales".[45] As yet however, we have very little evidence about whether this support extends to the present scheme and its effects. Nor, as is explored later in this Report, does this support extend to any political party in the House of Commons other than the Conservative Party.**

42 As the Conservative Party's campaign director, Lynton Crosby has readily admitted, International Business Times, 6 August 2015.

43 Rt Hon David Cameron, quoted in The Guardian, 19 April 2015.

44 Lord Forsyth of Drumlean, quoted in The Guardian, 21 April 2015.

45 Q 10 Oral evidence 27 October 2015

3 The new Standing Orders

The 2014 White Paper and the 2015 Conservative Manifesto

29. During the latter stages of the Scottish independence referendum, the three main Unionist Party leaders signed 'the vow', committing them to delivering "extensive new powers" for the Scottish Parliament. On 19 September 2014, a few hours after Scotland had voted to remain in the Union, the Prime Minister made the statement on the steps of Downing Street in which he announced that Lord Smith of Kelvin would chair a cross-party Commission "to take forward the devolution commitments with powers over tax, spending and welfare all agreed by November and draft legislation published by January."

30. The Prime Minister also stated that "as the people of Scotland will have more power over their affairs, so it follows that the people of England, Wales and Northern Ireland must have a bigger say over theirs" Importantly, for England this meant taking forward "the question of English votes for English laws… in tandem with, and at the same pace as" the process of extending devolution in Scotland.[46] So, as the Prime Minister announced a Commission led by Lord Smith to take forward devolution in Scotland, he also unveiled a Cabinet Committee, chaired by Rt Hon William Hague MP, aimed at developing EVEL proposals. These proposals "would be ready to the same timetable" as the Smith Commission for Scotland.

31. Consequently, in December 2014, the Government published a White Paper, The Implications of Devolution for England, aimed at moving forward the political debate on English Votes for English Laws. This paper outlined a range of different proposals for implementing EVEL, including three options favoured by the Conservative Party.

32. **Option 1: 'Reformed consideration of Bills at all stages'**, was informed by the Norton Commission report and proposed that Bills certified by the Speaker as England, or England and Wales, only would have their Second Reading in a Grand Committee, comprising all the MPs from the relevant nation(s). For England and Wales Bills, the same would also apply to their Committee Stage and Report and Third Reading would be governed by a convention whereby MPs from other nations did not vote -However, England only Bills would proceed entirely through an entirely England only process. According to the White Paper, the key advantage of this proposal is its "simplicity and the absence of the need for any new stages in the legislative process."

46 The timetable outlined for further Scottish devolution (and by implication, answering the West Lothian Question) by the Prime Minister in his statement was for the Smith Commission to produce a cross-party agreement by November, with draft legislation to be published by January). The Smith Commission published its report on 27 November 2014 and, on 22 January 2015, the UK Government published a Command Paper, *Scotland in the United Kingdom: an enduring settlement*, Cm 8990, containing draft clauses which aimed to take forward the Heads of Agreement contained in the Smith Commission Report. See paragraphs 29-38 of this report for the process which led to the passage of the new Standing Orders and the implementation of EVEL.

33. **Option 2, 'Reformed Amending Stages of Bills'**, on the other hand, was based on the recommendations of Rt Hon Kenneth Clarke MP's 2008 Democracy Task Force. Under this scheme, a Bill certified as relating solely to English, or English and Welsh matters, would pass as normal at Second Reading, but its Committee Stage would be taken from MPs representing those respective areas only, in proportion to their party representation in the House of Commons. While MPs from the affected territory would be able to vote on the Bill's Report Stage, all MPs would be able to vote on its Third Reading. The main advantage of the proposal was considered to be that it "allows MPs from England, or from England and Wales, to have the decisive say over the content of legislation while not excluding MPs from other stages and not introducing any new stages to the legislative process."

34. **Option 3, 'Reformed Committee Stage and Legislative Consent Motions'** was described as a "significantly strengthened version of the McKay Commission proposals." It would reserve the Committee stage of certified Bills to English or, as appropriate, English and Welsh only MPs and provide those members with an "effective veto over such legislation." Bills would not have to be England or England and Wales only in their entirety, as individual clauses and schedules within Bills would also be certified. While Report stage would be taken as normal by all MPs, a new stage would be established between Report and Third Reading whereby a Legislative Grand Committee (England or for England and Wales) would be established to vote on a Legislative Consent Motion (LCM) for the certified parts of the Bill.

35. As Third Reading could only take place once a LCM had been approved, the Legislative Grand Committee would therefore provide English and Welsh MPs with the ability to grant their consent to, or exercise a veto against, relevant parts of, a bill. The principle of requiring consent from an English Grand Committee could be applied to levels of taxation and welfare benefits where the equivalent rates have been devolved to Scotland or elsewhere

36. According to the Command Paper, this proposal would "give English, or English and Welsh MPs, a crucial say over the content of legislation and a secure veto over its passing, while not excluding other MPs from its consideration in the full House of Commons".[47]

37. The Conservative Party's 2015 General Election manifesto suggested that of the three proposals outlined above, Option 3 would be the scheme a Conservative Government would seek to implement.

47 *The Implications of Devolution for England*, Cm 8989 p.26, December 2014

38. Box 1: 2015 Conservative Party Manifesto

- We will maintain the Westminster Parliament as the UK and England's law-making body. But we want Parliament to work in a way that ensures decisions affecting England, or England and Wales, can only be taken with the consent of the majority of MPs representing constituencies in England, or in England and Wales. We will end the manifest unfairness whereby Scotland is able to decide its own laws in devolved areas, only for Scottish MPs also to be able to have the potentially decisive say on similar matters that affect only England and Wales. We will maintain the integrity of the UK Parliament by ensuring that MPs from all parts of the UK continue to deliberate and vote together, including to set overall spending levels. But we will:
- Change parliamentary procedures so that the detail of legislation affecting only England or England and Wales will be considered by a Committee drawn in proportion to party strength in England or England and Wales.
- Add a new stage to how English legislation is passed; no bill or part of a bill relating only to England would be able to pass to its Third Reading and become law without being approved through a legislative consent motion by a Grand Committee made up of all English MPs, or all English and Welsh MPs.
- Extend the principle of English consent to financial matters such as how spending is distributed within England and to taxation – including an English rate of Income Tax – when the equivalent decisions have been devolved to Scotland.

Source: The Conservative Party Manifesto 2015, p.70

39. Following the return of a majority Conservative Government in the 2015 General Election, a pledge to implement EVEL was included in the Government's first Queen's Speech, and on 2 July, the Government tabled its first set of proposed amendments to the Standing Orders of the House of Commons. While the initial intention was for the Standing Orders to be approved before the summer recess, the Government instead tabled a revised set of Standing Orders on 9 July, to be voted upon in the House in the autumn. After further revisions to the proposals on 15 October, a final set of proposals were laid before, and approved by, the House on 22 October 2015.[48] The Government has pledged to hold a review of the operation of the Standing Orders after the first 12 months of their operation.

48 Cabinet Office, English Votes for English Laws: Proposed Changes to the Standing Orders of the House of Commons and Explanatory Memorandum, July 2015; Cabinet Office, English Votes for English Laws: revised proposed changes to the Standing Orders of the House of Commons and Explanatory Memorandum, July 2015; Cabinet Office, English Votes for English Laws: proposed changes to the Standing Orders of the House of Commons and Explanatory Memorandum, October 2015

The New Standing Orders

40. On the 22 October 2015, the House of Commons voted, by a margin of 312 to 270, to amend Standing Orders so as to establish a system of English Votes for English Laws. The new Standing Orders[49] mean that, from now on, prior to Second Reading, the Speaker will certify Bills as a whole, or provisions within those Bills, as "relating exclusively to England or to England and Wales" (even if, provisions within, a Bill have "minor or consequential effects outside the area in question").[50]

41. For Bills certified in their entirety as English only, an English only Public Bill Committee, or English Members on the floor of the House, will examine it at Committee stage. However, the key change, affecting English only and English and Welsh only (and in the case of Finance Bills and their preparatory resolutions, English, Welsh and Northern Ireland only) Bills or provisions of Bills are the new post-report stage procedures.

a) Firstly, new Standing Order 83L will result in a recertification of the bill after report stage: this is to ensure English/English and Welsh MPs are asked to consent to the Bill, or English/English and Welsh provisions within it, in the LCM process. The same test is applied as in the first certification.

b) Legislative Grand Committees (LGCs) are then to be established, post recertification, to vote on a consent motion for qualifying Bills. Legislative Consent Motions (LCMs) can be amended if MPs wish to veto specific clauses/schedules, rather than the entirety of a Bill.

c) Reconsideration: This would essentially be a disputes resolution mechanism between the House as a whole and English/English and Welsh MP in the event of an LCM being rejected or amended so as not to give consent to all the relevant proposals. If, following reconsideration, the LGC continues to withhold consent to a Bill as a whole then it may not be given a third reading. However, if the LGC withholds consent to specific clauses/schedules, but not the Bill as a whole, then the Bill will be amended to remove those provisions. This amended Bill proceeds to third reading.

d) Consequential Consideration: The purpose of this proposed new stage is to consider "minor or technical changes in consequence of the removal of provisions" at reconsideration stage.

42. EVEL will also apply to (provisions within) Finance Bills, so that MPs from England, England and Wales or England, Wales and Northern Ireland (as appropriate) are asked to consent to those provisions within Finance Bills which relate exclusively to those areas and concern devolved taxes. A Legislative Grand Committee would consider Consent Motions required in respect of Finance Bills or provisions within Finance Bills that relate exclusively to England, Wales and Northern Ireland.

43. Lords amendments to Bills will be certified by the Speaker if they relate either to England or England and Wales and where there is a vote on a certified Lords amendment, a double majority, of both the whole House and of English or English and Welsh MPs,

49 Addendum to the Standing Orders of the House of Commons Relating to Public Business, 22 October 2015
50 Addendum to the Standing Orders of the House of Commons Relating to Public Business, 22 October 2015

must be secured. This is ascertained in a single vote, with the votes of the whole House and English/English and Welsh MPs "recorded separately". The same procedure will apply to Statutory Instruments certified as relating exclusively to England/England and Wales.

44. These new Standing Orders "will not apply to votes on the Government's annual spending plans (known as the estimates), nor to the legislation (known as Supply and Appropriation Bills) that provides statutory authority for this expenditure." In addition, "where there are financial implications associated with any bill [money resolutions]… all MPs will be able to vote on these decisions."

45. The Housing and Planning Bill was the first Bill to be certified under the new Standing Orders and, on 12 January 2016, was the first in respect of which the new Legislative Grand Committee processes operated. Neither the England and Wales or England LCMs were contested in the case of this Bill.[51]

Problems arising from the new Standing Orders

46. The House of Commons Procedure Committee examined the new Standing Orders in its Report, *Government proposals for English Votes for English Laws Standing Orders: interim report*.[52] This Report provided a thorough assessment of the Standing Orders. **We do not attempt to duplicate the ongoing work of the Procedure Committee. Instead, we outline some broad areas of concern and to examine the wider constitutional implications arising from the changes to the new Standing Orders and the introduction of this new procedure**. .

Complexity

47. Concerns about the complexity and workability of the new Standing Orders were a prominent theme during PACAC's evidence sessions. Sir William McKay, a former Clerk of the House of Commons, suggested that the Standing Orders do not "have the merit of simplicity".[53] Indeed, such is the complexity of the new Standing Orders that Sir William noted that having "spent 40 years trying to grapple with procedure", he still has "great difficulty in discovering what each of these Standing Orders… means".[54] **That a former Clerk of the House with such experience should describe the new Standing Orders as a "forest in which I lose myself" should be particularly worrying**.[55]

48. For Lord Lisvane, former Clerk of the House:

> Good procedural rules have three characteristics. First, they are consistent: the same things, or similar things, are dealt with in the same way. Secondly, they are certain and do not shift about. Thirdly, they are clear, so that what they regulate may be the subject of contention but the rules themselves do not become the subject of contention.[56]

51 HC Deb 12 January 2016 Vol 604, cc.794–807
52 House of Commons Procedure Committee, First Report of Session 2015–16, *Government proposals for English votes for English laws Standing Orders: Interim Report, HC 410.*
53 Q 65 Oral evidence 27 October 2015
54 Q 65 Oral evidence 27 October 2015
55 Q 65 Oral evidence 27 October 2015
56 Q 115 Oral evidence 27 October 2015

In his opinion, the new Standing Orders do not "pass that third test." This has great significance for the certification process where potentially contentious rulings will have to be made by the Speaker and, as Lord Lisvane noted, "for the credibility of the process, the House needs to see and understand the clockwork".[57]

49. This complexity appears to be a consequence of the Government's use of Parliamentary draftsmen (who, as Sir William McKay explained, "work for the Government and not the House")[58] to draft the Standing Orders. More than one witness commented on the way in which the new Standing Orders read "like a Bill on which, in the end, a judge will have to determine its meaning".[59] However, the Standing Orders are not a piece of legislation, to be interpreted by Judges and lawyers, this is, as Sir William McKay pointed out, "something for the House, and the House will have to determine its meaning".[60] According to Lord Lisvane, that the Standing Orders have been drafted in this way is "a very regrettable thing".[61]

50. ***The new Standing Orders do require further consideration and evaluation if they are to be anything more than a short-term experiment in the House's internal procedures. That former Clerks of the House of Commons, individuals steeped in decades of learning about Parliamentary procedure, should have difficulty in discerning what these Standing Orders mean should raise serious further doubts about how sustainable they are. It is regrettable that the new Standing Orders have been drafted like legislation, by Government Parliamentary draftsmen. Never again should Standing Orders be drafted by the Government, rather than Clerks. In taking forward any amendments to the Standing Orders, a different approach to drafting will be required. The revisions made to the Standing Orders, to make them more coherent and transparent, should be made by the House, for the House.***

Sustainability of the Standing Orders

51. An additional problem the House faces over the new Standing Orders is their sustainability. As evidenced from the House of Commons debates on the subject, since the first set of proposals were unveiled on 2 July 2015, the Government's EVEL policy has attracted significant criticism from members on the opposition benches. For example, during the response to the Leader of the House's statement outlining the initial set of proposed revised Standing Orders, the then Shadow Leader of the House, Angela Eagle MP attacked both the Government's approach and their proposals, including the veto for English MPs, for going "much further than the McKay commission envisaged in its 2013 report".[62] These proposals, she concluded, "risk the Union" and represented a "cynical attempt by a Government with an overall majority of just 12 to use procedural trickery to manufacture themselves a very much larger one." The SNP were similarly vocal in their criticism, describing the package as "constitutional bilge" that would create two classes of MP and place the Speaker in an "intolerable and politically invidious position" where he would be "dragged into a political role." Pete Wishart MP suggested that England would

57 Q 115 Oral evidence 27 October 2015
58 Q 82 Oral evidence 27 October 2015
59 Q 82 Oral evidence 27 October 2015
60 Q 82 Oral evidence 27 October 2015
61 Q 115 Oral evidence 27 October 2015
62 HC Deb 2 July 2015, c1648

be better served with an English Parliament, than "this cobbled-together, unworkable mess".[63] The Liberal Democrats and DUP similarly aired their opposition to the proposals.

52. In contrast, Conservative MPs were broadly receptive of the Government's plans. The Rt Hon John Redwood MP, for example, said he was "pleased that the Government now have an answer to… the question of who speaks for England",[64] and James Gray MP described it as a "major, major step in the right direction".[65] Indeed, the main criticism on the Government benches was that the plans could perhaps have been more radical.[66]

53. While it should be noted that concern about the Government's proposals were expressed from a number of Conservative MPs on 22 October when the House voted to approve the proposed amendments to Standing Orders,[67] the broader division between Government and Opposition on the question of the proposed changes to the Standing Orders was a constant thread throughout the House of Commons' deliberations on EVEL. In the division on 22 October 2015, all 312 MPs voting in favour of the new Standing Orders came from the Conservative benches, while the 270 MPs voting against demonstrated that every other party in the House of Commons was opposed to the implementation of the principle of EVEL via Standing Orders.[68]

54. **The stridency of the opposition to the new Standing Orders from the Opposition Benches underlines their vulnerability. With only the Conservative Party in favour of the new arrangements, these Standing Orders face a high risk of being overridden as soon as there is a non-Conservative majority in the House of Commons. Mr Bryant noted in his evidence to the Committee, "it is certainly feasible, if not probable" that a future Labour administration would revoke the new Standing Orders.[69] That the Standing Orders have attracted such hostility and can be removed on the basis of a simple majority must raise doubts as to whether they can ever be more than a temporary expedient, and currently they cannot be considered to be part of a stable constitutional settlement that will endure.**

The potential constitutional implications of EVEL

55. While it is too early to comment with any certainty on the constitutional implications of the new Standing Orders, a number of potential constitutional issues arising from implementing the principle of EVEL were raised with us:

Barnett Consequentials

56. As the Mile End Institute suggests, "the most high-profile example of spillover [effects from the new Standing Orders] concerns funding to the devolved administrations through the Barnett formula".[70] As a result of the Barnett Formula, spending decisions in

63 HC Deb 2 July 2015, c1651
64 HC Deb, 2 July 2015, c1652
65 HC Deb, 2 July 2015, c1653
66 See for example the contributions of Peter Bone MP (HC Deb, 2 July 2015, c1656), Nigel Mills MP (HC Deb, 2 July 2015, c1657), Bob Blackman MP (HC Deb, 2 July 2015, c1661) and Chris Heaton-Harris MP (HC Deb, 2 July 2015, c1667).
67 See, for example Bernard Jenkin MP's contribution on 22 October 2015 (HC Deb 22 October 2015 c.1197) and those of Sir Edward Leigh MP (HC Deb 22 October 2015 cc.1202–1203) and Sir William Cash MP (HC Deb 22 October 2015 c.1218)
68 HC Deb 22 October 2015 cc. 1248–1252
69 Q 138 Oral evidence 10 November 2015
70 EVE08 Mile End Institute

England help to determine the block grants of the Scottish, Welsh and Northern Ireland devolved administrations, arguably providing MPs from those nations with a mandate to vote on otherwise ostensibly English-only affairs.[71] While the new Standing Orders do not apply to votes on the estimates and supply and appropriation bills, as the Procedure Committee noted in its report on EVEL,

> …in reality, the estimates and supply procedures of the House validate prior decisions about policy, including those which have been given effect through primary legislation… neither money resolutions nor ways and means resolutions are in modern practice, used as instruments for fine tuning public spending.[72]

57. **While we note that the Procedure Committee will continue to pay close attention to how the new Standing Orders impact upon the consideration of the financial consequences of the Barnett Formula, we draw attention to concerns that, as a result of the new Standing Orders, there may be "decisions made that will have implications for funding levels in Scotland, Wales and Northern Ireland".[73] It is difficult to reconcile the implementation of EVEL and the continued retention of the Barnett Formula and PACAC notes the Justice Committee's conclusion, in its 2009 report *Devolution: a Decade on*, that a "change [in the funding system for Scotland, Wales and Northern Ireland] would be a necessary pre-requisite to any system of English votes for English laws".[74] The Barnett Formula has been subject to a considerable degree of scrutiny[75] and we draw no conclusions, at this stage of our inquiry, on its continued retention. The implications of constitutional change for the Barnett Formula, and alternative schemes of territorial funding, will be examined in a later stage of our inquiry.**

The devolution test and consequential effects

58. The new Standing Orders provide that the Speaker should certify any public Bill, or clause or schedule within such a Bill, presented by the Government, which, in the Speaker's opinion, "relates exclusively to England or to England and Wales, and is within devolved legislative competence".[76] Furthermore, in certifying a provision as relating exclusively to England or to England and Wales, the Speaker must disregard "any minor or consequential effects outside the area in question."

59. According to the Leader of the House, Rt Hon Chris Grayling MP, this is a "very simple test, a devolution test about whether something should be certified or not".[77] However, as Sir William McKay highlights, the devolution boundaries, particularly in the case of the evolving Welsh devolution settlement, are anything but clear.[78] Adjudicating

71 V. Bogdanor, *The West Lothian Question*, Parliamentary Affairs, 2010, Vol.63 No.1, pp.163-164
72 HC [2015–16] 410, para.42
73 Q 30 Oral evidence 27 October 2015
74 HC [2008-09] 529–I, para.194
75 See for example, the 2009 report of the House of Lords Select Committee on the Barnett Formula and the House of Lords Select Committee on Economic Affairs' 2015 report, *A Fracturing Union? The Implications of Financial Devolution to Scotland*, para 22–30 and Annex 3 to the report.
76 Addendum to the Standing Orders of the House of Commons Relating to Public Business, 22nd October 2015, p.25
77 Q 210 Oral evidence 10 November 2015
78 Q 78 Oral evidence 27 October 2015

where the devolution boundary lies in Wales has led to a succession of legal challenges in the Supreme Court.[79]

60. The Welsh experience illustrates the additional difficulty, posed by the new Standing Orders, of identifying what constitutes a minor or consequential effect. As the Procedure Committee noted in its interim report on EVEL, while "the interpretation of 'minor effects' may be considered straightforward**,** the interpretation of 'consequential effects', in the overall context of the devolution settlement, is much less clear cut".[80] According to Lord Lisvane, the insistence that minor or consequential effects be disregarded makes the process of certification "more complicated".[81] **The Supreme Court referrals of Welsh legislation represent a worrying portent of the potential controversy that may arise from attempts to adjudicate both where the devolution boundaries lie and working out what minor or consequential effects on devolved competence might be.**

61. To illustrate this potential complication, Lord Lisvane drew attention to the fact that he lived in Herefordshire where there is a cross-border flow of patients using the health service on either side of the England-Wales border.[82] Such "cross border phenomena", he suggested, are not considered "minor or consequential" for those living in the affected areas, "but it might be that, looked at from a UK-wide perspective, the Speaker might be advised they were minor and consequential." On this question of how minor or consequential effects interact with cross-border issues, the Procedure Committee's report noted that:

> England-only legislation may well affect constituencies in Wales adjacent or close to the border with England. Legislation for the NHS in England which has an effect on the structure or services provided by NHS Trusts or Foundation Trusts near the border with Wales will inevitably affect people in Wales referred to such services. Members with constituents likely to be affected by such changes may wish to argue for the right to vote on such measures. On a strict interpretation of the proposed standing orders, as drafted, the Speaker is not able to consider such effects in deciding whether to certify.[83]

62. An illustration of the potential confusion that might arise from the adjudication of a minor or consequential effect can be witnessed in the point of order raised by Sylvia Lady Hermon MP on 13 January 2016, the day after the House's consideration, including in the form of Legislative Grand Committees for England, and for England and Wales, of the Housing and Planning Bill. This point of order highlighted Lady Hermon's dissatisfaction with the certification of clause 62 of the Housing and Planning Bill as England only, despite the fact that the said clause also made reference to Wales. According to Lady Hermon, the designation of this clause, despite the fact that it made reference to an additional territory, was "inherently ambiguous and contradictory." In response, the Speaker noted that the

79 Judgment: Local Government Byelaws (Wales) Bill 2012 –– Reference by the Attorney General for England and Wales, Supreme Court, 21 November 2012, Michaelmas Term [2012] UKSC 53; Judgment: Agricultural Sector (Wales) Bill ––Reference by the Attorney General for England and Wales, 9 July 2014, Trinity Term [2014] UKSC 43

80 HC [2015–16] 410, p.15

81 Q 120 Oral evidence 27 October 2015

82 Q 120 Oral evidence 27 October 2015

83 House of Commons Procedure Committee, First Report of Session 2015–16, *Government proposals for English votes for English laws Standing Orders: Interim Report, HC 410*

Clause's relation to Wales was judged to be of a minor or consequential character "as, crucially, it makes no change in the law applying in Wales".[84]

63. ***The devolution test for certification is not a "very simple test" and, alongside the instruction that "minor or consequential effects" be disregarded, risks putting the Speaker in an unnecessarily controversial position. At the very least, it is highly likely that interested parties from inside and outside the House will want to make representations to the Speaker on how he adjudicates: a) where the devolution boundaries lie, and b) whether the effects of a Bill, or a clause or schedule of a Bill, are more than minor or consequential. PACAC therefore agrees with the Procedure Committee that there is a case for the Speaker to establish and publish a procedure for how he would handle such representations.***[85] ***While we note that the Speaker has issued a statement that outlined how the new Standing Orders would be implemented and recommended that representations should be made to the Clerk of Legislation, we nonetheless feel that a more thorough set of guidelines regarding representations would be beneficial for Members.***[86]

Two Classes of MP?

64. In its report, the McKay Commission warned against a system of EVEL "which could be accused of creating, by whatever means, two classes of MP," and argued that, while a voice for England should be expressed, "MPs from outside England should not be prevented from voting on matters before Parliament." As such, they concluded that an English 'veto' should be avoided.[87] The new Standing Orders, however, provide for such a veto, in the form of the Legislative Grand Committee stage for certified England or England and Wales Bills, prompting Chris Bryant to argue that they create "two tiers of MPs".[88]

65. It is worth acknowledging, as even Mr Bryant appeared to concede, that there are already at least two classes of MP.[89] Indeed, that there are different classes of MP, post-devolution, is at the heart of the West Lothian Question, as Lord Norton highlighted in his evidence to the Committee:

> My starting point is there are already two, because that is the point of devolution. The West Lothian question is premised on that very existence of two classes of MPs. If there weren't, you would not be having the West Lothian question.[90]

66. The key issue, therefore, facing Parliamentarians is how the difference in tiers of MP is contained. Sir William McKay stressed the importance of avoiding a "serious manifestation of the two classes [of MP], in which one was distinctly subordinate to the other".[91] Similarly, while Lord Lisvane used the examples of the Scottish Standing Committee and the territorial Grand Committees to illustrate that "there have always been proceedings of some sort or another where Members are treated differently", he

84 HC Deb, 13 January 2016, c861
85 HC [2015–16] 410, p.17
86 English votes for English laws: Speaker's Statement, 26 October 2015.
87 *Report of the Commission on the Consequences of Devolution for the House of Commons*, 2013, p.44.
88 Qq 158–159 Oral evidence 10 November 2015
89 Q 160 Oral evidence 10 November 2015
90 Q 73 Oral evidence 27 October 2015
91 Q 73 Oral evidence 27 October 2015

noted that the key difference between these procedures and the new Standing Orders is that "with all those procedures there is a confluence later in the process and the whole House is then asked to endorse it." While the whole House will continue to vote on key stages in the legislative process under the new Standing Orders, the inclusion of the Legislative Grand Committee and the ability of England or England and Wales MPs to veto legislation represents, according to Lord Lisvane, a step "further than I would comfortably have gone".[92]

Other possible outcomes

67. The discussion above is by no means an exhaustive analysis of the potential constitutional implications arising from the new Standing Orders. In attempting to resolve the anomalies created by devolution to Scotland, Wales and Northern Ireland, principally in the form of the West Lothian Question, these Standing Orders risk creating a whole set of potential additional anomalies. For example, the Standing Orders do not apply to the House of Lords. As Chris Bryant MP highlighted, the new Standing Orders mean that Peers who are Scottish born and bred, may have been elevated to the peerage after being an MP for a Scottish constituency and who continue to live in Scotland, "can vote on measures that a [Scottish] Member in the House of Commons cannot".[93]

68. Another unintended consequence may be that the new Standing Orders, far from satiating opinion in England, may fuel demands for an even stronger representation of England. As Lord Lisvane hypothesised:

> For example, what about other ways of calling the Executive to account? Might there be pressure for an England-only Question Time, for example? Might the idea of this separation spread into other types of proceedings?[94]

69. With so little certainty about the potential consequences of the new Standing Orders, there is a danger that EVEL, an attempt to remedy the anomaly of the West Lothian Question e.g. the questions raised by so-called 'Barnett Consequentials', could create further anomalies. This risk is in part a result of, and exacerbated by, the tendency of successive Governments to consider constitutional reform on an ad-hoc and piecemeal basis. A number of witnesses, from academics to former Clerks of the House of Commons, highlighted the "splintered" way in which devolution issues have been considered by Government and Parliament.[95] Lord Norton in his evidence to PACAC commented that "the Government tends to look at it [the constitution] in isolation and does not stand back, look at the links and, in this context, look at the United Kingdom as the United Kingdom and how it relates to one another".[96] According to Lord Lisvane, EVEL alongside the Government's proposed devolution to 'Mayoral Combined Authorities', such as Greater Manchester, present a "whole series of balances that you have to tackle and get right".[97] In Lord Lisvane's opinion, this "only underlines the complexity of finding an integrated and sustainable long-term solution".[98] Both Lord Norton and Lord Lisvane emphasised their preference for a constitutional forum, or to use Lord Norton's phrase a 'constitutional

92 Q 114 Oral evidence 27 October 2015
93 Q 140 Oral evidence 10 November 2015
94 Q 117 Oral evidence 27 October 2015
95 Qq 44; 87–88 Oral evidence 27 October 2015
96 Q 87 Oral evidence 27 October 2015
97 Q 126 Oral evidence 27 October 2015
98 Q 126 Oral evidence 27 October 2015

convocation', to take stock of the UK's constitution and the issues raised by devolution, including the West Lothian Question.[99]

70. **It is too soon to say with any certainty what the constitutional implications of the new Standing Orders will be. The ad-hoc approach to change in the constitution of the Union, that dates back to the devolution reforms initiated by the then Labour Government in 1997, and has treated each of Scotland, Wales and Northern Ireland in different ways at different times, has been characteristic of constitutional reform since the 1990s. This Report illustrates the need for Government to abandon this ad-hoc approach and to explore a comprehensive strategy for the future of relationships between the Westminster Parliament and the component parts of the United Kingdom.** ***The Government should be working towards a new and durable constitutional settlement for the United Kingdom that reflects the scale of constitutional change since the 1997 devolution referendums. This will be the subject of our continuing inquiry into the Future of the Union and of our subsequent Reports on the subject.***

99 Qq 87; 127 Oral evidence 27 October 2015

4 The next steps

The 2016 Review of the new Standing Orders

71. During a House of Commons debate on EVEL on 2 July 2015, the Leader of the House committed the Government to a review of the new Standing Orders twelve months after they come into operation.[100] The Procedure Committee will also be undertaking a technical evaluation of the new Standing Orders to feed into this review.

72. ***While there is evidence that the principle behind EVEL commands popular support, including, as we heard from Professor Wyn Jones, in Scotland and Wales, we have significant doubts that the current Standing Orders are the right answer or that they represent a sustainable solution. They may be unlikely to survive the election of a Government that cannot command a double majority of both English and UK MPs. The Government should use the remainder of the twelve month period in the run-up to their promised review of the Standing Orders to rethink the issue and to develop proposals that are more comprehensible, more likely to command the confidence of all political parties represented in the House of Commons, and therefore likely to be constitutionally durable.***

100 HC Deb, 2 July 2015, c1649

Conclusions and recommendations

Context: Devolution, the West Lothian Question and English Votes for English Laws

1. It is highly regrettable that the 1997 Parliament voted to proceed with devolution to Scotland and Wales without proper consideration being given to the well-rehearsed West Lothian Question. It was a failure to do so then that has led to the difficulties that the present Government is now seeking to address through EVEL. (Paragraph 13)

2. As devolution from the UK level to Scotland, Wales and Northern Ireland continues to develop, there is a growing body of evidence that suggests an increasing impatience with the constitutional anomalies to which this gives rise in England. This was amplified during the 2015 General Election campaign, in which the Conservatives focused voters' minds on the possibility of SNP MPs holding the balance of power. Of all the potential remedies to the "English Question" that have arisen from devolution, the principle of English Votes for English Laws commands consistent and substantial popular support. Put simply, there appears to be a strong English demand for English Votes for English Laws. As we heard from Professor Wyn Jones, "on balance, [the data suggest] that there is support for the principle of English votes for English laws in Scotland and in Wales." As yet however, we have very little evidence about whether this support extends to the present scheme and its effects. Nor, as is explored later in this Report, does this support extend to any political party in the House of Commons other than the Conservative Party. (Paragraph 28)

The new Standing Orders

3. The new Standing Orders do require further consideration and evaluation if they are to be anything more than a short-term experiment in the House's internal procedures. That former Clerks of the House of Commons, individuals steeped in decades of learning about Parliamentary procedure, should have difficulty in discerning what these Standing Orders mean should raise serious further doubts about how sustainable they are. It is regrettable that the new Standing Orders have been drafted like legislation, by Government Parliamentary draftsmen. Never again should Standing Orders be drafted by the Government, rather than Clerks. In taking forward any amendments to the Standing Orders, a different approach to drafting will be required. The revisions made to the Standing Orders, to make them more coherent and transparent, should be made by the House, for the House. (Paragraph 50)

4. The stridency of the opposition to the new Standing Orders from the Opposition Benches underlines their vulnerability. With only the Conservative Party in favour of the new arrangements, these Standing Orders face a high risk of being overridden as soon as there is a non-Conservative majority in the House of Commons. Mr Bryant noted in his evidence to the Committee, "it is certainly feasible, if not probable" that a future Labour administration would revoke the new Standing Orders. That the Standing Orders have attracted such hostility and can be removed on the basis

of a simple majority must raise doubts as to whether they can ever be more than a temporary expedient, and currently they cannot be considered to be part of a stable constitutional settlement that will endure. (Paragraph 54)

5. While we note that the Procedure Committee will continue to pay close attention to how the new Standing Orders impact upon the consideration of the financial consequences of the Barnett Formula, we draw attention to concerns that, as a result of the new Standing Orders, there may be "decisions made that will have implications for funding levels in Scotland, Wales and Northern Ireland." It is difficult to reconcile the implementation of EVEL and the continued retention of the Barnett Formula and PACAC notes the Justice Committee's conclusion, in its 2009 report *Devolution: a Decade on*, that a "change [in the funding system for Scotland, Wales and Northern Ireland] would be a necessary pre-requisite to any system of English votes for English laws." The Barnett Formula has been subject to a considerable degree of scrutiny and we draw no conclusions, at this stage of our inquiry, on its continued retention. The implications of constitutional change for the Barnett Formula, and alternative schemes of territorial funding, will be examined in a later stage of our inquiry. (Paragraph 57)

6. The Supreme Court referrals of Welsh legislation represent a worrying portent of the potential controversy that may arise from attempts to adjudicate both where the devolution boundaries lie and working out what minor or consequential effects on devolved competence might be. (Paragraph 60)

7. The devolution test for certification is not a "very simple test" and, alongside the instruction that "minor or consequential effects" be disregarded, risks putting the Speaker in an unnecessarily controversial position. At the very least, it is highly likely that interested parties from inside and outside the House will want to make representations to the Speaker on how he adjudicates: a) where the devolution boundaries lie, and b) whether the effects of a Bill, or a clause or schedule of a Bill, are more than minor or consequential. PACAC therefore agrees with the Procedure Committee that there is a case for the Speaker to establish and publish a procedure for how he would handle such representations. While we note that the Speaker has issued a statement that outlined how the new Standing Orders would be implemented and recommended that representations should be made to the Clerk of Legislation, we nonetheless feel that a more thorough set of guidelines regarding representations would be beneficial for Members. (Paragraph 63)

8. It is too soon to say with any certainty what the constitutional implications of the new Standing Orders will be. The ad-hoc approach to change in the constitution of the Union, that dates back to the devolution reforms initiated by the then Labour Government in 1997, and has treated each of Scotland, Wales and Northern Ireland in different ways at different times, has been characteristic of constitutional reform since the 1990s. This Report illustrates the need for Government to abandon this ad-hoc approach and to explore a comprehensive strategy for the future of relationships between the Westminster Parliament and the component parts of the United Kingdom. (Paragraph 70)

9. The Government should be working towards a new and durable constitutional settlement for the United Kingdom that reflects the scale of constitutional change since the 1997 devolution referendums. This will be the subject of our continuing inquiry into the Future of the Union and of our subsequent Reports on the subject. (Paragraph 70)

The next steps

10. While there is evidence that the principle behind EVEL commands popular support, including, as we heard from Professor Wyn Jones, in Scotland and Wales, we have significant doubts that the current Standing Orders are the right answer or that they represent a sustainable solution. They may be unlikely to survive the election of a Government that cannot command a double majority of both English and UK MPs. The Government should use the remainder of the twelve month period in the run-up to their promised review of the Standing Orders to rethink the issue and to develop proposals that are more comprehensible, more likely to command the confidence of all political parties represented in the House of Commons, and therefore likely to be constitutionally durable. (Paragraph 72)

Formal Minutes

Tuesday 26 January 2016

Members present:

Bernard Jenkin, in the Chair

Ronnie Cowan	Gerald Jones
Oliver Dowden	Mr David Jones
Mr Paul Flynn	Tom Tugendhat
Mrs Cheryl Gillan	Mr Andrew Turner
Kelvin Hopkins	

Draft Report (*The Future of the Union, part one: English Votes for English Laws*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 12 read and agreed to.

Paragraph—(Mr David Jones)—brought up and read, as follows:

Notwithstanding these concerns, the Blair administration, upon its election in 1997, proceeded to implement its manifesto commitments for devolution for Scotland and Wales without addressing the West Lothian Question. It is highly regrettable that Parliament decided to proceed with devolution for Scotland and Wales with such haste. Proper consideration should have been given to the well-rehearsed West Lothian Question when designing the devolution settlements. A failure to do so then has led to the difficulties that the present Government is now seeking to address through EVEL.

Question put, That the paragraph be read a second time.

The Committee divided:

Ayes, 6	Noes, 3
Oliver Dowden	Ronnie Cowan
Rt Hon Cheryl Gillan	Mr Paul Flynn
Kelvin Hopkins	Gerald Jones
Rt Hon David Jones	
Tom Tugendhat	
Andrew Turner	

Ordered, That the paragraph be read a second time.

Amendment proposed, in line 1, to leave out "It is highly regrettable that … been" and insert "It would have been preferable if Parliament had decided to proceed with devolution for Scotland and Wales with proper consideration being".—(Ronnie Cowan.)

Question put, That the Amendment be made.

The Committee divided:

Ayes, 1	Noes, 8
Ronnie Cowan	Oliver Dowden
	Mr Paul Flynn
	Rt Hon Cheryl Gillan
	Kelvin Hopkins
	Rt Hon David Jones
	Gerald Jones
	Tom Tugendhat
	Andrew Turner

Question negatived.

Paragraph (now paragraph 13) inserted.

Paragraphs 14 to 72 read and agreed to.

Resolved, That the Report be the Fifth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 2 February at 10.00am.

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the Committee's inquiry page.

Tuesday 27 October 2015

	Question number
Professor Richard Wyn Jones, Cardiff University	Q1–44
Professor the Lord Norton of Louth, University of Hull, and **Sir William McKay KCB,** Chair of the McKay Commission and former Clerk of the House of Commons	Q45–107
Lord Lisvane KCB DL, former Clerk of the House of Commons	Q108–135

Tuesday 10 November 2015

Chris Bryant MP, Shadow Leader of the House of Commons	Q136–202
Rt Hon Chris Grayling MP, Leader of the House of Commons	Q203–271

Published written evidence

The following written evidence was received and can be viewed on the Committee's inquiry web page. EVE numbers are generated by the evidence processing system and so may not be complete.

1 Better Government Initiative (EVE0002)

2 Constitution Reform Group (EVE0001)

3 Dr Andrew Mycock and Dr Arianna Giovannini, University of Huddersfield (EVE0015)

4 Dr Michael Gordon (EVE0009)

5 Electoral Reform Society (EVE0006)

6 Federation of Small Businesses (EVE0010)

7 Mile End Institute (EVE0008)

8 Professor Adam Tomkins (EVE0007)

9 Professor Arthur Aughey (EVE0011)

10 The Constitution Society (EVE0012)

11 The Federal Trust for Education and Research (EVE0013)

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the Committee's website at www.parliament.uk/pacac.

Session 2015–2016

First Report	Follow-up to PHSO Report: Dying without dignity	HC 432
Second Report	Appointment of the UK's delegation to the Parliamentary Assembly of the Council of Europe	HC 658
Third Report	The 2015 charity fundraising controversy: lessons for trustees, the Charity Commission, and regulators	HC 431
Fourth Report	The collapse of Kids Company: lessons for charity trustees, professional firms, the Charity Commission, and Whitehall	HC 433
First Special Report	Developing Civil Service Skills: a unified approach: Government Response to the Public Administration Select Committee's Fourth Report of Session 2014–15	HC 526
Second Special Report	Lessons for Civil Service impartiality for the Scottish independence referendum: Government Response to the Public Administration Select Committee's Fifth Report of Session 2014–15	HC 725
Third Special Report	Follow-up to PHSO Report: Dying without dignity: Government response to the Committee's First Report of Session 2015–16	HC 770