

Report of the Commission on the Consequences of Devolution for the House of Commons

Executive Summary

March 2013

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1. The Commission was asked 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.**

2. Commissioners sought views widely. All written evidence and transcripts of oral evidence, taken not only in London but in the capitals of the devolved jurisdictions, was posted on the Commission's website, <http://tmc.independent.gov.uk/>.

3. The powers and institutional form of the devolved institutions in Northern Ireland, Scotland and Wales vary substantially and asymmetrically. Each now has wide-ranging legislative and executive responsibilities across many fields of domestic policy. The "West Lothian Question" raises the situation that then arises when MPs from outside England could help determine laws that apply in England while MPs from England would have no reciprocal influence on laws outside England in policy fields for which the devolved institutions are now responsible.

4. Some see this as an anomaly which is unfair to people in England, requiring remedial action to give MPs in England a fuller or decisive, even unique, role in making laws for England in policy areas which are devolved outside England. Specifically it raises the possibility that a majority opinion among MPs from England on such laws could be outvoted by a UK-wide majority of all UK MPs. But it is

extremely rare for this to happen. Since 1919, only in the short-lived parliaments of 1964–66 and February–October 1974 has the party or coalition forming the UK Government not also enjoyed a majority in England.

5. The governing arrangements for England in the post-devolution era are emerging by default, a residual consequence of devolution elsewhere. While the UK Parliament is set to focus increasingly on England, its procedures for making laws for England have changed little post devolution, and do not differentiate between English and UK-wide matters.

6. Survey research on public attitudes in England reveals *differences of interest* that people in England perceive as distinct from the interests of other parts of the UK. Evidence suggests a significant level of grievance among the people of England, sparked by the perception that Scotland enjoys advantages relative to England under current governing arrangements, particularly in the distribution of public spending and economic benefit. There is a clear and enduring sense that England is materially disadvantaged relative to the other parts of the UK, especially Scotland.

7. In addition, there is a consistent message that the people of England do not think it right that MPs from Scotland should be allowed to vote in the House of Commons on laws that affect England only. The current institutional arrangements for making laws for England are seen fairly uniformly across England as wanting, and they need to be modified to establish some form of

England-specific legislative process. More than 50% of respondents supported some form of England-specific procedure for making laws for England, and some 60% did not trust any UK Government “very much” or “at all” to pursue the interests of England. The West Lothian Question, then, has a strong negative resonance in the surveys. Although its salience in practice may be much reduced, respondents want a significant response to their concerns – a voice for England.

8. None of the following potential solutions is a sustainable response:

- Abolishing devolution is not on the political agenda.
- Maintaining the status quo is a long-term risk.
- Strengthening local government in England does not tackle the governance of England.
- Federalism, both England-wide with an English parliament or with English regions, has compelling objections.
- Electoral reform, including proportional representation and reduction in the number of MPs returned for seats outside England, is not realistic and fails to tackle the underlying issue.

Cross-border effects

9. Laws and policies applying to England (or England-and-Wales) can have consequential cross-border legal and policy effects in the devolved nations in a number of distinct ways. Legal cross-border spillovers are managed through legislative consent motions (LCMs), whereby a devolved legislature can assent to the UK Parliament legislating in a devolved area on its behalf. Provision for LCMs is made in the Memorandum of Understanding between the UK Government and the devolved administrations. This emphasises that **the UK Government will proceed in**

accordance with the convention that the UK Parliament will not normally legislate with regard to devolved matters except with the agreement of the devolved legislatures.

10. Cross-border effects can occur outside the framework of a Westminster bill. These are largely a consequence of England’s weight relative to the rest of the UK. There are a number of examples. Spending decisions taken for England have particular significance for the financial capacities of the devolved administrations through the so-called “**Barnett consequentials**”. These consequential effects are often indirect and time-lagged.

11. There are instances when legislation in a devolved jurisdiction can have cross-border effects elsewhere in the UK. Another cross-border effect is the consequence of EU legislation as it differentially affects England compared with the devolved parts of the UK. The interrelationship of devolved, national and European laws and policies is complex. The lack of an identifiable political voice for English interests, despite the domination of England within the UK policy process, is a consequence of the asymmetric devolution settlements.

A principle to inform a response

12. A principle common to the devolution arrangements for Northern Ireland, Scotland and Wales exists on which to base proposals for modifying the procedures of the House of Commons to mitigate the unfairness felt by people in England. The constitutional principle that should be adopted for England (and for England-and-Wales) is that:

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).

This principle should be **adopted by a resolution of the House of Commons** and the generalised principle endorsed.

13. Adherence to the principle would be facilitated by the declaratory resolution and changes of Standing Orders to implement specific proposals. Principles applying to decision-making in Parliament necessarily apply to decision-taking by Government. **The internal processes of the UK Government for preparing legislation should include separate consideration of the interests of England.**

14. Devolution arrangements all contain legislative provisions which preserve the sovereignty of the UK Parliament. Similarly the principle contains flexibility to cover cases where the situation is not “normal” and where the interests of the whole of the UK need to be given greater weight than the interests of one part of it. **The right of the House of Commons as a whole to make the final decision should remain.** But there should be political accountability for any departure from the norm.

15. **MPs from outside England should not be prevented from voting on matters before Parliament.** This would create different classes of MP and could provoke deadlock between the UK Government and the majority of MPs in England. The concerns of England should be met without provoking an adverse reaction outside England. MPs from all parts of the UK need to have the opportunity to participate in the adoption of legislation, whatever the limits of its territorial effect. Instead, MPs from England (or England-and-Wales) should have new or additional ways to assert their interests. But MPs from outside England would then continue to vote on all legislation but with

prior knowledge of what the view from England is.

Implementing this principle

16. Procedures to give effect to the underlying principle should meet five objectives. They should ensure that:

- sufficient information is available to permit clear identification of the English-only dimension;
- there is an opportunity, separately, for views from England to be expressed;
- such views are heard and considered;
- the outcomes of such consideration are apparent; and
- consequences should follow through political and democratic accountability for subsequent decisions.

17. Where appropriate, the procedures should apply for England-and-Wales where the test for applying them for England alone is not satisfied but would be satisfied for both.

18. If perceived concerns and political expectations in England are to be met, any new procedures should be simple, comprehensible and accessible. Proposals must be widely regarded as fair, go with the grain of parliamentary procedure and practice, give politics the chance to work, and respect the prerogatives of all MPs.

Proposals which would support the principle by providing England with a voice

19. As well as the resolutions adopting the fundamental principle, this report offers a menu of proposed adaptations to parliamentary procedures to hear the voice from England. Bills should routinely indicate their territorial scope. Much has been done already. Drafting practice might identify (as far

as possible) parts of a bill or groups of clauses primarily separate and distinct to England.

20. In particular, we conclude that:

- 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 **specialty-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 disapplying committal to a specialty-constituted public bill committee had been agreed to;
- 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 specialty-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.

21. These practical recommendations should be regarded as a menu from which the Government might wish to make a selection for implementation. Thereafter, once the House has considered the Government's procedural recommendations and taken its decision, the favoured options would then be applied under the Standing Orders, according to the circumstances of each bill.

22. We think that some time in the debate on the Queen's Speech each session should be specifically allocated to the Government's proposals for England. **Sections on policies for England in the manifestos** put forward by the UK parties at a General Election would usefully focus on the distinctively English element of the legislative programme for the ensuing Parliament.

23. Delegated legislation in the form of **statutory instruments** presents issues similar to, but not identical with, those of bills, and should be covered by any procedural change. This would require separate parallel consideration.

A Devolution Committee

24. A Devolution Committee of the House of Commons could consider the consequences of UK decisions on cross-border effects and hold UK/English ministers to account. It would also allow scope for an evaluation of LCMs and how they work in practice. The awareness of the implications of devolution in Parliament would be enhanced. The appointment by the House of Commons of a select committee with a broad remit is recommended.

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