



House of Commons
Political and Constitutional
Reform Committee

**Do we need a
constitutional
convention for the UK?**

Fourth Report of Session 2012–13

Volume II

Additional written evidence

*Ordered by the House of Commons
to be published 14 and 21 June, 12 July, 6 September,
1 and 29 November 2012*

The Political and Constitutional Reform Committee

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The current staff of the Committee are Joanna Dodd (Clerk), Helen Kinghorn (Legal Specialist), Lorna Horton (Committee Specialist), Jacqueline Cooksey (Senior Committee Assistant), Jim Lawford, (Committee Assistant) and Jessica Bridges-Palmer (Media Officer).

Contacts

All correspondence should be addressed to the Clerk of the Political and Constitutional Reform Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 6287; the Committee's email address is pcrc@parliament.uk.

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Written evidence

Written evidence submitted by Professor Matthew Flinders, Professor of Parliamentary Government & Governance, University of Sheffield

1. In recent decades the structure and values of the British constitution have changed significantly. The traditional “old constitution”, with its power-hoarding emphasis, has to some extent been replaced by a “new constitution” that has clear power-sharing elements. From an academic perspective the current constitutional configuration in the United Kingdom (UK) is arguably best described as one of “*modified majoritarianism*”.

2. And yet despite the implementation of a broad range of constitutional reforms since 1997 there has been little attempt to understand the changing nature or structure of the British constitution *in toto*. Various academic studies have attempted to map the changing nature of British democracy and how specific reforms have had unintended consequences for other elements of the constitution but successive governments have shown *little interest in reflecting upon the “bigger picture” or general direction of travel*.

3. *This has created a situation that can be usefully characterised as one of democratic drift.*¹ Drift in the sense that without any blueprint for the type of democracy successive governments were attempting to build—or even an explicit set of values that underpinned the reform process—British democracy has simply evolved in a classically *ad hoc* and generally incoherent manner.²

4. This emphasis on “muddling through” not only reflects the British political tradition but also the fact that constitutional reforms were often the result of *party political deals and trade-offs rather than the result of high-minded constitutional convictions or public pressure for change*.

5. A constitutional historian might argue that the British constitution has always been riddled with puzzles, anomalies and contradictions and this may well be true. The simple fact is, however, that the constitutional fault-lines that have always existed within the Westminster Model have arguably grown to become significant gaps—possibly even chasms—as a result of recent reforms. *The old constitutional rules and understandings through which politicians and the public made sense of the political sphere no longer seem to apply*. Moreover a number of issues on the political horizon—not least a planned referendum on Scottish independence—are stretching the constitutional elasticity of the Westminster Model to breaking point.

6. It is in exactly this context that the idea of holding a constitutional convention is gaining support. “Old certainties are being shaken by the independence debate in Scotland” as the First Minister of Wales, Carwyn Jones, argued in February 2012 “a constitutional convention will allow us to begin to redefine a modern UK”. *The Political and Constitutional Reform Committee’s decision to hold an inquiry into whether there is a need for a constitutional convention in the UK is therefore to be welcomed as a core element of a wider debate about the future of British democracy*.

7. *The success of any constitutional convention will depend on a wide range of factors* but the aim of this submission is to focus on just three: the parameters; the public and the politics.

8. It would appear from the existing evidence and international experiences that *the parameters* of a constitutional convention could—to put a complex issue in simple terms—be either narrow or broad. The former option would begin with a focus on a small number of what are often called “primary” or “first-division” issues or debates. The benefit of this approach is that the constitutional convention begins with a fairly clear set of aims and a defined boundary. The territorial dimensions of the constitution, the ‘English question’ and the relationship between the UK and the European Union seem obvious issues that a narrow constitutional convention could focus on.

9. And yet to suggest that a constitutional convention could actually adopt a narrow focus risks overlooking the simple fact that even a focus on the “English question”, for example, would very quickly and *inevitably spill-over* into a wide range of issues (parliamentary reform, fiscal federalism, localism, etc). A constitutional convention must therefore to some extent focus on the constitution *in toto* rather than trying to bite-off neat chunks. To do otherwise would be to risk replicating the rather silo-based approach to constitutional reform that previous governments have practised and that has created such confusion about the current constitutional settlement.

10. A second factor that will affect the work and credibility of a constitutional convention is the role of *the public* in the process. Research and data clearly reveal that the public do not “hate” politics and that it is closer to the truth to suggest that politicians (and academics) have possibly not been as energetic as they might have been in explaining how and why the British constitution has changed.³ As a result one simple benefit of creating a constitutional convention might be to enhance the public understanding of politics and to stimulate a national conversation about the shape and form of British democracy in the twenty-first century.

11. Many MPs and commentators might respond by suggesting that to make such statements is naïve and fails to acknowledge the extent of public apathy and disinterest in all matters “political”. My response to such

¹ See Flinders, M 2009. *Democratic Drift*. Oxford: Oxford University Press.

² Jack Straw article.

³ See Flinders, M. 2012. *Defending Politics*. Oxford: Oxford University Press.

an argument would simply be that research reveals that the public are more interested in politics than they have ever been and that the younger generations are particularly active in relation to using non-conventional forms of political communication and activity. *The belief that the public are not interested in politics can act as a dangerous excuse for inaction* that risks creating a self-perpetuating cycle whereby the public believe that the political class is not interested in them. I would therefore encourage the Committee to be bold and creative in its approach to the idea of a constitutional convention.

12. A third factor that flows out of a focus on both the parameters of any constitutional convention and the potential role of the public is *the politics of constitutional reform*. Constitutional reform revolves around debates concerning the redistribution of power within a polity and is therefore likely to be supported by some actors and vigorously opposed by others. Therefore the fact that a “window of opportunity” appears to have opened *vis-à-vis* a possible constitutional convention there is no guarantee that any convention will actually be established, or if it is established that it will have any real powers, role or resources. This is the realpolitik of constitutional reform.

13. How the possible creation of a constitutional convention is presented to both the public and the Government is therefore critical and I see no reason why such a project cannot *be viewed as a win-win situation* for all parties. A constitutional convention would dovetail with the coalition Government’s emphasis on strategic and pragmatic policy-making as well as its broader emphasis on rebuilding public trust in politics (while at the same time offering a powerful mechanism through which to reconnect with those large sections of the public that seem disillusioned with and disconnected from conventional democratic politics). At a more basic level there are already a number of single-issue government-commissioned reviews underway and there is an urgent need to ‘join-up’ the outcome of those processes.

14. Although it is fairly easy to answer the question as to whether we need a constitutional convention (ie “yes”, or at the very least “probably”) it is far harder to navigate through the far thornier issues of the specific role and remit of such a constitutional review process or how *the politics* of such a process might be managed. The main recommendation of this submission is that the Committee considers *a two-stage process* that is explicitly tied to the symbolic and historical significance of the 800th anniversary of the Magna Carta in 2015. The first stage might focus on the Committee acting as a vehicle for a fairly tight and narrow debate about territorial devolution and multi-level governance as a first step towards advocating a (second stage) far broader constitutional convention—possibly in the form of a parliamentary commission of inquiry—that would report in 2015 (thereby taking advantage of the media and public interest, in the UK and abroad, that is likely to surround the Magna Carta’s anniversary).

May 2012

Written evidence submitted by The Constitution Society

1. The Constitution Society (CS) is an independent, non-aligned educational trust, which promotes public understanding of the British Constitution and works to encourage informed debate between legislators, academics and the public about proposals for constitutional change. The Society takes no position on the merits of specific legislative proposals, but believes that the existing process for constitutional change is in need of significant reform.

VARIETIES OF CONSTITUTIONAL CONVENTION

2. The designation of constitutional convention has historically been applied to a variety of types of assembly. Conventions may be established both to determine the constitution of a newly formed state and to revise the constitution of an existing state. Constitutional conventions of this second type may be unlimited in scope, with a remit to review the whole existing constitution, or may have a limited remit to address specific constitutional questions.⁴

3. In existing states, constitutional conventions may be either assemblies established by government or informal bodies established by non-governmental interest groups and lacking official status.⁵ Conventions established by government may enjoy a range of legal powers. At a maximum, a constitutional convention may have an effective power of constitutional amendment, although more commonly a convention’s proposals are subject to endorsement by popular referendum. Alternatively, a convention’s recommendations may be non-binding or merely advisory.

RESPONSES TO QUESTIONS: GROUNDS AND BASIS FOR ESTABLISHING A CONVENTION

Is there a case for establishing a constitutional convention for the UK?

4. A constitutional convention could provide a forum for a national debate about the future shape of the Union. There is currently a general consensus that the question of Scottish independence should be decided by

⁴ For example, the remit of the 1998 Australian Constitutional Convention was limited to the question of the possible abolition of the monarchy and the consideration of alternative mechanisms for selecting a head of state.

⁵ For example, the Scottish Constitutional Convention was established in 1989 by an informal group of pro-devolution political parties and other organisations and had no official or legal status.

a referendum in Scotland alone.⁶ A rejection of full independence by the Scottish electorate in a 2014 referendum would be the prelude to a broad debate about the future relationship between the Scottish and Westminster governments and parliaments. This would not be an issue of interest to Scotland alone and would raise unavoidable questions about the position in the Union of the other constituent nations and of the English regions.

If there were to be a constitutional convention, on what basis should it be established? What would be its legal status, or could it proceed on a more informal footing?

5. Based on the experience of the 1989 Scottish Constitutional Convention, CS suggests that an informal convention on the future of the Union would be of limited value. The participants would be effectively self-selecting and would consist mainly of those who favoured change. It is predictable that some political parties and interest groups would decline to take part. It would be difficult to sustain a credible process without access to substantial public funds. The recommendations of such a body would probably have limited impact if they did not reflect the views of the government of the day.

6. CS believes that four conditions must be satisfied if a constitutional convention on the future of the Union is to achieve political credibility and popular support:

- The convention should be established by the Westminster and devolved governments together, with appropriate public funding.
- The composition of the convention should be broadly reflective of national opinion and the assembly should not be dominated by political parties.
- The remit of the convention should be clearly defined, limited and specific.
- There should be an undertaking from the Westminster and devolved governments, and a cross-party consensus, that the recommendations of the convention will be put to popular referendums and if endorsed will be enacted into law.

What lessons could be learned from previous constitutional conventions, in other countries?

7. The experience of other countries suggests that constitutional conventions are most effective in achieving constitutional change when their remit is limited to specific issues and where there is a prior undertaking from government that the conclusions of the convention will be put to a popular referendum.

RESPONSES TO QUESTIONS: COMPOSITION

What should be the composition of the constitutional convention?

What would be the best way of involving the public in the convention?

8. There are three methods which have been commonly used to select the membership of constitutional conventions:

Election

- The composition of an elected assembly is likely to reflect the current level of support for political parties.⁷

Appointment

- Appointed delegates are normally politicians, selected to reflect relative party strength in legislatures.⁸ There do not appear to be any examples in recent times in states with parliamentary systems where academic experts or other non-politicians have been appointed to constitutional conventions.

“Semi-random” selection of citizens

- Under this method a sample of the general public, filtered to ensure it is demographically representative, is selected at random from the electoral role.⁹

9. These methods have often been used in combination. The Irish Government’s plan for the 2012 Constitutional Convention proposes a 100-member assembly, with 67 citizen members selected semi-randomly

⁶ This consensus rests on the implicit assumption that, should Scotland achieve independence, the other constituent parts of the UK will be recognised in international law as the continuing state of the United Kingdom.

⁷ The composition of the elected Northern Ireland Constitutional Convention 1975–76 reflected current levels of support for the political parties. It failed to reach any agreement on the future of Northern Ireland.

⁸ Half the delegates to the 1998 Australian Constitutional Convention were senior federal and state politicians appointed by the federal government. One third of the delegates to the 2012 Irish Constitutional Convention will be either selected from the Irish Parliament in proportion to party strength or nominated by Northern Ireland political parties.

⁹ The British Columbia Citizens’ Assembly on Electoral Reform (2004–05) is the most significant example of an assembly selected by this method in the modern era. For a useful overview of international experience, see: *Lucinda Maer* (2009), *Citizens Assemblies: House of Commons Library (SN/PC/04482: updated 25 November 2009)*.

from the electoral register, one member nominated by each political party in Northern Ireland and the balance selected from members of the Irish Parliament in proportion to party strength.¹⁰

10. CS suggests that the proposed composition of the 2012 Irish Constitutional Convention provides a useful model for a UK constitutional convention on the future of the Union. Consideration might be given to the appointment of academic experts as well as politicians, but these two elements together should be in a minority.

Would there be a means of providing specific representation for England or the English regions, alongside the other components of the UK and the UK as a whole?

11. Appropriate national and regional representation could be achieved by filtering the semi-random selection of citizens, as well as by appointing politicians from both parliaments and the devolved assemblies.

RESPONSES TO QUESTIONS: REMIT AND WORKING METHODS

What should be included in the terms of reference for the constitutional convention? For example, should the convention be tasked with proposing a new constitutional structure for the UK, or establishing an agreement between the different components of the UK on ways of proceeding in their relations with each other and with the UK Government and UK Parliament?

12. CS suggests that the remit of the constitutional convention should be to propose the future constitutional relationship between the United Kingdom and its component elements, assuming that the Scottish electorate does not vote for independence in a 2014 referendum.

13. The specific issues which the convention should address would include:

- The distribution of powers between the Scottish and Westminster parliaments.
- The distribution of powers between the Welsh Assembly and the Westminster parliament.
- The distribution of powers between the Northern Ireland Assembly and the Westminster parliament.
- Whether there should be an “English Parliament”, or assemblies analogous to the Welsh assembly in some or all English regions.
- The appropriate basis of representation in the Westminster parliament for citizens resident in nations or regions which have devolved governments enjoying significant powers.
- The composition of the electorates in popular referendums held to endorse the convention’s proposals on each of the preceding issues.

Are there any legal/constitutional issues requiring particular attention, such as the need to conform to the terms of the Belfast—or Good Friday—Agreement 1998?

14. The Belfast Agreement is in part an international agreement between the UK and Ireland, and any change in the 1998 settlement would thus require Irish consent.

How should the convention proceed? For instance, on the basis of consensus, unanimity, qualified majority voting, or simple majority voting?

15. The British Columbia Citizens’ Assembly on Electoral Reform (2004–05) provides a useful model for proceedings in an assembly with a semi-randomly selected composition.¹¹ The British Columbia experience and other Deliberative Democracy exercises, suggest that randomly-selected groups are generally able to reach decisions by consensus.¹² It is less likely that this would apply in the case of a hybrid group which also included politicians, as proposed in section 6 of this paper. Simple majority voting might be the best approach in an assembly where the randomly-selected participants enjoyed an inbuilt majority.

How would proposals made by the convention be taken forwards? For instance, would they require endorsement by the different Assemblies and Parliaments of the UK, or by one or more referendums?

16. If the proposed convention is to be an effective instrument for constitutional change, there should be a prior undertaking from both the Westminster and devolved governments, and a cross-party consensus, that the recommendations of the convention will be put to popular referendum, and if endorsed will be enacted into law. The composition of the electorates in these referendums will be a difficult and contentious issue which should itself form part of the convention’s remit.

¹⁰ *Merrion Street 28 February 2012*: <http://www.merrionstreet.ie/index.php/2012/02/constitutional-convention-government-proposals-28-february-2012/>

¹¹ Ian Ward (2006) *The British Columbia Citizens’ Assembly on Electoral Reform: An experiment in political communication*. (Paper presented to the Australian Political Studies Association Conference, University of Newcastle, September 2006).

¹² See: *James Fishkin* (2009), *When the People Speak: Deliberative Democracy and Public Consultation*, OUP.

APPENDIX

The 2004 British Columbia Citizens' Assembly on Electoral Reform

The most interesting and innovative international example that could inform the establishment of a British constitutional convention is the *2004 British Columbia Citizens' Assembly on Electoral Reform*.

Seeking to address “democratic deficit” by involving ordinary citizens in the decision process, the state government of British Columbia legislated to establish a Citizens' Assembly to deliberate on changes to its electoral system.

160 citizens were randomly (though proportionally) drawn from electoral districts across British Columbia, filtered for gender balance and with places reserved for some minority groups. They were given the resources and expert support to deliberate on changes to the electoral system. Each participant was paid a \$150 per diem honorarium and expenses.

Once selected, the group set out a programme of discussion and a series of public hearings and meetings were held to educate and invite comments and suggestions from the public. A well-designed website allowed the public to keep track of proceedings and make their own submissions to the Citizens' Assembly, thus combining traditional deliberation with modern channels of involvement.

The Government appointed a former university president to chair the Assembly and it went on to hire an office manager, communications director, chief research officer and others to provide a permanent secretariat.

The deliberative process took up much of 2004 with a heavy demand on the participants in terms of time and effort. It was divided into three stages: first, three months of exploratory education, which concluded with a preliminary report; second, a two-month public consultation stage with the wider citizen body; third, a final deliberative stage followed by a full report and recommendations. These recommendations were put to a referendum vote.

The method of selection and lack of overt political partisanship made for a high level of consensus between participants. Members did not interrupt or speak over each other and differing viewpoints were discussed rather than discounted. Meetings were often held ‘in the round’ as a means of fostering non-adversarial discussion.

Attendance at Assembly meetings was high throughout the year and only one participant withdrew from the process. After the project concluded many of the members agreed to form an “alumni association”.

The British Columbia referendum was lost, but this model remains of considerable interest as an important innovation in constitutional process. It has been suggested as a possible model for a republican convention in Australia and has been adopted in the Netherlands as a way of deliberating on democratic reform.

CS suggests this model informs a British constitutional convention. It's composition, narrow remit, set duration and the certainty that its recommendations would be put to a referendum vote are all commendable.

June 2012

Written evidence submitted by Dr Claire Sutherland, Lecturer in Politics, Durham University

1. This response pertains to the question: What would be the best way of involving the public in the convention?

2. The best way to involve the public would be to hold the convention in museums around the UK, for the following reasons:

- Museums are locally embedded, community hubs where people can come together in a non-partisan environment to examine aspects of their shared past and how this affects their attitudes to reform.
- Museum exhibitions can provide an accessible, stimulating starting point for thinking about the relationship between national and regional identities and their relevance to constitutional reform.
- Museums can make informal, non-intimidating venues in which to gather views across the country, while providing easily recognisable “branding” to link all of the convention's activities (cf the 2012 Cultural Olympiad).
- Museums can use their marketing knowhow to raise the convention's profile among the public.
- Museums have a wealth of experience in outreach work with local, often “hard-to-reach” communities, which could be drawn on to involve a wide cross-section of the public.
- Museum staff's expertise and enthusiasm for education and interpretation can be used in designing public sessions to encourage informed debate.
- Museums are an existing, UK-wide network, ready to be used as forums.

June 2012

Written evidence submitted by Alan Renwick, Reader in Comparative Politics, University of Reading

1. I am grateful to the Committee for its invitation to attend a seminar on the subject of this inquiry in Portcullis House on 24 May. The comments below supplement the remarks that I made during that seminar.

THE PURPOSES OF AN INQUIRY

2. My impression is that there are multiple views within the Committee as to the purposes of holding a constitutional convention. One possible purpose is to consider the future of the Union, particularly in light of the coming referendum in Scotland and ongoing developments in Wales. An alternative purpose is to foster national debate about our constitution as a whole and the ways in which it might evolve in the future. With regard to each of these:

— *The Future of the Union*

There is a clear case for establishing a forum that would consider the Union in the round, rather than taking the perspective of just one part of it. What one part of the Union decides clearly has implications for others.

The nature of such an inquiry would depend on whether it is held before or after the forthcoming Scottish referendum. An inquiry held before the referendum could usefully explore the implications of various possible referendum outcomes. But such an inquiry presumably would not be facilitated by the Government and its findings would have no official status. An inquiry after the referendum could have a more direct role in determining how the referendum result is translated into actual constitutional changes.

— *The Constitution as a Whole*

A convention designed to encourage national debate on the constitution as a whole could not expect to spark immediate wide public interest: evidence from such exercises elsewhere corroborates evidence from polls in the UK, that most people would prefer not to have to think about such things. A convention could, however, allow a range of perspectives to be aired and discussed and could become a valuable point of reference in subsequent debates. It would be unlikely to have much short-term impact, but it could have a positive longer-term effect upon the quality of debates over constitutional issues. The quality of those debates at present is very low, and so this would be a valuable contribution.

THE FORMAT OF AN INQUIRY

3. A number of possible formats were mentioned during the seminar, ranging from a standard select committee inquiry to a large-scale convention including experts, grantees and/or extensive public participation. The appropriate format depends on the underlying purposes. I suggest that three models deserve to be pursued:

— *A Select Committee Inquiry into the Future of the Union*

Given the likelihood that a pre-referendum inquiry into the future of the Union would not receive government backing, the most appropriate format may be a standard inquiry by the Political and Constitutional Reform Committee. The Committee would seem to be the body best fitted to gather perspectives from across the UK, to highlight the issues that need to be addressed, and to survey the options available. The language of a “constitutional convention” should be avoided when describing such an inquiry: it would simply be a select committee inquiry into the future of the Union.

— *A Select Committee Inquiry into What Should Follow the Scottish Referendum*

The processes by which the referendum outcome is translated into any revised constitutional structure will depend in large part on the decisions of the various governments, particularly in Whitehall and Holyrood. It would seem highly desirable, however, that the Political and Constitutional Reform Committee should take a prior view on the form those processes should take and thereby seek to influence them. To what extent, for example, should an independence settlement or a “devo max” settlement be determined simply by intergovernmental negotiations? Should there be a more inclusive process and, if so, what form should this take? These issues are not currently receiving adequate attention, and the Committee could make an important contribution by conducting an inquiry into them.

— *A Constitutional Convention*

If something called a “constitutional convention” is to be held, that should consider the constitution as a whole, not just the future of the Union. And it should have a broad membership: otherwise, it will lack credibility. In common with recent “citizens’ assemblies” in Canada and the Netherlands, it should include randomly selected citizens: a convention formed by other means would today struggle for legitimacy. The members would meet from time to time over an extended period (perhaps a year) and receive considerable support in order to deliberate both the overall agenda of the convention and particular parts of that agenda. The convention might also have a “second chamber” of people with particular expertise, who could offer advice to the popular chamber.

4. As I indicated above, I see no reason to think that such a convention would lead to rapid constitutional changes or great public interest: none of the citizens’ assemblies in Canada or the Netherlands have done so.

But it could serve as a reference point in future discussions and improve the quality of debate over key constitutional issues. A proposal from the Committee for such a convention would therefore be a positive step. I would be happy to provide further evidence on details should this be an option that the Committee would like to pursue.

June 2012

Written evidence submitted by Graham Pearce & Sarah Ayres

1.1 Constitutional arrangements in parts of the UK have been transformed by political devolution, but these have evolved piecemeal and insufficient attention has been given to their impacts on the government of the wider UK. With the exception of the Greater London Assembly devolution was principally conceived as being confined to the Celtic nations and, though English representation dominates the government of the UK, little thought was given to England in the process.

1.2 As devolution has proceeded attention has begun to focus on the need to examine the government of England—the “English question”—from two core perspectives. The first relates to how England, which comprises some 85% of the UK’s population, should relate to and be accommodated within a post-devolution UK. The second is concerned with whether, in order to improve the government of England it, too, needs political reform. English government remains the most centralised of all the large countries in Western Europe and transferring powers from Whitehall to the sub-national level is viewed as a way of enhancing government and responding to the growing sense of alienation on the part of many people in different parts of the country.

1.3 This memorandum focuses on the second of these questions and draws upon research conducted by the authors over the past decade into sub-national governance in England. Our central argument is that consideration of the government of England should form a key element in the terms of reference for any Convention charting a constitutional settlement for the UK.

1.4 We contend that, despite growing recognition across the major political parties that the territorial system of government in England is in need of change, after decades of real and threatened reforms, there remains no clear and shared imagery on how England should be governed within a devolved UK. Second, recent changes to the political and economic landscape of the UK, especially those arising from the economic crisis, have made it more vital than ever to address the English question in a cohesive manner.

2. TOPSY-TURVEY GOVERNMENT TOP

2.1 Combining central control with decentralised decision-making is not new to the UK. It was practiced for many years through the separate territorial departments of UK government for Northern Ireland, Scotland and Wales. There was no equivalent tradition in the English regions. Prior to 1997, central government was represented in the regions through its network of Government Offices which, alongside Regional Development Agencies (RDAs) and indirectly elected Regional Assemblies, New Labour sought to employ to give the regional tier of governance greater coherence and make it more accountable and responsive to meeting territorial priorities. It also presided over an attempt to promote regions as a fully democratic tier to complement institutional developments elsewhere in the UK. It failed and in the absence of a coherent alternative a search was triggered for a new “spatial-scalar fix” among policy elites that would involve a recalibration of the relationship between the centre and sub-national government as a way of achieving greater accountability and policy efficiency and effectiveness (HM Treasury *et al*, 2007).

2.2 Encouraged by a series of studies that questioned the “economic dividend of regionalism” and the effectiveness of regional structures, groups of large urban authorities, led by the Core Cities Group, began to mobilize around “city-regions” as the principal territorial reference points for sub-national economic governance (Harding *et al*, 2006). Though the “new city regionalism” shared the inherent lines of weakness that characterized the “new regionalism” (Harrison, 2007), the agenda attracted support in Westminster and Whitehall and the 2006 Local Government White Paper endorsed the principle through the mechanism of “Multi Area Agreements”.

2.3 By the end of Labour’s term in office sixteen Multi-Area Agreements and City Region partnerships had been established, covering 105 councils and including nearly 40% of England’s population. As the House of Commons Communities and Local Government Committee (2007, p.40) observed, “it is possible to envisage a situation in which, ultimately, a network of cities with strategic powers to determine planning and investment might render the existing regional governance structures largely obsolete”. Conversely, in the absence of any political support for local government reorganization, city-regions would not be new political institutions. Labour could be accused of adopting a permissive approach, which acknowledged the potential contribution of various spatial units but overlooked their inter-relationships.

2.4 At the 2010 general election both major opposition parties were committed to annulling Labour’s regional institutional legacy and the election of the Coalition Government prompted a further round of reforms. It declared an intention to “oversee a radical redistribution of power away from Westminster and Whitehall to councils, communities and homes across the nation. Wherever possible, we want people to call the shots over the decisions that affect their lives” (HM Government, 2010a, p.7). It, therefore, tapped into the “localist

agenda”, which had surfaced in the context of public service reform and local government modernization, to assert that such issues would be better handled by local authorities in accordance with the needs and preferences of their local communities (Clark, 2010). Labour’s key regional institutions were rapidly wound down, with only a whimper of disapproval from local government or the business sector. In place of RDAs, Local Enterprise Partnerships (LEPs), ostensibly serving “natural” economic or functional areas, have been established and, with the exception of nationally important projects planning, which incorporates land use, housing, transport and environmental issues, has become primarily a local function.

2.5 Over all, the Government’s ambition, set out in the 2010 Localism Bill, was “to achieve a substantial and lasting shift in power away from central government and towards local people” (DCLG, 2011, p.2). According to the Communities Secretary, Eric Pickles, “Our purpose is to make a radical redistribution of power and funding from government to local people to deliver what they want for their communities, transforming public services..... We will decentralise power as far as possible, turning government upside down and inside out” (DCLG, 2010, p.1). On the face of it decision making is to be assigned to smaller administrative units, but these are still much larger than the local authorities and municipalities in many Continental states—the average European municipality has 5,580 inhabitants compared with 152,200 in the UK.

2.6 It would be wise to distinguish between the language of decentralization used by Coalition ministers and their actions and potential outcomes. Past experience suggests that all too often a government commitment to decentralize is soon reversed as Whitehall departments reassert their dominance. Moreover, in the Coalition’s case, though the devolution of power to communities has been advocated as a way of promoting autonomous local action and recalibrating the way services are delivered, its overriding objective has been to assist in reducing the public sector deficit by way of substantial public spending cuts to both the central and local state (Taylor-Gooby and Stoker, 2011).

2.7 Though promising decentralization and localism the Coalition can be censured for continuing to preside over the creation of a range of complex and soft institutional arrangements—Core Cities, Elected Mayors and Police Commissioners, Local Enterprise Partnerships, Neighbourhood Plans—which overlap traditional governmental arrangements, but without any major shift in intergovernmental relations. Whitehall continues to retain control over key policy decisions and resources at the sub-national level and while the Localism Act grants local authorities a general power of competence; they enjoy far less constitutional protection than many of their Continental counterparts, have very limited financial autonomy and lack a formal place in national political debates (Gough, 2009). Just as Westminster and Whitehall appear to have been largely unaffected by devolution, it is by no means certain that all the relevant government departments have become fully committed to localism as an underlying strategy. The same weaknesses that characterized previous transitions from regionalism, city-regionalism and now “new localism” are, therefore, likely to remain, albeit at a different spatial scale. As Bognador (2012) observes, while “Politicians compete with each other to proclaim their belief in the dispersal of power and the need to strengthen local government ... not much has been done to secure this aim, and local democracy remains in a distinctly unhealthy state”. Nonetheless, boosting local government, however desirable, at best offers only a partial answer to the English question.

3. THE NEED TO RESPOND TO THE ENGLISH QUESTION

3.1 In 2006 Hazell speculated that one potential response to the English Question was to leave it unanswered indefinitely. Indeed, in the absence of viable alternatives and perceived public apathy this appeared to be a sensible, if not the only option. However, our argument is that an accumulation of events has rendered this approach increasingly untenable and the devolution settlement unstable. The last national review of English local government was published in 1969, predating the UK’s entry into the EU, as well as devolution to Scotland, Wales and Northern Ireland and the creation of an elected mayor for London. As Ward (2011) observes—“It is time to answer the ‘English Question’” (p.7).

3.2 The early years of devolution were characterized by favourable economic circumstances and generous increases in public spending. However, since the financial crisis regional economic inequalities in England have widened resulting in heightened tensions between localities for diminishing resources. Central government contributions to local government are planned to fall by a quarter between 2010–11 to 2014–15 and because local councils are dependent on the centre for 80% of their revenues the cuts will be keenly felt locally (HM Treasury, 2010). The impacts of public sector cutbacks also vary radically in different parts of the country. As Crawford and Phillips (2012, p.124) conclude, spending cuts are larger “in urban and poorer parts of England than in more affluent rural and suburban districts” and are “larger in London and the northern regions of England than in the southern regions”. Some localities are clearly better placed than others to mobilise partnerships and expertise to compete for and attract government funding and private sector investment. As the recent “Fair deal for the North” inquiry remarked, “The Coalition has endorsed the objective of geographical rebalancing of the economy, but has taken away the resources necessary to achieve that objective” (Ward, 2011, p.52).

3.3 In addition to deep-seated economic problems facing some areas, which demand a greater spatial awareness in government policy, there is also a set of longer-term, but no less, significant challenges. These include economic competitiveness, climate change and the provision of infrastructure for the projected additional nine million people in the UK by 2031 (especially in the Greater South East), increasing pressures

on natural resources and new technologies (Government Office for Science, 2010). Individually, the 293 district and unitary councils outside London are unable to respond to these issues.

3.4 Questions have, therefore, been asked about the extent to which local political structures have the necessary capacity, powers, funding and geographic coverage to enable the long-term, strategic management of core policy areas. For example, the Coalition's "bottom-up" approach has led to the creation of a relatively fragmented tier of thirty eight Local Economic Partnerships (LEPs), in part to replace the RDAs. It is too early to pass a conclusive judgment on their impact but, as the House of Commons Business, Innovation and Skills Committee (2010, p.45) observed, "LEPs will need to have clear powers to influence and determine local authority policy or risk becoming nothing more than talking shops". In a recent interview, a senior Whitehall civil servant also advised caution—"the LEPs are incredibly variable. Some, like Greater Manchester [a City Region], are held up as shining examples, while others have a history of local authority dysfunction and local politics which has made it difficult for them to get off the ground".

3.5 The Coalition believes that local authorities and their partners should be left to decide when and how to work together and what outcomes they should seek. However, only the most sanguine of observers would believe that this is sufficient to achieve the co-ordination necessary to address often controversial strategic issues (House of Commons Communities and Local Government Committee, 2011). Indeed, under the "localism" agenda, such coordination may prove unworkable.

3.6 It might be expected that the recently adopted National Planning Policy Framework would offer such a perspective. Nonetheless, rather than being a national spatial document it is determinedly aspatial. Its primary focus is on the process by which individual local authorities prepare plans for their areas. Unlike other Western European countries, including Scotland and Wales, England does not, therefore, have a national spatial plan; nor does it possess an intermediate or "meso" level of strategic planning between national and local. In their absence doubts have been raised over the capacity of emerging local structures to respond effectively to non-local, strategic issues. Moreover, recent research of government documents has identified over "100 major maps for England relating to policies and programmes on the economy, transport, communications and the environment" (Wong, *et al*, 2012, p.5). How or whether the patchwork of sectoral policies expressed in these documents might be coordinated across Whitehall is uncertain.

3.7 Among a plethora of initiatives aimed at rebalancing the state both New Labour and the current Coalition Governments have favoured the appointment of elected mayors in England's major cities as a way giving urban centres greater autonomy. However, voters in nine of the ten English cities, which held referendums earlier this year, rejected the idea of adopting directly-elected mayors. Only Bristol voted "yes", with a clear majority of voters in the other cities opting to retain the status quo. Mayors were envisaged as a means to provide strong city leadership and enhance local democracy and accountability. Yet, the reasons for the resounding "no" vote appear to echo those posited in the North East referendum to establish elected regional government in 2004—a lackluster "yes" campaign, uncertainty over what powers might be available, a lack of leadership and collective commitment across Whitehall for local government and public mistrust of further layers of political administration. If the Government's intention was for city mayors to address, at least in part, the English Question, it was firmly rebuffed.

3.8 A measure of the growing sense of dissatisfaction with the current unreformed set of UK institutions at Westminster amongst English voters was strongly reflected in a recent IPPR report (Wyn Jones, *et al*, 2012). Only 25% supported the current arrangements. Indeed, fuelled by concerns about the fairness of devolution and a sense that English people lack an independent voice on issues that matter to them, the report identified the emergence of an "English political community". As the authors warn, "the English question is now finally being asked by the country's electorate" (p.3). Rather than makeshift solutions, the issue should be seriously addressed by all the major political parties.

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Authors

Graham Pearce was formally Professor of Public Policy and Management at Aston University and Dr Sarah Ayres is Senior Lecturer in Policy Studies at the University of Bristol.

June 2012

Written evidence submitted by Michael Gordon and Brian Thompson,¹³ Liverpool Law School, University of Liverpool

INTRODUCTION

1. We welcome the Committee's initiative in conducting this inquiry. It is an important recognition that constitutional issues are significant and that traditional Westminster-based techniques will not be appropriate to account for the interests of different parts of the UK in our evolving devolution settlement. We suggest that the implications of devolution are under-appreciated by ministers, officials and parliamentarians in Westminster and the London based media which report on them, which contributes significantly to the lack of knowledge and awareness on the part of the public in England. In addition the public in Scotland, Wales and Northern Ireland have a greater knowledge about their own bilateral relationships with Westminster than those of the other parts of the UK. In turn this adds to the inherent difficulty of deliberating on "the Union as a whole" as opposed to specific issues or nations.

2. In this submission we consider the case for establishing a Constitutional Convention looking at the usual tasks they are called upon to conduct, other potential tasks and reasons why they may be rejected. In the next section we reflect on the composition and working methods of Constitutional Conventions drawing on some recent examples in Canada, Iceland and the Netherlands rather than the more familiar but slightly more dated domestic examples in Scotland and Northern Ireland.

IS THERE A CASE FOR ESTABLISHING A CONSTITUTIONAL CONVENTION FOR THE UK?

3. The usual purpose of a Constitutional Convention is to carry out large scale tasks of constitution-making or constitution revising, or indeed the project of codification of the UK's constitution which the Committee is also investigating. Yet none of these major projects is imminent, and even if they were, this would be a new

¹³ Respectively Lecturer and Senior Lecturer, Liverpool Law School, University of Liverpool.

endeavour. We argue that it would be better to move towards a better comprehension of the Union as a whole through a specific topic.

4. It seems to us that an eminently suitable topic for fostering a Union as whole view is reform of the House of Lords. What makes it particularly appropriate is that it raises a series of constitutional issues and their inter-relationships. For example, take the key ideas of representation and role. Representation encompasses who is to be represented and how, and role relates to the “what” and “why” of representation. Theories of democracy can inform the choice of methods of election including varieties of proportional representation in direct elections, as well as the role of an upper house which can cover conceptions such as a revising chamber, and a constitutional safeguard. This latter role is particularly relevant to our argument, in that the common role of a senate in a federation is one of seeking to ensure that the relationships amongst the different levels of government are not unbalanced. In turn this role can take us back to representation and invite consideration of indirect election as well as ideas of institutional complementarity, not only within the bicameral Westminster Parliament, but also between it and the devolved legislatures. It also raises the question of how to represent the regions of England which have no equivalent to the devolved institutions.

5. The argument against a Constitutional Convention to deal with reform of the House of Lords might focus on the low priority which the public and the majority of the political parties place on it compared with the economic downturn and the appropriate response to the twin challenges of reducing the deficit and generating growth. Besides, the topic has been repeatedly revisited in the period 1999–2012 with proposals in reports from a Royal Commission,¹⁴ White Papers,¹⁵ Parliamentary Committees,¹⁶ and a draft Bill considered by a Parliamentary Joint Committee.¹⁷

6. While the topic has clearly not lacked attention we would argue that the benefits which a Constitutional Convention addressing it would bring include the very experience gained from using this inclusive method, but especially its principled approach derived from a reliance on the people, with experts on tap not on top. We suggest this would enhance the democratic legitimacy of proposals which would emerge from the Constitutional Convention’s deliberations, and that process has the potential to create a greater popular engagement with the particular constitutional issues raised while further laying the foundations for improved knowledge and awareness of constitutional matters in general.

7. These are the positive reasons for experimenting with a Constitutional Convention on House of Lords reform. There are other reasons, primarily those related to the use of a Convention here encountering less opposition than other potential topics. One of the features of the UK’s constitution is that while there may be broad agreement about those topics which may be classed as constitutional, the high ground of grand constitutional theory may be overtaken by political priorities. We would argue that the normal method of making primary legislation for both creating fixed terms for, and reducing the number of constituencies for the Westminster Parliament, should not have been regarded as simple matter of housekeeping for Westminster alone to determine. These changes raised issues affecting the devolved institutions, yet the approach adopted reflected that of a sole legislature in a unitary state. Indeed one may speculate as to whether those who conceived the policy to reduce Westminster constituencies were aware of its implications for the devolved institutions. Similarly, while there was a referendum on the issue of AV voting for the House of Commons, this too was a significant constitutional proposal which needed time, but political reasons dictated it was part of the deal between the partners in the Coalition Government which required this change to be in place before the next election.

8. To sum up on the case for establishing a Constitutional Convention, while they are normally used to create or revise constitutions, we argue that since such a project is unlikely, the institution and its methodology could be tested on a different subject. The choice of an appropriate topic could be difficult in that there are problems in securing agreement that issues are (a) constitutional and (b) they should be treated in manner that reflects and respects that theoretical classification by dealing with them in special, more lengthy procedures. We argue that House of Lords reform does not suffer from the difficulties just outlined but possesses characteristics which make it a highly suitable topic for an experimental Constitutional Convention in which the Union as a whole perspective could be considered.

9. It may of course be the case that the Committee is considering the creation of a Constitutional Convention to address issues other than those we highlight above. The proposed referendum on Scottish independence might, for example, require a Constitutional Convention not to prepare for the referendum, but rather to deal with its consequences, whatever they may be. A vote for Scottish independence would have significant implications for the remaining parts of the UK, while a No vote might lead to an enhanced campaign for a greater degree of devolution of power to Scotland within the existing asymmetric settlement; the so called “devo max” option. It could be argued that devo max would be a matter first for Scotland, in so far as it would need to decide how much further power to request be devolved, with Westminster then to determine whether

¹⁴ *Royal Commission on Reform of the House of Lords, A House for the Future*, (Cm. 4534, 2000).

¹⁵ *Modernising Parliament—Reforming the House of Lords* (Cm. 4183, 1999), *House of Lords, Completing the Reform, A Government White Paper*, (Cm. 5291, 2001), *the House of Lords: Reform* (Cm 7027, 2007).

¹⁶ Public Administration Select Committee, *The Second Chamber—Continuing the Reform* (HC 494 of 2001–02, Joint Committee on House of Lords Reform, *House of Lords Reform: First Steps*, HL 151, HC 1109 of 2002–03), Joint Committee on Conventions, *Conventions of the UK Parliament* (HL265/HC1212 of 2005–06).

¹⁷ Joint Committee on the Draft House of Lords Reform Bill, *Draft House of Lords Reform Bill* (HL284/HC1313 of 2010–12).

to accept this, and legislate for it. But regardless of the outcome of such negotiations, there would necessarily be important implications for the other parts of the UK that might be appropriately considered in a Constitutional Convention.

10. That it is unclear precisely what task or tasks the Committee envisages a Constitutional Convention undertaking does not undermine our broad support for such an initiative. Yet it would be critical to know what the remit of a Constitutional Convention would most likely be to offer an unqualified endorsement of its establishment. A clear understanding of its purpose, and whether the Constitutional Convention would be convened to consider specific issues in relative isolation, or a range of overlapping constitutional reforms, would also be necessary to recommend the most appropriate methodology which could be employed. It is to this matter which we now turn.

COMPOSITION AND WORKING METHODS

11. The composition and working methods of a Constitutional Convention for the UK would depend to some extent on what issues it was convened to consider, as noted above, but also the timescale for completion, funding available, and the planned consequences of its proposals or recommendations. Nevertheless, some general observations can be made.

12. First, in our view the Convention should be comprised of a representative sample of members of the public, chosen at random from, for example, the electoral role. All constituent nations of the UK would obviously need to be afforded adequate representation, as would the various regions within Scotland, Northern Ireland, Wales and England. To give the Convention optimal legitimacy and its proposals maximum weight, the members of the public chosen should decisively determine the content of the recommendations to be taken forward. There is no reason that such decisions should not be made on a simple majoritarian basis; a requirement of consensus would impose too high a threshold for practical agreement.

13. Second, the members of the Convention chosen at random from the general public should be offered advice and guidance by an appropriate range of constitutional experts, offering a variety of opinions as to the desirability, or lack thereof, of the reform(s) to be considered. If the Convention is to consider a number of overlapping constitutional issues, and do so over a significant period of time, the members of the Convention should have the power to request to hear from any group or individual whose work or experience they consider would be relevant and/or useful to their deliberations. Written submissions from any interested parties should also be invited for the Convention's consideration.

14. Third, representatives of the main political parties should be afforded the opportunity to make representations, in person and/or in writing, to the members of the Convention.

15. Fourth, transparency throughout the period of the Convention's deliberations would be absolutely essential to ensure maximum public confidence in the ultimate recommendations made. All documents and evidence considered by the Convention should be published on a dedicated website, with members of the public able to offer comments on this material, and these views directly fed back to the members of the Convention. Social media platforms should also be utilised to maximise public engagement with the Convention. High level transparency would be critical to ensure that the work of the Convention could, so far as is possible in relation to constitutional reform, capture the attention of the general public. Constitutional change is all too often presented as something which is remote from, and uninteresting to, ordinary citizens. A genuinely democratic reform methodology of the kind we envisage could substantially contribute to the rehabilitation of constitutional change in the UK. If taken seriously, and promoted as a significant event in British political history, a UK Constitutional Convention could begin the process of transferring ownership of the constitution from the political class to citizens, challenging the fact that, as Rodney Brazier has noted, "[t]here is no British culture which regards the constitution as belonging to everyone, rather than just to the Government of the day".¹⁸

16. Fifth, it would be necessary for a referendum to be held to confirm the Convention's proposals prior to legislation being enacted to effect any substantial recommended reforms. In a relatively short space of time it has become widely accepted, if not yet conventional, that significant constitutional changes ought to be put to the people at a referendum before they can be given effect. The plebiscites held in the modern era in Scotland and Wales prior to devolution, in the North East of England rejecting a regional assembly, and in the UK as a whole on a new voting system for elections to the House of Commons, along with the guarantee contained in section 1 of the Northern Ireland Act 1998, and the extensive 'referendum locks' contained in the European Union Act 2011, have established the referendum as a critical tool in the politics of UK constitutional reform. With a referendum on Scottish independence scheduled to take place before the end of 2014, and the prospect of a second national referendum on continued membership of the EU after the next general election failing to dissipate, it would be unimaginable that significant reform to the structure of the British state or constitution could occur now or in the future without popular approval.

17. As the Committee will be aware, a number of precedents can be cited demonstrating the use of the kind of sophisticated, democratic constitutional reform methodology which we believe would be appropriately employed in the context of a UK Constitutional Convention. In particular, the Citizens' Assemblies established

¹⁸ R Brazier, "New Labour, New Constitution?" (1998) 49 *Northern Ireland Legal Quarterly* 1–22, 7.

in Canada to consider electoral reform at a provincial level, in British Columbia in 2004 and Ontario in 2006, are instructive because, in contrast with the Dutch Civic Forum convened in 2006 along similar lines, a commitment was made in advance for the assemblies' recommendations to be put to a referendum.¹⁹

18. A UK Constitutional Convention could be convened in the much the same way, even if it were to consider a broader range of constitutional issues; for as Graham Smith notes, "Citizens" Assemblies point to the possibility that mini-publics could play a more legitimate and formalised role in decision-making processes on controversial political and constitutional issues.²⁰ Indeed, in Iceland a group of citizens chosen to form a Constitutional Council, after the election of the very same delegates to a Constitutional Assembly had been invalidated on technical grounds by the Icelandic Supreme Court, have produced a draft for a revised constitution which will be put to a national referendum by October 2012.²¹ It is therefore possible for even the most ambitious programmes of constitutional reform to be pursued using a citizen-led Convention, and the democratic benefits of such an approach would, in our view, outweigh any logistical difficulties that might be encountered.

CONCLUSION

19. We welcome the proposal that a Constitutional Convention be established in the UK. We have attempted to identify some of the constitutional issues such a Convention might usefully be employed to address, highlighting House of Lords reform as an area in which such new methodology could be appropriately experimented with, especially if the present government proposals for reform of the upper house fail. Yet it might also be the case that a Constitutional Convention is convened to tackle broader, overlapping constitutional reforms, although whether the political will exists to transfer power over such fundamental issues away from Westminster is far from clear. If a Constitutional Convention for the UK were to be instituted, we would encourage the Committee to draw on the recent experiments with deliberative and direct democratic methods noted above, and recommend a citizen-led Convention which would seek to enhance public engagement with, and control over, UK constitutional reform.

June 2012

Written evidence submitted by Iain McLean, Oxford University

A CONSTITUTIONAL CONVENTION

1. My study of successful constitutional conventions (USA 1787–91; Australia 1891–1900; Scotland 1989–95) suggests that the following are required:

- (a) an urgent current problem;
- (b) a shared local constitutional understanding; and
- (c) popular ratification.

2. The US Constitution was ratified according to the rules laid down in the document itself, which required nine of the thirteen states to ratify it before it came into force. Several of the ratifying states wished to make their ratification conditional on adding a bill of rights to protect certain individual rights from political interference. In the first Congress twelve such articles were proposed. Ten of them were ratified, and now form the first ten amendments to the US Constitution, generally known as the "Bill of Rights".

3. The Australian Constitution draft produced by the 1897–98 Constitutional Convention was ratified by all the states except Western Australia. It was then presented to the UK Parliament, which agreed to enact it as the *Commonwealth of Australia Constitution Act 1900* c 12. However, at the request of Colonial Secretary Joseph Chamberlain, the UK Parliament added a clause (Section 74) about appeals from the Australian courts to the Judicial Committee of the Privy Council. In practice this clause was a dead letter, but the Australian constitution was not fully patriated until the *Australia Act 1986*, which the Australian Commonwealth and UK Parliaments passed in identical form. It finally removed scope for appeals from the Australian courts to a court in the UK.

4. Unlike the previous two examples, the Scottish Constitutional Convention was a private body, which two of Scotland's four main political parties declined to support. Nevertheless, it may be judged to have been a great success, to the degree that the Scotland Act 1998 followed its recommendations very closely. The Act followed the 1997 referendum, in which the people supported the main features of the Constitutional Convention's plan. The generally admired features of the Scottish Parliament may fairly be traced back to the work of the Constitutional Convention. See the written evidence from Canon Wright tabled on May 24.

¹⁹ On which see eg G Smith, *Democratic Innovations: Designing Institutions for Citizen Participation* (CUP: 2009), Ch 3. The website of the Ontario Citizens' Assembly is still available at: <http://www.citizensassembly.gov.on.ca/>.

²⁰ Smith, *Democratic Innovations*, 110.

²¹ "Referendum to Be Held on Icelandic Constitution", *Iceland Review Online* (25/5/2012), available at: http://www.icelandreview.com/icelandreview/daily_news/Referendum_to_Be_Held_on_Icelandic_Constitution_0_390328.news.aspx. The website of the Icelandic Constitutional Council is available at: <http://stjornlagarad.is/english/>.

5. The main problem for a proposed UK Constitutional Convention is that nobody in England, representing 85% of the UK population, seems to feel much urgency about it. Both the plan to offer elected regional assemblies (in 2004) and elected mayors (in 2012) have fallen victim to hostility and apathy.

6. It is true that there is concern in England about some constitutional issues, including the “West Lothian Question” and the status of EU and ECHR law in the UK, but these are not salient issues for most voters.

7. Nevertheless constitutional issues cannot be avoided in the current Parliament, as the outcome of the 2014 referendum in Scotland will have knock-on implications for the rest of the UK, whichever way the vote goes. Indeed the Scotland Act 2012 already does, but very few people have started to think about them.

8. House of Lords reform is obviously a constitutional issue. If defeated in this Parliament, the issues that led all three major parties to propose it in their 2010 manifestoes will not have gone away. In particular, the present House is manifestly unfit for purpose, being grossly oversized and getting bigger, as successive Prime Ministers attempt to redress its political balance every time there is a change of government. This means not only that the House keeps on getting bigger, but that most new peers are political appointees. Should an incoming Prime Minister decide not only to rebalance the unreformed House but also to make more non-political than political appointments, the house will balloon even faster.

9. The role of bishops will become increasingly anomalous. New social issues including discussions of civil same-sex marriage and the eligibility of women to become bishops of the Church of England will make it increasingly clear that the bishops in the Lords cannot speak for the whole of religious opinion in England, let alone for the whole of ethical opinion. The Scottish Government’s consultation on civil (and possibly religious) same sex marriage in Scotland will also draw attention to the 300-year old anomaly that the bishops cannot speak for religious (or any other) opinion in Scotland, Wales, or Northern Ireland.

10. Therefore there is plenty for a UK Constitutional Convention to discuss. But an elected convention is probably the wrong road to take. The US Constitutional Convention delegations were nominated by the state legislatures, and the draft constitution was ratified in either those legislatures or in elected state ratifying conventions. The second (1897–98) Australian Constitutional Convention was popularly elected, and its draft constitution was ratified by five of the six states. There is no realistic prospect of anything similar happening in the UK.

11. Therefore the route I recommend is either a Royal Commission or a Speaker’s Conference with a clearly defined agenda, to be supported by a Citizens’ Convention of the kind trialled by the Ministry of Justice in 2007 (described in *The Existing Constitution* at p.22), and recently used to discuss electoral reform in both British Columbia and Ontario.

12. I prefer a Royal Commission to a Speaker’s Conference because Parliament itself is one of the bodies that must be scrutinised, and the scrutiniser should be independent of Parliament. To ensure “buy-in” from the Government and potential alternative governments, I am content that the political parties should be able to nominate members with two provisos: (i) All their nominees, however, should be independently vetted by the Committee on Standards of Public Life or another suitable regulator of appointments. It should be clear that they are not to act as delegates from their parties; (ii) parties with a stake in the future constitution of the UK include not only the Labour, Conservative and Liberal Democrat parties, but also the nationalist parties in Wales, Scotland, and Northern Ireland, the unionist parties in Northern Ireland, the Green Party, and UKIP.

13. To have all of these make nominations to the Royal Commission would overweight it with party politicians. Nevertheless, the Commission must keep in mind the wide range of constitutional opinion in the UK outside the Commons and Lords as presently constituted.

14. The last Royal Commission on the Constitution (Crowther/Kilbrandon, appointed in 1969 and reporting in 1973) was hampered by seriously unfocused terms of reference. That is widely believed to have been a deliberate ploy by PM Harold Wilson in 1969: to push the difficult issues relating to Scottish devolution into the long grass and avoid having to take a position in the pending 1970 General Election.

15. Nevertheless, Kilbrandon commissioned some valuable research. Any new Royal Commission should have at least as generous a research budget as Kilbrandon’s.

16. The terms of reference of the new Royal Commission could focus on:

- (a) how constitutional legislation is to be defined;
- (b) whether constitutional legislation should be entrenched;
- (c) to what extent EU law and/or ECHR law may be used to override Acts of Parliament or executive actions; and
- (d) if asymmetric devolution is to continue, how many MPs should sit from the devolved territories, with what speaking and voting powers.

17. If the current Government’s plans for Lords reform should fail, then either the same Royal Commission or a different one should examine the powers and composition of the Upper House. That body should also not be a Speaker’s Conference as it must be independent of Parliament; but, again, it must have political party buy-in.

18. There is now experience from the UK and Canada on how to run a representative Citizen's assembly to advise on these matters. There is also considerable academic understanding. The most authoritative academic body on these matters is currently the Center for Deliberative Democracy at Stanford University. It should be consulted.

19. Both the British Academy and the Royal Society of Edinburgh have policy units specialising in UK constitutional matters which are entirely non-partisan and would be suitable bodies to help commission research. There are well-regarded research centres at Kings College London, University College, London, and Oxford University among others. There are academic research centres focused on devolution in the leading universities of Scotland, Wales, and Northern Ireland.

June 2012

Written evidence submitted by Leanne Wood AM, Leader of Plaid Cymru

1. Many Thanks for your letter dated 3 July inviting me to give formal oral evidence on 12 July. Unfortunately I am unable to attend on 12 July due to prior commitments. However I am very keen to take the opportunity to give formal oral evidence to the Committee on this matter which is of utmost importance to Wales.

2. In order to give a broad outline of the evidence I would like to give, here is a summary of the key points that should be considered in my view. Existing political structures are in crisis as trust in our political institutions falls to unprecedented low levels. There are proposals for constitutional conventions—eg in Ireland, for the UK and the EU—reflecting this crisis in the political system, and the failure of the political class to provide real leadership. An illustration of these issues is the continued wrangling over reform of the House of Lords after a century of debate. Constitutional conventions which are genuinely inclusive are valuable opportunities to allow broad public participation in constitutional reform. In principle, Plaid Cymru believes that the idea of a convention looking at evolving relationships in these islands and in Europe is positive given the need for radical change. However, it is imperative that they are “open source” constitutional conventions, like the recent one in Iceland, with a real role for the ordinary citizens in suggesting how we reshape our democracy. Timing is clearly an issue: a UK constitutional convention is not possible before the Scottish independence referendum, as it is unclear whether the UK as currently constituted will continue to exist. A post-referendum constitutional process of some description will be necessary either to discuss the arrangements for a successor state or the UK-wide implications of Scottish devo-max.

3. As such I am happy to support the idea of a broad-ranging convention that will have as its goal the formulation of a treaty or a written constitution setting out the arrangements between the constituent nations.

4. I would be happy to travel to London to meet the Committee in Westminster. In addition to this, while I am in London I would also be happy to meet with you to discuss this and other matters on a more informal basis.

5. My office would be pleased to assist you in arranging a mutually convenient date and time for me to appear before the committee.

July 2012

Written evidence submitted by Kirsty Williams AM, Leader of the Welsh Liberal Democrats

INTRODUCTION

1. We welcome the opportunity to provide evidence to the Political and Constitutional Reform Committee. We believe that the experience of devolution in Wales can provide a unique perspective on the constitutional challenges facing the UK. It also has a record of establishing constitutional inquiries that have developed a broad consensus of support, although with varying success of implementation.

WHY WE NEED A CONSTITUTIONAL CONVENTION

2. The UK constitution is rapidly changing. The introduction of devolution in 1999, the passing of the Human Rights Act, the creation of a Supreme Court and the current proposal for the democratisation of the House of Lords mean that the UK's constitution will have changed rapidly since the start of the 21st Century.

3. At the same time, political disengagement has increased. Not only is turnout decreasing, there is a wide disparity between turnout amongst older generations and lower generations. This suggests a much wider apathy amongst younger people than on average and could create a serious challenge for democratic institutions in the future. Likewise, election campaigning has become increasingly centred on a smaller number of target seats which are not representative of the wishes of voters across the UK.

4. Welsh Liberal Democrats have previously proposed a constitutional convention. Our manifesto for the 2010 UK General Election contained a commitment to “Introduce a written constitution. We would give people the power to determine this constitution in a citizen's convention, subject to final approval in a referendum.”

5. In Wales, we have also supported similar projects to develop a consensus on constitutional reform in Wales. That is why, in government as part of a Labour and Liberal Democrat coalition during the first term of the National Assembly, we established the cross-party and cross-society Richard Commission which examined the powers and electoral arrangements of the National Assembly for Wales. Likewise, the Welsh Liberal Democrats were instrumental in securing the establishment of the Silk Commission, which is continuing to explore the potential for increasing the financial and legal powers of the National Assembly.

6. However, we are aware that these recent developments only look at the constitutional future of Wales, rather than the UK as a whole. Given that the nature of the constitution of the UK has changed over the last few decades this UK-wide review is necessary but is also given a new impetus by the forthcoming referendum on Scottish independence.

7. The Welsh Liberal Democrats therefore consider it appropriate that a UK-wide constitutional convention should be established. However, this constitution would need to have some form of formal legal footing. The Richard Commission developed proposals received widespread political and societal support for its proposals to enhance the powers of the Assembly and reform its composition. However, the Labour UK Government failed to implement all of its proposals; most notably stalling on the introduction of law-making powers and on failing to reform the way the National Assembly was elected.

8. We also believe that there is likely to be the need for some form of representation from the political parties on the convention to ensure that there is wide political buy-in into the proposals, so that they enjoy political consensus and that the settlement will substantially endure beyond the next change of government.

WHAT THIS CONVENTION SHOULD EXAMINE

9. It is important that any constitutional convention should seek to go beyond merely codifying the changes to the British constitution that have occurred in recent years, although the convention should look at the best way to accommodate these changes into any convention. From the point of view of the Welsh Liberal Democrats, we consider it vital that the convention looks at the following issues:

The nations of the UK:

10. Perhaps the biggest individual change to the British constitution has been the advent of devolution, which was the most wide-ranging reform of the old unitary British state. However, the pace of devolution has not been consistent across the UK, with the Scottish Parliament, Northern Ireland Assembly and National Assembly for Wales all having significantly different powers. Likewise, devolution in England has only been achieved with the establishment of the Greater London Authority, and has been rejected by voters in the north-east of England.

11. It is therefore essential that any convention establishes a durable settlement that provides not just for the existence of the devolved Parliaments but makes it possible for them to accrue greater areas of responsibility, especially over financial powers.

12. The unsustainability of the existing settlement is partly however a result of the precariousness of the English political settlement and the associated problems of the West Lothian question. The solution to this must be a political priority for the convention, and it must make it a key part of its work pattern. Ideally, the convention would be able to determine this through its English members, rather than in a plenary session including all members and for how it incorporates the outcome of the McKay Commission into the West Lothian Commission into its work.

13. Finally, we believe it is essential that ongoing programmes of political reform are not delayed should any constitutional convention be established. For example, we would strongly oppose any moves to delay implementation of the recommendations of the Silk Commission while another convention (and subsequent legislation) was developed. We believe that the recommendations of the Silk Commission have the potential to confer additional competencies on the National Assembly that will enable it to improve the lives of the people of Wales and these powers should be conferred as soon as possible.

Federalism:

14. As well as ensuring that devolution is accounted for in any new constitution, the convention must examine the implications for this at a UK level. We have long supported a federal United Kingdom, where significant power is invested in the constituent units and their relationship is set out in a federal constitution. We believe that the consequence of this reform of the unitary state would necessitate a series of changes to support this new framework. Central to this would be the issue of what powers would remain reserved to the UK Government and how the various devolved governments would be funded (including how taxes would be levied.) This would need to be a priority for the convention.

Fairness in elections to political institutions:

15. The Welsh Liberal Democrats have long supported a fairer electoral system for electing political institutions. Although the system that elects the National Assembly (the additional member system) is not our

preferred system (the single transferable vote), we believe that having an electoral system that reflects the choices of the electorate has ensured the credibility of the National Assembly and developed a more consensual approach to policy-making.

16. We believe that a considerable amount of the disengagement in recent years is a result of two flaws in the current electoral system. The first is that the largest two parties have retained a considerable share of Parliamentary representation on a small and decreasing percentage of the vote, leaving the increasing number of voters who choose to vote for other parties lacking representation. The second is that the current electoral system forces parties to concentrate on the political issues of voters in target seats, whose political issues are not representative of the nation as a whole. This has led to disengagement amongst voters who feel their political issues are not addressed by the major political parties.

17. We note that the referendum on the alternative vote in 2011 was an election on a proportional electoral system and that, as a result, it cannot be interpreted as a decision on a truly proportional electoral system.

18. We believe that the Sunderland Commission, which looked at the electoral system used for local councils, undertaken in the first term of the National Assembly and looking at the system for electing local government in Wales, demonstrated that a broad consensus can be built behind the single transferable vote as an electoral system. As a consequence, the convention should examine the electoral system for the House of Commons.

Civil liberties:

19. Finally, most constitutions include a bill of rights that confer specific liberties and rights on citizens. Currently, this role is performed by the Human Rights Act, which provides a set of criteria against which the courts are able to judge legislation. We supported the introduction of the Human Rights Act and believe that any reforms to it must only strengthen, rather than weaken, it. However, the convention should consider whether the implementation of the Human Rights Act would be best incorporated into the constitution (as we would support) or remain as standard legislation.

CONCLUSION

20. A constitutional convention would provide an opportunity to establish a link between the political elite and the population at large. This is important given the recent constitutional changes that have reformed some parts of the old, unitary-style British state. There has been an (unrelated) disengagement with politics more generally, particularly amongst the young, which would also benefit from a broadly-based, consensual review of the way our political institutions are constituted.

July 2012

Written evidence submitted by James Ware

IS THERE A CASE FOR ESTABLISHING A CONSTITUTIONAL CONVENTION FOR THE UNITED KINGDOM?

1. Yes, provided that the following are included within the codified constitution:
 - (i) A reaffirmation referendum of the status of the British Monarchy within the mainland and crown dependant territories.
 - (ii) Separately in Northern Ireland and the Irish Republic a referendum on whether reunification as part of joint membership of the Commonwealth as a parliamentary republic²² is desired passed through the UK Parliament and Dail and agreed through the Council of the Isles and British Irish Council. This is in case the relevant jurisdictions wish to reunify or Unionism wishes to look South and North West to both its own Ireland and Scotland, to quote the views of the Welsh First Minister. This is the tenant of modern Irish Tory and Unionism.

That would require the Royal Commission for the monarchies and peers input to also authorise it on the advice of the Queen in Council.²³ I am unsure as to whether her peers; as opposed to members of the House of Lords since the 1999 and 2005–10 parliaments reforms have a role to play in that other than to make submissions to the parliament based predecessor and to make cases through Scots civil law direct to the Supreme Court or through the royal courts of Justice.

That way the contentious, us and them debate would be avoided and the Constitutional doctrine of a legislative based and accountable UK executive and ceremonial head of state who is also head of church could be continued within the Commonwealth until there is full separation of church and state, based on legislative mandate and agreed with the Synod of the CofE.
 - (iii) Parity for England with its own assembly/parliament equal to Scotland and Wales.
 - (iv) Regional and National grand committees in the reformed House of Lords/Senate so as to allow debate of planning to consider factors, keep the old peers in the Lords library active should they

²² Pakistan, India, Sri Lanka, and African states such as post Apartheid South Africa and Nigeria have similar constitutions. Where territories wish to remain separate or separate there are two examples Sudan and Israel/Palestine.

²³ The Council also has judicial function for other commonwealth jurisdictions, see exhibition in their and Supreme courts building basement.

wish through giving evidence and also allow a right of recall to MEPs by making them swear an oath of allegiance to the sovereign legislature and advise the Senate as the Commons is the primary law making body under the current governments reform proposals in keeping with the British constitution.

IF THERE WERE TO BE A CONSTITUTIONAL CONVENTION...

(a) *On what basis should it be established?*

2. Agree with Welsh First Minister in his unlock democracy speech²⁴ that the convention should be of and by the people through Parliament as royal commissions are bogged down by which titled individual should chair and which bigwigs skew the end result unless there is clear direction from Parliament.

(b) *What would be its legal status?*

3. Enacted by commons and lords with royal assent so as to keep the monarchy active and engaging with said process as they have to live by the rules agreed within the Kingdom. This would give it a sound legal footing and allow its recommendations to be more speedily enacted.

(c) *Could it proceed on a more informal footing?*

4. As a lobbying group like Canon Kenyon's Scottish Convention it could but to what end and would its reports and findings be considered credible or ignored by a Conservative/Tory government.

July 2012

Written evidence submitted by the Law Society of Scotland

1. The Law Society of Scotland's Constitutional Law Sub-Committee has considered the terms of the inquiry into whether or not there should be a constitutional convention for the UK.

2. The Sub-Committee agrees that the UK constitution would benefit from a convention which could provide a forum for debate about the type of constitution which the UK has and what changes may be made to it. Any convention considering this issue should be broadly based encompassing representation from not only the political parties and organisations such as the trades unions but also from civic society generally. It should also be properly resourced and funded so that it can undertake the requisite research and provide materials to its participants for informed debate on the issues.

3. However, the Constitutional Law Sub-Committee is of the view that this debate is premature at the moment.

4. Negotiations are ongoing as to the content and nature of the order under Section 30 of the Scotland Act 1998 which is proposed to give powers to the Scottish Parliament to conduct a referendum on Scottish independence during 2014. At the very least, a constitutional convention should only be promoted after the outcome of the referendum is known. At that point, the scope and nature of the convention would be clear and more readily identifiable. The Sub-Committee recommends therefore that this inquiry be postponed until after the outcome of the independence referendum in 2014.

September 2012

Written evidence submitted by Esther A Robertson

1. The UK is coming to a crossroads with the prospect of the referendum on independence for Scotland in 2014. If Scotland were to vote in favour, this would create perhaps the biggest constitutional upheaval the UK has ever seen. For this reason, I believe that there is an urgent need for a public debate about the potential implications, not just for Scotland but for the whole of the UK. A Constitutional Convention would be one method of approaching this but there may be others. With less than two years till the referendum, time is short and experience would suggest that a Convention would take some time to be established. The key issue for me is that the debate is established urgently and in a form that engages with the widest possible audience.

2. Having had a long standing commitment to securing a Scottish Parliament, I was privileged to be appointed as the Coordinator of the Scottish Constitutional Convention and served from 1994 till 1997. I helped establish Scotland Forward, the all-party/no party referendum campaign organisation and was then invited by the late Donald Dewar MP, then Secretary of State for Scotland, to join the Consultative Steering Group which drew up the Standing Orders for the Parliament. I continue to have a keen interest in the evolving UK constitution.

3. In the 1980s and 90s, the late John Smith QC MP regularly referred to the task of securing a parliament for Scotland as "unfinished business" and the "settled will of the Scottish people". The establishment of our

²⁴ 12/07/2012 Committee Room 10, House of Commons.

Parliament in 1999, which he sadly did not live to see, concluded that business, and the Parliament has quickly become an established part of Scottish life and governance.

4. It also formed part of a programme of constitutional reform across the UK by the 1997 incoming Labour Government. This was the most extensive ever seen in the UK. That programme included asymmetric devolution of power to Scotland, Wales and N Ireland. It was, however, neither comprehensive nor holistic. The reform of the House of Lords remains incomplete and reform of the House of Commons, to take account of changes in Europe and devolution within the UK, has not featured in any significant way.

5. Donald Dewar MP, as Scotland's inaugural First Minister, expressed a widely held view that devolution was a process not an event. This has been proven in many ways over the last 13 years, not just in Scotland but in Wales and N Ireland too. The election of a majority SNP government in 2011 has put the issue of Scottish independence firmly on the agenda and we now face the prospect of a referendum in 2014, less than two years from now.

6. Like many people in Scotland, I am watching the debate about the referendum with real concern as it polarises into two camps—the “yes” and the “no” camps. The Yes campaign is broadly based although led by the SNP Government. The “No” Campaign is likewise broadly based and entitled “Better Together”.

7. Many people I talk to have real issues that concern them as they try to decide how they will vote in 2014 and feel that these are not being properly addressed by either of the campaigns so far. Some have questions about policy positions which are more appropriately questions for elections to a future Scottish government. Many however have legitimate questions around constitutional issues such as the monarchy, currency, membership of the EU, foreign affairs and defence in an independent Scotland as well as about the future position of a parliament within the UK.

8. Many people find it less than helpful to be told that we should decide how to vote in 2014, and, if we vote to stay within the UK, we can then have a discussion about what the relationship with Westminster might be. For many of us, this has serious echoes of 1979 when the Conservative opposition urged us to vote against the proposed Assembly as they would deliver something better.

9. I strongly believe that this issue needs to be addressed as a matter of urgency so that the people of Scotland can make an informed decision about whether they want to vote for Scotland to become an independent state—a decision which they are entitled to make—but which would have serious implications for the remainder of the UK.

10. My major concern is the absence of debate across the UK about whether we believe we really are “better together”. The sense that many of us have in Scotland is that Wales and N Ireland have begun to consider that question and what the implications would be for them should Scotland vote “yes” in 2014. That debate seems to be missing in England for reasons which are perhaps understandable. This makes the Committee inquiry all the more welcome and timely.

11. England has been governed by the House of Commons since long before 1707 and I suspect that the Union of Parliaments made little difference to the people of England. In many ways, the establishment of the three devolved institutions post 1997 likewise made little difference, other than to raise debate about the West Lothian Question and the Barnett formula.

12. There is often a sense in Scotland that the people of England see the continuing debate about Scotland as an irritation now that we have our own Parliament and that they would be happy to see us leave the UK. What is missing is an understanding that there would be no UK and that things would change quite significantly for all of us.

13. I believe there is therefore a place for a structure like a UK Constitutional Convention to be established and take forward the debate but that we cannot wait for this. In the absence of any significant action from civic society, it is for the UK Parliament in the first instance, perhaps in the form of this Select Committee, to continue the process that this inquiry has started.

14. On the question of the best structure or process, the Scottish Constitutional Convention is the only model of which I have any detailed knowledge. I believe it has much to commend it, particularly given that it addressed the point above about public involvement.

15. The SCC membership included the two major parties in favour of devolution—Labour and the Lib Dems—as well as some of the smaller parties. More significantly, the origins of the Convention came from civic Scotland, driven by the Campaign for a Scottish Parliament's Claim of Right Committee. This ensured that civic Scotland continued to play a key role in the Convention. Key members of the Convention included the STUC, the churches and women's groups. This in itself ensured a degree of public legitimacy. In addition, the Preparing for Change programme for which I was responsible reached out to sectors and groups across Scotland to broaden understanding and extend the debate beyond politicians and the “chattering classes”.

16. In the years since the Scottish Parliament was established, processes and techniques for engaging the public have become more innovative and sophisticated and include large group processes such as Open Space which can reach hundreds of people at a time. I do not underestimate the challenges of organising a public

debate across the UK with 60 million people compared to the relative scale of Scotland but I believe that this is a challenge that needs to be met head on.

17. Although opinion polls in Scotland currently show majority support for staying within the UK, I believe that this should be treated with caution. My own anecdotal evidence, and that of many others I talk to, suggests that a significant percentage are still undecided and that there are also many people who have decided to vote in favour of independence but who are unwilling to say so publicly.

18. Whatever the polls might say, this is likely to be the biggest decision to affect the constitution of the UK in 300 years. If the people of Scotland vote for independence, it will be because they have decided that this is the best option for Scotland. The real danger is that England sleepwalks into the break-up of the UK by underestimating or not understanding the risks.

19. A national debate must be instigated as a matter of urgency to ensure that whatever Scotland decides in 2014, it is with the clearest understanding for everyone in the UK of the likely implications. This cannot be left as an issue for governments or even parliaments. It must be a debate that engages and informs the public.

September 2012

Written evidence submitted by SOLACE

SUB-REGIONAL DEVOLUTION IN ENGLAND

1. With regard to sub-regional devolution in England, the Society's view is that English local authorities have, for too long, been in an inferior position, as regards dependence on central government, to its counterparts in other western democracies. England is now one of the most centralised of all the larger countries in Western Europe.

2. This fact is having real consequences for our ability to deliver the services that people and communities need and expect. There is a wealth of research evidence that backs up this view and which suggests that this centralism is also impacting negatively on efforts to rebalance the economy. This is borne out again in central government's own Localism agenda which appears to recognise that centralisation is not delivering the needs of either central or local government and that a move towards devolution is preferable.

3. The weak constitutional position of English local authorities is being highlighted by devolution to Scotland, Wales and Northern Ireland, and the prospect of independence—or further devolution—to Scotland. At a time when more powers are being devolved to territorial administrations, local authorities in the largest country in the UK remain subject to extensive legal, financial and regulatory constraints.

4. We believe that there is a case for establishing a UK constitutional convention based on the existence of a series of areas of tension and uncertainty in present UK constitutional arrangements. One of the most important of these is the continued piecemeal extension of devolution and its absence from England.

5. The period since the late 1990s has seen a rapid period of constitutional change. However, although there has been radical change, there has been no overall vision or evaluation of the kind of country that these reforms were designed to help build. Each reform seems to have been enacted in isolation without a real idea of how it would impact on the others and there is little clarity about the means by which any future decisions may be made. This, in our view, makes the need for a constitutional convention all the more urgent.

6. As mentioned, extensive legal, financial and regulatory constraints are currently placed on English local authorities. For example, at present, a disproportionately high percentage of local authorities' revenue budget is usually determined by national government.

Case Study

Liverpool's Revenue Expenditure Budget for 2012–13 is £1.333 million. A total of £1.228 million (92%) of this relates to government grants or council tax, which although set locally is tightly restricted by government legislation.

7. This makes the ability of local people to exercise a real, relevant view on what local authorities prioritise and spend more marginalised, and certainly gives local authorities less ability to manage their financial autonomy.

8. Given the current economic climate, it is imperative that local authorities should be allowed to be innovative and creative in working out their own solutions to how they are going to continue to meet demands for services and stimulate local economies. For example, in September 2012, the Government announced a number of measures including the relaxation of planning laws aimed at stimulating local housing markets and local economies. These announcements take very little notice of local authorities' actual needs and are often ineffective or counter-productive. For example, locally we need to release land for development by selling former school sites, a process that is being held up centrally, but which these announcements make no account for. Local Authorities know what is needed locally to stimulate growth, we need more devolution of these decisions to make this happen.

9. Governance at city region level is still inconsistent and occasionally unsatisfactory and some commentators still argue in favour of directly elected city region mayors and the combined authority model. The recent City Deals should be viewed as the start of an ongoing process towards devolution. Although an extremely positive first step, we must recognise that they are the latest in a line of failed attempts, including Local Area Agreements and Multi Area Agreements, to address over centralisation in England. So far City Deals have only delivered a very small shift towards local authorities and we simply can't afford to slip backwards on this again.

10. Local government structures vary significantly in different parts of the country ranging from Metropolitan Authorities, Unitary or Shire Single Tier Authorities to two tier County Council, and District Councils. In addition to the nearly 400 local authorities in England there are some 10,000 parish and town councils. Local Authority expenditure accounts for around 25% of total public spending, providing many of the services that effect daily lives. Clearly a prescriptive 'one fits all' arrangement with central government will not work.

11. In the absence of a National Policy Framework SOLACE believes that a constitutional convention would provide a means by which the different component areas of the UK could consider common issues collectively and yet provide the flexibility for local authorities (either on a sub-regional or individual basis) to develop local agreements and solutions that work in practice locally.

12. The potential responsibility of English sub-regional devolution is considerable but local authorities are most definitely supportive of it and are more than willing to take on that future responsibility, if the prospect is a meaningful one.

THE FORM OF A CONSTITUTIONAL CONVENTION

13. With regard to the forming of a constitutional convention, SOLACE believes that there is a case for establishing a convention for the UK before the referendum on Scottish independence which we understand is likely to take place in 2014.

14. The debate on independence for Scotland will be taking place in a vacuum if it is not linked to broader issues which would affect all people in the UK. The time to have that discussion is before there is any decision on Scottish independence so that an evaluation can take place as to what the links should be if there were no independence and what the shared values would be across the UK. Devolution of powers to Scotland, Wales and N Ireland has already been seen as unequal and destabilising in its consequences and a convention may be timely ahead of further significant changes.

15. We suggest that each sub-regional area across England should put forward one local authority leader or Mayor where present. Each area could also be represented by an MP, and directly elected Mayors, where present, should play a key role.

16. Given the low level of interest in politics generally and in areas and systems with which people are unfamiliar, there is an increased challenge to engage in a new process, the format of which would be unknown and the purpose and outcome of which may not be clear to all. Before embarking on any form of convention, a well crafted public campaign to raise awareness of its purpose and why it would benefit people to engage would seem to be necessary. (This is particularly crucial given the low turnout and outcome of voting for elected Mayors across the board in England).

October 2012

Written evidence submitted by Simon Cramp

1. My name is Simon Cramp and I am someone with a learning disability and have dyslexia and dyspraxia and I am not an expert on the constitution.

2. So in answering the paper you would like us to comment on a number of matters.

3. I suppose a lot is up for discussion and there are commissions that have been set up from government: the McKay and Silk Commissions are two I can think of immediately, and the consultation on parliamentary privilege, for which the consultation period has passed and yet we are still waiting for action on the commitment made by the ex-Leader of the House of Commons about the consultation paper being examined by a joint committee of the House.

4. In terms of the paper you are asking for comments on, yes I think it is a good paper. But this country's credit card is maxed out and we can't afford the basics like providing welfare at reduced amounts.

5. Anyway, I don't think there is the political will to make this happen, leaving aside the fact we can't afford it as a country.

6. I wish I could be more positive.

October 2012

Written evidence submitted by Nicola Sturgeon MSP, Deputy First Minister, Scottish Parliament

1. It was good to meet you when you were in Edinburgh last week and I hope you and your fellow Committee members enjoyed the best that Scottish hospitality has to offer during your stay. I hear that the evidence session on Thursday generated some interesting and diverse opinions and I hope that it proved helpful to the Committee.

2. I undertook to provide written evidence on behalf of Scottish Ministers to the Committee's inquiry into whether there is a need for a constitutional convention for the UK. I have set out that evidence below.

3. It is the firm opinion of the Scottish Government that the future of Scotland is for the Scottish people to determine. Before the Act of Union in 1707, Scotland was both a nation and a state, and within the United Kingdom, sovereignty still lies with the people of Scotland. That principle has its origins in the Declaration of Arbroath of 1320, it was refined by George Buchanan in the late 16th century, and it was restated in Scotland's first Claim of Right in 1689. Three hundred years later, in 1989, a new Claim of Right was proclaimed by the Scottish Constitutional Convention.

4. The Scottish Government has a clear agenda for the future for Scotland—a future that is an independent Scotland. That is why we are holding a referendum on Scotland's future in November 2014. We believe that there is a strong and positive case for independence. That case is based on a simple, but fundamental, premise: The people best placed to take decisions about Scotland's future are the people who choose to live and work in Scotland. Ultimately, independence is the best means by which people in Scotland can shape their own future. It is the best means by which our economy can grow more strongly and sustainably by which we can fulfil our potential and realise our aspirations; and by which we can take our rightful place as a responsible member of the world community.

5. A successful, efficient, confident Scottish Parliament will, in our view, continue to lead to increased demands for independence. People in Scotland have, by and large, liked what the Parliament has done with its existing powers. And as a result, they want more. The Scotland Act 2012 gave further powers to the Scottish Parliament, but it is the view of the Scottish Government that they do not go far enough. The Scottish Government's consultation on the referendum encouraged a wide debate on these issues, involving all of Scotland's political parties, and involving civic Scotland—the organisations and communities which make up the fabric of the community of the realm of Scotland. We will be publishing the results of that consultation shortly.

6. It is my sincere hope that Scotland will vote yes to independence in the referendum in 2014. With a yes vote, we have proposed that the first elections to an independent Scottish Parliament should take place in May 2016.

7. On independence the relations between Scotland and the rest of the United Kingdom would be conducted on an equal footing between two sovereign governments. A strong partnership between Scotland and the UK Government would enable us to work together on areas of mutual interest and advantage. We would require intergovernmental machinery to manage the new relationship and to gain maximum benefit from the partnership. With a positive vote for independence in Scotland, the countries that make up the British Isles will want to discuss the form of this intergovernmental machinery. We can look to positive models such as the British Irish Council, whose purpose is to allow the governments of these islands to discuss issues of shared interest in an environment in which mutual respect is paramount. The Council currently includes the governments of three island groups, three devolved nations and two independent states.

8. In conclusion it is apparent to all that a yes vote in the referendum on independence for Scotland will have constitutional implications for the rest of the UK. The Scottish Government's aim is for independence, and I am clear that, just as it is for the people of Scotland to determine the future of Scotland, it is for the rest of the United Kingdom to determine the future of the rest of the UK. A positive vote for independence will lead to discussions with the other countries of these islands on the makeup of our future relationship, and it would be for the Scottish Government to represent Scotland in those discussions. I hope that this is helpful in setting out the Scottish Government's position.

October 2012

Written evidence submitted by Katie Ghose, Chief Executive, The Electoral Reform Society

1. The Electoral Reform Society was founded in 1884 and has over 100 years of experience and knowledge of democratic processes and institutions. As an independent campaigning organisation working for a better democracy in the UK we believe voters should be at the heart of British politics. The Society works to improve the health of our democracy and to empower and inform voters. <http://www.electoral-reform.org.uk>

2. The Electoral Reform Society welcomes the Committee's inquiry into a constitutional convention for the UK. The Society believes there is a strong case for establishing a vehicle of this type and that now is the right time to be considering it.

3. The UK has undergone a rapid and far-reaching series of constitutional reforms since 1997 but these have been undertaken in isolation lacking any overall holistic view.²⁵ A constitutional convention is one way of examining constitutional issues and other political reforms in the round, rather than on a piecemeal basis.

4. The obvious time to initiate a constitutional convention is after the Scottish independence referendum which must take place by the end of 2014. However there are unresolved political reform issues which would benefit from public deliberation between now and the general election in 2015.

5. We recommend that in addition to any convention that might be triggered by the conclusion of the Scottish referendum, a deliberative process is created from 2013–15 that enables a cross-section of the public to consider a portfolio of specified issues under a theme of “how politics works”. This would provide an opportunity for the process to begin as it means to continue: wide-ranging and bringing the public together with politicians, civil society, academia and other groups with an interest and something to contribute.

6. The Electoral Reform Society believes that a constitutional convention offers a unique opportunity to address a clearly defined portfolio of issues and to bring in a far wider range of people to propose a resolution. *The balance of this Parliament affords a period of up to two years for this work to be done—and for it to play a meaningful role in policy development for manifestos and for government formation following the general election*

GROUNDINGS AND BASIS FOR ESTABLISHING A CONVENTION

Is there a case for establishing a constitutional convention for the UK?

7. The United Kingdom is a proud, stable democracy. Despite this, there are pressing issues of political reform where direction, much less resolution, seems to elude elected politicians. Whether about the composition of the second chamber or the role of money in financing political parties, it seems that the ability of politicians alone to work together to deliver a settlement is hampered by traditional structures. With the effective shelving of the Government’s political and constitutional reform agenda as outlined in the coalition agreement, the public is left with the perception of unmet challenges at Westminster.

8. The forthcoming referendum on Scottish independence, whatever the outcome, will have significant implications for the rest of the union. Should the referendum, to be held in the autumn 2014 return a “no” vote, there will need to be discussion of a future settlement of powers (a form of “devo-max”). What one part of the Union decides cannot but have implications for the rest of the country. A constitutional convention presents an opportunity to bring that debate to the rest of the UK and identify solutions.

9. The approaching referendum has sparked debate in Scotland on a range of constitutional issues. ERS Scotland is helping to facilitate these wider discussions through its “Democracy Max” inquiry on “what makes a good Scottish democracy”. The programme is aimed at creating a non-partisan space where Scottish citizens can debate and discuss the future they want to see (details on page 6).

10. It is important that discussions about the future of our democracy are not held in isolation. A constitutional convention could bring other voices to the debate, particularly for citizens in England who have not previously had the opportunity to be part of the discussion. As Carwyn Jones, First Minister of Wales puts it, “The English voice has yet properly to be heard”.²⁶

11. Whilst devolution is progressing elsewhere, with the exception of the Greater London Authority, England remains highly centralised. Whilst a “no” vote in the North East Regional Assembly referendum in 2004 and a series of “no” votes for elected city mayors this year suggest there is little appetite for more regional tiers of government, the “English question” concerning the devolution of power from London to the English regions remains in need of an answer.

12. Meanwhile, UK voters remain some of the most unrepresented at local level. The UK is well below all other EU states in term of local representatives per number of voters; has larger geographical and population sized municipalities and has small percentages of the population standing to be local representatives.²⁷ The relationship between local government and Whitehall is also an issue to be considered.

13. A related and pressing concern is the future prospect of any reformed House of Lords. The debate on the proposals put forward earlier this year for an elected House of Lords with proportional regional representation raised a number of constitutional questions relating to the role of the House of Lords in the post Scottish referendum Union. A constitutional convention presents an opportunity to resolve once and for all, within the wider context, some of the recurring questions that are blocking long overdue reform of the Upper Chamber.

14. Recent political reforms have been derailed by political disagreement, lost in political trade offs or have failed to win public support. Examples of these are House of Lords reform, boundary changes, elected mayors and the alternative vote referendum. Of the many reforms included in UK government coalition agreement,

²⁵ See: Jeffrey, C, “Devolution in the United Kingdom: Problems of a Piecemeal Approach to Constitutional Change”, *Publius: The Journal of Federalism*, Vol. 39, Iss. 2, 2009.

²⁶ Jones, C “Britain after the Break-up” in *The Guardian*, 1 February, 2012, at: <http://www.guardian.co.uk/commentisfree/2012/feb/01/britain-after-break-up>

²⁷ See <http://reidfoundation.org/wp-content/uploads/2012/04/The-Silent-Crisis1.pdf>

only individual electoral registration remains as an initiative on which substantial progress is being made. Cross-party talks on funding of political parties appears likely to stall, with no side feeling a sense of urgency to produce an enduring solution. Further, there is an impression that parties participate in such processes in order to protect their own position and cause damage to the positions of their opponents.

15. This gives the impression that political and constitutional reform has been conducted in the interests of narrow party political gain instead of the interests of citizens. The problems remain but the solutions never materialise.

16. A constitutional convention provides an opportunity for much needed public participation in these debates. As political parties have reached a stalemate, some form of public deliberation may be the way to move forward with these much needed reforms. The involvement and engagement of citizens might be the only way to break the current logjam.

17. We support a constitutional convention to consider specific issues and post Scottish referendum is sensible timing. But there are immediate issues. We do not want to see public voices ignored on a range of political and constitutional matters as politicians consider these issues for their 2015 manifestos. People are rightly asking where next for political reform. There is room for an exercise in public engagement that starts in the next six months, one that has breadth and credibility. Such momentum would mean that any findings could be a foundation for a future constitutional convention. We believe that would be a sensible use of the balance of this Parliament.

18. Crucially a convention also provides important engagement opportunities. Democratic legitimacy is waning with decreasing turnout at elections and declining trust in our representatives. There is a widespread disconnect between people and formal politics. It is important to understand if our institutions and processes are part of the solution or part of the problem. New types and techniques of engagement may provide opportunities for a better democratic process. We should explore ways to bring representative democracy and deliberative and participatory methods closer together for the mutual benefit of both citizens and representatives.

19. Maximising the potential to create a UK-wide debate and at the same time enhancing public engagement and understanding should be at the heart of any proposal for a convention.

If there were to be a constitutional convention, on what basis should it be established? What would be its legal status, or could it proceed on a more informal footing?

20. A purely informal or advisory convention may fail to achieve the necessary public engagement, legitimacy for the exercise or eventual policy impact. For a convention to gain public support and engagement it must be clear about how its conclusions will be taken forward. A process in which the public felt the decisions were a foregone conclusion or that the outcomes could be derailed by party political disagreement would not achieve popular support.

21. There are a number of ways of bringing the political debate and public debate together. Clearly a convention would need cross-party support from the outset to give it a better chance of achieving change. However, the political reality is that the issues under consideration attract a vast difference in opinion and cross-party agreement may be extremely hard to achieve (unlike the Scottish Constitutional Committee where the parties that did sign up to the Convention shared a broad agreement on its destination—see comments on Scottish experience below). This should be taken into consideration in designing the public/party political interaction in any convention process.

22. It is important that a convention maintains the necessary independence to debate the issues openly and that it has the necessary funds to sustain the process. Should a convention be set up without a formal process for engaging a cross-section of society it risks appealing only to those who are already involved and engaged in these debates. This could damage the credibility of the outcomes.

What lessons could be learned from previous constitutional conventions, in other countries?

23. Conventions and assemblies on constitutional issues have been held in a number of countries. The design and composition of these conventions reflect the unique geographical, historical and political make up of each of these areas. Whilst there are lessons to be drawn, the UK will need a convention suited to its own distinct composition and needs.

EXPERIENCES FROM ABROAD

*British Columbia*²⁸

24. One of the more recent and relevant examples of a citizen convention to draw from is the 2004 British Columbia citizens' assembly on electoral reform.

²⁸ See: Warren, M E and Pearse, H (eds), *Designing Deliberative Democracy: The British Columbia Citizens' Assembly*, New York: Cambridge University Press, 2008

25. The British Columbia citizens' assembly was made up of 160 "semi-randomly" selected citizens. First 100 women and 100 men were selected randomly from each of the 79 electoral districts (from the electoral register). From those responding to the initial letter, 10 were invited to attend a local selection meeting in which it was explained what the process involved. From those willing to participate, a random selection of a man and woman for each electoral district was made. This semi-random process (with elements of random and self-selection) enabled the authorities to create a representative sample whilst also ensuring those selected were willing to participate in the substantial workload.

26. In British Columbia it was possible to stratify the sample of the electoral register by age and sex. In the UK, date of birth and gender are not recorded on the register so further sampling would be required for these and other demographic criteria. This would require the initial invite to be sent to a larger number of citizens.

27. The citizens assembly in British Columbia involved a year of work for its members (all meetings took place at weekends). The secretariat was established and selection took place in 2003. Following the selection phase a learning phase ran from January to April 2004 followed by public hearings in May and June. Submissions were invited until September 2004 after which there was a deliberation phase in which the Assembly discussed and debated what its conclusions should be. The final report was presented to the provincial Attorney-General in December 2004.

28. The Assembly had a permanent secretariat of professional staff to administer the process, convene meetings, provide briefings and facilitate the deliberative work.

29. A website was set up giving information on how the Assembly was proceeding and through which the public could make their own submissions.

*Iceland*²⁹

30. Following the financial crash in 2008 and subsequent "Pots and Pans" revolution, the Icelandic Government established a Constitutional Assembly to write a new constitution (to replace the provisional constitution adopted in 1944).

31. The process advanced in three stages. First Parliament convened a national assembly of 100 people selected randomly from the national register, using stratified sampling to ensure gender, age and regional balance. The national assembly met in October 2010 to discuss the things they would want to see in a new constitution, producing a brief document covering such issues as equal voting rights and public ownership of natural resources.

32. The second step was to appoint a constitutional committee to gather information, provide analysis and propose ideas. The committee was made up of seven professionals from different areas—literature and science as well as law. The committee was required by law to consider the conclusions of the national assembly. They produced a 700 page report containing detail of how the new constitution could be composed including suggested text and analysis of specific issues.

33. The third step was to elect a 25 member Constitutional Council. The members were elected by the Single Transferable Vote from a roster of 523 candidates. The political parties did not field candidates (in part because the two main opposition parties were against the project). The final group was a diverse selection of citizens including a farmer, a priest, a nurse, a philosopher and theatre director as well as lawyers, political scientists and politicians. The Council then set about its task of writing the new constitution. It had just four months. The final bill was agreed by 25 votes to zero.

34. A web-based interface was established for the process with Council meetings broadcast live and all written work posted online for the public to read and comment on. The assembly posted its provisional articles in advance so comments from the public could be factored into the discussions after which revised versions were again posted on the website. The public were encouraged to make submissions. 323 formal proposals were received and discussed and 3,600 comments were posted on the website (Iceland has a population of 320,000 and the world's largest per capita number of internet users (95%)).

35. The Council was advised by lawyers and others both in meetings and in written submissions. Notably, special interest groups (bankers, politicians, farmers, boat owners) were not given special access over and above that accorded to ordinary citizens.

36. The country specific design of such an assembly is well illustrated here. For Iceland, whose constitution project was born out of the absence of effective checks and balances which had led to undue influence accorded to certain groups, it was essential that these groups should not be given special access to the process. In Ireland, by contrast, the recently established constitutional convention proposals have been criticised for not specifically including civil society organisations and relevant stakeholders.

²⁹ See Gylfason, T "From Collapse to Constitution: The Case of Iceland" in *CESifo Working Paper*, June 2012, available online at: www.cesifo-group.de/portal/pls/portal/docs/1/1214953.PDF. Professor Gylfason was a member of the Icelandic Constitutional Convention.

THE UK EXPERIENCE

37. The Scottish Constitutional Convention, which was formed in the wake of the defeat of devolution in the 1979 referendum, brought together members of Scottish civic society, political parties, local authorities, several church leaders and the Scottish Trades Union Congress. It existed to build support around the concept of a Scottish Parliament, but unlike the examples from British Columbia and Iceland, this was a convention formed at grassroots level, in opposition to government policy and campaigning for a change.

38. The Campaign for a Scottish Assembly at the time published “A Claim of Right for Scotland” in 1988, which articulated the need for a constitutional convention and detailed how it could be organised. It also provided three tasks for the convention: design a scheme for a Scottish Assembly; mobilise Scottish opinion to support it; and lobby the UK Government to deliver it.³⁰

39. The Convention began with a gathering in the Church of Scotland Assembly Hall in March 1989, chaired by Canon Kenyon Wright. The leadership then wrote to over 150 organisations within Scotland to invite views upon the constitutional settlement and thoughts on the design of devolution. The second stage of the Convention’s operation was more inward looking, and saw the membership establish six working groups to consider specific elements of the design for a Scottish Assembly, how it would be elected and how to ensure the equal representation of women in the new institution. A second report, entitled “Towards Scotland’s Parliament” was published in 1990, outlining principles for devolution. However, these principles caused clear partisan tensions at the heart of the Convention, particularly on the proposed proportional electoral system and how to ensure women’s representation in the new institution.

40. To deal with these tensions, a Scottish Constitutional Commission was formed by the Convention’s Executive, independent of the Convention, to resolve some of the issues and make recommendations on details pertaining to the proposed Scottish Parliament. This provided forums for debate, and resulted in the publication of two further documents in 1995: “Key Proposals for Scotland’s Parliament” and “Scotland’s Parliament, Scotland’s Right”, which provided clear information on the Convention’s desired devolution scheme. It was this latter publication that set out the basis for the subsequent structure of the Scottish Parliament. So the work of the Commission can be seen in operation today at Holyrood.

Wales

41. The All Wales Convention,³¹ chaired by Sir Emyr Jones Parry, was established by the Welsh Assembly Government as a result of the One Wales Agreement which established the Labour-Plaid Cymru Coalition Government after the 2007 Assembly elections.

42. Conducted over a period of 2 years, the Convention was tasked to: “raise awareness and improve understanding of the current arrangements for devolved governance in Wales and of the provisions of Part 4 of the Government of Wales Act 2006, and their future implications for the governance of Wales; facilitate and stimulate a widespread, thorough and participative consultation at all levels of Welsh society on the issue of primary law-making powers; prepare an analysis of the views expressed and the evidence presented through this process; assess the level of public support for giving the National Assembly for Wales primary law-making powers; and report to the One Wales Government on its findings, with recommendations relevant to the holding of a referendum.”

43. The All Wales Convention convened a programme of external evidence-taking sessions, commissioned social research and opinion polls, and undertook visits (eg town hall meetings, street stands etc) in an attempt to engage the public in the devolution debate. Public meetings were held in all Welsh local authorities and evidence was sought in both written format and through oral evidence gathering sessions.

44. The final report of the All Wales Convention was published in 2009, and recommended that a move to Part IV of the Government of Wales Act 2006 offered a “substantial advantage” over the operation of the system of Legislative Competence Orders which had been established with the 2006 Act. It also suggested that a referendum on the issue was “winnable” but that this could not be guaranteed.

ERS Scotland—Democracy Max³²

45. ERS Scotland this year launched a programme to involve Scottish citizens in a conversation about what makes good democracy. The programme is helping to bring ordinary citizens into the debate about their future outside of the party political discussions and in doing so giving them a voice in the proceedings.

46. To begin the inquiry, ERS Scotland organised a “People’s Gathering” which brought together over 80 delegates from across Scotland with support from the Institute of Governance at Edinburgh University. Delegates gathered in Edinburgh to engage in some radical thinking about Scotland’s democracy. They were grouped around tables with up to eight delegates per table and two facilitators. In the morning session they

³⁰ See: Campaign for a Scottish Assembly, *A Claim of Right for Scotland: Report of the Constitutional Steering Group Presented to the Campaign for a Scottish Assembly*, Edinburgh, The Campaign for a Scottish Assembly, 1988.

³¹ See the All Wales Convention’s website at: <http://allwalesconvention.org>

³² <http://www.electoral-reform.org.uk/democracy-max>

discussed their ideas for Scotland's democratic future and in the afternoon thought about how this might be achieved, or what prevented it from happening.

47. The ideas that came out of the People's Gathering will now form the basis of a sequence of roundtable discussions, which will then seek to distil these ideas into "a vision of a good Scottish democracy", a vision that is informed by the people for whom democracy should serve.

48. Academics, experts, commentators and opinion formers, community activists, campaigners, writers and representatives of Scottish civic society (but no politicians) have been invited to a series of six round tables sessions in three phases. There will be two sessions on each of the following themes: "sovereignty of the people", "defending our democracy" and "how we write the rules".

49. Each roundtable will report to a public event to which the People's Gathering delegates will be invited. There will be regular interim papers which detail the progress of the programme and a final publication next year. The findings of the Peoples Gathering and the results of the subsequent discussions will be published on the ERS website as well as being presented to public meetings.

COMPOSITION

50. If it is to meet the expectations of a 21st century democratic process, the convention itself should be designed to ensure public ownership of the process and outcomes, equality of representation, openness and transparency.

51. The composition of the constitutional convention must enshrine the principle of popular participation. A convention without widespread public participation could not rightly be called a convention and could damage the legitimacy of the outcomes.

52. Whilst direct citizen involvement is the starting point, there should be defined roles and methods of participation for elected representatives, constitutional experts and civil society organisations either through submissions or direct advisory roles. There are a number of different models to consider. The Irish constitutional convention³³ will be two thirds members of the public and one third elected representatives. By contrast the Icelandic process specifically excluded party political representation.

53. It is important that the convention is not dominated by political parties which could make reaching a consensus much harder. Whilst government and party political buy-in is essential, constitutional change has often been a top-down process and it is important now to open this out to wider involvement. The Scottish Constitutional Convention was comprised predominantly of political parties and civil society, and had limited engagement with the wider public. In today's political climate direct citizen involvement is essential.

54. If public participation is left to the fringes of the debate through self-selecting submissions, surveys and public meetings, those responding are likely to come from a much smaller and less representative cross-section of society.

55. One model that might be considered is a citizens' assembly comprising 200–220 members chosen by semi-random selection with inbuilt gender parity and age representation. It will be important to ensure the assembly is at least as large as the 160 member British Columbia assembly. Statistically the larger the sample the more likely it is to be representative, a small sample could not achieve demographic representation. In addition the larger the body, the less likely it is to be dominated by dominant personalities.

56. Representation from each of the nations will need to be built into the selection process. Further, consideration needs to be given to the composition of each individual nation's delegation (particularly given the regional dimension to the issues under consideration). The two member per constituency model used in British Columbia cannot be replicated in the UK due to the number of constituencies. Instead an assembly of between 200–220 could be selected from each of the regions used to elect members of the European Parliament (each region would be allocated three times its number of MEPs (except Northern Ireland)) then divided into smaller groupings with two participants from each. Another model may be to have a series of regional conventions that come together in a "grand convention" so that the convention structure reflects the understanding that over-centralisation is part of the problem.

57. Should a smaller convention be convened and selected by election it will be essential to use a proportional electoral system (such as the Single Transferable Vote used to elect the Icelandic constitution council) to ensure fair representation and diversity.

58. As well as representation on the assembly, providing means for the rest of the public to engage in the process is essential. The examples in British Columbia and Iceland show how new media can be utilised to facilitate wider engagement. Online and social media should be built into the processes enabling a two-way discussion. However, unlike Iceland, the UK does not have exceptionally high rates of internet access—over 7 million people have not accessed the internet in the last year. Therefore other engagement opportunities must also be made available.

³³ The Irish Constitutional Convention will be a one year process and offer citizens the chance to have a say on changes to the constitution. It was scheduled to begin in September 2012 but has not yet commenced.

REMIT AND WORKING METHODS

59. For many, the primary purpose of a constitutional convention is to eventually lead to a written constitution for the UK. However, constitutional overhaul most often follows from total economic or social collapse, a situation the UK is not currently experiencing. In the current climate the most pressing concern is the relationship between the component parts of the Union which itself encompasses a number of related constitutional and political reform issues.

60. Whilst the specific terms of reference should be determined by the convention participants, this broad subject area covers issues such as the distribution of power between each devolved government and the UK Parliament, representation at Westminster for citizens under devolved governments (both in the upper and lower house) and regional and local representation.

61. A clear and specific remit is needed to achieve defined outcomes, however, with any deliberative exercise wider issues will be discussed and this could provide valuable insight into public opinion on a wider set of democratic problems.

62. Deliberative exercises usually enable participants to reach a consensus on issues through debate and revision. However, with a large group, complete consensus is not assured. If the convention were to proceed by majority voting, care would need to be taken that representatives from each of the constituent nations had a voice. A majority from each of the regions might be necessary.

63. The convention should report back to Parliament with recommendations. Political convention requires that any major constitutional change be put to a referendum. Should the convention propose substantial constitutional change a confirmatory referendum would be necessary before being enacted into law.

October 2012

Written evidence submitted by Sir Edward Lister, Chief of Staff and Deputy Mayor for Policing and Planning

1. Thank you for inviting the Mayor of London to provide written evidence to the inquiry the Political and Constitutional Reform Committee is conducting into the possibility of a constitutional convention for the UK. I am responding on the Mayor's behalf.

2. It is clear to the current Mayoralty that a world class city such as London needs to be as self-reliant as possible. This involves national government providing the city's government with the widest possible set of freedoms and flexibilities. We should not have to go cap in hand to national government every time a major need arises in London.

3. I am not entirely sure what a constitutional convention for the UK would look like—no doubt that is at the heart of what your Committee is looking into—but it might well have value in cementing the role played by pan-London government and removing some of the uncertainties that can detract from it functioning as effectively as it should do.

4. As you are aware, the Greater London Authority (GLA) Act dates back to 1999 and has been revised twice in the period since then. In each case the GLA has been given more powers. It would be beneficial to all concerned if we could move away from a piecemeal approach to GLA legislative arrangements and could move towards—with the support of the London boroughs—a settled view of those functions which should operate on a citywide basis.

5. I am confident we could build a consensus around educational excellence and public health campaigns being added to the current Mayoral functions of transport, economic development, housing, Olympic legacy, police and fire.

6. To assist your Committee's deliberations, and by way of background, I am appending a summary of the principal powers and responsibilities which have been awarded to the Mayoralty in three tranches—the GLA Act 1999, the GLA Act 2007 and related reforms, and the Localism Act 2011 and related reforms—over the last thirteen years.

7. The other issue I wanted to bring to your attention is one of finance. There is little point in London being handed a suite of powers if there are no sustainable arrangements for financing Mayoral plans and policies for a growing city.

8. With this in mind, the Mayor has established the London Finance Commission to examine which devolved funding mechanisms would work best in London. For example, one option we are looking at is the possibility of tax revenues arising from stamp duty collected in the capital being devolved to the Mayor.

9. By happy coincidence, those revenues more or less equate to the housing programme budget the Mayor receives annually from DCLG and there would appear to be some logic in some of the proceeds from a buoyant London housing market going to affordable housing initiatives in the capital.

10. The key point is that we establish funding mechanisms and legislative arrangements which will not only stand the test of the time but which also allow the Mayoralty to be bold in creating jobs, building houses and regenerating localities across London.

11. A constitutional convention for the UK could well play a part in achieving these aims.

12. I would be happy to appear in person at your Committee and expand on these initial thoughts, and I am aware officers have been in touch with your Committee to try and find a date when this might be possible.

November 2012

APPENDIX

PRINCIPAL MAYORAL POWERS AND RESPONSIBILITIES

ARISING FROM THE 1999 GLA ACT

- GLA Council Tax precept.
- Public transport fare setting in London.
- Transport for London (TfL) established as an *executive* arm of the GLA, with responsibility for the Tube, the bus network and the capital's main road routes.
- London Development Agency (LDA) established as an *executive* arm of the GLA, with responsibility for economic development and regeneration issues.
- Metropolitan Police Authority (MPA) established as an arms length agency of the GLA with oversight of the Metropolitan Police Service (MPS).
- London Fire & Emergency Planning Authority (LFEPA) established as an arms length agency of the GLA with oversight of the London Fire Brigade (LFB).
- Veto over significant planning decisions handled by London boroughs.
- Production of the London Plan, a strategy setting out a blueprint for the city's development.
- Management of Trafalgar and Parliament Squares.

ARISING FROM THE 2007 GLA ACT AND RELATED REFORMS

- Ability to call in significant planning decisions handled by London boroughs.
- Strategic oversight over housing investment decisions in the capital.
- Establishment of the London Skills & Employment Board (LSEB) and the London Waste & Recycling Board (LWARB).

ARISING FROM THE 2011 LOCALISM ACT AND RELATED REFORMS

- Homes and Communities (HCA) functions in London transferred to the GLA from Whitehall.
- LDA functions transferred to direct GLA control.
- London Legacy Development Corporation (LLDC) established as an executive arm of the GLA to oversee the development of the Olympic Park.
- Mayor's Office for Policing and Crime (MOPAC) established as an executive arm of the GLA as a replacement for the MPA and with oversight of the MPS.
- London Resilience function transferred to the GLA from Whitehall.