



House of Commons

Political and Constitutional Reform
Committee

Do we need a constitutional convention for the UK?

Written Evidence

Only those submissions written specifically for the Committee and accepted by the Committee as evidence for the inquiry are included.

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Written evidence submitted by Canon Kenyon Wright CBE (CC 01)

SCOTLAND AND UK CONSTITUTIONAL CHANGE

“Our constitution is wearing out” Lord Hailsham

1. A Constitutional Convention for the UK, which addresses the central issue of the constitutional relationships between the component nations, must begin by recognising (and seeking to resolve) the fundamental conflict between the Scottish and the English (now British) constitutional understanding and traditions.
2. To do this, it might be helpful to identify the distinctive elements that created the Scottish Constitutional Convention, and that in the end led to its success.
3. The most important of these was the traditional Scottish understanding of popular sovereignty, expressed dramatically at the very first session in 1989 when all members solemnly lined up to sign the **“Claim of Right for Scotland”**. This affirmed *“the sovereign right of the Scottish people to determine the form of government best suited to their needs”*. Our Convention did not begin with a political aim. It began with a fundamental constitutional principle, and all our work flowed from that.
4. Perhaps not all who signed that day (or who reaffirmed it in the Scottish Parliament earlier this year) fully recognised the implicit rejection of the claim of Westminster, or more accurately, of “the Crown in Parliament” to absolute sovereignty.
5. We reaffirmed a theme that runs through Scottish history—from the Declaration of Arbroath to the 2 previous Claims of Right of 1689 and 1842, both of which were in different ways a rejection of the Crown’s or Parliament’s right to impose on Scotland. Lord President Cooper, probably the greatest Scottish lawyer of the last century, said *“The principle of the unlimited sovereignty of Parliament is a distinctively English principle which has no counterpart in Scottish constitutional law.”*
6. That principle has in practice meant the growing power of the Government and especially the Prime Minister rather than Parliament—a situation the new Scottish Parliament has explicitly renounced.
7. This principle was massively strengthened by the perception, right or wrong, that the Thatcher Government was not only imposing policies that Scotland manifestly rejected, but was seen as an attempt to impose an alien ideology. We saw what could be done by a political system which Lord Hailsham called *“an elective dictatorship.”*
8. This combination put a strong wind in our sails.

9. The Church of Scotland Assembly in 1989 spelled this out and said we had a crisis—“*a crisis more real than apparent, within the constitutional foundations of Scotland and the United Kingdom. It is real in that it involves a clear conflict between two totally opposing notions of sovereignty in the Scottish and English constitutional traditions—made apparent by the polarising tendencies in British society in the 80’s but always present and underlying. From a Scottish constitutional (and theological) perspective this English tradition of state absolutism has always been unacceptable in principle. It is now intolerable in practice. The Scottish Parliament must be built upon philosophical foundations that are more coherent and credible than the notions which underpin the existing British constitution.*”

10. On this basis, the Convention’s final Report in 1995 said the coming of a Scottish Parliament “*will usher in a way of politics that is radically different from the rituals of Westminster; more participative, more creative, less needlessly confrontational—a culture of openness……much more than a mere institutional adjustment. It is a means not an end.*”

A CONSTITUTIONAL CONVENTION FOR THE UK?

11. There is a strong case for a Constitutional Convention for the UK. There are I believe a number of crucial questions which Scotland brings to the debate.

12. The main roadblock to real change is the unwritten constitutional doctrine of the absolute sovereignty of the Crown in Parliament, with the enormous powers of patronage and royal prerogatives which this gives in reality to the Prime Minister.

13. It is of course true that in practice alternative bases of more or less secure power have been created in the smaller nations, but the legal right of Westminster to have the last word remains. Indeed it may be used to shape the coming Referendum.

14. Any Convention must therefore have the mandate to look at the constitutional foundations of each of the nations, and at alternative models of relationship.

This would include such issues as:

- the need for a written constitution defining the relationships of the 4 nations;
- the principle of subsidiarity and real sharing of power;
- the meaning of Autonomy within a reformed Union;
- the anomaly of the “West Lothian question”;
- the case for an English Parliament and government;
- the case for a Federal, Quasi Federal or Confederal system;
- the role and shape of the UK Parliament in any new system;
- the role and shape of a second chamber in a new UK.

15. This inquiry is a real opportunity for some bold and imaginative thinking about the future of a Union in need of reform. Let us not be too timid or afraid to think innovatively.

May 2012

Further written evidence submitted by Canon Kenyon Wright (CC 01A)

“We must not let ourselves believe that a bit of technocratic tinkering here, a bit of constitutional consultation there, will do the trick. I believe there is only one way out of this national crisis we face: we need a massive, sweeping, radical redistribution of power. Through decentralisation, transparency and accountability we must take power away from the political elite and hand it to the man and woman in the street.”

David Cameron, then leader of the opposition
Speech to the Open University in Milton Keynes.
January 2009

1. I believe that the Scottish constitutional story is more likely to embody that “massive, sweeping, radical redistribution of power” and therefore, as the Constitutional Convention recognised, has profound relevance to the constitutional debate in the UK.
2. My purpose now is, first, to suggest some of the issues raised by the coming referendum; then to outline the historical Scottish view of constitutional power which was the firm foundation of the Scottish Constitutional Convention; and finally to propose what this might mean for a possible UK Constitutional Convention.

The Referendum – Scotland the What?

3. Like many individuals and organisations in Scottish civil society, I pressed for the inclusion of a second question, offering not just more devolution, which by definition leaves the constitutional dilemma basically unsolved, but rather “Secure Autonomy”. My reason is simple. I hoped this unique opportunity could be used to offer a solution that recognised Scotland’s constitutional sovereignty, but kept the integrity of the Union—albeit a radically reformed Union! The only way short of independence which could really recognise Scotland’s position, is a move towards a Federal or Quasi-federal Union—but I recognise that the F word is a red rag to a bulldog.
4. However this is now academic. The case for a second question has been lost, not by debate in Scotland or her Parliament, but effectively by an edict from Westminster. That alone might come back to haunt the debate before 2014. There may be many in Scotland, deprived of any other hope of real secure constitutional change, who will feel disenfranchised, and may reluctantly turn to independence as the only opportunity for real change on offer for a generation.
5. The crucial need is to get beyond the narrow slogans which make the debate so shallow. Both sides need now to define positively and with clarity, the kind of

Scotland they offer, and how it will be different, and take its place as a new democracy among the nations.

6. For the “Yes” campaign, this means the development, not just by politicians but by wide consultation the length and breadth of the land, of at least **the principles of a written constitution for Scotland** which would articulate the vision of the nation’s future, and define the nature and limits of power, and relationships.
7. For the “No” campaign, this means telling us clearly and positively what the future of Scotland would then be, and promising and defining what changes could be expected, which go beyond just a bit more devolution. Scots can then make an informed judgement between the two serious options.
8. In the 1997 referendum, the people of Scotland did not vote on the vague desire for a parliament; they voted with knowledge, for a detailed plan worked out by consensus by a Convention that was widely representative of Scottish political and civil society.
9. In the 2014 referendum, the same must be true. It must not be a vote for some emotional slogans of independence or status quo, based on hope or fear fuelled by political slogans and stunts. The people must know what kind of nation they will be voting for—or against.
10. The Constitutional Commission of which I am President (www.constitutionalcommission.org) will be working with the Scottish Government and others to develop the principles of such a positive constitution—and if wanted with the “No” group to clarify their position.

Scotland’s Founding Principle – Popular Sovereignty

11. The **founding principle** of the Convention was the “Claim of Right for Scotland” of 1989, solemnly signed by all members—and incidentally reaffirmed a few months ago by the whole Scottish Parliament apart from the 15 Conservative members. That Claim simply acknowledges “*the sovereign right of the Scottish people to determine the form of government best suited to their needs*”.
12. It has deep historical significance, as twice before Scotland has issued a Claim of Right. The first in 1689, by the then Scottish Parliament, deposed King James VII because he had “*turned a legal limited monarchy into an arbitrary despotic power*”.
13. The second, in 1842 was issued by the General Assembly of the Church of Scotland to reject the imposition by Westminster of patronage

14. The important principle which unites all 3 historic Claims is constitutional—the rejection of the absolute authority of the Crown, or the Crown in Parliament to impose policy or governance on Scotland against her will.
15. Lord President Cooper, the greatest Scots lawyer of the 20th century, states *“the principle of the unlimited sovereignty of parliament is a distinctively English principle, which has no counterpart of Scots constitutional law.”*
16. I have spent time on this historical account because it is essential to an understanding of Scottish constitutional thinking and tradition—and was the driving force behind the Convention’s successful achievement of a Scottish Parliament.
17. It may be of interest that the proposal to start the Convention, not just with a political goal, but with a fundamental restatement of constitutional sovereignty, though accepted by all members, came from the Churches’ representatives.
18. The Kirk’s General Assembly of 1989 supported the Convention, issued a detailed constitutional and theological analysis of the constitutional Crisis, and concluded *“It is not possible to resolve the question of the democratic control of Scottish affairs ... apart from a fundamental shift in our constitutional thinking away from the notion of the unlimited or absolute sovereignty of the British parliament towards the historic Scottish and Reformed constitutional principle of limited or relative sovereignty. Any settlement must be built upon philosophical foundations that are more coherent and credible than the notions which underpin the existing British constitution. The English constitutional tradition of state absolutism has always been unacceptable in theory. It is now intolerable in practice”*
19. The Scottish perception that the Thatcher Government had used the British constitutional position to impose policy after policy that were manifestly rejected by the people of Scotland and by their elected representatives, led us to see that the problem was not just political but constitutional; not just about policies but about **power**, not just about **who** governed, but about **how** we were governed.

Scotland’s Working Principles – Towards a New Political Culture

20. Based on this founding principle anchored in Scottish law, history and tradition, the Constitutional Convention planned for a parliament that would in the words of our final Report, *“usher in a way of politics radically different from the rituals of Westminster; more participative, more creative, less needlessly confrontational ... a culture of openness that will enable the people of Scotland to see how decisions are being taken in their name, and why”*
21. 4 working principles were agreed

- The sharing of power by Executive, Parliament and People
 - Accountability, Executive to Parliament, both to People
 - A participative approach to the development, consideration and scrutiny of policy and legislation.
 - Equal opportunities
22. To this end, we put in place an electoral system that is broadly proportional, and was designed to make it very difficult for any party to secure an absolute majority—though to our surprise that has now been achieved! We also proposed a Committee structure and standing orders that ensured openness and participation
23. The Parliament was seen by the Convention as *“much more than a mere institutional adjustment. It is a means, not an end”* It was seen as (and has at least partly succeeded in being) a process not an end; a new political culture. The Consultative Steering Group (CSG) which drew up the draft Standing Orders and Code of Conduct, said *“We see the Parliament as the central institution of a new political and community culture. A more open participative democracy requires innovative institutions and attitudes in Scottish Society”*

A Constitutional Convention for the UK?

24. Do we need one? Do we perceive any problems with the existing constitutional arrangements?
- David Cameron, quoted at the start of this paper, clearly did.
 - Chris Patten agreed when he wrote *“We have an electoral system riddled with unfairness; a bicameral legislative structure that the government reorganises at regular intervals on the back of an envelope; courts whose judges are attacked by the executive because it does not care for the way they seek to protect our liberties ; local government gutted by manic centralism; an executive that displays under both Labour and Conservative leadership the attributes of what Lord Hailsham memorably called an ‘elective dictatorship’”*.
 - Scotland’s constitutional path is built on the perception that there is indeed a serious problem of the concentration of power, in the UK
 - The erosion of trust in the whole political process indicates a real problem.

2. What would be the remit of a Constitutional Convention?

25. The central issue is the concentration of power, and the urgency of a “radical redistribution”. This means at least considering serious changes.
- In the enormous **powers of patronage** exercised by the Prime Minister.

- In the end of the “**royal prerogatives**” and the move to a truly constitutional monarchy.
- In ways of ensuring the regular **accountability of Parliament** and its members to the people, not just at elections. This may include powers of recall.
- In the recognition of **subsidiarity**. i.e that power should be shared, and exercised at the lowest effective level.
- In the development of a **Federal or Quasi Federal** system which recognises alternative sources of secure power, including Scotland’s Claim of Right to constitutional sovereignty.
- In the establishment of an **English Parliament and Government**, to take its place along with the Parliaments of the other 3 nations, all with similar defined powers, and with fair proportional electoral systems.
- In the transformation of the UK Parliament into the **Federal Legislature and Executive**.
- In the development of a **written constitution**, to guarantee rights, establish the nature and limitations of power at all levels, and define relationships between the parliaments in the UK.
- In support for the new institutions and “culture” needed for the development of a **participative, rather than a representative democracy**.

26. I am not naïve enough to expect these ideas to be greeted with wild enthusiasm, but I do believe they are the way to that “*massive, sweeping, radical redistribution of power*” which could renew our failing democracy!

October 2012

Written evidence submitted by Professor Matthew Flinders, Professor of Parliamentary Government & Governance, Department of Politics, University of Sheffield (CC 02)

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**

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

² Jack Straw article

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 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.

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

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 (i.e. ‘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 (CC 03)

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 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

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.

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.

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 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

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)

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

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

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

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.

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 (CC 04)**

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 (CC 05)

1. I am grateful to the Committee for its invitation to attend a seminar on the subject of this inquiry in Portcullis House on 24th 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, grandees 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 (CC 06)

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.

2.6 Overall, 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.

2.7 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).

2.8 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 - 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'.

3.6 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.

3.7 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.

3.8 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.

3.9 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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References

- Bognador, V. (2012) *The trouble with local democracy*, Electoral Reform Society News Blog 2nd April, <http://www.electoral-reform.org.uk/blog/tag/vernon-bogdanor>
- Clark, G. (2010) *The central importance of localism, Speech to the Local Government Association Conference 2010*, London: DCLG.
- Crawford, R. and Phillips, D. (2012) 'Local government spending: where is the axe falling?' in Emmerson, C., Johnson, P. and Miller, H. (eds) *The IFS Green Budget: February 2012*, London: Institute for Fiscal Studies, 124-141.
- Department for Communities and Local Government. (2011) *A plain English guide to the Localism Bill*, London: DCLG.
- Department for Communities and Local Government. (2010) *Business Plan 2011-2015*, London: DCLG.
- Gough, R. (2009). *With a little help from our friends: International lessons for English local government*, London: Localis.
- Government Office for Science. (2010) *Foresight Land Use Futures Project*, Final Project Report, London: Government Office for Science.
- Harding, A., Marvin, S. and Robson, B. (2006) *A framework for city-regions*, London: ODPM.

Harrison, J. (2007) 'From competitive regions to competitive city-regions: A new orthodoxy, but some old mistakes', *Journal of Economic Geography*, 7, 3, 311-332.

Hazell, R. (2006) 'The English question', *Publius: The Journal of Federalism*, 36, 1, 37-56

HM Government. (2010) *The Coalition: Our Programme for Government*, London: HMSO.

HM Treasury, Department for Business Enterprise and Regulatory Reform and Department for Communities and Local Government. (2007) *Review of sub-national economic development and regeneration*, London: HMSO.

HM Treasury. (2010) *Spending Review*, London: HMSO.

House of Commons Business, Innovation and Skills Committee. (2010) *The new Local Enterprise Partnerships: An initial assessment*, First Report of Session 2010-11, London: HMSO.

House of Commons Communities and Local Government Committee. (2007) *Is there a future for regional government?* Fourth Report of Session 2006-07, London: HMSO.

House of Commons Communities and Local Government Committee. (2011) *Abolition of Regional Spatial Strategies: A planning vacuum*, Second Report of Session 2010-11, London: HMSO.

Taylor-Gooby, P. and Stoker, G. (2011) 'The Coalition Programme: A new vision for Britain or politics as usual?' *The Political Quarterly*, 82, 1, 4-15.

Ward, M. (2011) *Rebalancing the economy: Prospects for the North*, London: Smith Institute.

Wong, C., Baker, M., Hincks, S., Schulze Bäing, S., and Webb, B. (2012) *A map for England: Spatial expression of government policies and programmes*, Final report to The Royal Town Planning Institute, Manchester: University of Manchester.

Wyn Jones, R., Lodge, G., Henderson, A. and Wincott, D. (2012) *The dog that finally barked: England as an emerging political community*, London: Institute for Public Policy Research.

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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 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

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

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

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 2001-2002, Joint Committee on House of Lords Reform, *House of Lords Reform: First Steps*, HL 151, HC 1109 of 2002-2003), Joint Committee on Conventions, *Conventions of the UK Parliament* (HL265/HC1212 of 2005-2006).

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

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 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 Constitution 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 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

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

¹⁹ On which see e.g. 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_Co

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 Unlock Democracy (CC 08)

About Unlock Democracy

1. Unlock Democracy is the UK's leading campaign for democracy, rights and freedoms. A grassroots movement, we are owned and run by our members. In particular, we campaign for fair, open and honest elections, stronger Parliament and accountable government, and a written constitution. We want to bring power closer to the people and create a culture of informed political interest and responsibility.

Executive Summary

2. Unlock Democracy strongly supports the creation of a constitutional convention for the UK. Constitutional reform has taken place in a piecemeal fashion in the UK. Particular grievances have been addressed—from the introduction of the universal franchise to devolution to Scotland, Wales and Northern Ireland—but there has never been a UK wide debate about how we should be governed. Unlock Democracy believes this is long overdue.

3. We believe that it is essential that this process involves wide-scale public discussion, debate and participation, reaching far beyond the members of the convention. In particular it is essential that any public engagement process includes:

- Choice in both the means of involvement and in the timing;
- a two way flow of information;
- Explains and represents the process as well as the subject matter.

4. Unlock Democracy recognises that there are different models for organising a convention and that there are a number of different constitutional issues on which a convention could be held. Whilst we support a convention process that would lead to the creation for a written constitution for the UK we believe the most pressing matter that should be considered by a constitutional convention is the impact of devolution on the UK.

Grounds and basis for establishing a convention

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

5. Yes. Unlock Democracy and in particular its predecessor organisation Charter 88 has campaigned consistently for a constitutional convention for the UK. In part this is because we believe that our fundamental political, civil and human rights should be enshrined in a written constitution. However this is not just about abstract principle—there are particular reasons why it is important for the UK at this particular juncture to hold a constitutional convention.

6. The period since 1997 has seen a rapid period of constitutional change and has made the need for a constitutional convention even more urgent. There has been radical change, but

with no overall sense 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. So, for example, we have had:

- devolution to Scotland, Wales, Northern Ireland and London whilst the England questions have remained dangerously unanswered. The result has been a destabilising sense of unfairness in England;
- a welcome Human Rights Act which the Government insists does not impact on the sovereignty of Parliament, but has yet to capture the public imagination and which few see as having relevance to them;
- a European Union, which with the Charter of Fundamental Rights has continued the process of constitutionalising itself, the need for Britain to be clear about its self-definition is all the greater;
- a system of local government that lacks any constitutional rights or status and in many ways is limited to being local administration rather than government;
- the introduction of elements of American style direct democracy, such as directly elected mayors and Police and Crime Commissioners but without the corresponding accountability mechanisms;
- the increased use of referendums for constitutional issues but in an adhoc manner whereby the government of the day determines what should and should not be put to the public vote;
- top-down reform which has helped to foster growing voter disenchantment and cynicism with politics in a period of unprecedented constitutional change.

7. The Scottish Government's proposal for a referendum on independence has meant that a debate is already taking place in Scotland but it is taking place in a vacuum. Under the last Government it became fashionable to talk about British values and yet we have no shared understanding or document to outline what these values are. Although independence is a question for the people of Scotland there are broader debates that we need to have as the people of the UK. A constitutional convention would be one way of starting that discussion.

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

8. Although it is possible to run effective informal constitutional conventions—as demonstrated by the Scottish Constitutional Convention mobilised by civic society, this is not the model we would recommend for a UK constitutional convention. Unlock Democracy believes that any constitutional convention should have direct public involvement. We believe that for the citizens to possess a constitution they need to have built it themselves. When the new South Africa wanted to write a constitution following the end of apartheid it embarked on a wide-scale process of public discussion, debate and participation. This is what we want for the UK.

9. One of the key factors in making public involvement in constitution making successful is that the process must be genuinely independent of government, and have a clear outcome. This means that it must have a clear legal status. Public engagement succeeds when there are defined stages to the process and it's known from the outset what will happen to the findings. This could be going straight to a referendum or reporting to Parliament before being put to a referendum but the process itself has to be independent of government. A good model of this is the recent constitutional convention in Iceland which was established by Parliament and reported to Parliament but the members of the convention were directly elected members of the public. The wider public was heavily engaged, primarily through the internet and once the draft has been considered by Parliament, it will be put to a referendum in October 2012.

10. In contrast the Irish constitutional convention has been heavily criticised for the lack of clarity about its process and parameters. Although it was initially billed as exploring comprehensive constitutional reform a number of issues have been taken away from the convention—either put straight to a referendum or returned to Parliament to debate and decide. For example the proposed amendment on Oireachtas inquiries was rushed to a referendum last November before the convention was even established, and was rejected by the people. While the most significant constitutional change proposed by the Government—the abolition of the Seanad—will not be considered at all. Although it has been expected to report back in 12 months the Government has only confirmed that it will be at some stage within the lifetime of this Government. This does not bode well for a convention that is only just being established.

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

11. Unlock Democracy believes that it is essential for the public to be directly involved in the process. There are a number of ways that this could be achieved, for example through citizens assemblies, citizens juries or broader engagement techniques such as those used in Northern Ireland's Bill of Rights process. Whichever approach is used the process has to be deliberative, open, representative, and independent of government and political parties.

12. Deliberative techniques such as citizens' juries have been used at all levels of governance to involve citizens in evaluating service delivery or to develop priorities for an organisation. These mechanisms are effective because they allow participants to learn about the subject, quiz experts and develop an informed opinion rather than simply capturing an immediate view in an opinion poll or referendum. They recognise that different views and interests have to be balanced in society, and also enable people to change their minds.

13. One of the criticisms made of involving citizens in complex or controversial topics is that they won't understand the subject, or will make reactionary judgments based on populist headlines. The evidence on mechanisms such as citizens' juries, panels and assemblies suggests that this isn't so. The experience of the British Columbia Citizens' Assembly on Electoral Reform shows that citizens are able to work through complex policy issues. We have also found when running community panels to assess views on Europe that listening to other views and debating the issues influences participants' opinions even when they don't feel their views have changed.

14. The openness of the process, selection of participants and availability of opportunities for people to contribute, are key factors in whether the public buys into the process. One of the limitations of deliberative mechanisms is that to be effective they have to involve a relatively small number of people. If groups are too large people become passive audience members rather than engaged participants. Citizens' juries typically involve 10–12 people and while citizens' assemblies such as those held in British Columbia and the Netherlands can involve hundreds, this would still be a tiny percentage of the UK population. If this process is going to be genuinely national, individuals must believe that they could have been selected to take part and that the participants represent them.

15. This is partly about ensuring the selection process takes account of the UK's regional, gender and ethnic diversity. But it's also about creating a relationship between the participants and the public; a key factor in the British Columbia experience was that the members of the Citizens' Assembly felt that they were participating on behalf of all Province citizens. This helped create high levels of commitment among Assembly members. Public meetings can assist, as the public can debate the issues facing the participants and quiz them on their experiences of being part of the process. In British Columbia they also published materials that were given to participants on the Assembly website and videoed the evidence session so that anyone could follow exactly the same process as the participants and then submit their own views. While many people would be content to not be involved, it is crucial that those who would, can.

16. The Northern Ireland Bill of Rights Commission used a slightly different approach to engage citizens in the debate. Rather than having an event, such as a citizens assembly, as a focal point of the public engagement process they used "cascading", "piggy backing" and entertainment, to stimulate debate. Cascading involved training just over 500 facilitators to go out into the community and talk about the Bill of Rights process, while piggy backing involves using existing community organisations and networks to publicise the process for you. They also used entertainment—videos and drama workshops to highlight the process and explore the issues. This was a very innovative process and certainly succeeded in involving people in the process. However it is important to recognise that the Northern Ireland has a much smaller population than the UK as a whole. If we were to replicate this process and scale it up for a UK Bill of Rights there would need to be approx 15,000 facilitators for the cascading element alone.

17. The Icelandic constitutional convention combined the more deliberative aspects of the convention with widespread public engagement over the internet. Although this opens up a number of possibilities for public engagement and is considerably cheaper, Unlock Democracy believes that it is essential that there are also 'real world' opportunities for participation so that those without access to the internet are not excluded.

Composition

- **What should be the composition of the constitutional convention?**

18. There are broadly speaking three different models for constitutional conventions, those involving elected politicians, constitutional experts and the public, as well as hybrid models. None is perfect and each poses its own challenges.

19. Unlock Democracy believes that the constitutional convention should have direct citizen involvement but that there should be defined roles for other groups including parliamentarians, civil society and constitutional experts. Inevitably it will not be possible for all interested parties to be a member of the convention—it would become too unwieldy and any attempt at deliberation would be lost. The process will have to be designed to allow and indeed encourage specific groups as well as the wider public to submit evidence and take part in the convention even where they cannot be voting members.

20. In terms of hybrid models of conventions such as we are proposing there are a number of examples of how the different groups have been balanced within the convention process. The Australian Republican Convention was made up of equal numbers of the directly elected members of the public and politicians and did not have formal representation for civil society. The Scottish Constitutional Convention was made up entirely of political parties and civil society and did not have direct public involvement but also had associate members to ensure the widest possible representation. The Irish constitutional convention will be two thirds randomly selected members of the public and one third elected politicians. Somewhat controversially there is no formal role for experts in the Irish process. In any model you are attempting to balance the different interests whilst ensuring that the convention does not become so large as to be unworkable.

21. Unlock Democracy believes that the constitutional convention should be made up of no more than 200 members—it could be smaller depending on the subject being considered. We believe that public involvement in the convention process is key and that two thirds of the places should be reserved for members of the public chosen randomly from the electoral register on the basis of the regional constituencies used for the European Parliament. At least 40% of the places should be reserved for men and 40% reserved for women to ensure that there is gender balance.

22. The third of places reserved for politicians should be allocated on a national basis with the Scottish Parliament, Welsh Assembly and Northern Ireland Assembly being free to decide how to appoint members within the parameters that they have to reflect the party balance within the Assembly or Parliament. England should be represented by elected politicians on the basis of the share of the vote received at the last general election. It would be up to the parties themselves to determine whether MPs, councillors MEPs or Mayors should join the convention. We would however also want to see a specific stage of the convention aimed at engaging with local government.

23. Unlock Democracy believes that it is important that civil society—trade unions, businesses, voluntary organisations and religious groups, play a role in the convention but we do not think that this necessarily needs to be as voting members. Rather we think they should be made associate members of the convention so that they can participate in proceedings but not vote.

24. We envisage the experts would be involved in the convention in both as formal advisers to the convention and also in contributing to the learning phase of the convention's work.

- **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?**

25. Unlock Democracy believes that it is essential that within any constitutional convention process there is a means of having debates about the governance of England as well as the governance of the UK as a whole. England is the one constituent nation of the UK that has not yet had any formal debate about its governance and this is creating a sense of grievance that has the potential to destabilise the UK. While Scotland, Wales and Northern Ireland have all debated and held referendums on devolution and have mechanisms for exploring additional powers they may wish to see devolved; there has been no equivalent debate in England.

26. The UK is one of the most centralised industrialised nations and this problem is particularly acute in England. While different governments have attempted to impose top down solutions—from directly elected regional government to directly elected mayors—these options have generally been rejected by the electorate.

27. The people of England must have the same basic rights as those in Scotland, Wales and Northern Ireland to determine how they are governed. However how this process should be managed is challenging—not least because the processes in other constituent nations have already taken place and it is highly likely that the decisions taken about English governance would impact on the rest of the UK. It would not be practicable for delegates from England to take on an entire body of work that could be a separate convention in its own right and to fully participate in the main convention. However what they can and must do is agree what the constitutional process for England should be and ensure that the issues regarding England's governance are not overlooked in the convention process.

- **Would the members of convention be mandated and, if so, by whom and to do what?**

28. Unlock Democracy does not believe that members of the convention should be mandated—particularly not if the process is deliberative—the participants must be free to explore ideas and change their minds having heard the evidence. However we do think that they have a responsibility to report back to and involve the wider public in the process. There are a number of different ways that this can be done.

29. There are 3 key elements to successful involvement of the general public:

- Choice in both the means of involvement and in the timing
- Creating a two way flow of information
- Explaining and representing the process as well as the subject matter

Choice

30. It is perhaps rather obvious to say that there need to be a range of opportunities for people to get involved with the process; but different mechanisms will attract different groups of people. Having a range of involvement opportunities also ensures that any obstacles to participation, such as time and accessibility issues, are minimised.

31. Exactly which tools are used depends on the resources invested in the process. Texting can be used for generating lists of priorities or values but this requires a large infrastructure. Tools such as wikis and web discussion forums, encourage people to respond to specific issues or questions that they may be interested in rather than a formal consultation which can be quite intimidating. Equally some people will attend public meetings or submit written responses that won't engage in web based activities.

32. Having said this, choice in the means of involvement is not enough. There also needs to be flexibility in the timings for participation. This increases the opportunities to participate, reduces the risk of people finding out about the process only to discover that the deadline has passed, and reassures people that the process is inclusive. Different stages of participation can also be a useful hook with the media to generate interest and awareness of the process. With the Citizens' Assembly process this was done by having different forms of engagement for the different stages of the process. During the learning stage people were encouraged to engage with the resources given to participants and submit their own comments; while during the public hearings phase people were able to attend the public meetings or submit written responses.

33. How the public are involved in the process also depends on how long it will last—usually the public involvement is run in parallel with the deliberative exercise and explicitly feeding into it at certain points. Each stage of the Citizens Assembly lasted a number of months. If the convention was to convene for a year then this model can be adopted. One way of doing this is over a shorter time period is to pose a series of questions and consult on each individually for a short period. This makes it easy for people to 'drop in' to the process and also makes participation easier—individuals can just focus on the issues that have particular relevance or importance to them.

Two way process

34. One of the important elements of any public engagement exercise is that the participants understand what is happening to their contribution. Ideally they should have the opportunity to feed into different stages of the deliberative exercise, effectively creating a dialogue.

35. Part of the public's mistrust of consultation exercises is a feeling that the decision has in reality already been taken, that the Government has to be seen to ask the public but that their involvement will have no effect. One way to counteract this is to involve the public in the very early stages of debate, for example in discussing any learning materials that participants are given and in setting the broad principles of debate not just the detailed policy questions that may emerge later in the process.

Representing the process

36. With deliberative processes it is important to not just involve people in the subject that is being explored, but also to give them an understanding of the process. There are very few opportunities in society today for people to just deliberate an issue; the emphasis tends to be on instant consumerist responses, so it can be quite an alien concept. If the public are to buy in to the idea of a constitutional convention and to feel that it represents them they need to understand what it is and how it works. By far the best way of doing this is using the members of the convention. In the Citizen's Assembly model, the public hearings phase was used to represent the process. At each public meeting at least one of the people from the Citizens Assembly was from the local area and was able to talk about their experience of the process as well as the issues that they were deliberating on. This was an important element of the wider public feeling that 'it could have been them' that the process was genuinely involving and empowering ordinary people. In Iceland they chose to achieve this by electing the members of the convention, this has the advantage that people get to choose who represents them but also runs the risk that some groups in society are less likely to put themselves forward for election.

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?**

37. In most countries, as in the current Irish and Icelandic examples, constitutional conventions review an existing constitution and propose specific changes. This is obviously not possible in the UK where we have an uncoded constitution and little shared understanding of what makes up our constitution.

38. Ultimately Unlock Democracy would like to see a constitutional convention tasked with proposing a new constitutional settlement for the UK. However this is a significant task and is not the only model of convention that could be adopted. It would be perfectly possible to have a convention which explored specific aspects of our constitutional settlement. For example we have in the past proposed that a constitutional convention could examine how our rights and freedom should be protected and whether the UK should have a Bill of Rights.

39. Unlock Democracy believes that the most pressing issue that should be considered by a constitutional convention is the impact of devolution on the UK and the future governance of England. We are aware that even this more limited task is a substantive one.

- **How should the convention proceed? For instance, on the basis of consensus, unanimity, qualified majority voting, or simple majority voting? Would all the participants in the convention have equal status? Are there any other procedural issues that should be considered at this stage?**

40. Unlock Democracy envisages the convention proceeding on the basis of consensus although if the convention were to explore the future of the UK we think it would be necessary that the proposals had at least the support of the majority of each national group. It would be for the convention itself to determine its own working practices.

- **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?**

41. Unlock Democracy believes that the convention should be created by the UK Parliament and that it should report back to that body. Parliament would have the opportunity to debate and amend the proposals but they would have to be put to a UK wide referendum to be implemented. We would also support there being a mechanism whereby the public can petition for a referendum on the constitutional convention's proposals if Parliament has chosen not to do so.

June 2012

**Written evidence submitted by Lewis Baston on behalf of Democratic Audit
(CC 09)**

1. Democratic Audit is an independent research organisation, based at the University of Liverpool. We are grant funded by the Joseph Rowntree Charitable Trust to conduct research into the quality of democracy in the UK and have now completed our fourth full audit of UK democracy. The previous three audits, which assess the democratic performance of the UK using a set of generic 'search questions', were published in 1996, 1999 and 2002.
2. We welcome the Committee's inquiry into a possible constitutional convention for the UK. In this submission, we argue that there is a strong case for a UK constitutional convention. It could address a series of uncertainties and instabilities that have developed in the UK constitution, often connected to devolution, though not exclusively so. Our submission emphasises the importance of an inclusive process, involving directly elected members and possibly members of the public chosen at random. Particular attention should be given to the status of England within any constitutional convention. We propose a series of detailed issues that a convention might address. However, it might be that the terms of reference of a convention should be kept open ended, with the body itself establishing its more detailed programme.

Grounds and basis for establishing a convention

- **Is there a case for establishing a constitutional convention for the UK?**
3. We believe that there is a case for establishing a UK constitutional convention. It rests in the existence of a series of areas of tension and uncertainty in present UK constitutional arrangements. They include the position of the UK in the European Union, the status of human rights and the constitutional role of the courts. In the following submission, however, we focus on issues associated with devolution, the different nations and regions of the UK and their relationship with the centre.
 4. Within this category of tensions one of the most important is the continued piecemeal extension of devolution and its absence from England (excluding arguably Greater London). Evidence exists of rising resentment within England about this disparity, although there remains no clear view on how it should be dealt with. Recent referendums on directly elected mayors for the largest English cities yielded 'no' votes in every case except Bristol. One potential (though only partial) solution to this problem was thereby closed off. The idea of directly elected regional assemblies covering the whole of England was abandoned in 2004 following a defeat for such a proposal for the North East region in a referendum held there.

5. Another important issue helping create a case for a UK constitutional convention is the rise of Scottish secessionism combined with the confusion surrounding the means by which a decision about its future position within the UK might be made. Furthermore, the advent of devolution has meant that the unitary model for the UK, in so far as it was ever applicable, is becoming increasingly strained. Various other associated features of the UK constitution are surrounded by doubts, such as the viability of the doctrine of parliamentary sovereignty. A constitutional convention might provide a means by which the different components of the UK could consider these issues collectively and seek to reach agreements that might clarify matters appropriately.
- **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?**
6. It would seem appropriate for the prospective parties to a constitutional convention to begin on the basis not of a full Act of Parliament, but possibly a resolution from the UK Parliament of some kind. Through this means, Parliament could act as a convener for a UK constitutional convention, but permit the body it established a degree of latitude that could well assist its effectiveness.
 7. The parliamentary resolution could provide a broad remit, with the parties to it agreeing the precise details and the means by which they might proceed. Their agreement might then be published in a document which was political rather than legal in nature.
 8. The extent to which the work of the convention needed to introduce a more formal legal dimension to its work would depend in part on the terms of reference it devised for itself and the particular outcomes it intended to produce.
 9. For instance, if it were intended simply to develop a set of conventions governing the interaction between the different components of the UK, then legal enactments might not be required. But it may be that a firmer legal status would be deemed necessary. For instance, the agreement that might emerge from a Convention could necessitate legal changes if it were to be implemented.
- **What lessons could be learned from previous constitutional conventions, in other countries?**
10. A variety of possible lessons can be drawn from previous international experience. One is the unpredictability of such exercises. This point is supported by perhaps the most famous constitutional convention of all, leading to the US federal constitution, held in Philadelphia in 1787. The terms of reference were apparently narrow, suggesting that the purpose of the convention was merely to consider improvement to the existing loose confederal system, rather than—as ultimately it did—introduce an

entirely new federal constitution. Moreover, broader political and practical circumstances may not have seemed conducive to such an outcome. However, a plan was produced that eventually gained the necessary approval from the states involved.

11. The various attempts made to introduce a new constitutional settlement to Canada over a number of decades are instructive in that they demonstrate the problem that can arise if the consent cannot be secured from one of the components of the country concerned. The National Assembly of Quebec voted against the Constitution Act 1982. Subsequent attempts to meet the concerns of Quebec through the Meech Lake Accord of 1987 then alienated other parts of Canada. Other objections to Meech Lake raise another important issue that arises from a consideration of previous constitutional conventions. Some criticised Meech Lake as an elite level agreement between the Canadian federal Prime Minister and his provincial counterparts.
12. More recent constitutional conventions have suggested means of avoiding these kind of problems of democratic legitimacy. The South African Constitution agreed by the Constitutional Assembly in 1996 was produced following an extensive and innovative public consultation programme conducted over a period of nearly two years, designed to develop the widest possible consensus.
13. An even more direct method of incorporating the wider public exists, through selecting members of the public by lot ('sortition') to comprise a constitutional convention. The most well-known example of this practice was the British Columbia Citizens' Assembly on Electoral Reform which sat in 2004.
14. We also note that, though it might not be classed as part of foreign experience, the Scottish Constitutional Convention set up in 1988 attained a degree of legitimacy for its proposal for Scottish devolution through wide participation from multiple parties and civil society groups. The Conservative Party and the Scottish National Party did not, however, formally take part.
15. A more general observation can be made on a basis of international observations about who takes part in constitutional conventions. They can involve one or more of the following groups:
 - o Individuals, both party politicians and non-party politicians, directly elected to the convention for the purpose of constitutional deliberation;
 - o Appointed experts;
 - o Individuals drawn from governments and/or parliaments within the state (this method is often used for federal constitutional conventions);
 - o Members of the public (eg: chosen by lot).

Composition

- **What should be the composition of the constitutional convention?**

16. Direct election for a proportion of the constitutional convention might well be considered. The precedent of the Australian convention in 1998, which involved direct election of half the delegates in 1997, may be useful. While turnout was relatively high (47 %) in Australia even without being a combined election, it may be wise in the UK context to run any convention election alongside another poll (European or General elections being the all-UK options).
17. An electoral system for a constitutional convention is governed by different criteria from general elections, as recognised for instance in the Northern Ireland Forum election of 1996. Their purpose is to ensure 'voice' rather than power, and therefore a highly proportional system is appropriate. List PR and STV are the only systems that would be appropriate. Direct election can also ensure that the different nations and regions of the UK are represented. Government policy points towards direct election for various specific posts, including police commissioners, without being concerned about the costs of additional elections and likely low turnout, and to create a constitutional convention with legitimacy and a chance of attracting public interest seems to require direct election.
18. As with Australia, a directly elected component of 50% seems appropriate. However, the other half of the Australian convention consisted of political appointees, which ended up detracting from the legitimacy of the result. It is reasonable that the UK Government, opposition, devolved governments and assemblies and local authorities should have representation, but the exercise would also benefit from the input of experts and the general public. The latter could be introduced by sortition (either truly random or semi-random as with the British Columbia Citizens' Assembly). In British Columbia expert involvement was at the level of the secretariat to the Assembly and as witnesses rather than full participants, but there may be grounds for bringing some academics and experts into a UK convention.

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

19. Public involvement is vital to making a constitutional convention a meaningful exercise. Overseas and historical examples, as outlined above, offer several possibilities and we would urge that radical options should be considered, such as the direct election method suggested above.
20. Having a direct election would in itself encourage public interest.
21. The danger of leaving public involvement and comment for traditional methods, essential as they are (such as on-line surveys and questionnaires, public meetings and

so on) is that they might merely involve a small group of people who are already interested in constitutional issues.

- **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?**

22. Yes. This is an essential aspect for a UK constitutional convention. England has a distinctive, and anomalous, constitutional position and it is vital that the interests of England as a whole are represented in the discussion. England is also extremely centralised and there needs to be specific representation also for each region. This can be provided through direct election and through local government appointees but there is also room for creative thinking on how this can be done.

23. There may well be a case for a discussion within England about its constitutional arrangements prior to a UK convention. This could take the form of a pre-convention among the English representatives to the UK convention. Scotland, Northern Ireland and to a lesser extent Wales have had extensive formal discussions: in the context of referendums in 1979, 1997 and forthcoming in Scotland, 1979, 1997 and 2011 in Wales, and 1998 in Northern Ireland; large-scale parliamentary discussions around constitutional legislation in several long periods since the 1970s; and formal and informal constitutional conventions in Northern Ireland and Scotland. England has not yet had a formal opportunity to establish the questions, both internal (in the relationship between centre, region and locality) and in its relationships with the other parts of the UK and UK political institutions.

- **Would the members of the convention be mandated and, if so, by whom and to do what?**

24. The convention must be obliged to produce a report, which in turn has a commitment from the Government (expressed at the time of the resolution or Act establishing the convention) that its report will either form the basis for a reform bill to be put to Parliament or a proposal for a referendum. The convention should strive for a maximal consensus, although unanimity cannot be expected.

25. A convention will be to some extent confederal, with different delegates representing different interests and points of view. However, it should be encouraged to act as a coherent deliberative entity of its own and develop its own agenda, and for this reason mandates, reporting back to other institutions and other limitations on deliberation should be discouraged.

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?

26. While the precise terms of reference would be a matter for the participants in the convention, a possible general wording could be ‘to consider matters pertaining to relations between the nations and regions of the UK and make proposals’. Within this broad area, we believe that there would be significant value in addressing the following issues:

- Arrangements governing the extension of devolution to existing devolved areas; and the establishment of new arrangements for devolution;
- Arrangements governing the possible secession of components of the UK;
- The institutional representation of England and/or its regions within the UK constitution;
- Arrangements for the involvement of different components of the UK in major constitutional decisions—such as those affecting provision for human rights (eg: under the Human Rights Act) and the position of the UK within the EU;
- The involvement of devolved institutions in other important policy areas, such as policy within the EU;
- The relationship between the UK Parliament and devolved institutions;
- The possible need for a formal UK constitutional document, possibly taking precedence over regular legislation produced by other institutions including the UK Parliament;
- Arrangements for the distribution of funding between the different components of the UK;
- Arrangements for the handling of legislation in the UK Parliament that do not apply equally throughout the UK;
- The sustainability of a unified legal system for England and Wales given the existence of a separate legislature in Wales; and
- The sustainability of a unified Civil Service for the UK (aside from Northern Ireland) given the advent of devolution.

- **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?**
27. Any UK constitutional convention would have to operate within the limits of UK commitments under international law. In the case of the Belfast Agreement the requirements to which it would have to adhere would include the commitment to respect the self-determination of the population of Northern Ireland with regard to which state they were part of. Indeed, the stipulation regarding a referendum prior to exit from the UK could provide a model for other components of the UK (though joining with the Republic of Ireland would presumably not be an option for parts of the UK other than Northern Ireland). A UK constitutional convention would also need to take into account that the UK is bound by the Belfast Agreement to the domestic incorporation of the European Convention on Human Rights, as enacted by the Human Rights Act 1998.
 28. A further legal/constitutional issue to be considered would be the status of the treaties of Union, particularly that between England and Scotland of 1706, as enacted by the English and Scottish Parliaments. This Treaty is drafted in such a way as to suggest that it is intended to exist in perpetuity. The UK Parliament has subsequently passed legislation altering the terms of this agreement. However, if the convention wished to consider the introduction of measures that might entail a major abrogation of existing contents of the Treaty of Union 1706, then it would need at least to take into account the legal grey area into which it was entering.
 29. This particular concern leads on the more general issue of the doctrine of parliamentary sovereignty. If the convention were considering the extent to which devolution is and could be entrenched, it will inevitably become engaged in the conventional position (in England at least) that the UK Parliament cannot bind itself, and therefore is able to overturn legislation establishing devolution unilaterally and as easily as it could any other legislation. It does not even seem at present that devolution legislation is immune to implied repeal—that is legislation that does not expressly overturn it, but does so implicitly—as the European Communities Act 1972 and the Human Rights Act 1998 seemingly are.
 30. The doctrine of parliamentary sovereignty is not universally accepted as intellectually coherent or practically viable. When the UK is considered as a multinational state, it is necessary to note that some hold it was never part of Scottish legal traditions.
 31. However, any attempt explicitly to make the amendment or repeal of devolution legislation—or any other legislation of the UK Parliament—amendable only subject to specific heightened procedures such as referendums or supermajorities, would need to be preceded by a thorough consideration of the issues involved.
- **How should the convention proceed? For instance, on the basis of consensus, unanimity, qualified majority voting, or simple majority voting? Would all the**

participants in the convention have equal status? Are there any other procedural issues that should be considered at this stage?

32. We believe that ideally a UK constitutional convention would proceed on a basis of unanimity, particularly if the basic units represented were England, Northern Ireland, Scotland and Wales (whether by appointees, citizens chosen by lot, elected members, or whatever method was arrived at).
 33. If the basic number of units was larger, for instance encompassing a number of English regions or other groupings, then it might be necessary to use majority voting—or perhaps qualified majority voting.
 34. According votes to representatives of particular areas according to the size of population they represented might be a problem if one unit was far larger than the others—for instance if England was a single unit in its own right. If one participant was able to outvote all the others combined, the assembly might seem pointlessly one-sided to other participants. However, resentment might be generated within England were it not afforded representation proportionate to its population size.
 35. It could be that the decision should be left to England (perhaps following a brief internal constitutional convention of its own) whether to participate in a convention as an ‘under-represented’ single unit, or as a series of regions of some kind with representation more commensurate to their population size.
- **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?**
36. It would probably be best for the convention to decide precisely how its proposals might be taken forwards, since the methods used would be very much determined by the nature of the proposals that were produced. If proposals involved relations between legislatures and executives at the UK and devolved levels, then it might simply be appropriate for those executives and legislatures to ratify the agreements in accordance with their own procedures. If an Act of Parliament was needed, it could also be processed in the usual way.
 37. However, if substantial changes to the constitutional structure of the UK were required, then some kind of referendum process could well be involved. Such changes might include:
 - o Major constitutional legislation being passed, for instance stipulating new mechanisms governing the extension of and limitations upon devolution;
 - o Other significant constitutional change such as agreements between executives and

legislatures on funding redistribution; and

- O Even more fundamental constitutional change, such as the introduction of a new legal system for Wales, substantial alteration of matters provided for by the Treaty of Union 1706, or measures legally to entrench devolution and make its alteration subject to special amendment procedures, which might conflict with conventional understandings of the doctrine of parliamentary sovereignty.
38. If referendums were held consideration would need to be given as to whether a supermajority was required at the overall UK level, and whether a majority would be required in each of the components of the UK (however defined for the purposes of England). Furthermore, an issue to be taken into account would be whether arrangements could be proceeded with if one component rejected a proposal while the others approved it.

June 2012

Written evidence submitted by Iain McLean (CC 10)

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;
 - 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 1897-8 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.
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 oversize 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 (1897-8) 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;*
 - 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 the Rt Hon Carwyn Jones AM, First Minister of Wales (CC
11)**

Introduction

1. I welcome the opportunity to submit evidence to the Committee on this important inquiry.
2. As Members will know, the last fifteen years has been a period of immense constitutional change. In addition to devolution, we have seen major reforms in such areas as the protection of Human Rights, and in the promotion of governmental transparency through Freedom of Information legislation. Nothing I say today is intended to detract from the enormous significance of those reforms. However, I believe that the challenges immediately ahead are at least as great as those that have been addressed thus far, and it is in that context that I have raised the issue of a constitutional convention.
3. What are those challenges? Fundamentally, they are about the territorial constitution: how are the different territories (I deliberately use neutral language here) of the UK to be governed, and how are their governments and legislatures to relate to each other within the UK?
4. I can offer a broad vision, but, it will need a constitutional convention to flesh out the detail. What is that broad vision? It is of a Kingdom which is politically diverse, looser, and combines several centres of democratic accountability.
5. Taking those elements in turn, it will be “politically diverse”, because we have moved away from the early years of devolution when—and here I leave Northern Ireland aside, as politically *sui generis*—Labour governments operated at UK, Scotland and Wales levels simultaneously, and any issues of contention could be smoothed over on a relatively informal basis. Now, and as may be the case in the future, the position is very different, and greater attention needs to be focused on more formal mechanisms of inter-governmental machinery, such as the Joint Ministerial Committee, to manage these sometimes complex relationships. And that will be so whether or not Scotland moves to independence.
6. The Kingdom will also be “looser”, in my view, by which I mean that the process of devolution in each part of the UK will continue. The Prime Minister has already said that, in the event that the Scots vote No in their independence referendum, the powers of the Scottish Parliament can be re-examined, and by implication expanded further. In Wales, the UK Government has appointed a Commission, under the chairmanship of Paul Silk, a former Clerk to the National Assembly, to review the devolution settlement and make recommendations as to the respective responsibilities of Westminster and Cardiff Bay as legislatures for Wales.

7. It would be surprising if that Commission recommended no change, and it will be pressed by some interests to recommend a new devolution settlement for Wales, one closer in form, and perhaps substance, to that which the Scots have enjoyed since 1998. Be that as it may, the Welsh Government has recently completed a consultation exercise on whether a separate Welsh legal jurisdiction, analogous perhaps to that in Northern Ireland, should be established, and we will be analysing the responses to that over the summer.
8. Finally, the Kingdom will “combine several centres of democratic accountability”. Why is it important to make this apparently obvious point? Some of the early difficulties with devolution appear to me to have originated in a somewhat reductivist interpretation in Whitehall of the meaning of devolution itself. On that interpretation, devolution provided (and continues to provide) machinery for the local adjustment or amelioration of “national” policy, which is of course determined by the UK Government. Thus it is about the better governance of the devolved territories, which must ultimately give way to the wider “national interest”, as determined by Whitehall. We see this particularly in certain Whitehall Departments’ approach to how the UK’s line is presented in European Councils.
9. But for me, devolution is not about how each of Wales, Scotland and Northern Ireland are separately governed. Rather it is about how the UK is governed, not by one but by four administrations, and which are not in an hierarchical relationship one to another. And the consequence of that is the administrations of all four territories, including the UK Government in respect of England, have their separate responsibilities and accountabilities, which must be recognised and respected by all the other partners, as part of the joint enterprise of the governance of the UK.
10. So, a Kingdom which is politically diverse, looser, and combines several centres of democratic accountability: that is my broad vision of where we should be going. How do we get there? That takes me to the need for a Constitutional Convention, and why we need to set this up now.

A Convention or a Commission: and Why Now?

11. The driving force for me is the developing constitutional debate in Scotland. Those of us who are committed to the UK cannot pretend that, if Scotland goes, the remaining truncated Union could simply carry on as before. In reality, a great deal would have changed and the long-term consequences might be profound. So, rather than simply allow events in Scotland to unfold, and to react passively to whatever happens when it happens, I believe that political and civil society across the UK should be talking now about what kind of UK we want to see.
12. So I have proposed the establishment of a Convention on the Future of the United Kingdom, primarily tasked with examining the full context of relationships between the

Devolved Administrations and the UK Government, bearing in mind what I just described as the joint enterprise of the governance of the UK.

13. A number of questions then arise. First, why a Convention, rather than a Royal Commission? Secondly, who would participate? And third, why now?
14. I offer three reasons for a Convention, in preference to a Royal Commission. First, I think there is force in the criticism that the constitutional reform agenda hitherto has been too much a matter for discussion among the political classes narrowly conceived, and with too little wider public engagement. While politicians act for and on behalf of the people we represent, we must always be reminded that our debates on these matters affect the most fundamental interests of our citizens, and their voices need to be heard too. A Royal Commission, constituted of the “great and good” and relying on traditional methods of taking evidence, does not seem to me to suit the spirit of the times, which is characterised by a perhaps understandable distrust of established institutions and establishment figures. We need to broaden out the debate.
15. This is not a revolutionary proposition, it has been done before. The success of Scottish devolution from its outset is surely linked to the work done over several years in the 1990s by the Scottish Constitutional Convention, which managed to build a consensus both on the case for devolution and how it should work. We need to replicate that approach.
16. My second reason is linked to the first. I have said that I would like the Convention to be primarily tasked with an examination of the relationships between the various administrations within the UK. If we think for a moment about how the various devolution settlements have developed, the policy conversations have tended to take place in a series of bilateral exchanges between the UK Government and the relevant devolved administration, to some degree without reference to how devolution is developing in other parts of the UK.
17. Perhaps that is inherent to the nature of devolution, as compared say to a state built on federal principles. If you are creating a federal constitution, it would be natural that representatives of all the states should come together and agree amongst themselves what limited range of powers should be conferred “upwards” on the federal authority; so all states would participate in that discussion. Under devolution, however, power is handed “downwards” from the centre; and there need be no assumption that the extent and scope of power devolved from the centre to one territory should necessarily be the same as that afforded to another. So it is that we have ended up with what I have called the UK’s “asymmetric quasi-federalism”, where the powers of the various devolved institutions differ one from another.
18. That may have sufficed in the past, but I do not think we can proceed like that in the future. We need to go beyond bilateralism as a technique of constitutional development, and engage a wider set of parties around the table. Take the Scottish case. If the Scots decide to stay within the UK, we know that there will be adjustments, by which I mean

more powers, for the Scottish Parliament. The candidates for the new settlement include the so-called “devo max” and “devo plus”, either of which would represent a radically different position for Scotland within the Kingdom. Could that simply be a matter for discussion and agreement between the Scots and the UK Government, or should the other members of the UK club be involved as the terms of membership of another of them are renegotiated?

19. I believe that all parts of the UK should be involved in that discussion, and I think, from what Lord Wallace of Tankerness said in the House of Lords during the passage of the Scotland Bill, that the UK Government agrees with me. That will require something like a Constitutional Convention, if there is to be a meaningful engagement.
20. My third reason for favouring a Convention over a Royal Commission is illustrated by the recent emergence of proposals for House of Lords reform. I find it totally inexplicable that these should have been developed entirely without regard to the UK’s territorial constitution. In other countries, the US Senate being the most obvious example, the upper House of a legislature contains within it representation from all parts of the state, with representation not rigidly tied to electorate data but the House itself serving as a unifying institution within the state. I do think that a territorial dimension to the membership of the House of Lords could be a way of ensuring a strong voice for each of the four countries at the UK level, without diminishing England’s voice (as the Commons membership would continue to reflect population shares).
21. In the same way, it is surely very curious, at a time when the prospect of Scottish independence represents an existential challenge to the UK, that a separate Commission is set up to examine the so-called West Lothian Question. The Question is about what future role MPs from Scottish constituencies should play with respect to exclusively English legislation, if there is such a thing. Surely this is something, like the membership of the House of Lords, that needs to be addressed in the wider constitutional context of the future of the United Kingdom. A Constitutional Convention would be well-placed to address these issues in an holistic way; it is obvious that Whitehall cannot.
22. So, I argue for the appointment of just such a Convention. Who should participate in its work? Here I think we can usefully turn to the Alternative Report on House of Lords reform, which was published by a group of peers and MPs who felt unable to support the Report produced by Lord Richard’s Committee. Paragraph 5.40 of that Report provides a helpful, albeit non-exhaustive, list of the sorts of representatives who might be involved. In addition to representation from both Houses of Parliament, there should be representation from the devolved Parliament/Assemblies; political party representatives; representatives of local government; and representatives of business, people at work, the third sector, and faith groups, respectively, together with specialist academic constitutional and political experts. While no doubt there would be arguments about exactly who should represent each relevant interest, that sort of approach seems broadly to me to be along the right lines.

23. One major advantage of establishing a Convention with this sort of membership would be to enable a more specifically English contribution to the debate. The discussions in recent years on constitutional matters within the UK have been primarily, and perhaps disproportionately, about the governance of Scotland, Wales and Northern Ireland. The English voice has yet properly to be heard. It is not for me to say what arguments about the governance of England should be advanced, but I can certainly regret the lack of an English contribution thus far, and urge that we find a way to rectify that. A Convention with the sort of membership I have described could provide the mechanism to achieve that.
24. Then we come to the question of when the Convention should begin its work. My answer to that is as soon as practically possible. The reason for this goes back to my concern about the future constitutional position of Scotland within the United Kingdom. As I said, I am anxious that those who are committed to the UK should be proactive in developing a vision for the UK in which Scotland can see its rightful place, without our waiting for the outcome of the referendum to be known.
25. Unfortunately, the Prime Minister does not share that view. While he is open to a comprehensive conversation about the kind of Union we want to see, he considers that that should take place only after the Scottish referendum debate has come to a conclusion. He believes that we need first to focus on winning the case for the Union in Scotland.
26. I do not agree. Unless an attractive alternative for the UK's constitutional future, based on partnership between the different parts of the UK, and developed by the sort of broad-based Convention I have described, is developed ahead of the referendum, I fear it may be lost. I cannot overstate how much I would regret that. But if a Constitutional Convention can be appointed soon, I believe there is still time for the necessary work to be done.

Conclusion

27. So, in summary, I believe that we need a Constitutional Convention to be appointed, and we need it to begin its work as soon as practically possible. Its focus should be the full context of relationships between all of the Devolved Administrations and the UK Government, on the basis of a shared responsibility for the governance of the UK. And I can assure you that the Welsh contribution to that debate will be positive and constructive.
28. I hope that the Committee finds this evidence of interest, and I look forward to meeting you on 12 July to discuss these matters further.

July 2012

Written evidence submitted by Andrew RT Davies AM, Leader of the Opposition & Welsh Conservative Assembly Group, Assembly Member for South Wales Central (CC 12)

1. Thank you for inviting me to contribute to the current work of the Political and Constitutional Reform Select Committee.
2. I note that your inquiry into whether there ought to be a constitutional convention in the United Kingdom aims to explore the following issues:
 - Is there a case for establishing a constitutional convention for the UK?
 - The composition of the convention
 - The remit and working methods of the convention
3. I am pleased to contribute as Leader of the Welsh Conservative Group in the National Assembly. With your permission, I shall confine my remarks to the first topic.
4. The National Assembly is now an established feature of the Welsh political landscape, and enjoys growing support, particularly amongst young people. The Assembly is an important, accessible and democratic forum for the people of Wales.
5. The Welsh Conservative Group in the National Assembly believes that whilst the premise of devolution has now been anchored—bringing political representation closer to the people and allowing Wales to pursue policies more closely aligned with her economic and social needs—the promise of devolution has yet to be realised. More than a decade on from the onset of devolution, Wales faces continued challenges in raising the educational achievements and economic prosperity of its people. The rate of unemployment is higher in Wales than in any other UK nation and higher than the British average (ONS, 20 June 2012). Two in five young people entering secondary school have reading skills below their age group (Estyn, 31 January 2012). Almost a third of children growing up in Wales currently live at risk after housing costs from poverty (Department for Work and Pensions, 14 June 2012).
6. Devolution therefore enters a critical phase. Concerted action is required to turn the Welsh economy around, reduce Wales' dependence on the public sector and allow for the provision of equitable and modern public services.
7. How would a constitutional convention for the United Kingdom sit amidst this constitutional, economic and social milieu? I argue that Wales' voice in the Union will be stronger when it has a record to be proud of in economic development, health and educational outcomes. I believe that a constitutional convention risks distracting from the real issues affecting the people of Wales, and from much-needed and long-overdue improvements to their material and social welfare in particular.

8. In the debate over further powers for the Assembly, it was argued by many that primary law-making responsibilities would give the Welsh Government the ‘tools to do the job’ (BBC News, 6 November 2009). More than a year on from the introduction of primary law-making in the 20 fields for which the Assembly holds competence, however, just one government bill has passed through the National Assembly—on local government byelaws. The Welsh Government has presented only three full bills to the Assembly. In the same period, the Scottish Government has put 11 bills before the Holyrood Parliament.
9. The Welsh Government’s legislative priorities are also modest. Respected and independent commentator Sir Emyr Jones Parry, said their legislative programme was ‘not a natural fit for the problems Wales confronts’ (BBC News, 22 September 2011). As the people of Wales look for government support and intervention on key issues that affect them in their daily lives, the Welsh Government has become side-tracked with concerns ranging from a separate legal jurisdiction for Wales and cycle lanes to allotments and local government byelaws.
10. A constitutional convention for the United Kingdom would follow the work of the Richard Commission, All Wales Convention, Holtham Commission and Silk Commission in reviewing the way that devolution works for Wales. Each of these commissions has conducted—or is to conduct—a thorough audit of the Assembly’s fiscal and constitutional competencies, and to recommend how the current settlement can be improved. Lord Richard has since led a committee inquiry into the future of the House of Lords (Western Mail, 23 April 2012); Sir Emyr Jones Parry is to review, under Sir William McKay, the West Lothian question (Western Mail, 17 January 2012). Each of these commissions will have a further impact on the way that Wales is governed.
11. The Silk Commission is to report on the devolution of fiscal powers to the National Assembly in the autumn of this year, and present its review into the powers of the Assembly by the spring of 2014 (Wales Office, 8 March 2012). The Commission on the Consequences of Devolution for the House of Commons—or West Lothian Commission—is expected to report ‘in the course of the next Parliamentary session’ (Written Ministerial Statement, Deputy Prime Minister, 17 January 2012).
12. With a referendum on Scottish independence due in 2014 (Scottish Government, correct as at 9 July 2012), continuing debate over reform of the House of Lords, the possibility of the transfer of enhanced fiscal powers to the Northern Ireland Executive (HM Treasury, March 2011), the possibility of a future referendum over Britain’s relationship with the European Union, and continued discussion—outwith Silk—of the Barnett formula and the way that Wales is funded, the potential for constitutional distraction in Wales arising from the convening of a constitutional convention should not be seen as insignificant.
13. Support for the Assembly is growing (All Wales Convention, November 2009), but turnout remains too low in Assembly election. With forty per cent of a forty-one per cent turnout, the executive in Wales counts with the support of fewer than one in six eligible

voters. The media in Wales suffers from a lack of plurality and balance. Civil society in Wales is catching up with that of the more established polities in England and Scotland, but remains in its infancy. I am strongly of the view that more people will engage with the Welsh political process once the Welsh Government has helped to deliver tangible improvements to the life chances of those it represents. I understand the arguments for a constitutional convention, in particular the need for a debate in the round which draws all of these themes—fiscal, constitutional, economic and social—together into a singular thread, and which does so in the run up to, and not the shadows of, the referendum in Scotland. However, I believe that voters in Wales would appreciate the attention of their elected representatives more profitably engaged in delivering the kind of economic and social improvements to which they aspire. I cannot therefore support the call for a constitutional convention at this juncture.

July 2012

**Written evidence submitted by Leanne Wood AM , Leader of Plaid Cymru and South
Wales Central Assembly Member (CC 13),**

1. Many Thanks for your letter dated 3rd July inviting me to give formal oral evidence on 12th July. Unfortunately I am unable to attend on 12th 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—e.g. 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 and Assembly Member for Brecon and Radnorshire (CC 14)

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 (CC 15)

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[2]}. 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 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...

^{22[1]} 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[2]} The Council also has judicial function for other commonwealth jurisdictions, see exhibition in their and Supreme courts building basement.

a) On what basis should it be established?

2. Agree with Welsh First Minister in his unlock democracy speech^{24[3]} 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

^{24[3]} 12/07/2012 Committee Room 10, House of Commons

Ruth Davidson MSP, Leader of the Scottish Conservatives (CC 16)

1. Thank you for inviting me to contribute to the work of the Political and Constitutional Reform Select Committee and I can confirm I will be happy to provide oral evidence to the Committee at its planned session in Edinburgh.
2. The UK has experienced a great deal of constitutional change in the last 15 years, not least the establishment of a Scottish Parliament and Assemblies in Wales and Northern Ireland.
3. There has been further devolution beyond that envisaged at the establishment of the Parliament and Assemblies—notably the Scotland Act 2012 arising from recommendations of the Calman Commission and the 2011 referendum on the direct law-making powers of the National Assembly for Wales and the on-going Silk Commission.
4. It should be noted that the significant additional powers encompassed in the Scotland Act are being transferred over a period of several years and it will not be possible to properly assess their impact before their implementation.
5. It should be further noted that a referendum on Scotland's membership of the United Kingdom is also likely to take place by October 2014 (at the time of writing, no date has been agreed).
6. I believe that any convention or commission must look at the whole of the UK, rather than the distribution of powers between one territory's decision-making body and the UK Government, as has been the template in the past.
7. All governing structures should be examined for their efficacy and relationship with others. This should include the House of Lords and local authority powers. There is an argument that the centralising tendencies of modern governments have reduced the responsibilities and local decision making of Scotland's local authorities. Devolution should be about more than transferring certain powers from one parliament to another.
8. The timing and structure of this convention or commission should take account of the referendum on Scottish independence.
9. The Scottish Rate of Income Tax powers are scheduled for introduction in April 2016. This is one of the most significant transfers of power from the UK Government to another decision making body in any part of the UK. While a convention or commission may wish to start its work before this date, it should consider the impact of this transfer as part of its work, particularly if it is a power under consideration for employment by other devolved nations.
10. On a general point, the Calman Commission looked specifically at areas where power could be devolved without impacting upon other nations and regions of the UK. There are many powers which could be devolved to the Scottish Parliament or Welsh

or Northern Irish Assemblies which could impact upon other nations and regions of the UK and set one area in competition with others. I think the successes of devolution have been anchored in stability, with few serious disputes, and those areas of contention which have existed being resolved through political responses rather than recourse to legal ones. It is therefore important that any commission or convention assesses the impact of any proposed changes on the whole of the UK as well as its individual constituent parts during the course of its work.

11. For me, the starting point of any convention or commission is to establish the essence of the UK—which essential characteristics define the unitary state and all discussions should flow from there. That established, discussions should move to areas which can be sensibly devolved without harming national unity or political stability and with due regard to our shared history and institutions, and whether such devolution is either desired or would be beneficial.
12. I look forward to meeting with the Committee on 4 October to discuss these issues.

September 2012

Written evidence submitted by Professor James Mitchell (CC 21)

1. Professor James Mitchell is Head of the School of Government and Public Policy, University of Strathclyde. He recently held a British Academy grant researching the work of the Scottish Constitutional Convention and is writing a book on the subject.

SUMMARY

- I. Formal written constitutions differ in length and range of matters covered. Determining what should be included in the remit of any Constitutional Convention will be highly contentious.
- II. Constitutional deliberation may focus on specific matters though spill over effects mean that deliberation will inevitably result in forcing other matters to the fore.
- III. Open, participatory deliberation is a worthwhile ideal but much discussion will necessarily take place in closed sessions or through bilateral agreements.
- IV. Legitimacy lies at the heart of the success of any Convention but a representative Convention may achieve high levels of legitimation but create tensions in relations with Parliament at Westminster.

I. GROUNDS AND BASIS FOR ESTABLISHING A CONVENTION

2. The proposal to establish a Constitutional Convention, or some other forum for constitutional deliberation, rests on an assumption that there is a need for reform or at least a review of constitutional arrangements. This in turn rests on an assumption that there is agreement on what is meant by *constitutional arrangements*. Current advocates of a Constitutional Convention appear to share a view on the need for reform or review without necessarily agreeing on what aspect or aspects of the constitution should be the subject of such deliberation.
3. There are many aspects of the UK's constitution that are currently the subject of controversy. Recently adopted or revised constitutions in other states have included matters not found in earlier constitutions. It is now more common, for example, for electoral systems to be included in formal written constitutions than in the past. Central banks are also now given protected independence in a significant minority of the world's written constitutions.
4. In essence, there is a tendency for more recent constitutions, especially those adopted after more open deliberation, to be much lengthier and to include a wider range of matters than older constitutions. There has been a shift from elite-level constitution-making conducted in private (the US Constitutional Convention being the most researched example but also including constitution-making in post-colonial states) to more open process aspiring to greater democratic participation. A primary question either prior to or at the outset of deliberations would have to be: *what would be included/excluded in constitutional deliberation by a constitutional convention?*

5. Two broad distinctions can be made in response to this question:
 - i. Constitutional Convention as a forum for codifying/writing the constitution;
 - ii. Constitutional Convention as a forum for addressing specific constitutional issues.
6. The first would be an opportunity to either write a new constitution or to codify and/or amend existing practice. This would involve a radical departure in UK constitutionalism which was characterised as having a 'political constitution',²⁵ a 'customary constitution',²⁶ and an 'evolved state'.²⁷ The more traditional approach in the UK to constitutional reform has been evolutionary, piecemeal and lacking in clear codes of practice. This has given rise to charges that incremental change has occurred with unintended consequences or without care to known likely consequences. It has also been suggested that the absence of a 'programme' of reform has led to incoherence.
7. A Constitutional Convention that attempted to codify or write a new constitution would be engaged in a formidable task, confronting many highly controversial issues requiring considerable democratic legitimacy, time and resources. It is difficult to detect any demand for such an exercise from the public at large or key institutions such as the political parties. It is difficult to identify the source of any mandate for such an exercise.
8. It is worth noting some of the different mechanisms, often in combination, used to review and reform the constitution:
 - a) Parliament: Formal changes in constitutional rules often require primary legislation. The Labour Government's package of constitutional measures, as listed by some scholars, included a wide range of matters, some requiring legislation, some not.²⁸
 - b) Parliamentary committees: Parliamentary committees have considered constitutional matters at various points in time and in different forms including committees consisting of members drawn from both Houses eg the Joint Committee on House of Lords Reform.

²⁵ J.A.G. Griffith, 'The Political Constitution', *Modern Law Review*, vol.42, 1979.

²⁶ Nevil Johnson, *Reshaping the British Constitution*, Palgrave Macmillan, 2004.

²⁷ Neil MacCormick, *Questioning Sovereignty*, Oxford University Press, 1999.

²⁸ Vernon Bogdanor, 'Our New Constitution', *Law Quarterly Review*, vol.120, 2004, lists the following as constitutional changes: the constitutional independence of the Bank of England; Referendums for Scottish and Welsh devolution (under the Referendum (Scotland and Wales) Act, 1997; Scottish Parliament (under Scotland Act, 1998); Welsh assembly (under Government of Wales Act, 1998); Referendum on Belfast Agreement (under Northern Ireland Act, 1998); Northern Ireland Assembly (under Northern Ireland Act, 1998); Referendum on directly elected mayor and strategic authority for London (under the Greater London Authority (Referendum) Act, 1998); Introduction of 'proportional representation' for elections to Scottish Parliament; Welsh assembly; Northern Ireland Assembly and London strategic authority (under various aforementioned Acts); 'proportional representation' for elections to the European Parliament (under the European Parliamentary Elections Act, 1999); Requirement that local authorities abandon committee system and adopt a cabinet system, city manager or directly elected mayor – last requiring approval in a referendum with provision for 5 per cent of registered electors to require a referendum on elected mayor (under the Local Government Act, 2000); European Convention on Human Rights enacted (under the Human Rights Act 1998); Removal of all but 92 hereditary peers from the House of Lords (under the House of Lords Act, 1999); Freedom of information (under the Freedom of Information Act, 2000); Registration of political parties, the control of political donations and national campaign expenditure and establishment of the Electoral Commission (under the Political Parties, Elections and Referendums Act, 2000); Abolition of office of Lord Chancellor, removal of Law Lords from House of Lords, and establishment of a new Supreme Court.

- c) Royal Commissions: The Kilbrandon Commission on the Constitution (1969-73) was an example of pre-legislative deliberation. Kilbrandon had a narrower focus than its name suggested. Its origins lay in the Wilson Government's response to the rise of the SNP. A Cabinet Committee under Richard Crossman had initially proposed establishing a Royal Commission on Scottish Government while Jim Callaghan proposed a Royal Commission to consider the 'whole issue of unitary Government and federalism, including the arrangements with Northern Ireland'²⁹ The Royal Commission reported to Parliament.
- d) Ad Hoc Commissions of Enquiry: The McKay Commission on the consequences of devolution for the House of Commons. This Commission consists of experts who will produce a report and to report to the Government (as opposed to Parliament).
- e) Standing Committees/Commission reports: The Electoral Commission was established following the fifth report of the Committee on Standards in Public Life (an independent advisory non-departmental public body).
- f) Extra-parliamentary bodies: Think tanks and others have deliberated on constitutional reform but these have operated as non-authoritative deliberations. The most notable example was the Scottish Constitutional Convention which met after 1989.

Constitutional Convention models

9. There are a number of models of Constitutional Conventions. *The US (Philadelphia) Constitutional Convention* is perhaps the most famous but its relevance to the UK today may be limited for a number of reasons:
 - it established a constitution for a new state and hence did not need to tackle issues of codification of existing practice;
 - the issues to be addressed were more limited in the eighteenth century than today—hence the relatively short document (cf many constitutions written more recently);
 - and it was not troubled by the complex issues of democratic legitimacy that would have to be confronted today.
10. *The European (Giscard) Convention* was established by the European Council in December 2001 completing its deliberations in July 2003. The European Convention's legitimacy was based on its establishment by the European Council but the Convention's conclusions required ratification. This proved too difficult. It operated as an elite-level body and ultimately lacked legitimacy.
11. *The Scottish Constitutional Convention (SCC)* is often referred to in debates in the UK. The SCC was founded on a 'Claim of Right' which proved less certain than its founders hoped.³⁰ While participants signed up to the Claim, it was a political rather

²⁹ See detailed background of debates within Whitehall in J. Mitchell, *Devolution in the United Kingdom*, 2009, pp.111-114.

³⁰ We, gathered as the Scottish Constitutional Convention, do hereby acknowledge the sovereign right of the Scottish people to determine the form of Government best suited to their needs, and do hereby declare and pledge that

than justiciable claim to ‘sovereignty of the Scottish people’. The SCC was an important non-authoritative body for cross- and non-party deliberation on aspects of devolution. There was a conscious effort to ensure that in form and in substantive conclusions it would be an open, participatory form of decision-making. The Convention highlights both the strengths and limitations of open, participatory constitutionalism.

12. The SCC’s deliberations focused mainly on issues of representation in the proposed Scottish parliament. It did not address the UK-dimensions of devolution— intergovernmental relations, the future role of a Scottish [Scotland] Office or implications for the House of Commons of devolution. Participants took the view that these were outside its remit. While it deliberated on the powers, functions and financing of devolution, these debates were much shallower than those on representation. This reflected the principal motivation behind the establishment of the Convention and, indeed, devolution: a perceived lack of Scottish representation in the system of UK government. However, even on matters of representation, the SCC was limited in its scope as a deliberative body. Arguably some of the most important debates on the electoral system were conducted within the parties, rather than the SCC.³¹ A complaint found in SCC documents was that the two main parties saw the Convention as essentially a bilateral affair.³² The Labour Party’s debate on the electoral system was more significant than any debate within the Convention. Having agreed in principle to support the MMP electoral system, the most contentious issue was the size of the Parliament. This was important as it would determine its degree of proportionality: Labour favoured 112 Members while the Liberal Democrats wanted 145. The decision to opt for 129, splitting the difference, was made in private by the leaders of Labour and Liberal Democrat parties. This highlights a limitation of an open deliberative forum. Some negotiations need to be conducted in private. The open forum may offer an important forum in which issues and proposals are raised but ultimately some of the most contentious matters will be made elsewhere. This is likely to be the case in any constitutional deliberation.

II. REMIT

13. There may be a temptation to focus on only one aspect of the constitution, such as relations between the component nations. The danger with this is similar to one of the problems that has arisen with regard to devolution. Constitutional change can have unanticipated consequences or anticipated consequences that are simply ignored. The SCC and establishment of devolution may have addressed a problem of legitimacy in Scotland, articulated in terms of a ‘democratic deficit’, ‘no Scottish mandate’ and ‘popular sovereignty’ amongst the opposition parties in the 1980s and

in all our actions and deliberations their interests shall be paramount.

(Scottish Constitutional Convention 1989: 1)

³¹ At its 1990 Scottish conference, Labour ruled out FPTP as a method for electing the Scottish Parliament and adopted a set of criteria pointing towards a Mixed Member Proportional system.-

³² An example of this frustration was a letter to non-party members of the Convention in which the secretary to the Convention complained about the ‘major political parties’ holding a press conference ‘ostensibly speaking on behalf of the Convention, whilst other major interests and organisations in the Convention are not supposed to do so’.

1990s. However, as a consequence of focusing on devolution to Scotland and Wales and failing to address the wider implications, the problem of legitimacy has simply been displaced rather than resolved. Solving one legitimacy problem in Scotland and Wales has created another: the ‘West Lothian Question’. This is now the subject of enquiry by the MacKay Commission on the consequences of devolution for the House of Commons. This Commission has a clear focus, tackles a set of issues that are both technical and politically contentious and might have proved difficult to resolve in an open deliberative forum such as a Constitutional Convention. Leaving aside the unfinished business of devolution, debates on the relations between the component parts of the UK state of unions often spill over into debates on other aspects of the constitution.

14. Debates on devolution have two linked dimensions: how devolved government operates and how the devolved government is represented at the centre. In bi-cameral systems, the components of the state find representation in one legislative chamber. It is notable that debates on devolution and Lords reform are rarely linked in the UK. One attraction of a Convention with a wide remit would be to allow for consideration of spill over implications.

III. COMPOSITION AND LEGITIMACY

15. The key to the composition of any Convention is legitimacy. By legitimacy, we mean not only legality but also perceptions of fairness and consent.³³ Parliament at Westminster might legally establish a Convention but unless it is deemed to be constituted fairly and therefore win consent, its deliberations and conclusions will lack legitimacy and likely to be unstable. An elected Convention would have more legitimacy than one that was appointed though a democratic claim to legitimacy might create problems in its relationship with Westminster. This might be exacerbated if the Convention was elected by a more proportional system than simple plurality as it might claim greater popular legitimacy than Parliament. This raises the important matter of the relationship between Parliament and any Convention, however constituted. Parliament is unlikely to cede constitutional authority to any other body.
16. There are winners and losers in any constitutional settlement. This has also has implications for the composition of a Convention. It is always easy to secure the support of winners in any settlement but losers’ consent is important.³⁴ This may require compromises to be reached which may be best achieved outside the formal Convention. Given current constitutional arrangements with devolved governments in three components of the UK, there will be a need to accommodate a territorial dimension in membership. In other words, a Convention that was based solely on population would lose legitimacy in Scotland, Wales and Northern Ireland. On the

³³ David Beetham, *The Legitimation of Power*, Basingstoke, Palgrave Macmillan, 1991.

³⁴ See J. Mitchell, ‘Devolution’s Unfinished Business’, *Political Quarterly*, vol. 77, 2006, pp.465-474; James Mitchell, Memorandum submitted to Justice Select Committee of House of Commons, ‘Legitimacy, Losers’ Consent and Constitutional Policy’, 2008, House of Commons Justice Committee Devolution: a decade on Fifth Report volume II, Ev202-204.

other hand, a Convention that gave equal representation to the components of the UK state of unions would have little legitimacy in England. Agreeing the composition of the Convention would require compromises of the sort that might be the very subject of its deliberations. Indeed, it might prove as easy to agree on a new constitutional settlement for the UK as on how to constitute any Convention.

October 2012

Written evidence submitted by the Law Society of Scotland (CC 17)

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 Sir Merrick Cockell, Chairman, Local Government Association (CC 18)

1. During my evidence session to your Committee on 6 September I undertook to provide a comparison of tax revenue raised locally in Sweden, Denmark and the United Kingdom.
2. There are a number of ways of doing these sums and the different ways of doing them tell us different things about the comparison between local government in different countries.
3. The usual comparison figures are those published by the Council of European Municipalities and Regions (CEMR) and Dexia Credit Local,³⁵ which provides direct comparisons of sub national public sector revenue, expenditure and GDP.
4. As a share of GDP, UK sub national government raise 14%, compared with 37.4% of GDP in Denmark and 25.6% in Sweden. As a share of total public revenue, the figures are 34.7%, 67.1% and 48.6% respectively. These figures show that one factor in the comparison is the overall size of the public sector, which is much bigger as a share of GDP in Denmark than in Sweden or the UK (which are about comparable on that score); if the comparison were extended to include spending as well as revenue, it would be apparent that the difference between Sweden is affected by the fact that Sweden has a balanced budget and the UK has a large deficit.
5. As a share of their overall revenue, sub national government entities in Denmark and Sweden raise 34.3% and 61.6% of their revenue respectively through local taxes whereas in the United Kingdom the figure is much lower at 12.7%. These figures assume that councils are responsible for the same services in each country, however. In particular, they assume that local government is fully responsible for the police, fire and schools services; they also include the Scottish, Welsh and Northern Irish Governments under the definition of “sub-national government”, and of course those governments have no taxing powers at all: this significantly distorts the CEMR figures. We do not, unfortunately, have the resource to disaggregate them to remove this distortion.
6. In England, of course, schools are funded by the ring-fenced Dedicated Schools Grant, and from this Autumn the police will be the responsibility of directly elected police commissioners. The recent LGA report *Funding outlook for councils from 2010/11 to 2019/20: Preliminary modelling* used a narrower definition of council spending which excluded the police and schools for that reason (as well as the, smaller, fire budget, for different reasons).
7. Using this narrower definition, English local government raises 42% of the cost of services locally. This is expected to rise to 65% from 2013-14 with the partial re-localisation of business rates. Over the period to 2020 it could rise as high as over 80%. This reflects the

³⁵ The Council of European Municipalities and Regions (CEMR) and Dexia Credit Local, EU sub national government 2010 key figures: 2011/2012 edition (2012), accessible at: http://www.dexia.com/EN/news/in_short/Pages/2010-2011_edition_of_keyfigures_on_local_and_regional_europe.aspx

change in the funding system and the predicted fall in central grant to local government as the result of the Government's planned cuts.

8. As I highlighted during my evidence, the United Kingdom's future constitutional arrangements should aspire to deliver a more mature partnership between the centre and localities. Any Constitutional Convention ought to involve local government in a way that reflects that aspiration. One way of doing this could be to increase the amount of business rates retained from 50% gradually over a period, by for example raising the percentage retained by 5% every 2 years. This would provide local government with access to a more buoyant local tax base.

September 2012

Written evidence submitted by Esther A Roberton (CC 19)

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 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 (CC 20)

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 £1.333m. A total of £1.228m (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 (CC 22)

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. I live in Chesterfield.
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 (CC 23)

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 (CC 24)

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.³⁶ 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**

³⁶ 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.

Grounds 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".³⁷
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.

³⁷ 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>

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 representatives³⁸. 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, 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.

³⁸ See <http://reidfoundation.org/wp-content/uploads/2012/04/The-Silent-Crisis1.pdf>

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 Columbia³⁹

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.
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.

³⁹ See: Warren, M. E. and Pearse, H. (eds), *Designing Deliberative Democracy: The British Columbia Citizens' Assembly*, New York: Cambridge University Press, 2008

*Iceland*⁴⁰

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 3600 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

⁴⁰ 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.

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.

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.⁴¹
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.

⁴¹ 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.

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,⁴² 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 (e.g. 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 Max⁴³

⁴² See the All Wales Convention's website at: <http://allwalesconvention.org>

⁴³ <http://www.electoral-reform.org.uk/democracy-max>

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 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 convention⁴⁴ 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.

⁴⁴ 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.

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.

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 Dr Robin Wilson (CC 25)

1. One way of approaching this issue which occurs to me and which the Committee might find helpful in framing questions is to recall the notion of 'Home Rule all Round' which, as you will be aware, had some currency in media and political circles a century ago (and, arguably, could have prevented the partition of Ireland, as Ulster Protestants would not have then feared isolation and would certainly not have been able to mobilise a successful anti-constitutional revolt against a measure which did not treat Ireland differently).
2. In a sense, devolution to Scotland, Wales and Northern Ireland after the 1997 accession to power of 'New' Labour was a muddling-through kind of Home Rule all Round, which, among other things, left out of the equation the key issue of the governance of England—hence the failed push for regional assemblies in England (however valuable these would remain for a range of reasons), the persistence of the West Lothian Question and the impossibility of securing House of Lords reform (since the only solution of adding electoral legitimacy without competing with the Commons is to mirror the Bundestag/Bundesrat relationship in some way).
3. It's been said (in 1066 and All That) that 'every time the English think they have solved the Irish question the Irish change the question' but I think this shows that there is a distinct Irish perspective on the conundrum of UK constitutional reform which may be helpfully oblique. The logic of my argument would be that there is indeed a need for a UK constitutional convention, with English representation regionalised so that its influence would not be like that of an undivided Prussia in a German context. On Northern Ireland this could provide the win-win of finally resolving the home rule crisis were it, on the one hand, to offer security for many NI Protestants that their region is formally recognised as part of the UK polity while, on the other, responding to the aspiration of many NI Catholics that no official restrictions should be placed on collaboration across the island of Ireland as a whole.
4. This federal (in the UK) and confederal (in an Irish context) proposition takes us on of course to how a UK constitutional convention would deal with NI in substance. But this thinking ahead is essential to avoid two highly undesirable outcomes: to exclude NI as separate from proceedings (which would anger many Protestants) or to think of it entirely in its UK but not Irish context (which would ensure the uninterest of most Catholics).
5. None of this, in my view, can be properly thought through, however, in a these-islands framework alone. The failure to understand the European concept of multi-level governance has bedevilled debates from the start, with the constant pitting of 'national sovereignty' against 'Brussels' in much debate in London and the English press. In NI, Scotland (hence the plurality of support for 'devo max' there, rather than the either/or sovereignty choice) and Wales there is a better understanding that it is entirely proper to be governed at different levels in different contexts, from the local to the

regional/small national to the state to the EU. England emerges in this wider context as remarkable for its centralisation and lack of a regional democratic tier but the absence of this consideration from the debate on a north-eastern assembly meant the latter could be (mis-)represented as an unnecessary *bureaucratic* interposition. The inherent complexity of this multi-dimensional governance is a further argument for the need to write down formally and in one document just what the arrangements are—particularly for intergovernmental relations, as Alan Trench has long argued. Otherwise there is a real danger of the *de facto* Balkanisation of the UK, where different groups of its citizens come to occupy hermetically sealed political spheres, by default rather than by design and with sub-optimal outcomes all round.

October 2012

Written evidence submitted by Nigel Smith, Director, Voxscot (CC 26)

1. Following my evidence to the Committee in Edinburgh, I wish to suggest these areas for further research though I suspect you may already be onto them.
2. More than 100 new democracies have been created in the last 35 years—currently about 20 constitutions a year are created or amended each year often using conventions. The majority of these are created in difficult circumstances and thus of limited relevance to the UK. But the particular point that might be of interest to you is that most of them, out of necessity, sought enhanced engagement with the electorate. They have been well documented by an organisation called *Interpeace*.
3. Since the Philadelphia Convention, the US States have held 230 state constitutional conventions. The 27 held in the last 45 years have been well documented giving a good account how they came into being, the *modus operandi* and results. And of course being America there is a proper record of the legal basis of the convention.
4. The convention on the EU Constitution is also well recorded. In this convention, direct representation from the national parliaments provided a third of the delegates though they, in the words of one of them, “*felt like tourists*” observing a process rather than participating in it. It might be worth asking Gisela Stewart and David Heathcoat-Amory who were the UK delegates, to give evidence applying their experience to the UK.
5. Finally there is still more experience in the rest of the developed world including the rest of Europe and Switzerland that hasn’t yet been cited to you.
6. If in 2014 independence is only narrowly defeated, the UK Government may be very glad to seize upon your template as a way forward for Britain.

October 2012

Written evidence submitted by the Cabinet Office (CC 27)

Introduction

1. The Government welcomes the Political and Constitutional Reform Committee's inquiry into whether there is a need for a constitutional convention for the United Kingdom. The Government recognises the need for political and constitutional reform to restore people's faith in the political system and has set out a wide ranging programme of work that covers much of the UK's constitutional framework. The Government is also clear that this important reform programme must not detract from its central task of growing the economy and tackling the deficit, which is at the heart of government business.
2. The Government believes that constitutional conventions are most effective when their scope is clearly defined and manageable and where the public are engaged with the subject.
3. The UK has a wide ranging and unique constitutional framework. International evidence demonstrates that there is a long historical precedent for conventions as one means of achieving constitutional change. Conventions have tended to consider on an individual basis relatively narrow questions, such as the size and shape of specific political institutions, their relationships with each other and the people, the protection of freedoms and the granting of civil rights. Most recently, the alternative report of members of the Joint Committee on the Government's draft House of Lords Reform Bill put forward the case for a convention focusing solely on House of Lords reform. There are very few examples in a mature democracy of conventions with an all-encompassing constitutional remit.
4. Examples from other countries also seem to suggest that constitutional conventions work best when they are bottom-up and driven by the public rather than politicians. This principle was followed in citizens' assemblies in Canada and the Netherlands, which have considered issues such as electoral reform before putting their findings to a referendum. There is no current evidence in the UK of a strong public appetite for a wide-ranging convention, although this should be kept under review. Without public involvement and interest such a convention would lack moral authority and democratic significance.
5. The Committee's call for evidence raises some specific issues about the relationships between the Government and the devolved administrations, and the wider context of constitutional reform in the United Kingdom. Given the breadth of work the Government is doing or that is already ongoing in these areas, this submission considers each of these issues in turn. However, the Government is not proposing to comment in detail on the composition and

working methods of any constitutional convention because these would have to be decided if a case were to be made on the need for a constitutional convention.

Devolution

6. One of the core aims of the Coalition Government is decentralisation of power in line with its belief that there are benefits in making decisions at local level. This is consistent with the Government's commitment to devolution, reflected in the Coalition agreement.
7. The Government believes that devolution gives people choice and provides for decisions to be made at the level which is most appropriate. It achieves a balance which enables local issues to be dealt with locally, while also retaining the benefits of being part of a strong and successful United Kingdom. This is illustrated by major reforms of the police and fire service in Scotland, to create an independent Scottish Police Authority, and a single Scottish Fire and Rescue Service. They replace the two unitary police and fire authorities, six joint police boards and joint fire and rescue boards and two national police organisations which currently operate within Scotland. Measures have also been introduced to improve the speed and effectiveness of the court system in Scotland and public health measures include the early introduction of a ban on smoking in public places and restrictions on the sale of tobacco and alcohol. In Wales, the Welsh Language Commissioner has been established and a minimum price on single-use carrier bags. Public health measures have included the early introduction of a ban on smoking in public places. These examples show why the devolution settlements work, and why they are an integral part of the way the UK is governed, having become embedded and established since the late 1990s and enjoying popular support in Scotland, Wales and Northern Ireland.
8. There are many shared benefits of the devolution settlements; however devolution in the UK is asymmetric in nature. This is because there are different circumstances within the UK to be accounted for. There has long been variation in the level of demand for devolution. For example, in the late 1990s in Scotland there was a clear desire for local powers, whereas in North East England in 2004, the principle was rejected in a referendum on an elected assembly. In addition, there are unique constitutional circumstances in each nation—in Scotland a different legal system and in Northern Ireland a peace agreement. Accordingly, each devolution settlement was planned differently, with different powers being devolved. The devolution settlements continue to evolve and current processes demonstrate the different circumstances in each nation. The profoundly different historic roots and the unique circumstances of each nation within the UK therefore factor heavily in any consideration of devolution as a whole.

Origins and current shape of the devolution settlements

9. There is a rich history of campaigns, commissions and conventions that led to the devolution settlement in Scotland, based on the level of demand for local powers over the years, particularly gaining momentum from the 1970s to the 1990s. The Scottish Constitutional Convention, which consisted of representatives of civic Scotland and some of the political parties in Scotland, carried-out a long-running exploration of Scotland's place in the UK, leading to its 1995 report which was a significant milestone in the development of devolution arrangements.
10. The Scotland Act 1998 created a Scottish Parliament with powers to make primary and secondary legislation, which had been approved in a referendum in Scotland in 1979. The Commission on Scottish Devolution, (also known as the Calman Commission) was set up in 2007 to independently review the constitutional settlement for Scotland after a decade of devolution. The Commission's recommendations, published in 2009, formed the basis for the Scotland Act 2012, which represents the greatest devolution of fiscal powers in 300 years.
11. In Wales, the National Assembly for Wales was established in 1999 following a White Paper, *A Voice for Wales*, and subsequent referendum in 1997, and the Government of Wales Act 1998. The Assembly had powers to make secondary legislation. A further White Paper in 2005, *Better Governance for Wales*, led to the Government of Wales Act 2006, which furthered devolution by providing a formal separation between the Assembly and the Welsh Government and enhanced legislative powers for the Assembly. This separation was implemented formally following the 2007 Assembly elections. The 2006 Act also provided the means for a referendum to be held on whether the Assembly should assume primary law-making powers in all twenty policy areas devolved to Wales. A referendum took place on 3 March 2011, and resulted in the Assembly assuming powers in those twenty areas the following May.
12. Northern Ireland had a devolved system of government at the point of its establishment in the 1920s. Following its collapse and the imposition of direct rule in 1972, successive UK governments pursued the re-establishment of devolved institutions in Northern Ireland—this time on a power-sharing basis, along with arrangements to reflect the 'Irish dimension' and guarantees that Northern Ireland's constitutional status, within the UK or a united Ireland, would be determined by the majority wish—as the only arrangement that could command sufficient consensus across the community to yield stability. The eventual settlement embodied in the Belfast (Good Friday) Agreement includes, besides power-sharing devolution, provisions on constitutional status and a range of politically significant cross border institutions. The result of this was the Northern Ireland Act 1998 and the establishment of the Northern Ireland Assembly.

13. The Committee asked whether any specific legal or constitutional issues should be considered. The specific historical circumstances of the settlement, arising out of the peace process, make the situation in Northern Ireland different from Scotland or Wales. The Northern Ireland settlement was arrived at by a process involving consent from both main parts of the community, and the Irish as well as the British Government; and it was endorsed by referendums in Northern Ireland and the Republic of Ireland. Any process, which revised the structures established by the Belfast Agreement, without involving the same players and thresholds of support would undermine the legitimacy and hence the stability of the settlement. Moreover, the system is now stable after many years of uncertainty. The emphasis should be on inducing it to deliver, and to address the social division that underlay the conflict, rather than to revert to further argument over institutional change.

Recent and ongoing developments

14. There are important ongoing developments in respect of the devolution settlements reflecting the Government's commitment to devolve powers to the most appropriate level within a strong United Kingdom.
15. The original devolution Acts allow for adjustments and evolutionary changes in the settlements. In Northern Ireland, policing and justice powers were restored in 2010, for the first time since 1972, and provision is made in the Northern Ireland Act 1998 for reserved matters to be transferred, providing that there is cross-community support in the Assembly for doing so. In Scotland, aspects of railways policy and control over Renewable Obligation Certificate banding have been devolved to the Scottish Government. The Acts themselves contain a flexible toolkit of order-making powers which have allowed for adjustments to be made to make each of the Settlements work better.⁴⁵ At the same time, many orders demonstrate close co-operation and a shared desire between the Government and the devolved administrations to make devolution work and deliver benefits to Scotland, Wales and Northern Ireland⁴⁶.

⁴⁵ Orders made under sections 30, 63, 93 and 104 of the 1998 Scotland Act have been used to allow transfers of power, agency arrangements and cross-border provision to be made to the mutual benefit of both Scottish and UK administrations. In addition, orders made under sections 22 and 24 of the Government of Wales Act 1998 and Section 58 of the Government of Wales Act 2006 have been used to allow transfers of functions to the National Assembly for Wales and to Welsh Ministers.

⁴⁶ Such as the need to have a section 104 Order to ensure that Scottish Parliament legislation cannot be undermined by action in other parts of the UK. Orders were also made in 2007 and 2010 under Section 109 of the Government of Wales Act 2006 to clarify further the devolution settlement in Wales. The recent Scotland Act section 93 Order, allowed the UK Government to purchase on behalf

16. There are circumstances when the devolved administrations are content for legislation in devolved areas to be made by the UK Parliament. The UK Parliament will not usually legislate in relation to devolved matters without the consent of devolved legislature. Legislative consent motions provide a mechanism for allowing the devolved legislatures to consent to legislation in devolved areas that are being considered in the UK Parliament. The Legislative Consent Motion is a mechanism to coordinate between devolved legislatures and the UK Parliament, and is an important way of ensuring consistency across the whole of the UK where the UK Government and devolved administrations consider this to be a benefit. This was illustrated by the 2009 Child Poverty Bill which provided for active participation in the UK Government Child Poverty initiative and the 2009 Bribery Bill which provided for uniformity across the UK, to provide a more effective and workable legislative framework than would be possible if separate legislation were introduced.
17. As mentioned at paragraph 9, the Scotland Act 2012 represents a significant update to the devolution settlement in Scotland. The Scotland Act 2012 contains a range of finance and non-finance provisions aimed at strengthening Scotland within the UK. In bringing about the largest ever devolution of financial powers to Scotland since the creation of the UK, the Act will deliver real financial accountability to the Scottish Parliament. The Scottish and UK Governments are working together to ensure the smooth implementation of the Act, with most of the non-finance provisions already commenced. The full effects of this strengthening of the devolution settlement in Scotland will continue to be felt over the coming years as the Act is implemented in full, with a new Scottish rate of income tax to be in place from April 2016.
18. The UK Government established the McKay Commission in January 2012 to explore how the House of Commons might deal with legislation which affects only part of the United Kingdom, following the devolution of certain legislative powers to the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales. The Commission is in the process of collecting a wide ranging and comprehensive set of evidence and opinions from across the UK. It is expected to report on its findings early in 2013.
19. The Silk Commission was set up in October 2011 to review the present financial and constitutional arrangements in Wales. Part I is looking at the case for the devolution of fiscal powers to improve the financial accountability of the National Assembly for Wales and the Welsh Government, and is due to report on this aspect of its work in the late autumn. In 2013 the Commission will turn its attention to the second part of its remit, and will review the

of Scottish Ministers a stockpile of flu vaccines ahead of the winter flu season, taking advantage of the economies of scale and increased buying power that being part of the UK brings.

powers of the National Assembly for Wales in the light of experience and recommend modifications to the present constitutional arrangements. This is a substantive process and piece of analysis and the Commission will report its findings by spring 2014.

20. The Government is also conducting a public consultation on minor adjustments to institutions in Northern Ireland, including the length of the Northern Ireland Assembly term. A consultation response will be published early in 2013.
21. The debate about the constitutional future of Scotland is a priority for the Government. The UK Government is extremely pleased that we have been able to work with the Scottish Government to reach an agreement that will facilitate a legal and fair referendum that is capable of commanding the confidence of both sides of the debate and which will enable people in Scotland to have their say. Now we can get on to the real debate about Scotland's future and whether Scotland should remain part of the United Kingdom. The UK Government firmly believes that Scotland is stronger as part of the UK and the UK is stronger with Scotland within it. As the Secretary of State for Scotland announced on 20 June 2012, the UK Government will undertake a programme of work to inform and support the debate in advance of the referendum. This programme of work will produce detailed evidence and analysis to assess the benefits of Scotland remaining part of the UK to both Scotland and the rest of the UK.
22. Each of the major pro-UK political parties in Scotland is establishing where they stand on devolving further powers to the Scottish Parliament. There is currently no consensus in Scotland on this issue. Moreover, further Scottish devolution has implications for the rest of the UK. A means for reaching consensus in Scotland and with other parts of the UK regarding the devolved settlements will be required. However, the Government is clear that it is for the Scottish people to decide first whether or not Scotland is to remain within the United Kingdom, because a vote for independence will bring to an end the devolution process in Scotland.
23. Devolution is a dynamic process to which the UK Government is and will continue to be committed. However, given the current wealth of considered work underway, the Government believes that current reforms and debates about the future shape of devolution should be allowed to progress, before looking at how to develop matters further. For this reason, the Government believes it would be premature to establish at this time a constitutional convention to look at the future of the devolution settlements across the UK.

Wider Political and Constitutional Reform

24. The Coalition's Programme for Government⁴⁷ recognised a crisis of confidence in the country's political institutions, and set out a programme of measures to address it. The commitments on political and constitutional reform aim to devolve power to the most appropriate level, and to engage the public more directly in politics. They include introducing fixed-term parliaments, pursuing reform of political party funding, and setting up a commission to explore the introduction of a Bill of Rights. The Government also legislated for people to have their say on the voting system for the House of Commons.
25. The Government is carrying out wider work on political and constitutional reform, for example on provisions in the laws on succession which could be discriminatory and do not reflect the values we hold today as a society. The Government is working with all of the other countries of which Her Majesty is also Head of State to put in place succession laws which are fit for the 21st century—ending male primogeniture, allowing the heir to the throne to marry a Roman Catholic, and repealing the Royal Marriages Act.
26. The Government is also committed to seeking agreement on the reform of party funding, including limiting donations and taking big money out of politics. Discussions between the main political parties at Westminster are currently taking place and the Government hopes consensus will be reached swiftly.
27. Some of those measures in the Programme for Government are in place but effects will take time to be felt, while others are still work in progress. The Government also notes that its work, and that of the Committee, will be taken forward in a context when the public is most directly concerned about economic growth. It will be important to look to measure their effectiveness, and ask what else can be done to strengthen democracy across the United Kingdom. In response to the Committee's questions, the Government believes that such processes work best when they are bottom-up and driven by the public rather than politicians. The Committee's inquiry can help to gather evidence and influence the debate.

Conclusion

28. In summary therefore, the Government believes that a constitutional convention to consider in the round the devolved settlements would be premature at a time of two ongoing commissions on the subject and a debate about Scotland's future within the United Kingdom. More generally, the Government is engaged in a number of reforms to increase public confidence in the political system. Whilst the Committee's inquiry will contribute to this process of public engagement, it is important to recognise that public concern and Government policy is focussed on tackling the economic challenges as a top priority, and it

⁴⁷ www.cabinetoffice.gov.uk/sites/default/files/resources/coalition_programme_for_government.pdf
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might therefore be difficult to justify a convention that looked at the whole of the UK constitution at the present moment.

October 2012

**Written evidence submitted by Sir Edward Lister, Chief of Staff and Deputy Mayor for
Policing and Planning (CC 28)**

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