

HOUSE OF LORDS

Select Committee on the Constitution

6th Report of Session 2016–17

English votes for English laws

Ordered to be printed 31 October 2016 and published 2 November 2016

Published by the Authority of the House of Lords

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Q in footnotes refers to a question in oral evidence

SUMMARY

In July 2015, the Government introduced its proposals for English votes for English laws (EVEL), which aim to provide English MPs with a separate and distinct voice in the House of Commons on laws which affect only England. Those proposals were agreed by the House of Commons in October 2015 on the understanding that they would be reviewed by the Government after a year, in the autumn of 2016. We were asked by the then Leader of the House of Commons, Chris Grayling MP, to review the constitutional implications of the EVEL proposals and to feed our conclusions into the Government's review.

The devolution of powers to Northern Ireland, Scotland and Wales means that MPs representing the devolved nations are able to debate and vote in the House of Commons on laws only affecting England, while MPs for English constituencies (as well as MPs representing seats in the devolved nations) cannot debate or legislate on devolved matters in the other nations. This issue is known as the West Lothian Question. It forms part of a larger 'English Question' which encompasses public concerns in England about its representation and governance within the Union.

The EVEL procedures introduced by the Government address, to some extent, the West Lothian Question. They provide a double-veto, meaning that legislation or provisions in bills affecting only England (or in some cases, England and Wales, or England and Wales and Northern Ireland), can only be passed by the House of Commons with the support of both a majority of MPs overall, and of MPs from the nations directly affected by the legislation.

Yet English MPs' ability to enact and amend legislation does not mirror their capacity, under EVEL, to resist legislative changes. The capacity of English MPs to pursue a distinct legislative agenda for England in respect of matters that are devolved elsewhere does not equate to the broader capacity of devolved legislatures to pursue a distinct agenda on matters that are devolved to them.

The future of EVEL and the Government's review

The public's desire for England to have a voice and decision-making capacity equal to the devolved nations' in relation to matters which affect only England is understandable. And there are, currently, no viable alternatives other than to provide that voice through the House of Commons. However, attempting to provide a separate voice for England through the membership and institutions of the UK Parliament carries risks. Parliament is a unifying body at the centre of the political union, where all citizens, regardless of where they live, have the same say in the laws and policies that govern them. Using the same institution to provide a separate and distinct role for England could risk undermining Parliament's position as a UK, rather than English, institution—a position which is already under threat given the growth of distinct and separate political party systems and political discourse within each of the devolved nations.

It is too soon to fully assess the impact of EVEL on the Union, and on Parliament's role as the central representative chamber of the whole UK. Likewise, it is too early to judge whether the procedures are robust, given the short period of time during which they have been in operation.

We recommend that, following the Government's review in autumn 2016, the EVEL procedures—if they are retained—should be subject to an extended

trial period for the remainder of this Parliament, with a final review taking place early in the next Parliament. The next few years will see a series of votes on matters relating to the UK's exit from the EU which may well provide a 'stress test' for the procedures. Following the extended trial period, the revised procedures should be subject to scrutiny by a Joint Committee examining both the technical and the constitutional aspects of EVEL.

Since the EVEL procedures are at least partly a response to public perceptions of unfairness about England's 'voice' within the Union, the Joint Committee should try to establish whether the introduction of EVEL has by then affected public perceptions in England of a 'democratic deficit'. It should also consider the impact EVEL has had on public attitudes in the devolved nations.

It is regrettable that cross-party support was not secured for EVEL prior to its introduction. A prolonged trial period, followed by detailed scrutiny on a cross-party basis by a Joint Committee and combined with evidence of public support for the policy, both in England and in the devolved nations, may provide more widespread political backing for the reform.

Consideration must be given in the longer-term as to whether, and if so how, to secure English votes for English laws as a permanent fixture of the UK's territorial constitution. We trust that the review by a Joint Committee, in the next Parliament, will consider the relative merits of Standing Orders and statute in this regard and recommend a way forward that secures cross-party support.

The impact of EVEL on Parliament and Government to date

EVEL creates distinctions between MPs at some points of the legislative process. This may be seen as justified in the attempt to create some degree of parity between England and the devolved nations in relation to devolved issues, but clearly presents risks to Parliament's position as a unifying body representing the UK as a whole. By opting for the double-veto form of EVEL, the Government has attempted to balance the need for a separate English 'voice' in the House of Commons with the need for Parliament to remain a sovereign chamber representing the whole of the UK.

EVEL does not create any constitutional restrictions on the ability of any member of the House of Commons to hold any ministerial office.

There is, to date, little evidence of any impact of EVEL in the House of Lords either procedurally or politically. While we will keep this matter under review, we anticipate that adverse consequences are unlikely and should be resolved by the conventional deference shown by the House of Lords to the elected chamber.

We have found no evidence that legislation is being drafted differently, or that the legislative programme has changed, following the introduction of EVEL. A welcome consequence of the reforms is the additional consideration being given by civil servants to the territorial extent and application of UK Government policies. We were impressed by the steps taken by the civil service to prepare for EVEL, and we trust that a continued focus on the interaction between the UK Government and the devolved administrations will continue as EVEL and the recent and forthcoming changes to the devolution settlements bed in.

English votes for English laws

CHAPTER 1: INTRODUCTION AND BACKGROUND

1. In July 2015, we launched an inquiry into how the Union between the four nations of the United Kingdom could be strengthened. As part of that inquiry, we considered issues relating to the governance of England. Our report, *The Union and devolution*,¹ was published in May 2016. Whilst we were undertaking that inquiry, we were asked by the then-Leader of the House of Commons, Chris Grayling MP, to consider reviewing the operation of the Government’s proposals for ‘English votes for English laws’ (EVEL), which were introduced in October 2015. We agreed to undertake a review of the impact of the new EVEL procedures, including their effect on the House of Lords and on Government, and their wider implications for the constitution as a whole.
2. This report is the result of our review. It is intended—alongside reports by several select committees in the House of Commons²—to feed into the Government’s own review of EVEL which is expected to begin in autumn 2016. In addition, our report builds on and complements the ‘England’ chapter in our May 2016 report, *The Union and devolution*.³
3. This report is based on evidence taken during our inquiry on the Union and devolution, during which we visited Cardiff and Edinburgh and heard from witnesses based in Northern Ireland. In addition, between June and September 2015 we took evidence from further witnesses specifically on EVEL.⁴ We are grateful to all those who gave evidence to inform our work.
4. Our report does not address possible implications that EVEL may have for the work of Parliament leading up to the UK’s exit from the European Union. Nor does it address the effect that EVEL may have on the legislative consequences of Brexit for both the UK as a whole, and for England and the devolved nations in particular.

1 Constitution Committee, *The Union and Devolution* (10th Report, Session 2015–16, HL Paper 149)

2 House of Commons Public Administration and Constitutional Affairs Committee (PACAC), *The Future of the Union, part one: English Votes for English laws* (Fifth Report, Session 2015–16, HC 523), House of Commons Procedure Committee, *Government proposals for English votes for English laws Standing Orders: interim report* (First Report, Session 2015–16, HC 410); further reports are expected from the Procedure Committee and Scottish Affairs Committee.

3 See Constitution Committee, *The Union and Devolution*, chapter 8

4 In our footnotes, evidence from our Union and devolution inquiry will be preceded by the letters UDE, evidence specific to this inquiry by the letters EVE.

CHAPTER 2: THE ENGLISH QUESTION AND THE WEST LOTHIAN QUESTION

5. In our *Union and devolution* report, we set out in brief the range of questions that form the English Question:

“The ‘English Question’ encompasses a number of questions about England’s governance. How, within the Union, should England be governed? Is there a way to allow England a separate voice within the UK without undermining the Union? Should power be devolved or decentralised, and if so how?”⁵

6. English votes for English laws is designed to address one aspect of the English Question: the ‘West Lothian Question’. The West Lothian Question gained its name⁶ through its articulation in the 1970s by the MP for West Lothian, Tam Dalyell, who asked in a debate on Scottish and Welsh devolution proposals:

“For how long will English constituencies and English Honourable members tolerate ... at least 119 Honourable Members from Scotland, Wales and Northern Ireland exercising an important, and probably often decisive, effect on English politics while they themselves have no say in the same matters in Scotland, Wales and Northern Ireland?”⁷

7. The West Lothian Question now arises from the difference that the creation of the devolved legislatures in 1998 has made to the responsibilities of MPs from each of the different parts of the UK. It can be illustrated by way of an example of a policy area that is devolved to all three devolved legislatures, such as education. MPs representing Scottish, Welsh or Northern Irish constituencies are able to debate and vote on laws affecting education in England, where it is not devolved. Meanwhile MPs for English constituencies (as well as MPs representing seats in the devolved nations) cannot debate or legislate on education in the other nations because the devolved national legislatures are responsible for the policy.⁸
8. Where votes are close, this situation can create—and has on a small number of occasions created—circumstances where proposed laws affecting England alone are passed (or rejected) against the wishes of a majority of MPs for English constituencies.⁹
9. The issue was first pointed out during debates on Irish Home Rule from the 1880s. Various proposals were put forward and rejected, including simply not having MPs for Ireland in the UK Parliament and having ‘in and out’

5 Constitution Committee, *The Union and Devolution*, para 352

6 The name ‘West Lothian Question’ was applied to it by Enoch Powell. See PACAC, *The Future of the Union, part one: English Votes for English laws*, para 11.

7 HC Deb, 13 November 1977, col 123

8 Self-denying ordinances prevent both Houses from debating devolved matters; see *House of Lords, Companion to the Standing Orders* (2015), [paragraph 6.18](#); House of Commons Resolution, HC Deb 25 October 1999, [col 772](#)

9 Divisions in 2003 and 2004 on higher education tuition fees, foxhunting, and foundation hospitals are widely-cited examples. A recent division on Sunday trading hours (which did not extend to Scotland but was not subject to the EVEL procedure) was controversial as the result would have been different if Scottish MPs’ votes were not included: see Daniel Gover and Michael Kenny, ‘Sunday trading and the limits of EVEL’, *Constitution Unit Blog*, (10 March 2016): <https://constitution-unit.com/2016/03/10/sunday-trading-and-the-limits-of-evel/> [accessed 28 April 2016]

MPs only able to debate and vote on UK-wide issues.¹⁰ During the first period of devolved rule in Northern Ireland, from 1921, that nation returned a smaller number of MPs per head compared with Great Britain. Even then, their involvement in matters only affecting Great Britain was occasionally controversial. When, in 1965, Northern Irish MPs voted against the Labour Government's policy of renationalising the steel industry, the then attorney-general was asked to explore how to avoid such a situation occurring again. He concluded that it was too difficult.¹¹ By the time Enoch Powell coined the phrase 'the West Lothian Question' in the 1970s, the issue had once again become a hotly contested subject of debate within the House of Commons. In recent years, as the number of powers devolved to Northern Ireland, Scotland and Wales has grown, the issue has once again risen up the political agenda.

Proposals for English votes for English laws in the House of Commons

10. English votes for English laws attempts to address the West Lothian Question by changing the procedures that govern how the House of Commons legislates. There have been different proposals put forward over time as to how this might be achieved. Some have proposed excluding MPs from constituencies outside England (or England and Wales) from debates and votes on matters that have been devolved. Others have suggested allowing MPs for English (or English and Welsh) constituencies to express a separate view, or to exercise a veto on matters which only affect England (or England and Wales).

Prior to the 2015 General Election

11. Resolving the West Lothian Question has been a Conservative Party manifesto commitment in every general election since 2001.¹² Under the Coalition Government, a Commission was appointed to scrutinise the issue.¹³ The McKay Commission, led by former Clerk of the House of Commons Sir William McKay, investigated "the consequences of devolution for the House of Commons". The Commission reported in March 2013¹⁴ and recommended the adoption by the Commons of the principle that:

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

12. No action was taken to implement the McKay Commission's recommendations.

10 See House of Commons Library, *The West Lothian Question*, 1995, [Research Paper 95/95](#), pp 13-14.

11 Jim Gallagher, *England and the Union: How and why to answer the West Lothian Question* (April 2012), p 4: http://www.ippr.org/files/images/media/files/publication/2012/04/west-lothian-question_Apr2012_8954.pdf?noredirect=1 [accessed 31 October 2016]

12 UDE [Q 17](#) (Professor Robert Hazell); see Conservative Party, *Time for Common Sense* (2001), p 46; Conservative Party, *The Conservative Party Manifesto* (2005), p 22; Conservative Party, *Invitation to join the Government of Britain* (2010), p 84; Conservative Party, *The Conservative Party Manifesto 2015* (2015), p 70

13 See 'Full Text: Conservative-Lib Dem deal', *BBC News* (12 May 2010): <http://news.bbc.co.uk/1/hi/8677933.stm> [accessed 27 July 2016]

14 McKay Commission, *Report of the Commission on the Consequences of Devolution for the House of Commons* (March 2013): http://webarchive.nationalarchives.gov.uk/20130403030652/http://tmc.independent.gov.uk/wp-content/uploads/2013/03/The-McKay-Commission_Main-Report_25-March-20131.pdf [accessed 9 May 2016]

13. Following the Scottish independence referendum in September 2014, Prime Minister David Cameron announced that, alongside the promised further devolution to Scotland, the Government intended to address the West Lothian Question:

“I have long believed that a crucial part missing from this national discussion is England. We have heard the voice of Scotland - and now the millions of voices of England must also be heard. The question of English votes for English laws—the so-called West Lothian question—requires a decisive answer.”¹⁵

After the 2015 general election

14. A Conservative Government was elected in May 2015 with an explicit manifesto commitment to bring forward a form of EVEL that required the consent of English (or English and Welsh) MPs for legislation affecting only England (or England and Wales).¹⁶
15. On 2 July 2015, the Government published its proposals for EVEL, which it proposed would be implemented by changing House of Commons Standing Orders. The proposals were debated by the House of Commons on 15 July, and the Government announced that a motion to implement the proposals would be put to the Commons for a vote after the summer recess.¹⁷ The House of Lords debated the proposals on 16 July and, on 21 July, voted by 320 to 139 to support a motion to establish a Joint Committee “to consider and report on the constitutional implications” of the proposed new EVEL procedures.¹⁸ In October 2015, following a report from the House of Commons Procedure Committee, the Government brought forward revised amendments to Standing Orders. These were approved by the House of Commons on 22 October.

How the new EVEL procedures work¹⁹

16. The new procedures broadly reflect the consent principle proposed by the McKay Commission, but with an express ‘veto’ for English (and Welsh) MPs over legislation affecting only their nation(s).²⁰ Professor Roger Scully told us that the changes were “broadly in line with the McKay Commission recommendations”,²¹ although others have stressed the differences, most notably the use of a veto rather than the expression of a ‘voice’.²²

15 Prime Minister’s office, *Scottish Independence Referendum: statement by the Prime Minister* (19 September 2014): <https://www.gov.uk/government/news/scottish-independence-referendum-statement-by-the-prime-minister> [accessed 27 June 2016]

16 Conservative Party, *The Conservative Party Manifesto 2015* (2015) p 70

17 See House of Commons Library, *English votes for English laws*, **Briefing Paper 7339**, 2 December 2015, Chapter 3.

18 HL Deb, 21 July 2015 **cols 1007–1031**

19 The detail of the provisions is set out in **Standing Orders 83J–83X**. See House of Commons Library Briefing Paper, *English votes for English laws*, **CBP-7339**, December 2015, for a description of the process

20 For further details, see Cabinet Office, *English Votes for English Laws: Revised Proposed Changes to the Standing Orders of the House of Commons and Explanatory Memorandum – October 2015*: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468329/english-vote-english-laws-revised-explanatory-memorandum.pdf [accessed 9 May 2016]

21 UDE written evidence from Professor Roger Scully (**UDE0069**). See also Professor Adam Tomkins’s written evidence to PACAC’s EVEL inquiry (**EVE0007**)

22 EVE **Q 13** (Professor Michael Kenny)

17. A Bill or provisions within it may be certified as English or English and Welsh (or less frequently English, Welsh and Northern Irish²³) in their application. The criteria for certification is that a provision (or Bill) applies only to England (and Wales), and is within devolved legislative competence in Scotland and Northern Ireland (and Wales for England-only provisions), and that any spill-over impact on the devolved nations would be “minor and consequential”.²⁴
18. Where entire Bills apply only in England (or England and Wales) their Committee Stage is carried out only by MPs for English (and Welsh) seats. Committee stage for other Bills, including those with certified provisions, takes place as normal. After Report stage, an English (and Welsh) Legislative Grand Committee must approve provisions applying only to England (and Wales). If approval is withheld, a whole-House ‘reconsideration’ stage may take place followed by a further vote of the Legislative Grand Committee; a second disapproval results in the fall of the Bill or clauses in question. Members from nations other than those to which the provisions apply are able to attend Legislative Grand Committee meetings and speak, but are not able to table motions or vote.
19. When Lords amendments or messages are being considered, those that are certified under EVEL are subject to a double majority, meaning that they require a majority of both the whole House and of English (or English and Welsh) MPs. Without both majorities a motion to agree or disagree with a Lords amendment is deemed to be disagreed to. Similarly, statutory instruments that are certified under EVEL require a double majority to be approved (under the affirmative procedure) or for a motion to annul to be agreed (under the negative procedure).
20. Neither the new procedures nor the McKay Commission’s proposals prevent Scottish, Welsh or Northern Irish MPs from voting on matters that only affect England. All MPs are still able to debate and vote on all legislation before the House, but the new procedures allow for some consideration to be conducted only by English (or English and Welsh) MPs. They also create a double veto, whereby the whole House has a veto over matters agreed by English (and Welsh) MPs, while the latter also have a veto over devolved matters affecting their nation(s) that have been voted upon by the whole House.²⁵

Alternative solutions to the West Lothian Question

21. Before we turn to consider the operation of the new EVEL procedures in detail, we note that alternative solutions to the West Lothian question have been proposed. These include:
 - An English Parliament;
 - English regional assemblies;
 - An informal self-denying ordinance within the House of Commons that MPs representing seats in the devolved nations should not vote on England-only (or England- and Wales-only) matters; and
 - Reducing the representation of the devolved nations in the House of Commons.

23 Pete Wishart MP noted in his written evidence to the Procedure Committee the lack of any combination in which certification could include Scotland (see [EVL 12](#)).

24 House of Commons [Standing Order 83J\(2\)](#)

25 UDE [Q 317](#) (Oliver Letwin MP)

22. We considered the first two options in some detail in our report *The Union and devolution*. Neither, at present, provide a solution to the West Lothian Question. In our report, we concluded that an English Parliament is not a viable option for the future governance of England. Meanwhile, English regional assemblies are not currently being considered and are generally thought to be unlikely to gain any political traction in the near future. Our report also considered the extent to which recent ‘Devolution Deals’, which create Combined Authorities led by directly-elected mayors and with powers that extend beyond those of individual local authorities, could address the English Question more broadly (although they cannot offer a solution to the West Lothian Question in particular). We consider briefly the third and fourth options below.

A self-denying ordinance

23. Pete Wishart MP, the Scottish National Party’s (SNP) Shadow Leader of the House of Commons, told us that he would have preferred to continue to rely on the self-denying ordinance that the SNP observed prior to the 2015 general election:

“I propose that we could get together at a business level where shadow Leaders of the House, with the Whips, could look at the legislation. It would be an arrangement whereby, if there was clearly no Scottish interest, we would not take part. It would be an agreed and consensual process.”²⁶

24. While this approach may have some appeal, not least because of its simplicity, it is hard to see how it could provide a lasting solution to the West Lothian Question. If Mr Wishart’s proposal is intended to apply to all MPs for Scottish (and indeed Welsh and Northern Irish) constituencies, it is hard to see why a future Government (or indeed official Opposition) reliant on the votes of MPs from the devolved nations would continue this informal practice. If it is meant to apply only to the SNP, then it does not prevent non-SNP MPs representing seats in the devolved nations from voting on matters only affecting England (or England and Wales).
25. Any such arrangement would be subject to the ongoing goodwill of whichever parties held seats in the devolved nations. Indeed, we note that the SNP are currently prepared to vote on matters that affect England only, on the basis that EVEL was “imposed ... without consensus and agreement”.²⁷
26. At present, the SNP hold the vast majority of Scottish seats, but—just as it was not the case prior to May 2015—this will not necessarily be the case in a future Parliament. There is no guarantee that parties with Scottish seats would agree on whether the MPs for those seats should or should not vote on a particular issue. It also seems unlikely that agreements made behind closed doors in meeting rooms in Westminster would satisfy public discontent in England with the lack of a distinct voice for England within the Union.

Reduced representation in the House of Commons

27. Two of our witnesses suggested that the number of MPs representing the devolved nations could be reduced in light of the devolution of powers to the devolved legislatures. Alun Evans, a former Director of the Scotland

26 EVE Q 2

27 EVE Q 6 (Pete Wishart MP)

Office, told us that it was a better solution than EVEL: “If you have a much higher level of devolution/home rule, you will lose a proportionate number of seats at Westminster. That seems to me to be defensible logic.”²⁸ Similarly, Donald Shell warned of the difficulties of implementing EVEL and offered a reduction in the number of MPs as an alternative that “should help to provide some reassurance to the electorate in other parts of the UK that Scotland is not in a position to exert unreasonable influence within the UK parliament.”²⁹

28. Such an approach has been tried before: it was the solution chosen in the 1920s following the devolution of power to Northern Ireland. Consequently, for the first 50 years of devolution to Northern Ireland, it had fewer MPs per head than the other nations of the UK.
29. Yet it is hard to see why MPs representing constituencies in a devolved nation should collectively have a diminished say over reserved matters such as foreign policy or defence simply because policy areas such as health or education have been devolved. This problem was illustrated by Professor Philip Booth of the Institute of Economic Affairs: “Imagine that there was a vote to go to war ... and Scottish MPs were underrepresented and the UK Parliament voted to go to war.”³⁰ A more pertinent example might be a vote in the House of Commons on reserved matters relating to Brexit. In such a situation, and more broadly on reserved matters, the voice and power of the devolved nations (or regions) would be unjustifiably diminished. Given that Scotland voted to remain part of the EU while England voted to leave, a solution which diminished Scottish representation in the House of Commons during such votes would surely place significant, and understandable, strain on the position of the UK Parliament as the centre of the UK’s political union.
30. On a more practical level, it would be difficult to determine what proportion of MPs should be removed to be equivalent to each nation’s devolved legislative powers. For example, should Northern Ireland have fewer MPs on the basis of the devolution of power over social security and welfare, when a policy of parity with the British welfare system is broadly followed—and particularly when, as at present, Westminster has the power to legislate for welfare reform in Northern Ireland?³¹ Moreover, this solution would not address the issue at the heart of the West Lothian Question: MPs from the devolved nations (or regions) would still be able to vote on matters affecting areas without devolved institutions.³²

28 UDE [Q 97](#)

29 Written Evidence from Donald Shell ([UDE0030](#))

30 UDE [Q 103](#)

31 Through the [Northern Ireland \(Welfare Reform\) Act 2015](#).

32 UDE [Q 103](#) (Professor Philip Booth)

CHAPTER 3: THE GOVERNMENT'S REVIEW

31. The introduction of the EVEL procedures has been referred to by the Government as being akin to a trial run. In their 2015 English manifesto, the Conservative Party stated they would “Run a pilot to test the new rules on one or more nonfinancial bills” followed by “full implementation of our plan within the first year of a new Government.”³³
32. The proposal to pilot the procedures on a limited selection of bills was not taken forward by Government. Instead, it committed to review the operation of the new proposals after 12 months, in the autumn of 2016. In response to a recommendation from the House of Commons Procedure Committee that the new procedures should apply only to a small number of Bills in their first year,³⁴ the then Leader of the House, Chris Grayling MP told the Commons:
- “In practice, we are embarking on the kind of trial process that it asked for in the report ... We will effectively have a trial period to road test the proposals and will then review them in discussion with the different Committees of the House.”³⁵

Too soon to judge?

33. Several of our witnesses stressed that one year was too little time to allow for a proper evaluation of the impact of EVEL. Moreover, as we note above, since the current Government has a majority of both the whole House and those members representing English or English and Welsh constituencies, it is unlikely that the implications of those two groups failing to reach agreement will be fully known from the experience of this first year. First Parliamentary Counsel, Elizabeth Gardiner, told us that “Given the current make-up of the House of Commons, I would say that [EVEL] has not been tested in anger.”³⁶
34. Lord Wallace told us that, “We have not had enough experience to see how they [the EVEL procedures] should be amended”, a sentiment echoed by Baroness Smith of Basildon, the Shadow Leader of the House of Lords.³⁷ Similarly, Liberal Democrat Shadow Leader of the House of Commons Tom Brake MP, told us that:
- “I would want to withhold judgment on whether it has merit until we see it used in anger ... There might be some significant clashes in the future when Parliament as a whole adopted one position and English MPs adopted another. At that point, we would really understand whether the public thought it was a sensible solution to the West Lothian Question.”³⁸
35. **It will be difficult for the Government to judge whether the EVEL procedures are robust given the short period of time during which they have been in operation. Whilst it is impossible to predict when the procedures might be used “in anger”, it would be sensible to allow for an extended trial period from which a more extensive evidence**

33 Quoted in House of Commons Library Briefing Paper, English votes for English laws, [CBP-7339](#), pp 33-36

34 House of Commons Procedure Committee, *Government proposals for English votes for English laws Standing Orders: interim report* (First Report, Session 2015–2016, HC 410), para 104

35 HC Deb, 22 October 2015, [col 1178](#)

36 EVE [Q 35](#)

37 EVE [Q 39](#) (Lord Wallace of Tankerness) and [Q 40](#) (Baroness Smith of Basildon)

38 EVE [Q 3](#)

base can be drawn. Following the Government’s review in autumn 2016, the EVEL procedures—if they are retained—should be subject to an extended trial period for the remainder of this Parliament, with a final review taking place early in the next Parliament. The next few years will see a series of votes on matters relating to the UK’s exit from the EU which may well provide a ‘stress test’ for the procedures.

36. Following the extended trial period, the revised procedures should be subject to scrutiny by a Joint Committee, examining both the technical and the constitutional aspects of EVEL.³⁹

The scope of the Government’s review

37. It is currently unclear what the scope and extent of the Government’s review of EVEL will be. We assume it will cover technical aspects of the operation of the procedures and whether the certification process is working as intended. A review of a trial constitutional reform should not, however, be limited to technical aspects. EVEL should also be assessed as to whether it has met its objectives, and what impact, if any, EVEL has had on the constitution as a whole.
38. In the explanatory memorandum for the EVEL Standing Orders, the Government stated that:

“English Votes for English Laws addresses the so-called ‘West Lothian Question’ ... As devolution to Scotland, Wales and Northern Ireland is strengthened, the question of fairness for England becomes more acute.”

“These proposals change the process by which legislation is considered by the House of Commons so that MPs with constituencies in England (and where relevant England and Wales) are asked to give their consent to legislation that only affects England (or England and Wales), and is on matters that are devolved elsewhere in the UK. Those MPs will therefore have the opportunity to veto such legislation. The change will strengthen England’s voice, just as devolution has strengthened the voices of Scotland, Wales and Northern Ireland within the Union, so that the legislative process is fair for everyone. All MPs will continue to be able to amend and vote on all legislation, as they can now.”⁴⁰

39. The Leader of the House of Commons, David Lidington MP, told us that the aim of EVEL was fairness and greater contentment among English (and Welsh) MPs and their constituents.⁴¹ We note that these objectives focus primarily on addressing issues of public perception rather than practical problems: as we note earlier in this report, the number of occasions when legislation affecting England (or England and Wales) has been passed or amended against the wishes of a majority of English (or English and Welsh) MPs is small. In addition, given that the current Conservative Government has both an overall majority and a majority of English seats, the situation is unlikely to arise frequently, if at all, during the current Parliament.

39 The scrutiny of a Joint Committee was advocated by the House of Lords prior to the introduction of the EVEL procedures in 2015: see HL Deb, 21 July 2015, [cols 1007–1031](#)

40 Cabinet Office, *English Votes for English Laws: An Explanatory Guide to Proposals* (July 2015), p 2: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/441848/English_votes_for_english_laws_explanatory_guide.pdf [accessed 27 September 2016]

41 [EVE Q 46](#) (David Lidington MP)

40. Yet the Government’s argument, that when asked there is public support for EVEL, was supported by our expert witnesses. English votes for English laws has been popular since polling on it began shortly after the devolution of legislative power to Scotland and Northern Ireland. Although it is not a top priority for citizens, opinion polls have consistently shown strong support for removing the right of Scottish MPs to vote on English-only matters.⁴² Support for the principle has been above 50% since 2000 and—as Dr Eichhorn told us—the strength of support has grown over time with those ‘strongly’ supporting EVEL increasing from 20–25% in 2000–2003 to a consistent figure of over 30% since 2010.⁴³
41. Professor Richard Wyn Jones of Cardiff University told PACAC that “on balance ... there is support for the principle of English votes for English laws in Scotland and in Wales.”⁴⁴ This chimes with what Professor John Curtice, Professor of Politics, University of Strathclyde, told us regarding Scotland: “around a half agree with the idea [of EVEL], while only between a fifth and a quarter are actually opposed”.⁴⁵ Professor Curtice also noted that polling after the Scottish independence referendum showed continued support for EVEL in Scotland, although it was not clear, at the time we took evidence, whether that had changed since the May 2015 general election at which the Scottish National Party made significant electoral gains. The election result has the potential to change the narrative of EVEL in Scotland. As Professor Curtice noted, EVEL is “at risk of being portrayed as an attempt to silence ‘Scotland’s party’, viz. the SNP”.⁴⁶
42. Others noted that English support for EVEL was a result of the devolution of powers to all the other nations in the Union. Scilla Cullen, the chair of the Campaign for an English Parliament, told us that EVEL “is popular because it is the only answer on offer. The man on the Clapham omnibus feels that at least this is something for England.”⁴⁷ This is echoed to some extent by polling evidence showing that, although EVEL is the single most popular option, the desire for *some* change in the governance of England is greater than the desire for any particular change.⁴⁸ Dr Eichhorn told us that other options, including city regions and regional assemblies, also have majority support. He emphasised that these were not seen by survey respondents as mutually exclusive options.⁴⁹
43. The extent of public support for the form of EVEL introduced in October 2015—with a veto for English (and Welsh) MPs rather than the exclusion of Scottish (and Northern Irish and Welsh) MPs from matters devolved to their nation(s)—is less clear.⁵⁰ One 2015 opinion poll did ask about both versions of EVEL and the results, according to Professor Curtice, “suggested that the idea of a veto (61% in favour) was somewhat more popular than barring

42 UDE Q 63 (Professor John Curtice) and written evidence from the Mile End Institute (UDE0042).

43 See UDE Q 64 and What Scotland Thinks, ‘Table of polling results 2000–2013’: <http://what-scotlandthinks.org/questions/do-you-agree-or-disagree-that-now-that-scotland-has-its-own-parliament-scottish> [accessed 27 September 2016]

44 PACAC, *The Future of the Union, part one: English Votes for English laws*, para 25

45 Written evidence from Professor John Curtice (UDE0056)

46 Written evidence from Professor John Curtice (UDE0056)

47 UDE Q 119

48 See written evidence from Professor Roger Scully (UDE0069)

49 UDE Q 66 and written evidence from Dr Jan Eichhorn (UDE0055)

50 Written evidence from Professor John Curtice (UDE0056); see also PACAC, *The Future of the Union, part one: English Votes for English laws*, para 25

Scottish MPs from English business entirely (53%).” The polls did not, however, ask people to choose directly between the two options.⁵¹

44. Our witnesses stressed the need for the Government’s review to address wider questions about whether EVEL was achieving its objective, in addition to technical questions about whether the procedures were operating properly. Former Labour Shadow Leader of the House of Commons Chris Bryant MP stated that the first question should be “whether it has made any fundamental difference”.⁵² Professor Michael Kenny stressed the need for the Government to “consider some of the possible downsides of the current system, as well as ways in which it has worked”.⁵³
45. Lord Wallace of Tankerness, then leader of the Liberal Democrats in the House of Lords, referred back to the rationale for EVEL as answering a democratic deficit in England. He told us that “we may want to know whether the constituents of English MPs feel that their concerns have been better addressed as a result of this change or not”.⁵⁴ This goes to the heart of what EVEL is intended to achieve. The Leader of the House of Commons was not, however, keen to seek evidence of any change in public perceptions during the Government’s review. He told us that, “The absence of complaints is itself a useful measure”, and that he did not intend to commission polling research to examine what impact if any the reform has had on public opinion.⁵⁵
46. **Given that EVEL is at least partly a response to public perceptions of unfairness, it should also be assessed against the wider objectives of providing a distinct voice for England and a legislative process that is “fair for everyone”, without undermining the Union more widely.**
47. **It is too soon to determine whether public perceptions have been substantively altered by the introduction of the EVEL procedures. We recommend that, as part of its review in the next Parliament, the Joint Committee should try to establish:**
 - **whether the procedures have affected public perceptions of a ‘democratic deficit’ in England; and**
 - **whether EVEL has affected public attitudes in the devolved nations towards the Union and the role of the House of Commons.**

51 See John Curtice, What Scotland Thinks ‘How Popular is EVEL?’ (4 September 2015): <http://blog.whatscotlandthinks.org/2015/09/how-popular-is-evel/> [accessed 21 July 2016]

52 EVE [Q 19](#)

53 EVE [Q 13](#)

54 EVE [Q 40](#)

55 EVE [Q 57](#) (David Lidington MP)

CHAPTER 4: THE IMPLICATIONS OF EVEL FOR THE UNION

48. We took evidence from a range of witnesses, both during our inquiry on the Union and devolution and separately during the current session, on the implications of English votes for English laws for the integrity of the Union and relations between the four nations of the United Kingdom.
49. Some witnesses were supportive: former leader of the Scottish Conservatives in the Scottish Parliament Baroness Goldie stressed the need to do something about the West Lothian Question and felt that EVEL was “as good as we can get at the moment”.⁵⁶ Professor Jim Gallagher told us that he thought it needed to be refined but was “the basis of a stable solution”.⁵⁷
50. Others were rather more critical. Scottish Government Minister Fiona Hyslop MSP told us that it was “very dangerous territory” for those who believe in the Union.⁵⁸ The First Minister of Wales, Carwyn Jones AM, told us bluntly that “I do not think it works”.⁵⁹ Professor Richard Rawlings told us that, although there was “clearly a demand ... for some recognition in our political process of England qua England and English national identity” he was “instinctively opposed to EVEL, because I think in the long term it will work to corrode the Union.”⁶⁰ Some witnesses felt that EVEL was more likely to damage than strengthen the Union, noting that the new procedures would give ammunition to those who want to undermine the Union.⁶¹
51. A number of witnesses felt that tackling the West Lothian Question at this juncture was simply a waste of time.⁶² Two key factors were cited. First, the very small number of occasions on which the outcome of divisions in the House of Commons would have been different were only English MPs allowed to vote. Secondly, the fact that EVEL becomes largely irrelevant when the UK Government also holds a majority of English seats. Mr Bryant told us that: “I do not suppose a single person has ever looked up the difference between a majority and double majority”.⁶³ The British Academy stated that, “Normally, as in the current Parliament, the party forming a majority in the UK also has a majority in England, and therefore the West Lothian Question can arise only when the governing party is divided.”⁶⁴ We recognise that a Government usually has a majority in both the House of Commons as a whole and among English MPs. Nonetheless, there is a long-standing demand for the West Lothian Question to be tackled—and given our long-standing view that constitutional change should not be rushed, there is merit in tackling this controversial question when it is not determining the outcome of votes on the floor of the House of Commons.
52. In addition to these more general comments, a number of specific concerns about the potential effects of the new EVEL procedures were raised. We cover these now in turn.

56 UDE [Q 140](#)

57 UDE [Q 55](#)

58 UDE [Q 132](#)

59 UDE [Q 254](#)

60 UDE [Q 273](#)

61 See UDE [Q 261](#) (Kirsty Williams AM), [Q 280](#) (Jessica Blair), [Q 165](#) (Willie Sullivan), [Q 38](#) (Peter Riddell) and [Q 165](#) (Willie Sullivan)

62 See [EVE Q 3](#) (Pete Wishart MP)

63 [EVE Q 20](#)

64 UDE Written evidence from the British Academy ([UDE0037](#))

Spillover effects

53. Significant concerns were expressed about ‘spillover’ effects: the impact of changes to public services in England on devolved areas with close links to England (for example Welsh users of English hospitals) and particularly the impact of English policy decisions on the funding of devolved services.⁶⁵ Mr Andrew RT Davies AM, leader of the Welsh Conservatives in the National Assembly for Wales, gave us an example:

“In mid-Wales ... there is no district general hospital, so virtually everyone would rely on an English district general hospital to provide their services. There are many other examples that you can highlight. In north Wales, cancer services, for example, are very often cross-border, as are maternity services and cardiac services in south Wales.”⁶⁶

54. The Mile End Institute noted that “If there is a perception that elected representatives from other parts of the UK are being unfairly prevented from intervening on matters that affect their constituents, this may well inflame territorial tensions.”⁶⁷

Barnett consequentials

55. Several witnesses were concerned in particular about the effect of Barnett consequentials—the impact that decisions on spending affecting only England could have on funding for the devolved administrations. The First Minister of Wales told us that:

“we are concerned that we may see a situation where legislation is produced that affects only England, so the logic is that English MPs would vote but that legislation would have an effect on the Barnett consequentials that go to Scotland, Wales and Northern Ireland, which apparently would mean that Scottish, Welsh and Northern Irish MPs would not be able to vote even though there is a financial effect of that legislation going through.”⁶⁸

56. Two arguments, of varying strength, have been made against this criticism of EVEL. The first is that funding is not decided through ordinary primary legislation, but through appropriation Bills which are not subject to EVEL certification.⁶⁹ The House of Commons Procedure Committee noted, however, that “in reality, the estimates and supply procedures of the House validate prior decisions about policy, including those which have been given effect through primary legislation.”⁷⁰ In view of this, it is clear that decisions on primary legislation affecting only England may affect the funding of the devolved administrations.
57. The second point relates to the double veto. As the Mile End Institute told us, criticisms based around Barnett consequentials “often overlook the fact that these [procedures] provide for a double veto, so that all legislation will continue to require the support of a majority of MPs from across the UK

65 For example, see UDE [Q 55](#) (Professor Jim Gallagher and Alan Trench), [Q 132](#) (Fiona Hyslop MSP), [Q 140](#) (Claire Baker MSP), [Q 254](#) (Carwyn Jones AM) and [Q 261](#) (Kirsty Williams AM), and written evidence from the Mile End Institute ([UDE0042](#))

66 UDE [Q 261](#)

67 UDE Written evidence from Mile End Institute ([UDE0042](#))

68 UDE [Q 254](#), see similar comments by Scottish Minister Fiona Hyslop MSP (UDE [Q 132](#))

69 See written evidence from the Society of Conservative Lawyers ([UDE0028](#))

70 Procedure Committee, *English votes for English laws Standing Orders: interim report*, para 40

in order to pass.”⁷¹ For example, a change to higher education tuition fees in England would be subject to a double veto. MPs for the other nations could not have the change—and any potential implications for funding for devolved administrations—forced on them without the chance to speak and vote on the changes as the support of the majority of the whole House is required. Meanwhile English MPs could not have a change forced on them by a majority of the whole House if a majority of English members opposed it.

58. **There is no doubt that funding decisions taken in relation to England, or England and Wales, can have consequential effects on the other nations in the Union as a result of the Barnett Formula. Accordingly, there is a strong case for MPs from the devolved nations to have a say in such decisions. The model of EVEL chosen, whereby the consent of all MPs is still required for any piece of legislation to become law, ensures that MPs from the devolved nations are still able to speak and vote on funding decisions that might have consequential effects for the funding of those nations.**
59. **Policy decisions taken in relation to England can also have spillover or knock-on effects in the devolved nations. Indeed, the reverse can also be true. Yet such effects can be difficult to determine and measure, and we are less convinced that they should entitle representatives from one nation to have a say on policy that applies exclusively in another. We note that, at present, there is no mechanism for English representatives to have a formal say on policy decisions taken by the devolved nations.**

Risk of deadlock

60. Some witnesses were concerned about the problems that could arise if a Government with a UK-wide majority did not also have a majority of MPs in England (and Wales) and was therefore unable to pass legislation relating to England (and Wales).⁷² In such a situation, the Federal Trust noted that English MPs would have “the ability to destabilise a government that had a parliamentary majority within the UK as a whole, but not in England.”⁷³
61. Professor Jim Gallagher highlighted a particular problem when it came to taxation:

“This is to do with the extent to which English tax decisions determine the overall tax framework and the overall funding framework of the United Kingdom. A Government who, ex hypothesi, had to rely on Scottish or Northern Irish votes, or who could not get their English income tax legislation through, would not be able to deliver their Budget and would no longer be stable.”⁷⁴

As the Mile End Institute noted, citing Professor Gallagher, “given that income tax must be reapproved by parliament each year in order to remain in force, the provision of a veto to a subset of MPs could potentially enable them to hold the government to ransom.”⁷⁵

71 Written evidence from the Mile End Institute ([UDE0042](#))

72 For example UDE [Q 55](#) (Jim Gallagher), UDE [Q 38](#) (Peter Riddell) and written evidence from the Mile End Institute ([UDE0042](#))

73 Written evidence from the Federal Trust for Education and Research ([UDE0018](#))

74 UDE [Q 45](#)

75 Written evidence from the Mile End Institute ([UDE0042](#))

62. The risk of deadlock under the current arrangements is minimal given that the procedures are set out in Standing Orders which can be repealed, amended or suspended by a majority vote of the whole House of Commons.⁷⁶ The Mile End Institute felt that the procedures ought to make explicit provision for the whole House to overrule English (and Welsh) MPs in the event a compromise could not be reached:

“There is a debate to be had about whether it is preferable to suspend standing orders in this situation or whether the reforms themselves should explicitly recognise that they may be exceptionally overridden. Our own view is that it would be better for the term ‘normally’ to be introduced in relation to these proposals.”⁷⁷

The Mile End Institute’s proposal mirrors the provisions of the Sewel Convention under which the UK Parliament does not ‘normally’ legislate with regard to devolved matters.

63. **The risk of deadlock under these proposals is reduced so long as they are contained in Standing Orders which can simply be suspended or repealed by a single majority-vote of the whole House of Commons. Should the EVEL procedures in future be placed in statute (see paragraph 135) then careful consideration would need to be given to including a mechanism that would ensure that deadlock could be avoided.**

Parliament’s role at the centre of the Union

Equality of members

64. One prominent criticism of EVEL is that the procedures create two classes or tiers of MPs.⁷⁸ Mr Bryant told us “that the fundamental principle of all MPs being equal is important ... We have ended up with two, three or four tiers of MPs.”⁷⁹ We were told that EVEL created a symbolic ‘us and them’ distinction between MPs representing seats in different nations.⁸⁰ It could, the Mile End Institute told us, create a dangerous “perception that elected representatives from other parts of the UK are being unfairly prevented from intervening on matters that affect their constituents, [which] may well inflame territorial tensions”, although such a perception, they noted, overlooks the continued voting rights of all MPs on all matters before the House.⁸¹ Some were concerned that attempting to use the House of Commons to express the views of England might undermine Parliament’s role as the legislature for the whole of the UK.⁸²
65. EVEL does create points in the legislative process where only members whose nation is affected by the legislative provisions in question may vote. The English (and Welsh) Bill Committee is one vehicle for nation-specific voting, but it has not yet been used. English (and Welsh) Legislative Grand Committees have been used; they are intended to provide an additional vote for English (and Welsh) MPs, while allowing all Members to vote as

76 UDE written evidence from the Society of Conservative Lawyers (UDE0028)

77 Written evidence from the Mile End Institute (UDE0042)

78 For example, see UDE Q 103 (Professor Philip Booth) and Q 140 (Claire Baker MSP)

79 EVE Q 20

80 UDE Q 69 (Brendan Donnelly)

81 Written evidence from the Mile End Institute (UDE0042)

82 Written evidence from the Mile End Institute (UDE0042) and from Christopher Luke (UDE0011)

usual at Second and Third Reading and Report stages of all Bills, and the Committee stage of all Bills other than those that are certified in their entirety. Similarly, MPs for nations with devolved legislatures are able to vote on all matters where the double-majority system is used (for example on secondary legislation and on consideration of Lords amendments).

66. Daniel Gover told us that what “the procedures themselves affirm is the right and the legitimacy of all MPs, from everywhere in the UK, to speak and to vote on all legislation that comes before the Commons.”⁸³ The Leader of the House of Commons told us that this was one of the considerations that led to the adoption of the current form of EVEL.⁸⁴ Mr Gover told us that any change to what was deemed legitimate business for members to speak and vote on was, therefore, more a matter of attitudes and politics than the procedures.⁸⁵
67. **Devolution has created greater democratic representation for Wales, Scotland and Northern Ireland, and primary legislative powers now reside in the devolved legislatures. It has, however, left the UK Parliament as England’s sole legislature.**
68. **EVEL creates distinctions between MPs at some points of the legislative process. This may be seen as justified in the attempt to create some degree of parity between England and the devolved nations in relation to devolved issues, but clearly presents risks to Parliament’s position as a unifying body representing the UK as a whole. By opting for the double-veto form of EVEL, the Government has attempted to balance the need for a separate English ‘voice’ in the House of Commons with the need for Parliament to remain a sovereign chamber representing the whole of the UK.**

A Prime Minister representing a Welsh, Scottish or Northern Irish constituency?

69. The First Minister of Wales, Carwyn Jones AM, and Scottish Minister Fiona Hyslop MSP both suggested that EVEL might make it difficult to have a Prime Minister representing a constituency in one of the devolved nations, as he or she would be unable to vote on the whole of the Government’s legislative programme.⁸⁶ This issue rose in prominence during the summer of 2016, when MPs reportedly briefed journalists that a Welsh MP standing in the Conservative Party leadership election could not become Prime Minister because of EVEL.⁸⁷ More recently, an MP representing a Welsh constituency, Owen Smith, stood for the leadership of the Labour party.⁸⁸
70. Our witnesses from the Mile End Institute told us that any restriction on who could become Prime Minister was political, not procedural. Professor Kenny told us that:

83 EVE [Q 15](#)

84 EVE [QQ 49 and 55](#) (David Lidington MP)

85 EVE [Q 15](#)

86 UDE [Q 132](#) (Fiona Hyslop MSP) and [Q 254](#) (Carwyn Jones AM); see also UDE [Q 270](#) (Dr David S Moon)

87 ‘Politicians are furious at claims senior Tories are briefing Stephen Crabb can’t become PM because he’s a Welsh MP’ *WalesOnline* (5 July 2016): <http://www.walesonline.co.uk/news/politics/politicians-furious-claims-senior-tories-11566969> [accessed 22 July 2016]

88 See <http://www.labour.org.uk/pages/labour-party-leadership-election-2016> [accessed 19 October 2016]

“There is nothing within the remit of these procedures that directly inhibits the selection of a party leader or Prime Minister who is from a territory outside England. Ultimately, that would probably be a question about politics and the decisions that the parties wanted to make, and would, I suspect, be only one of a number of considerations that would bear on that judgment.”⁸⁹

71. **Despite the voting restrictions an MP representing a constituency in one of the devolved nations might face under the EVEL procedures, there is no constitutional reason why a future UK Prime Minister should not represent a constituency in Wales, Scotland or Northern Ireland. It remains the Sovereign’s prerogative to invite whomsoever she chooses to be Prime Minister, albeit in accordance with the constitutional convention that she invite the person who appears most likely to be able to command the confidence of the House of Commons.**

Ministerial appointments

72. Mr Gover told us that EVEL could have an impact on ministerial appointments:

“it makes it marginally more challenging for an MP from outside England or England and Wales to be appointed to certain other ministerial posts that would require them to take through legislation that would have England-only or England and Wales-only provisions, particularly if the whole Bill were England only. Even in those cases, there are ways around it.”⁹⁰

73. This feeds into a wider question of whether ministerial posts whose remit pertains largely to England could, in practice, be filled by an MP whose constituency lies in one of the devolved nations. This issue arises from the advent of devolution, rather than EVEL, but has been brought into sharper relief by the new procedures.⁹¹ The Leader of the House of Commons told us that:

“These are matters that can and should be left to the judgment of the Prime Minister of the day. ... The Blair and Brown Governments had Members from the majority of seats in Scotland, but they chose not to appoint Members from Scottish constituencies in the Health Department, for example, once health had been devolved to the Scottish Parliament. Clearly, there are political judgments that will weigh in the mind of any Prime Minister, but making it mandatory would introduce an unnecessary bit of inflexibility to the system.”⁹²

74. **There is no constitutional reason why an MP representing a constituency in one of the devolved nations could not be appointed to a ministerial post whose remit pertains largely to England (or England and Wales). Likewise, there is no constitutional reason**

89 EVE [Q 15](#)

90 EVE [Q 15](#)

91 As Shadow Secretary of State for Health in 1992, Robin Cook said that he did not think he (a Scottish MP) could be Health Secretary after devolution to Scotland; however, John Reid (another Scottish MP) did hold the latter post in 2003–2005; see Guy Lodge and James Mitchell, ‘Whitehall and the government of England’, *The English Question* (Manchester: Manchester University Press, 2006), p 103

92 EVE [Q 56](#)

why an English MP could not be appointed to a ministerial post in a territorial department. However, in practice it is likely that the Prime Minister will take into account such issues when appointing his or her ministerial team.

An English Parliament within the UK Parliament?

75. Some have suggested that EVEL creates a quasi-English Parliament within the House of Commons.⁹³ In some senses, this is already the case: Professor Tomkins told us that it is important “to recognise that the UK Parliament is both the legislature for the United Kingdom and England’s legislature. This is what English votes for English laws does, by making it clearer which of these two roles the House of Commons is playing at any one time.”⁹⁴ Similarly, Professor Arthur Aughey told PACAC of the need to reconcile Westminster’s role as the Parliament of the UK and of England.⁹⁵
76. **The continued right of all MPs to debate and vote on all matters before the House of Commons clearly demonstrates the continued UK-wide nature of the House. It is, however, an inevitable consequence of the devolution of power to the devolved nations (but not England) that the UK Parliament now legislates on a wider range of matters for England than for the other nations within the Union.**⁹⁶

Certification and legislative competence

77. Concerns were expressed about the power given to the Speaker of the House of Commons to certify provisions in Bills and secondary legislation as within or without devolved legislative competence. Some witnesses drew attention to the risk of serious political disagreements arising over the certification of provisions—for example, where it was felt that a provision certified as English in practice seriously affected other nations, or where an issue appeared solely English and was devolved elsewhere but was not certified under EVEL.⁹⁷ Some witnesses warned that this might ‘politicise’ the role of the Speaker.⁹⁸
78. In addition, questions have been raised about the interaction between those certifications and the already-established role of the courts—and particularly the UK Supreme Court—in judging the extent of devolved competence.
79. The Electoral Reform Society told the Commons Public Administration and Constitutional Affairs Committee that they were concerned that the Speaker’s judgement could have “unintended knock-on effects” by creating a norm or precedent in Parliament over devolved competence, particularly in relation to the evolving Welsh devolution settlement. They were also concerned about the interaction of the certificate and the Supreme Court’s subsequent judgments.⁹⁹ So too were the Constitution Reform Group.¹⁰⁰

93 UDE [Q 140](#) (Claire Baker MSP) and [EVE Q 5](#) (Pete Wishart MP)

94 UDE supplementary written evidence from Professor Adam Tomkins ([UDE0057](#))

95 Written evidence to PACAC’s EVEL inquiry ([EVE0007](#))

96 [EVE Q 27](#) (Elizabeth Gardiner). See also written evidence to PACAC from Dr Andrew Mycock and Dr Arianna Giovannini, University of Huddersfield ([EVE0015](#)), and Professor Arthur Aughey of the University of Ulster ([EVE0011](#))

97 UDE [Q 69](#) (Alexandra Runswick)

98 This risk was suggested by several speakers in the 22 October 2015 debates in the House of Commons, including by Shadow Leaders Chris Bryant MP ([col 1188](#)) and Pete Wishart MP ([col 1200](#))

99 Written evidence to PACAC’s EVEL inquiry ([EVE0006](#))

100 Supplementary written evidence from the Constitution Reform Group ([UDE0072](#))

80. Lord Wallace of Tankerness, who as Advocate-General for Scotland in 2010–15 could refer Acts of the Scottish Parliament to the Supreme Court for judgments on legislative competence,¹⁰¹ also warned about potentially conflicting decisions on competence. A situation in which the Speaker certified a matter as devolved but the Supreme Court judged it to be outwith devolved competence, he told us, could cause great aggravation and potentially affect people’s rights.¹⁰² The Leader of the House of Commons told us that the Speaker’s decisions on certification would be based on his or her best understanding of the law at that time, and that if the decision were contradicted by a later Supreme Court ruling, that judgment would inform any future certification decision.¹⁰³
81. **We are confident that the Speaker’s decisions on certification are protected by Article 9 of the Bill of Rights and that no legal challenge to his decisions should be entertained by the courts.**

Welsh votes for Welsh laws and Scottish votes for Scottish laws

82. One criticism has been that English votes for English laws has not been accompanied by ‘Welsh votes for Welsh laws’¹⁰⁴ or ‘Scottish votes for Scottish laws’ in the House of Commons. Pete Wishart MP told us that during the passage of the Scotland Act 2016 amendments proposed by the SNP and, therefore, supported by the vast majority of Scottish MPs had been voted down by English MPs.¹⁰⁵ The suggestion appears to be that an equivalent to EVEL would be for any laws affecting Wales or Scotland to require the consent of a majority of MPs for those nations.
83. We do not accept the argument. EVEL allows an English veto on matters that, in relation to Scotland and Wales, are devolved. If Westminster legislation affects devolved matters or—as in the case of the Scotland Act—devolved competence, the consent of the devolved legislatures is sought through the legislative consent process. To some extent EVEL mirrors the practice of seeking legislative consent from the devolved legislatures. On reserved matters, the UK Parliament acts, as it always has, as the sole legislature for the whole of the UK. **Giving MPs for Scottish, Welsh or Northern Irish seats a veto over reserved matters affecting those nations would thus go considerably beyond the veto granted to English MPs by the current form of EVEL.**

A pro-Union reform?

84. As with all constitutional reforms, it is important that they strengthen, rather than weaken, the Union as a whole. The Mile End Institute told us that “the government also needs to strike a careful balance. Specifically, it needs to present EVEL as a pro-Union—and not as a narrowly pro-English—measure.”¹⁰⁶
85. In that regard, several witnesses criticised the manner in which the policy was announced by the Prime Minister the morning after the Scottish

101 Under [section 33](#) of the Scotland Act 1998; referral is also included in Government of Wales Act 2006, [section 112](#) and Northern Ireland Act 1998, [section 11](#).

102 EVE [Q 44](#)

103 EVE [Q 54](#)

104 See UDE [Q 261](#) (Leanne Wood AM)

105 EVE [Q 7](#)

106 Written evidence from the Mile End Institute ([UDE0042](#))

independence referendum. Professor Hazell felt that it struck the wrong tone, “when a statesmanlike approach would have been to reach out to the people of Scotland and be generous in victory.”¹⁰⁷ Similarly, Scottish Minister Ms Hyslop told us that, “Politically, it was very dangerous for the Prime Minister the day after the referendum to respond to the articulation of the will of the Scottish people by immediately reflecting on the situation regarding England.” This view was echoed by other witnesses when we took evidence in Edinburgh.¹⁰⁸

86. Other witnesses suggested that EVEL was viewed as a partisan reform brought forward to benefit the Conservative Party, rather than as a pro-Union measure designed to allay public concern about England’s voice in the Union.¹⁰⁹ It has been a manifesto commitment of the Conservative party since 2001 and—given the historical Conservative dominance of English seats in the House of Commons—has been seen as a way of increasing the power of the party in Parliament, particularly when Labour held a majority of constituencies in Scotland prior to the May 2015 general election. The Government’s decision to introduce the reform by means of Standing Orders contributed to this view since it meant the proposals received far less scrutiny than they would if introduced through legislation. The final proposals were subject to a single three and half hour debate in the House of Commons, and to a two and three quarter hour long debate in the House of Lords—significantly less time than would be afforded to the scrutiny of legislation.
87. We also heard wider concerns expressed about the lack of cross-party consensus. Mr Wishart noted that only the Conservative Party’s MPs voted for the adoption of the EVEL procedures.¹¹⁰ Professor Neil Walker told us that the reforms required a better, less adversarial forum for their development than UK Government proposals being brought forward to which people responded in an adversarial way. There needed to be, he said, “agreement across the political parties—because there is a partypolitical divide on this—and across central and Scottish government and Welsh and Northern Irish assembly government.”¹¹¹ Similarly, Councillor Robert Brown told us: “Constitutional change has to be done on a broad basis. Done by a Government, apparently in a partisan way, it is a different proposition. However it is done, whether it is a wider UK constitutional convention or some narrow arrangement, we have to try and get a bit more signup to this than we have already.”¹¹²
88. **EVEL attempts to address specifically English concerns about their voice within the Union. Yet if EVEL is to strengthen rather than weaken the Union, every effort must be made to develop cross-party support and to ensure that the procedures have no demonstrably negative effects on Parliament’s role as the centre of the political union, representing the interests of all parts of the United Kingdom. We trust that, when EVEL is reviewed by a Joint Committee in the next Parliament, it will consider the effect that EVEL has had on public opinion across all four nations of the UK, and not just within England.**

107 Written evidence from Professor Robert Hazell ([UDE0054](#))

108 UDE [Q 132](#) (Fiona Hyslop MSP), see also [Q 134](#) (Councillor Robert Brown) and [Q 136](#) (Claire Baker MSP)

109 Written evidence from the Federal Trust to PACAC’s EVEL inquiry ([EVE0013](#))

110 EVE [Q 6](#) (Pete Wishart MP)

111 UDE [Q 159](#)

112 UDE [Q 140](#)

A solution to the English Question?

89. In our report, *The Union and devolution*, we stated that:

“The English Question encompasses both concerns about the representation of England within the Union, and about the devolution or decentralisation of power within England.”¹¹³

90. By addressing the West Lothian Question, EVEL attempts to answer some of the concerns encompassed in the wider English Question as regards the representation of England within the Union. Yet it is worth noting that the double-majority requirement means that English MPs cannot get Bills or provisions through the Commons in the absence of the support of the whole House. As a result, English MPs’ ability to enact legal changes does not mirror their capacity, under EVEL, to resist legal changes. Viewed thus, EVEL is arguably an incomplete answer to the ‘West Lothian Question’ because the capacity of English MPs to pursue a distinct legislative agenda for England in respect of matters that are devolved elsewhere does not equate to the broader capacity of devolved legislatures to pursue a distinct agenda on matters that are devolved to them.

91. It is also important to note that EVEL is not being pursued in isolation, but alongside a new development in asymmetrical devolution or decentralisation within England that may address some of the concerns about the centralisation of power within England. The EVEL reforms were introduced alongside a series of ‘devolution deals’ between the UK Government and groups of local authorities, largely proposing Combined Authorities led by directly-elected mayors and with powers that extend beyond those of individual local authorities. Whether these changes were co-ordinated with the EVEL reforms or simply occurring in tandem is a matter of debate.¹¹⁴ We explored the potential benefits and problems of this approach in our *Union and devolution* report,¹¹⁵ and concluded that:

“It is too soon to know whether EVEL and the ‘devolution deals’, separately or in combination, will provide an answer to the English Question. What is clear is that the English Question remains one of the central unresolved issues facing decision-makers grappling with the UK’s territorial constitution.”¹¹⁶

92. **This remains our view.**

113 Constitution Committee, *The Union and Devolution*, para 428

114 See the contradictory positions taken in our supplementary written evidence from Professor Adam Tomkins (UDE0057) and written evidence submitted to PACAC by Dr Mycock and Dr Giovanni (EVE0015)

115 See Constitution Committee, *The Union and Devolution*, Chapter 8

116 Constitution Committee, *The Union and Devolution*, para 430

CHAPTER 5: IMPACT ON THE HOUSE OF LORDS

Procedural impact

93. The Government stated, on bringing forward the new procedures, that there would be “no changes to procedures in the House of Lords”.¹¹⁷ The Clerk of the Parliaments wrote to us to confirm that there had been no change to procedures in the House of Lords or to how the House’s existing procedures operate. His view was echoed by other witnesses.¹¹⁸
94. Although EVEL changes procedures in the House of Commons, it does not affect formal interactions between the two Houses. Specifically considering bicameral interaction, Daniel Gover told us that “it does not have an implication for the procedure of this House or how this House would be expected to respond to the Commons”.¹¹⁹ A bill, passed by the House of Commons as a whole, is passed to (or back to) the House of Lords irrespective of whether provisions in it were affected by votes by English (and Welsh) Bill Committees or Legislative Grand Committees. During the consideration of amendments stage, the House of Lords is informed in the usual way of the Commons’ agreement or disagreement with its amendments—irrespective of whether any disagreement was the result of a vote by the whole House or a veto by a majority of English (and Welsh) MPs on a matter certified under EVEL.
95. Secondary legislation is required to be passed by both Houses, a process that occurs in parallel rather than in the form of messages or legislation being passed from one House to the other. There is thus no procedural difference for the Lords if a division in the Commons produces an English (and Welsh) veto over an instrument, or a rejection by the whole House.
96. **There has, to date, been no procedural impact in the House of Lords as a result of EVEL.**

Political impact

97. The Clerk of the Parliaments told us: “I expect that the potential effects in the Lords ... are likely to be political rather than procedural”.¹²⁰ Thus far, there appears to have been no noticeable political impact in the House. The Leader of the House of Lords, Baroness Evans of Bowes Park, told us that “I have not sensed around the House that it is having a huge impact on how Lords approach their important role ... or that it is constraining the role of the Lords.”¹²¹ Witnesses noted, that given the relatively small number of bills affected by EVEL procedures to date, it is too soon to tell what the impact might be in the longer term.¹²²
98. Baroness Smith and Lord Wallace described circumstances in which political or constitutional controversy could conceivably arise in the House of Lords should a Lords amendment certified in the Commons as applying

117 HC Deb, 2 July 2015, [col 1647](#) (Chris Grayling MP)

118 Written evidence from the Clerk of the Parliaments ([EVE0001](#)), [EVE Q 16](#) (Daniel Gover) and [Q 46](#) (Baroness Evans of Bowes Park). Baroness Smith of Basildon and Lord Wallace of Tankerness stressed the lack of experience of the new basis on which to assess its impact ([Q 36](#))

119 [EVE Q 16](#)

120 Written evidence from the Clerk of the Parliaments ([EVE0001](#))

121 [EVE Q 51](#)

122 [EVE Q 36](#) (Baroness Smith of Basildon and Lord Wallace of Tankerness)

to England (and Wales) be supported by a majority of MPs but vetoed by those with English (and Welsh) constituencies. Lord Wallace told us that:

“We will therefore have a situation where a particular provision has been passed by the Lords and Commons, but it is not submitted in that form to the Queen for Royal Assent. I think that is quite a constitutional change ... it raises the issue of whether the will of Parliament as a whole can be vetoed by a subset of the House of Commons. I think that is an important constitutional issue.”¹²³

99. We can envisage the potential for controversy rising should one or other party disagree with the certification of a particular provision as England-only. Should amendments to that provision then be supported by a majority of the Commons, but rejected by English MPs, it is possible that members in the House of Lords would feel entitled to continue pressing the amendments during Ping-Pong on the basis that they were representing the interests of the UK as a whole in a situation where the narrow interests of England were wrongly being given precedence.
100. Baroness Smith and Lord Wallace commented on the absence of certification of bills which start in the Lords. Lord Wallace told us that “for the Lords proceedings it would be useful to know” whether provisions were going to be certified under the EVEL provisions in the House of Commons.¹²⁴ Given the absence of any procedural difference for the Lords when matters are certified, the only potential benefit would be political. Although Bills are not certified until they are introduced in the House of Commons, the ‘Territorial extent and application’ annex to each Bill’s explanatory notes sets out the Government’s interpretation as to which provisions in the Bill will be certified under the EVEL procedures.¹²⁵
101. **There is little evidence to date of any political impact in the House of Lords from the introduction of EVEL in the House of Commons. We will keep this matter under review, but we anticipate that adverse consequences are unlikely and should be resolved by the conventional deference shown by the House of Lords to the elected chamber.**

EVEL in the House of Lords?

102. Our witnesses did not think that a form of EVEL could operate in the House of Lords itself.¹²⁶ Lord Wallace said that the idea was “a non-starter, at one level for a very simple reason: with very, very few exceptions ... we are all Peers of the United Kingdom, regardless of the territorial area in our title.”¹²⁷
103. Some witnesses did, however, highlight the potential problems of EVEL applying in only one House. As the Constitution Reform Group told us,

123 EVE [Q 36](#)

124 EVE [Q 36](#)

125 Of the first four Bills introduced in the House of Lords in the current session, this annex appears in the explanatory notes for three (the Bus Services Bill 2016–17, Children And Social Work Bill 2016–17 and Cultural Property (Armed Conflicts) Bill 2016–17); the Intellectual Property (Unjustified Threats) Bill 2016–17 applies to the whole of the UK so does not have a table signalling territorial extent and application.

126 See EVE [Q 38](#) (Baroness Smith of Basildon), and supplementary written evidence from the Constitution Reform Group ([UDE0072](#)).

127 EVE [Q 37](#). These exceptions are the small number Members with pre-Union Scottish peerages, see Constitution Committee, *Scottish independence: constitutional implications of the referendum* (8th Report, Session 2013–14; HL Paper 188), para 77

“Having Bills on English matters passing through a House in which influence can be exerted by politicians whose political and other interests all relate to another part of the United Kingdom has the potential to contribute to the perception of unequal governance.”¹²⁸

104. Mr Bryant echoed this point, referring to the positions of a peer and an MP from the same place in one of the devolved nations and describing it as “bizarre” that the peer would “have more say on legislation that affects the United Kingdom than the Member of Parliament”.¹²⁹

105. Daniel Gover speculated that EVEL could affect how the Upper House perceives its role, when the Commons is legislating on certified matters:

“It may well be that a change in the Commons affects how [the House of Lords] interprets its role. For instance, if the House of Commons takes account of English interests more explicitly in its decision-making, might that affect how this House conceives of its role, perhaps in relation to a more explicitly union perspective?”¹³⁰

106. **EVEL cannot be applied in a House of Lords whose members are appointed to represent the whole UK, rather than specific regions or constituencies.**

128 Supplementary written evidence from the Constitution Reform Group ([UDE0072](#))

129 EVE [Q 21](#)

130 EVE [Q 16](#)

CHAPTER 6: IMPACT ON THE WORK OF GOVERNMENT

107. In addition the potential implications of EVEL for the Union and the two Houses of Parliament, we asked our witnesses what impact EVEL had had, or was likely to have, on the work of Government. In particular, we were interested to what extent Government was supporting and facilitating the use of the new EVEL procedures in the House of Commons.

Drafting of legislation

108. In their October 2015 report, the House of Commons Procedure Committee recommended that “Departments should as a matter of course instruct Parliamentary Counsel to draft legislation intended to apply to England or England and Wales only with the express intention of meeting the certification tests.”¹³¹ Professor Adam Tomkins told PACAC: “For EVEL to work effectively will require changes in the way legislation is drafted and changes in the way the House of Commons makes decisions.”¹³²

109. When we heard from senior government lawyers, they told us that, to date, there had been no change in how the Government prepared draft legislation. Parliamentary Counsel are responsible for drafting primary legislation, based on instructions from departmental lawyers. The latter are responsible for drafting secondary legislation. Elizabeth Gardiner, First Parliamentary Counsel, told us: “The Government’s policy is that they are not drafting to the Standing Orders; they are continuing to draft Bills in the way they always have.” The only exception she identified was a provision in the Finance Bill, “where the structure of the rates of tax has been set out in such a way as to ensure that there is a vote here [in the UK Parliament] corresponding to the vote on the rate of income tax that will occur in the future in the Welsh Assembly and the Scottish Parliament”.¹³³ Jonathan Jones, the Treasury Solicitor and head of the Government Legal Service, echoed Ms Gardiner’s comments in relation to the drafting of secondary legislation.¹³⁴

110. Former Labour Deputy Chief Whip and Shadow Leader of the House of Commons Chris Bryant MP told us that he feared that EVEL would lead to the division of legislation into smaller England- or Wales-only Bills.

“One of the decisions [for the Parliamentary Business and Legislation (PBL) Cabinet Committee] under EVEL would now be that we should take all the Welsh parts out so that it is an England-only Bill. That will happen on contentious matters ... [It] is difficult to tell whether that will happen, but that is my working assumption. That is bad, because the honest truth is that no MP or Member of the House of Lords can keep more than four or five Bills in detail in their head at any one time. Getting 35 Bills through Parliament every year rather than 25 is going to be a tall order.”¹³⁵

111. In response, First Parliamentary Counsel was clear that “there has been no pressure to remove those provisions to create” England-only Bills. She told us that if more England-only bills were to emerge, they would be the result

131 House of Commons Procedure Committee, *Government proposals for English votes for English laws Standing Orders: interim report*, para 99

132 Written evidence to PACAC’s EVEL inquiry ([EVE0007](#))

133 EVE [Q 25](#)

134 EVE [Q 25](#)

135 EVE [Q 22](#)

of further powers being devolved to Wales, Scotland and Northern Ireland, rather than changes to legislative drafting because of EVEL.¹³⁶ Similarly, the Treasury Solicitor told us that it was a policy’s territorial extent, rather than EVEL, that drove the application of legislation: “In the end, the content of Bills, and indeed of statutory instruments, will be driven by the policy, and if the policy is that the Bill should apply solely or mainly in relation to England because that is the territory that is being legislated for, that will be the effect of the Bill.”¹³⁷

112. **There is no evidence that legislation is being drafted differently, or that the legislative programme has changed, following the introduction of EVEL.**

Work of UK Government departments

113. In previous reports, we have expressed our concerns about shortcomings in how the UK Government engages with the devolved administrations. In our 2015 report *Inter-governmental relations in the United Kingdom*, we highlighted concerns about inconsistency of performance between and within Whitehall departments. We recommended that the UK Government address this issue through improved training, regular reviews of departmental concordats and guidance, and increased interactions and exchange of personnel between administrations.¹³⁸

114. A year later, in our *Union and devolution* report, we welcomed signs of progress but stressed that they “must be seen as merely the start of a larger process” and called for a new mindset of co-operation and collaboration:

“Instead of a ‘devolve and forget’ attitude [the UK Government] should be engaging with the devolved administrations across the whole breadth of government policy: not interfering, but co-operating and collaborating where possible and managing cross-border or UK-wide impacts that may result from differing policy and service delivery choices. The UK Government should work to reach an agreement with the devolved administrations to ensure a constructive approach to this engagement is introduced and maintained for the long-term on all sides.”¹³⁹

115. We were interested to know whether and how EVEL had affected the UK Government’s interaction with the devolved administrations. The evidence we received focused primarily on considerations of territorial extent and devolved competence, and on training and guidance.

Consideration of territorial extent and devolved competence

116. One clear indication of how UK Government officials’ consideration of devolution has developed is the introduction of a new Annex to the Explanatory Notes of bills indicating the extent and application of each part or clause of the bill.¹⁴⁰ We were told that this was planned prior to the introduction of EVEL,¹⁴¹ but it was brought into use with the first bills subject to EVEL certification.

136 EVE [Q 27](#)

137 EVE [Q 28](#)

138 Constitution Committee, *Inter-governmental relations in the United Kingdom* (11th Report, Session 2014–15, HL Paper 146)

139 Constitution Committee, *The Union and Devolution*, paras 301–305

140 Other than where a Bill applies to the whole of the UK, such as the Intellectual Property (Unjustified Threats) Bill 2016–17.

141 EVE [Q 33](#) (Adam Pile)

117. The Annex requires the Government to set out: whether each part or clause extends to the jurisdiction of England and Wales and to which of those nations it applies; whether it extends and applies to Scotland or to Northern Ireland; whether making corresponding provision there is within the competence of the devolved legislatures; and whether Legislative Consent Motions (LCMs) are required. The Annex is explicitly set out to be a guide to the Government’s interpretation of devolved competence, which affects both whether each provision should be certified under EVEL and whether an LCM is required. Where applicable, the Annex also sets out where there are provisions relating to England (or England and Wales) with effects on other nations that the Government deems “minor or consequential for the purposes of” EVEL certification.¹⁴² This assessment “relate[s] only to the application of the legislation”, not to any wider impact of the policy.¹⁴³ We were told that this assessment was done within the UK Government by policy and legal teams, in co-operation with a dedicated EVEL team in the Cabinet Office-based UK Governance Group.¹⁴⁴
118. The officials from whom we heard told us that devolution had become a more prominent part of officials’ thinking on policy and legislation. Jonathan Jones, the head of the Government Legal Department, told us that,
- “the requirements of the new procedure mean that officials, including lawyers, have actively to turn their minds to the precise devolution effects of any given provision. In a way, that is helpful. Whatever the policy may be, officials have to think about the devolution effects and cross-border implications of a given bill.”
119. Adam Pile, Head of the Parliamentary Business and Legislation Cabinet Committee Secretariat, agreed, telling us: “It has ensured that devolution is brought to the front sooner and we are more open about our analysis of whether it is reserved or devolved and how it applies to different parts of the UK.”¹⁴⁵
120. **We welcome the additional consideration being given by civil servants to the territorial extent and application of UK Government policies. A continued focus on the interaction between the UK Government and the devolved administrations will be required as EVEL and the recent and forthcoming changes to the devolution settlements bed in.**¹⁴⁶

Training and guidance

121. Mr Pile told us that there was a range of new training for policy and bill team officials relating to EVEL and the territorial extent of legislation. This included updates to the published *Guide to making legislation* to include information on the new territorial extent annex and to incorporate other guidance on EVEL;¹⁴⁷ “a workshop for policy officials, bill teams and the wider array of policy officials who feed into the policy in the bill”; an online

142 The annex sets out that the assessment is of devolved legislative competence and minor or consequential effects in accordance with Standing Order 83J.

143 EVE [Q 34](#) (Adam Pile)

144 EVE [Q 26](#) (Elizabeth Gardiner)

145 EVE [Q 28](#)

146 With the commencement of relevant parts of the Scotland Act 2016, Corporation Tax (Northern Ireland) Act 2015 and the Wales Bill 2016–17.

147 The current Cabinet Office, *Guide to making legislation* (31 July 2015) is available at: <https://www.gov.uk/government/publications/guide-to-making-legislation> [accessed 28 July 2016]

Civil Service Learning module; and a training module for lawyers joining the Government Legal Service. He also stressed that officials have ongoing support “from the specialist team in the Cabinet Office, from the Office of the Advocate-General for Scotland, from the three territorial offices—the Scotland Office, the Wales Office and the Northern Ireland Office—from my [the PBL Committee Secretariat] team in the Cabinet Office, from parliamentary counsel and from the Whips’ Office”.¹⁴⁸

122. **It was incumbent upon Government to respond to the introduction of EVEL by taking steps to inform, advise and support those officials who would be dealing with the results of the new procedures. We were impressed by the range of training, guidance and support being offered to officials dealing with EVEL. We hope that this represents a wider move within the civil service to embed consideration of devolution and engagement with the devolved institutions into its work across the breadth of government policy.**

CHAPTER 7: STANDING ORDERS VS LEGISLATION

123. The introduction of English votes for English laws was a significant constitutional development. One of the most controversial elements of the introduction of the new procedures was the Government’s decision to use House of Commons Standing Orders, rather than primary legislation, to implement the change.
124. The Government’s decision to introduce EVEL by means of House of Commons Standing Orders rather than primary legislation meant that they could be introduced by a single vote in the Commons rather than having to pass through the full scrutiny afforded (by both Houses) to primary legislation. As we noted earlier in this report (paragraph 87), EVEL was introduced without a cross-party consensus.
125. Some witnesses pointed out advantages to using Standing Orders rather than legislation to implement EVEL—particularly given the Government’s stated intention that the new procedures were to undergo a trial period. Standing Orders can be amended by a simple majority vote in the House of Commons. This means that the Commons may easily amend the procedures, for example following a review or an event that highlights an unforeseen shortcoming in the process.¹⁴⁹ This argument was not accepted by all our witnesses: Baroness Smith told us: “I suspect the reason it was done by Standing Orders was not to give flexibility, but to get it through as quickly as possible with as [little] fuss as possible.”¹⁵⁰
126. In the longer term, the use of Standing Orders makes it less likely that EVEL will survive under a Government of a different political persuasion. As Professor Kenny noted, a future Government wishing to repeal the EVEL procedures would face only political, rather than practical, restraints.¹⁵¹ The Leader of the House of Commons stated that any Government wishing to repeal EVEL would have to calculate the political costs of doing so—and that “any Government who sought to do that would pay a political penalty”.¹⁵²
127. A future government might have to pay a political price for repealing EVEL. But a Government that found itself with a UK majority but not a majority of English MPs—i.e. a situation where the EVEL procedures are likely to make the most difference—could, and most likely would, simply repeal the procedures rather than face the prospect of embarrassing defeats in the House of Commons.¹⁵³ Otherwise, as we note earlier in this report (paragraphs 60-63), English MPs could hold a Government with a UK-wide majority to ransom, with a significant risk of the legislative programme finding itself in deadlock.
128. The Society of Conservative Lawyers agreed that, while EVEL is set out in Standing Orders, it will always be possible for a majority of the whole House to over-ride English (and Welsh) MPs by changing those Standing Orders again. They advised that an explicit mechanism should be included specifically allowing the whole House to over-ride the English (and Welsh) veto, replacing the unofficial mechanism of suspending the Standing Orders

149 EVE [Q 4](#) (Tom Brake MP)

150 EVE [Q 37](#)

151 EVE [Q 17](#)

152 EVE [Q 49](#)

153 EVE [Q 3](#) (Pete Wishart MP)

and providing parity with the Sewel Convention that the UK Parliament does not normally legislate on devolved matters without the consent of the relevant devolved legislature(s).¹⁵⁴ This would be more in line with the recommendation of the McKay Commission (see paragraph 11).

129. One of the most significant distinctions that arises between the use of Standing Orders and legislation is the question of justiciability.¹⁵⁵ If the EVEL procedures are set out in primary legislation, there is a risk that the courts would be asked to scrutinise and assess whether the process set out in statute was followed.¹⁵⁶ Similarly, there may be scope for any errors—for example the miscounting of MPs in a division—to be challenged and the legality of the resulting Act of Parliament questioned. While Article 9 of the 1689 Bill of Rights generally prohibits the courts from questioning proceedings in Parliament, setting out the procedures in statute could arguably bring them into the purview of the courts.¹⁵⁷
130. Notwithstanding this concern, a number of witnesses saw benefits in implementing EVEL through legislation rather than Standing Orders. Several witnesses were unhappy with the idea of a major constitutional reform being carried out using Standing Orders and thus avoiding the enhanced scrutiny given to legislation. Bringing forward the proposals as legislation would allow a significantly greater degree of scrutiny and, potentially, amendment. Chris Bryant MP was very clear that he thought that using Standing Orders was insufficient:

“it was inappropriate. It was a major constitutional change. The checks and balances of a bicameral Parliament are important... There are few countries in the world where the Standing Orders of parliament can simply be changed on the whim of the Government. ... [I] believe that sometimes being able to apply the brakes to constitutional change is an important part of any system; otherwise, the danger is that you lead to autocracy.”¹⁵⁸

131. Similarly, the Society of Conservative Lawyers told us that: “We see a substantial argument for the embodiment of EVEL in primary legislation on the basis that EVEL will be an important constitutional arrangement.”¹⁵⁹ Mr Wishart felt that, “If the Government are serious about this, and if it is a constitutional issue, as it seems to have been presented to us, they should have the courage of their convictions and bring forward legislation so that it can be tested in both Houses of Parliament.”¹⁶⁰ Our Liberal Democrat witnesses, Lord Wallace and Mr Brake, both told us that it was reasonable to implement EVEL through Standing Orders for the trial period, but that if the procedures were to be made permanent then legislation might be a better option for a long-term reform.¹⁶¹

154 Written evidence from the Society of Conservative Lawyers ([UDE0028](#))

155 EVE [Q 4](#) (Pete Wishart MP), and [QQ 37, 39](#) and [Q 44](#) (Lord Wallace of Tankerness)

156 See, for example, EVE [Q 4](#) (Pete Wishart MP)

157 A parallel could be drawn to the *Jackson* case and the courts’ willingness to judge whether the Parliament Act 1949 was “validly passed by Parliament” under the Parliament Act 1911 (that question then having a bearing on whether the Hunting Act 2004, passed under the 1949 Act was lawful). See also written evidence submitted by Professor Adam Tomkins to PACAC’s EVEL inquiry ([EVE0007](#))

158 EVE [Q 19](#)

159 Written evidence from the Society of Conservative Lawyers ([UDE0028](#))

160 EVE [Q 4](#)

161 EVE [Q 4](#) (Tom Brake MP)

132. The Leader of the House of Commons told us that the decision to introduce the change by means of Standing Orders reflected both principle and practicality. On the practical side, he told us that the ease with which the reform could be made was part of the consideration. He also thought it was “perfectly proper” to use Standing Orders, as the reforms affected only the House of Commons. He noted that other important changes to the Commons had also been brought about through Standing Orders, such as the creation of select committees and the election of those committees’ chairs.¹⁶² We recognise the parallel drawn by the Leader of the House, although we note that those changes were the result of extensive deliberation by a select committee, and delivered on a cross-party basis.
133. As we note above, there is no cross-party agreement on whether and how EVEL should be implemented. While it is indeed possible, as one of our witnesses acknowledged, “to deliver successful constitutional change in the United Kingdom, even in circumstances where you do not have immediate cross-party support”, it is not preferable.¹⁶³ Mr Gover echoed the sentiments of several witnesses when he concluded that: “Ultimately, if this reform is to survive, it will need to be perceived as legitimate, both in popular opinion and through some sort of cross-party consensus.”¹⁶⁴
134. **It is regrettable that cross-party support was not secured for EVEL prior to its introduction. Given the ease with which Standing Orders may be repealed, there can be no certainty as to the reform’s longevity. A prolonged trial period, followed by detailed scrutiny on a cross-party basis by a Joint Committee and combined with evidence of public support for the policy may provide more widespread political backing for the reform.**
135. **Consideration must be given in the longer-term as to whether, and if so how, to secure English votes for English laws as a permanent fixture of the UK’s territorial constitution. We trust that the review by a Joint Committee, in the next Parliament, will consider the relative merits of Standing Orders and statute in this regard and recommend a way forward that secures cross-party support.**
136. **Finally, we recognise concerns that should the EVEL procedures be set in statute they would be opened up to challenge and interpretation in the courts. In that event, we recommend that the legislation be drafted in a way that protects the operation of Article 9 of the Bill of Rights, which prevents the courts from questioning proceedings in Parliament.**

162 EVE [Q 49](#)

163 UDE [Q 7](#); Professor Tomkins was talking about the idea of a ‘Charter of the Union’ rather than specifically about EVEL.

164 EVE [Q 17](#)

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

The Government's Review

1. It will be difficult for the Government to judge whether the EVEL procedures are robust given the short period of time during which they have been in operation. Whilst it is impossible to predict when the procedures might be used “in anger”, it would be sensible to allow for an extended trial period from which a more extensive evidence base can be drawn. Following the Government's review in autumn 2016, the EVEL procedures—if they are retained—should be subject to an extended trial period for the remainder of this Parliament, with a final review taking place early in the next Parliament. The next few years will see a series of votes on matters relating to the UK's exit from the EU which may well provide a ‘stress test’ for the procedures. (Paragraph 35)
2. Following the extended trial period, the revised procedures should be subject to scrutiny by a Joint Committee, examining both the technical and the constitutional aspects of EVEL. (Paragraph 36)
3. Given that EVEL is at least partly a response to public perceptions of unfairness, it should also be assessed against the wider objectives of providing a distinct voice for England and a legislative process that is “fair for everyone”, without undermining the Union more widely. (Paragraph 46)
4. It is too soon to determine whether public perceptions have been substantively altered by the introduction of the EVEL procedures. We recommend that, as part of its review in the next Parliament, the Joint Committee should try to establish:
 - whether the procedures have affected public perceptions of a ‘democratic deficit’ in England; and
 - whether EVEL has affected public attitudes in the devolved nations towards the Union and the role of the House of Commons. (Paragraph 47)

The implications of EVEL for the Union

5. There is no doubt that funding decisions taken in relation to England, or England and Wales, can have consequential effects on the other nations in the Union as a result of the Barnett Formula. Accordingly, there is a strong case for MPs from the devolved nations to have a say in such decisions. The model of EVEL chosen, whereby the consent of all MPs is still required for any piece of legislation to become law, ensures that MPs from the devolved nations are still able to speak and vote on funding decisions that might have consequential effects for the funding of those nations. (Paragraph 58)
6. Policy decisions taken in relation to England can also have spillover or knock-on effects in the devolved nations. Indeed, the reverse can also be true. Yet such effects can be difficult to determine and measure, and we are less convinced that they should entitle representatives from one nation to have a say on policy that applies exclusively in another. We note that, at present, there is no mechanism for English representatives to have a formal say on policy decisions taken by the devolved nations. (Paragraph 59)

7. The risk of deadlock under these proposals is reduced so long as they are contained in Standing Orders which can simply be suspended or repealed by a single majority-vote of the whole House of Commons. Should the EVEL procedures in future be placed in statute (see paragraph 135) then careful consideration would need to be given to including a mechanism that would ensure that deadlock could be avoided. (Paragraph 63)
8. Devolution has created greater democratic representation for Wales, Scotland and Northern Ireland, and primary legislative powers now reside in the devolved legislatures. It has, however, left the UK Parliament as England's sole legislature. (Paragraph 67)
9. EVEL creates distinctions between MPs at some points of the legislative process. This may be seen as justified in the attempt to create some degree of parity between England and the devolved nations in relation to devolved issues, but clearly presents risks to Parliament's position as a unifying body representing the UK as a whole. By opting for the double-veto form of EVEL, the Government has attempted to balance the need for a separate English 'voice' in the House of Commons with the need for Parliament to remain a sovereign chamber representing the whole of the UK. (Paragraph 68)
10. Despite the voting restrictions an MP representing a constituency in one of the devolved nations might face under the EVEL procedures, there is no constitutional reason why a future UK Prime Minister should not represent a constituency in Wales, Scotland or Northern Ireland. It remains the Sovereign's prerogative to invite whomsoever they choose to be Prime Minister, albeit in accordance with the constitutional convention that he or she invite the person who appears most likely to be able to command the confidence of the House of Commons. (Paragraph 71)
11. There is no constitutional reason why an MP representing a constituency in one of the devolved nations could not be appointed to a ministerial post whose remit pertains largely to England (or England and Wales). Likewise, there is no constitutional reason why an English MP could not be appointed to a ministerial post in a territorial department. However, in practice it is likely that the Prime Minister will take into account such issues when appointing his or her ministerial team. (Paragraph 74)
12. The continued right of all MPs to debate and vote on all matters before the House of Commons clearly demonstrates the continued UK-wide nature of the House. It is, however, an inevitable consequence of the devolution of power to the devolved nations (but not England) that the UK Parliament now legislates on a wider range of matters for England than for the other nations within the Union. (Paragraph 76)
13. We are confident that the Speaker's decisions on certification are protected by Article 9 of the Bill of Rights and that no legal challenge to his decisions should be entertained by the courts. (Paragraph 81)
14. Giving MPs for Scottish, Welsh or Northern Irish seats a veto over reserved matters affecting those nations would thus go considerably beyond the veto granted to English MPs by the current form of EVEL. (Paragraph 83)
15. EVEL attempts to address specifically English concerns about their voice within the Union. Yet if EVEL is to strengthen rather than weaken the Union, every effort must be made to develop cross-party support and to ensure that

the procedures have no demonstrably negative effects on Parliament's role as the centre of the political union, representing the interests of all parts of the United Kingdom. We trust that, when EVEL is reviewed by a Joint Committee in the next Parliament, it will consider the effect that EVEL has had on public opinion across all four nations of the UK, and not just within England. (Paragraph 88)

16. It remains our view that it is too soon to know whether EVEL and the 'devolution deals', separately or in combination, will provide an answer to the English Question. (Paragraph 92)

Impact on the House of Lords

17. There has, to date, been no procedural impact in the House of Lords as a result of EVEL. (Paragraph 96)
18. There is little evidence to date of any political impact in the House of Lords from the introduction of EVEL in the House of Commons. We will keep this matter under review, but we anticipate that adverse consequences are unlikely and should be resolved by the conventional deference shown by the House of Lords to the elected chamber. (Paragraph 101)
19. EVEL cannot be applied in a House of Lords whose members are appointed to represent the whole UK, rather than specific regions or constituencies. (Paragraph 106)

Impact on the work of Government

20. There is no evidence that legislation is being drafted differently, or that the legislative programme has changed, following the introduction of EVEL. (Paragraph 112)
21. We welcome the additional consideration being given by civil servants to the territorial extent and application of UK Government policies. A continued focus on the interaction between the UK Government and the devolved administrations will be required as EVEL and the recent and forthcoming changes to the devolution settlements bed in. (Paragraph 120)
22. It was incumbent upon Government to respond to the introduction of EVEL by taking steps to inform, advise and support those officials who would be dealing with the results of the new procedures. We were impressed by the range of training, guidance and support being offered to officials dealing with EVEL. We hope that this represents a wider move within the civil service to embed consideration of devolution and engagement with the devolved institutions into its work across the breadth of government policy. (Paragraph 122)

Standing Orders vs legislation

23. It is regrettable that cross-party support was not secured for EVEL prior to its introduction. Given the ease with which Standing Orders may be repealed, there can be no certainty as to the reform's longevity. A prolonged trial period, followed by detailed scrutiny on a cross-party basis by a Joint Committee and combined with evidence of public support for the policy may provide more widespread political backing for the reform. (Paragraph 134)
24. Consideration must be given in the longer-term as to whether, and if so how, to secure English votes for English laws as a permanent fixture of the UK's

territorial constitution. We trust that the review by a Joint Committee, in the next Parliament, will consider the relative merits of Standing Orders and statute in this regard and recommend a way forward that secures cross-party support. (Paragraph 135)

25. Finally, we recognise concerns that should the EVEL procedures be set in statute they would be opened up to challenge and interpretation in the courts. In that event, we recommend that the legislation be drafted in a way that protects the operation of Article 9 of the Bill of Rights, which prevents the courts from questioning proceedings in Parliament. (Paragraph 136)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Beith
 Lord Brennan
 Baroness Dean of Thornton Le Fylde
 Lord Hunt of Wirral
 Lord Judge
 Lord Lang of Monkton (Chairman)
 Lord MacLennan of Rogart
 Lord MacGregor of Pulham Market
 Lord Morgan
 Lord Norton of Louth
 Lord Pannick
 Baroness Taylor of Bolton

Declarations of interest

Lord Beith
No relevant interests

Lord Brennan
No relevant interests

Baroness Dean of Thornton-le-Fylde
No relevant interests

Lord Hunt of Wirral
Former Secretary of State for Wales 1990–93 and 1995
Partner DAC Beachcroft LLP
Chairman, Society of Conservative Lawyers

Lord Judge
No relevant interests

Lord Lang of Monkton (Chairman)
Secretary of State for Scotland 1990–95

Lord MacGregor of Pulham Market
No relevant interests

Lord MacLennan of Rogart
No relevant interests

Lord Morgan
No relevant interests

Lord Norton of Louth
Chair, Commission to Strengthen Parliament (2000)

Lord Pannick
No relevant interests

Baroness Taylor of Bolton
No relevant interests

A full list of members' interests can be found in the Register of Lords' Interests:

<http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

Professor Mark Elliott, Professor of Public Law at the University of Cambridge, and Professor Stephen Tierney, Professor of Constitutional Theory at the University of Edinburgh, acted as specialist advisers for the inquiry. They both declared no relevant interests.

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at <http://www.parliament.uk/hlconstitution-evel> and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. The Committee received one submission of written evidence. This report also draws heavily on evidence taken for the Committee's inquiry, *The Union and devolution*, the evidence for which is published online at: <http://www.parliament.uk/union-and-devolution>.

Oral evidence in chronological order

Rt Hon. Tom Brake MP, Liberal Democrat Party	QQ 1-7
Pete Wishart MP, Scottish National Party	
Professor Michael Kenny, Mile End Institute, Queen Mary University of London	QQ 8-17
Daniel Gover, Mile End Institute, Queen Mary University of London	
Chris Bryant MP, former Shadow Leader of the House of Commons, Labour Party	QQ 18-25
Elizabeth Gardiner, First Parliamentary Counsel	QQ 26-35
Jonathan Jones, Treasury Solicitor and Head of Government Legal Service	
Adam Pile, Head of the Parliamentary Business and Legislation Secretariat, Economic and Domestic Secretariat, Cabinet Office	
Rt Hon. Baroness Smith of Basildon, Shadow Leader of the House of Lords, Labour Party	QQ 36-45
Rt Hon. Lord Wallace of Tankerness QC, Leader of the Liberal Democrats, House of Lords	
Rt Hon. Baroness Evans of Bowes Park, Leader of the House of Lords	QQ 46-58
Rt Hon. David Lidington MP, Leader of the House of Commons	

Alphabetical list of all witnesses

Mr David Beamish, Clerk of the Parliaments	EVE0001
Rt Hon. Tom Brake MP, Liberal Democrat Party (QQ 1-7)	
Chris Bryant MP, former Shadow Leader of the House of Commons, Labour Party (QQ 18-25)	
Rt Hon. Baroness Evans of Bowes Park, Leader of the House of Lords (QQ 46-58)	
Elizabeth Gardiner, First Parliamentary Counsel (QQ 26-35)	

Daniel Gover, Mile End Institute, Queen Mary University of London (QQ 8-17)

Jonathan Jones, Treasury Solicitor and Head of Government Legal Service (QQ 26-35)

Professor Michael Kenny, Mile End Institute, Queen Mary University of London (QQ 8-17)

Rt Hon. David Lidington MP, Leader of the House of Commons (QQ 46-58)

Adam Pile, Head of the Parliamentary Business and Legislation Secretariat, Economic and Domestic Secretariat, Cabinet Office (QQ 26-35)

Rt Hon. Baroness Smith of Basildon, Shadow Leader of the House of Lords, Labour Party (QQ 26-35)

Rt Hon. Lord Wallace of Tankerness QC, Leader of the Liberal Democrats, House of Lords (QQ 26-35)

Pete Wishart MP, Scottish National Party (QQ 1-7)