



The English Question

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Politicians and voters in England have turned their attention to constitutional issues following the Scottish independence referendum and the offer to devolve significant additional powers to the Scottish Parliament. Two main strands have been addressed: the House of Commons voting arrangements on laws affecting only England, and the governance of England.

The day after the referendum, the Prime Minister said that “The question of English votes for English laws ... requires a definitive answer” and announced a Cabinet Committee on devolution to consider this question. The Government and Opposition have each proposed changes in governance structures for England. Neither of these issues is new: each has a long history marked by commissions and proposals, but new urgency has been brought to the discussion by the emphasis given to Scottish devolution during the last two weeks of the referendum campaign in September 2014. The Labour Party and the Liberal Democrats have suggested that the issues be considered by a constitutional convention. Some voices across the UK have gone further, and have argued for a written constitution entrenching and calibrating the relationships between the different levels of governance. Additional devolution is planned for Wales, with a *Wales Bill* currently in passage through the UK Parliament.

There is further detail on the history of the so-called West Lothian Question, and efforts to address it, in Standard Note 2586, [The West Lothian Question](#), 18 January 2012. The most recent effort to tackle the matter prior to the current phase is covered in Standard Note 6821, [The McKay Commission: report of the Commission on the consequences of devolution for the House of Commons](#), 17 February 2014.

This Note explores the technical issues involved in identifying “England-only” legislation and gives some analysis of bills and divisions in the current session. It highlights differences between the territorial extent of legislation and its effects. Although territorial extent is specified on the face of a bill, territorial effect may be of more interest politically.

This Note also gives a brief account of proposals for further devolution in England.

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1 Introduction

In the last two weeks before the Scottish independence referendum the three main Unionist parties made commitments to further devolution for Scotland in the event of a No vote.¹ The referendum took place on 18 September 2014 and independence was rejected.² Prime Minister David Cameron made a statement the next day. In the course of this he referred to the English question:

Just as the people of Scotland will have more power over their affairs, so it follows that the people of England, Wales and Northern Ireland must have a bigger say over theirs. The rights of these voters need to be respected, preserved and enhanced as well.

It is absolutely right that a new and fair settlement for Scotland should be accompanied by a new and fair settlement that applies to all parts of our United Kingdom. In Wales, there are proposals to give the Welsh government and Assembly more powers. And I want Wales to be at the heart of the debate on how to make our United Kingdom work for all our nations. In Northern Ireland, we must work to ensure that the devolved institutions function effectively.³

He argued that:

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.

He hoped that discussions would proceed on a cross-party basis, and said that William Hague, the Leader of the House of Commons, would chair a Cabinet Committee on devolution to bring forward proposals.

The Cabinet Committee has the following terms of reference:

To consider matters relating to the devolution of powers within the United Kingdom.⁴

In a House of Commons debate following the Scottish referendum Mr Hague said that the Committee would consider “the needs of England without delay in the coming months.”⁵ It met for the first time on 25 September 2014.⁶

Mr Cameron and Mr Hague also referred to the consequences of devolution for England at the 2014 Conservative Party conference. Mr Cameron said that the party would “deliver” on “English Votes for English Laws”.⁷ Mr Hague said that the Cabinet Committee would “address at last this question.”⁸

¹ See Standard Note 6987, [Scotland: devolution proposals](#), 15 October 2014.

² Voters rejected independence by a margin of 10.6 percentage points:

- 2,001,926 (55.3%) voted No
- 1,617,989 (44.7%) voted Yes [House of Commons Library Research Paper, [Scottish Independence Referendum 2014](#), RP 14/50, 30 September 2014]

³ [Scottish Independence Referendum, Statement by the Prime Minister](#)

⁴ Cabinet Office, [Devolution Committee](#)

⁵ [HC Deb 14 October 2014 c179](#)

⁶ [Cabinet Committee for devolved powers: statement on first meeting](#), Press Release, 25 September 2014

⁷ Conservative Party, [David Cameron speech to 2014 Conservative Party conference](#), 1 October 2014

⁸ Conservative Party, [William Hague speech to 2014 Conservative Party conference](#), 28 September 2014

So how often do MPs representing English constituencies vote for or against a proposal relevant only to England, and yet lose the division by virtue of the votes of other MPs who are not voting on the same subject matter in respect of their own constituents? There is no simple answer to this question, but the explanation of why this might be throws up a range of interesting points, which are explored below. In designing a modified procedure for legislation in order to address English disaffection, subtleties may need to be recognised that are not at first apparent.

“English votes for English laws” is one response to the concerns of some English voters about the asymmetrical devolution arrangements in the UK.⁹

Another response is the call for greater devolution in England. On this account, perceived unfairness has as much to do with the absence of powers for people living in England to create their own policies, as with the voting arithmetic and procedures of the House of Commons. Ideas have been mooted such as greater powers for cities and regions, or a senate based on regional representation to replace the House of Lords.

There have also been calls to review the whole package of devolved arrangements across the UK, with both the Labour Party and the Liberal Democrats proposing constitutional conventions.¹⁰ There is a *Wales Bill* currently in passage through Parliament.¹¹ This implements recommendations of the Commission on Devolution in Wales (the Silk Commission), with further recommendations likely to be implemented in the next Parliament.¹² There is also concern to make the devolved institutions in Northern Ireland function smoothly.

The Conservative Party’s desire to address English concerns by changes to House of Commons procedure is not new. The Party created a [Democracy Task Force](#), chaired by Kenneth Clarke, which reported on the matter in 2008. Its 2010 general election manifesto included the following proposal:

A Conservative government will introduce new rules so that legislation referring specifically to England, or to England and Wales, cannot be enacted without the consent of MPs representing constituencies of those countries.¹³

This led to a commitment in the Coalition Agreement to “establish a commission to consider the ‘West Lothian question’”.¹⁴ The Commission on the consequences of devolution for the House of Commons (known as the McKay Commission) was duly announced on 17 January 2012,¹⁵ and reported on 25 March 2013.¹⁶ Further information on the Commission and its proposals is given in Standard Note 6821, [The McKay Commission: Report of the Commission on the consequences of devolution of the House of Commons](#), 14 February 2014.

⁹ [HC Deb 10 September 2014 c898](#)

¹⁰ [HC Deb 14 October 2014 c145; c190](#)

¹¹ See Research Paper 14/19, [Wales Bill 2013-14](#), 27 March 2014, and SN 6875, [Wales Bill 2013-14: progress of the Bill](#), 4 June 2014.

¹² [HL Deb 11 November 2014 cc144-145](#)

¹³ Conservative Party, [Invitation to Join the Government of Britain](#), 2010, p84

¹⁴ HM Government, [The Coalition; our programme for government](#), May 2010, p27

¹⁵ [HC Deb 17 January 2012 cc35WS-36WS](#)

¹⁶ [Report of the Commission on the Consequences of Devolution for the House of Commons](#), March 2013

2 English laws

Bills usually include a clause stating their territorial extent. This means the legal jurisdiction to which they apply. The territorial extent clause is not a statement of the territory in which the effects of the bill will be felt. Extent and impact often overlap, but they are not the same, and there are occasions when they diverge.

Some bills have important clauses that impact only on England, while the bill as a whole includes matters which extend to other parts of the UK. On the other hand, some bills extend only to the England and Wales jurisdiction, and the subject matter is devolved in Wales, yet the bill has a effect on the rest of the UK. This might be through an impact on public spending that will feed through the Barnett calculation into the block grants given to Scotland, Wales and Northern Ireland, or it might be through English institutions and policies weighing heavily on the context in which devolved policies are developed.

2.1 The West Lothian Question?

The West Lothian Question addressed the situation in which an MP for West Lothian could vote on a matter affecting England, but could not vote on it in respect of his/her own constituents, because it was devolved. In fact, the devolution arrangements that came in 20 years after Tam Dalyell formulated the Question expressly retain the right for the UK Parliament to legislate on devolved matters. In practice it usually does so only with consent, and there is a convention, known as the Sewel Convention, to this effect. Nevertheless, it may legislate on any matter, devolved or not, with or without consent. The original West Lothian Question therefore no longer arises: the Member for West Lothian, or anywhere else, certainly could introduce and/or vote for legislation affecting his/her constituents on all subjects.

The frequency with which the UK Parliament has legislated on devolved matters can be seen on the [territorial extent spreadsheet](#) maintained by the House of Commons Library. Each time it has done so, a Legislative Consent Motion has been agreed in the relevant devolved legislature, and these are noted on the spreadsheet.

In the present circumstances attention has turned to the possibility of decisions affecting only England being determined by the votes of MPs representing other parts of the UK. This could happen if a policy were applied to England but a majority of its Members voted against. It could also happen if a majority of English representatives failed to secure a policy change, for instance as a result of votes by other English representatives coupled with Members from constituencies in Scotland, Wales and/or Northern Ireland.

Efforts to resolve this through changes to House of Commons procedure on bills tend to be associated with the Conservative Party: the “English votes for English laws” approach. On the whole, the Labour Party has tended to prefer to address the question through proposals for devolution in England, so as to shift the whole matter of voting on English policy into regional institutions in which areas outside England would not be represented. This is discussed further in section 5 below.

2.2 Do MPs vote on legislation that does not affect their constituents?

MPs routinely vote on legislation that does not affect their constituency in a direct way. For example, an MP for an inland constituency might vote on sea defences, an MP for an inner city area might vote on agricultural policy, or an MP for a Scottish constituency might vote on the NHS in England. However, there are differences in the latter case. Scottish constituents

have alternative representation on this matter in the Scottish Parliament, there is a separate block grant for that Parliament to spend on such devolved matters, and English MPs do not have a say on how it is used. On devolved subjects, Scottish, Welsh or Northern Ireland policy is usually decided in the relevant devolved legislature, although, as mentioned above, it can be decided at Westminster. On the other hand, Members representing Scotland, Wales and Northern Ireland will have constituents who use services or operate businesses in England, and might argue that they have an interest in English legislation. Another variety of this concerns MPs for London, which has a relatively powerful Mayor and Assembly, voting on issues in other parts of England. However, neither the Mayor nor the Assembly has legislative powers at present.¹⁷

2.3 How many England-only bills are there?

Since effect differs from territorial extent it is not a simple matter to identify or count England-only bills, nor the votes on them. Nevertheless, whatever method is used, there are relatively few bills that unambiguously affect England only.

As mentioned, the Library maintains a [spreadsheet showing territorial extent of bills](#). The website legislation.gov.uk also provides information on the extent of sections of some Acts of Parliament. After finding an Act and opening any section of it, a box appears to the left marked “show geographical extent”, which may be checked to reveal the extent of each section.

As far as an historical count of past legislation is concerned, there are two main issues.

First, no legislation is described as extending to England only. Instead, the term “England and Wales” is used, because that is the name of the legal jurisdiction for England (and for Wales). From this, one needs to subtract those bills that relate to subject matter devolved in Wales at the time of the passage of the bill. However, this is not only a matter of complexity, it is also a matter of uncertainty. It is notable that a significant proportion of the legislation passed by the National Assembly for Wales since 2011 has been referred to the Supreme Court to determine whether it is within the Assembly’s competence (its devolved powers). A case is indicated below in which the Law Commission first held that the regulation of taxis was devolved, but then found that the Welsh Government did not think this was definitely the case and so proceeded as if it were reserved. The Welsh Government has argued in general that its powers are neither clear nor certain, and, when looking at bills that amend pre-devolution legislation, none of which was devolved at the time, there is a real difficulty in saying precisely whether and when the matter was subsequently devolved.

Secondly, while the number of bills extending to England and Wales but certainly not having effect in Wales may be very small, the same cannot be said of clauses. It is feasible for those to have effect in England only, perhaps to introduce a controversial policy, while the bill as a whole extends beyond England.

For example, the *Health and Social Care (Community Health and Standards) Act 2003* is one of the few well-known cases of a provision being created for England (foundation hospitals) against the wishes of a majority of English MPs.¹⁸ However, the territorial extent of this bill was to the whole UK. The clauses extending to Scotland and Northern Ireland may have been limited, but they were not insubstantial, Scotland being covered by almost all of Part 3, while Wales was the subject of at least two whole Chapters of Part 2. The presence of such

¹⁷ House of Commons Library blog, [Does the ‘West Ealing Question’ exist?](#) 5 November 2014

¹⁸ [Report of the Commission on the Consequences of Devolution for the House of Commons](#), March 2013, p12

provisions would put the bill outside any mechanical count of England-only legislation based on territorial extent clauses minus matters devolved in Wales. The same goes for the *Higher Education Act 2004*, which introduced university top-up fees in England: the whole of Part 1, establishing the Arts and Humanities Research Council, extended to Scotland and Northern Ireland, as did a small number of other clauses. There is further discussion of divisions such as these in Standard Note 2586, [The West Lothian Question](#), 18 January 2012, p29 onwards.

These issues make it difficult to produce a figure for the number of “England-only” bills which have come before Parliament since devolution began.

In the current Parliament so far, out of the Government public bills and those Private Members’ Bills that became law, the total number of bills which have extended only to England and Wales and had their principal effect only in England is four:

- The *Mobile Homes Act 2013* was a Private Members’ Bill which became an Act. It extends only to England and Wales, and in Wales it made no changes to the law. Its substantive provisions are all couched in terms of “In England such-and-such shall happen”.
- The *Water Industry (Financial Assistance) Act 2012* extends only to England and Wales, and creates arrangements only in England.
- The *Academies Act 2010* extends only to England and Wales, and creates arrangements only in England.
- The *Local Government Act 2010* extends only to England and Wales. Its effect was in England, and in practice it was restricted to certain areas of England only since it stopped the proposed restructuring of councils in Devon, Norfolk and Suffolk.

An alternative approach is to identify the number of divisions on legislation in which the majority among those English MPs who voted was different from the majority in the division as a whole. One could then examine this relatively small number of cases to see which had clear-cut territorial extent, and which were more complex.

2.4 How many are passed by virtue of Scottish votes?

Members representing constituencies in England form a substantial majority in the House of Commons.¹⁹ If they chose to vote as a block on a given issue, they would always prevail. The potential for delicate arithmetic and a decisive role for Scottish representatives derives from the balance of the political parties.

The McKay Commission noted that since the First World War the UK Government has almost always had a majority in England, and only twice (1964-66 and Feb-Oct 1974) has the party with a majority of MPs from England been in opposition. The Commission also considered examples of a Government suffering a rebellion such that its own English Members created a majority against a measure, but the measure was still carried by virtue of Scottish votes:

It is difficult to find examples beyond the frequently cited votes on the introduction of foundation hospitals in England (in 2003) and the introduction of university top-up fees

¹⁹ Currently there are 650 seats in the House of Commons. England has 533, Scotland 59, Wales 40 and Northern Ireland 18.

in England (in 2004), when a substantial number of Labour MPs from England rebelled against the party whip, but Labour MPs from Scotland and Wales ensured that the Labour Government's proposals maintained majority support in Parliament.²⁰

An analysis of divisions in the present session is given in section 3 below. No Government bill in this session has extended only to England, and no division on the passage of legislation that concerned a provision extending only to England and Wales went against the votes of the majority of MPs representing English constituencies.

2.5 To what might a future policy apply?

If changes were made to parliamentary procedure so as to address the question of voting arrangements, it would be necessary to identify in advance those divisions to which new arrangements should apply. A decision would be needed whether the definition would be applied to bills or to clauses and/or amendments. If the former, the new arrangements would apply to very few bills, even if they contained specific provisions affecting only England. It would be conceivable that a Government dependent on Scottish votes could take care to add a Scottish provision to all legislation in order to avoid the new procedure. If the procedure were applied on a clause-by-clause basis, the level of work involved might be prodigious.

There have been suggestions in the past, for instance in Private Members' Bills, that the Speaker should have responsibility for identifying provisions to which a new procedure should apply.²¹ This has been criticised as potentially politicising the role of Speaker.²² If it were left to the sponsoring Minister or Member, there would be a conflict of interest, since a person introducing a bill or amendment would be able to choose who could vote on it. Another approach might be to create a committee to make the decision, although this could be time-consuming if applied at the level of individual amendments.

In summary, a new procedure for England-only legislation would need to take account of the following issues, among others:

- Legislation extending only to England which affects public spending is relevant to devolved regions, because of the impact on the Barnett calculation. Members representing those regions might argue that their constituents have an interest in the legislation. Other England-only legislation may exert a gravitational pull on the rest of the UK, while Members in border areas may have constituents who use services or run businesses in England.
- Bills described as extending to Scotland, Wales or Northern Ireland may include only technical or consequential clauses relating to those countries. A judgement is needed as to whether those technical issues matter enough to stop a given bill being "England-only" in real terms.
- A mechanical approach based on territorial extent clauses would place power in the hands of those sponsoring bills or amendments, which might be at tension with the aim of the new procedure.

²⁰ [Report of the Commission on the Consequences of Devolution for the House of Commons](#), March 2013, p12

²¹ [Legislation \(Territorial Extent\) Bill 2010-12; Parliament \(Participation of Members of the House of Commons\) Bill 2005-06](#)

²² [HC Deb 11 February 2011 c615](#)

- If automatic mechanisms to identify bills/clauses which should be subject to a new procedure carry difficulties, it is possible that an approach based on judgement, for instance by a committee, might be helpful.

There is also the question of whether all votes on a bill carry equal weight. Votes in committee may be easier to define as “England-only”, since they relate to individual clauses, but they are not usually votes of the whole House, so the regional arithmetic will be less persuasive. Further, the whole House will have a chance to reverse decisions taken in committee of which it does not approve. It could be argued that only divisions on third reading are decisive, but this reduces the calculation to a very small number.

On 22 October 2014, William Hague, Leader of the House of Commons, announced a pilot scheme in which the territorial extent of each provision in a bill would be published in the explanatory notes:

The First Secretary of State and Leader of the House of Commons (Mr William Hague): The Armed Forces (Service Complaints and Financial Assistance) Bill [Lords] has been passed by the House of Lords and was introduced in this House yesterday. The accompanying explanatory notes to this Bill pilot a new format which is easier to navigate and works better with online content. The notes now include:

A table of contents

A grid showing the application of each part of the Bill to each part of the United Kingdom

A shoulder note to the explanation of each clause and schedule showing the application of the provision to each part of the United Kingdom

An explanation of both the policy and legal backgrounds, along with a summary of the existing law

An explanation of the financial implications of the Bill and of the need for a money resolution

Links to relevant policy documents

An explanation of how the measures in the Bill will be commenced

The new format follows on from a review of explanatory notes which was conducted by the Cabinet Office and the Office of the Parliamentary Counsel as part of the Good Law project. In support of this work officials met with a variety of stakeholders and conducted an online survey which obtained views from within and beyond Parliament. The results of this survey have been placed in the Library of the House.

A full evaluation of this pilot will be conducted following its completion and any feedback on the new format should be delivered to my office or to goodlaw@cabinet-office.x.gsi.gov.uk.²³

The *Explanatory Notes* to the *Armed Forces (Service Complaints and Financial Assistance) Bill 2014-15* do contain the shoulder notes. The Bill contains seven clauses, the whole Bill extends to England, Wales, Scotland and Northern Ireland (EWSNI), and all the clauses and the Schedule all extend to EWSNI.

²³ [HC Deb 22 October 2014 cc72WS-74WS](#)

3 Sample analysis: session 2014-15 to date

A bill introduced into the House of Commons usually contains a clause that sets out the territorial extent of its provisions. Territorial extent is determined by the jurisdictions in which legislation applies, that is any of England and Wales (a single jurisdiction), Scotland and Northern Ireland. Occasionally the territorial extent is given as UK, and a bill in which territorial extent is not specified also extends to the whole of the UK. From the territorial extent provisions in a bill it is therefore not usually possible to identify legislation that applies exclusively to England, because the jurisdiction to which it extends would be England and Wales.

3.1 Divisions in the House of Commons in 2014-15

The following analysis of the divisions relating to the passage of legislation in the current session of Parliament uses the territorial extent stated in the bills. Note that in many cases decisions of the House (for example, on whether a bill is given a second reading, on whether to make an amendment, on whether to approve a statutory instrument etc) are made without a division.

So far there have been 20 Government bills in the current session. 19 have been public bills, the other is the *High Speed Rail (London – West Midlands) Bill*, which is hybrid. Of the public bills all but one extend to England and Wales, Scotland and Northern Ireland (though some are termed “UK”). This includes one bill which extends to Northern Ireland only technically, and the *Wales Bill*. The only bill that did not extend to all four nations was the *Social Responsibility and Heroism Bill*, which extended to England and Wales.

There have been 59 divisions in the current session to 21 October 2014. The majority of Scottish MPs voting were in the same lobby as the majority of English MPs voting on 18 occasions (31% of divisions). The majority of Scottish MPs voting were in the opposing lobby to the majority of English MPs voting on 41 occasions (69% of divisions). The majority of English MPs voting were on the winning side in 38 of these 41 divisions. The other three divisions, in which the majority of English MPs was on the losing side, were all on the *Affordable Homes Bill 2013-14*. They related to a closure motion, second reading and an attempt to refer the Bill to a select committee. The *Affordable Homes Bill* extends to England and Wales and to Scotland.

35 of the 59 divisions related to the approval of legislation (primary and secondary), including closure motions, but excluding other procedural motions (such as timetabling and committal motions).

The remaining 24 divisions, which are not considered further, were on:

Opposition day debates	11
Queen’s Speech (motions and amendments)	3
Programme or allocation of time	2
Ten minute rule (leave to introduce)	2
Sit in private (SO No 163)	2
Committal of a bill to a select committee	1
EU document	1
Government motion (Iraq)	1
Backbench Business	1

Divisions on legislation

Of the 35 divisions relating to the approval of legislation, 30 concerned primary legislation (i.e. second reading, amendments at committee stage and report stage, and third reading).

At what stage did divisions on bills take place?

	Total	of which PMBs
Second reading	4	3
Committee of the whole House	2	-
Report stage	21	-
Third Reading	3	-
Total	30	

Of the 30 divisions that took place on questions relating to the approval of bills, 70% took place at report stage. That is when the House considers specific details within a bill, rather than its principle.

What was the territorial extent of the provision subject to a division?

	Stage Second Reading	CWH	Report Stage	Third Reading
Extent				
England				
E+W			4	
EWS	1*		1	
EWSNI	1	2	5	2**
EWSNI+Gibraltar	1			
UK	1		10	1
Not specified***			1	
Totals	4	2	21	3

* some provisions extend this far

** in one case, some provisions extend this far

*** generally when a new clause is tabled a consequential amendment to the territorial extent provision is also tabled. In this case a consequential amendment was not tabled, so the extent was not specified.

It should again be noted that territorial extent relates to the jurisdiction in which legislation applies, not necessarily the parts of the country in which the legislation actually has effect. In some cases effect can be limited within the jurisdiction (perhaps because the issue is devolved to the Welsh Assembly, in the case of England and Wales) or the legislation could have a knock-on effect beyond the jurisdiction.

Who voted on provisions extending to England and Wales?

From the table above, four amendments divided upon at report stage extended to England and Wales only, and in one case, territorial extent was not specified. In each of these five cases the votes of English MPs on the majority side were sufficient to defeat all those who voted on the losing side of the division. For these amendments details are given below of the subject matter, extent, in some cases effect, and the breakdown of the division result into the constituent countries of the UK.

Clauses of bills

Criminal Justice and Courts Bill 2014-15 [[Bill 004 of 2014-15](#)]

Amendment 35 – “leave out Clause 58”.²⁴

Clause 58 of the Bill concerned costs of someone granted permission to intervene or make representations in judicial review proceedings. The territorial extent clause stated that this provision extended to England and Wales.

Result of the Division (that the amendment be made)

	<u>Aye</u>	<u>No</u>
England	162	280
Wales	29	8
Scotland	29	5
Northern Ireland	5	0
Total	225	293 ²⁵

Deregulation Bill 2014-15 [[Bill 005 of 2014-15](#)] – **Amendment 61**

Amendment 61 – “leave out Clause 10, Clause 11 and Clause 12”.²⁶

Clauses 10-12 of the *Deregulation Bill* amended provisions in the *Local Government (Miscellaneous Provisions) Act 1976* relating to taxis and private hire vehicles. The 1976 Act extended to England and Wales. It is not clear whether responsibility for taxis and private hire vehicles has been devolved to the Welsh Government: in its proposals for reforming the law on *Taxi and Private Hire Services*, the Law Commission noted that:

In the consultation paper, we set out our view that legislative competence in respect of the regulation of taxis and private hire vehicles was devolved under the Government of Wales Act 2006. That view was reflected in our preliminary proposals. However, since that time it has become apparent that Welsh Ministers consider the legal position to be too unclear to support that conclusion. In light of that, we proceed for the purposes of this report on the basis that legislative competence in respect of the regulation of taxis and private hire vehicles is not devolved and that the relevant functions will be exercised by the Secretary of State in relation to all of England and Wales.²⁷

Result of the Division (that the amendment be made)

	<u>Aye</u>	<u>No</u>
England	159	269
Wales	25	9
Scotland	20	7
Northern Ireland	2	0
Total	206	285 ²⁸

²⁴ *Criminal Justice and Courts Bill – Consideration of Bill, amendments for 17 June 2014*, 35, p109

²⁵ HC Division 7, 2014-15 see [HC Deb 17 June 2014 c1004](#)

²⁶ *Deregulation Bill – Consideration of Bill, amendments for 23 June 2014*, 61, p185

²⁷ Law Commission, *Taxi and Private Hire Services*, Law Com No 347, Cm 8864, May 2014

²⁸ HC Division 12, 2014-15 see [HC Deb 23 June 2014 c79](#)

Deregulation Bill 2014-15 [[Bill 005 of 2014-15](#)] – Amendment 2

Amendment 2 insert “(2) This section and section 31 shall not come into force until the Secretary of State has laid a Zero-Carbon Housing Strategy before both Houses of Parliament.”²⁹

Clause 30 of the *Deregulation Bill 2014-15* added a new provision to the *Building Act 1984*, while clause 31 amended section 1 of the *Planning and Energy Act 2008*.

The 1984 and 2008 Acts extended to England and Wales.

Result of the Division (that the amendment be made)

	Aye	No
England	160	255
Wales	25	8
Scotland	22	8
Northern Ireland	2	1
Total	209	272 ³⁰

Social Action, Responsibility and Heroism Bill [[Bill 009 of 2014-15](#)]

Amendment 5 – “leave out Clause 3”.³¹

The Bill extended to “England and Wales only”.

Result of the Division (that the amendment be made)

	Aye	No
England	111	245
Wales	14	5
Scotland	18	8
Northern Ireland	1	0
Total	144	258 ³²

Deregulation Bill 2014-15 [[Bill 005 of 2014-15](#)] – New Clause 8

In the case of this report stage amendment in which territorial extent was not specified, the Member’s explanatory statement accompanying New Clause 8 stated that “*This new clause would require the Minister to produce a plan to replace affordable homes lost in England as a result of Right to Buy, review the effectiveness of current policy and carry out an assessment of changes since 2012 before making further policy changes*”.³³

²⁹ *Deregulation Bill – Consideration of Bill, amendments for 23 June 2014*, 2, p222

³⁰ HC Division 16, 2014-15 see [HC Deb 23 June 2014 c146](#)

³¹ *Social Action, Responsibility and Heroism Bill – Consideration of Bill, amendments for 20 October 2014*, 5, p557

³² HC Division 59, 2014-15 see [HC Deb 20 October 2014 c699](#)

³³ *Deregulation Bill – Consideration of Bill, amendments for 23 June 2014*, NC8

Result of the Division (that the clause be added to the Bill)

	Aye	No
England	159	258
Wales	25	8
Scotland	22	8
Northern Ireland	2	0
Total	208	274³⁴

Other divisions relating to legislation

Of the remaining five divisions, three were on motions to approve draft statutory instruments (two of these were deferred) and two were on closure motions.

The territorial extent of the SIs that were voted upon was:

- draft *Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2014*: England and Wales³⁵;
- draft *Gangmasters (Licensing Authority) Regulations 2014*: United Kingdom;³⁶ and
- draft *Legislative Reform (Clinical Commissioning Groups) Order 2014*: “The draft Order extends to England and Wales, but its actual application is limited to England only”.³⁷

The two divisions on closure motions occurred during second reading: they therefore applied to consideration of the whole bill. The *Affordable Homes Bill 2014-15* extended to England and Wales and Scotland, although it had one England-only clause, while the *International Development (Official Development Assistance Target) Bill 2014-15* extended to the UK, as there was no extent clause.

4 Representation at Westminster

A consequence of devolution for Scotland was a reduction in the number of MPs that it sent to Westminster. Before the passage of the *Scotland Act 1998* Scotland had 72 MPs (of 659) in the UK Parliament, but this changed with devolution. Section 86 of the *Scotland Act 1998* amended the rules applied by the Boundary Commission for Scotland when determining how many seats there should be in Scotland.³⁸ First, it removed Rule 1(2), which guaranteed Scotland a minimum of 71 seats at Westminster. It also changed Rule 5 so that the electoral

³⁴ HC Division 14, 2014-15 see [HC Deb 23 June 2014 c126](#)

³⁵ [Explanatory Memorandum to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Amendment of Schedule 1\) Order 2014](#) [2014 No. [DRAFT]]; [HC Deb 9 July 2014 c415](#) (deferred division)

³⁶ [Explanatory Memorandum to the Gangmasters \(Licensing Authority\) Regulations 2014](#) [2014 No. [XXXX]]; [HC Deb 16 July 2014 c985](#) (deferred division)

³⁷ Department of Health, [Explanatory Document to accompany draft Legislative Reform Order 2014 – Amending the National Health Service Act 2006](#), March 2014; [HC Deb 9 September 2014 c835](#)

³⁸ Separate Boundary Commissions for England, Wales, Scotland and Northern Ireland are required to undertake reviews of constituency boundaries. Reviews are undertaken in accordance with the Rules for Redistribution in the *Parliamentary Constituencies Act 1986* (as amended). For more information, see House of Commons Library Standard Note, [Constituency boundaries: the Sixth General Review](#), SN/PC/5929

quota for England applied in Scotland when boundaries were reviewed following the passage of the Act.³⁹

The Boundary Commission for Scotland began the first post-*Scotland Act 1998* review of boundaries in June 2001 (the Fifth Review). In its final proposals, published in December 2003, it recommended that there should be 59 constituencies in Scotland. Its recommendations were implemented in 2005, ahead of the recommendations of the Fifth Reviews of the Boundary Commissions for England, Wales and Northern Ireland, which were implemented in 2010.

In 2010, the Government brought forward proposals to reduce the number of seats in the House of Commons from 650 to 600, and to apply the same electoral quota across the whole of the UK. Legislation was passed and the reduction was scheduled to be implemented at the 2015 general election. Implementation was delayed, following a Coalition disagreement over Lords reform. By that time the Boundary Commission had agreed the number of seats that should be allocated to each country in the UK.

The first table below shows how the number and proportion of seats in each part of the UK changed after the passing of the *Scotland Act 1998*, and how the reduction to 600 seats would have altered the distribution of seats in Westminster, had it gone ahead. The second table shows the number and proportion of electors in each part of the UK.

How many MPs are there in different parts of the UK?

	1997		2001		2005		2010		2015 - review halted	
	No	%	No	%	No	%	No	%	No	%
England	529	80.3	529	80.3	529	81.9	533	82.0	502	83.7
Scotland	72	10.9	72	10.9	59	9.1	59	9.1	52	8.7
Wales	40	6.1	40	6.1	40	6.2	40	6.2	30	5.0
N. Ireland	18	2.7	18	2.7	18	2.8	18	2.8	16	2.7
UK	659		659		646		650		600	

How many electors are there in different parts of the UK?

	1997		2001		2005		2010	
	No	%	No	%	No	%	No	%
England	36,516,012	83.3	36,991,780	83.3	37,041,396	83.7	38,300,110	84.0
Scotland	3,949,112	9.0	3,984,306	9.0	3,839,900	8.7	3,863,042	8.5
Wales	2,203,059	5.0	2,236,143	5.0	2,224,650	5.0	2,265,125	5.0
N Ireland	1,177,969	2.7	1,191,009	2.7	1,139,993	2.6	1,169,184	2.6
UK	43,846,152		44,403,238		44,245,939		45,597,461	

Source: Colin Rallings and Michael Thrasher, *Election 2010 [2005, 2001], The Official Results; Britain Votes 6*

The changes have led to the proportion of Members from England being more closely aligned to the proportion of electors in England.

What happens in the House of Lords?

Members of the House of Lords do not represent constituencies. They may have titles with a geographical element, but they are not representatives. The Labour leader, Ed Miliband, has

³⁹ For further background, see House of Commons Library Research Paper, *The Scottish Parliament (Constituencies) Bill*, RP 04/12, 3 February 2004

mooted the possibility of a future second chamber being elected on a regional basis, but at present Members of the House of Lords have a UK role. This was addressed in an exchange in October 2014:

Lord Palmer (CB): My Lords, given that there is a rumour going around that Scottish MPs in the other place will not be able to vote on only English matters, might those of us in this House who live north of the border be affected by the same rule?

Lord Wallace of Tankerness: My Lords, as we heard the Reading Clerk read out a moment ago, and have heard numerous times, we are Peers of the United Kingdom. That puts us in a slightly different position from those who are elected to represent specifically Scottish constituencies.⁴⁰

5 Further devolution

In October 2014 the Government published a document entitled, *The parties' published proposals on further devolution for Scotland*. This summarised the views of the three main political parties at Westminster on further devolution to Scotland. The paper acknowledged that further devolution would have an impact on the way that the UK was governed:

the UK Government absolutely recognises that any changes to the relationship between the UK and Scottish Parliaments will have wider implications for the constitutional settlement across the UK, and that these will need to be considered in the round.

The Prime Minister, the Labour Party and the Liberal Democrats have all argued that there should be further decentralisation within England. The Labour Party has stated that it would establish a constitutional convention to consider these issues. William Hague, who has been asked to look at the matter for the Government, has said that it will consider this proposal.

The devolution arrangements in Wales are once more in flux: a Commission on Devolution in Wales (the Silk Commission) made recommendations which are being implemented in part by the *Wales Bill 2014-15*, with further portions likely to be implemented in the next Parliament.

In parallel, several proposals have been made for devolution of power to local authorities and combined authorities in England. The Government has published a paper proposing to pass a number of powers and budgets to Greater Manchester, conditional on the creation of a new directly-elected mayor for the entire area of Greater Manchester.

5.1 Devolution to England: proposals⁴¹

Many proposals have been made in the recent past to change how England is governed. These are briefly considered below. They are all alternative schemes of territorial governance for England; however, none of them addresses the question of England's relationship to the other parts of the Union. Equally, the powers proposed for devolution under these schemes are far fewer than those currently devolved to Scotland, Wales and Northern Ireland, and their adoption would not lead to a scenario of 'symmetrical devolution' across the UK.

⁴⁰ [HL Deb 22 October 2014 c628](#)

⁴¹ This section by Mark Sandford.

Strengthened local government

Several reports have been produced during 2014 advocating devolution of substantial spending programmes to local authorities, or combined authorities (see below).⁴² These devolution demands vary widely in their boldness, but they have some commonalities. They focus on economic growth, skills, housing and transport, seeking to enable local government to contribute to national economic prosperity. Notable also is a range of proposals for new fiscal powers for local authorities, ranging from greater control over council tax and business rates to proposals for additional property taxes for cities, together with five-year budget settlements, removal of borrowing restrictions and budget ring-fences.

If such changes were made, they could raise the profile and capacity of local authorities considerably. However, similar ideas have faltered in the past,⁴³ and they would have no influence on the phenomena which are provoking interest in English votes for English laws.

City regions and combined authorities

Five 'combined authorities' have been established in the North of England (North-East, Liverpool City, Sheffield City, Greater Manchester, West Yorkshire).⁴⁴ These are joint bodies with a separate legal personality, controlled by their member local authorities. They allow some democratic oversight of passenger transport and strategic economic development. Recent reports indicate that Derbyshire and Nottinghamshire County Councils are to investigate forming a combined authority with their constituent districts.⁴⁵

At present, the powers available to combined authorities are very limited. Many proposals for devolution of new powers to local areas envisage a network of combined authorities (often referred to as 'city-regions' or 'strategic counties') across England, to exercise the powers devolved. The rationale for this has been that combined authorities would have the required scale, both in terms of geographical coverage and staff capacity, to exercise newly devolved powers. But this would also raise issues of democratic accountability, especially in respect of public money, as combined authorities have no direct elections.

New arrangements for Manchester

On 3 November 2014 the Government published a document entitled [Greater Manchester Agreement](#), which contained proposals for further devolution to the Greater Manchester Combined Authority. The document follows extensive negotiations between the Greater Manchester Combined Authority and the Government. The Government proposes to establish a new, directly-elected mayor for the whole Greater Manchester area. This will require primary legislation, and the document suggests that the first election to the position could take place in 2017.

The new elected mayor will receive powers and additional budgets over transport, housing and planning, and will become the Police and Crime Commissioner for Greater Manchester.⁴⁶ The combined authority itself will receive devolved funding for business support and for the Apprenticeship Grant for Employers, and it will have the power to take

⁴² For instance, see the City Growth Commission, [Unleashing metro growth](#), 2014; IPPR/PwC, [Decentralisation Decade](#), 2014; LGA Labour Group, [People-Powered Public Services](#), 2014; LGA, [Investing in our Nation's Future](#), 2014.

⁴³ For a discussion of this point, see Institute for Government, [Achieving political decentralisation](#), 2014

⁴⁴ See the Library standard note on [combined authorities](#) (SN/PC/06649).

⁴⁵ See David Paine, "Derbyshire to form first non-metropolitan combined authority", [Local Government Chronicle](#), 29 September 2014

⁴⁶ HM Treasury, [Greater Manchester Agreement](#), November 2014, p. 1

part in joint commissioning of the next round of the Work Programme and to plan the integration of health and social care.⁴⁷

An un-elected interim Mayor would be created before the first election took place. The powers and budgets available to the combined authority would also be devolved in advance of the election of the new mayor.

Regional assemblies

Elected regional assemblies were proposed by the 1997-2010 Labour Government. Details of the proposals can be found in the White Paper *Your Region, Your Choice* (2002) and the *Draft Regional Assemblies Bill* (2004). A referendum in the North-East, on 4 November 2004, rejected an elected regional assembly by 78% to 22%, on a turnout of 47%.

The case in favour of elected regional assemblies was that they would appear to provide a level of symmetry with the devolved institutions in Scotland, Wales and Northern Ireland, covering similar numbers of people. However, the powers proposed for elected assemblies fell well short of those available to the devolved institutions. Few voices have proposed a return to the regional agenda in the wake of the Scottish referendum.⁴⁸

Directly-elected mayors

Directly-elected mayors have long been favoured by central government, on the grounds that they provide stronger and more accountable leadership than a traditional council leader. Some 50 local referendums have been held on whether to establish a mayor, and the majority of local electorates have voted against.⁴⁹

Elected mayors do not have more powers than local authorities without mayors, so the introduction of a mayor would not lead to devolution within England in and of itself. There have been some proposals for directly-elected 'metro mayors', covering combined authorities or similar areas.⁵⁰ The Government has signalled its intention to legislate to allow such mayors, but no legislation has been forthcoming at the time of writing.⁵¹

⁴⁷ Ibid.

⁴⁸ Though one exception is the [Hannah Mitchell Foundation](#), which campaigns for a form of regional government for 'the North'.

⁴⁹ See the Library standard note on *Directly-elected mayors* (SN/PC/05000).

⁵⁰ For instance, see the City Growth Commission, *Powers to Grow*, 2014, p. 26; Centre for Cities, *Breaking Boundaries*, 2014, p. 17; *No Stone Unturned* (the Heseltine Review), 2012, p. 57

⁵¹ See the [Government response to the Heseltine Review](#), 2013, p. 47