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The House of Commons (Participation) Bill

Bill 22 of 2006-07

This Bill is sponsored by Robert Walter, Conservative MP for North Dorset, who came sixth in the ballot for Private Members' Bills. It seeks "to provide for the Speaker of the House of Commons to have power to determine the eligibility of members of the House of Commons to participate in certain legislative and other proceedings of the House" and is due to have its second reading on 9 March 2007. It is similar to the *Parliament (Participation of Members of the House of Commons) Bill* introduced by Lord Baker of Dorking in the House of Lords in 2005-06.

This paper provides background to the development of the 'English Question' in the context of devolution in the United Kingdom and examines earlier legislative initiatives in this area. It also provides background on the territorial coverage of bills; public spending in England, Wales, Scotland and Northern Ireland; the Barnett formula, which is part of the mechanism for determining the block grants to the devolved administrations; and devolved regional arrangements in selected European states.

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Summary of main points

This paper summarises the advent of devolution within the United Kingdom before examining earlier attempts to differentiate voting in the House of Commons by territorial background of Members. One aspect of the debate about devolution has been the question of the role at Westminster of Members representing constituencies in parts of the United Kingdom to which a measure of self-government in domestic affairs was to be or has been granted. Another is the role of such MPs (and those representing English constituencies) in the consideration of matters now devolved to bodies elsewhere in the UK. This aspect of the debate is often referred to as the 'West Lothian Question' or, more recently, the 'English Question'.

The paper provides background to the debate on the English Question and looks at some of the ways in which the question has been addressed or might be addressed. These include:

- A reduction of Scottish, Welsh and Northern Irish representation at Westminster
- The development of regional assemblies in England
- Members representing constituencies in Scotland, Wales and Northern Ireland to speak and vote at Westminster only on those matters not devolved to Scotland, Wales and Northern Ireland ('in and out' Members) or 'English' business to be considered only by English Members ('English votes for English matters/laws')
- The certification by the Speaker of the House of Commons of bills and laid statutory instruments as to their territorial extent, i.e. to which part of the UK they apply, (and the designation by the Speaker of groups of Members to speak and vote in the Commons on certain matters)

The paper also provides background on the related subjects of public spending in England, Wales, Scotland and Northern Ireland and the Barnett formula, which is part of the mechanism for determining the block grants to the devolved administrations. Devolved regional arrangements in selected European states (Italy, Spain, Denmark and Gagauzia in Moldova) are examined in Part V.

The *House of Commons (Participation) Bill* is sponsored by Robert Walter, Conservative MP for North Dorset, who came sixth in the ballot for Private Members' Bills. The Bill was presented on 13 December 2006 and seeks "to provide for the Speaker of the House of Commons to have power to determine the eligibility of members of the House of Commons to participate in certain legislative and other proceedings of the House". It is due to have its second reading on 9 March 2007. It is similar to the *Parliament (Participation of Members of the House of Commons) Bill* introduced by Lord Baker of Dorking in the House of Lords in 2005-06.

The *House of Commons (Participation) Bill* seeks to give the Speaker powers (or confirm powers that the Speaker already has to certify bills) to certify the territorial extent of a bill or laid statutory instrument. The Bill also provides for the Speaker to determine the eligibility of groups of MPs – English and Welsh MPs, Scottish MPs and Northern Ireland MPs – to participate in legislative proceedings in the Commons. The Speaker would be able to bar MPs returned for constituencies in Scotland and Northern Ireland from

speaking and voting on legislation affecting only England and/or Wales. All MPs would be eligible to participate in proceedings on designated legislation relating to Northern Ireland on matters which had not been devolved to the Northern Ireland Assembly.

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I Historical background

A. Home rule/devolution legislation

This part of the Research Paper summarises the advent of devolution within the United Kingdom before examining earlier attempts to differentiate voting in the Commons by territorial background of Members.

The period between 1886 and 1914 saw the introduction of three Irish Home Rule bills into Parliament. The passage of these bills is summarised by Vernon Bogdanor in *Devolution in the United Kingdom* as follows:

> The first, in 1886, was defeated in the Commons by 343 votes to 313 … The second, in 1893, passed the Commons but was defeated in the Lords by the overwhelming majority of 419 votes to 41. The third bill, introduced in 1912, was again rejected by the Lords, but, under the provisions of the 1911 Parliament Act, limiting the delaying power of the Lords to three sessions, it became law in 1914. With the outbreak of war, however, the Act was suspended, and in fact never came into effect.[1]

The Act was repealed by the *Government of Ireland Act 1920* which provided for two Parliaments in Ireland, one in Dublin and one in Belfast. After the creation of the Irish Free State in 1922, Northern Ireland was left as defined in the 1920 Act, within the United Kingdom and with a devolved Parliament in Belfast, at Stormont, which lasted until the imposition of Direct Rule in 1972.[2]

The Labour Government of 1974-79 started to legislate for devolution to Scotland and Wales with its *Scotland and Wales Bill* 1976-77,[3] presented on 29 November 1976, which provided for a Scottish Assembly and a Welsh Assembly. Following the decision of the Commons not to approve a timetable motion on the bill, the Leader of the House, Michael Foot, announced on 14 June 1977 that it was no longer practicable to contemplate further progress on the bill[4] and it was withdrawn.[5] Separate bills for Scotland and Wales were introduced the following session.[6] Although both were passed neither came into effect as the majority in favour of devolution for Scotland was not sufficient and there was no majority in favour of devolution for Wales when referendums were held in March 1979.

Devolution to Scotland and Wales was a manifesto commitment of the incoming Labour Government in 1997 and it introduced such bills in its first parliamentary session.[7] Later

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1 Vernon Bogdanor, *Devolution in the United Kingdom,* rev ed 2001, p19
2 See Library Research Paper 98/57 *Northern Ireland: political developments since 1972:* http://www.parliament.uk/commons/lib/research/rp98/rp98-057.pdf
3 *Scotland and Wales Bill,* Bill 7 of 1976-77
4 HC Deb 14 June 1977 cc225
5 *Votes and proceedings* 16 June 1977
6 *Scotland Bill,* Bill 1 of 1977-78, and *Wales Bill,* Bill 2 of 1977-78, both presented on 4 November 1977
7 *Scotland Bill,* Bill 104 of 1997-98, and *Government of Wales Bill*, Bill 88 of 1997-98

in 1997-98 it introduced the Northern Ireland Bill, to give effect to the Belfast Agreement and provide for a new Northern Ireland Assembly. The Assembly was suspended in 2000 and at the time of writing remains so. The Government of Wales Act 2006 will bring about changes in the way devolution works in Wales.

One aspect of the debate about Home Rule and devolution over many years has been the question of the role at Westminster of Members of Parliament representing constituencies in parts of the United Kingdom to which a measure of self-government in domestic affairs was to be or has been granted. Another is the role of such MPs (and those representing English constituencies) in the consideration of matters now devolved to bodies elsewhere in the UK. This aspect of the debate, often referred to as the West Lothian Question or, more recently, the English Question, is examined in greater detail below.

B. The West Lothian Question

The constitutional anomaly whereby Members representing Scottish constituencies (and on occasion from Welsh and Northern Irish seats) may vote on legislation which extends to England but neither they nor Members representing English seats can vote on subjects which have been devolved to the Scottish Parliament has since the 1970s been termed the West Lothian Question. The paradox was named following a campaign by Tam Dalyell, the Member for West Lothian, against Labour's attempt to introduce devolution in the late 1970s. Responding to Mr Dalyell's arguments (discussed below), Enoch Powell commented: "This is the question with which, by an iteration for which he should be praised rather than blamed, the hon Member for West Lothian (Mr. Dalyell) has identified himself".[8]

Perhaps the most appropriate explanation of the West Lothian Question is therefore that attributed to the author of the Question, Tam Dalyell. He set out his argument in some detail in his 1977 book, *Devolution: the end of Britain*? He asserted that:

> If the United Kingdom is to remain in being, then there can be no question but that the Scottish constituencies must continue to be represented at Westminster .... Yet once the [Scottish] Assembly had come into being, and was legislating for those areas that had not been reserved to the United Kingdom Government, the position of the seventy-one Scottish Westminster MPs would become awkward and invidious. Their credibility - like those of their counterparts in the Assembly - would be deeply suspect, simply because there would be so many areas of concern to their electors on which they could not pronounce.[9]

He examined, and rejected, four possible answers to the Question and concluded that "not one of them can be reconciled with Britain's continued existence as a unitary state".[10]

1. No Scottish or Welsh representation at Westminster

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8 HC Deb 14 November 1977 c87
9 Tam Dalyell, *Devolution: the end of Britain?*, 1977, p245-6
10 ibid p247

2. Maintenance of the status quo in terms of levels of representation
3. Reduction of Scottish and Welsh representation at Westminster
4. Scottish and Welsh MPs to speak and vote only on those matters not transferred to Scottish and Welsh Assemblies ('in and out Members')[11]

During the debate on devolution to Scotland and Wales on 14 November 1977, Mr Dalyell said:

> 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?[12]

However, the West Lothian Question was of course relevant to the Home Rule debate in relation to Ireland in William Gladstone's administration a century before. Professor Brigid Hadfield has noted: "only those with short memories have called this the West Lothian Question".[13] The four solutions outlined by Tam Dalyell were also considered during the controversies over offering some form of devolution (Home Rule) to Ireland, while maintaining its presence within the United Kingdom.

The Home Rule Bill introduced in 1886 sought to exclude Irish Members altogether from the Commons,[14] but among the difficulties with the Bill was the issue of taxation without representation (a frustration which a century or so earlier had set off the process leading to American independence). The 1893 Bill thus moved to the 'in and out' solution, whereby Irish Members would vote only on bills and clauses with UK wide territorial extent.[15] But this was removed at committee stage[16] and the final version of the Bill opted for a reduction in the number of Irish Members.[17] Subsequent bills also preferred this partial solution and in the Government of Ireland Act 1920 the number of Northern Irish Members was fixed at 13, later reduced to 12 (after the abolition of university seats in the Representation of the People Act 1948), below what might have been expected in terms of numbers of electors. Representation increased in 1979, acknowledging the return of Direct Rule in 1972.[18] But Northern Ireland Members had voted for half a century in the Westminster Parliament without differentiation in terms of extent of UK legislation. A proposal from the Speaker's Conference on Devolution in 1919 for 'Grand Councils' comprising English, Scottish and Welsh MPs to consider bills for their particular

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11 ibid pp247-51
12 HC Deb 14 November 1977 c122-3
13 Brigid Hadfield, *The Constitution of Northern Ireland,* 1989, p89
14 *Government of Ireland Bill,* Bill 181 of 1886, clause 24
15 *Government of Ireland Bill,* Bill 209 of 1893-94, clause 9
16 *Government of Ireland Bill,* Bill 428 of 1893-94, clause 9
17 *Government of Ireland Bill,* Bill 448 of 1893-94, clause 10
18 For further details see Hadfield, *The Constitution of Northern Ireland,* Chapter 1 and Library Research Paper 98/57 *Northern Ireland: political developments since 1972* http://www.parliament.uk/commons/lib/research/rp98/rp98-057.pdf

part of the UK was not implemented, but the proposal has been resurrected since as a possible solution to the West Lothian Question.[19]

The practice of Northern Ireland Members voting on Great Britain specific legislation passed almost without comment until the Wilson Government of 1964-66 which had a very narrow majority. Harold Wilson protested when the Unionist parties supported the Conservatives in opposing the nationalisation of the steel industry, although the measure would not affect Northern Ireland. He asked his Attorney General to devise an 'in and out solution'. The then Attorney General, Elwyn Jones, considered the matter too complex, and the Conservatives protested, with the Shadow Attorney General, Peter Thorneycroft, stating: "every Member of the House of Commons is equal with every other Member of the House of Commons, and that all of us will speak on all subjects".[20] Harold Wilson did not pursue the matter once his majority increased substantially in 1966.

The legislative and political problems of the Question were aired at length during the protracted proceedings on the devolution bills of the late 1970s, not least by Tam Dalyell himself, as well as by Enoch Powell (who, with other Unionists, emphasised the Northern Ireland perspective), by anti-devolutionists and by the Conservative Opposition. Margaret Thatcher explored the implications of alleged over-representation during the Second Reading of the *Scotland and Wales Bill* on 13 December 1976,[21] and Francis Pym, responding to a statement by the Leader of the House, Michael Foot, on the Government's proposals for new devolution bills in the 1977-78 session, described the West Lothian Question representation issue as "the single most contentious problem to arise in our debates on the [Scotland and Wales] Bill..."[22] The Government generally sought to deflect efforts at forcing it to make a detailed response to the Question posed by Mr Dalyell and others. Its view had been set out in the September 1974 White Paper *Democracy and devolution: proposals for Scotland and Wales*:

> The setting up of Scottish and Welsh Assemblies does not, however, detract in any way from the overriding interest of all the people of the United Kingdom in the determination of United Kingdom policies as a whole. The United Kingdom Parliament and the central Government Ministers will of course remain fully responsible for the overall interests of the United Kingdom and it is essential that the determination of United Kingdom policies should fully reflect the needs and contributions of all its constituent parts. For this reason the Government regard it as essential that both Scotland and Wales should retain their existing number of Members of Parliament in the United Kingdom Parliament and that there should continue to be Secretaries of State for Scotland and Wales who act as full

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19 See Vernon Bogdanor, *Devolution in the United Kingdom,* rev ed 2001, pp48-50 for more detail on the Speaker's Conference and also *Conference on devolution. Letter from Mr Speaker to the Prime Minister,* Cmd 692, 1920

20 Knox MT, "Terence O'Neill and the crisis of Ulster Unionism 1963-69", PhD thesis cited in "The Government of England by Westminster" in *The English Question,* Robert Hazell (ed), 2006; Vernon Bogdanor, *Devolution in the United Kingdom,* 2001, p230; HC Deb 26 October 1965 cc96-7

21 HC Deb 13 December 1976 cc1004-5

22 HC Deb 26 July 1977 c316

> Members of the United Kingdom Government in forming United Kingdom policies.[23]

The November 1975 White Paper, *Our changing democracy*, simply stated that: "The United Kingdom will still be a single state … Parliament will remain ultimately sovereign on all matters, whether devolved or not, and will continue to include the present complement of Scottish and Welsh Members."[24]

The (Kilbrandon) Royal Commission on the Constitution, which reported in 1973, considered the effect of devolution on the Westminster Parliament[25] and noted that: "if devolution were to be to selected regions only, a problem would arise over the extent and level of representation of those regions in the House of Commons compared with that of regions which did not have legislative assemblies of their own."[26] The report then examined the Northern Ireland situation as an example of the difficulty of dealing with this problem, including an 'in and out' arrangement,[27] and concluded that "In our view, therefore, all Members of Parliament, whether or not they come from regions with their own legislative assemblies, must have the same rights of participation in the business of the House of Commons",[28] although it did go on to consider the arguments for reductions in the level of representation of countries/regions with their own devolved assemblies.

During the lengthy passage of the *Scotland Bill* 1977-78 a provision was inserted in the bill against the wishes of the Government which provided for a further vote after fourteen days if a bill which did not relate to Scotland was carried on a vote where votes from Members sitting for Scottish constituencies were decisive. This was an interim period to enable Members to reconsider the issue. This amendment was first proposed by the Opposition in the Lords at the report stage of the Bill[29] and rejected initially in the Commons on the casting vote of the Speaker, but then, when the Bill returned, passed by one vote.[30] This became Section 66 of the *Scotland Act 1978*. As noted above, the *Scotland Act* did not, however, take effect as the majority in favour of devolution for Scotland was not sufficient when a referendum was held in March 1979.

In 1975 the Standing Committee on Regional Affairs was created in the Commons, in order to offer English Members an arena to debate regional issues (but not legislation). The committee met infrequently but was revived in 2000, with a core membership of thirteen members, and with other Members for English constituencies being able to attend in a non-voting capacity.[31] This has also met infrequently.

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23 Cmnd 5732, paras 32-3 (extracts). See also the full debate on a proposed new clause to the *Scotland and Wales Bill* moved by the Opposition. This called for a Speaker's Conference on "the appropriate number of Members of that House representing Scottish and Welsh constituencies after the enactment of this Act" [HC Deb 1 February 1977 cc375-512, defeated 199-277].

24 Cmnd 6348, para 296

25 Cmnd 5460, paras 810-5

26 ibid para 811

27 see the discussion in para 813

28 para 814. See also Part X on Northern Ireland generally (especially paras 1337-8)

29 HL Deb 13 June 1978 c241-7

30 For a full discussion of this provision, including its convoluted legislative history, see AW Bradley and DJ Christie, *The Scotland Act 1978,* 1979, notes to s66.

31 For further information see Library Standard Note SN/PC/867 *Regional Affairs Committee,* May 2001 and the standing order on the committee (S. O. No. 117):

II The devolution settlement after 1999

Devolution to Scotland and Wales was a manifesto commitment of the incoming Labour Government in 1997 and it introduced bills in its first parliamentary session.[32] Although the issue of the West Lothian Question was raised during the debates on the *Scotland Bill* and the *Government of Wales Bill*, the Government was not prepared to consider any form of 'in and out' solution. The position was more complicated in Wales since the devolution bill retained powers to pass primary legislation for Wales in both devolved and reserved areas at Westminster. On second reading, the then Secretary of State for Wales, Ron Davies, stated:

> There will be no reduction in the number of Welsh Members of Parliament as a result of the creation of the assembly, because the House of Commons will continue to pass primary legislation for Wales.[33]

Section 86 of the *Scotland Act* did contain provisions to reduce the number of Scottish seats from 72 to 59, but this readjustment retains Scottish representation at a level roughly proportional to that in the rest of the UK, rather than following the precedent of the *Government of Ireland Act 1920.* Appendix 1 of Library Research Paper 04/12 *The Scottish Parliament (Constituencies) Bill*[34] gives Scottish representation in the House of Commons since 1707 according to population and electorate. The following table shows the latest number of electors per constituency in the UK.

Number of electors per constituency, December 2006

	Electors	Seats	Electors/seat
England	37,588,775	529	71,056
Wales	2,243,244	40	56,081
Scotland	3,872,901	59	65,642
Northern Ireland	1,070,265	18	59,459
United Kingdom	44,775,185	646	69,311

Source: Office for National Statistics *UK Electoral Statistics*

Giving power to devolved bodies to introduce their own legislation in devolved areas has allowed differences to emerge between the policies of the Scottish Executive (and to a lesser extent its counterpart in Wales) and the UK Government. These have included the differences in policy relating to tuition fees, care for the elderly and health care. In part the issue has returned to the agenda because the British system of devolution is:

> …asymmetrical in that, although wide-ranging powers over primary legislation were given to the Scottish Parliament, Wales was given an Assembly with more limited power and no authority to make its own laws or to vary taxes (…) Second, there was little agreement about how to decentralize power in England. Changes

http://www.publications.parliament.uk/pa/cm200506/cmstords/416/41604.htm#a132

32 *Scotland Bill,* Bill 104 of 1997-98, and *Government of Wales Bill*, Bill 88 of 1997-98

33 HC Deb 8 December 1997 c 675: http://www.publications.parliament.uk/pa/cm199798/cmhansrd/vo971208/debtext/71208-07.htm

34 http://www.parliament.uk/commons/lib/research/rp2004/rp04-012.pdf

> to the territorial management of the United Kingdom were thus made as much in terms of a pragmatic political adjustment as of a logical constitutional settlement. This approach may have its merits; but it means that there is likely to be continuing debate about the scope of the devolution arrangements and about their implications for the rest of the United Kingdom.[35]

The Commons Procedure Committee's 1998-99 report, *The Procedural Consequences of Devolution,* recommended the following modification to Standing Orders:

> We recommend that the provision allowing the Speaker to certify Bills as relating exclusively to Scotland be transferred to a new Standing Order and adapted so that the Speaker may certify that a bill relates exclusively to one of the constituent parts of the United Kingdom.[36]

On certification, the Bill would then pass to a special second reading committee. The Committee did not envisage that this procedure would be adopted automatically and considered that there should be procedures to disapply the relevant standing order. Furthermore, the final stages of the Bill would be taken on the floor, where all Members could vote. The recommendations can therefore be seen as an evolutionary step towards an 'in and out' solution.[37] However, this proposal was not acceptable to the Government. In its response it noted that if "it were possible to identify some bills as relating exclusively to England, it is not clear what benefit this would have for the House".[38]

The then leader of the Conservatives, William Hague, spoke in 1999 of the need for 'English votes on English laws' and this commitment formed part of the Conservative manifesto for the 2001 general election.[39] A Conservative-established Commission on Strengthening Parliament, chaired by Lord Norton of Louth, a Conservative peer, recommended (in 2000) certification of Bills by the Speaker as applying to one or more parts of the United Kingdom and initial stages of Bills facing scrutiny by Members of that part only. The final stages would be on the floor, but only Members from that part would vote.[40] Michael Howard, as leader of the Conservative Party, indicated support for 'English votes on English laws' and this remained official party policy as shown in an Opposition Day debate on the West Lothian Question on 21 January 2004 (see below)[41] and the manifesto for the 2005 general election which stated:

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35 Gillian Peele, "Politics in England and Wales" in Patrick Dunleavy (ed), *Developments in British Politics 7*, 2003, pp203-4

36 HC 185 1998-99 para 30: http://www.publications.parliament.uk/pa/cm199899/cmselect/cmproced/185/18502.htm

37 See Meg Russell and Guy Lodge, "The government of England by Westminster", in Robert Hazell (ed), *The English question,* 2006, p90

38 HC 814 1998-99 para 8: http://www.publications.parliament.uk/pa/cm199899/cmselect/cmproced/814/81402.htm

39 For details see Roger Masterman and Robert Hazell, "Devolution and Westminster", in Alan Trench (ed), *State of the nations 2001: the second year of devolution in the United Kingdom,* 2001, p217

40 Conservative Party, *Strengthening Parliament: report of the Commission to Strengthen Parliament*, 2000, pp52-4: http://www.conservatives.com/pdf/norton.pdf

41 HC Deb 24 January 2004 c1389-440: http://www.publications.parliament.uk/pa/cm200304/cmhansrd/vo040121/debtext/40121-21.htm#40121-21_head0

> "Now that exclusively Scottish matters are decided by the Scottish Parliament in Edinburgh, exclusively English matters should be decided in Westminster without the votes of MPs sitting for Scottish constituencies who are not accountable to English voters. We will act to ensure that English laws are decided by English votes."[42]

David Cameron has said in a speech in Glasgow on 12 September 2006: "I've asked the Conservative Party's commission on democracy, led by Ken Clarke, to look at possible solutions [to the West Lothian Question]".[43]

The government reshuffle of 2003 again brought the issue briefly to the fore when on 11 June the Prime Minister took the opportunity to make fundamental machinery of government changes. These included the 'abolition' of the post of Lord Chancellor (subsequently modified); a new role for the Law Lords under an independent Supreme Court; an end to the separate posts of Secretary of State for Wales and Secretary of State for Scotland, which were to be combined with other Cabinet responsibilities; and, in place of the Lord Chancellor's Department, a new Department for Constitutional Affairs to which the staff of the Scotland and Wales Offices were transferred. Eric Forth, Shadow Leader of the House, during a debate several days later on the changes, raised the West Lothian Question in connection with the new appointments:[44]

> a Scottish Member of Parliament is in charge of health in England, imposing on England a foundation hospital system that was rejected in Scotland, yet no English Member is allowed a say on health policy in Scotland. Another Scottish Member is responsible for transport in England while defending the interests of Scotland, yet is apparently reporting to an unelected English Minister in another place.[45]

These comments raise another aspect of the debate - the extent to which it is constitutionally and politically 'proper' for Ministers representing territorial areas outside England to be responsible in England for subjects which, in Scotland, are devolved to the Scottish Parliament. Professor James Mitchell has noted that the appointment of John Reid as Health Secretary in June 2003 marked the first time that a Member from a Scottish constituency had held the post since the second world war and his appointment as Home Secretary in May 2006 was the first held by a Member from a Scottish constituency since Sir John Anderson in 1939-40. Sir John sat for the Scottish Universities constituency.[46]

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42 Conservative Party, *UK Manifesto,* 2005, accountability page: http://www.conservatives.com/tile.do?def=manifesto.uk.accountability.page

43 "Cameron: I will never take Scotland for granted", speech in Glasgow, 15 September 2006: http://www.conservatives.com/tile.do?def=news.story.page&obj_id=132019&speeches=1

44 Alistair Darling, Secretary of State for Transport took on the additional post of Secretary of State for Scotland, and Peter Hain, Secretary of State for Wales, the additional post of Leader of the House.

45 HC Deb 17 June 2003 c217: http://www.publications.parliament.uk/pa/cm200203/cmhansrd/vo030617/debtext/30617-07.htm

46 *Devolution and displaced legitimacy,* article submitted to *Political Quarterly* in 2006

There is no parliamentary solution to this conundrum. Presumably by analogy with the 'two classes of MP' argument, this has not thus far been regarded as a matter appropriate for any legal or parliamentary 'regulation'.

The West Lothian Question was the subject of an Opposition Day debate on 21 January 2004 in which the junior Minister, Christopher Leslie, defended the current devolution settlement, with some support from the Ulster Unionist David Burnside:

> **The Parliamentary Under-Secretary of State for Constitutional Affairs (Mr. Christopher Leslie):** Although the hon. Member for Rutland and Melton (Mr. Duncan) conducted his contribution in a calm manner, the Conservative motion is another example of the brazen opportunism that guides the tunnel vision—perhaps through the Mersey tunnel as my hon. Friends have suggested—of Tory policy under their latest leader.
>
> Let us be clear about the principle on which this Parliament is based and should be based in future. In the House, every Member of Parliament is equal. All Members can speak on all subjects. The suggestion to the contrary is divisive and dangerous…. Having equality for Members of Parliament at the centre is symbolic of our aspiration for all corners of the United Kingdom to be treated equally. It is an essential unifying part of our country. To say that one class of Member of Parliament must only vote on one class of issue is the slippery slope down which I doubt the Opposition truly want to go in the unlikely event that they ever get into government again.
>
> **David Burnside:** In promoting the most pro-Union of policies that has ever been heard from a party that traditionally is not regarded as a pro-Union party, does the Minister agree that it is time he put up candidates in all parts of the United Kingdom, won more pro-Union Labour seats in Northern Ireland and separated himself from the separatist nationalist Social Democratic and Labour party?
>
> **Mr. Leslie:** Clearly a political party can choose to stand wherever it wishes. The hon. Gentleman said that he was disappointed with his historic allies, the Conservative party, whom he feels unable to support tonight. I understand that he will side with Her Majesty's Government. In that, he is most welcome. Although some hon. Members mentioned their worries about the constitutional symmetry across the country, it is not simply a matter for Scotland, but is relevant to other parts of the country as well. The West Lothian question is just as much a west Belfast question. If we need to correct something for Scotland, which we do not, we also need to address it in Northern Ireland. Northern Irish Members of Parliament frequently voted on non-Northern Ireland business when the Assembly was up and functioning. Curiously, there was no objection from the Conservatives at the time. I suspect that their constitutional outrage is convenient and flexible, appearing only when they want it to.[47]

There were a number of questions to the Prime Minister on the West Lothian Question when he appeared before the Liaison Committee on 7 February 2006:

> **Q269 Dr Wright:** I find that my constituents who are in Middle England are saying to me increasingly that they are worried by the fact that measures that are being passed that apply only to England are being voted on by Members of

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[47] HC Deb 21 January 2004 c1433-4: http://www.publications.parliament.uk/pa/cm200304/cmhansrd/vo040121/debtext/40121-33.htm#40121-33_time0

Parliament from Scotland and Wales who have their own parliaments. We are shortly to have a vote on smoking in public places. This is being decided separately in Scotland, it is being decided separately in Wales, it has even been decided separately in Northern Ireland so as to apply to England and yet it is to be voted on by Scottish MPs, by Welsh MPs and by MPs from Northern Ireland. So you can see why the cry is going up from my constituents who say "Why can't we have English votes on English laws?"
Mr Blair: I understand the argument. The reason I do not agree with it is the reason that was given back in the 1960s when this argument first arose in respect of Ulster MPs and that is because I think if you try to have two classes of MP it just does not work. This is a debate we are going to continue having over the next few years, but I just do not agree with it.

Q270 Chairman (Alan Williams): Prime Minister, the more you expand devolution the more England-only legislation there is. I have raised this point with you before and you dismissed it, but you cannot dismiss it indefinitely. It will not go away. As I said in the debate on Welsh devolution the other day, it is going to come back and bite us. Eventually the English voter will not put up with me coming and telling them what they can or cannot do when I am not accountable for a single England vote.
Mr Blair: Some of those round the table may agree with this. I do not because I think if you end up with two classes of MP you will end up with a host of real problems.

Q271 Chairman: It is not second-class MPs, Prime Minister. You have altered the constitutional balance with devolution. I am against devolution and I always have been. You cannot argue from a position of a balance of power pre-devolution that devolution has altered the relationship and the House of Commons has to come to terms with that. You think we can get away indefinitely with failing to address it and we cannot.
Mr Blair: I am not failing to address it. I am simply saying I do not agree with you and the reason I do not agree is that English MPs remain in the overwhelming majority, the public spending is decided by a majority of English MPs and that has a Scottish and English dimension to it. I think if you try creating two classes of MP you will get yourself into all sorts of trouble and you will find it very, very hard to start distinguishing between those things that are purely English, those things that are purely Welsh or Scottish. I can totally understand why our Conservative colleagues wish that to be the case, but I do not agree with it and never have. It is not that I am avoiding addressing it, I am just saying I do not agree.

Q272 Chairman: By the nature of the Labour Party votes it is inevitable that when you get the smaller Labour majorities the Labour majority is dependent on the Scottish and the Welsh votes. At that time you will not have an English majority or the party would not have an English majority in the House of Commons.
Mr Blair: We have got a UK Parliament.

Q273 Chairman: How do you deal with that? It should have been thought about when the devolution programme was being pressed forward but no-one would face it.
Mr Blair: I am sorry, it was thought about. It is not as if this argument has not been fought over. You will remember it better than me from the 1970s for heaven's sake. I totally understand why people from other political parties think it is a good idea. I think in the end if you try to divide MPs up into two categories and then you have to define the legislation they are able to vote on and they are

> not able to vote on you will find it very hard. That is why I confidently predict that although there will be a lot of debate and argument about it, I doubt that a government is going to introduce this. This debate has gone on forever. It is not as if the issue has not been addressed.
> **Chairman:** We will probably return to this.[48]

One alternative that has been canvassed as a partial solution to the West Lothian Question is the development of regional assemblies within England.[49] However the No vote recorded in the referendum on a North East Assembly in November 2004 is generally accepted to have postponed for some time the development of a tier of regional government that is directly elected.

III The territorial extent of bills and voting patterns

Dr Meg Russell of the Constitution Unit has identified a number of occasions since 1999 in which Scottish votes have been held to have been decisive in securing victory for the passage of Government legislation in areas devolved to Scotland.[50] The issue of fox-hunting in England and Wales attracted particular attention, since the Scottish Parliament has legislated separately.[51] For example, on 30 June 2003, 27 Scottish Labour MPs voted to end fox-hunting in England in all its forms in Division 260 on the *Hunting Bill* 2002-03[52].

There were three divisions on the *Health and Social Care (Community Health and Standards) Bill* 2003-04 relating to the controversial policy of foundation hospitals which attracted interest. On 18 November 2003, in Division 381 on Lords amendments to the Bill, of the Members representing English constituencies, 17 more voted against the Government than for the Government.[53] The Government won the division by 17 votes.

Division 38 on the *Higher Education Bill 2003-04* also attracted attention since, of Members representing constituencies in England, 15 more voted against the motion than voted in favour.[54] This bill related to tuition fees for students from England. The motion passed by 5 votes.

In the 2005 Parliament, a smaller Government majority has led to renewed interest in the voting patterns of Scottish Members. In particular, there was interest in Divisions 163-

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48 Liaison Committee, *Oral Evidence given by Rt Hon Tony Blair MP – uncorrected transcript (7 February 2006)*, 7 February 2006, HC 709-ii 2005-06, Qq269-273

49 For a description of government policy see Library Standard Note SN/PC/3176 *The draft regional assemblies bill*

50 See Meg Russell and Guy Lodge, "The Government of England by Westminster", in Robert Hazell (ed), *The English question,* 2006, pp64-95

51 The *Protection of Wild Mammals (Scotland) Act*, banning killing a fox with dogs, was passed by the Scottish Parliament on 13 February 2002 and the ban came into effect on 1 August 2002.

52 On New Clause 11, during the report stage of the Bill, HC Deb 30 June 2003 c135-8: http://www.publications.parliament.uk/pa/cm200203/cmhansrd/vo030630/debtext/30630-38.htm

53 See Library Standard Note SN/SG/2768, *Divisions 381 and 388 on foundation hospitals: 19 November 2003.* For commentary, see Constitution Unit, *Monitoring Report: Devolution at the Centre,* February 2004: http://www.ucl.ac.uk/constitution-unit/monrep/centre/centre_february_2004.pdf

54 See Library Standard Note SN/SG/2878, *Division 38 on the Higher Education Bill*, for full details.

165 on the *Health Bill* which related to banning smoking in public places in England and Wales. Scotland has its own legislation in this area. The votes took place on 14 February 2006 and on this occasion the Government majority was so substantial as not to be affected by Members with Scottish constituencies. The SNP and the Conservative Member in Scotland (David Mundell) did not vote.

On the programme motion for the *Education and Inspections Bill* 2005-06, the main provisions of which did not apply to Scotland, the Government had a majority of 10.[55] There were 31 Labour rebels: 28 from English, 2 from Scottish and one from Welsh constituencies. One Conservative and one SDLP Member voted with the Government. 22 Labour MPs were absent from the vote: from 16 English, 4 Scottish and 2 Welsh constituencies. Here, the vote was complicated by intra-party dissent within the Labour Party, as assessed by the academic Philip Cowley.[56]

There is a full list of Labour backbench rebellions against Government bills since 1997 in Library Parliamentary Information List SN/PC/3038.[57] This does not differentiate in terms of territorial representation, but indicates votes where Government majorities have been slender.

Different political parties have adopted stances on the question of voting on English laws. The issue is complex, for a number of reasons:

1. The territorial application of a bill may be wider than set out in the territorial extent clause. As the Kilbrandon Commission noted: “any issue at Westminster involving expenditure of public money is of course of concern to all parts of the United Kingdom since it may directly affect the level of taxation and indirectly influence the level of a region’s own expenditure”.[58]
2. There may well be cross-border implications, where an MP has constituents who access services in Scotland or Wales, or vice versa.
3. Policies developed in England have implications for policy development in Wales or Scotland.
4. Scottish MPs do regard themselves, like all MPs, as not just representing their particular constituency, but also, in a more general sense, the UK and its people as a whole.

The Scottish Liberal Democrats, in their 1997 election manifesto, not only proposed a reduction in Scottish representation at Westminster and abolition of the of Secretary of State for Scotland, but also stated "we believe that, following these reforms, Scottish Members of the UK Parliament should not participate or vote on matters where there is no Scottish interest”.[59] However, following the devolution settlements, the Liberal Democrats have not adopted this policy.

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55 Applying the normal conventions on identifying votes set out in Library Standard Notes SN/SG/2768 and SN/SG/2878

56 For further detail on Labour backbench rebellions since 2005 see Philip Cowley http://www.revolts.co.uk/Concentrated%20Minds.pdf

57 http://www.parliament.uk/commons/lib/research/notes/snpc-03038.pdf

58 This is discussed in Part IV of this paper,

59 *Make the difference: the Scottish Liberal Democrat manifesto 1997*, p45

The SNP appears to have a policy of not voting on England-only legislation, but has on occasion voted against controversial legislation applying only to England, citing one of the grounds above.[60] For example, SNP members voted against the bills on foundation hospitals in 2002-03 and higher education in 2003-04, citing the funding implications and possibly adverse effects on the Scots. According to Russell, Tam Dalyell followed a self-denying ordinance from 1999, but decided to vote on the *Higher Education Bill 2003-04* because of the implications for higher education in Scotland. The only Scottish Conservative Member during the 2001 Parliament, Peter Duncan, abstained on the foundation hospitals bill, arguing that, "as a consequence of devolution, the decision on foundation hospitals in Scotland should be made by the Scottish Parliament".[61]

The Library has analysed voting since 2001-02 by Scottish Members at second reading on public bills not covering Scotland. This shows that the votes of Scottish Members have not affected the overall result of such divisions. See the table in Appendix I.[62]

As noted above, proposals to allow the certification of bills as applying to the various constituent parts of the United Kingdom have been made since 1893. There are a number of practical and political reasons which have made implementation difficult. These have been conveniently summarised by Dr Meg Russell as technical, political and constitutional.

A. Technical issues

Public bills commonly have clauses which define the territorial extent of proposed legislation,[63] but although it may be possible to identify a bill as applying predominantly to England and Wales, there may be other clauses which apply to Scotland as well. This is a common occurrence, as other measures may be included within a bill covering a whole range of subjects. The Commons Library maintains a chart which gives the territorial extent of bills each session since 2000-01, available at: http://www.parliament.uk/documents/upload/tc_bills.xls. This illustrates the issue in detail. In seeking to differentiate voting on bills it would be possible to designate different divisions on various clauses or amendments applying to particular parts of the UK, but an increased number of divisions might lead to calls for electronic voting or greater use of the deferred division procedure.

The Scottish Affairs Committee has recently recommended improved explanatory notes to Bills, with more comprehensive indications of territorial extent and a list in Hansard of bills in the Queens' Speech applying to Scotland.[64] Such a list appeared in Hansard after the Queen's Speech on 15 November 2006, (in a written statement by Douglas

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60 'Salmond proposes English affairs committee and financial independence from Scotland', SNP press release, 4 December 2004

61 HC Deb 21 January 2004 c1393: http://www.publications.parliament.uk/pa/cm200304/cmhansrd/vo040121/debtext/40121-22.htm#40121-22_spnew12

62 Provided by Edmund Tetteh, Statistics Resource Unit

63 See Appendix 2 for examples of territorial extent clauses for bills in 2005-06

64 *The Sewel Convention: the Westminster perspective,* HC 983 2005-6: http://www.publications.parliament.uk/pa/cm200506/cmselect/cmscotaf/983/98302.htm

Alexander, the Secretary of State for Scotland, on 16 November).[65] Peter Hain, the Secretary of State for Wales, announced on 13 December 2006 that the Government will in future make an annual statement on the implications of its legislative programme for matters that fall within the enhanced legislative competence of the National Assembly for Wales.[66]

The continuing use of the Legislative Consent Motion (Sewel Motion) convention, whereby the UK Parliament continues to legislate in devolved areas with the consent of the Scottish Parliament, adds further complications to proposals to certify bills as applying exclusively to individual parts of the UK.[67] See Appendix 3 which shows UK Parliament bills in 2005-06 for which a Legislative Consent Motion (Sewel Motion) was agreed in the Scottish Parliament). There may be practical ways to overcome these technical difficulties, such as changing drafting practice, but this is likely to result in more bills, more strictly defined as to territorial coverage.

The Welsh devolution settlement leaves primary legislation at Westminster, despite incremental changes in the *Government of Wales Act 2006* which have yet to take effect.[68] In general, England and Wales have a common statute book, therefore legislation designed to apply exclusively to Wales commonly also extends to England. Part of the rationale is to deal with cross border issues.[69] However, the National Assembly for Wales has a fairly wide degree of policy discretion when approving secondary legislation. The question of applying an 'in and out' strategy to legislation affecting Wales is therefore quite complex. The situation in Northern Ireland is also not straightforward since devolution is currently suspended and NI legislation is generally maintained separately through use of the Order in Council procedure. These Orders are enacted by the UK Parliament.

B. Political issues

Much of the impetus for introducing 'English votes on English laws' derives from the political distribution of seats within the UK Parliament. The following table shows MPs by party and country at present:

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65 HC Deb 16 November 2006 cc9-10WS
http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm061116/wmstext/61116m0002.htm#06111635000029

66 HC Deb 13 December 2006 c1059W:
http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm061213/text/61213w0001.htm#06121370000009

67 For further information on the operation of the Sewel Convention see Library Standard Note SN/PC/2084 *The Sewel Convention:*
http://www.parliament.uk/commons/lib/research/notes/snpc-02084.pdf
and HC 983 2005-6

68 For further information see Library Research Paper 05/90 *The Government of Wales Bill*:
http://www.parliament.uk/commons/lib/research/rp2005/rp05-090.pdf

69 One example is the *Children's Commissioner for Wales Act 2001*

MPs by party and country, February 2007

	CON	LAB	LD	SNP	PC	DUP	UUP	Others
England	194	285	47	0	0	0	0	3
Wales	3	29	4	0	3	0	0	1
Scotland	1	39	12	6	0	0	0	1
Northern Ireland	0	0	0	0	0	9	1	8
United Kingdom	198	353	63	6	3	9	1	13

Source: House of Commons Library Members database

The Conservatives hold one seat in Scotland and three in Wales and so their electoral strength is almost exclusively in England. Labour holds a preponderance of seats in Scotland and Wales and when the party has a narrow majority (as in 1974) it is dependent on support from these parts of the UK. Northern Ireland has a separate party system, though some parties have had formal or informal links with one of the major UK parties (as with the Unionists and Conservatives prior to the early 1970s and the SDLP and Labour), but at times its Members can hold the balance in a hung Parliament, as in March 1979, when the Callaghan Government lost a vote of confidence. Should the electoral geography change, these pressures are likely to be less acute. If some form of certification were introduced, the prospect of more complex voting decisions would lead to more complicated whipping arrangements, which might weaken party discipline.

Finally, it has been suggested that to require the Speaker to certify on territorial extent might subject the office to criticism, thus weakening the independence and status of the role. The Speaker already has power to certify Bills as money bills for the purposes of the *Parliament Acts*. Speaker's Counsel is available to the Speaker for legal advice.

C. Constitutional issues

Commentators have argued that holding separate votes on legislation affecting England would affect the devolution settlements and the operation of the Union.[70] Under current constitutional conventions, all Members are treated as equal, and can vote on all matters, even where these matters do not have a direct impact on constituents. For example, all Members voted on the enactment of the *Greater London Authority Act 1999,* not just Members for London*.* A UK Government which could command a majority at Westminster only in reserved subjects, such as taxation, benefits and foreign policy, but which could not carry legislation on health, education and social services in England, would be profoundly different in nature from current conventions. In effect, a separate coalition of parties would be needed to command a majority for legislation in England in these devolved areas. Because of the dominance of England within the Union, a federal solution on the lines of those developed for Canada or Australia presents particular difficulties.

[70] See for example, Vernon Bogdanor, *Devolution in the United Kingdom,* rev ed 2001, pp264-76 and Jackie Ashley, "If it's English votes for English law, the UK's end is nigh", *Guardian,* 12 June 2006

Commentators have suggested that the outcome of such an 'in and out' policy would be the operation of a Parliament for England within or without the UK Parliament. There is a pressure group known as the Campaign for an English Parliament which campaigns on this issue on a non-party basis.[71]

Professor John Curtice has presented the results of poll surveys which indicated that there has been little popular enthusiasm for a Parliament for England, despite support for a form of 'English votes for English laws'. For instance, 49% of voters in England favoured a continuation of the present form of Government, with 23% preferring an English Parliament, although 67% agreed or strongly agreed that Scottish MPs should no longer be allowed to vote in the House of Commons on laws that only affect England.[72]

A recent BBC/ORB opinion poll for BBC Two's *Newsnight* programme on 16 January 2007 found, according to a BBC press release, that:

> When asked if an English parliament should now be established, 61% of those in England, 51% of those in Scotland and 48% of those in Wales thought it should.[73]

The Scottish Affairs Committee has highlighted the extent of popular concern about the West Lothian Question:

> 49. It is a matter of concern to us that there are signs that English discontent with the current situation is becoming apparent. According to a report in *The Scotsman*, a recent poll, conducted by ICM for the BBC, indicated that 52 per cent of people in the UK believed it wrong that a Scottish MP should become Prime Minister, given that Scotland has its own Parliament. That figure rises to 55 per cent of people in England and 59 per cent of people in the South East of England, whereas only 20 per cent of people in Scotland thought it wrong.50
>
> 50. In order to address the West Lothian Question, there are usually four solutions proffered: the dissolution of the United Kingdom; English devolution; fewer Scottish MPs; or English votes on English laws. Although we make no recommendations on how to resolve this question, we considered it worth noting our concerns, with the hope that the matter will be comprehensively debated, and resolved, before the situation is reached whereby it could actually undermine the whole devolution settlement.
>
> 50 See *English blow to Brown's PM hopes, The Scotsman,* 15 May 2006.[74]

This led to press coverage with some Conservatives reiterating calls for English votes on English laws.[75]

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71 See http://www.thecep.org.uk/

72 Derived from respondents in England to *British Social Attitudes Survey 2003*, presented in Table 6.11 in John Curtice, "What the people say - if anything" in Robert Hazell (ed), *The English question,* 2006

73 http://www.bbc.co.uk/pressoffice/pressreleases/stories/2007/01_january/16/union.shtml

74 HC 983 2005-6

75 "Tories seek curb on Scottish MPs", *Daily Telegraph,* 21 June 2006

Lord Falconer, the Lord Chancellor, mounted a robust defence of the existing settlement at a devolution conference in March 2006 sponsored by Economic and Social Research Council (ESRC):

> Let us then assume, contrary to my argument, that we have English votes for English laws - if such a thing could be identified - or we establish an English Parliament, because that is what it would amount to.
> Parliaments for all the nations of the Union and an overarching federal Parliament too.
> The federal parliament would have responsibility for federal matters such as defence and the economy.
> But who would be calling the shots?
> Why would the English Parliament want to kow tow to the federal one?
> The English Parliament would control the greater part of the economic power of the UK.
> It would be the dominant political force.
> Leaving the federal parliament either voting on the back of what the English Parliament has already decided. Or hanging on to its coat tails.
> And where would this leave the other partner nations of the UK?
> No longer partners is the answer. But carried along on England's backdraft.
> We would end up, I believe, at exactly the point we had set out to avoid - unbalancing the relationship between the nations. How, under such circumstances, would the Union survive?[76]

Lord Falconer made similar points in a debate on the Treaty of Union initiated by Lord Forsyth of Drumlean in the House of Lords on 25 January 2007:

> Scotland, Wales and Northern Ireland all have legitimate concerns that the overwhelming number of Members of Parliament representing English constituencies means that specific Welsh, Scottish and Northern Irish concerns can get lost when legislated for by the Westminster Parliament. Devolution provides the right balance between local and national concerns. It frees the constituent parts of the United Kingdom to innovate local solutions for local problems. If there are different policies in different parts of the United Kingdom, that is one of the purposes of devolution. Yes, the arrangements are asymmetric, but if we were seeking symmetry or even logic in the UK constitution, we would have to tear up most of it. We are not about constitutional symmetry. We seek practical changes for practical goals. The great strength of our constitution is its effectiveness. It can accommodate difference and rough edges in support of wider goals of national unity, affiliation to the institutions of the state and the service of those institutions to the public.
>
> But—and this is my second point of disagreement—I do not believe that it can accommodate an English Parliament or its proxy, the seductively entitled “English votes for English laws”. The noble Lord, Lord Shutt of Greetland, was right when he said that the critical point in this debate is not support for the union, which, with the one exception I referred to, all noble Lords are in favour of. Instead, the question is how best we achieve it. The big issue raised by this debate is whether

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[76] ESRC Devolution and Constitutional Change Conference 10 March 2006, Department for Constitutional Affairs press notice. Full text available at: http://www.dca.gov.uk/speeches/2006/sp060310.htm

> English votes for English laws would promote the union or would, as I believe, be a significant step towards the break-up of the union.
>
> Make no mistake: if we were to introduce English votes for English laws in the other place—and I note that there does not seem to be any suggestion that it should be introduced in this House—that would simply be the first step on the way to an English Parliament, and the break-up of the union would follow. I echo the words of my noble friend Lord Anderson who said, "Those who blow on the flames of English nationalism may find that those flames consume the union". I agree that that is what proposals about English votes for English laws would do.
>
> Why, it has been asked, should there not be English votes for English laws when the Scottish Parliament votes on Scottish issues? The reason there is a Scottish Parliament is because England is over 80 per cent of the United Kingdom. England has over 80 per cent of the population, over 80 per cent of Members of Parliament and over 80 per cent of the country's GDP. If we had English votes for English laws, how would the system work? I cannot better the speech of the noble Lord, Lord Goodhart, who explained the absurdities and impracticalities that would arise. If we take what he said, and take it one stage further, all noble Lords would agree that the Government of the day must be formed by the party that commands a majority in the House of Commons. Is it seriously suggested that we could have a Government of the nation that could not pass legalisation in relation to England? That would be the effect of what is proposed. It is obvious that the moment that we do that, we end up in a situation where the United Kingdom Parliament gets completely dominated by English issues. The point of devolution is not a federation, because most constitutional experts who look at the concept of federation say that about 30 per cent is the largest that any one member of a federation can be without completely dominating it to the exclusion of its other parts. It is not a practical proposition, and it inevitably leads to an English Parliament.[77]

Lord Strathclyde, the Leader of the Opposition in the Lords said in the same debate:

> I agree with my noble friend Lord Crickhowell, who said that the dog is barking and biting. Sadly, every opinion survey shows the growing impatience of the English with the unequal relationships that flow from the present arrangements. Scottish MPs, who cannot even vote on reserved matters in Scotland, swan down to Westminster to impose policies on England that would not be accepted at Holyrood. The West Lothian question is a problem. It not only needs to be asked; it needs to be answered. It is hardly controversial in Scotland that MPs elected by the local electorate should not meddle in, for instance, English education when they can do nothing for the problems of local schools in their own constituencies.
>
> We need a parliamentary solution to this parliamentary problem. It is a problem that exists far less in this House than in another place. My right honourable friend David Cameron has asked the Conservative Party's democracy task force, led by Ken Clarke, to look at some solutions. We need to address the asymmetrical nature of current arrangements and we should do so in a calm and considered fashion. That does not include behaving like the honourable company

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[77] HL Deb 25 January 2007 cc1263-4: http://www.publications.parliament.uk/pa/ld200607/ldhansrd/text/70125-0010.htm

> of ostriches who inhabit the government Front Bench and the Liberal Democrat Benches; both those parties refuse to acknowledge the very existence of the problem. Alex Salmond could not ask for more effective allies in his campaign to break up the union, given the growing sense of unfairness, not as in the past in Scotland, but increasingly today in England. My party will fight, all the way, those in England or Scotland who see the solution as separation for Scotland.[78]

The Labour backbencher Michael Wills has suggested that resolving Scotland's position in the Union should be a central part of a new package of constitutional reform, assisted by a constitutional convention of voters. His proposals are set out in an Institute for Public Policy Research (IPPR) pamphlet.[79]

IV Public spending in England, Wales, Scotland and Northern Ireland[80]

Public spending per head is higher in Northern Ireland, Wales and Scotland than England. The most recent data were published in May 2006 and show planned spending for 2005-06. These data show that per capita public spending was 30% higher than the UK average in Northern Ireland, 18% higher in Scotland and 10% higher in Wales.[81]

Total identifiable public expenditure on services per head, 2005-06

	£	Index = 100
England	6,762	97
Scotland	8,265	118
Wales	7,666	110
Northern Ireland	9,084	130
UK identifiable expenditure	7,000	100

Source: HM Treasury, Public Expenditure Statistical Analyses 2006, Table 7.2
Note: data are for planned expenditure in 2005-06 and are on an accruals basis

Public expenditure is allocated to countries on the basis of the region which benefits from the spending. This "identifiable" expenditure includes most health, education and transport spending and spending on social security. Expenditure which cannot be identified as benefiting a particular country is excluded from these figures. Expenditure which is regarded as being for the UK as a whole, such as defence expenditure or overseas representation, is also excluded. Over 80% of total public spending is identified as benefiting a particular country. The data in the table cover central government, local government and public corporations. Their coverage is thus wider than spending for which the devolved administrations are responsible.

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78 HL Deb 25 January 2007 cc 1258-9: http://www.publications.parliament.uk/pa/ld200607/ldhansrd/text/70125-0009.htm

79 "Key Brown ally calls for urgent answer to West Lothian Question", *Scotsman*, 21 June 2006. See Michael Wills, *A new agenda: Labour and democracy,* IPPR, June 2006

80 This part was written by Dominic Webb, Economic Policy and Statistics Section

81 There is further information in HM Treasury Public Expenditure Statistical Analyses 2006, Chapter 7 and Library Standard Note Public expenditure by country and region (SN/EP/4033)

It is necessary to be cautious when interpreting these data. First, the scope of the public sector differs between countries. For example, water supply is part of the public sector in Scotland and Northern Ireland but in the private sector in England and Wales. Second, without an assessment of public spending need in the constituent countries, it is difficult to assess the fairness of the current geographical distribution of public spending. For example, the lower population density in Scotland may make provision of public services more expensive.[82]

The Barnett formula

The Barnett formula is part of the mechanism for determining the block grants to the devolved administrations. There are two important points to note. First, some areas of public spending, such as social security spending in Wales and Scotland, are not the responsibility of the devolved administrations and are therefore outside the scope of the Barnett formula. Second, the formula determines *changes* to the block grants rather than their absolute level. Under the formula, the increase in the block grants is linked to three factors:

- the increase in planned spending by (UK) government departments in England;
- the population of Scotland, Wales or Northern Ireland as a proportion of England's population[83]; and
- the extent to which spending by the (UK) government department is comparable to spending by the devolved administration.

For example, if health spending in England increased by £100m, then the increase for Scotland would be calculated as follows. Assuming Scotland's population is 10% of England's population and the comparability percentage for health is 100% (as this is a devolved matter), the increase for Scotland would be £100m x 10% x 100% giving an increase of £10m.[84]

The Barnett formula is non-statutory. While it forms the basis for the settlements received by devolved administrations, they have sometimes received payments outside the formula. For example in the 2004 spending review, Wales and Northern Ireland received money above their Barnett formula allocations. The devolved administrations are free to determine how they spend the funds allocated to them under the Barnett formula between different public services.

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82 Gross value added (GVA) per head might be considered as a crude indicator of need. England's GVA per head is two per cent higher than the UK average, Scotland's is four per cent below, Northern Ireland's is 20% below and Wales' 22% below.

83 In some cases, the population as a proportion of England and Wales or of Great Britain is used.

84 The figures used are stylised assumptions. Further information on the population proportions and comparability factors is in HM Treasury, *Funding the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly, A Statement of Funding Policy* (June 2004). There is further information on the Barnett formula in House of Commons Library Research Paper, *The Barnett Formula* (RP01/108).

Lord Barnett has called for a review of the formula but the Government have said they have no plans for a review:

> Lord Barnett asked Her Majesty's Government:
>
> Whether the forthcoming Comprehensive Spending Review will cover expenditure in all regions of the United Kingdom.
>
> Lord McKenzie of Luton: My Lords, the forthcoming Comprehensive Spending Review will cover public expenditure in all regions of the UK. Allocations to the individual regions of England will be determined by the relevant spending departments in the normal way. The devolved Administrations will be funded in accordance with the updated statement of funding policy, the latest edition of which was published by the Treasury in July 2004.
>
> Lord Barnett: My Lords, I had hoped that my noble friend's Answer would include the fact that a certain formula that allocates expenditure in Scotland is grossly unfair. It is bound to be, because it is not based on need. Is he aware that our right honourable friend Gordon Brown recently laid emphasis on the need for fairness? How can a policy of allocating expenditure to Scotland that is far in excess of what is needed in other parts of the UK be fair? Will the Minister therefore assure me that the comprehensive review to which he referred will include a review of the formula?
>
> Lord McKenzie of Luton: My Lords, I should make it clear that the Government have no plans to review the Barnett formula. The funding arrangements were set out in the latest statement of funding policy, which, as I said, was published in July 2004. That remains the Government's policy. Spending in the devolved Administrations is not derived just from the Barnett formula; there are other components to it, including the annually managed expenditure and locally financed local government expenditure. The differences between the regions and the devolved Administrations have as much to do with the starting baseline and the annual managed expenditure as they have with the application of the Barnett formula. Perhaps I may gently remind my noble friend that, in his evidence to the Select Committee in November 1997, he said:
>
> "I am flattered that the Barnett formula has lasted 20 years. I hope it will last much longer".[85]

The Barnett formula was the subject of a question at Prime Minister's Questions on 21 February 2007. The Prime Minister confirmed that the government has no plans to change the Barnett formula:

> **Michael Connarty (Linlithgow and East Falkirk) (Lab):** Will the Prime Minister make an ongoing commitment to the use of the Barnett formula, which has delivered substantial investment in public services in Scotland, and assure the people of Scotland that a Labour Government will not be tempted to create a

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[85] HL Deb 10 October 2006 c118: http://www.publications.parliament.uk/pa/ld199697/ldhansrd/pdvn/lds06/text/61010-0001.htm#061010126000007

> massive financial deficit by pursuing proposals for tax autonomy, proposed by the London-based leader of the Scottish nationalist movement?
>
> **The Prime Minister:** I can certainly assure my hon. Friend that we have no proposals at all to change the Barnett formula which, as he rightly said, has delivered substantial investment for Scotland. The other reason why investment is going into Scotland is the strength of the economy which, whatever the formula, allows an additional amount of money to go into health and education services, and provides help for people in Scotland, not least pensioners. I can assure him that the Barnett formula and the strong economy will continue under a Labour Government and a Labour Executive.[86]

In a speech in March 2006 the Lord Chancellor argued that even issues which appear to relate only to England have effects on the other parts of the UK. Public spending decisions for England have an effect on Scotland, Wales and Northern Ireland via the Barnett formula. Lord Falconer said:

> All matters - even those seemingly limited to England - impact on the Union. The funding settlement with the nations and regions of the UK means that what is decided on public funding in England, for example, affects Scotland and Wales and Northern Ireland. These are national issues for the United Kingdom and so they should be debated at the national Parliament in Westminster by all MPs, not by subsets depending on the location of their constituency.[87]

V Devolution in selected European states[88]

This section looks briefly at devolved regional arrangements in selected European states.

A. Introduction

The "West Lothian Question" does not really arise in other European states as it does in the UK, largely because they do not have the extreme asymmetry as the UK, where devolution is only extended to around 15% of the population. Although other European states are asymmetrical in terms of the powers of the different units (in Spain, for example), they tend to have devolution all round. One commentator on the Spanish system noted that "a solution which particularized the Basques and the Catalans" to the exclusion of other ACs

> … would have led to what, in the UK context, has come to be known as the West Lothian problem. If Basques and Catalans were granted autonomy and their own parliaments to legislate on their own affairs, why should their representatives in the Spanish Cortes be allowed to vote on measures which affected other regions?[89]

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86 HC Deb 21 February 2007 c257

87 Lord Falconer, Speech at ESRC Devolution and Constitutional Change Programme Final Conference, 10 March 2006

88 This part was written by Vaughne Miller, International Affairs and Defence Section

89 "State and Region: the Spanish Experience", David Brighty, *Chatham House briefing paper* New Series No. 3 June 1999 at http://www.chathamhouse.org.uk/pdf/briefing_papers/state_and_region.pdf

The "West Lothian question" was an important issue in Canada during debates on asymmetry for Quebec during the late 1980s and early 1990s. Ronald Watts commented:

> The question is sometimes raised whether greater autonomy of jurisdiction for some member states should affect their representation in federal institutions. For example, should representatives from the more autonomous member states be restricted from voting within the federal institutions on those matters over which the federal government does not have jurisdiction in their particular member state. A rational argument can be made for such a quid pro quo, and the issue has recently been intensely debated in Canada as a consideration if Quebec's asymmetric autonomy were to be substantially increased.[…] There would, however, be serious complexities in those federations employing a system of responsible cabinet government if cabinets had to rely on different majorities according to the subject matter under consideration. In any case, to date Canada, Malaysia and Spain have avoided this issue by not making adjustments in federal representation or voting by state representatives in the federal institutions on the grounds of an asymmetrical distribution of jurisdiction.[90]

John McGarry suggests that it is easier to implement asymmetry "when only a relatively small share of the state's population is involved" because "The smaller the population, the less prospect there is of the 'West Lothian' question causing resentment in those parts of the state that do not enjoy autonomy". [91] Canada, he believes, "has had more difficulty creating a formally asymmetric status for Quebec, which has 25 per cent of Canada's population. The larger the population of a region that wants asymmetrical autonomy in a unitary state, the greater the case for a symmetrical federation".[92]

B. Italy

Italy retained the Napoleonic prefectoral system in the unified state that emerged from the Napoleonic wars in the mid-nineteenth century. In 1860 Italy changed from being a state of many small, independent states to a larger, united state. The structure for local administration dates from this time and has remained the formal system, though modified by codification laws and 13 constitutional reforms since 1945. The Constitution of 1948 embodied the post-World War II objective of establishing a "truly representative political system with constitutionally protected individual and political rights".[93] Article 5 of the Constitution states that the "one and indivisible Republic" recognises and promotes autonomous local authorities and the widest administrative decentralisation of state services.

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90 Ronald L. Watts, *Indian Journal of Federal Studies* 1/2004, "Asymmetrical Decentralization: Functional or Dysfunctional" at http://www.jamiahamdard.edu/cfs/jour4-1_1.htm

91 John McGarry, Queen's University, Canada, draft working paper. Position paper for the 3rd International conference on Federalism, 3-5 March 2005. "Socio-cultural Identities and Asymmetric Federalism" at http://www.federalism2005.be/home/attachment/i/580

92 Ibid

93 *International Handbook of Local and Regional Government: A Comparative Analysis of Advanced Democracies*, Alan Norton, 1994

Regional government in Italy is structured at three levels: regions (20),[94] provinces (95) and municipalities (8,100), the respective responsibilities of which are set out in Title V of the Constitution. The 1948 Constitution provided for asymmetrical devolution with five "special status" regions with a high level of autonomy (Sicily, Sardinia, Valle d'Aosta, Trentino, Friuli) and 15 "ordinary status" regions with a lower level of autonomy. The Italian Constitution provides that the three separate entities are equally autonomous, but regional constitutions and laws cover the lower levels of local government and have superior status. Each of the 20 regions has its own statute setting out *inter alia* its internal organisation and administrative provisions. The five regions with a special statute are the longest-established regions of Italy. Their statutes gave them enhanced powers and quasi autonomy in certain areas of policy-making relevant to each region. These powers differ from one special region to the other. In addition to special powers specific to each region, the special statute regions have exclusive legislative jurisdiction over certain matters, subject solely to compliance with the general principles of Italian law. The special regions have had general competence for economic development, for example, whereas the other regions have been restricted by constitutionally and legally defined powers within their competences. The financial resources of the special regions have also been broader than those of the other regions and they have had privileged access to state transfers. Sicily was granted the most powers of all the special regions, comparable with those of Catalonia and the Basque Country in Spain (see below).[95]

The constitutional provisions on the autonomous regions are set out in Title V, Part II, Articles 114-133 of the Constitution on "The Regions, Provinces and Communes". Institutional reform in the 1970s devolved national government powers and functions to regional legislatures. Legislation was introduced in 1975 giving managerial and policy-making powers to the 15 non-special-status regional governments and in 1977 regional functions were "virtually redefined" by 616 Decrees.[96] Title V was amended again in 1999[97] and substantially in 2001.[98]

In a referendum in October 2001, with a low turnout of 34%, 64.2% of the Italian electorate voted in favour of the proposed Title V reform, which totally reorganised relations between ordinary state law and regional law. It removed state control over a range of regional matters, assigned areas of State competence to the "concurrent legislative power" of the state and regions,[99] gave the regions exclusive legislative competence in areas such as industry, tourism, commerce and vocational training and a general power of legislation, except on fundamental principles, such as private, penal and procedural law. The reform constitutionalised the principles governing the allocation and regulation of administrative functions by bodies with legislative powers, gave the lower level of governing bodies, the

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94 Piedmont Valle d'Aosta, Lombardy, Trentino-Alto Adige, Venetia, Friuli-Venezia Gulia, Liguria, Emilia Romagna, Tuscany, Umbria, Marches, Latium, Abruzzi, Molise, Campania, Apulia, Basilicata, Calabria, Sicily, Sardinia.

95 Norton p.222

96 Norton, 1994

97 Constitutional law no. 1 of 1999, Articles121-3 and 126

98 Constitutional law no. 3 of 2001, a further fourteen articles in Title V

99 Including in international and EU relations at regional level; the protection and safety of labour; education; scientific and technological research; support for innovation in productive sectors; health protection; and supplementary and 'integrative' pension schemes.

Communes, a role in the exercise of these functions, and redefined the financial arrangements between the different bodies.[100] Franco Pizzetti commented in *Le Regioni*:

> The comprehensive effect of the reforms is to change the role, the competences and the structures of the Regions and of the local bodies; and the role, the structure and even the modes of functioning of central government and the central administration and, in the final analysis, of the State, which has a new role of direction and coordination in a system that is now absolutely polycentric and polyarchic; the Italian system has changed from one founded on the absolute preponderance of the central State to a polyarchic one.[101]

The Constitution (as amended) sets out the respective powers and competences of the central, regional and local governments in Articles 117-127. However, the 2001 reforms gave rise to further constitutional conflicts, as Domenico Paparella and Vilma Rinolfi pointed out in a commentary in 2003:

> The introduction of concurrent legislative powers triggered a conflict of competence between central and regional institutions. The concept of parallel legislative powers leaves room for discretion to both regional and national legislators, and this has resulted in a series of disputes between the institutions, which have made frequent recourse to the Constitutional Court (Corte costituzionale) in order to have their rights recognised. This conflict virtually paralysed the institutions and thus substantially blocked constitutional reform.[102]

Regional institutional and economic reform has had a significant economic impact, which has not been uniform throughout the country. The polarisation between the poorer south and the richer north has given rise to increased demands from the Northern League (Lega Nord) and the National Alliance (Allianza Nazional) for a fully federal system, with more devolved powers for the regions and fewer for the state.

On 16 November 2005 a bill was passed by the government of Silvio Berlusconi on further reform of Title V of the Constitution. The proposed reforms strengthened the Cabinet and the powers of the Prime Minister, while reducing those of the President. They redefined the role of the two Chambers. The Senate would be transformed into a federal, rather than a national, legislative body, and the Constitutional Court would be restructured so that regional interests were represented. Greater powers were devolved to the regions. Article 117 of Title V would be modified and the regions given exclusive legislative competence, rather than concurrent powers with the centre, in the areas of health, education and local policing.

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[100] See editorial by Giandomenico Falcon, *Le Regioni*, No.6, 2001

[101] Franco Pizzetti, *Le Regioni*, No. 3, 2001, pp.437-41,445, quoted in "The New Regional Order in the Italian Constitution", George Woodcock, University of Kent, June 2004, at http://64.233.183.104/search?q=cache:b1Nsrzx9C6oJ:www.kent.ac.uk/politics/research/kentpapers/The%2520New%2520Regional%2520Order%2520in%2520the%2520Italian%2520Constitution.pdf+%22italian+constitution%22&hl=en&ct=clnk&cd=4&gl=uk

[102] *European Industrial Relations Observatory on-line* (EIRO), 9 January 2003, "Social partners oppose government's devolution proposals" at http://www.eurofound.europa.eu/eiro/2002/12/feature/it0212107f.html

The amendments enhancing devolution were the main condition set by the Northern League for continuing to support the Berlusconi government. However, the reform did not gain the two-thirds support in parliament needed for legislation affecting the Constitution and a referendum was held in June 2006. Mr Berlusconi's successor as Prime Minister, Romano Prodi, opposed the reform and his centre-left coalition campaigned for a no-vote. Italians overwhelmingly rejected the constitutional amendments by 62% to 38% (with a turnout of 52%). Lombardia and Veneto, two of the most advanced regions, voted in favour.

C. Spain

After the death of General Franco in 1975 a general election in 1977 convened the *Cortes constituyentes* (the Spanish Parliament as a constitutional assembly) for the purpose of drafting and approving a new constitution. This came into effect in December 1978. Article 2 recognised the "indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards" and also recognised and guaranteed "the right to self-government of the nationalities and regions of which it is composed and the solidarity among them all".

The Spanish system is not strictly speaking a federation and is formally unitary, but it functions as a highly decentralised 'federation' of Autonomous Communities, each with different levels of self-government. Spain has asymmetrical devolution across regions, with the highest autonomy in the regions with a strong regional or national identity. The process of devolution began in 1979 with the granting of Autonomous Community status to the Basque Country and Catalonia. A similar special status was given to Galicia in 1981 and there are now seventeen Autonomous Communities (ACs), including some which did not previously have a strong regional or national identity. Their powers are asymmetrical but over time, the lower profile ACs have been granted more powers of self-government, closing the gap with the higher level ACs. Two further tiers of local government were established by the 1978 Constitution: the provincial level and the municipal level.

Article 143 of the Constitution established the possibility of regions becoming ACs, though initially with only limited powers via a "slow track" process. Article 151 set out the rules for creating ACs with greater powers. The Constitution defined areas of exclusive central state competence in Article 150 and areas of regional competence in Article 149. The distribution of powers is different for each AC and is set out in each AC's Autonomy Statute. Their organisation and responsibilities, as well as amendments to these, are thus established within the limits set out in the Constitution and in their Autonomy Statutes, and they are subject to approval by the Spanish Parliament, the *Cortes Generales* (Articles 143 and 147).

The decentralisation process in Spain is dynamic. The status of regions may change, as and when constitutional amendments are adopted and amendments to the Autonomy

Statutes are approved. As part of a "continuous bargaining process"[103] competences may be transferred down from the State to the ACs. Laws passed in September 1993 aimed to give all the ACs more powers in two phases, one to be completed by the end of 1993 and the other by summer 1994. This was to be achieved by changes to the Autonomy Statutes and involved 33 areas of competence. For the four fast-track ACs, Catalonia, the Basque Country, Galicia and Andalucia, it involved in addition a transfer of some exclusively state powers to the ACs under Article 150(2) of the Constitution. There was a reallocation of tax powers in 1997 and 2002.

Thus, the Spanish model combines autonomy and asymmetry with a degree of flexibility. All the ACs manage locally their health and education systems, while others (the Basque Country and Navarre) manage their own public finances, and Catalonia and the Basque Country operate their own police force. Although the ACs have wide legislative and executive autonomy, the model does not provide them with judicial power or unconditional policy-making powers, or mechanisms by which they can participate in the central legislative and executive bodies or in European affairs. MPs from ACs are only able to vote on issues relating to their own AC, not others. Each Autonomy Statute limits MPs in one AC to voting on issues which are permitted under the Statute and therefore not ones which are the legal preserve of other ACs. The *Cortes Generales* legislate on a range of reserved issues, specified in Article 149 of the Constitution. These laws apply across the Spanish state. However, under Article 67 Members of the AC legislatures are disqualified from sitting in the *Cortes Generales* and therefore cannot vote on matters affecting other ACs. Article 67 states that "No one may be a member of the two Chambers simultaneously nor be a member of an Autonomous Community Assembly and a Deputy to the House of Representatives at the same time".

Cooperation between the centre and the regions takes place via the intergovernmental *Conferencias Sectoriales*,[104] and at bilateral level between regions by *Convenios de colaboración* (Cooperation Agreements).

> The national government and regional authorities established bilateral commissions on a temporary basis in order to guide and monitor the transfer of functions bargained in the devolution process. Once the transfer had been accomplished, however, commissions continued to operate. These bodies now supervise the new "Co-operation Agreements" (Convenios de Colaboración) that deal with welfare policies such as education, labour, culture, health and social services. The number of new commissions being established every year and the continuation of others shows that the significance of this policy instrument goes well beyond the initial transfer of functions to ACs. The number of agreements between the national government and ACs has grown steadily between late

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[103] "Intergovernmental Partnerships at the Local Level in Spain: Mancomunidades and Consortia in a Comparative Perspective", Javier Font, Rafael Gutiérrez Suárez and Salvador Parrado-Díez, OECD 1999, at http://www.oecd.org/dataoecd/11/14/1902663.pdf

[104] See also article by Ricard Ramon i Sumoy, "Multi-level governance in Spain: building new patterns of sub-national participation in the EU policy-making", VII Congreso Español de Ciencia Política y de la Administración: Democracia y Buen Gobierno, 2005, at http://www.aecpa.es/congreso_05/archivos/area5/GT-20/RAMONiSUMOY-Ricard(UAB).pdf and Tanja A. Borzel, European University Institute "From Competitive Regionalism to Cooperative Federalism: The Europeanization of the Spanish State of the Autonomies", 2000, at http://publius.oxfordjournals.org/cgi/reprint/30/2/17.pdf.

> 1980s and early 1990s. Since the mid-1990s the number of agreements has been stable.[…]
>
> In many cases, the bilateral commission is institutionalised in the form of a "consortium". A consortium is a legal framework which was predominantly used in the local sphere to build up partnerships with higher levels of government. Until 1992 the service had to be provided by a municipality and the participation of a municipality in the consortium was compulsory. In 1992 (Ley 30/1992), the law was adapted to the already well-established practice to use consortia also for agreements between the central government and ACs.
>
> Although "Co-operation Agreements" may be signed among several ACs and the national government as well as among ACs alone, agreements are usually bilateral between one Ministry and a regional public body of one AC. For instance, 81 out of 389 "Co-operative Agreements" in 1996 are multilateral agreements that were signed on a bilateral basis between the national government and seven ACs. This means that "Co-operation Agreements" are not homogeneous in nature. As a matter of fact, there are many multilateral relationships that are formalised on a bilateral basis (Alberti, 1996). Aja (1998) complains that multilateral agreements are not the rule although they would be much easier to monitor for all parties. In 1997, for instance, only one multilateral agreement between the Ministry of Education and Science and seven ACs was signed concerning the transfer of non-university education to the regional level.
>
> In 1996, for the first time, agreements among ACs were negotiated without the involvement of national government. From the four targeted agreements only one agreement entered into force: In the case of two other agreements, one AC withdrew and in the other, the national government finally became a member. There have been other horizontal agreements without central government intervention recently, which however still must pass the Senate and the Congress.
>
> In addition to these bilateral commissions, there are also multilateral statutory intergovernmental commissions composed of the national government, ACs and local governments (for example, the Commission on Financial and Fiscal Policy and many other sector-specific bodies). These commissions meet regularly to discuss matters of mutual concern and programme implementation. Although these multilateral commissions are of great economic relevance there are concerns that the issue of accountability is not being carefully examined (Aja, 1998). The perceived problem is that these bodies contribute enormously to the blurred relationships among different levels of government because of a lack of transparency and clear responsibilities. [105]

The General Commission of the Autonomous Communities was established by the Senate on 11 January 1994 as the first step towards a possible reform of the Senate to become a Chamber of the Autonomous Communities within the central government, which would require a constitutional amendment. The Commission is composed of central government representatives, 17 regional government representatives and around

[105] "Intergovernmental Partnerships at the Local Level in Spain: Mancomunidades and Consortia in a Comparative Perspective", Javier Font, Rafael Gutiérrez Suárez and Salvador Parrado-Díez, OECD 1999, at http://www.oecd.org/dataoecd/11/14/1902663.pdf

60 Senators. The Basque Nationalists objected to the Commission, saying that it would have a negative effect on bilateral relations with the central government which the leaders of the ACs had been trying to elevate.[106] The Commission is not a decision-making body, but it has been involved in central government initiatives, in inter-AC relations and in relations between the ACs and international organisations such as the EU. It also aims to take legislative initiatives and to be involved in matters arising from central government proposals (the distribution of inter-state and EU funds, for example). One critical commentator thinks the Commission has been somewhat disappointing in its contribution to the devolutionary process:

> The General Commission of the Autonomous Communities sits in the Senate and its members are appointed by the parliamentary groups. The commission was formed exclusively by provincial or autonomous senators, but its broad composition, which doubled the number of members in the remaining legislative commissions, was designed to give way to the largest possible number of autonomous parliamentarians. Furthermore, to reinforce this federalising character, all of the senators appointed by the autonomous parliaments could intervene in the debates, despite not being able to vote even though they were not actual members of the commission. However, the most important, original aspect lay in the fact that, together with the members of the central government, the president and the ministers of the Autonomous Communities are also able to participate.
>
> As a symbolic element, the use was permitted alongside Spanish of the Catalan, Basque and Galician languages. For the first time in the constitutional history of Spain an organism of the central state lost its monolingual nature, but as a result of a compromise on such a problematic issue this authorisation was restricted to only one of the activities of the commission, though doubtless the one with greatest political visibility: the annual debate on the state of the autonomies.
>
> The list of functions described in the standing orders of the commission stresses its symbolic importance. This list is very long and exhaustive; however, a first impression of a strong commission would be misleading. In fact the commission does not have decisional powers and its functions are predominantly informative. The commission was conceived as a place for debate and communication between the state and the Autonomous Communities and not a decisional arena. It could not be otherwise without modifying the constitutional functions of the Senate.
>
> It is therefore not surprising that this commission did not live up to expectations; its functions have not meant a change in politics and the Senate is still in its marginal position. In fact, the failure of the attempted reform is shown by the absence of the compulsory annual debate on the 'state of the autonomies', held by the government of the Partido Popular (PP) since 1998.[107]

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[106] *El País*, 18 February 1994

[107] Professor Jordi Capo Giol, Constitutional Law and Political Science, University of Barcelona, "The Spanish Parliament in a triangular relationship, 1982–2000", *Journal of Legislative Studies* 29 June 2004, at http://taylorandfrancis.metapress.com/media/7ppmqlrvlhn81qrgtav0/contributions/a/x/y/5/axy58ca660n4buq0_html/fulltext.html

The provisions governing the role and powers of the ACs are contained in Articles 143-158 of the Spanish Constitution.[108]

D. Denmark

Denmark has devolved arrangements for two island territories, Greenland and the Faroe Islands, which have different cultures and are located far from each other and from Denmark. Each territory has a population of around 50,000. They exercise legislative and administrative autonomy over most internal matters and have some rights in matters of international concern to the islands. For example, in August 2004 the United States and Denmark, including the Home Rule Government of Greenland (see below), signed agreements setting up a Joint Committee to broaden and deepen cooperation between the two entities in scientific, environmental, economic, commercial and educational areas.

Both Greenland and the Faroe Islands elect two representatives for the Danish parliament, the Folketing, in Copenhagen.

1. Greenland

Greenland was a colony of Denmark, becoming an integral part of the Kingdom of Denmark in 1953. Under the *Greenland Home Rule Act* of 1978 Greenland has an elected assembly and executive whose responsibilities include taxation, education, planning, economic activity, social issues, labour, health, housing, transportation and environmental protection. Greenland became a member of the then EC when Denmark joined in 1973, but after Home Rule was introduced Greenland held a consultative referendum in 1982 on membership of the EC. Greenlanders chose to leave the EC with effect from 1 February 1985. The *Home Rule Act*[109] established the powers of the Home Rule authorities and relations with the central authorities in Sections 4-18.[110]

A background paper by Ms. Tove Søvndahl Pedersen of the Greenland Home Rule Government submitted to a United Nations High Commissioner for Human Rights Expert Seminar in December 2003 provides a more detailed analysis of the Greenlandic system of self-government:

> 1.07 Greenland Home Rule is an extensive type of self-government. By the Greenland Home Rule Act the Danish Parliament has delegated legislative and executive powers to the Home Rule Authority, consisting of a popularly elected legislative assembly: the Greenland Home Rule Parliament (Landsting) and the Greenland Home Rule Government (Landsstyre). The powers transferred by statute are in principle identical to the powers exercised by the central authorities of the Realm in other parts of Denmark. Consequently, the Danish Parliament and the Danish Government refrain from enacting legislation and exercising administrative powers in the fields, where these powers have been transferred to the Home Rule authorities.

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[108] http://www.constitucion.es/constitucion/lenguas/ingles.html#p2
[109] Act No. 577 of 29 November 1978
[110] http://www.nanoq.gl/English/The_Home_Rule/The_Home_Rule_Act.aspx

1.08 The Home Rule Act provides that the Home Rule Authority may request that a number of fields specified in an annexed to the Act be transferred to Home Rule. The list of functionally defined, transferable fields contained in the annex is not exhaustive, however, transfer of legislative and executive powers in fields other than those listed in the annex is subject to prior agreement between the Home Rule Authority and the central authorities of the Realm.

1.09 Since the establishment of Home Rule in 1979, the Home Rule Authority has exhausted the list in the annex and thus assumed authority in most aspects of life in Greenland, including the organization of the Home Rule system, taxation, regulation of trade including fisheries and hunting, education, supply of commodities, transport and communications, social security, labour affairs, housing, environmental protection, conservation of nature and health services.

Procedures for the transfer of powers to Home Rule

1.10 Greenland Home Rule rests on the basic principle that legislative power and “the power of the purse” should not be divided. Consequently, the Home Rule Act provides that when the Danish Parliament transfers a field to the Home Rule, the Home Rule Authority must undertake the associated expenditures. Conversely, the Home Rule Authority is the sole beneficiary of taxes and revenue generated in fields transferred to Home Rule. Since Greenland is not yet able to fully self-finance a number of capital-intensive fields, an instrument has been created in the Home Rule Act to facilitate transfer of powers to Home Rule in fields requiring Danish subsidies.

1.11 According to the Act the Danish Parliament may by statute effect a transfer of authority and the subsidies to be paid in such fields through vesting the Home Rule Authority with the power to issue statutory orders within a subsidized field. The Danish Parliament passes, upon consultation with the Home Rule Authority, an Enabling Act specifying the competence transferred to Home Rule and establishing a framework in the form of a few fundamental principles for each field while leaving it to the Home Rule authorities to decide the more detailed regulations and undertake the administration of the said field.

1.12 The Danish subsidies to the Home Rule Authority are not earmarked for specific purposes but granted as a lump sum. Thus, the Home Rule Authority has virtually complete freedom to determine the order of priority for expenditure of the funds allocated by the Danish Parliament. These so-called “block grants” are fixed by Acts of the Danish Parliament for three-year periods, and the amount is provided for annually in the Danish Budget.

Unity of the Realm and Constitutional Limits to Home Rule

1.13 The Home Rule Act has not altered Greenland's constitutional status as a part of the Danish Realm. The principle of the unity of the Realm, derived from the Danish Constitution and expressed in the Home Rule Act, sets certain limits to the scope of Greenland Home Rule: sovereignty continues to rest with the central authorities of the Realm; Greenland remains a part of the Danish Realm; only policy areas pertaining exclusively to Greenland may be transferred to the Home Rule Authority; the delegation of powers cannot be unlimited and must be precisely defined by statute; certain fields such as the so-called affairs of State may not be transferred to Home Rule. These exclusive affairs of State include external relations, defence and monetary policy.

1.14 However, with respect to non-transferable and non-transferred fields, the Home Rule Authority has an important advisory function with respect to the central authorities of the Realm. Proposed legislation exclusively addressing the affairs of Greenland must be submitted to the Home Rule Authority for comments prior to the introduction of the bill in the Danish Parliament. Likewise, when proposed legislation is "of particular importance to Greenland" the Home Rule Authority must be consulted before it is put into effect in Greenland.

Joint Decision on Mineral Resources

1.15 The Home Rule Act states that the resident population of Greenland has fundamental rights to the natural resources of Greenland. In respect of mineral resources, the Home Rule Act contains a special provision vesting joint decision-making power in the national authorities and the Home Rule authorities, making it possible for either party to oppose, and ultimately to veto, a development policy or specific resolutions considered by the party in question as being undesirable. The Commission on Home Rule applied the principle that, in the wording of the legislation on mineral resources as well as of the Home Rule Act, due respect must be paid to the unity of the Realm and thus also to the interests of the Realm as a whole.

“Greenlandisation"

1.16 With the introduction of Home Rule an intensive process of "Greenlandisation" commenced. The autonomy of Greenland was symbolized by the bringing into existence of an official flag and coat of arms of Greenland. The Home Rule Authority has made great efforts to preserve the culture and heritage of Greenland. The language is of vital importance and the Home Rule Act proclaims Greenlandic to be the principal language in Greenland.

1.17 After having had Home Rule for more than 20 years the Government of Greenland decided, in 2000, to establish a commission on the expansion of the Home Rule, the so-called Commission on Self-Governance. The Commission has made a report on the current extend of the Home Rule and to identify and describe new arrangements that will satisfy the self-government aspirations of Greenland within the Danish Realm. Some of the areas, which the Commission has explored, are presently within the jurisdiction of the Danish Government, such as the judicial system, foreign affairs and security policy. Earlier this year the Commission has put forward proposals for moving Greenland further in the direction of an engrossed self-governance and economic self-sufficiency. In the current session (Fall 2003) of the Greenland Home Rule Parliament, the commission’s recommendations are on the agenda. The Parliament has already decided to establish a ministry for self-governance, that is to prepare inter alia a referendum on self-governance.

Greenland and Danish foreign policy

1.18 The power to conduct foreign policy is a constitutional prerogative of the Danish Government and no part of this prerogative may be transferred to Greenland Home Rule. However, the Home Rule Act has created cooperative procedures serving to accommodate the interests of Greenland and to alleviate potential conflicts of interest between Greenland and Denmark in matters of foreign policy granting the Home Rule Authority a number of important functions of an advisory, representative and executive nature. Accordingly, on the

administrative level, Greenland has a foreign service of its own, referring to a Home Rule Minister on Foreign Affairs.

1.19 Extensive legislative and executive powers, territorially as well as functionally defined, have been transferred to the Home Rule. Consequently, the cooperation of the Home Rule Authority will often be necessary for Denmark to fulfil its international obligations. Accordingly, the Home Rule Act provides that the Danish Government must consult the Home Rule Authority before entering into treaties that particularly affect the interests of Greenland. This consultative procedure applies whether or not the treaty concerns a transferred field.

1.20 International treaties concluded by the Danish Government and customary international law bind the Home Rule Authority to the same extent as they do the Government of Denmark. In order to ensure that Denmark and Greenland comply with their international obligations, the Danish Government may direct the Home Rule Authority to take the necessary steps to fulfil such obligations.

1.21 Legislative and administrative orders of the Home Rule Authority, e.g. concerning regulation of fisheries, may affect third State interests and the position of the Danish Government vis-à-vis other countries. Under the Act the Home Rule Authority is, therefore, under obligation to consult with the central authorities of the Realm before introducing measures that might prejudice Denmark's interests.

1.22 The Home Rule Authority may send representatives to Danish diplomatic missions in order to safeguard important commercial interests of Greenland. Currently, Greenland has a diplomatic representation in Brussels.

1.23 Although, in principle, treaty-making powers are vested exclusively in the Danish Government, the central authorities of the Realm may, upon request, authorize the Home Rule Authority to conduct, with the assistance of the Foreign Service, international negotiations on affairs pertaining exclusively to Greenland. The Home Rule Authority has notably availed itself of the right to conduct bilateral negotiations in connection with the conclusion of fishery agreements. And likewise Greenland is an active member of the Nordic Council of Ministers. But like the other “Home Ruled” Nordic countries, Faroe Islands (Denmark) and Aaland (Finland), as a non-voting member.[111]

The following UN document summarises the role and remit of the Commission on Self-Governance:

132. The principal task of the Commission is to describe the current constitutional position of Greenland - including issues of authority and delegation between the Danish State and Greenland Home Rule - and to identify and describe alternative scenarios within the framework of the Danish Realm that will meet to a greater extent the wish for expanded autonomy since the introduction of Home Rule two decades ago. The strategy is to address the contemporary challenge of completing the transfer of internal affairs to Greenland Home Rule while

[111] “The Greenland Home Rule Arrangement in brief”, Expert seminar on treaties, agreements and other constructive arrangements between states and indigenous peoples, Geneva, 15-17 December 2003. Organized by the Office of the United Nations High Commissioner for Human Rights

> accommodating the increasing awareness of the role of Greenland in international affairs, in particular when it comes to Danish foreign and security policy affairs.
>
> 133. In general terms, the Commission shall review and describe jurisdictional powers where Greenland Home Rule has taken over authority, and other areas in which the Danish State still has authority, including areas where authority is divided in various ways between Greenland and Denmark.
>
> 134. In this context, the Commission shall consider the possibilities of transferring all or part of the administration of justice to Greenland Home Rule based upon the upcoming report of the Greenland Law Reform Commission.
>
> 135. The role of the Commission on Self-Government provides an opportunity to review the Home Rule Act of 1978 in the light of the overall political, economic, social, cultural and demographic development during the last two decades. The Commission will therefore submit proposals on amendments to the Home Rule Act, which will include authorization acts and amendments of agreements on management and basic agreements between the Danish State and Greenland Home Rule on the identified areas. The Commission is expected to complete its work and submit a report by the Cabinet to the Greenland Legislative Assembly for parliamentary proceedings by 2002.[112]

The Commission submitted its final report in April 2003. It was adopted unanimously by the Greenland Parliament in December 2003 and the Cabinet was asked to consider and propose how the Greenland Home Rule authorities could take over further legislative and executive powers, while respecting the Danish Constitution. The Danish Government and the Greenland Home Rule Government appointed a joint Danish and Greenlandic Commission to do this. According to its terms of reference, the Commission's work would be based on the principle of correspondence between rights and responsibilities. In 2005 the Danish Government prepared new legislation devolving further powers to Greenland and the Faroe Islands (see below).

2. Faroe Islands

The Faroe Islands are an autonomous region of Denmark. They were a Danish county until 1948, but have since then been self-governing in accordance with provisions of the *Home Rule Act* of 1948. This Act made the Faroe Islands part of the Danish Kingdom with special status as a self-governing community, its own flag and Faroese as the main language. Legislative and local administrative powers were transferred to the Faroes elected legislative assembly, the *Lagting*, and to the *Landsstyre*, which is the government of the islands. Defence and foreign affairs, the judiciary and the monetary system remained under Danish central government control, although the Faroese can influence legislation in these areas through the Danish government's local representative, the *Rigsombudsmand* or through their two seats in the *Folketing*. Foreign policy is a matter of joint concern, but the Faroe Islands did not follow Denmark into the EC in 1972. Defence matters and foreign policy generally do not come under the Home Rule, but the Faroese authorities

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[112] UN Committee on the Elimination of Racial Discrimination, CERD/C/408/Add.1 21 May 2001, at http://193.194.138.190/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/2b997500070022 98c1256b13004e2e91/$FILE/G0142362.doc

do conduct negotiations regarding fishing rights with other countries, both with and without the participation of the Danish Foreign Office.[113]

In the early 2000s the Faroese and Danish governments entered into negotiations on reform of their relationship, in particular their financial relations and the duration of an interim arrangement in the event of increased home rule or full sovereignty. In 2002 the Danish Government and the Faroese Home Rule government entered into negotiations on full sovereignty, which have not yet been concluded. The general election in April 2002 resulted in the creation of a new coalition government which slowed down the political process of achieving full sovereignty.[114] Elections in January 2004 returned the incumbent, pro-independence coalition, but internal splits among the parties gave rise to a new governing coalition from which the pro-independence Republican Party was excluded.

The question of increased home rule, or even total independence, has been much debated in Copenhagen and in the islands themselves. The exploration and extraction of oil in Faroese waters would no doubt have a considerable impact on the result of a referendum on full sovereignty.

In 2005 The Danish Government set out its plans for further self-government for Greenland and the Faroe Islands:

> **Today's Unity of the Realm – in line with the times**
> A modern Unity of the Realm is based on close and constructive cooperation, characterised by mutual respect and with a shared focus on achieving results. The Government will further develop the good relations that have been established with Greenland and with the Faroe Islands in recent years.
> The Government's position is to contribute constructively to replacing the existing home rule arrangements by enlarged self-government in Greenland and in the Faroe Islands within the framework of the Danish Constitution and the Unity of the Realm. This entails also that the assumption of new areas of responsibility is accompanied by economic commitments.
> The Greenland-Danish cooperation on a future self-government arrangement for Greenland has been initiated with the establishment of a joint parliamentary commission. On the basis of Greenland's present constitutional position, the Commission on Self-Governance is to present proposals for ways in which the Greenland authorities may assume further powers where this is possible under the Constitution. The Commission is expected to conclude its work in the year 2006. The Danish Government and the Greenland Home Rule Government will, subsequently, discuss the result of the Commission's work with a view to submitting a Bill to the Folketing.
> The Government sees the 2004 report of the Commission on Greenland's Judicial System as an important element in the forthcoming discussions between the Danish Government and the Greenland Home Rule Government with a view to modernising the Greenland judicial system and to achieving a more self-governing Greenland.

[113] http://denmark.dk/portal/page?_pageid=374,520562&_dad=portal&_schema=PORTAL
[114] http://denmark.dk/portal/page?_pageid=374,520562&_dad=portal&_schema=PORTAL

> After consultation with the Home Rule Government of the Faroe Islands, the Government takes a positive view of introducing a Bill on a new arrangement that will enable the Faroese authorities to assume responsibility for all fields within the framework of the Constitution and the Unity of the Realm.
> The approach of the Government is that strengthened cooperation within the Unity of the Realm also comprises the foreign policy area.
> The Government's wish is, therefore, for Greenland and the Faroe Islands to gain contributory influence by being involved in foreign and security policy subjects of special interest to the two parts of the Realm. With respect to Greenland, the framework for this has been established with the joint declaration of principle on Greenland's involvement in the foreign and security policy. The Government expects to conclude a similar declaration on future cooperation with the Home Rule Government of the Faroe Islands.
> With the passing of the Bill on the Greenland Home Rule Government concluding international law agreements, which the Government has submitted to the Folketing, a framework will be established for more independent safeguarding of Greenland interests in the foreign policy area. The Government is prepared to introduce a similar Bill for the Faroe Islands, if the Home Rule Government of the Faroe Islands so wishes.[115]

E. Gagauzia in Moldova[116]

The region of Gagauzia is located in the south-east of the Republic of Moldova. It covers an almost homogenous block of territory of around 1,800 square kilometres. It includes all localities where the proportion of the Gagauz population exceeds 50 per cent, plus other localities where the local population has voted to include its territory within the Gagauz region. Its population stands at around 155,000, around 80 per cent of whom are of Gagauz ethnic origin. The Gagauz, who are ethnic Turks of the Orthodox Christian faith, represent around 3.5 per cent of Moldova's population.

As the Soviet Union disintegrated in the late 1980s, nationalist movements began to emerge in a number of the union's republics, including Moldova. The Socialist Republic of Moldova adopted a declaration of sovereignty in July 1990 and declared itself independent in August 1991. Gagauz concerns that Moldova might seek unification with Romania led to the proclamation of a Gagauz Autonomous Soviet Republic in November 1989 and a declaration of independence in August 1990. The Moldovan government refused to recognise Gagauzian independence, although the dispute remained largely peaceful, in contrast to the conflict that erupted between Moldovan government troops and separatist forces in the territory of Trans-Dneistr. Efforts to resolve the Gagauz dispute made a break-through in early 1994 when agreement was reached on the principle of broad autonomy for the Gagauz lands. Further negotiations and agreements during 1994 resulted in Gagauzia being granted a special legal status as "an administrative-territorial autonomous unit" that was to remain an integral and inalienable part of Moldova. The Moldovan constitution, which was adopted in July 1994, stipulates under Article 111 that, in addition to the disputed Trans-Dneistr region,

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[115] Danish government website, "New Goals, Government Platform", at http://www.stm.dk/publikationer/UK_reggrund05/index.htm

[116] This section was written by Tim Youngs, International Affairs and Defence Section

> (1) […] other places in the south of the Republic of Moldova may be granted special forms of autonomy according to special statutory provisions of organic law.
> (2) The organic laws establishing special statutes for the places mentioned under paragraph (1) above may be amended if three fifths of the Parliament members support such amendments.[117]

The Moldovan parliament adopted the *Gagauz Autonomy Act* in December 1994, which sets out in detail the parameters of the region's autonomy.[118] Its expressed aim is "to provide for the preservation of Gagauz national identity, the flourishing of the Gagauz language and culture, and to secure political and economic independence for this nationality." All rights and freedoms stipulated by the Moldovan constitution and in national legislation are guaranteed, but Gagauzia has the right to solve independently all political, economic and cultural issues that lie within the limits of its competence. These include education, culture, local development, social security, and budgetary and taxation issues. The act also declares that the people of Gagauzia would have the right to self-determination, in the event of a change to Moldova's status as an independent state (i.e. if Moldova were to seek unification with Romania).

The Gagauzian People's Assembly, which is directly elected for a four-year term, has legislative power within its own jurisdiction, along with two special powers: it may participate in the formulation of Moldova's internal and foreign policy, and has the right of appeal to the Moldovan constitutional court in cases where central regulations contradict or interfere with the jurisdiction of the Gagauz autonomous authorities. Executive power is exercised by an Executive Committee, which is headed by a Governor or *Bashkan*. The governor is elected by popular vote for a four-year term and also serves as a member of the national government. Members of the executive committee are nominated by the governor and approved by simple majority vote in the assembly.

Elections for the post of governor were last held in December 2006 when the opposition United Gagauzia candidate, Mihail Formuzal, defeated Nicolai Dudoglo by 56 per cent to 43 per cent in a second round run-off, with a 50% turnout of eligible voters. The incumbent, Gheorghe Tabunscic, was knocked out in the first round.[119] The Gagauz assembly approved the governor's nominations for executive committee posts on 12 January 2007 and the new members were sworn in on 23 February. Mr Formuzal said during his inaugural speech that:

> The seeds of separatism will not take root in the south of Moldova, while the settlement of the autonomy's problems will help it become an area of stability and a factor for rapprochement between the West and the East.
>
> It is time to achieve universal reconciliation and to realize the responsibility that everyone is bearing for the fate of Gagauzia and Moldova. The young autonomy is one of the wings of the independent Moldova. The second wing is the Dniester

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[117] Translation of the Moldovan constitution, from the website of the Parliament of the Republic of Moldova
[118] Translation of the act available online
[119] See OSCE Press Release, 18 December 2006 'OSCE Mission says Gagauz elections held in calm and orderly manner'

> region. Only by managing to raise both wings, Moldova will succeed in successfully solving all its territorial and economic problems.[120]

A 1995 Council of Europe Parliamentary Assembly report on Moldova noted that the Moldovan government and Gagauz authorities had succeeded in resolving the issue peacefully and democratically through negotiation, adding that:

> The method used by the Moldovan authorities to resolve this awkward problem displays a fairly exemplary approach to strategy and negotiation. This settlement could serve as a model for other states of the former Soviet Union (such as Chechnya) and the former Yugoslavia (particularly Croatia).[121]

Several commentators have suggested that the solution employed in Gagauzia could be replicated elsewhere. The issue arose in relation to Iraq in the late 1990s in response to concerns among the ethnic Turkomans about their status within the de facto Kurdish region of northern Iraq, a region that lay outside the control of Iraq's central government.[122]

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[120] 'Moldova's new Gagauz governor calls for closer ties with Chisinau, rebel region', report by Moldovan news agency *Infotag*, 29 December 2006, translated by *BBC Monitoring*

[121] *Opinion on the application by Moldova for membership of the Council of Europe*, Council of Europe Parliamentary Assembly, Doc. 7331, 19 June 1995

[122] See for example 'Iraq: Turkomans Demand Autonomous Region', *RFE/RL*, 22 February 1999

F. Aysmmetrical devolution

The following table from a draft working paper by John McGarry gives an overview of asymmetrical federalism systems worldwide in the 20th century:

Country:	Region with autonomy:	Start-end dates:
Sweden	Norway	1815-1905
Poland	Danzig	1919 – 1939
Finland	Aland Islands	1920 –
United Kingdom	Northern Ireland (1)	1921 – 1972
Lithuania	Memel	1924 – 1939
Italy	South Tyrol, Friuli-Venezia Giulia, Valle d'Aosta	1948 –
Yugoslavia/Serbia	Kossovo and Voivoidina	19XX-1989
Ethiopia	Eritrea	1952-1962
Tanzania	Zanzibar	1964 –
Sudan	Southern Sudan	1972 – 1983
Iraq	Kurdistan	1972-75??
United Kingdom	Northern Ireland (2)	January-May 1974
Denmark	Greenland	1978 –
Spain	Basque Country, Catalonia, Galicia	1978 –
Canada	Sechelt	1986 –
Nicaragua	The Atlantic Coast/Miskito	1987 –
France	Corsica	1991 –
Ukraine *	Crimea	1991 –
Russia	Various regions	1991-
Moldova	Gagauzia	1995 –
Finland	Sami	1995 –
Philippines	Mindanao	1996 –
United Kingdom	Northern Ireland (3), Scotland, Wales	1998 –
Canada	Nunavut	1999 –
Canada	Nisga'a	2000 –
Indonesia **	West Papua, Aceh	2001/2 –
Papua New Guinea	Bougainville	2002 –
Sudan	South (2)	2004/5-

* A change of status in the Crimean autonomy arrangements occurred in 1995. Crimea's autonomous government was placed under national control, but the Crimean Assembly was allowed to continue to function.
** The Aceh autonomy arrangement does not come into effect until July 2002.

[123]

[123] John McGarry, Queen's University, Canada, draft working paper. Position paper for the 3rd International conference on Federalism, 3-5 March 2005. "Socio-cultural Identities and Asymmetric Federalism" at http://www.federalism2005.be/home/attachment/i/580

VI Previous private Members' bills since 1997 on the 'English Question'

A. *Referendum (English Parliament) Bill* 1997-98

This was a ballot bill introduced by Teresa Gorman on 18 June 1997 (Bill 9 of 1997-98). It sought "to make provision for the holding of a referendum in England on the establishment and tax-varying powers of an English Parliament" and was debated on second reading on 16 January 1998 (debated adjourned).[124] The bill made no further progress.

B. *Referendum (English Parliament) Bill* 1998-99

This bill was introduced by Teresa Gorman under SO No 57 on 12 May 1999 (Bill 98 of 1998-99). It sought "to make provision for the holding of a referendum in England on the establishment and tax-varying powers of an English Parliament". The bill was not printed (and made no progress).

C. *Parliament (Participation of Members of the House of Commons) Bill [HL]* 2005-06[125]

On 10 February 2006 Lord Baker of Dorking introduced the second reading debate on his *Parliament (Participation of Members of the House of Commons) Bill*,[126] which sought to prevent non-English Members voting on English matters:

> My proposals in the Bill are designed to resolve this matter. I seek to give the Speaker powers, or rather confirm powers that the Speaker already has, to certify the territorial extent of a Bill. He has that power and he has exercised it in regard to Scottish Bills. He would designate groups of MPs—English MPs, Scottish MPs, Welsh MPs and Northern Ireland MPs—allowing them to vote only on such Bills, parts of Bills and statutory instruments. That is the nub of my proposals.[127]

Lord Baker was supported by Lord Strathclyde, Leader of the Opposition in the Lords and Constitutional Affairs spokesman:

> In the Conservative Party, we agree with my noble friend Lord Baker that the West Lothian question needs to be addressed. Many noble Lords opposite accept that there is a problem but do not find my noble friend's solution favourable. There are also noble Lords opposite, however, who do not believe that there is a

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124 HC Deb 16 January 1988 cc589-660: http://www.publications.parliament.uk/pa/cm199798/cmhansrd/vo980116/debtext/80116-01.htm#80116-01_head0

125 HL Bill 61 of 2005-06: http://www.publications.parliament.uk/pa/ld200506/ldbills/061/2006061.htm

126 HL Deb 10 February 2006 cc902-56: http://www.publications.parliament.uk/pa/ld200506/ldhansrd/vo060210/text/60210-03.htm#60210-03_head0

127 ibid c906

> problem at all: the head-in-the-sand approach. They are in denial. Well, they ought to wake up and see what is coming down the tracks. We agree emphatically that, now that there is a Scottish Parliament and the Parliament at Westminster no longer speaks for the whole of the United Kingdom on domestic policy matters, it is not sustainable for policy in England on matters that are devolved to Scotland to be decided by the votes of MPs representing Scottish constituencies. That is not a nationalist agenda; it is certainly not a Scottish nationalist agenda. There will come a time, and it may not be long, when English people simply will not accept that. I wholly accept that that is not the case at present, but the feeling is out there, and it is growing. Speaking as a Scot and a passionate supporter of the union, I regret that. It will happen, however, and the matter will be startlingly personified when—I refer to the brief interchange between by noble friend Lord Baker and the noble Lord, Lord Maclennan of Rogart—Mr Gordon Brown becomes Prime Minister, as we now gather will happen some time next year.
>
> It is possible, of course, that Mr Brown might take the Simon Hughes option and decide to set an example by not voting on English Bills. After all, the current Prime Minister sets a striking example of abstinence in the voting lobbies, as we discovered last week. Somehow, however, I do not think so. This intensely serious matter, which could be solved by a convention of not voting, in the same way as the noble and learned Lords of this House do not vote on political matters under the Bingham declaration, will therefore have to be solved by statute.[128]

In response, Lord Falconer, the Secretary of State for Constitutional Affairs and Lord Chancellor, argued:

> Our national Parliament is sovereign in all matters. If it is to continue to remain at the heart of our union, all its members must be able to consider any matter before Parliament. At the heart of the argument advanced by the noble Lord, Lord Baker of Dorking, in favour of the Bill, is the proposition that if English MPs cannot vote on devolved matters because they are dealt with in Edinburgh, Belfast and Cardiff, then non-English Members of Parliament should not be able to vote on comparable matters in the national Parliament. That is, as I understand it, though it was never put like that, the essence of his case.
>
> To have some Members who can vote on some issues while others can vote on everything indubitably creates a two-tier system of MPs. Such a proposal, despite the claim of the noble Lord, Lord MacGregor, to speak at one stage for the people of Scotland, has no groundswell of support, either in England or Scotland. That is unsurprising, because it has absolutely no basis in principle.
>
> Devolution happened in Wales and Scotland because their peoples wanted it. The people of England have not been the victim of proposals forced on them almost exclusively by Scots and Welsh MPs. If every one of the non-English MPs coalesced they could not outvote the English MPs. Only if well over 200 English MPs and every non-English MP voted for a proposal can it get through.[129]

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[128] ibid c945
[129] ibid cc948-949

Lord Maclennan of Rogart, a Liberal Democrat peer, did not support the Bill, stating: "The Bill can best be understood as the partisan response of the Conservative Party to its declining appeal to the electors of Scotland and Wales in particular."[130]

The Bill placed on the Speaker the duty to certify the territorial extent of each public or private bill (or part of a bill) before second reading and to designate which category or categories of Member can speak or vote on which provisions of the bill (including amendments). The Bill also required the Speaker to certify the territorial extent of a statutory instrument when laid before the Commons. Any such certificate would be conclusive and not questionable in the courts. No special procedures were included for the Lords, whose Members are not elected.

The Bill received a second reading, and passed all its stages in the Lords without further debate.[131] It did not make any make any progress in the Commons.

VII *House of Commons (Participation) Bill* 2006-07

A. The Bill's provisions

This Bill is sponsored by Robert Walter, Conservative MP for North Dorset, who came sixth in the ballot for Private Members' Bills. It is due to have its second reading on 9 March 2007.

The Bill was presented on 13 December 2006 and seeks "to provide for the Speaker of the House of Commons to have power to determine the eligibility of members of the House of Commons to participate in certain legislative and other proceedings of the House".[132] It has bi-partisan support; its other sponsors are Derek Conway, John Redwood, Bill Etherington, Angela Browning, Christopher Fraser, Nigel Evans, David Taylor, Christopher Chope, Derek Wyatt, James Clappison and Peter Luff.

In his press release, dated 13 December 2006, a copy of which is on the Campaign for an English Parliament's website,[133] Robert Walter states:

> NEWS from BOB WALTER MP
> Member of Parliament for North Dorset
> Date: 13th December 2006
> Release: Immediate
>
> BOB WALTER MP's BILL WILL PROPOSE ANSWER TO WEST LOTHIAN QUESTION

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130 ibid c941
131 The Bill received an unopposed third reading in the Lords on 18 April 2006
132 HC Deb 13 December 2006 c888: http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm061213/debtext/61213-0006.htm#06121364000008
133 http://www.thecep.org.uk/ The press notice does not appear to be on Robert Walter's website: http://www.ndca.org.uk/section/101/

Robert Walter MP (North Dorset) today (13th December) launched a NEW bid to stop Scottish MPs voting on issues that only affect England and Wales.

Bob Walter will today present his Private Members Bill, House of Commons (Participation) Bill, to answer the "West Lothian Question" and create a new constitutional settlement between the constituent parts of the United Kingdom. The Bill is ranked 6th in the list and will be debated in Second Reading on Friday 9th March

Bob Walter's Bill will provide for the Speaker of the House of Commons to have power to determine the eligibility of members of the House to participate in certain legislative and other proceedings. When the Commons debate matters concerning England and Wales, MPs from Scotland and Northern Ireland will not be able to participate.

Tam Dalyell, Labour MP for the Scottish constituency of West Lothian, posed in 1977 and 1978, and again in 1998, the West Lothian question during a House of Commons debate over Scottish and Welsh devolution. The question is - how can it be right that MPs representing Scottish constituencies in the Parliament of the United Kingdom have the power to vote on issues affecting England (including those that don't affect Scotland), but English MPs do not have the power to vote on Scottish issues?

The text will be based on a Bill introduced in the House of Lords in the last session by Lord Baker. Critically, however, Bob Walter's Bill will rectify a number of the problems raised with Lord Bakers Bill. Lord Baker's Bill would have enabled Northern Ireland legislation at Westminster to be determined solely by the Northern Ireland MPs which would be contravening the spirit of the accord that has been struck between the various parties. The new Bill will regard England and Wales as one, until such time as the Welsh Assembly might acquire primary legislative powers.

It is anticipated that Bob Walter's House of Commons (Participation) Bill will receive a second reading on Friday 9th March 2007.

Before presenting the Bill today, Bob Walter said,

"The present stage of devolution is unfair in that Scottish MPs at Westminster can vote on English and Welsh domestic affairs for which they have no constituency responsibility."

"My Bill will meet the call for "English votes on English laws". I do not believe we need to create a separate English parliament. We already have 428 MPs elected from English constituencies; it is perfectly possible for them alone to consider English legislation."

"It clearly unfair that a Scottish MP can exercise a decisive vote on matters that do not affect Scotland, whilst neither he nor his English counterparts have any role in similar Scottish legislation."[134]

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[134] http://www.thecep.org.uk/news/ViewItem.asp?Entry=1455

The Bill[135] has six clauses. Its purpose is to allow the Speaker of the House of Commons (or his deputies) to certify the territorial extent of bills and laid statutory instruments and also to determine the eligibility of Members of the House of Commons to participate in legislative and other proceedings of that House.

1. General principles applying to the Speaker

Clause 1 states that the Act does not remove the absolute discretion of the Speaker in calling Members to speak; any certificate or designation of the Speaker shall not be questioned in court; the Act does not affect the ability of the Speaker to preside or vote in the House.

Some commentators have suggested that to require the Speaker to certify on territorial extent might subject the office to criticism, thus weakening the independence and status of the role. The Speaker already has power to certify Bills as money bills for the purposes of the *Parliament Acts*. Speaker's Counsel is available to the Speaker for legal advice.

2. Certifying the territorial extent of bills

Public bills commonly have clauses which define the territorial extent of proposed legislation,[136] but although it may be possible to identify a bill as applying predominantly to England and Wales, there may be other clauses which apply to Scotland or to Northern Ireland as well. This is a common occurrence, as other measures may be included within a bill covering a whole range of subjects. The Commons Library maintains a chart which gives the territorial extent of bills each session since 2000-01, available at:
http://www.parliament.uk/documents/upload/tc_bills.xls. This illustrates the issue in detail.

Clause 2(1) and (2) provides that, between the first and second reading in the Commons of a public or private bill, the Speaker shall certify in writing its territorial extent. He may also certify that different provisions of a bill extend to different parts of the UK.

Usually at least two weekends elapse between the first and second readings of a government bill but this interval can be much shorter, for example when emergency legislation is being considered. No special provision for certification is made in Robert Walter's Bill where there is a very short time between first and second readings of a bill.

3. Designating categories of Members to speak and vote on bills

Clause 2(3) – (6) provides for the Speaker to designate which category or categories of Member may speak and vote on the bill (or on which provisions of the bill) in the various

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[135] http://www.publications.parliament.uk/pa/cm200607/cmbills/022/2007022.pdf
[136] See Appendix 2 for examples of territorial extent clauses for bills in 2005-06

proceedings on the bill. **Clause 2(7)** lists the categories of Members which the Speaker may designate (under subsections (3) to (7)): all MPs returned for constituencies in England and Wales; all MPs returned for constituencies in Scotland; all MPs returned for constituencies in Northern Ireland. Members from England and Wales are, therefore, placed in a single category, unlike in Lord Baker's Bill, because full legislative devolution to Wales has not yet taken place. **Clause 2(8)** states that the Speaker may designate any combination of the categories in subsection (7). There are currently 569 constituencies in England and Wales, 59 in Scotland and 18 in Northern Ireland.

Clause 2(9) and (10) provides for the Speaker to alter the terms of his certification or designation during the passage of the bill through Parliament if, having regard to amendments proposed or made, he deems it appropriate.

Commentators have argued that holding separate votes on legislation affecting England would affect the devolution settlements and the operation of the Union.[137] Under current constitutional conventions, all Members are treated as equal, and can vote on all matters, even where these matters do not have a direct impact on constituents. For example, all Members voted on the enactment of the *Greater London Authority Act 1999,* not just Members for London. A UK Government which could command a majority at Westminster only in reserved subjects, such as taxation, benefits and foreign policy, but which could not carry legislation on health, education and social services in England, would be profoundly different in nature from current conventions. In effect, a separate coalition of parties would be needed to command a majority for legislation in England in these devolved areas.

4. Certifying the territorial extent of statutory instruments

Most laid statutory instruments have a territorial extent provision. **Clause 3(1) and (2)** provides for the Speaker to certify in writing the territorial extent of a statutory instrument laid before the House of Commons and may certify that different provisions of the instrument apply to different parts of the UK.

5. Designating categories of Members to speak and vote on SIs

Clause 3(3) – (5) provides for the Speaker to designate which category or categories of Members may speak or vote on the instrument. **Clause 3(4)** lists the categories of Members which the Speaker may designate (under subsection (3)): all Members; all Members returned for constituencies in England and Wales; all Members returned for constituencies in England. These are different from Lord Baker's categories of a) England; b) Scotland; c) Wales and d) Northern Ireland. **Clause 3(6)** defines "statutory instrument" as having the meaning given to it by the *Statutory Instruments Act 1946* but may also include any other subordinate legislation to which the Speaker determines that a certificate issued under this section should apply. The section does not apply to any statutory instrument not subject to parliamentary procedure. About 1,000 statutory

[137] See for example, Vernon Bogdanor, *Devolution in the United Kingdom,* rev ed 2001, pp264-76 and Jackie Ashley, "If it's English votes for English law, the UK's end is nigh", *Guardian,* 12 June 2006

instruments are laid before the House of Commons and subject to parliamentary procedure each session.[138]

6. Northern Ireland

Clause 4 provides for the Speaker to designate legislation relating to Northern Ireland which relates to matters which have not been devolved to the Northern Ireland Assembly as if they related to the whole of the UK. All Members would, therefore, be able to speak and vote on such legislation; not just the eighteen Members returned for constituencies in Northern Ireland (at present in practice thirteen, given that Sinn Féin Members have not taken their seats).

7. Standing Orders and commencement

Clause 5 provides that the Standing Orders of the House of Commons may make further provision for giving effect to the Act. **Clause 6** provides for the commencement of the Act at the beginning of the parliamentary session immediately after the session in which it is passed.

B. Reactions to the Bill

Following the presentation of the Bill on 13 December 2006 *The Herald* reported that Mark Lazarowicz, Labour MP for Edinburgh North and Leith, "said he would fight the attempt by Robert Walter, the Tory MP for North Dorset, to prevent any Scottish MP from voting on certain matters (…) and said yesterday "Such plans are not just totally impractical but would also threaten the territorial integrity of the UK.""[139]

The Constitution Unit's *Devolution and the centre monitoring report: January 2007* commented on Robert Walter's press release on the Bill:

> … the bill will enact the English Votes on English Laws policy to which the Conservatives have been committed for several years. Like Lord Baker's bill in the previous session, it will enable the Speaker to bar Scottish and Northern Irish MPs from participating in debates on 'English' legislation. Unlike Lord Baker, Walter will place MPs from England and Wales in a single category until full legislative devolution takes place, thereby avoiding the difficulty of disentangling English and Welsh matters. In addition, the bill will not extend to Northern Ireland bills, sidestepping the anomalous scenario wherein only Northern Ireland's 18 MPs (in practice 13, given the Sinn Fein boycott) would be able to vote on bills or orders applying solely to the six counties.
>
> Even with these modifications, it remains questionable whether English Votes on English Laws could coexist with stable government. As previously discussed in these reports, it could lead to a situation where a government with a majority in the Commons as a whole would be unable to pass legislation for England and Wales in key areas such as Education and Health if it had no majority when Scottish MPs were taken out of the equation. In effect, in these circumstances

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138 *Sessional returns*
139 *The Herald,* 14 December 2006

> there would be a different government party for English matters than for reserved all-UK matters. Given that many bills contain some provisions that do apply to Scotland and some that don't, there might even be a different effective government for different parts of the same piece of legislation. The confusion that would ensue is one reason why a common criticism of the policy is that its implementation would lead inevitably to a separate English Parliament and Government, if not the break-up of the UK.[140]

A newspaper in Robert Walter's area has commented on the Bill:[141]

> NORTH Dorset MP Bob Walter will present a Bill to Parliament this week in a new bid to stop MPs from Scotland and Northern Ireland voting on issues that only affect England and Wales. Mr Walter's Private Members Bill would provide an answer to the "West Lothian Question". It would allow the Speaker of the House of Commons to decide when a particular issue only affects England and Wales, allowing it to be debated and voted on only by those MPs.
>
> Mr Walter said: "Scotland is essentially internally self-governing but they still send 59 Members of Parliament to London. "They can vote on laws which only affect England and Wales. I think that is very unfair particularly when we as English MPs have no say on healthcare or schools or roads in Scotland but they can have that say on what happens in England." Mr Walter said that in practice it could mean dealing with England-only legislation on set days. Tam Dalyell, Labour MP for West Lothian, raised the issue in 1977, 1978 and 1998. The text of Mr Walter's submitted Private Members Bill is based on a bill introduced in the House of Lords in the last session by Lord Baker. However, Mr Walter's Bill will rectify a number of problems raised with Lord Baker's Bill, which would have enabled Northern Ireland legislation at Westminster to be determined solely by the Northern Ireland MPs, contravening the spirit of the accord struck between the various parties. The new Bill will regard England and Wales as one, until the Welsh Assembly might acquire primary legislative powers. Mr Walter added: "My Bill will meet the call for English votes on English laws'. "I do not believe we need to create a separate English Parliament. "We already have 428 MPs elected from English constituencies. It is perfectly possible for them alone to consider English legislation."
>
> 7:00pm Sunday 4th March 2007

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[140] http://www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Centre_Jan07.pdf p27-8

[141] Louise Dunderdale, "MP seeks answer to West Lothian question", *Dorset Echo",* 4 March 2007: http://www.thisisdorset.net/display.var.1233959.0.mp_seeks_answer_to_west_lothian_question.php

Appendix 1 – Voting by Scottish MPs at second reading, public bills not covering Scotland

House of Commons Divisions at Second Reading (main question), Public Bills not covering Scotland

Session	Bill	Bill Type		All MPs Ayes	All MPs Noes	*Majority*	Scotland MPs Ayes	Scotland MPs Noes
2005-06	*Council Tax (New Valuation Lists for England) Bill*	Govt	*	166	338	*172*	0	40
2005-06	*Racial and Religious Hatred Bill*	Govt		303	247	*56*	33	10
2004-05	*Clean Neighbourhoods and Environment Bill*	Govt	*	151	356	*205*	0	51
2004-05	*Criminal Law (Amendment) (Householder Protection) Bill*	PMB		140	21	*119*	1	0
2003-04	*Housing Bill*	Govt		334	178	*156*	29	4
2003-04	*Hunting Bill*	Govt		356	166	*190*	47	0
2003-04	*Mental Capacity Bill*	Govt		326	62	*264*	34	4
2003-04	*School Transport Bill*	Govt		248	130	*118*	44	6
2003-04	*Traffic Management Bill*	Govt	*	126	362	*236*	0	49
2002-03	*Community Care (Delayed Charges) Bill*	Govt		237	135	*102*	35	0
2002-03	*Fire Services Bill*	Govt		284	59	*225*	37	2
2002-03	*Hunting Bill*	Govt		368	155	*213*	37	10
2002-03	*Northern Ireland Assembly Elections and Periods of Suspension Bill*	Govt		290	22	*268*	41	0
2002-03	*Northern Ireland (Monitoring Commission, etc) Bill [HL]*	Govt		325	7	*318*	42	6
2002-03	*Planning and Compulsory Purchase Bill*	Govt		320	192	*128*	42	4
2002-03	*Police (Northern Ireland) [HL] Bill*	Govt		334	11	*323*	28	2
2001-02	*Animal Health Bill*	Govt		303	181	*122*	1	43
2001-02	*Civil Defence (Grant) Bill*	Govt		292	159	*133*	1	48
2001-02	*Education*	Govt		323	188	*135*	44	8
2001-02	*Justice (Northern Ireland) Bill*	Govt	*	133	324	*191*	34	10
2001-02	*Northern Ireland Decommissioning (Amendment) Bill*	Govt	*	151	342	*191*	38	7

* vote on Amendment to main Question; no Division on main Question

Source: House of Commons Library Divisions Database

Appendix 2 – Examples of territorial extent clauses in selected 2005-06 bills

1. *Education and Inspections Bill*[142]

166 Extent
(1) Subject to subsections (2) and (3), this Act extends to England and Wales only.
(2) The following provisions extend also to Scotland and Northern Ireland—
section 147;
sections 157 and 158;
sections 161 to 165, this section and section 167.
(3) Any amendment or repeal made by this Act has the same extent as the enactment amended or repealed.

2. *Racial and Religious Hatred Bill*[143]

2 Short title, commencement and extent
(1) This Act may be cited as the Racial and Religious Hatred Act 2005.
(2) This Act comes into force on such day as the Secretary of State may appoint by order made by statutory instrument.
(3) An order under subsection (2) may make—
(a) such supplementary, incidental or consequential provision, or
(b) such transitory, transitional or saving provision,
as the Secretary of State considers appropriate in connection with the coming into force of this Act.
(4) This Act extends to England and Wales only.

3. *Violent Crime Reduction Bill [HL]*[144]

56 Short title, commencement and extent
(1) This Act may be cited as the Violent Crime Reduction Act 2005.
(2) This Act, other than—
(a) this section;
(b) section 49; and
(c) section 51 and the repeal in section 18(1) of the Crime and Disorder Act 1998 (c. 37),
shall come into force on such day as the relevant national authority may by order made by statutory instrument appoint; and different days may be appointed for different purposes, including different areas.
(3) In subsection (2) "the relevant national authority"—
(a) in relation to section 40 so far as it authorises the exercise of powers in relation to pupils of schools in Wales, means the National Assembly for Wales; and
(b) in all other cases, means the Secretary of State.
(4) This Part and section 53 extend to the United Kingdom, except that—
(a) the repeals by Schedule 4 of the Licensed Premises (Exclusion of Certain Persons) Act 1980 (c. 32) and of the enactments amending that

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142 http://www.publications.parliament.uk/pa/cm200506/cmbills/134/2006134.pdf
143 http://www.publications.parliament.uk/pa/cm200506/cmbills/011/2006011.pdf
144 Bill as brought from the Lords: http://www.publications.parliament.uk/pa/ld200506/ldbills/041/2006041.pdf

Act extend to England and Wales only;
(b) the repeal by that Schedule of section 141(3) of the Criminal Justice Act 1988 (c. 33) extends to England and Wales and Northern Ireland only;
(c) the other repeals specified in that Schedule extend only so far as the enactments repealed.
(5) Sections 23 to 37 and 43 extend to Great Britain only.
(6) Section 44 and Schedule 1 extend to Northern Ireland only.
(7) Section 47 and Schedule 3 and sections 48 to 50 extend to England and Wales and Northern Ireland only.
(8) The other provisions of this Act extend to England and Wales only

Appendix 3 - UK Parliament bills in 2005-06 for which a Legislative Consent Motion (Sewel Motion) was agreed in the Scottish Parliament

Details of the territorial extent of all bills in the 2005-06 Parliament are available at:
http://www.parliament.uk/works/notes_on_parliament_and_constitution/tc_2005_06.cfm

This includes Government bills (excluding Consolidated Fund bills, statute law repeal and consolidation bills) and numbers 1-7 in ballot for Private Members' bills

Information is based on explanatory notes in each House and on Royal Assent, HCL Research Papers and Reports of the Delegated Powers & Deregulation Committee and Sewel Motions listed in Scottish Parliament Factsheet *Parliamentary Business: Current Series.*

In 2005-06, a total of 55 bills were included in this list. Of these, fourteen (almost one quarter), were the subject of Sewel motions in the Scottish Parliament.

The following table shows the Bills that were subject to Sewel motions.

Title	Bill/CAP No	Type of bill	Summary	England	Scotland	Wales	Northern Ireland
Animal Welfare Bill	58; HL88; CAP 45	G	The main purpose of the Bill is to bring together and update legislation that exists to promote the welfare of vertebrate animals other than those in the wild.	Covered by the Bill	Not generally covered by the Bill except for clauses relating to application and enforcement of disqualification orders in Scotland. Legislative consent motion (Sewel motion) agreed. SP OR 15.12.05 c21959	Covered by the Bill	Not generally covered by Bill

Civil Aviation Bill	12; HL21; CAP 34	G	The Bill contains various measures intended to develop sustainable aviation and protect passenger interests.	Covered by the Bill	Covered by the Bill except for clause 5. Legislative consent motion (Sewel motion) agreed. SP OR 6.10.05 c19906-7	Covered by the Bill	Covered by the bill (except cl 4, paras. 2& 5 of sch 2 & cl 5)
Companies Bill [HL]	HL34; 190; CAP 46	G	The Bill implements many of the recommendations of the Company Law Review which sought to modernise company law in order to provide a simple, efficient and cost-effective framework for British business.	Covered by the Bill	Covered by the Bill. Legislative consent motion (Sewel motion) agreed to. SP OR 16.3.06 c24180	Covered by the Bill	The Bill will extend GB company law to Northern Ireland
Compensation Bill [HL]	HL 35; 155; CAP 29	G	The Bill contains provisions in relation to the law on negligence and the regulation of claims management services	Covered by the Bill	Cl 3 on mesothelioma extends to Scotland. Legislative consent motion (Sewel motion) agreed to. SP OR 29.6.06 c27139	Covered by the Bill	Cl 3 on mesothelioma extends to Northern Ireland
Equality Bill [HL]	HL2; 85; CAP 3	G	The Bill establishes the Commission for Equality and Human Rights (CEHR) to take over the work of the existing equality commissions; makes unlawful discrimination on the grounds of religion or belief; creates a duty on public authorities to promote equality between the sexes	Covered by the Bill	Covered by the Bill. Legislative consent motion (Sewel motion) agreed to. SP OR 26.10.05 c19985-99	Covered by the Bill	Not covered by Bill

Title	Bill/CAP No	Type of bill	Summary	England	Scotland	Wales	Northern Ireland
Health Bill	69; HL 76; CAP 28	G	The Bill contains a number of provisions relating to the protection of public health including smoking in public places and prevention and control of health care associated infections	Covered by the Bill	Not generally covered by the Bill but certain provisions relating to controlled drugs, medicines and pharmacies and NHS Appointments Commission extend to the UK as a whole. Legislative consent motion (Sewel motion) agreed. SP OR 19.1.06 c22624	Covered by the Bill	Not generally covered by the Bill but certain provisions relating to controlled drugs, medicines and pharmacies and NHS Appointments Commission extend to the UK as a whole
Housing Corporation (Delegation) Etc. Bill	164; HL105; CAP 27	G	The twin objectives of this Bill are to ensure that the Housing Corporation has the power to delegate the exercise of its functions in the future and to clarify the position as regards the exercise of its past functions.	Covered by the Bill	Covered by the Bill. Legislative Consent Motion (Sewel motion) agreed. SP OR 10.5.06 c25460	Covered by the Bill	Not covered by Bill
Legislative and Regulatory Reform Bill	111; HL109; CAP 51	G	The Bill extends the scope of powers available to ministers to amend statute law by Order.	Covered by the Bill	Covered by the Bill. Legislative consent motion (Sewel motion) agreed to. SP OR 5.10.06 c28336-7	Covered by the Bill	Covered by the Bill

Title	Bill/CAP No	Type of bill	Summary	England	Scotland	Wales	Northern Ireland
London Olympic Games and Paralympics Games Bill	45; HL52; CAP 12	G	The Bill sets up the Olympic Delivery Authority and provides the statutory remit for public bodies tasked with delivering the Games; also provides the legislative framework to enable UK to meet IOC requirements placed on host cities.	Covered by the Bill	Covered by the Bill. Legislative consent motion (Sewel motion) agreed to. SP OR 10.11.05 c20650-1	Covered by the Bill	Covered by the Bill
National Lottery Bill	6; HL67; CAP 23	G	The Bill establishes a single distributor (the Big Lottery Fund) to replace the Community Fund, New Opportunities Fund and Millennium Commission; enables distributors to take account of public consultation in making distribution decisions; ensures that licensing and regulation of the National Lottery continues to maximise returns to good causes.	Covered by the Bill	Covered by the Bill. Legislative consent motion (Sewel motion) agreed to. SP OR 27.1.05 c14065-6 (on 2004-05 Westminster Bill)	Covered by the Bill	Covered by the Bill

Title	Bill/CAP No	Type of bill	Summary	England	Scotland	Wales	Northern Ireland
Natural Environment and Rural Communities Bill	3; HL23; CAP 16	G	The Bill establishes the Commission for Rural Communities and Natural England; also brings in key elements of the Government's rural strategy published in July 2004.	Covered by the Bill	Not generally covered by Bill but several provisions (e.g. those relating to agricultural levy boards have UK-wide extent and part 7 (Inland Waterways) extends to Scotland. Legislative consent (Sewel motion) agreed. SP OR 6.10.05 c19903-5	Covered by the Bill although the main functions of the Commission for Rural Communities and Natural England relate to England.	Not generally covered by the Bill but several provisions (e.g. those relating to agricultural levy boards) have UK-wide extent.
Northern Ireland (Miscellaneous Provisions) Bill	131; HL110; CAP 33	G	The Bill makes provision in relation to the following: registration of electors, Chief Electoral Office, date of next Assembly elections, political donations, devolution of policing and justice functions, miscellaneous provisions including an extension to the amnesty period for arms decommissioning and changes in the energy sector.	Covered by the Bill	Covered by the Bill. Legislative Consent Motion (Sewel motion) under consideration. Justice 1 Cttee	Covered by the Bill	Covered by the Bill
Northern Ireland (Offences) Bill	81; withdrawn	G	The Bill fulfils a Government commitment to address the issue of terrorist suspects on the run	Covered by the Bill	Covered by the Bill. Legislative Consent Motion (Sewel motion) under consideration.	Covered by the Bill	Covered by the Bill

Title	Bill/CAP No	Type of bill	Summary	England	Scotland	Wales	Northern Ireland
Police and Justice Bill	119; HL104; CAP 48	G	The Bill enacts key elements of this Government's police reform programme and Respect Action Plan. Provisions include the establishment of a National Policing Improvement Agency, standardisation of the powers of Community Support Officers, and measures in connection with anti-social behaviour.	Covered by the Bill	Not generally covered by the bill but certain provisions, e.g. those relating to the National Policing Improvement Agency, extend to Scotland. Legislative Consent Motion (Sewel Motion) agreed. SP OR 4.5.06 c25338-53	Covered by the Bill although a few items relate to transferred matters	Not generally covered by the Bill but certain provisions, for example those relating to the National Policing Improvement Agency, extend to Northern Ireland.