



The McKay Commission: Report of the Commission on the consequences of devolution for the House of Commons

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Author: Oonagh Gay

Section Parliament and Constitution Centre

This Note looks at the McKay Commission: [Report of the Commission on the consequences of devolution for the House of Commons](#) which was published on 25 March 2013. The Commission had been established by the Coalition Government in January 2012 to consider how the House of Commons might deal with legislation which affects only part of the United Kingdom, following the devolution of certain legislative powers to the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales.

The report called for the adoption of a constitutional convention that decisions at the United Kingdom level with a separate and distinct effect for England (or for England-and-Wales) should normally be taken only with the consent of a majority of MPs for constituencies in England (or England-and-Wales). The report considered that the principle should be adopted by a resolution of the House of Commons. The report has not yet been implemented. An initial analysis of the report was published by the research service of the National assembly for Wales [“England’s Response to Devolution: The McKay Commission”](#).

In 2013, the Scottish Government brought forward legislation to hold a referendum on Scottish independence in September 2014. The House of Lords Constitution Committee has announced an inquiry into the constitutional implications for the rest of the UK, should Scotland become independent. One of the key questions to be addressed by the Committee is “What would be the impact of Scottish independence on Scottish MPs and Members of the House of Lords?”

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1 Introduction

Standard Note 2586 *The West Lothian Question* provides a full introduction into the long running debate on the role of making law at Westminster by Members representing constituencies in parts of the United Kingdom to which a measure of self-government in domestic affairs has been granted. The question first arose during Home Rule debates concerning Ireland in the 1880s, but was resurrected again in the 1970s when devolution proposals for Scotland and Wales were first subjected to serious legislative scrutiny. The Question is named after the former MP for West Lothian, Tam Dalyell, but most recently has become known as the English Question (the wider issue of how England should be governed following the devolution legislation of the late 1990s.) Since devolution has become a fact in Scotland, Wales and Northern Ireland, most of the debate about the possible impact on the House of Commons has revolved around discussing the following options:

1. Reduction of Scottish and Welsh and Northern Irish representation at Westminster (in recognition of the reduced impact of Westminster policies on devolved government)
2. Scottish, Welsh and Northern Ireland MPs to speak and vote only on those matters not transferred to their Parliament/Assemblies ('in and out Members')

The Commons Library has maintained a spreadsheet since the 2000-01 parliamentary session which indicates the territorial extent of most public bills. This is available on the intranet. The data suggests that substantial numbers of bills have a mix of territorial extent, and cannot be easily categorised as applying solely to England or England and Wales.

1.1 Labour Government 1997-2010

This Government implemented a devolution settlement in Scotland, Wales and Northern Ireland, not discussed in this Note. Section 86 of the *Scotland Act 1998* contained provisions to reduce the number of Scottish seats from 72 to 59, but this readjustment retained 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*, where the number of parliamentary seats in Ireland was significantly reduced. The number of seats in Wales was left at 40 following the *Government of Wales Act 1998*.¹ It was argued at the time that the fact that primary law-making powers remained at Westminster meant that no reduction was required.

The Labour Government did not come forward with any proposals for introducing new legislative arrangements in the Commons. In his statement on the green paper *The Governance of Britain* on 3 July 2007² the then Prime Minister, Gordon Brown, said:

... but while we will listen to all proposals to improve our constitution in the light of devolution, we do not accept the proposal for English votes for English laws, which would create two classes of Members of Parliament—some entitled to vote on all issues, some invited to vote on only some. We will do nothing to put at risk the Union.³

¹ See Library Standard Note 6641 *Electoral Arrangements in Wales* for background

² HC Deb 3 July 2007 cc815-20:

<http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070703/debtext/70703-0003.htm>

³ HC Deb 3 July 2006 c818

The Justice Select Committee reported in May 2009 on *Devolution: a decade on* and Chapter 5 of its report dealt with the broader issue of the English Question.⁴ The Government response agreed that there was no need for a separate English Parliament, given the dominance of England in the Union.⁵ The response went on:

The Government believes that the proposal for English votes for English laws, would in the end, divide the United Kingdom fundamentally. Quite apart from the considerable difficulties of identifying laws that apply only to England (and some research suggests that it would be almost impossible in many cases), it would create two distinct classes of MPs – those who could vote on all matters before the House, and those whose voting rights would be curtailed by virtue of constituency location.⁶

Regional select and grand committees

The then Leader of the House, Harriet Harman moved motions on 12 November 2008 to establish a series of regional select and grand committee in the Commons, to examine regions in England. The Liberal Democrats and Conservatives, in opposition at the time, refused to nominate members to the regional select committees, and so they met with Labour and independent MPs only. This is briefly discussed in Library Standard Note 5842 [The Abolition of Regional Government](#). The relevant Standing Orders were not renewed in the current Parliament and the committees lapsed.

1.2 Conservative policy on the English question

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.⁷ 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.⁸ Michael Howard, when he was 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).⁹ The manifesto for the 2005 general election stated:

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.¹⁰

⁴ <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmjust/529/52908.htm>

⁵ Cm 7687, July 2009: <http://www.official-documents.gov.uk/document/cm76/7687/7687.pdf>

⁶ Ibid

⁷ 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

⁸ Conservative Party, *Strengthening Parliament: report of the Commission to Strengthen Parliament*, 2000, pp52-4:

<http://www.conservatives.com/pdf/norton.pdf>

⁹ HC Deb 21 January 2004 c1389-440:

http://www.publications.parliament.uk/pa/cm200304/cmhansrd/vo040121/debtext/40121-21.htm#40121-21_head0

¹⁰ Conservative Party, *UK Manifesto*, 2005

The new Leader of the Opposition, David Cameron, asked the Conservative Party's Commission on Democracy, led by Ken Clarke, to look at possible solutions to the West Lothian Question.¹¹

The Conservative Party's Democracy Task Force reported in July 2008. *Answering the question: devolution, the West Lothian Question and the future of the Union* proposed:

- Bills that are certified as 'English' would pass through the normal Commons processes as far as and including Second Reading. The whole House would vote on Second Reading.
- The Committee Stage, however, would be undertaken by English MPs only, in proportion to English party strengths.
- At Report Stage, the Bill would similarly be voted on by English Members only.
- However, at Third Reading the Bill would be voted on again by the whole House. Since no amendments are possible at this stage, the government party would have to accept any amendments made in Committee or at Report or have the Bill voted down and lost.

and concluded:

The current devolution settlement contains long-term risks to the Union. The Democracy Task Force recommends to David Cameron a modified version of 'English Votes for English Laws', incorporating English-only Committee and Report stages but a vote of all MPs at Second and Third Reading. We believe that this proposal can remove the main source of English grievance at the current devolution settlement without some of the risks to political stability that critics have seen in proposals for a completely English procedure.

The United Kingdom was traditionally a unitary state without a formal executive-legislative separation of powers. By modifying this structure without moving to full federalism, the devolution reforms of 1997-99 introduced significant anomalies, and any change that seeks to resolve these will continue to have some inconsistencies. There is no perfect 'answer' to the West Lothian 'question'. However, we believe that our proposal is both workable and the best safeguard of the future of the Union.

The Conservative Malcolm Rifkind made some proposals to the Task Force designed to modify the Commission on Democracy conclusions.¹² He proposed a Grand Committee model.

2 2010 onwards: the Coalition Government

The Conservative and Liberal Democrat parties referred specifically to the West Lothian (or English) Question in their manifestos for the general election. The new Government's *The Coalition: our programme for government*, published on 20 May 2010 stated:

- We will establish a commission to consider the 'West Lothian question'.¹³

The Coalition also agreed to introduce what became the *Parliamentary Voting System and Constituencies Act 2011* which provided for a reduction in the number of seats in the

¹¹ "Cameron: I will never take Scotland for granted", speech in Glasgow, 15 September 2006

¹² [Statement by Sir Malcolm Rifkind MP on proposals by the Conservative Committee chaired by Kenneth Clarke MP on how to deal with the "West Lothian Question](#)

¹³ Ibid p27

Commons. The legislation provided for a new set of rules for redistribution of seats, with one electoral quota for the UK, which would have led to the reduction in the numbers of seats in Scotland and Wales.¹⁴ In the event, although the four boundary commissions made proposals for these reductions, the orders needed to implement the review were not brought forward to either House as the Deputy Prime Minister, Nick Clegg, indicated that the Liberal Democrats would not support them.¹⁵

Following some queries about a delay in establishing the Commission, the then junior Cabinet Office minister, Mark Harper, made the following Written Statement on 17 January 2012:

The Coalition Programme for Government includes a commitment to establish a Commission to consider the 'West Lothian question'. In my statement of 8 September 2011 I gave some details of the forthcoming Commission and undertook to return to the House with further detail including the terms of reference for the Commission. This statement sets out the further detail.

The "*Commission on the consequences of devolution for the House of Commons*" will consist of a panel of six independent, non-partisan experts, chaired by Sir William McKay, a former Clerk of this House. The other five Commission members, whose backgrounds are in law, academia and constitutional development in the UK and the EU, are: Sir Stephen Laws, Sir Geoffrey Bowman, Professor Charlie Jeffery, Professor Yvonne Galligan and Sir Emyr Jones Parry.

As I stated previously, the Commission will focus on Parliamentary business and procedure. The Commission's terms of reference are:

"To consider how the House of Commons might deal with legislation which affects only part of the United Kingdom, following the devolution of certain legislative powers to the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales."

The Commission will commence in February 2012 and will make its recommendations to the Government in the course of the next Parliamentary session. This reporting timescale is necessary to ensure that the Commission has time for proper scrutiny of all relevant options.¹⁶

The Commission held seven evidence sessions in various parts of the United Kingdom and accepted written evidence. This remains archived on the Commission website.¹⁷ The major political parties gave evidence, as well as a range of academics. A senior Commons clerk submitted evidence on request on the practicalities of MPs for English constituencies having a separate vote in certain types of legislation affecting only England or England and Wales.¹⁸ The Commission took a generally low key approach to its work.

¹⁴ See Library Research Paper 10/55 *The Parliamentary Voting System and Constituencies Bill 2010-12*

¹⁵ See Library Standard Note 6404 *Coalitions at Westminster* for background

¹⁶ HC Deb 17 January 2012, cc35-6WS

¹⁷ <http://webarchive.nationalarchives.gov.uk/20130403030652/http://tmc.independent.gov.uk/written-evidence/>

¹⁸ *The McKay Commission: a double lock mechanism for Bills*
http://webarchive.nationalarchives.gov.uk/20130403030652/http://tmc.independent.gov.uk/wp-content/uploads/2012/11/121030_Submission_61_Simon-Patrick.doc-Clerk-of-Bills.pdf

3 The McKay Commission report

The Commission report was published on 25 March 2013 and is available on an [archived website](#).¹⁹ There was some limited press reaction. Its publication was noted in a Written Ministerial Statement on the same day:

Chloë Smith: In January 2012, the Government announced the establishment of a Commission to consider how the House of Commons might deal with legislation which affects only part of the United Kingdom, following the devolution of certain legislative powers to the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales. Today, the Commission has published its report and I have placed a copy in the House library.

The Government has made clear its commitment to maintaining the UK and to making sure that the devolution settlements work. The Government is very grateful to Sir William McKay and his colleagues for setting out how the House of Commons might deal with legislation which affects only parts of the United Kingdom. The Report represents a positive step forward. This is a very important issue, which is why the Government asked this expert commission to look into it. We will consider seriously and constructively this report and provide a substantive response to it in due course.

The Commission considered that governing arrangements for England in the post-devolution era were emerging more or less by default, rather than as a result of any planned initiatives. However there appeared to be no significant demand for an English Parliament. The heart of their proposals was the requirement that views from England (or England-and-Wales) should be known before a final decision is made about something with a separate and distinct effect for England (or England-and-Wales)

Using findings of survey research on public attitudes in England by the National Centre for Social Research using data from the British Social Attitudes (BSA) Survey over the past decade and more, and by the team from the Institute for Public Policy Research (IPPR), Cardiff University and the University of Edinburgh that conducted the Future of England Survey (FoES) in 2011 and 2012, the Commission found that there was significant public concern about current arrangements post devolution:

6 [Survey] evidence suggests a significant level of grievance among the people of England, sparked by the perception that Scotland enjoys advantages relative to England under current governing arrangements, particularly in the distribution of public spending and economic benefit. There is a clear and enduring sense that England is materially disadvantaged relative to the other parts of the UK, especially Scotland.

7. In addition, there is a consistent message that the people of England do not think it right that MPs from Scotland should be allowed to vote in the House of Commons on laws that affect England only.

The Commission's main recommendation was a new constitutional principle to be adopted through a parliamentary resolution. It considered that it would have a significant declaratory effect, rather like the resolution on ministerial accountability to Parliament passed just before the 1997 general election:²⁰

12. A principle common to the devolution arrangements for Northern Ireland, Scotland and Wales exists on which to base proposals for modifying the procedures of the

¹⁹ [Report of the Commission on the consequences of devolution for the House of Commons](#) March 2013

²⁰ See [HC Deb 12 February 1997 cc273-293](#),

House of Commons to mitigate the unfairness felt by people in England. The constitutional principle that should be adopted for England (and for England-and-Wales) is that:

decisions at the United Kingdom level with a separate and distinct effect for England (or for England-and-Wales) should normally be taken only with the consent of a majority of MPs for constituencies in England (or England-and-Wales). This principle should be adopted by a resolution of the House of Commons and the generalised principle endorsed.

13. Adherence to the principle would be facilitated by the declaratory resolution and changes of Standing Orders to implement specific proposals. Principles applying to decision-making in Parliament necessarily apply to decision-taking by Government. The internal processes of the UK Government for preparing legislation should include separate consideration of the interests of England.

On the other hand, the Commission did not consider that bills affecting only England should be exclusively dealt with by MPs for English constituencies:

15. MPs from outside England should not be prevented from voting on matters before Parliament. This would create different classes of MP and could provoke deadlock between the UK Government and the majority of MPs in England.

Instead, the Commission argued MPs from England (or England-and-Wales) should have new or additional ways to assert their interests. It proposed a number of changes to parliamentary procedures as a menu from which it considered that the Government would wish to make a selection for implementation, followed by necessary standing order changes. These can be paraphrased as:

- an equivalent to a **legislative consent motion** (LCM) in Grand Committee or on the floor before second reading;
- use of a **specialty-constituted public bill committee** with an English or English-and-Welsh party;
- the opportunity at **report stage for amendments to be made to a bill** to implement compromises between the committee's amendments and the Government's view, or if necessary overriding in the House what was done in committee;
- the possibility of a **report committee to re-examine a bill** after report stage of up to 80 MPs constituted according to the balance of party representation in England (or England-and-Wales)
- **Opportunity to disapply that procedure** provided that either (a) a motion under the LCM-analogy procedure or (b) a debatable motion disapplying committal to a specialty-constituted public bill committee had been agreed to;
- a specialty-constituted **committee for relevant Lords Amendments**;
- **pre-legislative scrutiny** in appropriate circumstance;
- **the double-count of MPs in divisions**, illustrating the views of England (or England-and-Wales) MPs and UK MPs at second or third readings of bills. This would not amount to a double lock by which legislation could only be passed if there is both a majority of MPs from England and a majority of the House of Commons as a whole in favour.
- A **specific allocation of time to the Government's proposals for England** in the debate on the Queen's Speech each session
- Equivalent procedures for **delegated legislation** which might include a double count for MPs

The Commission also considered establishing a new Commons Devolution Committee:

24. A Devolution Committee of the House of Commons could consider the consequences of UK decisions on cross-border effects and hold UK/English ministers to account. It would also allow scope for an evaluation of LCMs and how they work in practice. The awareness of the implications of devolution in Parliament would be enhanced. The appointment by the House of Commons of a select committee with a broad remit is recommended.

The Commission recommended the Committee be constituted as a select committee and suggested that the chairs of the three territorial committees might be members of the committee *ex officio*, along with the chair of the Political and Constitutional Reform Committee and other MPs drawn from across the UK. Its overall role would be to scrutinise the devolution settlement.

3.1 Next steps and comment

There has been no formal Government response to the McKay Commission to date. In response to a PQ in September 2013, the Government indicated that it would respond in the autumn of 2013.²¹

Commentators have suggested that the report underplays the impact on Westminster as a basis for the formation of the executive:

First, there is the distinction between the twin roles performed by all Westminster-style legislatures: *viz* legislating, on the one hand, and determining the composition of and sustaining the Executive, on the other. Second, there is the distinction between the way in which the Westminster Parliament, on the one hand, and the devolved legislatures, on the other, discharge those roles. The McKay Commission's focus is upon the way in which the Westminster Parliament discharges its first—i.e. legislative—function. But there is insufficient consideration of the second function—i.e. determining the composition of and sustaining the Executive.

The analogy between devolved legislatures and Westminster breaks down because, unlike the former, the latter has to determine the composition of and sustain a Janus-like Executive: one that functions both as the Government of the United Kingdom and as the Government of England. Within this distinction is concealed the West Lothian Question writ large. As conventionally framed, the West Lothian Question is concerned with micro-level (albeit important) questions concerning Parliament's legislative function and its exercise in relation to individual Bills. But a macro-level question also arises. Because the Westminster Parliament must sustain not only the UK Executive but also the *de facto* English Executive, no amount of finessing of the procedure whereby legislation is enacted can get around the possibility that elections to the UK Parliament may yield an Executive that does not accurately reflect the wishes of voters in England (as refracted through Parliament as an electoral college).²²

Professor Iain McLean examined the report in *Political Quarterly*, concluding that the solution eventually favoured by Gladstone, that of reducing the number of seats at Westminster from a devolved area, was the most appropriate solution to the West Lothian Question.²³

²¹ [HC Deb 2 September 2013 c6w](#)

²² [Mark Elliott: Devolution, the West Lothian Question and the nature of constitutional reform in the UK](#) 26 March 2013 Constitutional Law Group

²³ "Report of the Commission on the Consequences of Devolution for the House of Commons (the McKay Commission)" vol 84(3) October 2013 *Political Quarterly*

4 The independence referendum and consequences

The SNP Government in Scotland has passed legislation in agreement with the UK Government enabling it to hold a referendum on Scottish independence in September 2014. Should there be a Yes vote, it is expected that there would be a transitional period during which Scottish MPs would continue to sit at Westminster until the independence negotiations were complete. In its White Paper on independence, the Scottish Government stated that: “with independence, Scotland will no longer send MPs to Westminster. Arrangements for the House of Lords will be for the rest of the UK to decide but the House of Lords will no longer be involved in legislating for Scotland”.²⁴

Since the next general election is due seven and a half months after the independence referendum, it is unlikely that negotiations would be complete by then, and so Scottish MPs would be elected for Westminster seats. Their role would be likely to come under further scrutiny during any such transitional period.²⁵

Another matter to consider would be the implications for the Government which took office in May 2015, if MPs for Scottish constituencies left the Commons halfway during the Parliament.²⁶ A parliamentary boundary review is not now due until 2018.

On 30 January there was a [debate](#) in the House of Lords on the implications for the United Kingdom of the forthcoming Scottish independence referendum. This was introduced by the Conservative peer Lord Lang of Monckton. Lord MacLennan of Rogart raised the question of a response to McKay at col 1367. In conclusion, the Advocate-General for Scotland, Lord Wallace of Tankerness, noted:

The First Minister of Wales raised with the Prime Minister the idea of a constitutional convention. The Prime Minister indicated that there would need to be an open, involved and comprehensive conversation about the kind of union we want to see, and that, 15 years after the process of devolution started, we should consider the best way to go about doing so. However, he went on to say that he believed a better time to do that would be once the referendum debate had come to a conclusion as we must first focus on the case of keeping Scotland in the union.²⁷

The Lords Library produced a [note](#) for the debate, which discusses in more detail the implications for both Houses of Scottish independence, as well as a range of more general issues.²⁸ A series of webpages linking relevant material is available on the UK Parliament website entitled [Scotland, the Referendum and Independence](#).

The Lords Constitution Committee has begun an inquiry into *Scottish independence: constitutional implications for the rest of the UK*. Its [call for evidence](#) included a question on the future of Scots constituencies in the event of a Yes vote in the referendum:

Parliament

7. What would the position of MPs for Scottish constituencies be from May 2015 to March 2016?

²⁴ Scottish Government, [Scotland's Future: Your Guide to an Independent Scotland](#)—Q&A, 26 November 2013.

²⁵ “[Scottish Independence: the timetable](#)” 22 January 2014 Constitution Unit blog

²⁶ “[What will become of the 2015 UK Parliament if Scotland votes Yes on independence?](#)” Professor Ron Johnston on Ballots and Bullets website, University of Nottingham

²⁷ HL Deb 30 January 2014 c1449

²⁸ [Debate on 30 January Scottish Independence Referendum](#) LLN/003

8. What impact would independence have on the House of Commons if the MPs for Scottish constituencies left it in March 2016?
9. What impact would independence have on the membership of the House of Lords?
10. What legislation (or other measures) would the Westminster Parliament have to pass in order for Scotland to become independent²⁹

The Committee intends to report around Easter 2014.

²⁹ <http://www.parliament.uk/documents/lords-committees/constitution/Scottish%20independence/Call-for-evidence-Scottish-Independence-inquiry.pdf>

Executive Summary of McKay Commission Report³⁰

1. The Commission was asked to consider how the House of Commons might deal with legislation which affects only part of the United Kingdom, following the devolution of certain legislative powers to the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales.
2. Commissioners sought views widely. All written evidence and transcripts of oral evidence, taken not only in London but in the capitals of the devolved jurisdictions, was posted on the Commission's website, <http://tmc.independent.gov.uk/>.
3. The powers and institutional form of the devolved institutions in Northern Ireland, Scotland and Wales vary substantially and asymmetrically. Each now has wide-ranging legislative and executive responsibilities across many fields of domestic policy. The "West Lothian Question" raises the situation that then arises when MPs from outside England could help determine laws that apply in England while MPs from England would have no reciprocal influence on laws outside England in policy fields for which the devolved institutions are now responsible.
4. Some see this as an anomaly which is unfair to people in England, requiring remedial action to give MPs in England a fuller or decisive, even unique, role in making laws for England in policy areas which are devolved outside England. Specifically it raises the possibility that a majority opinion among MPs from England on such laws could be outvoted by a UK-wide majority of all UK MPs. But it is extremely rare for this to happen. Since 1919, only in the short-lived parliaments of 1964–66 and February–October 1974 has the party or coalition forming the UK Government not also enjoyed a majority in England.
5. The governing arrangements for England in the post-devolution era are emerging by default, a residual consequence of devolution elsewhere. While the UK Parliament is set to focus increasingly on England, its procedures for making laws for England have changed little post devolution, and do not differentiate between English and UK-wide matters.
6. Survey research on public attitudes in England reveals *differences of interest* that people in England perceive as distinct from the interests of other parts of the UK. Evidence suggests a significant level of grievance among the people of England, sparked by the perception that Scotland enjoys advantages relative to England under current governing arrangements, particularly in the distribution of public spending and economic benefit. There is a clear and enduring sense that England is materially disadvantaged relative to the other parts of the UK, especially Scotland.
7. In addition, there is a consistent message that the people of England do not think it right that MPs from Scotland should be allowed to vote in the House of Commons on laws that affect England only. The current institutional arrangements for making laws for England are seen fairly uniformly across England as wanting, and they need to be modified to establish some form of England-specific legislative process. More than 50% of respondents supported some form of England-specific procedure for making laws for England, and some 60% did not trust any UK Government "very much" or "at all" to pursue the interests of England. The West Lothian Question, then, has a strong negative resonance in the surveys. Although its salience in practice may be much reduced, respondents want a significant response to their concerns – a voice for England.

³⁰ Available at http://webarchive.nationalarchives.gov.uk/20130403030652/http://tmc.independent.gov.uk/wp-content/uploads/2013/03/The-McKay-Commission_Main-Report_25-March-20131.pdf

8. None of the following potential solutions is a sustainable response:

Abolishing devolution is not on the political agenda.

Maintaining the status quo is a long-term risk.

Strengthening local government in England does not tackle the governance of England.

Federalism, both England-wide with an English parliament or with English regions, has compelling objections.

Electoral reform, including proportional representation and reduction in the number of MPs returned for seats outside England, is not realistic and fails to tackle the underlying issue.

Cross-border effects

9. Laws and policies applying to England (or England-and-Wales) can have consequential cross-border legal and policy effects in the devolved nations in a number of distinct ways. Legal cross-border spillovers are managed through legislative consent motions (LCMs), whereby a devolved legislature can assent to the UK Parliament legislating in a devolved area on its behalf. Provision for LCMs is made in the Memorandum of Understanding between the UK Government and the devolved administrations. **This emphasises that the UK Government will proceed in accordance with the convention that the UK Parliament will not normally legislate with regard to devolved matters except with the agreement of the devolved legislatures.**

10. Cross-border effects can occur outside the framework of a Westminster bill. These are largely a consequence of England's weight relative to the rest of the UK. There are a number of examples. Spending decisions taken for England have particular significance for the financial capacities of the devolved administrations through the so-called "Barnett consequentials". These consequential effects are often indirect and time-lagged.

11. There are instances when legislation in a devolved jurisdiction can have cross-border effects elsewhere in the UK. Another cross-border effect is the consequence of EU legislation as it differentially affects England compared with the devolved parts of the UK. The interrelationship of devolved, national and European laws and policies is complex. The lack of an identifiable political voice for English interests, despite the domination of England within the UK policy process, is a consequence of the asymmetric devolution settlements.

A principle to inform a response

12. A principle common to the devolution arrangements for Northern Ireland, Scotland and Wales exists on which to base proposals for modifying the procedures of the House of Commons to mitigate the unfairness felt by people in England. The constitutional principle that should be adopted for England (and for England-and-Wales) is that:

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

This principle should be adopted by a resolution of the House of Commons and the generalised principle endorsed.

13. Adherence to the principle would be facilitated by the declaratory resolution and changes of Standing Orders to implement specific proposals. Principles applying to decision-making in Parliament necessarily apply to decision-taking by Government. **The internal processes of the UK Government for preparing legislation should include separate consideration of the interests of England.**

14. Devolution arrangements all contain legislative provisions which preserve the sovereignty of the UK Parliament. Similarly the principle contains flexibility to cover cases where the situation is not “normal” and where the interests of the whole of the UK need to be given greater weight than the interests of one part of it. **The right of the House of Commons as a whole to make the final decision should remain. But there should be political accountability for any departure from the norm.**

15. MPs from outside England should not be prevented from voting on matters before Parliament. This would create different classes of MP and could provoke deadlock between the UK Government and the majority of MPs in England. The concerns of England should be met without provoking an adverse reaction outside England. MPs from all parts of the UK need to have the opportunity to participate in the adoption of legislation, whatever the limits of its territorial effect. Instead, MPs from England (or England-and-Wales) should have new or additional ways to assert their interests. But MPs from outside England would then continue to vote on all legislation but with prior knowledge of what the view from England is.

Implementing this principle

16. Procedures to give effect to the underlying principle should meet five objectives. They should ensure that:

sufficient information is available to permit clear identification of the English-only dimension;

there is an opportunity, separately, for views from England to be expressed;

such views are heard and considered;

the outcomes of such consideration are apparent; and

consequences should follow through political and democratic accountability for subsequent decisions.

17. Where appropriate, the procedures should apply for England-and-Wales where the test for applying them for England alone is not satisfied but would be satisfied for both.

18. If perceived concerns and political expectations in England are to be met, any new procedures should be simple, comprehensible and accessible. Proposals must be widely regarded as fair, go with the grain of parliamentary procedure and practice, give politics the chance to work, and respect the prerogatives of all MPs.

Proposals which would support the principle by providing England with a voice

19. As well as the resolutions adopting the fundamental principle, this report offers a menu of proposed adaptations to parliamentary procedures to hear the voice from England. Bills should routinely indicate their territorial scope. Much has been done already. Drafting practice might identify (as far primarily separate and distinct to England.

20. In particular, we conclude that:

an equivalent to a legislative consent motion (LCM) in Grand Committee or on the floor before second reading would be a useful procedure;

use of a specially-constituted public bill committee with an English or English-and-Welsh party balance is the minimum needed as an effective means of allowing the voice from England (or England-and-Wales) to be heard; it would retain the opportunity at report stage for amendments to be made to a bill to implement compromises between the committee's amendments and the Government's view, or even – though we would expect rarely – overriding in the House what was done in committee;

that procedure might however be disapplied in a particular case, provided that either **(a) a motion under the LCM-analogy procedure or (b) a debatable motion disapplying committal to a specially-constituted public bill committee had been agreed to;**

the English (or English-and-Welsh) report committee and the appeal after report to a similar report committee are practicable and no less effective than the other options, though they depart further than other suggestions from familiar bill procedures, perhaps rendering them more likely to give rise to controversy;

- a specially-constituted committee for relevant Lords Amendments would be straightforward in operation;
- pre-legislative scrutiny is also likely to be useful, but only when circumstances allow; and
- the double-count is a good indicator of the views of England (or England-and-Wales) MPs and the part of the UK from which an MP is elected should be shown in division lists, but its impact might be easily disregarded.

21. These practical recommendations should be regarded as a menu from which the Government might wish to make a selection for implementation. Thereafter, once the House has considered the Government's procedural recommendations and taken its decision, the favoured options would then be applied under the Standing Orders, according to the circumstances of each bill.

22. We think that some time in the debate on the Queen's Speech each session should be specifically allocated to the Government's proposals for England. Sections on policies for England in the manifestos put forward by the UK parties at a General Election would usefully focus on the distinctively English element of the legislative programme for the ensuing Parliament.

23. Delegated legislation in the form of statutory instruments presents issues similar to, but not identical with, those of bills, and should be covered by any procedural change. This would require separate parallel consideration.

A Devolution Committee

24. A Devolution Committee of the House of Commons could consider the consequences of UK decisions on cross-border effects and hold UK/English ministers to account. It would also allow scope for an evaluation of LCMs and how they work in practice. The awareness of the implications of devolution in Parliament would be enhanced. The appointment by the House of Commons of a select committee with a broad remit is recommended.