

Written evidence submitted by the Mile End Institute, Queen Mary University of London



October 2015

CONSTITUTION COMMITTEE
INQUIRY INTO THE UNION AND DEVOLUTION

About us

1. The Mile End Institute is a major new policy centre based at Queen Mary University of London. Its mission is to enhance public understanding of the challenges facing our systems of politics and governance, and to promote a richer debate about public policy issues and the UK's role within the wider world.
2. Our evidence to your committee focuses entirely on the constitutional implications of recent proposals for 'English Votes for English Laws' (hereafter 'EVEL'). The Institute is currently running a major research project into EVEL, conducted by Professor Michael Kenny (Director of the MEI) and Daniel Gover (a Research Fellow; also a researcher at the UCL Constitution Unit). The project is funded by the Centre on Constitutional Change and by the Economic and Social Research Council. Further information is available through our website: <http://mei.qmul.ac.uk/about/english-laws/index.html>.

English Votes for English Laws (EVEL)

3. The government's proposals for introducing EVEL are, on one level, an internal matter for the House of Commons. Yet they also raise substantial constitutional questions that extend far beyond the lower chamber, including whether it is appropriate for England to now be treated as a distinctive political unit with a right to greater say over its own domestic affairs. Yet, acceptance of this principle raises further constitutional questions. One concerns how the different parts of the UK ought to relate to each other, particularly given the deep inter-relationships between the four territories and the dominant position of England within the Union. Another is whether provision of a distinctive English voice within the Westminster parliament undermines or weakens the latter's capacity to act as a legislature for the whole of the UK. There is also a question to be asked about whether EVEL will in any way change the relationship between the two Houses of Parliament, given that the legislative process in the Lords will remain unchanged. More generally, the current proposals need to be assessed in terms of their capacity to achieve the government's stated goal of securing the Union and placing it on a more equitable and stable footing. Given the innovative character and

potential constitutional ramifications of these reforms, it is important that they are considered in conjunction with debates about the devolution settlement across the UK.

4. EVEL has emerged as a politically salient topic at the present time for a number of overlapping reasons. The devolution of varying powers to Scotland, Wales and Northern Ireland has made more transparent the asymmetrical nature of UK governance. At the heart of this is the so-called West Lothian question, whereby English MPs are no longer able to vote on policy that has been transferred to devolved legislatures, but MPs representing territories with devolved government may continue to vote on comparable English policy decisions. The gradual expansion of devolved powers has exacerbated this asymmetry. Alongside this, there is considerable evidence of a strengthening sense of English national identity, and signs of a growing correlation between this sentiment and dissatisfaction about England's position in the Union, notably over the question of different spending allocations across the UK.¹ Another issue associated with this dissatisfaction is the West Lothian anomaly. Polling in 2012 indicated that the proportion in England who strongly agreed that Scottish MPs should no longer be able to vote on England-only policy stood at 55%, compared to 18% in 2000.² The Scottish independence referendum appears to have made these concerns more salient. The government's contention that the introduction of EVEL is an important and necessary step to assuage a growing sense of English grievance is therefore not without foundation.
5. Nevertheless, the implementation of EVEL in parliament creates a number of constitutional challenges and carries the risk of inflaming territorial tensions. We believe that there are three broad areas that the government should now focus its attention on in order to deal with these risks.
6. First, much will hinge upon how EVEL operates in practice. A large number of different objections have already been registered, including concerns about the implications of these changes for the role of the Speaker, the effect of using Commons standing orders rather than primary legislation, and the potential for the Speaker's decisions to be challenged in the courts. These are all matters that need careful consideration, but they are not themselves insuperable objections, in our view.
7. We believe that particular attention should be paid to the question of 'spillover', whereby decisions taken in one part of the UK may have consequential effects in others. If there is a perception that elected representatives from other parts of the UK are being unfairly prevented from intervening on matters that affect their constituents, this may well inflame territorial tensions. The most commonly cited example of spillover is the Barnett consequentials, which refers to the capacity for decisions that affect spending in England to have consequential implications on the block grant to the devolved administrations via the Barnett formula. Criticisms of the government's proposals on this score often overlook the

¹ Michael Kenny (2014) *The Politics of English Nationhood* (Oxford University Press); Charlie Jeffery et al. (2014) *Taking England Seriously: The New English Politics*, http://www.centreonconstitutionalchange.ac.uk/sites/default/files/news/Taking%20England%20Seriously_The%20New%20English%20Politics.pdf.

² Richard Wyn Jones et al. (2013) *England and Its Two Unions: The Anatomy of a Nation and Its Discontents*, http://www.ippr.org/files/images/media/files/publication/2013/07/england-two-unions_Jul2013_11003.pdf.

fact that these provide for a double veto, so that all legislation will continue to require the support of a majority of MPs from across the UK in order to pass.

8. A more important, but less noticed, spillover issue in the current proposals has been highlighted by former civil servant Jim Gallagher, who notes that there is no mechanism for ensuring that the consequences of tax decisions taken by a subset of MPs do not spill over into spending consequences for UK-wide projects.³ As Gallagher notes, given that income tax must be reapproved by parliament each year in order to remain in force, the provision of a veto to a subset of MPs could potentially enable them to hold the government to ransom. This therefore shifts the balance of power in favour of the subset of MPs, providing far less protection for UK-wide MPs against this form of spillover. In general terms, while there is a strong, principled case for the introduction of EVEL in relation to most primary legislation, the argument for extending it to Finance Bills is much less persuasive.
9. Equally, careful consideration should be given to how such consequential effects should be managed. One response might be for certain types of consequence to be taken into account by the Speaker during the certification process. Here the government's position is somewhat ambiguous: the Conservative party's English manifesto stated that 'the Speaker will have regard to any cross-border effects' (p8), but the proposed standing orders state that the Speaker should disregard 'minor or consequential effects outside the area in question' (83J(2)). As an alternative to loading these issues onto the Speaker, there is, we believe, a strong case for the establishment of a new committee (potentially composed of both MPs and peers) to consider them. The McKay Commission made such a recommendation, advocating the formation of a Devolution Committee in the Commons. Such a committee would serve as a valuable integrative forum in a context where the UK is facing significant centrifugal pressures. And it could well take the heat out of some of the most fraught, territorial conflicts relating to spillover.
10. Second, the implementation of EVEL may have important political effects within parliament, and these need careful consideration. The procedure effectively creates alternative majorities in the House of Commons: for MPs across the UK, as well as for various territorial subsets (most notably those representing English constituencies). This makes it possible that a UK government might in future lack a majority to legislate on matters that solely affect England. In such a scenario, there would be a renewed onus on both government and opposition parties to negotiate and bargain over policy. But there may be exceptional moments when the government needs to override this convention, if, for example, it is unable to secure its budget even after making various offers of compromise. The principle of parliamentary sovereignty, indeed, implies that the UK-wide parliament retains the right to override these new arrangements as it does in relation to devolved governments elsewhere. But, because the current proposals do not specify this option, any future government would face the task of repealing or suspending these standing orders, should such an exceptional situation arise. There is a debate to be had about whether it is preferable to suspend standing orders in this situation or whether the reforms themselves should explicitly recognise that they may be exceptionally overridden. Our own view is that it would be better for the term 'normally' to

³ Jim Gallagher (2015) *The Problem of EVEL: English Votes and the British Constitution*, <http://www.nuffield.ox.ac.uk/News/Documents/The%20Problem%20of%20EVEL-Final-GGCPPwp140715.pdf>.

be introduced in relation to these proposals. More generally, for these proposals to work, and be seen to be legitimate across the House, it is important that the government works to secure as wide a consensus as it can.

11. In order to do so, we would contend that the government ought to have taken up the suggestion of the McKay Commission that a vote on the principles underlying EVEL should have preceded the introduction of specific mechanisms and procedures designed to reflect them. This would have also provided an opportunity to incorporate the term 'normally' into the proposals. The principle suggested by the Commission was 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)'.⁴ In the current situation, the government needs to demonstrate its willingness to work with other parties and heed their concerns as these proposals are introduced and evaluated. It is especially important that the government's review process is as transparent and comprehensive as possible.
12. Third, very little attention has so far been paid to how these reforms will be received outside parliament. As indicated above, there is clear evidence of a growing sense of dissatisfaction about the constitutional *status quo* within England. The implementation of some form of EVEL does present an opportunity to address these sentiments. Yet the government also needs to strike a careful balance. Specifically, it needs to present EVEL as a pro-Union – and not as a narrowly pro-English – measure. This will also require a clear statement of why a fully symmetrical settlement, in which England enjoys exactly the same constitutional mechanisms as other parts of the UK, is inappropriate given England's size and position in parliament.
13. Aside from these immediate concerns, EVEL is also likely to have longer-term constitutional implications, and these are hard to predict in concrete terms. One possible outcome is that they may open up a debate about a more substantive form of EVEL, perhaps involving an English executive within a federal UK structure. Exploring how the current proposals articulate with other planned changes to the constitution and governance of the UK, notably the Scotland Bill and the expansion of the City Deals programme in England, is now imperative, and this suggests an additional reason for establishing a Devolution Committee. There is an intimate relationship between these reforms and other territorial questions, not least the question of the mechanism for allocating spending across the UK and the principles that ought to inform it. The introduction of EVEL is unlikely to quell debate about this and other questions relating to the governance and constitution of the UK.

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⁴ McKay Commission (2013) *Report of the Commission on the Consequences of Devolution for the House of Commons*, pp8-9