



Constitutional Issues and the Case for a UK-wide Constitutional Convention Debate on 13 December 2018

Summary

On 13 December 2018, the House of Lords is scheduled to debate a motion moved by Lord Foulkes of Cumnock (Labour) on the “current constitutional challenges within the United Kingdom and the case for the establishment of a UK-wide constitutional convention to address issues of democratic accountability and devolution, particularly in England”.

There have been significant changes within the UK’s uncodified constitution over the past twenty years. These have included: devolution settlements, the passage of the Human Rights Act 1998; reforms to the House of Lords; the establishment of the Supreme Court; the introduction of fixed-term parliaments; and new ‘English Votes for English Laws’ (EVEL) procedures in the House of Commons. Of these changes, the devolution settlements in Scotland, Wales and Northern Ireland have perhaps had the highest profile.

However, there is general agreement that constitutional changes, including the devolution of powers within the UK, have been enacted on a ‘piecemeal’ basis, rather than as part of a comprehensive or fully coherent plan of constitutional reform. In addition, while devolution has been extended to Scotland, Wales and Northern Ireland, England has continued to be largely administered by the UK Government at Westminster. The implications of this asymmetry have been the subject of ongoing debate, and increasingly so in terms of the so-called ‘English Question’.

Calls for a convention to consider constitutional issues in the round were made following the Scottish independence referendum in 2014 and have continued since the UK-wide referendum to leave the European Union in 2016.

Consideration has also been given to the future of intergovernmental relations within the UK in this context. At the 2017 general election, both Labour and the Liberal Democrats called for such an exercise to take place. However, a constitutional convention could take a number of forms and academic commentators have written about the issues that should be considered to ensure such an endeavour would be effective. This briefing summarises the findings and recommendations of relevant reports that have looked at these issues, before summarising examples of parliamentary committee reports that have examined some prominent constitutional questions. It concludes with a selection of recommended reading on different constitutional challenges, and constitutional conventions, for further information on this complex subject.

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I. Introduction

Unlike many other democratic states, the United Kingdom does not have a codified constitution.¹ As such, and as the cabinet manual observes:

There is no single document that describes, establishes or regulates the structures of the state and the way in which these relate to the people. Instead, the [UK's] constitutional order has evolved over time and continues to do so. It consists of various institutions, statutes, judicial decisions, principles and practices that are commonly understood as 'constitutional'.²

The twenty years since 1998 have seen a number of significant constitutional developments. These include, but are not limited to:

- the devolution of powers to Scotland, Wales and Northern Ireland under Acts passed in 1998, and the passage of subsequent legislation that has added to the devolution settlements;
- the entrenchment of rights set out in the European Convention on Human Rights into domestic law under the Human Rights Act 1998;
- the removal of most hereditary peers from membership of the House of Lords under the House of Lords Act 1999 and further incremental reforms to the second chamber under subsequent legislation passed in more recent years;
- the establishment of the Greater London Authority between 1998–2000;
- a right of public access to information held by public authorities under the Freedom of Information Act 2000;
- the establishment of the Supreme Court and the transfer of the appellate jurisdiction of the House of Lords to that body in 2009;
- the introduction of fixed-term parliaments under legislation passed in 2011;
- the introduction of 'English Votes for English Laws' (EVEL) procedures in the House of Commons in 2015; and
- the use of referendums to inform or settle issues such as reform of the system used for elections to the UK Parliament (2011), Scottish independence (2014) and the UK's membership of the European Union (2016).³

¹ House of Commons Political and Constitutional Reform Committee, [A New Magna Carta?](#), 10 July 2014, HC 463 of session 2014–15, p 5. According to this source, only Israel and New Zealand among other democracies do not have codified constitutions.

² Cabinet Office, [Cabinet Manual: A Guide to Laws, Conventions and Rules on the Operation of Government](#), October 2011, p 2.

³ House of Commons Political and Constitutional Reform Committee, [A New Magna Carta?](#), 10 July 2014, HC 463 of session 2014–15, p 5. See the following briefing for information on

However, some observers, including parliamentary committees considering the UK's constitutional arrangements and academic experts on constitutional affairs, have noted that such changes—particularly in respect of devolution—have been undertaken on a “piecemeal” basis, rather than as part of a comprehensive or fully coherent plan of constitutional reform.⁴ As a result, the implications of these developments, including for the stability of the UK as a political entity, have been the subject of ongoing debate.

In recent years, such discussion has been increasingly visible in relation to the question of devolution and issues stemming from this area—in particular the so-called ‘English Question’ and intergovernmental relations within the UK.⁵ Parliamentary committee reports on these issues are therefore summarised in section 4. However, the wide-ranging nature of both noted and potential constitutional issues within the UK mean that a comprehensive exposition of all current questions is not possible within this briefing. For this reason, a selection of further reading is provided in the final section for information on issues that have been the subject of debate but are not covered below. Amongst others, these include:

- the future of the House of Lords;
- the redrawing of UK parliamentary constituency boundaries;
- variation in the franchise used in different elections within the UK; and
- the use of referendums to inform or settle constitutional questions.

2. Political Positions on a UK-wide Constitutional Convention

As a means of understanding and considering solutions to these constitutional challenges, several political parties have expressed support for a constitutional convention to examine one or more constitutional issues. Ahead of the 2015 general election, the Labour Party, Liberal Democrats, the UK Independence Party, Plaid Cymru and the Green Party of England and Wales expressed support for a constitutional convention. Meanwhile,

EVEL procedures: House of Commons Library, [English Votes for English Laws](#), 20 June 2017. See also: UK Parliament, [‘English Votes for English Laws: House of Commons Bill Procedure’](#), accessed 3 December 2018; and House of Commons Library, [Greater London Authority](#), 7 June 2018.

⁴ House of Commons Political and Constitutional Reform Committee, [A New Magna Carta?](#), 10 July 2014, HC 463 of session 2014–15, p 6; and House of Lords Constitution Committee, [The Union and Devolution](#), 25 May 2016, HL Paper 149 of session 2015–16, p 3. See also Gresham College, [‘Vernon Bogdanor: The New British Constitution’](#), 16 June 2009; and Peter Riddell, [‘Decentralisation and Devolution Must be Dealt with More Coherently’](#), Institute for Government, 30 April 2015.

⁵ For example: House of Lords Constitution Committee, [The Union and Devolution](#), 25 May 2016, HL Paper 149 of session 2015–16, pp 89–107; and House of Lords Constitution Committee, [Inter-governmental Relations in the United Kingdom](#), 27 March 2015, HL Paper 146 of session 2014–15. See also Akash Paun et al, [‘Understanding English Identity and Institutions in a Changing United Kingdom’](#), UCL Constitution Unit, 29 November 2018.

the Conservative Party position was that while it was open to ideas on holding a constitutional convention, other issues had a higher priority at that time.⁶ Subsequent manifesto commitments on this issue are set out below.

Conservative Party

The Conservative Party manifesto published ahead of the 2017 general election did not specifically mention the option of holding a constitutional convention to examine constitutional issues, but did include passages relating to its ambitions for the governance of the UK:

The United Kingdom Government has in the past tended to ‘devolve and forget’. This Conservative government will put that right. We want the UK Government to be a force for good across the whole country.

So we will be an active government, in every part of the UK. We will work closely with the Northern Ireland Executive, the Scottish and Welsh Governments, and the new devolved authorities in England, for the benefit of all our people—but that will not be the limit of our actions in the four nations. We are ambitious for everyone in Britain and will leave no-one behind in our efforts to spread opportunity and prosperity throughout the United Kingdom.⁷

In respect of England in particular, the manifesto stated:

This Conservative Government has devolved more power to English local authorities, closer to local people, than any previous government in over a century: across England, newly elected mayors, combined authorities, local councils and local enterprise partnerships are being empowered to improve local growth and public services. We will continue to give local government greater control over the money they raise and address concerns about the fairness of current funding distributions.

With devolution now established in London and other parts of England, we will consolidate our approach, providing clarity across England on what devolution means for different administrations so all authorities operate in a common framework. We will support those authorities that wish to combine to serve their communities better. For combined authorities that are based around our great cities, we will continue to support the adoption of elected mayors, but we will not support them for the rural counties.⁸

⁶ House of Lords Library, [Constitutional Conventions: Possible Options in the New Parliament](#), 20 March 2015, pp 19–26.

⁷ Conservative Party, [Conservative Party Manifesto 2017](#), May 2017, pp 31–2.

⁸ *ibid*, p 32.

Labour Party

The Labour Party manifesto published ahead of the 2017 general election explicitly committed the party to establishing a constitutional convention:

A Labour Government will establish a constitutional convention to examine and advise on reforming of the way Britain works at a fundamental level. We will consult on its form and terms of reference and invite recommendations on extending democracy.

This is about where power and sovereignty lies—in politics, the economy, the justice system, and in our communities.

The convention will look at extending democracy locally, regionally and nationally, considering the option of a more federalised country.⁹

In respect of England in particular, Labour’s manifesto committed the party to introducing a Minister for England, to sit within the Ministry of Housing, Communities and Local Government and who would “work with the Secretaries of State for Scotland, Wales and Northern Ireland”. The manifesto also stated that Labour would be “guided by public opinion when determining whether to include directly elected mayors in future devolution deals”.¹⁰

Liberal Democrats

The Liberal Democrats’ manifesto published ahead of the 2017 general election stated that it supported holding a mixed model constitutional convention:

We will deliver home rule to each of the nations of a strong, federal and united United Kingdom.

Change has been taking place rapidly. We now need to make sure all the new arrangements work together coherently and we will therefore establish a UK constitutional convention, made up of representatives of the political parties, academia, civic society and members of the public, tasked with producing a full, codified constitution for the UK, to report within two years.¹¹

In respect of England in particular, the manifesto stated that a constitutional convention would be charged with considering the issue of the UK

⁹ Labour Party, [Labour Party Manifesto 2017](#), May 2017, p 102.

¹⁰ *ibid*, p 103.

¹¹ Liberal Democrats, [Liberal Democrat Manifesto 2017](#), May 2017, p 91.

Parliament potentially legislating on measures affecting only England that did not have the support of a majority of English MPs, in addition to setting out other policies relating to England and devolution:

Devolution of power to Scotland, Wales and Northern Ireland has implications for the UK Parliament and its dual role in legislating for England as well as the federal UK. It is possible that a future UK government could use the support of MPs representing Scotland, Wales or Northern Ireland to secure the passage of legislation that only affects England, even if the majority in England were opposed. This would be a key issue for our proposed constitutional convention to address.

Liberal Democrats support an English-only stage in legislation affecting England, so English MPs can have a separate say on laws that only affect England. However, this should be on a proportional basis, genuinely reflecting the balance of opinion in England.

In some areas of England there is a greater appetite for powers, but not every part of the country wants to move at the same speed and there cannot be a one-size-fits-all approach. All areas should however have access to the same opportunities and mayoral authorities should not be ranked higher in terms of the powers with which they can be granted. We will therefore introduce ‘devolution on demand’, enabling even greater devolution of powers from Westminster to councils or groups of councils working together—for example to a Cornish Assembly or a Yorkshire Parliament.¹²

Scottish National Party

The 2017 SNP manifesto did not comment on the option of holding a UK-wide constitutional convention. It did set out though the party’s position on holding a future referendum on Scottish independence in the context of the UK’s withdrawal from the EU and the Scottish Parliament’s support for its ‘right to decide’ whether a second referendum should take place:

This election won’t decide whether or not Scotland will be independent. But a vote for the SNP is a vote to reinforce the Scottish Parliament’s right to decide when an independence referendum should happen.

At the end of the Brexit process, when the final terms of the deal are known, it is right that Scotland should have a real choice about our future.

¹² Liberal Democrats, [Liberal Democrat Manifesto 2017](#), May 2017, pp 93–4.

Brexit must not simply be imposed on Scotland no matter how damaging it turns out to be.

Last year's Holyrood election delivered the democratic mandate for an independence referendum in these circumstances. The recent vote of Scotland's national Parliament has underlined that mandate. If the SNP wins a majority of Scottish seats in this election, that would complete a triple lock, further reinforcing the democratic mandate which already exists. And, in such circumstances, any continued Tory attempts to block the people of Scotland having a choice on their future, when the options are clear, and on a timescale determined by the Scottish Parliament, would be democratically unsustainable.¹³

The manifesto also expressed support for replacement of the first-past-the-post system used for UK parliamentary elections with proportional representation, and for changes to allow 16- and 17-year olds and EU citizens resident in the UK to vote in these same elections.¹⁴

3. Holding a Constitutional Convention

As noted above, the case for a UK constitutional convention to settle one or more constitutional issues has been advocated by political parties in recent years.¹⁵ At the same time, consideration as to the form such a convention could take and what issues would need to be addressed for such an endeavour to be effective has been undertaken by a number of bodies including parliamentary committees and academic institutes.

In 2014, following the Scottish referendum on independence, Professor Robert Hazell of the Constitution Unit at University College London wrote that a constitutional convention may be established for one or more reasons:

- to build cross party consensus for further constitutional reforms;
- to harness expert opinion to chart a way forward;
- to develop a more coherent overall reform package, rather than

¹³ Scottish National Party, [SNP Manifesto 2017](#), May 2017, p 29. See also BBC News, ['Scottish Parliament Backs Referendum Call'](#), 28 March 2017.

¹⁴ *ibid*, p 41.

¹⁵ Alan Renwick and Robert Hazell, ['Blueprint for a Constitutional Convention'](#), UCL Constitution Unit, 5 June 2017. For the avoidance of doubt, 'constitutional convention' in this section is taken to mean a representative body collected together to discuss constitutional change, and not an uncodified procedural agreement followed by institutions of the state. In addition, there has been a debate over this term. For example, Lord Norton of Louth (Conservative), Professor of Government at the University of Hull, has argued that the term 'constitutional convention' is "often taken to denote a body created to draw up a new constitution", and that 'constitutional convocation' may be a more appropriate name for a body charged with "stand[ing] back and mak[ing] sense of where we are" ([HL Hansard, 1 June 2015, col 233](#)).

- further piecemeal reforms;
- to bring in ideas from outside the political elite;
 - to create greater legitimacy and support for the convention's proposals; and/or
 - to generate wider participation through innovative methods of public engagement.¹⁶

Professor Hazell went on to highlight that consideration of constitutional issues could take a number of forms, including through cross-party talks or by panels of experts.¹⁷ However, he argued that the 'Scottish experience' had "created an expectation that for proposals to command legitimacy, there must be greater citizen involvement in producing them". He added that there was no single model that a constitutional convention should follow.¹⁸

3.1 Basic Structures

In a pamphlet published the same year, Dr Alan Renwick, Deputy Director of the Constitution Unit, summarised the basic structures that a constitutional convention could adopt and gave examples of instances in which the noted forms had been used. These are set out below.

Expert Commissions

These comprise individuals selected, at least in part, for their expertise in a subject area or for their capacity to develop expertise in a subject area. Examples include the Kilbrandon, Richard, Calman and Silk Commissions on devolution proposals; the Jenkins Commission on electoral reform; the Wakeham Commission on the future of the House of Lords; the Commission on a Bill of Rights; and the McKay Commission on the consequences of devolution for the House of Commons.¹⁹

Negotiation Among Leaders

This form covers decision making based on bargaining between negotiating teams from various political parties, provinces or other groupings. Examples include the roundtable negotiations in Poland and Hungary following the collapse of communism in those countries; negotiations on the future of

¹⁶ Robert Hazell, '[You Want a Constitutional Convention? This is What You Need to Think Through First](#)', UCL Constitution Unit, 8 October 2014.

¹⁷ *ibid.*

¹⁸ *ibid.*

¹⁹ Alan Renwick, [After the Referendum: Options for a Constitutional Convention](#), 2014, p 21; and House of Lords Library, [Constitutional Conventions: Possible Options in the New Parliament](#), 20 March 2015, pp 5–7.

Quebec held between Canadian politicians in the 1980s and early 1990s; and the negotiations that led to the Belfast Agreement in 1998.²⁰

Indirectly Elected Assemblies

This typology can include those bodies charged with constitutional review or reform in which the members are either appointed or elected by state or provincial legislatures.²¹ The emphasis may be more upon deliberation than negotiation, with examples including the Philadelphia Convention of 1787; the German Parliamentary Council established in 1948; and the Convention on the Future of Europe.²²

Civil Society Conventions

According to Dr Renwick, in this model of convention citizens can be represented by “groups from civil society as well as by politicians in order to seek consensus across politically active society”. An example is the Scottish Constitutional Convention of 1989–95, which included “representatives of the churches, trade unions, business, local authorities, and ethnic minorities, as well as those political parties that agreed to take part”.²³

Directly Elected Constituent Assemblies

This model of convention refers to bodies to which delegates are elected by the population at large and which have the primary purpose of drafting a new constitution.²⁴ Examples include that which operated in India in 1947, or those forming part of democratic transitions in Spain in 1977–8, Bulgaria in 1990–1 and that attempted in Tunisia since 2011. Another recent example includes the Constitutional Council elected in Iceland in 2010.²⁵

Citizens’ Assemblies

This type, characterised by Dr Renwick as a “major innovation in constitution-making processes in recent years”, consists of assemblies comprising “ordinary citizens selected at random from among those who

²⁰ Alan Renwick, [After the Referendum: Options for a Constitutional Convention](#), 2014, pp 21–3; and House of Lords Library, [Constitutional Conventions: Possible Options in the New Parliament](#), 20 March 2015, pp 7–9.

²¹ Patrick Farard and Darrel Reid, [Constituent Assemblies: A Comparative Study](#), 1991, p 5.

²² Alan Renwick, [After the Referendum: Options for a Constitutional Convention](#), 2014, p 23; and House of Lords Library, [Constitutional Conventions: Possible Options in the New Parliament](#), 20 March 2015, p 9.

²³ *ibid*; and *ibid*, p 10.

²⁴ Patrick Farard and Darrel Reid, [Constituent Assemblies: A Comparative Study](#), 1991, p 5.

²⁵ Alan Renwick, [After the Referendum: Options for a Constitutional Convention](#), 2014, p 24. See also House of Lords Library, [Constitutional Conventions: Possible Options in the New Parliament](#), 20 March 2015, pp 11–12.

responded positively to an invitation to take part”.²⁶ Examples include the assemblies held in the Canadian provinces of British Columbia and Ontario between 2005 and 2007 and the assembly held in the Netherlands in 2006. In addition, the constitutional convention held in Ireland between 2013 and 2014 was based in part on this model. The citizens’ assembly held in Ireland between 2016 and 2018 used this model.²⁷

Mixed Assemblies

This last form consists of mixes of the various ‘pure’ models outlined above. The Irish Constitutional Convention (2013–14), is one example, having included both randomly selected citizens and politicians. Another is the Australian Constitutional Convention of 1998 which was half directly elected and half appointed.²⁸

3.2 Issues to be Considered

In a more recent report, Professor Hazell and Dr Renwick, drawing on the experiences of constitutional conventions held in various jurisdictions, observed factors they contended should be considered as part of preparations for a constitutional convention.²⁹

In a blog post accompanying the report, they argued:

Most supporters of a constitutional convention argue that it should not be a commission of the ‘great and the good’ and nor should it be composed solely of politicians. Such approaches may have been viable in the past, but expectations for democracy have moved on and more direct forms of citizen engagement are now widely advocated. Where fundamental questions about the country’s future form and direction are at stake, the voices of members of the public should be clearly heard. This attracts many to the citizens’ assembly model of a constitutional convention.³⁰

The authors added that there was “clear evidence that such assemblies work well: the quality of members’ engagement is very high and they can develop

²⁶ Alan Renwick, [After the Referendum: Options for a Constitutional Convention](#), 2014, pp 24–5. See also House of Lords Library, [Constitutional Conventions: Possible Options in the New Parliament](#), 20 March 2015, p 12.

²⁷ Citizens’ Assembly, ‘[About the Citizens’ Assembly](#)’, accessed 4 December 2018.

²⁸ Alan Renwick, [After the Referendum: Options for a Constitutional Convention](#), 2014, p 25. See also House of Lords Library, [Constitutional Conventions: Possible Options in the New Parliament](#), 20 March 2015, p 13.

²⁹ Alan Renwick and Robert Hazell, [Blueprint for a UK Constitutional Convention](#), UCL Constitution Unit, June 2017.

³⁰ Alan Renwick and Robert Hazell, ‘[Blueprint for a Constitutional Convention](#)’, UCL Constitution Unit, 5 June 2017.

conclusions that are reasoned and coherent”. However, they added that “genuine, well-grounded deliberation does not take place spontaneously”.³¹ For that reason, Professor Hazell and Dr Renwick identified twelve design features that, they contended, should be explored as part of plans to hold a convention on a citizen assembly model. These were summarised as follows:

Purposes of the Convention: a constitutional convention can be proposed for multiple reasons, but it will work best if its purpose is simply to develop well-grounded proposals. The success or otherwise of such a convention can be gauged in terms of four criteria: how far it represents the wider population; how far it deliberates effectively—in a manner that is reasoned and reflects the interests and values of all parts of society; how far it influences wider public discourse positively; and whether its proposals are implemented.

Scope and Terms of Reference: while some activists would like to see an overarching constitutional review, there is good reason to think this would be too complex and controversial to yield useful results. Limiting the convention to one aspect of the constitution is likely to be better. The breadth of this aspect of the constitution should be determined in light of the time and resources that are available: the tighter the resources, the narrower should be the focus.

Membership: a citizens’ constitutional convention should ideally consist of ordinary members of the public only, who should be chosen through stratified random sampling from the population as a whole. The only reason to include politicians or representatives of organised civil society as some have proposed would be to encourage them to take the convention process seriously—but there may be better ways of achieving this. A unitary convention would best have around 100–150 members; a federal body would, in total, need more.

Selecting Citizens: for an official convention, selection should take place from adult citizens on the electoral register and the selection process should include local meetings where potential members can learn about the convention’s design. For an unofficial convention, cheaper methods, including sampling from an existing online panel can be considered. Stratified random sampling is needed to provide broad representativeness of the wider population.

Structure: a federal structure is complex, so should be avoided on topics that do not need it. But it is likely to be necessary if the agenda relates to devolution. If a federal structure is chosen, careful

³¹ Alan Renwick and Robert Hazell, ‘[Blueprint for a Constitutional Convention](#)’, UCL Constitution Unit, 5 June 2017.

consideration should be given to its implications for the size of the convention, the character of its deliberations, and the timetabling of its work.

Operating Methods: the convention's work should be divided into three phases: learning, consultation, and deliberation and decision. The learning phase should be supported by a learning programme that is carefully worked out to maximise accuracy, breadth, impartiality, clarity, and accessibility. Consultations should be as wide and open as possible. Deliberation should characterise all of the convention's work and should be carefully structured and supported by trained facilitators.

Duration and Schedule: the convention should have a minimum of two weekends to consider each topic on its agenda. But we strongly recommend that more time than that is better—and essential for any convention with official status. Convention meetings should generally be spaced two to four weeks apart. They should run from Friday evening to Sunday lunchtime. The time should be carefully structured, though organisers should also be flexible to developments in the course of the convention's proceedings.

Support for Members: members should be treated well. They should be given good accommodation, food, and refreshments, their expenses should be paid fully and quickly, and they should receive a small honorarium if perhaps £150 per meeting day. Individual members' special needs should be catered for so far as possible, including support for those with caring responsibilities. Steps should be taken to minimise any harassment of members via traditional or social media.

External Engagement: a citizens' convention needs to reach out from the start to engage with politicians, the media, and the public, to explain its role and to interest people in its work and recommendations. This might include briefings with relevant select committees, interim reports, extensive media engagement, and the maintenance of a good website.

Staffing: an official constitutional convention requires a full-time staff of around a dozen, plus key figures such as the Chair, Academic Director, and Chief Facilitator. An unofficial convention could get by with more limited support. Roles, relating, for example, to recruitment and the testing of learning materials in focus groups can be contracted out.

Budget: a citizens' constitutional convention would not be cheap. An official, UK-wide, unitary convention would likely cost somewhere in the region of £5 million. A federal body would be more expensive. An

unofficial convention could be run on a tighter budget—but it would be unlikely to work well with a budget less than around £1 million. While these sums may seem high, they would represent money well spent if, as is likely, they helped to strengthen our constitutional and broader democratic system.

Role in Decision-making: a government setting up a constitutional convention needs to think ahead to what it will do when the convention reports. It may commit to giving a public response to each recommendation from the convention within a certain time. It may commit to holding a parliamentary debate, or referring certain recommendations to a parliamentary committee. If the proposals need to be put to referendum, the Government needs to think ahead about how that will be done. The Government could allow the convention to remain in being after it has reported so that its members can be advocates for its proposals.³²

4. Parliamentary Committees: Consideration of Selected Constitutional Issues

The following sections (4.1–2) summarise two devolution-related issues that have been subject to consideration in recent years by committees in both Houses. Information about other constitutional issues can be found in section 5, which provides sources of further reading.

4.1 Devolution and the ‘English Question’

The devolution of powers from Westminster to Scotland, Wales and Northern Ireland has proceeded at varying speeds over the past twenty years.³³ In summary, the current position is now as follows:

- **Scotland** has a devolved Parliament, which operates under the ‘reserved powers’ model. This means that policy areas not specifically identified as being reserved to the UK Parliament are within the legislative competence of the Parliament in Edinburgh.³⁴
- **Wales** has a devolved Assembly. This formerly operated under the ‘conferred powers’ model in which devolved matters were

³² Alan Renwick and Robert Hazell, ‘[Blueprint for a Constitutional Convention](#)’, UCL Constitution Unit, 5 June 2017.

³³ The following briefings provide background information on devolution in Scotland, Wales and Northern Ireland: House of Commons Library, ‘[“The Settled Will”? Devolution in Scotland, 1998–2018](#)’, 16 November 2018; ‘[“A Process, Not an Event”: Devolution in Wales, 1998–2018](#)’, 11 July 2018; and ‘[Devolution in Northern Ireland, 1998–2018](#)’, 16 November 2018.

³⁴ Scottish Parliament, ‘[What are the Powers of the Scottish Parliament?](#)’, accessed 5 December 2018. See also House of Commons Library, ‘[“The Settled Will”? Devolution in Scotland, 1998–2018](#)’, 16 November 2018.

specified in statute. However, on 1 April 2018, the ‘reserved powers’ model came into force.³⁵

- **Northern Ireland** has a devolved Assembly with legislative control over certain matters (known as ‘transferred matters’), predominantly in the economic and social field. The Assembly may legislate on ‘reserved’ category matters, with certain consents.³⁶

While devolved bodies in Edinburgh, Cardiff and Belfast have taken on responsibility for certain devolved issues since 1998, England has largely continued to be administered by the UK Parliament in Westminster. Changes to address this issue in recent years include the introduction of ‘devolution deals’ agreed between the Government and some local areas since 2014, and the introduction of EVEL procedures in the House of Commons in 2015.³⁷ However, over the same period the broader issue of continued centralised political control in England has given rise to increasing levels of attention being directed toward the future of English representation and the issue of how England is governed.³⁸

In 2016, the House of Lords Constitution Committee published a report on devolution within the UK which considered these issues.³⁹ Overall, the report concluded that the union was “under threat”, in large part because “proper consideration of the cumulative impact of devolution on the integrity of the union itself has been lacking”.⁴⁰ In respect of the position of England in the context of devolution, the committee noted the following:

The ‘English Question’ encompasses both concerns about the representation of England within the union, and about the devolution or decentralisation of power within England. As a result of the devolution granted to other parts of the UK, the governance of England is now a key concern for those considering the territorial constitution. It is the largest, most powerful nation in the UK yet the only one without separate recognition and political representation within the union. Meanwhile, within England power is centralised. As a

³⁵ Office of the Secretary of State for Wales, ‘[New Powers Model for Wales Comes into Force on 1 April 2018](#)’, 30 November 2017. See also House of Commons Library, ‘[“A Process, Not an Event”: Devolution in Wales, 1998–2018](#)’, 11 July 2018.

³⁶ Cabinet Office and Northern Ireland Office, ‘[Devolution Settlement: Northern Ireland](#)’, 20 February 2013. See also House of Commons Library, ‘[Devolution in Northern Ireland, 1998–2018](#)’, 16 November 2018.

³⁷ House of Commons Library, ‘[Devolution to Local Government in England](#)’, 9 May 2018.

³⁸ For example: Institute for Government, ‘[English Devolution](#)’, accessed 5 December 2018.

³⁹ House of Lords Constitution Committee, ‘[The Union and Devolution](#)’, 25 May 2016, HL Paper 149 of session 2015–16.

⁴⁰ *ibid*, p 3.

result, there is dissatisfaction within England with the current territorial constitution.⁴¹

The committee considered options to resolve this apparent dissatisfaction. It dismissed the idea of the creation of an English Parliament, separate from the UK Parliament, as this would “introduce a destabilising asymmetry of power to the union”.⁴² It also observed that the idea of establishing elected assemblies in the English regions “was not currently being considered” and was “unlikely to gain any traction in the near future”.⁴³

Instead, the committee noted that the House of Commons had “adopted procedures for ‘English Votes for English Laws’ (EVEL) which aim to give English MPs a distinct voice in Parliament”.⁴⁴ However, the report recorded that these procedures were “viewed unfavourably by some, including, but not exclusively, those representing the devolved nations whose devolution settlements already provide them with a distinct political voice”. At the same time, the committee “cautiously welcomed” the devolution deals agreed between the Government and certain local authorities in England, noting that they “may address some of the concerns about the centralisation of power within England”.⁴⁵ However, the committee expressed concern at the apparent “lack of consideration given to how they may affect the overall governance of England in the longer term, and the wider territorial constitution of the UK”. The report added:

It is unclear whether the UK Government has a clear set of objectives in mind to guide the development of the ‘devolution deals’. Clarity on these matters would not only help guide local government when they seek to reach agreement with the UK Government, but would also give Parliament a yardstick against which to measure the success of the UK Government’s devolution agenda in the future. As with any development of devolution across the UK more generally, the UK Government should set out a vision of what it seeks to achieve with these reforms and where it envisages the process of ‘devolution deals’ will eventually lead.⁴⁶

The committee recommended that the Government commission a “thorough evaluation of the impact on the union and its constituent nations of the cumulative effect of the devolution settlements and its plans for decentralisation within England”.⁴⁷ In respect of developments affecting

⁴¹ House of Lords Constitution Committee, [The Union and Devolution](#), 25 May 2016, HL Paper 149 of session 2015–16, p 5.

⁴² *ibid.*

⁴³ *ibid.*

⁴⁴ *ibid.*

⁴⁵ *ibid.*

⁴⁶ *ibid.*, p 101.

⁴⁷ *ibid.*, p 30.

England, the committee stated that it would undertake a review of the impact of EVEL procedures and their constitutional implications, with any findings feeding into the Government's own expected review of EVEL procedures.⁴⁸ It also called for public concerns about the governance of England to be addressed by "far greater public engagement" and "real discussions", both in general across England and in those areas seeking or agreeing greater powers, about what devolved or decentralised powers should be and "by whom they should be exercised".⁴⁹

In respect of the 'English Question', the committee concluded:

It is too soon to know whether EVEL and the 'devolution deals' will provide an answer to the English Question. What is clear is that the English Question remains one of the unresolved issues facing decision-makers grappling with the UK's territorial constitution.⁵⁰

In its response to the committee's report, the Government stated that it did not believe there was a need to conduct an evaluation.⁵¹ Rather, it contended that its "bottom-up approach" to devolution had seen "rapid and tangible progress in devolving powers and establishing stronger local governance mechanisms across functional economic areas".⁵² It also stated that devolution deals were "not envisaged as one-offs, but the start of an ongoing conversation between places and [central] government" as to any further powers needed in particular areas.⁵³ The Government added that it had introduced EVEL procedures to offer "fairness to England" within the UK's current constitutional framework. It also argued that public engagement in the devolution agenda was "critical" but that local representatives shared responsibility in this area, stating that elected representatives should "seek the views of their constituents through appropriate means" as part of the public engagement process.⁵⁴

In the debate on the committee's report, held in the House of Lords in October 2017, Lord Duncan of Springbank, speaking on behalf of the

⁴⁸ House of Lords Constitution Committee, [The Union and Devolution](#), 25 May 2016, HL Paper 149 of session 2015–16, p 93. The Government's review concluded that EVEL procedures were "working well" (House of Lords Constitution Committee, [English Votes for English Laws](#), 2 November 2016, HL Paper 61 of session 2016–17; and [Government Response](#), March 2017, Cm 9430, p 11).

⁴⁹ House of Lords Constitution Committee, [The Union and Devolution](#), 25 May 2016, HL Paper 149 of session 2015–16, p 105.

⁵⁰ *ibid*, pp 5–6.

⁵¹ Cabinet Office, [The Union and Devolution: Government Response](#), 7 March 2017, p 2.

⁵² *ibid*, p 14.

⁵³ *ibid*.

⁵⁴ *ibid*, pp 1 and 14.

Government, commented on the gradual nature of constitutional change in recent years:

A number of noble Lords pointed out the challenge of the piecemeal approach we have adopted to our constitutional evolution, and indeed some of those changes have not always been in the best interests of the entire union. Some have been made in haste and some, I suspect, we regret and would revisit were we to have an opportunity to do so. The challenge with devolution as we understand it is that it is a ratchet that moves in only one direction. The problem is that if we do not get it right the first time, it unfortunately moves on too fast to change it around.⁵⁵

He added that the Government’s approach to devolution, in the context of the UK’s decision to leave the European Union, was to “ensure that both the Brexit process and the devolution process work together”.⁵⁶ He commented on the ‘English Question’ as follows:

England can often be overlooked and it is one of the great challenges that we sit in what many people consider to be one of the Chambers of the English Parliament—and yet, the very nation of England itself can often be overlooked in the wider sense of the word. That is a great pity, and we need to recognise that as each of the other home nations pushes for particular changes to the wider constitutional settlement.⁵⁷

In July 2018, the House of Commons Public Administration and Constitutional Affairs Committee published a report which examined devolution in the context of the UK’s withdrawal from the EU, including in relation to the ‘English Question’. The report made several recommendations in respect of English representation, and reiterated a number of points made earlier by the House of Lords Constitution Committee:

Any discussion of devolution would be incomplete without serious consideration of the position of England within the constitutional architecture of the UK. We received evidence pointing to a significant asymmetry between the representation of the people of England within the union when compared with the people of Scotland, Wales and Northern Ireland. We recommend that the Government sets out, as part of [a recommended] statement of “Devolution Policy for the Union”, how the different parts of England are to be fairly and effectively represented. The current programme of English devolution

⁵⁵ [HL Hansard, 9 October 2017, col 93.](#)

⁵⁶ *ibid.*

⁵⁷ *ibid*, col 95.

to combined authorities and mayors should be expanded and greater powers devolved. In addition, plans should be drawn up for how devolution to more rural areas can effectively be pursued. The metropolitan mayors in England told us that they were struggling with a piecemeal delegation of powers and functions from central government. We recommend that whole areas of competence be properly devolved to the English mayors so that their work in their local areas can be more effective.⁵⁸

In its response, the Government stated that in recent years it had “devolved further powers to regions across England, with 36 percent of people now living in an area with a directly elected city-region mayor with new powers to stimulate job creation, improve skills, build homes and make it easier to travel”.⁵⁹ The Government added that it would “continue to shape the development of the devolution framework for England so that English communities can manage local services and priorities like never before”.

4.2 Intergovernmental Relations

Another issue connected with devolution that has arisen over the past twenty years has been that of intergovernmental relations within the UK. The House of Lords Constitution Committee has described these intergovernmental relationships as “integral to how the United Kingdom functions”.⁶⁰

Discussion and decision-making that had previously taken place within a single UK Government became, with the setting up of executive bodies in Scotland, Wales and Northern Ireland, a new set of relationships between ministers in devolved governments and their counterparts in the central UK Government. Since the advent of devolution in 1998, intergovernmental relations within the UK can be divided into three broad phases:

- an initial period of stability (1999–2007) widely attributed to the dominant position of the Labour Party in Scotland, Wales and England;
- a more uncertain period (2007–2016) in which several different parties led the UK’s four governments; and

⁵⁸ House of Commons Public Administration and Constitutional Affairs Committee, [Devolution and Exiting the EU: Reconciling Differences and Building Strong Relationships](#), 31 July 2018, HC 1485 of session 2017–19, p 4.

⁵⁹ House of Commons Public Administration and Constitutional Affairs Committee, [Government Response to the Committee’s Eighth Report: Devolution and Exiting the EU—Reconciling Differences and Building Strong Relationships](#), 18 September 2018, HC 1574 of session 2017–19, p 2.

⁶⁰ House of Lords Constitution Committee, [Inter-governmental Relations in the United Kingdom](#), 27 March 2015, HL Paper 146 of session 2014–15, p 5.

- the present phase (post-2016) as the UK withdraws from the European Union (and in which several different parties continue to lead executives in different parts of the UK).⁶¹

The UK's decision to leave the European Union has led to an ongoing political and legal debate as to which powers that currently reside at EU level should be repatriated to either Westminster or the devolved institutions after the UK ceases to be an EU member state. It has also raised related issues concerning how the UK Government takes account of the views of devolved administrations in its formulation of a post-Brexit trade policy and in other policy areas with an external dimension.⁶² This debate has been taking place in a context that the House of Commons Public Administration and Constitutional Affairs Committee has characterised as a “growing consensus that the current UK intergovernmental relations mechanisms are not fit for purpose”.⁶³ In a report published in July 2018, the committee recommended that the Government “take the opportunity provided by Brexit to seek to develop, in conjunction with the devolved administrations, a new system of intergovernmental machinery and ensure it is given a statutory footing”.⁶⁴ The committee added that any new intergovernmental apparatus that emerged from such a process “should ideally have an independent secretariat to schedule and organise intergovernmental meetings” and “provide an independent conduit for discussions among administrations at official and ministerial level in between formal intergovernmental meetings”.

In September 2018, the Government responded to the committee's recommendations. It stated that the UK's exit from the EU marked a “new phase in relations between the four administrations of the UK” and as such the Government recognised the need to review intergovernmental structures to ensure they remained “fit for purpose”.⁶⁵ The response noted that a review was in progress. However, the Government disagreed with the committee's view that such structures should be put on a statutory footing, instead arguing for flexibility. It contended that establishing a statutory framework would “require the UK Parliament to agree any changes that the four administrations wish to make to the agreements underpinning our

⁶¹ House of Commons Library, [Intergovernmental Relations in the United Kingdom](#), 25 July 2018, p 4.

⁶² See, for example: Richard Whitman, [Devolved External Affairs: The Impact of Brexit](#), Chatham House, February 2017.

⁶³ House of Commons Public Administration and Constitutional Affairs Committee, [Devolution and Exiting the EU: Reconciling Differences and Building Strong Relationships](#), 31 July 2018, HC 1485 of session 2017–19, p 38.

⁶⁴ *ibid*, p 41.

⁶⁵ House of Commons Public Administration and Constitutional Affairs Committee, [Government Response to the Committee's Eighth Report: Devolution and Exiting the EU—Reconciling Differences and Building Strong Relationships](#), 18 September 2018, HC 1574 of session 2017–19, pp 1 and 15.

relationship”. This, in turn, would “limit the participating administrations’ ability to adapt its function in what is a rapidly changing political landscape”.⁶⁶

Prior to this, in July 2018, David Lidington, Minister for the Cabinet Office and Chancellor of the Duchy of Lancaster, announced that a new ministerial forum on EU negotiations had been set up to “enhance engagement with the devolved administrations on the UK’s negotiating position”.⁶⁷ The most recent meeting of this forum, including ministers from the UK, Scottish and Welsh Governments and a representative from the Northern Ireland Civil Service in the absence of a functioning executive in that part of the UK, was held on 3 December 2018.⁶⁸

5. Further Reading

Committee Websites and Reports

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- House of Commons Public Administration and Constitutional Affairs Committee, [Parliamentary Boundary Reviews: What Next?](#), 19 February 2018, HC 559 of session 2017–19; and [Government Response](#), 25 May 2018

⁶⁶ House of Commons Public Administration and Constitutional Affairs Committee, [Government Response to the Committee’s Eighth Report: Devolution and Exiting the EU—Reconciling Differences and Building Strong Relationships](#), 18 September 2018, HC 1574 of session 2017–19, p 15.

⁶⁷ House of Commons, ‘[Written Statement: Engaging the Devolved Administrations](#)’, 23 July 2018, HCWS905.

⁶⁸ Cabinet Office, ‘[Ministerial Forum \(EU Negotiations\) Communiqué: 3 December 2018](#)’, 3 December 2018.

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- House of Commons Library, [Intergovernmental Relations in the United Kingdom](#), 24 July 2018
- House of Lords Library, [Referendums and Parliamentary Democracy](#), 13 July 2018
- House of Commons Library, [Devolution to Local Government in England](#), 9 May 2018
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- House of Commons Library, [Citizens' Assemblies and Constitutional Conventions](#), 18 July 2016
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- House of Lords Library, [Constitutional Conventions: Possible Options in the New Parliament](#), 20 March 2015
- House of Commons Library, [Citizens' Assemblies](#), 25 November 2009

Other Reports

- Nicola McEwen, Michael Kenny, Jack Sheldon and Coree Brown Swan, [Reforming Intergovernmental Relations in the United Kingdom](#), Centre on Constitutional Change, November 2018
- Daniel Gover and Michael Kenny, [Finding the Good in EVEL: An Evaluation of 'English Votes for English Laws' in the House of Commons](#), Centre on Constitutional Change, November 2016
- Alan Renwick and Robert Hazell, [Blueprint for a UK Constitutional Convention](#), UCL Constitution Unit, June 2017
- Alan Renwick, [After the Referendum: Options for a Constitutional Convention](#), 2014