



Devolution: A Decade On

Government Response

Presented to Parliament by the Lord Chancellor and Secretary of State for Justice by Command of Her Majesty the Queen

July 2009

Cm 7687

£9.50

© Crown Copyright 2009

The text in this document (excluding the Royal Arms and other departmental or agency logos) may be reproduced free of charge in any format or medium providing it is reproduced accurately and not used in a misleading context.

The material must be acknowledged as Crown copyright and the title of the document specified.

Where we have identified any third party copyright material you will need to obtain permission from the copyright holders concerned.

For any other use of this material please write to Office of Public Sector Information, Information Policy Team, Kew, Richmond, Surrey TW9 4DU or e-mail: licensing@opsi.gov.uk

ISBN: 9780101768726

Ministerial Foreword

The Government welcomes the timely report of the Justice Committee. Following ten years of successful devolution in the United Kingdom this report, alongside the report of the Commission on Scottish Devolution, provides an important contribution to the wider debate on the constitution of the United Kingdom.

The Government is proud of implementing devolution in the United Kingdom. Devolution strengthens the Union by allowing a shared culture and a single UK identity to thrive alongside distinctive national identities. The Government believes that devolution has delivered real benefits to people across the UK, providing the right balance between responsibility, accountability and representation while freeing the constituent parts of the United Kingdom to provide innovative local solutions to the problems they face.

At the same time, the Government believes firmly in the Union. At times of global tension and economic uncertainty, all parts of the Union benefit from the strength to be found in interdependence, drawing on the resources from across the UK to counter the challenges that face all Governments and economies across the world.

Introduction

- 1. The way the United Kingdom is governed has changed and will continue to change because its component parts are now governed by different administrations and in ways which are not uniform. The system of government for England, which remains relatively centralised under the management of the United Kingdom Government and the legislative authority of the United Kingdom Parliament, is at least called into question, and, in the view of a significant proportion of our witnesses, in need of fundamental change. There is no consensus on what change should be made to the system of government for England, but every major political party has put forward or is considering change in this area, with hardly anyone arguing for no change at all. (Paragraph 3)**

The Government agrees that devolution has changed, and will continue to change, the way the United Kingdom is governed. Devolution is now an integral part of the constitutional structure of the United Kingdom, and continues to deliver ongoing benefits to all parts of the Union.

Devolution in the United Kingdom is asymmetric, reflecting the different sizes, histories and aspirations of the different parts of the UK. However, constitutions throughout the democratic world are similarly asymmetric, as the protections a needed for minorities are not the same as those for a majority. The result of this arrangement is that there is a greater ability for local decision making and policy formulation at a localised level, hence the divergence in policy delivery across the United Kingdom.

The Government agrees that it is important that devolution is for England as well as the other nations of the UK. That is why the Government has secured decentralisation in England in different ways, including a Mayor for London and administrative devolution to the regions of England, and empowerment of local government and local communities, with new forms of accountability such as directly elected Mayors. And throughout the United Kingdom decentralising decision-making to regional, local and community level, as well as to citizens themselves, brings real benefits.

Devolution and the Centre

- 2. During the ten years experience of devolved government, departmental responsibility for overseeing the working of the system has been divided and unsettled. It has involved the Cabinet Office, 10 Downing Street, the Ministry of Justice, the former Department for Constitutional Affairs, the former Office of the Deputy Prime Minister, and the Scotland, Wales and Northern Ireland Offices, the first two of which are nominally attached to the Ministry of Justice. It is a normal feature of devolution that it will be the individual functional departments which have relationships with their counterpart departments in devolved administrations. What is lacking is any one department which is clearly charged with taking a holistic view of the infrastructure of government across the United Kingdom and the constitutional and policy issues involved. This role basically belongs to the department with lead responsibility for the constitution, which is the Ministry of Justice, and we recommend that the lead responsibility should be clearly recognised and developed. (Paragraph 63)**

- 3. The object of clarifying where responsibility for the system of devolution lies is to maintain the coherence of the system as a whole and deal with the constitutional issues which arise, not to inhibit or replace bilateral relationships between Whitehall departments and devolved administrations, and not to recentralise UK Government in contravention of the purpose of devolution. (Paragraph 64)**

- 4. Many have questioned whether it is justified for those parts of the United Kingdom which have devolved government, and only those parts, to have individual Secretaries of State in the Cabinet. As relationships between the administrations mature, the role of the Secretary of State for Scotland has clearly decreased, and the question of the continued separate existence of that office must be raised. However, the Government of Wales Act 2006 gave the Secretary of State for Wales a role in legislating for Wales. This process is still relatively new and bedding down, and any proposals for fundamental change to the role of the Secretary of State would have to take this into consideration. (Paragraph 65)**

5. Nevertheless, the fact that the Scottish and Welsh Secretaries are now "part time", combining the post with UK departmental responsibilities, illustrates that the reality of change has been accepted, and it is significant that many of the arguments in favour of retaining the positions are essentially political, focusing on either perceived advantages in a territory of having a "champion" in the Cabinet, or the potential political disadvantages of abolishing the position. It is clear that the role of the territorial Secretaries of State has changed beyond recognition and that it is not likely to remain central to the functioning of devolved government or to seem consistent with the logic of devolution. The direction of travel may well be towards a single Constitutional Minister with lead responsibility for the functioning of the system of devolved government, building on the work currently exercised by the Secretary of State for Wales who chairs the revived Joint Ministerial Committee on devolution. (Paragraph 66)

The Government agrees on the importance of clarity and coherence in the allocation of ministerial responsibilities.

The Ministry of Justice has a clear lead role in respect of devolution strategy, and it has been strengthened [since the Committee began its inquiries] in order to discharge these responsibilities better.

Working with the devolution settlements and the Devolved Administrations has become a regular part of the routine business of Government. It is inevitable, as the Committee acknowledges, and indeed vital that a wide range of departments have an interest in and an understanding of devolution issues. There is room to improve the level of awareness and understanding about devolution. The Government recognises the importance of effective co-ordination of these interests, and has strengthened the devolution machinery in the Cabinet Secretariat.

The Government believes that there is real value in each of the devolved parts of the United Kingdom having a distinct voice in central Government, and it believes that the territorial Secretaries of State and their departments play a valuable role in ensuring that Government gives proper attention to the interests of devolved areas, and the legitimate concerns of the devolved institutions. Both the roles of Secretary of State for Scotland and Wales are full-time Cabinet posts, supported by a full-time junior Minister.

The Territorial Offices seek to work constructively with their devolved counterparts to ensure that we are better placed to respond to the common challenges that we

face across the United Kingdom. The Territorial Offices play a key role in supporting and facilitating discussion between the UK Government and the Devolved Administrations. Success can be seen in legislation: the Child Poverty Bill which will eradicate child poverty across the UK, the Marine Bill which will ensure effective management of our shared seas and the Climate Change Act introducing legally binding targets on emission across the UK. Success can be seen in the establishment of joint forums to discuss our shared challenges: Economic Summits in Wales and Scotland, the publication of Real Help Now leaflets bringing together support offered by both devolved and reserved Governments in one place. And success can be seen in the successful reintroduction of the Joint Ministerial Committee structures sharing information, ideas and discussing real issues of divergence to reach working solutions.

The appointment of Regional Ministers and the creation of the Council of Regional Ministers has been a further important step in ensuring that the interests of the English regions, too, are properly represented in central Government decision-making.

The Civil Service

- 6. While it is clear that the awareness of devolution in Whitehall has improved since the onset of devolution in 1999, there is no doubt that there is still a considerable way to go in achieving consistent and effective practices in dealing with devolution issues across all Whitehall departments. This should not only involve a full and comprehensive understanding of the policy areas that have been devolved to Scotland and Wales, but also full appreciation and consultation so that Welsh and Scottish interests are taken into account in policy making in reserved or non-devolved areas which will have an impact on the UK as a whole. (Paragraph 75)**

- 7. We agree that best practice should be mainstreamed across Whitehall, and devolution awareness should form a core part of the training for all senior civil servants. While this is crucially important in relation to senior civil servants it is also important that a good understanding of the constitutional settlement(s) should reach the front line of every department and agency of government. It is an issue for those engaged in delivery as well as those concerned with policy. We acknowledge the improvements that have been made in this area, but recognise that the performance remains patchy and that both good and bad practice remain. (Paragraph 76)**

- 8. Whether there remains a unitary civil service or not within Great Britain, there is an overwhelming case for a more systematic programme of secondments between Whitehall, Cardiff and Edinburgh. This would have several benefits: not only helping to raise awareness of devolution in Whitehall, but also in promoting best practice and shared learning and experiences across all three administrations. Furthermore, it would help to address some of the capacity issues identified in relation to the civil service in Wales. (Paragraph 85)**

9. We recommend that the Government institute a programme of secondments throughout the United Kingdom, and that fast stream entrants to the civil service should be given the opportunity to spend time working both in Whitehall, and in one or more of the devolved administrations, early in their careers. (Paragraph 86)

10. In essence, the same civil service code applies in all jurisdictions with differing specific references to accountability. While there need to be provisions reflecting accountability to different administrations and the need for sensitivity in Whitehall to the different settlements, we believe that it is right that a common Civil Service code should be accepted and observed by all the administrations of Great Britain. The code should be one of the means by which the details and implications of the devolution settlements are experienced and promulgated, together with the fundamental principles of public service which are a shared inheritance of the whole of the United Kingdom. (Paragraph 87)

The Government agrees on the importance of Ministers and officials having a full awareness of the arrangements for devolution across the United Kingdom, and of the sensitivities associated with them at any time. It has long undertaken training and others efforts across Whitehall for this purpose, recognising that the process will need to be a continual one.

It has renewed and extended those efforts to ensure this. Devolution features extensively in training offered to civil servants at a number of levels, including the Senior Civil Service.

The Ministry of Justice and the Cabinet Office alongside input from the Territorial Offices is delivering innovative education and awareness products to help raise Whitehall's ability to deal with devolution and is working closely with the National School for Government to ensure that as large an audience as possible can be captured.

Part of the project involves updating the content of the Devolution Guidance Notes to ensure that they accurately reflect best practice and provide the best possible advice on how to deal with the realities of devolution.

The Cabinet Secretary has issued [further guidance on devolution](#)¹, supplementing and reinforcing what was already available. A central [website](#)² on devolution has also been launched, focusing on the need of civil servants among other groups for better information and signposting on devolution issues. The Government agrees it should pursue further improvements in departments' capacity for handling devolution.

The territorial offices play an important and ongoing role in ensuring that departments are sensitised to devolution concerns and the Government has taken steps to ensure they can play their full part in the development of policy.

The Government agrees that there is value in secondments to and from the devolved institutions, for the people involved, for the sending and receiving department and for the wider system. Some such exchanges have always taken place and the Government has given encouragement to them. Increasingly, individuals' personal commitments may reduce flexibility to change location in this way. Nevertheless the Government will investigate further whether more can be done to facilitate exchanges with the devolved administrations.

It is true that the content of the civil service codes applying within the UK government machine, to Welsh Assembly Government and to the Scottish administration is largely the same, the key difference being the passages that emphasise the accountability of civil servants to their own ministers.

The Government understands and sympathises with the committee's countervailing arguments. Nevertheless, while the issue is not perhaps a major one, it believes the principle of accountability to ministers is an essential one, and that it is helpful to underline it through different codes.

1

<http://www.cabinetoffice.gov.uk/media/121707/workingwiththedevelopedadministrations.doc>

² <http://www.cabinetoffice.gov.uk/devolution.aspx>

Inter-governmental Relations

- 11. We welcome the fact that the Concordats between relevant Whitehall Departments and the Welsh Assembly Government are being revised in order to reflect the changes brought about by the Government of Wales Act 2006. (Paragraph 96)**

- 12. We recognise that the structures for the co-ordination of inter-governmental relations designed between 1997 and 1999 grew out of relationships between departments of the same government, rather than between different governments of different party political complexions. (Paragraph 104)**

- 13. The system of devolved government, including governments of different political complexions, requires a set of arrangements which provide opportunity for the expression of legitimate political and territorial differences, negotiation, dialogue and dispute resolution. These arrangements also need to facilitate the co-ordination of action in areas of joint interest, the promotion of common interests and good relations and an effective means of dealing with the consequential effects of decisions taken in the respective jurisdictions. The absence of such a structure is one of the weaknesses of the current devolution settlement. (Paragraph 105)**

- 14. Such arrangements would not in any way detract from the importance of ensuring that there is a need for a proper understanding of the devolution settlement(s) to permeate every aspect of the work of Whitehall departments and their agencies and an equivalent need for understanding and sensitivity within each of the devolved administrations and their agencies. (Paragraph 106)**

Since the Committee received much of its evidence, the Joint Ministerial Committee has been revived (as is outlined later in the report), with the formal

designation of a Minister within the Government responsible for it (now the Rt Hon Peter Hain MP, separately from his Welsh responsibilities). The JMC has begun meeting in a new format, JMC (Domestic), which compliments the work of JMC (Europe), and has commissioned a revision of the Memorandum of Understanding underpinning devolution.

The recent Report by the Commission on Scottish Devolution welcomed these developments and we believe, on the basis of this experience that these structures are capable of meeting the purposes the Committee lists, and capable of developing further, the better to do so.

Once the revised Memorandum of Understanding has been agreed, the Government envisages that there will be further work on revision of concordats.

The Ministry of Justice, alongside the Cabinet Office and the Territorial Offices, is delivering an ongoing programme of education and awareness raising across Whitehall and is undertaking a detailed review of the Devolution Guidance Notes. This work aims to make the guidance more easily accessible and usable for officials across Whitehall, as well as providing general awareness raising and education materials. We believe that this will ensure that in future the devolution settlement is observed throughout government.

Joint Ministerial Committee

15. We welcome the re-convening of the Joint Ministerial Committee and note that its usefulness has been demonstrated in securing agreement between the territorial jurisdictions on the UK Marine and Coastal Access Bill. We recommend that the Joint Ministerial Committee continues to meet on a regular basis. (Paragraph 113)

16. We welcome a more active and systematic role for the Joint Ministerial Committee as the central apparatus for inter-governmental relations within the United Kingdom. We welcome the new terms of reference, which emphasise its role in promoting dialogue and negotiation and also in dispute resolution. (Paragraph 118)

17. We welcome the fact that the Joint Ministerial Committee has invited officials to review the Memorandum of Understanding. However, ten years on, we believe that a broad review is necessary: not only of the machinery for co-ordinating inter-governmental relations in the United Kingdom, but of the broader role of central Government in its strategic overview of the United Kingdom post-devolution. (Paragraph 119)

18. We believe that a robust framework for inter-governmental relations, supported by a streamlined centre responsible for devolution policy and strategy across Whitehall, would equip the United Kingdom with a more efficient and effective system for territorial management in the UK post-devolution. (Paragraph 120)

The Government believes that the revised Joint Ministerial Committee arrangements have been successful so far. It is likely that a further annual plenary meeting will take place shortly after the summer, to be followed by a further JMC(Domestic) meeting in the autumn. We hope also that the revised Memorandum of Understanding can be approved at that stage.

But the JMC will in our view need then to look further at ways in which it can be more effective, and we believe that it should consider the recommendations of this Committee, amongst others.

Inter-parliamentary Relations

19. One way of securing a greater interchange and understanding would be to develop a format similar to the British-Irish Parliamentary Assembly, bringing together Members of Parliament and of the devolved Parliaments and Assemblies, to hold to account the Joint Ministerial Committee and to share experience and best practice. There needs to be reasonable confidence in the value which could be added by such a body for the idea to be developed, but we consider that it deserves debate. (Paragraph 124)

The Commission on Scottish Devolution recently published its Final Report to the UK Government and the Scottish Parliament. This Report contained a number of

inter-parliamentary recommendations. As with the recommendation from the Committee on the development of a mechanism along the lines of the British-Irish Inter Parliamentary Assembly, these are matters for Parliament, and the Government looks forward to the outcome of any debate of the sort proposed by the Committee. An alternative approach might be that the British-Irish Parliamentary Assembly could itself turn its attention to some of the points the Committee has in mind.

The Legislative Process

Scotland

20. We welcome the procedures and mechanisms which have been put in place by the Scottish Parliament for the effective scrutiny of Legislative Consent Motions, and the effective system of communication with the Westminster Parliament, which appears to be working satisfactorily. (Paragraph 130)

21. We recommend that the UK and Scottish Governments set out and publicise their agreed understanding of the principles which should govern the use of Legislative Consent Motions. (Paragraph 131)

The UK Government remains committed to the principles of the Sewel Convention: that the UK Parliament should respect the responsibilities and remit of the Scottish Parliament and seek consent to matters that are within devolved competence, or that would alter powers of Scottish Parliament itself or Scottish Ministers. Since 1999 over 100 Legislative Consent Motions have been successfully tabled. This co-operative approach to legislation has enabled the introduction of cross-UK legislation in relation to Climate Change, Child Poverty and Marine management in the last year alone.

The Government's introduction and adherence to the Sewel Convention since the creation of the Scottish Parliament is one of the best examples of the effective co-operation between the Devolved Administration in Scotland and the UK Government.

Devolution Guidance Note 10 – one of a series of notes providing guidance to officials and available to the public – sets out the criteria for applying the Sewel Convention. The Government believes this provides a clear overview of the process and suggested contact points: this information is provided to all UK Government Bill teams and has ensured full adherence to the Convention during the past 10 years.

Wales

- 22. We recognise that the process of enhancing the legislative competence of the National Assembly for Wales with the consent of Whitehall and Westminster is seen by some commentators as complex. It is a new process, and there were some initial fears that it would be difficult to achieve an efficient and streamlined process of scrutinizing and enacting Legislative Competence Orders. (Paragraph 146)**
- 23. We agree that there is a legitimate role for Westminster in scrutinizing draft Legislative Consent Orders to check whether they are in order, what their scope is, whether the drafting is clear and precise and whether the legislative competence can or should be devolved under the terms of the Act. (Paragraph 147)**
- 24. However, the process in Whitehall is less clear and we are also concerned about the lack of transparency of the role of the Secretary of State in determining whether or not he would lay a draft Order before both Houses of Parliament. We recommend that the Secretary of State produce a protocol outlining the principles that would inform such a decision, and the maximum timescales within which a decision should be made. (Paragraph 148)**
- 25. We recognise that accessibility of the law relating to Wales is important for the development of healthy democracy. We encourage the Government to facilitate the work of the Welsh Assembly Government in seeking to achieve this objective. (Paragraph 152)**

The Government welcomes the Committee's recognition of the role played by Westminster in scrutinising Legislative Consent Orders. The system the Government has put in place, through the Government of Wales Act 2006, enables the Welsh Assembly Government to request that powers be devolved through Orders in Council. The National Assembly has already acquired legislative competence in a number of areas, through three Orders and framework powers in seven Acts, and yet more are in train.

We believe that the Government of Wales Act 2006 makes sufficiently clear the role of the Secretary of State in laying draft Orders before Parliament. The Secretary of State has 60 days after the National Assembly for Wales's resolution is received to either lay the draft Order before Parliament or give notice in writing to the First Minister of the Secretary of State's refusal to do so and the reasons for that refusal.

We continue to work with the Welsh Assembly Government on the accessibility of law relating to Wales. The Office of Public Sector Information (OPSI) lists on its website both Welsh Measures and Secondary legislation and delegated legislation made under the Government of Wales Act 2006. The National Assembly for Wales and the Welsh Assembly Government also maintain comprehensive websites, with information readily available

The English Question

26. Over four-fifths of the population of the United Kingdom live in England, but while fundamental change has been taking place in the governance of Scotland, Wales and Northern Ireland, with consequent effect on the governance of the United Kingdom as a whole, no such change has taken place in the way England is governed. There have been some developments with mixed results: a form of devolution in London, endorsed in a referendum in 1998, the creation of various unelected regional structures in the rest of England, and a move in some areas towards having a single tier of local government. Legislation was put in place to allow any region to have an elected Assembly, subject to a local referendum. The first—and only— attempt to make use of these provisions was defeated in a referendum in the North East in 2004. (Paragraph 153)

27. Government in England remains centralised under the authority and management of the United Kingdom Parliament and the United Kingdom Government. There is controversy arising from the fact that England is governed directly by the United Kingdom Government and Parliament and is therefore subject to Ministers and MPs who do not represent England and whose own constituents come under devolved governments. The governance of England is seen by many as the "unfinished business" of devolution, but this perception is not accompanied by any widespread agreement on what should be done. (Paragraph 154)

The Government believes in devolution, and it believes in the Union and we accept that there is a legitimate debate around the governance of England following devolution to Scotland, Wales and Northern Ireland. Following the North East referendum in 2004, it is clear that people do not want to have separate tiers of English regional government, and the Government does not believe in establishing a separate English Parliament which would fundamentally unbalance the Union and lead ultimately to its disestablishment. The Government has already created

the office of Mayor of London, has appointed nine regional ministers, and regional Select Committees have been established in Parliament.

Solutions

28. Different types of solutions can be suggested for the many different questions which fall under the broad heading of the English question. First, there are those solutions which seek to address the constitutional imbalance seemingly brought about by devolution, for example, through the creation of an English Parliament. Second, there are those solutions which seek to amend the role, practice and status of Westminster as a means of addressing the West Lothian Question, for example, schemes of English votes for English laws. However, others consider that the West Lothian Question could be best addressed by a change in the party political balance at Westminster, for example, through reform of the electoral system or a reduction in the number of MPs from Scotland and Wales. These approaches could be described as all-England solutions. The final category of solutions are those which attempt to tackle the centralised nature and relative size of England through decentralisation or devolution within England. What is clear is that different solutions address different aspects of the question. (Paragraph 163)

The Government agrees that the English Question is multi-faceted. It deals with questions of decentralisation, with questions of representation and questions of voting rights.

An English Parliament

29. While an English Parliament could address one aspect of the English question in terms of giving England a similar constitutional status to Scotland within the United Kingdom, it presents issues of balance because of the sheer size of the English population and because it would require a Government and First Minister for England in addition to the United Kingdom Government and Prime Minister. We do not think that there is a need to consider so far-reaching a solution as an English Parliament, although it may become necessary to do so if the English questions are seen as increasingly significant and other solutions are rejected or fail. (Paragraph 173)

The Government agrees with the Committee that there is no need to create a separate English Parliament. English MPs currently total over 85% of Members in Parliament and they represent over 85% of the population of the UK therefore England is already the dominant partner and English interests are fully represented. In addition, an English Parliament would not be much smaller than the existing Westminster Parliament. Such a Parliament would dominate policy decisions and it would be likely to become bureaucratic and difficult to pass legislation, particularly if there were a different party in Government at Westminster from the majority party in the suggested English Parliament.

The Government does not believe that federalism is a viable option for the UK. History shows that where one country in a federation contains more than 30% of the economic wealth or population, the federation is unstable. England's dominance with the UK, comprising as it does 85% of the population, would make a federal UK unsustainable. There would be continued tension between the policies of the English Parliament, and those of any federal Parliament and Government, with the English institutions determining most of the economic and social policies, including public expenditure, but the federal institutions responsible for defence, taxation and macro-economic policy.

English Votes for English Laws

30. The question of whether England-only legislation can be more clearly demarcated from other legislation has to be resolved if any scheme of English votes for English laws is to work. While technical difficulties in relation to Legislative Consent (Sewel) Motions could be overcome by

changes in drafting practice and by resorting to additional separate Bills, demarcating English and Welsh legislation is more complex. (Paragraph 191)

31. Even if legislation could be more clearly distinguished, the current system of territorial financing in the UK post-devolution means that the levels of public finance decided for England determine levels of resource allocation to Scotland and Wales. While we agree that the system could be changed in order to remove this effect, such a change would be a necessary pre-requisite to any system of English votes for English laws. (Paragraph 194)
32. While some proposals for English votes for English laws can be presented as limited procedural change, any thorough application of the principle would have broader implications for Parliament and for the position of the UK Government. (Paragraph 198)
33. Proposals for English votes for English laws seek to make procedural adjustments to Westminster in order to remove the anomaly of Scottish MPs voting on matters in England which are devolved matters in Scotland. At present, such a scheme would be difficult to apply other than in limited form given both the current procedures for legislating for the UK and its constituent parts following devolution, and the current system of territorial finance. (Paragraph 199)
34. While these obstacles could be overcome, some fear that the full application of English votes for English laws could result in a Parliament within a Parliament, which could be unworkable and might pose as great a threat to the Union as the resentment it seeks to address. (Paragraph 200)
35. English votes for English laws seeks to deal with what is as much a political problem as a constitutional problem, represented by the traditional dominance of different parties in different nations and

regions—an issue which, some suggest, could be addressed, in part, by reform of the electoral system which could reduce the risk of an English majority being overturned by Scottish and Welsh MPs. Others suggest that a further reduction in the number of Scottish seats at Westminster, and a possible reduction in Welsh seats following the devolution of greater powers, could also, to some extent reduce the same risk. Neither of these measures would, however, address the issue of principle about the voting rights of MPs representing nations with devolved governments and both of them give rise to controversy between parties because of the effect they have on party strengths at Westminster. (Paragraph 201)

The Government believes that a fundamental principle of the United Kingdom Parliament is that all MPs have equal rights. This means that each MP can vote on any matter brought before them, whether they represent English, Scottish, or any other constituencies.

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. MPs of the UK play a representative role for the whole of the UK in considering legislation, considering the welfare of the UK as a whole, rather than narrow geographic interests, and we believe it is right that all MPs continue to have equal voting rights on all matters before the UK Parliament.

Furthermore, the Government is of the view that even matters which may appear confined to England may have an impact on the United Kingdom as a whole. As the Committee have recognised, the funding settlement with the nations and regions of the United Kingdom, means that what is decided on public funding in England affects Scotland, Wales and Northern Ireland. These are national issues which need to be decided by all members in the United Kingdom, not by subsets of Members depending on the location of their constituency.

Accepting the principle of English Votes for English Laws would fundamentally alter the relationship between MPs and Parliament, and would lead to the de facto establishment of an English Parliament. As noted above, an English Parliament would lead to the eventual disintegration of the Union, and the Government will not put the Union at risk. In all respects, we are through the Union stronger together, and weaker apart.

Devolution within England, Local Government and the English Question

36. We have not examined regional and local governance issues in depth during this inquiry but clearly, in developing a clear and coherent strategy for devolution, the Ministry of Justice, needs to take policy developments in both areas into account and establish cross-departmental working mechanisms with the Department for Communities and Local Government and the Department for Business, Enterprise and Regulatory Reform to do so. (Paragraph 226)

37. However, it does not appear likely that the powers which future governments will be prepared to devolve to local government, will be sufficient to meet the concerns of those who want an English solution to the West Lothian question or those who believe that power will continue to be exercised at regional level and wish to see those powers made accountable and increased. (Paragraph 227)

As the Committee notes, responsibility for regional and local government rests with the Department for Communities and Local Government. Within England, the Government believes a regional approach is necessary to analyse and address the causes of economic disparity; to ensure planning and investment decisions are properly integrated; and to co-ordinate issues which extend beyond the boundaries of even the largest local authority.

The Government does not, however, believe in a prescriptive or 'one size fits all' approach. Respecting the outcome of the November 2004 North East referendum, it has no further plans for directly-elected regional bodies. Instead, in November 2008, the Government response to the Review of sub-national economic development and regeneration set out the Government's intention:

- to legislate to create a duty on local authorities to carry out an economic assessment of their area underpinned by statutory guidance - in London, the duty will be placed on the boroughs;
- to legislate to allow for the creation of statutory sub-regional authorities for economic development that will be voluntary in nature - the Government will also legislate to allow for the creation of multi-area agreements (MAAs) with statutory duties; and

- to refine its plans for producing the regional strategy and ensuring appropriate regional governance arrangements - the Government will in each region, give the RDA and a board of local authority leaders the joint responsibility for the regional strategy, including its drafting, implementation plan, sign off and monitoring of its delivery.

The Local Democracy, Economic Development and Construction Bill, announced in the Queen's speech on 3 December, will bring some of these changes into effect.

The Prime Minister has appointed nine dedicated Regional Ministers, helping strengthen the authority and visibility of Government Offices as facilitators of partnership working in the regions and localities. In November 2008 the House of Commons agreed to establish eight regional select committees, each with nine members and eight grand committees. The select committees have now begun their work.

At budget 2009 the Government announced that two city region pilots, Manchester and Leeds would be asked to develop proposals to deliver even stronger integration of planning, housing, transport, regeneration, employment and skills responsibilities.

The English Question - Conclusion

38. There is no consensus about solutions to the "English question", or the range of questions which arise under that heading. Each suggested answer has its own problems and limitations, and while some attempt to address issues around centralisation, others attempt to address the West Lothian question. Those which deal to any major extent with the West Lothian question, like an English Parliament and English votes for English laws, raise significant problems in a state where one of its constituent territories has 84% of the population. (Paragraph 228)

39. The implications of having an English Government and First Minister as well as a United Kingdom Government and Prime Minister have not been the subject of much public discussion and are politically significant. Approaches which make the UK Parliament into a federal Parliament or treat English laws differently at Westminster raise questions about the nature and role of the Second Chamber which need to be considered as part of the discussion of Lords reform: clarification would be needed

about whether, and if not why, the Second Chamber should consider "English" laws when it did not consider the laws of Scotland. (Paragraph 229)

40. These are major political as well as constitutional questions which are for Parliament as a whole to consider. It is our belief that as devolved government in Scotland, Wales and Northern Ireland develops in profile and substance, Parliament will come under pressure to consider these questions. (Paragraph 230)

The Government agrees with the Committee that there is no consensus on how best to answer the 'English Question', accepts that it is a multi-faceted and complex set of questions which deal with major political and constitutional issues, and agrees that it is a legitimate debate.

Finance and the Barnett Formula

- 41. The Barnett Formula is overdue for reform and lacks any basis in equity or logic. It creates controversy in all of the constituent parts of the UK. There is controversy in England that the Barnett Formula allows for higher levels of public spending in Scotland from the UK Exchequer and does not deal with different needs in different parts of England. There is concern in Wales that allocation of funds through the Barnett Formula does not adequately meet the higher structural costs of the delivery of some public services. We are concerned that the lack of adequate understanding of the Formula and how it operates has the potential to create tension and fuel disputes. (Paragraph 253)**
- 42. We are also concerned at the lack of transparency in the process of decision making by the UK Government as to what spending is included in the calculations for the Barnett Formula and the rationale for those decisions. This lack of transparency has already caused political disputes between the UK Government and the devolved administrations. These difficulties are only likely to intensify in the current economic climate. (Paragraph 254)**
- 43. We therefore recommend a two stage approach. First, we recommend that the Government publish, as a matter of urgency, the long promised detailed factual paper about how the Formula works. This should include the criteria for the inclusion or exclusion of spending in the Statement of Funding (i.e. for inclusion in the Barnett Formula). This overdue document is essential to remove misunderstanding about the operation of the Formula and to introduce an element of transparency and oversight into the Government's spending decisions. (Paragraph 255)**
- 44. This, however, is only a first step. We welcome the reviews of the operation of the Barnett Formula currently taking place in both Scotland and Wales. However, there is an urgent need for the Government to undertake a UK wide review of the Barnett Formula, and to put forward an**

alternative system for the allocation of funding between the nations and the regions of the UK and a generally accepted mechanism for reviewing its operation and adjudicating disputes which arise. (Paragraph 256)

45. Any new system should be robust and long term - enabling Departments and Agencies of Government to have dependable indicative figures on which to plan and budget at least three years ahead. Any new system should be introduced with care, with at least a two-year period of transition built into the system for its introduction. It should not be adjusted on an annual basis—a five-year review should be the minimum review period. (Paragraph 257)

The Government notes the recommendations of the Committee.

The devolved funding principles which determine the allocation of spending to the devolved administrations are set out transparently in the Statement of Funding Policy updated and published by the Treasury in October 2007. This also sets out what spending is included in the calculations for the Barnett formula. The Statement of Funding Policy is agreed with the territorial Secretaries of State and the devolved administrations are consulted. No date has been set for the publication of the factual paper on the Barnett formula. However full details of the formula are published in the Statement of Funding Policy. In addition the Treasury has given evidence to the Calman Commission on Scottish devolution, the House of Lords Select Committee on the Barnett formula and the Holtham Commission on Welsh funding.

The Government welcomes all views on the future of the Barnett formula. The Barnett formula provides the devolved administrations with a population based share of comparable changes in spending of UK Government departments. It has provided a stable and robust method of determining changes in the budgets for the devolved administrations, and it has stood the test of time. The Government currently has no plans to change the formula. However the devolved funding arrangements will be updated in the next spending review in the normal way and the Government has noted the views of the Committee.

The Commission on Scottish Devolution considered how the Scottish Parliament is funded. The Commission outlined a new financial model that would give significantly more responsibility to the Scottish Parliament for decisions on tax and spending in Scotland. The Commission's model empowers and requires the Scottish Parliament to make a decision on the balance between taxes and public spending. Their recommendations draw from the work of Professor Anton Muscatelli's group of independent financial experts.

The Government agrees that financial accountability could be achieved by moving to a system where a greater proportion of the Scottish Parliament's budget comes from their own decisions. We welcome the Commission's model which provides a promising and well-evidenced basis on which we can work with the Scottish Parliament and others to bring forward practical proposals. The suggested changes are complex, and require detailed and careful consideration. The Government will assess, and explore how to implement, these proposals.



information & publishing solutions

Published by TSO (The Stationery Office) and available from:

Online

www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0870 600 5522

Fax orders: 0870 600 5533

E-mail: customer.services@tso.co.uk

Textphone: 0870 240 3701

The Parliamentary Bookshop

12 Bridge Street, Parliament Square

London SW1A 2JX

Telephone orders/General enquiries: 020 7219 3890

Fax orders: 020 7219 3866

Email: bookshop@parliament.uk

Internet: <http://www.bookshop.parliament.uk>

TSO@Blackwell and other Accredited Agents

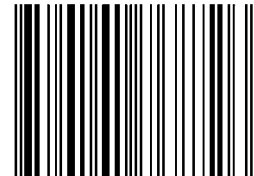
Customers can also order publications from:

TSO Ireland

16 Arthur Street, Belfast BT1 4GD

Tel 028 9023 8451 Fax 028 9023 5401

ISBN 978-0-10-176872-6



9 780101 768726