



Technical Review of the Standing Orders Related to English Votes for English Laws and the Procedures they Introduced

Presented to Parliament
by the Leader of the House of Commons
by Command of Her Majesty

March 2017



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Foreword Rt Hon David Lidington CBE MP

When the English votes for English laws provisions were introduced in October 2015, the Government committed to review their operation a year after their introduction. I launched the review on 26 October 2016 and we received written evidence from Members of both Houses and university academics. I would like to take this opportunity to thank those who submitted evidence as part of the consultation.

English votes for English laws was a key 2015 manifesto commitment for this Government reflecting the devolution of powers to Scotland, Wales and Northern Ireland. It has provided MPs representing English (or English and Welsh) constituencies a voice on legislation which applies to only them.

Three Parliamentary Select Committees, the Public Administration and Constitutional Affairs Committee, the House of Commons Procedure Committee and the House of Lords Constitution Committee, have also undertaken inquiries into English votes for English laws over the past twelve months. I am grateful to these Committees for their thoughtful deliberations. This report responds to the recommendations made by those committees.

Whilst there are undoubtedly those who believe that the so-called West Lothian question should be left unanswered and also those that think that it should be answered in a different way, the Government remains confident that the English votes for English laws provisions provide a necessary and effective solution to an imbalance created by devolution.

Having considered the evidence, I am also confident that the Standing Orders have worked well in applying the new procedures and that initial concerns raised in relation to the certification process have proved unfounded. Since the introduction of English votes for English laws, fifteen bills have included provisions certified as England-only or England and Wales-only by the Speaker. Seven of these bills have now become Acts. Fifty-six statutory instruments have also been certified.

Therefore, whilst both the Government and Parliament will no doubt want to keep the implementation of the English votes for English laws provisions under review, I do not propose making substantive changes to the current Standing Orders.

Rt Hon. David Lidington CBE MP, March 2017

Introduction

1. Answering the so called West Lothian Question was a key Conservative Party manifesto commitment at the last general election.¹ The West Lothian Question refers to whether MPs representing constituencies in Scotland, Wales and Northern Ireland should be able to vote on legislation in the United Kingdom (UK) Parliament that applies only to England.²
2. Following referendums in Scotland and Wales in September 1997, the majority of voters supported the establishment of a Scottish Parliament and a National Assembly for Wales. In Northern Ireland, devolution was a key feature of the Belfast Agreement, endorsed by voters in referendums held in both Northern Ireland and the Republic of Ireland in May 1998. Following the referendums, Parliament passed legislation to establish the devolved legislatures and administrations and set out their powers. In the period since, further powers have been devolved to the devolved legislatures, including through the Scotland Act 2016 and the Wales Act 2017.
3. The United Kingdom Parliament at Westminster has maintained the same voting rights for Members representing constituencies in England. This means, for example, that MPs representing constituencies outside England may vote on legislation in the UK Parliament, which does not affect their constituents, while MPs representing constituencies in England are not able to vote on legislation in the devolved parliaments of the other nations.
4. The 2010-15 Coalition Government established the McKay Commission in January 2012 to consider how the House of Commons might deal with legislation affecting England only. The Commission reported in 2013. Its main recommendation was that Parliamentary procedure be changed to enhance the voice of MPs representing constituencies in England during the passage of legislation applying to England (or of MPs representing constituencies in England and Wales in legislation applying to England and Wales) by adding stages to the consideration of legislation to affect that. At the same time, the Commission recommended that the whole House should continue to have a final say on legislation.
5. The 2015 Conservative Manifesto included a commitment to resolve the West Lothian Question with the introduction of English votes for English laws.³ In the spirit of the recommendations made by the McKay Commission, the new process introduced the principle of English consent for English measures, whilst maintaining the important principle of MPs from all parts of the UK being able to deliberate and vote on all legislation before the House. Nevertheless, rather than relying on the

¹ Conservative Party, The Conservative Party Manifesto 2015 (2015), p 70

² The West Lothian Question, 1995, Research Paper 95/95, pp 13-14

³ Conservative Party, The Conservative Party Manifesto 2015 (2015), p. 70

'separate and distinct effect' of provisions - as outlined in the McKay Report - the certification test introduced as part of the changes to the Standing Orders looks to the devolution settlements. This Government believes that these changes have strengthened England's voice, just as devolution has strengthened the voices of Scotland, Wales and Northern Ireland within the Union.

6. On 22 October 2015, the House of Commons voted in favour of the Government's proposals to introduce English votes for English laws. The new process was introduced through changes to the Standing Orders of the House of Commons.
7. The Government committed to a technical review of these Standing Orders and the procedures introduced following a period of twelve months from October 2015. This report is the result of this review.
8. This report focuses on the main findings of this technical review. It responds to the recommendations made by the three Select Committees: the Procedure Committee; the Public Administration and Constitutional Affairs Committee; and the House of Lords Constitution Committee. These reports also included evidence from the Scottish Affairs Committee and Northern Ireland Affairs Committee, which held inquiries into English votes for English laws.

English Votes Procedures

9. The English votes for English laws procedures provide a greater voice to MPs who represent constituencies in England (or England and Wales) on matters which apply only to England (or England and Wales). This is achieved by allowing MPs for these constituencies the opportunity to consent to entire bills, or clauses of bills, relating exclusively to England (or England and Wales). It is important to emphasise that under the English votes for English Laws procedures, MPs representing constituencies from across the rest of the UK are still able to debate, amend and vote on all legislation, even provisions which apply only to England (or England and Wales).

Certification

10. The English votes for English laws process requires that the Speaker of the House of Commons decides whether to certify both primary and secondary legislation. When making this decision the Speaker assesses whether the legislation relates exclusively to England (or England and Wales) and is within the devolved legislative competence of the Scottish Parliament, National Assembly for Wales or Northern Ireland Assembly.⁴
11. For primary legislation, the Speaker considers the question of certification at three separate points: ahead of Second Reading in the House of Commons, post Report

⁴ Cabinet Office, The Guide To Making Legislation. Cabinet Office, The English Votes for English Laws Guidance To Primary Legislation

stage in the House of Commons, and ahead of Commons consideration of Lords amendments. Since the introduction of English votes for English laws in October 2015, fifteen bills (seven of them now Acts) have included provisions certified for English votes for English laws by the Speaker. The Government has provided advice to the Speaker on each of these bills. The Speaker has disagreed with the Government's advice in nine instances.

12. The Government's experience so far suggests that the new procedures are bedding in well, and are also encouraging bill teams to think more carefully about the territorial and devolved aspects of the legislation they are working on.⁵ The House of Lords Constitution Committee supported this by stating, "We were impressed by the range of training, guidance and support being offered to officials dealing with EVEL. We hope that this represents a wider move within the civil service to embed consideration of devolution and engagement with the devolved institutions into its work across the breadth of government policy".⁶
13. Secondary legislation is certified once. An affirmative procedure instrument will be considered for certification after it has been laid in draft, and a negative procedure instrument will be considered for certification if and when it is prayed against and scheduled for debate. Following introduction, the Speaker has certified 56 Statutory Instruments.
14. The Government continues to work to ensure the Speaker and clerks are receiving sufficient information from the Government to assist the Speaker in reaching certification decisions in relation to both primary and secondary legislation. To support the Speaker in making certification decisions, the Government is reviewing its guidance to officials for both bills and statutory instruments to take account of lessons learned from the operation of the Standing Orders to date. The Government will also review the relevant sections of the Explanatory Memorandum template for statutory instruments to ensure that the information provided to the House of Commons is sufficient to assist the Speaker, and will work with the National Archives to make any amendments necessary to the template. In taking these actions, we will ensure the Speaker is able to make effective decisions in relation to the certification process.
15. During the introductory period, there were concerns that the Speaker may be politicised by having to make the certification decision, but this view is not supported by either the Procedure Committee or the Lords Constitution Committee. Professor Kenny and Daniel Gover in their report 'Finding the Good in EVEL' highlight the current Speaker's independence by stating "(the Speaker) has also taken a significant number of decisions that conflict with advice provided by government, thus

⁵ Adam Pile providing oral evidence to the House of Lords Select Committee on the Constitution on 29 June 2015

⁶ House of Lords Select Committee on the Constitution, 6th Report of the Session, English Votes for English Laws, para.122 p.32

underscoring his independence”.⁷ The Speaker has disagreed with the Government’s advice on nine separate occasions.

16. Concerns were raised that the Speaker’s certification decision may be subject to legal challenge. This has proved not to be the case and the Government is confident that the Speaker’s certification decisions are protected from such challenge by Article 9 of the Bill of Rights, a position also taken by the Lords Constitution Committee.
17. Some parliamentarians have also raised concerns that the Speaker, in assessing whether to certify provisions, is not required to take account of the consequences of English legislation for Scotland’s budget⁸ (referred to as Barnett Consequentials). However, the Government is clear that it is not possible to draw a direct link between individual pieces of legislation and the Barnett formula. In addition, as the standing orders set out, all MPs continue to have a role in making all legislation. No legislation can be made without the consent of the whole House. The House of Lords Constitution Committee have similarly concluded that “the model of EVEL chosen, whereby the consent of all MPs is still required for any piece of legislation to become law, ensures that MPs from the devolved nations are still able to speak and vote on funding decisions that might have consequential effects for the funding of those nations”.⁹
18. Nevertheless, the Government will consider carefully recommendations made by the Procedure Committee in its upcoming review of supply estimates.

Primary Legislation

19. Once the Speaker has considered a bill for certification it continues to Second Reading and Committee stage. Any bill that the Speaker has certified as England-only in its entirety will be considered at Committee Stage by MPs with constituencies in England only. Membership of this committee will reflect the party ratios in England. All other bills will be considered in a normal Public Bill Committee. To date, no bills have been certified as entirely England-only for English votes for English laws purposes (that is, in no bill has had every provision certified as applying only to England and as being within devolved legislative competence). After Committee stage, the bill continues to the Report stage (as normal).
20. After the Report stage, the Speaker reconsiders bills, to determine whether to certify clauses and amendments that apply only in England (or England and Wales) that are within devolved legislative competence. A Legislative Grand Committee considers a consent motion for any clauses or amendments that the Speaker has certified.
21. In order to reduce the hiatus between report and Legislative Grand Committee, the Speaker has, in practice, undertaken a preliminary certification assessment prior to Report stage. The Procedure Committee, in its technical report of English votes for English laws, found that the practice of provisional certification has caused no

⁷ Finding the good in EVEL: An evaluation of ‘English Votes for English Laws’ in the House of Commons, Daniel Gover and Professor Michael Kenny, 2016, p.4

⁸ Scottish National Party written evidence to the Procedure Committee on English Votes for English Laws Standing Orders on 25 May 2016

⁹ House of Lords Select Committee on the Constitution, 6th Report of the Session, English Votes for English Laws, para.58 p.18

difficulty, and recommended that it continues. The Government agrees that the practice is helpful and that it should continue.

22. The Procedure Committee also recommended that the House Service examine the feasibility of publishing consolidated information on the certification status of eligible bills and instruments online. This is essentially a matter for the House but the Government would welcome such a move to improve transparency and ease of reference.
23. The Legislative Grand Committee is a new stage, which provides an additional voice and veto to MPs representing constituencies in England (or England and Wales) where provisions relate exclusively to those countries. At this stage no amendments to the text of the bill can be made but specified clauses can be vetoed by amendments to the consent motion. In the case of a bill which is England-only (or England and Wales-only), this stage allows those MPs to consent to or veto the whole bill.
24. The Procedure Committee flagged that supplementary motions governing the programming of remaining stages of government bills should always make separate provision for time to be taken in Legislative Grand Committee and on Third Reading. The Government agrees that the Legislative Grand Committee, as an additional stage, will ordinarily require additional time. However, programming is specific to each bill and is determined on a case-by-case basis in consultation with opposition parties. Legislative Grand Committee stages are programmed in the same way as all other legislative stages, which allows for a flexible approach to allocate time according to varying circumstances. There is no evidence to suggest that the programming of bills containing certified provisions has been a problem.
25. In an instance where clauses of a bill are vetoed by the Legislative Grand Committee there is a reconsideration stage when further amendments can be made. The whole House can participate in this stage, which is, in effect, a second Report stage for disputed parts of the bill. This is followed by a second Legislative Grand Committee at which all MPs representing constituencies in England (or England and Wales) are asked to consent to the amendments made by the whole House. If no agreement is reached at this point, the disputed parts of the bill fall.
26. In its report, the Procedure Committee highlighted the fact that the Legislative Grand Committees that have so far taken place have not seen lengthy debates. The Committee, therefore, recommended that, in order to reduce the complexity of the process, the resolution of the House into Grand Committee should not be automatic. Rather, such a Committee should take place only if a member indicates dissent when the Minister indicates his/her intention to move a consent motion following recertification.
27. The Government is sympathetic to the aims of the proposal and remains open to the idea of finessing the Legislative Grand Committee process in the light of future experience. However, we are not convinced at this stage that removing the automatic right of members to debate and consent to England (or England and Wales) only provisions will provide clarity to members. Making Legislative Grand Committees dependent on dissent being indicated at the right time would risk making the procedures opaque and consequently rarely used. Given that the certification

process would still be required after Report stage, it would also seem to save little time.

28. Following the Legislative Grand Committee bills continue to Third Reading, at which all MPs can participate. They then progress to the House of Lords (unless the bill started in the House of Lords).
29. The legislative process in the House of Lords is unchanged. If a bill is amended by the House of Lords, then when it returns to the Commons, the Speaker is required to decide whether to certify any motions relating to Lords amendments to the bill. Any votes on amendments which have been certified as England (or England and Wales) only will be subject to a double majority vote. That is to say that such amendments will have to be supported by a majority of MPs representing constituencies in England (or England and Wales) as well as a majority of all MPs before they can become law.
30. In its report, the Procedure Committee raised concerns about the drafting of the Standing Orders in relation to Lords amendments and the uncertainty of the result following a double majority vote. The complexity of the procedures surrounding Lords amendments makes this, necessarily, one of the most complex areas to apply the English votes for English laws procedures. The Standing Orders provide a principle to apply in determining the outcome in the multiple scenarios possible following a split double majority vote (i.e. a vote where the whole house does not vote the same way as those MPs representing constituencies in England (or England and Wales)). This would seem to provide a pragmatic approach to this complex area. Attempting to detail every possible scenario would seem to risk adding complexity and is still unlikely to cover every possible circumstance. However, we would be happy to work with the House if clearer purposive wording can be found which does not add further complexity.

Secondary Legislation

31. English votes for English laws applies to statutory instruments which are subject to the affirmative procedure, or which are subject to the negative procedure and have been prayed against and scheduled for debate. A statutory instrument will be considered for certification by the Speaker using the same criteria as for bills.¹⁰ Unlike bills, the Speaker will consider statutory instruments in their entirety. If a whole statutory instrument applies to England (or England and Wales) only and meets the “devolution test” it will be subject to the new process. If any part of it applies to Scotland, Northern Ireland or the whole UK, or does not meet the “devolution test” it will not be subject to it.¹¹
32. If a motion on a statutory instrument which has been certified as England (or England and Wales) only is pressed to a vote on the floor of the House, the support of both the whole House and of MPs representing constituencies in England (or England and Wales) will need to be secured in order for the motion to be agreed.
33. Fifty-six affirmative statutory instruments have been certified since the introduction of English votes for English laws, but there has been only one division on a certified

¹⁰ Cabinet Office, The English Votes for English Laws Guidance To Secondary Legislation

¹¹ Cabinet Office, The English Votes for English Laws Guidance To Secondary Legislation

statutory instrument (the Education (Student Support) (Amendment) Regulations (2015/1951) – a negative procedure statutory instrument). On the division, the instrument was not annulled because a majority of all MPs and a majority of MPs representing English constituencies did not agree to it being annulled.

34. Overall, the English votes for English laws process applied to statutory instruments appears to have worked well. We have been made aware of some difficulties faced by the Office of the Speaker's Counsel in determining whether the certification tests had been met given the information currently provided in the explanatory memorandum accompanying SIs. As noted above, the Government will look to ensure that sufficient information is provided by Departments in the future.

Motions of annulment

35. The Procedure Committee, as part of its technical evaluation of English votes for English laws, raised the question of whether there is an anomaly in the operation of the Standing Orders in respect of motions to annul certified instruments subject to the negative procedure. This is an issue which was raised in evidence submitted to the Committee by Daniel Gover and Michael Kenny of the Mile End Institute. The Committee, therefore, recommended that the Government evaluates and sets out clearly the principles which underpin English votes for English laws Standing Order provisions in the treatment of motions to annul.
36. The principle underpinning the English votes for English laws Standing Orders in relation to all legislation is that the consent of both a majority of MPs representing constituencies in England (or in England and Wales) and a majority of the whole House is required to change the status quo in relation to certifiable provisions.
37. The effect of English votes for English laws on a motion to annul a statutory instrument should be considered in conjunction with the decision by Parliament, in the relevant primary legislation, to delegate to Ministers a power to legislate in a statutory instrument subject to the negative procedure. By agreeing to the use of the negative procedure when the relevant primary legislation was passed by Parliament, Parliament has agreed that its approval to the content of that instrument is not needed but rather that, if it is not content with what the Minister has done, it will have the chance to annul the instrument once it has been made.
38. As a result, the default position agreed to by all members of the House (and where necessary by members representing constituencies in England (or in England and Wales) in the primary legislation is that in normal circumstances a negative procedure statutory instrument will be made, brought into force and continued in force without any vote required by Parliament, with the annulment of such an instrument being extremely rare. Consequently, the principle underpinning the treatment of motions to annul is that a decision to annul would be a change from this default position, agreed to in the primary legislation and, it is therefore right that both MPs representing constituencies in England (or in England and Wales) and the whole House should consent to this change.

Standing Orders

39. The decision to introduce English votes for English laws through the Standing Orders of the House rather than statute, has led some to question the permanency and sustainability of the reforms.¹²¹³ However, the Government maintains that, as these reforms introduce changes to the processes and procedures of the House, it is right that they are implemented through the rules that govern the House, the Standing Orders. This is a position that is supported by Sir William McKay. It is an important constitutional principle that Parliament itself, and not the courts, has jurisdiction over how Parliament's affairs are conducted.
40. On 2 July 2015, the Government tabled its first set of proposed amendments to the Standing Orders of the House of Commons. Ahead of the Summer Recess, two debates allowed Members from across the House of Commons to provide comment on the Standing Orders. Following these debates, the Government made amendments to the proposed Standing Orders. Further revisions were made to the proposals on 15 October, following an interim report by the Procedure Committee,¹⁴ and the Government announced that a debate and vote on the proposed Standing Orders would be taken on 22 October. The final set of proposals was debated and approved by the House of Commons on 22 October 2015, implemented with immediate effect.¹⁵
41. In Spring 2017, the Government proposed a number of minor amendments to the Standing Orders. These minor amendments ensured that MPs from England, Wales and Northern Ireland had the opportunity to give their consent to any change to income tax rates that affect their constituents, following the devolution of income tax rates and thresholds to the Scottish Parliament. These amendments were debated and approved by the House of Commons on 7 March 2017, implemented with immediate effect. All UK MPs will still be able to continue to vote on the Budget and all aspects of income tax. But, MPs representing constituencies in England, Wales and Northern Ireland will have an opportunity to approve matters that primarily affect their constituencies, such as the 'main rates' of income tax.
42. In its recent report, the Procedure Committee criticised the complexity of the Standing Orders and has recommended that the Government commits to redrafting them. The Government maintains that the Standing Orders are comprehensive and that, in practice, they have worked well. In the absence of any incident where the Standing Orders relating to English votes for English laws failed to ensure that the Parliamentary process is delivered, the Government does not believe a redraft is required. This is evidenced by the number of bills and Statutory Instruments which have been subject to English votes for English laws since the House approved the changes to Standing Orders in October 2015.

¹² House of Lords Select Committee on the Constitution, 6th Report of the Session, English Votes for English Laws, para.24 p.38

¹³ House of Commons Public Administration and Constitutional Affairs Committee, The Future of the Union part one: English votes for English laws, paras 51 to 54, p.17

¹⁴ House of Commons Procedure Committee, Government proposals for English votes for English laws Standing Orders: interim report (First Report, Session 2015–16, HC 410)

¹⁵ See footnote CO

43. In reviewing the Standing Orders and the evidence provided about their operation, we have identified a number of minor and technical changes, which we propose could be made as part of wider changes to the Standing Orders (these would not alter the effect of the Standing Orders). For example, in evidence to the Procedure Committee, the Public Bill Office highlighted that the English votes for English laws Standing Orders make no reference to bills carried over from one session to the next under the provisions of Standing Orders 80A and 80B.
44. The Procedure Committee also raised concerns about Standing Order 83R, which contains a list of legislation under which motions automatically require the approval of both a majority of members and a majority of members representing constituencies in England (or England and Wales). The Committee questioned the omission of a reference to the Referendums Relating to Council Tax Increases (Alternative Notional Amounts) (England) Report (a section 52ZE report) as well as the use of a list rather than a category of SIs to which the Standing Order should apply.
45. Standing Order 83R ensures that the English votes for English laws provisions apply to important motions relating to provisions which have effect only in England (or England and Wales) that might not be caught by Standing Order 83P because they are not technically statutory Instruments. A motion in relation to a section 52ZE report was not included in Standing Order 83R because it is a less important aspect of the process of determining whether a council tax increase is excessive, it will not apply to all authorities in the way that a report on the principles is likely to. In practice, when a motion in relation to section 52ZE was brought in 8 February 2016, it was in fact certified under Standing Order 83P. The Government is, therefore, content to leave it off the list in 83R.
46. Whilst accepting that defining a category to which SO 83P applies would be preferable to a list, given the nature of those orders to which the Standing Order applies, we can see no way of capturing only those listed. We would though, of course, be happy to look at any proposals that the House may have.

Conclusion

47. English votes for English laws provides an answer to a difficult and complex issue which has been the subject of much discussion and deliberation following the devolution of powers to Northern Ireland, Scotland and Wales. It provides a voice and a veto to MPs representing constituencies in England (or England and Wales), not previously available, in relation to provisions affecting only their constituents whilst recognising the role of all MPs in a UK Parliament.
48. Given the importance and innovation of the English votes for English laws provisions, it is right that we have undertaken a review of their operation, as have three Select Committees of the House. Whilst there are undoubtedly those who think that the so-called West Lothian question should be left unanswered and also those that think that it should be answered in a different way, the Government remains confident that

the English votes for English laws provisions provide a necessary and effective solution.

49. Having looked carefully at how the procedures have worked in practice, through the application of the Standing Orders, we are confident that they are working well. We do not, therefore, propose any substantive changes to the Standing Orders.
50. We note the recommendations of the Lords Constitution Committee and the Commons Procedure Committee that a future follow-up review should be undertaken. The circumstances in which the English votes for English laws procedures operate will undoubtedly not remain unchanged, not least because the political makeup of the House and the devolution settlements have not remained static. However, rather than committing to a formal review at a specific point in the future, we think it would be beneficial for both Parliament and the Government to keep the technical operation of the provisions under review as they develop.

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