



The West Lothian Question

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This note explores the concept of the West Lothian Question in the light of the devolution settlements in Scotland, Wales and Northern Ireland from 1999. The question refers to the constitutional anomaly by which Members representing Scottish constituencies (and on occasion from Welsh and Northern Irish seats) may vote on legislation which extends to England, but neither they nor Members representing English seats can vote on subjects which have been devolved to the Scottish Parliament. Earlier material on the Question is set out in detail in Research Paper 98/3, *The Scotland Bill 1997/98: some constitutional and representational aspects*.

Lord Baker of Dorking introduced the *Parliament (Participation of Members of the House of Commons) Bill* into the House of Lords on 17 January 2006 and it has now passed all its Lords stages. The Bill requires the Speaker to certify Bills which apply to England only and to designate that Members from other territorial parts of the UK should not vote on clauses and amendments to such legislation. The Scottish Affairs Committee has produced a report on the Sewel Convention which commented on the need to find a solution to the West Lothian Question, but which did not specify a preferred solution.

Contents

A.	Historical background	2
B.	The devolution settlement after 1999	4
C.	The territorial extent of bills and voting patterns	9
	1. Technical issues	11
	2. Political issues	12
	3. Constitutional issues	12
D.	<i>Parliament (Participation of Members of the House of Commons) Bill 2005-6</i>	14

A. Historical background

The West Lothian Question is the name by which the paradox created by devolution within the United Kingdom is known. It was named following a campaign by Tam Dalyell against Labour's attempt to introduce devolution in the late 1970s. Responding to Mr Dalyell's arguments (discussed below) Enoch Powell commented, "We have finally grasped what the Honourable Member for West Lothian is getting at, let us call it the West Lothian Question".

Perhaps the most appropriate explanation of the West Lothian Question is therefore that attributed to the author of the question, Tam Dalyell. He set out his argument in some detail in his 1977 book, *Devolution: the end of Britain*. He asserted that "if the United Kingdom is to remain in being, then there can be no question but that the Scottish constituencies must continue to be represented at Westminster Yet once the [Scottish] Assembly had come into being, and was legislating for those areas that had not been reserved to the United Kingdom Government, the position of the seventy-one Scottish Westminster MPs would become awkward and invidious. Their credibility - like those of their counterparts in the Assembly - would be deeply suspect, simply because there would be so many areas of concern to their electors on which they could not pronounce." He examined, and rejected four possible answers to the Question and concluded that "not one of them can be reconciled with Britain's continued existence as a unitary state ..."

- 1) No Scottish or Welsh representation at Westminster
- 2) Maintenance of the status quo in terms of levels of representation
- 3) Reduction of Scottish and Welsh representation at Westminster
- 4) Scottish and Welsh MPs to speak and vote only on those matters not transferred to Scottish and Welsh Assemblies ('in and out Members')

During the debate on devolution to Scotland and Wales on 14 November 1977, Mr Dalyell said:

For how long will English constituencies and English Honourable members tolerate...at least 119 Honourable Members from Scotland, Wales and Northern Ireland exercising an important, and probably often decisive, effect on British politics while they themselves have no say in the same matters in Scotland, Wales and Northern Ireland?¹

However, the West Lothian Question was of course relevant to the Home Rule debate in relation to Ireland in William Gladstone's administration a century before. Professor Brigid Hadfield has noted "only those with short memories have called this the West Lothian Question".² The four solutions outlined by Tam Dalyell were also considered during the controversies over offering some form of devolution (Home Rule) to Ireland, but maintaining its presence within the UK.

The Home Rule Bill introduced in 1886 sought to exclude Irish Members altogether from the Commons, but among the difficulties with the Bill was the issue of taxation without representation (a frustration which a century or so earlier had set off the process leading to

¹ HC Deb 14 November 1977 c122-3

² *The Constitution of Northern Ireland*, 1989 p89

American independence). The 1893 Bill thus moved to the 'in and out' solution, whereby Irish Members would vote only on bills and clauses with UK wide territorial extent. But this was removed at committee stage and the final version of the Bill opted for a reduction in the number of Irish Members. Subsequent bills also preferred this partial solution, and the number of Northern Irish Members was fixed first at 13, then 12, below what might have been expected in terms of numbers of electors. Representation increased in 1979, acknowledging the return of Direct Rule in 1972.³ But Northern Ireland Members had voted for half a century in the Westminster Parliament without differentiation in terms of extent of UK legislation. A proposal from the Speaker's Conference on Devolution 1919 for 'Grand Councils' comprising English, Scots and Welsh MPs to consider bills for their relevant part of the UK was not implemented, but the proposal has been resurrected since as a possible solution to the West Lothian Question.⁴

The practice of NI Members voting on GB-specific legislation passed almost without comment until the Wilson Government of 1964-66 which had a very narrow majority. Mr Wilson protested when the Unionist parties supported the Conservatives in opposing the nationalisation of the steel industry, although the measure would not affect Northern Ireland. He asked his Attorney General to devise an 'in and out solution'. The then Attorney General, Elwyn Jones, considered the matter too complex, and the Conservatives protested, with the Shadow Attorney General, Peter Thorneycroft, stating: "every Member of the House of Commons is equal with every other Member of the House of Commons and that all of us will speak on all subjects."⁵ Wilson did not pursue the matter once his majority increased substantially in 1966.

The legislative and political problems of the Question were aired at length during the protracted proceedings on the devolution bills in the late 1970s, not least by Mr Dalyell himself, as well as by Enoch Powell (who, with other Unionists, emphasised the Northern Ireland perspective), by anti-devolutionists and by the Conservative Opposition. Mrs Thatcher explored the implications of alleged over-representation during the Second Reading of the *Scotland and Wales Bill* on 13 December 1976, and Francis Pym, responding to a statement by the Leader of the House, Michael Foot, on the Government's proposals for new devolution bills in the 1977-78 session, described the West Lothian Question representation issue as "the single most contentious problem to arise in our debates on the [Scotland and Wales] Bill..." The Government generally sought to deflect efforts at forcing them to make a detailed response to the Question posed by Mr Dalyell and others. Its view was set out in the September 1974 White Paper *Democracy and devolution: proposals for Scotland and Wales*:

The setting up of Scottish and Welsh Assemblies does not, however, detract in any way from the overriding interest of all the people of the United Kingdom in the determination of United Kingdom policies as a whole. The United Kingdom Parliament and the central Government Ministers will of course remain fully responsible for the overall interests of the United Kingdom and it is essential that the

³ For further details see Hadfield, *The Constitution of Northern Ireland* Chapter 1 and Library Research Paper 98/57 *Northern Ireland: Political Developments since 1972*

⁴ See Vernon Bogdanor *Devolution in the United Kingdom* 2001 for more detail on the Speaker's Conference

⁵ Knox M.T. "Terence O'Neill and the crisis of Ulster Unionism 1963-69 Phd thesis cited in "The Government of England by Westminster" in *The English Question* ed Robert Hazell 2006 and Vernon Bogdanor *Devolution in the United Kingdom* 2001 p230

determination of United Kingdom policies should fully reflect the needs and contributions of all its constituent parts. For this reason the Government regard it as essential that both Scotland and Wales should retain their existing number of Members of Parliament in the United Kingdom Parliament and that there should continue to be Secretaries of State for Scotland and Wales who act as full Members of the United Kingdom Government in forming United Kingdom policies."

The November 1975 White Paper, *Our changing democracy*, simply stated that "The United Kingdom will still be a single state ... Parliament will remain ultimately sovereign on all matters, whether devolved or not, and will continue to include the present complement of Scottish and Welsh Members."

The (Kilbrandon) Royal Commission on the Constitution, which reported in 1973, considered the effect of devolution on the Westminster Parliament, and noted that "if devolution were to be to selected regions only, a problem would arise over the extent and level of representation of those regions in the House of Commons compared with that of regions which did not have legislative assemblies of their own." The Report then examined the Northern Ireland situation as an example of the difficulty of dealing with this problem, including an 'in and out' arrangement, and concluded that, "In our view, therefore, all Members of Parliament, whether or not they come from regions with their own legislative assemblies, must have the same rights of participation in the business of the House of Commons", although it did go on to consider the arguments for reductions in the level of representation of countries/regions with their own devolved assemblies.

Section 66 of the *Scotland Act 1978* provided for a further vote after 14 days where a bill which did not relate to Scotland was carried on a vote where votes from Members sitting for a Scottish constituency were decisive. This was an interim period to enable Members to reconsider the issue. The provision was inserted against the wishes of the Government. It was first proposed by the Opposition in the Lords at the report stage of the Bill and rejected initially in the Commons by casting vote of the Speaker, but then, when the Bill returned, passed by one vote. The *Scotland Act* did not take effect, as the majority in favour of devolution for Scotland was not sufficient when a referendum was held in March 1979.

In 1975 the Standing Committee on Regional Affairs was created in the Commons, in order to offer English members an arena to debate regional issues (but not legislation). The Committee met infrequently but was revived in 2000, with a core membership of 13 Members, and with other Members for English constituencies being able to attend in a non-voting capacity.⁶ This has also met infrequently.

B. The devolution settlement after 1999

Although the issue of the West Lothian Question was raised during the debates on the *Scotland Bill* and the *Government of Wales Bill* during the parliamentary session 1997-98, the Government was not prepared to consider any form of 'in and out solution'. The position was more complicated in Wales since the devolution bill retained powers to pass primary legislation for Wales in both devolved and reserved areas at Westminster. On second reading, the then Secretary of State for Wales, Ron Davies, stated:

⁶ For further information see Library Standard Note no 867 *Regional Affairs Committee* (2001)

There will be no reduction in the number of Welsh Members of Parliament as a result of the creation of the assembly, because the House of Commons will continue to pass primary legislation for Wales.⁷

Section 86 of the *Scotland Act* did contain provisions to reduce the number of Scottish seats from 72 to 59, but this readjustment retains Scottish representation at a level roughly proportional to that in the rest of the UK, rather than following the precedent of the *Government of Ireland Act 1920*. Appendix 1 of Library Research Paper 04/12 *The Scottish Parliament (Constituencies) Bill* gives Scottish representation in the House of Commons since 1707 according to population and electorate.

Giving power to devolved bodies to introduce their own legislation in devolved areas has allowed differences to emerge between the policies of the Scottish Executive (and to a lesser extent its counterpart in Wales) and the UK Government. These have included the differences in policy relating to tuition fees, care for the elderly and health care. In part the issue has returned to the agenda because the British system of devolution is:

...asymmetrical in that, although wide-ranging powers over primary legislation were given to the Scottish Parliament, Wales was given an Assembly with more limited power and no authority to make its own laws or to vary taxes...second, there was little agreement about how to decentralize power in England, . Changes to the territorial management of the United Kingdom were thus made as much in terms of a pragmatic political adjustment as of a logical constitutional settlement. This approach may have its merits; but it means that there is likely to be continuing debate about the scope of the devolution arrangements and about their implications for the rest of the United Kingdom.⁸

Tam Dalyell offered an up-dated version of the question in 2000:

How, in a system paid for out of the United Kingdom Treasury, will it be possible to have students in Edinburgh University having fees waived until they are earning over £25,000 per year...and students at Exeter University paying tuition fees? Worse still, how long can a system last when students at Edinburgh University, domiciled in Scotland, do not have to pay fees, while those doing exactly the same course, domiciled in England, have to pay? This situation is the tip of an iceberg.⁹

The Commons Procedure Committee produced a report in 1998-99 session, *The Procedural Consequences of Devolution*, which recommended the following modification to the Commons Standing Orders:

We recommend that the provision allowing the Speaker to certify Bills as relating exclusively to Scotland be transferred to a new Standing Order and adapted so that

⁷ HC Deb 8 December 1997 c 675

⁸ Gillian Peele, in *Developments in British Politics 7*, Chapter 11, *Politics in England and Wales*, Palgrave Macmillan, 2003, pp203-4

⁹ Tam Dalyell, *Devolution: the end of Britain*, in Keith Sutherland ed, *The rape of the constitution*, Imprint Academic, 2000

the Speaker may certify that a bill relates exclusively to one of the constituent parts of the United Kingdom.¹⁰

On certification, the Bill would then pass to a special second reading committee. The Committee did not envisage that this procedure would be adopted automatically and considered that there should be procedures to disapply the relevant standing order. Furthermore, the final stages of the Bill would be taken on the floor, where all Members could vote. The recommendations can therefore be seen as an evolutionary step towards an 'in and out' solution.¹¹ However, this proposal was not acceptable to the Government; in its response, which noted that if it were possible to identify some bills as relating exclusively to England, it would not be clear as to the benefits for the House.¹²

The then leader of the Conservatives, William Hague, spoke in 1999 of the need for 'English votes on English laws' and this commitment formed part of the Conservative manifesto for the 2001 general election.¹³ Michael Howard also indicated support for the change and it remained official Conservative policy as evidenced by in an Opposition Day debate on the West Lothian Question on 21 January 2004 (see below).¹⁴ A Conservative-established Commission on Strengthening Parliament chaired by Lord Norton of Louth, a Conservative peer, also recommended certification of Bills by the Speaker as applying to one or more parts of the UK and initial stages of Bills facing scrutiny by Members of that part. The final stages would be on the floor, but only Members from that part would vote.¹⁵

The government reshuffle of 2003 again brought the issue briefly to the fore when on 11 June the Prime Minister took the opportunity to make fundamental machinery of government changes. These included the 'abolition' of the post of Lord Chancellor (subsequently modified); a new role for the Law Lords under an independent Supreme Court; an end to the separate posts of Secretary of State for Wales and Secretary of State for Scotland, which were to be combined with other Cabinet responsibilities; and in place of the Lord Chancellor's Department (LCD) a new Department for Constitutional Affairs to which the staff of the Scotland and Wales Offices were transferred. Eric Forth, shadow Leader of the House, during a debate several days later on the changes, raised the 'West Lothian' question in connection with the new appointments:¹⁶

A Scottish MP John Reid is in charge of Health in England, imposing on England a foundation hospital system rejected in Scotland, but no English MP is allowed a say on health policy in Scotland. And another Scottish member Alistair Darling, the Transport Secretary, is responsible for transport in England while defending the interests of Scotland and yet reporting to an unelected Scottish minister in the Lords the Constitutional Affairs Secretary, Lord Falconer.¹⁷

¹⁰ HC 185 1998-99 para 30

¹¹ See Russell p90

¹² HC 814 Session 1998-99

¹³ for details see "Devolution and Westminster" in *State of the Nations 2001: The Second Year of Devolution in the United Kingdom* ed Alan Trench 2001

¹⁴ HC Deb 24 January 2004 c1389-1440

¹⁵ *Strengthening Parliament: Report of the Commission to Strengthen Parliament* Conservative Party 2000

¹⁶ Alistair Darling, Secretary of State for Transport took on the additional post of Secretary of State for Scotland, and Peter Hain, Secretary of State for Wales, took on the additional responsibility of Leader of the House.

¹⁷ HC Deb 17 June 2003 c 218

These comments raise another aspect of the debate - the extent to which it is constitutionally and politically 'proper' for Ministers representing territorial areas outside England to be responsible in England for subjects which, in Scotland, are devolved to the Scottish Parliament. Professor James Mitchell has noted that the appointment of John Reid as Health Secretary in June 2003 marked the first time that a Member from a Scottish constituency had held the post since the second world war and his appointment as Home Secretary in May 2006 was the first held by a Member from a Scottish constituency since Sir John Anderson in 1939-40. Sir John sat for the Scottish Universities constituency.¹⁸

There is no parliamentary solution to this conundrum. Presumably by analogy with the 'two classes of MP' argument, this is not thus far been regarded as a matter appropriate for any legal or parliamentary 'regulation'.

The West Lothian Question was the subject of an Opposition Day debate on 21 January 2004, in which the junior Minister, Christopher Leslie, defended the current devolution settlement, with some support from the Ulster Unionist David Burnside:

The Parliamentary Under-Secretary of State for Constitutional Affairs (Mr. Christopher Leslie): Although the hon. Member for Rutland and Melton (Mr. Duncan) conducted his contribution in a calm manner, the Conservative motion is another example of the brazen opportunism that guides the tunnel vision—perhaps through the Mersey tunnel as my hon. Friends have suggested—of Tory policy under their latest leader.

Let us be clear about the principle on which this Parliament is based and should be based in future. In the House, every Member of Parliament is equal. All Members can speak on all subjects. The suggestion to the contrary is divisive and dangerous.... Having equality for Members of Parliament at the centre is symbolic of our aspiration for all corners of the United Kingdom to be treated equally. It is an essential unifying part of our country. To say that one class of Member of Parliament must only vote on one class of issue is the slippery slope down which I doubt the Opposition truly want to go in the unlikely event that they ever get into government again.

David Burnside: In promoting the most pro-Union of policies that has ever been heard from a party that traditionally is not regarded as a pro-Union party, does the Minister agree that it is time he put up candidates in all parts of the United Kingdom, won more pro-Union Labour seats in Northern Ireland and separated himself from the separatist nationalist Social Democratic and Labour party?

Mr. Leslie: Clearly a political party can choose to stand wherever it wishes. The hon. Gentleman said that he was disappointed with his historic allies, the Conservative party, whom he feels unable to support tonight. I understand that he will side with Her Majesty's Government. In that, he is most welcome. Although some hon. Members mentioned their worries about the constitutional symmetry across the country, it is not simply a matter for Scotland, but is relevant to other parts of the country as well. The West Lothian question is just as much a west Belfast question. If we need to correct something for Scotland, which we do not, we also need to address it in Northern Ireland. Northern Irish Members of Parliament frequently voted on non-Northern Ireland business when the Assembly was up and functioning. Curiously, there was no objection from the Conservatives at the time. I suspect that their constitutional outrage is convenient and flexible, appearing only when they want it to.¹⁹

¹⁸ *Devolution and Displaced Legitimacy* 2006 forthcoming.

¹⁹ HC Deb 21 January 2004 c1434

There were a number of questions to the Prime Minister on the West Lothian Question when he appeared before the Liaison Committee on 7 February 2006:

Q269 Dr Wright: I find that my constituents who are in Middle England are saying to me increasingly that they are worried by the fact that measures that are being passed that apply only to England are being voted on by Members of Parliament from Scotland and Wales who have their own parliaments. We are shortly to have a vote on smoking in public places. This is being decided separately in Scotland, it is being decided separately in Wales, it has even been decided separately in Northern Ireland so as to apply to England and yet it is to be voted on by Scottish MPs, by Welsh MPs and by MPs from Northern Ireland. So you can see why the cry is going up from my constituents who say "Why can't we have English votes on English laws?"

Mr Blair: I understand the argument. The reason I do not agree with it is the reason that was given back in the 1960s when this argument first arose in respect of Ulster MPs and that is because I think if you try to have two classes of MP it just does not work. This is a debate we are going to continue having over the next few years, but I just do not agree with it.

Q270 Chairman (Alan Williams): Prime Minister, the more you expand devolution the more England-only legislation there is. I have raised this point with you before and you dismissed it, but you cannot dismiss it indefinitely. It will not go away. As I said in the debate on Welsh devolution the other day, it is going to come back and bite us. Eventually the English voter will not put up with me coming and telling them what they can or cannot do when I am not accountable for a single England vote.

Mr Blair: Some of those round the table may agree with this. I do not because I think if you end up with two classes of MP you will end up with a host of real problems.

Q271 Chairman: It is not second-class MPs, Prime Minister. You have altered the constitutional balance with devolution. I am against devolution and I always have been. You cannot argue from a position of a balance of power pre-devolution that devolution has altered the relationship and the House of Commons has to come to terms with that. You think we can get away indefinitely with failing to address it and we cannot.

Mr Blair: I am not failing to address it. I am simply saying I do not agree with you and the reason I do not agree is that English MPs remain in the overwhelming majority, the public spending is decided by a majority of English MPs and that has a Scottish and English dimension to it. I think if you try creating two classes of MP you will get yourself into all sorts of trouble and you will find it very, very hard to start distinguishing between those things that are purely English, those things that are purely Welsh or Scottish. I can totally understand why our Conservative colleagues wish that to be the case, but I do not agree with it and never have. It is not that I am avoiding addressing it, I am just saying I do not agree.

Q272 Chairman: By the nature of the Labour Party votes it is inevitable that when you get the smaller Labour majorities the Labour majority is dependent on the Scottish and the Welsh votes. At that time you will not have an English majority or the party would not have an English majority in the House of Commons.

Mr Blair: We have got a UK Parliament.

Q273 Chairman: How do you deal with that? It should have been thought about when the devolution programme was being pressed forward but no-one would face it.

Mr Blair: I am sorry, it was thought about. It is not as if this argument has not been fought over. You will remember it better than me from the 1970s for heaven's sake. I

totally understand why people from other political parties think it is a good idea. I think in the end if you try to divide MPs up into two categories and then you have to define the legislation they are able to vote on and they are not able to vote on you will find it very hard. That is why I confidently predict that although there will be a lot of debate and argument about it, I doubt that a government is going to introduce this. This debate has gone on forever. It is not as if the issue has not been addressed.

Chairman: We will probably return to this.²⁰

One alternative that has been canvassed as a partial solution to the West Lothian Question is the development of regional assemblies within England.²¹ However the No vote recorded in the referendum on a North East Assembly in November 2004 is generally accepted to have postponed for some time the development of a tier of regional government that is directly elected.

C. The territorial extent of bills and voting patterns

Dr Meg Russell of the Constitution Unit has identified a number of occasions since 1999 in which Scottish votes have been held to have been decisive in securing victory for the passage of Government legislation in areas devolved to Scotland.²² The issue of fox-hunting in England and Wales attracted particular attention, since the Scottish Parliament has legislated separately.²³ For example, on 30 June 2003, 27 Scottish Labour MPs voted to end fox-hunting in England in all its forms in the division on the *Hunting Bill* 2002-3.

There were three divisions on the *Health and Social Care (Community Health and Standards) Bill* 2003-4 relating to the controversial policy of foundation hospitals which attracted interest. On 18 November 2003, in Division 381 on Lords amendments to the Bill, of the Members representing English constituencies, 17 more voted against the Government than for the Government.²⁴ The Government won the division by 17 votes.

Division 38 of the *Higher Education Bill* 2003-4 also attracted attention since, of Members representing constituencies in England, 15 more voted against the motion than voted in favour.²⁵ This bill related to tuition fees for students from England. The motion passed by 5 votes.

In the 2005 Parliament, a smaller Government majority has led to renewed interest in the voting patterns of Scottish Members. In particular, there was interest in Divisions 163-165 on the *Health Bill* which related to banning smoking in public places in England and Wales. Scotland has its own legislation in this area. The votes took place on 14 February 2006 and on this occasion the Government majority was so substantial as not to be affected by

²⁰ Liaison Committee, *Oral Evidence given by Rt Hon Tony Blair MP – uncorrected transcript (7 February 2006)*, 7 February 2006, HC 709-ii 2005-06, Qq269-273

²¹ For a description of government policy see Library Standard Note no 3176 *The draft regional assemblies bill*

²² See “The Government of England by Westminster” Meg Russell and Guy Lodge in Robert Hazell ed *The English Question* 2006 pp64-95

²³ The *Protection of Wild Mammals (Scotland) Act*, banning killing a fox with dogs, was passed by the Scottish Parliament on 13 February 2002 and the ban came into effect on 1 August 2002.

²⁴ See Library Standard Note 2768 *Divisions 381 and 388 on foundation hospitals: 19 November 2003*. For commentary, see Monitoring Report Devolution at the Centre February 2004 at http://www.ucl.ac.uk/constitution-unit/monrep/centre/centre_february_2004.pdf

²⁵ See Library Standard Note 2878 *Division 38 on the Higher Education Bill* for full details.

Members with Scottish constituencies. The SNP and the Conservative Member (David Mundell) in Scotland did not vote.

On the programme motion for the *Education and Inspections Bill 2005-6*, the main provisions of which did not apply to Scotland, the Government had a majority of 10.²⁶ There were 31 Labour rebels; 28 from English, 2 from Scottish and 1 from Welsh constituencies. 1 Conservative and 1 SDLP voted with the Government. 22 Labour MPs were absent from the vote split; 16 English, 4 Scottish and 2 Welsh constituencies. Here, the vote was complicated by intra-party dissent within the Government party, as assessed by the academic Philip Cowley.²⁷

There is a full list of Labour backbench rebellions against Government Bills since 1997 in Library Parliamentary Information List no SN/PC/3038. This does not differentiate in terms of territorial representation, but indicates votes where Government majorities have been slender.

Different political parties have adopted stances on the question of voting on English laws. The issue is complex, for a number of reasons:

1. The territorial application of a bill may be wider than set out in the territorial extent clause. As the Kilbrandon Commission noted: “any issue at Westminster involving expenditure of public money is of course of concern to all parts of the United Kingdom since it may directly affect the level of taxation and indirectly influence the level of a region’s own expenditure.” The operation of the Barnett formula is of direct relevance here, since the calculation of the Scottish Welsh and Northern Ireland block is based on overall UK spending.²⁸
2. There may well be cross-border implications, where an MP has constituents who access services in Scotland or Wales, or vice versa
3. Policies developed in England have implications for policy development in Wales or Scotland
4. Scottish MPs do regard themselves, like all MPs, as not just representing their particular constituency, but also, in a more general sense, the UK and its people as a whole.

The Scottish Liberal Democrats, in their 1997 election manifesto, not only proposed a reduction in Scottish representation at Westminster and abolition of the of Secretary of State for Scotland, but also that “we believe that, following these reforms, Scottish Members of the UK Parliament should not participate or vote on matters where there is no Scottish interest”²⁹ However, following the devolution settlements, the Liberal Democrats have not adopted this policy.

²⁶ Applying the normal conventions on identifying votes set out in Library Standard Notes no 2768 and 2878

²⁷ For further detail on Labour backbench rebellions since 2005 see Philip Cowley <http://www.revolts.co.uk/Concentrated%20Minds.pdf>

Further information on the Barnett formula is available in Library Research Paper, (RP 01/108) and in the Treasury’s Barnett Formula Funding the Scottish Parliament, National Assembly of Wales and Northern Ireland Assembly: A Statement of Funding Policy

²⁹ *Make the difference: the Scottish Liberal Democrat manifesto 1997*, p45

The SNP has a policy of not voting on England-only legislation, but has on occasion voted against controversial legislation applying only to England, citing one of the grounds above.³⁰ For example, SNP members voted against the bills on foundation hospitals in 2002-3 and higher education in 2003-4, citing the funding implications and possibly adverse effects on Scots. According to Russell, Tam Dalyell followed a self-denying ordinance since 1999, but decided to vote on the *Higher Education Bill 2004* because of the implications for higher education in Scotland. The only Scottish Conservative Member during the 2001 Parliament, Peter Duncan, abstained on the foundation hospitals bill, arguing that “as a consequence of devolution, the decision on foundation hospitals in Scotland should be made by the Scottish Parliament”.³¹

As noted above, proposals to allow the certification of bills as applying to the various constituent parts of the United Kingdom have been made since 1893. There are a number of practical and political reasons which have made implementation difficult. These have been conveniently summarised by Dr Meg Russell as technical, political and constitutional.

1. Technical issues

Public bills commonly have clauses which define the territorial extent of proposed legislation, but although it may be possible to identify a bill as applying predominantly to England and Wales, there may be other clauses which apply to Scotland as well. This is a common occurrence, as other measures may be included within a bill covering a whole subject range. The Commons Library maintains a chart which gives the territorial extent of bills, available at http://www.parliament.uk/documents/upload/tc_bills.xls which illustrates this issue in detail. It would also be possible to designate different divisions on various clauses or amendments as applying to various parts of the UK, but again an increased number of divisions might have to lead to electronic voting or greater use of the deferred division procedure.

The Scottish Affairs Committee has very recently recommended improved explanatory notes to Bills, with more comprehensive indications of territorial extent and a list in Hansard of bills in the Queens’ Speech applying to Scotland.³²

The continuing use of the Sewel (or Legislative Consent) convention, whereby the UK Parliament continues to legislate in devolved areas with the consent of the Scottish Parliament, adds further complications to proposals to certify bills as applying exclusively to individual parts of the UK.³³ There may be practical ways to overcome these technical difficulties, such as changing drafting practice, but this is likely to result in more bills, more strictly defined as to territorial coverage.

The Welsh devolution settlement leaves primary legislation at Westminster, despite incremental changes in the *Government of Wales Bill 2005-6* which have yet to take effect.³⁴

³⁰ “Salmond proposes English affairs committee and financial independence from Scotland” 4 December 2004 SNP Press Release

³¹ HC Deb 21 January 2004 c1393

³² *The Sewel Convention: the Westminster perspective* HC 983 2005-6

³³ For further information on the operation of the Sewel Convention, see Library Standard Note 2084 *The Sewel Convention* and HC 983 2005-6

³⁴ For further information, see Library Research Paper 05/90 *The Government of Wales Bill*

In general, England and Wales have a common statute book, therefore legislation designed to apply exclusively to Wales commonly also extends to England. Part of the rationale is to deal with cross border issues.³⁵ However, the National Assembly for Wales has a fairly wide degree of policy discretion when approving secondary legislation. The question of applying an ‘in and out’ strategy to legislation affecting Wales is therefore quite complex. The situation in Northern Ireland is also not straightforward, since devolution is currently suspended, but NI legislation is generally maintained separately through use of the Order in Council procedure. These Orders are enacted by the UK Parliament.

2. Political issues

Much of the impetus for introducing ‘English votes on English laws’ is derived from the political distribution of seats within the UK Parliament. The Conservatives hold one seat each in Wales and Scotland, and so their electoral strength is almost exclusively in England. Labour holds a preponderance of seats in Scotland and Wales, and when they hold a narrow majority (as in 1974) are dependent on support from these parts of the UK. Northern Ireland has a completely separate party system, though some parties have had formal or informal links with one of the major UK parties (as with the Unionists and Conservatives prior to the early 1970s, and the SDLP and Labour), but at times its Members can hold the balance in a hung Parliament, as in March 1979, when the Callaghan Government lost a vote of confidence. Should the electoral geography change, these pressures are likely to be less acute. If some form of certification were introduced, the prospect of more complex voting decisions would lead to more complicating whipping arrangements, which might weaken party discipline.

Finally, it has been suggested that to require the Speaker to certify on territorial extent might subject the office to criticism, thus weakening the independence and status of the role. The Speaker already has power to certify Bills as money bills for the purposes of the *Parliament Acts*, but this is a rare occurrence.

3. Constitutional issues

Commentators have argued that holding separate votes on legislation affecting England would affect the devolution settlements and the operation of the Union.³⁶ Under current constitutional conventions, all Members are treated as equal, and can vote on all matters, even where they do not have a direct impact on constituents. For example, all Members voted on the enactment of the *Greater London Authority Act 1999*, not just Members for London. A UK Government which could command a majority at Westminster only in reserved subjects, such as taxation and benefits and foreign policy, but which could not carry legislation on health, education, social services in England, would be profoundly different in nature from current conventions. In effect, a separate coalition of parties would be needed to command a majority for legislation in England in these devolved areas. Due to the dominance of England within the Union, a federal solution on the lines of those developed for Canada or Australia presents particular difficulties.

³⁵ One example is the *Children’s Commissioner for Wales Act 2001*

³⁶ See for example, Vernon Bogdanor *Devolution in the United Kingdom* rev ed 2001 and Jackie Ashley “ If it’s English votes for English law, the UK’s end is nigh” 12 June 2006 *Guardian*

Commentators have suggested that the outcome of such an 'in and out' policy would be the operation of a Parliament for England within or without the UK Parliament. There is a pressure group known as the Campaign for an English Parliament which campaigns on this issue on a non-party basis.³⁷

Professor John Curtice has presented the results of poll surveys which indicate that there is little popular enthusiasm for a Parliament for England, despite support for a form of 'English votes for English laws'. For instance 49 % of voters in England favour a continuation of the present form of Government, with 23% preferring an English Parliament, although 67 % agree or strongly agree that Scottish MPs should no longer be allowed to vote in the House of Commons on laws that only affect England.³⁸

The Scottish Affairs Committee has recently highlighted the extent of popular concern about the West Lothian Question:

49. It is a matter of concern to us that there are signs that English discontent with the current situation is becoming apparent. According to a report in *The Scotsman*, a recent poll, conducted by ICM for the BBC, indicated that 52 per cent of people in the UK believed it wrong that a Scottish MP should become Prime Minister, given that Scotland has its own Parliament. That figure rises to 55 per cent of people in England and 59 per cent of people in the South East of England, whereas only 20 per cent of people in Scotland thought it wrong.⁵⁰

50. In order to address the West Lothian Question, there are usually four solutions proffered: the dissolution of the United Kingdom; English devolution; fewer Scottish MPs; or English votes on English laws. Although we make no recommendations on how to resolve this question, we considered it worth noting our concerns, with the hope that the matter will be comprehensively debated, and resolved, before the situation is reached whereby it could actually undermine the whole devolution settlement.

⁵⁰ See *English blow to Brown's PM hopes*, *The Scotsman*, 15 May 2006.³⁹

This has led to some press coverage, with the Conservatives reiterating their policy of English votes for English laws.⁴⁰

The Lord Chancellor mounted a robust defence of the existing settlement at a devolution conference sponsored by Economic and Social Research Council (ESRC):

Let us then assume, contrary to my argument, that we have English votes for English laws - if such a thing could be identified - or we establish an English Parliament, because that is what it would amount to.

Parliaments for all the nations of the Union and an overarching federal Parliament too.

The federal parliament would have responsibility for federal matters such as defence and the economy.

³⁷ See <http://www.thecep.org.uk/>

³⁸ Derived from respondents in England to British Social Attitudes Survey 2003, presented in Table 6.11 in "What the People Say-if anything" by John Curtice in Robert Hazell ed *The English Question*, derived from British Social Attitudes 2003

³⁹ HC 983 2005-6

⁴⁰ "Tories seek curb on Scottish MPs" 21 June 2006 *Daily Telegraph*

But who would be calling the shots?
Why would the English Parliament want to kow tow to the federal one?
The English Parliament would control the greater part of the economic power of the UK.
It would be the dominant political force.
Leaving the federal parliament either voting on the back of what the English Parliament has already decided. Or hanging on to its coat tails.
And where would this leave the other partner nations of the UK?
No longer partners is the answer. But carried along on England's backdraft.
We would end up, I believe, at exactly the point we had set out to avoid - unbalancing the relationship between the nations. How, under such circumstances, would the Union survive?⁴¹

However, the Labour backbencher Michael Wills has suggested that resolving Scotland's position in the Union should be a central part of a new package of constitutional reform, assisted by a constitutional convention of voters. His proposals are set out in an IPPR pamphlet⁴²

D. *Parliament (Participation of Members of the House of Commons) Bill 2005-6*

On 10 February 2006 Lord Baker of Dorking introduced the second reading debate on his *Parliament (Participation of Members of the House of Commons) Bill*, which would prevent non-English Members voting on English matters:

My proposals in the Bill are designed to resolve this matter. I seek to give the Speaker powers, or rather confirm powers that the Speaker already has, to certify the territorial extent of a Bill. He has that power and he has exercised it in regard to Scottish Bills. He would designate groups of MPs—English MPs, Scottish MPs, Welsh MPs and Northern Ireland MPs—allowing them to vote only on such Bills, parts of Bills and statutory instruments. That is the nub of my proposals.⁴³

Lord Baker was supported by Lord Strathclyde, Leader of the Opposition in the Lords and Constitutional Affairs spokesman:

In the Conservative Party, we agree with my noble friend Lord Baker that the West Lothian question needs to be addressed. Many noble Lords opposite accept that there is a problem but do not find my noble friend's solution favourable. There are also noble Lords opposite, however, who do not believe that there is a problem at all: the head-in-the-sand approach. They are in denial. Well, they ought to wake up and see what is coming down the tracks. We agree emphatically that, now that there is a Scottish Parliament and the Parliament at Westminster no longer speaks for the whole of the United Kingdom on domestic policy matters, it is not sustainable for policy in England on matters that are devolved to Scotland to be decided by the votes of MPs representing Scottish constituencies. That is not a nationalist agenda; it is

⁴¹ ESRC Devolution and Constitutional Change Conference 10 March 2006 Department for Constitutional Affairs PN. Full text available at <http://www.dca.gov.uk/speeches/2006/sp060310.htm>

⁴² "Key Brown ally calls for urgent answer to West Lothian Question" 21 June 2006 *Scotsman*. See *A New Agenda: Labour and Democracy* June 2006 IPPR

⁴³ HL Deb 10 February 2006 c906

certainly not a Scottish nationalist agenda. There will come a time, and it may not be long, when English people simply will not accept that. I wholly accept that that is not the case at present, but the feeling is out there, and it is growing. Speaking as a Scot and a passionate supporter of the union, I regret that. It will happen, however, and the matter will be startlingly personified when—I refer to the brief interchange between by noble friend Lord Baker and the noble Lord, Lord Maclennan of Rogart—Mr Gordon Brown becomes Prime Minister, as we now gather will happen some time next year. It is possible, of course, that Mr Brown might take the Simon Hughes option and decide to set an example by not voting on English Bills. After all, the current Prime Minister sets a striking example of abstinence in the voting lobbies, as we discovered last week. Somehow, however, I do not think so. This intensely serious matter, which could be solved by a convention of not voting, in the same way as the noble and learned Lords of this House do not vote on political matters under the Bingham declaration, will therefore have to be solved by statute.⁴⁴

In response, Lord Falconer, the Secretary of State for Constitutional Affairs and Lord Chancellor, argued:

Our national Parliament is sovereign in all matters. If it is to continue to remain at the heart of our union, all its members must be able to consider any matter before Parliament. At the heart of the argument advanced by the noble Lord, Lord Baker of Dorking, in favour of the Bill, is the proposition that if English MPs cannot vote on devolved matters because they are dealt with in Edinburgh, Belfast and Cardiff, then non-English Members of Parliament should not be able to vote on comparable matters in the national Parliament. That is, as I understand it, though it was never put like that, the essence of his case.

To have some Members who can vote on some issues while others can vote on everything indubitably creates a two-tier system of MPs. Such a proposal, despite the claim of the noble Lord, Lord MacGregor, to speak at one stage for the people of Scotland, has no groundswell of support, either in England or Scotland. That is unsurprising, because it has absolutely no basis in principle.

Devolution happened in Wales and Scotland because their peoples wanted it. The people of England have not been the victim of proposals forced on them almost exclusively by Scots and Welsh MPs. If every one of the non-English MPs coalesced they could not outvote the English MPs. Only if well over 200 English MPs and every non-English MP voted for a proposal can it get through.⁴⁵

Lord Maclennan of Rogart, a Liberal Democrat peer, did not support the Bill, stating: ‘The Bill can best be understood as the partisan response of the Conservative Party to its declining appeal to the electors of Scotland and Wales in particular.’⁴⁶

The Bill places on the Speaker the duty to certify the territorial extent of each private or private bill (or part of bill) before second reading and to designate which category or categories of Member can speak or vote on which provisions of the bill (including amendments). The Bill also requires the Speaker to certify the territorial extent of a statutory instrument when laid before the Commons. Any such certificate would be conclusive and not

⁴⁴ HL Deb 10 February 2006 c945

⁴⁵ HL Deb 10 February 2006 ccc948-949

⁴⁶ HL Deb 10 February 2006 c941

questionable in the courts. No special procedures are included for the Lords, whose Members are not elected.

The Bill received a second reading, and has now passed all its stages in the Lords without further debate.⁴⁷ However, as a private member's bill, it is not expected to make much progress in the Commons.

⁴⁷ The Bill received an unopposed third reading in the Lords on 18 April 2006