

## Procedure Committee

### Oral evidence: The procedure of the House of Commons and the territorial constitution, HC 838

Wednesday 3 March 2021

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Members present: Karen Bradley (Chair); Aaron Bell; Kirsty Blackman; Bambos Charalambous; Chris Elmore; James Gray; Nigel Mills; James Sunderland; Owen Thompson.

Questions 1-19

#### Witnesses

**I:** Professor Katy Hayward, Professor of Political Sociology, Queen's University Belfast, Professor Ailsa Henderson, Professor of Political Science, University of Edinburgh, and Hedydd Phylip, Doctoral Researcher, Cardiff University.

Written evidence from witnesses:

- [Hedydd Phylip](#)



## Examination of witnesses

Witnesses: Professor Katy Hayward, Professor Ailsa Henderson and Hedydd Phylip.

**Chair:** Hello, everybody, and thank you for coming to our session this afternoon. We will be taking evidence for our inquiry on the territorial constitution and how the Westminster Parliament and the other Parliaments around the United Kingdom work together. We are very grateful to have with us today as witnesses three absolute experts in the field. We have Professor Katy Hayward, professor of political sociology at Queen's University Belfast; Professor Ailsa Henderson, professor of political science at the University of Edinburgh; and Hedydd Phylip, a doctoral researcher at Cardiff University. We are very, very grateful that you are spending this time giving us oral evidence. I know that you have also submitted written evidence, but it really does help the Committee if we can explore some of the issues that you have raised and some of the themes that have come out from your evidence and that of others, to help us to understand where, as a Committee, we can make recommendations to improve the territorial constitution of the United Kingdom in the future.

We are going to kick off with James Gray, who has some questions about the way English votes for English laws and the English issue happen at the moment.

Q1 **James Gray:** This is particularly directed at Professor Henderson, but I am sure that the others will be able to join in if they wish to do so. It may seem odd, I suppose, to be asking a Scottish professor about Englishness, but none the less that is a good sign for the future of the Union, isn't it? And I, after all, am a graduate of Glasgow University, so I am able to claim a degree of legitimacy. So, Ailsa, can you please tell us about your own work on Englishness. What is it? What does it mean? And are the demands for Englishness, are the demands of the English, being answered by EVEL?

**Professor Henderson:** Thanks very much for the invitation to be here today. I am afraid it is even worse than that: I am not just in Scotland speaking about England, I am Canadian originally, so it's even more horrible!

There is a fair bit to say. Since 2011 I have been co-directing with Richard Wyn Jones from Cardiff University the Future of England survey, and then in 2018 we added parallel surveys in Scotland, Wales and Northern Ireland, to have an annual state of the Union survey. I think three things come out of those surveys with respect to Englishness.

The first is what we are calling the two Unions argument. The whole point of the survey in England was to explore patterns of English and British identity and to look at how those related to attitudes to different governance arrangements, including procedural arrangements like English



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votes for English laws, as well as to attitudes to the EU. What we find is that England's attitudes to England's two Unions are linked. There is a considerable degree of what we call devo-anxiety—dissatisfaction with the domestic constitutional status quo—in England, and a considerable level of Euroscepticism, and both of those are linked. Those who are more devo-anxious are also those who have tended to be more Eurosceptic, and both of those are linked to English identity. So, the more you prioritise your English identity, the more devo-anxious and Eurosceptic you are.

A second thing that comes out is that there is a considerable level of inter-regional grievance in the UK, but that devo-anxiety in England has a particular target, and that target is Scotland. It manifests itself as disquiet about Scottish access to resources, but also what is perceived to be undue Scottish influence at Westminster, both in terms of who gets to vote on legislation but also who gets to sit in Government.

The third thing I would say is that the survey data, particularly in England, made clear that the Union is in a precarious place. Support for independence in Scotland is high; support is rising, but from a low base, in Wales; support for a border poll in Northern Ireland is increasing; and throughout, and particularly in England, there is a considerable level of what I would call ambivalent Unionism. That is not going as far as to call for independence, but is perfectly happy for one or more of the parts of the UK to go their own way. That ambivalent Unionism is particularly strong in England. Those are the main findings in terms of what we have been looking at in England.

- Q2 **James Gray:** I have to say that my own private conversations, for example with constituents in Wiltshire, entirely endorse what you say. It tends to be the Brexiteers who are the most extreme on the constitutional questions in answer to devolution. Would you agree with me that one of the most worrying things is a lack of concern amongst the people of England? Most of my constituents would say, "I really couldn't care less if the Scots want to go their own way—let them go. Who cares anyhow? They are just a small group of people. We've got 65 million people in England and 4.5 million in Scotland." Would you agree with me that that kind of attitude of nonchalance is even more worrying?

**Professor Henderson:** That is certainly present in the data; we are picking that up. I suppose whether you find it worrying depends on how you feel about the Union, but certainly we know that if we look at attitudes to support for independence, or reunification in Northern Ireland, and at support for this ambivalent Unionism, we are up over 50% of the electorate, no matter where in the UK we are looking. It is just because support for independence is fairly low in England, it is the ambivalent Unionism that is driving things. It is about 40% of the electorate.

- Q3 **James Gray:** Would you agree with Vernon Bogdanor, who recently said that the original devolution settlement didn't answer the English question, and hadn't answered the English question, and until such time as we did answer the English question or West Lothian question, the devolution settlement in Scotland would never be stable?



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**Professor Henderson:** I certainly think that devolution to Scotland and Wales wasn't designed to satisfy the needs of the electorate in England. It is not a failing for that, in the sense that it was never designed to answer an English question, so it hasn't, by chance, happened to answer it. I suspect that's not particularly surprising. I do think that Englishness and the needs of the English—

Q4 **James Gray:** Sorry, but I think you misunderstood me. The English question that I am referring to, or the West Lothian question, is the question that you referred to in your first answer, namely that the people of England are upset about the fact that the Scots now, post-devolution, have a disproportionate say in English matters.

**Professor Henderson:** You are right. Absolutely, yes. It did not provide a compelling answer to the West Lothian question, but I think there is a different way of understanding the English question, which is what do you do about England now that there is devolution in Scotland, Wales and Northern Ireland?

Englishness has typically been more often ignored than included in discussions, but also when it is the focus of attention, when people are trying to find answers to the English problem, as it is sometimes called, or the English question, the proposed solutions are typically not what people want.

Four years or so after devolution, everyone was looking for the presence of an English backlash, and having found none, people largely stopped polling England as a political community and trying to understand what the needs or wishes of that electorate were. That is part of the reason we have set up the survey. If you look at all the data, I think it is possible to identify four different pillars of English attitudes to devolution and the territorial question. Sometimes they are in tension, but two of them are very relevant to this Committee. The first is subsidiarity; we know that people are really attached to the local level, more so than they are to England, and they are keen for local decision-making powers. When we first started, 40% wanted local authorities to have more powers than they do at the moment. The second is that there is a considerable desire for an institution that allows for the expression of an English political voice. Every time we ask about England-wide solutions, and compare them with regional solutions or even local solutions, the England-wide solutions always poll better.

Related to that, Westminster is not at present seen as the vehicle for the expression of England's interests: 60% don't trust Westminster to work in the best long-term interests of England. It is worth noting that those two—subsidiarity and the expression of Englishness—are separate and need separate treatment. Sometimes they are bundled and support for subsidiarity is seen as a solution to the expression of the English political voice problem. That's where some of the problems crop up.

The third thing I would say is that there is a real desire for a fair system of transfers from richer to poorer regions in the UK. There is incredible



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support in principle for economic solidarity across the UK. The problem is that, when you start asking questions about how it works in practice, support drops. It particularly drops if you start mentioning Scotland. It is also worth noting that the English, even at their least generous, are still more supportive of inter-regional transfers than Scots.

The last point relates to the Westminster point. There really is a desire for an upfront, non-furtive accounting of when Westminster and the UK Government are acting for England. When it is not, there are entire Twitter campaigns dedicated to decoding Government messaging about when it is acting for England and when it is acting for England and Wales, when it is acting for the UK. That has also been clear in many of the covid press conferences.

Two of those—the expression of English voice and clear communications about when the Government, or Westminster, is acting for England—would seem to be directly relevant to what the Committee is looking at right now.

**Q5 James Gray:** I was just coming on to saying that. With all that disquiet and the outcome of your study as background, this has been the theme for many years. It is many years since I was the shortest-serving shadow Secretary of State for Scotland ever—one week—when Michael Howard gave me the sack for advancing some of these arguments on “Newsnight”. So, I come with scars.

With all that background, to what degree do you think that EVEL—English votes for English laws—deals with it? Is it entirely irrelevant? Is there any real way in which it addresses these concerns?

**Professor Henderson:** Excellent question. I counted the other day that we have asked 17 different questions on English votes for English laws over the years. Three things are clear.

First, EVEL is incredibly popular. If we ask people whether they like a series of different policies—this one or that one—more people say that they like EVEL than any other possible policy that we put to them. If we force them to choose, EVEL always comes out on top. It doesn’t matter whether we give them a big shopping list of different governance options, or a really restricted forced choice of two options. EVEL is far and away always the most popular option.

It is also relevant to other attitudes. When we started polling, we were finding that support for an English Parliament was quite high at about 30%. When we added a question asking about a reformed UK Parliament in which English votes for English laws was present, we found support for the English Parliament dropped and support swung behind that. EVEL is not just important; it also helps us to understand the different preferences that people have.

The second thing, though, is that there is considerable uncertainty about it. When you ask about it, the level of don’t knows is really high. We are getting about 20% don’t know when we force them to choose from a list



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that includes EVEL. We asked people recently how they felt it was going and we got about 40% don't know. So it is incredibly popular, but there is still a considerable degree of uncertainty and low level of knowledge about it.

The last point is about evaluations of EVEL: what people think about it now that it has happened and whether they even know that it has happened. The answer is that they really do not know that it has happened. We did a poll after it was introduced and less than 1% believed that there had been a lot of progress on it. When we asked them why they felt there had been so little progress, over half said it was because it had not been introduced and a substantial portion of the others said there was insufficient Government commitment to it. For the group we told it had happened, a substantial portion felt it did not go far enough. Then, a year later than that, when we asked people if they felt it had made a difference, a third said they didn't know, a third said it had made no difference and 10% said it had made things worse.

It is incredibly popular, but there is a high degree of uncertainty around it and people do not think it has happened—they believe that is because the Government is not committed to it—and when you tell them it has happened, a sizeable portion do not think it has gone far enough; they want something more. So, in a way, the introduction of EVEL has not satisfied demand for EVEL. That is partly because the English electorate want something different. They want something that allows them to express a political voice, which may be satisfied by a completely different procedural arrangement like an English Grand Committee or an English Affairs Committee.

**Q6 James Gray:** Those answers are extremely interesting. I can make a public admission. I am a Scot, I am a Scottish graduate in politics, I was shadow Secretary of State for Scotland, I have a particular interest in procedure and I have been in Parliament for 25 years but I have to admit—I say this perfectly publicly—I have not got the faintest idea how EVEL works. It is a complete mystery to me. Of all people, I should know. I simply cannot imagine that one single constituent understands it.

Am I right in thinking what you are really saying is there is a very strong desire for it among the English, but they really do not understand what it is, and they certainly do not think that what was brought in by William Hague answers that particular desire? It does not give them what they want. Is that a reasonably robust summary of your conclusions?

**Professor Henderson:** Yes. I would say that is absolutely accurate.

**James Gray:** Thank you. That is all from me.

**Chair:** Thank you, James. Professor Henderson, on your point about subsidiarity, I must put on the record that any suggestion of changes to local government structure and losing district or borough councils in my part of England is extraordinarily unpopular. People want to keep their districts and boroughs, and I certainly want to keep my own district council. I concur completely with what you say. I will bring in Chris Elmore



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and then I will ask the other witnesses if they want to add anything following your response to his question.

- Q7 **Chris Elmore:** Thank you, Chair, and thank you to the three witnesses. In response to Professor Henderson's comments around Englishness, isn't part of the problem the geography of England? If you live in Yorkshire, you do not necessarily feel a connection to Hampshire—no disrespect to James Gray; I am a big fan of Hampshire as it happens.

**Chair:** He's Wiltshire.

**Chris Elmore:** There we go—I also like Wiltshire. The point is: isn't that part of the problem? When regional assemblies were discussed back in 1998 under the last Labour Government, the rejection of that was arguably around a campaign that did not work or whatever, but the whole point is that England's physical geography is completely different, and what works for somebody in Devon and Cornwall would not work for somebody in the Chair's seat in Staffordshire—I know that is right.

Secondly, you said in the opening remarks that independence is on the rise in Wales. I would partially challenge that, because what is also on the rise in Wales is the wish to abolish the Senedd. For the record, I do not want the Senedd abolished—this is a public session and I absolutely am in favour of devolution. They are only opinion polls, not academic studies, but in one of the most recent opinion polls on St David's Day, abolish was at its highest level ever, running at 15% of the Welsh electorate. There is an anti-devolution element in Scotland. We have to accept that, and those figures have only grown over the last number of years. It could be that it is down to a particular type of voter demographic—as you say, whether they are pro-Brexit or whatever it might be—but it is also about some people arguing that devolution has not worked for them.

I will stick with the Welsh example. In north Wales, some people—not me, but some people—would argue that devolution has not worked and delivered in the way that they would like it to in north Wales, and they feel more connection to the Mersey city region than they would to Cardiff. There are some arguments about the highlands and islands of Scotland in relation to devolution in Edinburgh. Is that not the same principle around Englishness? If we are to have devolution, or a way of finding a solution to the English question, a lot of it is because some people do not feel a connection to Westminster, but they would not necessarily feel a connection to Manchester if they are in Devon and Cornwall. There is this whole idea that the country is so vast.

On EVEL, I would also ask the question—I think James touched on this a bit—whether it is because the title is English votes for English laws. I have been Opposition Whip for five years and I just about understand it in terms of how the legislation is written, and why it is done as it is. I am not saying that I agree with it, but I understand why it is done as it is. If you ask someone in England whether they want something in Parliament that is English votes for English laws, is that not a very good reason why they would support it? Then you say, "Is it working?" "I don't know."



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It is a bit like explaining the d'Hondt system under devolution. No one really understands d'Hondt; they just know that they get two votes. Arguably, those with the most votes do not get a seat in the d'Hondt system. I am not saying that that is right or wrong either, but it is another thing that people do not necessarily grasp because of the complexities of how legislation is sometimes written. There are a couple of things in there, but I wanted to pry a bit in terms of your opinions on it.

**Professor Henderson:** In terms of polarisation, I think you are absolutely right. On the Welsh issue, yes, support for independence is increasing, and so too is support for abolition, but I do not think that that cuts against what I was saying, which is that the Union is in trouble. The Union is in trouble in part if there is, all of a sudden, a polarisation around the issue of the constitutional status quo. These are two different groups, both very dissatisfied with the constitutional status quo; they just see different solutions as the way out of that unhappy present. One is to remove Wales from the United Kingdom and another is to remove the Welsh Parliament. I think you are absolutely right that that nuance is there, but I do not think that it is good news in terms of the Union. Both are a comment on the constitutional status quo.

Q8 **Chris Elmore:** Just to be clear, I was not suggesting that it was good news. I just wanted to explore it a bit, because there is this worrying polarisation. Then there is a big group of people in the middle—perhaps Ms Phylip will understand this better, being from Cardiff Uni; obviously, if you could not guess, I am a Welsh MP—who would like more devolution or the status quo, who are often not necessarily listened to because of the polarising views. I think that is why I was trying to get at, but I do not think that it is good. I do not want anything abolished.

**Professor Henderson:** Absolutely. In terms of your comment on England and regional assemblies, I think the problem is that because of England's size there are four levels, where in Scotland we would typically think of three. We would think of your local authorities, the Scottish Parliament and the UK Parliament, if we are not talking about supra-state structures. In England, there is a tendency to insert between the local and national levels—so between England and local authorities or borough councils—a regional level as a way to cope with England's size. We have a book out tomorrow, but England's size poses all kinds of problems for how you come up with constitutional arrangements.

We keep seeing in public opinion data that people are attached below the regional level, at the local level, and at the English level, above the regional level, but the problem is that people keep proposing what they think will kill two birds with one stone and insert straight into the middle, and unfortunately that is just something that people do not want.

We have polled on EVEL a bunch of different ways. We have polled on regional assemblies and Ministers for different regions in England. We have polled on regions just as much. We cannot figure out a way to—it is not like we are looking for people to support regional solutions, but we never find support for solutions at the regional level, yet that is what



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parties always jump to, in part because England's size poses such problems for a UK-wide constitutional settlement. The solution seems to be to carve up England into different Scotland-sized chunks and that will satisfy people for a while, but the problem is that it just does not satisfy the English electorate.

In terms of whether English votes for English laws just sounds good and that is why people like it, I think there are two things going on. First, I think you are right that the labelling matters. We have found that putting England in front of anything causes it to poll better, unless it does not exist; we created some fake ones a couple of years ago to see whether that would draw people's attention, and it did not. However, if you label anything as an "English this" or an "English that", it automatically polls better, because people want an England-wide solution.

The other thing we know is that we can ask about English votes for English laws purely in an English frame—we can say that only English MPs should vote on England-only legislation—and we typically get about 60% support in England. However, later on in the surveys, we also poll about it in the frame of excluding Scottish, Welsh or Northern Ireland MPs, and one thing that we consistently find is that, if you mention Scotland and that Scottish MPs should not vote on England-only legislation—framing EVEL as a Scottish exclusion issue—support for EVEL goes up by about five points. However, if you talk about it in the context of excluding Welsh MPs, support tends to go down by 5 points or so.

It is not that there is not a principled reason to support EVEL in England, but one of the most popular aspects about it is that it excludes Scots from decision making. If we think that there are two aspects to English attitudes to the status quo—a sense that there is an absent expression of political voice, but also one based on grievance—England does not do much on voice, as all the academic research on that confirms, including submissions to this Committee, but it actually does a fair bit in terms of addressing the grievance side of things, and I think that it is not ineffective because of it.

**Chair:** Thank you, Professor Henderson. Professor Hayward, do you have anything you would like to add?

**Professor Hayward:** No, I have nothing to add on this.

**Chair:** And Ms Phylip, do you have anything?

**Hedydd Phylip:** No.

**Chair:** Okay. Thank you very much. I think we have covered the English part of the debate, so we will now move on to the way that legislative consent works. I will bring in Owen Thompson.

Q9 **Owen Thompson:** Thanks, Chair. I will steer clear of EVEL for now. I will start with a relatively general question to each of you: how effective do you think the legislative consent process is right now? I do not mind who wants to come in on that first.



**Hedydd Phylip:** I think it is safe to say that I would class the Sewel convention as something that has been put under significant strain recently, that being the result of the process of withdrawing from the EU. We know that it is a convention that says that the UK Parliament should not normally legislate in devolved policy areas, and that the Supreme Court in Miller confirmed that that was a political convention, rather than a legally binding one. So that is all we really have in terms of the definition. There is an understanding about when it is engaged, but there is no consensus on what “normally” means, and certainly the devolved Governments would have a narrower definition of this than perhaps the UK Government would, and I think the issues that we have seen regarding the convention come up because of the lack of definition of “normally”.

That said, there is some useful analysis by the Institute for Government on this that confirms that actually, in most cases where consensus is asked, it is given by the legislatures. But this has most successfully happened when there is an understanding on the part of the UK Government that there needs to be early engagement with the devolveds, that there needs to be prior sight of those Bills and engagement throughout the process for any issues to be ironed out.

The most recent examples of consent not being given—in the European Union (Future Relationship) Act 2020 and the United Kingdom Internal Market Act 2020—are examples of Acts that significantly affect devolved power, and yet there was not an incredible amount of engagement beforehand, and the consent process was set aside.

**Chair:** Professor Hayward, would you like to add anything?

**Professor Hayward:** Thank you very much for inviting me to give evidence before you this afternoon. It is first worth recognising that because the Standing Orders in the House of Commons and the House of Lords do not deal with legislative consent motions at all, that implies that it is an internal concern of the devolveds, which is far from true. I really welcome this inquiry, because this is fundamental to the future of the United Kingdom.

I am talking about the process from the perspective of Northern Ireland, recognising that our procedures for dealing with these matters are slightly less developed than they are in Scotland and Wales, and I believe you will be hearing from our Committee on Procedures in the Northern Ireland Assembly on that matter. As it stands at the moment the process is okay, but it can definitely be improved. As Hedydd said, there are aspects of the process that have been very much exposed as being in grave need of being addressed pretty rapidly, as a result of EU exit.

At the moment, the way it runs is that the UK Government Minister informs the Northern Ireland Minister that such-and-such Bill is coming up that will impinge on aspects of the devolved powers. Then the Northern Ireland Minister will inform the Northern Ireland Executive that he or she intends to bring a legislative consent memorandum on the matter, and they are meant to lay that memorandum before the Northern Ireland



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Assembly. It then, of course, goes to the appropriate Statutory Committee to make a recommendation. Then in theory we have an Assembly debate and a vote. Then the Northern Ireland Minister informs the UK Government Minister of what has happened. That is the way it should be, according to Standing Orders.

We have had some issues on that in recent times, which suggests a problem in this process, and about giving consent in Northern Ireland. The first is the possibility that Northern Ireland Ministers might not comply with the Standing Orders. We have had this on a number of occasions recently. That is partly, possibly, because the Minister knows that he or she may not get the consent or the approval of the Executive—bearing in mind, of course, that our Northern Ireland Executive has no fewer than five parties in it, rather than a single party, so sometimes, particularly around contentious matters, possibly relating to Brexit, it is more difficult to get a consensus.

However, even if the Minister does not get the agreement of the Executive on what the Minister would be recommending to the Assembly—that it give consent, for instance—the Minister should always bring a memorandum anyway, possibly explaining why they will not be laying a request for consent, such as an LCM—an actual motion trying to get the consent of the Assembly. That has not happened in a number of cases recently, including on the UK Internal Market Bill, which is fundamentally important. We all remember the debates around it, and it is really critical to Northern Ireland in particular. This has been a particular problem.

The consequence of that is that the UK Parliament has then passed the Bill without the Northern Ireland Assembly being efficiently informed about that Bill impinging on devolved powers, let alone giving its consent. That means that there is no record of what the Assembly considered with regards to that Bill, and indeed, no reason given as to why a consent motion was not laid before it. We do have a really fundamental problem here, partly because we are relying on Ministers in particular, rather than the legislatures themselves.

Basically, there are a few ways of dealing with that. One is to try to take control a little bit away from just relying on the Northern Ireland Ministers, so that it could be more directly between the UK Parliament and the devolved legislatures, and so that Parliament informs the Assembly rather than depending on the Ministers to do so.

A big problem recently has been about time pressure. All the devolveds are having to work within the time constraints of Westminster and—I am sure we will discuss this in a moment—the particular intensity of the processes around the lack of consent has been very acute in the last few months, so there needs to be a reduction of time pressure and some adjustment in that regard.

Finally, it needs to be clear. We need some procedural mechanisms for the UK Parliament to know what has happened in the devolveds—whether they have given their consent; whether they have even been informed



about it. Of course, if they have not been informed, in theory the UK Government could table amendments to the Bill in recognition of a consent not being given or some particular issue that has arisen around that in relation to one or more of the devolved legislatures. I would suggest that that is a critical matter to address fairly urgently given that we have seen an increasing number of situations where consent has not been given for really very important pieces of legislation.

**Chair:** Thank you, Professor Hayward. Professor Henderson?

**Professor Henderson:** I come at this purely from the perspective of how voters feel about how things are going. We do not conduct polling using the term “legislative consent”, in part because we know that when we poll on all kinds of different aspects of the constitutional settlement, knowledge is patchy and attitudes are really malleable, so it is actually really easy to knock people off their preferences if you just give them different pieces of information. However, we can tease out how people are feeling about things from questions that we ask about their preferences and what they think about the Scottish Parliament.

If there is concern about the handling of legislative consent—particularly what happens when legislative consent is withheld—it is not so much that Scots care that their Parliament has been ignored, but that the Parliament has the same broad spectrum of opinion as the Scottish electorate. It is not that people are concerned that the Parliament is ignored. It is that, in a way, they feel that their own needs, wishes and preferences have been ignored, and that it is a sign of ignoring the needs and wishes of the Scottish electorate.

Obviously, polling on independence is very different this year than it was just two years ago—it is up in the high 50s. It is unprecedented for two reasons: the sustained lead and the sustained period of time that “Yes” has been in the lead. Of the 25 polls since the 2019 election, there have been only two with a “No” lead—there are still only two with a “No” lead, and a recent tie. Unpacking why has to look at things like that. When people are making the argument in support for independence, sometimes the argument is being made in London—sometimes it is tied to things like this.

We find it very difficult to poll on legislative consent. Even in areas where people know a little bit more, such as legislative competence, we find the levels of “don’t knows” are really high. People get legislative competence right about 25% to 50% of the time, but it varies wildly by policy area. We also know that there are interesting patterns in how they get it wrong. In England, people tend to overestimate the powers of the Scottish Parliament when they get it wrong. In Scotland when they get it wrong, they tend to underestimate the powers of the Scottish Parliament. Because of this wider context of what people’s attitudes are like and what levels of knowledge are like, we don’t tend to poll with questions using the phrase “legislative consent”.

Q10 **Owen Thompson:** Thanks for that. Ms Philip, your written evidence



recommended that the Sewel convention should be put into Standing Orders. What difference do you think that would make?

**Hedydd Phylip:** Yes. This is evidence that I submitted with my colleague Jack Sheldon within the framework of an ESRC project. We come at this from the perspective of Professor Hayward, who has just explained the procedural requirements of passing a legislative consent motion in the Northern Ireland Assembly, and there are similar procedures in the Scottish Parliament and the Senedd. Given that it is a convention that is operationalised by Parliaments, it is a bit strange and a bit of an anomaly that there is no counterpart or any procedural requirement within the Commons Standing Orders. On an elementary point, it is a question of evening out that anomaly.

Earlier I mentioned this difficulty with the definition of “normally” in the convention. If consent is not given in the devolveds, perhaps there should be a requirement on the UK Government to justify why on the Floor of the House. The requirement to justify its position on the Floor of the House would help to develop a better understanding of the scope and remit of the convention and would greatly help people’s understanding of the relationships between devolved power and reserved matters.

I also want to pick up on the point made by Professor Hayward about timings. The consent processes that happen within the devolved Parliaments are not just a “let’s go and vote today”. There are inquiries and reports made and real consideration given for the content of that legislation. If an allowance could be made for that procedure to be seen through, not only the final result of the decision could be taken into account by Parliament, but also the reasons behind it. So there is merit in taking into account what those reports say, and what the opinions of the devolved legislatures are on the subject and nature of those Bills going through, and it might bring in a different perspective, because those Bills will engage devolved matters. That is why consent is required. The devolved perspective might not come out in the ordinary scrutiny of that legislation otherwise, so provision for those reports to be given consideration would be a welcome development.

Q11 **Owen Thompson:** Thanks. Finally from me, in recent years we have seen the best and worst of this. In 2016, there was positive engagement between Parliaments around the Scotland Act 2016, resulting in support for LCMs, yet over the Internal Market Bill, as has been highlighted, the lack of engagement obviously resulted in a virtually unanimous—certainly very close to it—declining of it, which was reflected in the Senedd.

Are there lessons we could learn? EVEL obviously came around very quickly and was immediately put into Standing Orders, whereas the Sewel convention has been around much longer, yet has not been. Are there lessons we could learn from that about putting Sewel into Standing Orders?

**Hedydd Phylip:** I’ve got to say that EVEL is not something that we have looked at very closely in our research. I suppose I would just repeat the point I made that it is a bit strange that, with the length and breadth and

the importance of those scrutiny procedures relating to the consent mechanism within the devolveds, there is no parallel consideration in the Commons.

**Owen Thompson:** Do either of the other panellists have any thoughts on that? No.

Q12 **James Sunderland:** Good afternoon, everyone. Thanks for coming on. I suppose this question is really for Professor Hayward, as it relates to Northern Ireland specifically. How important is the concept of consent between Parliaments in the context of the Good Friday agreement?

**Professor Hayward:** Thank you for your question. It is good to be talking about the Good Friday/Belfast agreement because I think it is constitutionally significant for all parts of the UK and Ireland.

Consent means something quite specific in the GFA, with regards to changes to the constitutional status of Northern Ireland. More broadly, the Good Friday/Belfast agreement has certain principles that are probably worth reminding ourselves of at this time.

The first is that of partnership, equality and mutual respect across these islands, which is probably particularly significant at this moment. Then there is also the fact that we have the three strands of the Good Friday/Belfast agreement. This places Northern Ireland in a very distinct position because of the power sharing within Northern Ireland, the north-south co-operation—a very important strand; the Irish dimension is fundamentally important in legislation affecting Northern Ireland—and then, of course, east-west relations.

Within that third strand, we have the point about innovation, if you like, in territorial governance that we have through that—most fundamentally, through the British-Irish Council, which contains a format within which you can have consultation and agreement. On top of that, it also allows for bilateral and multilateral initiatives to be developed between two or more members of the British-Irish Council, which could potentially respond to areas of common interest and mutual concern. We have seen that recently between the Welsh and Irish Governments, just announced a couple of days ago. I know that the Irish Government are undertaking a review of British-Irish relations, seeing their relationship with the different parts of the UK as worth developing at this particular moment.

In and of itself, broadly, the principle of consent between the Parliaments as it relates to the Good Friday agreement comes down to that point that—despite the asymmetry in size, which Ailsa has already referred to—the need for those principles of partnership, equality and mutual respect is really quite profound.

Q13 **James Sunderland:** Noting the unique circumstances of Northern Ireland, could you briefly outline what the significance of the Northern Ireland and Ireland protocol is, in relation to legislation?



**Professor Hayward:** I would see the protocol in Ireland and Northern Ireland as by far the most significant legal text that affects Northern Ireland since the Good Friday/Belfast agreement. That is true in many ways. Fundamentally, it is about the possibility—or the requirement, if you like—for dynamic alignment between Northern Ireland and the EU. This is where the work of your Committee is very important, because Northern Ireland is obviously placed in this very distinct position vis-à-vis the rest of the UK and the EU. There are concerns about the way that legislation that will be affecting Northern Ireland is going to be scrutinised. According to article 12 of the protocol, the UK is responsible for making sure Northern Ireland continues to follow EU laws that are amended and updated. That has to be put in place so that Northern Ireland will continue to do so, but we don't actually know how that is going to be transposed into the NI statute book. It is actually still somewhat unclear, so there is a concern.

I know that the Lords EU affairs Committee has focused on that in particular in its report. It asks the UK Government what will happen, how that process is going to take place, how we will scrutinise that legislation and how Northern Ireland will know what legislation is coming down that it has to update its statute book in relation to. In theory, this responsibly rests with the UK Government, and Michael Gove has said that it will be done with the agreement of Northern Ireland Ministers and that there will be explanatory memorandums brought forward, but we don't actually know how that will take place in practical terms.

In theory, it should be the devolved Ministers who are responsible for seeing this legislation brought forward into Northern Ireland, but of course we have the political situation in Northern Ireland whereby a Minister may refuse to do so, and we don't know what would happen in that regard. The UK would stand responsible vis-à-vis the EU, as per that international agreement, but politically of course it would be quite a contentious situation if the UK Government overrules the desire of the Northern Ireland Minister. The sooner this can be clarified and the process by which the Northern Ireland Assembly is informed and involved in the process of bringing this legislation into Northern Ireland law, the better it will be for everybody.

**Chair:** Thank you very much. That has been really helpful in giving us more understanding of legislative consent and the way that English votes for English laws operates. We are also interested in how interparliamentary relations might work better. I am going to bring in Nigel Mills with some questions in that area.

Q14 **Nigel Mills:** May I start with Ms Phylip? In your written evidence, you suggested that interparliamentary relations have developed in a bit of an ad hoc manner. Does that have negative consequences for how the various Parliaments and Assemblies work together?

**Hedydd Phylip:** There are a couple of ways of looking at this. First, we should acknowledge that interparliamentary relations do happen—they do exist—and they have gradually developed since the advent of devolution. A lot of this interparliamentary work is done through correspondence, the



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sharing of reports and the like. On that, the Llywydd of the Senedd sent some written evidence that was published in January, which was really helpful in understanding how those dynamics are currently working.

A good example of an ad hoc creation is the development of the Interparliamentary Forum on Brexit, which was an evolution of the meetings between the Chairs of the EU Committees. Following a recommendation by the House of Lords EU Committee, it had its first meeting in October 2017. It met eight times in all between that time and September 2019. It was made up of parliamentarians interested in issues relating to the departure from the EU. It looked at issues relating to common frameworks and the like, and it issued joint communiques. In our research, we found that participants and people who were involved with the forum found it really useful. So, the ad hoc-ness there is actually a positive element, because an innovation was allowed to bear fruit, if you like.

The other side of it is the more negative consequences, in that an ad hoc body cannot compel Members to participate. In analysing who had participated out of the Members, we found that there was quite weak involvement from the Commons, and despite the fact that there were always frequently MPs attending these meetings, it was very rare that somebody would attend more than one. That is a clear drawback of ad hoc arrangements, and there is also the fact that the forum has not actually met since 2019. Given the events of the past year—the covid-19 pandemic, for instance, and the process of withdrawing from the EU coming to a head—there is a strong argument for saying that that forum would have had things to talk about, but for one reason or another, it did not. I think it would be interesting for the Committee to pursue what happened there, and why Members felt like they did not want to convene the forum.

- Q15 **Nigel Mills:** Are you leading to suggesting that maybe we should have some kind of interparliamentary assembly with Members from all the four Parliaments and Assemblies on, presumably meeting a few times a year? Is that the angle you are driving at there?

**Hedydd Phylip:** I am not sure if I am angling at that particularly, but I would encourage parliamentarians to think about whether there is scope and interest in doing that. If we look at the changing context that we are dealing with now—post-Brexit realities, implementation of the TCA, how the Internal Market Bill operates in practice, the Northern Ireland protocol, and the fact that Governments are now going to be coming together to co-create common policy frameworks—there is an increase in intergovernmental and Executive activity, so there is a question there for Parliaments about how they go about scrutinising these developments, whether there is a benefit in a level of collaboration on these points, and whether it is the case that you need one body. I am not sure, and that is something that would need to be discussed between the legislatures.

We need to be clear that it is the responsibility of each legislature to hold its own Government to account, but I think it is a matter of whether the



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legislatures have all the information possible and all the information available to them when going about that scrutiny process, and whether there is a benefit in coming together to gather some of that evidence. If you have a common framework, for example, agreed through a memorandum or a concordat between Governments, and then the only thing that Parliaments get is potentially a statutory instrument that implements something, or potentially even an Act, the scope for amending that will, I am sure, be reduced, with Governments saying, "Well, we've already agreed this collaboratively, so I'm not sure how we're going to be able to amend this legislation to satisfy Parliament." If there is a common voice or a common pooling of those resources, where legislatures can find a common voice on some of those issues, that might compel Governments to look again at those issues.

**Q16 Nigel Mills:** Can we get there by joint working of Select Committees? I think we have a Standing Order provision that allows Select Committees to do joint work in some situations with Committees of the devolved Parliaments or Assembly. Obviously those Committees have the legal powers to demand documents and have witnesses appear, and we would not need to create a new architecture, so is that a solution? Is there perhaps more use in expanding the role of those? You can see the sense in the Work and Pensions Committee being able to have a joint inquiry with the Scottish Parliament Committee on how welfare would work, given that some of the powers are split. You could see a useful role in that situation, I think.

**Heddyd Phylip:** Yes, definitely. I think it is a bit of an anomaly in the Standing Orders at the moment that only the Welsh Affairs Committee can actually invite a Committee of the Senedd to participate and to conduct joint meetings. So, for the exact reasons that you outline, I think there is definitely a case for expanding Standing Order 137A, I think it is, to include provisions for the other territorial Committees, but, as you say, for all Select Committees.

There are a lot of individual policy areas that engage devolved competence, but may also in the current climate be required to look at these issues on a UK-wide basis, for all the reasons that I have just mentioned. Expanding that Standing Order would certainly allow for those meetings to take place, and, I think, be a signal for the kind of co-operation that could happen in future. So, it is about starting that dialogue, I think, and, where there is a perceived usefulness, the possibility that co-operation can actually happen, instead of having to use ad hoc measures or innovations that stand slightly outside Standing Orders and without a real procedural anchoring under them.

**Q17 Nigel Mills:** Are there any other countries that do this better, in terms of relations and joint working between that sort of federal Parliament and regional ones, or are we trying to trailblaze in this situation?

**Heddyd Phylip:** That is a tricky question, because actually there are international examples of interparliamentary relations, but they are very contextualised. There are examples in more federalised countries of very



institutionalised models, and then, at the other end of the scale, you have the more information-sharing ad hoc Committee. The Belgium example is one: they established a joint Committee for climate dialogue, for example, and that is an example of a policy-specific area on which we are seeing it would be beneficial to come together and form a declaration. I think the key message from the international sphere is that interparliamentary relations are very normal, but also reflective of the specific contexts of those places. I think that that is a really useful basis for the Committee to look at this, because it means that the key thing is to find ways that are appropriate for the kind of territorial arrangements that we have, and to proceed on those grounds, rather than have to feel like there is a template from elsewhere that you can just implant.

**Q18 Nigel Mills:** So we can't try and implant the British-Irish Parliamentary Assembly and turn it into an England-Scotland-Wales-Northern Ireland Assembly, or something? That is not quite the model that is going to work for us, is it?

**Hedydd Phylip:** Well, no, and I think you also have to think about what you want to achieve. The British-Irish Parliamentary Assembly already exists. You might not want to recreate something that is already there. Maybe that is a forum that could be used for some of these interparliamentary discussions, but it is more a case of working out what would be useful for all the legislatures involved, in terms of improving scrutiny and accountability. It may not be one body; it may be a series of different ways and different policy areas, for example, that could be useful, or there might be one body that is useful to scrutinise the intergovernmental sphere. That is another angle you can come at this from, but it is really important for the Parliaments to come together and work together on what might be useful, because the different legislatures have their own different institutional cultures and procedures, as we have just heard, so working out what is doable and workable for each of them is actually key to enhancing the legitimacy of this process.

**Nigel Mills:** Thank you, Chair.

**Q19 Chair:** Thank you very much. We have one final question, which is for all of you. If we were to make recommendations regarding how interparliamentary relations could be improved, and if the House of Commons were to decide to adopt those recommendations, how could we make sure that we had the support of the national Parliaments and Assemblies, and how could we make sure that those changes were seen as legitimate by all participating Assemblies? Hedydd, you have just spoken, so I will let you have a little break to get a glass of water or something. Perhaps I could ask Professor Hayward to start on that, then Professor Henderson and then you, Ms Phylip, if that is okay.

**Professor Hayward:** Would it be possible for me to say a little about the British-Irish Parliamentary Assembly?

**Chair:** Of course. Please do. As a Member of it, I'd be delighted if you did.



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**Professor Hayward:** As someone who has addressed it, Chair, I know that.

I want to follow up to give a few lessons, if you like, from the British-Irish Parliamentary Assembly, and this also relates to your final question, which is about the importance of the Irish dimension.

The British-Irish Parliamentary Assembly has played a very important role. I think it has been useful but unexciting, as Professor John Coakley described it, and it has a lot of elements to it that are quite innovative, in having the equal representation from the sovereign Parliaments and from the devolved Assemblies, regardless of their respective sizes, and also in having associate members, to make sure that we have a presence from all Parliaments at the meetings, and also the co-Chairs and having alternate meetings in Britain and Ireland. All those are very positive.

Where perhaps BIPA has failed, or has been underdeveloped, is in the connection to those processes of legislation making and scrutiny in the respective Parliaments. This is where potentially formalising its links to the British-Irish Council would make a lot of sense. I agree with Hedydd in relation to the role of Committees in that regard. Certainly, having more formal links between not just the Northern Ireland Affairs Committee and the Northern Ireland Assembly, for example, but with Oireachtas Committees—I know you have received written evidence on that—as well as links between Oireachtas Committees and Westminster Committees, would make a lot of sense, given the new challenges that are facing relations between Britain and Ireland, and within the UK, at the moment.

Going forward, it is important to recognise quite how much pressure there is on the devolved settlements and arrangements. So, the fact that so much legislation was passed through statutory instruments and related to devolved powers in the last few months without the possibility of scrutiny—especially in Northern Ireland, because the Northern Ireland Assembly isn't able to scrutinise secondary legislation in particular—is important. So, we had Committees that were quite clear in saying that they were not able to offer opinions on those new areas of legislation that, of course, the Northern Ireland Assembly is now responsible for, because they did not have the time or the information to do so. I really want to stress that this is of grave concern with respect to the functioning of democracy in the United Kingdom.

Therefore, it would be really important in the work of your Committee to have representation from officials in the devolved Administrations, but also of course from parliamentarians in the various devolved legislatures, so as to hear directly about the concerns that they have in this new, completely transformed environment in which we find ourselves. One last thing: it would be good, too, to hear from the Speakers.

**Chair:** Yes, that is a very good point. Professor Henderson?

**Professor Henderson:** On this, I would say that the polling is picking up a considerable lack of trust in Westminster to act in the interests of



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different electorates. Those different electorates sometimes have contradictory preferences—you can see that in the issue of grievance and people trying to exclude each other from voting on legislation. But we also know that 40% of the English electorate think that no SNP MP should ever be in government. That is a partisan issue, not a political issue. But we also know that about a third of the English electorate believe that no Scottish MP should ever be in government, and satisfying those demands puts the Union in a very difficult place.

We know that polling is picking up a lack of trust in Westminster on satisfying different electorates, but we also know that satisfying those different electorates would also put Westminster in a very difficult position, because it would pose considerable challenges to the Union. But many of these problems are not procedural so much as political, and no procedural change will help the UK if there is not a fundamental cultural change in terms of two things: genuinely caring about what the electorates in different parts of the UK think, including what their legislatures say, and treating England as England. I talked earlier about the sleight of hand and the use of “this country”, whereby the Government does not really talk about when it is governing for England and when it is governing for the whole UK. But that surfaces in other ways.

On the issue of an interparliamentary union, who would represent England? There are grave concerns within England about Westminster’s ability to do that job, so some thinking needs to go into how the English voice would be represented in an interparliamentary union. I think it would actually make matters worse, from an England perspective, if you had an interparliamentary union where Westminster was wearing two hats, as it is at present. How English wishes and English needs could be represented in such a body would really need to be thought through. I have no easy answers for you on that I’m afraid, but I would say that just as procedure can reflect both a working culture and a political culture, so too can it chivvy things along. If there is a clear understanding of what the challenges are, procedure can help move us a little further down the road in terms of understanding the concerns that exist in the different electorates about whether they are able to express their voice and whether that voice is listened to.

**Chair:** Thank you. Ms Phylip?

**Hedydd Phylip:** For me, this chimes with what has already been said. Any interparliamentary working would have to be—perhaps stating the obvious—useful and have to contribute to the work of scrutiny and accountability. As a starting point, enhancing some of these procedural quirks, as we have just been talking about, would really help in opening the door. Building on the interparliamentary working that already goes on would also be helpful.

In our evidence, we talk about the need to agree joint principles. Any move towards a body of any kind would need to be jointly created and based on commonly agreed principles that related to the absence of hierarchy, reciprocity and the like, so that each of the legislatures was



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able to come to the table in good faith, and the imbalances inherent in the territorial constitution were not then replicated in any intergovernmental working moving forward.

**Chair:** Thank you very much. I realise we have kept you longer than was originally envisaged, but that is because you have given us comprehensive and helpful answers that will inform us in what is going to be a long inquiry.

We had intended, this time last year, that this might not be that long an inquiry. In fact, I think we are marking the 12-month anniversary of our first meeting. We started off saying that we were going to start an inquiry on territorial matters, and then said maybe we should just find out what is going on with coronavirus. The rest, as they say, is history. This is something that we are pursuing and working on, and your evidence has given us great insight and some real things to think about with regard to the recommendations we make.

Thank you all for the evidence, both the written evidence and the evidence today. With that I bring the session to a close.