

Written evidence from Dr Daniel Gover and Professor Michael Kenny (EDE 18)

Public Administration and Constitutional Affairs Committee The Evolution of Devolution: English Devolution

1. This written evidence summarises the operation and impact of ‘English Votes for English Laws’ (EVEL) in the House of Commons. As the committee’s call for evidence notes, there has been no equivalent for England of the legislative devolution that has been granted to Scotland, Wales and Northern Ireland. The closest that has so far been delivered for England is the EVEL system implemented in 2015.
2. The submission has been prepared by Dr Daniel Gover (Queen Mary University of London) and Professor Michael Kenny (University of Cambridge), drawing on an in-depth academic research project into the design and operation of EVEL. Further detail is included in the publications listed at the end of this submission.

English Votes for English Laws

3. The version of EVEL introduced in 2015 provides English (or English and Welsh) MPs with the right to ‘veto’ certain legislative provisions that apply only in England (or England and Wales). However, this veto right is in addition to the right of the whole House to vote at various pre-existing legislative stages. For this reason, EVEL has sometimes been referred to as a ‘double veto’ system, meaning that English (or English and Welsh) MPs *and* UK-wide MPs must consent to affected legislation for it to pass. It therefore does not provide English (or English and Welsh) MPs with sole control over legislation that applies only in that part of the UK – a feature that distinguishes it from the situation in Scotland, Wales and Northern Ireland.
4. Since its introduction, EVEL has operated relatively smoothly in administrative terms. During the system’s first five years (23 October 2015 to 22 October 2020), the Commons Speaker certified provisions of 51 bills, and 237 statutory instruments. This has given English (or English and Welsh) MPs many opportunities to veto legislative provisions. In practice, the veto right has never been exercised, meaning that EVEL has not to date altered any legislative outcomes. While some feared that various constitutional difficulties might result from this kind of reform, these have not so far materialised. However, it should be acknowledged that EVEL has thus far operated in relatively benign political circumstances, and it is possible that future developments may place greater strain on the system.
5. The veto right provided by EVEL is not entirely watertight. This is for two main reasons. First, it is possible for legislation that applies only in England (or England and Wales) to fail to meet the EVEL certification ‘test’. This was seen to apply in the case of legislation to liberalise Sunday trading rules in 2016 (outlined in the blog post listed below). Second, it is possible for EVEL to be suspended by the whole House – either on specific occasions, or more routinely. In response to the coronavirus pandemic, EVEL has effectively been suspended since 22 April 2020. This has occurred without any significant debate, and may set a precedent for the future.

6. EVEL has also failed to provide opportunities for a distinctively English ‘voice’ to be expressed in Westminster. The main mechanism that could have achieved this is the new ‘legislative grand committees’ convened after report stage on bills with certified provisions. During the first five years of EVEL there were 42 post-report legislative grand committee stages, on 35 bills. Most of these were entirely perfunctory, without any debate at all. Only on four bills did the legislative grand committee stage(s) last longer than 10 minutes. Even where debates did occur, they tended to be dominated by MPs from outside of the area of certification seeking to make a wider political point about the deficiencies of the EVEL process.
7. Since EVEL was introduced in 2015, the political context within which it has operated has changed considerably. The system of ‘legislative consent motions’ in the devolved legislatures – which EVEL was designed to mimic for English MPs – has come under significant strain during the course of the Brexit process. There are also enduring questions as to whether an English legislative veto – as opposed to a fully England-only legislative process – will be sufficient to satisfy English opinion in the longer term. One plausible outcome of the next general election may be a UK government, responsible for England-only policy areas, that lacks a majority among English MPs. In such a scenario, tensions around the legitimacy of English governance and law-making could well become inflamed.

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Selected publications

Detailed report

Gover, Daniel, and Michael Kenny (2016) *Finding the Good in EVEL: An Evaluation of ‘English Votes for English Laws’ in the House of Commons*. Edinburgh: Centre on Constitutional Change, <http://qmro.qmul.ac.uk/xmlui/handle/123456789/36392>.

Academic journal paper

Gover, Daniel, and Michael Kenny (2018) ‘Answering the West Lothian Question? A Critical Assessment of “English Votes for English Laws” in the UK Parliament’, *Parliamentary Affairs* 71(4): 760–82, <https://doi.org/10.1093/pa/gsy003>.

Blog posts

Gover, Daniel, and Michael Kenny (2016) ‘Sunday Trading and the Limits of EVEL’, *Constitution Unit blog*, <https://constitution-unit.com/2016/03/10/sunday-trading-and-the-limits-of-evel/>.

Gover, Daniel, and Michael Kenny (2016) ‘One Year of EVEL: Evaluating “English Votes for English Laws” in the House of Commons’, *Constitution Unit blog*, <https://constitution-unit.com/2016/11/28/one-year-of-evel-evaluating-english-votes-for-english-laws-in-the-house-of-commons/>.

Gover, Daniel, and Michael Kenny (2020) ‘Five Years of EVEL’, *Constitution Unit blog*, <https://constitution-unit.com/2020/10/23/five-years-of-evel/>.

Project website

Project EVEL, www.evel.uk.