

**Supplementary written evidence submitted by
Dr Daniel Gover and Professor Michael Kenny (TTC 15)**

1. This supplementary written evidence has been prepared by Dr Daniel Gover (Queen Mary University of London) and Professor Michael Kenny (University of Cambridge). It follows an initial submission about the operation of the ‘English Votes for English Laws’ (EVEL) standing orders (TTC 01). Further information about the research on which it is based is available at www.evel.uk.
2. On 13 July 2021, the EVEL standing orders were rescinded by the House of Commons. However, the pressures that led to their implementation in 2015 have not gone away – including the specific anomaly of the ‘West Lothian Question’, but also a wider sense of popular dissatisfaction within England about its constitutional position within the UK. The independent McKay Commission (2013, 8) concluded that ‘[m]aintaining the status quo is a long-term risk’. In the absence of EVEL, there is thus a strong case for examining the case for alternative mechanisms for addressing these pressures.
3. One useful starting point would be the report of the McKay Commission itself. The commission advocated reforms that would enhance England’s ‘voice’ within the legislative process – judging that this would create a political incentive for the House to respect these preferences – but explicitly rejected arguments for a binding ‘veto’ (which was ultimately implemented through the EVEL reforms). It identified an underlying ‘principle’, based on the Sewel convention, which it encouraged the Commons to endorse through a resolution. It then proposed a menu of possible institutional changes, for instance a ‘grand committee’ stage prior to second reading that would enable England’s voice to be clearly expressed but would not be procedurally binding. It appears likely that a system founded on voice rather than veto would be less vulnerable to most of the criticisms levelled against EVEL, and could be implemented in a way that would be less procedurally disruptive.
4. In our 2016 report, *Finding the Good in EVEL*, we recommended consideration of two specific mechanisms for enhancing England’s voice at Westminster more broadly: an ‘English grand committee’ modelled partly on the existing territorial grand committees; and an ‘English Affairs select committee’ (Gover and Kenny 2016, 29–31). The Procedure Committee’s review of EVEL cited evidence from us (as the Mile End Institute) and from Jacob Rees-Mogg MP in support of proposals such as these. It concluded that both ‘proposals have merit in terms of enhancing an English voice in the House’ (Procedure Committee 2016, 16).
5. Of these two proposals, we believe that the case is probably strongest for an English Affairs select committee. We envisaged this committee as performing at least two overlapping functions. First, it could conduct inquiries into cross-cutting issues of particular interest to England, in a similar way to how the Scottish Affairs, Welsh Affairs, and Northern Ireland Affairs committees operate. Second, it could have a role in drawing to the attention of the House any legislation with particular implications for England – in a fashion comparable to how committees in the devolved legislatures examine legislative consent memorandums, as well being similar to the work of several committees at Westminster that routinely comment on legislation (e.g. the

Joint Committee on Human Rights and the Delegated Powers and Regulatory Reform Committee). We originally imagined that this would operate alongside EVEL, for example as a way of reducing the system's practical complexity, but it could in principle operate independently or alongside other mechanisms such as those envisaged by the McKay Commission. Further detail about this proposal from our report is reproduced in the Annex below.

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References

- 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>.
- McKay Commission. 2013. 'Report of the Commission on the Consequences of Devolution for the House of Commons', http://webarchive.nationalarchives.gov.uk/20130403030652/http://tmc.independent.gov.uk/wp-content/uploads/2013/03/The-McKay-Commission_Main-Report_25-March-20131.pdf.
- Procedure Committee. 2016. *English Votes for English Laws Standing Orders: Report of the Committee's Technical Evaluation*. Third Report of Session 2016-17, HC 189. London: House of Commons.

Annex: An English Affairs select committee

The following text is taken from our 2016 report on EVEL (Gover and Kenny 2016, 30–31).

An English Affairs select committee

A more promising way of boosting a sense of English voice at Westminster comes from the establishment an English Affairs select committee. The House of Commons has a longstanding network of such bodies. The current system of departmental select committees was established in 1979, but the origins of the mechanism date back much further. As with the grand committee proposal, there is every chance that introducing an English Affairs select committee would therefore be seen as an incremental evolution rather than an innovation introduced from outside the parameters of the existing system.

At present, the Commons is home to Scottish Affairs, Welsh Affairs, and Northern Ireland Affairs select committees. These are departmental select committees, meaning that their remit is 'to examine the expenditure, administration and policy of the principal government departments' – in these cases the Scotland Office, the Wales Office, and the Northern Ireland Office respectively.[61] In reality, however, they have tended to interpret their roles more broadly, and they have conducted inquiries, collected evidence and made recommendations on a wide range of non-devolved or reserved matters of particular interest to the relevant part of the UK.[62] In the current parliament, for example, the Scottish Affairs Committee has conducted inquiries on the implications of the EU referendum for Scotland, the post-study work visa scheme, and

Scotland's creative industries – all of which also fall within the remits of committees scrutinising other government departments. The innovative element here is that the select committee model has not previously been applied to England as a whole; the Commons did experiment with regional select committees within England alongside the regional grand committees mentioned above, and they were similarly disbanded.

But extending the select committee model on an all-England basis does present particular challenges that would need careful consideration. Such a body might be harder to fit into the existing architecture of parliamentary scrutiny. There is no UK government department specifically responsible for English affairs, and so this could not be a select committee shadowing a particular department. It would, therefore, need a different, and more explicitly cross-cutting, remit, a characteristic that already applies to non-departmental committees. But such committees present a risk of duplication, and this would be particularly acute for an English Affairs committee, for two reasons. First, on non-devolved matters, England is a much larger part of the UK 'whole' than are other parts of the UK, and so it is by definition harder to define English concerns in very precise terms. And second, on matters devolved elsewhere, other select committees will already have responsibility for scrutiny of de facto England-only policy, whether for whole departments focused almost entirely on England (e.g. the Health and Education select committees) or individual policy portfolios held by departments with a wider remit (e.g. English regional policy by the Communities and Local Government Committee).

Even so, the potential for duplication and overlapping remits are not insurmountable challenges, and could be resolved through pro-active coordination between the committees. One way around the dilemma might be for it to be tasked specifically with considering issues and trends that fall across departmental lines – for instance the impact of migration upon public services, or learning and skills gaps in different parts of England. It might also take on the role of reviewing, and drawing to the attention of the House, legislative proposals from across government that may be of particular interest to England – or even of triggering the EVEL process on specific bills (as further discussed below). The role of examining and reporting on legislation is not dissimilar to the current practices of the European Scrutiny Committee, the Joint Committee on Human Rights, the Constitution Committee, and the Delegated Powers and Regulatory Reform Committee; it might also be regarded as similar to the role performed by committees of the Scottish Parliament in considering and reporting on legislative consent memorandums.[63] Although fairly modest in scope, such a function might conceivably contribute powerfully to the aim of showing that England's interests are being voiced and heard at Westminster. In terms of its putative membership, there is a debate to be had about whether the normal convention that its party balance should reflect the House as a whole – as opposed to in England alone – would be appropriate in this instance.