

National Assembly for Wales
Research paper

England's response to devolution: The Report of the McKay Commission

May 2013

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



Research
Service

The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales and holds the Welsh Government to account.

The Research Service provides expert and impartial research and information to support Assembly Members and committees in fulfilling the scrutiny, legislative and representative functions of the National Assembly for Wales.

Research Service briefings are compiled for the benefit of Assembly Members and their support staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. We welcome comments on our briefings; please post or email to the addresses below.

An electronic version of this paper can be found on the National Assembly website at: www.assemblywales.org/research

Further hard copies of this paper can be obtained from:

Research Service
National Assembly for Wales
Cardiff Bay
CF99 1NA

Email: Research.Service@wales.gov.uk

Twitter: @NAWRResearch

© National Assembly for Wales Commission Copyright 2013

The text of this document may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading or derogatory context. The material must be acknowledged as copyright of the National Assembly for Wales Commission and the title of the document specified.

Enquiry no: 13/0821

Paper number: 13 /036

National Assembly for Wales
Research paper

England's response to devolution: The Report of the McKay Commission

May 2013

Owain Roberts

The 'Commission on the Consequences of Devolution for the House of Commons', or the 'McKay Commission', was established in January 2012 to consider how the House of Commons might deal with legislation which affects only part of the United Kingdom, following the devolution of certain legislative powers to the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales. Its final report was published on 25 March 2013.

The Commission's report encapsulates how England is developing and emerging as a political entity in response to devolution and may form a significant milestone in debates relating to the UK's constitutional future. The paper provides some background to the establishment of the Commission, as well as an analysis of its findings and a summary of the initial reactions to the report's publication.

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



Research
Service

Summary

The Commission on the Consequences of Devolution for the House of Commons ('the McKay Commission') published its report on **25 March 2013**.

This paper provides some background to the establishment of the Commission, as well as an analysis of its findings and a summary of the initial reactions to the publication of its report.

Contents

1. Introduction	1
2. The Commission	2
2.1. Research on public opinion in England	2
3. The McKay Commission report	4
3.1. Addressing 'The English Question'	4
3.2. Discarded solutions.....	6
3.3. Legislative Consent Motions	7
3.4. A Devolution Committee	8
3.5. Next steps	9
4. Reactions	10

England's response to devolution: The Report of the McKay Commission

1. Introduction

On 25 March 2013, the **Commission on the Consequences of Devolution for the House of Commons** or the **McKay Commission** ('the Commission') published its final report.

The Commission was established in **January 2012** to consider 'how the House of Commons might deal with legislation which affects only part of the United Kingdom, following the devolution of certain legislative powers to the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales'.¹

This enabled the Commission to address issues arising from the '**West Lothian Question**'. This generally refers to the issue of MPs from the devolved areas of the UK voting on English matters, while MPs from England would have no reciprocal influence on laws outside England in policy fields for which the devolved institutions would now be responsible. In addition, the Commission's terms of reference allowed it to look at '**The English Question**' which relates to a wider set of concerns about the general balance and stability of the UK's territorial constitution.²

'The English Question' emanates from perceived anomalies in the UK's current constitutional arrangements, provided for by devolution, which are seen to be particularly unfair to people in England. In particular, the evolution of the governance arrangements in the devolved nations has resulted in an increase in English-only UK Acts, even though the House of Commons has not adapted its structures in relation to the making of law for England from that which applied prior to devolution. This in turn has led to concerns that English interests currently lack their own political voice.

The Commission's report encapsulates how England is developing and emerging as a political entity in response to devolution and may form a significant milestone in debates relating to the UK's constitutional future. The paper provides some background to the establishment of the Commission, as well as an analysis of its findings and a summary of the initial reactions to the report's publication.

¹ The McKay Commission – Commission on the consequences of devolution for the House of Commons, [Terms of Reference](#) [accessed 29 April 2013]

² Ibid, paragraph 37

2. The Commission³

After the 2010 UK general election, the agreement that formed the basis for the UK coalition Government included a commitment to ‘establish a commission to consider the **‘West Lothian Question’**’.⁴

On **17 January 2012**,⁵ the then Cabinet Office Minister for Political and Constitutional Reform, Mark Harper MP, announced the formation of a Commission to consider the matter, under the chairmanship of the former Clerk of the House of Commons, **Sir William McKay KCB**. The five other members of the panel were:

- **Professor Yvonne Galligan**, director of research on governance and public policy at Queen's University Belfast;
- **Professor Charlie Jeffery**, head of social and political science and vice-principal for public policy at Edinburgh University;
- **Sir Emyr Jones Parry GCMG**, the UK's former ambassador to the UN, chair of the All-Wales Convention, and president of Aberystwyth University;
- **Sir Stephen Laws KCB QC**, former First Parliamentary Counsel; and
- **Sir Geoffrey Bowman**, former First Parliamentary Counsel (served as a Commissioner until 20 June 2012).

2.1. Research on public opinion in England

Shortly following the announcement of the Commission's formation on **23 January 2012**, the Institute for Public Policy Research (‘IPPR’) published a report entitled ‘The dog that finally barked: England as an emerging political community’.⁶ The report included public opinion data which suggested the emergence ‘of a new kind of Anglo-British identity in which the English component is increasingly the primary source of attachment for English people’.⁷ The report also suggested that:

English identity is becoming more politicised: that is, the more English a person feels, the more likely they are to believe that the current structure of the UK is unfair and to support a particularly English dimension to the governance of England.⁸

³ Further background information about the Commission and the ‘West Lothian Question’ is included in National Assembly for Wales Research Service, [Research Paper: The West Lothian Commission](#), March 2012 [accessed 10 April 2013]

⁴ UK Government, [The Coalition: our programme for government](#), May 2010 p27 [accessed 10 April 2012]

⁵ BBC News, [West Lothian Question commission members announced](#), 17 January 2012 [accessed 10 April 2012]

⁶ Institute for Public Policy Research, [The dog that finally barked: England as an emerging political community](#), January 2012 [accessed 29 April 2013]

⁷ Ibid

⁸ Ibid

The IPPR's findings were followed on **28 February 2012** by a separate study conducted by the National Centre for Social Research entitled 'The English Question: How is England responding to devolution?'.⁹ Both studies informed the Commission's report and are mentioned as providing 'compelling evidence that there are distinct concerns, felt across England, that lack sufficient opportunity to be expressed through current institutional arrangements'.¹⁰

⁹ National Centre for Social Research, [*The English Question: How is England responding to devolution?*](#), 28 February 2012 [accessed 29 April 2013]

¹⁰ Commission on the Consequences for the House of Commons, [*Report*](#), March 2013, paragraph 61 [accessed 1 May 2013]

3. The McKay Commission report

The report makes a number of conclusions, suggestions and recommendations which are mainly procedural in nature, and which could be adopted by a resolution of the House of Commons and facilitated by changes to the Commons' Standing Orders, without the need for new primary legislation.

3.1. *Addressing 'The English Question'*

The report acknowledges that an '**English Question**' is emerging by default as a 'consequence of the asymmetric devolution settlements'.¹¹ This has led in turn to a lack of 'an identifiable political voice for English interests'.¹²

Speaking shortly after the report's publication, Professor Charlie Jeffrey, a Commission member, felt that there 'is a need for England's voice to be heard and to be seen to be heard'.¹³ As a result, he added that 'there's a danger that the disconnect we see in English public opinion could intensify, if that opportunity isn't given'.¹⁴

In order for such issues to be addressed, the report suggests that **changes should be made to the procedures of the House of Commons to give MPs in England a fuller and more decisive role in making laws for England in policy areas which are devolved outside England**. These suggested changes are summarised below:

- The development of an '**England-specific legislative process**' within the House of Commons on the basis of a **constitutional principle** that 'decisions at the UK level with a separate and distinct effect for England (or 'England and Wales')¹⁵ should normally be taken only with the consent of a majority of MPs for constituencies in England (or 'England and Wales')'.¹⁶
- The report does not, however, advocate the introduction of exclusive 'English votes for English laws' as it concludes that **MPs from outside England should not be prevented from voting** on matters before the House of Commons. This is on the basis that clear cut 'English votes for English laws' would 'create different classes of MP and could provoke deadlock between the UK Government and the majority of MPs in England'.¹⁷

¹¹ Commission on the Consequences for the House of Commons, *Report*, March 2013, paragraph 11 [accessed 1 May 2013]

¹² *Ibid*

¹³ The Guardian, *England-only MP votes needed for English legislation, commission says*, 25 March 2013

¹⁴ *Ibid*

¹⁵ 'England and Wales' currently form a shared legal jurisdiction. Northern Ireland and Scotland have separate jurisdictions.

¹⁶ Commission on the Consequences for the House of Commons, *Report*, March 2013, paragraph 12 [accessed 1 May 2013]

¹⁷ *Ibid*, paragraph 15

In relation to developing an ‘England-specific legislative process’, the report states that:

The need for special consideration of bills that have an effect wholly or mainly in England would focus parliamentary and public debate on English matters as distinguished from those in Parliament with a wider territorial reach. With special procedures for such matters the House of Commons would act as a forum for giving voice to England-specific concerns and for opening up to public scrutiny the decision-making on those concerns. **Such procedures could establish a distinct and more explicit sense of accountability on English matters between voters in England and their representatives, enabling a fuller, clearer and more positive expression of the English voice in the UK’s political system** *[RS emphasis]*.¹⁸

The report adds that the introduction of such procedures would also ‘help to defuse the dissatisfactions evident in public opinion’ that ‘would not involve the upheaval, cost and likely destabilising effects of establishing a new institution’.¹⁹

In order for an England-specific legislative process to be developed, the report also provides ‘**a menu of proposed adaptations to parliamentary procedures**’.²⁰ These include:

- UK Bills ‘**should routinely indicate their territorial scope**’ and that ‘Drafting practice might identify (as far as possible) parts of a bill or groups of clauses primarily separate and distinct to England’.²¹
- Time should be made available in the **debate on each Queen’s Speech in the House of Commons to consider the UK Government’s proposals for England**.
- The possible **introduction of an equivalent to an ‘English’ LCM in Grand Committee** or on the floor before second reading, whereby MPs from England or England and Wales would give their consent for a UK Bill to make provisions relating to England or England and Wales;
- The possible use of specifically **constituted public bill committees in the House of Commons with an English or English-and-Welsh party balance**; and
- The possible introduction of a ‘**double-count**’, where the views of England (or England and Wales) MPs and the part of the UK from which an MP is elected is shown in a division list.²²

¹⁸ Commission on the Consequences for the House of Commons, *Report*, March 2013, paragraph 76 [accessed 1 May 2013]

¹⁹ *Ibid*, paragraph 77

²⁰ *Ibid*, paragraph 19

²¹ *Ibid*, paragraph 19

²² *Ibid*, paragraph 20

3.2. *Discarded solutions*

The Commission considered and eventually discarded a number of solutions to 'The English Question' which were suggested to them in evidence. These are outlined below along with the reasons outlined by the Commission as to why they were not favoured:

- **Abolishing devolution** is not on the political agenda and 'does not appear a proportionate, feasible or desirable means to remove some of the causes of dissatisfaction felt in England'.²³
- **Maintaining the status quo** is a 'long-term risk' which is 'likely to erode the legitimacy of the UK's political system in England'²⁴ over time. The Commission concludes as a result that 'It is now the right time to enable a fuller, clearer and positive expression of a voice for England in the UK's political system'.²⁵
- **Strengthening local government in England** does not tackle the governance of England and 'will not address that England-wide sense of disadvantage'.²⁶
- **Federalism**, both England-wide with an English parliament or with English regions, has, according to the report, 'compelling objections'.

In particular the Commission 'heard little evidence in support' of a federal system based in England on **English regions** and that 'it is not clear that establishing a set of regional assemblies would address this English-wide sense of disadvantage'.²⁷

The Commission was also in agreement with the majority of evidence received that was 'set firmly against the idea of an **English Parliament**' and outlined the following reasons for its objections:

- There are no precedents of federal systems in which one component makes up over five-sixths of the overall population of a state and that 'such a big unit would destabilise the state as a whole'.²⁸
- It would be a radical departure from UK constitutional practice and a 'massive upheaval in governmental arrangements' that would 'not appear a proportionate response to the current sense of disadvantage in England'.²⁹

²³ Commission on the Consequences for the House of Commons, *Report*, March 2013, paragraph 63 [accessed 1 May 2013]

²⁴ *Ibid*, paragraph 65

²⁵ *Ibid*, paragraph 66

²⁶ *Ibid*, paragraph 68

²⁷ *Ibid*, paragraph 70

²⁸ *Ibid*, paragraph 71

²⁹ *Ibid*

- It seems unlikely in the current climate ‘that citizens would favour having more politicians than now, or the costs associated with establishing a new institution’.³⁰
- **Electoral reform**, including proportional representation and a reduction in the number of MPs returned for seats outside England, is not realistic and fails to tackle the underlying issue.³¹

3.3. *Legislative Consent Motions*

One of the report’s main conclusions is that **Legislative Consent Motions** (‘**LCMs**’) should remain as a mechanism to manage legal cross-border spill-overs which emanate from UK Parliamentary Acts.³² In particular, the report believes that there is scope to give LCMs:

a more formal status in a more clearly structured, explicitly parliamentary communication between Westminster and the devolved legislatures...[which] would emphasise the co-operative nature of the law-making process after devolution.³³

In practical terms, the report believes that this could be achieved by ‘bringing the Westminster aspect of the LCM process within the responsibility of the Devolution Committee’³⁴ (further information about the Devolution Committee proposed by the report is included below in section 3.4). In the meantime, however, the report makes a number of

The report states that the processes in place to inform the House of Commons of decisions relating to LCMs currently vary between the devolved legislatures. Details of each LCM considered by the Scottish Parliament and the Northern Ireland Assembly are communicated between Clerks in Belfast and Edinburgh and their counterparts at Westminster. It is also now common practice for decisions made on Scottish and Northern Irish LCMs to be routinely ‘tagged’ to the Order of Business in the House of Commons through a short note under a pending stage of a Bill.

No such processes currently exist between Westminster Clerks and the Assembly and details of decisions on LCMs emanating from the Assembly are not currently ‘tagged’ to the relevant Bill. Instead, information about each LCM is transmitted through the Welsh Government to the relevant UK Government department which passes it on to the House of Commons authorities.

³⁰ Ibid

³¹ Commission on the Consequences for the House of Commons, *Report*, March 2013, paragraph 8 [accessed 1 May 2013]

³² Ibid, paragraph 9

³³ Ibid, paragraph 267

³⁴ Ibid

As a result, the report makes a number of practical suggestions which are summarised below:

- The Clerk to Clerk approach of informing the House of Commons of LCMs considered in the devolved legislatures should be the favoured method of communication in future.³⁵
- The receipt of an LCM from any of the devolved legislatures should be routinely recorded in the House of Commons' Votes and Proceedings, as well as on the Order of Business when the relevant Bill is before the House.³⁶
- The Chair of the relevant public bill committee in the House of Commons should formally announce the existence of an LCM when it is received by a devolved legislature, with copies made available to MPs.³⁷
- It would be 'good practice' for a Minister in Charge of a Bill which has resulted in an LCM to be available to make a statement (at the outset of proceedings or as soon as an LCM is received) on the LCM's' contents as he or she may wish. Similar procedures should be in place to require the Minister in Charge to inform MPs of LCMs that occur in the last stages of debate on a particular Bill in the House of Commons.³⁸

3.4. A Devolution Committee

In order to consider fully the consequences for the devolved nations of the UK of decisions made for England, the report recommends the establishment of a House of Commons **Devolution Committee**.³⁹

In addition to providing 'a more articulated Westminster response to the challenges of devolution',⁴⁰ the report envisages such a committee as:

A central element in the machinery by which the House of Commons holds UK ministers to account for their responsibilities in connection with devolution and their relations with the devolved administrations.⁴¹

The report states that the committee 'would be in a position to become a key player in developing Westminster's contribution to the co-operative aspect of devolution', adding that 'No other type of body would be as appropriate to undertake such a sensitive constitutional task'.⁴²

³⁵ Ibid, paragraph 271

³⁶ Commission on the Consequences for the House of Commons, *Report*, March 2013, paragraph 271 [accessed 1 May 2013]

³⁷ Ibid, paragraph 272

³⁸ Ibid, paragraphs 273-274

³⁹ Ibid, paragraph 101

⁴⁰ Ibid, paragraph 259

⁴¹ Ibid, paragraph 275

⁴² Ibid, paragraph 261

In particular, the report states that the committee should be expected to fulfil the following duties:

- To **report** to the House of Commons on unusual circumstances occurring during a Bill's passage, which may arise from whatever procedures are adopted in developing an England-specific legislative process.
- To **have referred to it** LCMs received from the devolved legislatures, drawing the attention of the House of Commons to their content and evaluating the need for further improvements in intra-parliamentary processes and the way in which LCMs are considered in general.
- To **scrutinise** Orders in Council which are laid in draft before the UK Parliament and which modify the law for England (or 'England and Wales') as a result of an Act of the Scottish Parliament or the Northern Ireland Assembly.⁴³

The report states that the Committee's membership could include the Chairs of the three territorial Select Committees, along with the Chair of the Political and Constitutional Reform Committee. The committee would also 'be expected to comprise MPs from across the UK, including England'.⁴⁴ As such, the report sees the committee operating 'in a non-party-political way' much as the Joint Committee on Human Rights does.⁴⁵

3.5. *Next steps*

The UK Government will now respond to the Commission's recommendations, which the report regards as a 'menu from which the Government might wish to make a selection for implementation'.⁴⁶

⁴³ Commission on the Consequences for the House of Commons, *Report*, March 2013, paragraph 278 [accessed 1 May 2013]

⁴⁴ *Ibid*, paragraph 262

⁴⁵ *Ibid*, paragraph 260

⁴⁶ *Ibid*, paragraph 21

4. Reactions

There was a mixed response to the report's publication.

The Chair of the House of Commons' Political and Constitutional Reform Committee, Graham Allen MP, was reported as saying that the recommendations did not go far enough:

A little well intentioned tinkering with Westminster parliamentary procedure is not enough...England needs to come to the devolution party too and as we approach the 800th anniversary of Magna Carta in 2015 there couldn't be a better time to generate public interest throughout the union, not just in our constitutional heritage but in settling the democratic future of the United Kingdom.⁴⁷

However, the Labour MP for Cardiff West, Kevin Brennan MP, gave the report a tentative welcome:

These are interesting proposals as far as I can see as an initial reaction that need to be looked into...I think it's right that the House of Commons preserves overall the right to vote on all matters that affect any part of the United Kingdom within the House of Commons. That's very important.⁴⁸

The experienced Conservative MP, the Rt. Hon Kenneth Clarke MP, also believed that action was needed to address 'the English Question' sooner rather than later:

It's a good idea to solve it now...What we don't want is some close-run election with some government being elected with a tiny majority and arguments breaking out as to whether various things are being carried by the votes of people from constituencies that aren't faintly affected.⁴⁹

Professor Richard Wyn Jones, Director of the Wales Governance Centre and a member of the IPPR's research team into 'the English Question', believed the report to be 'a real landmark in the history of the territorial governance of the United Kingdom', adding that:

While the changes the Commission champions are relatively limited, if implemented they would represent a sea change. Rather than treating England as a kind of residual category – the bit left over when Wales, Scotland and Northern Ireland have gone off to do their own thing – England would be explicitly recognised as a full part of the Union with (potentially at least) its own view and voice. Constitutionally speaking the UK would become more properly the multinational state it already is in reality.⁵⁰

⁴⁷ The Guardian, [Devolution needs a UK-wide strategy to avoid English resentment, say MPs](#), 28 March 2013

⁴⁸ Ibid

⁴⁹ The Guardian, [England-only MP votes needed for English legislation, commission says](#), 25 March 2013

⁵⁰ Cardiff University, [Press release: Conclusion of McKay](#), 25 March 2013

Other commentators were more muted in their responses. Writing on the Click on Wales website, the then Director of the Institute for Welsh Affairs, John Osmond lamented the Commission's 'outright rejection of a federal solution for the constitutional dilemmas of the United Kingdom',⁵¹ adding that:

In its rejection of [a] federal approach to the UK, as has been advocated by First Minister Carwyn Jones in a series of speeches over the past year, the Commission rehearses what, by now, are a familiar set of arguments, but ones which it finds "compelling".⁵²

The parliamentary consultant, Barry Winetrobe, was highly critical of what he saw as an 'executive-centred approach to parliamentary reform'.⁵³ He stated that:

Presumably Parliament is expected, as usual, to sit back quietly and wait for its executive masters to work out how it should operate. The idea that one of the Commons' select committees dealing with House matters (given the current Political & Constitutional Reform Committee's inquiry into the 'Wright Committee reforms', we currently have 2 of them, i.e. it and Procedure Committee) should do a brisk inquiry into the subject of WLQ and the McKay Report, independently of Government's own deliberations, is presumably far too revolutionary for the current House. Ditto for some sort of initiative of this sort by the Speaker.⁵⁴

The UK Government has not yet formally responded to the Commission's recommendations, although a Cabinet Office spokesperson was reported as saying that the UK Government 'will give the report very serious consideration before we respond substantively'.⁵⁵

⁵¹ Click on Wales, [McKay Commission points way to confederal UK](#), 26 March 2013

⁵² Ibid

⁵³ Constitution Unit Blog, [Barry Winetrobe: McKay Commission Report: Parliament on the Sidelines ... Again](#), 3 April 2013

⁵⁴ Ibid

⁵⁵ BBC News, [McKay Commission: Welsh MPs' role could be limited](#), 25 March 2013