



House of Commons
Political and Constitutional
Reform Committee

**Do we need a
constitutional
convention for the UK?**

Fourth Report of Session 2012–13



House of Commons
Political and Constitutional
Reform Committee

**Do we need a
constitutional
convention for the UK?**

Fourth Report of Session 2012–13

*Volume I: Report, together with formal
minutes, oral and written evidence*

*Additional written evidence is contained in
Volume II, available on the Committee website
at www.parliament.uk/pcrc*

*Ordered by the House of Commons
to be printed 25 March 2013*

The Political and Constitutional Reform Committee

The Political and Constitutional Reform Committee is appointed by the House of Commons to consider political and constitutional reform.

Current membership

Mr Graham Allen MP (*Labour, Nottingham North*) (*Chair*)
Mr Christopher Chope MP (*Conservative, Christchurch*)
Paul Flynn (*Labour, Newport West*)
Sheila Gilmore MP (*Labour, Edinburgh East*)
Andrew Griffiths MP (*Conservative, Burton*)
Fabian Hamilton MP, (*Labour, Leeds North East*)
Simon Hart MP (*Conservative, Carmarthen West and South Pembrokeshire*)
Tristram Hunt MP (*Labour, Stoke on Trent Central*)
Mrs Eleanor Laing MP (*Conservative, Epping Forest*)
Mr Andrew Turner MP (*Conservative, Isle of Wight*)
Stephen Williams MP (*Liberal Democrat, Bristol West*)

Powers

The Committee's powers are set out in House of Commons Standing Orders, principally in Temporary Standing Order (Political and Constitutional Reform Committee). These are available on the Internet via <http://www.publications.parliament.uk/pa/cm/cmstords.htm>.

Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/pcrc. A list of Reports of the Committee in the present Parliament is at the back of this volume.

The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume.

Additional written evidence may be published on the internet only.

Committee staff

The current staff of the Committee are Joanna Dodd (Clerk), Helen Kinghorn (Legal Specialist), Lorna Horton (Committee Specialist), Jacqueline Cooksey (Senior Committee Assistant), Jim Lawford, (Committee Assistant) and Jessica Bridges-Palmer (Media Officer).

Contacts

All correspondence should be addressed to the Clerk of the Political and Constitutional Reform Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 6287; the Committee's email address is pcrc@parliament.uk.

Contents

| | |
|---|-------------|
| Report | <i>Page</i> |
| Summary | 3 |
| 1 Introduction | 5 |
| Our inquiry | 5 |
| A convention versus a commission | 5 |
| 2 Is a convention necessary? | 6 |
| The pace of constitutional change since 1997 | 6 |
| The failure of regionalism | 8 |
| What is a constitutional convention? | 9 |
| Constitutional conventions in other countries | 10 |
| The case in favour of a convention | 13 |
| The case against a convention | 15 |
| Federalism | 17 |
| The elephant in the room: England | 18 |
| Devolution to local government | 20 |
| A pre-convention for England | 21 |
| 3 Remit and composition of a constitutional convention | 24 |
| Remit | 24 |
| Devolution of financial powers | 25 |
| A formal or informal convention? | 27 |
| Composition | 28 |
| Decision making | 30 |
| Timing | 31 |
| 4 Conclusion | 33 |
| Conclusions and recommendations | 35 |
| Formal Minutes | 39 |
| Witnesses | 40 |
| List of printed written evidence | 41 |
| List of additional written evidence | 41 |
| List of Reports from the Committee during the current Parliament | 43 |

Summary

The United Kingdom has been a successful political union. The ability of the foundations and rules of the UK to evolve and in doing so adapt to changing circumstances has been a great strength. The rapid pace of constitutional change over the last 15 years, including devolution, has altered our constitutional arrangements considerably—far more than many may have realised.

The devolution of power to Scotland, Wales, and Northern Ireland has allowed those parts of the Union better to determine their own economic and political priorities. For example, institutional arrangements now exist in three nations in the UK to express and demonstrate their own preferences on a range of issues from NHS prescription charges, and tuition fees, to the collection of Air Passenger Duty for long-haul flights.

England, despite being home to 83% of the population of the UK, is yet to join the other nations of the Union in having effective devolution. Outside London, most decisions about England are still taken centrally by the UK Parliament. It is worth bearing in mind that many decisions in the devolved parts of the Union are also taken centrally in the sense that they are made by the devolved Administrations and Legislatures for the whole of that part of the Union. Our report on *Prospects for codifying the relationship between central and local government* outlined a way in which devolution for England could be taken forward using local councils as the vehicle. We believe the English Question needs to be addressed swiftly. In this report, we suggest that among the options which the Government should consider is a national forum, or pre-convention, for England to discuss the most appropriate method to address the English Question.

A strong, lasting democratic settlement for the UK must be built upon two principles: those of devolution and union. That is to say, a broad acceptance of the role and powers of the Union, allied to a respect for different but agreed forms of devolution for the nations that make up the Union. This way, everyone in the Union will see that devolution is not an expedient but a founding democratic principle to be applied to all parts of the Union in the future. We welcome the development of bespoke devolution, rather than one size fits all, but the more this is within a context of an agreed role for the UK, the more sustainable the settlement will be.

There is a range of very different opinions. This is true, not only among the witnesses but also among the members of our Committee, some of whom do not accept either the need for further review of constitutional arrangements or that a constitutional convention would be the right vehicle for any such review. We have debated our report carefully, but all our recommendations to the Government must be considered with the caveat that they do not represent the unanimous view of the members of our Committee.

The impending 2014 referendum on independence for Scotland makes a consideration of the future of the Union all the more urgent. The arguments for or against Scotland remaining in the Union, or what might happen to the Union if Scotland were to leave, and our relationship with Europe, are beyond the scope of our inquiry. We do not suggest that any constitutional convention should report before the referendum on Scottish

independence. However, regardless of the result of the 2014 referendum on Scotland's independence, there is, in our view, a need to consider both how the increasingly devolved parts of the Union interact with each other, and what we, as residents of the UK, want the Union to look like going forward.

We therefore suggest that the Government consider, among other options, preparations for a UK-wide constitutional convention, including decisions about its form and organisation, and the process of calling for evidence. If the Government chooses to take this option, the UK-wide constitutional convention should be able to take into account the debate from the pre-convention hearings in England and the referendum result in Scotland, and produce a preliminary report. Alternatively, the UK Government and devolved Administrations may form agreements themselves.

1 Introduction

Our inquiry

1. Over the course of the inquiry, we sought to establish whether there is a case for establishing a constitutional convention for the UK. We began in May 2012, by holding a seminar with interested parties to discuss the issues that we should pursue in our oral evidence sessions. The seminar was filmed and is available to watch on our website. Our oral evidence programme started in June 2012 and we visited each of the devolved Legislatures to gauge the opinions of political leaders, and sought evidence from experts on devolution and the constitution. We also sought, and received evidence on behalf of the Mayor of London and the London Assembly, as the only elected regional tier of government in England.
2. As well as looking at whether a UK-wide constitutional convention was necessary, we considered more detailed questions about the basis on which a convention should be established, its legal status, its composition, and how it should engage with the public.
3. We are grateful, as ever, to our witnesses, for their insights and advice in dealing with such a complex and wide-ranging subject as the state of the UK constitution.

A convention versus a commission

4. Some witnesses questioned why we were considering the case for a UK-wide constitutional convention, rather than an appointed commission. There are also other options for addressing constitutional change that we could have considered, including a debate and decision by Parliament, but the focus of our inquiry was on whether a constitutional convention was an appropriate forum for looking at and proposing constitutional change.
5. For the purposes of the inquiry, a commission is defined as a group of people appointed by the Government to investigate a matter of public concern and to make recommendations on any actions to be taken. Commissions have regularly been used to research and probe issues of constitutional importance. Indeed, in recent years there have been a number of commissions: the Calman Commission, which looked at further powers for Scotland; the Holtham, Richard, and Silk Commissions, which looked at devolved powers for Wales; the McKay Commission, which looked into solutions to the West Lothian Question; and the Commission on a British Bill of Rights, which looked at whether the UK should have its own Bill of Rights. However, despite the reams of recommendations from these commissions that the Government has implemented, or has indicated that it will implement, there has been no analysis of the combined effect that these changes have had on the constitution as a whole.

2 Is a convention necessary?

“Firstly, I am an Ulsterman steeped in the traditions of this place. Secondly, I am Irish, of this island. Thirdly, I am British, and finally, in a more diffuse way, I am European. It may make it easier for you to understand if you remove one of those elements but if you do you are no longer describing who I am.” John Hewitt, Irish poet.¹

6. In this chapter, we consider the case both for and against a UK-wide constitutional convention. We take into account the pace of constitutional change since 1997, and the effect that piecemeal devolution has had on the UK. We consider the relative stability of a constitutionally asymmetric Union, looking in particular at England, the only part of the Union yet to have its own devolved settlement, and discuss what problems the lack of a specific voice for England could cause a constitutional convention.

The pace of constitutional change since 1997

7. In his book, *The New British Constitution*, Vernon Bogdanor writes: “We have all been living through an unprecedented period of constitutional change, an era of constitutional reform which began in 1997 and shows no sign of coming to an end.”² The UK has undergone a significant amount of constitutional change in the last 15 years, and yet there has been no comprehensive attempt to assess how these changes have affected the state of the Union as a whole. Some of the biggest changes to our unwritten constitution since 1997 are listed below:³

- In 1997 referendums in Scotland and Wales paved the way for devolved Legislatures. The Scotland Act 1998 provided for the establishment of the Scottish Parliament; and the Government of Wales Act 1998 for the National Assembly of Wales. The first elections to both bodies were held in 1999, fundamentally changing the relationship between Scotland, Wales, and the rest of the UK.
- In 1998 the Good Friday Agreement, and subsequent Northern Ireland Act 1998, included provision for a devolved Assembly. The agreement was endorsed by the electorate and the first elections were held in 1998. Powers were devolved from December 1999. There were subsequent suspensions, but devolution was finally restored in 2007.
- Also in 1998, electors in the Greater London area voted in favour of a Greater London Authority, with a directly-elected mayor and Assembly, which was implemented through the Greater London Authority Act 1999. The first elections were held in 2000. To this day, London is the only part of England to have a devolved tier of government. The Greater London Authority Act gives the Greater London Authority the “power to do anything which it considers will further any

1 *The Collected Poems of John Hewitt*, ed. Frank Ormsby, (1991)

2 Vernon Bogdanor, *The New British Constitution*, (2009), p 5

3 List adapted from *Constitutional change: timeline from 1911*, Standard Note 06256, House of Commons Library, December 2012

one or more of its principal purposes”. Its principal purposes are promoting economic development and wealth creation in Greater London; promoting social development in Greater London; and promoting the improvement of the environment in Greater London.

- The Human Rights Act 1998 incorporated the European Convention on Human Rights into domestic law, and was fully implemented by 2000.
- The House of Lords Act 1999 removed the right of all but 92 hereditary peers to sit in the House of Lords.
- The Constitutional Reform Act 2005 enacted a number of changes including: (1) Reform of the role of Lord Chancellor, (2) Establishment of a Lord Speaker in the House of Lords, and (3) Creation of a Supreme Court.
- The Government of Wales Act 2006 made provision for further devolution to Wales.
- The Parliamentary Voting Systems and Constituencies Act 2011 provided for a referendum on whether to change the voting system for UK parliamentary elections and set out new rules for the redistribution of parliamentary seats. The May 2011 referendum rejected AV.
- The Fixed-term Parliaments Act 2011 set the date of the next general election at 7 May 2015, and provided for five-year fixed terms. There are two ways in which an election could be triggered before the end of the five-year term: if a motion of no confidence is passed and no alternative government is found, or if a motion for an early general election is agreed either by at least two-thirds of the House or without division.
- The Scotland Act 2012 gives the Scottish Parliament the power to set a Scottish rate of income tax to be administered by HM Revenue and Customs (HMRC) for Scottish taxpayers from April 2016.

8. Constitutions, both written and unwritten, are always subject to change. However, as the list above shows, the sheer volume of constitutional change that the UK has been subject to since 1997 has been implemented without a look at how each change has affected the constitution as a whole. The proposed 2014 referendum on Scottish independence will have profound consequences for the Union. Even if the Scottish people vote against full independence in 2014, it is likely that the devolution of powers to Scotland will continue. Michael Gordon and Brian Thompson, lecturers in Constitutional Law from Liverpool Law School, University of Liverpool, stated in their written evidence: “the implications of devolution are under-appreciated by ministers, officials, and parliamentarians”.⁴

The failure of regionalism

9. It remains the case that all attempts to introduce the devolution of power in England outside of London have fallen short, despite good intentions.

10. In 1998, Londoners voted in a referendum in favour of the creation of a Greater London Authority, composed of a directly elected Mayor of London, and a London Assembly, to scrutinise the Mayor's activities. Sir Edward Lister, the Deputy Mayor for Policing and Planning, told us that while devolved powers for London had been positive, there was still uncertainty:

It is clear to the current Mayoralty that a world class city such as London needs to be as self-reliant as possible. This involves national government providing the city's government with the widest possible set of freedoms and flexibilities. We should not have to go cap in hand to national government every time a major need arises in London.⁵

Sir Edward added that a constitutional convention:

might well have value in cementing the role played by pan-London government and removing some of the uncertainties that can detract from it functioning as effectively as it should do.⁶

11. In May 2002, the Government published a White Paper, *Your Region, Your Choice*, outlining its plans for the possible establishment of elected Regional Assemblies for the English regions outside London. The Assemblies were expected to be elected by an Additional Member System similar to the systems used for the London Assembly, the Scottish Parliament and the National Assembly for Wales. The Regional Assemblies (Preparations) Act 2003 made provisions for referendums to be held to create such assemblies, and to simplify the structure of local government where this was done. Three such referendums were planned, for the regions of North East and North West England, and Yorkshire and the Humber.

12. On 8 July 2004, it was announced that the referendums would be held on 4 November, but on 22 July the then Minister, Mr Nick Raynsford MP, announced that only the North East England vote would go ahead on that date. This region was chosen because the Government thought it was the most likely to approve the proposal. However the voters rejected the Assembly by 696,519 votes to 197,310. This overwhelmingly negative vote was seen as an insurmountable obstacle to elected Regional Assemblies elsewhere in England. On 8 November 2004, the then Deputy Prime Minister, John Prescott, told the House of Commons he would not move orders for the other two regions within the effective time limit of June 2005 permitted by the Act.

13. Several of our witnesses offered reasons why regional devolution in England ultimately failed. Sir Merrick Cockell, Chairman of the Local Government Association, stated that the previous attempt at regional devolution imposed arbitrary regional boundaries without

5 Ev w28

6 *Ibid.*

paying enough attention to those living in those areas. Sir Merrick told us: “perhaps one of the difficulties with regionalism under the past Government was that other people decided what region you were in”.⁷ Ged Fitzgerald, Chief Executive of Liverpool City Council, stated that the failure of Regional Assemblies in England was inevitable as the public knew that the proposed Assemblies had no real power devolved to them. He stated: “what was on offer did not make sense to people”.⁸

14. None of our witnesses proposed a return to regional devolution, and neither do we. The people of England have made it quite clear that they have no appetite for another layer of elected politicians. We wholeheartedly agree. There is another option for the devolution of power in England which involves no new elected politicians or additional layers of government, but rather utilises the existing political and operational infrastructure.

What is a constitutional convention?

15. The *New Oxford Companion to Law*, defines a constitutional convention as “a representative body, brought together to draft a new constitution or to design or approve changes to an old one”.⁹ In this inquiry, we are using the term slightly more broadly to refer to a representative body collected together to discuss constitutional change. The most famous constitutional convention is probably the meeting of delegates in Philadelphia in 1787, which led to the creation of the United States constitution, but there have been more recent examples, and we discuss the lessons that can be learned from them below.

16. The Kilbrandon Commission, which ran from 1969 to 1973, is an example of a commission which looked at UK-wide constitutional issues. The terms of reference of the Commission were:

To examine the present functions of the present legislature and government in relation to the several countries, nations and regions of the United Kingdom;

To consider, having regard to changes in local government organisation and in the administrative and other relationships between the various parts of the United Kingdom, and to the interests of the prosperity and good government and our people under the Crown, whether any changes are desirable in those functions or otherwise in present constitutional and economic relationships;

To consider also whether any changes are desirable in the constitutional and economic relationships between the Channel Islands and the Isle of Man.¹⁰

The Kilbrandon Commission recommended devolved Legislatures for Scotland and Wales, and recommended that regional bodies should be established to advise on government policy.¹¹

7 Q 139

8 Q 172

9 P. Crane and J. Conaghan, *The New Oxford Companion to Law*, (2008)

10 *Royal Commission on the Constitution 1969 -1973*, Volume I, Cm 5460

11 *Ibid.*

17. Commissions are usually made up mainly of political appointees or academics, and although they may take evidence from the public, laypeople are not usually commissioners themselves. In contrast, constitutional conventions usually include significant representation from members of the general public.

18. If there is a need for a review of the constitutional relationships in the UK, this could be put into effect by a decision of the Government and devolved Administrations, or a commission or a constitutional convention.

Constitutional conventions in other countries

19. Constitutional conventions have been used in other countries for a variety of different reasons, such as revising or rewriting a country's constitution, or to look at smaller constitutional changes, such as changes to the right to vote. We consider several examples of constitutional conventions in other countries and analyse whether their models could be successfully applied to the UK.

The Philadelphia Convention

20. The most famous example of a constitutional convention is probably the Philadelphia Convention, which took place from 14 May to 17 September 1787. Some 55 delegates from 12 of the 13 existing United States (Rhode Island did not send any delegates to the convention) gathered with the initial intention of revising the Articles of Confederation and Perpetual Union, but ended up drafting what became the United States Constitution. The Philadelphia model serves as an interesting historical example of where constitutional conventions can lead, but offers fewer lessons for the UK than the more recent examples of constitutional conventions. However, it is worth noting that the Philadelphia Convention had a clearly defined remit and only a small number of delegates.

The Scottish Constitutional Convention

21. The proposal to establish a constitutional convention in Scotland came from a 1988 report *A Claim of Right for Scotland*, which recommended that a convention should be established to draw up a scheme for a Scottish Assembly or Parliament. In January 1989, a cross-party meeting was held to consider proposals for a convention. At this meeting, the Scottish National Party expressed their concern that the convention would not consider the issue of Scottish independence, and later withdrew. The Conservative Party had already made it clear that they would take no part in the proposed convention, as they were not in favour of a devolved Parliament for Scotland. The convention held its first meeting on 30 March 1989, with Canon Kenyon Wright as the Executive Chairman, and reaffirmed the Claim of Right. The Claim of Right states that the will of the Scottish people is sovereign. Members of the Scottish Constitutional Convention included the Scottish Labour Party, the Scottish Liberal Democrats, the Scottish Democratic Left, the Orkney and Shetland Movement, the Scottish Green Party, the Scottish Trades Union Congress, Regional, District and Island Councils, and the Campaign for a Scottish Parliament. Membership also included the main Scottish Churches, the Federation of Small Businesses, ethnic minority representatives and the Scottish Women's Forum.

22. The Scottish Constitutional Convention's report in 1995 formed the basis of further proposals which were brought forward in a white paper, *Scotland's Parliament*, by the Government in 1997. These proposals received considerable support in a referendum on 11 September 1997, with 74% of those voting favouring the Government's proposals for a Scottish Parliament. A smaller majority of those voting supported giving Parliament the power to vary income tax in Scotland. The Scotland Act 1998 sets out the statutory framework of the devolution settlement and under its authority the Scottish Executive and the Scottish Parliament took on their full executive and legislative powers on 1 July 1999.

23. The Scottish Constitutional Convention was highly successful in achieving its aim. The Convention had a clearly defined remit of making the case for an Assembly or Parliament for Scotland. Nonetheless, the example of the Scottish Constitutional Convention shows that there is a need for clarity about the questions that the convention would seek to answer. Although the Scottish Constitutional Convention did not initially have support from all the political parties, support for its proposals grew over the course of the Convention's six years of deliberations. However, any UK-wide constitutional convention following the Scottish model would have to be completed to a tighter timescale. It may be difficult to get political support for a convention which spanned more than a parliamentary term, as results would only be available to a future Parliament.

Iceland

24. In June 2010, an Act of Parliament was passed in Iceland which set out a process for constitutional reform. A National Forum took place on 6 November 2010. This was a group of 950 citizens randomly selected from the National Population Register, "with due regard to a reasonable distribution of participants across the country and an equal division between genders, to the extent possible".¹² The conclusions of the National Forum were then published.

25. The same Act provided for the creation of a Constitutional Assembly, which was to be an elected body which would revise the Icelandic constitution. Some 522 candidates stood, and the 25 members of the body were elected by Single Transferable Vote in November 2010. The election was invalidated in 2011 due to procedural technicalities, but (with one exception) the same Assembly that had been elected was then appointed by Parliament as the Constitutional Council, to have the same role as that intended for the Constitutional Assembly. The Constitutional Council was required to take the conclusions of the National Forum into account when drawing up the new clauses of the constitution.

26. The Constitutional Council published draft clauses on the internet for the public to comment upon. The Council also made use of new media to engage the public, with a Facebook page, a Twitter account, a YouTube page, where interviews with its members were posted, and a Flickr account containing pictures of the members at work. Meetings of the Council were open to the public to attend, and were streamed live on the internet. The draft constitution was completed by July 2011 and presented to the Icelandic Parliament, Althingi, for consideration. On 25 May 2012, the Icelandic Parliament voted in favour of

12 Act on a Constitutional Assembly, Interim Provision, *Icelandic National Forum 2010*

putting the constitution drafted by the Constitutional Council to a national referendum. The national referendum was held and proposals agreed on 20 October 2012.¹³

27. The Icelandic Constitutional Convention is a good example of the use of multiple facets to a convention to gain widespread support amongst the public. However, due to the fact that the Icelandic population is significantly smaller than the UK population—some 319,000 compared to the UK's 50 million—work would need to be done to ensure that a UK convention was representative, but also a manageable size. The use of social media, to ensure that the proposals of the constitutional convention were analysed by a wide range of people rather than a self-selected few, is certainly something that a UK-wide convention could adopt at little cost.

Citizens' Assemblies: Canada

28. The Citizens' Assembly in British Columbia in 2004 was set up to review and suggest replacements to the electoral system. The Government of British Columbia set the terms of reference for the Assembly, but agreed to consider the Assembly's recommendations. The Assembly decided to recommend the adoption of the Single Transferable Vote to the British Columbia Government, and this was put to a referendum in 2005, which was subsequently lost. In a paper written for our Committee, the Centre for Political and Constitutional Studies at King's College London commented on the British Columbia Citizens' Assembly:

The Citizens' Assembly sat over 11 months in 2004. It was composed of 160 randomly selected citizens with a basic quota of one man and one woman from each electoral district plus two aboriginal members. Initially members spent weekends learning about different electoral systems; then they took evidence during 50 public hearings attended by around 3,000 citizens and received approximately 1,600 written submissions. The Assembly then deliberated over different electoral systems and voted on options.¹⁴

29. While the reforms proposed by the British Columbia Citizens' Assembly ultimately failed, the Assembly clearly managed to engage citizens of British Columbia. The 'town hall' meeting style, where citizens come together to discuss and raise new proposals for change, is one that a constitutional convention for the UK could use. It would be impossible for a UK-wide convention to give each constituency even one representative on the convention, as then it would become too unwieldy, but 'town-hall' style meetings could be a way of increasing engagement among the wider public.

30. Looking at examples of how constitutional conventions have worked in other countries shows that they are most effective when they have a clearly defined remit, contain representatives from a range of sections of society, and engage the public with their deliberations.

13 "Referendum to Be Held on Icelandic Constitution", *Iceland Review Online*, 25 May 2012

14 *Codifying—or not codifying—the United Kingdom Constitution: A literature review*, Centre for Political and Constitutional Studies, King's College London, 23 February 2011

The case in favour of a convention

31. We considered whether a UK-wide constitutional convention could be an effective tool for analysing our existing constitutional frameworks and for suggesting ways to strengthen the constitution. There are a number of logistical issues that would need to be solved before a UK-wide constitutional convention could be set up, which we consider later.

32. In his oral evidence to the Committee, Canon Kenyon Wright, Former Executive Chairman of the Scottish Constitutional Convention, stated that there were five questions our inquiry would need to answer: “The questions are: first, why do we need/want a convention; what is the problem? Secondly, what is it for—clear goals? Thirdly, who does it consist of? Fourthly, how does it work? And, fifthly, where is it going?”¹⁵ Much of the evidence we received argued that there was a case for establishing a constitutional convention for the UK, although opinions differed on what the remit of a constitution convention should be.

33. Professor Matthew Flinders, of the University of Sheffield, argued that the pace of constitutional change had stretched our constitution to breaking point:

A constitutional historian might argue that the British constitution has always been riddled with puzzles, anomalies and contradictions and this may well be true. The simple fact is, however, that the constitutional fault-lines that have always existed within the Westminster Model have arguably grown to become significant gaps—possibly even chasms—as a result of recent reforms. The old constitutional rules and understandings through which politicians and the public made sense of the political sphere no longer seem to apply. Moreover a number of issues on the political horizon—not least a planned referendum on Scottish independence—are stretching the constitutional elasticity of the Westminster Model to breaking point.¹⁶

The First Minister of Wales, Carwyn Jones, strongly advocated a UK-wide constitutional convention, arguing that devolution had fundamentally changed our political institutions, and that the UK Parliament had yet to fully adapt to this change:

We are at a point where people do not know when the UK Government is speaking for England, for England and Wales, for England, Wales and Scotland, for England, Wales and Northern Ireland, or indeed, for the UK as a whole, which is why a convention is needed.¹⁷

34. The Society of Local Authority Chief Executives (SOLACE) argued that a convention was necessary because:

there has been no overall vision or evaluation of the kind of country that these reforms were designed to help build. Each reform seems to have been enacted in isolation without a real idea of how it would impact on the others and there is little

15 Q 134

16 Ev w1

17 Q 106

clarity about the means by which any future decisions may be made. This, in our view, makes the need for a constitutional convention all the more urgent.¹⁸

Professor Matthew Flinders concurred with SOLACE, stating that a constitutional convention was needed from a practical viewpoint, as “there are already a number of single-issue government-commissioned reviews underway and there is an urgent need to ‘join-up’ the outcome of those processes”.¹⁹ Dr Alan Renwick, of the University of Reading, argued that one of the benefits of a constitutional convention would be the scope to look at UK constitutional issues from the perspective of all parts of the Union:

There is a clear case for establishing a forum that would consider the Union in the round, rather than taking the perspective of just one part of it. What one part of the Union decides clearly has implications for others.²⁰

35. John McCallister MLA reiterated this viewpoint. He stated that there was a need for a constitutional convention to tidy up the loose ends of devolution:

It is very much internal housekeeping for both sides. How do we do things better? What are the new dynamics particularly now with three parts of the UK having devolved governments, as well as other regions of England or the capital? How do those bits all tie in together and best work together and define out the roles? When they clash who comes out on top, or is there a set of guidelines?²¹

Lord MacLennan of Rogart suggested that a constitutional convention could help to ensure that all parts of the Union were treated fairly:

We have lived with an unwritten constitution for a long time. Where there is legal dubiety it can usually be resolved by the courts. I think the time has come to recognise that we need equitable treatment of all the nations of the United Kingdom but that the English question is very important.²²

This point was reiterated by Democratic Audit, in their 2012 audit of democracy in the UK, which stated that the lack of a coherent settlement for the UK as a whole could create problems for British democracy:

The successes of devolved governments in Scotland, Wales and Northern Ireland are the products of new constitutional settlements, from which the residents of England, by far the great bulk of the UK population, have been excluded. If significant, and sustained, improvements in British democracy are to be achieved, then a fresh constitutional settlement will be required for the UK as a whole.²³

36. Research published by the Electoral Commission in January 2013, in their report *Referendum on independence for Scotland: Advice of the Electoral Commission*, on the

18 Ev w20

19 Ev w1

20 Ev w6

21 Q 406

22 Q 298

23 S. Weir, A. Blick, and C. Crone, *How Democratic is the UK? The 2012 Audit*, January 2013

proposed referendum question, also highlighted that people in Scotland wanted unbiased information about the pros and cons of independence. The report stated that those polled:

wanted more information before polling day and while they expected that campaign groups and the media would provide information in the run-up to the referendum, some also wanted objective information from an independent, neutral source. In particular they wanted unbiased information about what the pros and cons of each outcome were and what independence would mean in practice for Scotland.²⁴

A constitutional convention for the UK could be a neutral source of information about the benefits of the Union, and of an independent Scotland. However, it would be necessary to move very quickly if a convention were to be set up before the referendum on Scotland's independence. We discuss timings later in the report.

The case against a convention

37. Not all our witnesses thought a constitutional convention was a political priority. Andrew RT Davies AM, Leader of the Opposition at the National Assembly for Wales, told us: “we need politicians to start delivering rather than constantly going to conventions, and actually start to look at this whole constitutional process”.²⁵ He added: “often, no decisions of substance come out of those conventions and fora, and we muddle on”.²⁶

38. The Parliamentary Secretary at the Cabinet Office, Chloe Smith MP, in both her written and oral evidence, rejected the idea of a constitutional convention for the UK, stating that tackling the economy had to be the Government's priority:

It is important to recognise that public concern and Government policy is focussed on tackling the economic challenges as a top priority and it might therefore be difficult to justify a convention that looked at the whole of the UK constitution at the present moment.²⁷

39. We agree that a key goal of any Government is to steward a healthy and vibrant economy. However, for the economy to recover the Government will need to engage all parts of the UK, and it is worth considering whether devolving powers from Whitehall to local people could help to harness a UK-wide economic recovery.

40. We do not believe that the Government is incapable of focusing on other issues, as well as the economic challenges facing the UK. Having a system of politics and a constitution that are ‘fit for purpose’ is a prerequisite for an inclusive and fully functioning economy.

41. Those who oppose the need for a constitutional convention point to the political realities of the situation. Neither the Government, as made clear by the uncompromising evidence of the Parliamentary Secretary, nor the Scottish National Party, nor the

24 The Electoral Commission, *Referendum on independence for Scotland: Advice of the Electoral Commission*, January 2013, 3.47

25 Q 63

26 Q 74

27 Ev 157

Conservative party in Wales, support the idea of a constitutional convention. In the absence of that support, it is, in the opinion of some, difficult to see how a convention could proceed.

42. It could also be argued that constitutional conventions presuppose that there is a written constitution, which there is not in the UK. We are currently exploring the need for a written constitution in a separate inquiry.

43. It is also worth emphasising that, in other countries where constitutional conventions have taken place, there has been overwhelming political support for changes to the constitution. However, as Professor Iain McLean, of the University of Oxford, pointed out in his written evidence: “The main problem for a proposed UK constitutional convention is that nobody in England, representing 85% of the population, seems to feel much urgency about it.”²⁸ In his written evidence, Professor James Mitchell, of the University of Strathclyde, highlighted the difficulties that there would be in ensuring that the composition of any convention had legitimacy. He concluded that “it might prove as easy to agree on a new constitutional settlement for the UK as on how to constitute any Convention.”²⁹

44. There is also a danger that, without any support from the Government, a convention would inevitably become a talking shop, no doubt of interest to academics but with little public appeal, or connection with the political realities of the situation. Some believe that there is no prospect of there being a unanimous or near unanimous agreement for a constitutional convention, let alone the product from such a convention.

45. There is also concern about the timing of a convention. It is the view of some that any recommendation that preparations for a constitutional convention should start in autumn 2013 ignores the reality that the UK is currently in a desperate economic crisis, and is already preoccupied with the prospect of a referendum on independence for Scotland and a major reappraisal of the UK’s relationship with the European Union.

46. For all of these reasons, opponents of the need for a constitutional convention believe that, while constitutional matters are evolving very rapidly in some respects, now is not the moment further to review constitutional relationships within the UK.

47. There is a range of very different opinions. This is true, not only among the witnesses but also among the members of our Committee, some of whom do not accept either the need for further review of constitutional arrangements or that a constitutional convention would be the right vehicle for any such review. We have debated our report carefully, but all our recommendations to the Government must be considered with the caveat that they do not represent the unanimous view of the members of our Committee.

28 Ev w14

29 Ev 156

Federalism

48. It has also been stated that it would be impossible to have a constitutional convention in which all the constituent parts of the Union prioritised the same issues. Alan Trench, a fellow at the Constitution Unit, commented:

What is vital for Wales is of much less importance in eastern England. To the extent there is a ‘Scottish’, ‘Welsh’ or ‘north-east English’ interest in the Union, each of these is different. Trying to set up a convention to resolve these issues without being clear about what the interests of the various groups are, and how they relate to each other, will be impossible.³⁰

While it is likely to be difficult to resolve the political priorities of the different parts of the Union, if a constitutional convention had a clearly defined remit, we believe consensus should be possible, given time.

49. One of the key issues that a constitutional convention would have to consider would be whether it is time to look at a form of federal model for the UK. In his written evidence, the First Minister of Wales, Carwyn Jones AM, stated that the differing powers of the UK’s devolved institutions had already created an “asymmetric quasi-federalism”.³¹

50. There has been a huge amount of incremental constitutional change over the past two decades. Much of it has taken the form of a response to specific pressure, which has meant that there has not been a strategic approach to the future of the UK. Failure to respond in a timely way to the natural desires of people to run their own affairs has been a contributory factor to antagonism towards Whitehall and Westminster. Devolution has tackled, and must continue to tackle, that problem. The failure to answer the English Question, and the reality that the largest nation of the Union is still micro-managed from Whitehall, has caused and will continue to cause tension with the rest of the Union. However, if the English Question is proactively addressed, it could pre-empt the next set of difficulties for the Union.

51. While there is not yet a constitutional crisis in the UK, it is better to identify and analyse potential weaknesses in our constitutional framework before a crisis arises.

52. The devolution of power from Westminster to the other parts of the Union is a principle, and not simply a political expedient. Some have argued that if devolved powers were extended to England, this would, in part, address the asymmetry of the current devolution settlements, and allow the UK to move forward and embrace the future as a quasi-federal union.

53. We call on the Government seriously to consider in response to our report the creation of a convention, involving members of the public, to examine the impact of the constitutional changes that have already taken place and to consider how, in the future, our constitution can best serve the people of the UK.

30 Alan Trench, “A grand constitutional convention for the United Kingdom?”, Devolution Matters blog, 29 January 2012

31 Ev 147

The elephant in the room: England

54. During our inquiry, the issue of England being the ‘unfinished business’ of devolution was repeatedly raised. Many witnesses felt that the issue of ‘who speaks for England’ would need to be decided prior to, or at least alongside, a constitutional convention, in order for the convention to be successful. In this section, we explore whether there is an appropriate model for devolution in England.

55. England is the only part of the Union which is still heavily centralised. It is worth bearing in mind that many decisions in the devolved parts of the Union are also taken centrally in the sense that they are made by the devolved Administrations and Legislatures for the whole of that part of the Union. Sir Merrick Cockell, Chairman of the Local Government Association, stated that England was “the last part of the British Empire, still run, as we concede, in a way that might have worked with running India from the India Office”.³² Ged Fitzgerald, Chief Executive of Liverpool City Council, stated simply: “If you were designing a governance system for England, in our case as part of the UK, would you start with the system we now have? I doubt it.”³³ The question is whether the centralisation of decision-making in relation to England is good or bad.

56. Tom Riordan, Chief Executive of Leeds City Council, detailed the problem that there is no specific focus on what is best for England. He stated: “one of the main anomalies is in Whitehall; the current structures do not have anybody with a specific mandate for England in Cabinet and yet there is for Scotland, Wales and Northern Ireland. You also do not have a specific Department mandated to work with England”.³⁴ The First Minister of Wales, Carwyn Jones AM, added: “England needs a voice, and it could express that voice through a convention.”³⁵

57. The Commission on the consequences of devolution for the House of Commons looked at “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”. However, there is currently no forum where the people of England can have their say about their place in the Union, and whether or not they wish to see a devolution of power similar to that which has taken place in Scotland, Wales and Northern Ireland.

58. Professor Robert Hazell, Director of the Constitution Unit, writing in 2006 for *Publius*, stated that the lack of devolution in England did not necessarily threaten the future of the UK:

There is no logic in the process of devolution which requires the English, too, to have devolution. England could remain a gaping hole in the devolution settlement without the system imploding. The devolution settlements already granted to

32 Q 128

33 Q 159

34 Q 152

35 Q 101

Scotland, Wales and Northern Ireland are not threatened by the lack of devolution in England. Asymmetry does not necessarily make the system unstable.³⁶

59. However, Kirsty Williams AM, Leader of the Liberal Democrats in the National Assembly for Wales, stated that the lack of a devolved settlement for England made the whole of the UK's constitutional settlement unsustainable:

It is ... essential that any convention establishes a durable settlement that provides not just for the existence of the devolved Parliaments but makes it possible for them to accrue greater areas of responsibility, especially over financial powers.

The unsustainability of the existing settlement is partly however a result of the precariousness of the English political settlement and the associated problems of the West Lothian question. The solution to this must be a political priority for the convention, and it must make it a key part of its work pattern.³⁷

60. William Rennie, Leader of the Scottish Liberal Democrats, also thought that the lack of desire for devolution in England was preventing the UK from becoming more federal:

The missing link in all of this is the same passion and desire for change in England and, as much as we want it, in order to get a truly federal system we need to have change south of the border in terms of that passion.³⁸

61. Professor Iain McLean, of the University of Oxford, argued that the proposal to hold a convention could be threatened by a lack of interest in England. He stated that, while the UK had plenty of constitutional issues that should be addressed, such as House of Lords reform, the West Lothian question and the status of EU law in the UK, the real problem with holding a constitutional convention was England: "The main problem for a proposed UK constitutional convention is that nobody in England, representing 85% of the UK population, seems to feel much urgency about it."³⁹

62. There is some evidence that interest in devolution in England is increasing. In February 2012, the National Centre for Social Research published a paper on the *English Question: How is England responding to Devolution?* Using data from the British Social Attitudes Survey, the paper charts how attitudes towards how England is governed have changed. It suggests that there is an increasing minority who would be interested in a new constitutional settlement for England: 25% of those presented with the statement "England as a whole to have its own new parliament with law-making powers" in 2011 agreed with it. This was up from 18% in 1999. Some 12% of respondents were in favour of English Regional Assemblies. While a slim majority of those asked, 56% of respondents, favoured the statement "England governed as it is now, with laws made by the Westminster Parliament," this had decreased from 62% in 1999.

36 R. Hazell, *The English Question*, (2006), p 239

37 Ev w15

38 Q 179

39 Ev w13

Attitudes towards how England should be governed, 1999–2011

| | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
|--|------|------|------|------|------|------|------|------|------|------|------|------|------|
| With all the changes going on in the way different parts of Great Britain are run, which of the following do you think would be best for England? | | | | | | | | | | | | | |
| England governed as it is now, with laws made by the UK parliament | 62 | 54 | 57 | 56 | 50 | 53 | 54 | 54 | 57 | 51 | 49 | 53 | 56 |
| Each region of England to have its own assembly that runs services like health | 15 | 18 | 23 | 20 | 26 | 21 | 20 | 18 | 14 | 15 | 15 | 13 | 12 |
| England as whole to have its own new parliament with law-making powers | 18 | 19 | 16 | 17 | 18 | 21 | 18 | 21 | 17 | 26 | 29 | 23 | 25 |
| Base | 2718 | 1928 | 2761 | 2897 | 3709 | 2684 | 1794 | 928 | 859 | 982 | 980 | 913 | 967 |

Source: National Centre for Social Research, *The English Question: How is England responding to Devolution?*

Devolution to local government

63. We published our report on *Prospects for codifying the relationship between central and local government* in January 2013. The report was the culmination of a two-year inquiry into whether local government should be given greater freedoms to act on behalf of its communities. We argued that there was a strong case for considering greater legal and financial freedoms for local government. However, the report makes it clear that local councils should not be compelled into devolution, but could choose—or not choose—to access additional powers from a menu of options.

64. We welcome the Government's commitment to its localism agenda, and note the steps it has taken so far to devolve power to local communities, including the powers set out in the Localism Act 2011. The general power of competence—which, according to *A plain English guide to the Localism Act*, “gives local authorities the legal capacity to do anything that an individual can do that is not specifically prohibited; they will not, for example, be able to impose new taxes, as an individual has no power to tax”⁴⁰—is a broad new power which some have said could revolutionise the way local authorities act. The removal of the vast majority of council ring-fencing, and the measure to allow local authorities to retain a proportion of business rates, have also helped to give local councils greater autonomy over how they spend their money, allowing them to focus on priorities in their local areas. This general trend of the decentralisation of power to local government means that local authorities are getting used to having greater freedoms.

65. The representatives from local authorities that we spoke to were in favour of the devolution of power from Whitehall to local government in England. Tom Riordan, Chief Executive of Leeds City Council, stated simply that power in England should be devolved

40 Department for Communities and Local Government, *A plain English guide to the Localism Act 2011*, 15 November 2011, p 4

to local government as “the basic point is that we think we can do better than Whitehall”.⁴¹ While, Sir Merrick Cockell, Chairman of the Local Government Association, stated: “it is time, not to break up the system or head in the direction of an English Parliament or something like that, but to re-craft a grown-up relationship with local government”.⁴²

66. In his book *The English Question*, published in 2006, Professor Robert Hazell, Director of the Constitution Unit, stated that the devolution of power from Whitehall to local government in England could be an answer to excessive centralisation:

England is now the most centralised of all the large countries in western Europe. Famously insular as well as pragmatic, the English remain unaware of that. The main alternative advanced as the answer to excessive centralisation is to restore powers and functions to local government ... Most of the proposals are perfectly feasible. What is lacking is any evidence of political will in central government to let go.⁴³

This sentiment was reiterated by Graham Pearce of Aston University and Sarah Ayres of Bristol University in their written evidence:

... transferring powers from Whitehall to the sub-national level is viewed as a way of enhancing government and responding to the growing sense of alienation on the part of many people in different parts of the country.⁴⁴

67. In his oral evidence, Professor Gerald Holtham, who chaired the Independent Commission on Funding and Finance for Wales, agreed that the devolution of power in England to local government was the most logical step: “I don’t see any alternative ... I think local government is the only way to decentralise within England.”⁴⁵ He also reminded us that historically local government did have greater autonomy over its own affairs, and created prosperous communities during that time: “I’m sure that if local authorities had their powers restored, and their tax powers restored, that the better ones would do a much better job.”⁴⁶ It is clear that not all local councils would necessarily be in a position to accept devolved powers from Whitehall tomorrow. Capacity building would be needed in many cases. However, local authorities already have many of the staff and much of the governance structures needed to make this a reality.

A pre-convention for England

68. Many of our witnesses stated that one of the key issues with a UK-wide constitutional convention was that the English Question—the issue that the people of England, outside of London, are governed by Westminster, with little authority to propose local solutions that benefit their own communities—had not yet been discussed by the people of England. In order for a UK-wide constitutional convention to be successful, such a discussion will need

41 Q 166

42 Q 130

43 R. Hazell, *The English Question*, (2006), p 239

44 Ev w7

45 Q 538

46 Q 552

to take place. However, any discussion of the future of England is clearly for the people of England alone. The discussion should be mindful of the impact on the Union.

69. However, evidence received from Sir Merrick Cockell, Chairman of the Local Government Association and Ged Fitzgerald, Chief Executive of Liverpool City Council, detailed in an earlier section of the report, suggested that the failure of regional government was less because the English do not want devolution but at least in part because the Government of the day had imposed an arbitrary regional structure on England, with few or no law-making powers. When giving oral evidence, Nigel Smith, Director of VoxScot, which provides strategic advice for referendum campaigns, told us:

It won't surprise you that I was a supporter of English regionalism post 1997, and as soon as I read John Prescott's Bill I said, 'This will lose and it will lose for one simple reason: that it hasn't got enough powers' ... When you came to the north-east then you had a situation where the public, when you did the top of the head polling, were pro the idea of a north-east assembly but not when actually presented with the proposal. I told John Prescott's senior civil servant fairly early on that the people would oppose this referendum for the simple reason it was going to be a playground for politicians—that is my phrase—and this is absolutely a killer.⁴⁷

70. Several witnesses suggested that a specific pre-convention for England, running before, or alongside a UK-wide constitutional convention, would be helpful in allowing the people of England to discuss what they wanted from the Union.

71. Lewis Baston, of Democratic Audit, told us:

There may well be a case for a discussion within England about its constitutional arrangements prior to a UK convention. This could take the form of a pre-convention among the English representatives to the UK convention. Scotland, Northern Ireland and to a lesser extent Wales have had extensive formal discussions: in the context of referendums in 1979, 1997 and forthcoming in Scotland, 1979, 1997 and 2011 in Wales, and 1998 in Northern Ireland. England has not yet had a formal opportunity to establish the questions, both internal (in the relationship between centre, region and locality) and in its relationships with the other parts of the UK and UK political institutions.⁴⁸

72. This sentiment was echoed by academics Graham Pearce and Sarah Ayres, who stated that, "consideration of the government of England should form a key element in the terms of reference for any Convention charting a constitutional settlement for the UK".⁴⁹

73. This pre-convention, or national forum, for England should involve representatives from each constituency and local authority in England to discuss what form of devolution, if any, might be appropriate. This discussion should include consideration of the case for devolving powers to local government, as set out in our report on *Prospects for codifying the relationship between central and local government*. If an English pre-convention

47 Q 250

48 Ev 143

49 Ev w7

recommended that England should have a devolved settlement involving the transfer of more powers to local government, local government would already have done some of the necessary groundwork to absorb those powers.

74. Dr Robin Wilson, an academic, suggested that an English Parliament would not solve the tensions caused by the asymmetrical nature of the devolution settlements:

I don't think you can solve the English question without regional devolution, if for no other reason than Robert Hazell's long-made point that, if you had an English Parliament, you would be talking about a kind of Prussia within Germany in the UK context that would hugely dominate UK governance, and that doesn't seem to me to be a feasible prospect.⁵⁰

However, he added that if England were to use the existing asymmetrical structure of the Union as a blueprint, then it may be possible to find a model that allowed English local authorities to devolve a range of powers, or not, according to local wishes:

I am not for a moment saying that we have to have a kind of gridiron solution for the UK that tears everything up and puts down a new kind of structure that is a federal arrangement, for instance, where everything is exactly the same. By the nature of the evolution of the UK historically, you would have to have some degree of asymmetry in the arrangements and facility to draw down powers, and some capacity for different authorities to exercise powers of general competence, which they might or might not want to utilise, in a context where framework legislation was passed at Westminster and local and regional authorities below that level could do various things in that context. That gives you the kind of flexibility you are thinking about rather than enforcing a one-size-fits-all solution on it.⁵¹

75. It is our view that a solution for England that allows local authorities to choose, or not choose, devolved powers from a menu of options agreed between local authorities in England and Government, would be the preferred option for English devolution. Our report on the *Prospects for codifying the relationship between central and local government* outlines a way in which such devolution could be brought about.

76. We recommend that the “English Question” be addressed without delay. Of all the tectonic plates within the Union, it is England which most needs to be lubricated and adjusted to the new reality of an effective Union, within a key framework of national competences. The Government should now, with all urgency, create a forum, or pre-convention, for the people of England to discuss if, and how, they wish to follow in the footsteps of Scotland, Wales and Northern Ireland and access substantial devolved powers, clearly defined in statute, for their local communities. The Government should consider whether such a forum might be conducted before a UK-wide constitutional convention and involve representatives from all parts of England.

50 Q 347

51 Q 348

3 Remit and composition of a constitutional convention

“Government without a constitution, is power without a right”—Thomas Paine.⁵²

Remit

77. We have analysed the evidence and believe it makes a strong case for a UK-wide constitutional convention. However, in order to proceed further we must consider what the remit of a constitutional convention should be. A clear remit would be key to the success of a UK-wide constitutional convention.

78. Our witnesses had a range of suggestions on an appropriate remit. Ruth Davidson, Leader of the Scottish Conservatives, suggested an “open remit, rather than have the stated aim at the end of it of what was going to happen before you even started”.⁵³ The Constitution Society advocated that a convention should “propose the future constitutional relationship between the United Kingdom and its component elements”.⁵⁴ Professor Matthew Flinders, of the University of Sheffield, advocated a two-stage process, starting with a Select Committee inquiry to focus on:

a fairly tight and narrow debate about territorial devolution and multi-level governance as a first step towards advocating a (second stage) far broader constitutional convention—possibly in the form of a parliamentary commission of inquiry—that would report in 2015.⁵⁵

79. A minority of witnesses suggested that a UK-wide constitutional convention should be convened to create a written constitution for the UK. Canon Kenyon Wright, former Executive Chairman of the Scottish Constitutional Convention, suggested that there was a “need for a written constitution defining the relationships of the four nations”.⁵⁶ Dr Robin Wilson suggested that a constitutional convention would be a good vehicle for exploring the merits of a written constitution for the UK:

First, if one accepts the premise that there should be a written constitution for the UK, and I do, I cannot see any other way of reasonably arriving at it that would carry the necessary legitimacy and enjoy the benefits of the wisdom of crowds, unless there was some broad participatory arrangement to deliberate on it. A constitutional convention of some form would do that as an instrument.⁵⁷

80. Unlock Democracy took a pragmatic view, stating:

52 Thomas Paine, *The Rights of Man*

53 Q 264

54 Ev w2

55 Ev w1

56 Ev 135

57 Q 345

Whilst we support a convention process that would lead to the creation of a written constitution for the UK we believe the most pressing matter that should be considered by a constitutional convention is the impact of devolution on the UK.⁵⁸

81. We are concerned that a UK-wide constitutional convention with an open remit could struggle to reach clear conclusions. The complexity of the UK's constitutional relationships is such that it may be best for the Government to try to solve these issues first. While there is a case to be made that the evolving devolution settlements have altered our unwritten constitution to such an extent that it may be best to revise and codify it in a written document, we believe further work is necessary fully to examine this option. We are exploring this issue further in our inquiry into mapping the path to codifying, or not codifying, the UK's constitution.

Devolution of financial powers

82. One issue that would need to be discussed when resolving the English Question is financial devolution. The devolution settlements have allowed the people of Scotland, Wales and Northern Ireland to determine the priorities for their areas. The devolution of financial powers has been part of this. A discussion could take place about whether England, within a devolved settlement, should have access to the tax-raising powers that Scotland possesses, and that are proposed in Wales. Any discussion on the future of England should of course, be discussed, and agreed by the people of England before a UK-wide constitutional convention looks at the issues.

83. The Scotland Act 1998 introduced the Scottish Variable Rate (SVR), which gave the Scottish Parliament the power to raise or lower the basic rate of income tax by up to three pence in the pound. This power has never been used. The Scotland Act 2012 gives the Scottish Parliament the power to set a rate of income tax for Scottish taxpayers, and will come into force from April 2016.⁵⁹ The Scottish rate of income tax will be established by reducing the basic, higher, and additional rates of income tax levied by the UK Government by 10 pence in the pound and adding a new rate set by the Scottish Parliament. If the Scottish Parliament chooses to set the rate at 10%, there will be no change from the UK tax rates.

84. In Wales too, the concept of retaining a proportion of existing income tax has been proposed. Part 1 of the Silk Commission's report, published in November 2012, recommended that the UK and Welsh Governments share the responsibility for income tax in Wales by 2020.⁶⁰ It stated:

there should be new Welsh rates of income tax, collected by HMRC, which should apply to the basic and higher and additional rates of income tax;

58 Ev 138

59 HM Revenue and Customs, *Devolved taxation in Scotland*, retrieved 31 January 2013, <http://www.hmrc.gov.uk/news/news-calman.htm>

60 Commission on Devolution in Wales, *Empowerment and Responsibility: Financial Powers to Strengthen Wales*, November 2012, p 4

the basic, higher and additional rates of income tax levied by the UK Government in Wales should be reduced initially by 10 pence in the pound. Over time the Welsh Government's share could increase if there is political consensus.⁶¹

Unlike in Scotland, if the Silk proposal were accepted, Wales would be able to vary the basic, higher and additional rates of income tax by different amounts. The Silk Commission report also recommended the full devolution of business rates to Wales.⁶² It was reported by the BBC that these proposals, if implemented would “make the Welsh government responsible for raising around 25% of its budget”.⁶³ The proposals would give Wales greater power to raise its own finances and involve no new central government funding.

85. It has been reported that the Government is also considering Northern Ireland's call for a reduction in corporation tax in order to compete with the Republic of Ireland's 12.5% corporation tax rate.⁶⁴ On 21 February 2012, the Treasury announced that it would soon be devolving the power to set Air Passenger Duty rates for long-haul flights departing from Northern Ireland.⁶⁵ The Northern Ireland Assembly's Air Passenger Duty (Setting of Rate) Bill passed in the Northern Ireland Assembly on 6 November 2012. The Finance Minister, Sammy Wilson MP MLA, stated:

The Executive committed in the Programme for Government to reduce the Air Passenger Duty for direct long haul flights to zero. The legislation passed today delivers on this commitment and is good news for our economy in these challenging financial times.⁶⁶

86. England, since it does not have a financial settlement of its own, has been left behind. Liverpool City Council's Chief Executive, Ged Fitzgerald, stated that his council was reliant on central government for the majority of their spending, which left local people marginalised. He stated: “of our spend—our revenue budget—91% is determined by National Government. That makes the ability of local people to exercise a real, relevant view on what we prioritise and what we spend more marginalised.”⁶⁷

87. In our report into the *Prospects for codifying the relationship between central and local government*, we looked at the possibility of assigning a portion of the income tax take in England to local councils in England, in place of some of the central government block grant, as an attempt to give councils greater autonomy. An examination of the English Question could consider whether a system of tax assignment to local councils in England would help to address the differences between heavily-centralised England, and the

61 *Empowerment and Responsibility*, p 9

62 *Empowerment and Responsibility*, p 7

63 “Commission calls for Welsh government income tax powers”, BBC News, 19 November 2012 <http://www.bbc.co.uk/news/uk-wales-politics-20346118>

64 “Cameron urged to cut Northern Ireland's corporation tax rate” *The Guardian* website, 20 November 2012 <http://www.guardian.co.uk/uk/2012/nov/20/cameron-urged-cut-northern-ireland-corporation-tax>

65 HC Deb, 21 February 2012, col 71WS

66 Northern Ireland Executive website, “Finance Minister Sammy Wilson has welcomed the abolishment of Air Passenger Duty on long haul flights from Northern Ireland”, 6 November 2012 <http://www.northernireland.gov.uk/news-dfp-061112-air-passenger-duty>

67 Q 159

devolved Administrations. We heard evidence from Professor Gerald Holtham, Chair of the Independent Commission on Finance and Funding for Wales, and Alan Trench, a fellow at the Constitution Unit, and are confident that tax assignment for England is, in principle, a feasible option. Alan Trench, when asked if there was any reason why tax assignment could not work in England, answered: “Not as such, but you have to decide what assignment is going to achieve ... it may give you a greater degree of public involvement but it will not directly promote responsiveness”.⁶⁸

88. The UK Government and the devolved Administrations, or a UK-wide constitutional convention, could also consider whether there is a need to modify the current formula-based funding mechanism—the means used by the UK Government to determine funding for the devolved Administrations. Sir Merrick Cockell, Chairman of the Local Government Association, criticised the current formula-based funding mechanism:

It does have bizarre consequences, particularly at a time of less money ... We are not going to be able to avoid looking at the symmetry of funding and its fairness and must try to work out something that is actually based on need rather than an artificial formula.⁶⁹

Andrew RT Davies AM, Leader of the Opposition in the National Assembly for Wales, stated simply: “we all understand that the Barnett Formula has reached its sell-by date”.⁷⁰

89. We recommend that the Government or a constitutional convention analyse whether England should be given similar devolved tax arrangements to those taking shape in Scotland, Wales and Northern Ireland, and consider the feasibility of tax assignment.

A formal or informal convention?

90. The evidence of previous conventions suggests that a UK-wide constitutional convention would not necessarily have to be set up by the Government. The Scottish Constitutional Convention, for example, was not set up by the Government, and yet gained widespread support over the years.

91. However, the Constitution Society argued that an informal constitutional convention would be of little value:

An informal convention on the future of the Union would be of limited value. The participants would be effectively self-selecting and would consist mainly of those who favoured change. It is predictable that some political parties and interest groups would decline to take part.⁷¹

92. Unlock Democracy, an organisation campaigning for greater transparency in Government, suggested that only a convention with a clear legal status would succeed in

68 Q 571

69 Q 129

70 Q 62

71 Ev w2

engaging the public, and suggested that the UK follow Iceland's model for a constitutional convention:

One of the key factors in making public involvement in constitution making successful is that the process must be genuinely independent of government, and have a clear outcome. This means that it must have a clear legal status. Public engagement succeeds when there are defined stages to the process and it's known from the outset what will happen to the findings. This could be going straight to a referendum or reporting to Parliament before being put to a referendum.⁷²

93. We considered whether the Good Friday Agreement could cause any legal issues for a UK-wide constitutional convention. Mike Nesbitt MLA, leader of the Ulster Unionists in the Northern Ireland Assembly, thought not:

I don't see it as a barrier to having discussions. A constitutional convention could come up with recommendations that would run contrary to the Belfast agreement, but it would depend to some extent on those specifics.⁷³

94. It would be best if either the Government undertake the work, or appoint a commission or set up a constitutional convention. The legal status of any work undertaken, and the process involved, should be clear at the outset. The Government should make a commitment in advance to report any proposals resulting from a convention or a commission to Parliament and be clear about whether a referendum would be necessary before the proposals could be implemented.

Composition

95. It may be better to undertake this work within the scope of the Government. On the other hand, how a constitutional convention should be composed is an important question, as a convention that was not felt to be representative might lack legitimacy. The example of the Scottish Constitutional Convention suggests that a UK-wide convention would not necessarily require the involvement of all political parties in the UK in order to go ahead, although it would be difficult to proceed without 'buy-in' from all the devolved Administrations and Legislatures.

96. There are many different ways in which a constitutional convention could be composed. Many witnesses expressed the opinion that any convention would need to be inclusive, find ways to engage the wider public, but not be so big as to be unwieldy. The First Minister of Wales, Carwyn Jones AM, stated that "the challenge for the convention is to ensure that it is not just the great and the good, which royal commissions tend to be... but also that it is not so big that it becomes unwieldy".⁷⁴

97. Professor James Mitchell, of Strathclyde University, commented that the key challenge would be getting agreement from those who had most to lose from a new constitutional settlement:

72 Ev 138

73 Q 401

74 Q 99

It is always easy to secure the support of winners in any settlement but losers' consent is important. This may require compromises to be reached which may be best achieved outside the formal Convention. Given current constitutional arrangements with devolved governments in three components of the UK, there will be a need to accommodate a territorial dimension in membership.⁷⁵

98. We have been clear throughout the report that we believe that it is essential that the public are part of the composition of the constitutional convention. Leanne Wood AM, Leader of Plaid Cymru at the National Assembly for Wales, stated that a constitutional convention would be useful only if it included the public:

In principle, Plaid Cymru believes that the idea of a convention looking at evolving relationships in these islands and in Europe is positive given the need for radical change. However, it is imperative that they are 'open source' constitutional conventions, like the recent one in Iceland, with a real role for the ordinary citizens in suggesting how we reshape our democracy.⁷⁶

99. Democratic Audit stated that direct election could be one way of engaging the public in a constitutional convention:

Direct election for a proportion of the constitutional convention might well be considered. The precedent of the Australian convention in 1998, which involved direct election of half the delegates, may be useful. While turnout was relatively high (47%) in Australia even without being a combined election, it may be wise in the UK context to run any convention election alongside another poll (European or General elections being the all UK options).⁷⁷

100. The Electoral Reform Society stated:

Whilst direct citizen involvement is the starting point, there should be defined roles and methods of participation for elected representatives, constitutional experts and civil society organisations either through submissions or direct advisory roles. There are a number of different models to consider. The Irish constitutional convention will be two thirds members of the public and one third elected representatives. By contrast the Icelandic process specifically excluded party political representation.⁷⁸

101. Some believe the arguments point strongly to the need for a constitutional convention. There is a choice about whether a constitutional convention should be directly elected, or include a mix of appointed and elected delegates. Questions of composition may come rapidly into focus when the remit of a UK-wide convention has been agreed. There is not just one type of successful convention. However, we believe a successful convention would involve representatives from all parts of the Union. We are clear that the convention must have a strong element of public participation if it is to be credible. We believe that the public should be represented among the members of the

75 Ev 153

76 Ev w15

77 Ev 145

78 Ev w 22

convention, but we also believe that there are a number of useful precedents for involving the wider public. Using social media, as Iceland did in its constitutional convention, would be a comparatively low-cost way of ensuring engagement by citizens across the UK. Given that the UK has a lower rate of internet use than Iceland, 83% compared to Iceland's 95%, use could also be made of public meetings so ordinary citizens could contribute to the work of the convention.

Decision making

102. A key task is to ascertain how the convention would deliberate on proposals, and whether agreement would need to be unanimous in order for a proposal to be adopted.

103. In his oral evidence, Canon Kenyon Wright stated that a convention which required a consensus on proposals was a formidable task. The Scottish Constitutional Convention, which had a relatively narrow remit, took six years to formulate its proposals. He told us:

I had to chair the Executive for six long years before we produced our scheme. Consensus means you have to have time to achieve it, but it took us six years. Again and again, to be quite frank with you, I would have loved to have been in a situation where at the end of a meeting I could say 'Right, let's take a vote now'. We couldn't. We could only say 'Go away and sort this one out'. There were times when that was very difficult, but it was done. Because it was done, we have a new kind of politics in Scotland.⁷⁹

104. The Electoral Reform Society suggested that proposals could be accepted if they were agreed by a majority of the Union: "If the convention were to proceed by majority voting, care would need to be taken that representatives from each of the constituent nations had a voice. A majority from each of the regions might be necessary."⁸⁰ Unlock Democracy concurred, adding that "it would be necessary that the proposals had at least the support of the majority of each national group".⁸¹ The Constitution Society suggested that "Simple majority voting might be the best approach in an assembly where the randomly-selected participants enjoyed an inbuilt majority".⁸²

105. How the delegates of a UK-wide constitutional convention take decisions will be key to its success. Requiring unanimous agreement might lead to gridlock and risk the timescale for the convention becoming prolonged. However, we are not convinced that simple majority voting is a satisfactory way of proceeding on proposals of a constitutional nature. At the very least, we would want to see decisions supported by a majority of the representatives from each of the parts of the UK.

106. The Governments and Legislatures of all the nations of the Union would be key participants in the convention and the public debate. It would be expected that all the political institutions and parties would take the long view on the future shape of the Union.

79 Q 314

80 Ev w22

81 Ev 138

82 Ev w2

Timing

107. Our inquiry has been conducted against the backdrop of the forthcoming referendum on Scottish independence, which will take place in the autumn of 2014. The prospect of the referendum, and its possible outcomes, has helped to focus people's minds on the need for a forum in which to discuss the future of the Union. It has also given the inquiry an increased sense of urgency, and inevitably questions of timing have arisen. Our witnesses were split on whether it would be possible to hold a convention before the referendum.

108. Esther Roberton, the former co-ordinator of the Scottish Constitutional Convention, stated that a constitutional convention for the UK was urgently needed given the potential implications that the referendum on independence for Scotland could have on the whole of the UK:

The UK is coming to a crossroads with the prospect of the referendum on independence for Scotland in 2014. If Scotland were to vote in favour, this would create perhaps the biggest constitutional upheaval the UK has ever seen. For this reason, I believe that there is an urgent need for a public debate about the potential implications, not just for Scotland but for the whole of the UK. A Constitutional Convention would be one method of approaching this but there may be others. With less than two years till the referendum, time is short and experience would suggest that a Convention would take some time to be established. The key issue for me is that the debate is established urgently and in a form that engages with the widest possible audience.⁸³

109. The First Minister of Wales, Carwyn Jones AM, argued that a constitutional convention should take place before the referendum because otherwise "we run the risk of visiting constitutional issues after what might be a referendum that produces a result that no-one expects".⁸⁴ However, Leanne Wood AM, Leader of Plaid Cymru at the National Assembly for Wales, stated:

Timing is clearly an issue: a UK constitutional convention is not possible before the Scottish independence referendum, as it is unclear whether the UK as currently constituted will continue to exist. A post-referendum constitutional process of some description will be necessary either to discuss the arrangements for a successor state or the UK-wide implications of Scottish devo-max.⁸⁵

On balance, we do not believe there is time to set up a constitutional convention, and for such a convention to report, before the referendum on Scottish independence in 2014. However, there is no time to waste and the run up to the referendum should be used to carry out the groundwork necessary to set up such a convention.

110. International examples suggest that conventions can be completed within one to two years. The Icelandic constitutional convention sat over seven months, drafting an entirely new constitution during that time, while the British Columbia Citizens' Assembly

83 Ev w18

84 Q 83

85 Ev w15

deliberated on a change in the voting system over 11 months. The Royal Commission on the Constitution, also known as the Kilbrandon Commission, looked at UK-wide constitutional issues, and took four years, reporting in 1973. Some believe that a UK-wide constitutional convention could report in under a year. **However, since it would take time to set up a convention, the Government should begin work without delay on resolving the English Question. It would be best if either the UK Government and the devolved Administrations undertake the work, or jointly appoint a commission, or set up a UK-wide constitutional convention.**

4 Conclusion

111. The rules and principles of the UK's constitution have evolved over hundreds of years. They should continue to evolve, based not on what is politically expedient, but on the concept of subsidiarity, with clear and broadly accepted roles for the Union as a whole, and for the devolved nations of the Union. Changes over the last 15 years have continued to alter our political and constitutional arrangements at a rapid pace. Some believe that the time is right to step back and consider what effect these constitutional changes have had on the UK as a whole, and what the future of the Union could look like. In short, it is time to conduct a comprehensive review so that the Union can work well in the future. The forthcoming referendum on Scottish independence, and the need to answer the “English Question”, reinforce the need to consider what the Union will look like in five, 10 and 50 years' time.

112. There is some argument for a convention to look at the future constitutional structure of the UK. The Government's options should include whether it should examine the case for a convention to look at the future constitutional structure of the UK, because of the impact of the incremental political and constitutional change that has taken place over the past two decades, and the effects of devolution—including the lack of a devolved settlement in England—on relations between the different elements of the UK and how it functions as a whole. Were Government and Parliament to accept such a proposal, any convention should be tasked with recommending a way forward for relations between the different parts of the UK in the 21st century, and should take account of the work of the recent Commissions that have looked at aspects of the devolved settlements, including the Commission on Devolution in Wales, the Commission on the consequences of devolution for the House of Commons, and our own report on *Prospects for codifying the relationship between central and local government*, which explored the devolution of power to local councils in England. The precise remit of any such convention should be a matter for consideration and agreement by the UK Parliament and the devolved Legislatures.

113. However, the English Question—the fact that England, unlike the other parts of the Union, is still governed centrally, and, outside London, does not have its own devolved settlement—must be addressed first. Given that measures to resolve the English Question could have a profound effect on the UK Parliament, any proposals and subsequent changes should be considered with caution. The future constitutional position of England needs to be clarified, and possibly work started on a UK-wide constitutional convention, although it is far from clear whether Parliament, as a whole, would vote for such a convention.

114. We urge the Government to begin the preparatory work now by swiftly resolving the English Question—both in terms of English votes in Westminster and the lack of a devolved settlement for England itself—then moving to establish a Government forum, a commission or a UK-wide constitutional convention once that work has begun. The conclusions should be published after the referendum, enabling any convention to take the result into account. We are aware that the Government's current opinion is understandably that a convention is not a priority. It would be unfortunate if work in this area were merely to take the form of a reaction to a referendum in one part of the Union,

rather than to involve listening at length to views from all the UK nations. **We believe that the future of the Union is the property of all those who live in the UK. Securing the involvement and consent of us all will mean that the continual evolution of our Union will be supported and sustainable.**

115. Being able to adjust to changing circumstances and needs, and reconciling the twin complementary principles of devolution and union are key to a successful United Kingdom in the 21st century and beyond.

Conclusions and recommendations

Is a convention necessary?

1. None of our witnesses proposed a return to regional devolution, and neither do we. The people of England have made it quite clear that they have no appetite for another layer of elected politicians. We wholeheartedly agree. There is another option for the devolution of power in England which involves no new elected politicians or additional layers of government, but rather utilises the existing political and operational infrastructure. (Paragraph 14)
2. If there is a need for a review of the constitutional relationships in the UK, this could be put into effect by a decision of the Government and devolved Administrations, or a commission or a constitutional convention. (Paragraph 18)
3. Looking at examples of how constitutional conventions have worked in other countries shows that they are most effective when they have a clearly defined remit, contain representatives from a range of sections of society, and engage the public with their deliberations. (Paragraph 30)
4. We do not believe that the Government is incapable of focusing on other issues, as well as the economic challenges facing the UK. Having a system of politics and a constitution that are 'fit for purpose' is a prerequisite for an inclusive and fully functioning economy. (Paragraph 40)
5. There is a range of very different opinions. This is true, not only among the witnesses but also among the members of our Committee, some of whom do not accept either the need for further review of constitutional arrangements or that a constitutional convention would be the right vehicle for any such review. We have debated our report carefully, but all our recommendations to the Government must be considered with the caveat that they do not represent the unanimous view of the members of our Committee. (Paragraph 47)
6. There has been a huge amount of incremental constitutional change over the past two decades. Much of it has taken the form of a response to specific pressure, which has meant that there has not been a strategic approach to the future of the UK. Failure to respond in a timely way to the natural desires of people to run their own affairs has been a contributory factor to antagonism towards Whitehall and Westminster. Devolution has tackled, and must continue to tackle, that problem. The failure to answer the English Question, and the reality that the largest nation of the Union is still micro-managed from Whitehall, has caused and will continue to cause tension with the rest of the Union. However, if the English Question is proactively addressed, it could pre-empt the next set of difficulties for the Union. (Paragraph 50)
7. While there is not yet a constitutional crisis in the UK, it is better to identify and analyse potential weaknesses in our constitutional framework before a crisis arises. (Paragraph 51)

8. The devolution of power from Westminster to the other parts of the Union is a principle, and not simply a political expedient. Some have argued that if devolved powers were extended to England, this would, in part, address the asymmetry of the current devolution settlements, and allow the UK to move forward and embrace the future as a quasi-federal union. (Paragraph 52)
9. We call on the Government seriously to consider in response to our report the creation of a convention, involving members of the public, to examine the impact of the constitutional changes that have already taken place and to consider how, in the future, our constitution can best serve the people of the UK. (Paragraph 53)
10. We recommend that the “English Question” be addressed without delay. Of all the tectonic plates within the Union, it is England which most needs to be lubricated and adjusted to the new reality of an effective Union, within a key framework of national competences. The Government should now, with all urgency, create a forum, or pre-convention, for the people of England to discuss if, and how, they wish to follow in the footsteps of Scotland, Wales and Northern Ireland and access substantial devolved powers, clearly defined in statute, for their local communities. The Government should consider whether such a forum might be conducted before a UK-wide constitutional convention and involve representatives from all parts of England. (Paragraph 76)

Remit and composition of a constitutional convention

11. We are concerned that a UK-wide constitutional convention with an open remit could struggle to reach clear conclusions. The complexity of the UK’s constitutional relationships is such that it may be best for the Government to try to solve these issues first. While there is a case to be made that the evolving devolution settlements have altered our unwritten constitution to such an extent that it may be best to revise and codify it in a written document, we believe further work is necessary fully to examine this option. We are exploring this issue further in our inquiry into mapping the path to codifying, or not codifying, the UK’s constitution. (Paragraph 81)
12. We recommend that the Government or a constitutional convention analyse whether England should be given similar devolved tax arrangements to those taking shape in Scotland, Wales and Northern Ireland, and consider the feasibility of tax assignment. (Paragraph 89)
13. It would be best if either the Government undertake the work, or appoint a commission or set up a constitutional convention. The legal status of any work undertaken, and the process involved, should be clear at the outset. The Government should make a commitment in advance to report any proposals resulting from a convention or a commission to Parliament and be clear about whether a referendum would be necessary before the proposals could be implemented. (Paragraph 94)
14. Some believe the arguments point strongly to the need for a constitutional convention. There is a choice about whether a constitutional convention should be directly elected, or include a mix of appointed and elected delegates. Questions of composition may come rapidly into focus when the remit of a UK-wide convention

has been agreed. There is not just one type of successful convention. However, we believe a successful convention would involve representatives from all parts of the Union. We are clear that the convention must have a strong element of public participation if it is to be credible. We believe that the public should be represented among the members of the convention, but we also believe that there are a number of useful precedents for involving the wider public. Using social media, as Iceland did in its constitutional convention, would be a comparatively low-cost way of ensuring engagement by citizens across the UK. Given that the UK has a lower rate of internet use than Iceland, 83% compared to Iceland's 95%, use could also be made of public meetings so ordinary citizens could contribute to the work of the convention. (Paragraph 101)

15. How the delegates of a UK-wide constitutional convention take decisions will be key to its success. Requiring unanimous agreement might lead to gridlock and risk the timescale for the convention becoming prolonged. However, we are not convinced that simple majority voting is a satisfactory way of proceeding on proposals of a constitutional nature. At the very least, we would want to see decisions supported by a majority of the representatives from each of the parts of the UK. (Paragraph 105)
16. The Governments and Legislatures of all the nations of the Union would be key participants in the convention and the public debate. It would be expected that all the political institutions and parties would take the long view on the future shape of the Union. (Paragraph 106)
17. International examples suggest that conventions can be completed within one to two years. (Paragraph 110)
18. However, since it would take time to set up a convention, the Government should begin work without delay on resolving the English Question. It would be best if either the UK Government and the devolved Administrations undertake the work, or jointly appoint a commission, or set up a UK-wide constitutional convention. (Paragraph 110)

Conclusion

19. The rules and principles of the UK's constitution have evolved over hundreds of years. They should continue to evolve, based not on what is politically expedient, but on the concept of subsidiarity, with clear and broadly accepted roles for the Union as a whole, and for the devolved nations of the Union. Changes over the last 15 years have continued to alter our political and constitutional arrangements at a rapid pace. Some believe that the time is right to step back and consider what effect these constitutional changes have had on the UK as a whole, and what the future of the Union could look like. In short, it is time to conduct a comprehensive review so that the Union can work well in the future. The forthcoming referendum on Scottish independence, and the need to answer the "English Question", reinforce the need to consider what the Union will look like in five, 10 and 50 years' time. (Paragraph 111)
20. There is some argument for a convention to look at the future constitutional structure of the UK. The Government's options should include whether it should

examine the case for a convention to look at the future constitutional structure of the UK, because of the impact of the incremental political and constitutional change that has taken place over the past two decades, and the effects of devolution—including the lack of a devolved settlement in England—on relations between the different elements of the UK and how it functions as a whole. Were Government and Parliament to accept such a proposal, any convention should be tasked with recommending a way forward for relations between the different parts of the UK in the 21st century, and should take account of the work of the recent Commissions that have looked at aspects of the devolved settlements, including the Commission on Devolution in Wales, the Commission on the consequences of devolution for the House of Commons, and our own report on Prospects for codifying the relationship between central and local government, which explored the devolution of power to local councils in England. The precise remit of any such convention should be a matter for consideration and agreement by the UK Parliament and the devolved Legislatures. (Paragraph 112)

21. However, the English Question—the fact that England, unlike the other parts of the Union, is still governed centrally, and, outside London, does not have its own devolved settlement—must be addressed first. Given that measures to resolve the English Question could have a profound effect on the UK Parliament, any proposals and subsequent changes should be considered with caution. The future constitutional position of England needs to be clarified, and possibly work started on a UK-wide constitutional convention, although it is far from clear whether Parliament, as a whole, would vote for such a convention. (Paragraph 113)
22. We believe that the future of the Union is the property of all those who live in the UK. Securing the involvement and consent of us all will mean that the continual evolution of our Union will be supported and sustainable. (Paragraph 114)
23. Being able to adjust to changing circumstances and needs, and reconciling the twin complementary principles of devolution and union are key to a successful United Kingdom in the 21st century and beyond. (Paragraph 115)

Formal Minutes

Monday 25 March 2013

Members present:

Mr Graham Allen, in the Chair

Mr Christopher Chope

Stephen Williams

Draft Report (*Do we need a constitutional convention for the UK?*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 115 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Fourth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report (previously reported and ordered to be published on 14, 21 and 28 June, 10 July, 4 and 18 October, 1 and 8 November 2012 and 14 March 2013).

[Adjourned till Thursday 18 April at 9.45 am

Witnesses

Thursday 28 June 2012

Page

Peter Facey, Director, Unlock Democracy, and **Lewis Baston**, Senior Research Fellow, Democratic Audit Ev 1

Thursday 12 July 2012

Andrew R. T. Davies AM, Leader of the Welsh Conservative Group Ev 17

Carwyn Jones AM, First Minister of Wales and Leader of Welsh Labour Ev 20

Thursday 6 September 2012

Sir Merrick Cockell, Chairman, Local Government Association Ev 31

Ged Fitzgerald, Chief Executive, Liverpool City Council, **Will Godfrey**, Strategic Director for Corporate Services, Bristol City Council, and **Tom Riordan**, Chief Executive, Leeds City Council Ev 37

Thursday 4 October 2012

Willie Rennie MSP, Leader of Scottish Liberal Democrats, Scottish Parliament Ev 47

Nigel Smith, Director of VoxScot, strategic advice for referendum campaigns, and **Professor James Mitchell**, Strathclyde University Ev 53

Ruth Davidson MSP, Leader of the Scottish Conservatives, Scottish Parliament Ev 63

Johann Lamont MSP, Leader of Scottish Labour, Scottish Parliament Ev 67

Thursday 18 October 2012

Lord Maclennan of Rogart, Co-Chair of the Liberal Democrat Parliamentary Party Committee Ev 74

Canon Kenyon Wright, Former Executive Chairman of the cross-party Scottish Constitutional Convention Ev 77

Thursday 1 November 2012

Dr Robin Wilson Ev 84

Mike Nesbitt MLA, Leader, **Dr Christopher McGimpsey** and **John McCallister MLA**, Ulster Unionist Party Ev 93

Thursday 8 November 2012

Miss Chloe Smith MP, Parliamentary Under-Secretary of State, Cabinet Office, and **Ciaran Martin**, Director, Constitution Group, Cabinet Office Ev 101

Thursday 17 January 2013

Paul Silk, Chair of the Commission on Devolution in Wales, and **Professor Noel Lloyd CBE**, Member of the Commission on Devolution in Wales Ev 110

Thursday 28 February 2013

Professor Gerald Holtham, former Chair of the Independent Commission on Funding and Finance for Wales Ev 124

Alan Trench Ev 130

List of printed written evidence

| | | |
|----|---|---------------|
| 1 | Canon Kenyon Wright CBE | Ev 135:Ev 136 |
| 2 | Unlock Democracy | Ev 138 |
| 3 | Democratic Audit | Ev 143 |
| 4 | Rt Hon Carwyn Jones AM, First Minister of Wales | Ev 147 |
| 5 | Andrew RT Davies AM, Leader of the Opposition & Welsh Conservative Assembly Group | Ev 150 |
| 6 | Ruth Davidson MSP, Leader of the Scottish Conservatives | Ev 151 |
| 7 | Sir Merrick Cockell, Chairman, Local Government Association | Ev 152 |
| 8 | Professor James Mitchell | Ev 153 |
| 9 | Dr Robin Wilson | Ev 156 |
| 10 | Nigel Smith, Director, Voxscot | Ev 156 |
| 11 | Cabinet Office | Ev 157 |
| 12 | Professor Gerald Holtham | Ev 160 |

List of additional written evidence

(published in Volume II on the Committee's website www.parliament.uk/pcrc)

| | | |
|---|---|--------|
| 1 | Professor Matthew Flinders, Professor of Parliamentary Government & Governance, University of Sheffield | Ev w1 |
| 2 | The Constitution Society | Ev w2 |
| 3 | Dr Claire Sutherland, Lecturer in Politics, Durham University | Ev w5 |
| 4 | Alan Renwick, Reader in Comparative Politics, University of Reading | Ev w6 |
| 5 | Graham Pearce and Sarah Ayres | Ev w7 |
| 6 | Michael Gordon and Brian Thompson, Liverpool Law School, University of Liverpool | Ev w10 |

42 Do we need a constitutional convention for the UK?

| | | |
|----|--|--------|
| 7 | Professor Iain McLean, Oxford University | Ev w13 |
| 8 | Leanne Wood AM, Leader of Plaid Cymru | Ev w15 |
| 9 | Kirsty Williams AM, Leader of the Welsh Liberal Democrats | Ev w15 |
| 10 | James Ware | Ev w17 |
| 11 | Law Society of Scotland | Ev w18 |
| 12 | Esther A Robertson | Ev w18 |
| 13 | SOLACE | Ev w20 |
| 14 | Simon Cramp | Ev w21 |
| 15 | Nicola Sturgeon MSP, Deputy First Minister, Scottish Parliament | Ev w22 |
| 16 | Katie Ghose, Chief Executive, the Electoral Reform Society | Ev w22 |
| 17 | Sir Edward Lister, Chief of Staff and Deputy Major for Policing and Planning | Ev w28 |

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2010–12

| | | |
|-------------------|---|-------------------|
| First Report | Parliamentary Voting System and Constituencies Bill | HC 422 |
| Second Report | Fixed-term Parliaments Bill | HC 436 (Cm 7951) |
| Third Report | Parliamentary Voting System and Constituencies Bill | HC 437 (Cm 7997) |
| Fourth Report | Lessons from the process of Government formation after the 2010 General Election | HC 528 (HC 866) |
| Fifth Report | Voting by convicted prisoners: Summary of evidence | HC 776 |
| Sixth Report | Constitutional implications of the Cabinet Manual | HC 734 (Cm 8213) |
| Seventh Report | Seminar on the House of Lords: Outcomes | HC 961 |
| Eighth Report | Parliament's role in conflict decisions | HC 923 (HC 1477) |
| Ninth Report | Parliament's role in conflict decisions: Government Response to the Committee's Eighth Report of Session 2010–12 | HC 1477 (HC 1673) |
| Tenth Report | Individual Electoral Registration and Electoral Administration | HC 1463 (Cm 8177) |
| Eleventh Report | Rules of Royal Succession | HC 1615 (HC 586) |
| Twelfth Report | Parliament's role in conflict decisions—further Government Response: Government Response to the Committee's Ninth Report of Session 2010–12 | HC 1673 |
| Thirteenth Report | Political party finance | HC 1763 |

Session 2012–13

| | | |
|---------------|---|-----------------|
| First Report | Recall of MPs | HC 373 (HC 646) |
| Second Report | Introducing a statutory register of lobbyists | HC 153 |
| Third Report | Prospects for codifying the relationship between central and local government | HC 656 |