



# External Experts Panel Newsletter

KNOWLEDGE IS POWER, INFORMATION IS LIBERATING

IN THIS ISSUE

## Welcome to our Newsletter

by Stephen Imrie & Professor Nicola McEwen

Welcome to the first edition of the Newsletter for the External Experts Panel. We hope to bring you the latest information and updates from the Scottish Parliament and from the Experts on the Panel.

If you are interested in **constitutional reform, territorial financing, Brexit, devolution and the implementation of the Parliament's new social security powers**, this Newsletter is the place for you.

### About the External Experts Panel

The Panel is an initiative of three committees in Scottish Parliament and the Centre on Constitutional Change, based at the University of Edinburgh. With the support of The University of Edinburgh ESRC Impact Accelerator Account, the Panel has been formed to provide support and expert advice to the Scottish Parliament's Finance & Constitution; Culture, Tourism, Europe & External Relations; and, Social Security committees.

The Panel also exists to share news, information, the latest research and details of events across the Parliament and with the different universities and think tanks represented in our membership.

### Why form the Panel?

This session of the Scottish Parliament will be shaped by two major developments – debates on devolution, constitutional reform and implementation of new powers, and Brexit. These issues require detailed scrutiny which will be complex, technical and will require expert insight and creative thinking. The Panel provides a pan-UK, cross-discipline resource of the leading academics and researchers to supplement the traditional means of gathering views and advice. The Panel has been formed initially as a pilot until June 2018 and is coordinated by Parliamentary officials and **Professor Nicola McEwen** of the University of Edinburgh.



### Inaugural Meeting of the Panel

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# Inaugural Meeting of the Panel

by Stephen Imrie, The Scottish Parliament

## 5, 4, 3, 2, 1 ... launch!

It felt like a long time coming, but the day was finally upon us. With 17 of our 24 founding expert members present, we were joined on the day by the Conveners of all three of our parliamentary committees, a number of other Members of the Scottish Parliament, other parliamentary clerks and researchers, and a number of committee advisers.

**Joan McAlpine MSP**, Convener of the Culture, Tourism, Europe and External Relations Committee got the inaugural event underway, speaking on behalf of the other conveners present; **Bruce Crawford MSP** of the Finance and Constitution Committee and **Sandra White MSP** of the Social Security Committee.

## Why are we here?

Joan reminded all of the purpose of the Panel. Namely that the issues of constitutional change, the challenges of Brexit, the debate around the repatriation of previously EU competences and new financial arrangements in the UK and the implementation of the new powers under the Scotland Act 2016, were all issues that had assumed a new focus and importance. These were not issues where MSPs needed much support or advice in the earlier years of the Parliament, but that we did now.

Joan was confident that the Panel would fulfill its role as a network for exchange of information and ideas, concluding her speech by reminding us of the words of Kofi Annan; "Knowledge is power. Information is liberating".

**Sir Paul Grice**, Clerk/Chief Executive of the Scottish Parliament, welcomed the guests to the Parliament and endorsed the establishment of the Panel. He set out the long history of engagement between the Parliament and academia, stressing the value placed on the expert advice we receive. He reminded us of the fourth of the words engraved on the Parliament's mace – wisdom – concluding that that was what he hoped this Panel would bring to MSPs and parliamentary staff.

Our final opening speaker was **Professor Nicola McEwen** of the University of Edinburgh and the Centre on Constitutional Change (the co-organiser of the Panel). Nicola was able to give us an academic's view of the merits of engagement with policy-makers such as MSPs and to outline how the Panel would work in practice.

## What emerged from the discussions?

Across the day, we were delighted to hear from all of our Experts on a range of subjects as diverse as the then proposed European Union (Withdrawal) Bill (now introduced), intergovernmental arrangements in the UK for the Brexit negotiations, the challenges of delivering new social security powers in Scotland and the need to look again at the operation of the Fiscal Framework and the Scotland Act 2016. Full **proceedings** of our event are now available.



## TELL ME MORE

The Proceedings for the Inaugural Meeting of the External Expert Panel will be available online shortly.

FOR MORE INFORMATION:  
Contact Stephen Imrie

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# Who's who?

Members of the External Expert Panel

Constitution/politics/governance etc.	
Professor Nicola McEwen	University of Edinburgh and the Centre on Constitutional Change
Professor Aileen McHarg	University of Strathclyde
Professor James Mitchell	University of Edinburgh
Professor Michael Keating	University of Aberdeen and the Centre on Constitutional Change
Professor Cathy Gormley-Heenan	University of Ulster
Professor Richard Wyn Jones	University of Cardiff
Dr Sandra Leon	University of York
Professor Michael Kenny	University of Cambridge
Mr Akash Paun	Institute of Government, London
EU/Brexit/International Trade matters	
Dr Tobias Lock	University of Edinburgh
Professor Damian Chalmers	London School of Economics
Dr Gracia Marin-Duran	
Dr Matias E Margulis	University of Stirling
Professor Alan Page	University of Dundee
Professor Laura Cram	University of Edinburgh
Taxation, economic policy and fiscal matters	
David Phillips	Institute of Fiscal Studies, London
Dr Katerina Lisenkova	University of Strathclyde
Professor David Bell	University of Stirling
Professor Graeme Roy	Fraser of Allander, University of Strathclyde
Social security and social policy	
Dr Sharon Wright	University of Glasgow
David Finch	Resolution Foundation
Dr Jackie Gulland	University of Edinburgh
Dr Nicola Cunningham	University of Stirling
Dr Hayley Bennett	University of Edinburgh and What Works Scotland
Standing Adviser to the Finance & Constitution Committee	
David Eiser	University of Strathclyde



# News from the Scottish Parliament and its committees

## Immigration inquiry launched

The Scottish Parliament's **Culture, Tourism, Europe and External Relations Committee** has agreed to hold an inquiry to explore how the UK's immigration policy can best respond to Scotland's demographic and skills needs.

The objective of the inquiry is to seek evidence from organisations and individuals in Scotland on how immigration policy can be developed to reflect and respond to Scotland's demographic and skills needs drawing on the policy options identified by **Dr Eve Hepburn** in her report to the Committee on [Options for Differentiating the UK's Immigration System](#).

The Committee published a report on [EU Migration and EU Citizens' Rights](#) in February 2017 which provided strong evidence of the importance of EU migration to Scotland and the contribution that EU citizens have made to the Scottish economy and Scottish society.

In its report, the Committee concluded that there had to be a bespoke – or differentiated – solution for immigration policy in Scotland in the future and agreed to commission research on options for differentiating immigration policy to meet Scotland's demographic and skills needs in the future.

The Committee now wants to build on its earlier work and ask organisations and individuals to identify which policy options would best address potential skills shortages in their sector.

### TELL ME MORE

The [Call for Evidence](#) for this inquiry and details of how to send your views are available online.

**Deadline: 25 August 2017.**

FOR MORE INFORMATION:

Contact Katy Orr, Committee Clerk

[katy.orr@parliament.scot](mailto:katy.orr@parliament.scot)

## Call for parliamentary reform

Established by the Parliament's Presiding Officer, **Ken Macintosh MSP**, shortly after the 2016 election, the

independent **Commission for Parliamentary Reform** has completed its work, publishing its [final report](#) on 20 June 2017.

The Commission was tasked with looking at how the Scottish Parliament can engage better with the people of Scotland and how its work can be improved to deliver better scrutiny.

Between January 2017 and March 2017, the Commission attended over 40 workshops, conferences and meetings throughout Scotland hearing from over 1000 people.

The final report contains over 70 recommendations which touch on every aspect of how the Scottish Parliament conduct its business and at their heart are the principles of openness and accountability to the people of Scotland.

The recommendations aim to deliver:

- ❖ More flexibility and spontaneity in the business of the chamber, improving opportunities for participation in debates and increasing ministerial accountability.
- ❖ An enhanced legislative scrutiny process with mandatory pre- and post- legislative scrutiny and the creation of a Legislative Standards Body.
- ❖ Smaller and stronger committees, led by conveners elected by the Parliament to underline their independence and authority, more able to set the political agenda rather than simply respond to the Government.
- ❖ A more efficient Parliament, allowing committees and chamber to meet at the same time and making better use of the rhythm of the parliamentary year.
- ❖ An enhanced role for individual MSPs to influence, and contribute to, parliamentary business and encouraged to be parliamentarians first.
- ❖ A stronger role for the Presiding Officer to direct parliamentary business and ensure more effective scrutiny, accountability and debate.
- ❖ A renewed vision for an equal and diverse Parliament, with benchmarks for MSP recruitment from under-represented groups, while ensuring diversity issues become a more systematic part of scrutiny.
- ❖ Becoming a leader in public engagement, experimenting with new ways to gather views and evidence and opening

up more opportunities for people to become involved, where they want and how they want.

- ❖ Providing enhanced support to committees, including the creation of a Committee Engagement Unit.
- ❖ Working with young people to encourage greater knowledge of the Parliament, removing barriers to people's understanding of what the Parliament does and exploiting digital technologies to improve communication with people across the country.
- ❖ More effective monitoring and evaluation of the work of the Parliament, with better feedback to those who get involved, to provide self-sustaining improvement and engagement.

The Report was **debated** briefly in the Parliament on 29 June.

#### TELL ME MORE

Details of the Commission's membership, work and final report are available [online](#).

#### FOR MORE INFORMATION:

Contact Jane Williams, Head of Secretariat

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### Scrutinising the Brexit negotiations - Inquiry launched

The Scottish Parliament's **Culture, Tourism, Europe and External Relations Committee** has also agreed to hold an inquiry to monitor and scrutinise the Article 50 withdrawal negotiations and their implications for Scotland.

The remit of the inquiry is to consider—

- ❖ the implications for Scotland and EU citizens in Scotland of the Article 50 withdrawal treaty;
- ❖ the process by which the UK position in relation to the Article 50 withdrawal negotiations are agreed and how Scotland's interests are taken into account;
- ❖ the implications for Scotland of any discussions or agreement on the framework for the future relationship with the EU.

The objectives of the inquiry will be to—

- ❖ promote an understanding of the Article 50 negotiations and assess their implications for Scotland and EU citizens in Scotland;

- ❖ draw on evidence gathered in this inquiry and the Committee's previous inquiry to make recommendations on how Scotland's interests can best be represented;
- ❖ draw on evidence gathered in this inquiry and the Committee's previous inquiry to scrutinise decisions taken in relation to the UK's future relationship with the European Union and the impact of those decisions on Scotland; and
- ❖ to present the evidence gathered and the conclusions of the Committee.

#### TELL ME MORE

For more details on the Inquiry, please see our [Call for Evidence](#). **Deadline: 18 August 2017.**

#### FOR MORE INFORMATION:

Contact Katy Orr, Committee Clerk

[katy.orr@parliament.scot](mailto:katy.orr@parliament.scot)

### Finance and Constitution Committee gets to work on the Legislative Consent process and the European Union (Withdrawal) Bill

Earlier in June, the **Finance and Constitution Committee** undertook some preparatory work in advance of the introduction by the UK Government of its European Union (Withdrawal) Bill. This work was aimed at looking more generally at the legislative consent process in light of Brexit and how it may operate and what challenges can be anticipated.

To date, the [evidence](#) has been taken from a range of experts, including Expert Panel member **Professor Alan Page** on 21 June, 2017, and from **Michael Russell**, Minister for UK Negotiations on Scotland's place in Europe. This is set to lead to the Committee launching a new inquiry and call for evidence on the European Union (Withdrawal) Bill and any Legislative Consent Memorandum in the coming weeks.

#### TELL ME MORE

#### FOR MORE INFORMATION:

Contact Jim Johnstone, Committee Clerk

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## Social Security Committee gets work underway to scrutinize the Scottish Government's flagship Social Security (Scotland) Bill

The [Bill](#) itself was introduced on 20 June, 2017, and follows the transfer of powers over certain social security measures after the passage of the Scotland Act 2016. These measures give the Scottish Parliament legislative competence over disability, industrial injuries and carer's benefits, benefits for maternity, funeral and heating expenses, and Discretionary Housing Payments. They also provide the ability to top up benefits which remain reserved to the UK Parliament. As a result of the changes in the devolution settlement, eleven existing social security benefits will become a devolved responsibility.

The Bill transposes the eleven social security benefits onto a Scottish legislative platform, allowing the Scottish Ministers to shape a distinctly Scottish benefits system, with dignity and respect being core to its approach. These benefits are: Disability Living Allowance, Personal Independence Payment, Attendance Allowance, Severe Disablement Allowance and Industrial Injuries Scheme; Carer's Allowance; Sure Start Maternity Grants; Funeral Payments; Cold Weather Payments and Winter Fuel Payments; and Discretionary Housing Payments. The Bill provides for a supplementary payment to persons receiving Carer's Allowance, pending the transposition of that benefit onto a Scottish legislative platform.

The principal policy objective is to put in place a legislative framework that will underpin a process by which people will be given assistance, once a determination is made that they are entitled to that assistance. People will either apply for the types of assistance for which they are eligible or, in some circumstances, a determination will be made without an application being required. A guiding assumption is that, at a high level, the overall process should be more or less the same for all types of assistance provided.

The Social Security Committee considered its approach to the new Bill on 29 June and agreed to:

- ❖ a [call for evidence](#)
- ❖ to go out and meet groups of those affected by the Bill over the summer, and
- ❖ to hear directly from claimants at its first evidence session on the Bill.

### TELL ME MORE

The Call for Evidence is now available. **Deadline: 23 August 2017.**

FOR MORE INFORMATION:  
Contact Simon Watkins, Committee Clerk  
[simon.watkins@parliament.scot](mailto:simon.watkins@parliament.scot)

## Finance and Constitution Committee launches new Inquiry on impact of Brexit on the Scottish Budget

As one of its last decisions before the summer recess, the **Finance and Constitution Committee** is launching a new inquiry to help it assess the short-term impact of Brexit on the public finances and any measures the Scottish Government could adopt to mitigate the impact of Brexit.

In particular, the Committee's focus is on:

- ❖ Are there any indications of a differential economic impact in Scotland separately from the rest of the UK?
- ❖ What additional spending pressures are there on the public finances as a consequence of Brexit?
- ❖ What should the Scottish Government's priorities be in formulating Draft Budget 2018-19 in response to the initial economic impact of Brexit?
- ❖ Given that increased inflation is likely to disproportionately impact on the poorest, what measures should the Scottish Government take in its Budget to address this?
- ❖ What issues require to be considered from the loss of EU funding mechanisms arising from Brexit?

### TELL ME MORE

Details of Inquiry and the [Call for Evidence](#) are now available. **Deadline: 18 August.**

FOR MORE INFORMATION:  
Contact Jim Johnstone, Committee Clerk  
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## Scottish Government produces first ever Annual Report on its Intergovernmental Relations to the Scottish Parliament

At the tail end of the last session of Parliament, the then Devolution (Further Powers) Committee endorsed a [Written Agreement](#) on Intergovernmental Relations with the Scottish Government, setting out the details of how Ministers would inform Parliament and its committees of their formal meetings with ministers from other administrations in the UK.

In reaching this Agreement, the Scottish Government recognised the Scottish Parliament's primary purpose of scrutinising the activity of the Scottish Government within formal inter-governmental structures. The Scottish Parliament

also recognised and respected the need for a shared, private space for inter-governmental discussion between the administrations within the United Kingdom, such as, in situations where negotiations are on-going.

This Agreement was developed in recognition of the increased complexity and 'shared' space between the Scottish and UK Governments that the powers proposed for devolution entail. It further recognised that the increased interdependence between devolved and reserved competences will be managed mainly in inter-governmental relations. This Agreement sought to ensure that the principles of the Scottish Government's accountability to the Scottish Parliament and transparency with regard to these relationships were built into the revised inter-governmental mechanisms from the outset of this structure of devolution.

Reporting procedures covering before/after correspondence on the Joint Ministerial Committee system, meetings of the Joint Exchequer Committee and gatherings of the Joint Working Group on Welfare are covered by the Written Agreement.

The Written Agreement also requires the Scottish Government to produce an Annual Report on IGR for the Parliament; the first of which was received just before the summer recess.

#### TELL ME MORE

##### FOR MORE INFORMATION:

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### Brexit means Breakfast ...

The latest in a series of Brexit Breakfast Briefings for MSPs was held recently on the subject of justice policy. This is the ninth such briefing session held as part of this successful [pilot series](#).

Speakers included:

- ❖ Maria Fletcher, Senior Lecturer in European Law at the University of Glasgow.
- ❖ Dr Leandro Mancano, Lecturer in EU Law at Edinburgh Law School and Programme and Director of the LLM in European Law.
- ❖ Dr Lorna Gillies, Lecturer in Commercial Law

Copies of the handouts and position papers are available on request.

#### TELL ME MORE

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### Public finance experts call for 'cultural change' to Holyrood's budget process

Holyrood's budget process needs to be substantially revised to take account of Scotland's new financial powers and fiscal framework, says an expert review group. An opportunity therefore exists for 'cultural change' and a new budget process that looks both forward and back in terms of parliamentary scrutiny.

In its [Report](#) published just before recess, the group also calls on the Scottish Government to adopt a more strategic approach to financial planning by publishing:

- ❖ each spring, a Medium-Term Financial Strategy for Scotland's public finances, and;
- ❖ each autumn, a Fiscal Framework Outturn Report, setting out data for Scottish tax revenues.

The report also found that the present budget process delivers insufficient opportunity for Parliament and its committees to influence the Government's budget formulation. Parliament should instead move to an "all year round approach" to scrutiny, where committees seek to influence government plans in advance of the budget being published each autumn.

Overall, the group recommends that the Scottish Parliament's revised budget process should have the following four core objectives:

- ❖ To have an influence on the formulation of the budget;
- ❖ To improve transparency and raise public understanding and awareness of the Budget;
- ❖ To respond effectively to new fiscal and wider policy challenges;
- ❖ To lead to better outputs and outcomes as measured against benchmarks and stated objectives.

Expert Panel Members **David Eiser** and **Professor James Mitchell** were both involved in the Group's work.

## Scottish Government updates committees on Brexit issues and sets out initial views on the European Union (Withdrawal) Bill

Although Parliament started its summer recess in July, the volume of information being considered by its committees as part of the Brexit process has not slowed.

In the last few days, both Scottish and UK ministers have provided the Finance and Constitution and Culture, Tourism, Europe and External Relations committees with updates as part of the Brexit negotiations as a result of the introduction of the new European Union (Withdrawal) Bill. These included:

- ❖ Scottish Government position paper - [Free Movement - Citizens' Rights](#)
- ❖ Scottish Government letter to MSPs setting out its [initial views](#) on the European Union (Withdrawal) Bill and the [joint letter](#) from the First Ministers of Scotland and Wales
- ❖ [Letter](#) from the Secretary of State for Scotland on the European Union (Withdrawal) Bill

### TELL ME MORE

#### FOR MORE INFORMATION:

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# From our Experts

## Institute of Government and Centre on Constitutional Change Seminar on Brexit, Devolution and Intergovernmental Relations, 22 June 2017, London

Three of our Experts – **Akash Paun**, **Professor Nicola McEwen** and **Professor Michael Keating** – were joint hosts for a closed-door seminar held at the Institute of Government on 22 June 2017, supported by the ESRC UK in a Changing Europe Initiative.



The event brought together civil servants from across the UK and a select group of academics, parliamentary clerks and other experts, to consider the impact of Brexit on the devolution settlements and to consider how the UK and devolved governments should work together as the Brexit process gets under way in earnest

The purpose of the event was to encourage reflection and private dialogue about how the UK and devolved governments have worked together so far on Brexit, what are the major challenges ahead, and what approaches to intergovernmental working are likely to be most productive in this context.

The discussions covered both intergovernmental working during the Brexit negotiation process itself, and also some forward-looking issues such as what kind of ongoing cooperation may be needed after Brexit (for instance to create and operate new UK-wide frameworks in areas currently governed by EU law).

The event was divided into two sessions, focusing on the following key questions:

- ❖ How have the UK and devolved governments worked together so far on Brexit, and what lessons can be learnt from this about how to strengthen intergovernmental relations during the formal Brexit negotiation process?
- ❖ What kind of ongoing cooperation between UK and devolved governments may be needed after Brexit (for instance to create new UK frameworks for agriculture and regional economic development), and to what extent is Brexit likely to require changes to the devolution settlements?

Proceedings of the event will be available shortly.

### TELL ME MORE

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## Can UK intergovernmental relations be rebooted?

by Professor Nicola McEwen

Brexit poses profound challenges for relations between the UK and devolved governments. But, can the lack of understanding and trust that characterised intergovernmental relations in the months before the election give way to more positive relationships?

The Brexit referendum outcome prompted an unprecedented intensification of intergovernmental relations between the UK and devolved governments. The decision last October to set up a new forum, the Joint Ministerial Committee (European Negotiations), marked a step-change in IGR. It promised more focus, purpose and influence for the devolved governments than is normally associated with the JMC. But the JMC(EN) failed to live up to the expectations of all parties, and its future is in doubt.

Certainly, there were lots of meetings. After 21 months without meeting, the JMC Plenary (which brings together the PM and First Ministers) met twice, while the JMC (EN) met four times between November 2016 and February 2017. Both the UK and Scottish governments also acknowledged an intensification of bilateral meetings between officials and ministers in the two months prior to the General Election. The quantity of meetings brought its own challenges in terms of resources and organisation. But what of the quality?

The lack of transparency in IGR makes it difficult to make an impartial assessment. But the reactions of the governments involved suggest that intergovernmental relations had become a dialogue of the deaf, with UK ministers on the one side and devolved government ministers on the other talking past each other, failing – willfully or otherwise – to see or respect the others' viewpoint. The JMC (EN) raised expectations of joint agreement on a UK approach prior to the triggering of Article 50. But there was no intergovernmental discussion of the UK Government's Brexit position prior to the Prime Minister's [Lancaster House speech](#), or the publication of the [White Paper](#) or the triggering of Article 50.

The JMC (EN) was also supposed to provide the devolved governments with oversight of negotiations with the EU, but formal multilateral IGR may be difficult to resurrect without a functioning Executive in Northern Ireland. Besides, prior to the General Election at least, the UK Government's appetite for the JMC (EN) had diminished, as had the expectations of the Scottish and Welsh Government regarding its capacity to uphold its remit.

Both the UK Conservatives and the SNP have been humbled by the General Election results, and it is not yet clear how this will affect the relationship between their two governments. The First Minister has called for a rethink on Brexit, and an opening up of the process to include all parties and the devolved governments. While the Scottish Government's capacity to influence negotiations is likely to remain limited, its central objective of retaining membership of the Single Market may be back on the table amid broader pressures for a rethink.

The Scottish Tory leader, Ruth Davidson, buoyant from her electoral success, seems intent on trying to influence the UK's Brexit stance, though quite how remains unclear. The UK Government may take try to bypass the Scottish Government to bring Ruth Davidson – the principal opposition leader in the Scottish Parliament – into the Brexit fold. Such a controversial step could be seen as disrespecting devolution, and would lead to further significant deterioration of relations between the two governments.

The election results reinforced the authority and confidence of Wales' First Minister, Carwyn Jones. He has been at the forefront of thinking over how to restore the Union, while mounting a small 'n' nationalist defence of devolution. In a

post-election paper, the Welsh Government has called for 'deeper and more sustained cooperation' between the UK and devolved governments, including more shared governance, co-decision and joint delivery. The paper also calls for an overhaul of the UK's intergovernmental machinery, replacing the JMC with a Council of Ministers acting as a decision-making body not dissimilar to the EU Council.

This imaginative proposal might find favour with the devolved governments (although the absence of a veto power would be problematic). It is difficult to foresee the UK Government agreeing, however, given the added complexity and reduced authority it would entail. Besides, a structure of shared governance may need to be underpinned by mutual trust, shared purpose and commitment to the Union, but these can't be taken for granted.

What, then, lies ahead for UK IGR? Brexit and the repatriation of competences necessitates intergovernmental coordination, especially in policy areas like agricultural, fisheries and finance which are most affected. Informal ministerial quadrilaterals outside of the JMC framework have already been established to take these issues forward, and these are likely to continue and may intensify. The devolved governments are keen to re-establish the JMC. The precarious position of the Conservative administration makes it more likely that it will also want to re-engage, at least for consultation, if not co-decision.

As is often the case in UK constitutional practice, the most likely road ahead in IGR is to muddle through. But Brexit, and especially the repatriation of competences, will present hazardous road blocks along the way.

## EVEL won't worry the new government - but the West Lothian question may well do

by Professor Michael Kenny & Danny Gover

Amidst the swirl of punditry and opinion unleashed by this month's general election result, attention has once again turned to the 'English votes for English laws' reform (otherwise known as 'EVEL') recently introduced in the House of Commons. EVEL aimed to address concerns about the capacity of MPs from outside England to exercise a determining vote on England-only legislative matters. Some pundits have suggested that it may well represent an acute obstacle, of the Conservatives' own making, to the prospects of Theresa May's minority government given its reliance on support from MPs outside England. Others, by contrast, have wondered whether EVEL might give her the enhanced majority she needs to govern England. In fact, neither of these possibilities is likely to occur.

Indeed, some of the more outlandish claims in circulation about EVEL supply yet more evidence of how poorly

understood this set of procedures still is. In our in-depth analysis of its first year of operation – Finding the Good in EVEL, published in November 2016 – we argued that the EVEL procedures should be simplified, made more transparent, and be better explained by government. But, although EVEL itself is unlikely to greatly hinder this minority government in parliament, some of the wider issues underpinning the ‘West Lothian Question’ (to which EVEL was a very belated answer) may well resurface, and it is worth pondering those at this particular moment.

### *EVEL and the West Lothian Question*

The arithmetic of the new House does mean that questions of territorial representation could well become divisive and difficult for Theresa May, and these may add to the formidable set of challenges ahead of her. But to understand these, we should first remind ourselves of the iconic West Lothian Question posed by the late Tam Dalyell in response to proposals for devolution in the 1970s. Dalyell raised two distinct issues. His central complaint was that, were devolution to be implemented in only certain parts of the UK, MPs who represented seats where devolution applied could, in principle, determine outcomes for those who lived in non-devolved parts of the UK, whilst MPs representing the latter could not do the reverse. Implicit within this, however, was a second observation: that devolution might legitimise the idea that any UK administration needed a ‘mandate’ to introduce legislation for territories where it was not the majority party.

Both of these points may well become pertinent now, given the territorial arithmetic generated by the recent election. The Conservatives, who have since the 1970s become increasingly preponderant in England in terms of their parliamentary numbers, have now secured 13 seats in Scotland (a result not achieved since the 1980s). And they have at the same time gone backwards in England, suffering a net loss of 22 seats.

This result means that the party is unlikely to play the English card in quite the way that David Cameron did after the Scottish referendum of 2014. During the 2015 general election campaign, he appealed directly to English voters worried about the prospects of a Labour-led government, under the weak leadership of Ed Miliband, and the possibility that it might need to lean upon SNP support. The Tory party published an English manifesto as well as a UK one (a move which was not repeated in 2017), and included within it a commitment to introduce a new set of rules in the Commons designed to achieve ‘English Votes for English Laws’. These new EVEL procedures came into force in October 2015, and have been applied to provisions in roughly half of all subsequent government bills.

### *Why EVEL won't worry the new government*

But is EVEL likely to become an obstacle to any deal with the DUP, as has been widely suggested? Or will it give the Conservatives an enhanced majority to pass English legislation? The short answer to both of these questions is ‘no’.

All primary legislation at Westminster passes through a series of stages at which MPs from across the UK may vote – and this remains the case under the EVEL procedures. What is novel as a result of EVEL is the requirement for the Commons Speaker to ‘certify’ provisions of any government bill that meet particular tests of applying only to England (or England and Wales). Certified provisions must, in addition to passing the UK-wide stages, also be approved by a ‘legislative grand committee’ comprising MPs from England (or England and Wales), which meets towards the end of the bill’s Commons passage (for a full explanation of these processes see our recent report). This means that MPs from England (or England and Wales) can exercise a veto over certified parts of a bill. But the entire House also retains a right of veto, since it may vote at most of the other stages of a bill’s Commons passage (including at the final ‘third reading’). In other words, to pass certified (parts of) legislation, the support of MPs from across the UK remains necessary, but it is no longer sufficient.

What then is the effect of this month’s election outcome on this system? Firstly, it reduces the majority of the Tory party both in England, and also in England and Wales combined, but not by a huge margin. In England there are now 296 Conservative MPs, compared to 236 for all other parties combined – which means a Conservative majority of 61 (excluding the Speaker and his deputies, and assuming they all represent English seats). In England and Wales combined, the Conservatives have an effective majority of 37. While no government would take for granted majorities of this size, they are nevertheless comparatively comfortable. Of far greater concern to Theresa May will be her government’s position across the UK as a whole – given that, under EVEL, it remains necessary for England-only legislation to be approved by UK-wide MPs. Even with the support of the DUP, the government’s effective Commons majority stands at 13; without the DUP it has no majority at all. In this situation, the new government will be worrying far more about its thin (non-)majority across the whole House than it will about its lead among English representatives.

It is possible that EVEL will surface in the politics of the coming period – though not as an obstacle to a deal with the DUP (although they, like all the other non-English parties at Westminster, are not keen on these new procedures). Situations could arise where the government would like to pass legislation, parts of which apply only to England or England and Wales, but cannot do so because MPs from across the House (including some Conservative rebels) oppose it. This was exactly the situation which arose in the

last parliament and resulted in the government's defeat on planned changes to legislation regarding Sunday trading in England and Wales. If this kind of eventuality arose again, the call for a more robust form of EVEL – for example by eliminating entirely any influence by non-English MPs on England-only legislation – may well gather momentum. In such a scenario, it is the limits of EVEL, not its capacity to represent an obstacle to an arrangement with the DUP, that will become an issue.

*The West Lothian question – but not as we know it*

But the territorial balance of the new Commons does in fact raise the prospect that the concerns raised by Dalyell may come back to the fore – though not solely in relation to England.

One particularly interesting potential scenario concerns policy matters that apply only to Great Britain (i.e. England, Scotland and Wales), where equivalent provision is transferred to Northern Ireland – for example, subsidies for renewable energy, employment law, and social security. On such issues, Westminster usually legislates only for Great Britain (e.g. see the recent Trade Union Bill and the Pension Schemes Bill), although on some policy areas Northern Ireland routinely seeks 'parity' in its own policy. Across Great Britain, the Conservatives have a slender Commons majority of just four, which could be wiped out by the tiniest of backbench rebellions. EVEL was developed principally to respond to concerns about the influence of Scottish MPs on England-only legislation – but no equivalent protection has been given to English, Scottish and Welsh MPs to veto legislation applying only to Great Britain. Were the Conservatives to rely on Northern Irish MPs to help them pass such legislation, it would surely spark accusations of hypocrisy. Given how strongly many Conservative MPs feel about the principle that lies behind EVEL, it will be interesting to see whether they feel similarly were the same issue to arise on a 'Great British' basis.

It may well be that issues of this kind are not frequent in the near future. What is much more likely to happen is that the political, rather than legal, problems associated with the notion of the 'mandate' of the UK government, to which Dalyell drew attention, will surface at some point soon. The question of the UK government's legitimacy in Scotland and Wales was a key catalyst for the introduction of devolution. And while the establishment of devolved government in both these territories has gone some way to dissipating this problem, it has certainly not gone away completely. In constitutional terms, the UK parliament undoubtedly has the right to legislate in areas that are 'reserved' (i.e. which fall outside the devolution agreements for Scotland, Wales and Northern Ireland). But there is now a potentially high political cost for bringing in unpopular legislation to bear upon territories where a weak UK government does not have a majority, and where it may soon be fighting another election.

And this may well become an issue that is voiced in Wales, as well as Scotland, in the months to come.

There is an important territorial dimension to the challenges facing the new government in the Commons, which goes beyond the important question of what effect an arrangement with the DUP will have on the Northern Irish peace process (itself a vital question). The election result looks at first blush like it may have assuaged some of the most immediate pressures upon the union, notably in Scotland. But it may well be that different kinds of territorial anomaly and disagreement open up beneath Theresa May's feet in the weeks and months to come.

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16-17 November 2017, Hull

[Political Studies Association \(PSA\) Parliaments Group Annual Conference](#)

16-17 November 2017, Edinburgh

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