Mr. Daniel Gover, Queen Mary University of London and Professor Michael Kenny, University of Cambridge—written evidence (LEG0056)

About this submission

1. This submission focuses exclusively on the latter part of question 3, concerning the impact of English Votes for English Laws (EVEL) on the Westminster legislative process.

2. The information in this submission is drawn from an in-depth academic research project into EVEL, conducted by the authors. The research is based at the Mile End Institute (at Queen Mary University of London) and at the Cambridge Institute for Public Policy (at the University of Cambridge). Further detail and analysis is available in our publications (cited below) and on our project website (www.evel.uk).

English Votes for English Laws

3. EVEL has been advanced as an ‘answer’ to the West Lothian Question, a constitutional anomaly arising from the UK’s asymmetrical devolution settlements. In short, it provides MPs representing constituencies in England (and England and Wales) with the opportunity to veto certain legislation that applies only in that part of the UK. The Speaker is required to consider most government bills at various points during their Commons passage and to ‘certify’ any provisions (usually clauses or schedules) that meet specified criteria. The veto right is then achieved through new ‘legislative grand committees’, which comprise all MPs from the relevant area(s) and which must give their ‘consent’ to certified provisions for them to pass, and through ‘double majority’ voting on motions relating to Lords amendments.

4. During the 2015-17 parliament, a total of 18 bills had at least one provision certified at some point during their Commons scrutiny. This represents just over half of all bills eligible to be considered for certification. Once broken down into individual provisions, the Speaker certified around a quarter of all clauses and schedules that were eligible for consideration at the initial certification prior to Commons second reading. So far during the 2017-19 session, six bills have had provisions certified.

5. The early operation of EVEL allows for a preliminary assessment of its impact on, and contribution to, the legislative process. It is important to stress that the system has so far

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1 In specific circumstances, legislation may also be certified as relating exclusively to England, Wales and Northern Ireland. Given the nature of this inquiry, this submission focuses on EVEL’s impact on primary legislation. However, the procedures do also apply to secondary legislation and to some non-legislative business.

2 Further detail on 2015-17 is available in Gover & Kenny (2016, 2018). Figures for 2017-19 are correct as of 13 April 2018. A full list of certified legislation to date is available at www.evel.uk.
operated in a relatively benign political context, and as such it would be unwise to draw firm conclusions. This submission therefore reports our provisional observations based on EVEL’s early operation.

6. On a practical level, the early indications are that the system has operated more smoothly than some critics feared. We are not aware of any evidence that EVEL has significantly reduced the time available for debate at other legislative stages. The greatest disruption has occurred between Commons report and third reading stages, due to the requirement for the Speaker to reconsider the bill for certification at this point; however, innovations such as issuing ‘provisional certificates’ have kept this disruption fairly minimal. It remains to be seen whether this early experience will be replicated in different parliamentary settings – for example where a government lacks a majority in England.

7. A central rationale for EVEL was to prevent legislation being imposed on England against the wishes of its MPs. This situation was perceived to have occurred on a small number of occasions during Blair’s second term in office. The veto right established by EVEL has at least two apparent limitations: first, a future government without a majority in England (or England and Wales) could use its UK-wide strength to revoke the procedures; and second, it remains possible for a government to draft its legislation in a way that legislation implementing England-only policy might not meet the certification criteria (as illustrated by the case of Sunday trading in 2016). Even so, EVEL does appear to have established a fairly robust form of veto, which mimics the ‘legislative consent motions’ considered by the devolved legislatures. Given that the government has, since EVEL’s introduction, consistently held a larger majority in England than across the House, this veto has not so far been exercised.³ In different circumstances, however, it may become politically significant, and may also produce hidden effects on how governments prepare legislation that applies only to England (or England and Wales).

8. However, EVEL does not enable English (or English and Welsh) MPs to force through legislation in the face of opposition from UK-wide representatives. This is because the system requires that both English (or English and Welsh) and UK MPs must support the legislation for it to pass – a situation often referred to as a ‘double veto’. This aspect of EVEL has made it more constitutionally defensible, but in time may cause it to be regarded as an insufficient mechanism for English representation on legislation.

9. A further rationale for EVEL has been to enhance England’s ‘voice’ within the legislative process. In its own review, the government argued that ‘these changes have strengthened England’s voice, just as devolution has strengthened the voices of Scotland, Wales and Northern Ireland within the Union’ (CM9430). But there is so far little evidence that EVEL has enhanced England’s voice, or the deliberation of its interests, in any meaningful way. The central forum within the system for the expression of an English

³ During 2015-17 there were 22 divisions subject to the EVEL procedures, 12 of which were on primary legislation (all on motions relating to Lords amendments), but in no case was the outcome changed.
voice is the new ‘legislative grand committees’, at which MPs may not only vote but also hold debates. Since EVEL’s introduction, however, these stages have been almost entirely perfunctory: during the 2015-17 parliament, the legislative grand committees on 11 out of 15 bills received no substantive contributions, and in only two cases did these stages last longer than 10 minutes. On some bills, the operation of the government’s programme motion meant that a debate was not even possible. Moreover, the complexity of the EVEL procedures makes it questionable whether the new stages are comprehensible to most members of the public.

Further reading


Project EVEL website: www.evel.uk.

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4 E.g. see the Higher Education and Research Bill (21 November 2016).