1 SUMMARY

1.1 The United Kingdom of Great Britain and Northern Ireland (UK) is a relatively young union of ancient nations. The affairs of all parts were closely linked until devolution. Then Scotland, Wales and Northern Ireland were recognised constitutionally and politically. England was not. The CEP believes that in the absence of separately mandated representatives (as exist in rest of the UK) to speak for England’s needs, England has been sidelined in debates concerning the effects of devolution on the Constitution. The CEP is of the opinion that to maintain any form of union a new Act of Union, appropriate for the 21st Century, is necessary in which England, as an ancient unity, is represented politically and constitutionally.

2. INTRODUCTION

2.1 The CEP was established in 1998 in response to the Devolution Acts of that year, which put England at a serious political and constitutional disadvantage. Scotland and Wales were recognised as nations within the UK with their own devolved administrations. Northern Ireland was similarly distinctly recognised. Unlike Scotland and Wales, England was denied national recognition politically and constitutionally being referred to as the regions of Britain. The people of England were denied the right to express their will through their own parliament. The CEP campaigns for an English Parliament that will represent all those for whom England is their chosen or inherited home.

2.2 The CEP is not linked to any political party but is a cross party organisation that seeks to influence and inform. An English Parliament cannot come about without the agreement of the Houses of Parliament. The CEP’s role is to work with academics, business groups, trades unions, think tanks, the media and the public to create the conditions where politicians are convinced that there is no alternative.

2.3 The CEP has given written and oral evidence to the McKay Commission on the Consequences of Devolution for the House of Commons, the House of Lords Select Committee on the implications of Scottish independence for the rest of the UK, the Calman Commission and in 2009 the Justice Committee, a select committee of the Justice Department. The session title was Devolution: a decade on, which focussed on “The English Question”.

3. SUBMISSION

3.1 Background:
3.1.1 The UK is not a federal union but is essentially a series of unions. The first union came into existence in 1536 when England incorporated Wales into the ‘One Realm’. It was the ‘One Realm’ that enacted the Act of Union of 1707, that together with the Kingdom of Scotland formed the ‘United Kingdom of Great Britain’. The 1801 union with Ireland was later dissolved, leaving the Province of Northern Ireland as a member of the UK.

4. Principles underlying the Union and devolution

a) The Union

4.1 What are the essential characteristics of a nation state? Are these different for a state in which power is devolved and, if so, how?

4.1.1 "Unionism is also about the maintenance of nationhood and autonomy within the union" (3): That applies as much to England as to any other country.
4.1.2 The CEP believes that the essential characteristics of a nation state should be:

- Run on democratic principles
- Equal nations in equality of relationship to each other and to the central government
- Universal suffrage and equal franchise.
- Equal governance and common citizenship
- Equality under the Constitution
- No legislation without representation,
- No taxation without representation
- Equal representation internally and externally
- A social and fiscal union
- A common market

4.1.3 These fundamental principles should not be different for a state in which power is devolved otherwise some citizens will have fewer rights than others thus denying them full citizenship.

4.2. What are the key principles underlying the Union between England, Wales, Scotland and Northern Ireland? Are there principles that are unique to the UK’s Union?

4.2.1 Historically the key principles underlying the Union were political and economic; internally, for the advantage of the governing elite; externally, to present a united front to any enemy. Together with the union of crowns and economic factors this was the precipitating factor for the 1707 union with Scotland.

4.2.2 These principles remain although altered in form. The governing elite may be elected in part, but their concerns tend to be that of their party and there is a only veneer of democracy. The only principle that seems unique is the role of the monarchy.

Democratic Principles:

4.2.3 Democracy is a system of government by all the eligible members of a state, typically through elected representatives. The Oxford English Dictionary states that it is a social state in which all have equal rights.

4.2.4 The 1707 Act of Union states in article Article IV that "all the subjects of the United Kingdom of Great Britain shall have full communication of all other rights, privileges, and advantages which do or may belong to the subjects of either kingdom" and in Article VI, "all parts of the United Kingdom shall have the same allowances, encouragements and drawbacks". That is no longer the case.

4.2.5 Devolution/decentralisation within England is not national devolution as granted to Wales and Scotland, nor should it be so regarded. The people of England do not enjoy the same rights as the other nations of the UK. Concern has been expressed in "The UK's Changing Union—Towards a New Union 2015"(4) and in the UK government that the UK is very close to radical dismemberment.

4.2.6 If the dismemberment of that "young"(4) union is of concern why is not the proposed dismemberment of that ancient country, England? Regionalisation was overwhelmingly rejected in the northeast of England. The single 'region' promoted by the then government as a return to the Greater London Authority does not have the powers of primary legislation that are fundamental to the Scottish Parliament and Welsh and Northern Irish Assemblies. Moreover the imposition of the system of elected mayors in the Cities and Local Government Devolution Bill, when they were rejected in10 out of 12 cities by the electorate of England, flies in the face of democratic choice.

4.2.7 The UK can therefore no longer be regarded as a democracy. In 1998 the CEP’s farsighted founders realised that the Devolution Acts then passing through Parliament would profoundly destabilise and alter the constitution of the UK to the detriment of the people of England.

4.2.8 Of the 17 opinion polls recorded by the CEP since 1999 all have shown consistently that a majority in England are dissatisfied with current undemocratic and asymmetric devolution. The trend is towards an increasing consciousness of the detriment England experiences and for a separate solution.

b) Devolution
4.3 On what principles are the UK’s devolution settlements based, or on what principles should they be based? Have principles emerged through the process of devolving power, or as power has been exercised by the devolved nations and regions?

4.3.1 The principle for the devolution to Scotland and Wales was on the basis of their nationhood. In the Preface to the Scotland Devolution Bill, (http://www.parliament.uk/Commons/lib/research/rp98/RP98-001.PDF) the then British Prime Minister, wrote, "Scotland is a proud, historic nation". Paragraphs 1.15 and 5.4 of the Wales Devolution White Paper entitled ‘A Voice for Wales’ exhorts the Assembly as "the forum for the nation".

4.3.2 Separate governance for Northern Ireland has a longer and more sensitive history. It seems clear that the agreement to devolve power to Scotland and Wales was based on the naive and arrogant assumption that, in gratitude, they would vote in a certain way in perpetuity. An assumption that has notably been proved wrong.

4.3.3 The process of devolution must inevitably run its course as there is no politically acceptable reversal. The goal must be to equalise the UK nations so that they are in equality with each other and to central government.

4.3.4 The original principles of the union were to promote and underpin social and economic cohesion. The Constitution, individual rights and the rule of law, European and foreign policy, security and defence must be maintained by a new union appropriate for the 21st century - namely a federal union of equal parties. Currently the principles of a nation state listed above have been denied to England.

4.3.5 Some of the areas which have adversely impacted on England, a nation that is unequal to the rest of the UK as a consequence of devolution, are the weakening of the economic, social and constitutional union and of individual rights. These are as follows:

**Universal suffrage and equal franchise/common citizenship.**

4.3.6 Currently the citizens of Wales, Scotland and Northern Ireland have a double franchise, the ability to vote in UK elections and for their own devolved legislatures. In England we have only one; for the UK Parliament.

4.3.7 Since the devolution Acts of 1998 there have been two classes of MPs in the House of Commons (The West Lothian Question WLQ).

a) Those who are unaccountable to any of the English electorate but can debate, vote on and influence domestic matters for England.

b) Those who are accountable to the electorate they represent in these matters.

This disparity did not, apparently, occasion the vehemence that is currently levied against the feeble proposal of English Votes for English Laws.

4.3.8 Attempts to answer the WLQ simply tinker with procedures in the House of Commons. The CEP profoundly regrets that Harriet Baldwin’s Territorial Extent Bill was killed by the former government. It would seem that such a study would be the first step in assigning legislation that affects England alone. Even if the extent of legislation is made clear the problem remains of the accountability of those who vote for it.

4.3.9 Of equal concern is the parallel issue in the House of Lords. The devolved Assemblies/Parliament are unicameral. No primary legislation from them is revised, reviewed, debated or voted on by the Upper House. However all legislation relating to domestic matters in England passes through the Upper House which contains members from across the UK.

**Unrepresentative Governance:**

4.3.10 The introduction of university top-up tuition fees to England was passed by 5 votes, 46 Scottish MPs voted with the then government. (http://news.bbc.co.uk/1/hi/scotland/3432767.stm). At this time the Labour controlled Scottish Parliament decided against tuition fees in Scotland.

4.3.11 The banning of foxhunting in England was forced through the Commons by the Speaker Michael Martin (a Scottish MP) when he invoked the Parliament Act.

4.3.12 The 41 whipped Labour MPs for Scottish and Welsh constituencies swung the vote for the UK government’s policy for **foundation hospitals** in England
(http://news.bbc.co.uk/1/hi/scotland/3054562.stm), which was passed by a majority of 35. This proposal had already been discarded by the Scottish Executive, which consisted of members of the Scottish parliament (MSPs) from that very same Labour party. Almost the last action of the Brown administration was to call in his Scottish vote to defeat an amendment (blocking a 3rd runway at Heathrow) that was supported by the English MPs.

4.3.13 Whether or not one agrees with these laws one has to question how they can be imposed democratically by MPs whose constituents are not affected by them

4.3.14 In addition to UK MPs from the devolved regions we also have a few UK MPs who are also members of their own devolved legislatures voting on laws that affect the people of England. As “no man can serve two masters” (Matthew 6:24), these UK MPs may be tempted to vote in such a way as to advantage their own devolved constituencies at the expense of England. Indeed one of their arguments against banning the votes of these UK MPs is that what is imposed on England may affect their national interests. The only example that can be elicited to illustrate this concern is the working of the Barnett formula whereby the more money spent in England guarantees more money to be allocated to the devolved regions (http://news.bbc.co.uk/1/hi/scotland/3054562.stm).

4.3.15 Currently such MPs and Lords have voted to obstruct the Government’s proposal to introduce Evel, a manifesto promise, and also against the Government’s Cities and Regions Bill which clearly only affects England.

4.3.16 In order to redress this imbalance it would be necessary to have representatives for England sitting in the devolved administrations assessing how their legislation affects England. A case in point follows.

Unrepresentative Ministerial Office:

4.3.17 When John Reid and Alistair Darling were, respectively, Secretary of State for Health and Secretary of State for Transport their duties related to England only. They did not have to answer to their own or to any English constituents as such matter are devolved to the Scottish Parliament. There is no procedure in place, or proposed, to prevent such undemocratic appointments being repeated.

Unrepresentative Legislation:

4.3.18 Article 11 of "The Tweed Regulation Order 2007" made by the Scottish Executive creates an offence that applies to the River Till, which is entirely within England.

4.3.19 The Scottish Executive is empowered to make laws binding on the people of England although we have no representatives there. Those affected cannot make representations to their UK MPs as they have no say in the Scottish Parliament.

4.3.20 This undemocratic situation has now been brought into sharp focus because according to The National (a Scottish newspaper) reporting in August 2015, "Politicians in England have accused the Scottish Government of mounting a “cross-border raid” on their finances over plans to change the law relating to the River Tweed. That would ensure that all tax raised will go to the Scottish government although one third is raised in England and currently spent by the River Tweed Commission on both sides of the border.

4.3.21 Defenders of the status quo refer to the administration by the UK Government of the Scottish part of the River Esk as being the equivalent. However the regulations of the Esk are made by the UK (not English) parliament in which the Scots have representation.

Unrepresentative Taxation

4.3.22 Regulations to UK laws are directed at England without oversight of anyone mandated to represent England.

4.3.23 The UK government issued the Workplace Parking (England) Regulations Statutory Instrument 2009/2085 of the Transport Act 2000 (http://www.opsi.gov.uk/si/si2009/uksi_20092085_en_1) This authorises cash strapped English local authorities, underfunded by the UK government, to require places of employment to buy licences for employees to park on their premises. Nottingham installed this levy and its proposed introduction in Bristol caused uproar. This allows a levy to be imposed solely on English companies and employees.
4.3.24 A UK government made it possible for local taxes to increase even more with charges for rubbish collection and congestion charging (turned down in Edinburgh by a referendum),

**Selective Asset Stripping**

4.3.25 The UK’s budget deficit remains staggering. One of the means by which the UK Government attempts to address this deficit is by stripping England of its assets. A former UK Government announced its intention to sell off English assets such as the Channel tunnel rail link, the bridge and tunnel crossing over the Thames at Dartford, the government’s 32% stake in the uranium processing company Urenco (in England), the student loan book (mostly needed by students from England), the Meteorological Office (located in England), the Royal Mint (Wales) and the betting company Tote (located in England) ([http://www.wigantoday.net/wigannews/Fears-for-650-jobs-at.3687385.jp](http://www.wigantoday.net/wigannews/Fears-for-650-jobs-at.3687385.jp)) and the port of Dover ([http://www.dailymail.co.uk/news/article-1249194/Dover-symbol-British-sovereignty-sold-French-help-reduce-debt.html](http://www.dailymail.co.uk/news/article-1249194/Dover-symbol-British-sovereignty-sold-French-help-reduce-debt.html)) forcing the English citizens of Dover to try to raise enough money to buy their own port!

4.3.26 In 2010 the UK Government proposed the sales of English forests and woodlands to raise. Fortunately this proposal was dropped in the face of massive opposition

4.3.27 The UK government could not sell assets in Scotland, Wales and Northern Ireland as ownership of them has been transferred to the devolved administration. The funds, only raised in England, were for the benefit of the whole of the UK, despite no contribution being required from three parts of it. The UK Government controls England's assets but no-one is mandated to protect English interests

**Unequal Funding**

4.3.28 Yearly, England is consistently underfunded by the UK Government in matters that are devolved. For example in 2013-2014 total expenditure per head on services in England was £8,678 whereas the UK average was £8,936. These figures include expenditure on health, welfare, education, housing, community protection, environmental protection, transport, agriculture and fisheries, economic development and employment policies.

4.3.29 Each person in England was effectively deprived of £258 compared with the rest of the UK. The current UK government has no intention of making any changes to the Barnett formula despite the fact that the population parameters on which it was based, over three decades ago, have changed. Scotland gets 10% of UK spend whilst now having only 8% of the population.

4.3.30 The UK treasury gets representations from the devolved administrations and from their respective secretaries of state. No-one to represent England’s interests there.

**Unequal Representation**

4.3.31 According to memoranda of understanding the UK government represents England in international affairs. However, recently, an SNP member of the Scottish Executive was appointed to represent the UK and therefore England in the EU on fisheries. The Institute for Government at the Economic and Social Research Council Centre on Constitutional Change in its 2015 paper "Governing in an ever looser union" advocates "a more permissive attitude to allowing devolved ministers to speak for the UK". This contravenes Article III of the Act of Union which states "the UK will be represented by one Parliament". Can anyone truthfully imagine that, for example, a Scottish Nationalist member of the Scottish Executive will represent England's best interests or anyone representing other selective interests in the rest of the UK? This leads to the English question: Who speaks for England?

4.3.32 In addition English interests are, apparently, represented by the UK representatives to the British/Irish council. Those representatives at the time of enquiring were the Secretary of State for Northern Ireland and the Deputy Prime Minister. Will either of those representatives support English interests if they do not coincide with their primary roles? Even the Bailiwick of Jersey sends a representative.

4.3.33 In addition the devolved governments have offices in Brussels from which to lobby and influence the EU. England has no such collective voice.

4.3.34 If these anomalies to the democratic function are not addressed there will be no constitutional or political cohesion in the UK.
4.4. **Are there applicable examples from other countries with multi-level governance structures?**

4.4.1 Federal structures such as the United States, Australia and Canada have been successful. They are bicameral and have components of greatly differing size. In the UK a federal structure would have one nation, England, being greater than the sum of the other participants. The CEP recognises this but proposes a solution that does not involve the dismemberment of England, which would be fiercely opposed and ultimately unsuccessful.

4.4.2 The CEP does not oppose subsidiarity in principle within all parts of the UK but does oppose this being represented as devolution for England. Equal representation is vital for the health of the union and also reciprocity, particularly in the restoration of a bicameral system for all parts. The CEP believes that there should be an overarching UK government dealing with reserved matters.

**Implementation**

4.5 **How might these two sets of principles be embedded in the UK’s constitution, or entrenched in the work of governments and legislatures across the UK?**

4.5.1 It is possible to maintain both a Union and national devolution within that union. A federal union of equals that are in equality to the overarching UK Government is essential.

**Practical steps to strengthen the Union**

6. **What is the effect on the Union of the asymmetry of the devolution settlement across the UK? What might be the impact of the further proposed devolution of powers to Scotland, Wales, Northern Ireland and English local government? Is the impact of asymmetry an issue that needs to be addressed? If so, how?**

6.1 The impact of asymmetry has led to the call for English Votes for English Laws (EVEL). The CEP was always aware of the flaws in this policy. Arguably a commitment to establishing EVEL gained the Conservative party many votes in the last general election. Indeed opinion polls since 1998 show that the English public perceive this as a fair way forward without extra politicians and layers of bureaucracy in England. Devolution is the transference of power, decentralisation is the transference of function, therefore what is currently proposed for English local government, what has been afforded to Greater London, is decentralisation and will have no effect on the underlying undemocratic nature of national representation. It will not stem the calls for national representation for England.

6.2 The proposed further powers to Scotland will make the fragmentation of the UK more likely with all the problems associated with the identity of the bank of last resort, foreign policy, especially membership of the EU and defence. Wales and Northern Ireland are less devolved than Scotland and neither seem to have the same appetite, at present, for such devolution as to make them virtually independent. Indeed Northern Ireland has fundamental political reasons for maintaining membership of the UK. It should be noted that the UK is a voluntary union and all members are free to leave. While there is no general appetite within England for independence this may change as many who are politically aware are despairing of a fair deal.

7. **What might be the effect of devolving powers over taxation and welfare on the economic and social union within the UK? Are there measures that should be adopted to address the effects of the devolution of tax and welfare powers?**

7.1 Devolving powers of taxation from the UK government to local administrations, whether Parliaments, Assemblies or other institutions would ensure that poorer parts of the UK would become even poorer and the richer, richer. It would destroy social and economic cohesion. In addition the bank of last resort would be funded by the richer parts of the UK without any power of oversight. Similarly welfare powers rely heavily on the resources available to fund them.
8. What other practical steps, both legislative and non-legislative, can be taken to stabilise or reinforce the Union? How should these be implemented?

8.1 Lord Salisbury proposed a solution that would be fair to all parts of the United Kingdom. This is to create a federal union whereby the House of Commons would be the English parliament and the House of Lords would be replaced by an elected chamber for the entire United Kingdom. The prime minister and leading cabinet members would sit there, and it would deal with such federal matters as defence and foreign policy. Welsh, Scottish and Northern Irish parliaments would have equal powers to the English parliament. No new parliament-house would be created, and the total number of members would be reduced (as would expenses).

9. Is the UK’s current constitutional and legal structure able to provide a stable foundation for the devolution settlement? What changes might be necessary?

9.1 Clearly the above examples illustrate the disparity of governance and representation within the UK as currently constituted, which has contributed to the current instability. It takes a leap of the imagination to believe that exhortations to put the good of the union over partisan interests will have any effect. Legislative measures must be put in place to define the limit of responsibility of the devolved administrations and to ensure that the people of England are equally represented and enfranchised. Only in this way can there be thorough representation of all interested parties in policy-making at all levels of government in the UK.

10 Recommendation

10.1 The stated policy of the CEP is a Parliament for England with at least the same powers as those of Scotland. Some say that people in England are not clamouring for an English Parliament and so it can be denied them. However most people are aware of the inequity of the WLQ and support the Government’s manifesto.

10.2 There are "Several lucid accounts exist of why the UK should embrace federalism"(1,6) Moreover, it is wrong to assume that an English parliament would necessarily be dominated by one party. Of the 15 general elections since the last war 13 election results in England mirror those of the whole of the UK. Of those 13 six returned a Labour majority in England and the UK as a whole. Only those in 1964 and February 1974 returned a Conservative majority in England but a Labour majority in the UK. In 1964 there was a very slim majority in the UK for Labour and in 1974 there was a hung Parliament.

10.3 It is also wrong to assert that an English first minister would be more powerful than the UK prime minister. Firstly their functions would be different and secondly a Union parliament reflecting the whole of the UK politically would prevent an overbearing presence of an English first minister.

10.4 Reform of the House of Lords has been mooted for many years but there has been no coherent plan to do so. The general opinion is that there are too many members. "A reconstituted second chamber might provide a more effective binding together of the constituent nations at the political centre of the union" (1).

10.5 The purpose of the second chamber would be twofold to deal with reserved matters and to revise and vote on primary legislation from the devolved administrations (1). It should also have strong ties to the British nation.

10.6 Whereas it is claimed(3) that the directly elected Australian senate represents the people of the states who vote on party lines and not the states themselves, the CEP sees this as an advantage in the UK situation. For instance in the 2015 general election the percentage of votes cast were: Conservative 36.9, Labour 30.4, UKIP12.6, LD 7.9, SNP 4.7, Green 3.8. Assuming a Senate of 200 then proportionally there would be about 75 Conservative senators, 61 Labour, 25 UKIP, 16 LIB DEM, 10 SNP, 8 Green and 4/5 from Northern Ireland. Since there is no strong nationalist party in England and the senators would most likely vote along party lines, as the Lords do now, England would not predominate.

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