The Constitution Society—Written evidence (UDE0019)

Introduction
1. The Constitution Society is an educational charity. It is impartial and has no affiliation to any political party. The Society is concerned with the promotion of wider understanding of the United Kingdom (UK) constitution. It does not take specific positions on particular substantive proposals intended to impact upon the constitution. However, it does endorse the idea that constitutional change should be given careful prior consideration. It should also be subject to the fullest possible consultation; and consensus should be sought for alterations when enacted. Constitutional change demands such an approach because it is a different order to regular public policy, entailing transformation to the system within which the political process takes place.

2. In a country with a written constitution, the core features of the constitution are protected against casual alteration by heightened amendment procedures. Changes to the constitutional text, for instance, may require the convening of a conference of experts, and be subject to legislative supermajorities or referendums before they can come into effect. In such states, changes of the type brought about in recent times in the UK, such as the introduction and extension of devolution, alteration to the composition of the House of Lords, the Human Rights Act 1998, and the Fixed-term Parliaments Act 2011, might well have been subject to these procedures.

3. However, in the UK, there is no written constitution. Discussions on the merits or otherwise of introduction such a text to the UK are not the central concern here, and The Constitution Society does not take a position on this matter. However, it is certainly the case that the lack of a written constitution makes it possible for systemic alteration in the UK to take place with relative ease. Whether or not this modification is subject to any kind of special procedure such as a referendum is not governed by clear principles and to a large extent at the discretion of the government of the time. Therefore, while under any system it is possible for change to take place by means other than a formal constitutional amendment process, such as judicial decisions or the development of conventions, in the UK this tendency is pronounced and subject to the particular influence of whichever group holds power at Westminster and Whitehall.

The current position

4. The present Committee inquiry is necessary precisely because of a sustained failure on the part of successive UK governments to adhere to the principles of constitutional change to which The Constitution Society subscribes: careful consideration, wide engagement, and consensus-seeking.

5. While the individual changes involved may have had merit, a series of measures have come about to a significant extent under the influence of calculations of partisan gain. It is reasonable to assume that the parties that
were most supportive of the introduction devolution to Scotland and Wales were of the view that they were likely to play a part in the government of these territories for the foreseeable future (though in the case of Scotland, disruption took place). Plans for ‘English Votes for English Laws’ (EVEL) have presumably appealed to the Conservative Party, their strongest advocate, partly because of the relative strength of the party in England. Moreover, constitutional changes have been executed sporadically, and without due attention to their possible consequences and the way in which they integrate into the constitutional whole. Devolution has proceeded in different parts of the UK in different ways and at different times. No government has made consideration of the lack of devolution for most of England a serious political priority. The present government has committed to plans to modify the impact of the European Convention on Human Rights in the UK without clearly taking into account the importance of the Convention within the devolved systems. Furthermore, no single, all-UK process of engagement has participated in and endorsed the major changes in the territorial governance of the UK that have taken place since the 1990s, despite their significance for the wider UK constitution.

6. The outcome is a position of pronounced instability for the UK. Asymmetrical devolution lies at the centre of present problems. Asymmetry is not necessarily wrong in itself. But the particular form it has now taken has created uncertainty and is connected to various forms of political dissent, some of which are in tension with each other.

7. The lack of devolution in most of England (and the existence of only limited devolution where it does exist in Greater London, or is presently contemplated, for ‘Northern Powerhouses’) has led some to call for greater local or regional autonomy within England. It has also encouraged complaints regarding the so-called ‘West Lothian Question’. In Wales, there are demands for devolution to be expanded to bring it more into line with Scotland. In Scotland, devolution has not, as initially hoped, quelled the independence movement and seems to have boosted it substantially. There are also calls for more devolution to Scotland, and the limits on devolution in Scotland are unclear. Overall the growing but uneven downward transfer of powers leave the central UK constitutional in an uncertain position. Disagreements prevail about how funding should be redistributed centrally. Intended measures such as EVEL, the impact of which is difficult to predict, could create further problems still.

Specific questions
8. Questions 8 and 9 from the Committee in particular are of interest to The Constitution Society. The first, number 8 is: ‘What other practical steps, both legislative and non-legislative, can be taken to stabilise or reinforce the Union? How should these be implemented?’ The second is ‘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. A process that could potentially contribute to the cohesion of the union, for those who believe that the maintenance of the union is a desirable goal,
would be a UK constitutional convention. Such a body could promote a thorough consideration of the constitutional future of the UK and agree on appropriate steps forward. To be effective and command sufficient legitimacy, its membership should probably largely comprise members of the public, removing it from the competitive environment of party politics. It should seek evidence as widely as possible in the course of its deliberations. Its recommendations might require approval through popular referendum, or adoption by the devolved legislatures and UK Parliament.

10. There are a variety of areas of constitutional concerns that the convention might wish to consider, involving the different devolved systems, their potential extension to the whole of England, and how they might relate to each-other at the centre. Beyond these matters, one subject which the convention could address is the means by which constitutional change itself takes place. This submission has suggested that flawed process is a source of present difficulties. A convention could identify those features of the constitution that it felt were key to the UK system, and propose a consistent arrangement whereby changes to them were subject to a special procedure.

11. This approach could help ensure that the principles of constitutional change proposed here were more fully adhered to in future. It would share some features with a written constitution, in that it protected core components from inappropriate interference. However, it need not entail a complete move to a full text of this kind. A variety of routes to achieving the outcome envisaged here exist. They include the publication of a concordat not resting on direct legal enactment, through to the use of the standing orders and the committee system in Parliament, through to options with fuller legal force, such as the protection of some statutes from implied repeal, that is deeming that Parliament can only subsequently alter constitutional enactments if it states expressly that it intends to do so. It is also possible that the constitutional convention might advocate a clearer shift in the direction of a written constitution. These options each require close consideration.

12. Whatever particular method is favoured, without a new approach to our political system along these general lines, it seems likely that future changes, whatever might be their particular value, will only aggravate present constitutional dislocation.

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