The Electoral Reform Society welcomes this inquiry into the pressing question of what post-referendum devolution means for the rest of the Union. Such momentous constitutional decisions should not be rushed and there is now a strong case for involving citizens in the process.

Involving citizens with politicians, experts and the widest range of civil, business, faith and other organisations will help achieve a long-lasting and legitimate settlement. The aspiration should be to build on the spirit of the Scottish referendum, ensuring that every voice counts and that debate is not limited to the corridors of power. Constitution-making is sequential but should not be piecemeal. Now is the right time to take a measured and joined up look at the constitutional puzzle before us.

The future of devolution after the referendum is not only a question about transferring more powers from Westminster to the Scottish Parliament or voting rights of English MPs, but about the functioning of Westminster politics and the growing divide between citizens and political institutions across the UK.

We recommend:

- **Involving citizens directly in the future of devolution**
  - By committing to a **UK-wide constitutional convention** (to begin as soon as practical)
  - By enshrining this commitment in legislation this Parliamentary session if a Convention is not established before the General Election.

- **Delivering on promises made to Scottish citizens** and continuing the process to *extend devolution in Wales (Silk)*, but not coupling other constitutional issues to that timetable which would preclude citizen involvement

- Ensuring full citizen involvement in all devolution decision-making processes including the Lord Smith Commission and Devolution Committee chaired by the Rt Hon William Hague MP

- Avoiding rushing into further constitutional changes, beyond those promised to Scotland, without considering, as a whole, the range of constitutional issues raised by the independence referendum

The Scottish independence referendum demonstrated that people care passionately about politics when they are given a say and when their vote matters. 97% of Scottish citizens registered to vote in the referendum and nearly 85% turned out to vote.

The referendum also raised difficult questions about the culture of UK politics. Voters felt strongly that Westminster-style politics was part of the problem. 51% of ‘yes’ voters put ‘feelings about Westminster and the type of politicians there’ in their top three reasons for voting for independence. A post-referendum poll found 74% of ‘yes’ voters putting ‘dissatisfaction with Westminster politics’ in their top three. The scale of disengagement and disappointment with the current state of politics

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cannot be overestimated. The UK Government and Westminster Parliament cannot proceed from this referendum with business as usual.

These next few months provide decision-makers with an opportunity to do things differently. There is a public expectation and desire to be more involved in important political decisions and a worrying lack of trust in politics to deliver. It seems clear that the future of devolution in the UK should take its next step with citizens in the forefront. The process for how these decisions are made is as important as the outcome. There is an opportunity to return legitimacy to and faith in decision making at Westminster by involving citizens in the process. It is now incumbent on UK politicians to signify a step change in the culture of politics at Westminster; giving citizens a say and trusting people to decide on the future of devolution in the UK.

1. **Should England, Wales and Northern Ireland be offered the level of devolution that has been discussed in relation to Scotland?**

1.1 Devolution in the UK has historically been an asymmetric process and whilst further devolution to Scotland raises important questions about devolution in other nations and regions, it does not follow that these changes must be equal to or simultaneous with Scottish devolution.

1.2 Recommendations from the first part of the Silk Commission are already being legislated for this Parliamentary session, with Part 2 recommendations due to be legislated for early in the next parliament. The Commission has been in place since 2011, so it is important that this process is not derailed, although the legislative timetable for part 2 could be accelerated if there is general consensus among the Welsh parties. The changes recommended in Part 2 of the Commission to a ‘Reserved Powers’ model of devolution for Wales are strongly supported by the Electoral Reform Society Cymru, as is the Commission’s recommendation for an increase in the number of AMs to 80-100. With greater responsibility, the National Assembly must also be able to provide robust scrutiny. The current Assembly of just 60 members is already overstretched. Increasing the number of AMs is a necessary adjunct to increased powers.

1.3 A change in the electoral system to accommodate this increase will be necessary and the National Assembly for Wales should have the power to change electoral arrangements accordingly. 1.4 The ERS advocates the adoption of the Single Transferable Vote form of proportional representation. However there should be a clear check and balance in place that any constitutional change should command the support of a supermajority of two-thirds of the Assembly (such a provision in constitutional changes has clear precedents in the Assembly, and in the UK Parliament).

1.5 In England the question of devolved powers is multi-faceted. The ‘English Question’ is in fact a set of questions that raise issues about identity as well as legislative scrutiny and decision-making. Because of this it is essential that these questions be addressed with the input of citizens. The prospect of further devolution raises questions both about England’s voice within the Union and the strength of governance within England itself. These are two different issues which suggest different solutions. Answering the West Lothian Question by English Votes for English Laws (EVEL) or an English Parliament creates significant practical challenges. The McKay Commission report highlighted many of these and such findings will undoubtedly need to be reviewed again in light of new Scottish devolution arrangements.

1.6 Likewise devolution of powers to local levels of government in England, a long overdue and important shift from the highly centralised nature of governing in England, could take a number of different forms. Ten years has passed since the vote on a regional assembly for the North East and we cannot assume to know what voters may feel about governance in England in light of the future
devolution arrangements for Scotland. Rushing into constitutional changes without taking into account how citizens’ views may have evolved or be evolving after new devolution arrangements will undermine their legitimacy.

1.7 It is important that following progress on Scottish devolution, the rest of the UK is brought into the conversation.

2. If so, what should be the next stages to take forward devolution in a) Scotland, b) Wales, c) Northern Ireland, d) England?

2.1 Both the Smith Commission and Hague Committee are proceeding with great speed and with little to no citizen input. Whilst we understand the political challenges of taking forward the next stages of devolution, we also believe that citizens should have a voice in it.

2.2 It is welcome that civil society organisations have been given an opportunity to make submissions to the Smith Commission but there has been no attempt to involve citizens more broadly. The great engagement and enthusiasm evidenced in Scotland, not least in the impressive turnout for the referendum, has not been harnessed for the next stage of the process. As this is impossible in the timeframe set, we would recommend that the outcomes of the Commission are seen as a starting point from which proposals can be tested through a citizen-led process before being put into legislation. This would ensure the outcomes match the expectations of citizens. It would work within the necessary parameters of respecting the referendum result, honouring the vow and meeting the timetable set out during the campaign, whilst ensuring important issues are not overlooked.

2.3 The Hague committee has, to date, proceeded entirely without public engagement. English citizens are once again locked out of the discussion of the future of their democracy. Whilst the timetable is tight, we feel the Committee should consider how it will engage with citizens and civil society both up to the 31st October and afterwards. The resulting proposals could go forward to be discussed in a citizen-led convention (see below).

2.4 It is absolutely essential that promises made to Scottish citizens are kept. But following on from this, there are many more questions that need answers for both the rest of the UK and within Scotland. After all, the contents of a Scotland Act would throw up further issues for Scotland as well as for the rest of the UK. These issues need to be considered holistically and it is important that citizens are given a chance to be part of the process.

2.5 A convention is the ideal method to bring all UK citizens into the discussion. We would recommend a government initiated, UK-wide constitutional convention commencing as soon as is practical. This convention would need to be UK-wide, involving citizens and politicians, with opportunities for all UK citizens to input and which results in a binding referendum. The ERS has set out more detailed proposals on the possible shape and remit of a convention in a submission to the Committee’s 2012 inquiry ‘Do we need a constitutional convention for the UK?’

2.6 The nature of a constitutional convention is ultimately shaped by country-specific requirements but there are lessons that can be taken from successful conventions and deliberative processes around the world. The recently concluded Irish Constitutional Convention provides a rich source of learning and demonstrates, amongst many other things, the value of involving elected representatives alongside citizens. Conventions are a well-established mechanism to bring citizens

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into policy-making, find solutions to difficult issues and give the outcomes legitimacy. Whilst the
detail of how the convention is designed varies according to country-specific requirements, the basic
model has proven successful in a number of contexts. One of the most important principles at the
outset however is that the conclusions of the convention must be taken forward.

2.7 The ERS is currently convening a group of experts to explore these issues, taking in recent lessons
from Ireland and the Scottish referendum. We want to see the best model possible adopted for the
UK and will be sharing our findings.

3. To what extent is the Government’s timetable for considering the future of devolution
realistic?

3.1 The timetable set out by the government is incredibly short. Whilst this timetable is born out of
the political reality, a rushed process may result in unstable decisions. More crucially it will miss the
window of opportunity to encourage wider political debate. It is important to begin the process to
deliver on promises to Scotland but it is also important not to couple the Scottish devolution
timetable with other constitutional issues which would limit the opportunity for citizens of England
and the rest of the UK to properly engage with the issues and have their say. A rushed and narrowly-
focused restructuring process will fail to create an arrangement that is stable, functional and has
popular support.

3.2 Scottish voters have been engaged in a wide-ranging debate about constitutional issues since the
announcement of the referendum. In Scotland and Wales, devolution and constitutional issues have
been a familiar part of the terrain since the 1960s (and arguably since the calls for ‘Home rule all
round’ at the end of the 19th century). In England the conversation is not as advanced. Citizens have
not been given a say on these issues and therefore have not had time to consider the implications.
Rushing into significant constitutional changes without properly engaging citizens will limit the
options available and ultimately undermine their credibility, legitimacy and longevity.

4. What measures, such as a written constitution, could most effectively entrench future
devolution settlements?

4.1 Since the referendum the idea of capturing part or all of the constitutional rules in a single
document has attracted fresh attention. The argument for entrenching the Welsh Assembly and
Scottish Parliament (following the Sewel Convention\(^4\)) to safeguard these institutions in future is also
gaining ground. Regardless of which parts of the constitution are codified, what matters most is a
thorough process that involves citizens at every stage. The referendum in Scotland enlivened
political debate, and sent a strong message that citizens want to have their say but do not trust
politics to deliver. Involving citizens in the decision-making process, including having the final say on
proposals, will go a long way to entrench any future devolution settlement.

5. Given that different parties have put forward different proposals for further devolution to
Scotland, what is the best way forward?

5.1 No-one knows if agreement between any or all of the parties will emerge from Lord Smith’s
process. Participants do however have the power to send a strong signal that they are serious about
involving the public in determining fundamental questions over where power lies and how

\(^4\) The Sewel Convention is a convention whereby Westminster does not legislate in the devolved nations in
devolved areas without the consent of the respective government. See
democratic accountability should be exercised. To this end, both processes (Smith and Hague) should recommend (i) a **UK-wide constitutional convention** (to begin as soon as practical) and (ii) enshrining this commitment in legislation this Parliamentary session if the UK Government has not established a Convention before the General Election.

5.2 It is important that changes to the constitution have legitimacy and longevity. Whilst devolution is an ongoing process, decisions should have stability; they need the support of all parties and, even more importantly, of the citizens of the UK. The constitution should not be used for political gain. If these important changes are seen to be made only in interests of parties, this could be extremely damaging for politics, parties and democratic engagement.

5.3 A constitutional convention would also bring politicians and citizens together to discuss the issues in the round. This is not about one party winning the argument but creating a space for open discussion and debate. Naturally, each party will have their established position, but it is through the process of debate, discussion and learning, that convention participants can reach agreement and move forward as a group. Finding agreement on these issues is the only way to ensure stability.

**6. What implications does further devolution to Scotland have for how the House of Commons should deal with legislation that deals with only part of the UK?**

6.1 The implications of further devolution to Scotland for rest of UK are wider than just the West Lothian Question (WLQ). Concern about the voice of England and Wales in the UK Parliament is important but it also raises questions about representation within England. There is no one perfect solution. Given the range of issues connected to the WLQ and correspondingly, the potential problems and unintended consequences of various options for resolving it, it is not a decision to be rushed. Likewise given the nature of the questions under discussion, it would seem only fair to consult citizens of England and Wales in whose name they are made.

6.2 The next General Election is set to raise two major questions of legitimacy: **electorally**, with the strong possibility of no party gaining a majority, further challenging the notion that a two-party system still operates at Westminster; and **regionally**, with extra tension put on the constitutional anomalies created by devolution. The Westminster system will face trials on many fronts including further challenges to the legitimacy of the electoral system. Without doubt the WLQ is exacerbated by the inadequacies of the electoral system at Westminster. First Past the Post creates a divide in the politics of the UK that does not reflect the way UK citizens vote. Changing the electoral system to truly reflect voters’ choices in all the nations and regions would reduce the false party divides that have developed between the nations of the UK. In rebalancing parliament, the political imperative to solve a question that may not have an answer would be lessened and would make the prospect of a government with a UK majority but not an English majority much less likely.

6.3 Westminster’s response to the many issues raised by the further devolution to Scotland will shape the future of political engagement. The ERS believes that these important questions should not be answered by a technical fix at Westminster but by fundamentally changing the political culture and giving citizens a say in their constitutional future.

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