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# Finding the good in EVEL:

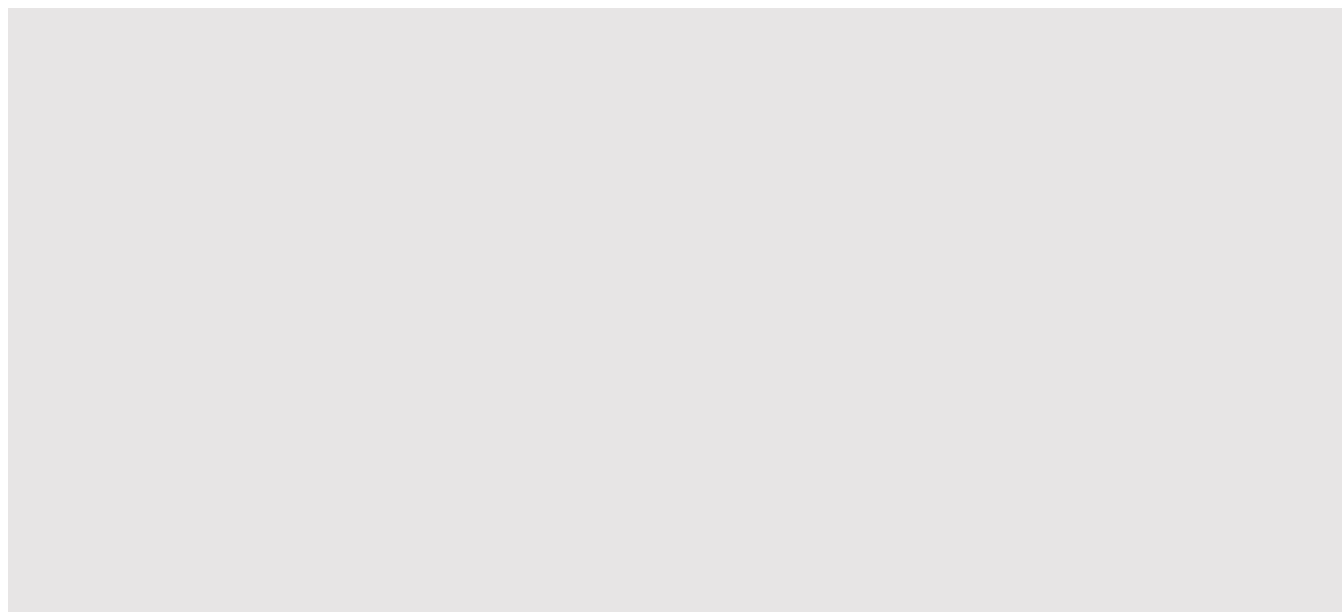
An evaluation of 'English  
Votes for English Laws' in  
the House of Commons

Daniel Gover and Michael Kenny



# Acknowledgements

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## The return of the English Question

- From Gladstone onwards, attempts to introduce devolution to parts of the UK have provoked counter-claims that the interests of the other parts needed compensatory protection at Westminster. The focus particularly shifted to England's interests in the 1970s, when proposals for devolution were bedevilled by the notorious 'West Lothian Question'. Yet attempts to provide such compensatory protection ran into serious difficulties.
- Following the implementation of devolution to Scotland, Wales and Northern Ireland in the late 1990s, these earlier debates re-emerged. A series of proposals from within the Conservative party were developed, culminating in the recommendations of the independent McKay Commission in 2013. In many cases, these proposals were presented as precautionary adjustments to avoid English resentment and protect the union.
- The anomaly that these proposals sought to address concerned the possibility that legislation affecting only England could be passed by parliament without the support of England's democratic representatives. This happened after devolution on votes conce.7 (n)ld be pas ameon.5.2 (t)21d blahtcn1.8 ( c7 (s) a)-9.9 (g)- (s)-dna8.8.3 (t)51.8 (e)

- Five important criticisms of EVEL are evaluated, and empirical data about how EVEL operated during its first 12 months is offered.
- The first criticism is that EVEL will politicise the office of the Speaker. This concern focuses primarily on the potential for the Speaker's certification decisions to be contested by MPs. Based on the first year of EVEL's operation, there is little evidence that this has happened. The Speaker has also taken a significant number of decisions that conflict with the advice provided by government, thus underscoring his independence.
- A second criticism is that EVEL creates two classes of MP, and that this not only undermines the status of those from outside England (or England and Wales) but also inhibits their ability to represent their constituents on legislation that legally applies only in England (or England and Wales) despite having consequential effects elsewhere. As a point of principle, it seems reasonable to treat direct effects differently from indirect ones. But even where legislation certified as England-only has indirect effects in other parts of the UK – for example through the 'Barnett consequential' – the double veto means that MPs from those affected territories are in no weaker a









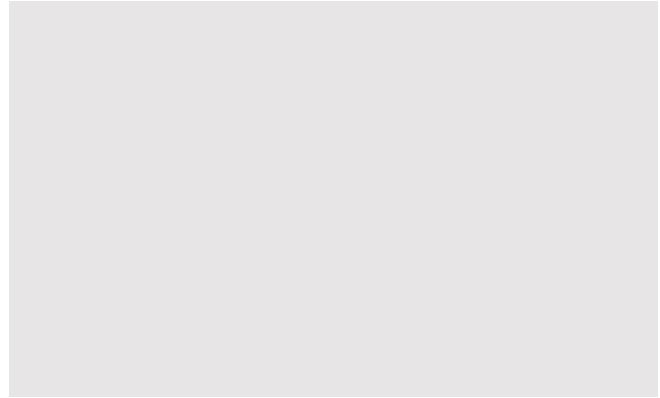
position. During the parliamentary debates on the Scotland Bill, the anomaly identified by Dalyell cropped up once more, and was connected by some Conservatives to the question of a constitutional imbalance and its possible effects upon England. Former prime minister John Major asked the following question in the Commons:

Can he tell us why Scottish Members should be able to vote on such matters as health and education in England and Wales, whereas English, Welsh and Northern Irish Members will not be able to vote on those matters as they affect Scotland? It is not just the West Lothian question; it is the west Dorset, west Hampshire and west

a party wishing to appeal to voters in England would be reluctant to impose policy on them against the wishes of their democratic representatives. The commission floated a menu of procedural changes that might reinforce these incentives, including: territorially-constituted pre-legislative scrutiny committees; new English (and English and Welsh) 'grand committees' to debate whether to give 'consent' to affected legislation; specially-constituted public bill committees reflecting the party balance in England (or England and Wales); and reporting the result of divisions among only English (or English and Welsh) MPs separately from the UK-wide result.

None of these mechanisms were intended to be formally binding, but rather to make it politically harder to override England's expressed interests. As such, the McKay Commission's suggestions were designed to enhance the role of English MPs without eroding the sovereignty of the House as a whole. Its principal arguments might have supplied the basis for a wider agreement among the political parties. But any such prospect was undermined by the Labour party's refusal to engage with these, suspicious that this kind of reform was little more than a politically inspired ploy by the Conservative party to give the Conservatives a stronger electoral performance in England. The McKay Commission's report was welcomed in many other quarters, however (and subsequently to some extent by Labour), and supplied the most important extended engagement with the case for, and implementation of, EVEL in official circles. Its thinkings

Figure 1: Newspaper mentions of West Lothian Question per year, 1996-2015



Source: LexisNexis search of UK national newspapers conducted by the authors, 1 January 1996 to 31 December 2015.

### Public attitudes

One of the most important, and contentious, aspects of the debate about EVEL concerns public perceptions and expectations, and specifically whether this new process is favoured by a majority of people in England and across the UK. There has been much rhetoric and numerous, often unsubstantiated, claims about what the English now want in constitutional terms. In this section we consider the available polling evidence, as well as research and evidence gathered by Kenny in his study of the transformation of English national consciousness since the 1990s. We seek to shed light on two questions in particular: (a) have the English become more disgruntled with the union settlement in recent years, as many advocates of this reform claim?; and (b) does EVEL appear congruent with the shifting constitutional preferences of the English?

Before attempting to answer these questions, it is useful to trace some wider trends in English identity. In very broad terms, there is a quite considerable body of evidence to suggest that there has been a notable rise in national self-consciousness among the English over the past 20 years.

There is an important qualitative dimension to this change

Importantly, evidence supplied by the Scottish Social Attitudes

unusual step of publishing a command paper that set out four different options for reform: three Conservative and one Liberal Democrat (Leader of the House of Commons 2014). The Labour party was also invited to participate, but declined.

The three Conservative options were based on the various proposals discussed above: one on Norton's Commission to Strengthen Parliament; the second on Clarke's Conservative

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<sup>17</sup> The Liberal Democrat submission argued that any new England-only stage should represent parties in proportion to their vote share in England, rather than in proportion to their number of MPs.

## Certification process

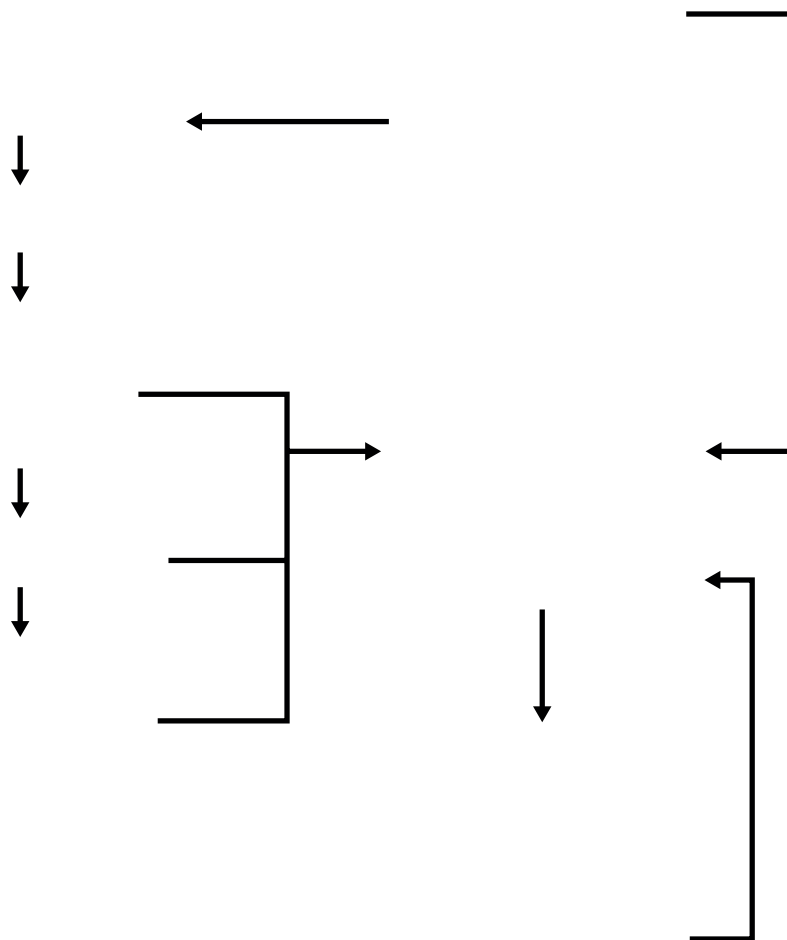
The EVEL procedures implement a series of changes to the House of Commons' scrutiny of legislation that applies exclusively to a particular geographical area within the UK.<sup>18</sup> For these new stages and processes to occur, it is first necessary for somebody to determine whether or not a particular piece of legislation relates to a relevant part of the UK. Under the EVEL procedures, this process is conducted by the Commons Speaker, and is known as 'certification'. It is reminiscent of – although not identical to – the Speaker's existing certification responsibilities on bills that relate exclusively to Scotland, and also on money bills.<sup>19</sup>

The EVEL procedures apply to legislation that relates exclusively to one of three geographical areas: England; England and Wales; and England, Wales and Northern Ireland. The third of these is relevant only to Finance Bills (and related business), so we do not routinely refer to it in this report. The most high-profile type of legislation to which EVEL applies is government-sponsored primary legislation (i.e. bills, which if passed become Acts of Parliament).<sup>20</sup> On primary legislation, the Speaker must effectively break down the bill into 'units' and consider each for certification separately. These units are principally the clauses and schedules that make up the bill (and by extension whole bills) – plus, less frequently, agreed

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decision and motions relating to the bill.



Figure 2: The EVEL process on primary legislation





# 3.

In its purest form, this justification leads towards demands for a more symmetrical devolution settlement across the UK. For some, it underpins an argument for the establishment of an English parliament and executive, on the basis that this is what other peoples in the UK now enjoy. However, relatively few senior Conservatives adopt a purist interpretation of this principle, and for most proponents the priority is to deal with the potential for English disadvantage rather than achieve symmetry – a goal which is widely viewed as incompatible with the survival of the UK. This kind of argument has underpinned calls for a particularly robust version of EVEL. Conservative backbencher John Redwood, for example, has argued that as a component of ‘justice fouas in ac (p)7 (f5.9 Tw 9 3.5 (a41

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## Evaluating arguments for EVEL

Broadly put, these represent two distinct justifications for introducing some variant of EVEL. In practice advocates frequently draw on, or mix aspects of, both, and they may also derive different institutional conclusions from the same principle. But there are some connections between argument and institutional preference which are notable, and have been a recurrent pattern in these debates. The first kind of justification points towards a reform that is intended to remain congruent with the established ethos and conventions of

procedures. Indeed, making and communicating a clear, principled argument for EVEL is in some ways as important as recalibrating its precise design and application.

### Evaluating arguments against EVEL

In addition to these arguments in support of reform, EVEL has been the subject of a series of objections – both of principle and in relation to some of the specific features of the scheme introduced by the government. While the majority of EVEL's critics contend that the government's reform goes too far in its institutionalisation of an English veto, a minority make the opposite case. It is beyond the scope of this report to evaluate every possible objection to EVEL. Instead, we focus on five of the most important and familiar complaints: that its operation will inevitably politicise the office of the Commons Speaker; that it has created two classes of MP; that it will undermine UK-level government; that it has failed to facilitate expression of England's voice; and that the procedures as implemented are unnecessarily complex. In assessing these objections we draw on a range of evidence, including empirical data about how EVEL worked during its first 12 months of operation.

#### Politicisation of the Speaker

An obvious place to begin is with the certification process, through which the Speaker identifies legislation on which the EVEL procedures should apply. Given the fears that some critics have about the consequences of EVEL for parliament and government (which we will turn to below), it has been argued that the certification process might politicise the office of Speaker, potentially compromising his or her ability to act as an impartial arbiter of debate in that chamber. The SNP's Pete Wishart, for example, has argued that the Speaker's responsibility to certify legislation will place him in an 'intolerable and politically invidious situation'<sup>30</sup>

In broad terms, certification may well place the Speaker in an intolerable position. MPs from across the UK may feel very strongly that a specific provision should – or should not – be certified as relating exclusively to a particular territorial area. But it is also important to emphasise that the office of Speaker already requires extensive, and sometimes contentious, political judgement. All Commons procedures place considerable authority in the hands of its occupant. As a consequence, the Speaker routinely takes decisions that have a substantive effect on proceedings and outcomes, including: the selection, or not, of amendments (which can in principle affect the final text agreed by the Commons);

Despite this, the Speaker's decisions have not, during the first 12 months of EVEL's operation, provoked any significant controversy. On a very small number of occasions MPs sought to clarify on the floor of the House the rationale behind the Speaker's certification decisions – in particular Tasmina Ahmed-Sheikh and Lady Sylvia Hermon at different stages of the Housing and Planning Bill.<sup>2</sup> Yet on neither occasion did these questions develop into serious political disquiet. Subsequently, MPs expressed concerns about how EVEL was applied on particular pieces of legislation, often related to indirect effects of the legislation upon other parts of the UK.<sup>33</sup> On the Charities (Protection and

could reveal a Speaker's certificate to have relied on an interpretation at variance with subsequent case law.

But the consensus among our interviewees was that direct challenge of the Speaker's rulings is unlikely. And it is worth noting that the double veto may provide an additional layer of protection that further limits the possibility of this scenario. This is because certified legislation continues to require majority support among all UK MPs, even where EVEL requires that English (or English and Welsh) MPs must also consent to it. Consequently, were the Speaker to take a decision subsequently contradicted in the courts, it is only possible for this certification decision to have resulted in legislation not having been passed by parliament when it would otherwise have been. Except in relation to the specific anomalies we highlight in chapter 4, EVEL cannot result in parliament passing legislation that it would otherwise have rejected. Moreover, any decision made by a legislative grand committee would subsequently have been effectively endorsed by the whole House at the bill's third reading. As a result, we are sceptical about the likelihood of the Speaker's decisions being directly challenged in the courts.

Two classes of MP

A second complaint widely made about EVEL concerns the



The question of whether EVEL has created two classes of MP – particularly when viewed against the backdrop of a representative system that is already asymmetrical – is one that continues to attract debate. However, a central characteristic of the new standing orders, as indicated above, is that that they implement a double veto. While this does not necessarily rebut the argument that EVEL has created two classes of MP, it does mean that MPs from outside England (or England and Wales) are in no way

Even so, we do not conclude that the Barnett consequential objection is ultimately convincing. This is because of the specific design of the version of EVEL introduced by the

There is, however, an important possible circumstance in which EVEL could pose even more serious difficulties for the UK government. As Gallagher (2015) observes, certain legislation effectively lapses if it is not regularly renewed by parliament. This is the case on certain types of secondary legislation, as well as income tax decisions that are implemented through Finance Bills. On such types of business, Gallagher argues that the provision of a veto means that a subset of MPs could effectively hold the UK government to 'ransom (eB)/MCID 2698 >>BDC BTsu (e)-8.7 (l)t-8.7 (i (K ))TJ ET4.6 (e)x)3 (v)-1 (e)2mio(i)-5 (t)9.6 (o ))TJ ET EMC /Sp

Table 8: Length of legislative grand committees and number of speakers, October 2015-October 2016

## Complexity of EVEL

The final complaint we highlight is the claim that the EVEL procedures are unduly complicated. This objection has been very widely expressed, and has been directed towards both the EVEL processes themselves and the standing orders that underpin them. In the Commons debates, for instance, the reform was variously described as a ‘total dog’s breakfast’,<sup>4</sup> ‘unbelievably obscure’,<sup>5</sup> and ‘incomprehensible to most

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unexpectedly at report, the Speaker would be required to reconsider the certificate, and this could take some time. A similar risk of disruption could potentially arise at the CCLA stages were a bill to ‘ping pong’ rapidly between the two Houses, especially towards the end of a parliamentary session.

More substantively, the highly opaque and complex character of this system could serve to undermine EVEL’s capacity to achieve its more foundational goals. As we have already indicated, the complexity of the process has elicited extensive comment, and may well be one source of the scheme’s failure to acquire legitimacy. Even more worryingly, complexity could be a significant obstacle to the goal of ensuring that EVEL offers the English a sense of reassurance about, and connection with, the Westminster parliament. It may also run counter to wider attempts to make the proceedings of parliament more accessible to the public (Digital Democracy Commission 2015). This is a particular problem if EVEL is conceived of as a pragmatic response to pressure, rather than being driven by the need for absolute procedural symmetry, as discussed above. As the report of the McKay Commission (2013:45) put it, ‘[i]f political expectations in England are to be met, then any new procedures should be simple and comprehensible, not lost in the labyrinth of opaque Westminster arrangements’. It is difficult to argue that this challenge has been met by the current system. The opacity of this new process is not just an aesthetic issue. It would matter considerably should a political crisis be sparked by an important issue which divided MPs along territorial lines. Under such circumstances, it is essential that both MPs and the public are broadly able to understand the processes that are being employed, and regard them, in general terms, as legitimate.

In this chapter, we have discussed EVEL in rather broad terms. This leads us to the conclusion that the specific design of the system – in particular the double veto – has served to offset some, although by no means all, of the major concerns about it. Our analysis is to some extent provisional, in that it is not possible given the current composition of the Commons to assess the workings of this new system in the context of the more challenging scenario presented by a UK government that lacked a majority in England. We have also identified several concrete flaws with the current system, notabthaculm260.11(l c)90 9 42.5197 2 [(o)1.8 ( -3.3 (v)-1.2 89h b)-3.7 (y n)-11.3 (o m)-12

## 4. Improving EVEL

In the previous chapter we argued that, although in broad terms many of the common criticisms of EVEL are not as convincing as they may first appear, the scheme introduced by the government nevertheless suffers from a number of flaws. In this chapter we make a series of proposals that are intended to mitigate these and improve the working of the current system.

process, which has in turn been converted by the government into the legislative grand committee stage. But the existing territorial grand committees have also had wider remits, including the capacity to question ministers, conduct short debates and receive ministerial statements. Following the implementation of devolution in Scotland, Wales and Northern Ireland in the late 1990s, the roles performed by these bodies



Even so, the potential for duplication and overlapping remits are not insurmountable challenges, and could be resolved through pro-active coordination between the committees. One way around the dilemma might be for it to be tasked specifically with considering issues and trends that fall across departmental lines – for instance the impact of migration upon public services, or learning and skills gaps in different parts of England. It might also take on the role of reviewing, and drawing to the attention of the House, legislative proposals from across government that may be of particular interest to England – or even of triggering the EVEL process on specific bills (as further discussed below). The role of examining and reporting on legislation is not dissimilar to the current practices of the European Scrutiny Committee, the Joint Committee on Human Rights, the Constitution Committee, and the Delel4.5 (9h65.8 (t)18.6 (e)-3.8 (d)3.9 ( ET EMC /Span <</Lang (en-GB)/MCID 340

parliament on certification.<sup>64</sup> If English MPs had voted to annul the statutory instrument but UK MPs had not, so that it remained in force against the wishes of English MPs, this would have put into question whether English MPs truly have a veto right on certified legislation. If UK MPs had voted to annul the statutory instrument but English MPs had not, so that it remained in force against the wishes of UK MPs, it would have undermined the government's claim to have protected the position of the UK-wide House. To correct this, we would suggest, the EVEL standing orders should be amended so that, in the case of instruments subject to the negative procedure, the instrument is annulled if a majority of either group of MPs votes in support the motion to annul it.

An important caveat here is that, were this change to be made, it would mean that English (or English and Welsh) MPs would gain the ability to veto instruments subject to the negative procedure. As such, the problem identified by Gallagher (discussed above) – concerning secondary legislation that must be regularly reapproved by parliament – might become salient in relation to instruments subject to the negative procedure. We therefore recommend that the change applying the double veto to the negative procedure be made in conjunction with an effort to correct the problem identified by Gallagher.

The second departure from the double veto principle relates to Lords amendments at the CCLA stages. As explained in chapter 2, any Commons motion relating to Lords amendments is subject to double majority voting, and requires the support of both English (and/or English and Welsh) and UK-wide MPs for the Lords amendment(s) to be agreed to. Lords amendments may seek to add text to a bill, in which case double majority voting is consistent with the double veto principle. However, Lords amendments may alternatively delete text from the bill. In this case, and in common with negative statutory instruments, this means that the double veto here applies not to the draft legislative text, but to a proposal to delete text from the bill. As such, legislative text could be retained even if one of the two groups

As already indicated, during their first year of operation none of the new EVEL stages have in practice been used to debate the implications of the relevant bill on England





associated with this type of reform for some time. And while it does not feature in the standing orders introduced by the government, this name – and its associated acronym – has stuck, and has been widely used, including in David Cameron's statement after the Scottish referendum, the documents that set out the government's draft proposals (e.g. Cabinet Office

In the late 1990s, devolved government was returned to Northern Ireland, and was introduced for the first time in Scotland and Wales. Since then there has been considerable concern about the so-called West Lothian Question – the anomaly whereby policy matters that have been devolved are voted on only by representatives from the relevant constituent part the UK, but equivalent matters concerning only England may be voted on by MPs from across the UK. Survey data suggests growing irritation about England’s constitutional position within the UK among its inhabitants, and there is clear support for giving English MPs greater say on legislative matters that affect England only.

In chapter 3 of the report we considered the main justifications for, and objections to, EVEL. We argued that there are broadly two kinds of reasoning for it: first, as a pragmatic response to new territorial pressures; and second, as a principled commitment to procedural equality between the four parts of the UK. The government has not been entirely consistent in its arguments for the new standing orders, and there has been a degree of ‘over claiming’ about EVEL which may store up problems for the future. We also considered five key objections that have been made about this reform: that it will politicise the office of Speaker; will create two classes of MP; risks undermine the coherence of UK-wide government; has failed to facilitate expression of England’s voice; and is unhelpfully complex and opaque. Based on the first 12 months of EVEL’s operation, we conclude that key features of EVEL – in particular the double veto it offers – have served to limit the force of some of these objections. But our analysis does point to various flaws in the current system,

## Entrenching the double veto

- The double veto should be regarded as a bulwark of the current system. Any move towards an England-only legislative process within the confines of the Westminster parliament would render the new procedures vulnerable to many of the criticisms commonly made against them.
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# Appendix A: EVEL certification and practice on primary legislation, October 2015-October 2016

	Initial certification	Date of Commons second reading	English bill committee	Post-report certification	Legislative grand committee(s)			Reconsideration	CCLA	
					Territory	Length (mins)*	Divisions		CCLA certification	Divisions
Housing and Planning Bill (DCLG)	28/10/2015 E: 103 clauses & 5 schedules EW: 34 clauses & 6 schedules	02/11/2015	No	12/01/2016 E: 127 clauses, 11 schedules & 5 amnds EW: 33 clauses, 7 schedules & 4 amnds	EW & E	43	0	No	04/05/2016 E: 19 motions EW: 3 motions 09/05/2016 E: 5 motions E & EW: 1 motion 11/05/2016 E: 1 motion	9
Childcare Bill [HL] (Education)	18/11/2015 E: 3 clauses	25/11/2015	No	25/01/2016 E: 2 clauses & 1 amdt	E	2	0	No	None	0
Charities (Protection and Social Investment) Bill [HL] (Cabinet Office)	04/11/2015 EW: whole bill	03/12/2015	No	26/01/2016 EW: whole bill	EW	14	0	No	None	0
Energy Bill [HL] (DECC)	18/11/2015 EW: 1 clause	18/01/2016	No	14/03/2016 EW: 1 clause	EW	2	0	No	None	0
Enterprise Bill [HL] (BIS)	27/01/2016 E: 3 clauses EW: 3 clauses	02/02/2016	No	09/03/2016 E: 5 clauses, 1 schedule & 9 amec2/2016						





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Labour Party. 2015-7.8 (i)-9.2 (c)-10 (h)-6.1 (a)-5.9 (e)-8.7 (i)(c)(T)-7 (ic).7 (lc)(a)-8 (s & l).

In October 2015 the House of Commons approved an important set of procedural changes, designed by the government, known as 'English Votes for English Laws'. This new system has proved contentious in both political and constitutional terms, provoking claims that it has fundamentally altered the terms of representation at Westminster. But what should be made of this and other criticisms? This report results from a major academic investigation into EVEL. It includes detailed analysis of how the new procedures worked in practice during their first 12 months in operation, and discusses their wider constitutional implications. Based on this analysis, the report makes a series of constructive proposals for how EVEL could be improved.

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