

**What changes were made to the UK Constitution between 1900-1997?**

During the twentieth century the pace of constitutional change in Britain sped up. This was particularly the case after 1997 when Tony Blair's New Labour embarked on a constitutional modernisation programme. However, a number of significant constitutional changes took place between 1900 to 1997 too:

- **Parliament Acts 1911 and 1949** - The Parliament Acts of 1911 and 1949 limited the power of the House of Lords. Before 1911 the House of Lords could block legislation. However, the 1911 Parliament Act limited the power of the House of Lords to delaying legislation by two years. The 1949 act went further by limiting the powers of delay to one year. Today, if the House of Lords votes against a Commons Bill, but the same bill then passes through the Commons for a second year, it will become law.

However, it is worth noting that the Parliament Act has only been used four times since 1990:

**War Crime Act (1991)** – Allowed UK Courts to try criminals retrospectively who committed crimes in Nazi Germany. This has resulted in only one prosecution.

**European Parliamentary Elections Act (1999)** – Changed the voting system for EU elections to Proportional Representation

**Sexual Offences (Amendment) Act (2000)** – Made the age of consent for Homosexual Sex equal to that of Male-Female Sex, at 16.

**Hunting Act (2004)** – This prohibited the use of dogs in Hunting of foxes and other wild mammals.

- **Representation of the People Act (1918)** – This changed the conditions required for people to vote. It gave the vote to practically all men and also extended the franchise to Women over the age of 30 who owned property or were married to a man who was able to vote.
- **Life Peerages Act 1958** - The Life Peerages Act allowed for the creation of Life Peers who would sit in the House of Lords. This was an attempt to modernise the Lords and allow more people with specialisms to join its membership.
- **Representation of the People Act (1969)** – This Act of Parliament lowered the voting age for all otherwise eligible UK voters to the age of 18.

**What changes were made to the UK Constitution between 1997 and 2010?**

Tony Blair's government were elected with a landslide majority in 1997 of 179 seats. They won this victory so with the New Labour campaign promise of modernisation. They promised reforms to the constitution, and led the electorate to believe there would be a number of constitutional changes. These would include:

- A codified Constitution
- A UK bill of Rights
- An elected Upper Chamber
- A proportional system of elections
- State funding of political parties
- Devolution to the areas of the UK
- Referendums on major constitutional reforms

Labour did not achieve changes in all of these areas, some commentators have argued that the Labour government did not reach its expectations in the area of constitutional reform.

However, in thirteen years of Labour Government there were constitutional changes.

## House of Lords Reform

The Labour Government promised a fully elected House of Lords. They did not manage to achieve this. However, in 1999 they passed the **House of Lords Act 1999**. This removed all but 92 **hereditary peers** from the Lords. Ironically, the 92 hereditary peers that were able to remain by winning elections held by their fellow peers. This means the only elected people to ever sit in the House of Lords are hereditary peers!

Despite this change, for 13 years Labour were unable to bring about their promise of a fully elected House of Lords.

## Human Rights

Labour incorporated the **European Convention of Human Rights** into UK law by passing the **Human Rights Act** in 1998. They also passed the **Freedom of Information Act** in 2000. This gives individuals the right to request information held by public bodies.

Even though it was introduced by his government, Tony Blair said in his autobiography about the Freedom of Information Act that he thought “There is really no description of stupidity, no matter how vivid, that is adequate. I quake at the imbecility of it.”

Labour also proposed a Bill of Rights and Responsibilities, but this was not introduced as law. Labour was criticised by the Supreme Court for not following Article 5 of the Human Rights Act, by introducing stricter Anti-Terrorism laws.

## Referendums

The Labour government promised referendums on issues of major constitutional concern. Referendums were held on devolution to Scotland, Wales and Northern Ireland. Referendums were also held on whether there should be a Mayor of London.

### Devolution Referendum Results

**Scottish Devolution Referendum 1979** – 74% to 26% in favour of Scottish Devolution.

**Welsh Devolution Referendum 1979** – 50.3% to 49.7% in favour of Welsh Devolution.

**Northern Irish Good Friday Agreement Referendum 1998** – 71% to 29% in favour of the Good Friday Agreement and Northern Irish Devolution.

**Greater London Authority Referendum 1998** – 72% to 28% in favour of greater devolution to London, including a directly elected Mayor of London.

However, promised referendums from Labour on issues such as electoral reform, the **European Constitution** and Britain joining the Euro were never held.

## Voting Systems

A system of **Proportional Representation** was introduced for new elections under Labour including that for Devolved Assemblies, the **European Union** and elected mayors. However, no action was taken on electoral reform for elections to Westminster.

### Voting Systems used across the UK

**First Past the Post** – Used in UK General Elections and Local Elections in England.

**Supplementary Vote** – Used for London Mayoral Elections, Directly Elected Mayors and Police and Crime Commissioners

**Regional List** – Used for European Elections in the UK and for some of the seats in the Scottish Parliament, Welsh Assembly and London Assembly.

**Single Transferable Vote** – Used for local elections in Scotland and Northern Ireland.

**Additional Member System** – Used for elections to the Scottish Parliament, Welsh Assembly and London Assembly.

## Judicial Reform

Labour introduced wide-scale Judicial Reform. In 2005 the **Constitutional Reform Act** introduced a Supreme Court for the UK. This Act also removed most of the traditional powers of the **Lord Chancellor** and introduced a new **Judicial Appointments Commission**.

## Devolution

As promised, the Labour Government introduced wide-scale devolution across the UK. This resulted in devolved governments for:

Northern Ireland (1998)  
 Scotland (1998)  
 Wales (1998)  
 London (1999)

However, Labour plans for greater devolved assemblies were dropped after a ‘no’ vote in a referendum for a North-East regional assembly.

In addition, only 12 local authorities adopted the new elected Mayor model, one of these was London.

## What changes were made to the Constitution the Coalition Government between 2010 and 2015?

In May 2010 the Conservatives and Liberal Democrats agreed to form a coalition government. To prepare for this, they published a coalition agreement. As part of this agreement many areas of constitutional reform would be settled. The Coalition Agreement included:

- A referendum on the use of the Alternative Vote in General Elections
- An Elected House of Lords
- Fixed Term Parliaments
- A reduction in the size of the House of Commons
- Greater Powers for the Scottish and Welsh Assembly
- Registration of Lobby Groups
- The right to recall members of Parliament
- To amend the European Communities Act of 1972 to require a referendum on future transfer of powers
- To reconsider the Human Rights Act

### **AV Referendum**

As promised a referendum was held in May 2011 on whether Britain should adopt an ‘Alternative Vote’ proportional system for Westminster Elections. The Liberal Democrats campaigned for AV and the Conservatives and Labour campaigned to keep ‘First Past the Post’. This result was a conclusive 67.9% in favour of keeping ‘First Past the Post’.

### **Elected House of Lords**

The government had planned to pass a bill through Parliament to turn the House of Lords into a Senate, with 450 elected members having a 15-year term of office. In July 2012 91 Conservative Members voted against even debating the issue in Parliament and the proposal came to a complete standstill. As a result, Nick Clegg also said he would not support electoral boundary changes, which were part of the first coalition deal.

### **Fixed Term Parliaments**

In 2011 the Fixed Term Parliaments Act was passed. This guarantees that elections will be held every five years, unless:

- A motion for an early General Election is agreed by at least two-thirds of the House of Commons.
- If a motion of no confidence is passed in the government and no alternative government is confirmed within 14 days.

Critics have argued the Liberal Democrats only pushed for this to avoid being kicked out of government as soon as the Conservatives popularity increased enough for them to call a new General Election.

### **A reduction in the size of the House of Commons**

Coalition plans aimed to reduce the size of the House of Commons to 600 MPs. The original target of the Liberal Democrats was 500. The parliamentary Voting and Constituencies Act was passed in February 2011. However, it will not take effect until the 2020 general election.

### **Greater Powers to the Devolved Regions**

#### **Wales**

New powers over Energy, Transport, Environment and Elections were promised for Wales in February 2014. In addition, in February 2015 David Cameron suggested a referendum could be held on whether Wales can set its own income tax rates.

## **Scotland**

New powers were granted to Scotland as part of ‘Devo-Max’. These include the power to deviate from UK Income Tax levels by 3%. It also added greater powers on all other issues except Defence and Foreign Affairs.

Critics of ‘Devo-Max’ have suggested that the government only granted it after panic during the Scottish Referendum campaign that suggested that the ‘Yes’ campaign were heading for victory.

## **Northern Ireland**

Northern Ireland saw the least change under the Coalition. Because of the unique ‘power-sharing’ arrangement between the nationalists and unionists in Northern Ireland, change was more limited as time needs to be given to consolidation of the status quo.

## **Recall of MPs**

In the Coalition Agreement it was stated legislation that would be passed that allowed the recall of MPs by their constituents. Prior to this, there had been no way for an MP to be removed from their position. The bill that was eventually passed was called the [Recall of MPs Act \(2015\)](#). It was a much-watered down version from what had originally been discussed. The circumstances under which an MP could be recalled were limited to those in which the serving MP had been given a prison sentence or suspended by the House of Commons. A petition signed by 10% of constituents in these circumstances would initiate a by-election. The process has still not been used.

## **Scottish Independence Referendum, 2014**

In September 2014 a referendum was held in Scotland on whether or not Scotland should remain part of the United Kingdom. The result was that 55% of Scots voted to remain in the UK.

## **Registration of Lobby Groups**

In February 2010 David Cameron called lobbying the ‘next great scandal’. The government passed the ‘Lobbying Bill’ in 2014, despite resistance from the House of Lords. This created a register for all lobbying groups and limits spending on political campaigns by lobbyists during General Elections.

However, the lobbying issue came back to the fore in February 2015 when two former Foreign Secretaries, Malcolm Rifkind and Jack Straw, were filmed by undercover reporters agreeing to use their influence to support a fictional Chinese company, in exchange for money.

## **European Union Reform**

The coalition agreement agreed to make sure that any future powers transferring to the European Union would be subject to a referendum. They also agreed to consider a UK Sovereignty Bill, making sure that it is clear that ultimate sovereignty remains with the UK. They were successful with the first point. The European Union Act (2011) requires referendums for new treaties transferring powers from the UK to the EU. In 2013, David Cameron also promised to hold a referendum on the UK’s membership of the EU.

## **A British Bill of Rights**

The Conservatives have for many years talked about replacing the Human Rights Act with a UK Bill of Rights. The Liberal Democrats agreed to consider this, if a citizen’s convention was set up to consider drawing up a codified Constitution. A commission on the Bill of Rights showed that a majority of people in the UK favoured a UK Bill of Rights. However, relatively little progress was made on the consideration of a Codified Constitution.

**What constitutional reform has there been since 2015?**

In the May 2015 majority, the Conservatives won a majority. David Cameron was Prime Minister until July 2016, when he was replaced by Theresa May. In June 2017, Theresa May did not win a majority and instead was forced to form a **confidence and supply agreement** with the DUP.

**Constitutional Reform under David Cameron’s Government May 2015-June 2017:**

**English Votes for English Laws** - By adding the ‘Grand Committee’ stage to the legislative process David Cameron’s Government moved somewhat towards allowing English MPs to have a special say on English-Only matters. However, this is still not satisfactory to many, as Welsh, Scottish and Irish MPs still have a say on the final bill.

**European Union Withdrawal** – On the 23<sup>rd</sup> June 2016 the promised referendum was held on Britain’s place in the European Union. The British people voted to leave the EU by 52% to 48%.

**Greater Devolution** – David Cameron oversaw greater devolution to Scotland and Wales. The Scotland Act (2016) gave greater tax-raising powers to the Scottish Parliament. The Act also stipulated that a Referendum would have to be held before either the Scottish Parliament or Scottish Government could be abolished. The Wales Act (2017) gave tax-raising powers to the Welsh Assembly.

**Constitutional Reform under Theresa May’s Government July 2016-Present**

**European Union (Notification of Withdrawal) Act (2017)** – In March 2017 Parliament passed the European Union Withdrawal Bill (2017) to instigate Article 50, the mechanism by which countries have a two-year window to negotiate their exit from the European Union.

**European Union (Withdrawal) Act (2017)** – In July 2017 the Government introduced the bill that will legally see Britain withdraw from the European Union. As of April 2018, it has passed the House of Commons and is being considered by the House of Lords.

**What future constitutional reform is possible?**

**British Bill of Rights** – In February 2017 the Justice Minister, Liz Truss, announced that plans for a British Bill of Rights would be halted until at least after Brexit had been completed. However, this still remains something that many in the Conservative Party remain keen on.

**House of Lords Reform** – The House of Lords initially threatened to vote against Article 50. They did manage to vote in order to ensure that Parliament would have a final say on the Brexit Deal. This has led to speculation that the Government may seek to reform the Lords. The Conservatives no longer have an in-built majority in the House of Lords and there are over 100 Liberal Democrat Lords, despite there only being 12 MPs. However, there are no concrete plans at present to reform the Lords.

**Second Scottish Independence Referendum** – Every single voting area in Scotland voted to remain in the EU in the EU Referendum. In total, 62% of Scots voted to remain in the EU. In March 2017, largely as a result of this, the SNP pushed through legislation in the Scottish Parliament asking Westminster for a Second Independence Referendum. As of April 2017, Theresa May has simply said that “now is not the time”, but this is unlikely to be an issue that goes away.

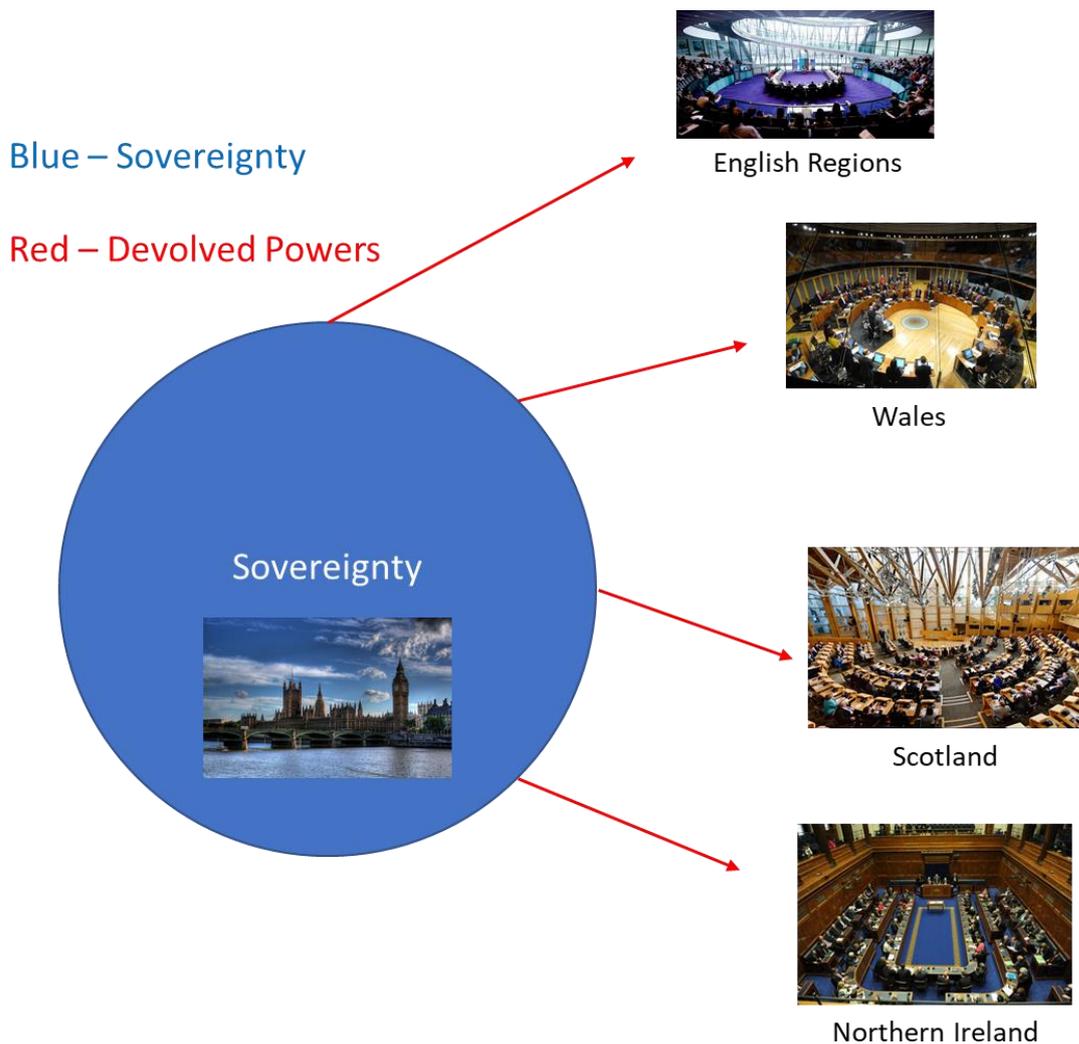
**What is devolution and how did it come about?**

Devolution refers to the process whereby power is delegated (given) to specific regions of a country. Importantly, however, sovereignty does not change. The ultimate power remains with the central power who had in the first place.

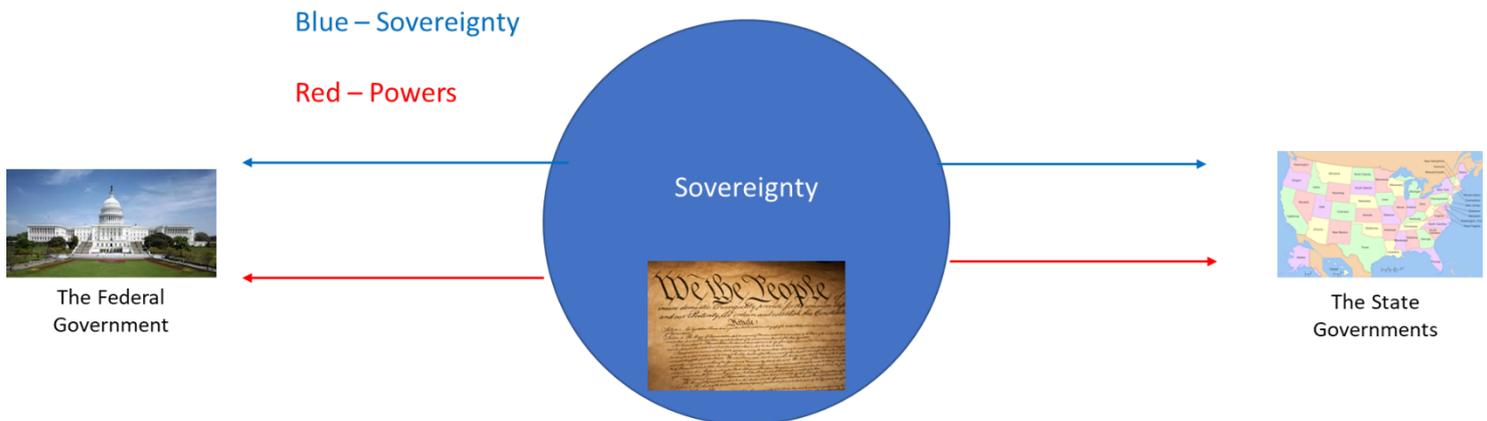
Devolution is different from **Federalism**. In a Federal System, sovereignty is divided. Ultimate power is split between different areas and has not merely been delegated, as it has in the UK.

In Britain, devolution has happened since 1997. It has seen greater powers being given to various areas of the United Kingdom. Parliamentary Sovereignty means that ultimately all power belongs to the Westminster Parliament. However, Parliament has taken the decision to delegate some of its power to the different regions of the United Kingdom.

Devolution in the UK, where Parliament is Sovereign:



In the US, there is constitutional sovereignty. Powers are divided directly between the Federal Government and the State Governments by the Constitution:



Devolution in the United Kingdom was first pushed by the Labour Party with the support of the Liberals in the 1970s. Referendums took place in 1979 in both Scotland and Wales to decide whether or not devolution should be enacted:

**Scottish Devolution Referendum (1979)** - In Scotland 51% voted for devolution in 1979. However, an amendment to the bill stipulated that 40% of Scotland's total electorate had to vote in favour, however only 32.9% did.

**Welsh Devolution Referendum (1979)** - In Wales 79% voted against devolution in 1979. There was a turnout of only 35.6%.

It was not considered to be possible to offer devolution to Northern Ireland at this time because they were going through **The Troubles**. This was a period of violence between Unionist and Republican communities in Northern Ireland that lasted from 1968 to 1998.

In 1979 Margaret Thatcher became Prime Minister and the Conservatives remained in power until 1997. Traditionally, the Conservatives have been less keen on devolution and it was not part of the political agenda during their period in power.

However, when **New Labour** came to power in 1997, devolution was offered to Wales, Scotland, Northern Ireland and London. A number of referendums took place to confirm whether the population of these areas wanted devolution.

**Scottish Devolution Referendum 1997** – 74% to 26% in favour of Scottish Devolution.

**Welsh Devolution Referendum 1997** – 50.3% to 49.7% in favour of Welsh Devolution.

**Northern Irish Good Friday Agreement Referendum 1998** – 71% to 29% in favour of the Good Friday Agreement and Northern Irish Devolution.

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The wishes of the electorate in these areas was confirmed by a number of Acts of Parliament:

- **Northern Ireland Act (1998)**
- **Scotland Act (1998)**
- **Government of Wales Act (1998)**
- **Greater London Authority Act (1999)**

This resulted in a number of devolved Parliaments being set up in the devolved regions:

- **Welsh Assembly** (As of April 2017 a Labour and Liberal Coalition formed a majority in the Welsh Assembly)
- **Scottish Parliament ('Holyrood')** (As of April 2017 the SNP lead a **minority government**.)
- **Northern Ireland Assembly ('Stormont')** (Currently there is no Executive formed from the Assembly)
- **London Assembly** (Currently, Labour are the biggest party in the Assembly, but do not have a majority)

Each region has a devolved Executive (Government) with powers passed to it from Westminster.

- **Welsh Government** – Headed by the First Minister, currently Carwyn Jones (Labour)
- **Northern Ireland Executive** - Until March 2017, headed by the First Minister Arlene Foster (DUP) and Deputy First Minister Martin McGuinness (Sinn Fein).
- **Scottish Government** – Headed by the First Minister, Nicola Sturgeon (SNP).

As of April 2018 there is no functioning Northern Ireland Executive. After the March 2017 Northern Irish Elections, the two leading parties, the DUP and Sinn Fein, were unable to come to the constitutionally required 'power-sharing' agreement. The stand-off continues.

- **Greater London Authority** – Headed by the Mayor of London, Sadiq Khan (Labour)

Each area has powers that are given to it by the Westminster Parliament. These are known as **devolved powers**.

### Examples of Devolved Powers

Scotland – Health, Education and Housing  
 Wales – Health, Education and Agriculture  
 Northern Ireland – Policing, Prisons and Housing  
 London – Transport, Policing and Housing

As examples of how this works, in England the NHS is under the control of Theresa May's Conservative Government. However, in Wales, it is under the control of Carwyn Jones' Welsh Government.

In England a student pays over £40,000 in university tuition fees. In Scotland, Scottish students only pay £1,820 per year.

In England, medical prescriptions cost £8.60 each. In Wales and Scotland they are free.

Other powers, however, are **reserved powers**. These powers are generally those which affect the whole of the United Kingdom and are not suited to being handled separately.

### Examples of Reserved Powers

Constitutional Matters  
Defence Policy  
Foreign Policy

### Brexit and Devolution

Brexit is a major constitutional change that is going to fundamentally change the way Britain works. Although 52% of voters chose to leave the European Union in 2016, this was not uniform across the United Kingdom. The results in various areas were:

**Scotland** - 38% voted to leave

**Wales** - 52.5% voted to leave

**London** - 40% voted to leave

**Northern Ireland** - 44% voted to leave

This means that only in Wales and England did a majority of voters chose Brexit.

This causes problems, as Scotland, London and Northern Ireland are going to have to accept major constitutional changes which their voters did not mandate.

This could lead to greater calls for devolution, of even independence, to stop these areas suffering the perceived problems that leaving the European Union would bring.

Unlike in a Federal System, Devolution means that power is decentralised by the choice of the Central Authority. In the case of the U.K, this means that the Westminster Parliament has voluntarily chosen through Acts of Parliament to give power to devolved areas. Importantly, it could be withdrawn. Indeed, constitutionally, there is nothing to stop the Westminster Parliament legislating on devolved issues. It is only by a convention, known as the **Sewel Convention**, that this does not happen.

### Sewel Convention

The Sewel Convention was established to deal with potential conflicts between the Westminster Parliament and the Scottish Parliament. It was announced in 1998 when devolution was established. The convention states that the Westminster Parliament will not legislate on areas of devolved power, unless they are expressly given permission by the devolved assemblies.

This convention has now also been codified into law. **The Scotland Act (2016)** stated that “it is recognised that the parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament”

Ultimately, since 2009, it has been the role of the Supreme Court to arbitrate on any disagreement between the political regions of the UK.

### Example of the Supreme Court arbitrating on the political process

In 2014 the UK Government believed that the Welsh Government had acted beyond its devolved powers by passing a bill to regulate agricultural wages. The Westminster Government believed this fell into the realm of industrial policy and not agricultural policy. Although agricultural policy was a devolved power to Wales, industrial policy was not. In the case Agricultural Sector (Wales) Bill The Supreme Court judged that the Welsh Government was allowed to make policy in this area.

## What are the fundamental problems with Devolution?

### Funding

Funding for the devolved areas is given via a **Block Grant** from the Westminster Government. The formula to work this out is known as the **Barnett Formula**.

### How does the Barnett Formula work?

1. It considers any changes made each year the Departmental Budgets of the Westminster Government
2. It multiplies this by a comparability percentage. This is the amount of devolution that has happened in this sector
3. It multiplies this by the proportion of population that the devolved area has of the UK.

The total amount is then given to the devolved areas as a block grant.

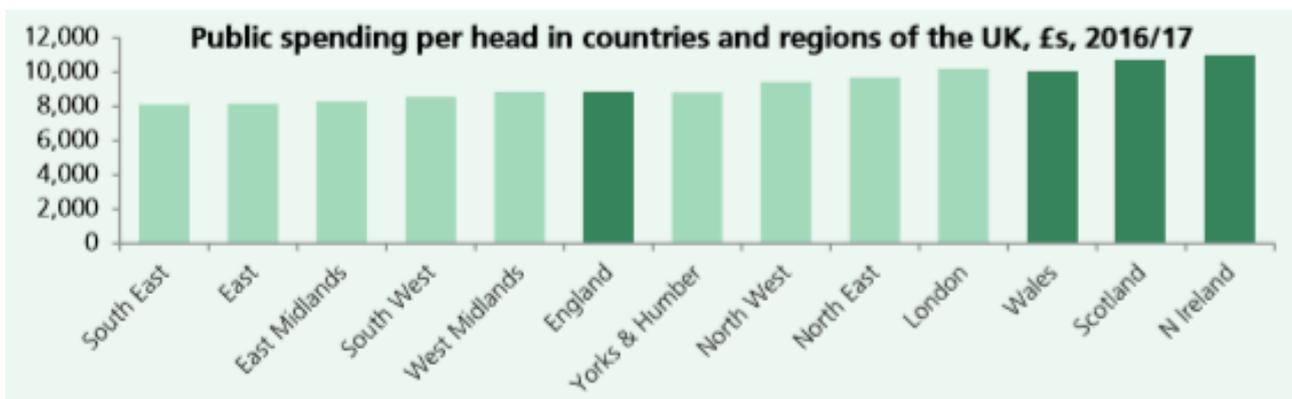
The Barnett Formula has been seen to be unfair because it allocates different amounts of money per person across the UK. As of 2015/2016 spending per person across the UK was:

**England** - £8816

**Scotland** - £10536

**Wales** - £9709

**Northern Ireland** - £1087



Source: House of Commons Library, Research Briefing 23<sup>rd</sup> January

There are a number of justifications as to why Northern Ireland, Scotland and Wales have higher levels of spending per person than the UK:

- Populations are sparser. This makes providing public services costlier. For example, providing train services in the Scottish Highlands will inevitably be higher than that in Surrey.
- The size of the public sector differs between different areas. For example, in Scotland, Water and some Airports are owned and run by the Government, whereas in England they are privatised.
- Money that is spent on devolved areas comes from the Barnett Formula and from **direct spending**. Therefore, relative amounts spent can be misleading.

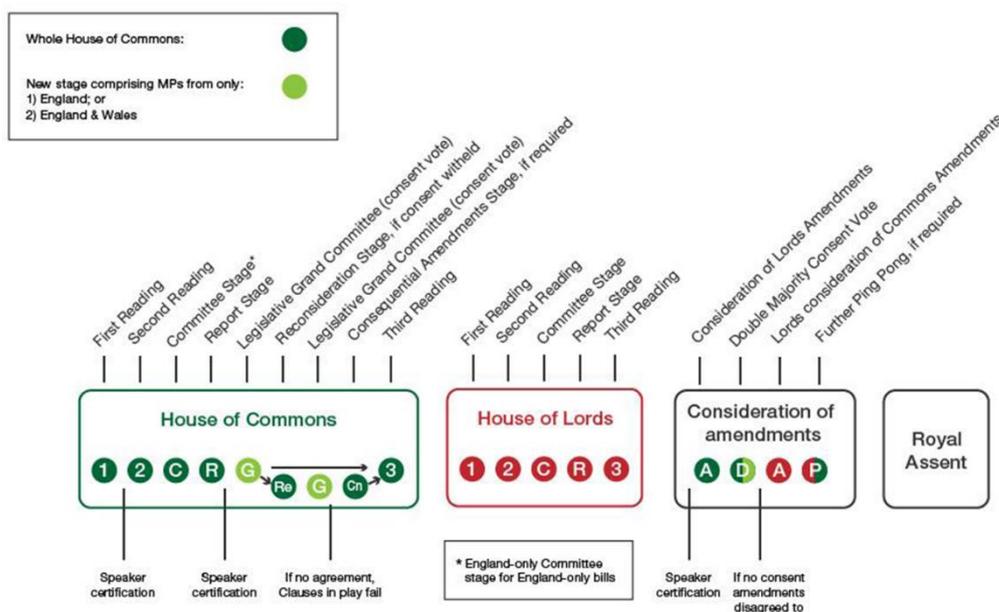
However, despite these justifications, the sense that more is being spent on citizens outside of England leads to resentment from some. This is especially the case when provisions are offered in Scotland, for example, that are not offered in England. The best examples of these provisions are free higher education and free prescription charges. These means that there is **asymmetrical devolution**.

### The West Lothian Question

A major complication of the way that Devolution works is what is known as the **West Lothian Question**. Despite the Sewell Convention meaning that English MPs do not make laws that will affect Scotland, Wales and Northern Ireland, the same cannot be said about Scottish MPs on English matters. This is because England does not have its own Parliament and is legislated for in Westminster, MPs from devolved areas can vote on issues that will not affect their own constituents but will effect constituencies in England. This has become known as the West Lothian Question, after Tam Dalyell the MP for West Lothian raised it in 1977, when Devolution was being considered.

This has become a big focus in British Politics, particularly after the promise of ‘Devo-Max’ to Scotland during the Scottish Referendum debate. It has led to an emphasis on the ‘**The English Question**’. David Cameron’s Conservative Government claimed to have solved this by adding an additional Committee Stage to the legislative process. This stage is called the **Grand Committee** stage. In this Committee Stage, Scottish, Welsh and Northern Irish MPs would not be able to have the ultimate say on matters only effecting England:

**Outline of model - Bill starting in the House of Commons**



However, although progress has been made, this has not completely solved the ‘English Question’. The final version of a bill will still be voted on by all MPs. This means that MPs of areas that have devolved powers can still vote on legislative changes that will not affect their own constituents.

### **Post-2015 Example of the West Lothian Question**

8 DUP MPs voted with the Conservative Government on 14<sup>th</sup> March 2018 to remove thousands of Free School Meals in England. Their decision would not impact their constituents in Northern Ireland, as this is a devolved issue.

### **Unstable System**

As soon as the process of devolution has begun, it is almost inevitable that devolved areas will want more power and become increasingly unhappy with the powers they have. This spiral, some would argue, inevitably leads to a demand for full independence. Although there was a Scottish Independence Referendum in 2014 in which Scots voted to remain in the UK, there is a seeming growing desire for what has been dubbed ‘[IndyRef2](#)’.

### **Expense**

It is sometimes argued that Devolution is a more expensive way to deliver services across the United Kingdom as a whole. New institutions have been built which cost hundreds of millions of pounds and there is a danger that there is duplication between the central government and devolved areas, particularly if the responsibility for a certain issue is not clear cut. On the other hand, it could be argued that local areas know how to support their services than a central government.

### **Requirement for Inter-Governmental Relationships**

Before Devolution there was only one government and although there were government departments for Scotland, Wales and Northern Ireland, they were all from the government and party, relationships were inter-departmental.

Now, to deal with issues, the central government must deal with a whole different government. This was not so big a deal between 1999 and 2007 when the Labour Party led the governments of Scotland and Wales. However, since 2007 the SNP have been in Government in the Scottish Parliament.