

'The ability of the UK Parliament to override a measure made in any part of the United Kingdom is one of the mischiefs in the UK's constitution that needs fixing.' Why it is time to reform the Sewel Convention

*The Sewel Convention, by which the UK's government normally seeks the consent of the devolved legislatures on matters that come within their competence, is enshrined in legislation. However, writes **Matthew Hexter**, it remains too weak and a constitutional convention is needed to fundamentally alter the balance of powers between London and the devolved nations.*



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In a [recent meeting of the National Assembly for Wales' Constitutional and Legislative Affairs Committee](#) (trust me this is how all good stories start), Mandy Jones asked Vaughan Gething a question about whether if the Senedd refused to grant consent to an Act of the UK Parliament, could the Assembly be overruled by Westminster? Vaughan Gething replied in a way that got me thinking. He said 'The ability of the UK Parliament to override a measure made in any part of the United Kingdom is one of the mischiefs in the UK's constitution that needs fixing.' Vaughan was, granted indirectly, talking about the situation that devolved legislatures face under the Sewel Convention. That is, where the UK Parliament wishes to legislate in an area that is within the devolved competence of the Scottish Parliament, the National Assembly for Wales or Northern Irish Assembly, it will not normally do so without the relevant devolved institution having provided legislative consent via a Sewel motion. This motion is also sometimes known as a legislative consent motion, especially since Lord Sewel got caught in an uncompromising position by a tabloid newspaper. We digress.

Now, what's the problem with this you may ask? This seems like a pretty cast-iron guarantee that the UK Parliament will at least ask the devolved administration before it seeks to interfere in its policy objectives. Well, one of the problems here is the word 'normally'. Whilst the UK Parliament, would not *normally* legislate, that does not mean that it *will not*, nor does it mean that it *cannot*. Some may now argue that Sewel being placed on a statutory footing recognises how serious the UK Parliament is about respecting the rule. However, despite the codification of the convention it remains *prima facie* a convention, a non-justiciable rule because of that word *normally*. Both Section 2 of the Wales Act 2017 and Section 2 of the Scotland Act 2016 reflect a good step forward in many ways in terms of Westminster starting to respect the autonomy of devolved institutions but they do not go far enough. There have been 340 Sewel motions voted on since 1999: 173 in Scotland, 79 in Northern Ireland and 88 in Wales. Whilst the intergovernmental mechanisms between UK and devolved administrations ensures most changes are made with the express consent of the devolved legislatures, there are circumstances in which consent has been withheld. Most recently this was in the case of the Scottish Parliament's refusal to consent to The EU Withdrawal Bill now Act, while the National Assembly has refused to give consent seven times and Northern Ireland once.

Something must change to ensure that devolved legislatures are not overruled or have legislation imposed upon them from London, but what is the solution? I believe it is time to propose a new justiciable rule, stronger than a convention, that would ensure that the UK Parliament *cannot* legislate in an area that is within the devolved competence of the Scottish Parliament, National Assembly for Wales or Northern Ireland Assembly. Additionally, if UK-wide action were required, a joint ministerial committee should meet to formulate the legislation co-operatively with individual Bills introduced in each national legislature. You could call it Sewel + (other disgraced Lords are available).

This suggestion has some issues, excusing for a moment that legislation focusing on constitutional tinkering is probably quite low down on the UK government's priority list, primarily that of parliamentary sovereignty. The doctrine of parliamentary sovereignty is such that even if the UK Parliament passed legislation removing their right to legislate for the devolved administrations in devolved areas they could not bind a successor Parliament. Therefore a subsequent Parliament could just legislate to remove this protection, or in fact just legislate in the devolved area ignoring the protection completely. Some may argue that parliamentary sovereignty is a fallacy. That just because Parliament votes to nationalise all the cafes in Paris does not make it so. However, there is a clear distinction to be made between the UK government of the day's potential penchant for Parisian coffee houses and institutions created by the UK Parliament itself. With the UK's constitution as it is Parliament could simply legislate away any protection, it could even legislate to abolish the devolved legislatures. So something even more drastic would be required to ensure Sewel +'s place in the UK constitution. We require a constitutional convention.

Only a constitutional convention that fundamentally alters the location of power in the UK could ever deliver a set of circumstances in which Sewel + could be deliverable, where power rests equally in the hands of all the UK's constituent nations.

This article gives the views of the author, and not the position of Democratic Audit. It was first published on [Click on Wales](#), published by the IWA, and is republished with permission.

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