

# The Government's new EVEL timeline still isn't sufficient to facilitate the necessary debate and deliberation

[democraticaudit.com/2015/07/10/the-process-through-which-english-votes-for-english-laws-will-be-realised-risks-undermining-the-legitimacy-of-the-outcome/](http://democraticaudit.com/2015/07/10/the-process-through-which-english-votes-for-english-laws-will-be-realised-risks-undermining-the-legitimacy-of-the-outcome/)

By Democratic Audit UK

2015-7-10

*In the immediate aftermath of Scotland's vote to remain in the United Kingdom, the Prime Minister David Cameron proposed removing the rights of Scottish MPs to vote on 'English only' issues – a process which would be contemporaneous with the granting of new powers for Scotland. **Katie Boyle** argues that there are at least three main issues with the Government's recent announcement of the way the change will be introduced, including what counts as a "devolved matter", the financial overlap between devolved and non-devolved issues, and the break-neck speed of the process through which it was be introduced.*



Scottish notes for English Laws? (Credit: Cowrin, CC BY NC 2.0)

English votes for English laws (EVEL) [as proposed by the Leader of the House of Commons, Chris Grayling, on 2 July 2015](#) was originally to be debated and decided on 15 July and introduced through amendment to the Standing Orders of the House of Commons, leaving less than two weeks for deliberation. However, following an [emergency debate on 7 July](#), the Government has postponed the final decision for Parliament until after summer recess. The [explanatory guide](#) tells us the proposals seek to answer the [West Lothian question](#), yet for the moment at least, the constitutional amendments raise more questions than they answer.

Following decades of deliberative constitutional processes in the form of devolution, democratic power structures have undergone slow and steady change. The process of devolution has involved negotiation as changes to democratic structures were subject to intense scrutiny with a number of constitutional safeguards in place. For example, devolution was approved through the operation of UK-wide debate, the passage of legislation in Westminster, and approval of the changes through the operation of direct democracy – a referendum. The EVEL proposals may potentially introduce new hierarchical power structures, such as a right of veto and the introduction of 'double majorities' at various parts of the legislative process, effectively excluding non-English MPs on what would

otherwise be devolved matters in other parts of the UK. The proposed mechanisms are different to devolution simply because there is no devolved administration – granting English-MPs a form of Parliamentary supremacy emanating from Westminster that devolved legislatures do not possess. This raises a number of issues – two of which I highlight here as of immediate concern in terms of the constitutional viability of the proposal and the legitimacy of the process through which it may be realised.

First, the proposal assumes that defining what a ‘devolved matter’ constitutes is a straight forward process – clearly this is not the case all of the time – different matters are devolved in Scotland, Wales and Northern Ireland meaning there is no clear ‘reserved v devolved’ division of competence across the UK. Furthermore, whether secondary legislation engages a ‘devolved’ matter (and falls within the competence of a devolved parliament) in certain circumstances has been a matter of contention resulting in reference to the judiciary for adjudication (see for example *Imperial Tobacco* or *Martin and Miller* challenging devolved legislation in Scotland, or references by the Attorney General for England and Wales challenging devolved legislation in Wales [here](#) and [here](#)). Devolution is complex and any system that fails to take this into account risks serious complications in defining what exactly constitutes a matter falling within the EVEL veto threshold. The Government has proposed that the Speaker will certify if a Bill or part of a Bill [relates exclusively to England](#), or England and Wales, and concerns matters which are devolved to Scotland, Wales or Northern Ireland. This in and of itself raises issues of constitutional legitimacy in relation to whether it is appropriate to delegate the decision making process to the Speaker who is required to perform an impartial and non-partisan constitutional role in Parliament. And where do the powers of scrutiny lie if a contentious decision is reached? Shall the Speaker’s decision be open to challenge?

These questions remain unanswered at present. As highlighted by Alan Trench [here](#), the Government has not adopted the [McKay Commission’s test](#) but instead plan to determine what Bills fall within the parameters of EVEL on whether a provision ‘relates exclusively’ to England. All sorts of questions must be raised as to how this will work in practice and how it will operate in comparison to the ‘purpose and effect’ test adopted by the Supreme Court to assess devolved competence (for a brief explanation of this see [here](#)). The proposal also raises issues of financial concern. Non-English MPs could effectively be excluded from determining how much money is spent on particular areas in England and hence having no say on the budgetary impact in other parts of the UK (this would be an issue under the existing Barnett arrangements). The proposed reforms might actually result in deadlock if the power of veto is used and the full House cannot agree on an amendment – the proposals highlight that the relevant part of the Bill will [fall](#) in such a scenario rendering it invalid. That is not to say that matters such as this could not be resolved, however, without opportunity to consider or deliberate on reform and structure there is a risk potential oversights may not be addressed.

The second issue I raise relates to the process through which these significant constitutional changes will be realised. Stephen Tierney and I [have previously highlighted](#) the importance of process as well as substance and outcome when dealing with constitutional transitions. Constitutional change requires participation, informed consideration, inclusive debate and time for proper democratic deliberation. The Government has delayed the hastily planned introduction of the EVEL proposal which was initially to be implemented over two weeks. The timeline now appears to be delaying any changes until after summer recess. More time is a good thing, however, the question remains – is the new timeline sufficient to facilitate a process that ensures legitimate constitutional change?

Little has changed in terms of ensuring proper inclusive and considered deliberation which engages the public in the process. Perhaps employment of at least some of the constitutional safeguards mentioned above might be worth considering such as a formal legislative process or even an England-only referendum. If EVEL is part of wider package of constitutional reform then perhaps a more inclusive and holistic UK-wide process such as a constitutional convention might well be appropriate and timeous. Some form of constitutional safeguards would at least help ensure legitimacy in the outcome through a more reasoned and inclusive deliberation before the democratic structure of the state is amended through a simple tweaking of the House of Commons rules.

---

*This post represents the views of the authors and not those of Democratic Audit UK or the LSE. Please read our [comments policy](#) before posting.*

---

**Dr Katie Boyle** is a qualified constitutional lawyer, Postdoctoral Researcher at the Crucible Centre for Human Rights Research and previous ESRC Researcher under the Future of the UK and Scotland programme at the University of Edinburgh.

