



The Constitution Unit

Nations and Regions: The Dynamics of Devolution

Quarterly Monitoring Programme

Devolution and the Centre

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Key Points

- Boundary Commission for Scotland publishes its Fifth Periodical Review of Parliamentary Constituencies in Scotland
- Lord Barnett says the Barnett Formula is unfair and calls for it to be replaced with a 'needs-based' formula.
- Scottish Affairs Committee publish *Coincidence of Parliamentary Constituency Boundaries in Scotland and the Consequences of Change*.
- Westminster Hall debate on the West Lothian Question
- Second reading of the *Scottish Parliament (Constituencies) Bill*
- Opposition day debate on *Scottish Constituencies (Members' Voting Rights)*
- The West Lothian question is raised as the votes of Labour's Scottish MPs prove decisive in passing controversial legislation on tuition fees.
- Alistair Darling establishes a Voting Systems Commission to review the electoral arrangements in Scotland

1 Devolution and Westminster

Figure 1: Chronology of Events at Westminster (Dec – February 2004)

10 December	Oral questions to the Wales Office
11 December	Boundary Commission for Scotland publishes its Fifth Periodical Review of Parliamentary Constituencies in Scotland
6 January	Westminster Hall debate on the 'West Lothian Question' House of Lords debate on the Barnett Formula
13 January	Oral questions to the Scotland Office and Advocate General
14 January	Oral questions to the Northern Ireland Office
21 January	Opposition day debate on Scottish Constituencies (Members' Voting Rights) Oral questions to the Wales Office
27 January	Commons vote on Higher Education Bill
3 February	Scottish Affairs Committee publish <i>Coincidence of Parliamentary Constituency Boundaries in Scotland and the Consequences of Change</i>
9 February	Second Reading of the Scottish Parliament (Constituencies) Bill Alistair Darling announces establishment of a Voting Systems Commission in Scotland
10 February	Oral questions to the Scotland Office and Advocate General
11 February	Oral questions to the Northern Ireland Office
25 February	Oral questions to the Wales Office

1.1 The Scottish Parliament (Constituencies) Bill and the Boundary Commission for Scotland's report on Scottish representation at Westminster

The second reading of the *Scottish Parliament (Constituencies) Bill* took place on 9 February 2004.¹ The main purpose of the Bill is to remove the statutory link that currently exists between Westminster and Holyrood constituency boundaries, by amending the Scotland Act 1998. The need to amend the Scotland Act was prompted by two separate but related developments, which will see the end of coterminous constituency boundaries for the House of Commons and the Scottish Parliament.

Firstly, following a consultation exercise on the size of the Scottish Parliament, the UK government decided to maintain the number of MSPs (Members of the Scottish Parliament) at the current level of 129.² This decision meant that the Scotland Act, which contained a statutory obligation to link the size of the Scottish Parliament with the number of Scottish MPs at Westminster, would have to be amended. The Scottish Parliament (Constituencies) Bill therefore replaces Schedule 1 of the Scotland Act, with a new schedule, which preserves the size of the Scottish Parliament at its current level of 129 members: 73 elected from constituencies and 56 'list' members elected from the eight regions.

Secondly, the Boundary Commission for Scotland has recommended a reduction in the number of Scottish constituencies for Westminster. The Commission began its *Fifth Periodical Review of Parliamentary Constituencies in Scotland* in 2001, operating under new statutory guidelines set out in the Scotland Act. Section 86 of the Scotland Act amended the rules under which the Commission reviews constituency boundaries by removing Scotland's guarantee to a minimum of 71 seats at Westminster and by requiring the Commission to use the same electoral quota for

¹ HC Deb 9 February 2004 Col 1146. The full debate can be viewed at http://www.publications.parliament.uk/pa/cm200304/cmhansrd/cm040209/debtext/40209-12.htm#40209-12_head1

² *The size of the Scottish Parliament: a consultation* was published by the Scotland Office on 18 December 2001. The then Scottish Secretary, Helen Liddell announced the outcome of the consultation exercise on 18 December 2002: '... in view of the overwhelming body of opinion in favour of maintaining the current number of MSPs, I propose in the interest of stability to seek to amend the Scotland Act accordingly.' HC Deb 18 December 2002 Col 859-872.

Scotland as for England to calculate the appropriate number of Scottish seats.³ Both measures were clearly designed to reduce the number of Scottish seats at Westminster, reflecting the government's view that following devolution Scottish representation at Westminster should be decreased.⁴

The Boundary Commission published its interim findings on 7 February 2002. It recommended that the number of Scottish seats at Westminster be reduced from 72 to 59.⁵ After a period of consultation on its interim proposals the Commission published its final report on 11 December 2003, in which it confirmed its view that there should be 59 Westminster constituencies in Scotland.⁶

Reducing the number of Scottish seats to 59 will mean that Scotland will have roughly the same proportion of MPs as England, thereby ending Scotland's historic over-representation. Yet a YouGov poll commissioned by the Daily Telegraph suggests that many voters in England and Wales do not believe that these changes go far enough. The poll found that 44% of English and Welsh voters believe that Scotland should have either 'somewhat fewer' or 'a lot fewer' Westminster MPs in proportion to the Scottish population.⁷

The Boundary Commission's recommendation to remove 13 constituencies in Scotland will involve the loss of constituencies belonging to senior government ministers. The casualties include the Edinburgh Central seat of the Scottish Secretary, Alistair Darling, the Hamilton North and Bellshill seat of the Health Secretary, John Reid and the Dunfermline East seat, which is the constituency of the Chancellor of the

³ For more background on the work of the Boundary Commission for Scotland see Isobel White, *The Scottish Parliament (Constituencies) Bill*, House of Commons Library Research Paper 04/12, 3 February 2004, pp. 9-10. The paper can be viewed at <http://www.parliament.uk/commons/lib/research/rp2004/rp04-012.pdf>

⁴ During the debate on the Scottish Parliament (Constituencies) Bill, Alistair Darling said, 'The Government accepted from the outset that devolution removed the need for special consideration for Scotland in terms of representation in this House, and that there should be the same electoral quotas for Scotland as for England.' HC Deb 9 February 2004 Col 1146.

⁵ Boundary Commission for Scotland press release, *Proposals for Revised Parliamentary Constituency Boundaries in Scotland*, 7 February 2002.

⁶ The Boundary Commission for Scotland acknowledged that using the electoral quota for England would actually entitle Scotland to 57 seats, but after consideration it decided to recommend that Scotland have 59 seats.

⁷ The Daily Telegraph, *Loss of 13 seats at the next election 'not enough'*, 16 February 2004.

Exchequer, Gordon Brown. The Airdrie and Shotts seat of the former Scottish Secretary, Helen Liddell, will also disappear.

The Boundary Commission is required by statute to report to the Secretary of State for Scotland by December 2006 with its recommendations. The Scottish Secretary will then implement the changes subject to Parliamentary approval. However, under the terms of the Scotland Act (Schedule 1) the Boundary Commission was also required to conduct a review of the boundaries for the regions from which regional list MSPs are elected to the Scottish Parliament, before it could report. Given the statutory link between Holyrood and Westminster constituencies, and the reduction in the number of Westminster seats, the Boundary Commission were tasked with making consequential recommendations for changes to the regional seats.

However, since the Scotland Parliament (Constituencies) Bill breaks the link between Westminster and Holyrood constituencies, the Boundary Commission's review of the regions and regional members will no longer be applicable. Alistair Darling said that the 'Bill specifically stops that work'.⁸ He added that, 'the commission is considering the best way to proceed in the light of the Bill's progress.' So long as the current Bill passes then, the Boundary Commission for Scotland will be ready to report to the Secretary of State, who will then set about implementing their recommendations on reducing the number of Westminster constituencies to 59. It seems reasonable to assume that this reduction will take place before the next general election.⁹

The Scottish Parliament (Constituencies) Bill also provides for the Scottish Parliament constituencies and regions to be reviewed by the Electoral Commission, 'separately from any review of the Scottish Westminster constituencies in the

⁸ HC Deb 9 February 2004 Col 1149. The explanatory notes to the Bill state that. 'this latter report (on consequential alterations to the regions) will not be relevant once the Scottish Parliament constituencies and regions have been decoupled from the Westminster boundaries and any report in these regional boundaries needs to be disapplied.' See

<http://www.publications.parliament.uk/pa/cm200304/cmbills/004/en/04004x--.htm>

⁹ Darling said, 'The Prime Minister and I have often said that as soon as we get the report – the timing is a matter for the Boundary Commission – we shall implement it. I cannot make that any clearer.' HC Deb 9 February 2004 Col 1149. So long as the Bill passes the Boundary Commission will only report on its work on constituency boundaries which it has already completed.

future.’¹⁰ The Bill stipulates that the first review will not take place until *after* the next elections to the Scottish Parliament, which will take place in 2007.

The Bill passed its second reading by 333 votes to 127. Only the Conservative Party opposed the Bill, insisting that the government should uphold the commitment in the Scotland Act to reduce the number of MSPs in line with the reduction in MPs. Alan Duncan, the shadow constitutional affairs spokesman, said, ‘Scotland is already over-governed. It needs few politicians ... and there is no doubt that the Scottish Parliament could function as well, if not better, with a smaller membership.’¹¹

Figure 2: Summary of the Scottish Parliament (Constituencies) Bill

- The Bill removes the statutory link between the Westminster and Scottish Parliament constituencies.
- The Bill preserves the current level of 129 MSPs regardless of the recommendations made by the Boundary Commission for Scotland’s review of Westminster constituencies.
- It stipulates that the Boundary Commission for Scotland’s review of the regional boundaries for the Scottish Parliament will not be acted upon.
- The Bill provides for the Scottish Parliament constituencies and regions to be reviewed by the Electoral Commission, separately from any review of Westminster constituencies.

1.2 The ending of coterminous boundaries and electoral arrangements in Scotland: The Scottish Affairs Committee report and Darling’s announcement to set up a Voting Systems Commission

The prospect of ending ‘coterminosity’ between Westminster and Holyrood constituencies has been the cause of much concern. Those against ending

¹⁰ Scottish Parliament (Constituencies) Bill, Explanatory Notes, P. 1.

¹¹ HC Deb 9 February Col. 1160.

coterminosity are worried that it will confuse the Scottish electorate and consequently deter people from voting. It is important to note that these debates are taking place within the wider context of proposed changes to the electoral arrangements in Scotland and with a widespread concern by all political parties about the falling turn out in elections.¹² As part of the coalition deal struck between Labour and the Liberal Democrats, following the 2003 Scottish Parliament elections, the Labour leadership accepted proposals to introduce the single transferable vote (STV) proportional electoral system into local government elections. The Local Government Elections (Scotland) Bill is currently being considered by the Scottish Parliament, if enacted it will mean that there will be four different voting systems in place in Scotland.¹³

It was against this background that the Scottish Affairs Committee launched an inquiry into the *Coincidence of Parliamentary Constituency Boundaries in Scotland and the Consequences of Change*, and that the Scottish Secretary announced a commission to look at voting systems in Scotland. Both are addressed below.

Figure 3: Electoral Systems in Scotland

Election	Electoral System
UK General Election	First-Past-the-Post
Scottish Parliament	Additional Member System
European Parliament election	PR list system
Local Government elections	STV

¹² Turn out fell by 9 %, from 58 % in the 1999 elections to the Scottish Parliament to 49% in the 2003 elections. See the Scottish Elections 2003 – Statutory report by the Electoral Commission. An executive summary can be found at

http://www.electoralcommission.org.uk/files/dms/Scottishelections_11227-8862_E_N_S_W_.pdf

¹³ If the Local Government Elections (Scotland) Bill is passed by the Scottish Parliament, STV for local government will be introduced from 2007.

The Scottish Affairs Committee report: The Coincidence of Parliamentary Boundaries in Scotland and the Consequences of Change¹⁴

One voice of opposition came from the Scottish Affairs Committee in its report published on 3 February. *The coincidence of Parliamentary boundaries in Scotland and the consequences of change*, argued against ending coterminous boundaries. Although the Committee agreed with preserving the size of the Scottish Parliament at the current level of 129 MSPs, in relation to the coterminosity of constituency boundaries it said:

‘The Committee considers the convenience of the electorate to be paramount. Based on the evidence we have received, we recommend that, in order to avoid possible confusion, the constituency boundaries in Scotland for elections to the United Kingdom and to the Scottish Parliament should remain coterminous.’¹⁵

In their evidence to the committee’s inquiry, the Association of Electoral Administrators (AEA), said:

‘The lack of coincidence between Parliamentary Boundaries in Scotland is more likely to cause bewilderment for electors.’¹⁶

The Committee recommended that the Electoral Commission should make detailed proposals on how their two objectives of retaining 129 MSPs and maintaining coterminous boundaries could be achieved. The Committee said that their, ‘favoured option is to have 2 constituency MSPs for each new Westminster constituency, totalling 118 MSPs, with the remaining 11 MSPs being elected from a national list.’¹⁷ The committee said that ‘such a dramatic reduction in the number of list MSPs (from

¹⁴ The Scottish Affairs Committee, *The Coincidence of Parliamentary Boundaries in Scotland and the Consequences of Change*, First report of the session 2003-04, HC 77. See <http://www.publications.parliament.uk/pa/cm200304/cmselect/cm Scotaf/77/7702.htm>

¹⁵ Scottish Affairs Committee (2004), p. 11.

¹⁶ Scottish Affairs Committee (2004), p. 6.

¹⁷ Scottish Affairs Committee (2004), p. 7.

56 to 11) could resolve the perceived problem of regional list MSPs ‘muscling’ in on the territory of constituency MSPs.’¹⁸

The Committee also expressed concern at the prospect of four electoral systems operating in Scotland, and were unconvinced of the case for the introduction of STV for local government elections. They recommended that:

‘As well as looking into the matter of coterminous boundaries, the Electoral Commission should look also at the implications for the electoral process of Scotland having four different voting systems. There may well be good reasons why, for example, elections to Westminster need a different system than elections to the Scottish Parliament, but we are not convinced that every type of election needs a different voting system.’¹⁹

Figure 4: Summary of the recommendations from the Scottish Affairs Select Committee report

- The number of MSPs should be preserved at the current number of 129.
- In order to avoid confusion for the electorate, the constituency boundaries for the Westminster and the Scottish Parliament should remain coterminous.
- The Electoral Commission should propose how to achieve the joint aim of retaining 129 MSPs and preserving coterminous boundaries.
- The Electoral Commission should also examine the implications of having four electoral systems in operation in Scotland.
- Since the Scottish parliament (Constituencies) Bill is a constitutional measure it should be debated on the floor of the House.

¹⁸ Scottish Affairs Committee (2004), p. 7.

Darling establishes a Voting Systems Commission for Scotland

The ending of coterminous boundaries has also been a concern for the government, who are also worried about the impact on the electorate. The previous Secretary of State for Scotland, Helen Liddell, announced in December 2002 her intention to establish a commission to review the working of non-coterminous boundaries after the Scottish Parliament elections in 2007.²⁰ However, during the debate on the Scottish Parliament (Constituencies) Bill, the current Scottish Secretary, Alistair Darling announced his decision to set up a commission not in 2007 but in 2004.²¹

Darling explained that he had decided to set up the commission now because of the ‘significant changes that have occurred following the Scottish Parliament elections’²² in 2003, a reference to the Scottish Executive’s proposals for STV for local elections. He said:

‘Scotland now faces the prospect of four different voting systems for an electorate of just over 3.8 million. The potential for significant confusion on the part of voters is therefore high. And the worryingly low turnout of voters at the May (Scottish Parliament) elections suggests that we should be doing all we can to make voting more straightforward and understandable for the electorate – not more complicated.’²³

The Commission will examine the consequences of having four different systems of voting in Scotland, and different boundaries for Westminster and Scottish Parliament constituencies on:

- Voter participation
- The relationship between public bodies and authorities in Scotland, and MPs and MSPs
- Representation of constituents by different tiers of elected members

¹⁹ Scottish Affairs Committee (2004), p. 11.

²⁰ See HC Deb 18 December 2002 Col 859-872.

²¹ HC Deb 9 February Col 1150.

²² HC Deb 9 February Col 1150

²³ HC Deb 9 February Col 1151.

The commission will be asked to make recommendations on whether these consequences require action to be taken in respect of:

- Arrangements between elected representatives, to ensure that constituents and organisations receive the best possible service
- The pattern of electoral boundaries in Scotland
- The relationship with other public bodies and authorities in Scotland
- The method of voting in Scottish Parliament elections²⁴

The commission will be independent and ‘will consider the case for change and make recommendations to the Secretary of State for Scotland and the First Minister’.

Darling said that he would announce the chairmanship and membership of the commission, once he has discussed it with other political parties.

The terms of reference outlined by Darling suggest that the commission will have a wide-ranging remit. Clearly, the commission will not simply confine itself to looking at the issue of non-coterminous boundaries. Interestingly the commission will be tasked with examining the consequences of STV for local government, despite the fact that responsibility for local government electoral arrangements is devolved to the Scottish Parliament. Darling did stress that it would be for the ‘Scottish Parliament to decide what course of action they wish to follow’²⁵ with regard to what the commission says about STV.

Most significantly, though, the commission will review the electoral system used to elect members of the Scottish Parliament, which is a reserved matter. This is the first clear indication from the government that they are willing to look at the additional member system (AMS) used to elect MSPs. It is no secret that the AMS electoral system has been the source of some controversy in Scotland, notably among Labour MSPs (and MPs), who are unhappy about the problematic relations that can exist between the constituency and list MSPs. The Scottish Affairs Committee advocated

²⁴ Darling set out the commissions’ terms of reference in his statement to the House of Commons during the second reading of the Scottish Parliament (Constituencies) Bill. HC Deb 9 February Col 1151.

reducing the number of list MSPs to truncate the opportunity for list MSPs to ‘muscle in’ on the activities of the constituency elected members. Alan Duncan, the shadow constitutional affairs spokesman, said he was suspicious of the government’s sudden interest in AMS, and accused them of buckling ‘under pressure from their own MSPs.’²⁶

Alistair Darling added that any change to the way in which the Scottish Parliament is elected would require a ‘degree of consensus’ and that although it would be impossible to achieve unanimity amongst the various views, he said that this was ‘not something that a single political party can do.’²⁷

1.3 Hain to consider a review of the electoral arrangements for the Welsh Assembly

On the back of Alistair Darling’s announcement, the Welsh Secretary, Peter Hain issued a statement saying that he will consider commissioning a review of the electoral arrangements for the Welsh Assembly – which are the same as for those for the Scottish Parliament.²⁸ Hain has been a particular critic of the AMS electoral system, especially with the way that candidates defeated in the constituency election can then be elected through the regional list:

‘Complaints about the list element of the existing system are widespread in Wales. At present, candidates who are defeated in the first past the post constituency ballots can then be elected under the regional list system. So ‘winners’, despite losing, are then able to call themselves the member for the self-same constituency, setting up constituency offices in competition with the AM who defeated them.’²⁹

²⁵ HC Deb 9 February 2004 Col 1158.

²⁶ HC Deb 9 February 2004 Col 1159.

²⁷ HC Deb 9 February 2004 Col 1152.

²⁸ Of the 60 members of the National Assembly for Wales, 40 are elected from constituencies, while the remaining 20 are elected from regional party lists.

²⁹ Wales Office press release, ‘Hain to consider review of electoral arrangements for Welsh Assembly’, 9 February 2004. See http://www.walesoffice.gov.uk/pn_20040209.html

In a lecture to the Constitution Unit on 27 January, Hain said that at a ‘very minimum, candidates should have to choose between standing in a constituency and standing on the regional lists’. He also questioned whether regional list AMs should have smaller staffing and expenses allowances than the constituency AMs, given that list AMs do not have to undertake constituency business.³⁰

However, Hain said that he would wait to see the response of the Welsh Assembly Government to the report of the Richard Commission, (which is looking at the electoral arrangements for the Welsh Assembly), before making a final decision on whether to commission a review.

1.4 The West Lothian Question and the Higher Education Bill

Debate over the so-called ‘West Lothian Question’, which refers to the anomaly following devolution whereby Scottish MPs can vote on English matters at Westminster, while English MPs cannot vote on issues devolved to the Scottish Parliament, has been growing in intensity recently. A major catalyst for the debate has been the two votes on foundation hospitals in which the government have only been able to pass the legislation with the support of their Scottish and Welsh MPs – despite the fact that the legislation does not apply in Scotland and Wales and that the Scottish Parliament and Welsh Assembly had explicitly rejected the policy of foundation hospitals themselves.

On the first foundation hospital vote in July 2003, the government’s majority was reduced to 35. If only MPs representing English constituencies had voted, the government would have lost the division by 1 vote. In the second foundation hospital vote, in November 2003, the government’s majority was reduced even further to 17. On this occasion if only MPs representing English constituencies had voted the government would have lost the vote by 17. On both occasions opponents of the

³⁰ Peter Hain, *Changing for good – devolution: the silent revolution*, State of the Nations Annual lecture, The Constitution Unit, 27 January 2004.

policy said that the government had used their non-English MPs to ‘impose’ a policy on England that England did not want.³¹

The momentum generated by these two ‘West Lothian votes’ continued with the run-up to the vote on the Higher Education Bill. The Bill contains the highly controversial measure to allow universities in England and Wales³² to charge variable tuition fees. This does not apply to Scotland as student finance is a devolved matter. The tuition fee proposals did not apply to Northern Ireland either. The vote was widely expected to be very close given the sensitivities involved for many Labour MPs, and so it was anticipated that the government would once again depend upon the support of its Scottish MPs to pass the legislation.

The Conservatives argued that all Scottish MPs should abstain from voting. Conservative leader, Michael Howard, said that it would be ‘absolutely wrong’ for Scottish MPs to vote on the issue. Speaking on the BBC’s *Politics Show*, he said:

‘It would be absolutely wrong for the vote on top-up fees to be decided by the votes of MPs from Scotland. They are not going to have top-up fees in Scotland ... and for MPs from Scotland to impose top-up fees on England and Wales would be quite unacceptable.’³³

In a letter to the Prime Minister, Howard said that the issue was one of ‘wide constitutional importance’, and informed Tony Blair, that ‘as a matter of principle’, the Conservative MP in Scotland, Peter Duncan, would not be voting on the Bill.³⁴ He said that his party’s principle was more important than his objective of defeating the government’s Bill and urged Labour and other political parties to ensure that their Scottish MPs abstained from the vote.

³¹ For a full analysis of the two foundation hospital votes please see the November and August 2003 monitoring reports for *Devolution and the Centre*, they are available at <http://www.ucl.ac.uk/constitution-unit/leverh/monitoring.htm>

³² The Bill allows for tuition fees to be introduced in Wales but transfers the responsibility for doing so to the National Assembly for Wales. It will therefore be up to the National Assembly to decide whether or not they want to introduce tuition fees in Wales.

³³ Quoted in The Herald, *Howard urges Scots MPs not to vote on English top-up fees*, 12 January 2004.

³⁴ The letter was published on the Conservative Party website as a press release, *Scottish MPs should abstain in the key vote on tuition fees*.

Under the leadership of Michael Howard, the Conservatives have rekindled their interest in the West Lothian Question. On 6 January, James Gray, the (Scottish) Conservative MP for North Wiltshire, led a Westminster Hall debate on the subject.³⁵ And in an Opposition day debate led by the shadow Scottish Secretary, Peter Duncan MP on *Scottish Constituencies (Members' Voting Rights)*, they set out their solution to the West Lothian conundrum:

‘This House deplores the practice of Members representing Scottish constituencies voting on bills concerning issues that have been devolved to the Scottish Parliament ... condemns the unfairness that this represents to those in English constituencies and the Government’s failure to address the problem; and believes that the fairest long-term solution is for bills on areas of policy which have been devolved to Scotland to be so ratified by the Speaker and for Members from Scottish constituencies to abstain from voting on such bills.’³⁶

This reiterates Howard’s call for the introduction of a new clause to every Bill that would contain a ‘certificate’ explaining whether it dealt with a devolved or reserved matter.³⁷ There is nothing new in these proposals – Howard has essentially resurrected William Hague’s policy of ‘English votes on English law’. Others have also suggested something similar. The Scottish National Party (SNP) believe that the Speaker should be able to certify English-only legislation which should then have its second reading and committee stage referred to an English Affairs Committee, so only English MPs could participate. The SNP also point out that there is a precedent for such a

³⁵ Westminster Hall debate, 6 January 2004 Col 37 WH. Gray’s triumvirate response to the West Lothian Question was: Firstly, Scottish MPs should not vote on English matters as certified by the Speaker. Secondly, in reference to the appointment of the Scottish MP, John Reid, to the post of Health Secretary, (a policy area almost entirely devolved to the Scottish Parliament) he said, ‘we must get rid of Scottish Members of Parliament running English departments.’ Thirdly, he suggested that Scottish MPs should be allowed to participate in the affairs of the Scottish Parliament for part of the week, leaving English MPs to deal with English Affairs at Westminster. Scottish MPs would return to Westminster to discuss ‘UK’ affairs for the rest of the week.

³⁶ HC Deb 21 January 2004 Col 1389. The full debate can be viewed at http://www.publications.parliament.uk/pa/cm200304/cmhansrd/cm040121/debtext/40121-21.htm#40121-21_head0

³⁷ Howard outlined the plans in an interview with The Scotsman on 8 December 2003.

procedure: Standing Order 97 enables the Speaker to refer a Bill that only applies to Scotland to the Scottish Grand Committee.³⁸

The Vote

In the end the government did need the support of its Scottish MPs to get the Higher Education Bill through the Commons. The Bill passed its second reading by 316 to 311 votes, giving the government a majority of only 5 – its lowest since coming to power. From a West Lothian perspective, if only MPs from England and Wales had voted the Bill would have been defeated by 276 to 270 votes. 46 Scottish Labour MPs voted for the Bill. All 14 of the Northern Ireland MPs who take their seats in the House of Commons, voted against the Bill. Figures 5 and 6 below, give a breakdown of the vote.

Figure 5: Breakdown of Division 38 on 27 January 2004 on the Second Reading of the Higher Education Bill by Nation³⁹

Nation	For Government	Against Government
England	246	261
Scotland	46	21
Wales	24	15
Northern Ireland	0	14
Total	316	311

Although no reference to the issue of Scottish MPs voting had been made during the debate on the Bill, following the announcement of the result, the Tory shadow Scottish Secretary Peter Duncan MP, (who didn't vote), said, 'this is a dark day for British democracy, and the actions of Scottish MPs are reprehensible' and accused

³⁸ SNP press release, *Scots MPs voting at Westminster – Must be fair to England and Scotland*, 6 January 2004. The SNP believe that this procedure should be introduced alongside granting Scotland financial independence.

³⁹ Data for Figures 5 and 6 was compiled using the House of Commons Library Standard Note, *Division 38 on the Higher Education Bill*, SN/SG/2878.

those Scottish MPs who voted of undermining the devolution settlement'.⁴⁰ Despite the media and political attention on the West Lothian question in the build up to the vote, the low level of interest that followed it was notable, if understandable given the publication of the Hutton Report the following morning.

Figure 6: Breakdown of Division 38 on the Second Reading of the Higher Education Bill by Party and Nation

Nation	Party	For Government	Against Government
England	Conservatives	1	158
	Labour	245	59
	Lib Dem	0	42
	Other	0	2
	Total	246	261
Scotland	Conservatives	0	0
	Labour	46	5
	Lib Dem	0	10
	SNP	0	5
	Other	0	1
Total	46	21	
Wales	Labour	24	9
	Lib Dem	0	2
	Plaid Cymru	0	4
	Total	24	15
Northern Ireland	DUP	0	5
	SDLP	0	3
	Sinn Fein	0	0
	Ulster Unionist	0	6
	Total	0	14

⁴⁰ Quoted in BBC Online News, *Scots MPs attacked over fees vote*, 27 January, 2004.

On a strict reading of the Bill it appears that critics who argued that Scottish MPs should not have voted because the Bill does not apply to Scotland are only partially correct. While the territorial extent of the Bill covers England and Wales, (including the proposals for variable tuition fees), Part 1 of the Bill provides for the establishment of the Arts and Humanities Research Council which extends to the whole of the UK. The fact that part of the Bill has UK-wide provisions has led some to suggest that Scottish MPs were justified in participating in the vote – even though the provisions for tuition fees only applied to England and Wales.

This highlights a practical problem with the Conservative proposals for certifying Bills. It is actually much more difficult to stipulate the territorial extent of Bills – often the same Bill will contain some provisions which apply only to some parts of the UK while having a different territorial extent for others. As the Higher Education Bill shows, to stand a chance of working, certification would have to be applied ‘Part by Part’ or even ‘clause by clause’. For many such a system would be too complex to be applied politically at Westminster. The ‘legislative hokey-kokey’ of different MPs voting on different issues would be a recipe for ‘constitutional chaos’.⁴¹

To illustrate the difficulty Figure 7 breaks down the various provisions in the Higher Education Bill by territorial extent.

Figure 7: Bills by territorial coverage: The example of the Higher Education Bill

The Territorial Extent of the Higher Education Bill ⁴²
(1) Subject to subsections (2) to (4), this Act extends to England and Wales only.
(2) The following provisions also extend to Scotland and Northern Ireland—
(a) Part 1,
(b) section 42,

⁴¹ HC Deb 21 January 2004 Col 1427. George Foulkes used the phrase ‘legislative hokey-kokey’.

⁴² Taken from Part 5 of the Higher Education Bill as introduced in the House of Commons on 8 January.

(c) sections 43, 44, 47 and 48, and

(d) this section and section 50.

(3) Subsections (1), (2) and (5) of section 39 also extend to Northern Ireland.

(4) Any amendment or repeal made by this Act has the same extent within the United Kingdom as the enactment to which it relates.

The technical difficulties associated with determining who should vote are further complicated by the cross-border implications of the policy. Many Scottish (and Northern Irish) MPs felt entitled to vote on the Bill because the introduction of tuition fees in England would have an impact on Scottish universities. Even Tam Dalyell, the Labour MP who has championed the West Lothian Question since the devolution debates of the 1970s, and who through his self-denying ordinance, has not voted on any ‘English-only’ legislation since devolution, was persuaded to vote because of the implications for higher education in Scotland.⁴³ The SNP criticised the Conservatives abstaining in the vote, which they claim will adversely affect Scottish universities and therefore damage the ‘Scottish interest’.⁴⁴

Tuition fees will not be introduced in Northern Ireland but MPs there did vote on the Bill. The leader of the Ulster Unionists, David Trimble said that, given the financial arrangements underpinning the devolution settlement,⁴⁵ the West Lothian Question was ‘illusory’ and dismissed the Conservative proposals to define voting rights by territory as ‘completely misconceived’. He also said that MPs are elected not to be ‘regional or parochial’ but to use their judgement on issues that come before the House’.⁴⁶

⁴³ At a press conference the Prime Minister said, ‘university finance is an area where there is bound to be an impact between what happens in Scotland and what happens in England.’ See www.number-10.gov.uk/output/Page5181.asp The Scottish Parliament’s Enterprise Committee concluded that the introduction of tuition fees in England would have an ‘adverse’ impact on Scotland’s universities. See the report on BBC Online news, *Fears voiced over ‘top-up fees’*, <http://news.bbc.co.uk/1/hi/scotland/3329267.stm>

⁴⁴ The SNP have a policy of not voting on English-only legislation, defined as legislation that has no ‘direct or indirect legislative or financial impact on Scotland, Wales or Northern Ireland.’

⁴⁵ The Barnett formula allocates money to Scotland, Wales and Northern Ireland through a block grant based on funding decisions for England. Thus a spending decision in England has a consequence for the funding allocated to the devolved territories. The Liberal Democrat Scottish spokesperson, John Thurso has argued that as such, ‘UK members vote on UK Treasury matters, and that means voting on virtually every Bill.’ HC Deb 21 January Col 1407.

⁴⁶ HC Deb 21 January Col 1419.

What is clear is that government are not prepared to accept any limitations on what Scottish MPs can vote on. They have consistently rejected calls to change the voting rights of MPs. In opposing the Conservative led debate on 21 January the Parliamentary Under-Secretary of State for Scotland, Anne McGuire said:

‘Parliament is the Parliament for the whole of the United Kingdom ... all MPs are equal in status and have a right to speak and vote on all matters ... [the government] oppose any step that would undermine the Union of the United Kingdom.’⁴⁷

The government believe that the Conservative proposals are practically unworkable, and that they would create two classes of MPs, which would be anathema to the notion of parliamentary sovereignty. Writing in the Guardian, the Secretary of State for Wales, Peter Hain, accused the Conservatives of advocating a prescription for the ‘Balkanisation of Britain’.⁴⁸ He said that under the British constitution has always had anomalies – citing the example of Stormont, when Northern Ireland had devolved government but Northern Irish MPs were still entitled to vote on matters affecting other parts of the UK. Speaking for the government, Chris Leslie, said that under the Conservatives proposals, their own shadow Welsh Secretary, Bill Wiggin, whose constituency is in England, would not be able to vote on issues relating to Wales.⁴⁹

Labour ministers suggested that the revival of Conservative interest in the West Lothian Question was driven not by principle but by opportunism. They argued that the Conservatives were motivated by the possibility that the government might lose the vote. ‘[the motion in the debate] is not constitutional. It is an attempt by the Tories to gerrymander votes in the House to their own political ends’.⁵⁰ They also alleged that the shadow Scottish Secretary, Peter Duncan, has in the past voted ‘37 times on non-Scottish’ issues – including on the Mersey Tunnels Bill.⁵¹ In a poll conducted in February 2004, respondents were asked for their views about the motives behind the Conservative’s policy. The result was mixed: 42% said that they thought the

⁴⁷ HC Deb 21 January 2004 Col 1397.

⁴⁸ Peter Hain in The Guardian, *The Balkanisation of Britain*, January 21 2004.

⁴⁹ HC Deb 21 January 2004 Col 1434.

⁵⁰ HC Deb 21 January 2004 Col 1403.

⁵¹ HC Deb 21 January 2004 Col 1435.

Conservatives ‘genuinely believe it is wrong in principle for Scottish MPs to be able to vote on bills relating to England and Wales’, while 38% said that, they ‘believe that the Conservatives can never again win a large number of Scottish seats and want to make it difficult for any Labour Government to get its legislation through Parliament’.⁵²

Perhaps the most significant problem with the proposals to restrict Scottish MPs from voting on English matters is that, followed to its logical end, this would mean that a UK government that was dependent upon the support of its non-English MPs for a majority, would not be able to legislate for the largest part of the UK. It is hard to see how such a scenario would not create constitutional deadlock. The government pointed out that one person who conceded this point is the current shadow Secretary of State for local and devolved government, David Curry. In 2000 he said:

‘I fear that we shall be providing a weapon for an assault on the integrity of the Union ... If we exclude Scottish MPs from our deliberations on purely English affairs – assuming that those can be isolated and defined, which I doubt.’⁵³

The vote on tuition fees, along with the foundation hospital vote has rekindled debate on the West Lothian Question. This will persist if the government continue to require the support of its Scottish MPs to pass controversial legislation⁵⁴ and if the Conservatives continue to air their opposition.

However, it remains unclear whether this renewed interest in the issue is having any impact on the public, who hitherto, have failed to express much concern. A YouGov poll commissioned by the Telegraph in February 2004 suggests that there is growing dissatisfaction among the voters in England and Wales *and* in Scotland over the West

⁵² Yougov poll commissioned by the Daily Telegraph, *The Scots don't want to rule England*, 16 February 2004.

⁵³ Quoted in HC Deb 21 January 2004 Col. 1402.

⁵⁴ The most surprising feature of the current debate on the West Lothian Question is that it is happening under a Labour government which controls 323 of the 529 English seats. Under such parliamentary arithmetic, West Lothian votes were not expected to surface. The reason they have is because the government have pursued policies that have proved extremely controversial for its own backbenchers.

Lothian anomaly.⁵⁵ The poll found that 66% of English and Welsh voters and 78% of Scottish⁵⁶ voters felt that Scottish MPs should not be allowed to vote on matters that only affect England and Wales. Referring specifically to the higher education vote, the poll found that 67% of respondents in England and Wales were bothered a great deal or quite a lot by Scottish MPs determining the vote. Only 18% of English and Welsh voters and 20% of Scottish voters felt that Scottish MPs should continue to vote on all matters that come before Parliament. 49% of English and Welsh voters went as far as saying that Scottish MPs should not be allowed to speak in debates on English matters.

The Telegraph said that the poll showed that ‘voters from all parts of Britain are angry’ that Scottish votes proved decisive in the tuition fees saga. Michael Howard said the poll strengthened the case for his policy. However, some caution should be noted. The same poll found that 88% of voters in England and Wales attach very little importance to the relations between Scotland and England when it comes to voting in general elections, suggesting that most voters lack any strong interest in the issue.

1.5 The Barnett Formula

Lord Barnett has called for the Treasury formula used to allocate public expenditure to Scotland, Wales and Northern Ireland, (which was named after him following its introduction while he was Chief Secretary to the Treasury during the Callaghan government), to be scrapped. In a debate in the House of Lords on 6 January 2004, Lord Barnett said that the population based formula was unfair to the rest of the country, since it gives Scotland an additional £1000 per head of public expenditure compared to England.⁵⁷ In a subsequent interview for *Scotland on Sunday*, he said:

‘It has become increasingly unfair to the regions of England. I didn’t create this formula to give Scotland an advantage over the rest of the country when it comes to public funding. It is a great embarrassment to have my name attached

⁵⁵ Daily Telegraph, *Voters united on both sides of the border*, 16 February 2004.

⁵⁶ A poll commissioned by the Herald newspaper also found that a majority of Scots do not think that Scottish MPs should vote on non-Scottish issues. *Ban our MPs' vote on English issues, say Scots*, 9 December 2003.

to so unfair a system, especially as it was only going to last a year. It has now lasted for more than twenty years, because successive governments have failed to deal with it for fear of upsetting the Scots.’

Lord Barnett advocates replacing the population-based formula with a ‘needs-based formula’, which would assess the needs of the different components of the UK and allocate expenditure accordingly. He is not the first to question the suitability of the Barnett formula. The Lords Constitution Committee recommended that Barnett should be reviewed and that an independent commission should conduct a needs assessment for the UK, while the Select Committee on the Office of the Deputy Prime Minister claimed that, ‘the allocation of public funding across the nations and regions of the UK does not reflect the patterns of need across the country’, and also called for a review of Barnett.⁵⁸

However, the government have consistently ruled out a review - responding to Lord Barnett for the government, Lord McIntosh said that the formula had survived because it is simple to understand and straightforward to administer.⁵⁹

A YouGov poll commissioned by the Daily Telegraph in February 2004 found that 64% of English (and Welsh) voters said that it bothered them a great deal or quite a lot that, ‘the UK spends more money per head of population in Scotland than in England.’⁶⁰ Analysing the poll, Professor Anthony King said that it, ‘suggests that pressure could begin to mount in England and Wales for UK government expenditure in Scotland to be cut’.⁶¹ Some have speculated that if regional assemblies are set up in the three northern English regions, giving them enhanced political clout, the prospect for reform of the Barnett system will be accelerated.⁶²

⁵⁷ HL Deb 6 January 2004 Col 81.

⁵⁸ Select Committee on the Constitution, *Devolution: Inter-institutional relations in the United Kingdom*, Second report, HL 28, session 2002-03. Committee on the Office of the Deputy Prime Minister, *Reducing Regional Disparities in Prosperity*, Ninth report, HC 492, session 2002-03.

⁵⁹ HL Deb 6 January 2004 Col 83..

⁶⁰ The Daily Telegraph, *Voters united on both sides of the border*, 16 February 2004.

⁶¹ Daily Telegraph, *Voters united on both sides of the border*, 16 February 2004.

⁶² See the Daily Telegraph, *Northerners could take Scots cash*, 22 January 2004.

1.6 Supreme Court: Response from the Constitutional Affairs Select Committee

On 10 February the Constitutional Affairs Committee published its report, *Judicial appointments and a Supreme Court*, in response to the government's proposals for a new Supreme Court and Judicial Appointments Commission, and for the abolition of the office of Lord Chancellor.

1.7 The Territorial Select Committees

The Scottish Affairs Committee

The Committee published one report this quarter:⁶³

- 3 February 2004 *Coincidence of Parliamentary Constituency Boundaries in Scotland and the Consequences of Change* (First Report HC 77).

The Welsh Affairs Committee

The Committee has published three reports in the last quarter:⁶⁴

- 27 January 2004 *Work of the Committee* (Second Report – HC 178).
- 15 January 2004 *The Empowerment of Children and Young People in Wales* (First Report HC 177).
- 11 December 2004 *The Government Response to the Fifth Report of the Committee Session 2002-03: The Draft Audit (Wales) Bill* (First Special Report HC 87).

⁶³ See section 1.2 for a wider discussion of this report. Publications from the Scottish Affairs Committee can be found at <http://www.publications.parliament.uk/pa/cm/cmscotaf.htm>.

⁶⁴ All the reports of the Welsh Affairs Committee can be found at <http://www.parliament.the-stationery-office.co.uk/pa/cm/cmwelaf.htm>.

The Northern Ireland Affairs Committee

In October 2003 the Northern Ireland Affairs Committee had a change in its membership. The Labour MP, Stephen McCabe (Birmingham, Hall Green) was replaced with another Labour MP, Iain Luke (Dundee East). In January 2004 the Committee announced that it was setting up a sub-committee to enable it to do conduct more inquiries. The sub-committee will mainly undertake inquiries into issues that were devolved to the Northern Ireland Assembly. Mr Michael Mates MP, Chairman of the Northern Ireland Affairs Committee, said: “As long as the Assembly remains suspended oversight of Northern Ireland issues must continue and we believe the best way of doing this is through a dedicated sub-committee.”⁶⁵ The sub-committee will be chaired by Tony Clarke MP, and all members of the Northern Ireland Affairs Committee will be eligible to participate in its inquiries. The first inquiry will be on the Social Housing Provision in Northern Ireland.

The Committee published three reports this quarter:⁶⁶

- 11 February 2004 *The separation of paramilitary prisoners at HMP Maghaberry* (Second Report HC 302-I).
- 15 January 2004 *The Committee’s Work in 2003* (First Report HC 146).
- 7 January 2004 *Government Response to the Committee’s Eighth Report on Illegal Drugs Trade and Drug Culture in Northern Ireland Session 2002-03* (First Special Report HC 180).

1.8 The Grand Committees

⁶⁵ Taken from a Northern Ireland Affairs Committee press release outlining the details of the new sub-committee. Please see

http://www.parliament.uk/parliamentary_committees/northern_ireland_affairs/niac_pn_7_03_04_.cfm

⁶⁶ All the reports of the Northern Ireland Affairs Committee can be found at <http://www.parliament.the-stationery-office.co.uk/pa/cm/cmniaf.htm>.

The **Welsh Grand Committee** met on 16 December 2003, holding a debate on *The Government's Legislative Programme and Public Expenditure in Wales*⁶⁷ as outlined in the Queens Speech.

The **Northern Ireland Grand Committee** met on 15 January 2004, to debate the *Proposal for a Draft Rates (Amendment) (Northern Ireland) Order 2004*.⁶⁸ It also met on 26 February 2004 to discuss the *Draft Budget (Northern Ireland) Order 2004*.⁶⁹

The **Standing Committee on Regional Affairs** met on 11 December 2003 to debate, *The English Regions and Referendums on Elected Regional Assemblies*.⁷⁰

1.9 Intergovernmental Relations

The formal intergovernmental machinery has not been used this quarter – there have been no meetings of the Joint Ministerial Committees or of the British-Irish Council. The Joint Ministerial Committee (JMC) has still not met in full plenary session. The meeting is planned to take place in Edinburgh but a date has still not been set. The Memorandum of Understanding states that ‘Plenary meetings of the JMC will be held at least once every year’ – but given that the last plenary meeting of the JMC was held on 22 October 2002, this commitment will now not be met.⁷¹

⁶⁷ The debate can be viewed at <http://www.publications.parliament.uk/pa/cm200304/cmstand/welshg/cmwelsh.htm>.

⁶⁸ The debate can be viewed at <http://www.publications.parliament.uk/pa/cm200304/cmstand/nilrelg/st040115/40115s01.htm>

⁶⁹ The debate can be viewed at <http://www.publications.parliament.uk/pa/cm200304/cmstand/nilrelg/st040226/40226s01.htm>

⁷⁰ The debate can be viewed at <http://www.publications.parliament.uk/pa/cm200304/cmstand/cmreg/st031211/31211s01.htm>

⁷¹ *Memorandum of Understanding and Supplementary Agreements*, Cm 5240, (London: The Stationery Office, 2001), p. 12.