

Act of Union Bill

EXPLANATORY NOTES

INTRODUCTION

Why a new Act of Union?

This draft Bill proposes a new Act of Union for the United Kingdom. The purpose is to cement the fundamental structure of the UK for the foreseeable future, based on principles and processes that command the general support of people throughout the country.

The Bill aims to preserve and codify the most important and successful features of the present system, such as the notion of mutual support and shared rights and values; but it also suggests change on issues where there is thought to be general lack of content, including the governance of England and the structure of the House of Lords.

The Bill is not a full written constitution. Where something is generally perceived to be working well, such as the judicial and court structure, the Bill does not seek to reinvent it.

The essence of the policy of the Bill is that it starts from the position that each of England, Scotland, Wales and Northern Ireland is a unit that both can and should determine its own affairs to the extent that it considers it should; but that each unit should also be free to choose to share, through an efficient and effective United Kingdom, functions which are more effectively exercised on a shared basis.

That is why the Long Title to our draft Act of Union restates the purpose of the United Kingdom in the following terms, as an effective alternative to independence or devolution: “a renewed constitutional form for the peoples of England, Scotland, Wales and Northern Ireland to join together to form the United Kingdom”. The Title adds “that the peoples of those nations and parts have chosen to continue to pool their sovereignty for specified purposes, and to provide universal citizenship with social and economic rights”.

The purpose of publishing the draft Bill in this form now is to invite views from people throughout the UK. The Constitution Reform Group, which is the author of this draft Bill, welcomes thoughts and suggested changes from everyone with an interest in the future of the Union: our aim is to find as much common ground as possible, with a view to providing a basis for the continuation of the Union which meets the aims and aspirations of as many of its citizens as possible.

We are hoping that readers will engage with this document and let us have their views, including areas where they agree with the draft but more importantly areas where they

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disagree and suggest amendment. We believe that once this document has had the benefit of revision as a result of wide public consultation, it will command the respect of government as an expression of the will of the people, and will deserve to be presented to Parliament by the Government of the day and enacted on that basis.

The last few years have seen constitutional tensions and divisions within the United Kingdom on a number of issues; those tensions continue to be felt and to frustrate and concern many, and the divisions have left scars that could threaten the harmonious development of our country for years to come. This Bill is an opportunity to resolve those tensions and to heal those scars, by celebrating what is most successful about the constitution of the United Kingdom, and establishing it on an even sounder basis for the future.

Overall structure of the Union

The draft Bill proposes a structure for the continuation of the Union which is broadly federal in nature: there will be a central government and legislature dealing with certain matters on a UK-wide basis, and governments and legislatures of the units of the UK dealing with all other matters.

The main difference between the approach of the draft Bill and the present system of incremental devolution is the recognition that devolution suggests limited repatriation of powers that belong to the individual units, and is therefore an inherently unsatisfying process tending inevitably towards eventual dissolution. The Bill starts from the assumption that the nations and parts of the United Kingdom are entitled to full sovereignty and self-determination, which should be the starting point for the structure of the constitution; the “centre” should be created by those nations and parts, to deal with matters that they wish to have addressed on a shared basis, for which purpose they choose to pool their sovereignty to a defined and limited extent. This fundamental principle is expressed in the Long Title of the Bill.

The Bill will enact core purposes for the Union, and core functions to be addressed at central level. There will be a mechanism for changing both, but requiring a sufficiently high degree of consensus to avoid constant change at the whim of the Government of the day. The aim is to achieve stability, while allowing for necessary flexibility as the world changes.

The Bill recognises the principle of self-determination as a fundamental principle of the Union: each nation and part of the United Kingdom remains within it unless and until the people of that nation or part express a wish to leave.

Commencement referendum

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The purpose of the Bill is to establish consensus within the country as a whole about its future structure. It therefore needs to have the authority of the people before it becomes law. In order to ensure that the people have absolute clarity about what it is they are approving, we propose that the Bill should be passed by Parliament first, and then commenced as law only if and when it receives a significant majority approval in a referendum. The Bill provides that the majority needs to be achieved not only in the UK as a whole, but also within each separate nation and part.

COMMENTARY ON CLAUSES

Overview

The draft Bill is designed to be treated by the courts and other readers as an over-arching piece of constitutional legislation. It establishes a system for the overall governance of the United Kingdom which is partly new, creating a broadly federal system of government, partly codifies or restates what already happens, and partly rests on systems (such as the courts) which presently work well and do not need to be reshaped or restated.

The draft Bill leaves a number of matters to be further developed, or susceptible to change, by further primary legislation. For example, the Part about the structures for public finance raising and spending make reference to matters to be addressed in annual Finance Bills. And one of the two versions of the Part about English governance leaves matters to be developed by city deal and regional devolution new primary legislation.

Part 1 – Status of the Union and core purposes

Part 1 of the draft Bill—

- affirms the continuity of the United Kingdom as a Union between England, Scotland, Wales and Northern Ireland;
- establishes the principle of self-determination for those nations and parts;
- establishes principal purposes of the Union, including rule and law and quality, the protection of fundamental rights and freedoms, the provision of a safe and secure society, the provision of a strong economy and the protection of social and economic rights.

Part 2 – Central policy areas

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Part 2 of the draft Bill establishes the matters on which the individual nations and parts of the Union choose to pool their sovereignty to achieve more efficient and effective governance. The initial central areas are listed in the Schedule to the Bill, and they will determine both the legislative competence of the central and non-central legislatures in the restructured Union, and the areas of competence of the central and non-central governments.

There is power for non-central legislatures to legislate incidentally outside their areas of competence with the consent of Parliament.

Disputes about areas of competence are to be decided by the Supreme Court.

Part 3 – England

Part 3 of the draft Bill makes provision for the governance of England, and offers two alternative models.

The first involves the creation of a directly elected English Parliament, similar to the Scottish Parliament, to deal with non-central areas (including health, education, local government and other matters presently devolved).

The second model continues the present position of Parliament legislating both on central matters for the UK as a whole and on all matters for England; but it puts the “English Votes for English Laws” system on a statutory basis by restricting legislation on England-only matters to English MPs alone; and it allows cities and regions within England to develop self-governance through the increased use of city deals and the development of new regional arrangements. These systems would be further developed in separate primary legislation arising out of this draft Bill.

Part 4 – Scotland

Part 4 of the draft Bill makes high-level provision for the governance of Scotland.

In essence, Part 4 simply confirms the existing arrangements for devolution. In particular, it preserves the Scotland Act 1998 as the core Act about the government and legislature of Scotland.

The Part also paves the way for amendments to ensure that all matters of legislative and administrative procedure in Scotland are determined by the Scottish institutions themselves and not imposed from central Government or by Parliament. In that respect it builds on and develops the changes made by the Scotland Act 2016.

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The draft Bill does not reduce or curtail in any way the areas of substantive or procedural self-determination already provided by the devolution arrangements.

Part 5 – Wales

Part 5 of the draft Bill makes high-level provision for the governance of Wales.

In essence, Part 5 simply confirms the existing arrangements for devolution. In particular, it preserves the Government of Wales Acts 1998 and 2006 as the core Acts about the government and legislature of Wales, together with the 2016 Act expected to arise out of the present Wales Bill before Parliament.

The Part also renames the National Assembly for Wales as the Welsh Parliament.

The Part also paves the way for amendments to ensure that all matters of legislative and administrative procedure in Wales are determined by the Welsh institutions themselves and not imposed from central Government or by Parliament. In that respect it builds on and develops the changes proposed by the draft Wales Bill published by the Government in 2015.

The draft Bill does not reduce or curtail in any way the areas of substantive or procedural self-determination already provided by the devolution arrangements.

Part 6 – Northern Ireland

Part 6 of the draft Bill makes high-level provision for the governance of Northern Ireland.

In essence, Part 6 simply confirms the existing arrangements for devolution. In particular, it preserves the Northern Ireland Act 1998 as the core Act about the government and legislature of Northern Ireland.

The draft Bill does not reduce or curtail in any way the areas of substantive or procedural self-determination already provided by the devolution arrangements.

Part 7 – Parliament

Part 7 of the draft Bill deals with the continuation of Parliament under a new broadly federal system. It offers two alternative versions, to match the two alternative versions of governance for England offered in part 3.

Version A abolishes the House of Lords.

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- The United Kingdom Parliament will be composed of two units as it is now: an initiating Chamber and a revising Chamber (or Scrutiny Committee).
- The House of Commons will remain as the initiating Chamber of the reconstituted UK Parliament. To reflect its changed responsibilities as the central or federal Parliament, the number of MPs will be reduced to 146 (a number chosen on the basis of 2 for each of the units presently used for European Parliamentary elections).
- A new Revising Chamber or Scrutiny Committee for the UK Parliament will be created, composed of delegates elected by each of the following: the English Parliament; the Scottish Parliament; the Welsh Parliament; and the Northern Ireland Assembly.
- The continued sovereignty of the UK Parliament, as restructured, is expressly preserved.
- MPs returned for an English constituency together form a Revising Chamber for the English Parliament; and equivalent arrangements operate for the other legislatures.

Version B revises the House of Lords.

- The number of members is reduced to around 400, with 75% being directly elected and 25% being appointed.
- The elected members will be elected in accordance with provision to be made by the Representation of the People Acts, possibly based the regional and constituency arrangements presently used for European Parliamentary elections, but with overlapping periods of office for different groups in order to provide continuity.
- The appointed Members will be chosen by a new Appointments Commission, and are expected to be independent of political parties and of government; they will be appointed to contribute knowledge and experience of commercial, professional, cultural and social matters.
- As with Version A, the Revising Chambers (or Scrutiny Committees) for the Scottish, Welsh and Northern Ireland legislatures are drawn from the regional representatives in the House of Commons.

Part 8 – Public money

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Part 8 of the draft Bill sets out the principal mechanisms that will control the raising and expenditure of public money under the revised system.

The Part opens by setting the public finance principles. These include: that central functions should be financed from central taxes; that the local governments should be free to raise local taxes and spend them on local functions, in accordance with the principle of additionality; that tax revenue should be applied by the local governments so far as possible; that central taxes should be shared within the Union on the basis of local need and different taxable capacity; that the local governments should be able to raise funds through public borrowing, but not at the expense of the financial stability of the United Kingdom.

The draft Bill contains a list of taxes which are to be raised at central level: income tax; corporation tax; inheritance tax; VAT; and other taxes presently collected by HMRC. The inclusion of income tax in the list of central taxes is made expressly without prejudice to the right of the local legislatures to make provision for altering the rate of tax so as to provide local funding for local activities, in accordance with the principle of additionality.

Flexibility in the light of experience and fiscal changes is provided by the ability to amend the list by an annual Finance Act at the time of the Budget.

The draft Bill introduces the concept of occasional Public Spending Acts, to adjust the distribution mechanism for public expenditure in different areas of the country from time to time.

- There is an initial presumption of distribution by reference to an average per capita formula, with modifications to reflect circumstances and changing trends.
- The draft Bill also provides for the establishment of a UK Funding Committee, to operate the distribution principles in accordance with the Public Spending Acts.
- The aim is to avoid a repetition of the present experience with the Barnett Formula, a solution that was intended to be temporary but which has become entrenched due to the lack of a mechanism for development and adjustment.

On public borrowing, the draft Bill—

- permits each non-central Government to borrow money to fund public expenditure;
- establishes a Public Borrowing Board to set limits, terms and conditions for public borrowing;

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- provides for borrowing within those limits, terms and conditions to be certified as “authorised borrowing”, which is automatically underwritten by central Government and is therefore expected to receive favourable treatment in international financial markets;
- renames the Bank of England as Bank UK, and provides for it to continue to exercise central banking functions for the United Kingdom;
- recognises that transitional rules will be necessary to ensure an orderly and affordable transition from the present distribution systems.

Part 9 – Defence and security

Foreign affairs, defence and security are identified by the draft Bill as central functions to be exercised at a UK-wide level.

Part 9 of the draft Bill—

- imposes duties on central authorities to ensure that functions are exercised in the interests of protecting and enhancing the security of all citizens;
- complements those duties by duties for local and regional authorities to cooperate with each other and with the central authorities for that purpose;
- requires the establishment of a Defence and Security Liaison Committee to coordinate UK defence and security on a nation-wide basis.

Part 10 – Home affairs

The draft Bill confirms some of the key components of the UK-wide home affairs mechanisms. In particular, it makes provision about the UK-wide court system, and for the unified UK-wide civil service.

Part 11 – Commencement referendum

The draft Bill will be passed by Parliament in the normal way; but it will not come into force as law unless and until the citizens of the United Kingdom vote to commence it in a referendum. Part 11 makes provision about that referendum; in particular—

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- commencement will be dependent on a majority of votes cast in the UK as a whole, and on a majority in each of England, Scotland, Wales and Northern Ireland;
- the Question is set out in the Bill in a simple form;
- the Government is required to hold the referendum between 10 and 14 months after the Bill receives Royal Assent.