



Bingham Centre for the Rule of Law

Constitutional Review: Devolution in the United Kingdom

### CALL FOR EVIDENCE

Under the chairmanship of Professor Sir Jeffrey Jowell QC, the Bingham Centre for the Rule of Law is undertaking a major review of the United Kingdom constitution in the light of the result of the Scottish independence referendum and the commitment, enshrined in the report of the Smith Commission, to further devolution. The Review will focus on the following three themes:

- The Constitutional Framework of Devolution
- The Representation of English Interests
- The Fiscal Framework of Devolution

**We would welcome written submissions on any aspects of the above.** Questions to be considered under each heading are indicated below (for illustration: what follows is not intended to be exhaustive).

#### *The Constitutional Framework of Devolution*

The United Kingdom is neither a federal nor a unitary constitution: it is a Union constitution. What are the principles of Union constitutionalism? How are they best articulated, understood and defended? How has the case-law of the UK Supreme Court and other judicial bodies contributed to a jurisprudence of “new Unionism”? If the Smith Commission’s recommendation that Westminster legislation should declare the Scottish Parliament to be “permanent” is implemented, what constitutional consequences will this have for the UK, for Scotland, for the other devolved nations, and for England? What of the Smith Commission’s recommendation that the Sewel convention be placed on a statutory footing? What are the constitutional and legal implications of this? Are there any implications for human rights and

membership of the EU? Finally, what should happen to the UK's inter-governmental machinery? Should any of it be placed on a statutory footing?

### *The Representation of English Interests*

There are two elements to this, each equally important. On the one hand is the West Lothian Question and its possible answer, "English votes for English laws" ("EVEL"). What would EVEL entail? On the other hand is the matter of devolution (or decentralisation) within England. The city deals programme may be one of the more important, if unheralded, achievements of the present UK Government, but it has not been understood in constitutional terms. Is it only about economic regeneration and development, or is there something about the institutions of local government and/or regional representation within England latent within the scheme of city deals? If so, what about the shires, and more rural areas? Moreover, can such an approach be accommodated within the existing framework of local authorities and their boundaries, or does it require change to those?

### *The Fiscal Framework of Devolution*

Prime among the areas of enhanced devolution referred to but not spelled out by the Smith Commission is the fiscal framework. How should this seek to balance risk-sharing and equity across the whole of the United Kingdom, versus autonomy for devolved governments? Should the UK play a role in assuring a particular set of life chances or levels of public services across the whole of the UK? If so, how should that be articulated and implemented? Should any of the financial framework be enshrined in statute, or should it continue to be largely non-statutory in nature? In Scotland it is understood that the Barnett formula is to be sustained. But what should the constitutional future of Barnett be in the new era of fiscal devolution? How should the block grant be recalibrated to take into account the greater share of devolved budgets which are now to be raised directly by devolved legislatures? Is noticeable tax competition likely within the United Kingdom and, if so, does this raise constitutional problems?

### *Call for Evidence*

We should be delighted to receive written evidence from anyone in support of the Review. Further details of the Review, including information about our personnel, may be found on our web pages here:

[http://www.biicl.org/documents/420\\_media\\_release\\_-\\_constitutional\\_review\\_devolution\\_in\\_the\\_uk\\_-\\_dec\\_2014.pdf](http://www.biicl.org/documents/420_media_release_-_constitutional_review_devolution_in_the_uk_-_dec_2014.pdf)

We are working to a tight timetable: it would assist us greatly were submissions to reach us by **Friday 30 January 2015**. Please email your submission to Sandra Homewood on [s.homewood@binghamcentre.biicl.org](mailto:s.homewood@binghamcentre.biicl.org).