

Constitution Unit

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A constitution in flux

The UK is experiencing a period of deep constitutional uncertainty. In at least four key areas, structures of power and governance are in flux.

The first of these, of course, is the nature of the UK's future relationship with the European Union, to which the Brexit negotiations will shortly turn. The degree to which the UK continues to pool its sovereignty with other European countries depends on the form of that relationship: how far, and on what issues, the UK continues to adhere to EU rules, align closely with them, or follow its own separate path. Theresa May set out her most detailed proposals yet in a [speech at Mansion House](#) on 2 March, advocating close alignment outside the structures of the EU Single Market and Customs Union. On 7 March, the President of the European Council, Donald Tusk, published [draft guidelines](#) for the EU's position. As before, this emphasises 'that the four freedoms of the Single Market are indivisible and that there can be no "cherry picking."' What deal will emerge from the negotiations (see p.2) is entirely unclear.

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Theresa May with EU Council President Donald Tusk at a meeting to discuss progress of the Brexit negotiations, 8 December 2017

The government's preferred path will face stiff resistance in parliament too. In late February [Jeremy Corbyn signalled](#) that Labour wants a UK-EU customs union (an issue also central to the conclusions reached by the [Citizens' Assembly on Brexit](#)). Consequently the government now risks defeat on an [amendment to the Trade Bill](#) pursuing the same objective, tabled by Conservative backbencher Anna Soubry. Beyond that, an amendment to the EU (Withdrawal) Bill passed in the House of Commons in December (see p.3) guarantees that the deal between the UK and the EU agreed through the Brexit negotiations will need to be endorsed by an Act of Parliament in the UK. Brexit's opponents are increasingly vocal and organised, and occupy a strong position in Westminster. The odds remain that Brexit will happen, but that isn't guaranteed.

The second area of constitutional flux affects the relationship between the UK executive and legislature. The Withdrawal Bill has raised considerable concerns about an executive power grab, particularly through the broad-ranging powers that the government has sought for making changes through secondary legislation. The Commons, in which the government's majority is very delicate, asserted itself in scrutinising the bill – inserting the amendment noted above and forcing the government to make other significant concessions. The Lords will likely add further changes, some of which the Commons will not overturn. At the same time, the upper chamber seems finally to be having some success in restricting the Prime Minister's historic monopoly decision-making power over appointments of new peers (see p.5).



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As noted by Unit Director Meg Russell in a [new publication](#), parliament has become gradually more challenging for government to control. Will Brexit enhance or reverse this process?

The third area of uncertainty relates to the structure and pattern of devolution. Many of the powers exercised at EU level that will return to the UK after Brexit are in policy areas devolved to the authorities in Holyrood, Cardiff Bay, and Stormont. The UK government initially wanted these to be reserved in the first instance to Westminster; the Scottish and Welsh governments wanted them to transfer immediately to the devolved administrations. The UK government offered significant concessions in February, but Scotland's First Minister, Nicola Sturgeon, rejected the proposals, and agreement is yet to be reached (see p.4). At stake is not simply the ultimate location of these specific powers, for if the UK government ultimately concluded that it could proceed only by overriding the objections of the Scottish Parliament and Welsh Assembly, that would challenge the very foundations of the devolution settlement. Meanwhile, as acknowledged in a new Unit report on *Options for an English Parliament* (see p.16), in these delicate negotiations no actor speaks uniquely for England.

Fourthly, and beyond this, there is particular constitutional uncertainty in Northern Ireland. Devolved government has now been suspended for over a year, and, a briefly flickering flame of optimism in early February was brusquely extinguished (see p.13). There is little hope that this situation will change soon. The outline Brexit divorce terms that were patched together in December between the UK government and EU leaders offered warm assurances that Brexit will not affect the border between north and south in Ireland or undermine the Good Friday Agreement. But the spat over the European Commission's draft text translating those terms into law shows how uncertain it remains whether such assurances can be fulfilled.

This pervasive atmosphere of change and flux extends well beyond Brexit and the constitution. In the social sphere, widespread allegations of sexual misconduct in film, business, charities, and elsewhere have prompted searching discussions of sexual norms. Revelations about gendered pay inequality and growing recognition of the harms done by online bullying have added to pressure for change. The political world has itself been hit by parallel developments, leading to two cabinet

resignations (see p.7) and to two reports: one, on *Intimidation in Public Life*, published in December (see p.11); the other – published in the week of the hundredth anniversary of the initial enfranchisement of women – on sexual harassment and the need for new complaints procedures in parliament (see p.6).

Flux has also come to characterise the relationship between politics and the internet. Concerns about the effects of misinformation and 'microtargeted' political messaging are rife, and internet companies, government, and parliament are scrambling to catch up (see p.10). These issues are central to the work of the [Independent Commission on Referendums](#), which was established by the Unit last autumn and will report this summer.



EU-UK negotiations

The heads of the 27 remaining EU countries [agreed](#) on 15 December that 'sufficient progress' had been achieved on the terms of the 'divorce' (Phase I of the Brexit talks) to permit the start of negotiations on the future EU-UK relationship (Phase II). This followed the agreement one week earlier of an outline of the [divorce terms](#). But the scale of the task ahead remains great. Three key issues remain unresolved.

First, while the divorce terms have been agreed in outline, they have not been finally settled. This became starkly apparent on 28 February, when the European Commission published a [draft of the withdrawal agreement](#) that will give those terms legal substance. This draft has not yet been considered by the EU 27. But its suggestion that the UK will have to sign up to a 'common regulatory area' between the EU and Northern Ireland if other ways of maintaining a frictionless border with the Republic of Ireland cannot be agreed was immediately [rejected by Theresa May](#).

The second issue is the character of the transition phase – or, what Theresa May [continues to call](#) the 'implementation period'.

Brussels has [proposed a 21-month transition](#), ending on 31 December 2020, thereby ensuring the UK's exit before the EU's next seven-year financial period begins. But it

has also stipulated certain conditions: that, throughout transition, ‘the whole EU acquis will continue to apply’ in the UK ‘under the jurisdiction of the European Court of Justice’; and that the UK will be bound by any new EU rules that come into force during this period.

These conditions have sparked significant rows in the UK, particularly over a perceived ‘punishment clause’ in a [draft Commission document](#). This suggested that the UK could be partially suspended from access to the Single Market if it was considered in breach of its commitments during the transition phase. While the wording was subsequently withdrawn, it nonetheless led David Davis, the Brexit Secretary, to [accuse the EU of acting discourteously and in bad faith](#).

The third issue regards what precisely the UK wants – particularly in terms of trade and economics – from any deal, and how close it wishes to be to its former EU partners post-Brexit.



Michel Barnier, the European Council's Chief Negotiator.
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Divisions in government and parliament have made it difficult to reach an agreed position. Some, such as Chancellor Philip Hammond, have argued for the closest possible alignment with and access to the Single Market to minimise economic damage. Others, [notably Foreign Secretary Boris Johnson](#), fear that such an approach would leave the UK as merely a ‘vassal state’ of the EU, and prefer a more immediate and dramatic separation.

Following lengthy cabinet discussions at Chequers in late February, Theresa May set out her most detailed Brexit manifesto yet in a [speech at Mansion House](#) on 2 March. She said that the UK should leave the EU’s Single Market and Customs Union but maintain close alignment with EU rules and structures in many areas – what some dubbed the ‘[softest form of hard Brexit](#)’. The EU’s own [draft guidelines](#), published on 7 March, cast doubt on whether this will be attainable. The document proposes a UK–EU free trade agreement, but warns, ‘Such an agreement cannot offer the same benefits as Membership and cannot amount to participation in the Single Market or parts thereof’. At the [press conference](#) launching the guidelines, European Council President Donald Tusk said, ‘Our agreement will not make trade between the UK and EU frictionless or smoother. It will make it more complicated and costly than today for all of us. This is the essence of Brexit’.

The Withdrawal Bill

As reported in [Monitor 67](#) (pages 3–4) the [European Union \(Withdrawal\) Bill](#) began its Commons stages in September. The bill repeals the European Communities Act 1972 and implements arrangements to allow legal continuity while bringing EU legislation onto the domestic statute book. Its committee stage was delayed, but began in mid-November, and the bill completed its Commons stages and passed to the Lords in mid-January.

This flagship Brexit measure has been highly controversial both inside and outside parliament. During [eight days on the floor in Commons committee](#), over 400 amendments and 80 new clauses were proposed to the bill. Some dealt with technical and constitutional aspects, such as oversight of powers delegated to ministers, and the status of the EU Charter of Fundamental Rights. Others were more clearly political, and targeted at the Brexit process – such as suggestions that ministers should publish full independent impact assessments of the economic and environmental consequences before parliament approves the final withdrawal arrangements. The government suffered [one defeat](#), on an amendment proposed by senior Conservative backbencher Dominic Grieve, to require parliament to pass another statute approving the withdrawal deal. On other points the government conceded, including accepting a [proposal from Procedure Committee chair Charles Walker](#) to establish a ‘sifting committee’ for statutory instruments under the bill.

In the Lords the bill can expect an even bumpier ride (as discussed by Constitution Unit Director Meg Russell in January [on our blog](#), and at an [Institute for Government event](#)); though notions that it will be used by peers to ‘block Brexit’ are fanciful. In fact, following the Grieve amendment, parliament’s opportunity to truly block Brexit appears to have been postponed until the subsequent withdrawal bill this autumn, when the big politics will be played out in the Commons. Nonetheless, the Lords’ well-established interest in constitutional matters guarantees that the bill will be closely scrutinised, and probably heavily amended.

On 30–31 January the Lords second reading attracted over 190 speakers – [a record for any such debate](#). Many, including on the Conservative benches, were highly critical from various constitutional perspectives. Concerns were [fuelled by a report](#) from the chamber’s respected Constitution Committee describing the bill as ‘constitutionally unacceptable’, but nonetheless rescuable if amended. Key concerns (summarised [on our blog](#) by the committee’s chair) include the legal status of ‘retained EU law’ (whether primary, secondary or sui generis), the extent of delegated powers, and devolution matters – which the government failed to resolve as promised during the Commons stages. After second reading the Lords Delegated Powers and Regulatory Reform Committee also [reported on the bill](#), proposing significant amendments. The new ‘sifting’ arrangements inserted in the Commons are considered inadequate by critics (including the [Hansard Society](#)), and this committee proposed a far tougher mechanism. After ten days in House of Lords committee, and several days of remaining stages, the bill will probably return to the Commons in May significantly changed.

Other Brexit-related bills are also proving controversial. The [Trade Bill](#) has completed its committee stage in the Commons, but its return to the chamber for report has been postponed – presumably because the government fears defeat on the crucial Soubry amendment (see p.1). The [Taxation \(Cross-border Trade\) Bill](#) has reached the same stage, but is also stalled. The Lords Constitution Committee has [expressed concerns](#) that some powers delegated to ministers in the bill are ‘not constitutionally acceptable.’

Brexit and devolved powers

[Monitor 67](#) (pages 4–5) reported how the Scottish and Welsh governments had announced that they would not support legislative consent motions for the Withdrawal Bill unless major amendments were agreed. Their objections focus on [Clause 11](#) of the bill, which as currently drafted would reserve to Westminster powers currently exercised at EU level, but which are not among the reserved powers specified in the Northern Ireland, Scotland, and Wales Acts. Pressure for Clause 11 to be amended has not let up since the autumn, with committees in the [House of Lords](#), [Scottish Parliament](#), and [National Assembly for Wales](#), plus the [Scottish Conservatives](#), all calling for changes to the bill.

In this context the UK government’s position has shifted away from defending the existing Clause 11 towards seeking to reach agreement on amendments with the devolved administrations. It [initially promised](#) to bring forward amendments at Commons report stage, but this deadline was [not met](#). Ministers now [intend](#) to propose amendments in the Lords.

On 21 February David Lidington, the new Cabinet Office minister with responsibility for devolution consequences of Brexit, circulated a [proposal](#) to Scottish and Welsh ministers representing a significant concession to devolved demands. This would mean that most EU powers not falling in reserved areas would be devolved, with the UK government able to take measures to protect its internal market in a small number of policy areas. The Joint Ministerial Committee (European Negotiations) discussed this offer on 22 February and, while no agreement was reached, the [joint communiqué](#) noted that ‘progress had been made’. On 27 February, however, Scottish First Minister Nicola Sturgeon [rejected the proposal](#), insisting that all powers in devolved policy areas should transfer first to the devolved administrations. She said she was ‘very likely’ to recommend to the Scottish Parliament that it refuse consent to the Withdrawal Bill.

In the meantime, the Scottish and Welsh governments have continued to prepare ‘continuity bills’ that would be introduced if no solution that they consider acceptable is found. Continuity bills would provide for existing EU law to be incorporated into devolved law after Brexit, but could potentially be overridden by Westminster legislation. As Professor Sionaidh Douglas-Scott has [argued](#), the practical purpose of such legislation might be to increase the pressure to amend Clause 11, given that the UK government is unlikely to want to overturn devolved legislation without consent.

Parliament



Size of the House of Lords

The [report of the Lord Speaker's Committee on the Size of the House](#) (see [Monitor 67](#), pages 6–7) was debated in the chamber on 19 December. As summarised [on our blog](#), the great majority of speakers (about 80%) endorsed the proposals of the committee – which was chaired by Crossbencher Lord Burns – to reduce the size of the chamber to 600 through a gradual process. Unusually, there was no closing speech from the government, but early in the debate the Leader of the House, Baroness Evans of Bowes Park, indicated that the Prime Minister would ‘consider carefully’ the recommendations, describing the report as ‘a serious piece of work’.



Question Time in the House of Lords, 23 February 2018.

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Concerns were expressed during the debate about [persistent rumours](#) that Theresa May was due to appoint a new batch of peers, as an essential element of achieving progress is for the Prime Minister to sign up to the limits of appointments set out in the report. Peers again made clear that only after such an assurance will the different groups in the chamber make serious plans to reduce their numbers – though [Labour has officially announced](#) its in-principle agreement to do so, and the implication is that the Liberal Democrats and Crossbenchers will do likewise. On 20 February Lord Fowler, the Lord Speaker of the House of Lords, [published a letter from Theresa May](#) outlining her response to the report – which he warmly welcomed.

The letter indicated, for the first time, that the Prime Minister would not only exercise ‘restraint’ when making new appointments, but would ‘allocate them fairly’ based on general election results. This fell short of wholeheartedly embracing the Burns formula (while other points in the report such as the proposed 15-year terms were judged by the Prime Minister to ‘require further consideration’ to avoid ‘unintended consequences’). Nonetheless it could prove enough, probably following further debate and negotiation, to unlock a deal.

On 30 January [Lord Burns gave oral evidence](#) to the House of Commons Public Administration and Constitutional Affairs Committee (PACAC) on his report. This committee had previously begun an inquiry into the Lords’ size, in November 2016, which was suspended when the 2017 election was called. It remains unclear whether PACAC will now also report on this matter, but if it does a voice from the House of Commons in support of the Burns committee proposals would significantly increase pressure for change.

House of Lords committee structure review

On 18 January the House of Lords Liaison Committee [announced a review](#) into the chamber’s committee structure (as summarised by Chairman Lord McFall on our [blog](#)). Committees in the Lords are structured differently to the Commons – being ‘crosscutting’ rather than shadowing government departments. The largest single component of the current system is the [European Union Committee](#) and its subcommittees, which collectively involve more than 70 members. Their work has clearly been thrown into question by Brexit, which the Liaison Committee’s consultation noted has ‘profoundly changed the political context’. This will hence be a root-and-branch review, expected to report in late 2018 for implementation of changes at the start of the 2019–20 session. The Liaison Committee invites submissions of evidence: the deadline is 19 March.

Procedure Committee report on select committee chairs

As reported in [Monitor 67](#), (pages 5–6), the early general election in 2017 threw into doubt the future of some House of Commons select committee chairs, as standing orders required that the maximum term for chairs was two parliaments or eight years, whichever was the longer. Chairs first elected in 2010 hence

stood to lose their positions. This appeared somewhat anomalous, given that the Fixed-term Parliaments Act sets the standard length of a parliament at five years. The Procedure Committee hence considered the matter, and [proposed](#) in February that the maximum term should be increased to 10 years. One of the beneficiaries would be the chair of PACAC, Bernard Jenkin. The others would be Clive Betts (Communities and Local Government) and David T.C. Davies (Welsh Affairs).

New Liaison Committee holds first session with the Prime Minister

The House of Commons Liaison Committee – which comprises the chairs of select committees – [elected Sarah Wollaston of the Health Select Committee](#) as its new chair in November. The previous chair, Andrew Tyrie (of the Treasury Select Committee), had stood down as an MP at the general election.

The Liaison Committee has held [evidence sessions](#) with the Prime Minister two or three times a year since 2002. The [legacy report](#) published in 2015 recommended holding three sessions a year, and hearings were held with David Cameron in [January](#) and [May 2016](#), and Theresa May in [December 2016](#). However, due to the general election and the suspension of the select committees, the sole evidence session of 2017 took place on [20 December](#). This focused primarily on the state of Brexit and post-Brexit transitional negotiations following the meeting of the European Council earlier that month.

Constitution Committee inquiry on legislative process

The House of Lords Constitution Committee's ongoing examination of the legislative process has turned to how bills are scrutinised in parliament. In February the committee launched a [call for evidence](#), with submissions invited by 16 April. The committee has previously reported on [Preparing Legislation for Parliament](#), in October 2017, and is also due to report on the delegation of powers in legislation.

Harassment and bullying at Westminster

A [cross-party report](#) published in February found that of 1,377 Westminster personnel surveyed, 39% had experienced some sort of non-sexual bullying

or harassment while on the parliamentary estate. In addition, one in five had experienced or witnessed sexual harassment or sexually inappropriate behaviour in the past year. The report called for urgent reform to tackle the culture of harassment and bullying. It made several recommendations, including the creation of an independent grievance procedure to make it easier for victims to report complaints. Leader of the Commons Andrea Leadsom, who chaired the working group behind the report, [said](#) that those found to have engaged in bullying or harassment would face 'real sanctions'. The Commons debated the report in full on 28 February, approving a motion to instruct the House authorities to implement its recommendations.

Proxy voting being considered for MPs

Following a [Backbench Business Committee debate](#) on 1 February by Labour's Harriet Harman and Conservative Maria Miller, the Commons has approved in principle the introduction of proxy voting to facilitate maternity and paternity leave for MPs. This proposal passed by acclamation, and the government has indicated its support. Harman noted that the current system meant that constituents represented by absent members could lose a voice in key decisions. Other MPs spoke against the option of 'pairing' in these circumstances, observing that some MPs [had been branded](#) as lazy for failing to vote whilst on maternity leave. As members noted during the debate, proxy voting could remove the uncertainty and informality of the pairing system and replace it with a clearer, more formalised process for managing absences that does not rely on the Whips for approval. The Procedure Committee has now launched an [inquiry](#) into how the proposal could be implemented, which will consider issues such as how proxies should be appointed, whether they would be obligated to vote as instructed, and how votes should be cast and recorded.

MPs vote to leave parliament during restoration works

[Monitor 67](#) (page 8) noted the repeated delay in holding the promised debate on 'Restoration and Renewal of the UK Palace of Westminster'. But the Commons and Lords have both now held such debates, allowing the [recommendations of the Joint Committee](#) looking into this issue to go ahead – with the proviso that no change of venue will take place until 2025.

The Commons [debate](#) was on Wednesday 31 January. Andrea Leadsom, as Leader of the House, proposed two motions on a free vote, both of which were condemned as delaying actions by backbench speakers on all sides.

An amendment for a full move to another venue in the name of Meg Hillier, chair of the Public Accounts Committee, was passed by 16 votes (236 to 220), specifying that legislation to create a Sponsor Board and Delivery Authority should include a clause that both Houses should return to the Palace as soon as feasible.



Richmond House. Once the home of the Department of Health; now a proposed temporary home for the House of Commons. Image copyright © [James Stringer](#)

The board will have parliamentary and external members with expertise in heritage and project management. It will undertake detailed investigation and planning of a new chamber and offices on the site of Richmond House, the former Department of Health building. Since MPs and peers will remain in place until 2025, [there remains a risk](#) to the fabric of the building in the interim.

[Division lists](#) indicate that 68 Conservatives voted for the Hillier amendment, including the ministers Chris Grayling, David Gauke, and Matt Hancock. Just 11 Labour MPs voted against, and were joined in the lobby by two members of the government: Michael Gove and Greg Clark.

On 6 February the Lords passed a government motion to agree with the Commons without a division, although many peers remain unhappy with their proposed temporary home of the Queen Elizabeth II conference centre, just off Parliament Square.

Executive



Cabinet reshuffle

In January Theresa May carried out a [reshuffle](#), which had been anticipated since the resignation of First Secretary of State Damian Green in December. It was sweeping: [analysis by the Institute for Government](#) shows that 70% of ministers have been appointed to their roles since the June 2017 general election, and junior ministerial turnover in this reshuffle was particularly high. The entire ministerial team at the Cabinet Office was replaced, and three quarters at the Ministry of Justice (MoJ).

Almost one in three full Cabinet members are in a new job. Moves included that of David Lidington from the Ministry of Justice to the Cabinet Office (also becoming Chancellor of the Duchy of Lancaster), and David Gauke left the Department of Work and Pensions (DWP) to become the fourth Justice Secretary in just over 18 months. Karen Bradley is the new Northern Ireland Secretary. New full Cabinet entrants are Damian Hinds at the Department for Education (DfE), Matthew Hancock at the Department for Digital Culture, Media and Sport, Esther McVey at DWP and Brandon Lewis as Minister without Portfolio (and Chairman of the Conservative Party). Three Cabinet members departed in the reshuffle; Justine Greening from Education, James Brokenshire from the Northern Ireland Office (departing for health reasons), and Sir Patrick McLoughlin, who resigned as party Chairman and Chancellor of the Duchy of Lancaster.

New 'attending' members of Cabinet are Caroline Nokes as Immigration Minister and Claire Perry, Minister of State at the Department for Business, Energy and Industrial Strategy. Chloe Smith, MP for Norwich North is the [new Minister for the Constitution](#) in the Cabinet Office, replacing Chris Skidmore. Oliver Dowden joins her as Minister for Implementation.

Changes to the ministerial code

The [ministerial code](#), first introduced in 1992, was updated on 9 January. Changes sought to address the causes of the three Cabinet level resignations which took place towards the end of 2017.

New standards on sexual harassment are a reaction to allegations made against former Defence Secretary Sir Michael Fallon and former First Secretary of State Damian Green. The new code makes clear that ‘harassing, bullying or other inappropriate or discriminating behaviour wherever it takes place is not consistent with the Ministerial Code and will not be tolerated’.

Priti Patel’s resignation as International Development Secretary, following unreported meetings held during a visit to Israel, has led to the creation of new standards on undisclosed ministerial meetings. An addition to the code says, ‘If a minister meets an external organisation or individual and finds themselves discussing official business without an official present – for example at a social occasion or on holiday – any significant content should be passed back to the department as soon as possible after the event’.

Theresa May instructed all ministers and ministerial teams [to confirm that they have read the document](#), but the civil service union the FDA [complained](#) that the additions alone will not be enough to ensure behaviour changes.

Inquiry into civil service effectiveness

An inquiry into the effectiveness of the civil service is being carried out by the Public Administration and Constitutional Affairs Committee (PACAC). This carries on the unfinished inquiry ‘The Work of the Civil Service’, which had to close with an [interim report](#) when the 2017 general election was called. The current inquiry will [focus](#) on the cooperation of ministers and civil servants, as well as the capacity of the civil service to cope with Brexit.

The committee has held five sessions of oral [evidence](#), and received eleven written submissions. A wide range of individuals and organisations have contributed. Witnesses include Cabinet Secretary Sir Jeremy Heywood and former Minister for the Cabinet Office Francis Maude. Robert Hazell submitted written evidence, with a summary of the Unit’s recently published [report on the role of non-executives on Whitehall boards](#) (see page 17).

Courts and the judiciary



Judicial appointments inquiry

A [report into judicial appointments](#) by the House of Lords Constitution Committee was [published](#) in November. This follows a similar [2012 inquiry](#).

The 2017 report noted the challenge of attracting the best quality candidates, increasing diversity, and retaining judges once appointed. It concluded that insufficient progress had been made in these areas since the 2012 report.

Factors which may have negatively impacted the attractiveness of a judicial role include judicial salaries, pensions, conditions, court administration and infrastructure, and the perceived failure of successive Lord Chancellors to fulfil their statutory obligation to defend judicial independence.

Suggestions to improve diversity include increasing applications from lawyers employed by the Crown Prosecution Service (CPS) or the Government Legal Service.

The [government published its response](#) to the report in December. Pay is being reviewed by the Senior Salaries Review Body (SSRB). Working conditions will improve with improvements to courts infrastructure. The government was more cautious about allowing judges to return to practice, and similarly cautious about raising the judicial retirement age.

Elections and referendums



Electoral Commission reports on the 2017 general election

The Electoral Commission has published four reports on the conduct of the 2017 general election. For the first of these, on electoral registration, see [Monitor 67](#) (pages 8–9).

Its [report on the regulation of campaign finance](#) was published in November, before the deadline for the larger parties to submit their spending returns.

Nevertheless, the Commission was able to reiterate many recommendations made after previous elections. It said that the requirement for ‘imprints’ (identifying the source of a political advertisement) should be extended to digital advertising, that more detailed breakdowns should be required in spending returns, and that sanctions for breaches of the rules should be increased.

The same month saw publication of a [report](#) on how people with disabilities experienced the election. This drew on evidence from two surveys. It urged the government to investigate further, and affirmed the Commission’s desire ‘to help make sure everyone’s experience of voting is as easy as possible’.

The Commission’s [fourth report](#), published in December, concerned the administration of the election. It highlighted several problems that arose and steps taken to address them. The report included recommendations on how candidates’ names appear on ballot papers, on tackling electoral fraud, on the conditions for appointing an emergency proxy, on access for overseas voters, and on reducing the risk that people will vote in more than one constituency.

In addition, the Commission’s chair, Sir John Holmes, [presented a wider survey](#) of the primary challenges on the Commission’s agenda in a speech delivered at the Institute for Government in December. He highlighted five primary areas of concern: the inconsistency and undue complexity of electoral legislation; the strains faced by local authorities in administering elections amidst funding cuts; the need to respond to perceptions of electoral fraud; the challenges created by the rise of digital campaigning; and the need to keep up with voters’ expectations in a digital world.

Electoral Commission candidate blocked

The House of Commons has blocked an appointment to the Electoral Commission for the first time. After the usual process of open competition, shortlisting, and interviews, [the Speaker’s Committee selected Sir Ian Kennedy](#), former Chair of the Independent Parliamentary Standards Authority (IPSA). Commons Leader Andrea Leadsom duly proposed the appointment, and Shadow Commons Leader Valerie Vaz agreed, but the House voted 77-46 against appointing him, despite the unanimous recommendation of the Committee.

[Opposition in the Commons](#) was led by the Conservative MP James Duddridge and Labour MP John Spellar. Criticism of Kennedy centred on the perceived burdensome nature of the expenses regime introduced by IPSA following the MPs’ expenses scandal, and the inconvenience this caused MPs.

It is not yet certain who will now fill the vacancy.

Scrutiny of election expenses

The Electoral Commission has launched new inquiries into spending in both the 2016 referendum on EU membership and the 2017 general election.

The new referendum investigations focus on Vote Leave and on prominent Leave campaigner (and former UKIP donor) Arron Banks. The [Vote Leave investigation](#) relates to whether the organisation submitted an incorrect spending return and exceeded its permitted spending limit. The allegation is that Vote Leave funnelled some of its substantial social media spending through two other campaigners in order to keep its own spending within the £7 million limit. The [Arron Banks investigation](#) focuses on whether the true sources of certain donations were those reported. It builds on an existing investigation into donations to Leave.EU. [Media reports](#) link the investigations to concerns about Russian involvement in the campaign.

The new [investigation into the 2017 election](#) centres on Momentum, the campaign group that was created following Jeremy Corbyn’s successful campaign for leadership of the Labour Party. It is examining whether Momentum submitted an inaccurate spending return and whether it exceeded its spending limit as an ‘unauthorised non-party campaigner’.

In addition, a number of other investigations have concluded. Most notably, the Liberal Democrats [were fined](#) £18,000 for infringements in the EU referendum campaign: ‘for failing to provide acceptable invoices or receipts for 80 payments with a total value of more than £80,000’ and ‘because some payments were reported in aggregate rather than as individual payments’. The successor organisation to the Britain Stronger in Europe campaign [was fined](#) £1,250 for similar infringements on a smaller scale.

Finally, the case of South Thanet MP Craig Mackinlay has [reached the courts](#). Mr Mackinlay, his campaign

director, and his election agent all pleaded not guilty to charges of submitting false spending returns for the 2015 election at an Old Bailey hearing in January. Their trial will begin in May.

Political impact of social media

Increasing attention is being paid in the UK and elsewhere to the possible negative implications of social media for democratic politics. There are growing concerns that social media contribute to the spread of misinformation, allow opaque and underhand forms of campaigning, and enable foreign actors, including the Russian government, to exert undue influence in elections and political debate.

In January, the UK government published its '[Digital Charter](#)', one aim of which is to mitigate the threats posed by social media. Although the Charter holds out the prospect of legislation, the government would prefer to support firms in seeking possible solutions themselves.

In parliament, the House of Commons Digital, Culture, Media and Sport Committee has launched an [inquiry](#) into the role of fake news in politics. The committee has been more sceptical than the government of internet firms' ability or willingness to find solutions, and has been considering a possible change of legal status for social media platforms that would increase their regulatory obligations.

Faced with growing pressures, internet companies have themselves begun to take steps to address these concerns. Facebook is seeking to give greater prominence to news from '[trusted](#)' sources and to expose users to news from [diverse perspectives](#). [Facebook](#), [Google](#) and [Twitter](#) have all said that they will create repositories for political advertisements – though when this will be applied in the UK is unclear.

Institutions for public deliberation

There is growing interest in ways of increasing public engagement in politics beyond elections and referendums. In the wake of the Constitution Unit-led [Citizens' Assembly on Brexit](#) (see p.17), held last autumn, particular attention is being given to deliberative forms of participation. As noted below (p.11), the Welsh

Assembly considered creating a citizens' assembly to examine proposals for electoral reform.

There have also been significant developments in Northern Ireland. A citizens' assembly focused on the question of the Irish border was held in early February as part of an [academic research project](#). The results were still awaited at the time of writing. In addition, ambitious plans for a Citizens' Assembly for Northern Ireland were [announced](#) in January and received [significant media attention](#). Core funding for the Assembly comes from the [Building Change Trust](#), while [Involve](#) will lead on design and delivery. The [proposal](#) is for a body of 50–100 members, meeting over two weekends. The topic has not yet been chosen, but the intention is to select an issue that traditional political mechanisms have proved unable to resolve. The process is also intended to explore new ways of engaging voters in politics.

Boundary review developments

The Boundary Commission for Northern Ireland [published revised proposals for Westminster constituency boundaries](#) in January. This follows revised proposals from the Boundary Commissions for England, Scotland, and Wales in October (see [Monitor 67](#), pages 9–10).

The Northern Irish Commission's initial proposals had been especially controversial: [projections](#) suggested the Democratic Unionist Party (DUP) would lose seats and Sinn Féin gain, giving nationalists a seat majority for the first time. The revised proposals are substantially different. Sinn Féin [expressed concern](#) that they appeared close to those suggested by the DUP, and, indeed, [new projections](#) indicated that results in 2017 would have maintained the DUP's position as the largest party. The new boundaries, if implemented, will also be used for elections to the Northern Ireland Assembly and could therefore significantly influence the political balance at Stormont.

As [Monitor 67](#) reported, however, there is considerable doubt as to whether the boundary review will ever be implemented. In February, the Public Administration and Constitutional Affairs Committee (PACAC), published a report – [Parliamentary Boundary Reviews: What Next?](#) – that highlighted this uncertainty and urged the government to act. It pointed to the undesirability of retaining the current boundaries – largely based on 2000–01 electorate data – for the election due in 2022, and said, 'Amending the current legislation to facilitate a

boundary review process that would command broader support in Parliament, and have updated boundaries in place by a General Election 2022, is therefore worthy of serious consideration.’ Time for making such changes is, however, very short. The committee suggested that a [private member’s bill](#) which received its second reading in the Commons in December could provide the vehicle for the kind of rapid legislative change that it suggested was needed. This would cancel the most contentious feature of the current review – a planned reduction in the number of MPs from 650 to 600 – and increase the leeway in constituency sizes, from 5% above or below the average to 7.5% above or below.

To unlock progress, PACAC urged the government to allow an early Commons debate on the issue, rather than waiting, as currently planned, until the boundary commissions have made their final proposals in September.

Electoral reform agenda in Wales

A range of possible electoral reforms are on the agenda in Wales. Power over electoral rules for local and Welsh Assembly elections will be devolved to the Assembly in April.

The Expert Panel on [Welsh] Assembly Electoral Reform [reported](#) in December. Established on the initiative of the Assembly’s Presiding Officer, the panel was chaired by Professor Laura McAllister of Cardiff University; its members included the Unit’s Alan Renwick. It made three core recommendations: that the Assembly’s size should be increased from 60 Members to ‘at least 80 Members, and preferably closer to 90 Members’; that the Assembly’s electoral system should be reformed, ideally to a Single Transferable Vote (STV) system accompanied by gender quotas; and that the minimum voting age should be reduced to 16 and citizenship education concomitantly enhanced.

These proposals have received a broadly warm reception across the political spectrum. There is widespread agreement that the Assembly’s size constrains its ability to perform its functions effectively. Many politicians are wary, however, of endorsing a policy that they fear large numbers of voters will intuitively dislike.

The Assembly’s authorities came close to establishing a citizens’ assembly to create a forum for considered public discussion of the proposals, but eventually

[decided against](#) on grounds of cost. Instead, a [public consultation](#) is now open.

Supporters of the proposed reforms hope they can be implemented in time for the next Assembly elections, in 2021. This is, however, a tight timetable. The chair of the Assembly’s Labour group [has signalled](#) an intention to report on the proposals to the party’s 2019 conference. Some may fear that this pushes the issue dangerously close to long grass.

The Welsh Government is, however, pursuing electoral reforms at the local level, including [a reduction in the voting age for local elections to 16](#).

Parties and politicians



CSPL Intimidation in Public Life report

The Committee on Standards in Public Life published its report on [Intimidation in Public Life](#) on 13 December 2017, following a review that found a third of parliamentary candidates to have experienced harassment and intimidation during the most recent general election. The forms of abuse were found to have been ‘persistent, vile and shocking’ and included threatening violence – sexual or otherwise – and property damage. Intimidation and abuse was found often to be clearly targeted at certain groups, including women and ethnic minorities. Although intimidation in public life is nothing new, its scale and intensity is an increasingly serious issue, as social media platforms provide an open environment for it to proliferate and for abusers to reach candidates.

The Committee argued that British political culture can be protected from further damage if sufficient action is taken. Building upon evidence from parliamentary candidates, academics, civil society organisations, and members of the public, the report made 33 recommendations for action to be taken in the short and long term. It emphasised the need to implement a package of reforms together, requiring collaborative effort from social media companies, political parties, parliament, the police, broadcast and print media, and MPs and candidates themselves. Key recommendations included proposed legislative changes affecting social media companies’ liability for illegal content online, and a government consultation on the introduction of a new

offence of intimidating parliamentary candidates and campaigners. The report called on political parties to work proactively together to tackle this issue and urged those in leadership positions to set clear expectations, call out intimidating behaviour, and support and train candidates in their use of social media.

The report concluded that prevention strategies are necessary in the long term and will be more important than sanctions in individual cases. As the committee's Chair Lord Bew said in a letter to the Prime Minister that accompanied the report, 'those in public life must adopt a healthier public discourse and stand together to oppose behaviour which threatens the integrity of public life.'

Devolution



England

The UK government is showing signs of pursuing a new relationship with the recently created 'metro-mayors'. The Communities Secretary, Sajid Javid, [claimed](#) in early February that a promised 'devolution framework' was almost complete. The November [Budget](#) included a number of new funding streams for the metro-mayoral areas – half of the £1.7 billion Transforming Cities Fund will be shared among the six metro-mayoral areas – but few additional powers. This focus on funding rather than functions suggests that the government sees metro-mayors as preferred local partners, but that further devolution of power may be less easy to attain.

Nevertheless, two new devolution deals were published alongside the November Budget. One was [for the 'North Tyne' area](#) – which will comprise Newcastle, North Tyneside and Northumberland – with an initial mayoral election planned for May 2019. The other was a [second devolution deal for the West Midlands](#): this included a number of new funding streams and collaboration agreements. The proposal included exploring merging the West Midlands police and crime commissioner, and fire and rescue service, under the control of metro-mayor Andy Street (as has recently been done in Greater Manchester).

Negotiations have also proceeded in Yorkshire. The government has [held out the possibility](#) of a future devolution deal for the whole county, and supporters

of a 'One Yorkshire' devolution deal [claim support](#) from 18 of 20 local authorities. However, the election for the Sheffield City Region metro-mayor in May 2018 is to go ahead as planned. Suggestions that the term could be shortened to two years, or an interim mayor appointed instead (as in Greater Manchester from 2015 to 2017), have been rejected. The mayor will have [very few powers](#): a statutory consultation is required before an Order transferring powers can be made. Dan Jarvis, the MP for Barnsley Central, is seeking the Labour nomination with the [stated intention](#) of transforming the Sheffield deal into a One Yorkshire arrangement by the end of his term.

In the meantime, the six metro-mayors and the Mayor of London have been developing relationships. They held a [summit](#) on 1 November, at which they called for increased devolution of power, including fiscal powers. A ['Council of the North' meeting](#) involving leaders in the 'Northern Powerhouse' area, is tentatively planned for summer 2018 in Newcastle.



MP and Sheffield mayoral candidate Dan Jarvis. Image copyright © [UK Parliament](#)

Northern Ireland

Devolved government in Northern Ireland has now been suspended for over a year. After months of stasis, political discussions about restoring the devolved government briefly led in early February to hopes that a solution might be found. But these hopes abruptly ended

on 14 February when the Democratic Unionist Party (DUP) [announced](#) that there was no current prospect of success, after parts of the party's heartland apparently rebelled against the emerging deal.

The main issue in dispute has ostensibly been whether or not there should be a freestanding Irish Language Act. This often appeared more about form than substance, with little clarity on either side about the content of such legislation. To some it was preposterous that so apparently small an issue rendered government unable to address increasingly acute problems, for example around public services. But underlying the dispute lay long-standing issues about inter-community 'respect', made harder to resolve by the increasing polarisation of opinion on sectarian lines.

With nobody in charge of government, no new policy initiatives can be taken, causing real [strains](#) for the administration. Westminster eventually intervened to provide a [budget](#) for the devolved institutions for the current financial year. The new Secretary of State, Karen Bradley, [announced in the Commons](#) following the breakdown of talks that she will provide 'clarity' on next year's budget, but declined to introduce direct rule, urging resumed dialogue. Unless somehow the talks get back on track, it is hard to find reason for optimism. Direct rule would, particularly given the UK government's dependence on the DUP, be strongly opposed by nationalists and strain relations with the Irish government, making the London–Dublin axis less able to take its traditional role of moving politics on.



Secretary of State for Northern Ireland Karen Bradley with the Irish Foreign Minister Simon Coveney, 18 January 2018. Image copyright © [Northern Ireland Office](#)

Questions raised by Brexit regarding the Irish border risk bringing political conflict to a head. This led some harder-line proponents of Brexit, including a former Northern Ireland Secretary, to [speculate](#) on whether the Good Friday Agreement has outlived its usefulness, a question previously off-limits in mainstream British politics. The government strongly affirmed its support for the Agreement, with the Secretary of State saying during her statement to the House that she was '100% behind it'. As divisions deepen in Northern Ireland, however, the Agreement seems increasingly imperilled, with no prospect of anything to replace it.

Scotland

The high drama of Brexit and devolution (see p.4) has diverted attention from major developments in Scottish politics. Holyrood is now very much a taxing as well as a spending institution. For the first time the SNP government has nailed its colours to the mast of higher taxation for the better off. Hitherto the SNP has been largely focused on cutting taxes (freezing council tax for eight years, for example), but after the independence referendum its support has shifted. Losing ground to the Conservatives in the north-east and among the better off, it is now in competition with Labour for working-class votes in the west of Scotland.

So a [new five-band income tax system](#) introduces a new starter rate of 19p for incomes under £24,000, but for those above that the rates are increased to 21p, 41p and 46p. A majority of Scottish taxpayers will pay a little less than in England, but the better off will now contribute rather more. The small number of people on incomes of £150,000 or above will be over £1,700 worse off. This careful balancing act is projected to produce around £200 million a year in extra revenue and (perhaps unsurprisingly) polling suggests it is supported by a majority of the population.

Something of a constitutional row has also broken out over Scottish policing. Since Sir Robert Peel, British policing has been governed by a balance of central and local government, with both seeking to avoid direct political control. The SNP's major public sector reform so far, however, was to nationalise policing, merging eight local forces into a single body governed by a Board appointed by ministers. In its first five years, two chief constables and two Board chairs have resigned early, and the Justice Minister faces [accusations of](#)

[interference](#) and micromanagement. Under pressure, ministers hint at governance changes, including an appointment role for the Scottish Parliament. How that would insulate policing more from politics is not obvious.

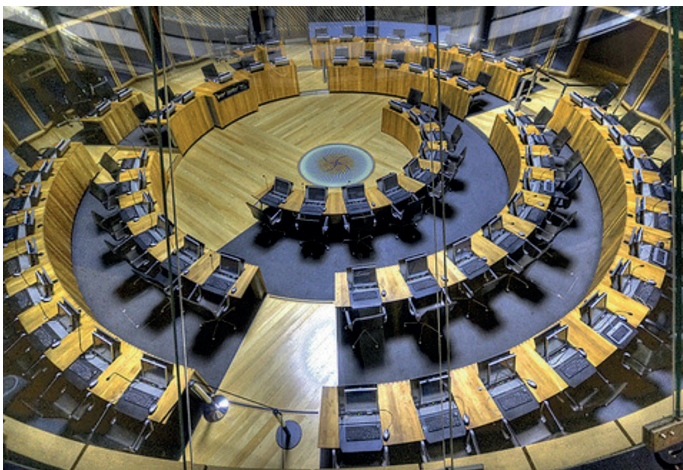
Wales

Brexit may be grabbing the headlines, but major constitutional reforms are already on the way for Wales, with a [new reserved powers model](#) of devolution coming into force this April. While this has generally been welcomed, the number of reservations within the Wales Act 2017 has been criticised for blurring the lines of devolution further, with Professor Richard Wyn Jones [writing in 2016](#) that ‘reservation has been piled upon reservation to create a final schedule that is sprawling and lacking in any logic’.

Alongside this will be the devolution of [Stamp Duty Land Tax](#) and [Landfill Tax](#), with the [partial devolution of income tax](#) to follow in April 2019. This presents an opportunity to political parties in Wales to add another element to their political campaigning.

These developments will give First Minister Carwyn Jones plenty to think about but there may be pressing political challenges ahead too. The [election of Jack Sargeant](#) in the Alyn and Deeside by-election – which was called following the death of his father, Carl – has the potential to cause problems for Jones. His handling of the sacking of Carl Sargeant is the subject of an [independent inquiry](#) and has led to calls for his resignation.

Several electoral changes have also been proposed, including a reduction of the voting age. These are discussed above (see page 11).



National Assembly of Wales. Copyright © [Wojtek Gurak](#)

International



Irish Citizens' Assembly reports on referendums

The [Irish Citizens' Assembly](#) met on 13–14 January to consider its penultimate topic: ‘the manner in which referenda are held’. The 99 members of the Assembly made a series of [recommendations](#) on reforming the conduct of referendum campaigns in Ireland. These will form the basis of a report to be presented to the country’s parliament, the Oireachtas, later this year.

The Assembly backed the current prohibition on the government spending public money on one side of a campaign, but agreed that it could provide public funds equally to both sides. Other recommendations included banning anonymous donations and implementing spending limits for registered parties, campaign groups and individuals.

The Assembly voted overwhelmingly for the establishment of a permanent Electoral Commission, which would include the functions of the current ad hoc Referendum Commissions. Near unanimous support was also given to the suggestion that any future Commission should be permitted to comment on matters of factual or legal dispute during campaigns.

To enhance voter turnout, the Assembly recommended a number of measures, including holding referendums at the weekend – this was passed unanimously – and lowering the voting age to 16. A majority of members were in favour of initiatives to allow citizens to submit constitutional or legislative proposals to the people, or to place an item on the legislative agenda.

The Citizens' Assembly reconvened on 3–4 March to consider fixed-term parliaments, its final topic.

Ireland's constitutional referendum on abortion

The Irish government has agreed to consult voters on repeal of the Eighth Amendment to the Constitution, which effectively prevents legal abortions in almost all circumstances by recognising the right to life of the unborn as equal to that of the mother. At present, most women in Ireland who want an abortion have to travel

abroad to countries such as the UK in order to have their pregnancy terminated. Of women based outside the UK who had abortions in England and Wales in 2016, [Department of Health statistics](#) suggest that 68% were Irish residents.

The decision to hold the referendum was made following [advice](#) from the Irish Attorney General, which included a recommendation that the amendment be replaced with a provision enabling the Oireachtas (parliament) to legislate in such matters. This approach is known as ‘repeal and replace’ and accords with the [recommendations](#) of the Irish Citizens’ Assembly, agreed last April. However it is contrary to the view of the parliamentary Joint Committee on the Eighth Amendment of the Constitution, which [proposed](#) that the Amendment simply be replaced.

The Referendum Bill was set to be published on 6 March and introduced to the lower house, the Dáil, on 8 March, which is International Women’s Day. Parallel legislation replacing the [Protection of Life During Pregnancy Act 2013](#) would guarantee unlimited abortion access up to 12 weeks and allow terminations in line with the recommendations of the Joint Committee. However, this can only be passed into law if the referendum result authorises repeal.



Leo Varadkar, the Irish Taoiseach. Image copyright © [Annika Haas](#)

Taoiseach Leo Varadkar has [announced](#) that he favours repeal in order that the country can liberalise its abortion laws, but ministers will be allowed to campaign on both sides. The referendum, when it happens, will be the

end product of years of [protests](#), [social media action](#), and [strikes](#) in support of change. It will also be the first time since 1983 – when a referendum approved the introduction of the Eighth Amendment – that the country has had the opportunity to vote directly on this issue.

Japanese emperor confirms abdication date

Emperor Akihito of Japan will abdicate on 30 April 2019, having completed 30 years as emperor. He will then be 85 years old. Akihito’s eldest child, Prince Naruhito, will succeed.

The [1947 Japanese Constitution](#) – written by the Allies after the end of World War II and adopted with relatively little amendment by Japan – prohibits emperors from political influence, describing the emperor as a symbol of the ‘unity of the people’. However, Akihito has not been entirely apolitical, and throughout his reign has used his informal influence to help heal wounds left by the war, notably with a 1992 visit to China.

In a rare televised address in August 2016, Akihito mentioned [concerns over his age and health](#). These comments were interpreted as a wish to abdicate. Special legislation was prepared, as the [1947 Imperial Household law](#) does not provide for abdication.

The new legislation covers the current situation only and will not apply to future emperors, thereby maintaining the rule that emperors are expected to reign for life.

Prime Minister Shinzō Abe opposed including a clause allowing female royals to maintain royal status after marrying commoners – a benefit already enjoyed by males. Such a change would allow retention of title, family name, status, and government allowance. This discussion came shortly before the announcement of the [engagement of Princess Mako](#) – eldest child of the Crown Prince – to a commoner. That wedding has since been postponed until 2020, with the official explanation being that the couple are too young. As women cannot inherit the throne, the wedding will not affect the line of succession whether it goes ahead or not.

People on the move

In the House of Lords, **Sarah Clarke** was appointed as the new [Black Rod](#) on 17 November 2017 and formally started work in February. She is the first woman to hold the position.

The new chair of the House of Commons Liaison Committee is **Sarah Wollaston** (see page 6).

UKIP leader **Henry Bolton** was [forced out](#) by a vote of no confidence less than five months after his election in September. **Gerard Batten** is serving as acting leader.

Sinn Féin has a [new leadership team](#). Irish TD **Mary Lou McDonald** has been elected as president following the retirement of **Gerry Adams**. The new Vice-President is **Michelle O'Neill**, who had already succeeded the late **Martin McGuinness** as Sinn Féin's leader in the Northern Ireland Assembly.

Richard Leonard defeated **Anas Sarwar** to [win the Scottish Labour Party leadership](#) election in November, succeeding Kezia Dugdale.

Jacob Rees-Mogg has [been elected](#) as the new leader of the staunchly pro-Brexit European Research Group, following the appointment of its previous leader, **Suella Fernandez**, to the government (for further details of ministerial changes see page 7).

Sue Gray, who was Director General of the Propriety and Ethics Team in the Cabinet Office and who led the inquiry that prompted the resignation of First Secretary of State **Damian Green**, has moved to become Permanent Secretary at the Northern Ireland Executive's Department of Finance.

Jon Thompson, the Permanent Secretary and Chief Executive of HM Revenue and Customs, has been [named](#) the head of the operational delivery profession in government. He replaces **Andrew Rhodes**.

Professor Mike Kenny, a Constitution Unit fellow, has become professor of public policy at the University of Cambridge. He has also been appointed as the inaugural Director of the [Cambridge Institute of Public Policy](#) (p.18)



Sarah Clarke, the first female Black Rod, attends the House of Lords, 23 February 2018. Image copyright © [House of Lords 2018](#). Photography by [Roger Harris](#)

Constitution Unit news

English Parliament report

On 5 March the Unit launched a new report on [Options for an English Parliament](#) in the House of Commons. Speakers included its two authors – Meg Russell and Jack Sheldon – alongside responses from Scilla Cullen of the Campaign for an English Parliament, former Labour MP Professor John Denham of the University of Winchester, and Akash Paun of the Institute for Government. The report is the final output from the [project of the same name](#), which was funded by the Nuffield Foundation from late 2016 to early 2018.

Calls for an English Parliament have been regularly made by some politicians and campaigners since devolved bodies were established in Scotland, Wales and Northern Ireland in the late 1990s. Yet no single blueprint for such a body has ever been produced. This project sought not to advocate for or against establishment of an English Parliament, but to consider the various design options and their implications. Its 140-page report is the most detailed consideration to date of such questions. Taking proponents' aspirations as a starting point, and drawing on evidence from existing arrangements in the UK and overseas, it considers the possible powers, financing, operation, structure, size, electoral system and location of an English Parliament, alongside possible executive structures, and – crucially – [the implications of setting up such a body for the UK government and parliament](#).

The report identifies two main models for an English Parliament: the ‘separately elected’ and ‘dual mandate’ models. It concludes that establishing a new institution on either model would be a very major step. In particular, the nature of the existing devolution settlement means that an English Parliament with similar powers would have substantial repercussions for the UK’s central institutions. Recognising the legitimate grievances raised by English Parliament supporters, the report suggests the need to review the overall territorial future of the post-Brexit UK. This might be achieved through some form of citizen-led constitutional convention.

Citizens’ Assembly on Brexit

We reported on the initial findings of the Constitution Unit-led [Citizens’ Assembly on Brexit](#) in [Monitor 67](#) (page 15). The Assembly’s [full report](#) was published in December. In addition to the previously reported results, it examined the quality of the Assembly’s internal processes. Drawing on surveys of Assembly Members and other evidence, it suggested that the deliberations had been inclusive, balanced, and characterised by high levels of mutual respect, and that their understanding of the issues had been enhanced. It also pointed to the strong success of the Assembly in bringing together a group of people who reflected the diverse makeup of society in the UK. These findings give strong grounds for saying that the Assembly’s conclusions deserve to be taken seriously by policy-makers working on Brexit.

The report was launched at events in Westminster and UCL in December. It was further discussed at meetings at the University of Edinburgh and St Andrew’s House – the seat of the Scottish Government – in January. Speaking at the [Westminster event](#), Suella Fernandez – then chair of the European Research Group of pro-Brexit Conservative MPs – praised the ‘brilliant project’ and said its ‘very rigorous, extensive, and robust’ processes meant that the Assembly’s recommendations should carry substantial weight. Writing in the *Guardian* the following day, Polly Toynbee [said](#) ‘Citizens’ assemblies are wonderful – if only the whole population could be given the chance for such serious, informed deliberation.’



Image copyright © UCL Imagestore

Report on non-executive directors in Whitehall

On 18 January, the Unit published a report entitled [Critical Friends? The Role of Non-Executives on Whitehall Boards](#). Written by Robert Hazell, Alan Cogbill, David Owen, Howard Webber, and Lucas Chebib, its conclusions were based on numerous interviews with both current civil servants and non-executive directors (NEDs). The report concluded that those working in Whitehall ‘greatly valued’ the advice and expertise of NEDs but that the non-executive directors themselves often found the role frustrating, claiming that they could be much more effective than the current system allowed.

Robert also [summarised the report’s findings](#) in a post that appeared on the Constitution Unit blog.

Meg Russell wins funds to hold bicameralism events in Rome

Unit Director Meg Russell has [secured £3,500 in funding from the UCL Rome Regional Partnership Fund](#). The project, ‘The Challenges of Second Chambers: Parliamentary Bicameralism in Practice, and Prospects for Reform’, includes two workshops to be organised in partnership with the [Rome LUISS University’s Centre for Parliamentary Studies](#). Italy and the UK have been debating the need to reform their second chambers for a long time; both have experienced numerous failed reform attempts over many decades. The events, one of which is to take place in the Italian parliament, are likely to be held in June. They aim to contribute to debates on how parliamentary second chambers work and how such bodies can best be reformed.

Dominic Grieve lecture

On 23 January, the Unit was pleased to host the Constitution Society and Dominic Grieve QC MP. The former Attorney General – who is also a member of the Unit's [Independent Commission on Referendums](#) – delivered the Society's Inaugural Public Lecture, entitled '[A backbencher's view of Brexit](#)', followed by a lengthy Q&A session. The topics covered included the historic limits on the role of parliament in the UK constitution, the role of non-UK courts in enforcing international treaties, as well as the merits and flaws of the Withdrawal Bill. A [shorter version](#) of the lecture, written by Dominic Grieve, appears on the Unit's blog.



Dominic Grieve QC MP with Unit Director Meg Russell and Constitution Society President Sir Malcolm Jack. © [UCL Constitution Unit](#)

Staff changes

At the end of 2017 the Unit was very sad to say farewell to Jack Sheldon, who served both as the main researcher on the English Parliament project, and for more than two years as the editor of *Monitor* and the Constitution Unit blog. Jack did a fantastic job in both of these roles. We wish him all the best in his new position as a researcher for Professor Mike Kenny at the University of Cambridge, where he is working on new devolution projects (see below). In January we were pleased to welcome Dave Busfield-Birch as the new blog and *Monitor* editor.

December was also the scheduled end date for the Citizens' Assembly on Brexit project, funded by the ESRC. Hence project Research Associate Rebecca McKee also ended her full-time employment with us at

this point. A project extension has meant that Rebecca returned on a part-time basis in February, and she is now also working with our former project partners Involve. We are likewise very grateful to her for all her excellent previous work.

Research volunteers

The Unit is, as always, grateful for the excellent work done by its research volunteers. A big thank you to departing volunteers Lucas Chebib, Hannah Dowling, Kelly Shuttleworth, Nikki Soo, and Rishabh Watts.

News from Constitution Unit Fellows

The 'Between Two Unions' project

Work has begun on a major research project funded by an [Economic and Social Research Council](#) (ESRC) Large Grant that will run until September 2020. '[Between Two Unions: The Constitutional Future of the Islands after Brexit](#)' will be led by the [Centre on Constitutional Change](#) and involves researchers at Aberdeen, Cambridge, Cardiff, Cork, Edinburgh, and Stirling universities. The co-investigators include two Constitution Unit Fellows, Professor Michael Kenny (University of Cambridge) and Professor Nicola McEwen (University of Edinburgh). The aim is to examine the process of constitutional reinvention across the UK and Ireland that will result from Brexit in real time. The research is being organised under four themes: constitutional principles; political union and institutional relations; economic union; and social union.

Professor Kenny is working with Jack Sheldon, who joined Cambridge from the Constitution Unit in January. Their research within the 'political union and institutional relations' theme is focusing on how different parts of Whitehall are engaging with the devolved governments, and on conceptions of political union held by Westminster politicians. The research is based on interviews with key insiders and documentary analysis. It is intended that the findings will be informative to policy makers and the general public, and also make an important contribution to the academic literature on constitutional change.

Centre for Democratic Engagement

The [Centre for Democratic Engagement](#) is being established at the University of Leeds to act as a catalyst for inter-institutional and inter-disciplinary research on themes surrounding the issue of democratic engagement. Constitution Unit Fellow [Professor Cristina Leston-Bandeira](#) is its Co-Director, together with [Dr Jonathan Dean](#). The Centre's launch took place on 16 February through a [symposium](#) where over 40 academics and practitioners gathered to discuss some of the key underlying themes of democratic engagement.

The Centre brings together academics working in different areas such as populism, parliamentary public engagement, and information in a 'post-truth' era, all of which address a general trend of a persistent questioning of the status quo model inherent to our democratic systems. The Centre for Democratic Engagement integrates inter-disciplinary approaches combining politics with such diverse disciplines as communication studies, languages, geography and computational social sciences. Besides this, the Centre has a strong focus on working in close partnership with practitioners, such as parliamentary officials and civic society charities. Through collaborating in identifying real world problems, the Centre aims to become a key catalyst for the development of research in democratic engagement.

Bulletin Board

Events

To sign up for our events, please visit the Constitution Unit [events page](#). Seminars are free and open to all.

Intimidation of candidates and others in public life

Lord Bew, Chair of the Committee on Standards in Public Life; **Jane Ramsey**, member of the Committee on Standards in Public Life; **Sofia Collignon Delmar**, Lecturer in Political Communication, Royal Holloway; **Jennifer Hudson**, Senior Lecturer in Political Behaviour, Constitution Unit.

21 March 2018, 6pm

Council Room, School of Public Policy, UCL,
29 Tavistock Square, London, WC1H 9QU

[Register](#)

Political polling and digital media

Lord Lipsey, Chair of the Lords *ad hoc* Committee on Polling and Digital Media; **Will Jennings**, Professor of Political Science and Public Policy, University of Southampton
Chair: **Jennifer Hudson**, Senior Lecturer in Political Behaviour, Constitution Unit.

17 April, 1pm

Committee Room G, House of Lords,
Westminster, London SW1A 0AA

[Register](#)

Bulletin Board

Unit in the news

Meg Russell was quoted in an article about the Burns report's recommendation to reduce the membership of the House of Lords ([Holyrood](#), 31 October).

The report of the [Expert Working Group on the EU \(Withdrawal\) Bill and the Rule of Law](#), co-ordinated by the Bingham Centre with Constitution Unit support, was cited in an article about the prospects for the bill in the House of Lords ([The Daily Telegraph](#), 25 November).

Meg Russell's [Governance paper](#) with Philip Cowley on the role of parliament in the UK decision-making process was cited in an article about the increasing parliamentary power of backbenchers ([Buzzfeed](#), 1 January).

Meg Russell was quoted in an article about the prospect of new peers being created ([Financial Times](#), 8 January).

Robert Hazell was quoted in an article about the Unit's report on the role of non-executive directors on Whitehall boards ([Civil Service World](#), 18 January).

Robert also wrote a blog on the report ([Civil Service World](#), 19 January).

Meg Russell wrote an article making ten predictions about how the House of Lords would handle the EU Withdrawal Bill ([The Conversation](#), 23 January).

Meg Russell was quoted in an article predicting difficulties for the EU Withdrawal Bill in the House of Lords ([Bloomberg Politics](#), 28 January).

Robert Hazell appeared on a radio podcast about the role of monarchs in modern European democracies ([Cultures World](#), 5 February).

Alan Renwick wrote an article in which he discusses the prospects and likely shape of a second referendum on Brexit ([Prospect](#), 9 February).

Ed Miliband discussed the Unit-led Citizens' Assembly on Brexit in depth on his podcast with the Assembly's lead facilitator, Sarah Allan ([Reasons to be Cheerful](#), 4 February).

Select committee appearances

Alan Renwick and Meg Russell spoke alongside Graham Smith (University of Westminster) and Sarah Allan (Involve) at a private session of the House of Lords EU Committee on 21 November to present the work of the Citizens' Assembly on Brexit.

Alan Renwick [gave evidence](#) to the Council of Europe Parliamentary Assembly's Committee on Political Affairs on Democracy on 24 January. The Committee is conducting an inquiry on 'Updating guidelines to ensure fair referendums in Council of Europe member states', and Dr Renwick will act as advisor.

Robert Hazell appeared at a private session of the Liaison Committee on 21 February alongside Peter Riddell (Commissioner of Public Appointments) to discuss the Unit's [report](#) on the effectiveness of Pre-Appointment Scrutiny Hearings.

Unit publications

Meg Russell and Jack Sheldon, [Options for an English Parliament](#) (Constitution Unit report, March).

Unit members provided several chapters in the new OUP book [Exploring Parliament](#) (see below, February). Meg Russell contributed 'Parliamentary Scrutiny and Influence on Government Bills' (with Daniel Gover), Robert Hazell contributed 'Private Members' Bills' (with Fergus Reid), Ruxandra Serban 'Questioning the Government' (with Stephen Bates and Peter Kerr). Oonagh Gay contributed 'MPs Campaigning for their Constituencies'.

Meg Russell and Philip Cowley, '[Modes of UK Executive-Legislative Relations Revisited](#)', (*Political Quarterly*, January)

Robert Hazell, Alan Cogbill, David Owen, Howard Webber, and Lucas Chebib, [Critical Friends? The Role of Non Executives on Whitehall Boards](#) (Constitution Unit report, January).

Bulletin Board

Alan Renwick, Brenton Prosser, Matthew Flinders, Will Jennings, Paolo Spada, Gerry Stoker, and Katie Ghose, [‘Pedagogy and Deliberative Democracy: Insights From Recent Experiments In The United Kingdom’](#) (*Contemporary Politics*, January)

Alan Renwick, Sarah Allan, Will Jennings, Rebecca McKee, Meg Russell, Graham Smith, [The Report of the Citizens’ Assembly on Brexit](#) (Constitution Unit report, December).

Alan Renwick, [‘Citizens’ Assemblies: A Better Way of Doing Democracy?’](#) (*Political Insight*, December).

Jack Simson-Caird, Robert Hazell and Dawn Oliver [The Constitutional Standards of the House of Lords Select Committee on the Constitution, Third Edition](#) (Constitution Unit report, November).

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