



Testing constitutional times

Politics remains fast-moving. Its unexpected turns have raised fundamental questions about the constitutional order, in the UK and beyond – including the rightful place of voters, elected legislators, governments and judges in political decision-making, as well as the media’s role in questioning those decisions.

Here, Brexit remains the dominant preoccupation. [The previous issue of Monitor](#) reported how ‘ministers have repeatedly insisted that they are in charge of the Brexit negotiations and that to reveal their hand to parliament in advance would weaken their negotiating position’. A lot has changed since then.

Image above: Theresa May and Donald Trump give a joint press conference at the White House, 27 January 2017. © Jay Allen. This image is subject to [Crown copyright](#).

In this edition

Parliament	3–6
Executive	6–7
Elections and referendums	7–9
Parties and politicians	9
Devolution	10–12
Courts and the judiciary	12
Europe	13
International	13–14
People on the move	15
Constitution Unit news	15–16
News from Constitution Unit Fellows	16–17
Bulletin board	18

Following rulings by the [High Court](#) on 3 November, and [Supreme Court](#) on 24 January, ministers had to accept that they require parliamentary approval to trigger Article 50; at the time of writing, the European Union (Notification of Withdrawal) Bill has now passed through the Commons and awaits scrutiny in the Lords (see page 3). Even before the bill’s introduction, the government had conceded (in December) that its Brexit plan would be published prior to triggering Article 50, and (in January) that this would include a white paper – commitments necessary in order to see off potential Commons defeats. With help from the courts, parliament has rediscovered some of its teeth.

The government’s principal goals for the coming negotiations were set out first by Theresa May, in a [speech at Lancaster House](#) on 17 January, and then, on 2 February, in the promised [white paper](#). Ministers want a comprehensive deal, not just on divorce terms, but also on future relations between the UK and the EU. They proposed a complex bespoke deal, outside the single market, but within a deep free trade area and some form of limited customs union. The Prime Minister says she hopes to achieve all of this within two years.

Despite the government’s ultimate acceptance of its more constrained position, the High Court’s ruling initially attracted [vitriolic criticism](#) from some press outlets, which presented judges as an arrogant elite



seeking to trample upon the people's view as expressed in last June's referendum. Some, most notably former Conservative Attorney General Dominic Grieve, [urged](#) the Prime Minister and Lord Chancellor to speak up for the judges' essential role in defending the rule of law. The latter eventually did so, though in [guarded terms](#). The Supreme Court's subsequent judgement was, thankfully, [greeted more calmly](#).

The next to navigate the delicate line between respecting public sentiment and ensuring proper scrutiny of executive decisions were parliamentarians. The Article 50 Bill's [Commons second reading](#) provided a textbook example of MPs' [representational dilemmas](#). Sole Conservative rebel [Kenneth Clarke](#) conjured up Burke in following his conscience, while opponents such as Labour's [Chris Bryant](#), representing constituencies where the majority backed Leave, faced tougher choices still. Many – on both sides – cited the national or local vote to justify their decision, while others simply stayed away. Labour faced the biggest problems, with [47 rebels](#) at second reading, forcing [another frontbench reshuffle](#).

In the end, the bill passed through the Commons without difficulty. Only two proposed amendments – designed to [strengthen parliament's voice](#) towards the conclusion of the Brexit negotiations and to [protect the residence rights of EU citizens](#) – resident in the UK up to 23 June – gained support from more than one Conservative rebel. Even in these cases the government's majority – buoyed by six Labour rebels and support from the DUP – was over 30. The final [third reading vote](#) backed triggering Article 50 by a majority of four to one. The Lords is very unlikely to vote against the bill in its entirety, but might still push for some amendments.

The Brexit challenges remain myriad. As further discussed on page 12, the Supreme Court determined that there is no justiciable requirement to consult the devolved institutions, but the territorial situation is very delicate (see pages 10–12). Parliament's involvement will remain key, notably once attention shifts to the government's 'Great Repeal Bill'. Much will clearly depend on responses from other EU member states (see page 13). A [report](#) from the Constitution Unit's Alan Renwick, published on 3 February, points to the extreme difficulties the government faces in delivering the goals it has set, and the great uncertainties that remain over what outcome will eventually emerge.

As a [blog post](#) from Alan Renwick and Meg Russell explored at the time, reaction to the High Court's ruling was worryingly resonant of populist anti-establishment sentiment spreading in many parts of the world. Less than a week later, Donald Trump was elected President of the United States – having promised to 'drain the swamp' in Washington. December's Italian referendum was more ambiguous (see page 14), though anger against political elites was a factor. Fresh elections in Austria did [narrowly reject](#) the far right's presidential candidate. But eyes will now turn to the Netherlands in March and France in April and May.

In the US, the caustic 'America first' rhetoric of Trump's January inauguration speech gave no hint that he might moderate his campaign agenda. Within a fortnight, claims of '[constitutional crisis](#)' could already be heard. Trump's anger at the liberal media quickly spread to the judges, after his order banning immigration from several majority-Muslim countries was blocked (see pages 13–14). Other concerns include his own [financial interests](#), and his [reorganisation](#) of the National Security Council. The new President's relationship with Congress, and whether he can successfully pit 'the people' against 'the system', remains to be seen.

Reactions in the UK to Trump's rhetoric and agenda have been divided. The parliamentary petitions system has been used to gather [nearly two million signatures](#) opposing Theresa May's offer to Trump of a state visit, and MPs will debate this on 20 February. After over 200 MPs signed an [Early Day Motion](#) against a Trump address to parliament and amidst [threats to boycott](#) any such visit, the Commons Speaker, in an unusual and controversial intervention, effectively [vetoed the idea](#). Theresa May's post-Brexit vision depends on trade deals with the US and others, and while many consider Trump toxic, he clearly also has [some UK support](#). Attitudes to Brexit may depend partly on how these other relationships play out.

Concerns continue to grow, in the UK, US and elsewhere, about '[post-truth](#)' politics, '[fake news](#)' and (most recently) '[alternative facts](#)'. The Constitution Unit will conduct research over the coming year, funded by the McDougall Trust, aimed at identifying ways to challenge these trends (see page 13). But the challenges – not least the rise of social media – are large.

Parliament



Westminster and Brexit

Following the Supreme Court's judgement on 24 January (see page 12) the government [confirmed](#) that it would introduce legislation to empower the Prime Minister to trigger Article 50. The [European Union \(Notification of Withdrawal\) Bill](#), as introduced on 26 January, has just two clauses. Although [around three-quarters](#) of MPs supported the Remain campaign during the referendum an overwhelming majority [voted in favour](#) of the bill at the end of a two-day second reading debate in the Commons, held on 31 January and 1 February. Of the [114 MPs to vote against the bill](#) at this stage 47 were Labour rebels but there was only one Conservative rebel, Kenneth Clarke. A programme motion, which allowed the bill to complete its Commons stages by 8 February, was [also agreed](#).

The Commons programme motion provided for three days in committee of the whole House, which took place from 6 to 8 February. Despite claims that the bill would be ['bombproof' to amendments](#) over [140 pages](#) of amendments were in fact tabled. Ultimately all of those that were voted on were comfortably defeated, although pressure from Conservative backbenchers led the government to [announce](#) that the promised parliamentary vote on the negotiated Brexit terms would take place before the agreement is concluded and before it is voted on by the European Parliament. The bill passed its third reading by [494 votes to 122](#) on 8 February. It now goes to the Lords, where the official opposition have indicated that they will [not be seeking to block the bill's passage](#) but where the government is likely to come under further pressure on issues such as the rights of EU nationals currently resident in the UK and the exact nature of the vote on the final deal. Royal assent will almost certainly be received in time for Theresa May to meet her self-imposed deadline for triggering Article 50 by the end of March.

Even before the Article 50 legislation was published the government was forced to make some concessions to parliamentary opinion. As reported in [Monitor 64](#) (page 3), a Labour opposition day motion that there should be a 'full and transparent debate on the Government's plan for leaving the EU' was [accepted without a division](#) in October. This has resulted in a series of debates in

government time – so far debates have been held on the implications of Brexit for [workers' rights](#), [transport](#), [science and research](#) and [security, law enforcement and criminal justice](#). In December Labour held a [further opposition day](#) on Brexit, tabling a motion calling on the Prime Minister to 'commit to publishing the Government's plan for leaving the EU before Article 50 is invoked'. In the face of a possible defeat – according to [media reports](#) up to 40 Conservative backbenchers were intending to support the motion – this was accepted, with the addition of an amendment adding extra words stating that 'this House should respect the wishes of the United Kingdom as expressed in the referendum on 23 June; and further calls on the Government to invoke Article 50 by 31 March 2017'. The amended motion passed by [448 votes to 75](#) and in January the Prime Minister set out the government's 'Plan for Britain' in her [Lancaster House speech](#). As well as laying down 12 priorities for the upcoming negotiations, the speech included a commitment that the final deal would be voted on in both the Commons and the Lords. At Prime Minister's Questions on 25 January Theresa May [confirmed](#) that the government's 'plan' would also be published as a white paper, something that a number of MPs had [called for](#), including former Conservative ministers Dominic Grieve, Nicky Morgan and Anna Soubry.

Meanwhile, select committees in both chambers have continued to take a very active interest in Brexit-related issues. By the end of January a total of [44 inquiries](#) into aspects of Brexit had been launched, and 15 reports had been published. These include the [first report](#) of the new Exiting the European Committee in the Commons, titled [The process of Exiting the European Union and the Government's negotiating objectives](#), and [six reports in six days](#) published by the House of Lords European Union Committee from 12 to 17 December covering the implications of Brexit for a variety of areas from [financial services](#) to [fisheries](#).



The House of Commons Exiting the EU Committee takes evidence. This image is subject to [parliamentary copyright](#). www.parliament.uk

Restoration and renewal of the Palace of Westminster

Votes in both chambers are still awaited following the publication of the Joint Committee on Restoration and Renewal of the Palace of Westminster's [report](#) last September (see [Monitor 64](#), page 4), recommending a full decant of MPs and peers whilst the work takes place. Over the past few months resistance to the proposal for a full decant has become more vocal. In early January senior MPs from the Conservative and Labour parties [circulated a letter](#) calling for the Commons to sit in the Lords chamber and the Lords to move to the royal gallery during the building work. Some media reports have suggested that the Prime Minister is sympathetic to this suggestion. Meanwhile, the Treasury Select Committee has [launched a fresh inquiry](#) into restoration and renewal, with its chair, Andrew Tyrie, saying that existing reports had not provided 'enough of the evidence to come to even a preliminary decision'. The Public Accounts Committee has also announced an [inquiry of its own](#). On 25 January a [Westminster Hall debate](#) was held, led by Labour MP Chris Bryant, a member of the Joint Committee. In his speech he stressed that the committee had reached the conclusion that it was 'simply unfeasible, unworkable and impracticable for us to stay in' and called on the government to 'get on with it' and bring forward votes on the committee's recommendations without further delay.

English votes for English laws

The Commons procedures known as English votes for English laws (EVEL) continue to operate. As of the end of January 2017, the Commons Speaker has certified provisions of 15 bills, and around 50 statutory instruments, since the rules were introduced in October 2015. Under the procedures, MPs representing constituencies in England (or England and Wales) have the opportunity to veto certain legislative provisions that apply only in that part of the UK. But although there have been around 20 'double majority' votes held under the new rules, EVEL has not so far altered any legislative outcomes.

Following a year of operation of the new EVEL procedure, three major reports appeared evaluating it and its implications. In November 2016, the Constitution Committee in the House of Lords [published the conclusions of its inquiry](#). Later that month, an academic report by Daniel Gover and Michael Kenny of the Mile

End Institute, entitled [Finding the Good in EVEL](#), was published by the [Centre on Constitutional Change](#), in collaboration with the Constitution Unit (see pages 16–17). In December, the Commons Procedure Committee [published the conclusions of its technical evaluation](#) of the EVEL standing orders. The latter two reports, in particular, made detailed recommendations for reform of the existing system. The government is currently [reviewing the operation of EVEL](#), and is expected to publish its own conclusions later in the current parliamentary session.

Private members' bills to become backbench bills

As reported in [Monitor 64](#) (page 5), in October the House of Commons Procedure Committee published a [report](#) on private members' bills, reiterating [earlier proposals](#) for reform of the system that had been [rejected by the government](#) in June. The government [responded](#) in January. It again rejected the Procedure Committee's more substantive proposals – that the Backbench Business Committee should be allowed to select four priority bills for debate each session, that the House should approve the use of the chair's power to impose time limits on speeches on private members' bill days, and that members should be limited to presenting one bill per day. The government did, however, accept a recommendation to rename 'private members' bills' as 'backbench bills' on the grounds that the term 'backbencher' is better understood by the public than 'private member'.

House of Lords composition: a time for action?

[Monitor 64](#) (page 5) reported how post-referendum personnel changes brought potential for action on the House of Lords' growing size. Following the [public comments](#) by new Lord Speaker Lord (Norman) Fowler, the Commons Public Administration and Constitutional Affairs Committee (PACAC) formally announced that it would conduct an [inquiry](#) into Lords effectiveness, with a particular focus on size (as indicated on page 16, the committee subsequently appointed the Constitution Unit's Meg Russell as its specialist adviser). On 5 December the House of Lords then [debated a motion](#) – proposed by Conservative backbencher Lord Cormack – that 'this House believes that its size should be reduced, and methods should be explored by which this could be achieved'. The 61 speeches demonstrated virtually no

dissent from such a principle, and plenty of suggestions for change – with particular emphasis on the need to agree a maximum size for the chamber, and limit appointments, as well as encouraging mass retirements. The new Leader of the House, Baroness Evans of Bowes Park, showed greater openness to these proposals than her predecessor – presumably reflecting a change of mood under Theresa May. She indicated willingness to ‘examine and consider what ideas might be able to command support across the House in relation to our size’, suggesting that she ‘would welcome working with noble Lords... to explore taking them forward’ (column 590).

Many contributors to the debate had suggested creation of a Lords select committee to consider the options. With no immediate promises from government to pursue this, it was [announced on 20 December](#) that Lord Fowler was establishing a ‘Lord Speaker’s committee on the size of the House’. This represents a procedural innovation, and is a further sign of Fowler’s determination to make progress on the issue. The [new committee](#) is chaired by former civil servant Lord (Terry) Burns (Crossbench) and includes five other members (two Conservative, two Labour, one Liberal Democrat). It began meeting in mid-January. Hence both chambers now have committees investigating this issue, creating the potential for co-ordinated pressure in coming months.



New Lord Speaker, Norman Fowler, presides over business in the House of Lords. [This image](#) is subject to [parliamentary copyright](#). www.parliament.uk.

House of Lords powers: inaction after all?

While the Cameron administration had shown little enthusiasm for membership reform, it did threaten changes to the powers of the House of Lords, through the [Strathclyde Review](#) – which followed the October 2015 [dispute](#) between the government and peers over

tax credits. As reported in [Monitor 62](#) (pages 1–2) and [63](#) (page 3) respectively, Lord Strathclyde had set out three options for restricting the Lords’ power over secondary (i.e. delegated) legislation, which had met with universal criticism from parliamentary committees in both chambers. This made progress on reform look difficult at best. On 17 November Leader of the Lords Baroness Evans made a [statement](#) on the matter, which was [widely reported](#). In December the government published its formal [response to the Strathclyde Review and the committee reports](#), confirming its conclusion that there should not be legislation to limit the Lords’ power, as Strathclyde had suggested. Nonetheless it retained the option to change its mind ‘if it becomes necessary to intervene to maintain the primacy of the House of Commons... on secondary legislation’. This barely-veiled threat, through which the government clearly hoped to maintain the current uneasy truce, was poorly received by the Lords committee chairs. In a joint letter, they [expressed concern](#) about this and the ‘thinness’ of the government’s response.

As with so many things, there is also a Brexit dimension to these debates. Fears by some on the government side that the Lords will somehow intervene to block Brexit led to anonymous briefings in January that the Strathclyde proposals could be resurrected. Alongside this were wilder suggestions that the government might move to [abolish the House of Lords](#) or, contrary to other positive progress on size (reported above), ‘flood’ the chamber with new pro-Brexit peers. This spurred Lord Speaker Norman Fowler to [publicly intervene](#) to insist that ‘the Lords recognise the primacy of the Commons’ and ‘won’t sabotage Brexit’. With regard to volume of appointments, he emphasised that mass appointments would be unhelpful, and prime ministerial restraint is needed, taking the opportunity to suggest that Theresa May ‘would be going with the grain if she herself was to decide substantially to move away from the example of her most immediate predecessors’.

Lords Constitution Committee legislative process inquiry

One consequence of the tax credits/Strathclyde process was that several parliamentary committees demanded a review of the dividing line between primary and secondary legislation, and the legislative process in general. This also has a Brexit dimension, given the widespread expectation that the necessary

legislation will delegate considerable power to ministers. In September the Lords Constitution Committee announced that it would conduct such a wholesale review. As set out in the [inquiry's terms of reference](#) the committee intends this work to take a year, and be conducted in four phases. It began with phase one – ‘preparing legislation for introduction to parliament’ – and has subsequently moved on to phase three – ‘the delegation of powers’ (with a specific reference to the promised ‘Great Repeal Bill’ on Brexit). Written submissions on this were invited by 18 January. By that date the committee had already held eight oral evidence sessions, with more than 25 witnesses. Phase two, ‘the passage of legislation through parliament’ and phase four, ‘the period after Royal Assent’, are still awaited.

Executive



Public appointments

On 16 December 2016, the new [Governance Code for Public Appointments](#) was published, coming into force on 1 January 2017. It followed the [Grimstone review](#), the recommendations of which caused some controversy when they were published in March 2016 (see [Monitor 63](#), page 5). Reflected in the new Code are the five recommendations of the Grimstone review which were singled out for criticism by Sir David Normington, the outgoing Commissioner for Public Appointments at the time of the review's publication (see his [piece on the Unit blog](#)). However, the new Commissioner, Peter Riddell, is [optimistic about the concessions he has secured](#). First, the key ‘Nolan principle’, that selection processes should be fair, impartial and based on consistent selection criteria, is included. Second, the Commissioner must be consulted before ministers select Senior Independent Panel members, use their exceptional powers to appoint someone not deemed appointable by the selection panel, or dispense with the selection process. Riddell also welcomed the [new online tracker](#) of public appointments. For Riddell, however, much hinges on the ‘spirit’ with which the government operates the new rules.

The new [Public Appointments Order in Council](#) also came into force on 1 January 2017. It extends the Commissioner's remit from 277 public bodies to 322, but does not yet reflect the departmental structure of the current government.

Extended ministerial offices and special advisers

In [Monitor 62](#) (page 5) it was reported that [extended ministerial offices](#) (EMOs) had been established in five Whitehall departments following the 2015 general election. First proposed by then Minister for the Cabinet Office Francis Maude in 2013, these made it easier for ministers to personally appoint expert policy advisers to their departments with the status of temporary civil servants. However, they have proved to be a short-lived innovation – EMOs were omitted from the [new version of the Ministerial Code](#) published in December, with [media reports](#) suggesting that this was because Theresa May wished to ‘avoid the politicisation of the civil service’.

The government also published its latest [list of special advisers](#) (spads) in December. David Cameron's majority government had 95 spads; Theresa May's has 12 fewer. Of this reduction only one has come from the ‘centre’ (No. 10 and the Cabinet Office), while the rest have come from government departments. On the Constitution Unit blog Ben Yong and Harmish Mehta have [argued](#) that May's treatment of spads reflects the prioritisation of primal political concerns over technocratic measures of governmental effectiveness.

Draft Public Services Ombudsman Bill

A [draft bill](#) was published in December which simplifies ombudsman services in England, and across the UK in respect of reserved matters. It fulfils a commitment first made in the 2015 Queen's speech to bring forward a draft bill, which followed recommendations in 2014 [from the Public Administration Select Committee](#) and [former civil servant Robert Gordon](#). Existing ombudsman services across central, health and local authority bodies will be unified under a new Public Service Ombudsman, with capacity to include housing and other ombudsmen at a later date. The ‘MP filter’, whereby complaints have to be directed through a member of parliament, will also be abolished. There are precedents for a unified service in Scotland, Wales and Northern Ireland, which are generally believed to have worked successfully.

A new Board of the Public Service Ombudsman will fund and oversee the new service, itself overseen by the independent Public Accounts Commission, which will recruit the Ombudsman and Board Chair. The Ombudsman will have new powers to widen investigations where necessary and champion good

administration and complaints handling. These put into statute informal initiatives by recent Ombudsmen to address systemic issues of maladministration. Although there is no specific power to initiate investigations without a complaint, the new powers to expand investigations will assist considerably in major investigations such as treatment of compensation for Equitable Life in 2009. There are new powers to co-operate and share information with devolved ombudsmen. But recommendations by the new Ombudsman remain non-binding on public bodies.

The draft bill was [welcomed](#) by ombudsmen organisations, and is expected to be non-controversial. Scrutiny is likely to be carried out by the Commons Public Administration and Constitutional Affairs Committee.

Transfer of Privy Council powers in the Higher Education and Research Bill

The [Higher Education and Research Bill](#), which has passed through the House of Commons and is currently being considered by the House of Lords, establishes a new non-departmental public body termed the Office for Students (OfS) as regulator of the higher education sector in England. On 6 January the chair of the House of Lords Constitution Committee, Lord Lang of Monkton, wrote to the government spokesperson responsible for the bill in the Lords [expressing concerns](#) about the transfer of powers currently held by the Privy Council to the OfS, which could be exercised without parliamentary scrutiny. The functions of the OfS currently held by the Privy Council include the conferral and revocation of degree-awarding status to a higher education provider, as well as the conferral of university status.

Similar [concerns](#) have been raised by the Lords Delegated Powers and Regulatory Reform Committee, and in debates on the bill in the chamber. In a [speech](#) at second reading former Clerk of the House of Commons Lord Lisvane commented that the ministerial guidance that the bill allows the Secretary of State to issue with respect to how the OfS should exercise its functions is in effect ‘quasi-legislation’. Furthermore he noted that the OfS would gain powers to make secondary legislation ‘as if made by ... a Minister of the Crown’, and that while this could modify the status of higher education institutions (which might have been conferred in statute), it would not be subject to parliamentary scrutiny. The Delegated Powers and Regulatory Reform Committee

[recommended](#) that ministerial guidance issued to the OfS, and proposals on major changes of status made by it, should both be treated as delegated legislation subject to the ‘affirmative’ procedure (thereby requiring parliament’s explicit approval). The government came under significant pressure on these issues at the Lords committee stage, which may well result in amendments at report stage, scheduled for 6 March.

Elections and referendums



The role and conduct of referendums

Discussions about how referendums are conducted in the UK, which built up steam during the 2016 referendum campaign and gained great prominence in the immediate wake of the referendum result (see [Monitor 64](#), pages 7-8), have continued. There are still some who would like to revisit the legality of the vote. In October, a group calling itself [Restoring Integrity to Democracy](#), led by Professor Bob Watt of the University of Buckingham, made a formal referral to the Director of Public Prosecutions alleging that the two main Leave campaign groups had breached the rules on ‘undue influence’ upon the vote at least six times by making claims that they knew to be false. It is vanishingly unlikely, however that any such case will succeed: there is no law against lying during a referendum campaign.

Rather, the more interesting issue concerns whether lessons can be learned for how referendums might be conducted in the future. The House of Commons Public Administration and Constitutional Affairs Committee (PACAC) has launched an [inquiry](#) into these issues, focusing particularly on the role and purpose of referendums, the interactions between direct and representative elements of the democratic process, the regulation of the role that government and the civil service can play during referendum campaigns, and the administration of the referendum by the Electoral Commission. Alan Renwick, Deputy Director of the Constitution Unit, was the [first person to give oral evidence to the inquiry](#), on 1 November. He argued that the key lesson to be learned is the need to improve mechanisms for ensuring that balanced and accurate information is available to voters during any future referendum campaigns.

The Constitution Unit held a public [seminar](#) on the regulation of referendums in the UK on 25 October. This was followed by a day-long Constitution Unit and Committee on Standards in Life joint seminar on 22 November. Details of this are reported in the Constitution Unit News section of this *Monitor* (see page 15), where information on the Unit's new research project *Improving Discourse During Election and Referendum Campaigns* can also be found.



Alan Renwick giving evidence to the Commons Public Administration and Constitutional Affairs Committee. This image is subject to [parliamentary copyright](#). www.parliament.uk

Government response to the Pickles Review into electoral fraud

As reported in [Monitor 64](#) (page 8), last summer former cabinet minister Sir Eric Pickles published a review for the government on how to combat electoral fraud. It made 50 recommendations, including the suggestion that voters in Great Britain should have to present photo ID when voting at a polling station, as those in Northern Ireland already do. The government published its [response](#) to the report between Christmas and the New Year.

As expected, the response was favourable. In particular, the government has decided to take forward the suggestion that schemes requiring voters to show ID should be piloted. It wants these pilots to be concentrated primarily in the 18 local authority areas that the Electoral Commission has identified as being at particular risk of electoral fraud, though it will also invite applications to take part in the pilot from other local authorities in order to gather wider evidence.

The government argues that testing such measures is important for promoting the integrity of the democratic process. On the other hand, Labour and some

campaigning organisations have criticised them. The Shadow Minister for Voter Engagement, Cat Smith, [said](#), 'The plans for photo ID are like taking a sledgehammer to crack a nut, potentially denying a vote to millions.'

Fines issued by the Electoral Commission

The Electoral Commission has, since late 2010, had the power to fine political parties that breach the rules on reporting election expenses. It can use these civil powers on matters that do not fall within the domain of the criminal, such as instances of unintended inaccuracy in parties' expenses submissions. The 2015 election was the first general election to which these arrangements applied. In recent months, the Electoral Commission has concluded two investigations: in October, it [fined the Labour Party](#) £20,000 for failing to declare election expenses totalling £123,748; then, in December, it [fined the Liberal Democrats](#) the same amount after £184,676 of expenses were found to be missing from their election returns. In the latter case, it also referred one matter to the police, where there was evidence that the declaration may have been knowingly false. Investigations in relation to the Conservative Party, meanwhile, are ongoing.

The Electoral Commission has argued that the £20,000 limit on the fines it can impose is too low and should be raised. It [says](#) that the maximum 'could seem inadequate and affect public confidence, especially if imposed on a high spending campaigner following a closely contested poll'. The government has not, however, responded to this proposal.

Progress with the boundary reviews

The four Boundary Commissions – for England, Scotland, Wales, and Northern Ireland – published their initial proposals for the future boundaries of parliamentary constituencies in September and October (see [Monitor 64](#), page 8). Since then, the next step in the lengthy review process has been taken: each of the Commissions has run a twelve-week consultation on its preliminary plans. The Boundary Commission for England [reports](#) that it received over 15,000 comments through its website and over 2,000 emails and letters; in addition, 1,200 people came to its public meetings around the country.

Over the coming months, the Commissions will publish these submissions and invite comments on them. They

will then publish revised proposals later in 2017. These will go through a further period of consultation before final recommendations are submitted to government by 1 October 2018. The recommendations will be implemented only if they are subsequently agreed by parliament.

In November a [private members' bill](#) introduced by Labour MP Pat Glass, seeking to change the rules for the reviews, so that there would be 650 MPs rather than the proposed 600 and allowing greater variation in the size of electorates, [received a second reading](#) in the House of Commons. If passed the bill would effectively force the review process to be restarted. It is highly unlikely to become law but the debate was interesting for revealing the strength of opposition to aspects of the boundary review process – [253 MPs voted in favour](#) of giving the bill a second reading, including two Conservative rebels as well as strong turnouts from Labour and other opposition parties.

Parties and politicians



Women in the House of Commons

In January the House of Commons Women and Equalities Committee published a [report](#) which included a number of striking recommendations for steps that might be taken to increase the number of female MPs. The proportion of female MPs has [recently passed 30 per cent](#), following a number of by-elections at which women were elected to seats previously held by men. However, the UK is still only [48th in the world](#) for representation of women in its lower house or single chamber of parliament, a ranking that the committee's chair, Maria Miller, has described as '[shockingly low](#)'.

The committee report emphasises that future progress cannot be taken for granted and calls for government, parliament and political parties to take action. Recommendations include that the government should set a formal target of 45 per cent female MPs by 2030; that political parties should be required by law to field a minimum of 45 per cent female candidates, to be brought into force if there is no significant increase in the number of female MPs after the next general election; and that the provisions of the Sex Discrimination (Electoral Candidates) Act 2002, which allow parties to

use mechanisms such as all-women shortlists for a time-limited period, should be extended beyond the current 2030 sunset date.



Female members of the House of Commons. This image is subject to [parliamentary copyright](#). www.parliament.uk

UKIP leadership election

In [Monitor 64](#) (page 12) it was reported that UKIP were to hold their second leadership election in quick succession, following Diane James' resignation after just 18 days as leader. The initial favourite in this contest was Steven Woolfe, but after being involved in an altercation with fellow MEP Mike Hookem he [withdrew from the contest and also resigned from the party](#), which he described as being on a 'death spiral'. Paul Nuttall, previously the party's deputy leader, was named as the new leader on 28 November, comfortably defeating Suzanne Evans and John Rees-Evans. Nuttall is UKIP's candidate in the Stoke-on-Trent Central by-election, scheduled for 23 February.

Devolution



Inter-governmental relations and Brexit

The Supreme Court's [Article 50 judgement](#) confirmed that the UK government is under no *legal* obligation to consult or seek the consent of the devolved legislatures, despite the court affirming that Brexit will affect devolved competence (see page 12). Changes to devolved competences would normally invoke the Sewel convention, under which the consent of the devolved assemblies is sought, but the court concluded unanimously that this is a political convention, not a legal obligation. As such, it was not a matter on which the court would rule, 'because those matters are determined within the political world' (para. 146).

Politically, the devolved governments may have some indirect influence over the parliamentary process through party representatives at Westminster, but the only direct opportunity for influence is within the intergovernmental arena. The Joint Ministerial Committee (European Negotiations) was [set up](#) to ‘seek to agree a UK approach to, and objectives for, Article 50 negotiations’ and to provide oversight of Brexit negotiations once underway ‘to ensure, as far as possible, that outcomes agreed by all four governments are secured from these negotiations’.

The JMC (EN) has met monthly since its inception, but there is no sign as yet that it has provided an avenue for influence for the devolved governments. The Prime Minister’s [Lancaster House speech](#) setting down some parameters of the UK approach to Brexit was delivered without consultation, let alone agreement, with the JMC. The [Scottish](#) and [Welsh](#) governments have issued position papers stating their preferences, but it is difficult to see how their priorities, which include full participation in the single market, could be accommodated within Theresa May’s Brexit vision. The collapse of the Northern Ireland Executive (see page 11) makes it even less likely that multilateral agreement can be secured before Article 50 is triggered.

The extent to which the Brexit process gives a meaningful voice to the devolved governments represents the Union’s biggest test since the Scottish independence referendum. Failure to accommodate at least some of their preferences may have serious and long-lasting repercussions for politics and relationships on these islands.

In a taste of the battles to come, the Scottish Parliament [voted](#) symbolically on 7 February against triggering Article 50; by contrast, the Welsh Assembly [rejected](#) a similar motion the same day.

Scotland

Although debate has been dominated by what looks like a stand-off between the Scottish and UK governments over Brexit and the possibility of another independence referendum (to which Nicola Sturgeon edges asymptotically closer), other constitutional issues have moved on in Scotland. In a change of stance, Scottish Labour now [supports a ‘federal’ UK](#). Their leader Kezia Dugdale argues that Brexit, though unwelcome, presents an opportunity to refashion devolution into a new kind of federalism, with European responsibilities devolved,

including workers’ rights. She has called for a People’s Constitutional Convention to rewrite the constitution, perhaps in a new Act of Union.

Over the past few months the Scottish Parliament has begun, tentatively, to exercise the new tax and benefit powers devolved after the Smith Commission. Finance Minister Derek Mackay presented the first Budget with the new powers: in income tax, almost completely devolved, the Scottish government [stuck to the same tax rates](#) as the Conservatives in Westminster – rejecting Labour’s proposed 50p rate for top earners. Following a [deal with the Green Party](#), necessary to secure parliamentary approval for the Budget, the threshold for the 40p rate will be frozen, so income tax is marginally heavier for some Scottish taxpayers. Meanwhile, Minister for Social Security Jeanne Freeman [announced](#) that the Scottish government would exercise new powers not to follow the UK changes to the frequency of benefit payments (fortnightly, not monthly) and to keep paying some housing support directly to social landlords. So, away from the high drama, devolution gradually brings about policy divergence, though the differences are marginal. In the new devolved areas, as in others, the decisions are more to reject England’s policy, rather than strike out in new Scottish directions.

In other news the Scottish Parliament’s Presiding Officer, Ken Macintosh, has [set up a Commission](#) to review the operation of Holyrood itself, following criticism that it had fallen away from its founding principles with, for example, claims that the much-vaunted committee system is now much more partisan and less effective than at Westminster. In [evidence to the Commission](#) two former Labour First Ministers argued for an increase in the number of MSPs, to accommodate the extra work that has come Holyrood’s way.

Wales

The new year has already seen significant constitutional change in Wales. On 31 January the UK government’s Wales Act [received royal assent](#), becoming Wales’ fourth devolution settlement since 1998. The Welsh Assembly [passed a legislative consent motion](#) for the measure by 38 votes to 17 on 17 January. The motion was supported by Labour and the Conservatives (although several Labour AMs publicly expressed reservations), with Plaid Cymru and UKIP opposing. The legislation, which moves Wales from a conferred to a reserved powers model,

has been criticised as a step back for Welsh devolution (see [joint Constitution Unit/Wales Governance Centre report](#)) but does provide additional limited powers over tax, energy and transport, and Assembly affairs. Of particular interest is the Assembly's ability to alter its size and change its electoral system – powers which may come into use after boundary changes reduce Welsh Westminster representation by 25 per cent. On 1 February, the Presiding Officer of the Welsh Assembly announced an [Expert Panel on Electoral Reform](#) to advise on these matters: see the Unit News section below (page 16).

Meanwhile, First Minister Carwyn Jones and Plaid Cymru leader Leanne Wood have outlined a joint plan for exiting the EU in a [white paper](#) focusing on Wales' continued 'participation' in the single market. Their task is no easy one: they must find a middle ground between continued membership and full exit for a population that voted to leave, yet whose economy is more reliant on exporting to the EU than is the rest of the UK's.

Northern Ireland

After a year or so of '[Fresh Start](#)' – involving, if not harmony, at least the absence of public discord between the DUP and Sinn Féin, the Northern Ireland governing parties – all fell apart abruptly in January. There will be Assembly elections on 2 March, and it is unclear whether devolved government can be restored afterwards.

The immediate cause of the [break](#) was the refusal of the First Minister Arlene Foster to step aside during an inquiry into a [scheme](#), promoted when she was responsible minister, to further the use of renewable heat sources. As established, the scheme encouraged profligate use of heat that would impose substantial unbudgeted costs on the Northern Ireland Exchequer for 20 years. It is widely acknowledged that there have been, as the [Northern Ireland Audit Office concluded](#), 'serious systemic failings'. [Rumours swirl](#) of something nearer corruption, the latest in a line of suspected though unsubstantiated scandals.

Sinn Féin at first stood with the First Minister against demands for her head, but her handling of the issue was much criticised. And it emerged that this was only the last in a series of provocations that Sinn Féin felt they, and the nationalist cause, had been subjected to in the Executive. So the deputy First Minister Martin McGuinness [resigned](#), to bring about an election.

An underlying cause of tension was [Brexit](#), which the DUP favours, and nationalist parties vehemently oppose. The Executive had been able to reach no common position, beyond demanding that Northern Ireland should suffer no harm.

After a potentially divisive election will come a difficult negotiation on terms for resumed devolution. Sinn Féin are [upping the ante](#) on the Brexit issue. If, as the terms become clear, adverse consequences – notably any return of tangible borders within the island of Ireland – emerge, it will be increasingly difficult for them to be in government. They may think a stand-off gives them more leverage than co-operation within the Executive.

The negotiations will lack the moderating influence and experience of Martin McGuinness, who is seriously ill and [not standing for re-election](#). He has been [replaced as Northern leader of Sinn Féin by Michelle O'Neill](#). Potentially the next Executive, if there is one, will be headed by two co-equal women: a development that few would have anticipated when the Good Friday Agreement was signed 19 years ago.



Michelle O'Neill, Sinn Féin's new leader in Northern Ireland. © Sinn Féin

English regional devolution

English devolution continues to progress towards a critical point: the election in May 2017 of several 'metro-mayors' for new combined authorities. Evidence of the longer-term direction of the policy is still thin, and the government's position in particular remains guarded. In November it published a '[Northern Powerhouse Strategy](#)', plus the first '[devolution report](#)' required under the Cities and Local Government Devolution Act 2016; but neither provided much additional information.

Turning to specific deal areas, the Sheffield City Region has run into trouble: a judicial review concluded on 21 December that its consultation over whether parts of Derbyshire and Nottinghamshire should be included in the region [was unlawful](#). As a result, the Sheffield mayoral election planned for May 2017 has been postponed. In the wake of this, talk of an alternative ‘Greater Yorkshire deal’, encompassing the whole of the county of Yorkshire, has resurfaced.

No new deals were announced in the Chancellor’s 2016 Autumn Statement and the [Norfolk/Suffolk](#) and [Greater Lincolnshire](#) deals collapsed in November 2016 after councils in those areas voted against them. At the time of writing six ‘metro-mayors’ will be elected in May 2017: Greater Manchester, Liverpool, Tees Valley, Cambridgeshire, West Midlands and West of England. Rumours continue regarding deals in Oxfordshire, the Solent/Hampshire; Suffolk/North Essex, Lancashire, Northumberland, Newcastle and North Tyneside, and Dorset: but no concrete outcomes are in evidence.

On 27 January the London Finance Commission (LFC), chaired by Professor Tony Travers, made several new proposals for fiscal devolution to the Greater London Authority: hypothecated income tax and VAT, property taxes, and smaller revenues such as Vehicle Excise Duty, Air Passenger Duty, and a tourism tax. The LFC’s report, [Devolution: a capital idea](#), was presented as a potential model for other English city regions. The government has shown little appetite for fiscal devolution to date, beyond limited reforms to the allocation of business rate revenue between local authorities (‘100 per cent business rate retention’). New arrangements are to be piloted in several of the ‘devolution deal’ areas from 1 April 2017, in advance of full-scale introduction, likely in April 2019.



London’s City Hall. © UCL Digital Media Imagestore, www.imagestore.ucl.ac.uk

Courts and the judiciary



Brexit litigation

As has been noted elsewhere in this issue, the Supreme Court [rejected](#) the government’s appeal of November’s [High Court ruling](#) in the *Miller* case, denying the government the power to serve an Article 50 notice declaring its intention to withdraw from the European Union without the consent of parliament as it had intended.

By a majority of eight to three, the Supreme Court judges held that the terms of the European Communities Act 1972 do not allow the government to use the royal prerogative to withdraw from the EU treaties. Britain’s exit from the European Union will fundamentally alter the UK’s legal and constitutional framework, and erode the rights of British citizens. This persuaded the court that governmental authorisation alone is insufficient.

In their [judgement](#), the court also addressed the two separate legal challenges referred by the Attorney General for Northern Ireland. The first was brought by a bi-partisan group of Stormont politicians and the second by campaigner Raymond McCord. In agreement with the Belfast High Court, which had dismissed the cases, the Supreme Court judges decided that the government is not obliged to seek consent from the devolved legislatures before invoking Article 50. The UK’s relationship with the EU is a matter reserved to the Westminster parliament. Although the acts giving effect to devolution were passed in the context of UK membership of the European Union, they do not require the UK to belong to the EU. Under the Sewel convention, the UK authorities may have a *political* obligation to consult the devolved bodies on aspects of Brexit that affect their competences, but they have no *legal* obligation.

As after the High Court ruling, the [media response](#) to the ruling was divided. The *Daily Mail*, which had mounted a vicious attack on the High Court judges as ‘[enemies of the people](#)’, was this time more restrained, nonetheless commenting that the day of the Supreme Court’s decision was ‘[not a good day for democracy](#)’. The [Telegraph editorial](#) also expressed concerns about the judgement. However, there was broad support for the decision from other daily papers including the [Guardian](#), the [Financial Times](#) and the [Independent](#).

Europe



The EU's response to Theresa May's speech

Just a few tumultuous weeks after the [resignation of Sir Ivan Rogers](#) as the UK's Permanent Representative (ambassador) to the EU, after he voiced his fears that government uncertainty risked a 'disorderly Brexit', Prime Minister Theresa May sought to steady the ship with her [much anticipated speech on Brexit on 17 January](#).

In mapping out her vision for a new, globally focused UK, Theresa May offered some much needed clarity as to what form of Brexit will be sought once Article 50 is triggered. Most eye-catching was her explicit statement that Britain would prioritise control of its borders and reject freedom of movement. She did not shy away from the ramifications of this, noting that it 'cannot mean membership of the single market'. In just a few short paragraphs she not only removed from the table one of the most contentious issues to emerge from the referendum campaign, but also set the UK on an unambiguous pathway to exit.

While her remarks certainly caused dismay amongst some still hoping that Brexit might not quite mean Brexit, among her fellow EU leaders there will have been little surprise. Throughout the referendum campaign and subsequently, various EU officials, European ministers and business representatives have been quick to point out the incompatibility of curbs on freedom of movement with membership of the single market. Britain could not have an 'à la carte' membership option that threatened the integrity of the broader integration project.

Thus, the response of the EU-27 to Theresa May's speech has been pragmatic and appreciative that this reality has finally been recognised. Donald Tusk, European Council President, [tweeted](#) that the speech 'proves that unified EU-27 position on indivisibility of Single Market finally understood and accepted by London'.

And, while there was consternation in some parts of the European media at the Prime Minister's implied threat that if the EU sought to punish the UK it would be 'an act of calamitous self-harm' and that 'no deal [...] is better than a bad deal', EU-27 leaders were [publicly](#)

[far more sanguine](#). Germany's Foreign Minister, Franz-Walter Steinmeier, welcomed the clarity of the speech: 'we as well want good and trustful relations and hope for a constructive process of negotiation'. His Dutch counterpart, Bert Koenders, declared 'It's good that PM May has provided the first design of Brexit and that the UK wants a good and constructive relationship with the EU. We share this desire.'

Despite such positive views and however much the EU-27 may appreciate Mrs May's sentiment that a successful EU 'remains overwhelmingly and compellingly in Britain's national interest', they are very aware of the potential damage that Brexit may do to the whole integration project. Following Theresa May's speech, Joseph Muscat, Prime Minister of Malta, the current holder of the six-month rotating EU Council presidency, emphasised the '[unequivocal unity](#)' of the EU-27 on the inviolability of the four freedoms and separately that he had 'never seen such a convergence within the European family' as he had on Brexit. It remains to be seen, of course, whether unity among the EU-27 can be maintained, particularly once the negotiations start.

International



US: Trump's constitutional crises?

Donald Trump was elected as US President on 8 November 2016, with an electoral college majority but [nearly three million fewer votes](#) than his rival, Hillary Clinton. His [inauguration speech](#) on 20 January, and his actions since taking office, suggest that he does not intend to moderate his campaign agenda. Less than a month into his term he is already facing two potential constitutional crises.

The first relates to whether he has done enough to divest himself of his global business interests to avoid being in breach of the emoluments clause in Article I of the [US Constitution](#). The clause prohibits emoluments – gifts or benefits – from a foreign state. His continued ownership of companies that do business with foreign governments, hotels for example, raises serious conflict of interest questions. These concerns relate not just to income from foreign governments, but also to the potential for Trump to limit his competitors through regulatory relief, tax breaks or subsidies.

So far Trump has declined to release his tax returns, so the reach of his business interests, and what – if any – breaches occur will be difficult to determine.

A second and growing crisis relates to an [executive order](#) mandating a three-month ban on citizens from seven Muslim-majority countries and an indefinite ban on Syrian refugees. The order was met with widespread domestic and international condemnation before being ruled unlawful by [district judge James Robart](#). Trump responded to the ruling by describing Robart as a ‘[so-called judge](#)’ and saying that Americans should [blame him and the courts ‘if something happens’](#). The country’s highest court may become more favourable to Trump’s policies, however, subject to the confirmation of his recent [Supreme Court nominee](#), conservative Neil Gorsuch.

Whatever Trump’s agenda for the next 100 days, he faces an uphill battle having recorded the [lowest initial job approval ratings for any US President](#) in a deeply divided country. For discussion of how far he will actually be able to carry out his agenda see posts by [Nigel Bowles](#) and [Colin Provost](#) on the Constitution Unit blog.



Donald Trump signs Executive Orders. Source: [Wikimedia Commons](#)

Italy: Senate referendum

On 4 December 2016, the Italian people [rejected by a crushing 59 to 41 per cent](#) margin the constitutional reform proposed by (now former) Prime Minister Matteo Renzi. [The reform](#) would have drastically cut the powers of the upper chamber (the Senate), reduced its membership from 315 to 100, and turned it from directly to indirectly elected, comprising representatives of the regions. In the run-up to the referendum, the possibility of a No victory was described as another anti-establishment vote: Renzi had linked the survival of his government to the passage of this reform; his

opponents, such as the populist Northern League and Five Star Movement, naturally campaigned against it to force him to resign. In fact, however the result [was about more than populism](#). Together with a new electoral law, the reform would have changed the nature of the Italian political system from very consensual to highly majoritarian – a striking contrast with the aim of the 1948 anti-fascist Constitution, designed to encourage dialogue among all political parties. Many constitutional experts opposed the reform, which, in light of Italy’s constitutional history, was hard to sell to the public. The Italian referendum also highlights the difficulties of achieving such a radical second chamber reform – as also seen in the never-ending debate about reforming the House of Lords. While populism remains a cause for concern, the Italian vote was, at least in part, a vote for the Italian Constitution. For further discussion of the referendum outcome [see our blog](#).

Canada: Senate and electoral reform

As reported in [Monitor 62](#) (page 12–13) Prime Minister Justin Trudeau pledged to reform Canada’s appointed Senate so that all seats would in future go to non-partisan independents. As of November 2016, such members held a plurality of seats – marking a milestone in incremental Senate reform. The Senate has since adopted procedural changes to ensure that it can continue to function without a government and opposition caucus, and more are expected as the Senate adapts to its new make-up. Alongside procedural change, the emergence of independent Senators has led to changes in how Senators conceive their role. Although the full implications remain uncertain, it appears that an independent, less-partisan Senate will be more active in reviewing and amending legislation. Whether or not this is a positive outcome is up for debate.

As Trudeau’s Senate reform has proceeded at pace, his promise that the 2015 federal election would be the last one held under the current first-past-the-post electoral system has fallen apart. The Special Committee on Electoral Reform presented its final report to parliament on 1 December, recommending that a referendum be held on whether to stay with first-past-the-post or switch to a proportional system. The government rejected the recommendation of the committee and soon after, following a cabinet reshuffle, Trudeau announced that his government would [no longer be pursuing electoral reform](#).

People on the move

Jo Stevens resigned as Labour's Shadow Welsh Secretary in order to vote against the second reading of the Article 50 legislation. Her replacement is **Christina Rees**.

After his election as UKIP leader **Paul Nuttall** named **Jonathan Arnott** as spokesperson on Constitutional Affairs and **Gerard Batten** as spokesperson on Brexit.

Michelle O'Neill became Sinn Féin's new leader in Northern Ireland, following **Martin McGuinness's** resignation due to ill health.

Sir Ivan Rogers resigned as the UK's Permanent Representative to the EU in January. **Sir Tim Barrow** was quickly announced as his successor.

Andrew Kennon retired as Clerk of Committees in the House of Commons in late 2016. He was replaced by **Paul Evans**, who is in turn replaced by **Mark Hutton** as Clerk of the Journals. In the Lords, Clerk of the Parliaments **Sir David Beamish** will be succeeded by **Edward Ollard** when he retires in April. **Simon Burton** will replace Ollard as Clerk Assistant and **Jake Vaughan** will replace Burton as Reading Clerk.

The Hansard Society have appointed **Dr Brigid Fowler**, previously Committee Specialist to the House of Commons Foreign Affairs Committee from 2007 to 2014, as a new Senior Researcher to lead their work on Brexit and parliament.

Constitution Unit news

New research project: Improving Discourse During Election and Referendum Campaigns

We are delighted to have secured generous funding from the [McDougall Trust](#) to pursue a year-long research project into how discourse can be improved during election and referendum campaigns. In the aftermath of the Brexit campaign and the recent US presidential election, there is widespread concern among engaged

citizens, activists, journalists, and politicians that political discourse today is scarred by misinformation, misunderstanding, and lack of careful attention to serious issues. The project will examine how these deficiencies might be addressed.

We currently envisage three sets of options: interventions that are designed directly to prevent misinformation, for example by banning misleading statements; interventions that are designed to feed high-quality information into campaigns, to crowd out the misleading claims; and interventions designed to foster citizens' capacities or opportunities for engagement, so that they can distinguish more easily between accurate and inaccurate claims. We will gather evidence from cases around the world in which each of these approaches have been tried, seeking to draw out lessons and consider which options deserve to be explored further in the UK. We will write a report at the end of the project, which we hope will influence ongoing debates in the UK.

The McDougall Trust's funding will allow us to employ a Research Associate, to be known as the McDougall Fellow, who will work on the project for one year. We are currently recruiting for this post and encourage those who are interested to go to our [recruitment page](#) for further details.

Joint Constitution Unit–Committee on Standards in Public Life seminar: The Role of Referendums in the UK

The Constitution Unit co-organised a day-long seminar with the Committee on Standards in Public Life on the role of referendums in the UK which was held on 22 November 2016. Speakers included the Unit's Alan Renwick, CSPL Chair Lord Bew, Public Administration and Constitutional Affairs Committee (PACAC) Chair Bernard Jenkin, representatives from the Electoral Commission, Cabinet Office, UK Statistics Authority, BBC, and Full Fact, and academics including Professors Steven Barnett (Westminster), Sarah Birch (KCL), Michael Saward (Warwick) and Stuart White (Oxford). Two principal themes emerged from the wide-ranging discussions, which were summarised in two posts on the Constitution Unit's blog. One related to the issue of how to ensure the availability of [high-quality information](#) during referendum campaigns; the other concerned how the notion of [balance](#) should be understood in the context of referendums and how it can best be

promoted. Transcripts of all parts of the event are available on [CSPL's website](#).

Lessons from the seminar, and a [separate seminar](#) hosted by the Unit on 25 October, will feed into research into discourse during election and referendum campaigns (see above) and other ongoing work on the role and conduct of referendums.



Lord Bew opens the Constitution Unit/Committee on Standards in Public Life seminar on the role of referendums in the UK, 22 November 2016

Meg Russell advising PACAC

As reported on pages 4–5, PACAC is conducting an inquiry into the effectiveness of the House of Lords – and particularly what can be done about its size. Constitution Unit Director Meg Russell, well known for her work on the Lords, and author of two reports ([here](#) and [here](#)) suggesting greater regulation of appointments to the chamber, has been made a specialist adviser to the inquiry. The work will include assisting committee staff in tasks such as briefing members, preparing for evidence sessions, and ultimately drafting the committee report. The committee [held its first evidence session](#) on Tuesday 31 January, and is [inviting written evidence](#) by 31 March.

Alan Renwick appointed to Expert Panel on Electoral Reform

Alan Renwick has been appointed to an [Expert Panel on Electoral Reform](#) that has been established by the Presiding Officer of the National Assembly for Wales to advise on various possible changes to the Assembly's electoral arrangements. These include the size of the Assembly, as well as its electoral system, and the minimum voting age for Welsh Assembly elections. The Panel is due to report by autumn 2017, to allow

any changes that might be made to be enacted in time for the 2021 election.

Unit seeks new Office Manager

Our highly talented Office Manager Ben Webb, who has run the Unit behind the scenes with huge efficiency since 2012, is leaving us to take up a promotion within UCL, in the Department of Epidemiology and Public Health. We are very sad to lose Ben, but tremendously grateful for everything he has done for the Unit, and we wish him every future success. This means that we will shortly be recruiting a new Office Manager, to play a central role in running our events, website, social media and publications, and generally running the Unit office and internal meetings. This busy and varied role needs somebody energetic, highly efficient, and with some interest in political research. Details of the position will appear on our website soon – so keep an eye out if you are interested, or know others who might be. We remain indebted to Bernadette Ross, who in recent months has been filling in for Ben during his secondment to another UCL department.

Research volunteers

The Unit is grateful for the hard work and diligence of our research volunteers in autumn 2016: Agnes Magyar, Ailsa McNeil, Alex Quirk, Harmish Mehta, Alex von Koskull and Dominic Walsh.

News from Constitution Unit Fellows

Mile End Institute project on English votes for English laws

Michael Kenny (Professor of Politics at Queen Mary University of London) has, together with Daniel Gover, been working on a major research project into 'English votes for English laws' (EVEL) at the [Mile End Institute](#). During the course of the research they have given evidence to several parliamentary select committees, including the [Constitution Committee](#), the [Scottish Affairs Committee](#), and the Commons [Procedure Committee](#).

In November 2016, they published a major report based on their research, entitled [Finding the Good in EVEL](#). This analysed and evaluated EVEL's first year of operation in the Commons, and was launched in parliament at [an event](#) hosted by the Constitution Unit. One of the report's key findings was that, despite being justified as a mechanism to enhance England's voice at Westminster, EVEL has so far failed to achieve this goal. The authors suggested that alternative mechanisms – such as the creation of an English Affairs Select Committee – might now be considered. The report also argued that the 'double veto' at the heart of the system should be applied more consistently, the new procedures should be rendered less complex, and steps should be taken to enhance its political legitimacy.

The report received wide coverage in the media (including in the [Telegraph](#), [Times](#), [Guardian](#), [Express](#), [Herald](#), [Scotsman](#), [WalesOnline](#) and on BBC Radio 4's Today in Parliament programme). Its findings were also raised by MPs on the floor of the Commons ([28 Nov 2016](#) and [1 Dec 2016](#)). On the latter of these occasions, the Leader of the House, David Lidington, confirmed that his department would take the report's recommendations into consideration as part of its own review of EVEL, which is expected to conclude in early 2017. Some of the report's conclusions were also echoed in a subsequent report by the Commons [Procedure Committee](#). Kenny and Gover are now working on academic publications from their research.

Report from study of the public reading stage of the Children and Families Bill

Professor Cristina Leston-Bandeira (University of Leeds) and her colleague Dr Louise Thompson (University of Surrey) have recently finished their study of the pilot 'public reading stage' that was held during House of Commons consideration of the Children and Families Bill (2013–14 session). This study was funded by a Leverhulme Trust/British Academy grant.

They are now working on two journal articles from this project, but have already published a [final project report](#). This provides a summary of their findings in relation to the experiences of members of the public who submitted comments on the bill and the impact of these comments through the legislative process. The report makes six recommendations for any future attempts to involve the public in the scrutiny of legislation:

1. Explicit guidance specifically developed for the general public to ensure that there is simple information available about the key issues within the bill.
2. Formal integration of the public reading stage into the parliamentary scrutiny of the bill. This may include positioning the public reading stage as a form of pre-legislative scrutiny or dedicating time on the floor of either House to discuss the public's views of the bill.
3. Clarification about who the public reading stage is aimed at, to establish whether mechanisms should be designed for members of the public or for interest groups.
4. Greater resources in terms of specialised staff to help manage the submission of comments from the public and ensure that information about the public reading stage can be disseminated as widely as possible.
5. An amended, public-friendly web forum design with information about the bill written specially for the public and provision for positive comments on the bill as well as critical ones.
6. The provision of feedback to participants following their contributions to the web forum. Participants could opt in to receive updates on the progress of the bill and could be alerted if their comments are used by MPs or peers scrutinising the bill in parliament.

Legal advice to legislatures

Together with Constitution Unit Honorary Senior Research Fellow Dr Ben Yong (University of Hull), Professor Leston-Bandeira has recently been awarded a £68,500 Leverhulme grant to examine how legal advice to Westminster and the devolved legislatures has been provided, received and used. This project will begin in February 2017 and run for 18 months. Anyone interested in any aspect of this project should contact Dr Yong (b.yong@hull.ac.uk). The researchers are particularly interested in speaking with clerks and lawyers (past and present) from Westminster and the devolved legislatures.

Bulletin Board

Events

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

Brexit, federalism and Scottish independence

Kenny Farquharson, Senior writer, *The Times Scotland* (Chair); **Kezia Dugdale**, Leader of the Scottish Labour Party; **Jim Gallagher**, Visiting Professor, Nuffield College, Oxford; **Kenny MacAskill**, former SNP MSP and Cabinet Secretary for Justice; **Baroness (Jenny) Randerson**, former Liberal Democrat minister, Wales Office.

13 February 2017, 6pm
Ambrose Fleming Lecture Theatre, Roberts Building, Malet Place, UCL, London, WC1E 6BT

[Register](#)

Brexit at Westminster

Hilary Benn MP, Chair, House of Commons Exiting the European Union Select Committee; **Arnold Ridout**, Clerk of European Legislation, House of Commons.

13 March 2017, 12.30pm
Chadwick Building, Room B.05, UCL, Gower Street, London, WC1E 6BT

[Register](#)

Devolution in England

Professor Tony Travers, LSE.

10 April 2017, 1pm
Council Room, School of Public Policy, UCL, 29–30 Tavistock Square, London WC1H 9QU

[Register](#)

Unit in the news

Alan Renwick discussed the High Court's ruling in the Article 50 case and the inflamed media reaction to it (BBC Radio 5 Live and BBC local radio, 4 Nov 2016)

Meg Russell wrote that the High Court's judgement 'should now prompt a wide debate about the proper role of parliament, as opposed to referendums, in deciding constitutional change' (*The Times*, 4 Nov 2016).

Robert Hazell was interviewed on the implications of Brexit (*BBC Reporting Scotland*, 7 Nov 2016, and BBC News, 18 Nov 2016).

Alan Renwick discussed the Supreme Court's Article 50 judgement (BBC World Service [Newshour](#), 24 Jan 2017).

Select committee appearance

Alan Renwick gave evidence to the Commons Public Administration and Constitutional Affairs Committee on the conduct of the EU referendum (see [here](#), 1 Nov 2016)

Unit publications

Daniel Gover and Michael Kenny, [Finding the Good in EVEL](#) (Centre on Constitutional Change/Constitution Unit, Nov 2016)

Alan Renwick, [The Process of Brexit: What Comes Next?](#) (UCL European Institute/Constitution Unit, Feb 2017)

Contributors to *Monitor 65*

Andrew Cook, Roberta Damiani, Jim Gallagher, Oonagh Gay, Daniel Gover, Jennifer Hudson, Michael Kenny, Jac Larner, Cristina Leston-Bandeira, Nicola McEwen, Ailsa McNeil, Harmish Mehta, Alan Renwick, Meg Russell, Mark Sandford, Ruxandra Serban, Alan Whysall, Nick Wright and Ben Yong.

The issue was edited by Jack Sheldon.