

Constitution Unit

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Brexit: the constitution under strain

This *Monitor* appears less than three weeks before the date set for the UK to leave the European Union. Remarkably, the form that Brexit will take – indeed, whether it will happen at all – remains highly uncertain. The coming days and weeks will be crucial in determining the UK’s future direction.

Brexit has placed the UK’s political and constitutional system under great strain. That is partly because it is so contested – dividing the main parties internally and risking alienation between the popular majority who backed Leave in 2016 and the parliamentary majority who opposed it. The 2017 general election added to these challenges by resulting in a minority government. Meanwhile, the political task is immensely complex and the stakes exceptionally high.

Image above: [President Tusk Bilateral](#) by [UK Prime Minister \(CC BY-NC-ND 2.0\)](#).

This strain has manifested itself in numerous ways. The Independent Group (TIG), created on 18 February (see page 12) and currently including 11 former Labour and Conservative MPs, is the largest breakaway from the main parties since the ‘Gang of Four’ founded the Council for Social Democracy – precursor to the Social Democratic Party (SDP) – in 1981. Labour disquiet is widespread, and Deputy Leader Tom Watson has [proposed](#) an intra-party grouping of social democrats to stem further defections. The Conservatives have their own party-within-a-party, in the strongly pro-Brexit European Research Group. After many false starts, it forced a vote of no confidence in Theresa May’s leadership of the party in December, which [she won](#) by 200 votes to 117.

Divisions are clear within the executive, severely stretching collective cabinet responsibility. In November, Brexiteer ministers openly expressed their dissatisfaction with the Withdrawal Agreement that had just been concluded between the government and the EU. Several (including the Brexit Secretary) resigned, while Remainers such as Jo Johnson have also departed. In February, three cabinet ministers [signalled](#) their determination to prevent a ‘no deal’ Brexit despite the Prime Minister’s repeated and adamant refusals to take this off the table. Remarkably, [analysis](#) by the Institute for Government shows that almost a fifth of ministerial resignations since 1979 have taken place during Theresa May’s short tenure. Non-Brexit business within government is paralysed, and legions of civil servants from across Whitehall have been diverted to Brexit preparations.

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The relationship between the executive and legislature has also been strained. The government suffered the largest Commons defeat in modern history in January, when MPs rejected the Withdrawal Agreement. Nonetheless, it comfortably survived a no-confidence vote the following day. The Commons Speaker has caused controversy through his selection of amendments, while MPs have several times threatened to wrest control over the chamber's agenda more decisively (see pages 3–4). In response to these ministerial and parliamentary pressures, in late February the Prime Minister conceded opponents' core demand of an opportunity to reject 'no deal'. Anyone doubting the power of the Westminster parliament must by now have been disabused of that notion. Readers of Meg Russell's book [Legislation at Westminster](#) (now out in paperback – see page 9) would already be familiar with the pattern whereby ministers, whenever possible, offer parliamentarians policy concessions in order to avoid difficult defeats.

Pressures on Labour leader Jeremy Corbyn to make concessions to his Remain-supporting MPs – or risk losing more of them to TIG – have also played a role in shifting the parties' positions. Despite some indications that such a move could drive away more Brexit-friendly shadow ministers, he finally indicated in late February that his frontbench would support amendments seeking a fresh Brexit referendum (or so-called 'People's Vote'). Depending on the decisions in the coming days, this could yet become (as the [Unit's report](#) in October foresaw) a [condition for parliamentarians supporting a Brexit deal](#). Meanwhile, key figures including Gordon Brown have urged more deliberative forms of public engagement, through citizens' assemblies (see [our blog](#)). A relatively lengthy delay to Article 50 would allow either or both of these to happen.

Constitutional tensions extend well beyond Westminster. Devolved government in Northern Ireland has now been suspended for more than two years, and interest is growing in the possibility of a border poll on reunification with Ireland. Existing pressure for another independence referendum in Scotland was fuelled in December, when the Supreme Court ruled that Westminster legislation passed in June had rendered unlawful key provisions of a Scottish bill which had sought to retain EU law in Scotland (see page 5).

There are, meanwhile, efforts to strengthen the democratic process. In February, the Commons Digital,

Culture, Media and Sport Committee published a major report urging far-reaching measures to tackle online disinformation and abuse (see page 10). In March, the Constitution Unit published its own detailed report, by Alan Renwick and Michela Palese, proposing an ambitious package of reforms to promote high-quality information and discourse during election and referendum campaigns (see pages 16–17). The Unit also jointly sponsored a conference exploring different mechanisms for developing constitutional reform proposals (see page 17). In the short term, the system faces a deep challenge in navigating through the final stages of the Brexit process. Once the dust has settled, concerted attention may need to be given to rebuilding trust in the UK constitution and democracy.



EU-UK negotiations

Just under 20 months after Article 50 was triggered, the UK government and the leaders of the 27 other EU member states gathered in Brussels on 25 November to sign off the 584-page [Withdrawal Agreement](#), setting out the terms on which the UK would leave the EU. At the same time, they also agreed a 26-page '[Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom](#)'. This is not intended to be binding in law, but to provide the outline for the terms of post-Brexit relations, which are due to be negotiated in full once Brexit has taken place.

The final stages of the negotiations were fraught. EU leaders had refused at the regular European Council meeting in October to agree to a special November summit, as they deemed sufficient progress not yet to have been made. It was only on 14 November that a [draft agreement](#) was reached. The same afternoon, the cabinet met for five hours, for what the Prime Minister [described](#) as a 'long, detailed and impassioned debate' about whether to endorse the deal.

Most controversial was the so-called Northern Ireland 'backstop'. This was designed to ensure that no 'hard border' would have to be introduced between Northern Ireland and the Republic of Ireland, whatever the outcome of future negotiations. But critics – including

the Democratic Unionist Party (DUP), upon whom the government depends for its Commons majority, and the ardent Brexiteers of the European Research Group within the Conservative Party – regarded it as unacceptable because it treated Northern Ireland differently from Great Britain and, they believed, risked binding the UK into arrangements with the EU from which it would be unable to extricate itself.

[Media reports](#) indicated that nine cabinet ministers spoke against the deal. In the following hours and days, two – Brexit Secretary Dominic Raab and Work and Pensions Secretary Esther McVey – resigned, while others – notably including Michael Gove, who was initially offered the position of Brexit Secretary – wrestled with their consciences. It was only after the cabinet’s backing had been secured that the special summit on 25 November was confirmed.

It was intended that the EU–UK negotiations should conclude at that point, to be resumed only once Brexit had happened and the negotiations on a treaty on future relations could begin. But the government’s difficulties in securing parliamentary support for the deal (see next story) thwarted those plans. Prior to the initial ‘meaningful vote’ the government sought reassurances from Brussels in December, leading on 14 January to a [joint letter](#) from European Council President Donald Tusk and European Commission President Jean-Claude Juncker. The two Presidents confirmed that the backstop was ‘intended to apply only temporarily’ and that they would work towards a permanent future deal as speedily as possible. Then, two weeks after MPs voted overwhelmingly against the deal on 15 January, the government essentially abandoned its own position by whipping Conservative MPs to support the Brady amendment, which demanded that the agreement be reopened and the Northern Ireland backstop replaced by unspecified ‘alternative arrangements’. The Prime Minister [promised](#) to negotiate ‘legally-binding changes’ to the backstop, particularly on the issue of its duration in the event it comes into force.

The EU27 could be forgiven for feeling exasperated. The need for the backstop was agreed in the [Joint Report](#) of 2017. Meanwhile, its final manifestation in the Withdrawal Agreement ‘[was very much shaped by the UK](#)’, according to the EU’s Deputy Chief Negotiator, Sabine Weyand. At the government’s insistence (primarily to appease the DUP) it will apply to the whole of the UK, meaning Northern Ireland will not be constitutionally distinct. This was a notable concession

by the EU. The UK negotiators also accepted that the backstop could not be time-limited. Whatever the rationale (and the EU27 are only too aware of her domestic difficulties), Theresa May’s promise to reopen a deal she herself said could not be renegotiated undermined her credibility as a negotiating partner.

The letter of 14 January had reiterated that EU leaders would not contemplate reopening the Withdrawal Agreement. By early March, however, both sides were still seeking some form of legally binding addendum that, it was hoped, would reassure sufficient MPs regarding the nature of the backstop, thereby enabling parliamentary approval. It remained unclear at the time of writing whether this would be possible.



[Theresa May and European Commission President Jean-Claude Juncker](#)

Brexit and Parliament

A year ago (see [Monitor 68](#)) parliamentary events regarding the EU (Withdrawal) Bill seemed dramatic. But these look tame compared to those of the last few months. A central reason is the amendment forced on the government to that bill by Conservative backbencher Dominic Grieve, guaranteeing the Commons a ‘meaningful vote’ on the Brexit outcome. In November the Political Studies Association [named Grieve ‘Parliamentarian of the Year’](#), and he has remained central to the process.

With the Brexit deal between the UK and the EU27 agreed in November, five days of debate were scheduled starting on 4 December, with the ‘meaningful vote’ set to take place a week later. But proceedings got off to a very rocky start from the government’s point of view. An [opposition motion on 13 November](#), using the ‘[humble address](#)’ procedure, had demanded that the government publish the Attorney General’s legal advice on the Northern Ireland ‘backstop’ – which

it had failed to do. The opposition therefore tabled a motion on 3 December that the government was in contempt of parliament, which was [accepted for debate](#) the following day, immediately before debate on the deal. Despite government protestations that the motion set a dangerous precedent, [MPs supported it](#) by 311 votes to 293. This proved to be only the first defeat of the day. Dominic Grieve had also moved an ingenious [amendment to the Business of the House motion](#) setting out the procedure for the main debate, to guarantee further ‘meaningful votes’ should the government be defeated on its first attempt (similar to Lords amendments rejected on the EU (Withdrawal) Bill, as reported in [Monitor 69](#), page 4). This amendment was accepted by [321 votes to 299](#).

Such a development was important, due to widespread expectation that the government faced defeat on the deal. Numerous MPs were critical – including backbenchers from both the pro- and anti-Brexit wings of the Prime Minister’s own party. In a further unexpected twist, following [three days of debate](#), the government chose simply to suspend the vote. This angered many MPs, and seemingly the Speaker, who suggested that suspending debate after 164 members had already spoken was ‘[deeply discourteous](#)’.

On 9 January a [revised Business of the House motion](#) was moved to resume debate. Unexpectedly, the Speaker allowed a further Grieve amendment to require tabling of a new government motion within three days, in the event of defeat. This broke with precedent (see our [blogpost](#) on the topic), and was [widely criticised](#), but could be seen as retribution for the government’s previous behaviour. The amendment was agreed by 308 votes to 297. As anticipated, the vote on the deal itself ultimately also ended in defeat – and dramatically so. At [432 votes to 202](#), this was the largest Commons defeat of modern times.

New precedents have continued to be set. With MPs increasingly anxious about a ‘no deal’ outcome, a series of amendments were proposed to a government motion [on 29 January](#). Attention focused on one from Grieve to set aside Standing Order No. 14 (which gives government default control of the Commons agenda) on certain days for Brexit debates, and another from Labour’s Yvette Cooper to do the same to allow [a bill](#) to be debated that would force the government to ask for an Article 50 extension. In the event both failed, but caused widespread controversy (as discussed by Meg Russell [on our blog](#)). Instead MPs agreed an amendment

from 1922 Committee chair Sir Graham Brady supporting ‘alternative arrangements’ to the Irish backstop (see page 3), and one from former Conservative cabinet minister Dame Caroline Spelman rejecting (in a non-binding manner) a ‘no deal’ outcome.

Further debates ensued, while the Prime Minister sought to renegotiate with the EU27. On 14 February a [seemingly anodyne government motion](#) that the Commons ‘reiterates its support for the approach to leaving the EU expressed by this House on 29 January’ was defeated when [72 Conservative MPs abstained or voted against](#) – on the basis that this implied acceptance of the previous Spelman amendment, and hence rejection of ‘no deal’. This caused significant consternation, including from [some within the Conservative Party](#), and hinted that there might not be any deal that this group would accept. [On 27 February](#) Theresa May avoided further defeat on amendments from Spelman and Cooper (this time partnered by former Conservative cabinet minister Oliver Letwin) only by changing her position to one of support, having [conceded the previous day](#) that a final vote on the deal by 12 March would be followed, in the event of defeat, by a binding vote within a day allowing MPs to rule out ‘no deal’, and a further binding vote on whether an Article 50 extension should be requested. These major concessions avoided [threatened resignations from ministers](#) opposed to ‘no deal’, while piling pressure on hard Brexiteers to accept the deal.

Brexit and devolved powers

The devolved governments have been marginal players in the recent Brexit dramas. Both the [Scottish government](#) and [Welsh government](#) oppose Theresa May’s Withdrawal Agreement, and there are few signs that either could be won round without a substantial move towards a ‘softer’ Brexit. Symbolic votes rejecting the deal were carried convincingly in the [National Assembly for Wales](#) and [Scottish Parliament](#) on 4 and 5 December respectively. The Scottish First Minister, Nicola Sturgeon, has [begun to prioritise campaigning for a further referendum](#) on EU membership over her government’s previous proposals for a Norway-style deal. The new Welsh First Minister, Mark Drakeford, has also [indicated](#) his openness to a fresh referendum. A motion calling for work to begin on preparing for the possibility of a referendum [passed in the Assembly](#) on 30 January.



Lord Keen of Elie argues on behalf of the government in the Supreme Court. Contains Supreme Court information licensed under the [Open Supreme Court Licence v1.0](#)

Some of the differences between Edinburgh and Westminster had to be settled by the Supreme Court, which released a [judgment](#) in December on the validity of the [Scottish Continuity Bill](#) (see [Monitor 70](#), page 4 and Akash Paun's [summary of the arguments](#) on our blog). The Court decided that although the vast majority of the bill's provisions would have been within the powers of the Scottish Parliament at the time it was passed, the subsequent passage of the Withdrawal Act had changed that position. Since the Withdrawal Act explicitly prevented the Scottish Parliament from legislating inconsistently with its provisions, the bulk of the bill was outside the powers of the Scottish Parliament and could not be given royal assent. In effect, it was the UK government's response to the bill – challenging its legality and passing the Withdrawal Act before judgment was rendered – that had made many of its provisions unlawful.

Despite the gulf between the UK and devolved governments on the substance of Brexit policy, the high concentration of Brexit-related intergovernmental meetings reported in [Monitor 70](#) (page 4) has continued.

A [plenary meeting](#) of the Joint Ministerial Committee (JMC) was held at Downing Street in December, in addition to regular meetings of the JMC (EU Negotiations) and Ministerial Forum (EU Negotiations). The Scottish and Welsh First Ministers have also been [invited to attend](#) a UK cabinet sub-committee on Brexit preparations.

At official level, engagement in relation to future 'common frameworks' in areas of devolved competence where powers are currently exercised at EU level has continued. The UK government's [latest statutory report](#) on the progress of these discussions, published in December, indicated 'a high degree of consensus about potential scope of frameworks, areas of agreement and disagreement and the next steps required to establish a framework'. However, it was acknowledged that there are a 'range of dependencies (including the nature of the future relationship with the EU), which will have a bearing on the final shape of a number of frameworks'.

A review of intergovernmental relations (IGR) arrangements commissioned by the JMC is [continuing](#). The review has a wide-ranging agenda, including the principles underpinning IGR, its machinery and dispute resolution. Its work has been informed in part by an [external report](#) by academics, written at the invitation of officials working on the review and published last November (see page 18). The House of Commons Scottish Affairs Committee has concluded the evidence-gathering phase of its inquiry into '[The relationship between the UK and Scottish governments](#)'. Unit Fellow Professor Nicola McEwen [gave evidence](#) to the committee on 20 November; a report is expected in the spring. Meanwhile, the Interparliamentary Forum on Brexit – which brings together committee chairs from the UK's legislatures – has [called for](#) the consideration of more formal interparliamentary structures for scrutiny of post-Brexit IGR.

The Constitution Unit

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Parliament



Commons committee backs calls to reduce the size of the Lords

Following a long gestation, the House of Commons Public Administration and Constitutional Affairs Committee (PACAC) issued a [report](#) in November on the size of the House of Lords, in response to the report from the [Lord Speaker's Committee on the Size of the House](#) (which was chaired by Lord Burns). Constitution Unit Director Meg Russell served as specialist adviser to the inquiry, which [first originated in 2016](#), and was suspended following the 2017 snap general election and the establishment of the Burns committee. The sole witness to the latest inquiry was Lord Burns, though various others contributed at earlier stages.

PACAC strongly supported some of the key conclusions of the Burns report, including the need to introduce a cap of 600 on the membership of the House of Lords, and the need to regulate the number and balance of future prime ministerial appointments. It endorsed the Burns committee's proposal that, until the cap is reached, the Prime Minister should respect a 'two out, one in' principle. In some respects PACAC went further than Burns, suggesting that the cap and appointments formula (which would require new appointments to be balanced in line with the most recent general election) should be set down in the [Cabinet Manual](#). The committee was more cautious about Burns' proposal for 15-year terms – as was the Prime Minister in her [original response to the Burns report](#). The government's response – [published on 5 March](#) – had a distinctly more sceptical tone than the Prime Minister's letter. It seemingly rejected some of Burns' core recommendations such as a size cap and 'two out, one in' principle – suggesting that even these represented the kind of 'long-term, significant change' that was 'not a priority' in this parliament. The parliamentary reactions remain to be seen but, particularly in the Lords, are likely to be negative.

Inquiry in to the role of parliament in the UK constitution

PACAC's omnibus inquiry into parliament's role in the UK constitution continues, with two reports produced in recent months. In December the committee [published](#)

[a report](#) into the status of confidence motions under the [Fixed-term Parliaments Act](#). Having taken evidence from parliamentarians, senior clerks and academics, it concluded that despite the Act setting out a precise form for motions of no confidence which trigger its provisions, 'the Act in no way affects the fundamental principle that the Government's authority to govern rests on the confidence of the House, however it chooses to express it'. Such motions outside the terms of the Act could not automatically trigger a general election, but the committee concluded that convention would demand that the Prime Minister resign and propose a successor should such a vote be lost. It would then be for the House of Commons to decide whether to accept that choice, or to trigger a general election under the terms of the Act. As with so much at present, these conclusions are of obvious relevance to the present Brexit gridlock.

In January, the committee [published a report](#) into the status of resolutions of the House of Commons. This was inspired by recent controversies over the government's habit of whipping members to abstain on opposition motions, as well as (partly in retaliation) MPs' use of the 'humble address'. The committee expressed some concern about both practices, noting that abstention on opposition motions risked showing 'a lack of respect for the House of Commons', but that MPs should also be cautious in the use of the humble address. These issues have likewise been highly relevant to Brexit debates, with a humble address [used to demand publication of the Attorney General's legal advice](#) (see pages 3–4).

On 29 January the committee held a lively [one-off evidence session](#) focused on other topics sparked by Brexit controversies – regarding amendments for that day's debate which sought to direct the government, and to take control of the parliamentary agenda. It has also formally announced a [new strand to the inquiry](#) focused on parliament's role in authorising the use of military force, with a deadline for submissions of 11 March.

PACAC criticism of Cabinet Office over public appointments

Last year PACAC published two reports expressing concerns about the government's handling of senior public appointments (see [Monitor 70](#), page 6). The committee heard evidence from a number of experts, including the Unit's [Professor Robert Hazell](#) (see [here](#) for Robert's blogpost on the subject). The committee was critical of the government's overall approach, accusing the Cabinet Office of 'serious administrative

failures'. The government was criticised for repeatedly giving too little notice of its preferred candidate ahead of the required pre-appointment hearing, and for a lack of diversity amongst those nominated.

The [government's response](#) to both reports was delivered on 30 November. Responding to the criticism that all of the nominees questioned by the committee since the 2015 general election had been white men, the Cabinet Office stated that diversity 'remains a priority for the government'. It also announced 'a clear ambition' that '14% of new appointments go to people from an ethnic minority, and 50% to women, by 2022.'

The response also expressed concern about the 'administrative burden' on civil servants if committees held hearings on appointments beyond the Cabinet Office list, and rejected the proposal for a new mechanism to instigate a debate about a government nominee on the floor of the House of Commons. Instead, it announced the creation of a support team to manage the pipeline of public appointments made by Cabinet Office ministers. What it could not disclose was that the main reason for delay is blockages in Number 10, which has to approve all senior public appointments. This has long been the case, but is now exacerbated by Brexit.

Liaison Committee inquiry into effectiveness of select committees

As reported in [Monitor 68](#) the House of Lords Liaison Committee has, since January 2018, been conducting a review of the committee system in that chamber. Now the House of Commons Liaison Committee (made up of the chairs of the select committees) has launched its own [wide-ranging inquiry](#) into committee effectiveness. Explicitly noting that 2019 marks the 40th anniversary of the modern-day select committee system, and the 10th anniversary of the [Wright committee proposals](#) that led to election of select committee members and chairs, the inquiry asks how the select committee system is working, and how it can be improved. These objectives were summarised by the Liaison Committee's chair, Sarah Wollaston, [on our blog](#) in February. Questions include which committee inquiries have proved most impactful, which forms of public engagement by select committees work best, how diversity of evidence received can be improved, and whether greater joint working between select committees is desirable. A final crucial question is how the committee system might be changed by Brexit, which raises the question (not explicitly asked) of how

any resultant changes might best complement those emerging from the still-ongoing House of Lords inquiry. Written evidence was invited by 28 February.



Liaison Committee Chair Dr Sarah Wollaston. By Chris McAndrew (CC BY 3.0).

Committee inquiries into parliamentary Brexit scrutiny

Brexit has unsurprisingly continued to dominate other select committee inquiries, and various other committees have focused their attention on how parliament might best conduct future scrutiny of the process. The House of Lords [Constitution Committee inquiry](#) into scrutiny of international treaties was launched in October 2018, and by February had held 10 oral evidence sessions with a range of witnesses. The House of Commons International Trade Committee [published a report in December](#) on trade policy transparency, including the role that parliament should play in oversight of future trade deals. The House of Commons Exiting the EU Committee likewise has an ongoing [inquiry into the role of parliament](#) in oversight of the EU negotiations, including the future relationship.

Constitution Committee report on delegated legislation

As part of its ongoing inquiry into the legislative process, the House of Lords Constitution Committee [published a report in late November](#) on the government's use of delegated legislation. This expressed some strong concerns about the breadth of delegated powers being sought, with the result that the direction of policy (not just its detail) may be determined with limited parliamentary oversight. As the committee pointed out, parliament (and particularly the Lords) has tended to act with caution in rejecting statutory instruments – but this pattern may

come under increasing strain if government does not exercise greater restraint. The report's key arguments were [summarised on our blog](#) by the committee's legal advisers Mark Elliott and Stephen Tierney.

Commons authorities take action following Cox report

Following a [Commons debate](#) on 5 November on the [report](#) of Dame Laura Cox into bullying and harassment of House staff (see [Monitor 70](#), page 5), the process of implementing her recommendations continues. On 10 December, the Committee on Standards published its [initial proposals](#), which recommended reforms of its own processes for dealing with complaints against MPs. Lay members of the committee (those who aren't MPs) have since been given equal voting rights, the Commissioner for Standards no longer needs to seek the committee's approval before starting an inquiry into incidents more than seven years old, and complaints may now be submitted electronically. Those proposals were [debated](#) on 7 January, and approved by the House after the Deputy Speaker, Eleanor Laing, called a vote despite there still being numerous MPs wishing to speak. Her decision was immediately – but ineffectually – challenged in a [point of order](#) raised by Sir Desmond Swayne.

At its 30 January meeting, the House of Commons Commission, which is chaired by the Speaker and is the chamber's overall supervisory body, agreed to appoint an independent reviewer to assess the suitability of the existing [Independent Complaints and Grievance Scheme](#). The scheme was heavily criticised in Dame Laura's report, despite only coming into being in July 2018. Her report has also prompted the House of Lords Commission to [appoint](#) Naomi Ellenbogen QC to lead an investigation of bullying and harassment of staff in that chamber.

Lords complaints procedures under scrutiny

The House of Lords found itself criticised from both [without](#) and [within](#) after [voting](#) by 101 to 78 on 15 November against suspending the former Liberal Democrat peer Lord Lester of Herne Hill, a well-known specialist in anti-discrimination law. The vote divided all of the chamber's groups, including Lord Lester's fellow legal experts.

The process prompting the vote included a lengthy investigation of a complaint of sexual misconduct

and abuse of power made to the independent House of Lords Commissioner for Standards, Lucy Scott-Moncrieff. She [concluded](#) that Lord Lester had breached the [Code of Conduct for Members](#), and the Sub-Committee on Lords Conduct [recommended](#) his permanent expulsion from the House. But [the report](#) of the Committee for Privileges and Conduct instead recommended that Lord Lester be suspended until June 2022, as expulsion was not an available punishment at the time of the misconduct.

During the [debate](#), the Commissioner's handling of the investigation was heavily criticised by several peers, as was the Code itself, which was labelled by Lord Tugendhat as '[not fit for purpose](#)'. Lord McFall, who chairs the committee, spoke strongly in defence of both the Commissioner and the Code throughout the debate, inviting peers who felt the latter needed reform to write to the committee.

Following the [debate](#) and vote, the matter was referred back to the committee. It swiftly issued a [second report](#) that once again recommended a lengthy suspension. Lord Lester [retired from the Lords](#) in December, without the need for a second vote.

House of Commons approves proxy voting scheme

On 29 January, the Commons [approved](#) – without a division – the introduction of a proxy voting scheme for MPs. Following an amendment by Philip Davies, the scheme will apply to MPs who have recently experienced a miscarriage as well as those absent by reason of childbirth or care of an infant or newly-adopted child. Proxy votes will not be permissible on motions under the Fixed-term Parliaments Act 2011 or closure motions, but will otherwise apply to almost all divisions, and votes to elect the Speaker, who has responsibility for overseeing the arrangements. The scheme will run for one year, at the end of which it will be reviewed by the Procedure Committee.

Proxy voting was introduced partly due to concerns about the '[pairing](#)' system, the reputation of which was severely damaged after the Conservative Chief Whip [instructed](#) one of his MPs to vote despite their being paired with the Liberal Democrat Jo Swinson, who was on maternity leave. Pairing has not, however, been abolished; it will coexist with the new scheme.

Tulip Siddiq became the first MP to vote by proxy, doing so on the day the scheme was approved. This followed

her [decision](#) to delay her caesarean section surgery in order to vote against the Withdrawal Agreement on 15 January. Bim Afolami [confirmed](#) that he intends to be the first man to take advantage of the new arrangements.

Meanwhile, the SNP's Patrick Grady [called](#) on the House of Commons Commission to introduce electronic voting to address health and safety concerns related to the current system of passing through the lobbies.



Tulip Siddiq. Image credit: Chris McAndrew ([CC BY 3.0](#)).

Democracy, free speech and freedom of association inquiry

On 23 January, the parliamentary Joint Committee on Human Rights announced an inquiry into '[Democracy, free speech and freedom of association](#)', which held its [first evidence session](#) just one week later. This was in part prompted by video footage of MP Anna Soubry being allegedly harassed by pro-Brexit supporters on two separate occasions in [December](#) and [January](#), resulting in one man being [charged with numerous offences](#).

Witnesses at the opening session included the chairs of both the Conservative 1922 Committee and the Parliamentary Labour Party. There was general consensus that although intimidation and harassment has always been a part of life as an MP, things have become significantly worse since the 2016 EU referendum, in part due to the changing digital landscape. The committee has since written to [Facebook's Vice-President for Global Affairs and Communications](#) (former Deputy Prime Minister Nick Clegg) and the [Head of Public Policy at Twitter](#), inviting them to give evidence regarding the treatment of MPs online.

LEGISLATION AT WESTMINSTER

Parliamentary Actors and Influence
in the Making of British Law

MEG RUSSELL AND DANIEL GOVER

Now available in paperback, with 30% discount for Monitor readers

[Legislation at Westminster: Parliamentary Actors and Influence in the Making of British Law](#)

[Meg Russell](#) and [Daniel Gover](#)

Although the British Westminster parliament is one of the most visible in the world it is often considered relatively weak in policy terms. This applies in particular to parliament's core role of making legislation. Yet recent study of the Westminster legislative process has been limited. This book, by Constitution Unit Director Meg Russell and former Unit researcher Daniel Gover, is based on more than 120 interviews with legislative insiders and is the largest study of its kind in over 40 years. The book shows how, even before Brexit demonstrated its power, the Westminster parliament was always a more significant actor in the policy process than commonly assumed.

To benefit from the 30% discount click on the image of the book to go to the Oxford University Press website, and enter the code **ALAUTHC4** when prompted.

Elections, referendums and democratic engagement



Improving campaign regulation

Momentum continues to grow behind proposals to strengthen the rules relating to campaigning in elections and referendums in the UK. In November, the Constitution Unit held a half-day conference on the subject in parliament, bringing together many of the key actors (see page 17). In early March, the Unit published the conclusions of its own two-year investigation into strategies for [improving information and discourse during campaigns](#), proposing the establishment of an information hub to support and collate a range of activities (see pages 16–17).

Two further important reports were published in February. At the start of the month, the Electoral Reform Society issued a collection of essays, [Reining in the Political 'Wild West': Campaign Rules for the 21st Century](#). Unusually, this drew together contributions from Conservative and Labour MPs (Dame Cheryl Gillan and Stephen Kinnock), regulators (Tom Hawthorn from the Electoral Commission and Steve Wood from the Information Commissioner's Office), and a range of experts from other organisations. The contributors discussed a range of proposals, including tighter rules for digital campaigning, greater transparency of campaign finance, a statutory code of practice for the use of 'big data' in politics, and measures to increase democracy's resilience against misinformation.

Later the same month, the House of Commons Digital, Culture, Media and Sport Committee published the [final report](#) from its inquiry into *Disinformation and 'Fake News'*, building on an interim report published last summer (see [Monitor 70](#), page 10). It declared that 'Electoral law is not fit for purpose' in light of the shift to online campaigning. Among other measures, it called for a searchable repository of online political advertising, greater powers for the Electoral Commission, and action against disinformation. It added that 'digital literacy should be a fourth pillar of education, alongside reading, writing and maths'.

The government has repeatedly acknowledged that problems exist and that changes are needed. It is expected to report soon on the outcome of its [public consultation](#) on this issue.

Meanwhile, the fallout from the 2016 referendum continues. In February, the Information Commissioner's Office [fined](#) Leave.EU and Arron Banks's insurance company, Eldon Insurance, a total of £120,000 for breaches of data protection law.

Further voter ID trials

With local elections due to take place on 2 May in most of England (outside London) and all of Northern Ireland, the government has [announced plans](#) to trial requirements in 11 local authorities for voters to show ID at polling stations. These trials will build on last year's pilots in five areas (see [Monitor 69](#), page 9, and [Monitor 70](#), page 8). The intention is that local authorities will test four different arrangements for the form of ID that is needed.

The legality of the trials is, however, questioned by some, who believe that ministers are acting beyond their powers. An [application for judicial review](#) was heard in the High Court on 7 and 8 March.

The ID trials form part of the government's Democratic Engagement Plan, launched in December 2017. This plan was updated in January, with a new [report](#) setting out activity to date and future work.

Recall of MPs

Voters have [since 2015](#) been able to recall their MP in any of three circumstances: if he or she has been suspended from the House for two weeks or more, imprisoned for up to a year (a longer sentence leads to automatic expulsion), or found guilty of submitting false expenses claims. The first recall petition occurred in the autumn, when North Antrim MP Ian Paisley was unsuccessfully challenged (see [Monitor 70](#), pages 8–9). The Electoral Commission published a [report](#) on the operation of the petition in November.

It concluded that there were 'no significant problems in the delivery of the recall petition which affected voters or any individuals or organisations wishing to campaign'. But it also identified various difficulties and areas where legal clarification would be desirable. It recommended that consideration be given to shortening the six-week petition period and extending opening hours of locations hosting the petitions to evenings and weekends. It said that the government 'should consider further ways of how electors can get information about the recall petition and how they can take part in it if they so wish'.

A second recall petition [has been triggered](#), after Peterborough MP Fiona Onasanya was [sentenced to serve three months in prison](#) for perverting the course of justice. Her appeal against her conviction was heard and dismissed by the Court of Appeal on 5 March. Chris Davies, the Conservative MP for Brecon and Radnorshire, has recently been [charged](#) in relation to his parliamentary expenses claims, so could also face a recall petition if convicted.

Craig Mackinlay acquitted

Craig Mackinlay, the Conservative MP for Thanet South, was [found not guilty](#) in January of knowingly falsifying his expenses returns for the 2015 general election, in which he fought a fierce contest with then UKIP leader Nigel Farage. The judge did, however, conclude that the returns were not wholly accurate, and a Conservative Party official deemed responsible for this was found guilty on two counts.

Prisoner voting

An extraordinarily protracted legal dispute may now have ended. The European Court of Human Rights [ruled](#) in 2005 that the UK's blanket ban on voting by all prisoners violated the European Convention on Human Rights. The UK parliament subsequently refused to change the legislation. Successive governments involving Labour, Conservative and Liberal Democrat ministers have supported this position: David Cameron famously [remarked](#) in 2010, 'It makes me physically ill even to contemplate having to give the vote to anyone who is in prison.' In February 2011, the Commons held a backbench debate on the issue, and MPs voted by 234 votes to 22 in favour of a [motion](#) that the House 'supports the current situation in which no sentenced prisoner is able to vote except those imprisoned for contempt, default or on remand' (for a helpful summary of the debates in this period, see [here](#)).

In November 2017, the government [announced](#) that it would make administrative rather than legislative changes in response to the ruling: judges would make it clear at the time of sentencing that prisoners would lose their right to vote; and prisoners released on temporary licence (around 100 people at any time) would be allowed to vote. These changes were subsequently implemented, and the Committee of Ministers – the Council of Europe body responsible for monitoring compliance with Court rulings – [said](#) in late 2018 that it regarded the matter as closed (for further details, see [here](#)).

[At least one legal scholar](#) has, however, questioned whether the changes that have been made really address the Court's original concerns. The possibility therefore remains that a further legal challenge could be made. The Scottish government, meanwhile, is proposing to make deeper changes: it has just concluded a [consultation](#) on extending the franchise to prisoners on short sentences. For the ongoing debate in Wales, see pages 14–15.

Council of Europe report on the conduct of referendums

The Parliamentary Assembly of the Council of Europe [agreed](#) a resolution in January endorsing a [detailed report](#) proposing reform of existing [guidelines on the conduct of referendums](#). The report was prepared by British representative Dame Cheryl Gillan, working with the Unit's Deputy Director, Dr Alan Renwick, as adviser. It drew extensively on Constitution Unit research conducted for last year's [Independent Commission on Referendums](#) and our new report on improving information and discourse during election and referendum campaigns (see pages 16–17).



Alan Renwick gives evidence to the Political Affairs and Democracy Committee of the Parliamentary Assembly of the Council of Europe, as the President of the Venice Commission, Gianni Buquicchio, looks on.

Among its wide-ranging recommendations were proposals that referendums should be post-legislative whenever possible, that public authorities should be prohibited from using public funds for campaigning purposes 'throughout the campaign period', and that 'the responsibility to provide official information should be entrusted to an independent body, rather than the authorities'. The report highlighted the need for referendum rules to respond to the rise of digital – especially social – media, and it called for further work to be done in this area. It also emphasised the importance of developing more deliberative approaches

to democracy. The resolution ‘encourage[d] all member States to explore opportunities for citizen deliberation both prior to referendums and during any campaign, for instance through citizens’ assemblies’.

The [current referendum guidelines](#) were drawn up by the [Venice Commission](#) – the Council of Europe’s legal arm – in 2007. The Commission is now seeking to update those guidelines in light of the report.

Developments in deliberative democracy

The [Citizens’ Assembly for Northern Ireland](#) (see [Monitor 70](#), page 9) concluded its work in November and reported shortly afterwards. After two weekends learning about, discussing and deliberating on options for the future of social care provision in Northern Ireland, the assembly’s 71 members agreed 27 recommendations relating to three themes: person-centred care; systems and structures; and care providers.

Since the New Year, there has been a wave of interest in the idea that a citizens’ assembly could play some role in resolving Brexit. Different proposals have been made as to what that role could be. Some advocates, including [MPs](#), former Prime Minister [Gordon Brown](#), and the [Guardian](#) newspaper, have argued that Brexit should be delayed so an assembly can be held that would make recommendations on the steps that parliament should take next. Others, less vocally, have spoken of a post-Brexit assembly, which might make recommendations for the future relationship between the UK and the EU or for measures designed to bring the country back together. Such proposals – which were summarised and discussed on the Unit’s [blog](#) – have not hit the mainstream of debate. It remains possible, however, that they could be latched onto at some point as a way of overcoming any impasse.

Parties and
politicians



The Independent Group

The strains on Westminster’s party system in the context of Brexit and other pressures finally showed themselves in a Labour Party split on 18 February, when seven MPs (Luciana Berger, Ann Coffey, Mike Gapes, Chris Leslie, Gavin Shuker, Angela Smith and Chuka Umunna)

[announced that they were quitting the party to form The Independent Group](#). They were [subsequently](#) joined by an eighth MP, Joan Ryan. Brexit, and the leadership’s resistance to embracing a fresh referendum, provided a central driver, but other key issues included long-running allegations of anti-Semitism in the party. All eight MPs could be seen as moderates, and some (as reported in [Monitor 70](#), page 11) had faced deselection pressures from local Corbyn-supporting activists.

The picture became more complex and interesting when, on 20 February, the group was [joined](#) by three MPs splitting from the Conservative Party: Heidi Allen, Anna Soubry and Sarah Wollaston. Again, the Brexit issue was key but Allen has also spoken out repeatedly against austerity ([most recently touring the country with former Labour minister Frank Field](#)). Wollaston is a senior figure at Westminster, as chair of the Liaison Committee. While defections from the opposition party might make little difference in practice to the Westminster arithmetic, Conservative defections can only make Theresa May’s position more perilous.

It remains to be seen whether other MPs from either side will join the group, which has yet to become a formal political party. Some in Labour, [including Deputy Leader Tom Watson](#), have responded remarkably sympathetically – others distinctly less so. On the Conservative side former ministers Dominic Grieve and Justine Greening [indicated that they would quit the party](#) if it pursued a no deal Brexit. This new grouping, having offered other disillusioned MPs somewhere to go, has hence piled additional pressure on both party leaders.

Devolution



England

National devolution policy for England has remained quiet, partly because the government has yet to publish a number of documents that were expected to materialise in the four months since [Monitor 70](#) went to press. A ‘devolution framework’ that was originally promised in November 2017 has failed to appear, as has the third statutory annual report on English devolution and a response to the consultation [Strengthened Local Enterprise Partnerships](#), which was published in July 2018. An anticipated consultation on the UK Shared

Prosperity Fund, which is planned to replace [EU structural and investment funds](#) after Brexit, is also overdue.

On 12 February James Brokenshire, the Secretary of State for Housing, Communities and Local Government, wrote to Dan Jarvis, mayor of the Sheffield City Region, to communicate the government's decision not to proceed with the 'One Yorkshire' devolution bid (see [Monitor 70](#), page 13). Brokenshire stated in his letter that although the bid did not meet the government's criteria, he was prepared to 'begin discussions about a different, localist approach to devolution in Yorkshire'. Jarvis had [said as recently as November](#) that several senior cabinet ministers were supportive of the proposals.

Elsewhere, metro-mayors have continued to make progress developing and delivering policy. In Tees Valley, the mayor has [bought the local airport](#) for £40 million and [made investments in local railway stations](#), whilst the West Midlands has secured [additional funding for the 2022 Birmingham Commonwealth Games](#), and is [considering](#) absorbing the Police and Crime Commissioner into the mayoralty. Meanwhile, the new North of Tyne Combined Authority [will elect its first mayor](#) in May 2019, with Norma Redfearn of North Tyneside Borough Council serving in an interim capacity until then. Although the Conservative contender has yet to be named, [Labour](#) and the [Liberal Democrats](#) have selected their candidates, whilst the Greens and North East Party are expected not to contest the election due to the required £5,000 deposit.

Northern Ireland

The Irish backstop has continued to dominate the Brexit debate nationally (see pages 2–3), and to [entrench the political divide](#) in Northern Ireland. The government [has said](#) that it is working 'tirelessly', as an 'absolute priority', towards resumed devolution, but [others are sceptical](#). Talks have been held but are widely seen as tokenistic. Indeed it is [generally understood](#) that there will be no resumed devolution until after Brexit; and probably also after the report – expected in late spring – of the [Inquiry into the Renewable Heat Incentive](#), which [exposed questionable conduct](#) within the collapsed Executive.

In the interim, the spirit of making the institutions work, inculcated with great pain over the last 20 years, is falling apart. [Serious tensions are now emerging](#) over policing, consensus on which was perhaps the most profound achievement of the peace process.

Increasingly, nationalism has [turned away from a focus on working within Northern Ireland](#) towards the prospect of a reunited Ireland, with [debate](#) on the merits and conspicuous dangers of an early border poll. See [our blog](#) for a discussion of the practical and legal problems with holding such a poll.

Meanwhile, government remains in the hands of civil servants. Despite the [legal protections](#) temporarily afforded them last year, many [significant decisions remain untaken](#). Those protections expire in March, although the legislation permits a single extension of five months. The Head of the Northern Ireland Civil Service, David Sterling, [fears](#) that, despite the 'slow decay and stagnation' in public services, the current situation may become 'the new normal'. Resumed devolution appears unachievable, whilst direct rule is potentially too provocative given the Westminster government's reliance on the DUP.

Incrementally, Westminster will inevitably make more decisions. The Secretary of State, Karen Bradley, has already [moved to extend her powers of appointment](#), and Brexit will require [an enormous set of legislative changes](#) for Northern Ireland, which can only emanate from London.

There are signs that the UK government is becoming aware of the risks: the [Prime Minister's speech in Belfast](#) on 5 February was a fuller and more balanced analysis than she has offered previously. Avoiding those risks may prove impossible, particularly in a difficult post-Brexit context. That is liable to significantly affect the political climate, and the disarray may be such that direct rule becomes inevitable.



Theresa May during a recent visit to Northern Ireland by [UK Prime Minister](#) ([CC BY-NC-ND 2.0](#)).

Scotland

The Budget was [approved](#) in the Scottish Parliament by 66 votes to 58 on 21 February. Finance Secretary Derek Mackay decided to freeze the threshold for the highest rate of income tax, a sign of the increasing divergence in tax rates since the [Scotland Act 2016](#) devolved greater control over taxation to Edinburgh. Labour and the Liberal Democrats both demanded that a second independence referendum be ruled out as a condition of their support, meaning the SNP once again needed to rely on the Greens. Green support was secured with small reductions in planned cuts to local government budgets and increased local tax flexibility, including the possibility of workplace parking taxes that are [staunchly opposed](#) by the Conservatives.

Former First Minister Alex Salmond was successful in his [judicial review](#) of the internal investigation into two formal complaints about his behaviour. Because a civil service investigating officer had previous personal knowledge of the complainants, the court concluded the process had been ‘tainted with apparent bias’. The UK Information Commissioner’s Office has [confirmed](#) that it is looking into the alleged leaking of confidential information relating to that investigation.

In connection with this, Salmond’s successor Nicola Sturgeon will now face a [Scottish Parliament inquiry](#) led by members of her own party. The Conservatives have joined Labour – who voted against the inquiry – in [calling](#) on the SNP to relinquish control of the committee overseeing it, which was assigned to them in line with the proper parliamentary procedure. There will also be separate internal government investigations into Sturgeon’s conduct, including [possible breaches of the ministerial code](#) related to conversations with her predecessor during the original investigation into his conduct.

On the substance of the issue, Salmond has since been [charged](#) with two counts of attempted rape and multiple counts of sexual assault.

Wales

Mark Drakeford was sworn in as First Minister on 13 December having [won](#) the contest to lead Welsh Labour with 53.9% of the vote. Women make up a majority of his new cabinet. Jeremy Miles has been given responsibility for Brexit in addition to his responsibilities as Counsel General. [Concerns have since been raised](#)

that this might affect Miles’ ability to carry out his duties as the government’s independent legal adviser. It might also contravene [section 49](#) of the Government of Wales Act 2006, which prohibits a Welsh minister being appointed Counsel General. Drakeford defended the move on the basis that Miles will not be exercising any statutory powers in his new Brexit role.



Welsh First Minister Mark Drakeford by [CPMR \(CC BY-SA 2.0\)](#).

The official investigation into the handling of the [dismissal of Carl Sargeant](#) has been delayed. Sargeant’s family have since [challenged](#) the inquiry’s format, concerned that the involvement of former First Minister Carwyn Jones in setting out its parameters will compromise its independence.

Electoral reforms have continued to progress. On 12 February, the [Assembly and Elections \(Wales\) Bill](#) was introduced. The bill makes provision to extend the right to vote in elections to the Welsh legislature to 16- and 17-year-olds and change its official title to ‘Senedd’ or, alternatively, the ‘Welsh Parliament’. It also stipulates changes to electoral administration, including the disqualification of members of the House of Lords as future candidates for election to the Assembly. Discussions around increasing the number of members and changing the election system are ongoing. In January, the Assembly [backed a motion](#) supporting the extension of the right to vote to prisoners in the context of Welsh elections, marking a significant divergence from the UK government (see page 11). The Welsh government has indicated that it will await the recommendations of the Equality, Local Government and Communities Committee, which is [considering](#) the issue, before taking any further action.

Efforts to increase legal accessibility in Wales are also underway. The [Legislation \(Wales\) Bill](#) was introduced in December. It will provide guidance on the interpretation

and operation of Welsh law and impose a duty on the Welsh government to bring forward a programme of action to improve the accessibility of Welsh law. This bill is the product of several [consultations](#) that recommended the need for codification and consolidation of the laws that apply in Wales.

International



British Columbia votes on its electoral system

The Canadian province of British Columbia has held a referendum on whether to change its electoral system. Voting took place entirely by post between late October and early December. Voters were asked two questions: first, whether they supported the retention of the existing First Past the Post system or a switch to proportional representation; and, second, which of three forms of proportional representation they would favour if this option won on the first question. Voters could rank the options in the second question in order of preference.

The [results](#) were announced in December. Though most polling had pointed towards a victory for reform, 61.3% of those casting a valid ballot backed the status quo on the first question, and so no change will take place. On the second question, 41% of voters gave their first preference to the Mixed-Member Proportional system (MMP; similar to that used for the Scottish Parliament and Welsh Assembly), while 29.5% backed a newly invented system called Dual Member Proportional (DMP) and 29.3% supported a hybrid system called Rural–Urban Proportional (RUP). The last of these options was eliminated and preferences were redistributed in a second count, where MMP won by 63% to 37%.

This case is interesting as a rare example of a multi-option referendum. As set out in the Unit's recent report on [The Mechanics of a Further Referendum on Brexit](#), such a vote creates various complexities that are not present in a simple binary contest. Four features of the referendum are particularly noteworthy. First, a simple First Past the Post choice among multiple options was avoided, so as to ensure a clear winner. Second, the ballot paper combined two of the approaches discussed in the Unit's report: multiple questions and preferential voting among multiple options. Third, voters were supported in their choice by

extensive information materials in the form of a 24-page [booklet](#) sent to every household, setting out how to cast a vote and how each of the electoral systems would work. Fourth, there were designated '[official proponent and opponent groups](#)' on each side, which received public funding – but only for the options in the first question. The official pro-reform group remained neutral between the three forms of proportional representation.

Polish judges reinstated following EU ruling

Polish President Andrzej Duda has [formally reinstated](#) approximately one third of the country's senior judges – including First President of the Supreme Court Małgorzata Gersdorf – following the intervention of the European Court of Justice (ECJ). The move ends a year of conflict between the executive and the judiciary over the Supreme Court Act 2017, which retrospectively lowered the retirement age for judges to 65, with an exception for those permitted to remain in post by the president. The effect of the law was to create a significant number of judicial vacancies, enabling the ruling Law and Justice Party (PiS) to appoint a raft of new judges whilst also giving the president an effective veto over older judges continuing in office. Gersdorf refused to retire as the law required, and [accused](#) PiS of 'staging a coup'; the government's initial refusal to back down prompted [mass protests](#) in Warsaw.

The European Commission referred the matter to the ECJ, which [issued an interim order suspending the law](#) in October. The ECJ then affirmed its interim decision via an additional ruling in December. The dismissed judges have now resumed their posts, and the requirement to seek presidential permission to continue to serve past the age of 65 has been removed. However, those appointed to replace the dismissed judges during their period of enforced retirement will also continue in office, meaning that the government has perhaps not suffered quite as significant a defeat as it might at first have appeared.

The issue of judicial independence in Poland is unlikely to go away any time soon. European Commission First Vice President Frans Timmermans [said as recently as February](#) that he intended to take further steps. His comments were a response to an [open letter](#) from a Polish judicial group, in which it is alleged that disciplinary action had been targeted at judges who spoke up for the rule of law or made preliminary references, which ask the ECJ for a ruling on the compatibility of domestic law with that of the EU.

People on the move

Dr John Benger became the 51st Clerk of the House of Commons on 1 March, following the retirement of **Sir David Natzler**.

The Department for Exiting the European Union has a new Secretary of State and Parliamentary Under Secretary of State after **Dominic Raab** and **Suella Braverman** resigned in November. They were replaced by **Stephen Barclay** and **Kwasi Kwarteng** respectively. **Nick Hurd** succeeded **Jo Johnson** as Minister for London that same month, and **John Penrose** replaced **Shailesh Vara** as Minister of State at the Northern Ireland Office.

Dame Sue Owen has announced her intention to retire from the Civil Service and her position as Permanent Secretary at the Department for Digital, Culture, Media and Sport (DCMS). Her replacements at DCMS and as the Civil Service's Diversity and Inclusion Champion have yet to be announced.

Caroline Anderson has been named as the next Commissioner for Ethical Standards in Public Life in Scotland. She will take over from **Bill Thomson** on 31 March.

Unit Fellow **Professor Cristina Leston Bandeira** has been elected chair of the Study of Parliament Group.

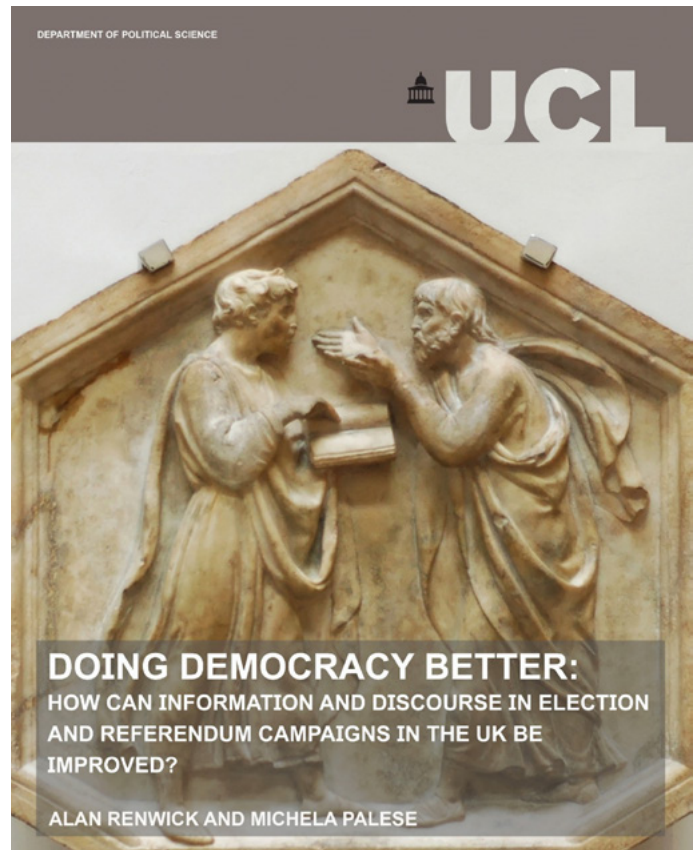


Sir David Natzler. Contains Parliamentary information licensed under the [Open Parliament Licence v3.0](#)

Constitution Unit news

New Constitution Unit report on improving election and referendum campaigns

The Unit has published a new report that proposes major improvements to the conduct of election and referendum campaigns in the UK. [Doing Democracy Better: How Can Information and Discourse in Election and Referendum Campaigns in the UK Be Improved?](#) is co-authored by Unit Deputy Director Alan Renwick and Michela Palese, and was funded by the McDougall Trust. Building on extensive international research, it provides detailed analysis of nine strategies for improving information and discourse that are being used around the democratic world. It argues that many of these could be applied in the UK, and proposes that ambitious change is needed in how we think of campaign information.



The report sets out six key features of a new approach. First, materials should be available that span every rung of an 'information ladder' – from basic information on where the polling stations are and when voting will take place to materials designed to help voters think through their own priorities and explore the implications of different options. Second, these should be coordinated

in an ‘information hub’, with multiple pathways through for different voters. Third, the materials in this hub should come from diverse sources: they should not be monolithic. Fourth, citizen deliberation should be embedded into all aspects of information generation. Fifth, the information hub should be publicly funded. Sixth, it should be run by a new independent public body. The report recognises that such a model may have critics, and it proposes a gradualist approach to its realisation.

Full details of the research and recommendations are available in the [report](#). A summary is contained in an accompanying [blogpost](#).

Regulating Digital Campaigning: What is to be Done?

The Unit, working with other interested groups, organised a half-day conference in parliament in November, entitled ‘Regulating Digital Campaigning: What is to be Done?’. Speakers included the Minister for the Constitution, Chloe Smith, the Chair of the House of Commons Digital, Culture, Media and Sport Committee, Damian Collins, the then Chief Executive of the Electoral Commission, Claire Bassett, Deputy Information Commissioner Steve Wood, and digital technology expert Stephanie Hankey.

There was broad agreement on the need for reform to reflect the huge changes in political campaigning and communications that have taken place since current regulations were introduced. Proposals advocated by individual speakers included ‘imprints’ on digital advertisements identifying their source, a central repository for online political advertising, reform of how campaign spending is reported, and greater powers for regulators. The advantages – but also disadvantages – of more radical steps, such as introducing a ban on online political advertising to match that for broadcast advertising, were also explored.

Conference on ‘Remaking the UK Constitution’

The Unit participated in a major [conference](#) in February that examined mechanisms for future constitutional reform in the UK. The conference was held at the Bonavero Institute of Human Rights in Oxford and co-hosted by the [Institute](#), the Unit, and the [Bingham Centre for the Rule of Law](#). It gathered leading scholars, politicians, practitioners, and

activists, including Professors Jon Elster (Columbia), H el ene Landemore (Yale), and David Farrell (UCD), SNP MP and Home Affairs spokesperson Joanna Cherry, and former Labour MP and Leave campaigner Gisela Stuart.

The discussions focused particularly on whether and how a citizens’ assembly could be used as part of a constitutional reform process, and on how a constitutional convention might be established. The Unit’s Robert Hazell presented an overview of UK constitutional developments in recent decades, while Alan Renwick set out how proposals for constitutional reform are developed in other democracies.

Recordings of each session are available [here](#), and a written report is expected in due course.

Rebecca McKee to conduct survey of MPs’ staff

At the end of last year [Dr Rebecca McKee](#) joined the Constitution Unit as a Research Fellow on a three-year British Academy Postdoctoral Fellowship. She will be expanding on her previous work on representation in parliament, and further information on her various projects will appear on our website in due course.

Later this year, along with Professor Meg Russell, Rebecca will launch a survey of the over 3,000 staff who work for MPs in their parliamentary offices – a group of people about whom we currently know little. The survey will explore who they are, what roles they perform for MPs, and what they would like the House of Commons authorities and others to do to enable them to best perform these roles. Rebecca would welcome any comments or ideas about the design of the survey.



[Dr Rebecca McKee](#).

Research staff and volunteers

In February the Unit was delighted to welcome Gaia Taffoni, who joins us as a Research Assistant working with [Professor Claudio Radaelli](#) on his large European Research Council project Procedural Tools for Effective Governance (PROTEGO). Professor Radaelli, who joined the UCL Department of Political Science in autumn 2018, has been welcomed as one of the Unit's associates.

The Unit is, as always, grateful for the excellent work done by its research volunteers. A big thank you to departed volunteers Lucie Davidson, Olivia Hepsworth, Hannah Kaufman, Sarah Kennedy-Good and Francisca Moya Marchi.

News from Constitution Unit Fellows

New report on intergovernmental relations

Constitution Unit Fellows Professor Nicola McEwen and Professor Michael Kenny, together with Jack Sheldon and Dr Coree Brown Swan, have written a new report on [Reforming Intergovernmental Relations in the United Kingdom](#). The team, who are working together as part of the [‘Between Two Unions’ research project](#) funded by the Economic and Social Research Council (ESRC), were invited to write the report by civil servants from the UK and devolved governments who are working on an official review of intergovernmental relations (see page 5). While the need for reform has frequently been recognised in recent years, few detailed proposals had previously been made. The new report seeks to fill this gap, setting out 27 [conclusions and recommendations](#).

One of the report's key conclusions is that the repatriation of EU competences following Brexit will mean that there is a greater need for co-operation between governments than has previously been the case. The report's authors recommended that a decision-making function should be added to the remit of the existing Joint Ministerial Committee (JMC), although it is important that any decision should be taken by consensus in order to respect the authority of each government. Various relatively straightforward reforms to the existing JMC machinery were suggested, proposals were made for a revised dispute resolution protocol, and options were presented for how explicitly English representation in IGR structures might be achieved. A full summary is available on [our blog](#).

Centre for Constitutional Change project on devolved competences

In 2017, the [Centre on Constitutional Change](#) – which includes Unit Fellow Professor Nicola McEwen – was awarded an ESRC Brexit priority grant, as part of the [UK in a Changing Europe](#) initiative, to examine the [implications of the repatriation of EU competences on devolution](#). Now that the project has concluded, much of the uncertainty of 2017 remains about which of the many Brexits on offer the UK could pursue. Yet the form of Brexit will shape significantly the extent to which it reshapes devolution and multi-level government within the UK.

Some impact can already be identified. In its original form, the EU (Withdrawal) Bill would have marked the first significant recentralisation of power within the UK since devolution. This sparked unprecedented coordinated action between the Welsh (Labour) government and the Scottish (SNP) government, exerting ‘soft power’ to secure a less restrictive approach in the bill as enacted. That the Welsh and UK governments were able to reach agreement on the withdrawal legislation, while the Act was passed without the consent of the devolved institutions in Scotland, should not mask the degree of shared concerns about the broader impact of Brexit on devolution. The Brexit process has generated an intensification of intergovernmental relations, with opportunities for new forms of shared governance; but the devolved governments remain concerned about their right to influence UK policies that affect devolved competence.

As well as taking a broad view, the project focused on three policy fields where devolved competence and EU competence have hitherto overlapped to varying degrees: [agriculture](#); [justice and home affairs](#); and [energy and climate change](#). Those working on the projects examined the nature of multi-level governance in these spheres, the degree of convergence and divergence within EU frameworks, the implications of alternative political, legal and financial models under consideration in the negotiations, and the form, scope and governance of new common frameworks. The reports on each of these areas were published throughout the course of the project, with the last being released on 28 January.

Bulletin Board

Events

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

Challenges for Parliament: Looking Back and Looking Forward – Sir David Natzler in conversation.

Sir David Natzler, former Clerk of the House of Commons, will discuss change over his more than 40-year career in parliament and the challenges for the future with **Professor Meg Russell**, Director of the Constitution Unit.

19 March at 6pm

Unit in the news

The Unit's report on the mechanics of a further referendum on Brexit has been mentioned numerous times, including in the blog of *Democratic Audit* ([7 November](#) and [8 December](#)), the *Guardian* ([24 November](#), [28 November](#), [7 December](#), [15 December](#)), the *National* ([3 December](#) and [17 December](#)), on the BBC News site ([5 December](#) and [21 February](#)), in the *Economist* (6 December), on *LabourList* (14 December), in the *Seattle Times* (15 December), the *Washington Post* ([15 December](#) and [9 January](#)), *RTÉ* (17 December), *MalayMail* (18 December), *EWN* (18 December), the *Times* ([19 December](#) and [13 January](#)), *New Statesman* ([9 January](#), [16 January](#), [18 January](#)), the *Independent* ([16 January](#) and [21 January](#)), *Sina* (16 January), *iNews* (17 January), the *Mirror* (17 January), *Radio NZ* (17 January), *EU Bulletin* (18 January), *Metro* (18 January), *CincoDias* (20 January), *Bustle* (22 January), the *Express* (30 January) and *EuroNews* (14 February).

The Unit's video summary of its report on the mechanics of a further referendum on Brexit was recommended in a 'Brexit briefing' in the *FT* (28 November).

Meg Russell appeared on *The Briefing Room* ([30 November](#) and [12 December](#)), PM (4 December), the [BBC News channel](#) and *News at Ten* (4 December, 5

December and 15 January) to discuss parliament's role in the Brexit process. She also appeared on *News at Ten* (6 December) and *Today* (17 December) to discuss the mechanics of a further referendum on Brexit.

Alan Renwick appeared on *Five Live Drive* (17 December) to discuss the mechanics of a further referendum on Brexit, and on *Analysis* (4 March), discussing the possibility of a citizens' assembly on Brexit.

The report of the Independent Commission on Referendums was cited in a *Carnegie Europe* blogpost about direct democracy (15 November), and by Justine Greening MP in the *Times* (30 November). It was also discussed on the *Talking Politics* podcast (7 January).

The Unit's report on the accession and coronation oaths was briefly discussed in an article about disestablishment in *Christian Today* (29 November).

Robert Hazell was quoted in an article on *Al Jazeera* about the decision to delay the 'meaningful vote' on the Brexit deal (10 December), in an article by Lord Foulkes in the *Herald* proposing a UK Constitutional Convention (12 December), and in a *Time* article about the Conservative vote of confidence in Theresa May (12 December).

Meg Russell was quoted in articles about an extension of Article 50 in *20 minutos* (13 December), *Christian Science Monitor* (17 December), *Tribune de Genève* (17 December), *Le Croix* (18 December) and *ITV News* (15 January). She was also quoted in an article about the Conservative vote of confidence in Theresa May on *ecns* (17 December).

Meg Russell was interviewed by *Yomiuri Shimbun* on a variety of Brexit-related topics (17 January).

Robert Hazell appeared on *The Briefing Room* (17 January) to discuss the effects of Brexit on the British political system.

Alan Renwick was quoted in articles on a further referendum on Brexit on the *BBC News* site (14 December), *athina984* (17 December) and *Left Foot Forward* (18 January).

Alan Renwick wrote an article for the *Economist* (18 January) on the questions that must be answered before a further referendum on Brexit can be held.

Bulletin Board

The Citizens' Assembly on Brexit was referred to in several articles in the *Guardian* ([16 December](#), [16 January](#), [17 January](#) and [3 March](#)) and *LabourList* (19 January).

Alan Renwick's [blog](#) on citizens' assemblies was cited in an article on the subject in the *FT* (25 January). He also appeared on *Five Live* (21 January) to discuss citizens' assemblies.

Bob Morris was quoted in an article in the *Times* (26 January) on the role of the Queen in the Brexit process.

Meg Russell appeared on *Westminster Hour* (27 January) to discuss the role of the Fixed-term Parliaments Act.

Alan Renwick appeared on Sky News's [All Out Politics](#) and the BBC World Service's [World Update](#) (both 7 March) to discuss information in election and referendum campaigns.

Meg Russell was quoted in [Yomimuri Shimbun](#) on 7 March on the topic of forthcoming parliamentary votes on Brexit.

Unit publications

Alan Renwick and Michela Palese, [Doing Democracy Better: How Can Information and Discourse in Election and Referendum Campaigns in the UK Be Improved?](#) (March).

Meg Russell and Daniel Gover, [Legislation at Westminster: Parliamentary Actors And Influence in the Making of British Law](#), (Oxford University Press; paperback edition published in January). For information on how *Monitor* readers can get a 30% discount, see page 9.

Meg Russell and Jack Sheldon, 'An English Parliament: An Idea Whose Time has Come?' in [Governing England: English Identity and Institutions in a Changing United Kingdom](#) (Oxford University Press, November).

Publications to note

Michael Kenny, Iain McLean and Akash Paun, [Governing England: English Identity and Institutions in a Changing United Kingdom](#) (Oxford University Press, November).

Nicola McEwen, Michael Kenny, Jack Sheldon and Coree Brown-Swann, [Reforming Intergovernmental Relations in the United Kingdom](#), (Centre for Constitutional Change and Bennett Institute for Public Policy, November).

Michael Koß, [Parliaments in Time: The Evolution of Legislative Democracy in Western Europe, 1866-2015](#) (Oxford University Press, December).

Vernon Bogdanor, [Beyond Brexit: Towards a British Constitution](#) (Bloomsbury, February).

Contributors to Monitor 71

Dave Busfield-Birch, Greg Davies, Jim Gallagher, Lotte Hargrave, Robert Hazell, Nicola McEwen, Rebecca McKee, Hedydd Philip, Alan Renwick, Meg Russell, Mark Sandford, Jack Sheldon, Alan Whysall and Nick Wright.

The issue was edited by Dave Busfield-Birch.

