

# Constitution Unit

## Monitor 72 / June 2019



### Brexit and the changing logic of British politics

The Brexit tumult goes on, and is increasingly challenging some central tenets of British politics.

Having been due to leave the European Union on 29 March, the UK will now remain until at least 31 October. Right up to the original deadline, the government was making frenetic efforts to negotiate addenda to the Withdrawal Agreement (see page 2), but it could not gain concessions adequate to persuade MPs to accept the deal (see page 4). Extensions were agreed, first just for two weeks, then for seven months. A key obstacle is fragmentation on the government side, with Conservative MPs (mostly those who are pro-Brexit) refusing to compromise. With great reluctance, the Prime Minister ultimately turned to seeking a pact with the Labour Party – a distinctly un-British approach whose necessity her European partners had apparently seen long before she did.

[Theresa May announces her intention to resign, 24 May \(OGL 3\)](#)

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But, with the pressure of an immediate deadline gone, and with looming European Parliament elections that she had never wanted to hold, the perilous politics of a cross-party deal proved un navigable. Following [her promise](#) that a proposed Withdrawal Agreement Bill would include a referendum clause, Theresa May's cross-party flirtations sufficiently [infuriated sections of her party](#) that she was eventually forced to acknowledge defeat. On 24 May she [announced](#) her intention to step down, triggering a contest for the leadership of the Conservative Party and (very likely) for the country.

Throughout these months of tumult the role of parliament has been central, and hotly contested. The 2016 referendum initiated such tension, by pitting popular sovereignty against the conventional logic of parliamentary sovereignty. Most recently there has been a long battle of wills between government and parliament. A key argument (see page 4) has concerned parliament's ability to control its own agenda, with initiatives from backbenchers firmly backed up by the Commons Speaker. While these had mixed success, many MPs are clearly now willing to use all the powers they possess to prevent an outcome they believe would be deeply damaging to the country.

At the heart of these arguments is a question about whether the correct interpretation of Westminster convention is to privilege the parliamentary majority or the government. For most of our recent history these two have reliably coincided.



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But, with fragmented parties and a minority government, the cracks have really begun to show. Pushing back against MPs' newfound confidence, some extraordinary suggestions have been made about use of prerogative powers. [One](#) was that ministers might advise the Queen not to sign parliament's Brexit extension bill (the 'Cooper bill') into law. More recently, some Conservative leadership contenders have [refused to rule out](#) asking the monarch to prorogue parliament in order to prevent it blocking a 'no deal' Brexit. This would amount to little short of the suspension of democracy. It points to the urgent need to further limit prerogative powers by statute if the monarch is to avoid getting dragged into political disputes.

Amidst these developments, the future of the Union remains in question. Scottish First Minister Nicola Sturgeon signalled her intention to move towards another independence referendum by introducing legislation on referendum conduct and announcing a citizens' assembly on Scotland's future (see page 12). Ongoing political tensions in Northern Ireland were highlighted by the tragic murder of the journalist Lyra McKee (see page 15). While the powerful words spoken at her funeral rekindled pressure to restore devolved government, actual progress remains limited.

On the partisan front, meanwhile, the logic of the British party system has also been thrown into doubt and the seeds of a potential transformation have been growing. The two main parties at Westminster are increasingly riven by Brexit, while this same divide dominated the European elections in May. Nigel Farage's newly-established Brexit Party topped the poll. Although the other new party – Change UK, formed by the Independent Group MPs who had defected from Labour and the Conservatives – floundered and later split, anti-Brexit voters found their voice through putting the Liberal Democrats in second place, and the Greens above the Conservatives. Meanwhile the vote shares for the two conventional 'main' parties collapsed (see page 9).

At the time of writing, two parties were amidst leadership elections (see page 13), with some 150,000 Conservative Party members (almost two-thirds of whom are [estimated](#) to have voted for the Brexit Party in May) set to choose the next Prime Minister. The grip of grassroots member power meanwhile explains why Labour's leader, [even after the party lost half its MEPs](#), remains unchallenged. Whether voters can be coaxed back to the old parties or not will profoundly shape the future of British politics.

The Conservatives will hope that their new leader can offer a path towards recovery. Notwithstanding the promises made during the campaign, however, he will face harsh realities on entering office. One immediate prospect could be the [challenge of a no confidence vote](#), which some prominent Conservatives (e.g. [here](#) and [here](#)) have indicated they might support, particularly if there are threats to prorogue. This could leave Theresa May in a very difficult position regarding how to advise the Queen on the appointment of her successor. Even if these threats melt away, there is little sign that EU leaders will reopen the terms of the Withdrawal Agreement. Should they prove more flexible, legislating for an orderly Brexit by 31 October would anyway be all but impossible. A fraught period of high-stakes brinksmanship in the lead-up to the October deadline looks certain.

Having been told by the EU27 not to waste time during the extension period, it seems hard to believe that parliament will soon break for 6–8 weeks over the summer – and demands for a summer recall may well soon be heard. Given the stalemate, and the unpredictable current climate, a further Brexit delay to facilitate a general election cannot be ruled out.

## Brexit



### EU-UK negotiations

Since the [Withdrawal Agreement](#) was concluded in November 2018, most of the action on Brexit has been in the UK parliament, with three failed votes on the agreement itself, and two rounds of 'indicative' votes that produced no majority for any outcome (see page 4). Meanwhile, the EU has [repeatedly insisted](#) that the Withdrawal Agreement will not be reopened.

Ahead of the original Brexit deadline of 29 March, Attorney General Geoffrey Cox and the Brexit Secretary, Stephen Barclay, [conducted talks](#) with the EU negotiating team in which they sought changes to the Northern Ireland backstop. UK negotiators failed to secure the right to unilaterally terminate the backstop or to require it to be time limited. A [compromise suggestion](#) from the EU was rejected on the basis that it would create a hard border between Northern Ireland and the rest of the UK. Although the talks, which culminated on 11 March, produced new ['legally binding' documents](#), these did not alter the text of

the Withdrawal Agreement – instead merely restating that the backstop is intended to be temporary and committing both sides to use ‘best endeavours’ to negotiate alternative arrangements. Cox therefore [continued to advise](#) that the backstop could potentially endure indefinitely, and the talks consequently had minimal impact on parliamentary opposition to the deal.

Labour leader Jeremy Corbyn also held talks with EU negotiators ahead of the 29 March deadline. On 21 February, he and other senior Labour figures met with both the EU’s chief negotiator, Michel Barnier, and the European Parliament’s Brexit coordinator, Guy Verhofstadt. Mr Barnier was [reportedly](#) ‘sympathetic’ to Labour’s proposal that the UK remain in a customs union – an option the UK government has consistently rejected. Corbyn and his team [met with EU officials again](#) on 21 March, leading to what he described as ‘positive’ and ‘constructive’ discussions. But Labour clearly does not have the numbers in parliament to back up an alternative deal (as the indicative votes – discussed below – went on to show), and many Labour members remain strongly opposed to Brexit.

The UK has requested two extensions of Article 50 – a [short one in March](#) and a [longer one in April](#) – which were both unanimously approved by the European Council. The March extension was intended to expire on 12 April, unless the Withdrawal Agreement had by then been approved by parliament, in which case it would last until 22 May. On 5 April, however, Theresa May, keen to avoid a ‘no deal’ exit and with no prospect of resolving the parliamentary impasse in time, [requested a further extension](#). This proved more difficult to secure than the first extension, with EU leaders split regarding the proposed expiry date, and France [pushing for it to be conditional](#). Crucially, the EU made clear its concerns about the prospect of undermining the ‘regular functions of the European Union and its institutions’ when it agreed to [the second extension](#) on 10 April. Hence the UK would be required to honour its legal obligations to hold European parliamentary elections, and if it refused would be forced to leave on 1 June, deal or no deal. The UK duly took part in the elections (see page 9), allowing the extension to run to 31 October.

The EU has been open to the notion of amending the [Political Declaration](#), which is non-binding and outlines aspirations for the future EU–UK relationship. On 2 April, Theresa May [offered to meet](#) with Jeremy Corbyn in an attempt to agree a new UK negotiating position,

provoking criticism from Conservative backbenchers such as the European Research Group’s chair, [Jacob Rees-Mogg](#). Six weeks of intermittent talks followed, in which Labour [consistently pushed](#) for the government to end its opposition to a customs union. Negotiations, led by the government’s David Lidington and Shadow Brexit Secretary Sir Keir Starmer, [were described](#) as ‘productive’ and ‘constructive’ on 29 April. The Chancellor, Philip Hammond, [said on 6 May](#) that he was ‘optimistic’ that they would prove successful.

But the gap between the two leaders could not ultimately be bridged, and on 17 May Jeremy Corbyn [wrote to Theresa May](#) to terminate the talks. Both leaders laid the blame at the other’s door, [accusing each other](#) of failing to overcome the divisions within their respective parties. Although the International Development Secretary, Rory Stewart, said [later that week](#) that the two parties were ‘half an inch apart’ and could yet return to the negotiating table, that seems unlikely before Theresa May leaves office in the summer.

With the EU position set, parliament divided and the next Prime Minister yet to be determined, it is impossible to know what the situation will be when the current extension deadline approaches in October. No EU leader wants ‘no deal’, making it difficult to see a further request for an extension being denied, despite [Donald Tusk’s warning](#) that the UK should ‘use this time wisely’. There is no legal reason why the Article 50 period cannot be prolonged multiple times.



Michel Barnier and Guy Verhofstadt, by [Renew Europe](#) (CC BY-ND 2.0).

## Brexit and Parliament

Parliament, and specifically the House of Commons, has remained a key forum for dramatic developments over Brexit, including government defeats, procedural innovations, and interesting cross-party alliances and internal party splits.

As reported in [Monitor 71](#) (see page 3), on 15 January MPs heavily rejected the deal negotiated by Theresa May with the EU27 in a ‘meaningful vote’ under the European Union (Withdrawal) Act. Subsequently some backbenchers tried unsuccessfully to temporarily wrest control of the Commons agenda from the government in order to debate alternatives, and motions were twice agreed to reject ‘no deal’. In the subsequent period all of these initiatives by parliamentarians stepped up to a new level, but agreement on the way forward nonetheless remained elusive. Greater detail is usefully set out in a House of Commons Library briefing [here](#).

Following the passage of the ‘[Brady amendment](#)’ on the Irish backstop on 29 January, Theresa May committed to returning to negotiations. Ultimately, and unsurprisingly, these resulted in no substantive change (see page 2). With the clock ticking down to the originally-planned ‘exit day’ of 29 March, a second ‘meaningful vote’ took place on [12 March](#). While support for the Prime Minister’s deal marginally increased, it was still heavily defeated, by [391 votes to 242](#). As promised beforehand by the Prime Minister, the next day there was [a further vote](#) to reject ‘no deal’, and [one day later](#) the Commons voted for a government motion seeking an extension to Article 50. The 14 March debate also saw two key amendments rejected – one from Sarah Wollaston in favour of a referendum, and another from Hilary Benn to briefly suspend Standing Order 14 and allow MPs a series of ‘indicative votes’ on the options. While the first of these was [defeated heavily](#), the second lost [by just two votes](#).

With the clock still ticking, it was widely expected that Theresa May would seek a third ‘meaningful vote’ before 29 March. Among some MPs this smacked of intransigence, and of bullying the Commons. In a [statement](#) on 18 March the Speaker communicated that he could well rule such an attempt out of order, based on the precedent that MPs should not be asked to vote repeatedly on the same proposition. While this was not a definitive ruling (the government could still have proposed a motion, and if necessary sought MPs’ support in the division lobbies for such a vote to proceed

against the Speaker’s advice) Theresa May’s response was to back down. The government’s request for an Article 50 extension followed.

The initial extension to only April or May clearly focused MPs to some extent on the need to find a way forward. Following a debate on 25 March a further amendment setting aside standing orders to allow indicative votes on the options, in the name of senior Conservative backbencher Sir Oliver Letwin, was agreed (against the government’s wishes) by [329 votes to 302](#). These votes [took place two days later](#). Despite suggestions from many both inside and outside parliament (including the Unit’s [Meg Russell](#) and [Alan Renwick](#), in posts on our blog) that such votes should use some kind of preferential/elimination ballot, they instead followed the standard format of yes/no on each proposition. Consequently [none of the eight propositions](#) (as selected by the Speaker from a longer list of proposals) reached a majority. The Labour leadership’s plan was defeated by 307 votes to 237, while the two most popular options were a customs union arrangement (proposed by senior Conservative Ken Clarke and rejected by 265 votes to 271) and for a referendum (from senior Labour MP Margaret Beckett: 268 to 295). ‘No deal’ was roundly rejected by 160 to 400 votes.

With no clear way forward Theresa May seemingly hoped that MPs would finally fall in behind her deal, symbolically scheduling a vote on the original ‘exit day’ of 29 March (this avoided the Speaker’s stricture by using a motion of a different form). Against the backdrop of [a demonstration](#) by pro-Brexit protesters outside parliament, MPs voted for the third time to reject the deal – albeit by a narrower margin of [344 votes to 286](#).

### The Constitution Unit

## Job Vacancy

### Research Assistant – Parliament and Brexit

Salary: £30,922 including London allowance.

This is a new full-time post to support the Unit’s Director, Professor Meg Russell, on her new three-year ESRC-funded project on ‘Brexit, Parliament and the Constitution’ (see page 19).

For further details click [here](#).

**Closing date: 14 July.**



After the indecisive outcome of the first set of ‘indicative votes’, the organisers then sought to try again – somewhat oddly using the same process – with slightly different options. Unsurprisingly, this produced similar results. At the end of [a debate](#) on 1 April all four options were rejected, including a referendum by 12 votes and membership of a customs union by just three votes. The next backbench procedural innovation was the [European Union \(Withdrawal\) \(No. 5\) Bill](#), commonly known as the (Yvette) ‘Cooper Bill’. This sought a further Article 50 extension, and completed its main Commons stages on 3 April, again following a government defeat on a business motion to suspend normal standing orders. The bill cleared the Lords (notwithstanding an attempted filibuster, which is [far easier in the Lords than the Commons](#)) on Monday 8 April. Two days later the Prime Minister negotiated an extension to 31 October.

Parliament was initially becalmed, but anxiety mounted following Theresa May’s announcement of her resignation, when some leadership candidates [began to hint](#) that parliament could be prorogued in order to prevent MPs blocking a ‘no deal’ exit. On 12 June Labour used an opposition day to force debate on a cross-party motion (signed by the leaders of the Liberal Democrats, SNP, Plaid Cymru and Greens, alongside Conservative Sir Oliver Letwin) to take control of the agenda on 25 June. As [set out by Labour’s Sir Keir Starmer](#), the intention was to bring forward a bill that day which would prevent a forced prorogation. However this attempt narrowly failed, by [309 votes to 298](#). Although [10 Conservatives supported the motion](#), eight Labour members opposed it and another 13 were absent from the vote. MPs’ assertiveness was seemingly tempered not only by splits on the Labour side, but also by reluctance among Conservatives to support an opposition motion in the midst of a leadership election.

Although the options for MPs may be narrowing, this is unlikely to be the end of the story in terms of parliamentary assertiveness against the executive over Brexit. Parliament nervously awaits the outcome of the Conservative contest.

As reported on page 19, Unit Director Meg Russell has recently been awarded a three-year grant to work on parliament and Brexit.

The UK in a Changing Europe will be holding a [public conference](#) on Brexit and the Constitution on 15 July.

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## Brexit and devolved powers

As the impasse at Westminster continues, the Scottish and Welsh governments have become more confident in calling for a second referendum and continued membership of the EU. The pro-Remain message was reflected in the SNP’s campaign slogan, ‘[Scotland’s For Europe](#)’, in the [European Parliament elections](#) (see page 16), at which the party gained a third MEP and topped the poll in every mainland Scottish local authority area. Welsh Labour’s message was more nuanced, in line with the party’s UK-wide position, and they came third with just 15% of the vote – losing significant support to parties with clearer pro-Brexit or pro-Remain positions. In the wake of the result and under [pressure from members of his cabinet](#), First Minister Mark Drakeford [committed unequivocally](#) to supporting a referendum and campaigning to remain in the EU should one be called, suggesting that the previous position had been ‘too complicated’.

Intergovernmental discussions around Brexit have continued, albeit with a somewhat lower intensity than before. The Joint Ministerial Committee (European Negotiations) met most recently on [9 May](#) to discuss the role of the devolved governments in the next stage of talks, should this be reached.

## The Constitution Unit

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This followed a statement from the Prime Minister in January that the government was [committed](#) to giving the devolved administrations an ‘enhanced role’ – which she has not since elaborated upon. In March, the Lords EU Committee [recommended](#) that this should include a role for the devolved governments in the dialogue at ‘summit, ministerial and technical level’ discussions envisaged by the Political Declaration, including the proposed Joint Committee on the Future Relationship. There are delicate issues involved here, especially as [more substantive commitments](#) have been made about the role of any future Northern Ireland Executive.

Meanwhile, the [third statutory report](#) on the progress of official-level discussions on future ‘common frameworks’ in areas of devolved competence where powers are currently exercised at EU level was published in May. This indicated that frameworks were continuing to be developed through ‘constructive discussions’ and that no use of the powers under the EU (Withdrawal) Act to ‘freeze’ devolved powers in these areas is currently proposed. Separately, an [updated analysis](#) of the policy areas where frameworks are under consideration was published by the Cabinet Office. This indicated a slightly reduced number of areas in which the UK government considers that legislative or non-legislative frameworks may be required, compared to the [previous iteration of this document](#) published in March 2018.

## Interparliamentary relations

The Interparliamentary Forum on Brexit, which brings together representatives of Brexit-related committees from the House of Commons, House of Lords and the devolved legislatures, held its [seventh meeting](#), at the Scottish Parliament, on 26 April. The forum met with Scottish cabinet minister Michael Russell and [agreed a letter](#) to the UK Cabinet Office minister, David Lidington, calling for the outcome of the ongoing review of intergovernmental relations (see [Monitor 71](#), page 5) to include ‘explicit recognition of the scrutiny role for UK and Devolved Parliaments including the timely provision of information’.

In March the House of Lords EU Committee [recommended](#) that parliamentary authorities across the UK consider how the Interparliamentary Forum, which has ‘developed into a useful tool’, might be strengthened ahead of negotiations on the UK–EU future relationship. The report identified defining its remit more closely and addressing membership (which has been inconsistent)

and resourcing as key issues that should be considered as a ‘matter of urgency’. This follows a number of previous calls for enhanced interparliamentary relations from other committees across the UK, and from the [forum itself](#) at its January meeting.

## Parliament



### The position of Speaker

House of Commons Speaker John Bercow, who was elected to the position in 2009 following the MPs’ expenses crisis, has been subject to various controversies during his tenure. Popular among many as a backbenchers’ champion, he has aggravated others – particularly on the government side, including over Brexit. After being linked to allegations of bullying at Westminster, he was [widely reported](#) to be planning to step down around his 10-year anniversary in June or July 2019. Until recently, that was the working assumption, to the point that candidates for the position had started to set out their stalls. Those who declared their intention to consider entering the race included existing Deputy Speakers [Dame Eleanor Laing](#) and [Sir Lindsay Hoyle](#), Conservative backbencher [Sir Edward Leigh](#), and Labour backbencher and [prolific author](#) on the history of parliament, [Chris Bryant](#). Others rumoured to be considering running included [Harriet Harman](#) and [Meg Hillier](#). The SNP’s Pete Wishart had even got as far as [publishing his manifesto](#), proposing various reforms.



John Bercow discusses his Speakership at Brookings Institution, by [Brookings Institution \(CC BY-NC-ND 2.0\)](#).

In late May, however, Bercow unexpectedly brought these plans to a halt by announcing that he [intended to stay on](#). The context was the Conservative leadership contest, and suggestions (including from contestant [Dominic Raab](#), and the [Institute for Government](#)) that the Commons might be powerless to block a ‘no deal’ Brexit. Signalling his intention to provide MPs an opportunity to do this if necessary, Bercow again infuriated his pro-Brexit critics. But in doing so his place in the history books has probably become even more secure, not least as the [longest serving Speaker since the Second World War](#), now set to have served under four different prime ministers.

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## Restoration and Renewal

The long-delayed refurbishment of the Palace of Westminster moved a step closer in May when the [Parliamentary Buildings \(Restoration and Renewal\) Bill](#) passed its [second reading](#) and [committee stage](#) in the Commons. The bill proposes a three-tier governance structure for the multi-billion pound Restoration and Renewal programme (R&R), based on the model from the 2012 Olympics.

The second reading debate was less contentious than the [January 2018 Commons debate](#) on R&R (see [Monitor 68](#), page 6). Although Frank Field [called](#) for the refurbishment to be delayed until ‘we are out of the age of austerity’, most of the debate was about the best available method, rather than the principle itself. Sarah Wollaston [questioned](#) why the new temporary Commons chamber – the subject of a separate [public consultation](#) – is to be designed as a replica of the existing one, and Jonathan Edwards became the latest MP to [call for parliament to move out of London entirely](#) – a suggestion that a recent [Early Day Motion](#) indicates has limited parliamentary support. Most of the debate at committee stage centred on amendments related to the process for selecting members of the Sponsor Body. Meg Hillier, for example, [tabled amendments](#) for members from the House of Commons to be elected by MPs, and [indicated](#) that she would return to the proposal at report stage, which took place after *Monitor* had gone to press.

Despite this progress, further consideration of the bill may be stalled by the wider political turmoil at Westminster. The day after she opened the debate, Leader of the Commons Andrea Leadsom [resigned](#): her personal commitment to R&R has been [credited by MPs](#) as key to achieving the progress to date. Under a [new](#)

[Leader of the House](#) and an as yet unknown new Prime Minister with other priorities, continued government support for R&R is far from guaranteed.

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## House of Lords by-elections

Labour peer Lord Grocott’s [private members’ bill](#) to abolish the system of by-elections for hereditary peers has made slow progress since being introduced in June 2017. This is partly due to strong opposition from a small group of hereditary peers (including Lord Northbrook, Lord Trefgarne and the Earl of Caithness), who challenged a similar bill during the 2016–17 session. Following the second committee sitting in September 2018, the House passed a [motion](#) to move the bill from Committee of the Whole House to Grand Committee – during which there can be no divisions – in order to avoid further delays. This enabled the bill to pass its committee stage on 23 November and progress to report stage in March, when 62 amendments were tabled. Of these, 49 were proposed by Lord Trefgarne, and 16 by the Earl of Caithness. During the debate [Baroness Hayter](#) (Labour frontbench) [Lord Rennard](#) (Liberal Democrat) and [Lord Cormack](#) (Conservative) joined Lord Grocott in accusing these peers of attempting to ‘filibuster’ the bill.

Speaking for the government, Lord Young of Cookham [reiterated](#) ministers’ support for the recommendations of the [Burns Report](#) and the general aim of reducing the size of the Lords. However, he was neutral on the bill itself, which he said the government would neither support nor obstruct. Due to the large number of amendments and the lack of time limits for speeches, the first day of report stage saw little progress, dealing with just 14 of the proposed amendments, almost all of which were either withdrawn or defeated. With no sign of government assistance and Lords procedures on private members’ bills very susceptible to filibustering by small groups of members, the bill’s prospects look poor. This is despite the great majority of peers being in support – as demonstrated by votes both in committee and at report (for further discussion [see our blog](#)). A second day of report is yet to be scheduled.

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## Liaison Committee inquiries into select committees

The House of Commons Liaison Committee (made up of select committee chairs) has begun taking evidence for [its inquiry into the effectiveness of the select committees](#)



(see [Monitor 71](#), page 7 and [our blog](#)). This marks 40 years since the establishment of the departmental select committees in their present form, and 10 years since the ‘Wright committee’ reforms. To date the committee has held three oral evidence sessions, with the Unit’s Meg Russell contributing to the first of these (see page 20) alongside [Tony Wright](#) (an associate of the Constitution Unit, and chair of the reform committee that recommended reforms in 2009) and representatives of the Hansard Society and Institute for Government. Other witnesses have included journalists, former senior civil servants, voluntary sector representatives and the (then) Leader of the House of Commons, Andrea Leadsom. A large volume of written evidence has also been received. The committee has gathered many interesting examples of good and innovative practice, and an emerging theme is the key role that select committees play in holding various power holders to account – including beyond government, and indeed beyond the broader public sector. Its report is expected before the summer recess.

Meanwhile, the House of Lords Liaison Committee is still [continuing its inquiry](#) into the structure and functions of that chamber’s select committees. This began in January 2018 (as discussed in [Monitor 68](#), page 5), and now also promises to report ‘by summer 2019’. It is to be hoped that – as emphasised by Meg Russell in her evidence to both committees – these simultaneous inquiries allow members of the two chambers to take a coordinated and strategic approach to the structure of future committee scrutiny.

In other news the House of Commons Liaison Committee is now on Twitter ([@CommonsLiaison](#)), and is using this forum to issue weekly roundups of select committee activity.



[Unit Director Meg Russell gives evidence to the Commons Liaison Committee, 29 April](#). Credit: Parliament TV.

## Parliament continues to reform its complaints procedures

Following the [Cox report](#) on harassment and bullying in the Commons and the [negative media coverage](#) of the handling of misconduct allegations involving Lord Lester of Herne Hill (see [Monitor 71](#), page 8), the Lords Committee for Privileges and Conduct published a [report](#) on 4 April, recommending changes to the [Code of Conduct](#). When peers [debated](#) the report on 30 April, almost everyone who spoke expressed a desire for the old system to be reformed and there was no serious opposition to its proposals. Some members, such as [Lord Hogan-Howe](#) and [Lord Evans of Weardale](#), suggested that the reforms did not go far enough, and that peers should consider making the complaints system more – or entirely – independent of parliament. Senior Deputy Speaker Lord McFall emphasised that these changes were the beginning of a long process and that further reform was to be expected. The proposals were adopted with immediate effect and – somewhat surprisingly – apply retrospectively to the start of the current parliament.

The peers’ Code of Conduct has been amended to include the Parliamentary Behaviour Code and to make clear that it prohibits bullying, harassment and sexual misconduct. The complaints process has been made slightly more victim-friendly, removing requirements to contact the relevant member in advance, but also includes additional protections for peers, making clear the circumstances in which the existence of a complaint and the identities of those involved will be made public.

The Privileges and Conduct Committee itself has been abolished and a much smaller nine-person Conduct Committee established. Chaired by former Supreme Court Deputy President Lord Mance, it will include four lay (non-parliamentary) members, who will have full voting rights. The new committee will continue to hear appeals against findings of the Commissioner for Standards, who will take over the role of recommending sanctions from the Sub-Committee on Conduct (now also disbanded).

The question of how independent the complaints process should be – including whether peers should still be permitted to approve misconduct reports via a vote – has been deferred. The Conduct Committee should consider this question after the publication – probably in July – of an independent report into bullying and harassment by Naomi Ellenbogen QC.



A separate Commons review of the Independent Complaints and Grievance Scheme has been [announced](#), and an [independent inquiry](#) by Gemma White QC – dealing with ‘members of the parliamentary community’ not covered by the Cox report – is continuing.

## Lords Constitution Committee reports on parliamentary scrutiny of treaties

On 30 April the House of Lords Constitution Committee [issued the final report](#) from its inquiry into parliament’s scrutiny of treaties. While this area has seen some reform in recent years – notably through Gordon Brown’s [Constitutional Reform and Governance Act 2010](#) – it has clearly taken on a new importance in the context of Brexit. A central concern of the committee was that parliament’s involvement is largely restricted to commenting after treaties have been negotiated by government. Notably, there is no set mechanism for parliament to feed into the initial negotiating objectives, or hold government to account during negotiations. There were also concerns about the lack of established arrangements for consultation with the devolved administrations. The committee’s central recommendation was for the establishment of a dedicated parliamentary committee on treaties. This would sift treaties and bring those of particular interest to the attention of both chambers. It would also keep a closer eye on negotiations. The committee argued for government to ensure adequate time for parliamentary scrutiny of treaties, and where appropriate to include representatives of devolved executives on negotiating teams.

For a further critique of current treaty-making arrangements, see [this post on our blog](#).

Elections, referendums and democratic engagement



## European Parliament elections in the UK

UK voters went to the polls on 23 May to elect 73 members of the European Parliament: elections that were meant not to happen. Even after the Brexit extensions, the government hoped to avoid the elections by securing parliamentary acceptance of the Withdrawal Agreement. It finally confirmed that the vote would go ahead only on 7 May.

The [results](#) were remarkable. For the first time in the modern era, neither the Conservatives nor Labour finished in the top two. The Conservatives, having secured at least a quarter of the vote at every national election since their foundation in 1834, slumped to just 9%. Labour, on 14%, won its lowest share since 1910. The Brexit Party topped the poll on 32%, building on UKIP’s success in 2014, while the Liberal Democrats came second. But the combined vote share of the unambiguously anti-Brexit parties, at 40%, exceeded that of the hard Brexiteers, on 35%. Alan Renwick analysed on [the Unit’s blog](#) how the electoral system translated these vote shares into seats.

The results reflected how Brexit is straining traditional party loyalties. Whether voters who have abandoned the two main parties can be won back is unknowable, but will be vital in determining the future shape of British politics.

The elections revealed again the urgent need to update the UK’s election machinery. One issue related to donations to parties. In general election campaigns, parties must submit weekly donation reports. But this does not apply in other elections: only normal quarterly reports are needed. The Electoral Commission published [donation information](#) for the first quarter of 2019 at the end of May, but reports covering the election period will not be available until August. The Electoral Commission [visited the offices](#) of the Brexit Party during the campaign following complaints from [Gordon Brown and others](#) that the party’s procedures for accepting online donations were insufficiently robust to exclude impermissible foreign donations. On 12 June, the Commission [said](#) that the Brexit Party’s procedures left it ‘open to a high and on-going risk of receiving and accepting impermissible donations’, and indicated that further action might follow if the party failed to implement recommended changes.

Concerns were also raised about the effective disfranchisement of eligible electors. [Reports](#) suggested that a large number of UK citizens living abroad received their postal ballots too late for their votes to count. Many EU citizens resident in the UK, meanwhile, [were tripped up](#) by a barely advertised requirement not merely to register to vote, but also to submit a paper-based form declaring their intention to vote in the UK rather than their home country. The Electoral Commission [criticised](#) the government’s failure to simplify this procedure since similar problems arose in 2014.

## Local elections

The European elections were presaged three weeks earlier by [local elections](#) in most of England – excluding London – and in Northern Ireland. The Conservatives lost over 1300 councillors. Labour also went backwards, losing 84 seats, despite being the main opposition party. The Liberal Democrats, Greens, and independents made substantial gains. The Brexit Party did not stand, making extrapolations about the broader state of public opinion difficult.

The elections saw further voter ID pilots, building on the first such experiments in 2018 (see [Monitor 69](#), page 9 and [Monitor 70](#), page 6). Voters in [10 local authority areas](#) had to show some form of identification – the details varying from place to place – to cast a ballot. The pilots are part of the government’s effort to clamp down on electoral fraud. But Labour and the Electoral Reform Society [criticised](#) them, saying that evidence of fraud in UK elections is minimal and that attention should focus on more pressing issues such as updating campaign rules. A legal challenge to the pilots was [rejected](#) in the High Court in March. Official reports assessing the pilots are expected over the summer.

The elections also sparked concerns that democracy is being eroded by council reforms. Local government expert Chris Game [calculated](#) that council reorganisations in Dorset, Somerset, and Suffolk had cut the number of councillors in the affected areas from 592 to 336 – a 43% reduction – while boundary reviews elsewhere had reduced numbers by 10%. Elections in Northamptonshire were [postponed](#) pending reorganisation there too. The UK has exceptionally large local government units by international standards. Whether the efficiencies achieved by consolidation outweigh the cost of voters being left remote from democratic decision-making is an open question.

## Recall petitions and by-elections

A busy season of elections concluded on 6 June, when voters in Peterborough went to the polls for the third time in five weeks, this time in a Westminster by-election. This was the first ever by-election triggered by a recall petition. Under the [Recall of MPs Act 2015](#), a petition on whether to recall an MP is opened in any of three circumstances: if the MP 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, unsuccessful, petition was held in 2018 and related to the first of these provisions (see [Monitor 70](#), page 8). Peterborough MP Fiona Onasanya fell foul of the second (see [Monitor 71](#), pages 10–11). A remarkable [27.6% of eligible electors](#) in the constituency signed the petition, far exceeding the 10% threshold for removal of the MP. In the by-election itself, Labour [narrowly retained the seat](#) – which had been Conservative as recently as 2017 – in part because the involvement of the Brexit Party split the non-Labour vote. Lisa Forbes’ victory means nine of the last 12 by-elections have been won by women.

A third recall petition [opened in May](#) after Brecon and Radnor’s Conservative MP, Chris Davies, was found to have submitted false expenses claims, breaching the third of the provisions above. As in the case of the first recall petition, [concerns were expressed](#) about access to the petition. Whereas the maximum of 10 signing locations were established in the geographically compact constituency of Peterborough, in Brecon and Radnor – the largest constituency by area in England or Wales – there were just six. Nevertheless, it was [announced](#) after the petition closed on 20 June that almost 19% of eligible electors had signed the petition. A by-election will therefore be held.

## Government proposals to safeguard democracy online

The government published its long-awaited white paper on [Online Harms](#) in April. Jointly produced by the Department for Digital, Culture, Media and Sport (DCMS) and the Home Office, this listed 23 ‘harms’ that can be caused by online activity, and proposed remedies. Two harms were directly relevant to democracy: intimidation, including of those in public life; and disinformation. The central remedy was the establishment of a duty of care for social media companies to protect users from online harms, backed up by a regulator, a proposal [reiterated by Theresa May](#) on 15 May when she attended a summit on online harms in Paris. Instead of a detailed statutory framework, the paper proposed that the regulator should establish a code of practice, and it listed areas that it expected this to cover. In respect of disinformation, these included ‘making content which has been disputed by reputable fact-checking services less visible to users’, ‘promoting authoritative news sources’, and ‘promoting diverse news content, countering the “echo chamber” in which people are only exposed to information which reinforces their existing views’.

While the broad thrust of the report was widely welcomed, many – including the chair of the Commons DCMS Committee, [Damian Collins](#), and Labour’s DCMS Shadow Secretary of State, [Tom Watson](#) – criticised its lack of specific action on political advertising. In May, however, the Cabinet Office [announced](#) a commitment to introducing a requirement for online political advertising to carry an imprint specifying its source. It promised to publish detailed proposals later in the year.



[Theresa May at the Online Harms Summit in Paris](#), by [UK Prime Minister](#) (CC BY-NC-ND 2.0).

## Parliamentary committee work on elections and democracy

Parliament continues to take a close interest in matters relating to elections and democracy.

The Commons Public Administration and Constitutional Affairs Committee launched an [inquiry into electoral law](#) in March. This asks ‘how urgently comprehensive electoral reform is required, what should be prioritised, and whether there is a need to go beyond the Law Commission’s proposals outlined in their 2016 interim report’. Though broad, the inquiry’s terms of reference exclude some of the most pressing issues – such as the regulation of national campaigns and online advertising – as well as fundamentals like voting systems and the franchise.

In April, the Commons DCMS Committee established a [Sub-Committee on Disinformation](#), designed to become ‘Parliament’s “institutional home” for matters concerning disinformation and data privacy’. As Michela

Palese [suggested on the Unit’s blog](#), ‘One of the primary benefits of the sub-committee is that it will allow for the ongoing monitoring of developments in the field of disinformation and digital campaigning, and provide a constant, long-term parliamentary focus in this area.’ The DCMS Committee has also continued its innovative collaboration with counterparts in other legislatures through the [International Grand Committee on Big Data, Privacy and Democracy](#). Following its inaugural meeting in Westminster in November 2018, this met over three days in Ottawa in late May.

The Lords Liaison Committee [announced](#) in March its proposals for the next set of ‘special inquiry’ committees, which are constituted on a temporary basis to investigate a specific topical issue. Two of the four proposed committees relate to electoral matters. First, a post-legislative scrutiny committee on the [Electoral Registration and Administration Act 2013](#) is due to examine the introduction of individual voter registration and consider whether further reforms are needed. Second, a committee on ‘Democracy and Digital Technologies’ will examine ‘the extent of the harm caused by digital media to politics and political campaigning’, review existing recommendations and progress towards their implementation, and consider alternative responses.

## Boris Johnson in court

In the latest in a series of court cases seeking to hold campaigners in the 2016 Brexit referendum to account for their inaccurate statements, Boris Johnson [was summonsed](#) to answer a charge of misconduct in public office as part of a crowdfunded private prosecution. The alleged misconduct was Johnson’s repeatedly making the [false claim](#) that ‘the UK sends £350 million a week’ to the EU. Even some of Johnson’s strongest critics, however – including the Director of the Good Law Project, [Jolyon Maughan](#) – argued that the move was unhelpful for the protection of democracy and free speech. Johnson was quick to apply for judicial review of the decision, and in a rolled up permission and decision hearing on 7 June, the High Court [quashed the summons](#). At the time of writing, it is unclear if the decision will be appealed.

Meanwhile, Vote Leave [dropped its appeal](#) against an Electoral Commission ruling last summer that it violated referendum campaign spending regulations.

## Referendums bill in Scotland

One of the plans that Scottish First Minister Nicola Sturgeon [announced](#) in April in order to maintain momentum towards a further independence referendum (see page 16) was the creation of a new framework of rules for any referendum called by the Scottish Parliament. In fulfilment of this pledge, the [Referendums \(Scotland\) Bill](#) was introduced at the end of May. At present, Scotland has no standing legislation for the conduct of referendums or referendum campaigns: all the rules must be created afresh each time such a vote is called. The new law will plug this gap, as was suggested last year by the [Independent Commission on Referendums](#).

The Bill in many ways closely follows the existing framework for referendums in the UK, which was used as the basis for the rules applied to the 2014 independence vote. In some respects, it is ahead of the UK-wide legislation. For example, it stipulates the franchise for referendums and it requires that all campaign materials, whether printed or digital, carry an imprint indicating their source. On the other hand, it contains some provisions that are likely to prove controversial: notably, it would empower ministers to call referendums via secondary legislation. The Scottish government hopes to pass the new law by the end of the year.



First Minister Nicola Sturgeon by [Scottish Government](#) (CC BY-NC 2.0).

## Developments in deliberative democracy

The recent growth of interest in citizens' assemblies and other forms of deliberative democracy has gathered pace. Extinction Rebellion – the group that led climate action protests across London and other cities over Easter – has made the [creation of a citizens' assembly](#) on 'climate and ecological justice' one of its three

core demands. Meanwhile, support for some form of assembly to help resolve the Brexit impasse has spread to include Conservative leadership contender [Rory Stewart](#).

Four official deliberative democracy processes have been announced. First, the UK government has launched its [Innovation in Democracy](#) programme, which will enable three local areas – Dudley, Test Valley, and the Greater Cambridge Partnership – to convene randomly selected samples of local residents for deliberative discussions on key local issues. Though the programme was [originally envisaged](#) as rather larger, prompting some [criticisms](#) of perceived government timidity, it has attracted considerable interest from local authorities across the country and should serve as a testbed for methods for improving local policy-making processes.

Second, the Welsh Assembly has [announced](#) a citizens' assembly as part of events marking the 20th anniversary of devolution. The assembly will meet over one weekend in July and consider aspects of Wales' future governance arrangements.

Third, Scotland's First Minister, Nicola Sturgeon, has [announced](#) a citizens' assembly to examine three questions: 'What kind of country are we seeking to build? How can we best overcome the challenges we face, including those arising from Brexit? And what further work should be carried out to give people the detail they need to make informed choices about the future of the country?' Speaking in the Scottish Parliament in May, the minister responsible for the constitution, Michael Russell, [said](#) he hoped the assembly would begin operating by the autumn.

Finally, on 20 June, six Commons committees [announced](#) that they will create a citizens' assembly 'on combatting climate change and achieving the pathway to net zero carbon emissions'. Several local councils – including [Camden](#), [Oxford](#) and [Sheffield](#) – are planning assemblies on similar themes.

## Executive



### Leak inquiry leads to ministerial sacking

A leak inquiry carried out by Cabinet Secretary Sir Mark Sedwill resulted in the [sacking of Gavin Williamson](#) as Defence Secretary on 1 May. The investigation was prompted by a [report in the Daily Telegraph](#) detailing



confidential discussions of a National Security Council meeting about whether Chinese telecoms company Huawei should be allowed to provide certain hardware for the 5G mobile network.

Williamson was singled out for failing to assist the inquiry. In the [letter informing him of his dismissal](#), the Prime Minister said that all other NSC attendees had ‘answered questions, engaged properly, provided as much information as possible to assist with the investigation, and encouraged their staff to do the same’, but Williamson had not. She also claimed to possess ‘compelling evidence’ that he was behind the leak and dismissed him from the government after he refused to resign. Williamson [criticised the inquiry](#) as informal, ill-motivated and insufficiently thorough, and continues to deny being the source of the leak.

The inquiry prompted a debate about both leaking and what a perceived increase in the practice says about the executive. Nicola Sturgeon suggested it was a sign of the ‘[complete dysfunction](#)’ of the UK government. Foreign Secretary Jeremy Hunt [claimed](#) leaks had ‘moved from the exception to the norm’, a view supported by [another NSC leak](#) that occurred just a few days later. Hunt condemned the leak itself but defended the right of the *Telegraph* to report it, as did [Sir Paul Stephenson](#), a former Metropolitan Police Commissioner. Less forgiving were former Conservative minister Sir Nicholas Soames and Labour Deputy Leader Tom Watson, who joined the Liberal Democrats, SNP and Change UK in [stating the possible need for a criminal investigation](#) that the police later judged to be unnecessary.

A [mini reshuffle](#) followed Williamson’s departure, in which Penny Mordaunt became the first female Secretary of State for Defence and Rory Stewart replaced her at the Department for International Development.



## Constitution Committee annual evidence sessions

The President and Deputy President of the Supreme Court, the Lord Chief Justice, and the Lord Chancellor all recently attended annual evidence sessions with the Lords Constitution Committee. Asked to reflect on the Supreme Court’s first decade [during her evidence](#)

[session](#), its President, Baroness Hale, said that the court had become far more accessible to the public and that its role had evolved significantly since its creation – with a greater public law caseload in particular – meaning that it does ‘far more that is of relevance to ordinary people’.

She also said that the court’s symbolic, physical and legal separation from both parliament and government is important, particularly (as Lord Reed, the Deputy President, noted) for high profile litigation such as the [Miller case](#). Independence does not, however, mean disengagement, and the court continues to interact well with parliamentary committees in the Lords, and with the Lord Chancellor and law officers at both UK and devolved level. The Lord Chief Justice Lord Burnett [offered a less positive account](#) of relations with the legislature and executive, noting in particular the use of parliamentary privilege to breach court orders, and what he saw as a tendency in government to treat judges like civil servants.

The committee expressed concern during its [session with Lord Chancellor David Gauke](#) about a lack of clarity regarding who had overall responsibility for the constitution within government – a point members made last February when questioning the Minister for the Constitution, Chloe Smith (see [Monitor 69](#), page 6). Gauke’s response was that overarching responsibility for the constitution lay with the Chancellor of the Duchy of Lancaster, whereas his own role was, [according to statute](#), to support the independence of the judiciary.

## Parties and politicians



### Conservative and Liberal Democrat leadership elections

Recent elections (see pages 9-10) and opinion polls suggest that the potential for fundamental change to the British party system is greater now than at any time since the Second World War. In the midst of this, both the Conservatives and the Liberal Democrats have begun processes to elect new leaders.

Once Theresa May had fought off a vote of no confidence in her leadership last December, Conservative Party rules appeared to render her free from the threat of challenge for a year. As patience with her tenure ran out, however, the executive of the 1922

Committee of Conservative backbench MPs signalled its willingness to change those rules if she did not announce her departure. On 24 May, therefore, Mrs May [said](#) that she would resign as party leader on 7 June. With the number of MPs declaring their intention to run reaching as high as 13, the 1922 Committee executive showed again on 4 June its willingness to fit the rules to current needs. Whereas previously an MP required only a nominator and seconder to reach the ballot paper, this was changed to require them to have eight supporters. And candidates would now need at least 17 votes in the first ballot and 33 in the second to stay in the race (a [Commons Library briefing paper](#) provides a useful summary). By close of nominations on 10 June, 10 candidates had formally entered the contest, of whom seven made it through the first round three days later. Through four further rounds of voting, MPs gradually whittled these down to two: Jeremy Hunt and Boris Johnson. Party members will now choose between these, with the winner expected to be declared in the week of 22 July.

The Liberal Democrats also considered rule changes: outgoing leader Sir Vince Cable had proposed that registered supporters who are not party members should be able to vote in the election and that party members who are not MPs should be able to run as candidates (see [Monitor 70](#), page 11). Both proposals [were rejected](#) at the party's spring conference. Two candidates entered the race before the close of nominations on 7 June: Sir Ed Davey and Jo Swinson. A vote among party members will take place, with the result due to be announced on 23 July.



Lib Dem leadership candidate Jo Swinson by [Liberal Democrats](#) (CC BY-ND 2.0).

## Democracy, free speech and freedom of association

The Joint Committee on Human Rights is conducting an [inquiry](#) into 'Democracy, free speech and freedom of association'. Evidence has been given by MPs, free speech advocates and staff from Facebook and Twitter in the context of a number of high profile incidents of alleged harassment involving MPs such as [Anna Soubry](#) and [Jess Phillips](#), several of which have [resulted in criminal charges](#). At an [evidence session](#) involving senior members of the police and Crown Prosecution Service, Metropolitan Police Commissioner Cressida Dick reported that criminal abuse and harassment of MPs are at 'unprecedented' levels. The number of offences more than doubled in 2018, rising to 342 from 151, with a disproportionate number of the victims being women or from a minority group.

Free speech implications of the inquiry were discussed at an [evidence session](#) on 15 May. The general tenor of the evidence was that the current law was appropriately drafted in terms of limiting conduct, but a lack of police resources made it hard to enforce in the digital realm, where one person could receive thousands of messages of a harassing or intimidatory nature in a matter of hours. Senior staff from Facebook and Twitter [gave evidence](#) to the committee on 1 May, with much of the focus on their anti-harassment policies, which are policed using a mix of human staff and artificial intelligence. Representatives from both companies were keen to stress their close working relationship with both the police and parliament, which for Twitter included producing a pack advising election candidates on how to stay safe on their platform. The evidence phase of the inquiry has now concluded and a report is in preparation.

## Nations and Regions



### The relationship between the UK and Scottish governments

The House of Commons Scottish Affairs Committee published a report on [The Relationship between the UK and Scottish Governments](#) on 7 June. The committee heard oral evidence from the UK's Minister of the Constitution, [Chloe Smith](#), and the Scottish Cabinet Secretary for Government, Business and Constitutional

Relations, [Michael Russell](#), as well as from Unit Fellow [Nicola McEwen](#) and experts from Spain, Belgium and Canada.

The efficient functioning of Scottish–UK relations depends largely on personal relationships and trust. The committee found that both had been damaged in recent years, first by the 2014 Scottish independence referendum, and then by the politics of Brexit – notably, by the UK passing the European Union (Withdrawal) Act 2018 [without the Scottish Parliament’s consent](#).

Many of the report’s recommendations would alter the relationships between Westminster and all three devolved nations. It said that the ‘basic requirements’ of the Joint Ministerial Committee should be set down in statute, rejecting the UK government’s argument that this would reduce flexibility.

Although there is already government training on devolution, the committee was ‘alarmed’ that only a third of civil servants reportedly believed they had a good understanding of the subject. It therefore recommended a review of the training regime and greater use of secondment and exchange of officials between governments.



Scottish and UK ministers discuss Brexit, by [Scottish Government](#) (CC BY-NC 2.0).

Finally, the committee called for a review of the role of the Scotland Office, whose relevance was uncertain now that much of intergovernmental relations is conducted directly between the Scottish government and the relevant UK departments. The committee mused about – but did not formally recommend – replacing it with a single department responsible for devolution and constitutional affairs. A similar idea was [mooted](#) by Rory Stewart during his Conservative leadership campaign, when he pledged to establish a ‘First Secretary of State for the Union’, a title he claimed would come with ‘real heft and budget’. This is an argument that [has been made for many years](#) by the Constitution Unit’s Robert Hazell.

## England

National policy on devolution in England remains becalmed. The government published its [annual report on devolution](#) in March, but [indicated](#) in April that the long-awaited ‘devolution framework’ will not appear until after Brexit. A consultation on the UK Shared Prosperity Fund (replacing EU Structural Funds) is also outstanding, but is expected to recommend metro-mayoral involvement in managing that fund in their local areas.

A response is still awaited to last July’s consultation [Strengthened Local Enterprise Partnerships](#). The National Audit Office’s May report [Local Enterprise Partnerships: An Update on Progress](#), indicated that the government’s requirement to abolish Local Enterprise Partnership boundary overlaps has now been agreed everywhere but Birmingham and Lincolnshire.

There has been one area of progress: the Adult Education Budget has now devolved to the metro-mayors and the Mayor of London. The government has published [a guide to AEB devolution](#), [a memorandum of understanding](#), [funding allocations](#) and [statutory guidance](#).

At a more local level, Yorkshire saw further developments in March, as the Sheffield City Region agreed to pursue a [devolution deal](#) from October 2015. This was subject to permitting its constituent authorities to move to a broader Yorkshire-wide deal when Mayor Dan Jarvis’ term ends in 2022. The next steps will be a public consultation on the Sheffield deal, followed by an Order in parliament. Meanwhile, on 2 May, Labour’s Jamie Driscoll became the eighth metro-mayor after being [elected in the ‘North of Tyne’ area](#), which comprises Newcastle, North Tyneside and Northumberland.

## Northern Ireland

Northern Ireland continues to be without a devolved government after 29 months, causing the UK government to [extend](#) provisions authorising civil servants to make certain decisions in the absence of ministers. Talks in early 2019 lacked energy, but when they resumed after the civil disturbances and [killing of journalist Lyra McKee](#) in April, they seemed to have developed stronger momentum.

After [detailed discussions in working groups](#) overseen by current and former civil servants, the Prime Minister and Taoiseach [urged an intensification](#), aiming at

agreement on resumed devolution ‘in a narrow window of opportunity’ ahead. Given the divisions that have emerged – such as over equal marriage and Irish language legislation – that is a tall order, and the first ‘intensified’ talks on 3 June [broke up after just 25 minutes](#). The report of the [Inquiry into the Renewable Heat Incentive](#) is expected soon and its conclusions on the DUP’s handling of the scheme could provide fresh impetus to the process: this was the stated cause of the [resignation of Deputy First Minister Martin McGuinness](#), which led to the government’s collapse in January 2017.

Another factor in those talks will be the recent election results. At the [local elections](#) in May, the cross-community Alliance Party and the Greens succeeded beyond their most optimistic projections. In the [European Parliament elections](#) later that month, Alliance did better still. Even if the context of the European campaign might have led some people to change their voting preference temporarily, the results indicate a strong popular wish for politicians to work together. As for the election’s relevance to Brexit, two of Northern Ireland’s three MEPs are now pro-Remain and publicly supportive of the backstop proposals contained in the Withdrawal Agreement.

Speculation continued meanwhile on prospects of a border poll on the reunification of Ireland (the subject of a Unit [report](#) in March: see page 20). Former Deputy First Minister Seamus Mallon has [warned](#) that a bare 50%+1 majority for unity would not lead to an agreed and peaceful Ireland, but more division, instability and probably violence. Some other nationalists robustly challenged his view.

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## Scotland

Brexit still dominates Scottish politics, as the [European election results](#) show. The SNP vote share rose by 9% to 38%, giving them three of Scotland’s six MEPs. The other three seats went to the Conservatives, the Brexit Party and the Liberal Democrats respectively. Labour’s vote collapsed to 9% in an election where polarised positions on Brexit dominated.

The SNP [sought to align much of the Remain vote with support for independence](#), prompting immediate calls for a fresh referendum. Nicola Sturgeon opposes the Catalan approach of an unauthorised poll. But she is keenly aware that doing so leaves her reliant on the UK government for the necessary legislative authority, and that several Conservative leadership candidates have

already [said](#) they would oppose it. In a [statement](#) to the Scottish Parliament in April, she announced a series of steps towards another referendum. First, she will promote a Referendums Bill at Holyrood, which sets out the rules for any possible future referendum, but gives no timetable for an actual vote (see page 12). Second, she will convene a citizens’ assembly to foster reflective public discussion of Scotland’s future (see page 12). Third, she will seek cross-party talks on ways forward. She also signalled her intention to keep the option of a further independence referendum by 2021 on the table.

With Brexit unresolved, it is difficult to marshal the arguments for independence. A ‘no deal’ Brexit might reinforce the emotional case, but the economic case must also be made and the SNP is far from unified on what an independent Scotland should look like. A [Sustainable Growth Commission](#) under former MSP Andrew Wilson proposed a fiscal and currency approach intended to be seen as cautious and prudent (see [Monitor 70](#), page 14). It proved insufficiently ambitious for the SNP conference, which [demanded](#) a new Scottish currency as soon as possible after independence.

Some foretaste of the economic battleground is seen as devolved taxation beds in. Although the Scottish government secured a favourable deal in devolving income tax (protecting Scotland from the effects of relative population decline), the Scottish Fiscal Commission has [forecast](#) lower than expected tax income. This will mean making hard spending choices, which may explain the Scottish government’s failure to agree a deal implementing the second half of the [Smith Commission](#) plan, which would assign it a share of the proceeds from Scottish VAT.

Meanwhile, opposition parties struggle to draw attention to domestic matters such as pressures and performance shortfalls in the NHS, or a relative decline in the standing of the Scottish education system (the issue on which Nicola Sturgeon [said](#) her administration should be judged). Domestic politics can only manage a poor third place behind Brexit and independence.

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## Wales

The Brexit Party [came first in the EU elections in Wales](#) with 32.5% of the vote, winning 19 out of 22 local authority areas and gaining two seats in the European Parliament. The party in Wales was already buoyant, having [successfully constituted a group](#) at the Welsh Assembly formed from four members originally elected



for UKIP on the regional list system. Plaid Cymru came second with 19.6%, beating the Brexit Party in Ceredigion, Gwynedd and Anglesey and coming ahead of Labour Wales-wide. The results saw Labour lose in a Wales-wide poll for only the second time since 1922. In the immediate aftermath of the results, First Minister Mark Drakeford [signalled his support](#) for a second referendum in which Welsh Labour would campaign to remain in the EU.

Prior to the election, in a [keynote speech](#) at the Institute for Government in May, the First Minister called for major, UK-wide constitutional reforms. Echoing the 'new unionism' espoused by his predecessor, Carwyn Jones, he called for a 'fundamental rethink' of the role of the Welsh and Scottish Offices, along with reforms to the UK's intergovernmental arrangements and the House of Lords.

In the Assembly, major legislative reforms are well underway. The [Legislation \(Wales\) Bill](#) has proceeded to the third stage of the legislative process after the Constitutional and Legislative Affairs Committee (CLAC) [reported](#) in favour of its general principles in March. The bill was amended during the second stage of the legislative process and will now proceed to consideration in plenary. If passed, it will require the Welsh government to bring forward plans for the codification of Welsh law.



Welsh National Assembly by [Andrew Gurner](#) (CC BY-ND 2.0).

Meanwhile, the [Senedd and Elections \(Wales\) Bill](#) is progressing under the stewardship of Llywydd/Presiding Officer Elin Jones AM. The Assembly's Finance Committee and CLAC have taken evidence on the bill's general principles and are expected to report soon, before it progresses. The bill would extend the right to vote in elections to the Welsh legislature to 16- and 17-year-olds and change the Assembly's official title to Senedd

(meaning 'Parliament') – a change which the Llywydd hopes will 'last for a century and more'. Elsewhere, the [Commission on Justice in Wales](#) has continued to gather evidence. Its highly anticipated report is expected in the autumn, after almost two years of work.

In the name of sustaining ties after Brexit, [the Irish Consulate has reopened](#) in Cardiff Bay. The Irish Ambassador Adrian O'Neill and Consul General, Denise Hanrahan, met with Mark Drakeford and Welsh Minister for International Relations, Eluned Morgan, on 29 May and will hold an event to celebrate the opening later in the year.

## International



### Elections to the European Parliament

After 40 years in decline, turnout across the EU in May's European Parliament elections rose by eight percentage points to 51%. [The results](#) revealed an increasingly fragmented political landscape. In one of their worst performances since the first Parliament elections in 1979, the centre-right European People's Party (EPP) lost 37 seats and the Socialists lost 42. Strongly Eurosceptic parties gained 56 seats, driven by successes in Italy, Hungary, Poland and the UK. However this increase was somewhat counterbalanced by the growth of non-traditional Europhile parties such as [the Greens](#) – who did well among young voters – and the liberal ALDE alliance, which gained 43 seats, making them the Parliament's clear third force.

This fragmentation and the lack of a majority for any one group will make it harder to reach a consensus to fill the four main roles in the EU institutions: President of the European Commission, President of the European Council, High Representative for Foreign Affairs and Security Policy, and Governor of the European Central Bank. What role the UK's MEPs will play in these processes remains to be seen: the possibilities have been discussed [on our blog](#).

According to the [spitzenkandidaten process](#) adopted in 2014, the new Commission President should be someone who was designated as a 'lead candidate' for a pan-European alliance of parties during the European Parliament election. However, the Parliament will have to vote on a choice made by the Council. French President Emmanuel Macron is [trying to place himself as a](#)

[kingmaker](#), as is Spanish Prime Minister Pedro Sanchez, who stands strengthened by [a strong domestic win for his Socialist Party](#).

Despite its losses, the EPP remains by far the biggest bloc and would like to see its candidate, German MEP Manfred Weber, prevail. Socialist candidate Frans Timmermans or Liberal favourite Margrethe Vestager top the list of alternatives. However, the need for compromise could mean the winning candidate is someone not currently nominated, such as Michel Barnier, a former Commissioner who is currently the EU's lead Brexit negotiator and has already been [touted](#) by his countryman, President Macron.

## Swiss referendums annulled due to misinformation

For the first time in modern history, Switzerland's Supreme Court has annulled the result of a national referendum. The [ruling](#), issued in April, related to a 2016 vote on removing discrimination against married couples from the tax system. Every time a referendum is held in Switzerland, the government produces a booklet setting out relevant information. In this case, the booklet was found subsequently to contain erroneous information: it said that 80,000 couples would benefit from the change, when the correct figure was 454,000. The Court found that 'citizens' right to objective and transparent information' had been violated, breaching Article 34 of the [Federal Constitution](#), which guarantees 'the freedom of the citizen to form an opinion and to give genuine expression to his or her will'. The result of the referendum was close – the proposal was defeated by 50.8% to 49.2%. The Court concluded that correct information might have swung the vote the other way and that the outcome therefore could not stand.

## Ireland announces two new citizens' assemblies

The Irish government has [announced](#) two new citizens' assemblies: a national assembly focusing on how to achieve gender equality; and an assembly in the Dublin area examining the future of the city's governance. The former body will meet over six months starting in October. Following on from the Constitutional Convention of 2012–14, which paved the way towards legalisation of same-sex marriage, and the Citizens' Assembly of 2016–18, which led to the liberalisation of abortion law, the assemblies will further strengthen an emerging convention that major constitutional reform proposals are subject to detailed scrutiny through public deliberation.

## People on the move

**Mel Stride** was appointed Leader of the House of Commons following the resignation of **Andrea Leadsom**. The post of Deputy Leader remains vacant.

**Lucy Frazer QC** was appointed Solicitor-General, replacing **Robert Buckland QC** as part of the mini-reshuffle that followed the dismissal of Gavin Williamson from his position as Defence Secretary (see page 12).

**Chloe Smith** commenced a six-month period of maternity leave in April; her duties as Minister for the Constitution will be covered by **Kevin Foster** until she returns to work in October.

**Simon Hoare** has been elected as chair of the Commons Northern Ireland Affairs Committee following the resignation of **Andrew Murrison**, who was named a Minister of State at both the Foreign Office and Department for International Development.

**Lord Mance**, who retired from the Supreme Court last year, has been named as Chair of the new House of Lords Conduct Committee (see page 8). **Baroness Anelay of St Johns**, **Lord Brown of Eaton-under-Heywood**, **Baroness Donaghy** and **Baroness Hussein-Ece** will join him on the committee.

Three new independent members have been appointed to the House of Lords Appointments Commission (HOLAC). They are former Bishop of London **Lord (Richard) Chartres**, Lord Lieutenant of Belfast **Fionnuala Jay-O'Boyle** and journalist and author **Charles Moore**. They replace **Lord (Colin) Low**, **Professor Gillian Peele** and **Sir Malcolm Ross**.

**Sir Graham Brady** resigned as Chair of the 1922 Committee on 24 May. **Dame Cheryl Gillan** and **Charles Walker** are sharing the role on an acting basis.

**Sarah Davies** has succeeded **John Benger** as Clerk Assistant of the House of Commons, following his appointment to the top job of Clerk.

**Philip Rycroft** retired from the Civil Service on 29 March. He has been replaced as Permanent Secretary at the Department for Exiting the European Union by **Clare Moriarty**.

**Sarah Healey** is the new Permanent Secretary at DCMS. She replaces **Dame Sue Owen**, who retired from the Civil Service at the end of March.

**Bob Posner** has been confirmed as the permanent Chief Executive of the Electoral Commission after holding the position in a temporary capacity.

**Sir Vince Cable** has resigned as Leader of the Liberal Democrats (see page 14).

**Gerard Batten** and **Mike Hookem** have resigned as Leader and Deputy Leader of UKIP following the European elections.

**Heidi Allen** has resigned as interim leader of Change UK and as a party member; **Anna Soubry** has taken on the role.

## Constitution Unit news

### New Constitution Unit honorary staff

Following his retirement as Clerk of the House of Commons, and his packed swansong seminar with the Unit in March (summarised [here](#)), we are delighted that Sir David Natzler has agreed to join our distinguished [list of honorary staff](#) – and thereby to make occasional contributions to the Unit's future work. His former opposite number as most senior official in the House of Lords, Sir David Beamish, is already on that list.

In addition, we are very pleased to welcome [Sarah Allan](#) of Involve, who has been a frequent collaborator on deliberative democracy projects (most notably the [Citizens' Assembly on Brexit](#)), and [Jack Simson Caird](#), formerly of the House of Commons Library and now at the Bingham Centre on the Rule of Law.

Our website will be updated to reflect these changes in due course.

### Visiting researcher on deliberative democracy

Dr Vincent Jacquet has joined the Unit for the summer as a visiting researcher. Vincent, who is a Postdoctoral Fellow at the Université catholique de Louvain in Belgium, is an expert on citizens' assemblies and other modes of deliberative democratic engagement. While at the Unit, he is working on a systematic review of writings on this subject.

### Major new project on Brexit and parliament

Constitution Unit Director Meg Russell has been awarded a prestigious [three-year Fellowship](#) under the ESRC-funded UK in a Changing Europe (UKICE) initiative, to provide research and commentary on the topic of Brexit, Parliament and the Constitution. She will be one of nine such Fellows, with others including Constitution Unit Fellow Professor Nicola McEwen of the University of Edinburgh, and Sir John Curtice of Strathclyde University. Full details can be found on our website.

The Fellowship will facilitate events and commentary on various constitutional topics, alongside detailed research and publications on parliament and Brexit. The latter work is anticipated as having three strands – on tensions between principles of direct and representative democracy, on parliament's influence over the Brexit process, and on possible future procedural reforms. The project began on 1 June, and during the summer Meg Russell will be supported by former Unit researcher and co-author Dr Daniel Gover for the initial planning stages. The Unit is now seeking to recruit a full-time Research Assistant to support this work from the autumn (see page 4 for more details).

Two events are currently planned: a joint conference on Brexit and the Constitution with UKICE and the Hansard Society on 15 July, and a Constitution Unit seminar in July.

### Teaching award for research-based education

On 30 May Meg Russell was declared the winner of the UCL award for 'Brilliant Research-Based Education', from a field of 54 candidates nominated by UCL students. The award related to her undergraduate module in British Parliamentary Studies, which is jointly delivered with the parliamentary authorities, and includes a research project conducted collectively



by the students in the class. This year 30 students worked together to gather data on the types of people and organisations who submit evidence to House of Commons select committees. The award is a credit not only to Meg's teaching, but also to the great value of parliament's university outreach programme, and to what a fascinating time it currently is to study the UK parliament. Further details can be found [here](#).



## Meg Russell appears before House of Commons Liaison Committee

On 29 April Meg Russell was among the first witnesses to give oral evidence to the House of Commons Liaison Committee's inquiry into the effectiveness of House of Commons select committees (see page 8). In her evidence (which is summarised [here](#)), she argued that the select committees have become a highly valued part of the parliamentary landscape and are more effective than is often assumed. However, having reached high prominence they are now potentially more vulnerable to criticism – so a review is timely. Among her suggestions were greater coordination between committees, and greater opportunities for committees to commission research – including to gain a more developed understanding of public opinion on complex policy issues.

## Northern Ireland border poll report

A new Constitution Unit report, [A Northern Ireland Border Poll](#), was published in March. Written by Honorary Senior Research Associate [Alan Whysall](#), it outlines the current state of opinion on a border poll and the provision in law for one to happen, before analysing the many gaps in the framework for a potential transition to a united Ireland.

The Secretary of State must by law call a poll if a majority of people in Northern Ireland would be likely to vote for Irish unity; this was a key part of the Good Friday Agreement. A poll in the Republic would also be needed. But beyond that the provision is stark and minimal. The report says there is little evidence at present of a majority for Irish unity, but adds that it is clear that opinion has become much more volatile; [some believe](#) a hard Brexit could tip the scales narrowly to unity.

It is possible to envisage a poll taking place in a positive environment, with the proponents of the Union joining those supporting Irish unification in seeking to appeal across the community, and then taking part in developing arrangements for a new Ireland. But this is far from guaranteed: a poll that took place in a strained political atmosphere could destabilise both parts of Ireland and put at risk the political gains and civil order of recent decades.



It is important that the process that would be followed is considered and as far as possible resolved before any poll may have to be held. Following the report's publication, the Unit is now seeking to bring together a team of experts in London, Belfast and Dublin to further examine the issues it raises. A summary of the report's recommendations and conclusions can be found [on our blog](#).

## Research volunteers

The Unit is, as always, grateful for the excellent work done by its research volunteers. A big thank you to our one departed volunteer in the current cycle, Riley Thorold.



# Bulletin Board

## Events

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

### Citizens' Assemblies: What are they good for?

**Lilian Greenwood MP**, Chair of Commons Transport Committee, **Joanna Cherry QC MP**, SNP Justice and Home Affairs Spokesperson at Westminster, **Professor Graham Smith**, Professor of Politics and Director of the Centre for the Study of Democracy, University of Westminster.

Chair: **Dr Alan Renwick**, Deputy Director of the Constitution Unit.

**Monday 1 July at 6pm.** George Thomas Room, Central Hall Westminster, London, SW1H 9NH.

## Unit in the news

Alan Renwick and Michela Palese wrote an article for [Prospect](#) (11 March) about the Unit's [Doing Democracy Better](#) report. Alan Renwick appeared on *All Out Politics* on Sky News (7 March) to discuss the report, whilst Michela Palese spoke about it on the [LGiU Fortnightly](#) podcast (15 March). The report was also referred to in an article on the prospects of a 'no deal' Brexit on [fairobserver.com](#) (26 March).

Meg Russell and Alan Renwick co-authored an article on [Huffington Post](#) (13 March) discussing the pros and cons of a lengthy extension of the Article 50 process.

Meg Russell appeared on BBC Radio 4's [Today](#) and [World Update](#) on the World Service (both 14 March) to discuss the prospects of an extension of the Article 50 process.

The [Times](#) (20 March) published a letter from Meg Russell on the role of parliament and the Speaker in the Brexit process. Meg appeared on *The World at One* (21 March and 29 March), [The Week in Parliament](#) (22 March), and [Newsnight](#) (8 April) to discuss the same subject.

Meg Russell appeared on the BBC news channel (25 March) and BBC World Service (27 March) to discuss the indicative votes process in the House of Commons.

Robert Hazell had a letter published in the [Times](#) (27 March) on the same topic, as did Alan Renwick (3 April).

Meg Russell was co-signatory of a letter published in the [Times](#) (3 April) on the role of the Queen in the Brexit process.

Meg Russell appeared on BBC Radio 4's [The Briefing Room](#) (28 March) in a panel discussion on Britain's place in the world after Brexit.

The Independent Commission on Referendums was mentioned in a letter to the [Herald](#) (29 April) about the prospect of a second Scottish independence referendum.

Robert Hazell appeared on BBC World Service programme [The Real Story](#) (13 April) to debate the impact of Brexit on the UK constitution.

The Unit's [report](#) on FOI and local government was referred to in a report on [UK Authority](#) (30 May) about freedom of information requests to local authorities.

Alan Renwick wrote a piece for the [Scotsman](#) (6 May) on the benefits of a multi-stage referendum process on Scottish independence. He was also quoted in a [news report](#) in the paper the same day.

Robert Hazell was quoted by [France 24](#) and the [Daily Telegraph](#) (both 6 May) on the impact of the new royal baby on the monarchy. His report on the Accession and Coronation Oaths was referred to in an [Express](#) article about the prospects of Prince Charles abdicating after becoming king (29 March).

Meg Russell appeared on Sky News (13 May) to discuss the role of select committees.

Meg Russell appeared on Austrian programme *ZIB 1* (24 May) to discuss the European elections.

Alan Renwick had an article in [Prospect](#) (18 April) on the time needed to properly conduct a second referendum.

# Bulletin Board

Meg Russell was quoted by [BBC News](#) (21 May) on the same subject, and the Unit's [report](#) on the mechanics of such a referendum was also referred to in the [Times](#) (29 May).

Alan Renwick discussed electoral systems on Sky News' *All Out Politics* on the day of the European elections (23 May).

Alan Renwick's [blogpost](#) on lessons to be learned from the European elections was referred to in an article about the electoral fortunes of the Remain parties on [politics.co.uk](#) (31 May).

Meg Russell appeared on the Radio 4 programme *Rethinking Representation* ([31 May](#), [7 June](#) and [14 June](#)), hosted by David Runciman, to discuss the role of representative democracy in the UK.

Meg Russell appeared on Austria's [ZIB 1](#) and [Abendjournal](#) (both 7 June) to discuss Theresa May's resignation.

Meg Russell appeared on Radio 4's [The World Tonight](#) to discuss parliamentary attempts to prevent a 'no deal' Brexit (11 June).

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## Select committee appearances

Meg Russell gave evidence to the Commons Liaison Committee's inquiry into the effectiveness of House of Commons select committees ([29 April](#)).

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## Unit publications

Alan Whysall, [A Northern Ireland Border Poll](#) (Constitution Unit report, March).

Meg Russell, 'Parliament' in [Article 50 Two Years On](#) (The UK in a Changing Europe, March)

Alan Renwick and Michela Palese, '[Can Democracy Be Done Better?](#)' (*Political Insight*, May).

Jean-Benoit Pilet and Alan Renwick, 'Personalization and Electoral Systems', in [The Personalization of Democratic Politics and the Challenge for Political Parties](#) (ECPR Press/Rowman & Littlefield International).

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## Publications to note

Richard Bellamy, [A Republican Europe of States](#) (Cambridge University Press, January).

Andrew Gamble and Tony Wright (editors), [Rethinking Democracy](#) (Wiley, January)

Thomas Christiansen and Diane Fromage (editors), [Brexit and Democracy: The Role of Parliaments in the UK and Europe](#) (Palgrave Macmillan, March).

Maddy Thimont Jack and Hannah White, [Parliament after Brexit](#) (Institute for Government, May).

Jorge M Fernandes and Cristina Leston-Bandeira, [The Iberian Legislatures in Comparative Perspective](#) (Routledge, May).

James Mitchell and Jim Johnston (editors), [The Scottish Parliament at Twenty](#) (Luath Press, June).

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## Contributors to Monitor 72

Dave Busfield-Birch, Greg Davies, Jim Gallagher, Lotte Hargrave, Lorenzo Leoni, Clement Leroy, Alexandra Meakin, Patrick O'Brien, Oliver Patel, Hedydd Phylip, Alan Renwick, Meg Russell, Mark Sandford, Ruxandra Serban, Jack Sheldon and Alan Whysall.

The issue was edited by Dave Busfield-Birch.

