

# Constitution Unit

Monitor 70 / November 2018

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the Continuity Bill completed its passage through the Scottish Parliament. A ruling is expected shortly.

Meanwhile, the House of Commons Public Administration and Constitutional Affairs Committee (PACAC) published a report in July on [OHMR](#)

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## Bullying and harassment in the House of Commons

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In October, Dame Laura Cox QC published a 155-page independent [report](#) into bullying and harassment in the House of Commons. The report is a serious piece of work and has been praised by MPs, [commentators](#) and the Speaker, John Bercow, [who has himself been accused of bullying](#). In a [Commons debate](#) on the report, Maria Miller, Chair of the Women and Equalities Committee, [called on Bercow to resign](#), although [numerous others](#) spoke in his defence. Despite her criticism, Miller did not join the three Conservative MPs who [resigned from the Commons Reference Group on Representation and Inclusion](#). Sir Kevin Barron had already resigned as Chair of the Standards and Privileges Committee in September, after accusing the

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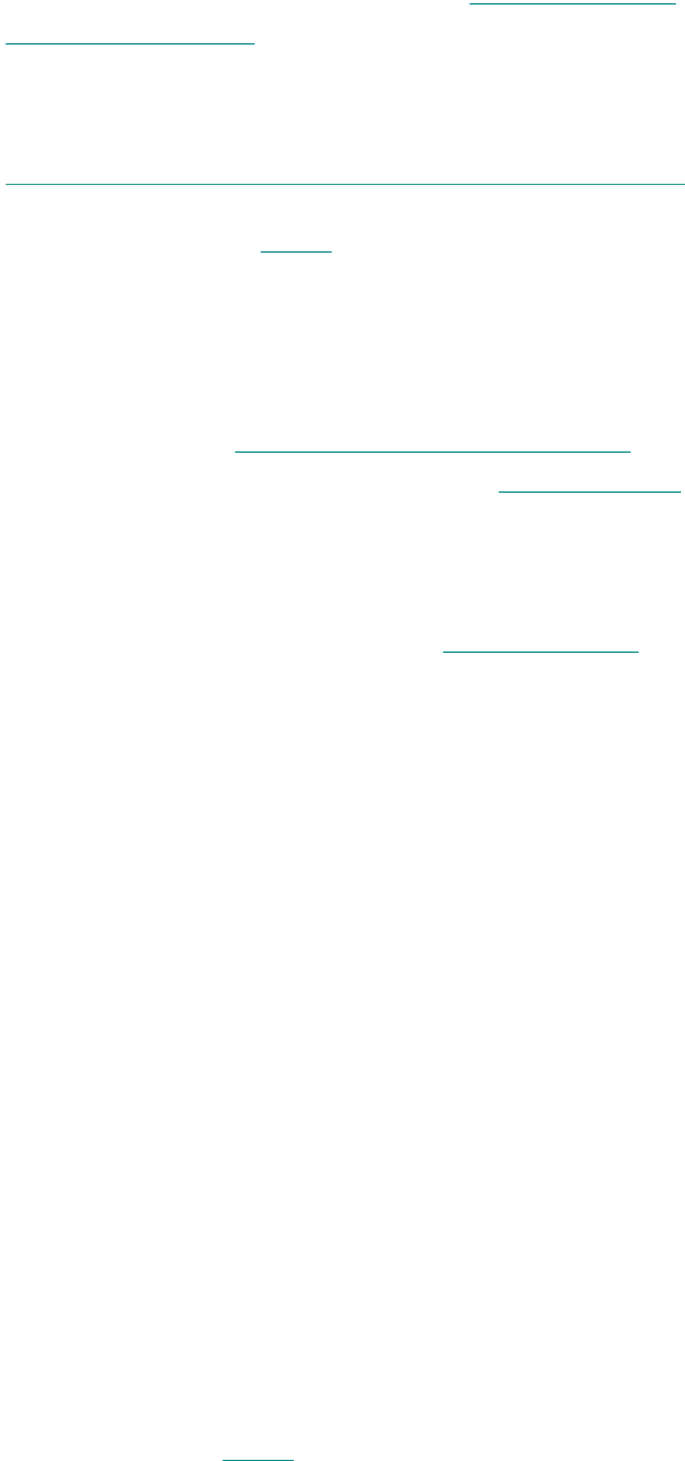
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investigation in the coming months.

Back in the UK, the work of the Commission helped inform the Unit's analysis of the appropriate rules for any further referendum on Brexit that may be called (see page 17). Further progress in reforming general referendum rules is unlikely until the Brexit process has concluded.

## Boundary Commission reports

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The four Boundary Commissions – for [England](#), [Scotland](#), [Wales](#), and [Northern Ireland](#) – published parliamentary constituencies in September. This was the culmination of a review process lasting over two years. The Commissions had produced their initial proposals in autumn 2016 and revised proposals a year later. While only minor changes.

As reported in \_\_\_\_\_ (page 10), the review remains controversial. Because it seeks to implement the 2011 decision to cut the number of constituencies from 650 to 600 and limit the size of permissible deviations of constituency electorates from the nationwide average, it would, if implemented, entail substantial disruption to existing constituencies and cost some MPs their seats. Given [reports](#) that 'dozens' of Conservative MPs are willing to vote against the changes, there is little expectation that they will ever be implemented. Change requires the government to bring forward a draft order to implement the recommendations 'as soon as may be'. But Chloe Smith, Minister for the Constitution, [said in parliament](#) on 5 September that this order 'will take months to prepare, because it needs to transcribe the entirety of those four boundary commission reports'. The presumption is that the government intends to delay the vote until after Brexit.

## Voter ID trials

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After methods for requiring voters to show ID at polling stations were trialled in five areas in the local elections in May (see \_\_\_\_\_, page 9), several reports seeking to draw lessons have been published. The Cabinet Office produced a [detailed assessment](#) of all the trials, while the Electoral Commission produced shorter reviews of the evidence in each of the areas: [Bromley](#), [Gosport](#),

[Swindon](#), [Watford](#) and [Woking](#). These drew very similar conclusions: there was no evidence that people had been put off voting; few voters arrived at polling stations without the required ID, and most who did so returned later and were able to vote; perceptions of the threat posed by electoral fraud either lessened or stayed the same; administrators found the new systems to be manageable. A Cabinet Office analysis estimated that it would cost between £4 million and £20 million to roll out voter ID requirements nationwide, depending on the model used and assumptions made.

The Electoral Reform Society also produced a report on the trials. Called \_\_\_\_\_, this pointed out that there was just one conviction for 'personation' across the UK in 2017. It argued that problems of electoral fraud have been very limited and do not justify the creation of new barriers to participation in democratic processes. It said the government should focus on 'real problems' such as 'secret political donations and "dark ads"' instead.

Nevertheless, the government [announced](#) in July that it plans to pursue the policy further by holding additional pilots at the local elections in 2019.

## First recall petition

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One of the reforms introduced following the 2009 scandal over MPs' expenses was a [provision](#) allowing MPs to be recalled by their constituents under specified circumstances. One of these circumstances is the suspension of an MP for at least 10 sitting days by the



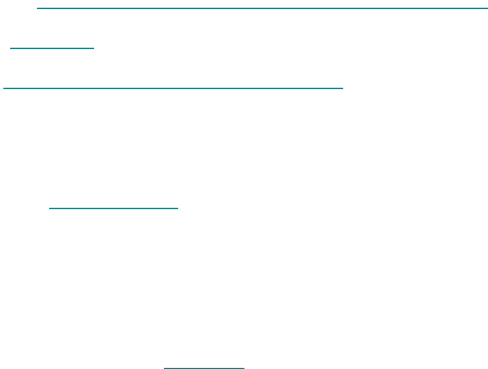
signing available – well below the maximum of 10 places allowed for in the legislation. In the end, [9.4% of electors](#) registered in the constituency signed the petition, and Paisley therefore retained his seat. One [commentator](#) subsequently asked, ‘If recall doesn’t work in the most polarised electorate in the UK after a huge controversy, can it ever?’

## Developments in deliberative democracy

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The government launched a [White Paper](#) in August, which ‘sets out how government will work with and support civil society in the years to come, so that together we can build a country that works for everyone’. This touches on many matters, including philanthropy, opportunities for young people, and the social role of the private sector. Most notably for [readers](#), it announces the creation of an Innovation in Democracy programme, which will pilot the use of face-to-face deliberative processes such as citizens’ juries, ‘complemented by online civic tech tools’, in local areas. Government will work with local authorities to deliver six pilots in the coming months. These will be selected with a view to unlocking progress on difficult local policy decisions.

Meanwhile, the [Citizens’ Assembly for Northern Ireland](#) met for the first time over the last weekend in October. It is due to gather for its second and final meeting in mid-November. It is examining options for the future of Northern Ireland’s social care system and is intended both to ‘break the deadlock’ on this issue and to pilot



More broadly, the House of Commons Digital, Culture, Media and Sport Committee published a report in July on ["Digital Democracy"](#). Though officially only an interim report, this was a detailed work that set out extensive recommendations. It concluded that 'Electoral law in this country is not fit for purpose for the digital age, and needs to be amended to reflect new technologies', and called for 'a comprehensive review'. Besides agreeing that imprints should be required on

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## Labour Party organisational reforms

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Alongside Brexit, proposals for internal organisational change featured heavily among topics for debate at September's Labour Party conference. A serious tension over recent years has been the desire among some activists (particularly those associated with the Corbynite pressure group Momentum) for greater grassroots control over the reselection, and possible deselection, of Labour MPs. As discussed recently [on our blog](#) by Eric Shaw, this tension also ran high in the late 1970s and early 1980s, when rule changes allowing easier deselection resulted in some MPs on the right of the party being forced out by activists on the left – helping to drive the party split that resulted in the formation of the SDP.

This year's conference debates took place in an environment where several Labour MPs viewed as right-leaning, including [Joan Ryan](#) and [Chris Leslie](#), have been subjected to votes of no confidence by their local parties, and where, shortly after such a vote, Birkenhead MP [Frank Field](#) resigned the party whip. Momentum-backed motions had proposed totally open selections in all seats, with MPs potentially facing challengers, instead of the current 'trigger ballot' system. A compromise proposal from the party's National Executive Committee (NEC) stopped short of this, allowing for watering down of the current system, to reduce (from one half to one third) the number of local branches within the constituency needed to trigger an open selection. This was ultimately agreed, but sparked [angry protests](#) from some delegates.

There was also a surprise U-turn on the planned creation of a second Deputy Leader position, which would be reserved for women candidates. Initially backed by Momentum, the NEC supported it, but fears quickly grew that an election in the near future could become a faction-fight, perhaps challenging Corbyn's Brexit position, and the proposal was unexpectedly withdrawn. This [attracted anger](#) from many activists and feminist campaigners.

## Vince Cable proposes Liberal Democrat leadership election reforms

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Liberal Democrat leader Sir Vince Cable is seeking to leave his mark on the party via a series of internal reforms. Key to his proposals are changes to how leaders are elected. His [party conference speech](#) confirmed that he wants to launch a free 'registered supporter' scheme, and to allow such supporters to vote



## England

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A group of 18 Yorkshire local authorities have resubmitted a summary of their proposals for a combined mayoral authority for Yorkshire, together with an [economic case for devolution](#) prepared by Steer, a global business consultancy. This plan is supported by Dan Jarvis, the metro-mayor of South Yorkshire, and by the West Yorkshire combined authority. Options

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governance; this is very unlikely to happen before the RHI inquiry reports in the spring. In reality, it is likely to be much further away than that: a hard (or 'no deal') Brexit risks making politics even more volatile, and could further undermine the already damaged foundations of the Good Friday Agreement.

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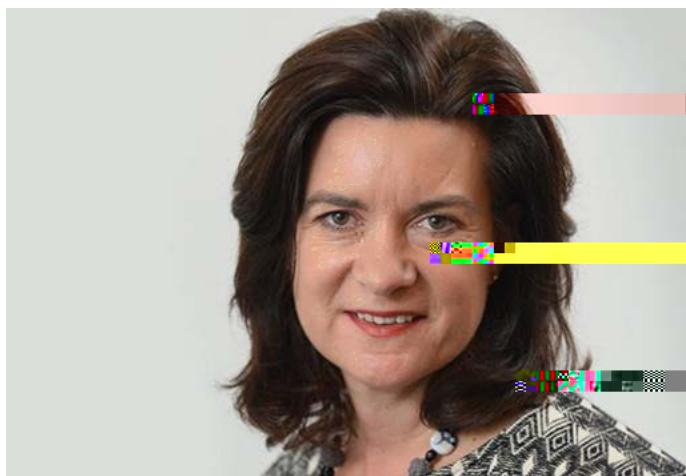
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Internal party elections dominated the summer political agenda, with the Conservatives, Plaid Cymru and UKIP all selecting new leaders and Labour resolving an internal debate about its own process for doing so. Adam Price, who is expected to take a stronger position on independence, defeated the incumbent, Leanne Wood, to become leader of Plaid Cymru. Paul Davies is the new leader of the Welsh Conservatives, whilst Gareth Bennett won the UKIP election on an [anti-devolution platform](#) that included abolition of the Welsh Assembly. Following a [special conference](#), Labour decided to use the one-member-one-vote system to select Carwyn Jones' successor: Mark Drakeford, Vaughan Gething and Eluned Morgan are on the ballot paper. Results are due on 6 December and Jones will resign as First Minister five days later, the day after completing his ninth year in the role.



Eluned Morgan, one of three candidates to succeed Carwyn Jones as First Minister. [Open Government Licence](#).

## International



### Irish referendums

Hot on the heels of a landmark referendum in May that removed restrictions on abortion from the Irish Constitution (see [\\_\\_\\_\\_\\_](#), page 14), voters went to the polls again in October to vote on whether to remove the offence of blasphemy from the Constitution. On a relatively low turnout of 44%, 65% of those casting a ballot [backed the change](#).

The referendum is a holdover from the Irish [Convention on the Constitution](#), which met between 2012 and 2014. This comprised 100 individuals: 66 ordinary members of the public selected at random, 33 politicians nominated by the political parties, and an independent chair. It

examined eight issues fixed by the government and two others selected by its own members. The most high-profile subject on its agenda was same-sex marriage, which was put to voters in a [referendum](#) in 2015. The Convention preceded the Irish Citizens' Assembly, whose main topic was abortion.

The Convention examined the issue of blasphemy over a weekend in November 2013. As set out in a [report](#) published in January 2014, it voted in favour of removing the offence of blasphemy from the Constitution, recommending that it be replaced with 'a new general provision to include incitement to religious hatred'. The constitutional amendment adopted in October's referendum simply removes the offence. The topic of blasphemy arouses little public interest, and the difference received almost no attention.

The government initially suggested that the referendum would include a second question, to remove or amend a constitutional provision that assumes a woman's place is in the home. This too stems from a [report](#) of the Convention on the Constitution. While there is agreement on the need for change, however, widely differing views exist on how this should be done. A decision on how to proceed therefore [remains on hold](#). Taoiseach Leo Varadkar [has indicated](#), however, that further referendums – including a vote to allow diaspora voting in presidential elections – are 'pencilled in' for May 2019.

### EU takes action against Poland and Hungary

The attempted implementation in Poland of legislation restructuring the Supreme Court [triggered public protests](#) in July. The new laws increased the Court's size and lowered its compulsory retirement age to 65, making 27 existing Justices too old to serve. Those affected  $\text{Đ} \text{ř} [\text{d} \text{h} \text{ř} \_ \text{t} \text{'}] [\text{gr} \text{j} \text{l} \text{ř} \text{h} \text{j}] \text{k} \text{à} \text{]} \text{f} \text{I} \text{E} \text{Y} \_ \text{g} \text{j} \text{r} \text{Y} \text{I} \text{Y} \text{?} \text{]} \text{j} \text{k} \text{\} \text{g} \text{j} \text{^}$  – may continue in office only with permission from the President of Poland. Critics note that the combined effect of the reforms is that 60% of the Court will effectively be (re-)appointed by the sitting President Andrzej Duda, who is currently aligned with the governing Law and Justice party (PiS).

The reforms brought immediate dissension. The judiciary pointed out that they could not legally be removed from their posts and had a guaranteed six-year term; the government countered that the Constitution allows parliament to set judicial retirement ages. A confused situation ensued, with all sides agreeing that the senior Justice Józef Iwulski would temporarily head the Court,

but disagreeing as to whether Gersdorf had been removed from office, or was merely on leave.

On 2 August the Supreme Court [suspended the early retirement provisions](#) and referred them to the European Court of Justice (ECJ). On 24 September, the European Commission [commenced](#) the infringement procedure under [Article 7](#) for violating the principle of judicial independence. This did not deter President Duda from [appointing 27 new Justices](#) on 10 October. A week later, the ECJ responded to the Polish Supreme Court's request for a reference by [issuing an injunction](#) freezing the provisions.

E Y \_gjrYIY? ]jk\gj %c) [Chancellery of the Senate of the Republic of Poland](#).

Hungary is also now subject to Article 7, after the European Parliament [voted](#) by 448 to 197 in favour of invoking it. Whereas the process against Poland is focused on a single issue, the [Sargentini report](#) that led to Hungary's censure raised multiple concerns, including threats to judicial independence and freedom of expression (including media and academic freedom), and anti-immigrant measures such as the so-called '[Stop Soros' law](#) and a [constitutional amendment](#) prohibiting mass immigration. The Hungarian government, led by the right-wing Fidesz party, was [re-elected in April](#) with a 'supermajority' that enables it to pass constitutional amendments without cross-party support, meaning there is little prospect of these concerns being resolved without external intervention.

The Hungary vote in the European Parliament was notable for the split within the European People's Party, broadly along East/West lines. British Conservative MEPs voted in Hungary's favour, leading to [criticism](#) in the UK.

## People on the move

**Sir Mark Sedwill**, who was serving as Acting Cabinet Secretary, has been appointed to the position permanently. His predecessor, **Sir Jeremy Heywood**, sadly [died on 4 November](#), very shortly after retiring on medical grounds and taking the title Lord Heywood of Whitehall.

**Elizabeth Peace CBE** has been appointed as Chair of the Shadow Sponsor Board of the Restoration and Renewal of the Palace of Westminster.

**Lord Bew** has come to the end of his term as Chair of the Committee on Standards in Public Life (CSPL), and is now Chair of the House of Lords Appointments Commission (see pages 5–6). The new CSPL Chair is **Lord Evans of Weardale** (see page 6).

**Claire Bassett** will step down as Chief Executive of the Electoral Commission at the end of the year to take up the role of Chief Executive Designate of the new Trade Remedies Authority.

**Kate Green MP** has been elected unopposed to serve as Chair of the Standards Committee, following the resignation of **Sir Kevin Barron MP** (see page 5).

Former Conservative Chief Whip **Sir Patrick McLoughlin MP** has become Chair of the new House of Commons European Statutory Instruments Committee.

**The Earl of Devon** and **Lord Bethell** were elected to the House of Lords to replace **Earl Baldwin of Bewdley** and **Lord Glentoran** as Crossbench and Conservative hereditary peers respectively.

**Paul Davies AM** was elected leader of the Welsh Conservative Assembly (oss-par1 Tf{(Lor)18C4mil0 -1.5 Td{(to

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## Report on the mechanics of a further Brexit referendum

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As indicated in the front page story, the difficulties in finding a deal on the terms of the UK's withdrawal from the EU that will satisfy both EU leaders and a majority in the UK parliament make a further referendum on Brexit far from impossible. In light of this, the Unit published a report in October examining the mechanics of such a vote. Key findings were summarised in a series of posts on the Constitution Unit blog. Building on a long tradition of neutrality in Unit work, the analysis took no position on whether a referendum should be held, but rather explored whether and how it could happen.

One key conclusion in [the report](#) was that a minimum of 22 weeks would be required between the introduction of legislation to provide for a referendum and polling day. It would therefore need to take place after 29 March 2019, requiring an extension to the Article 50 period. EU leaders would probably agree to that, though it would create complications for the European Parliament elections scheduled for late May.

Taking account of the multistage process for parliamentary approval of any deal, there are five possible trigger points for a referendum. Depending on the trigger – and on whether there is a deal on the table – different possibilities for the referendum question exist.

The report set out the implications of these, including

the timing of the referendum, the length of the campaign, and the timing of the referendum.

The report also considered the implications of a referendum being held at a time when a deal is not yet agreed.

The report was received via email in parliament and in the media (see page 7). It was cited by six speakers in the House of Commons during the debate on the referendum question on 11 October 2018.

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The report was also cited in the House of Lords during the debate on the referendum question on 11 October 2018.

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Meg Russell wrote an article about the Independent Commission on Referendums in the [Independent](#) (10 July). Dominic Grieve and Gisela Stuart wrote on the same subject in [The Telegraph](#) (10 July), as did Alan Renwick in [The Telegraph](#) (17 July), and Cheryl Gillan and Seema Malhotra in [The Telegraph](#) (19 July).

Alan Renwick, Gisela Stuart and Jenny Watson were interviewed for a podcast on the Independent Commission on Referendums ([The Independent](#), 12 July). Meg Russell was interviewed by BBC Radio 4 about the Commission's work ([BBC Radio 4](#), 21 July).

The Unit's report on the mechanics of a further referendum on Brexit was summarised in articles in the [Independent](#), [The Telegraph](#), [The Guardian](#), [The Telegraph](#), the [Daily Telegraph](#), and [The Telegraph](#) (all 9 October), the [Independent](#) (13 October) and the [Independent](#) (18 October).

Meg Russell was quoted in a brief segment on the report ([BBC Radio 4](#), 9 October). Earlier, a [blogpost](#) by Jess Sargeant, Alan Renwick and Meg Russell on the timing of such a referendum was discussed in comment pieces in the [Independent](#) (20 September) and the [Independent](#) (21 September).

Meg Russell and Alan Renwick wrote pieces for [The Independent](#) (24 September) and [The Independent](#) (9 October) discussing the mechanics of a further referendum. Meg Russell had a letter published in [The Independent](#) (15 October).

Alan Renwick was interviewed by BBC Radio 4 on the same subject ([BBC Radio 4](#), 5 August; [BBC Radio 4](#), 20 September). Meg Russell also appeared on BBC Parliament to discuss the report ([BBC Parliament](#), 12 October).

## Select Committee appearances

Meg Russell and Alan Renwick [gave evidence](#) on 24 July to the Public Administration and Constitutional Affairs Committee (PACAC) on behalf of the Independent Commission on Referendums in a one-off evidence session on the Commission's final report.

## Unit publications

Jess Sargeant, Alan Renwick and Meg Russell, [The UK's referendum on EU membership of June 2016: how expectations of Brexit's impact affected the outcome](#) (October).

Alan Renwick, Michela Palese and Jess Sargeant, ['Discussing Brexit: Could We Do Better?'](#) (Political Quarterly, October).

Meg Russell, ['Attempts to change the British House of Lords into a second chamber of the nations and regions: explaining a history of failed reforms'](#) (Perspectives on Federalism, August).

Stephen D. Fisher and Alan Renwick, ['The UK's referendum on EU membership of June 2016: how expectations of Brexit's impact affected the outcome'](#) (Acta Politica, August).

## Publications to note

Matthew Bevington, Jack Simson Caird and Alan Wager, [The UK in a Changing Europe](#), (September).

Albert Weale, [The UK in a Changing Europe](#) (Polity Press, September).

Martin Moore, [The UK in a Changing Europe](#) (Oneworld Publications, September).

Vito Breda, [The UK in a Changing Europe](#) (Edwarda, b 1 Tf( )Tj0.pteJds intogtionse,