

Constitution Unit

The relationship between the executive and legislature has also been strained. The government suffered the largest Commons defeat in modern history in January, when MPs rejected the Withdrawal Agreement. Nonetheless, it comfortably survived a no-confidence vote the following day. The Commons Speaker has caused controversy through his selection of amendments, while MPs have several times since January of this year. However, the government has managed to avoid a vote on the Withdrawal Agreement.

On 15 October, the Commons rejected the Withdrawal Agreement by a vote of 202 to 149. This was the largest Commons defeat in modern history. The government has managed to survive a no-confidence vote on 16 October. The Commons Speaker has caused controversy through his selection of amendments, while MPs have several times since January of this year. However, the government has managed to avoid a vote on the Withdrawal Agreement.

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

[Media reports](#) indicated that nine cabinet ministers spoke against the deal. In the following hours and days, two – Brexit Secretary Dominic Raab and Work and

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

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

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

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

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

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

Brexit and devolved powers

The devolved governments have been marginal players in the recent Brexit dramas. Both the [Scottish government](#) and [Welsh government](#) oppose Theresa May’s Withdrawal Agreement, and there are few signs that either could be won round without a substantial move towards a ‘softer’ Brexit. Symbolic votes rejecting the deal were carried convincingly in the [National Assembly for Wales](#) and [Scottish Parliament](#) on 4 and



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

Some of the differences between Edinburgh and Westminster had to be settled by the Supreme Court, which released a [judgment](#) in December on the validity of the [Scottish Continuity Bill](#) (see [_____70](#), page 4 and Akash Paun's [summary of the arguments](#) on our blog). The Court decided that although the vast majority of the bill's provisions would have been within the powers of the Scottish Parliament at the time it was passed, the subsequent passage of the Withdrawal Act had changed that position. Since the Withdrawal Act explicitly prevented the Scottish Parliament from legislating inconsistently with its provisions, the bulk of the bill was outside the powers of the Scottish Parliament and could not be given royal assent. In effect, it was the UK government's response to the bill – challenging its legality and passing the Withdrawal Act before judgment was rendered – that had made many of its provisions unlawful.

Despite the gulf between the UK and devolved governments on the substance of Brexit policy, the high concentration of Brexit-related intergovernmental meetings reported in [_____70](#) (page 4) has continued.

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

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

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

The Constitution Unit

Stay in touch

If you are not already signed up to the Constitution Unit's mailing lists, please subscribe now to keep in touch with our activities and outputs:

Click here to receive notification of each new issue of _____, and/or for regular updates on our events and publications.

Click here to receive regular updates from the Constitution Unit blog (enter your address in the box in the left hand sidebar of this link, then click 'follow').

Support us

The Constitution Unit is a non-profit research centre, which relies on external funding to conduct its work. Our projects are often funded by research bodies and charitable trusts, but key projects such as the [Independent Commission on Referendums](#) have been wholly supported by individual donors. Donations from our supporters also help fund our policy impact work, our seminar series and blog, as well as this newsletter.

Click here to make a one-off donation, become a regular subscriber, or simply to find out more about giving to the Constitution Unit.

Commons committee backs calls to reduce the size of the Lords

Following a long gestation, the House of Commons Public Administration and Constitutional Affairs Committee (PACAC) issued a [_____](#)

[_____](#)

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

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

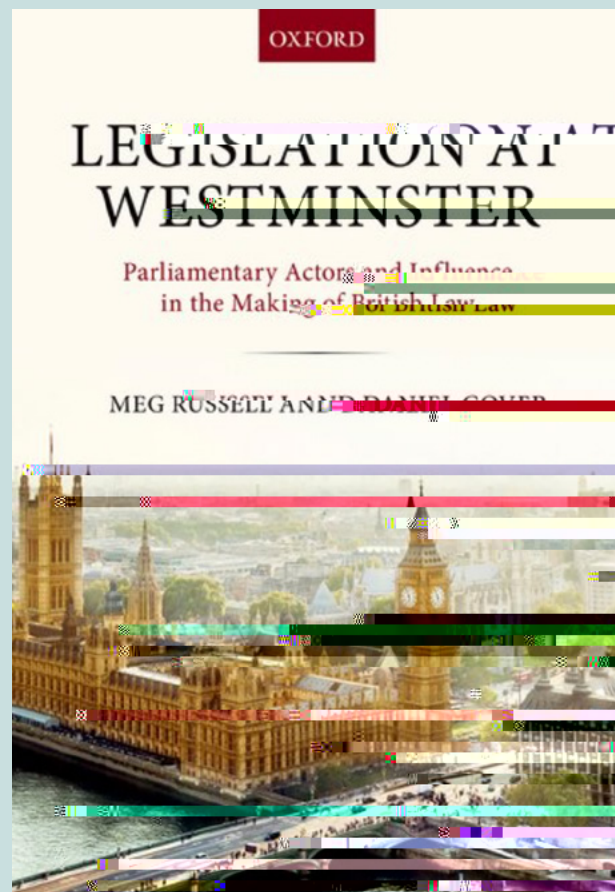


Tulip Siddiq. Image credit: Chris McAndrew ([CC BY 3.0](#)).

Democracy, free speech and freedom of association inquiry

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

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



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

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

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

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

Improving campaign regulation

Momentum continues to grow behind proposals to strengthen the rules relating to campaigning in

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

Craig Mackinlay acquitted

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

Prisoner voting

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

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

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

Council of Europe report on the conduct of referendums

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



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

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

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

The [current referendum guidelines](#)



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

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

Elsewhere, metro-mayors have continued to make progress developing and delivering policy. In Tees Valley, the mayor has [bought the local airport](#) for £40 million and [made investments in local railway stations](#), whilst the West Midlands has secured [additional funding for the 2022 Birmingham Commonwealth Games](#), and is [considering](#) absorbing the Police and Crime Commissioner into the mayoralty. Meanwhile, the new North of Tyne Combined Authority [will elect its first mayor](#)

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

British Columbia votes on its electoral system

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

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

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

New report on intergovernmental relations

Constitution Unit Fellows Professor Nicola McEwen and Professor Michael Kenny, together with Jack Sheldon and Dr Coree Brown Swan, have written a new report on _____

_____. The team, who are working together as part of the ['Between Two Unions' research project](#) funded by the Economic and Social Research Council (ESRC), were invited to write the report by civil servants from the UK and devolved governments who are working on an official review of intergovernmental relations (see page 5). While the need for reform has frequently been recognised in

