



Change, continuity, and an uncertain future for the Union

As 2020 ended, it appeared that UK politics might – as in the US – be entering a new phase. Brexit had dominated the previous five years, at least until COVID-19 came along. But the [trade deal](#) between the UK and the EU, reached on 24 December after months of negotiations (see page 3), and enshrined into UK law in an extraordinary parliamentary sitting [six days later](#) (see page 4), suggested that this debate might at last be put to bed.

The Vote Leave duo of [Dominic Cummings](#), Boris Johnson's de facto chief of staff, and [Lee Cain](#), Number 10 Director of Communications, dramatically left their posts in November (see page 12). They were widely seen as driving the Johnson government's initially abrasive style, characterised by [confrontation with parliament](#), the [Civil Service](#), parts of [the media](#), and [various basic norms of Britain's uncodified constitution](#). The [announcement](#) that former civil servant Dan Rosenfeld would become the new Number 10 Chief of Staff suggested that a more measured approach might prevail.

Image above: [Boris Johnson Brexit Trade Deal Signing](#) (CC BY-NC-ND 2.0) by UK Prime Minister.

Yet indications of fundamental change may prove illusory. Many aspects of the UK's future relationship with the EU – notably over financial services and long-term arrangements for fishing – are unresolved. Chief Brexit negotiator Lord (David) Frost was [recently appointed to Cabinet](#), highlighting that his job is far from done. Recurring negotiating rounds may become a permanent political feature.

That is most starkly clear in Northern Ireland, which remains subject to many EU rules under the terms of the [Protocol on Ireland/Northern Ireland](#) (see page 3). [Frictions](#) in post-Brexit trade across the Irish Sea, compounded by the European Commission's ill-judged (if rapidly reversed) [decision to suspend key Protocol provisions](#), led many unionists to [demand its scrapping](#). The Commission and the UK government [responded](#) that they were committed to making it work.

Number 10's confrontational politics have partly moderated: relations with Conservative backbenchers have improved; and Johnson made no attempt to exploit the European Commission's Protocol blunder
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UK-EU negotiations

The [UK-EU Trade and Cooperation Agreement](#) signed on 24 December was a significant milestone in the Brexit process. Despite the limited negotiating time (11 months) and frequent hurdles (the spectre of 'no deal'

The Protocol's details received little attention during 2020, but the reality began to set in this January. [Article 16 of the Protocol](#) allows the UK or EU – but not Northern Ireland itself – to suspend aspects of the agreement unilaterally if either side experiences 'economic, societal or environmental difficulties'. Amidst problems importing some items from Great Britain, members of both the [Democratic Unionist Party](#) (DUP) and the [Ulster Unionist Party](#) (UUP) called for this provision to be invoked. Extraordinarily, however, it was the EU that, in late January, stated its intention to trigger that clause, in order to prevent COVID-19 vaccines from leaving the bloc. The [UK](#) and [Irish](#) governments, along with [every major party in Northern Ireland](#), objected strongly to the move, and the EU [rapidly acknowledged](#) that it had made a mistake. Nevertheless, the episode pushed [Article 16 to the forefront of political attention](#).

Subsequently, many unionist politicians – not least [DUP First Minister Arlene Foster](#) – redoubled their calls for change. On 11 February, Michael Gove and European Commission Vice-President Maroš Šefčovič [reiterated their commitment](#) to making the Protocol work through the joint committee on implementation. However, since

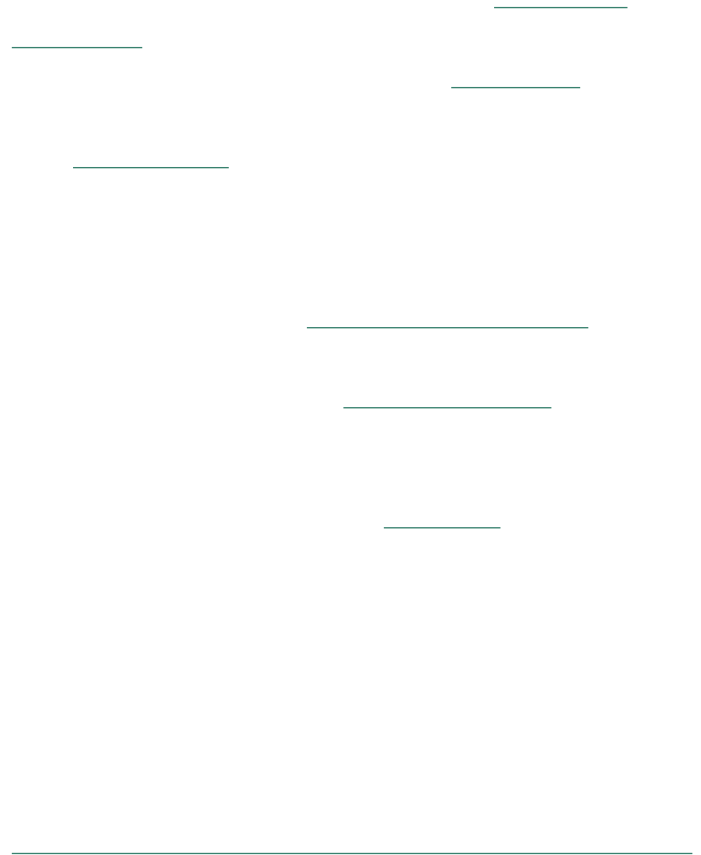


with limited enthusiasm by the devolved administrations. Nicola Sturgeon, the Scottish First Minister, [claimed](#) that it represented a 'far harder Brexit than could have been imagined when the EU referendum took place', and suggested that the views of the majority of Scottish voters who had supported remaining in the EU had been 'ignored'. Welsh First Minister Mark Drakeford [described](#) the deal as 'thin and disappointing'. Northern Ireland's First Minister and deputy First Minister were also [critical](#) – the DUP's Arlene Foster stressed that the deal failed to address the 'detrimental aspects of the [Northern Ireland] Protocol' (see page 4), while Sinn Féin's Michelle O'Neill argued that there could be 'no good Brexit for the people of the island of Ireland'.

Each of the devolved legislatures was recalled on 30 December to consider motions relating to the deal. Both the [Scottish Parliament](#) and the [Northern Ireland Assembly](#) voted to refuse legislative consent for the [European Union \(Future Relationship\) Bill](#), which was passing through its stages in the House of Commons on the same day (see page 4). The Welsh government argued that it was 'not in a position to determine legislative consent'. The [Senedd](#) instead endorsed a motion stating that the deal did not reflect its aspirations but would be 'less damaging' than 'no deal'. None of these motions had much noticeable impact on proceedings at Westminster. Following the passage of three other pieces of Brexit-related legislation over the past few years without the consent of at least one of the devolved legislatures, it is ever clearer that there are significant limitations to how far the [Sewel convention](#) can be used as a device to give them leverage in relation to an issue as politicised as Brexit.

Even with a trade deal between the UK and the EU in place, much remains to be resolved about the future

of powers that were formerly exercised at the EU level, but which fall within devolved competence. Although the UK and devolved governments [agreed](#) principles for negotiating 'common frameworks' as long ago as 2017, none have yet been fully implemented and only three had been [published](#) in draft by February 2021. The House of Lords Common Frameworks Scrutiny Committee has raised [concerns](#) about



More Lords appointments and controversies about size

The size of the House of Lords and the Prime Minister's largely unregulated ability to appoint members have long been controversial. Concerns subsided during Theresa May's premiership, when relatively few appointments were made, partly under pressure from the [Lord](#)

postal voting requests in anticipation of greater demand, makes it possible for voting to be spread over several days, and allows for postponement should that prove necessary. The Senedd passed [legislation](#) in February which, as [discussed on the Unit blog](#), also allows for voting across multiple days and makes postponement possible – but only following a two-thirds Senedd vote (see page 17). The UK government also set out [a range of measures](#) in February: regulations will be amended to make proxy voting more accessible and reduce signature requirements for candidates; and there will be increased funding for councils.

Reflecting the complexity of these elections, a range of organisations have recognised a need to improve the basic information available to voters on what elections are taking place in their area and how voters can take part. The Electoral Commission has increased its [information provision](#) and created [extensive resources](#) for 14–18-year-olds and educators in Scotland and Wales. The Senedd has also launched [new materials](#).

The Electoral Commission

The Electoral Commission still lacks a chair, John Holmes’s term having expired at the end of 2020. The process of appointing Electoral Commissioners is overseen by the Speaker’s Committee on the Electoral Commission in the House of Commons. As reported in [Monitor 76](#) (page 10), the committee currently has a single-party majority for the first time in its history, leading to concerns about its impartiality. The committee decided not to renew Holmes’s appointment in July 2020, but made no public statement to that effect at the time; the move was announced, without explanation, only in October, in response to a [parliamentary question](#). The Speaker’s Committee [announced](#) in February that its preferred candidate was John Pullinger, former Librarian of the House of Commons and National Statistician. The committee held a [public meeting](#) with him on 1 March to inform its decision on whether to recommend him to the House of Commons for appointment.

There have been long delays in filling other vacancies too. The Commissioner nominated by smaller political parties resigned in February 2020, and it took a year to replace him. The Speaker sought nominations in May 2020, candidates were interviewed in September, the committee made its [recommendation](#) in December, and the House of Commons [endorsed](#) the selected candidate – the SDLP’s Alex Attwood – in January.

Meanwhile, the term of the nonpartisan Commissioner with responsibility for Northern Ireland expired in December 2020, but no successor has yet been announced. As detailed in our report [Interim Recommendations](#) (October 2020), the Commission for Northern Ireland has been in a state of limbo since then.

scope of the proposed measures in their foreword to

Citizens' assemblies held in 2020 have begun to influence subsequent policymaking. In December 2020, the government's advisory Committee on Climate Change (CCC) published its [Sixth Carbon Budget](#), and cited [Climate Assembly UK](#) extensively in justifying its recommendations. It said, 'More than ever before, future emissions reductions will require *people* to be actively involved. ... The experience of the UK Climate Assembly shows that if people understand what is needed and why, if they have options and can be involved in decision-making processes, they will support the transition to Net Zero.' In January, the Unit's blog

that no breach had occurred, a decision that has been said to have 'fatally undermined' the Code.

The Independent Review of Administrative Law

Although slightly [delayed](#), the Independent Review of Administrative Law (IRAL) led by former Conservative minister Lord (Edward) Faulks has [reported its findings](#) to the Ministry of Justice. The contents of the report are not yet public, and the government is still considering its response.

As noted in [Monitor 76](#) (page 13), and in [a post on the Unit's blog](#), IRAL came under criticism for its parameters, an accelerated timetable and the panel's [decision](#) not to publish evidence submissions. In order to facilitate a more public debate, the UK Administrative Justice Institute resolved to [collate](#) submissions which had been shared by their authors. However, several government departments – including the Department for Education, Ministry of Defence and Home Office – have decided not to publish their evidence, even [refusing to comply with Freedom of Information requests](#).

When IRAL was launched, it was not clear if its report would be published, but Lord Chancellor Robert Buckland has since [confirmed](#) that the report will be released alongside the government's official response, which he thought would likely take 'several months' to formulate.

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Northern Ireland

For Northern Ireland, Brexit is far from settled. The Protocol on Ireland/Northern Ireland came into effect in January (see page 3), provoking further tensions in its politics, [which are likely to set the political tone for the May 2022 Assembly elections](#). The Assembly will vote in 2024, by simple majority, on whether the Protocol should continue – it is likely to affirm it, since the centrist and nationalist parties think the alternative is worse. The unionist parties expressed their support for a [judicial review application](#) alleging the Protocol violates the Act of Union with Ireland of 1800 and the Belfast/Good Friday Agreement.

[Recent polling](#) suggests that the centrist parties, [as in elections in 2019](#), will emerge much stronger next May; meanwhile the DUP is losing support to harder-line unionist forces. The first development may increase pressure for changes to the institutions, which in some respects give a privileged position to unionist and nationalist parties. That is unlikely to threaten stability, but fragmentation of the unionist vote raises the prospect of [Sinn Féin, rather than the DUP, being the largest party](#)

inquiry. He claimed that First Minister Nicola Sturgeon had misled the committee and breached the [Scottish Ministerial Code](#) and was similarly critical of Leslie Evans, Permanent Secretary to the Scottish government, who he said had not lived up to the standards of the [Civil Service Code](#).

Nicola Sturgeon made an [eight-hour appearance before the committee](#) on 4 March, during which she vigorously denied many of the allegations made by Salmond the previous week, calling them 'absurd'. In particular, she denied breaching the Ministerial Code and made very clear that she had not intervened in the investigation against Salmond. She also said that, while Salmond's acquittal on the criminal charges against him was beyond question, he had nevertheless admitted to her that he had apologised to one of the complainants for his conduct, and she criticised him for failing to show public remorse for that or for the wider harm his actions had caused. A [separate inquiry](#) into her personal conduct is being carried out by James Hamilton, her independent adviser on the code.

Divisions over the inquiry within the SNP have inflamed existing disagreements on issues such as [the best path to independence](#) and [the party's stance on trans rights](#), both of which likely played a role in the [decision to sack Justice spokesperson Joanna Cherry](#) during a February reshuffle of the party's Westminster frontbench team. [Polling](#) suggests that SNP support has diminished somewhat, but the party remains on course to win another term following the Scottish Parliament election in May.

Scottish Labour will have a new leader for that election. Richard Leonard [resigned](#) in January, a matter of months after surviving an [attempt to replace him](#). In the contest that followed, Anas Sarwar defeated fellow MSP Monica Lennon to become the first Muslim leader of a major political party in the UK. [Interviewed](#) the day after his election, Sarwar said he had 'real questions' about the Lord Advocate's dual role as chief legal adviser to – and member of – the Scottish government and head of prosecutions in Scotland. He said he thought the roles should be 'separated', as they are at UK level.

As for Scotland's long-term future, [Brexit](#), as well as [views on the present UK government](#), and the perception that an independent Scotland [would have handled the pandemic better](#), have kept support for independence above 50%. It is expected that the Scottish government [will publish a draft referendum bill](#) if the SNP remains

in power after the election. The Unit will host [an event on 25 March](#) to discuss how the UK government might respond.

[New Scottish Labour leader Anas Sarwar](#) (CC BY-NC-ND 2.0) by Scottish Labour.

Wales

The political and constitutional ramifications of Brexit continue to unfold (see page 4). On 19 January, the Welsh government formally issued [proceedings](#) for judicial review of the [UK Internal Market Act 2020](#). It seeks a declaration that neither the Act's status as a 'protected enactment' nor the [Henry VIII](#) powers it granted to UK ministers can limit the Senedd's legislative competence.

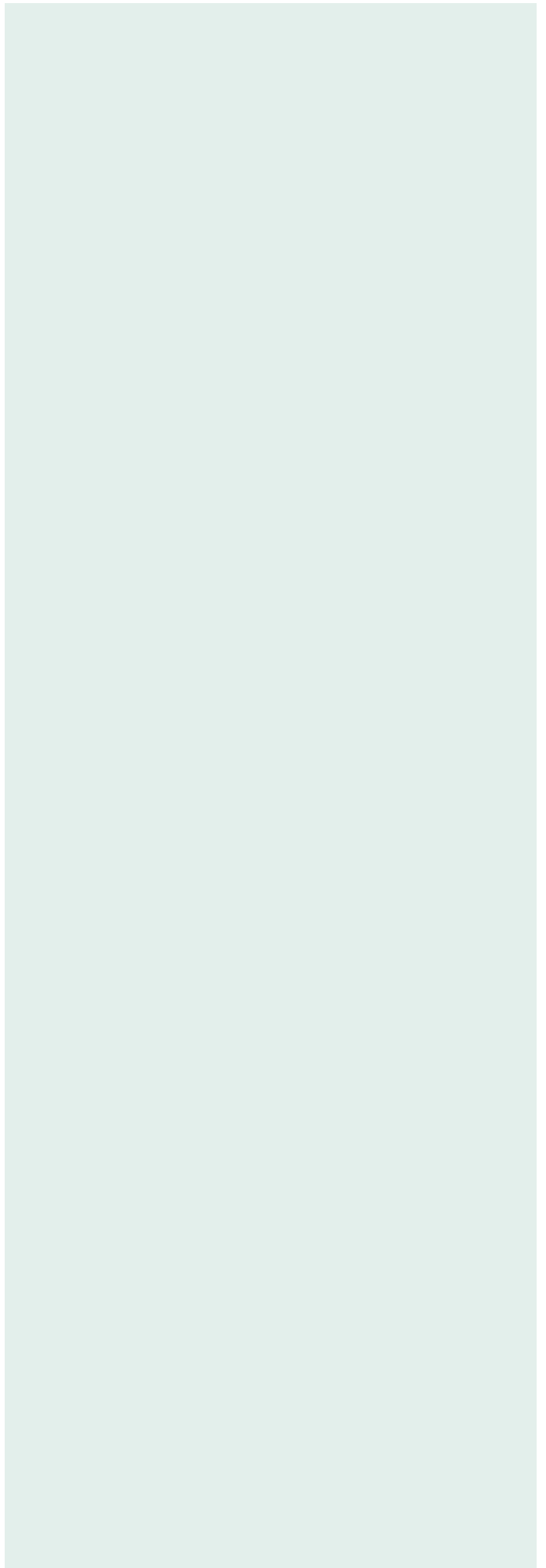
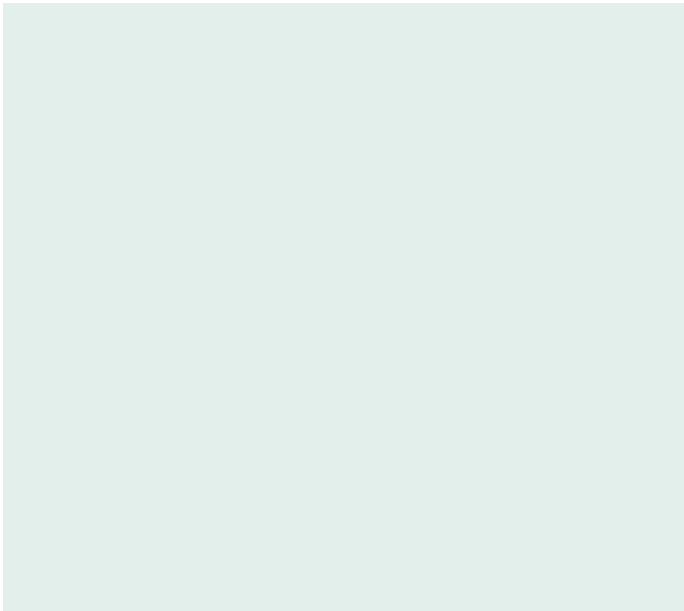
The [Local Government and Elections \(Wales\) Act 2021](#) has introduced significant reforms to local democracy in Wales. It mirrors the Senedd and Elections (Wales) Act 2020 by extending the franchise for local council elections to 16- and 17-year-olds and non-UK citizens legally resident in Wales. Passage of the Act means that Welsh councils now have the power to choose between the [First Past the Post](#) and [Single Transferable Vote](#) systems for local elections. It also extends the electoral cycle from four to five years, and makes provision for improving diversity among elected members.

Some uncertainty remains, however, over this year's Senedd elections, currently scheduled for 6 May 2021. On 10 February, the Senedd passed the [Welsh Elections \(Coronavirus\) Act](#), the culmination of a process that began in June 2020 when the Welsh government established the 'Elections Planning Group'. The Act (discussed in more detail [on our blog](#)) gives the First Minister the fi

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was likely, how proposals for a united Ireland would be developed, and whether such work would be done before referendums or only afterwards, in the event that unification won majority support. The report examines these and many other issues. It concludes that it would be highly unwise for referendums to be called without first putting in place a clear plan for those referendums and other associated processes.

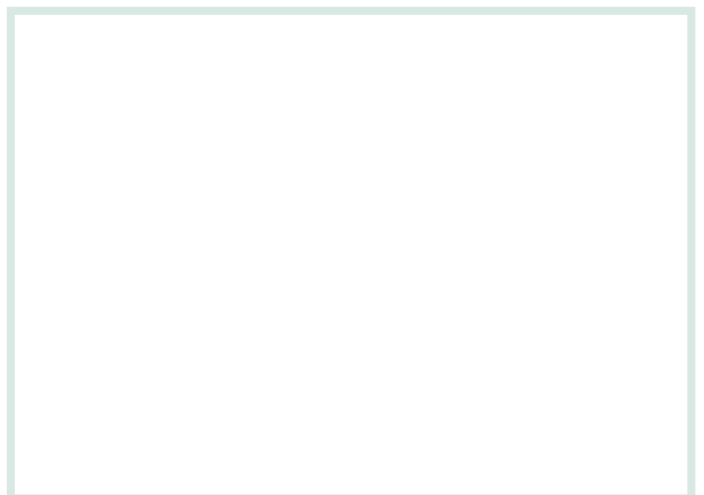
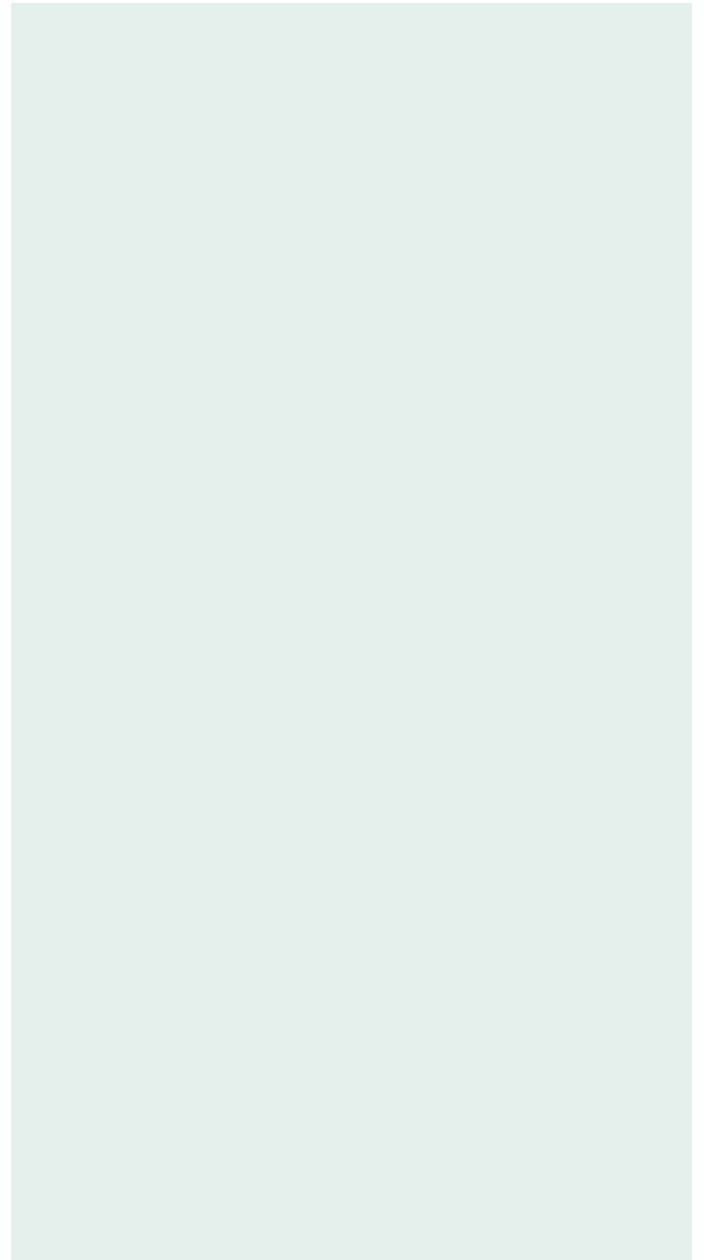
The report was subject to consultation in December and January, and was generally well received. Writing in the

Irish Business Post

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Events recently made available to view online

[Attitudes to Democracy in the UK Today](#)



Bulletin Board

Upcoming events

Can Johnson prevent indyref2?

James Forsyth, Political Editor of the *Spectator*,
Aileen McHarg, Professor of Public Law and
Human Rights at Durham University; **Alan
Renwick**, Deputy Director of the Constitution Unit

Chair: **Meg Russell**, Director of the Constitution
Unit.

22 March, 1pm. [Sign up here](#)

Regulating public appointments

Peter Riddell, departing Commissioner for
Public Appointments.

Chair: **Meg Russell**, Director of the Constitution
Unit.

29 April, 1pm. [Sign up here](#)

Unit in the news

A Unit [blogpost](#) by Alan Renwick and Charlotte Kincaid on the case for the continuing independence of the Electoral Commission was quoted in an article on [politics.co.uk](#) (3 November).

The *Express* quoted the Unit in an article exploring the likelihood of the Queen's abdication (6 November). Robert Hazell was quoted in articles in *News International* (24 November) and the *Express* (27 November) discussing how Prince William could become King before Prince Charles. *Express* articles outlining the possible regnal titles Prince Charles might adopt when he becomes King ([8 November](#)) and what new title might be used by the Duchess of Cornwall ([20 November](#)) quoted the Unit.

An article in the *Economist* on the government's agenda to strengthen executive power quoted Meg Russell (19 November).

The interim report of the [Working Group on Unification Referendums on the Island of Ireland](#) (see page 20) was mentioned in articles in the *Belfast Telegraph*, [thejournal.ie](#), *Irish Legal News*, *Irish News* and *Irish Times*. *Times Red Box* published an article authored by the chair of the Working Group, Alan Renwick, while the *Belfast Telegraph* and *Irish Times* published opinion pieces written by members of the Working Group (all 26 November). The *Law Society Gazette* (27 November), the *National* (27 November) and *Irish Business Post* (14 December) offered summaries of the report.

The Working Group report was quoted in an article in the *Belfast Telegraph* discussing a new pro-Union group set up to grow support for Northern Ireland's continued place in the UK (19 December). The project was mentioned in various blogposts on *Sluggie O'Toole* ([30 November](#), [1 December](#), [7 December](#), [21 December](#), [10 January](#) and [24 January](#)), and in a *4NI* article about a Sinn Féin report on the future of the island of Ireland (4 December).

Working Group member Etain Tannam joined a discussion about the interim report on a podcast episode of *Inside Politics* (26 November). Alan Renwick spoke to Michael Portillo about the report on Times Radio (4 December) and appeared on an episode of Radio 4's *The Briefing Room* (28 January).

An article in the *Guardian* discussing the Brexit deal quoted one of the key findings from the Citizens' Assembly on Brexit: that members of the public are prepared to accept free movement of people in order to minimise the economic costs of Brexit (27 November).

Meg Russell was quoted extensively in an article in *GQ* about the 2019 intake of MPs (11 December).

A *BBC News* article on the week ahead in parliament commented on the Unit's achievements in recording government defeats in the House of Lords (12 December).

Meg Russell's statement on the latest round of appointments to the House of Lords was quoted in an article by the *Evening Standard* (23 December) and an article in the *Times* (3 January).

