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from

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on

**“Brexit: the impact on the UK Parliament of the 2016 referendum on European Union
membership”**

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Summary

The UK has voted in a referendum to leave the European Union of which it has been a member for forty years. The Government is soon to trigger the process of the UK's withdrawal from the EU – often referred to as “Brexit” (British exit). This is expected to take up to two years.

While political opinion is deeply divided on the merits of withdrawing from the EU, most politicians are taking the view that the outcome of the referendum should be respected: argument is focusing on the terms of the UK's future relationship with the EU, and the extent to which the UK Parliament will have a say on the outcome of the exit negotiations.

The referendum result led to a change of Government and political turmoil in 2016. It is posing questions for the future relationship between the constituent parts of the UK (England, Wales, Scotland and Northern Ireland).

The impact on the UK Parliament has already been considerable. Parliamentary time is likely to be dominated by Brexit-related legislation in the two years ahead. There are new demands on the Committee systems in the two Houses of Parliament, and pressures on parliamentary staff.

The June 2016 Referendum

1. On 23 June 2016 a referendum was held in the UK on whether to remain in, or leave, the European Union.
2. Referendums are unusual in the UK. There have only been two national referendums before: on remaining in what was then known as the Common Market (the forerunner of the EU) in 1975 and on whether to reform the voting system in 2011. The UK's membership of, and relationship with, the EU has long been the subject of political controversy, with divided opinion within political parties. The 2016 referendum was called by the Cameron Government in part to resolve tensions within the governing Conservative Party and to counter the electoral threat from the UK Independence Party. All the Parties represented in the UK Parliament except UKIP and Northern Ireland's Democratic Unionist Party supported “Remain”, but a significant minority of Members of Parliament – including a number of Government Ministers – campaigned for “Leave”.
3. The result of the referendum was a 52% majority for Leave (a difference of about 1.3 million voters). There were significant regional variations with majorities for Remain in Scotland, London and Northern Ireland, while the rest of England, and Wales, voted to Leave.

Impact on the political parties

4. Within hours of the result, the Prime Minister David Cameron indicated he would resign. There followed a swift and dramatic campaign for his successor as Leader of the governing Conservative Party. Other candidates fell away and Theresa May, formerly the Home Secretary, became Leader of the Party,

without need for a national election of the party membership which would have delayed appointment of a new Prime Minister to the Autumn. Mrs May was appointed Prime Minister by the Queen on 13 July, and formed a new Conservative Government, comprising both pro-leave and pro-remain Ministers, without a General Election.

5. The referendum also had a dramatic impact on the Opposition Labour Party, most of whose MPs were pro-Remain. A motion of no confidence in the Leader of the Opposition, Jeremy Corbyn, was passed by the Parliamentary Labour Party by 172-40 on 28 June – partly prompted by a feeling that he had not campaigned sufficiently strongly for Remain. Most of the front bench resigned, but Mr Corbyn, confident that his mandate came from the Party membership outside Parliament, stayed on. He was challenged for the party leadership but comfortably won an election of the party membership in September, and continues as Leader of the Opposition. Tensions remain within the Parliamentary Labour Party remain.
6. The impact on the smaller parties has been varied. The Scottish National Party – which won all but three of the seats in Scotland in the 2015 Election – has been fortified further by the referendum result. The Liberal Democrats, who lost most of their seats in the 2015 General Election, have seen a modest recovery in their support, partly on the back of their strong opposition to Brexit and calls for a second referendum. UKIP, which has only one MP despite winning 12% of the vote at the 2015 Election, seems to have lost its impetus since its success at the referendum.

The Brexit process

7. The new Government, although comprising many Remain supporters, was firm that the result of the Referendum should be acted upon. It announced that it would start the process of leaving the EU – by submitting a notification to withdraw under Article 50 of the Treaty on European Union before the end of March 2017. It established a new Government Department for Exiting the European Union to oversee the Brexit process, and also a new Department for International Trade, as a signal of its priorities.
8. The process of negotiating withdrawal from the EU is expected to take up to two years. Until then, the UK will remain a member of the EU and subject to its body of law and treaty commitments. No country has left the EU before and the process for exiting is not entirely clear. For example, it is not clearly established in law whether a notification of withdrawal can be revoked.
9. While a majority of MPs were pro-Remain, the large majority of the House of Commons has supported the Government's view that the outcome of the Referendum must be respected. Political argument has focused not on whether to leave the EU but on the nature of the withdrawal settlement and future relationship with the EU: whether we should have a “hard Brexit”

(totally outside the EU) or a “soft Brexit” (remaining members of some EU structures, such as the Single Market).

10. The kind of Brexit that the UK will get will depend, of course, not just on what the UK wants but on what it is able to negotiate with its EU partners. The Government initially declined to give much information on its negotiating position, and said repeatedly that it would “not provide a running commentary” on these negotiations.

Supreme Court judgment: the Miller case

11. The first significant challenge to Brexit came, not in Parliament, but through the courts. The Government initially considered that it could trigger Article 50 without empowering legislation, relying on Ministers’ prerogative powers. Gina Miller, a private citizen, brought judicial review proceedings to challenge this view, and her challenge was upheld first by the High Court on 3 November 2016 and then, following the Government’s appeal, by the Supreme Court on 24 January. The Supreme Court decided, by a majority decision, that primary legislation would be required, principally on the ground that the notice of withdrawal would so materially amend the operation of existing legislation as to require fresh legislation to achieve the change. However the Supreme Court decided unanimously that the devolved legislatures had no power to block the Government from triggering Article 50.¹

European Union (Notification of Withdrawal) Bill

12. In response to this judgment, the Government introduced a very short (two clause) bill into the House of Commons on 26 January, giving it legal authority to issue notice of withdrawal.² It was reported that the Government might have tried to draft a bill so limited in scope that it was not capable of amendment: if that was so, it was not successful. The Committee stage of the Bill was taken on the Floor of the House (“Committee of the whole House”) over three days: over 200 new clauses and over 90 amendments were tabled for debate. The focus was on rights of EU citizens living in the UK, the priorities for negotiations and the role that Parliament will have in approving the outcome of the negotiations in due course.
13. During the course of proceedings on the bill, and in response to pressure for more information on its objectives, the Government published a White Paper³

¹ See <https://www.supremecourt.uk/cases/docs/uksc-2016-0196-judgment.pdf>

² European Union (Notification of Withdrawal) Bill, Bill 132, Session 2016-17
<https://www.publications.parliament.uk/pa/bills/cbill/2016-2017/0132/17132.pdf>

³ *The United Kingdom’s exit from, and new partnership with, the European Union*, 2 February 2017, Cm 9417
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589189/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Print.pdf

setting out what it is seeking to achieve in negotiating the UK's exit from and new partnership with the EU. The Government also conceded that there would be vote in Parliament at the end of the negotiations before the UK withdrew from the EU, though the precise nature and impact of that vote are unclear.

14. The bill was not amended in the House of Commons but the Government was defeated on two issues in the House of Lords: a guarantee of the residency rights of EU and European Economic Area citizens presently in the UK, and enshrining in legislation the requirement for parliamentary approval of a Government decision to leave the EU at the end of the negotiation period. The Government succeeded in overturning those two amendments when the bill returned to the House of Commons, and the House of Lords did not insist further. The bill passed into law on 16 March, in the form that it had been introduced. The Government is expected to give notice of withdrawal to the European Council on 29 March.

Great Repeal Bill and other legislation expected

15. The Government has announced that in the next session (the parliamentary year which begins in May 2017) it will introduce a "Great Repeal Bill" to repeal the European Communities Act 1972 and to convert the body of existing EU law into UK law. Its intention is that, in order to provide legal certainty, when the UK leaves the EU, the same rules and law will apply as before, and decisions will be made thereafter about which elements of that law the UK should keep, amend or repeal. The Government has said that this Bill will also enable changes to be made by secondary legislation to laws that would otherwise not function sensibly when we have left the EU.
16. The precise nature and timing of this Bill are not yet known, but it is anticipated that it will be the subject of intense political debate and lengthy scrutiny over the year ahead. The expected provisions allowing amendment of the law by secondary legislation are likely to be particularly controversial, and – if passed – are expected to lead to a large volume of secondary legislation which will, in turn, require scrutiny by Parliament.
17. The Government has said that there will be separate bills on specific policy areas in which changes are to be made: for example, on immigration and customs. A well-informed independent think-tank, the Institute for Government, has recently reported that it expects up to 15 new bills, in addition to the Great Repeal Bill, to be required to deliver Brexit, leaving very little space in the legislative timetable for non-Brexit-related matters.⁴ Again, the timing and nature of these bills is not yet known. It is clear, however, that the legislative programme in the next two years, and beyond, will be heavy

⁴ Legislating Brexit, Institute for Government, March 2016.
<https://www.instituteforgovernment.org.uk/publications/legislating-brexit>

and controversial. We expect to see an increase in sitting hours, and additional pressure on House Service resources.

European Courts

18. One of the main arguments of the Leave side was that the UK should take back control of UK law. The Government has made clear that it intends to end the jurisdiction of the Court of Justice of the European Union (CJEU) in the UK. There will need to be some alternative mechanism for resolving any dispute between the UK and the EU: exactly what remains to be seen.
19. The Government has deferred controversial proposals to limit the jurisdiction of the European Court of Human Rights and to introduce a “British Bill of Rights”. The UK will remain a member of the Council of Europe (which is a separate and larger institution than the EU).

Impact on devolution and internal UK relations

20. The outcome of the referendum has put renewed pressure on the devolution settlement – the arrangements by which certain powers are devolved to governments and legislative bodies in Scotland, Wales and Northern Ireland. The UK’s vote for Brexit, while Scotland voted strongly in support of Remain, has rekindled political pressure in Scotland for Scottish independence, which had been narrowly rejected in the Scottish referendum in September 2014. The Scottish National Party, which is in power in Scotland, would like to see Scotland an independent member of the EU, but in the meantime is pressing for the UK to remain in the European Single Market and the EU Customs Union. The Scottish First Minister, Nicola Sturgeon, has recently called for a second independence referendum, and – while Prime Minister May has said that “now is not the time” for this – this looks likely to be a continuing source of contention.
21. Brexit also raises difficult issues in Northern Ireland. Here there was a narrow majority for remain, though the largest party, the Democratic Unionist Party, was pro-Brexit. There are concerns about the implications of Brexit for the open border with the Republic of Ireland and for the delicate political settlement and power-sharing arrangement which have maintained peace in Northern Ireland since the Good Friday Agreement in 1998. Elections to the Northern Ireland Assembly in March had an increased turnout and showed a polarisation of voting towards the DUP, on the unionist side, and to Sinn Féin, on the other.
22. There is likely to be lively argument between the UK and devolved governments about whether the powers which will be repatriated from the EU should be retained by the UK Government or devolved to the nations, regions, or even to local government. Some of these powers lie within areas, such as fishing and farming, which are already devolved. The SNP is pressing also for

new powers – over employment law, for example – to be devolved to the Scottish Parliament. The UK Government, on the other hand, is keen to ensure a consistent regulatory framework across the UK, in the interests of trade.

Impact on parliamentary committees

23. The changes in the structure of Government Departments made by the May Government has led to changes in the select committee structure in the House of Commons. A new Committee on Exiting the EU has been formed, monitoring the Department on Exiting the EU: reflecting the level of interest in this, it has 21, rather than the usual 11, Members. There is also a new Committee to monitor the new Government Department on International Trade. Several Select Committees – including the new Exiting the EU Committee - are now chaired by prominent Labour Members, Ministers under the Blair and Brown Governments, who resigned the Labour front-bench in opposition to Mr Corbyn.
24. In addition to these new Committees, existing Committees have been active in Brexit-related scrutiny in their departmental or subject areas. There are currently as many as 35 Brexit-related inquiries by Committees of both Houses. This level of activity brings a risk of overlap and overload, and is putting pressure on administrative support. At staff level, committee teams are cooperating to share information and expertise, and also working closely with specialists in the Library and with lawyers in the Office of Speaker's Counsel.
25. In the longer term, Brexit is likely to lead to changes in the Committee system in both Houses. The House of Commons European Scrutiny Committee will continue to be required to scrutinise the flow of EU legislation until the date of withdrawal, but probably not beyond. In the House of Lords – where the committee structure is centred on an EU Committee with six subject-related sub-committees – a more radical restructure will be required.

Impact on parliamentary staff

26. It is a fundamental requirement that parliamentary staff refrain from political activity and express no public views about political issues. While staff are well accustomed to keeping out of party politics, it has been more challenging to keep detached from the existential question about the UK's future relationship with the EU. The unexpected Referendum result was as much a shock to parliamentary staff as it was to Members, and to the country as a whole; and for some it was distressing. A number of our staff are nationals of other EU countries, and a larger, but unquantified, number have partners or close family members who are from other EU countries. The continued uncertainty about whether they will be assured of a right of residency after Brexit is naturally a cause of anxiety. As managers, we have offered personal support and information to staff, while expressing no view on the merits of the issue.