

Case for a Referendum on the Outcome of EU Withdrawal Negotiations

Debate on 25 October 2018

Summary

This House of Lords Library Briefing has been prepared in advance of the debate due to take place on 25 October 2018 in the House of Lords on the motion moved by Lord Campbell of Pittenweem (Liberal Democrat), “that this House takes note of the case for a People’s Vote on the outcome of the negotiations between the UK and the EU on the UK’s withdrawal from the EU”.

On 23 June 2016, the UK voted in a referendum on the question “should the United Kingdom remain a member of the European Union or leave the European Union?” with leave winning by 51.9% to 48.1% on a turnout of 72.2%. Under the terms of article 50 of the Treaty of European Union, the UK and the EU have been negotiating a withdrawal agreement. The UK Government has said that it will put the withdrawal agreement, and an accompanying political declaration on the future UK-EU relationship, before the UK Parliament for approval (provided for under section 13 of the European Union (Withdrawal) Act 2018). If the UK Parliament agrees to the withdrawal agreement and political declaration, the Government would then introduce a bill to give the withdrawal agreement domestic legal effect in the UK. The European Parliament would also be required to vote on approving the withdrawal agreement.

Some, such as the campaign group People’s Vote, have argued that the terms of the UK’s withdrawal from the EU should be subject to a further decision by UK voters because the terms of withdrawal were not known at the time of the 2016 referendum. The Prime Minister has said a second referendum is not government policy, having argued that the 2016 referendum represented a ‘people’s vote’ on the UK’s membership of the EU.

This briefing presents arguments put forward by the People’s Vote campaign, and others, for a second referendum and outlines the positions of the Conservative, Labour, Liberal Democrat, Scottish National and Democratic Unionist parties in the UK Parliament. It then summarises the legal requirements for holding a referendum and presents an assessment by academics, who have studied the issue of the practical considerations associated with holding a second referendum.

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I. Introduction

The suggestion of a second referendum on the UK's membership of the EU has been made while negotiations continue between the UK and the EU on the terms of the UK's exit.

Under the terms of article 50 of the Treaty on European Union, the EU shall negotiate and conclude an agreement with a member state that has notified its decision to leave the Union. Article 50 specifies that this agreement shall set out the arrangements for the withdrawal of the departing member state, "taking account of the framework for its future relationship with the EU".

The Government expects there to be at least two agreements resulting from the negotiations: a withdrawal agreement setting out the departure terms, and one or more agreements covering different aspects of the future relationship.¹ In the white paper published in July 2018, the Government proposed that the future relationship was likely to consist of a number of separate agreements, covering different elements of economic, security and cross-cutting cooperation, some of which would be legally binding agreements (eg a free trade agreement covering components of the future economic relationship, a treaty covering internal security), while other aspects would be based on political commitments (eg components of external security cooperation).²

Under the EU treaties, legal agreements covering the future relationship can only be concluded with the UK once it is a third country (a non-EU member state). They therefore cannot be signed until the UK has left the EU, which, under the terms of article 50 will be on 29 March 2019 unless either the withdrawal agreement enters into force on a different date, or there is unanimous agreement between the UK and the remaining 27 member states to extend the negotiating period. However, the framework for the future relationship will be outlined in a political declaration accompanying and referred to in the withdrawal agreement.³

To allow sufficient time for the European Parliament to approve a withdrawal agreement before 29 March 2019, it was envisaged that the latest time by which the EU's chief negotiator Michel Barnier could put a proposed withdrawal deal to the European Council was autumn 2018. The timescale that both sides had been working towards was the European Council meeting which was held on 17 and 18 October 2018. On 10 July 2018, Michel Barnier was reported as saying that the EU and the UK had "agreed

¹ House of Commons, '[Written Statement: Procedures for the Approval and Implementation of EU Exit Agreements](#)', 13 December 2017, HCWS342.

² HM Government, '[The Future Relationship Between the United Kingdom and the European Union](#)', 12 July 2018, Cm 9593, p 84.

³ European Council, '[European Council \(Art 50\) \(23 March 2018\) Guidelines](#)', 23 March 2018.

on 80 percent of the of the negotiations” and that he was determined to reach agreement on the remaining 20 percent. One of the areas that remains unresolved is how to avoid a hard border between Northern Ireland and Ireland under any circumstances (the so-called ‘backstop’), without creating a border in the Irish Sea between Northern Ireland and the rest of the UK. No agreement had been reached on this issue by the October 2018 European Council meeting. However, updating the House of Commons on the progress of negotiations on 15 October 2018, the Prime Minister, Theresa May, said that progress had been made on the withdrawal agreement and that she would continue to work with the EU on reaching agreement. On 12 July 2018, the Government published its white paper on the future relationship between the UK and the EU, elaborating on the outline that had been set out in a statement made at Chequers on 6 July 2018.⁴ The white paper set out the Government’s negotiating position, which would see the UK leaving the EU’s customs union and single market and replacing it with a ‘common rulebook’ and a facilitated customs agreement (commonly referred so as the Chequers model).

Should no agreement be reached between the UK and the EU by 29 March 2019 then the UK would leave the EU without a negotiated withdrawal (a so-called ‘no deal’ scenario). Other potential outcomes could result in no deal. For example, if either the UK Parliament or the EU Parliament voted to not approve a negotiated agreement (and any subsequent re-negotiations were not able to resolve outstanding issues) then the UK could leave with no deal.

Dominic Raab, Secretary of State for Exiting the European Union, has written to the House of Commons Procedure Committee as part of its inquiry into Motions under section 13(1) of the European Union (Withdrawal) Act 2018 inquiry. In his letter dated 10 October 2018, Mr Raab stated that the Government placed great importance on the “vital role” of Parliament in approving a withdrawal agreement. The Government stated that amendments which sought to approve a withdrawal agreement only if changes were made to it “would, in effect, amount to Parliament not approving the documents that were put before it”. It also observed that amendments which might be conditional on an event occurring “could prevent ratification if the condition introduced any doubt that the Government had the required approval to proceed with ratification”. The Government asserted that there needed to be a clear decision on whether or not to accept the negotiated withdrawal agreement and political declaration:

It is important, however, to recognise the need ultimately for the House to consider the question that is in reality before the UK—

⁴ HM Government, [The Future Relationship Between the United Kingdom and the European Union](#), 12 July 2018, Cm 9593; and HM Government, [Statement from HM Government](#), 6 July 2018.

whether or not to accept the deal that the Government has negotiated with the EU.⁵

2. Campaigns for a Second Referendum

The People's Vote Campaign (People's Vote) is an umbrella campaign group for a range of organisations which are campaigning for a second referendum, what it describes as a 'people's vote', on the terms of the UK's withdrawal from the EU.⁶ People's Vote has argued that its campaign is "not about re-fighting" the 2016 referendum.⁷ It argues that its campaign is in reaction to developments since the UK voted to withdraw from the EU.⁸

It has asserted that one development is that certain costs and complexities of the UK's withdrawal from the EU could not have been known about two years ago. It has cited the value of the financial settlement, payable to the EU by the UK as part of a negotiated withdrawal agreement, as one example.⁹ It has also cited the EU's subsequent free trade agreements with Japan and Canada and new EU rules on mobile phone roaming charges as examples of developments within the EU since the 2016 referendum.¹⁰

It has also stated that whilst it accepts that the 2016 referendum gave the Government a mandate to negotiate the UK's withdrawal from the EU, "we still don't know what any Brexit deal will look like".¹¹ Whilst accepting the view that there is currently no majority for a second referendum in the House of Commons, People's Vote also believes that there is no majority for any particular model of UK withdrawal from the EU:

Whether the outcome of the article 50 negotiations is an agreement resembling the Prime Minister's Chequers proposals, or a "blindfold Brexit" that delays negotiation of the key issues until after we have left, or some form of "no deal", the chances of the Government securing sufficient support for any of these options to pass through the House of Commons now look poor.¹²

⁵ HM Government, [Parliamentary Approval of the Withdrawal Agreement and the Framework for the Future Relationship Under Section 13 of the European Union \(Withdrawal\) Act 2018](#), 10 October 2018, p 3.

⁶ This includes Open Britain, the European Movement UK, Britain for Europe, Scientists for EU, Healthier In, Our Future Our Choice, For Our Future's Sake and InFacts (People's Vote, '[Who We Are](#)', accessed 12 October 2018).

⁷ People's Vote, '[Arguments for Why We Need a People's Vote on a Final Brexit Deal](#)', accessed 12 October 2018.

⁸ *ibid.*

⁹ *ibid.*

¹⁰ People's Vote, '[We Need A Vote](#)', accessed 17 October 2018.

¹¹ People's Vote, '[Arguments for Why We Need a People's Vote on a Final Brexit Deal](#)', accessed 12 October 2018.

¹² People's Vote, '[The Roadmap to a People's Vote](#)', September 2018, p 7.

In its view, a second referendum is “the most viable and democratic way of resolving [this]” and to deny the public “a voice challenges the basic principle of informed consent”.¹³ People’s Vote has argued that it would be “anti-democratic” not give the electorate a decision on the negotiated terms of the UK’s withdrawal from the EU:

Far from being anti-democratic, we believe a vote on the deal would be entirely in keeping with the democratic tradition of proper Parliamentary and public scrutiny of the big decisions made by government. As the detail of the deal becomes clear, what would be anti-democratic would be to give the public no further say in decisions that will dictate the country’s future for decades to come.¹⁴

This justification for a referendum would also apply to the negotiated terms of the UK’s withdrawal:

The People’s Vote campaign believes that the public has as much right to give its verdict on the outcome of the Brexit negotiations as on the question in the 2016 referendum. If it made sense for Parliament to ask the people for their view on the principle, it makes sense to give them a say on what Brexit would mean in practice. Indeed, it is arguably more important that the people should vote on what lies ahead, when the consequences have become clearer, than before any of them were known.¹⁵

People’s Vote has cited polling that it says demonstrates a desire for a second referendum amongst the public:

People want the right to decide. Polling by YouGov this summer has demonstrated clear backing, by 45% to 35%, for a public vote on the outcome of Brexit negotiations. This rises to a margin of two-to-one—50% to 25%—if talks break down and the UK leaves without any deal.¹⁶

It has written a report in which it sets out the steps it believes necessary to hold a second referendum.¹⁷ This report was produced with the assistance of an advisory committee chaired by Lord Kerr of Kinlochard (Crossbench).¹⁸ This argues that there would be opportunities for a second

¹³ People’s Vote, [The Roadmap to a People’s Vote](#), September 2018, p 3.

¹⁴ People’s Vote, [‘We Need A Vote’](#), accessed 17 October 2018.

¹⁵ People’s Vote, [The Roadmap to a People’s Vote](#), September 2018, p 4.

¹⁶ *ibid*, p 3.

¹⁷ *ibid*.

¹⁸ It also comprised Richard Corbett (Labour MEP for Yorkshire and the Humber); Stephen Dorrell; Dominic Grieve (Conservative MP for Beaconsfield); Chris Leslie (Labour MP for Nottingham East); Caroline Lucas (Green Party MP for Brighton, Pavilion); and Lord Wallace of Tankerness (Liberal Democrat).

referendum to be organised:

Amendments to the EU (Withdrawal) Bill, and commitments made by the Government, mean that any deal must be put to Parliament through a meaningful vote, and that any deal must be ratified through an Act of Parliament before it can come into force. Should there be a majority of MPs in favour of a people's vote, the Commons will therefore have a series of opportunities to either encourage or even force the Government to legislate for it.¹⁹

According to the People's Vote, these opportunities include:

- The motion put to the House of Commons to agree the withdrawal agreement could be amended to require it to be put to a referendum for approval.
- Under the terms of the European Union (Withdrawal Act) 2018, should there be no agreed deal between the UK and EU by 21 January 2019 the Government must table a statement on how it intends to proceed. People's Vote has argued that if this motion were amendable it could be used to propose a second referendum.
- Amendments could be made to the Government's proposed European Union (Withdrawal Agreement) Bill. This is the legislation that would give domestic legal effect to the withdrawal agreement.²⁰

However, the report argues that any legislative vehicle for a second referendum should allow for a vote to take place before the article 50 deadline expires. It says that the Government "could consider" requesting an extension of article 50, something which it believes there would be "little problem" in securing from the EU.²¹

On the issue of the question to be asked, People's Vote has argued in favour of a binary option depending upon the circumstances, either "no deal versus stay" or "the deal versus stay". It believes that:

If there is a deal, the most pressing question for the country would be whether that deal is better than the one we already have inside the EU. And if there is no deal, the country deserves the right to say whether it nevertheless still wants Brexit.²²

¹⁹ People's Vote, [The Roadmap to a People's Vote](#), September 2018, p 7.

²⁰ *ibid*, p 9.

²¹ *ibid*, p 8.

²² *ibid*, p 17.

The People's Vote's report did not rule out a referendum with three options if it commanded majority support in Parliament. However, it argued that "for reasons of simplicity, speed and clarity, as well as past experience, it is unlikely such a proposal would prevail".²³

The campaign organisation Best for Britain is also campaigning for a second referendum and has said that it is "committed to finding a democratic way to stop Brexit".²⁴ It has argued there is no model for the UK's withdrawal from the EU that is better than the UK remaining a member:

We believe that the best way to fight for a better Britain and a better Europe is from within the EU. For more than two decades Britain has enjoyed the best economic performance in Europe by leading the creation of the single market, without being forced to adopt the Euro and lose our currency freedom. The only way for the UK to keep this privileged position is by avoiding Brexit. If we left the EU and applied to rejoin later, we would never be offered the same uniquely favourable terms.²⁵

Referring to young people, Best for Britain has argued that "tomorrow's doctors, nurses, teachers, leaders and parents should have the right to have a say on their future".²⁶

Best for Britain has argued that that a "people's vote" would be the "first time a vote will have taken place with detail attached". It has asserted that a second referendum should not be a re-run of the 2016 referendum:

In 2019, a different kind of people's vote campaign must be fought, without the mistakes of the past. We cannot have a re-run of the 2016 vote. It must be a vote the like of which Britain has never seen before: with more stringent rules on digital campaigning, and citizens' assemblies used to inform and encourage debate.²⁷

In July 2018, Justine Greening (Conservative MP for Putney), former Secretary of State for Education, called for a second referendum with three options on the ballot paper, to include the negotiated withdrawal agreement, leaving with no negotiated agreement (no deal) or the option of remaining an EU member state.²⁸ Voters would be given a first and second preference

²³ People's Vote, [The Roadmap to a People's Vote](#), September 2018, p 17.

²⁴ Best for Britain, '[We Are Fighting to Keep the UK Open to EU Membership](#)', accessed 17 October 2018.

²⁵ *ibid.*

²⁶ *ibid.*

²⁷ Best for Britain, '[Join the Roadmap to a People's Vote](#)', accessed 17 October 2018.

²⁸ BBC News, '[Justine Greening's Call for New Brexit Referendum Rejected by No 10](#)', 16 July 2018.

vote.²⁹ Ms Greening argued that Parliament was “stalemated” and that the UK needed to find a way forward. She said that a first and second preference vote would help to ensure consensus.³⁰

The Liberal Democrats campaigned during the 2017 general election on a manifesto commitment for a second referendum. The manifesto argued that whilst the Liberal Democrats acknowledged the result of the referendum, the ballot paper did not provide information on the future model of UK’s relationship with the EU:

[W]e acknowledge the result of the 2016 referendum, which gave the government a mandate to start negotiations to leave. The decision Britain took, though, was simply whether to remain in or to leave the European Union. There was no option on the ballot paper to choose the shape of our future relationship with the EU on vital issues including trade, travel or security.³¹

The manifesto said that the Liberal Democrats would put the negotiated terms of the UK’s withdrawal to a referendum, with the option of remaining in the EU on the ballot paper.³²

In its 2017 general election manifesto, the Labour Party stated that it accepted the referendum result but that it viewed no deal as the “worst possible deal for Britain”.³³ In its 2017 manifesto, the Conservative Party stated that it would deliver “the best possible deal for Britain as we leave the European Union delivered by a smooth, orderly Brexit.”³⁴ The positions of the Conservative, Labour, Liberal Democrat, Scottish National and Democratic Unionist parties are discussed in further detail in section 3 of this briefing.

3. Policy Positions 2018

3.1 Conservative Party

In its 2017 manifesto, the Conservative Party stated that “following the historic referendum on 23rd June 2016, the United Kingdom is leaving the European Union”.³⁵

²⁹ The structure of the question to be put to the electorate in a possible second referendum has been examined by researchers at UCL’s Constitution Unit; Jess Sargeant, Alan Renwick and Meg Russell, [The Mechanics of a Further Referendum on Brexit](#), 8 October 2018, pp 33–41. The report is discussed in further detail in section 4 of this briefing.

³⁰ *ibid.*

³¹ Liberal Democrats, [Change Britain’s Future: Liberal Democrat Manifesto 2017](#), May 2017, p 9.

³² *ibid.*, p 9.

³³ Labour Party, [The Labour Party Manifesto 2017](#), May 2017, p 24.

³⁴ Conservative Party, [The Conservative Party Manifesto 2017](#), May 2017, p 30.

³⁵ *ibid.*, p 35.

It stated that the party wanted to:

[A]gree a deep and special partnership with the European Union. This partnership will benefit both the European Union and the United Kingdom: while we are leaving the European Union, we are not leaving Europe, and we want to remain committed partners and allies to our friends across the continent.³⁶

In a newspaper article published in September 2018, Theresa May wrote that she would not “give in to those who want to re-open the whole question” of the UK’s EU membership with a second referendum. She argued that:

In the summer of 2016, millions came out to have their say. In many cases for the first time in decades, they trusted that their vote would count; that after years of feeling ignored by politics, their voices would be heard. To ask the question all over again would be a gross betrayal of our democracy—and a betrayal of that trust.³⁷

Speaking at the Conservative Party’s 2018 autumn conference, Theresa May said that it was her role as Prime Minister to act in the national interest, and argued that this included honouring the result of the referendum.³⁸ She spoke against holding a second referendum and asserted that the aim of those proposing a second vote was to prevent the UK from leaving the EU:

[T]here are plenty of prominent people in British politics—in Parliament and out of it—who want to stop Brexit in its tracks. Their latest plan is to hold a second referendum. They call it a ‘people’s vote’.³⁹

Mrs May referred to the referendum on 23 June 2016, arguing that the UK had already held a people’s vote in which the UK voted to leave the EU. She stated that a second referendum would be a “politicians’ vote, politicians telling people they got it wrong the first time and should try again”.⁴⁰ The Prime Minister said that in her view it would have consequences for people’s faith in democracy.

Following her statement to the House of Commons, on 15 October 2018, on the ongoing negotiations between the UK and the EU, several MPs, some of whom support a second referendum, asked about a ‘people’s vote’ in various scenarios.

³⁶ Conservative Party, *The Conservative Party Manifesto 2017*, May 2017, p 35.

³⁷ Theresa May, ‘[There Will Be No Second Referendum on Brexit—It Would Be a Gross Betrayal of Our Democracy](#)’, *Telegraph* (£), 1 September 2018.

³⁸ Conservatives, ‘[Prime Minister: Our Future is in Our Hands](#)’, 3 October 2018.

³⁹ *ibid.*

⁴⁰ *ibid.*

Anna Soubry (Conservative MP for Broxtowe) asked whether the Prime Minister would consider a people's vote if neither the Government nor Parliament could "get a grip on this".⁴¹ The Prime Minister said that the Government was "determined to deliver on the vote of the British people, unlike an Opposition who want to frustrate the people's vote and frustrate Brexit". Mrs May reiterated that in her view the people had already voted:

The people voted to leave the European Union, and I believe it is a matter of faith in our democracy, and the integrity of politicians, that we deliver for people on that vote. That is why it is so important to recognise—there is talk of a people's vote; of going back to the people for a vote—that the people were given a vote. The people's vote happened in 2016 and the people voted to leave.⁴²

Chris Leslie (Labour MP for Nottingham East) asked whether the Prime Minister would "respect the decision of Members of Parliament to put this question to a people's vote" if Parliament voted against a withdrawal agreement.⁴³ Mrs May stated that the process was clear if Parliament did not support the Government's negotiated proposal in the 'meaningful vote'.⁴⁴ Wes Streeting (Labour MP for Ilford North) argued that the 2017 general election was a people's vote. He stated that the result demonstrated that there was no majority in the electorate for a hard Brexit.⁴⁵ The Prime Minister replied, arguing that "over 80 percent of Members stood [in the general election] on a manifesto promise to deliver on the vote of the people to leave the EU".⁴⁶

Referring to the possibility of no deal, Heidi Allen (Conservative MP for South Cambridgeshire) asked:

If that comes to pass and the Prime Minister will not entertain an extension of article 50, but accepts the reality that there is no way that no deal will pass through this House, I ask with the greatest respect: what option does that leave us other than going back to the people? What else can we do?⁴⁷

The Prime Minister replied that were it agreed that no deal could be reached between the UK and the EU, the House of Commons would have to take a view at the time:

If, at the end of the negotiation process, both sides agreed that no deal

⁴¹ [HC Hansard, 15 October 2018, col 418.](#)

⁴² *ibid.*

⁴³ *ibid.*, col 421.

⁴⁴ *ibid.*

⁴⁵ *ibid.*, col 427.

⁴⁶ *ibid.*

⁴⁷ *ibid.*, col 426.

was there, that would actually come back to this House, and then we would see what position the House would take in the circumstances of the time.⁴⁸

Sarah Wollaston (Conservative MP for Totnes) argued that the electorate was not able to see “which of the many versions of Brexit” would be implemented. She said in her view that it would be reasonable to hold a referendum to gain “their informed consent to moving forward”.⁴⁹ The Prime Minister stated her belief that it was imperative for MPs to deliver on the result of the referendum and that the Government was continuing to work for a deal.⁵⁰ Similarly, Dominic Grieve (Conservative MP for Beaconsfield) argued that the proposed transition period and the Government’s policy of a common rulebook to apply afterwards was “entirely different from what was discussed and negotiated during the referendum in 2016”.⁵¹ He said he could only support the Government if the matter was “put to the British people again”.⁵² Theresa May said that it was important for the UK to have frictionless trade and also to enable the UK to enter into trade deals with other countries.⁵³

Conservative MPs also spoke against holding a second referendum. Matt Warman (Conservative MP for Boston and Skegness) asked the Prime Minister “is it not the case that not a single argument has been made since the referendum that was not made before the referendum?”. As such, he asserted “anyone who is a democrat should reject a second vote”. The Prime Minister agreed with Mr Warman. She argued that many of the issues had been discussed during the 2016 referendum and that it was important that the result be delivered:

There was a full debate during the referendum process on issues about our remaining in or leaving the European Union, and it is a matter of faith in our democracy and the integrity of politicians that we deliver on that vote.⁵⁴

The chairman of the European Research Group (ERG) of Conservative backbench MPs, Jacob Rees-Mogg, has expressed opposition to a second referendum. He has asserted that a second referendum had been proposed by those that “don’t like the fact that they lost” and that:

It would be an absolute kick in the teeth for people who voted to leave, to say to them ‘we think you did the wrong thing, therefore you

⁴⁸ [HC Hansard, 15 October 2018, col 426.](#)

⁴⁹ *ibid*, col 430.

⁵⁰ *ibid*.

⁵¹ *ibid*, col 422.

⁵² *ibid*.

⁵³ *ibid*.

⁵⁴ *ibid*, col 434.

have to have another go' [...] That's not democratic, that's condescension.⁵⁵

3.2 Political Party Positions

Labour

Labour's 2017 general election manifesto stated that "Labour accepts the referendum result and a Labour government will put the national interest first".⁵⁶ On the model of the UK's withdrawal, Labour described no deal as "the worst possible deal for Britain" and that:

We will reject 'no deal' as a viable option and if needs be negotiate transitional arrangements to avoid a 'cliff-edge' for the UK economy.⁵⁷

In his speech for the Labour Party's 2018 autumn conference, Jeremy Corbyn, Leader of the Labour Party, further described leaving the EU with no deal as a "national disaster" and said within this context Labour would support options aimed at preventing this:

[I]f Parliament votes down a Tory deal or the Government fails to reach any deal at all we would press for a general election. Failing that, all options are on the table.⁵⁸

However, addressing Theresa May directly, Mr Corbyn said that were she to negotiate what Labour considered to be a "sensible deal" it would support it:

If you deliver a deal that includes a customs union and no hard border in Ireland, if you protect jobs, people's rights at work and environmental and consumer standards—then we will support that sensible deal. A deal that would be backed by most of the business world and trade unions too. But if you can't negotiate that deal then you need to make way for a party that can.⁵⁹

⁵⁵ Katie Weston, '[Rees-Mogg has Brilliant Response to Caller Claiming he is Fearful of Second Brexit Vote](#)', *Express*, 1 October 2018. The *Independent* has reported on comments made by Mr Rees-Mogg in 2011; Benjamin Kentish, '[Final Say: Leading Conservative Brexiteers Told to Explain Speeches Showing They Supported Second Referendum on Final EU Deal](#)', *Independent*, 4 August 2018.

⁵⁶ Labour Party, *The Labour Party Manifesto 2017*, May 2017, p 24.

⁵⁷ *ibid.*

⁵⁸ Labour, '[Jeremy Corbyn Speaking at Labour Party Conference Today](#)', 26 September 2018.

⁵⁹ *ibid.*

Keir Starmer, Shadow Secretary of State for Exiting the European Union, said that if Parliament voted down the withdrawal agreement or a deal could not be reached, Labour's preference would be for a general election to be held. However, he stated that if a general election was not possible, then "other options must be kept open" and Labour could campaign for a second referendum:

It is right for Parliament to have the first say but if we need to break the impasse, Labour campaigning for a public vote must be an option.⁶⁰

On the floor of the conference, Keir Starmer said "and nobody is ruling out remain as an option".⁶¹

The Labour autumn conference passed a motion which supported a general election as its first preference but affirmed the possibility that Labour would campaign for a second referendum:

Should Parliament vote down a Tory Brexit deal or the talks end in no-deal, Conference believes this would constitute a loss of confidence in the Government. In these circumstances, the best outcome for the country is an immediate general election that can sweep the Tories from power.

If we cannot get a general election Labour must support all options remaining on the table, including campaigning for a public vote. If the Government is confident in negotiating a deal that working people, our economy and communities will benefit from they should not be afraid to put that deal to the public.⁶²

Liberal Democrats

At its 2018 autumn conference, the Liberal Democrats passed a motion (proposed by Tom Brake, Spokesperson on Brexit and International Trade) which affirmed the party's policy to call for a second referendum once the outcome of the UK's negotiations with the EU were known.⁶³ The motion argued that the 2016 referendum "gave no clear destination for Brexit" because the terms of the UK's withdrawal were not known at that point. It also asserted that certain international events had occurred since the referendum that emphasised the importance of EU membership for the UK, citing the US's withdrawal from the United Nations Human Rights Commission (UNHRC). The motion, as amended, also called on the

⁶⁰ Labour, '[Keir Starmer Speaking at Labour Party Conference Today](#)', 25 September 2018.

⁶¹ *Guardian*, '[Nobody is Ruling out Remain as an Option](#)': Keir Starmer at Labour's Brexit Debate', 25 September 2018 (video).

⁶² Labour List, '[Labour's Brexit Composite Motion in Full](#)', 26 September 2018.

⁶³ Liberal Democrats, '[Conference Daily: Tuesday 18 September 2018](#)', 18 September 2018, p 2.

Government to seek to extend article 50 to legislate for a second referendum, or to extend the negotiating period to avoid a no deal scenario.

The motion also stated that the Liberal Democrats would continue to campaign for the UK to remain a full member of the EU and that a second referendum should be “for the public to choose ‘the deal’ or Britain remaining a full member of the EU”.⁶⁴ In his conference speech, Dr Vince Cable, Leader of the Liberal Democrats, said that the party was right to campaign for a second referendum.⁶⁵

Scottish National Party

In her 2018 autumn conference speech, Nicola Sturgeon, Leader of the Scottish National Party (SNP), argued for the Article 50 process to be extended to “allow disaster to be averted”.⁶⁶ She stated that this would allow time for the SNP’s policy of continued single market membership for the UK to be pursued. However, she said that it would also allow for a second vote to take place and that “if there is a proposal for another EU referendum, SNP MPs will vote for it”. She also stated her belief that there was “no guarantee that another vote won’t deliver the same outcome”.

Democratic Unionist Party

Following the result of the 2017 general election, the Democratic Unionist Party (DUP) agreed to enter into a confidence and supply agreement to support the Conservative Government. The DUP’s Parliamentary Spokesperson on Brexit, Sammy Wilson, responded to Justine Greening’s suggestion of a second referendum, describing it as a “hare-brained, divisive and duplicitous proposal”.⁶⁷ Mr Wilson argued that it would undermine the UK’s negotiating position and that the call for a second referendum continued to “ignore the will of the United Kingdom electorate”.⁶⁸

Arlene Foster, Leader of the DUP, has spoken against a second referendum, “I would never advocate a second referendum [...] where would you stop? [...] we would be in a never-ending cycle of referendums”.⁶⁹

⁶⁴ Liberal Democrats, [Conference Daily: Monday 17 September 2018](#), 17 September 2018, pp 4–6.

⁶⁵ Liberal Democrats, [‘Read Vince Cable’s Speech to #LDConf in Full’](#), 18 September 2018.

⁶⁶ Scottish National Party, [‘SNP Leader Nicola Sturgeon’s Speech to SNP Conference in Glasgow’](#), 9 October 2018.

⁶⁷ Democratic Unionist Party, [‘Second Vote Call a “Hare-Brained, Divisive and Duplicitous Proposal”’](#), 16 July 2018.

⁶⁸ *ibid.*

⁶⁹ *Belfast Telegraph*, [‘DUP Leader Urges Closer Anglo-Irish Relations Amid Brexit Negotiations’](#), 13 January 2018.

4. Requirements for Referendums in the UK

The Political Parties, Elections and Referendums Act 2000 (PPERA) sets out the requirements for holding referendums in the UK. These include the passing of primary legislation; the assessment of the question by the Electoral Commission; and a ten-week regulated period leading up to the day of the poll.⁷⁰

PPERA requires the UK Parliament to pass primary legislation before a referendum can be held that applies to the whole of the UK. The legislation would need to provide for different aspects of the referendum, including:

- The referendum question.
- The franchise (who is eligible to vote).
- Any amendments to the regulatory framework.
- Conduct rules for the poll.
- The polling date.

The latter two may be specified in statutory instruments under the legislation setting up the referendum.⁷¹

Section 104 of PERA requires the Electoral Commission to assess the intelligibility of a referendum question. This requirement remains whether the question is contained on the face of the bill providing for the referendum or is to be later specified in subordinate legislation.⁷² The Electoral Commission has stated that it should normally be able to publish its views on the intelligibility of a proposed question “around ten weeks” after it received it:

This includes eight weeks to carry out public opinion research, based on getting at least two weeks’ notice of the date when we will be given the exact wording of the question.⁷³

PPERA also makes provision for a ten-week regulated referendum period. This is comprised of:

- Four weeks for campaign groups to apply to be a lead campaigner for one of the referendum outcomes.

⁷⁰ The Electoral Commission was established by powers in part I of the Political Parties, Elections and Referendums Act 2000.

⁷¹ Jess Sargeant, Alan Renwick and Meg Russell, [The Mechanics of a Further Referendum on Brexit](#), 8 October 2018, p 9.

⁷² Section 104(3).

⁷³ Electoral Commission, [Our Approach to Assessing the Intelligibility of Referendum Questions](#), November 2009, p 2.

- Two weeks for the Electoral Commission to decide the outcome of these applications.
- Two weeks between this decision and polling day.⁷⁴

In addition to the requirements above, the Electoral Commission has recommended, as part of best practice, that legislation setting up a referendum should be passed “at least six months before it is required to be implemented or complied with [...]”.⁷⁵

Assessment of the Requirements for a Second Referendum

On 8 October 2018, researchers at UCL’s Constitution Unit published, jointly with UK in a Changing Europe,⁷⁶ an assessment of the mechanics of a further referendum on the UK’s withdrawal from the EU.⁷⁷ The authors stated the purpose of the report was to examine how a referendum would best be conducted, not whether one should be held.⁷⁸

This report provided a detailed examination of the requirements for the setting up of a second referendum, including:

- How long it might take to hold a referendum.
- The authors’ assessment of whether extending article 50 would be feasible.
- How a referendum could be triggered.
- A consideration of the form the question could take.
- Setting the rules for the referendum.

The report estimated a minimum time from introducing legislation to polling day of 22 weeks, and it listed factors that could increase this estimate, including:

- Disagreements during the passage of the legislation, for example on the form of the question or the suitable franchise.
- The period of question testing could be impacted by

⁷⁴ Jess Sargeant, Alan Renwick and Meg Russell, [The Mechanics of a Further Referendum on Brexit](#), 8 October 2018, pp 9–10.

⁷⁵ Electoral Commission, [The 2016 Referendum: Report on the 23 June 2016 referendum on the UK’s membership of the European Union](#), September 2016, p 33.

⁷⁶ An academic research initiative based at King’s College London and involving a number of other academic institutions, UK in a Changing Europe states that it “provides an authoritative, non-partisan and impartial reference point for those looking for information, insights and analysis about UK-EU relations that stands aside from the politics surrounding the debate” (UK in a Changing Europe, ‘[About Us](#)’, accessed 15 October 2018).

⁷⁷ Jess Sargeant, Alan Renwick and Meg Russell, [The Mechanics of a Further Referendum on Brexit](#), 8 October 2018, pp 9–10.

⁷⁸ *ibid*, p 7.

- amendments to the question during the passage of the legislation.
- Changes to conduct rules for a multi-option referendum.⁷⁹

The authors also put forward what they believed were the conditions necessary to meet the 22-week minimum timescale, including:

- Cross-party agreement to hold the referendum and agreement on central issues such as the form of the question and suitable franchise.
- Implementing a two-option question.
- Using the same regulatory framework and conduct rules as the 2016 referendum.
- Making no changes to the regulated period.⁸⁰

The report drew two principal conclusions:

First, a second referendum on Brexit is feasible. It would almost certainly require an extension to the article 50 period; but that, though not unproblematic, would be possible.

Second, if a decision is taken to hold a further referendum on Brexit, the principle of such a vote is likely to remain controversial—hence is of utmost importance that the process should command the maximum legitimacy. If the result is to be accepted by those on all sides, every effort should be made to ensure that the referendum campaign is fair, the poll is properly conducted, the options put to the referendum are clear, and the question allows voters to express their preferences unambiguously. These considerations guide this report's discussion of the logistical aspects of holding a second referendum.⁸¹

Akash Paun, a senior fellow at the Institute for Government, has also argued the importance of a clear question:

If we have learnt anything from June 2016, it is that referendums should be held only when there is clarity about the options on offer. So if a second referendum were to be held, it would be vital that the detail of each of the options was clear. It would also be essential for any options included to be achievable—including those which would require cooperation from the EU.⁸²

⁷⁹ Jess Sargeant, Alan Renwick and Meg Russell, [The Mechanics of a Further Referendum on Brexit](#), 8 October 2018, p 14, table 1.

⁸⁰ *ibid.*

⁸¹ *ibid.*, pp 7–8.

⁸² Akash Paun, '[A Second Brexit Referendum: The Practical Questions](#)', Institute for Government, 19 July 2018.

5. Academic Analysis

The question of holding a second referendum is a complex and contentious one. Debate on the question has focused on a number of considerations, some of which are summarised in this section. These include:

- The level of detail available to the electorate in the withdrawal agreement and the political declaration.
- Practical considerations associated with holding a second referendum.
- The level of support that any one possible outcome might receive from the electorate.
- The effect of a second referendum on political discourse in the UK.

Commentary has been drawn from academics working in the fields of politics and constitutional affairs.

Professor Anand Menon, director of UK in a Changing Europe, has questioned whether “the facts” would be clearer for a second vote. He has argued that this is because the UK’s future relationship with the EU will only be subject to detailed negotiation after it has left.⁸³ He has expressed concern that there will be limited time for a detailed political declaration before this point:

Any referendum held before the UK leaves the EU would not be held on a clear plan for future UK-EU relations. As the clock ticks down to the article 50 deadline, there are real doubts as to whether sufficient time remains to finalise even a withdrawal agreement, let alone a clear outline of a future relationship. The best we can hope for on the latter is an aspirational political declaration with no legal force.⁸⁴

Professor Menon has therefore argued that the political declaration will not be detailed enough for a second referendum to be debated on a “firm basis”:

Phrased as vaguely as the time constraints imply it must be, this will not provide a firm basis for informed debate. Instead, expect another campaign replete with competing claims about competing futures.⁸⁵

Phil Syrpis, professor of EU Law at the University of Bristol, also believes that the nature of the political declaration means that the electorate would

⁸³ Anand Menon, ‘[A Second Brexit Referendum Would be a Painful, Toxic Waste of Time](#)’, *Guardian*, 25 July 2018.

⁸⁴ *ibid.*

⁸⁵ *ibid.*

not have a clear view of the UK's future relationship with the EU when a referendum would be likely to be called.⁸⁶

Dr Dion Curry, lecturer in public policy at Swansea University, believes that the argument that the electorate were not well informed in the 2016 referendum would still apply in a second referendum:

There were numerous credible objections raised against the first Brexit referendum—that people were not given full (or even partial) information about what their vote meant; that complicated issues were boiled down to a simple yes or no answer. These concerns remain for a second referendum, which is currently as problematic as the first one.⁸⁷

Professor Anand Menon has also referred to what he has described as the “practical arguments” against a second referendum, that is the need for primary legislation to be passed:

Remember, the bill for the 2016 referendum took seven months to pass. Add the time required to designate the campaigns and hold the vote itself (and even allowing for “cutting and pasting” some of the parliamentary work from 2015 to speed things up), and it is clear that it would be difficult to have a result before the UK's date of departure from the EU on 29 March 2019.⁸⁸

Researchers from UCL's Constitution Unit have assessed the mechanisms by which a second referendum could be held. Their report is discussed in section 4.1 of this briefing. Professor Meg Russell, one of the report's co-authors, has argued that a second referendum could be possible:

In the British system anything is possible given the political will. The current level of interest in a further referendum on Brexit makes it vital that serious consideration is given to all possible scenarios, including which would work best and which would be most problematic.⁸⁹

Professor Menon has also raised the concern that it is not certain that the electorate would provide a majority for any question that could be asked in a second referendum. In his view a referendum would not necessarily be an

⁸⁶ Phil Syrpis, '[The People's Vote is Not the Answer to the Brexit Riddle](#)', LSE Blog, 18 September 2018.

⁸⁷ The Conversation, '[The Case For and Against a Second Brexit Referendum: Four Experts Give Their Views](#)', 16 January 2018.

⁸⁸ Anand Menon, '[A Second Brexit Referendum Would be a Painful, Toxic Waste of Time](#)', *Guardian*, 25 July 2018.

⁸⁹ UK in a Changing Europe, '[A Brexit Referendum is Clearly Possible, But Contingency Planning Must Start Now, Says New UCL Report](#)', 9 October 2018.

answer to a lack of majority in Parliament for any particular terms of withdrawal:

[A]s far as the argument about a gridlocked parliament is concerned, the irony is that, on this at least, our representatives are indeed representative of the British people. Neither in Westminster nor among the public at large can a majority be found for any one Brexit outcome.⁹⁰

He has stated that there “would at least be a point” to a second vote if there was a “realistic expectation” that a clear majority could be found for a clear alternative.

In contrast, Vernon Bogdanor, a research professor at King’s College London, also does not believe that there is a majority for any particular form of withdrawal within Parliament, but that there is “no way of overcoming [the] fragmentation within Parliament itself”.⁹¹ He argues that this could only be resolved by a second referendum:

The truth is that the dilemma, created by the people via the referendum vote of 2016 and again in the general election of 2017, can only be resolved by the people through another referendum. Leavers oppose a further referendum which, they say, disrespects democracy. But a further referendum is the only democratic solution.⁹²

Professor Bogdanor went on to assert that a second referendum, as a “democratic solution”, had been acknowledged by Nigel Farage, former leader of the UK Independence Party (UKIP), prior to the 2016 referendum. Speaking to the *Mirror* prior to the 2016 referendum, Mr Farage, was reported as saying that a narrow defeat for the leave campaign would be “unfinished business”.⁹³ In such a situation, the *Mirror* said that Mr Farage had predicted pressure would grow for a second referendum, claiming that “in a 52-48 referendum this would be unfinished business by a long way”.⁹⁴ Professor Bogdanor has asserted that proponents of leave “cannot now deny to their opponents a right they previously claimed for themselves”.⁹⁵ Referring to Mr Farage’s comments, Dr Ben Williams, a tutor in politics and political theory at the University of Salford, has said that Mr Farage’s belief is that a further referendum would produce an “even more decisive vote for

⁹⁰ UK in a Changing Europe, ‘[A Brexit Referendum is Clearly Possible, But Contingency Planning Must Start Now, Says New UCL Report](#)’, 9 October 2018.

⁹¹ Vernon Bogdanor, ‘[Brexit Broke Parliament. Now, Only the People Can Fix It](#)’, *Guardian*, 23 July 2018.

⁹² *ibid.*

⁹³ Kevin Maguire, ‘[Nigel Farage Wants a Second Referendum if Remain Campaign Scrapes a Narrow Win](#)’, *Mirror*, 16 May 2016.

⁹⁴ *ibid.*

⁹⁵ Vernon Bogdanor, ‘[Brexit Broke Parliament. Now, Only the People Can Fix It](#)’, *Guardian*, 23 July 2018.

leave” by motivating leave voters because they would feel that politicians were ignoring the result of the 2016 referendum and obstructing the UK’s withdrawal from the EU.⁹⁶

Regarding the structure of a second referendum, Professor Bodganor has cited criticisms that a three-way question could split the vote for leave and be subject to the ‘Condorcet paradox’.⁹⁷ He therefore proposes a two-stage referendum:

The first stage would ask voters whether they still wished to leave the European Union. If they did not, no second stage would be necessary.

But if they did, the second stage—to be held perhaps a week later—would ask whether voters favoured the deal negotiated by the Government, or some alternative form proposed by the Brexiteers. The outcome would give Parliament a clear indication as to how to proceed.⁹⁸

Dr Andy Price, head of politics at Sheffield Hallam University has asserted that leaving the EU was never a binary choice “as shown by ongoing discussions around membership of the single market and the customs union”.⁹⁹ He argues that a second referendum is essential because the 2016 referendum started a “meaningful national debate” about EU membership, and only once the debate is over should the electorate be asked to decide if they support it or not.¹⁰⁰

Dr Ben Williams has argued that it is “a core element of any liberal democracy that voters have the right to change their mind or review key political decisions if circumstances appear to have changed”.¹⁰¹ Dr Philip Cunliffe, senior lecturer in international conflict at the University of Kent, disagrees with this position, arguing that it is “deeply disingenuous” to claim that “democracies are entitled to change their mind”.¹⁰² He has argued that this position could lead to further referendums. He asks whether campaigners for a second referendum “would be willing to countenance a third referendum, to verify the outcome of the second? Why not a fourth referendum, to verify the third?”¹⁰³

⁹⁶ The Conversation, [‘The Case For and Against a Second Brexit Referendum: Four Experts Give Their Views’](#), 16 January 2018.

⁹⁷ See: Jonathan Portes, [‘What Do the People Really Want? The Condorcet Paradox and the Referendum’](#), LSE Blog, 15 June 2016 and Albert Weale, [‘Not So Fast with AV in a Second Referendum’](#), UCL Constitution Unit Blog, 2 October 2018.

⁹⁸ Vernon Bogdanor, [‘Brexit Broke Parliament. Now, Only the People Can Fix It’](#), *Guardian*, 23 July 2018.

⁹⁹ The Conversation, [‘The Case For and Against a Second Brexit Referendum: Four Experts Give Their Views’](#), 16 January 2018.

¹⁰⁰ *ibid.*

¹⁰¹ *ibid.*

¹⁰² *ibid.*

¹⁰³ *ibid.*

Dr Dion Curry, has asserted that arguing against a second referendum is not an argument against democracy, stating his belief that:

It's an argument for a meaningful dialogue between the people and their politicians, rather than the box-ticking exercise that a second referendum would be.¹⁰⁴

Professor Syrpis argues that under three different scenarios—a deal endorsed by Parliament, a deal rejected by Parliament, or no agreement reached with the EU—a second referendum would not be needed to “solve the Brexit riddle”.¹⁰⁵ He asserts that the core problem of a lack of consensus would not be solved by a second referendum:

The core problem—which the people’s vote does not address—is that the rival groups (the Government, the ERG and the Labour Party, among others) have yet to set out their Brexit visions. Calls for a vote are a dangerous distraction from the urgent task of preparing alternatives to ‘no deal’.¹⁰⁶

Instead, Professor Syrpis asserts that those who wish to remain should argue that a “failure to reach a deal with the EU which attracts parliamentary support represents a failure of Brexit”.¹⁰⁷

The potential effect on political discourse in the UK has been raised as a concern by some academics. Professor Menon has expressed concern that a narrow result in a second referendum would “solve none of the underlying problems that led to the Brexit vote in the first place”, stating that the “establishment” could be seen as having “betrayed” voters:

The divide in values in British society that burst into the open following the 2016 vote would remain entrenched, reinforcing the problems already faced by our party system in attempting to contain it.¹⁰⁸

Similarly, Professor Cunliffe, has stated a belief that a second referendum could increase disagreement between those who voted leave and those of voted remain in 2016:

Instead of giving Britain the possibility of transcending the division

¹⁰⁴ The Conversation, ‘[The Case For and Against a Second Brexit Referendum: Four Experts Give Their Views](#)’, 16 January 2018.

¹⁰⁵ Phil Syrpis, ‘[The People’s Vote is Not the Answer to the Brexit Riddle](#)’, LSE Blog, 18 September 2018.

¹⁰⁶ *ibid.*

¹⁰⁷ *ibid.*

¹⁰⁸ Anand Menon, ‘[A Second Brexit Referendum Would be a Painful, Toxic Waste of Time](#)’, *Guardian*, 25 July 2018.

between leavers and remainers in the form of a democratic and representative Brexit, a second referendum would recapitulate these divisions, and it will be more bitter a second time round. It would forestall the restoration of parliamentary democracy that has been opened up by Brexit, substituting direct for representative democracy, with all the dangers of elite manipulation that come with it.¹⁰⁹

Dr Andy Price argues that a second referendum could be a way to overcome the “emotional divides” from the 2016 referendum:

[H]andled sensibly and sensitively, avoiding all of the mistakes made first time around, the next referendum could be based on analyses that are checked and double checked, on a meaningful engagement of experts and practitioners from all sectors of society, and carried out with the explicit acknowledgement that this is the final vote on this matter. Indeed, this might well be the only way to overcome in EU Ref #2 the emotional divides caused by EU Ref #1.¹¹⁰

6. Further Information

- House of Commons Library, [Referendums](#), 31 August 2016

House of Commons Library briefing examining the use of referendums in the UK, arguments for against their use and how they are conducted in the UK.

- BBC News, '[Brexit: How Would a Second EU Referendum Be Held?](#)', 16 July 2018
- Robert Shrimpsley, '[A Second Brexit Poll is a Bigger Risk Than Leaving](#)', *Financial Times* (£), 8 October 2018
- Tom Harris, '[Calls for a Second Referendum Are Not About Democracy: They Are Cynical and Manipulative](#)', *Telegraph*(£), 10 September 2018
- *Independent*, '[The Referendum Gave Sovereignty to the British People, So Now They Deserve a Final Say on the Brexit Deal](#)', 24 July 2018

¹⁰⁹ The Conversation, '[The Case For and Against a Second Brexit Referendum: Four Experts Give Their Views](#)', 16 January 2018.

¹¹⁰ *ibid.*