



DEBATE PACK

Number CDP-0267, 29 November 2018

E-petition 226071: Stop possible second referendum on EU membership

A debate will be held in Westminster Hall on Monday 3 December at 4.30pm on [e-petition 226071](#) relating to leaving the European Union. Paul Scully MP will lead the debate.

The petition says a second referendum on Brexit should be stopped:

There is a growing band of people that want to reverse the result of the democratic vote of this country to leave the European Union and are calling for a second referendum. This is mainly by the people that lost the vote two years ago and cannot accept the democratic vote of the majority decision.

Although not legally binding the referendum on whether we stay or leave the EU carried out on the 23rd June 2016 was the clearest indication of the will of the electorate. At that time our Prime Minister David Cameron assured us that the result of the referendum would be carried out. We must ensure the democracy rules

Currently the Government has no plans to hold a second referendum on Brexit. Some commentators have argued that the people should be given a final say on the outcome of the Brexit negotiations between the UK and the EU, particularly if Parliament rejects the draft withdrawal agreement.

If a second Brexit referendum were to be held Parliament would be required to pass an Act to enable for it to take place. This could either be an Act that deals solely with a referendum or could be another Act that includes provisions for a referendum alongside other provisions related to Brexit.

The House of Commons Library prepares a briefing in hard copy and/or online for most non-legislative debates in the Chamber and Westminster Hall other than half-hour debates. Debate Packs are produced quickly after the announcement of parliamentary business. They are intended to provide a summary or overview of the issue being debated and identify relevant briefings and useful documents, including press and parliamentary material. More detailed briefing can be prepared for Members on request to the Library.

By Neil Johnston

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1. Background

The UK voted to leave the EU in a referendum on 23 June 2016. The question put was “should the United Kingdom remain a member of the European Union or leave the European Union?” ‘Leave’ won by 51.9% to 48.1% on a turnout of 72.2%.

The *European Referendum Act 2015*, the Act of Parliament passed to allow the referendum to take place, did not include provisions to implement the result of the referendum; legally, the Government was not bound to follow the outcome.

However, the Government made it clear that the result of the referendum would be respected:

The result of the referendum on the UK’s membership of the European Union will be final. The Government would have a democratic duty to give effect to the electorate’s decision. The Prime Minister made clear to the House of Commons that “if the British people vote to leave, there is only one way to bring that about, namely to trigger Article 50 of the Treaties and begin the process of exit, and the British people would rightly expect that to start straight away.”¹

The UK notified the EU of its intention to withdraw from the EU on 29 March 2017 by triggering Article 50 of the Treaty on European Union (TEU). This provides for an EU Member State to leave the EU with or without a withdrawal agreement or ‘deal’.

The EU and UK hoped to reach agreement by October 2018 on the UK’s terms of withdrawal and on the framework for future relations, but this deadline slipped. A way of avoiding a hard border between Ireland and Northern Ireland has been the most difficult issue for the negotiators.

The draft withdrawal agreement between the UK Government and the EU was agreed on 14 November 2018. The following day the text was agreed by the Cabinet.

The UK Parliament has a special role in approving the draft withdrawal agreement. Parliament already has a role in the ratification of treaties, but the arrangements for this international agreement are unique and give it a more proactive role than would normally be the case. This is the so-called ‘meaningful vote’. The Library briefing, [The ‘meaningful vote’: A user’s guide](#), gives an overview of this Parliamentary process and addresses some frequently asked questions relating to it.

If there is no withdrawal agreement, and no UK request or no EU agreement to extend the negotiations, or if there is a withdrawal

agreement but either the UK Parliament or the European Parliament or the other 27 EU Member States do not endorse it, the EU Treaties will no longer apply to the UK from 29 March 2019. The Library briefing, [What if there's no Brexit deal?](#), analyses how a situation might come about and what the impact could be.

2. Why are there calls for a second referendum?

The Prime Minister has repeatedly stated that there will be no second referendum. In its response to the e-petition the Government makes it clear that it will respect the result of the first Brexit referendum.

A clear majority of the electorate voted to leave the European Union. We must respect both the will of the British people, and the democratic process which delivered this result.

The Government is clear that we will respect the result of the 2016 referendum, and that we will not hold a second referendum.²

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.³

Some 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 People’s Vote Campaign (People’s Vote) is an umbrella campaign group for a range of organisations which are campaigning for a second referendum, which it describes as a ‘people’s vote’, on the terms of the UK’s withdrawal from the EU.⁴

People’s Vote argues that it does not want to re-run the 2016 referendum but that its call for a second referendum is a result of the developments since the UK voted to withdraw from the EU. It argues that whether or not Parliament agrees the draft withdrawal agreement the final decision should be put to the people in a referendum:

The 2016 referendum determined that Britain should negotiate the country’s departure from the EU and the People’s Vote campaign respects that decision. However, the terms on which we leave, and Britain’s future relationship with the EU, were never

² [Government response to e-petition 226071](#)

³ Theresa May, ‘There Will Be No Second Referendum on Brexit—It Would Be a Gross Betrayal of Our Democracy’, *Telegraph* (Subscription required), 1 September 2018.

⁴ 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 21 November 2018).

formulated or put to the public in the referendum and much more information and hard fact about this exists now than was available then. 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.⁵

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.⁶

Other commentators argue that any second referendum could be conducted with voters being as unclear on what they are voting on as the first referendum. Writing before the withdrawal agreement and the political declaration on the future EU-UK relationship were published, 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:

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.⁷

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.⁸

3. How could a second referendum be held?

The general regulatory framework for national or regional referendums is set out in the *Political Parties, Elections and Referendums Act 2000* (PPERA), as amended. This regulates general aspects such as financial regulation of the campaign, designation of lead campaigns and the statutory responsibilities of the Electoral Commission.

⁵ People's Vote, [We need a vote](#), accessed 21 November 2011

⁶ People's Vote, [The Roadmap to a People's Vote](#), September 2018, p 4

⁷ Anand Menon, '[A Second Brexit Referendum Would be a Painful, Toxic Waste of Time](#)', *Guardian*, 25 July 2018.

⁸ *Ibid*

However, a national referendum still requires separate legislation to allow for the specific poll to be held.

A Bill must be passed by Parliament and would need to include important provisions such as the franchise to be used, the question to be asked in the referendum and the date of the poll.

Detailed legislation to allow for the conduct of the poll is also required. For the 2016 referendum the conduct rules were set out in a detailed statutory instrument made under powers granted in the enabling Act. This Order was made four months before the referendum.⁹ For the 2011 referendum on the voting system to be used for UK Parliamentary elections, the detailed rules were contained in a schedule to the main Act, passed three months before the poll.¹⁰

4. How quickly could a Bill be passed?

The Standing Orders of the House of Commons do not prescribe the timings of parliamentary stages of a bill and the length of time for a bill to pass through both Houses of Parliament and gain Royal Assent varies considerably.

How quickly a Government Bill proceeds through Parliament will partly depend on the length and complexity of the Bill, how many amendments are tabled, whether the Bill has broad cross-party support or whether it is controversial.

The timings could also be affected if the Bill seeks to change the regulatory framework for referendums. There have been several reports and recommendations on improving the regulation of referendums recently. These include the report of the Independent Commission on Referendums,¹¹ and reports from the Information Commissioner on personal data and campaigning.¹² Trying to incorporate regulatory modifications in the Bill could make the Bill more complex and add to the time taken to scrutinise the Bill.

Bills can be programmed in the House of Commons, the Government can control the timetable of proceedings on Bills, but this requires a programme motion to be passed by the House.

There are no equivalent programming provisions in the House of Lords and a controversial Bill could take considerably longer in the Lords. For example, the *Parliamentary Voting System and Constituencies Act 2011* had seventeen sessions in committee, three sessions on report in the Lords and four sessions of ping pong between the Houses before being passed.

⁹ [European Union Referendum \(Conduct\) Regulations 2016](#)

¹⁰ [Parliamentary Voting System and Constituencies Act 2011](#)

¹¹ [Report of the Independent Commission on Referendums](#), July 2018

¹² ICO, [Democracy disrupted? Personal information and political influence](#), July 2018 and [Investigation into the use of data analytics in political campaigns](#), November 2018

The UCL Constitution Unit issued a report in October 2018 which assessed the possible timescale between a decision to hold a second referendum on Brexit and polling day.¹³ The report concluded that if the political will existed within Parliament then a Bill could be passed in about 11 weeks. The report also noted that there could be dangers for a Bill being rushed through Parliament:

If the referendum result is to be seen as legitimate, and to command widespread public acceptance, it could be damaging for an impression to be created that the bill had been rushed through too quickly.¹⁴

5. What question would be asked?

The Electoral Commission has a statutory duty, under provisions in PPERA, to assess any question to be put in a referendum.

The Commission assess the intelligibility of the question and publishes its views. The final decision on the question to be included on any referendum ballot paper remains with Parliament.

The way the Commission assesses a question is not set out in legislation and it can consider the wording 'in such a manner as they may determine'.¹⁵

The Commission tests intelligibility by using focus groups and similar techniques to ensure the electorate understands the question. Its guidance states:

A referendum question should present the options clearly, simply and neutrally. So, it should:

- be easy to understand
- be to the point
- be unambiguous
- avoid encouraging voters to consider one response more favourably than another
- avoid misleading voters.¹⁶

There have been suggestions that a second Brexit referendum question might be a multi-option or two stage question rather than a binary 'yes'/'no' question. The UCL report highlights that there is currently little consensus about what a second Brexit referendum question might be. The report also points out that question testing usually takes about 12 weeks and that truncating the assessment of whatever question might be included in a Bill runs similar risks to rushing through referendum legislation:

¹³ UCL Constitution Unit, [The Mechanics of a Further Referendum on Brexit](#), October 2018

¹⁴ Ibid, p12

¹⁵ Section 104 of the *Political Parties, Elections and Referendums Act 20*, as amended

¹⁶ Electoral Commission, [Referendum question assessment guidelines](#), November 2009

In the current polarised political environment over Brexit it is of utmost importance that the result of any referendum should be perceived as legitimate. Integral to this is public confidence in the neutrality and intelligibility of the question. Curtailing or abandoning the normal process could jeopardise this, and risk accusations that the question was misleading or biased. Furthermore...there is a possibility that the referendum question could take a form not previously used in the UK – with the likeliest innovation being a three-option question. This would necessitate particularly careful testing. Therefore, it is likely that something similar to the usual process, albeit perhaps on a somewhat condensed timetable, will be necessary.¹⁷

The final decision on the contents of a Bill, including the question to be asked in the referendum, remains with Parliament.

¹⁷ UCL Constitution Unit, [*The Mechanics of a Further Referendum on Brexit*](#), October 2018, p12-3

6. Parliamentary material

6.1 Debates

[Brexit: Case for a Second Referendum](#)

Lords Question for Short Debate

HL Deb 07 Jul 2016 cc2155-2172

Baroness King of Bow: To ask Her Majesty's Government whether they have made an assessment of the case for holding a second referendum on the United Kingdom's membership of the European Union.

6.2 Oral questions

Second EU Referendum

HC Deb 25 Oct 2018 cc427-8

John Lamont (Berwickshire, Roxburgh and Selkirk) (Con): What the Government's policy is on holding a second referendum on the UK leaving the EU. [907272]

The Parliamentary Under-Secretary of State for Exiting the European Union (Suella Braverman): After sustained public debate, a clear majority of the electorate voted to leave the EU in June 2016, with the highest number of votes cast for anything in UK electoral history. We must respect both the will of the British people and the democratic process that delivered that result. As such, it is a matter of Government policy that there will not be a second referendum on our exit from the EU.

John Lamont: I am grateful to the Minister for that response. As someone who voted remain in that referendum, I was naturally disappointed by the result. But I am also a democrat, and it is important that we all respect the results of all elections, regardless of whether we win or lose them. Putting aside the questions on the so-called "people's vote" and what it would actually achieve and deliver, does she not agree that it would undermine fundamental principles of democracy in this country?

Suella Braverman: My hon. Friend makes his point skilfully. People trusted that their voices would be heard, and to ask the question all over again would be a betrayal of our democracy and of that trust. Whether on Brexit or on Scottish independence, politicians north and south of the border should think twice before they choose to let people down in this way.

Mr Barry Sheerman (Huddersfield) (Lab/Co-op): When are this Government going to wake up to the madness of where we are? There is no deal I can see coming from Europe that will look after my constituents better than remaining in the EU. Whether it is through reasserting parliamentary sovereignty or having a second referendum — yes, I was out on the march in Parliament Square on Saturday—can we

please have a Government who wake up to their responsibilities and look after the future of this nation?

Suella Braverman: Looking after the future of this nation means respecting the democratic voice of this nation. Yes, 700,000 people marched on Saturday, but 17.4 million people voted to leave, and we do not simply ignore their voices just because we do not like what they said. I ask the hon. Gentleman, who obviously supports a second referendum and, worse still, one that would have remain as an option, to take a long, hard look in the mirror and ask himself whether he can truly call himself a democrat.

Mr Speaker: I should say to the hon. Member for Huddersfield (Mr Sheerman) that I was speaking at a theatre in Colchester last night and I referenced him in the course of my remarks. Knowing that he is not altogether averse to a focus upon himself from time to time, I think he would have enjoyed my observations.

Graham Stringer (Blackley and Broughton) (Lab): Does the Minister agree that, if the 2016 referendum is not honoured, a second referendum would have no credibility whatsoever?

Suella Braverman: The hon. Gentleman is absolutely right. This is not the best of three. It is not about, "You keep trying until you get the result you want." This was a historic vote, when millions of people put their faith in democracy. To do anything other than revere that vote would undermine democracy and cause a collapse in that faith.

Topical Questions

HC Deb 19 Jul 2018 c583

Chris Green (Bolton West) (Con): My electors expect the decision of a general election to be delivered, just as they expect the decision of a referendum to be delivered. Does my right hon. Friend agree that to have a second referendum would undermine the democratic process and that anyone calling in this place for a second referendum should perhaps step down, have a by-election and ask for a second opinion on themselves? [906565]

Dominic Raab: My hon. Friend makes his point in his usual powerful and eloquent way. Of course, when the referendum legislation was passed it was agreed by all parties that we would respect the verdict of the referendum. That was how we entered into the legislation, that was how the legislation was passed by the House and that was how we campaigned. It would be a shifting of the democratic goalposts and a breach of democratic trust to suggest otherwise.

6.3 Written questions

13 Sep 2018 | Written questions | 172459

Watson, Tom: To ask the Secretary of State for Exiting the European Union, whether his Department has sought legal advice on (a) holding a second referendum on EU membership and (b) reversing Article 50.

Chris Heaton-Harris | Department: Department for Exiting the European Union: The Government are maintaining the general practice of successive Governments not to comment on legal advice that may or may not have been sought or received.

As a matter of firm policy we will not revoke Article 50 or hold a second referendum. A clear majority of the electorate voted to leave the EU and we must respect both the will of the British people, and the democratic process which delivered this result.

The British people gave a clear instruction to leave, and we are delivering on that instruction.

19 Jun 2018 | Written questions | 53439

Watling, Giles: To ask the Secretary of State for Exiting the European Union, if he will make an assessment of the potential effect on the level of division in society of a second referendum on the UK leaving the EU.

Mr Robin Walker | Department: Department for Exiting the European Union: There will not be a second referendum and we are leaving the EU. The people of the UK have delivered a firm mandate and the Government is committed to delivering on it.

Our focus now is on getting the best deal for every person in the UK by bringing all sides together and reaching agreement on a deep and special partnership with the EU.

10 Aug 2016 | Written questions | HL1320

Lord Inglewood: To ask Her Majesty's Government what assessment they have made of whether holding a second referendum is an essential constitutional precondition to invoking Article 50 of the Lisbon Treaty.

Lord Bridges of Headley | Department: Department for Exiting the European Union: Article 50 explicitly recognises that a Member State may decide to withdraw "in accordance with its own constitutional requirements". It is for the Member State concerned to determine what those constitutional requirements are. The Government does not consider that a second referendum is necessary, or required to invoke Article 50.

7. Press Articles

Please note: The Library is not responsible for either the views or accuracy of external content.

[Theresa May: My focus is on getting Brexit deal passed](#)

BBC News

29 November 2018

Appearing before the Liaison Committee, the PM claimed delaying Brexit for another referendum would lead to the re-opening of negotiations with the EU, something she said Brussels had ruled out. But the main reason she was against another referendum, she told MPs, was that it would destroy trust in politics and lead to "more uncertainty and more division in this country".

[Mrs May's Brexit deal deserves conditional support; If parliament cannot ratify it, a second referendum may be needed](#)

Financial Times, Editorial (sub)

29 November 2018

MPs should be ready to stop the clock on Article 50, and potentially seek a Norway-style relationship. If this proved unpalatable and all alternatives were exhausted, parliament would then be entitled to call for a second referendum.

[Arlene Foster says DUP would not back second Brexit referendum](#)

The Guardian

29 November 2018

The Democratic Unionist leader, Arlene Foster, has said she and her 10 MPs will not vote for a second EU referendum but did not rule out backing a "Norway-plus option" that is gaining support in the Commons.

[Labour's John McDonnell says second Brexit vote is inevitable](#)

Jim Pickard, Financial Times (sub)

29 November 2018

Mr McDonnell admitted that the result of a second referendum remained "very difficult to call", but he said: "At some stage if Parliament can't decide, the government can't deliver; you'll have to go back to the people at some stage. I prefer a general election. If we can't achieve that, that's why we've kept a public vote on the table."

[Voting down the Brexit deal could lead to a new coalition government of Remainers](#)

Philip Goldenberg, The Independent

29 November 2018

No single other party could form a viable administration, but there is a hidden party which could. It consists of the vast majority of MPs who would seek to avoid, at all costs, the economic disaster of a hard Brexit and would support a second referendum now that the facts are known

[Brexit breeds boredom, bafflement and frustration in Scotland: Support for second referendum is strong but fishing and independence questions complicate political calculus](#)

Libby Brooks, The Guardian

28 November 2018

Support for second referendum is strong but fishing and independence questions complicate political calculus

[A Second Brexit Poll is a Bigger Risk Than Leaving](#)

Robert Shrimmsley, Financial Times (sub)

8 October 2018

The Brexit Files: Can Brexit be stopped? There are significant logistical obstacles. What would the question be? Are there two or three options with a transferable vote? How long would it take? But, these are mere details compared with - and I write this as a Remain voter - more important political objections.

[Calls for a Second Referendum Are Not About Democracy: They Are Cynical and Manipulative](#)

Tom Harris, Telegraph (sub)

10 September 2018

The notion that those calling for A People's Vote on the final Brexit deal would examine the details in an objective way is beyond risible.

[The Referendum Gave Sovereignty to the British People, So Now They Deserve a Final Say on the Brexit Deal](#)

Independent, Editorial

24 July 2018

Morally, emotionally even, another referendum is needed to help bind up the wounds of the past two years

8. Further reading

Parliament website

[Brexit: research and analysis](#)

Research and analysis from Parliament's libraries and committees on issues related to leaving the European Union

Commons Library briefing paper

[Brexit Glossary](#)

22 November 2018

a list of commonly-used terms and acronyms that have needed clarification since the United Kingdom voted in the June 2016 EU referendum.

Lords Library briefing paper

[Case for a Referendum on the Outcome of EU Withdrawal Negotiations](#)

19 October 2018

Briefing prepared in advance of the debate 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".

UCL Constitution Unit

[The Mechanics of a Further Referendum on Brexit](#)

October 2018

The Constitution Unit has no position on Brexit or on whether such a referendum should be held, the Unit's report is intended to inform discussion. The report finds that a referendum would be possible if parliament wanted it, though it would raise a number of challenges. There are several points in the Brexit process at which such a vote could be triggered. The report analyses the possible timing, the referendum question, and the regulation of the ballot.

People's Vote Campaign

[The Roadmap to a People's Vote,](#)

September 2018

This paper draws on the expertise and experience of constitutional and legal experts, as well as politicians in the UK and in Europe.

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