



BRIEFING PAPER

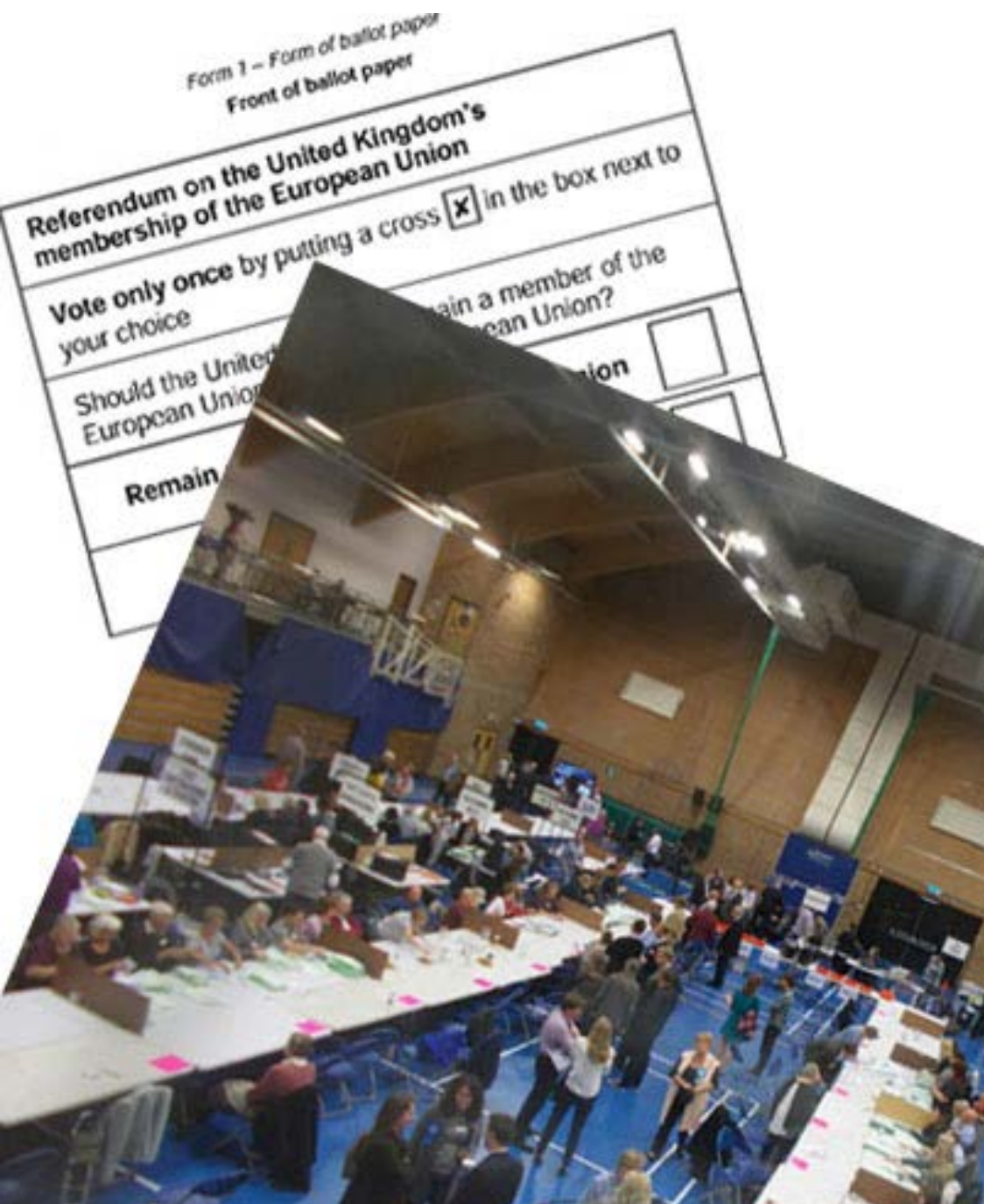
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Brexit: what happens next?

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05 May 2016.

Summary

On 23 June 2016 the UK voted in favour of leaving the European Union. Turnout was 72.2% and Leave won 51.9% of the vote across the UK. Remain won 48.1% of the vote.

The process for withdrawing from the EU is set out in Commons Briefing Paper 7551, [Brexit: how does the Article 50 process work?](#) That paper describes the procedures under Article 50 of the Treaty on European Union (TEU).

This paper considers various questions about UK withdrawal from the EU and what is likely to happen in the coming weeks and months. The issues include the method of leaving the EU, who will be negotiating and how, continuing parliamentary scrutiny of EU business and the withdrawal negotiations, and the implications of Brexit for Scotland and Gibraltar.

It supplements other Library notes published or up-dated recently which consider the outcome of the EU referendum:

- [Financial services after the referendum](#)
- [Brexit: how did the UK vote?](#)
- [Reading list on UK-EU relations 2013-16: reform, renegotiation, withdrawal](#)
- [Leaving the EU: How might people currently exercising free movement rights be affected?](#)
- [Tax after the EU referendum](#)
- [Brexit: how will it affect transport?](#)
- [Outcome of the EU Referendum](#)
- [Leaving the EU: Parliament's Role in the Process](#)
- [European Union Referendum 2016](#)

1. What will the Government do now?

1.1 Must the Government respect the vote to leave?

No, but politically it is highly unlikely that the Government would ignore the result.

David Allen Green, writing in the [Financial Times on 14 June](#), speculated about possible reasons for the Government not respecting a vote to leave:

What happens next in the event of a vote to leave is therefore a matter of politics not law. It will come down to what is politically expedient and practicable. The UK government could seek to ignore such a vote; to explain it away and characterise it in terms that it has no credibility or binding effect (low turnout may be such an excuse). Or they could say it is now a matter for parliament, and then endeavour to win the parliamentary vote. Or ministers could try to re-negotiate another deal and put that to another referendum. There is, after all, a tradition of EU member states repeating referendums on EU-related matters until voters eventually vote the “right” way.

However, other commentators thought that not respecting an out-vote would be political suicide.

A [parliamentary petition](#) calling for a second referendum was first set up on 25 November 2015. It stated:

We the undersigned call upon HM Government to implement a rule that if the remain or leave vote is less than 60% based on a turnout less than 75% there should be another referendum.

After the referendum, signatures increased dramatically. At the time of writing, there were 4,028,918 signatures.

1.2 What is the procedure for the resignation of the Prime Minister?

David Cameron has announced that he will resign as Prime Minister will not lead the UK in the withdrawal negotiations envisaged under the EU Treaties. His resignation will take place once a new Conservative Party leader has been elected. He thought that a new Prime Minister could be in place by the beginning of October. (Prime Minister’s Office, [EU referendum outcome: PM statement](#), 24 June 2016)

On 10 May 2007, Tony Blair announced his decision to stand down from the leadership of the Labour Party, triggering a leadership contest. He also announced that he would resign as Prime Minister on 27 June 2007.

The Cabinet Manual states that:

Where a Prime Minister chooses to resign from his or her individual position at a time when his or her administration has

an overall majority in the House of Commons, it is for the party or parties in government to identify who can be chosen as the successor. ([*The Cabinet Manual*](#), First Edition, October 2011, para 2.18)

This paragraph points to the following footnote:

Margaret Thatcher's resignation statement on 22 November 1990 said that she had informed Her Majesty the Queen that she did not intend to contest the second ballot of the election for leadership of the Conservative Party and gave notice of her intention to resign as Prime Minister as soon as a new leader had been elected. She formally tendered her resignation on 28 November 1990. On 10 May 2007 Tony Blair announced his intention to resign once a new leader of the Labour Party had been elected. He formally tendered his resignation on 27 June 2007. Following the 2010 general election, which took place on 6 May, Gordon Brown resigned on 11 May, by when it was clear that David Cameron should be asked to form a government.

2. What will happen in the EU and the UK in the coming months?

The UK [‘deal’](#) agreed in February 2016 on the UK in the EU will not come into force.

Although the UK has voted to leave the EU, from 24 June until the point of departure from the EU the UK is still a member of the EU. Nothing about the UK’s EU membership will change initially. Politically, however, there will be a great deal of activity in the EU institutions, in other EU Member States and in the UK.

2.1 EU action

On the one hand, the EU will continue with ‘business as usual’. The institutions will continue to discuss and adopt laws and the EU Court will continue to give preliminary rulings and decide on alleged breaches of EU law, including in cases involving the UK.

Emergency meetings

Brexit will undoubtedly be on the agenda of meetings to come and the EU institutions have held emergency meetings to consider the implications of Brexit. The Conference of Presidents (the EP President and the chairmen of the political groups in the EP) met early on 24 June. European Council President Donald Tusk, EP President Martin Schulz, Commission President Jean-Claude Juncker and Mark Rutte (holder of the EU Council’s rotating Presidency) also met on 24 June. A statement issued after the meeting said that:

We now expect the United Kingdom government to give effect to this decision of the British people as soon as possible, however painful that process may be. Any delay would unnecessarily prolong uncertainty. We have rules to deal with this in an orderly way. Article 50 of the Treaty on European Union sets out the procedure to be followed if a Member State decides to leave the European Union. We stand ready to launch negotiations swiftly with the United Kingdom regarding the terms and conditions of its withdrawal from the European Union. Until this process of negotiations is over, the United Kingdom remains a member of the European Union, with all the rights and obligations that derive from this. According to the Treaties which the United Kingdom has ratified, EU law continues to apply to the full to and in the United Kingdom until it is no longer a Member.¹

Martin Schulz said:

“Now is the time for us to behave seriously and responsibly. David Cameron has his responsibilities for his country, we have our responsibilities for the future of the EU. You can see what is happening to sterling on the markets. I don't want the same thing to happen to the euro”.²

¹ Full statement is at <http://www.consilium.europa.eu/en/press/press-releases/2016/06/24-joint-statement-uk-referendum/>

² [EUObserver, 24 June 2016.](#)

On 25 June the foreign ministers of the founding six Member States – Germany, France, Italy, Luxembourg, Belgium, and the Netherlands – met in Berlin.

European Commission

The UK's European Commissioner, Lord Jonathan Hill, [announced](#) on 25 June that he would stand down in an “orderly handover”. His resignation will take effect from effect on 15 July and Jean-Claude Juncker has given his financial services portfolio to the Latvian Commission Vice-President, Valdis Dombrovskis.

Under the EU Treaties, there is one Commissioner per Member State in the Commission, so Mr Juncker has suggested a temporary UK replacement should be appointed.³ David Cameron [said](#) on 27 June:

We should try to seek a replacement, because the fact is that we are a full, contributing and paying member of this organisation until we leave, and we should therefore have a commissioner, although I am sure that will be a challenge.

European Parliament

The European Parliament held an extraordinary plenary session on 28 June. The plenary debated a [resolution](#) assessing the outcome of the UK referendum and describing what the EU institutions, especially the EP, would do next.⁴ Mr Schulz said that under Article 50 the EP would be “fully involved” in the next steps and underlined that the EP would play an “active role” in the process. The resolution called on the UK Government to enable a “swift and coherent implementation of the withdrawal procedure” by activating Article 50 TEU. According to the resolution, David Cameron’s notification of the outcome of the referendum to the European Council of 28-29 June 2016 would “launch the withdrawal procedure”. However, this was not the case; notification is likely to be formal and in writing.⁵

Some EP groups have also asked David Cameron to invoke Article 50 TEU sooner rather than later, although there is no Treaty obligation on the PM to do so.⁶

The EP asked the Council to change the order of its presidencies so the UK would not take on the EU presidency in the middle of withdrawal negotiations, and also invited the Council to appoint the Commission as the negotiator under Article 50 TEU.

European Council

The European Council met on 28 June and discussed the outcome of the UK referendum. Donald Tusk said ahead of the meeting that “while respecting the will of the UK voters, we also have to respect our treaties; and, according to them, it is the British government who initiates the process of exit from the EU. And this is the only legal way

³ See [Commission press release, 25 June 2016](#).

⁴ Summary of debate at <http://www.europarl.europa.eu/news/en/news-room/20160628IPR34006/MEPs-call-for-swift-Brexit-to-end-uncertainty-and-for-deep-EU-reform>. The text was approved by 395 to 200, with 71 abstentions.

⁵ See section 2.2 of CBP 7551, Brexit: how does the Article 50 process work?

⁶ See also [EUObserver, 20 June 2016](#).

we have". Mr Tusk emphasised that negotiations would not start without notification, dispelling any notion that informal withdrawal talks might precede the formal negotiations.⁷

David Cameron explained the situation in the UK following the referendum, and this was followed by a first exchange of views. He also confirmed and received agreement from the other Member States that his successor would "trigger without delay" Article 50 TEU.⁸ Jean-Claude Juncker is reported to have said that the next UK Prime Minister has "a day to trigger Article 50".⁹

On 29 June, the 27 other heads of state or government met informally to discuss the political and practical implications of Brexit. They also started a debate on the future of the Union of 27 Member States: "a political reflection to give an impulse to further reforms, in line with our Strategic Agenda, and to the development of the EU with 27 Member States".¹⁰ Their statement also made clear that the UK would not have privileged access to the single market:

Any agreement, which will be concluded with the UK as a third country, will have to be based on a balance of rights and obligations. Access to the Single Market requires acceptance of all four freedoms.

Brexit taskforce

The European Council has appointed a Belgian diplomat, Didier Seeuws,¹¹ to lead a "Brexit taskforce" which will negotiate the terms and conditions of withdrawal with UK Government officials.

The Seeuws appointment is reported to have caused tension between the Council and Commission over who should lead the withdrawal negotiations. [Politico quoted](#) a leaked Commission Legal Service opinion which was that Article 50 "treats the withdrawing Member State as if it were already a third State", making the Commission the appropriate negotiator.¹² But the Council's legal position was (according to the Commission opinion) that the UK would still be an EU Member State, not a "third state" under Article 218(3) and that the Council would therefore be more appropriate. The Commission thought the Council's argument was "presentable" but "ultimately unconvincing in law".

2.2 UK action

The UK will continue to apply EU law and to participate in the making of EU law in Brussels. There is no need to give immediate notice of withdrawal under Article 50 TEU, although the Prime Minister had earlier implied that he would do so quickly in the event of a Brexit vote.

As David Cameron has said he will not lead the exit negotiations, there will now be a period of three or four months before a new prime

⁷ See [Statement](#), informal meeting of 27, 29 June 2016.

⁸ [EurActiv, 29 June 2016](#).

⁹ Ibid.

¹⁰ [Statement](#), informal meeting of 27, 29 June 2016.

¹¹ Chief of staff to former European Council president Herman Van Rompuy.

¹² [Politico, 28 June 2016](#).

minister will notify the European Council of its intention to withdraw. During this time the UK and the EU will be able to “take stock and work out who, and by reference to what strategy, the negotiations will be conducted”.¹³

New Cabinet Office unit

The Prime Minister has set up a cross-departmental EU unit. It will be headed by Oliver Letwin, who will “listen to all views and representations and make sure they are fully put into this exercise”.

The Home Office second permanent secretary Olly Robbins is the top civil servant. He will “examine all the options and possibilities in a neutral way and set out costs and benefits to enable the right decisions to be made”.¹⁴

Does the UK Parliament have a role in triggering Article 50 TEU?

Article 50 TEU states that a Member State may ‘decide’ to withdraw from the EU ‘in accordance with its own constitutional requirements’. But what are the UK’s constitutional requirements, and do they give Parliament a role?

Importantly, the EU referendum result was not in itself a ‘decision’ to withdraw from the EU, as it had no binding effect.

But whether it is the Government or Parliament that can make the decision is the subject of increasing debate. Four main options have been argued so far, ranging from using the Government’s prerogative power to requiring an Act of Parliament:

- Government’s ‘prerogative’ power: the conventional position is that the Government alone would be able to trigger under its inherent ‘prerogative power’ to conduct foreign affairs, which include the power to withdraw from a treaty or international organisation.
- Parliamentary involvement: even if there is no requirement in the UK’s constitutional arrangements for parliamentary approval of a decision to notify the EU of its intention to withdraw, there may be a political case for involving at least the House of Commons.
- Order in Council: a new argument is that the only way for Article 50 to be triggered is by the Government making secondary legislation – an Order in Council – under [section 2\(2\) of the European Communities Act \(ECA\) 1972](#), because that is how to exercise the UK’s right to withdraw.
- Act of Parliament: since the referendum result, many commentators have argued that an Act of Parliament is required before notifying the EU, for instance because the prerogative may only be used where it does not conflict with an Act of Parliament (in this case the ECA 1972).

¹³ Public Law for Everyone, [Brexit: Legally and constitutionally, what now?](#) Mark Elliott, 24 June 2016.

¹⁴ [Global Government Forum, 29 June 2016](#).

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There is more detail on these arguments in section 2.3 of another Commons Library Briefing Paper, [Brexit: how does the Article 50 process work?](#), CBP 7551.

Continuing parliamentary scrutiny of the EU

The European Scrutiny Committee's remit under [Standing Order No. 143](#) is to examine EU documents, to report on them and to consider any issue arising from such documents or related matters. The Committee will consider any EU documents resulting from the vote to leave and it will doubtless consider what else it might do in the light of circumstances at the time.

The Committee might move to light-touch scrutiny of EU documents, combined with one or more of the following:

- Oversight/scrutiny of Brexit negotiations
- Review of existing *acquis* with a view to identifying the rules/measures the UK might want to keep and those which will cease to apply
- Consideration of different Brexit models
- Further work on Article 50 TEU process or alternatives

Scrutiny of the withdrawal procedure

Ruth Fox of the Hansard Society writes:

The scrutiny work that lies ahead will be detailed, complex and technical. MPs already struggle to effectively scrutinise financial and delegated legislation and this will add to the burden. Serious consideration therefore needs to be given to a bi-cameral solution to the scrutiny process given that Peers tend to have greater appetite for and experience of such scrutiny. It would be in both Houses' interest not to duplicate work.[...]

A stand-alone select committee or a joint committee of both Houses may be required to monitor the negotiations and decision-making, although existing departmental select committees will want to oversee their own particular departmental policy area. As a consequence we will likely see greater efforts at joint working across committees. Consideration will need to be given to how to knit together the new scrutiny work with that of existing committees that are tasked with scrutinising EU legislation, specifically the European Scrutiny Committee in the Commons and the EU Committee in the Lords.

The Liaison Committee of select committee chairs currently questions the Prime Minister three times a year – they may want an increase in these sessions.

Parliament may require additional staff and support and there will, from time to time, be a need to bring in specialist expertise, which will bring its own costs. When the bicameral Banking Commission inquiry, modelled similarly to a select committee was set up a couple of years ago it consumed resources. The requirement for scrutinising our departure from the EU will be on a much greater, and longer-term scale and the resource need will therefore be

higher. Effective scrutiny will not be cheap but should not be stunted upon.¹⁵

2.3 What if Parliament does not pass legislation to implement EU withdrawal?

Parliament could vote against the adoption of any legislation linked to withdrawal - an amendment to or repeal of the European Communities Act 1972, for example - but this would not prevent the UK's exit from the EU if the UK Government had already notified the EU under Article 50 TEU. Article 50 stipulates withdrawal two years from formal notification, with or without a withdrawal agreement.¹⁶

¹⁵ [It's Brexit... So What Now for Parliament?](#) 24 June 2016.

¹⁶ Extendable only by unanimous agreement of all Member States.

3. Will EU law still have effect in the UK?

Yes, until the UK actually leaves the EU. The Government will have to repeal the European Communities Act 1972 (ECA) and decide what to do about secondary legislation implementing EU law, and directly applicable EU Regulations.

There might be some over-arching legislation saying, for example, that all UK laws implementing any EU Directive were repealed (perhaps with specified exceptions); or that they would all remain in force (again perhaps with exceptions). If the ECA were repealed, any secondary legislation based on s2(2) ECA would need to be saved from lapsing if it was to continue in force. EU Regulations, which are directly applicable (i.e. they do not need further implementation in the UK to come into force) will cease to have effect if the UK were to repeal the ECA.

There is no reason why EU-based UK law could not remain part of UK law, but the Government would have to make sure it still worked without the UK being in the EU.

The Government would probably come up with a mechanism for allowing changes to be made to secondary legislation (Statutory Instruments) made under the ECA or other 'parent' acts. There could also be general amendments, such as replacing references to 'the Commission' or 'Council' with references to 'the Secretary of State'.

The devolved legislatures would have to deal with EU legislation they have transposed into Scottish, Welsh or Northern Irish laws. It would also be necessary to amend the relevant parts of the devolution legislation, which might require a Legislative Consent Motion under the Sewel Convention.

There is more information on this in Commons Briefing Paper 7751, [Brexit: how does the Article 50 process work?](#)

4. Will immigration be affected?

4.1 What will happen to the free movement and working rights of EU/EEA citizens?

For the time being, these rights remain unchanged. The Prime Minister addressed this issue during [his statement outside Downing Street on 24th June](#):

I would also reassure Brits living in European countries, and European citizens living here, that there will be no immediate changes in your circumstances. There will be no initial change in the way our people can travel, in the way our goods can move or the way our services can be sold.

What happens in practice in the longer term will depend on the approach taken by the Government and the 27 other Member States during the UK's withdrawal negotiations. The Government did not set out what approach it would take on this issue during the referendum campaign. Its February 2016 [White Paper on *The Process for withdrawing from the European Union*](#) merely stated:

There would be no requirement under EU law for these rights to be maintained if the UK left the EU. Should an agreement be reached to maintain these rights, the expectation must be that this would have to be reciprocated for EU citizens in the UK.

It has been widely suggested that the UK and other European governments would likely favour a solution that protects the immigration rights of people already exercising their free movement rights, given the widespread disruption and administrative burden that retrospective changes could cause.

'Leave' campaigners indicated support for such an approach during the referendum campaign. [Supporters of the Vote Leave campaign said](#) that, in the event of a vote to leave the EU, "there will be no change for EU citizens already lawfully resident in the UK". It envisaged a post-Brexit immigration system in which EU citizens already living in the UK "will automatically be granted indefinite leave to remain in the UK and will be treated no less favourably than they are at present". The [Leave.eu campaign gave a similar assurance](#) during the campaign that European migrants living in the UK would not be removed in the event of a vote to leave, pledging that "Any restriction of free movement would not be implemented retrospectively".

4.2 Will Brexit open up more immigration opportunities for Commonwealth citizens?

In short, while it is possible to argue that Brexit could or should lead to enhanced visa options for Commonwealth nationals, it is not possible to state with any certainty what a post-Brexit UK immigration policy might look like, and there is no consensus on what implications Brexit could have for opportunities for Commonwealth immigration. The Government has not indicated a position on this.

Some commentators have suggested that gaining greater control over EEA immigration as a result of leaving the EU could (or should) lead to enhanced scope to prioritise Commonwealth immigration. See, for example:

- BBC News, '[Commonwealth community leaders back British exit from EU](#)', 17 February 2016
- Leave.EU, [FAQs/What about border control and immigration?](#) (undated)

However it is also worth bearing in mind that:

- The UK does not need to leave the EU in order to be able to offer more/favourable immigration opportunities to Commonwealth nationals compared to other non-EEA nationals – the UK can already do this (to the extent that we already do, see the [UK Ancestry visa](#)). However, the Government's policy ambition to reduce net migration over the course of this Parliament to the tens of thousands has required a restrictive approach to non-EU/EEA immigration, given the difficulty in restricting EU immigration flows within the context of EU law.
- The current Government has not given any indication of what any transitional immigration agreements with the EU or a post-Brexit immigration policy might look like (including whether its objective to reduce net migration to the tens of thousands would still stand)
- The nature of a future UK-EU/EEA relationship is likely to affect the extent to which the UK would be able to exercise greater control over EU/EEA immigration in the event of a Brexit (e.g. whether or not the UK became a member of the EEA but not the EU)
- It is possible that Brexit could have different implications for different visa categories – e.g. whereas restrictions on non-EU/EEA family migration might not be significantly changed, there might be changes made to work visa categories (including low-skilled work) in the event of the ending of free movement rights for EU/EEA nationals. Until now, the UK immigration system has not generally provided visa opportunities for low-skilled non-EU/EEA workers, because it has assumed that this need can be satisfied by the UK and EU/EEA workforce.
- It is possible that a post-Brexit immigration policy could lead to an increase in restrictions on EU/EEA immigration (to bring requirements into line with visa requirements for non-EU/EEA nationals), rather than a relaxing of restrictions on non-EU/EEA immigration – certainly it is not difficult to imagine that this could be the case in terms of family migration.

5. Will the UK still contribute to the EU Budget?

As long as the UK is in the EU, it will continue to pay into the EU Budget. Many commentators believe the UK's contributions to and receipts from the EU Budget will be reduced each month over the two-year period until withdrawal takes effect.¹⁷ But Allan Tatham suggested: "It's a moot point as to whether or not the withdrawing Member State would be obliged to pay its outstanding contributions to the Union or even reimburse monies to the Union".¹⁸

Any post-exit contributions will depend on what arrangement are agreed for its relationship with the EU after leaving. Members of the European Economic Area, for example, contribute to the EU Budget, so if the UK joins the EEA, it too will pay into the EU Budget. It is not clear what further costs will be incurred by the UK.

¹⁷ See, e.g. Ian Milne, [Time to Say No. Alternatives to EU Membership](#), Civitas, 2011, and Ben Clements, Institute of Economic Affairs Brexit prize finalist, "[Britain outside the European Union](#)", 2014.

¹⁸ "Don't Mention Divorce at the Wedding, Darling!: EU Accession and Withdrawal after Lisbon", from *EU Law after Lisbon*, Eds Biondi et al, 2012.

6. What are the options for Scotland?

All 32 local authority areas in Scotland voted in favour of remaining in the EU. In response, Nicola Sturgeon, Scotland's First Minister, has stated that she will 'explore all options' for protecting Scotland's position in the EU. She has also said that a second independence referendum is highly likely.

Following a motion in the Scottish Parliament mandating the Scottish Government to conduct discussions with the UK government, the other devolved administrations, the EU institutions and EU Member States "to explore options for protecting Scotland's relationship with the EU [and] Scotland's place in the single market", on 29 June the Scottish First Minister Nicola Sturgeon held talks with EP President Martin Schulz.

6.1 Could Scotland stay in the EU without the rest of the UK?

In Scotland, 62% of voters were in favour of remaining in the EU, with all Scotland's local authority areas having a majority in favour of remaining. The Scottish First Minister, [Nicola Sturgeon, said on 24 June 2016](#) that it was 'democratically unacceptable' for Scotland to be taken out of the EU against its will, and she would therefore explore all options for securing Scotland's place in the EU.

As part of the UK

Scotland is currently not a 'state' under international law capable of signing and ratifying international treaties. Nor does it have power over international relations, which are reserved to Westminster under the Scotland Act 1998:

International relations, including relations with territories outside the United Kingdom, the [European Union](and their institutions) and other international organisations, regulation of international trade, and international development assistance and co-operation are reserved matters.¹⁹

Scotland could not therefore be an EU Member State in its own right, or even sign an Association Agreement with the EU, however much either side wished for it.

Some countries and territories have a special relationship with the EU without being Member States in their own right. These '[Overseas Countries and Territories](#)' (OCTs) have duty- and quota-free access to the EU market for goods, and automatically receive better terms of trade in services and establishment. However, they do not participate directly in EU decision-making, and EU law and treaties do not apply there.

If Scotland wanted to become an OCT, the definition in the EU treaties would have to change. The current definition is that the OCTs are 'the

¹⁹ Scotland Act 1998 Sch 5 para 7.

non-European countries and territories which have special relations with Denmark, France, the Netherlands and the United Kingdom'.²⁰

When Greenland left the EU despite staying part of the Danish Realm (a kind of inverse of the current UK-Scotland situation), it became an OCT by special agreement.

As an independent country

If Scotland became independent, could it 'inherit' the UK's place in the EU or would it have to go through the whole accession process for new Member States?

There is no precedent for a devolved part of an EU Member State becoming independent and determining its membership of the EU as a separate entity – let alone in the context of the 'parent' state leaving the EU.

Under general international law, there are at least three different possibilities for a newly-independent Scotland's membership of international organisations, depending on how the break-up of the UK was categorised:

- **continuation and secession:** the rest of the UK would retain its treaty obligations and membership of international organisations, but Scotland would not;
- **separation:** both entities would retain them; and
- **dissolution:** both would lose them.

Although continuation and secession would be the most likely, the fact that the rest of the UK does not want to retain its EU treaty obligations could lead to a different outcome.

There are provisions in international law for a newly-independent state to become a party to a multilateral treaty that was in force in its territory before independence, simply by notification – but these are in a treaty which the UK has neither signed nor ratified (the 1978 [Vienna Convention on Succession of States in respect of Treaties](#), Article 17).

In any case, whatever the position under international law, a decision on Scotland's status in the EU is likely to be a political one:

- If all the EU Member States agreed, they might be able to find a way for an independent Scotland to inherit the UK's place, subject to negotiations on details of membership (including for example financial contributions and the number of MEPs to represent Scotland).
- On the other hand, EU Member States with their own domestic concerns about separatist movements might argue that Scotland should lose its membership along with the rest of the UK, and hold up or even veto any subsequent accession process.

²⁰ [TEU Art 198](#)

6.2 A second independence referendum?

'Significant and material change in circumstances'

In her statement responding to the referendum result, Nicola Sturgeon said that a second independence referendum was highly likely. She considered that the trigger in the [SNP's 2016 election manifesto](#) had been met. The manifesto stated:

We believe that the Scottish Parliament should have the right to hold another referendum if there is ... a significant and material change in the circumstances that prevailed in 2014, such as Scotland being taken out of the EU against our will.

The First Minister had addressed this theme in a [June 2015 speech to the European Policy Centre](#):

I have previously stated my view that if Scotland were to be taken out of Europe, despite voting as a nation to have remained, it would provoke a strong backlash among many ordinary voters in Scotland.

Quite what the result of that would be, no one knows. But I have stated before that this could be one scenario producing the kind of material change in circumstances which would precipitate popular demand for a second independence referendum.

Bluntly, I believe the groundswell of anger among ordinary people in Scotland in these circumstances could produce a clamour for another independence referendum which may well be unstoppable.

Power to call a referendum

After the EU referendum Ms Sturgeon said that the Scottish government would begin preparing legislation to enable another independence vote.

The Scotland Act 2016 did not give the Scottish Parliament law-making powers in relation to referendums, so UK consent would be required for another referendum.

Scotland's 2014 independence referendum was called under an agreement between the UK Government and the Scottish Government to devolve the power to hold such a referendum for a limited period, ending on 31 December 2014.²¹ This was done by means of an Order made under section 30 of the Scotland Act 1998, which had to be approved by both Houses of Parliament and by the Scottish Parliament. The Scottish Parliament gained the power to set the franchise.

²¹ The [Edinburgh Agreement](#)

7. What about Gibraltar?

Gibraltar is a British Overseas Territory, but is also in the EU by virtue of the UK's membership. So a vote to leave would mean Gibraltar would leave too.

During an official visit to Gibraltar in May 2016, the UK Foreign Secretary Philip Hammond warned that Brexit would threaten the sovereignty and “seriously impair” the Government’s ability to stand up for Gibraltar, and would “also endanger Gibraltar’s future security and prosperity”.²² Brexit, he said, would be “...as big a threat to Gibraltar’s future security and Gibraltar’s future sovereignty as the more traditional threats that we routinely talk about”.²³ However, he also assured the Chief Minister, Fabian Picardo, that “Britain’s commitment to Gibraltar is absolute, it’s unshakable and it will endure whatever the decision in the referendum”.

Before the referendum many commentators believed that Brexit could mean Spain re-asserting its sovereignty bid and attempts to change Gibraltar’s status. There were reports earlier in 2016 that Spain might revive its 2002 joint sovereignty idea.²⁴ Spain’s acting Foreign Minister, José Manuel García-Margallo, said in a television interview analysing the Brexit vote that Spain would be seeking joint sovereignty over Gibraltar: “It’s a complete change of outlook that opens up new possibilities on Gibraltar not seen for a very long time”. He hoped “the formula of co-sovereignty – to be clear, the Spanish flag on the Rock – is much closer than before”.²⁵ He said in May that Spain might close the frontier with Gibraltar if the UK votes to leave the EU.²⁶ This would have a serious effect on the estimated 10,000 workers crossing the border daily.²⁷

The Minister for Europe, David Lidington, has said the Government would continue to stand by the people of Gibraltar and would never “enter into a process of sovereignty negotiations with which Gibraltar is not content”.²⁸

Fabian Picardo has already discussed with Nicola Sturgeon “giving effect to the possibility of Scotland and Gibraltar remaining in the EU, in line with the views of their respective people”.

²² [Gibraltar Chronicle, 12 May 2016](#).

²³ [Gibraltar Chronicle, 12 May 2016](#). See also [Joint Statement](#), 11 May 2016.

²⁴ [Gibraltar Chronicle, 12 May 2016](#).

²⁵ [BBC News, 24 June 2016](#).

²⁶ [The Local, 30 May 2016](#).

²⁷ “There are 10,000 frontier workers of many different EU nationalities who live in Spain but work across the border. Gibraltar has a base labour force of 22,907 workers (2013), and 32.76 per cent of these people are frontier workers, or, in other words are normally resident in Spain but employed in Gibraltar”, Iskra Mihaylova, [The Parliament Magazine, 15 April 2016](#).

²⁸ [Gibraltar Chronicle, 24 June 2016](#).

8. Can France re-negotiate the Le Touquet treaty?

The centre-right Mayor of Calais has announced that she wants the Treaty of Le Touquet to be re-negotiated. This bilateral treaty governs the 'juxtaposed' immigration controls for France and the UK.

8.1 Termination clause in the treaty

France could break the Le Touquet treaty unilaterally (even if the UK did not leave the EU).

Article 23 of the [Treaty of Le Touquet](#), establishing 'juxtaposed' immigration controls for France and the UK, contains specific rules on how the treaty can be terminated, modified or revised:

- Either France or the UK could terminate the arrangements, although the time-scales and conditions for doing so need to be agreed with the other country.
- The two parties could also agree (by exchanging diplomatic notes) to modify the treaty, apart from those provisions that need the approval of parliament.
- Either party can ask for consultations if they want to revise the treaty.

There is also a provision which allows the 'local representatives of the authorities concerned' to agree to a temporary change in the area where juxtaposed controls are operated (Article 1.5).

Moreover, under Article 24 'Each of the Contracting Parties reserves the right to take any measures necessary for the safeguarding of its sovereignty or security'.

8.2 Termination under general international law

General international law provides other circumstances in which a treaty may be terminated or suspended (see Article 60 of the 1969 [Vienna Convention on the Law of Treaties](#)). These include material breach by one of the parties, a supervening impossibility, or a substantial change of circumstances. However, these are very restrictively interpreted, and it is not possible to say whether the UK leaving the EU would trigger any of them.

9. Will there be an impact on defence and the armed forces?

The direct impact of leaving the EU on the UK armed forces is arguably minimal: the UK's ability to project military power will be largely unaffected. The UK's membership of NATO, which the Government describes as the 'bedrock' of national defence, remains unchanged.²⁹

The EU may feel the loss of the UK more acutely because the UK is one of Europe's largest military powers and is one of the few EU countries capable of taking command of a mission. A UK exit could potentially leave the EU with fewer assets and capabilities at its disposal, although the UK could choose to contribute to EU military missions as a third party state.

Arguably the biggest impact will be a reduction in the UK's ability to influence the direction of travel for European defence. Exit from the EU will remove one of the strongest voices opposing further defence integration and the creation of what is commonly called a 'European Army'. The UK has consistently resisted proposals to create a European military headquarters to avoid duplication with NATO. Might EU leaders opt to pursue this agenda more aggressively now that one of the strongest voices in opposition is leaving the Union?

The European Council will discuss new paper on foreign and security policy by the EU High Representative at the European Council on 28-29 June 2016. Also on the agenda is closer cooperation with NATO, which will also be discussed at NATO's summit in Warsaw 8-9 July 2016. The latter will focus on addressing Russian military assertion and instability along its southern flank. Five former NATO Secretaries-General warned before the referendum that Brexit would undermine NATO "give succour to the west's enemies".³⁰

Exit from the EU will not prohibit the UK from working closely with individual European nations to jointly procure equipment, exercise or deploy together on military operations. Withdrawal negotiations will decide whether the substance of two EU defence directives are retained. These directives are designed to make the EU internal defence market work better and to increase competition in the EU defence sector. Major UK defence companies argued before the vote in favour of Remain.³¹

The prospect of a second referendum on Scottish independence will reignite the debate about the location of the UK's strategic nuclear deterrent, Trident. The Scottish Government opposes its presence in Scotland. The UK Government has promised a vote on the renewal of the deterrent but no date has been given.

²⁹ [The National Security Strategy and Strategic Defence and Security Review](#), Cm 9161, November 2015. See Library briefing paper [The 2015 SDSR](#), CBP 7462, 12 January 2016 for analysis of how the SDSR affects the armed forces.

³⁰ ["EU referendum: Nato chiefs warn Brexit will 'give succour to the West's enemies'"](#) The Telegraph, 20 June 2016

³¹ ["Remaining part of the EU is better for UK companies and their employees"](#), ADS Group, 20 June 2016

10. How have other EU countries reacted?³²

10.1 Calls for other referendums

So far none of the governing parties in other EU countries has called for a referendum on EU membership. However, nationalist parties in France, Netherlands and Italy have responded to the UK result by calling for referendums of their own.

France

The leader of the French National Front, Marine Le Pen – a front-runner for the presidential elections due in spring 2017 – hailed the result a ‘victory for freedom’. She tweeted that it was time for France and all EU countries to have a referendum.

Netherlands

The Dutch far-right politician Geert Wilders, leader of the anti-immigration Freedom Party in the Netherlands, tweeted a similar response:

Hurrah for the British! Now it is our turn. Time for a Dutch referendum!

He said in a statement:

We want to be in charge of our own country, our own money, our own borders, and our own immigration policy ... As quickly as possible the Dutch need to get the opportunity to have their say about Dutch membership of the European Union.

A recent Dutch survey reportedly suggested that 54% of the population wanted a referendum. The Freedom Party is doing well in opinion polls ahead of the Dutch general election due in the spring of 2017.

Italy

Mateo Salvini, the leader of Italy's anti-immigration Northern League party, tweeted:

Hurrah for the courage of free citizens! Heart, brain and pride defeated lies, threats and blackmail. Thank you UK, now it's our turn.

A proposal for constitutional reform, on which Italians are due to vote in a referendum in autumn 2016, would lower the quorum required for a popular referendum to be valid. An [opinion poll in spring 2016](#) suggested that a majority of Italian voters wanted an EU referendum.

³² Main sources: ‘[EU referendum: Brexit sparks calls for other EU votes](#)’, BBC news online, 24 June 2016; ‘[Europe reacts to UK's vote to leave EU](#)’, ITV news, 24 June 2016; ‘[Brexit: World reacts as Britain votes to leave the EU](#)’, Al Jazeera, 24 June 2016;

10.2 Other responses

Many other EU Governments have expressed regret over the outcome. It could boost the popularity of nationalist parties in several major national elections due in 2017.

Germany

Germany's Chancellor, Angela Merkel, called the result 'a watershed moment for Europe'. She cautioned against hasty responses that could further intensify rifts in Europe, but added that the EU was strong enough to weather a Brexit.

German Foreign Minister Frank-Walter Steinmeier said the result was 'really sobering... a sad day for Europe'.

Germany is heading for federal elections in autumn 2017, with the right-wing *Alternative für Deutschland* party gaining support and the governing grand coalition (CDU/CSU and Social Democratic Party) losing popularity.

France

French President Francois Hollande said the outcome of the UK referendum presented a 'tough test for Europe', adding that negotiations over the UK leaving the EU should be swift.

France will be holding presidential elections in spring 2017. Mr Hollande could stand for a second term but is deeply unpopular; Marine le Pen is likely to get at least to the second round.

Ireland

Northern Ireland voted to remain in the EU, by 56% to 44%.

Ireland's Taoiseach (prime minister) Enda Kenny said he was 'very sorry' about the result of the referendum but that Ireland would fully respect the decision. He announced that the Dáil (Irish parliament) would be recalled on Monday 27 June to discuss its impact, and that there would be 'no immediate change to the free flow of people, goods and services between our islands'. Enda Kenny said the Dáil would publish [a summary of the key actions it will take to address the issues arising from the decision of the British electorate](#).³³

Netherlands

Dutch Prime Minister Mark Rutte said he 'deeply regretted' the decision but that 'European co-operation will have to continue'.

The Netherlands is due to hold a general election by spring 2017.

Greece

Greek Prime Minister Alexis Tsipras said that a new vision is needed for a united Europe:

The extreme choices of austerity that widened the inequality between countries of the north and south, fences and closed

borders and the denial to share the burden of the debt and migrant crises had signalled an extended crisis in Europe ... We urgently need a new vision and beginning for a united Europe - for a better Europe, more social and democratic.

Poland

Poland's Foreign Minister Witold Waszczykowski said Britain's vote to leave the EU was bad news for Europe and for Poles, adding that the EU needed to look at why it had happened:

We will be trying to use this situation to make the European politicians aware why this happened. And it happened because this concept, which was created some time ago, is no longer popular in Europe.

Czech Republic

The Czech Prime Minister Bohuslav Sobotka said the EU must change quickly in the wake of Britain's vote:

The European Union must change quickly. Not because Britain has left, but because the European project needs much stronger support of its citizens.

Europe must be more ready to act, be flexible, less bureaucratic and much more sensible to the diversity that the 27 member states represent.

Mr Sobotka added that the UK vote did not mean the end of the EU and the bloc should agree the UK's departure 'quickly and rationally'.

Finland

Finland's foreign minister Timo Soini, leader of the eurosceptic Finns party, said the result must be respected and there should be no 'retaliation' in future negotiations between the UK and the EU:

The nation has had its say ... Any retaliation and whinge is out of the question.

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