



DEBATE PACK

Number 0157, 1 September 2016

E-petition 131215 relating to EU referendum rules

Summary

Debate Pack prepared ahead of the Westminster Hall debate sponsored by Ian Blackford MP, a member of the Petitions Committee.

The debate will be held on Monday 5 September 2016 at 4.30pm.

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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.

1. Background

The [e-petition](#) being debated was created on 25 May, before the EU referendum took place. The referendum took place on 23 June 2016.

The wording of the petition is:

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

The legislation enabling the referendum to take place made no stipulation about thresholds. A simple majority of the votes was required for one side to be declared the winner.

The issue of thresholds in referendums is examined in the Library briefing [Referendums](#). The arguments put forward for such thresholds are that major constitutional change is something more important than the result of ordinary elections, and therefore should be the result of something more than a simple plurality of the votes. By meeting such a requirement the decision is given greater legitimacy.

The House of Lords Constitution Committee examined the use of thresholds and supermajorities in its report on referendums in 2009-10.¹ In general, the evidence received by the Committee was against the use of thresholds. Arguments against highlighted in the report included that setting a threshold for a certain level of turnout could lead to those who oppose the proposition being voted on encouraging people to stay at home and not vote, rather than engaging with the debate.

There is also a risk that people who have participated in the campaign and secure a majority but do not meet the turnout threshold will feel cheated. The principle of everyone's vote being equal is called into question.

Some argue that these set a dangerous precedent for democratic engagement.

As of 1 September it had received over 4.1 million signatures, making it the most popular petition since the e-petition system was introduced. Most of these were added in the days after the referendum result had been declared.

The petition was set up by an English Democrat activist and 'Leave' voter William Healey. He has since distanced himself from the petition. Press articles report he posted a Facebook statement saying:

I am its creator, nothing more! The logistical probability of getting a turnout to be a minimum of 75% and of that, 60% of the vote must be one or the other (leave or remain) is in my opinion next to impossible without a compulsory element to the voting system.

I have openly and actively lent my support to both Vote Leave and Grassroots Out campaigns - why would I do this if I wanted to remain in the EU?

I am genuinely appalled by the behaviour of some of the remain campaign, how they are conducting themselves post-referendum not just with this petition but generally. The referendum was fairly funded; democratically endorsed, every vote was weighted equally and I believe this was a true reflection of the mood of the country. (Source: *Daily Telegraph*, 27 June 2016)

The Government response to the petition states:

The EU Referendum Act received Royal Assent in December 2015. The Act was scrutinised and debated in Parliament during its passage and agreed by both the House of Commons and the House of Lords. The Act set out the terms under which the referendum would take place, including provisions for setting the date, franchise and the question that would appear on the ballot paper. The Act did not set a threshold for the result or for minimum turnout.

As the Prime Minister made clear in his statement to the House of Commons on 27 June, the referendum was one of the biggest democratic exercises in British history with over 33 million people having their say. The Prime Minister and Government have been clear that this was a once in a generation vote and, as the Prime Minister has said, the decision must be respected. We must now prepare for the process to exit the EU and the Government is committed to ensuring the best possible outcome for the British people in the negotiations.

The Petitions Committee had originally delayed its decision on scheduling a debate on this petition because of concerns that a large number of signatures were fraudulent. Over 77,000 signatures had already been removed at the time.

In scheduling the debate the Petitions Committee have pointed out:

A debate in Westminster Hall does not have the power to change the law, and won't end with the House of Commons deciding whether or not to have a second referendum. Moreover, the petition – which was opened on 25 May, well before the referendum – calls for the referendum rules to be changed. It is now too late for the rules to be changed retrospectively. It will be up to the Government to decide whether it wants to start the process of agreeing a new law for a second referendum.

As the Petitions Committee point out, to implement the thresholds requested in the petition would require retrospective legislation. Governments have been reluctant to legislate retrospectively unless there is a compelling public interest.

The last Labour Government articulated the issue. Lord Bach, then a Justice Minister, replied to a question on retrospective legislation:

The Government recognise that retrospective legislation has the potential to cause unfairness and to create problems regarding legal certainty. The Government therefore only legislate retrospectively when they consider that the general public interest in the law not being changed retrospectively is outweighed by a competing public interest. The Government will not legislate retrospectively if they consider that to do so would be incompatible with the European Convention on Human Rights. (HL Deb 23 Oct 2009, cWA100)

2. Parliamentary material

2.1 Prime Minister's statement

Statement on the outcome of the EU Referendum by the Prime Minister (Mr David Cameron) [Extracts]

Philip Davies (Shipley) (Con): As the Prime Minister knows, I have not always agreed with him on issues, but, as he equally knows, I have always been very supportive of him personally and did not want him to make the announcement that he made last week. In saying that the country needs to come together—he is right to do so—does he accept that the first part of that is that everybody has to accept the result of the referendum, whether they like it or not, and that talk of a second referendum is for the birds? When he goes to see his European counterparts, will he pass on the message that the British people have said that we are very happy to continue with our £68 billion trade deficit with the European Union by trading with it, but in return for that we are not prepared to accept free movement of people or contributing to the EU budget?

The Prime Minister: My hon. Friend is absolutely right to say that we must accept the result—the Cabinet has and I think that everybody should—but what has to happen now is translating that result into action and choosing the correct pathway to leave the European Union and the correct relationship to have with it. That is going to take a lot of complex decision making by the new Government, and my hon. Friend obviously has a very clear view about what that should involve. It will involve a lot of separate and different decisions, but he is absolutely right to say that the decision must be accepted.

Mrs Cheryl Gillan (Chesham and Amersham) (Con): The Prime Minister, the Chancellor and the Governor of the Bank of England have commendably acted swiftly to restore calm to the markets and confidence in our country and economy. However, the Prime Minister knows that many people are leading voters to believe that a second referendum is possible and could be run on different rules. What would he say to those people who are encouraging others to believe that that is a possibility?

The Prime Minister: People will not be surprised to hear that I am not planning a second referendum. We have to accept the result, and get on and deliver it. As we do so, we have to seek the best possible deal, and obviously this House should be involved in that process.

Mr David Lammy (Tottenham) (Lab): May I say to the Prime Minister that I saw very closely the work that he did during the riots and I am very grateful for that? He will recognise that some of my constituents are among the poorest in Britain. In these very tough economic times, it is the poorest who will suffer. Does he recognise that young people, poor people and many middle class people who voted for remain want a plan, and that lies behind the call for a second referendum on the detail?

The Prime Minister: As I have said, we need to set out the options for the model of leaving. The next Government will make those decisions and they will have to confront the issue that the right hon. Gentleman raises of how to involve Parliament in those decisions. That will be something for them and for Parliament, but not for me.

HC Deb 27 June 2016 cc21-63

2.2 Parliamentary questions

[UK Withdrawal from EU](#)

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 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.

10 Aug 2016 | Written questions | Answered | House of Lords | HL1320

[UK Membership of EU: *Referendums*](#)

Tom Brake: To ask the Secretary of State for Foreign and Commonwealth Affairs, what assessment the Government has made of the potential merits of holding a second referendum on the UK's membership of the EU.

Sir Alan Duncan | Foreign and Commonwealth Office: The Prime Minister has been clear that Brexit means Brexit. We must now prepare for the process to leave the EU and the Government is committed to ensuring the best possible outcome for the British people in the negotiations.

02 Aug 2016 | Written questions | Answered | House of Commons | 41955

[EU Withdrawal Negotiations](#)

Alex Salmond (Gordon) (SNP): The whole of Scotland is deeply concerned about the personal future of the Foreign Secretary, given his apocalyptic statements during the recent referendum. For example, he told Chatham House on 2 March that leaving would take longer to negotiate "than the second world war."

Will it take longer to negotiate Brexit than the second world war? How would any future Chancellor of the Exchequer deal with such uncertainty?

Mr Hammond | Foreign and Commonwealth Office: I think the right hon. Gentleman will recognise that the concern is this: if a future treaty between the United Kingdom and the European Union 27 is deemed to be a mixed competence, it will have to be ratified by 27 national Parliaments. I believe I am right in saying that the shortest time in which that has been done in respect of any EU treaty is just under four years—that is after taking into account the time it takes to negotiate.

12 Jul 2016 | Oral questions - Supplementary | Answered | House of Commons | 613 c154

[EU Referendum](#)

Henry Smith (Crawley) (Con): With over 1 million people in Scotland voting to leave the European Union last month, what is my right hon. Friend's assessment of the rush for a second independence referendum on the Union?

David Mundell | Scotland Office: It is important that we respect the views of people we do not agree with. It has become evident that the Scottish National party cannot respect the views of the 2 million people who voted to remain in the United Kingdom in the 2014 referendum and it does not respect the people who voted to leave the EU. I do not agree with the people who voted to leave, but their views need to be respected.

06 Jul 2016 | Oral questions - 1st Supplementary | Answered | House of Commons | 612 cc867-8

[Engagements](#)

Nigel Adams (Selby and Ainsty) (Con): I congratulate my right hon. Friend on honouring our manifesto pledge and delivering this historic referendum. Unfortunately, however, we have heard some hysterical scaremongering during the debate, and there are those in this House and the other place who believe that if the British people decide to leave the EU, there should be a second referendum. Will he assure the House and the country that, whatever the result on 24 June, his Government will carry out the wishes of the British people—if the vote is to remain, we remain, but if it is to leave, which I hope it is, we leave?

The Prime Minister: I am very happy to agree with my hon. Friend. "In" means we remain in a reformed EU; "out" means we come out. As the leave campaigners and others have said, "out" means out of the EU, out of the European single market, out of the Council of Ministers—out of all those things—and will then mean a process of delivering on it, which will take at least two years, and then delivering a trade deal, which could take as many as seven years. To anyone still in doubt—there are even Members in the House still thinking about how to vote—I would say: if you have not made up your mind yet, if you are

still uncertain, just think about that decade of uncertainty for our economy and everything else, don't risk it and vote remain.

15 Jun 2016 | Prime Minister's questions - 1st Supplementary | Answered | House of Commons | 611

2.3 Parliamentary debate

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

Lords question for short debate on whether they have made an assessment of the case for holding a second referendum on the United Kingdom's membership of the European Union.

07 Jul 2016 | Questions for short debate | House of Lords | 773 cc2155-2172

Lead member: King of Bow, Baroness | **Answering member:** Anelay of St Johns, Baroness

Department: Foreign and Commonwealth Office

2.4 Early Day Motion

[Referendum on Agreeing the Terms of the UK-EU Exit Package or on the UK Remaining in the EU](#) – EDM 243

That this House notes that the EU membership referendum was lost by only 1.25 million votes, 1.9 per cent; further notes that 3.7 million people have called for a second referendum in a petition as the winning margin was less than 60 per cent and the turnout less than 75 per cent; notes that the decision is binding on future generations; notes that the pledges to reinvest £350 million in the NHS and to curb immigration on which voters relied have been withdrawn; believes that UK citizens must agree on the terms of leaving the EU and, if not satisfied, be given the opportunity to opt for the UK to remain an EU member; calls on the Government to ensure that there will be a referendum allowing UK citizens to agree on the terms of the UK-EU exit package and associated constitutional changes or on the option to remain; and further believes that this referendum should be called before Article 50 is triggered.

3. Press articles

'Glaring deficiencies' in EU debate, Electoral Reform Society says

BBC News

1 September 2016

The EU referendum campaign was dogged by "glaring democratic deficiencies" with voters turned off by big name politicians and negative campaigning, a report says.

Set up new watchdog to call out false claims in referendum campaigns, report recommends

The Independent, Jon Stone

1 September 2016

UK to hold Parliamentary debate on second EU referendum

Despite petition signed by 4.1 million people, 'Brexit means Brexit', says EU constitutional expert Andrew Duff,

The Parliament Magazine, Martin Banks

18 July 2016

Parliament will debate a second EU referendum in September - this is what it means

How likely is it that a second referendum will actually take place?

New Statesman

13 July 2016

Brexit: Debate on second EU referendum after millions sign petition

The Petitions Committee said the debate would be on 5 September as a "huge number" had signed it. But the committee said the debate did not mean it was supporting the call for a second referendum and it was "too late" to change the referendum rules.

BBC News

12 July 2016

Brexit: no second EU referendum despite e-petition, says government

Statement in response to petition signed by more than 4.1m people says referendum was 'once in a generation' vote

The Guardian, Nicola Slawson

10 July 2016

Brexit: Government rejects second EU referendum petition signed by 4.1 million

We must now prepare for the process to exit the EU,' the Government says.

The Independent, Harry Cockburn

9 July 2016

Petition to hold second EU referendum reaches 2.5m signatures

House of Commons website sees unprecedented traffic for record-breaking petition.

The Guardian, James Tapper

26 June 2016

4. Further reading and useful links

4.1 Commons Library briefings

Referendums

This Briefing Paper provides background to the increasing use of referendums worldwide to settle constitutional issues and to the holding of referendums in the UK; a table of all referendums held in the UK to date is provided. The use of thresholds in referendums is discussed and information provided on the administration of referendums and regulation of the referendum campaigns.

31 Aug 2016 | Commons Briefing papers | CBP-7692

Referendum campaign literature

During the EU referendum campaign there were complaints about the claims put forward in campaign literature and calls for an independent body to oversee the truthfulness of claims made during political campaigns. This Briefing Paper looks at the regulation of campaign literature in the UK and in other countries.

31 Aug 2016 | Commons Briefing papers | CBP-7678

Regulation of Referendums

This Note sets out the mechanics for holding referendums. It summarises the applicable provisions of the Political Parties, Elections and Referendums Act 2000 (PPERA) which regulate publicity and campaigning.

29 Jan 2013 | Commons Briefing papers | SN05142

Thresholds in Referendums

Referendums have become an established mechanism for validating constitutional initiatives in the UK. The possibility of using an appropriate minimum turnout, or a special majority to ensure that the outcome of such a poll is seen as legitimate is sometimes raised. This note looks at the debate in the UK so far and briefly looks at the use of referendum thresholds in states outside the UK.

30 Jun 2011 | Commons Briefing papers | SN02809

4.2 Electoral Reform Society

It's Good to Talk: Doing referendum differently after the EU vote

ERS, Will Brett

1 September 2016

David Torrance's guide to the EU referendum cuts through the spin

An introduction to David Torrance's new guide to the EU referendum, which the ERS are supporting

ERS, Darren Hughes

25 April 2016

People feel left in the dark by the EU referendum debate

ERS programme of work on the EU vote, A Better Referendum

7 March 2016

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