



## DEBATE PACK

Number CDP-0202 | 7 September 2018

# E-petition 223729 relating to rescinding Article 50 if the Vote Leave campaign broke electoral laws

Westminster Hall

Monday 10 September 2018

Debate initiated by Daniel Zeichner MP

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.

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# 1. Background

The decision by the Electoral Commission to fine Vote Leave and refer it to the police for breaking electoral law in exceeding campaign spending limits has led to calls for the EU referendum result to be annulled and the UK's Article 50 notification to leave the EU revoked.

The legislation setting out the regulatory framework for referendums does not contain any provisions for annulling or overturning a result. This is in contrast to the rules on parliamentary elections which allow for individual constituency results to be declared void if an individual candidate(s) spends more than the limits set for the regulated period of an election.

There are differing opinions as to whether or not the UK's Article 50 notification on withdrawal from the EU can itself be withdrawn by the UK government. However, EU leaders have indicated that they would be open to a change of mind from the UK.

## 2. Legal challenge and campaign overspending

### 2.1 Regulating referendums

The general regulatory framework for referendums is set out in the [\*Political Parties, Elections and Referendums Act 2000\*](#) (PPERA), as amended. This sets out the statutory role of the Electoral Commission in relation to referendums that are covered by PERA. It also sets out the general provisions for financial regulation of participants in a referendum, including spending limits and control of donations. PERA does not contain any provisions for annulling or overturning a result. The Electoral Commission does not have the power to declare a result null and void.

Although PERA sets out a general framework for regulation of referendums, separate legislation is still required to allow each referendum to occur and normally sets out the question to be asked and the entitlement to vote. The *European Union Referendum Act 2015* was the enabling legislation for the referendum on the UK's membership of the EU. The 2015 Act also amended and increased the spending limits contained in PERA.

The spending limits for the two lead campaign groups in the EU referendum was £7 million each. Any other group or individual planning to spend over £10,000 on campaigning had to register with the Electoral Commission. The spending limit for registered campaigners was £700,000. Political parties campaigning in the referendum had

different spending limits based on their previous General Election result, ranging from £700,000 (SNP, Plaid Cymru, DUP) to £5.5 million (the Labour Party). A political party had to register which outcome they were campaigning for in order to be able to spend money. The Conservative Party was unable to register for an outcome and therefore had a spending limit of £10,000.

The key spending figures reported to the Electoral Commission were as follows:

- Registered campaigners reported spending a total of £32,642,158 campaigning at the EU referendum and reported having accepted donations totalling £30,714,106 and loans of £6,071,940.
- Campaigners that registered to campaign for the UK to remain in the EU reported spending £19,309,588.
- Campaigners that registered to campaign for the UK to leave the EU reported spending £13,332,569.
- The two designated lead campaigners reported total spending of £13,510,049 - The In Campaign Ltd reported spending £6,767,584; and Vote Leave Ltd reported spending £6,742,466.<sup>1</sup>

The *European Union Referendum Act 2015* contained provisions that restricted challenges to the result to the first six weeks after the referendum. Schedule 3 of the act included a provision that the result of the referendum could only be challenged by judicial review. This had to be lodged with the Administrative Court within six weeks of the declaration of the result for the UK being made by the Chief Counting Officer.

## 2.2 Challenging Parliamentary elections

In a Parliamentary election, the result in a **constituency** can be challenged by way of an election petition for one of three reasons: if there had been administrative failings that could have led to the wrong result, if a candidate is suspected of being disqualified from being allowed to stand, and if there have been corrupt or illegal practices (which includes a candidate spending over the limit).

Election petitions are the only way to challenge an election result once it has been declared. Candidate finance and conduct in local constituency campaigns is not regulated by the Electoral Commission and they have no role in prosecuting or investigating breaches.

A Parliamentary election consists of 650 separate constituency contests and an election petition could declare a **constituency** result void.

Although there are financial limits on national spending by political parties and third-party campaigners during an election, there is no similar provision for declaring a general election result void because of overspending at the national scale.

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<sup>1</sup> Electoral Commission, *Report on the regulation of campaigners at the referendum on the UK's membership of the European Union held on 23 June 2016*, March 2017.

## 2.3 Venice Commission

Some have cited the Venice Commission rules on referendums to argue that the referendum should be declared void. The Venice Commission, to which the UK is a signatory, has produced guidelines for constitutional referendums at national level which includes the following:

National rules on both public and private funding of political parties and election campaigns must be applicable to referendum campaigns...As in the case of elections, funding must be transparent, particularly when it comes to campaign accounts. In the event of a failure to abide by the statutory requirements, for instance if the cap on spending is exceeded by a significant margin, the vote must be annulled.<sup>2</sup>

However, the Venice Commission is not legally binding on signatories.

## 3. Revoking or annulling any notification of intent to withdraw

### 3.1 The Article 50 process

The Article 50 process is described in some detail in Commons Briefing Paper 7551, [Brexit: how does the Article 50 process work?](#) 16 January 2017.

Article 50 TEU states in para. 3:

The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

Britain's exit from the EU will therefore take effect either when a withdrawal agreement enters into force, or two years after notifying the European Council of the intention to withdraw (i.e. on 29 March 2019, two years to the day after the Prime Minister triggered Article 50), unless the European Council decides to extend this period.

A decision to extend the period would need to be taken unanimously by the European Council. Paragraph 4 of Article 50 states that for the purposes of negotiating and concluding agreements on the status of exiting states, the exiting state (once Article 50 is triggered) is no longer included in European Council discussions or decision-making.

While a decision to extend the negotiation period would require a unanimous decision by the EU27, the withdrawal agreement itself

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<sup>2</sup> [Code of good practice on Referendums adopted by the Council for Democratic Elections at its 19th meeting \(Venice, 16 December 2006\) and the Venice Commission at its 70th plenary session \(Venice, 16-17 March 2007\)](#)

(which could include provision for withdrawal to take effect at a different date to 29 March 2019) requires agreement by qualified majority in the European Council, and consent from the European Parliament.

Whether or not the Article 50 notification can itself be withdrawn by the UK government, thus ending the withdrawal negotiations and enabling the UK to remain in the EU, has however been disputed.

## Is Article 50 reversible?

There is a debate as to whether the UK could unilaterally revoke Article 50. The EU Treaties are silent on this issue, but the [Miller](#) case at the Supreme Court (in which the Court ruled that primary legislation was required before the Government issued an Article 50 notice) proceeded on the assumption that Article 50 notification would be irreversible.

There have however been [reports](#) that the UK Government has received legal advice stating that Article 50 can be withdrawn. The Government has not confirmed that it has received such advice, and it maintains that Article 50 will not be revoked as a matter of policy principle.

There is no provision in Article 50 itself for withdrawing the notification to withdraw, but many commentators and legal experts believe it is revocable.

Former UK diplomat Lord Kerr, who was responsible for drafting Article 50 as Secretary-General to the European Convention in 2002-03, said last year in a speech to the [Open Britain](#) group that Article 50 is revocable. He was supported in this interpretation by Jean-Claude Piris, former legal counsel to the European Council.

Three QCs, Marie Demetriou, Jessica Simor and Tim Ward, have written a joint [legal opinion](#), which they have sent to the Prime Minister, in which they conclude that Article 50 can be withdrawn before 29 March 2019 without the need to seek the agreement of the other EU Member States, and that if this happens the UK would retain its privileges.

The joint legal opinion notes that the wording in Article 50 refers to a decision to notify an 'intention' to withdraw. The QCs argue that an 'intention' is not a binding commitment; it can be changed or withdrawn.

There are no judicial precedents to guide CJEU interpretation of Article 50 TEU. There could be a need for recourse to the Vienna Convention on the Law of Treaties ([VCLT](#)). Articles 65-68 of the VCLT concern the procedure for the withdrawal of a party from a treaty.

The legal opinion issued by Demetriou, Simor and Ward cites Article 68 of VCLT in support of their argument. This reads: "*A notification or instrument provided for in article 65 or 67 may be revoked at any time before it takes effect.*"

Ultimately, the revocability question would be for the Court of Justice of the EU (CJEU) to decide.<sup>3</sup>

## Application for Judicial review of Article 50 revocability

In March 2018, a cross-party group of MPs and MSPs in Scotland (from the Labour party, SNP, Liberal Democrats and Scottish Greens), backed by the [Good Law Project](#), were granted permission for a [judicial review](#) into whether the UK can unilaterally revoke Article 50.

This was with a view to seeking a ruling from the CJEU on the question. However, the Court of Session in Edinburgh [decided](#) on 8 June not to refer the matter to the CJEU, given that it was a hypothetical question as the Government does not intend to withdraw the A50 notice.

The group appealed the decision. The appeal was heard by the Inner House of the Court of Session on 15 August 2018 and a decision is being awaited on this. The parties to the appeal argued that the situation had changed since the case was previously held as the EU Withdrawal Act made provision for the UK Parliament to reconsider, and Parliamentarians needed to know the options before them should they want to reconsider.

## 3.2 UK in EU Challenge

A crowd-funded group called "[UK in EU Challenge](#)" are seeking a judicial review in relation to the Article 50 notification process. On their website, they have set-out the intention to seek two remedies from the High Court:

- to declare the result of the EU Referendum of 23 June 2016 "null and void" in light of [findings by the Electoral Commission](#) about the conduct and expenses of the campaign group Vote Leave; and
- to quash the "decision" of the Prime Minister to make a notification of intention to leave the EU in light of the influence that campaign group's behaviour had on the result of the referendum, on which that decision relied.

If the High Court grants permission for the claim (which was itself issued on 13 August 2018), the group anticipates a full hearing would take place in October 2018.

## 3.3 How would the EU respond if UK asked to withdraw Article 50 notification

EU leaders have indicated they would be happy if the UK were to change its mind and stay in the UK without attaching any conditions.

In June 2017 French President [Emmanuel Macron](#) said that the "door" was "always open" for the UK to remain in the EU.

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<sup>3</sup> For further information, see briefing paper 7763, [Brexit and the EU Court](#), 14 November 2016

The President of the European Council [Donald Tusk](#) indicated in January 2018 that the EU was open to a “change of heart” from the UK and that EU “hearts” were “still open” for the UK.

Following this, European Commission President [Jean Claude Juncker](#) told the European Parliament, “we are not throwing the British out, we want the British to stay, and if they so wish they should be allowed to do so”.

According to Lord Kerr, there would be no change in the UK’s status if it were to revoke Article 50 before the withdrawal process had run its course. “(W)hile we're in, we're in; and there would be no price to pay if we were to decide to stay in,” Kerr said in his Open Britain speech.

On the basis that the UK remains an EU Member State until it leaves the EU, if it were to formally revoke the Article 50 notification before the process had concluded, it would therefore remain in the EU and retain its current terms of membership. This would include current opt-outs for example in relation to euro membership and Schengen (though not the package of measures agreed with the EU by former Prime Minister David Cameron prior to the EU referendum in February, as these were never implemented).

## 4. E-petition 223729 and the Government response

### [E-petition 223729](#)

#### **Rescind Art.50 if Vote Leave has broken Electoral Laws regarding 2016 referendum**

If Vote Leave has broken any laws regarding overspending in 2016 EU referendum then Art.50 should be immediately withdrawn and full EU membership continued.

Article 50.1 of the Lisbon Treaty sets out that a member can leave by " Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements."

Also, Article 10.3 of the Lisbon Treaty, "Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen."

#### **Government responded**

The British people voted to leave the EU, and it is the duty of the Government to deliver on their instruction. There can be no attempt to stay in the EU.

The result of the referendum held on 23 June 2016 saw a majority of people vote to leave the European Union. This was the biggest democratic mandate for a course of action ever directed at any UK Government. Following this, Parliament authorised the Prime Minister to trigger Article 50, passing the EU (Notification of Withdrawal) Act.

In last year's General Election, over 80% of people then voted for parties committing to respecting the result of the referendum. It was the stated policy of both major parties that the decision of the people would be respected. The Government is clear that it is now its duty to implement the will of the electorate.

This was not a decision made after just a few weeks of campaigning, but one that came after a debate that had taken place both in Parliament and across the country for decades.

We are committed to making a success of the British people's decision to leave the European Union. And that is how we have always approached the negotiations - anticipating success, not failure. It is vital that we try to reach an agreement that builds a strong relationship between Britain and the EU as neighbours, allies and partners. Not just for those who voted to leave but for every citizen of the United Kingdom. We were given a national mandate and this Government is determined to deliver a deal in the national interest.

As the Prime Minister has said: "This is about more than the decision to leave the EU; it is about whether the public can trust their politicians to



put in place the decision they took.” The British people can trust this Government to honour the referendum result and get the best deal possible. To do otherwise would be to undermine the decision of the British people. The premise that the people can trust their politicians to deliver on the promises they make and will deliver them in Parliament is fundamental to our democracy.

Our focus is making a success of Brexit and attempting to get the best deal possible. A deal that is in the interests of both the United Kingdom and the European Union. And one that takes in both economic and security cooperation.

It is the Government’s duty to deliver the will of the people and reach a desirable final outcome.

Department for Exiting the European Union.

## 5. Press Articles

The following is a selection of press and media articles relevant this debate.

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

### [British expats in EU launch Brexit legal challenge](#)

Guardian  
Owen Bowcott  
14 August 2018

### [Brexit explained: can the referendum result be reversed?](#)

The Times  
Oliver Wright  
18 July 2018

### [Vote Leave broke electoral law and British democracy is shaken](#)

Guardian  
Emma Graham-Harrison  
17 July 2018

### [Brexit: Vote Leave broke electoral law, says Electoral Commission](#)

BBC News Online  
17 July 2018

### [Leave. EU fined £70,000 over breaches of electoral law](#)

Guardian  
Matthew Weaver and Jim Waterson  
11 May 2018

### [The time for revoking Brexit has passed](#)

Financial Times  
Wolfgang Münchau  
1 April 2018

### [What happens if there is no Brexit withdrawal agreement](#)

Financial Times  
David Allen Green  
26 February 2018

### [Call for clarity over revoking Article 50](#)

The Times  
Daniel Sanderson  
3 February 2018

### [Article 49: What is it and how can it reverse Brexit after the UK leaves the EU?](#)

Independent  
Jon Stone  
17 January 2018

**Brexit: Secret legal advice on whether Article 50 can be revoked could be revealed in Commons vote**

Independent  
Rob Merrick  
21 December 2017

**Can Article 50 be revoked? When was Article 50 triggered and will Brexit be reversed?**

Daily Express  
Alice Foster  
10 November 2017

**UK can ignore Brexit and stay in EU, Article 50 official says**

Financial Times  
Henry Mance  
10 November 2017

**Why the EU should let the UK revoke Article 50**

New Statesman  
Steve Bullock  
13 October 2017

**Barnier 'lobbied to stop May withdrawing article 50 in two years'**

Guardian  
Daniel Boffey  
7 April 2017

**Reality Check: Can the UK change its mind on Article 50?**

BBC News Online  
29 March 2017

**Brexit: Article 50 could be revoked once triggered, senior academics claim**

Independent  
Ashley Cowburn  
2 November 2016

## 6. PQs

### [Brexit: Negotiations](#)

26 Jul 2018 | 166049

**Asked by: Tom Brake**

To ask the Secretary of State for Exiting the European Union, if his Department will make an assessment of the effect of allegations made against the campaigns (a) Vote Leave and (b) BeLeave by the (i) Electoral Commission and (ii) Observer on negotiations with the EU on the UK leaving the EU.

**Answering member: Suella Braverman | Department for Exiting the European Union**

The Electoral Commission have determined that electoral rules have been broken and Vote Leave and BeLeave have been fined and referred to the police. It would not be appropriate for the Government to comment on ongoing police investigations.

The Government published a White Paper on the Future Relationship and talks with the EU are now accelerating and intensifying. We remain confident of reaching agreement on the Withdrawal Agreement and Future Framework by October. We are not going to provide a running commentary on these negotiations.

### [Topical Questions](#)

19 Jul 2018 | 645 c583

**Asked by: Helen Hayes**

I understand that the Secretary of State, as a member of the campaign committee of Vote Leave—the campaign committee met weekly, according to Vote Leave’s website, to agree the leave campaign’s strategy—may not want to comment on this week’s findings of the Electoral Commission until he has spoken to the police, who are investigating those findings, so I ask him this hypothetical question instead. In a situation in which an organisation has been found to have lied about its spending and to have broken UK law in order to secure a narrow referendum victory, what does he believe the consequences should be?

**Answered by: Dominic Raab | Department for Exiting the European Union**

Obviously we need to see any of those allegations, any of those cases, followed up by the relevant authorities. I was on the campaign board of Vote Leave. I had nothing to do with the financial implications, with donations or with anything like that. What I think the hon. Lady is really trying to do is somehow, in a back-handed way, to discredit the outcome of the referendum, which is not going to work. The country voted to leave the EU, and that is what we are going to do.

### [Elections: Electoral Commission Recommendations](#)

28 Jun 2018 | 792 c240

#### **Asked by: Lord Cormack**

My Lords, I am grateful to my noble friend for that response, but he will know that the chairman of the Electoral Commission has called for legislation. Will the Government give that careful thought? If so, will they make sure that the legislation also applies to the commission so that it is obliged to respond more expeditiously? More than two years after June 2016, we are still waiting for its comments on the Vote Leave campaign and whether it behaved responsibly or not.

#### **Answered by: Lord Young of Cookham**

My noble friend will know that the Electoral Commission has made requests for legislation, particularly to increase the sanctions that are available to it. He referred to some commission inquiries. Last month, the commission published an inquiry into the activities of Vote Leave during the referendum campaign. He is quite right that there are two outstanding inquiries: one into Better for the Country Ltd and Arron Banks, and one into Vote Leave, Darren Grimes and Veterans for Britain, which commenced in November last year and, as I understand it, will be completed later this year. The Electoral Commission is an independent body so I need to be careful with what I say, but I am sure that Sir John Holmes will read my noble friend's comments.

### [European Union Referendum: Alleged Russian Interference](#)

19 Jun 2018 | 791 c1936

#### **Asked by: Lord Tyler**

My Lords, do the Government not recognise that this piecemeal approach is potentially quite dangerous? Given that it is the considered judgment of the chairman of the DCMS Select Committee—the Minister's Conservative colleague—that the leaders of the Leave.EU campaign have been lying, and given that there is ever-rising evidence of illegality, with even Mr Banks admitting that there was Russian collusion in the leave campaign, is it not now urgent that the Government should authorise a comprehensive investigation into what exactly happened? After all, this calls into question the very marginal outcome of the referendum, where for every 17 people who voted leave, 16 voted to remain. Does that not, in turn, raise real questions about the whole Brexit process?

#### **Answered by: Lord Young of Cookham**

On the first question, the noble Lord will know that it is for the Electoral Commission to investigate any alleged irregularities concerning the referendum. It has already published a decision on Leave.EU and fined that body £70,000. Investigations continue into allegations that Vote Leave avoided the cap on election expenditure on the referendum by channelling resources into another, linked organisation, and that is a matter for the Electoral Commission to resolve. As far as the outcome is concerned, 1.3 million more people voted to leave than to remain, and I am not sure that one can attribute that fairly substantial margin to the activities of the Russian bots or, indeed, any other outside agencies.

[Vote Leave Campaign](#)

28 Mar 2018 | 790 cc832-5

**Asked by: Lord Hunt of Kings Heath**

To ask Her Majesty's Government what assessment they have made of whether the Electoral Commission has sufficient powers to investigate claims that the Vote Leave campaign broke electoral law during the 2016 referendum on the United Kingdom's membership of the European Union.

**Answered by: Lord Young of Cookham**

My Lords, the Electoral Commission has ongoing investigations into spending and campaigning on the EU referendum, and the Government will consider any specific recommendations that arise from those. The commission has not so far called for greater investigative powers.

**Asked by: Lord Hunt of Kings Heath**

My Lords, these very serious allegations come in the context of the former CEO of Cambridge Analytica claiming that he could fix election outcomes for a fee, using entrapment. Does the noble Lord think that the maximum £20,000 fine per offence that can be imposed by the commission is anywhere near meeting the gravity of the allegations, if proven? Does he consider the Government have shown respect for the independence of the commission, when the Foreign Secretary arrogantly dismissed the whistleblower's claims as utterly useless? Will the Prime Minister apologise for the shameful outing of Mr Sanni by her political secretary?

**Answered by: Lord Young of Cookham**

My Lords, on the first part of the noble Lord's question, it is the Information Commissioner's Office that is investigating the specific allegations about the misuse of data by Cambridge Analytica and their associates. That is a different regime to the one that comes under the Electoral Commission. On the specific question of the £20,000 fine, the noble Lord is correct that the Electoral Commission has expressed concern in the past that this might be regarded as simply the cost of doing business, and it is making representations that it should be enhanced to a higher level. The Government are considering those representations and, alongside any other recommendations that come out of the investigation currently under way, we will then consider what further action to take. Whatever the Foreign Secretary may have said about these allegations, it is the independent Electoral Commission that has the final word as to whether or not an offence has been committed. I have nothing to add to what the Prime Minister has said on the final part of the noble Lord's question.

**Asked by: Lord Cunningham of Felling**

My Lords, is it the case that the Government are taking seriously attempts, either by foreign powers or by UK citizens or individuals, which strike at the very heart of the integrity of our whole democratic process? That is the question; that is the issue. The powers of the Electoral Commission, confronted by the power, influence and wealth of other countries and international organisations, are frankly derisory. That is the reality of the situation. I understand and accept what the Minister is saying about ongoing investigations. But if we are intent on

protecting the strength, virility and fairness of our democracy, these situations have got to be addressed at a much higher level, and powers need to be enhanced to deal with them.

**Answered by: Lord Young of Cookham**

The Prime Minister made it clear recently that these are very serious allegations which do raise questions for the integrity of our democratic system. So far as the Information Commissioner is concerned, it is she who is investigating the misuse of data. The Data Protection Bill currently going through Parliament, now in the other place, gives enhanced powers to the Information Commissioner's Office to get the information that is needed. If more powers are needed, the Government have said they will seriously look at that issue before the Bill emerges from Parliament. But I agree with the noble Lord that, on the whole, we have a robust electoral system and its integrity is amongst the highest in the world, but we need to take every safeguard we possibly can to make sure that it is not undermined by alien forces from overseas.

**Asked by: Lord Tyler**

My Lords, does the Minister recall that, as long ago as 10 March last year, I drew to his attention and to that of the House that the leave campaign then was accused not only of lying in the substance of its campaign but of cheating in the process of delivering it, and I gave examples? Can the Minister explain why the investigation of these increasingly serious allegations has taken so long? He says the law is robust, but this is a very long period indeed in which there has been no satisfactory outcome. It would appear that both the Electoral Commission and the police say they have appropriate resources, but is there a lack of effective electoral law here or are there discrepancies? After what we have seen and heard in the last few days, and given the very narrow result of the EU referendum—for every 17 people who voted to leave, there were 16 who voted to remain—do the Government not recognise that there are continuing public doubts about the integrity of the system, which he has just described as being robust, and which then challenge the legitimacy of the whole Brexit process?

**Answered by: Lord Young of Cookham**

I think it is worth quoting what the Electoral Commission said in its report on the referendum:

“The evidence outlined in this report confirms that, through careful management of the potential risks associated with the timing and profile of the poll, we saw a referendum that was delivered without any major issues and the announcement of a clear, timely final result”.

We will never know if the law was broken and whether it made any difference. My personal view is that it was unlikely, and there are better explanations as to why people voted as they did, rather than that they were targeted by an algorithm.

**Asked by: Lord Pearson of Rannoch**

My Lords, can the Electoral Commission take into account the £9 million spent by the Government on the pamphlet which went to every

household in the land urging our people to vote to remain in the European Union? Surely that was in effect part of the referendum campaign, was it not?

**Answered by: Lord Young of Cookham**

The Government followed the precedent of previous national referendum campaigns in 1975 and also the campaign on Scottish independence. The Government published a leaflet in accordance with precedents setting out the Government's view. There was nothing irregular or improper about that at all.

**Asked by: Viscount Ridley**

My Lords, given that the remain campaign spent considerably more than the leave campaign—not even counting the £9 million spent by the Government—and that the vote leave campaign has been investigated twice over these issues already by the Electoral Commission, does the Minister agree that it is important that the Electoral Commission is not put under significant political pressure on this matter?

**Answered by: Lord Young of Cookham**

The Electoral Commission is independent of the Government and accountable to Parliament. Under the leadership of Sir John Holmes, with Claire Bassett as the chief executive, it is well able to defend its independence against any aggressor.

[Brexit](#)

**06 Feb 2018 | 126046**

**Asked by: Tom Brake**

To ask the Secretary of State for Exiting the European Union, whether he has made an assessment of the implications for the debate on leaving the EU of the arguments published by Marie Demetriou QC, Jessica Simor QC and Tim Ward QC stating that Article 50 can be rescinded.

**Answering member: Mr Robin Walker | Department for Exiting the European Union**

The Government has consistently made clear that notification under Article 50 will not be withdrawn. The British people voted to leave the EU and the Government is committed to deliver on their instruction.

[Brexit](#)

**09 Nov 2017 | HL2574**

**Asked by: Lord Myners**

To ask Her Majesty's Government whether they have taken legal advice on whether they can revoke or pause the Article 50 two year timetable.



**Answering member: Lord Callanan | Department for Exiting the European Union**

It has been the practice of successive Governments not to comment on legal advice that may or may not have been received. A clear majority of the electorate voted to leave the EU and we will respect the will of the British people. As a matter of firm policy, our notification will not be withdrawn, for the simple reason that people voted to leave. And we are determined to see through that instruction.

**[Brexit](#)**

**23 Oct 2017 | HL2086**

**Asked by: Lord Smith of Finsbury**

To ask Her Majesty's Government what is the latest constitutional advice they have (1) sought, and (2) received, as to whether the Article 50 application to leave the EU can be revoked before the process is complete.

**Answering member: Baroness Anelay of St Johns | Department for Exiting the European Union**

A clear majority of the electorate voted to leave the EU and we will respect the will of the British people. This was reinforced by the fact that in the last general election over eighty percent voted for parties committed to respecting the outcome of the referendum. There can be no attempts to remain inside the EU and no attempt to rejoin it. There is no precedent for a country triggering Article 50, let alone seeking to reverse such a decision. As a matter of firm policy, our notification will not be withdrawn for the simple reason that people voted to leave. And we are determined to see through that instruction.

**[Brexit: Negotiation Programme](#)**

**20 Mar 2017 | 782 c8**

**Asked by: Lord Campbell-Savours**

My Lords, the Question asked by the noble Lord, Lord Spicer, was whether Article 50 was reversible, but the Minister said in answering that it would not be revoked. Are they not two completely different issues?

**Answered by: Lord Bridges of Headley**

The noble Lord picks me up on an interesting point. We have said that, regardless of the legal position, we do not intend to revoke our notice to withdraw.

[Brexit: Trade Arrangements](#)

12 Jan 2017 | 777 c2063

**Asked by: Lord Lea of Crondall**

My Lords, does the Minister agree that Article 50 implies that it can be revoked within the two-year period? Is a corollary of that not that if there is any doubt about that—this goes back to the question of the noble Lord, Lord Hannay, about what has to happen within the two years—or if the negotiation is not reaching a reasonable conclusion, the Article 50 Bill can make provision to reverse engines or revoke the Article 50 timetable?

**Answered by: Lord Bridges of Headley**

The noble Lord makes an interesting hypothetical point; however, the Government are aiming to have a successful outcome to the negotiations. It is a matter of government policy that, once given, our notification will not be withdrawn.

[Brexit](#)

21 Nov 2016 | HL3138

**Asked by: Lord Hollick**

To ask Her Majesty's Government whether, prior to the proceedings in the High Court, they received legal advice on the question of whether notification under Article 50 can be revoked after Article 50 has been invoked; and, if so, whether they will publish that advice.

**Answering member: Lord Bridges of Headley | Department for Exiting the European Union**

A clear majority of the UK electorate voted to leave the EU and we will respect the will of the people. As Government lawyers made clear in the High Court, the Government's position is that once given, our notification will not be withdrawn.

Our efforts will be focused on getting the best deal possible for the UK in the negotiations with the EU.

## 7. Other Parliamentary material

### 7.1 Debates

#### [EU Referendum: Electoral Law](#)

**27 Mar 2018 | House of Commons | 638 cc688-723**

Motion that this House has considered the EU referendum and alleged breaches of electoral law.

#### [EU Referendum: Electoral Law](#)

**26 Mar 2018 | House of Commons | 638 cc548-550**

Motion under Standing Order No. 24. Allowed by Speaker.

### 7.2 Statements

#### [Electoral Commission Investigation: Vote Leave](#)

**17 Jul 2018 | House of Commons | 645 cc226-240**

[Extract: only the Minister's opening statement is included below]

**Chuka Umunna (Streatham) (Lab):** To ask the Minister for the Cabinet Office if he will make a statement on the findings of the Electoral Commission's investigation into the conduct of the Vote Leave campaign.

**The Parliamentary Secretary, Cabinet Office (Chloe Smith):** I am proud to say that the UK has a clear and robust electoral system, and we should all be proud of the democracy in which we live and work. I place on the record my thanks to all those involved in the electoral community, which works hard at every poll to deliver it within the law such that we can be proud of our democracy.

The Electoral Commission is the independent body that oversees the conduct of elections and referendums and regulates political finance. The commission regularly reports on the running of elections and referendums and conducts thorough investigations into allegations that rules have been breached. Electoral law exists to ensure fair campaigning, and the commission has determined that those rules have been broken. Both Vote Leave and BeLeave have been fined and referred to the police, and it would not be appropriate for the Government to comment on ongoing police investigations.

That electoral rules have been breached is rightly a cause for concern, but that does not mean that the rules themselves were flawed. The Government will continue to work closely with the Electoral Commission, along with many other stakeholders in the electoral system, to protect the integrity, security and effectiveness of referendums and elections. Let me make it clear for the record that we

will continue to implement the referendum's result and to make a success of it.

**[The Minister's response to the Urgent Question was repeated and debated in the House of Lords: [Electoral Commission](#)]**

## **[Procedures for the Approval and Implementation of EU Exit Agreements](#)**

**13 Dec 2017 | Written statements | HCWS342**

### **David Davis (Secretary of State for Exiting the European Union):**

The UK will exit the EU on 29 March 2019. We are currently negotiating the terms of our withdrawal (and hope shortly to move on to the terms of our future relationship). This note sets out the role of Parliament in approving the resulting agreements and how they will be brought into force.

### **Background**

There will be at least two agreements.

A Withdrawal Agreement will be negotiated under Article 50 of the Treaty on European Union (TEU) whilst the UK is a member of the EU. It will set out the terms of the UK's withdrawal from the EU (including an agreement on citizens' rights, Northern Ireland and any financial settlement), as well as the details of any implementation period agreed between both sides.

Article 50(2) of the TEU sets out that the Withdrawal Agreement should take account of the terms for the departing Member State's future relationship with the EU. At the same time as we negotiate the Withdrawal Agreement, we will therefore also negotiate the terms for our future relationship.

However as the Prime Minister made clear in her Florence speech, the European Union considers that it is not "**legally able to conclude an agreement with the UK as an external partner while it is itself still part of the European Union**". This is because the EU treaties require that the agreement governing our future relationship can only be legally concluded once the UK is a third country (i.e. once it has left the EU). So the Withdrawal Agreement will be followed shortly after we have left by one or more agreements covering different aspects of the future relationship.

### **How will the Withdrawal Agreement be approved and brought into force?**

The Withdrawal Agreement will need to be signed by both parties and concluded by the EU and ratified by the UK before it can enter into force. The UK approval and EU approval processes can operate in parallel.

The EU's Chief Negotiator, Michel Barnier, has said that he wants to have finalised the Withdrawal Agreement by October 2018. In Europe, the agreement will then require the consent of the European Parliament and final sign off by the Council acting by a qualified majority. It will not require separate approval or ratification by the individual Member States.

In the UK, the Government has committed to hold a vote on the final deal in Parliament as soon as possible after the negotiations have concluded. This vote will take the form of a resolution in both Houses of Parliament and will cover both the Withdrawal Agreement and the terms for our future relationship. The Government will not implement any parts of the Withdrawal Agreement - for example by using Clause 9 of the European Union (Withdrawal) bill - until after this vote has taken place.

In addition to this vote, the Constitutional Reform and Governance Act 2010 (CRAG) normally requires the Government to place a copy of any treaty subject to ratification before both Houses of Parliament for a period of at least 21 sitting days, after which the treaty may be ratified unless there is a resolution against this. If the House of Commons resolves against ratification the Government can lay a statement explaining why it considers the treaty should still be ratified and there is then a further 21 sitting days during which the House of Commons may decide whether to resolve again against ratification. The Government is only able to ratify the agreement if the House of Commons does not resolve against the agreement.

If Parliament supports the resolution to proceed with the Withdrawal Agreement and the terms for our future relationship, the Government will bring forward a Withdrawal Agreement & Implementation Bill to give the Withdrawal Agreement domestic legal effect. The Bill will implement the terms of the Withdrawal Agreement in UK law as well as providing a further opportunity for parliamentary scrutiny. This legislation will be introduced before the UK exits the EU and the substantive provisions will only take effect from the moment of exit. Similarly, we expect any steps taken through secondary legislation to implement any part of the Withdrawal Agreement will only be operational from the moment of exit, though preparatory provisions may be necessary in certain cases.

### **How will the agreement governing the UK's future relationship with the EU be approved and brought into force?**

As described above, the agreement governing our future relationship with the EU can only be legally concluded once the UK has left the EU. This may take the form of a single agreement or a number of agreements covering different aspects of the relationship.

Whatever their final form, agreements on the future relationship are likely to require the consent of the European Parliament and conclusion by the Council. If both the EU and Member States are exercising their competences in an agreement, Member States will also need to ratify it.

In the UK, the Government will introduce further legislation where it is needed to implement the terms of the future relationship into UK law, providing yet another opportunity for proper parliamentary scrutiny.

The CRAG process is also likely to apply to agreements on our future relationship, depending on the final form they take.

**[This statement was also made in the House of Lords: [HLWS337](#)]**

### **[Personal Statement](#)**

**20 Nov 2017 | House of Lords | 787 c1**

Lords personal statement on the Supreme Court's view on the revocability of Article 50.

**The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con):** My Lords, with the leave of the House, I would like to make a short personal statement. Last Monday I repeated a Statement to the House to provide an update on negotiations between the UK and the European Union in November. Following that Statement, I responded to a question from my noble friend Lord Ridley regarding the Supreme Court's view on the revocability of Article 50. My response to my noble friend was incorrect, as a result of a misunderstanding of the question on my part. I am grateful to the noble Baroness, Lady Hayter, who highlighted my mistake. I undertook to check the record, which I subsequently did, and then wrote to the noble Baroness the following day to clarify my remarks and make it clear that the Supreme Court did not opine on the revocability of Article 50 during the case. A copy of this correspondence was placed in the Library of the House last Tuesday afternoon.

I would like to take this opportunity to clarify the Government's understanding of the Supreme Court case. To reiterate, for the avoidance of any doubt, the Supreme Court proceeded in the Miller case on the basis that Article 50 would not be revoked but did not rule on the legal position regarding its revocability. It was, and remains, the Government's policy that our notification of Article 50 will not be withdrawn. This House has a huge amount to contribute to debates about our exit from the European Union, and my door remains open to anyone who wishes to discuss this with me.

Once again, I am grateful to the House for this opportunity to make a statement. I recognise that my comments have caused confusion, and I apologise for that.

## 8. Further reading

### Library Briefing Papers

#### [The Brexit White Paper on future relations and alternative proposals](#)

Commons Briefing Paper CBP-8387  
28 August 2018

#### [Brexit: the exit bill](#)

Commons Briefing Paper CBP-8039  
30 July 2018

#### [EU referendum and alleged breaches of election law \(Emergency Debate\)](#)

Commons Briefing Paper CBP-8272  
27 March 2018

### Committee inquiries

#### [The progress of the UK's negotiations on EU withdrawal inquiry](#)

Exiting the European Union Committee

Scope of the inquiry

The Committee is interested in examining the following topics:

- The priorities and positions of the UK Government and of its negotiating partners - the Commission, the EU-27 and the European Parliament;
- The structure and sequencing of the negotiations as they develop, including the extent to which they include provisions relating to the UK's future relationship with the EU including transitional arrangements;
- The Government's management of the negotiation process in respect of the objectives set out in the White Paper and its relations with the devolved administrations; and
- Whether DExEU and cross-Government structures have the capacity and ability to manage the negotiation process effectively.

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