



Referendums and Parliamentary Democracy Debate on 19 July 2018

Summary

This Lords Library Briefing has been prepared in advance of the debate due to take place on 19 July 2018 in the House of Lords on the motion moved by Lord Higgins (Conservative) “that this House takes note of the impact on parliamentary democracy in the United Kingdom of the use of referendums”.

It contains brief information on the use of UK-wide referendums thus far, and commentary on their use in the context of the UK’s parliamentary system. In addition, section 3 highlights further reading on the subject from external bodies.

The first modern nationwide referendum in the UK was held in 1975 on the UK’s membership of the European Community. At the time, a number of concerns had been raised about the possibility of holding such referendums, with some politicians referring unfavourably to their previous use in other countries to bolster dictatorships. However, the Labour Government claimed the referendums were consistent with parliamentary sovereignty, and stated that it could not bind Parliament and that Parliament would have a role scrutinising any associated legislation. Since then, two further UK-wide referendums have been held, both in the 2010s. The first, in 2011, was held on the potential introduction of the alternative vote system for general elections, and the second, in 2016, was on the UK’s EU membership. In addition, a number of referendums have been held on matters of devolution over the last 30 years, most recently the 2014 referendum on Scottish independence.

In response to apparent moves towards an increasing use of referendums (such as the referendums held on devolution in the 1990s and the then Coalition Government’s plans to hold a referendum on the alternative vote system), in 2010 the House of Lords Constitution Committee published a report considering their use, including the positive and negative aspects of holding them. It expressed a number of concerns about the use of referendums, but agreed that, if they are to be used, they should be held on issues of constitutional importance. This view was shared by the House of Commons Public Administration and Constitutional Affairs Committee in its 2017 report about the EU referendum. Both reports also made a number of recommendations for how the use of referendums can be improved, and highlighted the important role to be played by Parliament in ensuring they were used and run appropriately.

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I. Referendums in the UK

I.1 Overview of the Use of Referendums in the UK

The Electoral Commission defines a referendum as a “direct vote in which an entire electorate is asked to answer a question on a particular proposal”.¹ It is often referred to as an example of ‘direct democracy’, whereby citizens are directly involved in decision making. This contrasts to ‘representative democracy’, whereby the decisions are made by elected representatives (eg in a parliamentary system).² However, referendums are not restricted to national level issues, and referendums may be held on a local level or on a regional or devolved basis (for example, the Scottish independence referendum).

To date, there have been three UK-wide referendums held in the UK. Two of these related to membership of the European Community or European Union, and one was on proposals for a new voting system for UK general elections.³ Further details can be seen in the following table:

Figure 1: UK-wide Referendums

Date	Question	Yes vote (%)	No vote (%)
5 June 1975	Do you think the United Kingdom should stay in the European Community (the Common Market)?	67.2	32.8
5 May 2011	At present, the UK uses the ‘first past the post’ system to elect MPs to the House of Commons. Should the ‘alternative vote’ system be used instead?	32.1	67.9
23 June 2016	Should the United Kingdom remain a member of the European Union or leave the European Union?	48.1 (Remain)	51.9 (Leave)

In addition to the UK-wide referendums, there have been a number of referendums in the UK involving just the citizens of the (now) devolved administrations. These have been on various aspects of devolution. For example, the first post-war referendum held in the UK (on 8 March 1973) was held in Northern Ireland, and asked citizens whether Northern Ireland should remain part of the United Kingdom or join the Republic of Ireland.⁴ They voted in favour of remaining part of the UK. There have also been referendums which approved the establishment of the Scottish Parliament

¹ Electoral Commission, [Introduction to a Referendum](#), accessed 6 July 2018.

² See, for example: Theo Schiller, ‘[Direct Democracy](#)’, Encyclopedia Britannica, accessed 6 July 2018.

³ House of Commons Library, [Referendums](#), 31 August 2016, pp 7–9.

⁴ *ibid.*

and the National Assembly for Wales (both held in 1997), and which signalled support for the Good Friday Agreement (held in 1998). The last referendum involving a devolved administration was held on 18 September 2014, and asked whether Scotland should become an independent country. This was rejected by 55.3 percent of the vote.

A full list of these referendums can be found on pages 8 to 9 of the House of Commons Library briefing, [Referendums](#) (31 August 2016). Referendums are also held on a local basis, including on council tax rates and certain planning issues; information on this is set out on pages 11 to 13 of the House of Commons Library briefing, [Local Government: Polls and Referendums](#) (2 March 2016).

1.2 Legislation

Rules underpinning the process of running national or devolved area referendums in the UK are set out in the Political Parties, Elections and Referendums Act 2000 (PPERA). These rules are then supplemented by additional legislation setting up the referendum in question. For example, the 2016 referendum on the UK's membership of the European Union was governed by the PERA and by the European Union Referendum Act 2015.

The PERA sets out the Electoral Commission's role in the oversight and regulation of referendums. This includes responsibility for:

- commenting on the wording of the referendum question;
- registering campaigners;
- designating lead campaign organisations;
- regulating campaign spending and donations;
- giving grants to lead campaign organisations;
- the conduct of the poll; and
- announcing the result.⁵

The PERA also sets out information on campaign regulation (such as controls on campaign spending and publications) and on the 'referendum period' (when certain restrictions apply, eg restrictions on the publication of material related to the referendum by government departments or local authorities).

The PERA defines a referendum as a "referendum or poll held by or under an Act of Parliament on one or more specified questions".⁶ The individual legislation setting up a given referendum (for example, the European Union

⁵ Electoral Commission, '[What is the Electoral Commission's Role in Referendums?](#)', accessed 6 July 2018.

⁶ Explanatory Notes to the Political Parties, Elections and Referendums Act 2000, section 101.

Referendum Act 2015) specifies matters including: the proposed or latest possible date for the referendum; the proposed question; and who will be entitled to vote. The legislation may also include a number of other supplementary provisions specific to that referendum, and further provisions relating to the administration of the referendum campaign (including campaign spending). For example, in the case of the European Union Referendum Act 2015, the Act specified that the Government must publish information about membership of the European Union before the final ten week period leading up to the referendum day.⁷ This requirement had been added to the legislation by a government amendment to the European Union Referendum Bill at report stage in the House of Lords.⁸ Further information on the parliamentary scrutiny of the Bill can be found in the House of Commons Library briefing, [European Union Referendum Bill 2015–16: Progress of the Bill](#) (11 December 2015).

2. Debates About the Use of Referendums in the UK

2.1 Background

As mentioned previously, the first post-war referendums in the UK were held in the 1970s. However, the idea was around well before that, as highlighted by the House of Lords Constitution Committee:

Referendums, by which citizens are given the opportunity to express a view on specific issues, have antecedents in the Middle Ages and earlier. A.V. Dicey [the British constitutional theorist] advocated referendums for Britain in 1890. But in comparison with some other democracies, the referendum has been little used in the United Kingdom.

Although there was prior experience, such as the Scottish referendum on prohibition in 1920, and local polls in Wales on the Sunday opening of pubs during the 1960s, the modern history of referendums in the UK begins in 1973.⁹

The Constitution Society has summarised Dicey's views on holding referendums as representing an "alternative second chamber" and as a possible extra check when considering major constitutional changes:

Unlike the House of Lords, the referendum was—in Dicey's opinion—"the one available check on party leaders" and the only institution that could "give formal acknowledgement of the doctrine which lies at the basis of English democracy—that a law depends at bottom for its

⁷ European Union Referendum Act, section 7.

⁸ House of Commons Library, [European Union Referendum Bill 2015–16: Progress of the Bill](#), 11 December 2015, p 24.

⁹ House of Lords Constitution Committee, [Referendums in the United Kingdom](#), 7 April 2010, HL Paper 99 of session 2009–10, p 7.

enactment on the consent of the nation as represented by its electors”. Concerned about irreversible and possibly revolutionary changes to the British constitution, Dicey advocated the use of referendums on major constitutional changes.¹⁰

When challenged on his support for referendums being held under certain circumstances, particularly in light of his views on parliamentary sovereignty, Dicey identified the underlying importance of electors within both processes:

This course [of using referendums], it may be said, is unconstitutional. This word has no terrors for me; it means no more than unusual, and the institution of a Referendum would simply mean the formal acknowledgment of the doctrine which lies at the basis of English democracy—that a law depends at bottom for its enactment on the assent of the nation as represented by the electors.¹¹

Although not widely used by the UK prior to the 1970s, referendums had historically been used by a number of other countries prior to that point, such as France, Germany and Switzerland.¹² However, the nature of these referendums, particularly in France and Germany, had led to some criticism within the UK, as they were sometimes seen as the recourse of authoritarian or totalitarian regimes. For example, in 1934 Adolf Hitler used the vehicle of a referendum to approve the merger of the offices of Chancellor and President:

[Hitler] legitimated his illegal merger of the offices of Chancellor and President by a referendum held after the death of President Hindenburg in August 1934, and secured the supposed support of 88 percent of the voters. This result had been assisted by widespread intimidation including the stationing of Brownshirts at polling stations. Groups of electors belonging to particular associations were marched to the polls and in some areas, the result was a victory by more than those on the electoral list. Subsequent referenda approved the military occupation of the Rhineland, the adoption of a single party list for the 1936 Reichstag and withdrawal from the League of Nations.¹³

It was against this background that, in 1945, Clement Attlee (the Labour Leader) responded to Winston Churchill’s (the Prime Minister) request to hold a referendum to extend the wartime coalition, by stating:

I could not consent to the introduction of our national life of a device

¹⁰ Professor Matt Qvortrup, [A Tale of Two Referendums](#), Constitution Society, 2015, p 14.

¹¹ Simon Lee, ‘[Dicey Sentiments](#)’, UK Constitutional Law Association, 29 November 2016 (quoting from: A V Dicey, *A Leap in the Dark*, 1893).

¹² Gareth Stedman Jones, ‘[Brexit in Context: Reflections on the History of Referenda](#)’, History Workshop, 3 May 2017.

¹³ *ibid.*

so alien to all of our traditions as the referendum, which has only too often been the instrument of Nazism and Fascism.

Hitler's practices in the field of referenda and plebiscites can hardly have endeared these expedients to the British heart.¹⁴

Attlee's concerns were subsequently raised by Margaret Thatcher, Leader of the Conservative Party, in a debate on the European Economic Community referendum in 1975, where she referred to the view referendums were a "splendid weapon for demagogues and dictators".¹⁵ In her speech, she also discussed the relationship between referendums with concepts such as parliamentary sovereignty and a representative Parliament.¹⁶ On the first of these points, she stated:

There is no power under which the British constitution can come into rivalry with the legislative sovereignty of Parliament. That is the tenth edition of Dicey. To subject laws retrospectively to a popular vote suggests a serious breach of this principle. To subject laws prospectively before the final assent of the popular vote suggests we are using a different rule to validate laws. To have several referenda would create a new rule. We should be saying that some proposals require popular ratification and others do not. Without a written constitution one might ask: which proposals and what kind of measures?¹⁷

Considering this question, Mrs Thatcher went on to suggest that people may assert it is necessary in cases of constitutional change. However, she argued this was not appropriate and that it was not easy to define what constitutes such change, particularly in the absence of a written constitution:

But it is hard to define such a change in the British tradition because so much depends on convention and precedent. A referendum may, however, become acceptable if given a proper constitutional foundation—that is to say, if the conditions under which it could be used were defined. But that would mean, like many other democratic countries, going as far as a written constitution or at least part of the way. The implications for parliamentary sovereignty are profound.¹⁸

She then described her views of the UK system of "representative Government", whereby the public elected representatives to make decisions in the interests of the country as a whole.

¹⁴ *Times*, 'July Election Nearer', 22 May 1945.

¹⁵ [HC Hansard, 11 March 1975, col 307.](#)

¹⁶ *ibid*, col 310.

¹⁷ *ibid*.

¹⁸ *ibid*.

She believed referendums would not represent everyone, particularly minorities, in the same manner:

[O]ur system, which has been copied all over the world, is one of representative Government under which those who have not time to look into every detail of this or that Bill choose people who are honourable and with whose opinions they are in harmony to discuss these matters. That has been our system of Government for many years, representative Government in which the representatives consider and discuss all the points in detail. In a popular vote, the voter expresses an individual opinion. In a representative institution, the representative would be expected to consider the interests of minorities and see how the separate measure fitted into the whole. I believe that if we have a referendum system, minorities would not receive anything like such a fair deal as they have under the existing system.¹⁹

The issue of the proposed referendum's relationship with parliamentary sovereignty was also considered by the Leader of the House of Commons, Edward Short (Labour). He believed it was "wholly consistent" with the principle of parliamentary sovereignty, arguing that it would be brought about by legislation scrutinised by Parliament and that Parliament could not be bound by the result:

This referendum is wholly consistent with parliamentary sovereignty. The Government will be bound by its result, but Parliament, of course, cannot be bound by it. Although one would not expect hon. Members to go against the wishes of the people, they will remain free to do so.

One of the characteristics of this Parliament is that it can never divest itself of its sovereignty. The referendum itself cannot be held without parliamentary approval of the necessary legislation. Nor, if the decision is to come out of the Community, could that decision be made effective without further legislation. I do not, therefore, accept that the sovereignty of Parliament is affected in any way by the referendum.²⁰

2.2 Lords Constitution Committee on Referendums (2010)

On 7 April 2010, the House of Lords Constitution Committee published a report on the use of referendums in the United Kingdom.²¹ The report was published in the context of a growing use of referendums in the United Kingdom in the preceding years (such as the referendums relating to devolution), and increasing proposals for further referendums (such as the alternative vote referendum).

¹⁹ [HC Hansard, 11 March 1975, cols 313–14.](#)

²⁰ *ibid*, cols 292–3.

²¹ House of Lords Constitution Committee, [Referendums in the United Kingdom](#), 7 April 2010, HL Paper 99 of session 2009–10, p 7.

As part of the report, the Committee considered a number of arguments from witnesses for and against using referendums in the UK, as set out below.

Relationship with Democratic Process

In their evidence to the Committee, some witnesses expressed the view that referendums could legitimise policy decisions (by indicating public support), and could help restore public faith in democracy.²² In addition, the Committee noted that:

Professor Bogdanor [the constitutional academic] thought that it was “illusory” in the modern world “to believe that you can confine legislative matters solely to parliamentarians”. The Government [in its evidence] acknowledged arguments that referendums could ensure that the public are consulted on significant issues.²³

Professor Bogdanor also believed that referendums could complement representative democracy, arguing that:

The dichotomy between ‘representative’ and ‘direct’ democracy is [...] highly misleading. For the referendum, even in Switzerland, is used not to replace, but to supplement representative democracy. There is little danger that it will come to subvert parliamentary government.²⁴

However, others believed that referendums can weaken democracy, with some witnesses suggesting that putting people before Parliament is in direct opposition to parliamentary sovereignty.²⁵ In addition, the Committee noted arguments by a number of witnesses that referendums were often used as a ‘tactical device’ by governments. For example, it drew attention to an argument by Sir David Butler (social scientist and psephologist) that:

[Referendums in the UK] are only going to happen when the Government of the day wants it or when it would be too embarrassing (because of past promises) to get out of it. Normally they will have a referendum because they think they are going to win it and they will not have it if they are not going to win it. They will just dodge the issue. It is a matter [...] of straight politics.²⁶

It was also argued that many referendums were simply held to settle issues within the governing party at the time.²⁷ For example, Peter Kellner, the

²² House of Lords Constitution Committee, [Referendums in the United Kingdom](#), 7 April 2010, HL Paper 99 of session 2009–10, p 13.

²³ *ibid.*

²⁴ *ibid.*, p 16.

²⁵ *ibid.*, p 20.

²⁶ *ibid.*, p 16.

²⁷ *ibid.*, p 17.

political polling expert, asserted that this was the case with the 1975 referendum on European Community membership.

Entrenchment of Policy

Another benefit seen by some witnesses, such as Unlock Democracy, was that referendum decisions can entrench legislation or policy:

In the opinion of some witnesses, an important feature of referendums was that they make it difficult to reverse a policy that had demonstrable public support. Unlock Democracy asserted that they were one of the few ways under the UK's constitutional settlement that Acts of Parliament could be entrenched: "This is not to say that the Acts are codified, just that if a measure has been endorsed in a referendum it would not be politically possible to repeal it without a further referendum [...]"²⁸

However, a similar point was made in opposition to this view, ie that referendums can be a "block on progress".²⁹ For example, Peter Kellner noted that, "in Switzerland, women were not given the vote until 1971, because male voters had rejected votes for women in a referendum in 1959".³⁰

Can they Settle an Issue?

There were contrasting views among the Committee's witnesses over whether referendums can settle a policy issue. For example, speaking about the 1975 referendum on membership of the European Community, Peter Kellner argued that it had resolved the issue for a generation, as "the opponents of British membership accepted that verdict for a period and without the referendum it might have been re-opened".³¹ However, Dr Stuart Wilks-Heeg, currently Head of Politics at the University of Liverpool, argued that there were often calls for referendums to be repeated.³² He highlighted the multiple referendums on devolution since the 1970s, and—regarding referendums on EU membership—noted:

[I]n the case of other EU states that have held referendums on EU treaties, governments had been able to force repeat referendums to get the result they wanted.³³

²⁸ House of Lords Constitution Committee, [Referendums in the United Kingdom](#), 7 April 2010, HL Paper 99 of session 2009–10, p 14.

²⁹ *ibid*, p 18.

³⁰ *ibid*.

³¹ *ibid*, p 14.

³² *ibid*, p 18.

³³ *ibid*.

Regarding the recent EU referendum, YouGov reported in March 2018 that there was uncertainty over the public's view regarding a second referendum, with different polling companies finding different results.³⁴ However, its own findings indicated that more people were still opposed to holding a second referendum, although the number in favour of holding a second vote was rising. Summarising, YouGov stated:

Different polling questions by different companies have found varying levels of support for a second referendum. Our latest poll finds 36 percent of the public think that once terms are agreed there should be a referendum on whether or not to accept them, while 42 percent of people think there should not. However, support for a second referendum has been gradually ticking upwards. When we originally asked this question back in April 2017, 31 percent supported a second referendum and 49 percent were opposed.³⁵

A Driver of Public Engagement?

There were also contrasting views among witnesses regarding public engagement with referendums. For example, some believed they improved public engagement with politics overall, as people could see that their active participation had “real policy implications”.³⁶ In addition, other witnesses argued that referendums were popular with voters, with Professor Bogdanor stating that:

[S]tudies of the international use of referendums showed that people welcomed the opportunity to participate so long as they thought that their participation would have some result and was not a ‘talking shop’.³⁷

However, others argued against this view, suggesting that there were already increasing signs of public apathy to votes, and that low turnout in referendums could question the legitimacy of the result.³⁸

Figure 2 shows the voting turnout at each general election and UK-wide referendum since 1970. It shows that the only national referendum which saw turnout higher than the general elections preceding or following was the EU referendum in 2016.

³⁴ YouGov, [‘Where Britain Stands on Brexit One Year Out’](#), 29 March 2018.

³⁵ *ibid.*

³⁶ House of Lords Constitution Committee, [Referendums in the United Kingdom](#), 7 April 2010, HL Paper 99 of session 2009–10, p 14.

³⁷ *ibid.*, p 16.

³⁸ *ibid.*, p 18.

Figure 2: General Election and UK-wide Referendum Turnout since 1970³⁹

UK General Elections		UK-wide Referendums		
General Election Date	Turnout (%)	Referendum Date	Subject	Turnout (%)
1970	72			
Feb-74	78.8			
Oct-74	72.8			
		1975	European Community membership	64
1979	76			
1983	72.7			
1987	75.3			
1992	77.7			
1997	71.4			
2001	59.4			
2005	61.4			
2010	65.1			
		2011	Parliamentary voting system	42.2
2015	66.2			
		2016	European Union membership	72.2
2017	68.8			
Average	70.6			59.5

Turning to the public's view on referendums, this has been the subject of polling by the Hansard Society as part of its Audit of Political Engagement series. For example, in its most recent Audit, published earlier this year, the Hansard Society found that public support for the greater use of referendums has been declining, with 58 percent backing it in the latest survey, compared with 61 percent in 2017 and 76 percent in 2016 (this poll was run prior to the EU referendum that June).⁴⁰

³⁹ House of Commons Library, [UK Election Statistics: 1918–2017](#), 23 August 2017.

⁴⁰ Hansard Society, ['Audit of Political Engagement 15'](#), 2018.

In 2017 the Hansard Society polled on the public's preferred way of resolving an issue, finding little overall preference:

We asked which mechanism people thought would work best to produce a decision in Britain's best interest: government taking a decision without a vote in Parliament; a parliamentary vote; local government deciding for their own area; or the public deciding through, for example, a referendum. Each option was put across five different policy areas, covering national and local issues, constitutional and ethical matters:

- the method for electing MPs—a national, constitutional question—like that posed in the 2011 AV referendum;
- a financial matter in relation to the NHS—a key national policy area with local delivery implications;
- 'fracking', a controversial environmental issue with important local ramifications;
- assisted dying—a moral or conscience issue where citizens might arguably have stronger personal views or indeed knowledge than they might, for example, have on constitutional questions; and
- our future relationship with the EU, the subject of the recent nation-wide referendum.

Overall, public opinion was split; no decision-making mechanism attracted majority support for any of the policy scenarios. However, overall, decisions by the public, through a referendum, were the most popular. The option that was closest to attracting a majority was a referendum to choose the method for electing MPs, which was supported by 47 percent of the public.⁴¹

The Hansard Society found that opinion was split when the type of issue to be decided was taken into account, with those surveyed believing that any change to the voting system or the question of assisted dying would be best decided themselves (eg through a referendum), and that the NHS spending question would be better decided by Parliament. The Hansard Society also found a difference in views to referendums among those who voted leave or remain in the EU referendum:

Young people apart, those who voted 'remain' are less likely to think that important questions should be determined by referendums and more likely to select a vote in Parliament as the best way to make a decision across all the scenarios we tested. Conversely, older people apart, those who voted 'leave' are more likely to think that the public should decide, for example through a referendum.⁴²

⁴¹ Hansard Society, '[Parliamentary Democracy or Referendums? Public Attitudes to Decision-making](#)', 26 April 2017.

⁴² *ibid.*

Public Knowledge of Issues

A number of witnesses, in their evidence to the House of Lords Constitution Committee, expressed the view that ‘complex issues’ should not be decided by referendums, and that a simple ‘yes’ or ‘no’ referendum can over-simplify an issue.⁴³ As such, it was suggested that complex matters are better decided through the time and experience offered by elected representatives. In addition, some witnesses believed that when referendums are held on complex issues it can lead to the campaign becoming more focused on ‘peripheral issues’ to the central question.⁴⁴

However, other witnesses asserted that referendums gave the public an opportunity to think deeply about an issue, and that this often improved knowledge and understanding. For example, Professor Robert Hazell, currently Professor of Government and the Constitution at University College London, argued that the referendum campaigns in Scotland, Wales and Northern Ireland raised awareness about the proposals for devolved assemblies.⁴⁵ Others argued against the view that the public should not be trusted with complex questions:

In response to those who queried whether referendums were a suitable vehicle by which to determine policy on complex issues, some witnesses asserted that voters are well-equipped to make reasoned judgments on issues put before them at referendums. Peter Facey, Director, Unlock Democracy, argued that voters were “perfectly capable” of making a complex decision, so long as there was adequate public education. Professor Gallagher [currently Professor of Comparative Politics at Trinity College, University of Dublin] suggested that, if pushed too far, “the arguments highlighting the supposed incompetence of voters to decide on specific policy issues [...] can become an argument against allowing people to vote at elections”.⁴⁶

⁴³ House of Lords Constitution Committee, [Referendums in the United Kingdom](#), 7 April 2010, HL Paper 99 of session 2009–10, p 18.

⁴⁴ *ibid*, p 19.

⁴⁵ *ibid*, p 15.

⁴⁶ *ibid*.

Views on Information Provided in Advance of 2016 EU Referendum

As part of its report on the 2016 referendum on the UK's membership of the European Union, the Electoral Commission ran public opinion surveys on the public's view of the information available to inform their decision. It found:

Our public opinion survey explored whether voters had enough information about the 'leave' and 'remain' arguments to be able to make an informed decision how to vote in the referendum. Sixty two percent of respondents agreed that they did compared to 28 percent who disagreed. There was a clear pattern by age group with those aged 18–34 least likely to agree they had enough information to make an informed decision (52 percent agreed), 35–54 year olds more likely (63 percent agreed) and those aged 55+ most likely (70 percent agreed).

In response to a similar question asked following the 2011 referendum 73 percent of respondents agreed they had enough information to make an informed choice. Equivalent questions asked following the elections in Scotland, Wales and Northern Ireland in May 2016 also yielded higher results with 84 percent of respondents in Northern Ireland saying they knew enough about candidates to make an informed choice (80 percent in Scotland and 74 percent in Wales).

Respondents were also asked, separately, whether they had enough information about what would happen in the event of a Remain vote and a Leave vote. Sixty five percent agreed that they had enough information about what would happen in the event of a Remain vote (26 percent disagreed) and 45 percent agreed that they had enough information about what would happen in the event of a Leave vote (46 percent disagreed).

(Source: Electoral Commission, [The 2016 EU Referendum](#), September 2016)

Referendums Benefit Certain Groups?

Some witnesses argued that referendums tend to be “dominated by elite groups, including politicians, the media, and wealthy individuals”, rather than being about the views of the public.⁴⁷ For example, Sir David Butler stated that this had happened during the first Irish referendum on the Lisbon Treaty, arguing that the result had been heavily influenced by one wealthy individual. In addition, the Committee noted views from witnesses that

⁴⁷ Electoral Commission, [The 2016 EU Referendum](#), September 2016, p 17.

referendums can sometimes see minority views or rights overridden by “populist sentiment”.⁴⁸

Committee Conclusions on the Use of Referendums

Overall, the House of Lords Constitution Committee expressed concerns about the use of referendums, and in particular “the ad hoc manner in which referendums have been used, often as a tactical device, by the government of the day”.⁴⁹ The Committee suggested cross-party agreement should be sought on the circumstances in which they should be used in future.

However, considering the possible circumstances in which referendums could be employed, the Committee believed they may be most appropriately used to agree “fundamental constitutional issues”.⁵⁰ It highlighted evidence from witnesses arguing that if the rules or structure of politics should change, the people (rather than politicians) should be given the right to make the decision. For example, it set out the views of Professor Stephen Tierney, currently Professor of Constitutional Theory and Director of the Edinburgh Centre for Constitutional Law at the University of Edinburgh, that:

Referendums should only be held in relation to “fundamental constitutional change” and “the highest issues of constitutional principle”, where “the issues are so fundamental that people should be able to reclaim their direct constitutional authority”.⁵¹

Some witnesses believed that referendums were already protective in this regard, and restricted governments pushing forward with certain constitutional change without first consulting the public. For example, Professor Bogdanor argued it would be very difficult for the Government not to hold a referendum on a matter of devolution, and Professor Hazell stressed that people in Ireland have been promised that Irish unity could not happen without the consent of the people through a referendum.⁵²

Although the Committee acknowledged that in the absence of a written constitution it was hard to define exactly what would constitute a significant constitutional issue, it did provide the following (non-definitive) list of possible scenarios:

- To abolish the Monarchy;
- To leave the European Union;
- For any of the nations of the UK to secede from the Union;
- To abolish either House of Parliament;

⁴⁸ Electoral Commission, [The 2016 EU Referendum](#), September 2016, p 17.

⁴⁹ *ibid*, p 49.

⁵⁰ *ibid*.

⁵¹ *ibid*, p 21.

⁵² *ibid*, p 14.

- To change the electoral system for the House of Commons;
- To adopt a written constitution; and
- To change the UK's system of currency.⁵³

However, it believed the decision should not be left to the government of the day, and that “Parliament should decide whether or not a referendum is appropriate in a given circumstance”.⁵⁴

Further details on the Committee's proposed use of referendums to agree constitutional issues can be found in chapter three of the report. In addition, consideration of the administration of referendums, including whether vote thresholds should be set, is set out in chapter five.

Government Response

In response to the Committee's findings, the then Coalition Government agreed with the Committee's view that issues of significant constitutional change were often appropriate for the use of referendums.⁵⁵ However, as with the Committee, it noted the difficulty of providing an exhaustive list of the scenarios this should cover. In addition, the Coalition Government stated that referendums were important for transparency and accountability overall:

The Government is committed to renewal of our political system to make it more transparent and accountable. A fundamental concept underpinning this aim is the transfer of power from the Executive to Parliament, and from Parliament to people. The Government believes that referendums can be a valuable means of giving people a greater say over important issues, at both the national and local level. However we recognise that national referendums cannot and should not be held on every important issue.⁵⁶

The Coalition Government's response also underlined its commitment to holding referendums on a number of subjects, including the alternative voting system and further devolution in Wales, and emphasised its commitment to allowing certain local referendums (for example, on proposed council tax rises).⁵⁷

⁵³ Electoral Commission, [The 2016 EU Referendum](#), September 2016, p 47.

⁵⁴ *ibid*, p 51.

⁵⁵ House of Lords Constitution Committee, [Government Response to the Report on Referendums in the United Kingdom](#), 8 October 2010, HL Paper 34 of session 2010–12, p 7.

⁵⁶ *ibid*.

⁵⁷ *ibid*, p 4.

2.3 House of Commons Public Administration and Constitutional Affairs Committee on EU Referendum (2017)

In April 2017, the House of Commons Public Administration and Constitutional Affairs Committee published a report considering referendums, and their administration, in light of the 23 June 2016 referendum on the UK's membership of the European Union.⁵⁸

Summarising the relationship between referendums and a “representative, parliamentary democracy”, the Committee outlined arguments made for and against referendums.⁵⁹ For example, the Committee highlighted the potential difficulties faced if the views of the public did not correspond with the views of their representatives:

Critics of the referendum warn that referendums by their very nature undermine the UK's representative, and parliamentary, democracy, not least when there is a clear difference between the views of a majority of the public and the majority of parliamentarians. The trustee model of representation was formulated by Edmund Burke MP, Irish MP and philosopher, who told the electors of Bristol that “your representative owes you, not his industry only; and he betrays, instead of serving you, if he sacrifices it to your opinion”.⁶⁰

Indeed, it claimed this clash of views had happened in the case of the EU referendum.⁶¹

However, in support of referendums and their relationship with representative democracy, the Committee noted evidence of the success of referendums elsewhere, and cited views from witnesses that there had been no obvious impact on the broader democratic process:

Referendums can enhance the quality of representative democracy and have been used across the world, in countries such as Switzerland, Australia and New Zealand, and in some US states, such as California, without endangering representative democracy. As Dr Alan Renwick from the Constitution Unit at UCL noted, “most democracies hold referendums and there is no evidence to suggest that the existence of referendums undermines the broader representative democratic process”.⁶²

Concerning the question over when referendums should be held, the Public Administration and Constitutional Affairs Committee agreed with the view

⁵⁸ House of Commons Public Administration and Constitutional Affairs Committee, [Lessons Learned from the EU Referendum](#), 12 April 2017, HC 496 of session 2016–17.

⁵⁹ *ibid*, p 9.

⁶⁰ *ibid*.

⁶¹ *ibid*, p 4.

⁶² *ibid*.

of the House of Lords Constitution Committee that they should generally be used for resolving issues of constitutional importance, and when “issues cannot be resolved through the usual medium of party politics”.⁶³

In addition, the Committee highlighted the importance of clarity surrounding the referendum’s question and the legal status of the outcome. On the former point, the Committee criticised the Government’s handling of the EU referendum, claiming that the potential outcomes were not clear to voters and that the information provided was negatively affected by the Government’s preferred result at that time:

If the results of referendums are to command the maximum of public support, acceptance and legitimacy, then they must be held on questions and issues which are as clear as possible. Voters should be presented with a choice, where the consequences of either outcome are clear [...] The UK Government initiated the process which led to the [EU] referendum, despite being against the suggested proposal, and with the aim of using a negative result to shut down the debate about the question at issue. Moreover, the referendum was confined to a tight question, on the basis of a clear binary choice. There could, however, have been more positive efforts to explain, and therefore to plan for, the consequences for voters in the event of either outcome. This would have required providing impartial consideration of the outcome which the Government clearly did not want.⁶⁴

Regarding the importance of clarity on the legal status of referendum outcomes, the Committee discussed whether referendum results were, in effect, binding. For example, it noted that:

The doctrine of parliamentary sovereignty, allied to the absence of a codified constitution, has resulted in referendums in the UK generally being treated as advisory, rather than legally binding. The sole exceptions to this general rule were the alternative vote referendum in 2011, and, in a more complicated fashion, the 1979 devolution referendums in Scotland and Wales, where the legislation enacted the legal consequences of the result.⁶⁵

However, the Committee highlighted evidence from its witnesses that referendums were often seen as “morally binding”, with Parliament and Government expected to take action to bring about the public’s decision.⁶⁶

⁶³ House of Commons Public Administration and Constitutional Affairs Committee, [Lessons Learned from the EU Referendum](#), 12 April 2017, HC 496 of session 2016–17, p 11.

⁶⁴ *ibid*, p 12.

⁶⁵ *ibid*.

⁶⁶ *ibid*, p 13.

Therefore, on this point, the Committee concluded:

Parliamentary sovereignty, and the associated principle that no Parliament can bind a successor, makes the concept of a legally binding referendum impossible in theory. However, it is clear that, in reality, referendums are seen by the public as conferring an obligation on parliamentarians to deliver the result.⁶⁷

Overall, the Committee argued that the relationship between referendums and representative democracy required “careful management”, with the referendum process needing to be viewed as “fair” by all, and the result needing to be “agreed to” by all.⁶⁸ The Committee again emphasised the importance of these principles in light of the public’s expectation that the result would be accepted and implemented. To achieve this, the Committee argued that referendums need to be:

[D]esigned in such a way as to provide the utmost clarity for parliamentarians, campaigners and, above all, the electorate. Referendums should be limited to matters which lend themselves to a binary question. Confusion as to the possible consequences of a referendum result serves only to heighten the potential tensions between referendums and representative democracy and risks increasing the public’s disenchantment with politics.⁶⁹

The Committee then highlighted the important role to be played by Government and by Parliament in ensuring this was achieved.⁷⁰

Government Response

In its response to the Public Administration and Constitutional Affairs Committee, published in December 2017, the Government defended its stance regarding the clarity of the EU referendum result and highlighted the role Parliament played when scrutinising legislation setting up a referendum:

The Government has been consistently clear, both before and after the referendum, that it would respect the outcome of the referendum. The Government is also clear that there must be no attempts to remain inside the EU and there will be no second referendum.

The current framework for referendums requires primary legislation before any UK-wide referendum can be held. There are thorough parliamentary procedures in place to ensure that any referendum legislation is scrutinised and debated. The European Union

⁶⁷ House of Commons Public Administration and Constitutional Affairs Committee, [Lessons Learned from the EU Referendum](#), 12 April 2017, HC 496 of session 2016–17, p 13.

⁶⁸ *ibid.*

⁶⁹ *ibid.*, pp 13–14.

⁷⁰ *ibid.*, p 14.

Referendum Bill was passed at second reading in the House of Commons by large majority (544 to 53).⁷¹

The response also highlighted the role already played by Government and Parliament in ensuring referendums are run properly and that sufficient information is provided for the public.⁷² For example, it outlined the role played by the Electoral Commission in regulating referendums (for example, its role considering the intelligibility of the wording of referendum question), and again highlighted the role played by Parliament scrutinising the legislation setting up referendums, which includes provisions relating to the administration of the referendum.

3. Further Reading

The following sources provide further recent commentary on the subject of referendums and their use in the UK's parliamentary system. However, this is not an exhaustive list.

Constitution Unit, [Report of the Independent Commission on Referendums](#), 10 July 2018

This report considered the regulation of referendums and their role in democracy, including how they should be legislated for, the use of voting thresholds, and when they should be used (see, in particular, part two of the report). The commission behind the report included academics, MPs and a Member of the House of Lords, Lord Eames (Crossbench), and made a number of recommendations on the future use of referendums.

In summary, regarding the relationship between referendums and representative democracy, the report stated:

They cannot replace the institutions of representative democracy. Citizens do not have the time or the resources to participate in all the policy decisions necessary for the functioning of a complex modern democracy. Representatives can dedicate time to consider such issues in great detail, engage in deliberation with other representatives and make informed decisions on a wide range of topics. Representative institutions are also needed to provide for 'joined up' thinking across policy areas.⁷³

⁷¹ Cabinet Office, [Government Response to the Public Administration and Constitutional Affairs Committee Report on Lessons Learned from the EU Referendum](#), December 2017, Cm 9553.

⁷² *ibid.*

⁷³ Constitution Unit, [Report of the Independent Commission on Referendums](#), 10 July 2018, p 8.

Lucy Atkinson and Andrew Blick, [Referendums and the Constitution](#), Constitution Society, 2017

This report set out historical background to the increased use of referendums in the UK, contains case studies on their use so far, and made recommendations on key principles and good practice when running referendums. Although believing they can play a valuable democratic role, the authors also suggested they can be manipulated by the executive. This can see referendums being used for political ends or voters being presented with limited options.

Nat le Roux, '[Is There a Tension between Parliamentary Democracy and Referendums?](#)', Constitution Society, 18 November 2016

This article considered the relationship between referendums and parliamentary democracy in the UK. The article included consideration of the mandate that should be taken from the result, bearing in mind the concept of parliamentary sovereignty, and recommendations for improving their use, including the use of thresholds. This latter point was based on the author's view of 'asymmetric irreversibility':

In sovereignty referendums, there is an important difference between the consequences of a vote for the status quo and a vote for independence, or withdrawal from an international organisation. A 'Leave' vote, if implemented, is effectively irreversible: a 'Remain' vote leaves open the possibility of future referendums on the same issue. That is quite unlike a general election, where whatever the result, voters have an opportunity to change their minds five years later.⁷⁴

Electoral Reform Society, [It's Good To Talk: Doing Referendums Differently After the EU Vote](#), September 2016

The Electoral Reform Society (ERS) also considered methods in which the use of referendums could be improved in the UK. It made recommendations that there should be better public information and discussion on the issues covered by referendums, and that each referendum should have mandatory pre-legislative scrutiny which included citizen involvement. Although the ERS stated that a lot of questions needed to be considered regarding the UK's use of referendums, it believed:

Referendums are a rich source of learning about public attitudes to politics and democracy. They expose views and feelings that are not given true expression or representation at general elections, given our distorted electoral system.⁷⁵

⁷⁴ Nat le Roux, '[Is There a Tension between Parliamentary Democracy and Referendums?](#)', Constitution Society, 18 November 2016.

⁷⁵ Electoral Reform Society, [It's Good To Talk: Doing Referendums Differently After the EU Vote](#), September 2016, p 7.