

THE MECHANICS OF A FURTHER REFERENDUM ON BREXIT

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Foreword

For well over two years UK politics has been dominated by Brexit – the term coined to describe the decision taken in a referendum on 23 June 2016 that the UK should leave the EU. This has opened up profound questions about the UK's international relations, economy and constitutional arrangements, as well as serious divisions within the main political parties. Ever since the original vote there have been some calls for a further referendum on Brexit, including claims that there should be a final public vote once the deal negotiated between the UK government and the EU is known. In recent months these calls have grown in frequency and intensity.

Given the increasing attention on the idea of a further referendum, but the relative lack of detail and clarity among both proponents and

Executive summary

- x Ever since the referendum decision on 23 June 2016 that the UK should leave the EU (i.e. embark on Brexit), some have proposed that there should be a further referendum on the details of any Brexit deal. In recent mon

in which case a preferential ballot using the Alternative Vote (AV) seems the most plausible option. If no deal is reached, a straightforward referendum ballot could be held.

- x Section 6 explores the potential legal and regulatory framework for a new referendum. The referendum legislation would need to include both the question and the franchise. While some might propose that the franchise for a further Brexit referendum should include 17 year olds, and/or EU citizens resident in the UK, these groups were not included in the 2016 franchise and it would be unwise to alter that at this stage. In addition, proposals exist for improving the conduct and regulation of referendums, some of which should be incorporated even though time would be short. These include crucial steps for improving the regulation of online campaigning.
- x Section 7 puts all these pieces together, to develop alternative scenarios and timetables for a possible further Brexit referendum, taking into account the required timescale for preparation, the trigger point and the question to be put to voters. It concludes that a referendum triggered at the earliest possible point, when the meaningful vote on a deal is considered by the House of Commons, could potentially take place as early as May 2019. This could allow the UK to hold European Parliament elections in the event of a vote before the start of the Parliament's new term on 2 July 2019. A referendum triggered during Commons scrutiny of the deal would be held on 12 June 2019. The 25th (73 (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z) (aa) (ab) (ac) (ad) (ae) (af) (ag) (ah) (ai) (aj) (ak) (al) (am) (an) (ao) (ap) (aq) (ar) (as) (at) (au) (av) (aw) (ax) (ay) (az) (ba) (bb) (bc) (bd) (be) (bf) (bg) (bh) (bi) (bj) (bk) (bl) (bm) (bn) (bo) (bp) (bq) (br) (bs) (bt) (bu) (bv) (bw) (bx) (by) (bz) (ca) (cb) (cc) (cd) (ce) (cf) (cg) (ch) (ci) (cj) (ck) (cl) (cm) (cn) (co) (cp) (cq) (cr) (cs) (ct) (cu) (cv) (cw) (cx) (cy) (cz) (da) (db) (dc) (dd) (de) (df) (dg) (dh) (di) (dj) (dk) (dl) (dm) (dn) (do) (dp) (dq) (dr) (ds) (dt) (du) (dv) (dw) (dx) (dy) (dz) (ea) (eb) (ec) (ed) (ee) (ef) (eg) (eh) (ei) (ej) (ek) (el) (em) (en) (eo) (ep) (eq) (er) (es) (et) (eu) (ev) (ew) (ex) (ey) (ez) (fa) (fb) (fc) (fd) (fe) (ff) (fg) (fh) (fi) (fj) (fk) (fl) (fm) (fn) (fo) (fp) (fq) (fr) (fs) (ft) (fu) (fv) (fw) (fx) (fy) (fz) (ga) (gb) (gc) (gd) (ge) (gf) (gg) (gh) (gi) (gj) (gk) (gl) (gm) (gn) (go) (gp) (gq) (gr) (gs) (gt) (gu) (gv) (gw) (gx) (gy) (gz) (ha) (hb) (hc) (hd) (he) (hf) (hg) (hh) (hi) (hj) (hk) (hl) (hm) (hn) (ho) (hp) (hq) (hr) (hs) (ht) (hu) (hv) (hw) (hx) (hy) (hz) (ia) (ib) (ic) (id) (ie) (if) (ig) (ih) (ii) (ij) (ik) (il) (im) (in) (io) (ip) (iq) (ir) (is) (it) (iu) (iv) (iw) (ix) (iy) (iz) (ja) (jb) (jc) (jd) (je) (jf) (jg) (jh) (ji) (jj) (jk) (jl) (jm) (jn) (jo) (jp) (jq) (jr) (js) (jt) (ju) (jv) (jw) (jx) (jy) (jz) (ka) (kb) (kc) (kd) (ke) (kf) (kg) (kh) (ki) (kj) (kk) (kl) (km) (kn) (ko) (kp) (kq) (kr) (ks) (kt) (ku) (kv) (kw) (kx) (ky) (kz) (la) (lb) (lc) (ld) (le) (lf) (lg) (lh) (li) (lj) (lk) (ll) (lm) (ln) (lo) (lp) (lq) (lr) (ls) (lt) (lu) (lv) (lw) (lx) (ly) (lz) (ma) (mb) (mc) (md) (me) (mf) (mg) (mh) (mi) (mj) (mk) (ml) (mm) (mn) (mo) (mp) (mq) (mr) (ms) (mt) (mu) (mv) (mw) (mx) (my) (mz) (na) (nb) (nc) (nd) (ne) (nf) (ng) (nh) (ni) (nj) (nk) (nl) (nm) (nn) (no) (np) (nq) (nr) (ns) (nt) (nu) (nv) (nw) (nx) (ny) (nz) (oa) (ob) (oc) (od) (oe) (of) (og) (oh) (oi) (oj) (ok) (ol) (om) (on) (oo) (op) (oq) (or) (os) (ot) (ou) (ov) (ow) (ox) (oy) (oz) (pa) (pb) (pc) (pd) (pe) (pf) (pg) (ph) (pi) (pj) (pk) (pl) (pm) (pn) (po) (pp) (pq) (pr) (ps) (pt) (pu) (pv) (pw) (px) (py) (pz) (qa) (qb) (qc) (qd) (qe) (qf) (qg) (qh) (qi) (qj) (qk) (ql) (qm) (qn) (qo) (qp) (qq) (qr) (qs) (qt) (qu) (qv) (qw) (qx) (qy) (qz) (ra) (rb) (rc) (rd) (re) (rf) (rg) (rh) (ri) (rj) (rk) (rl) (rm) (rn) (ro) (rp) (rq) (rr) (rs) (rt) (ru) (rv) (rw) (rx) (ry) (rz) (sa) (sb) (sc) (sd) (se) (sf) (sg) (sh) (si) (sj) (sk) (sl) (sm) (sn) (so) (sp) (sq) (sr) (ss) (st) (su) (sv) (sw) (sx) (sy) (sz) (ta) (tb) (tc) (td) (te) (tf) (tg) (th) (ti) (tj) (tk) (tl) (tm) (tn) (to) (tp) (tq) (tr) (ts) (tt) (tu) (tv) (tw) (tx) (ty) (tz) (ua) (ub) (uc) (ud) (ue) (uf) (ug) (uh) (ui) (uj) (uk) (ul) (um) (un) (uo) (up) (uq) (ur) (us) (ut) (uu) (uv) (uw) (ux) (uy) (uz) (va) (vb) (vc) (vd) (ve) (vf) (vg) (vh) (vi) (vj) (vk) (vl) (vm) (vn) (vo) (vp) (vq) (vr) (vs) (vt) (vu) (vv) (vw) (vx) (vy) (vz) (wa) (wb) (wc) (wd) (we) (wf) (wg) (wh) (wi) (wj) (wk) (wl) (wm) (wn) (wo) (wp) (wq) (wr) (ws) (wt) (wu) (wv) (ww) (wx) (wy) (wz) (xa) (xb) (xc) (xd) (xe) (xf) (xg) (xh) (xi) (xj) (xk) (xl) (xm) (xn) (xo) (xp) (xq) (xr) (xs) (xt) (xu) (xv) (xw) (xx) (xy) (xz) (ya) (yb) (yc) (yd) (ye) (yf) (yg) (yh) (yi) (yj) (yk) (yl) (ym) (yn) (yo) (yp) (yq) (yr) (ys) (yt) (yu) (yv) (yw) (yx) (yz) (za) (zb) (zc) (zd) (ze) (zf) (zg) (zh) (zi) (zj) (zk) (zl) (zm) (zn) (zo) (zp) (zq) (zr) (zs) (zt) (zu) (zv) (zw) (zx) (zy) (zz) (01) (02) (03) (04) (05) (06) (07) (08) (09) (10) (11) (12) (13) (14) (15) (16) (17) (18) (19) (20) (21) (22) (23) (24) (25) (26) (27) (28) (29) (30) (31) (32) (33) (34) (35) (36) (37) (38) (39) (40) (41) (42) (43) (44) (45) (46) (47) (48) (49) (50) (51) (52) (53) (54) (55) (56) (57) (58) (59) (60) (61) (62) (63) (64) (65) (66) (67) (68) (69) (70) (71) (72) (73) (74) (75) (76) (77) (78) (79) (80) (81) (82) (83) (84) (85) (86) (87) (88) (89) (90) (91) (92) (93) (94) (95) (96) (97) (98) (99) (00)

Introduction

On 23 June 2016 the UK electorate voted narrowly to leave the European Union in a referendum. Calls for a second vote began almost immediately: within days, over four million people signed a petition to support such a vote (Government and Parliament 2016). However, opinion polls at the time indicated that less than a third of the public (31%) felt that there should be a second referendum, with 58% thinking that there should not (Moore 2016).

Divergent opinions emerged in the parties too. Immediately after the vote, amidst speculation that he would run to replace David Cameron, current Foreign Secretary Jeremy Hunt suggested that a vote on the outcome of negotiations should be held (BBC 2016). However, when Theresa May (2016) launched her leadership bid, she dismissed the idea, declaring that it was not a Brexit Labour leadership contender Owen Smith pledged to support a referendum on the ratification of the deal if elected (A(e)1 3.1-3 (d).(e)s5 (u.3 (-3 (d-10 (s)5 l1)A)]TJd j 0y43e)1 (r)4 (e)03

Second, if a decision is taken to hold a further referendum on Brexit, the principle of such a vote is likely to remain controversial. It is of utmost importance that the process should uphold the maximum legitimacy. If the result is to be accepted by those on all sides, every effort should be made to ensure that the referendum campaign is fair, the poll is properly conducted, the options put to the referendum are clear, and the question allows voters to express their preferences unambiguously. These considerations guide this report's discussion of the logistical aspects of holding a second referendum.

1. How long would it take to hold a referendum?

If a referendum is to be held in the UK, various processes must be completed, all of which take time. Therefore, the first issue that this report considers is whether there is sufficient time to hold a referendum, given that the UK is due to leave the European Union on 29 March 2019. Some commentators have dismissed the practicality of a second referendum on this basis, citing the 2016 EU referendum's 13-month timetable as evidence of its impossibility. Green (2017) By contrast, many proponents of People's Vote have argued that time is not a problem: Vince Cable for example, has suggested that a referendum could be legislated in a matter of weeks (Cowburn 2018)

This section examines what processes are necessary to hold a referendum, how long each has taken for past referendums, and whether these could be streamlined. It then goes on to consider the shortest time in which each step could be completed, building a minimum timescale according to which a referendum could be held.

What is required for a referendum to be held in the UK?

The processes that must be completed before any UK referendum can be held are the following:

- x Legislation – first, the UK parliament must pass primary legislation. This is needed to provide the legal basis for the referendum and to specify various key details that are not already in the standing legislation on Afhnd3 (i)-1 (001 T31 (a)-2 (t)1. 2)-1 (0)-1eg60must3 (i)-10(t)2 u1 (an)(–)

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- b. two weeks in which the Electoral Commission may designate lead campaigners for each outcome, should there be suitable applicants
- c. and four weeks between designation and polling day.

To all

Starting with legislation, both the European Union Referendum Act 2015 and the Parliamentary Voting System and Constituencies (PVSC) Act 2011, which enabled the AV referendum, took just under seven months to pass through parliament. However, in both cases the bill was introduced shortly before the long summer recess, during which time no legislative progress could be made. The Regional Assemblies (Preparations) Bill, which enabled the 2004 referendum, received royal assent five months after its introduction. Controversy also played a part in the length of these bills passage. In particular

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could take a form not previously used in the UK – with the likeliest innovation being a three option question. This would necessitate particularly careful testing. Therefore, it is likely that something similar to the usual process, albeit perhaps somewhat condensed timetable, will be necessary.

If only a straightforward two option referendum was under consideration, compressing the question testing process into something like eight weeks might be possible without causing significant problems. In the event that a three option question were on the table, something closer to the normal 12 week schedule would probably be required. Even if, ultimately, a two option question were chosen, the proposed question were changed as a result of public debates, that would also likely cause delays.

What is the minimum time between legislation and polling day?

The minimum 10 week referendum period is specified in PPERA, and comprises three parts (-6 (r

There are clearly many uncertainties in the timescales discussed above, the biggest being the timing of the legislation, which is greatly dependent on political circumstances in which the referendum is triggered (as explored in more detail in section 6.1). Table 6.1 outlines a minimum timescale according to which each process could be completed and a referendum held, estimating this as 22 weeks. It explains the conditions necessary to meet that minimum timetable, and the factors that could cause more time to be required at each step.

If referendum legislation were introduced on the first day after parliamentary recess – 9 October, the minimum timescale suggests (allowing for Christmas recess) that the earliest a referendum could be held is 28 March 2016 – the day before the currently scheduled exit day. There is, of course, no chance that legislation could be introduced on this date. It is also likely that all the conditions necessary to hold a referendum according to the minimum timescale would be met. And a referendum on the day before exit day is anyway not practicable. Therefore, an extension to the Article 50 period to delay exit day seems necessary to allow a referendum to be

2. Is extending Article 50 feasible?

In the previous section we concluded that, to ensure sufficient time to hold a referendum before the UK leaves the European Union, an extension to the Article 50 window would almost certainly1 (a) 5t

Consequences of extending Article 50

Even if the UK asked

First, while a referendum would be fought between campaign groups, the competitors in a European Parliament election would be political parties. Sections might well revive the UKIP vote, as a vehicle for expressing strong pro-Brexit sentiment. In response, some kind of Brexit bloc might form to put the opposite point of view. If the election contest did polarise in this way it could create significant problems for the two main political parties, both of which are very divided on the Brexit issue. With the party system already under strain, such a referendum could even prove to be the catalyst for party splits. Nonetheless, the proportional voting system used for the European Parliament would make it relatively easy for new groupings to break through electorally.

Second, the franchise for European Parliament elections, unlike for general elections and the 2016 Brexit referendum, includes EU citizens resident in the UK. If the elections did indeed bel45 (08 Tw

Could the European Parliament elections be significantly delayed?

Matters would become more complex if referendum timing made it impossible to resolve the issue of the UK's representation in the European Parliament by 2 July

Were the UK still in the EU at this point, it would clearly retain a legal obligation to hold the elections and participate in the new European Parliament. Any attempt to remove this legal obligation, perhaps through creating some kind of exception, would require treaty change. Given the need for all member states to ratify any such amendment, this seems infeasible within the timescale.

Another option would be for the UK, with the tacit agreement of the EU, simply not to proceed with the elections, on a promise to hold them on some later date if the referendum reversed the decision to leave the EU. Whilst this might be a convenient compromise, it would be legally problematic. Any EU citizen could launch a case with the European Court of Justice (ECJ), which would likely rule that elections should be held. In practice, by the time any such ruling was made, the UK might already have held the referendum and therefore be ready to take the

The 21-month transition period between March 2019 and December 2020 has already been widely criticised as too short to negotiate a trade deal (eg. Tindyte, and Mazur 2018: 17). Any extension to Article 50 would shorten this period further and increase the likelihood that transition would need to be extended. This too would have implications for the future EU budget.

Conclusion

An extension to the Article 50 period would almost certainly be required to allow enough time to hold a further referendum on Brexit. Should the UK parliament decide to support such a referendum, it would be very unlikely to oppose a delay to exit day. The EU27 also look likely to agree to this to facilitate the UK holding a referendum.

Should the period be extended however, the UK would still be subject to the treaties, and thus could be formally required to participate in the elections to the new European Parliament which will sit from 2 July 2019. Going ahead with these elections before a referendum would be problematic: the effort and expense of holding elections for positions that UK representatives might never take up (depending on the result of the actual referendum) seems very undesirable. In addition, the elections would risk becoming a proxy referendum, with destabilising effects on the UK party system. There would also be some disruption at EU level.

Most of these problems could be avoided if the referendum were held by mid-May 2019, allowing the European Parliament elections in the UK to take place, if needed, by the end of June.

If a referendum were scheduled for later than that, the difficulties would increase. There is no easy legal route out of the obligation on the UK to elect MEPs. Potentially the UK and EU could tacitly agree that the elections in the UK should be delayed, but this would place the UK in breach of treaty obligations and could be open to challenge. These are clearly delicate matters that the UK government and EU partners would need to consider in the event of an Article 50 extension.

The longer the Article 50 period is drawn out, and the uncertainty about the UK remains, the greater the knock effect on other EU processes. The difficulty in negotiating a trade deal might require the transition period to be extended. There are good reasons why a longer transition period might be desirable even in the absence of a referendum. Nonetheless, this further adds to the argument that an extension to Article 50 should be kept to a minimum. We return to these questions when considering the overall possible timetable for a referendum in section 7 of the report.

3. How could a referendum be triggered?

In order for a referendum to be triggered, there would need to be a majority in parliament in favour of holding such a poll. How likely this becomes would depend on a number of factors including whether a deal is reached, the nature of that deal, the position of the opposition parties, and how public opinion develops regarding both a second referendum and the relationship with the EU. Much of this remains unknown but we can identify several distinct points in the process at which a referendum could be triggered, should there be sufficient parliamentary will. These

a referendum out under any circumstances (Pickard 2018); she repeated this at the start of September (May 2018).

Figure 4. Possible routes to a second referendum

Scenario A: Conditional approval of the meaningful vote motion

If a deal is reached, the meaningful vote motion will be parliament's first opportunity to vote on it. The government needs the Commons to approve the deal in order to progress onto the next step – which clearly gives MPs important leverage. For example, if the deal is opposed by Eurosceptic Conservative MPs, the government may need the votes of a substantial number of Labour MPs in order to pass the motion. Remain Conservative MPs could likewise refuse to support the motion unless a referendum is promised. This means that various political scenarios by which the Commons could make its approval of the deal conditional on a referendum.

There are two ways in which such a conflict might play out. The most obvious is that proponents of a second referendum successfully amend the wording of the motion to state that the House approves the withdrawal agreement and future relationship subject to approval by the public.

from being brought forward in the same parliamentary session. Hence if the government wanted to make a second attempt following an initial rejection, a subsequent ~~outcome~~ ~~outcome~~ to be substantively different (Simson Caird, Wager and Bevington, 2018: 14) making the deal subject to approval in a referendum could be one way to fulfil this requirement

In any of these cases, the referendum would then need to be enabled by primary legislation (see section 1).

A decision at this stage would be the earliest means of triggering a referendum on the deal, so would potentially facilitate an earlier referendum than a similar decision taken subsequently.

Scenario B: Conditional approval of the

disrupt it given the controversial nature of some of the issues – such as the referendum question and the franchise – the government would probably prefer to bring forward

Scenario E: Negotiations are extended

Finally, it is also possible

4. What might the options be?

Having considered the circumstances in which a further referendum on Brexit might be called, this section reviews the options that could be placed on the ballot paper. The set of possible options would depend in part on the circumstances existing at the time such a vote was called: for example, the Brexit deal between the UK and the EU could be put to voters only if such a deal had in fact been signed. At present, however, it appears that there are four main options that could be considered for inclusion in any further referendum:

- x leave the EU on the terms the government has negotiated
- x leave the EU without a deal
- x remain in the EU
- x reopen negotiations.

We can assess these possible options in terms of two principal criteria.

First, are they feasible? That is to say, if voters chose any option, is it likely that this choice could in fact subsequently be delivered? If an option is unlikely to meet this requirement, it makes no sense to offer it to voters.

Second, is each option clear? A central point made by the Independent Commission on Referendums (2018) in its comprehensive review of the role and conduct of referendums was the need for clarity in the options that are put to voters. The Commission gave two primary reasons for this: first, clarity is required to allow voters to make an informed decision on which option they prefer; second, to be able to implement the result of a referendum effectively, parliament needs a clear instruction. A failure to satisfy this condition risks undermining the legitimacy of the result and of any changes that it mandates. Prior to the 2016 EU referendum, there was a lack of clarity on what the UK's future outside the EU would look like should the electorate vote to leave. Consequently, there have been competing interpretations of the result and how it should be honoured, which have generated significant political difficulties and delays. If a further referendum on Brexit is to settle the issue effectively, maximum clarity on the options is required.

This section considers each of the options above in turn and assesses how they measure up against these two criteria of feasibility and clarity.

Leave the EU on the terms the government has negotiated

The first possible option is that Brexit should take place on the terms agreed in the negotiations between the UK government and the EU as already indicated in section 3. Any such deal would consist of two parts:

1. the withdrawal agreement, which would set out the terms of the UK

But it again struggles to meet the criterion of clarity. Indeed, it would certainly be harder to provide clear details of the long and short-term implications of this option than of the option to accept a deal. This is so for two reasons.

First, if no deal were chosen, in contrast to a negotiated deal, even the framework of a future relationship would then have been agreed. Those who are willing to countenance this option are almost unanimous in agreeing that they would like a future trading relationship with the EU that goes beyond WTO terms. But what might be possible, particularly if the Brexit talks are broken down in acrimony, could be very unclear.

Second, given most Member States' antipathy to the no-deal option, it appears unlikely that any government would argue for it in a referendum. In that case, the government would struggle to offer a credible prospectus for what it would do in the event that voters chose this option. And, while campaigners

doubt that the UK could retain its current EU membership terms, including such favourable features as the budget rebate and eurozone access. However, as a need for consent might allow member states to seek concessions from the UK in return. But those who track the mood in Brussels closely think such demands highly unlikely.

All of this presumes that any decision to reverse the decision to leave the EU would come before the UK had in fact formally left. If, by contrast, a decision to reverse course came after Brexit— even if this was during a transitional phase in which most arrangements continued as before—the UK would have to reapply for membership as an external state. In that case, regaining all aspects of the current membership terms would be very unlikely.

Reopen negotiations

The final possible option for a further referendum is for the electorate to be given the opportunity to indicate a preference for reopening negotiations. This could be accompanied by detailed proposals for an alternative negotiating position: for example, a Brexit option that includes Single Market membership, a Canada-style deal, or a 1-3 (s)17.96sbet Td [(pr Td ()Tj 0.03 TTd [(t)2 (he

administrators, so implementing it to a tight timetable should be relatively straightforward. This approach would provide more clarity for voters than the previous one, with the meaning of each option spelt out on the ballot paper.

But there are also significant potential problems with referendums of this kind in the current context given that, as explored in the previous section, three viable options for the UK have clearly emerged. Excluding any currently live option could prevent some voters from expressing their preference, which could undermine the legitimacy of the referendum as a whole. The depth of this problem varies between the possible combinations of options.

Negotiated deal vs. remain

This option is favoured by many proponents of a second referendum, and therefore might have the best chance of all the two option formulations of commanding a majority in the House of Commons (although such a majority is far from guaranteed).

This combination would clearly only come into play if a deal had been agreed between the UK government and the EU. Some MPs might hope to make a referendum along these lines a condition for supporting the Commons motion setting out the deal, or for approval of the EU (Withdrawal Agreement) Bill, as discussed in section 3. However, it would clearly exclude the 'deal'

This referendum format is also unlikely to command a parliamentary majority. While some parliamentarians would be uneasy at backing a referendum which placed the ballot paper, many others who support a second referendum would likely refuse to accept a question that excluded the option to remain in the EU. Even if the government proposed such a format and it could command a majority in the House of Commons (which seems unlikely), it would surely not get through the House of Lords. It is hence difficult to see circumstances in which this question structure would be used.

The obvious advantage of this approach is that no option is excluded, allowing voters to support their most preferred of the three options. This could help command public legitimacy and perhaps more easily win majority backing in the Commons. Nonetheless there are also potential challenges.

One concern is that, as noted in section 1, a multiple referendum would be harder to conduct within a tight timeframe than a conventional binary vote. It is difficult to estimate the time differential, but it might require around an additional six weeks of guidance for campaigners, electoral administrators and voters would need to be developed, and time provided for training and public information to ensure a free and fair poll. An innovative question format would reduce the scope for speeding up the Electoral Commission's question testing work. None of these issues are insurmountable, but they must be considered given the time constraints on holding a referendum. Additionally, campaign regulation might need to be modified to take account of the three, rather than the usual two, possible options. This would raise important questions about how the campaign should be conducted – as discussed further in section 6

Particularly big questions arise when considering what voting system should be used. This matters because different voting methods could actually lead to different outcomes. These are modelled, based on wholly notional levels of support for the three options, in the columns headed 'Preferences'. The results suggest that there might be four main blocks of voters in a three-option contest. We suppose for the sake of illustration that the largest group of voters prefer the option of remaining in the EU, followed by the Brexit deal, followed by leaving the EU without a deal. Another block of 35% put the deal option first, followed by the deal, followed by remaining in the EU. Smaller groups favour the deal, some of whom then favour leaving without a deal and others of whom support remaining. The further columns in the table then show how different possible voting systems translate these preferences into results.

Table 3 Simulating different voting systems for multiple option referendums

Options	Preferences				First Past the Post	Alternative Vote		Condorcet		
						Round 1	Round 2	A v. B	B v. C	A v. C
A: Remain	1	3	3	2	45%	45%	48%	45%		48%
	2	2	1							

18.9%, 39.1% and 38.7% of votes. The second option therefore won. But it fell well short of majority support, and it is entirely possible that a majority of voters may in fact have preferred the third option.

In the current context, there would be three options, and only one remain, so the votes of those who wanted to leave the EU would be split. As Table 3, this could allow the single 'remain' option to gather the highest percentage of votes, even if a clear majority of voters preferred one of the leave options over 'remain'. With a different pattern of preferences, the same could occur in reverse allowing one of the leave options to win despite not having majority

(e)-3 (f)7 (e) support File 83 way re 3 (c) 3 Oct 2 (1) 32 (e) 3 22 Oct 1 0 31 (c) 2 3 6 (5) (T) 3 Jy w. (3) p 24. 33 47 (c)

To an extent, this quandary might be resolved by voters' voting decisions. If, for example, opinion polls suggest that 'no deal

- x Constitutional expert Professor Vernon Bogdanor (2018) proposed a first stage question asking voters whether they still wish to leave the European Union. If they do, a second ballot would give them the choice between the government's deal, and an alternative deal.

A two-part approach would allow all the options to be kept on the table, whilst maintaining the familiar binary format of previous referendums. However, unless the options in the second question were close variants of the same basic proposal (as in Scotland in 1997), such arrangements would create very difficult tactical voting decisions for some voters, making it hard for them to express their preferences clearly. This in turn could lead to major legitimacy problems.

Under the Grieve proposal, many voters' decisions on whether they approved the deal would depend on what they would get if the deal was rejected, but they couldn't know this at the time of the first ballot. As in the other binary referendum options discussed above, voters would doubtless protest that they couldn't express their true choice on the first ballot. Similarly, on the Bogdanor proposal, some voters' preferences on whether to support leaving the EU would depend on whether this would take place on the basis of a deal or not. In both cases, voters would have to make very difficult calculations about what was likely to happen in the second ballot in order to decide how to vote in the first.

Another concern with any two-ballot system is that the ordering of the questions could significantly affect the outcome. Table 4 demonstrates how in the same theoretical scenario as above, and assuming voters followed their first preferences, the government's deal could be rejected by as many as 80% of voters if a two-question referendum were held on Grieve's model, but chosen by 65% of voters using Bogdanor's model.

For all of these reasons, a two-round referendum format would be undesirable.

Conclusion

This section demonstrates that there is no single, simple way to make a collective choice when there are more than two serious options on the table. If a deal is reached between the government and the EU, a straightforward yes/no vote on the deal would be very ill advised as the meaning of a no vote would be unclear. Binary votes between two of the three available options could also be problematic, as they risk alienating a significant part of the electorate who would have supported the excluded option.

If three options are on the ballot paper, First Past the Post contest would be very unwise, as the 'winning' option might well not command a majority of votes. The Alternative Vote (AV) would avoid this problem, but could end up polarising opinion around a 'remain' and 'no deal' with the compromise of supporting the deal being forced out in the first round of voting. Innovations such as Condorcet voting or Borda Count could deliver a compromise, but may well be as a messy fudge. Anyway, these are probably too unfamiliar to be serious contenders.

6. Setting the rules for the referendum

Any further referendum would need to be conducted within a framework of rules. The UK has some standing legislation on the conduct of referendums – as already indicated in section 1, these are contained in Part VII of the Political Parties, Elections and Referendums Act (PPERA) 2000.

B

Restrictions on government

Less than three months prior to the 2016 EU referendum, the government spent £9.3 million of public funds producing and distributing a leaflet advocating for remaining in the EU. This drew strong criticism from PACAC (2017: 46), whose members span both sides of the Brexit divide. A common complaint was that the sum spent by government exceeded the spending limit of lead

(2018: 157) recommended that the time limit could be reduced to three months with little disruption or inconvenience.

Beyond legislation

Most of this section has focused on the content of the legislation authorising a referendum. But there are other lessons from past referendums that ought to be learned by government, but also by others involved in the referendum process, including broadcasters, internet companies, and researchers.

As noted above, recent attention has focused on the need to enhance the transparency of online advertising. As a result, Facebook and other large internet companies have begun to develop searchable repositories of online political advertising on their sites: Facebook ~~launched~~ ^{launched} it such repository for the 2018 US midterm elections (Leathern 2018). It would be desirable ultimately to create a single, regulated repository that maximises transparency and democratic control (Independent Commission on Referendums 2018: 188). In the short term, government should liaise with internet companies to encourage each to provide a comprehensive, useable facility that provides information alongside each advertisement including who sponsored it, how much was spent on it, and at whom it was targeted (DCjajaae (nd a)-4 (1.9 (d)12 (d)1 ((2018:-4 (d

consideration would need to be given to aspects of the rules in the event of a referendum.

The more the legislative framework were to deviate from that applied in 2016, the longer parliament would likely take to scrutinise the bill and the more time the Electoral Commission would need to develop new guidance for administrators and campaigners. The preceding section has indicated which changes would be both desirable and feasible within a constrained timetable and which would better be set aside on this occasion.

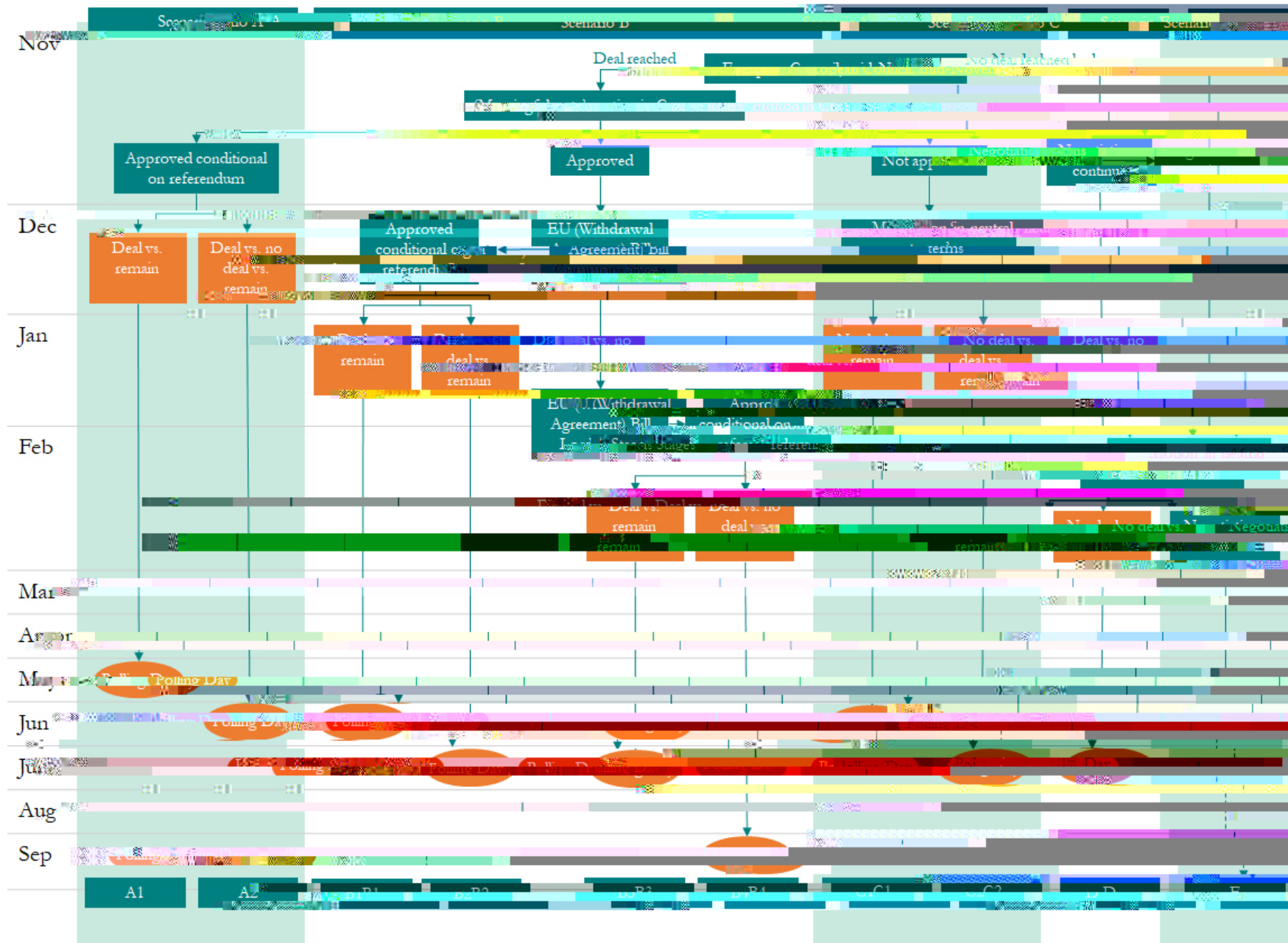
Important non-legislative improvements could also be made, particularly relating to the transparency of digital campaigning and the quality of information available to voters. Achieving these would depend on action by government, internet companies, broadcasters, research specialists, and others.

7. Fitting it all together: how and when might a second referendum occur?

The preceding sections have yielded the following conclusions:

- x Section 1 established that the minimum time necessary to complete the processes required to hold a referendum from the introduction of legislation to polling day is probably around 22 weeks. Several factors could extend that time. For example, disagreement over key issues like the question and franchise could mean that parliamentary or the Electoral Commission's question testing need more time. A multi-option referendum would require longer – perhaps around six weeks longer for question testing and additional preparation. Even under the fastest possible timetable, planning for a referendum began in early October, an extension to the Article 50 period would almost certainly be required.
- x Section 2 concluded that such an extension would likely be agreed by the EU to enable a referendum to be held. But with the new European Parliament due to sit from 2 July, and elections for MEPs happening in late May, this could create difficulties unless the Article 50 extension were very short. A referendum by mid-May would be relatively unproblematic. Thereafter difficulties would start to mount, though political solutions might nonetheless be found.
- x Section 3 identified five scenarios in which a referendum might be triggered and explored the parliamentary procedures associated with these and how the politics might unfold in practice.
- x Section 4 established that leaving the EU on the terms of a negotiated deal, leaving the EU without a deal, and remaining in the EU are the only options that it would be appropriate to put to a referendum.
- x Section 5 concluded that only three possible question formats would allow voters to express their preferences clearly and would have a chance of commanding a parliamentary majority: these are a choice between deal and remain, a choice between deal and 'remain', or a three-option question using preferential voting. Although other possibilities exist

Figure 5. Five referendum scenarios



There is clearly great uncertainty in these timetables. First, negotiations might not be concluded at the November Council. Second, if parliament makes approval of the withdrawal agreement conditional on a referendum, there ~~could~~ be

timetables would be far more likely to cause difficulties for the European Parliament elections, and require a lengthier extension to Article 50.

Scenario C: Parliament rejects the withdrawal agreement

The third possible outcome on the meaningful vote motion is that the House of Commons rejects it outright. Here the timetable would in theory be similar to those in the previous two scenarios, but the politics would be far more acrimonious. There could also be a difference in terms of the referendum question offered to voters

Under this scenario there are again two routes to a referendum, depending on the question chosen:

- x One possibility would be a two-option referendum, where the alternatives are remaining in the EU or leaving without a deal. This could occur on the basis that Parliament itself having rejected the deal, it did not wish to offer this to voters. Although (as discussed in section 5) such an outcome seems unlikely. Assuming that the rejection was followed by a 'neutral term' motion in the first half of December, with legislation introduced shortly afterwards, in the New Year, and that a 12-week lead period was required, the first possible polling date would be mid

basis would be strong. Politically, the majority of MPs would want to avoid Brexit, making a decision to call a referendum quite likely. Should this route be chosen, referendum legislation might be introduced in February 2019.

In this scenario, there being no UK–EU deal, only two options would remain. Hence the question would straightforwardly be adopted, asking voters if they preferred the UK to remain in the EU or to leave the EU without a deal. The 12-month minimum period to prepare for such a referendum would lead to an earliest possible poll date of July 2019.

The likelihood of meeting the minimum timetable under this scenario would be greater than under some others above. It is possible, of course, that a decision to pursue a referendum would not be taken quickly after talks ended, with some wishing to revive negotiations (see scenario E). But there would in practice be very little time to resolve these questions, given the agreed exit day of 29 March 2019. In the absence of other politically tenable options on how to proceed, the principle of a referendum could well face less resistance than in other scenarios. As one option would have been excluded by circumstance, there would also likely be little debate on the question. Legislation might therefore pass through parliament in the minimum time, and no extra administrative planning time would be needed.

Scenario E: A final decision is delayed

The final scenario is one in which the government successfully negotiates an extension to the Article 50 period not (at least in the first instance) to permit a referendum, but rather to allow the Brexit negotiations to continue. That might happen because the UK government and the EU conclude that they need more time to reach a satisfactory deal. It could occur as a result of the House of Commons rejecting the negotiated deal (as an alternative to scenario D). Alternatively, it could happen because parliament decides that a broad political declaration on the future relationship between the UK and the EU gives insufficient basis for parliament itself to

- x Scenario A1, whereby approval of the meaningful vote motion is made conditional on a referendum, and a two-option question is chosen (offering 'deal vs. 'remain'), offers the best possibility of organising UK MEP elections before the European Parliament first meets. If the fastest possible version of this timetable is adhered to, it is the only scenario that potentially permits the referendum to take place in May 2019. Although this would not allow the election of MEPs to take place at the same time as that in other member

to the European Parliament process, but even a widely resisted outcome such as a no deal Brexit, some means could probably be found to manage this situation.

In the end, the path ahead necessarily remains unknown. Many key things—the outcome of the negotiations, the state of public opinion, and the mood in the political parties—could yet change in unpredictable ways. While a further referendum on Brexit is far from a certainty, it is also wholly plausible in a range of different scenarios, probably including others not considered here. Despite the challenges that such a poll could create, most things are possible in UK politics given the political will. And if the political will existed to hold a referendum in the UK, that would almost certainly be accommodated in one way or another by the EU27.

- DCMS [Digital, Culture, Media, and Sport] Committee (2018) [Information and Fake News in the Report, Fifth Report of Session 2017-18](#), HC 7363, London: House of Commons.
- Department for Exiting the European Union (2018) [Legislating for the Withdrawal Agreement between the United Kingdom and the European Union](#), Cm 9674, London: HM Government.
- Durrant, T. (2018) [‘The UK still isn’t ready for a deal Brexit’](#), Institute for Government blog, 28 September.
- Electoral Commission (2011) [Referendum on the Voting System for UK Parliamentary Elections: Report on the May 2011 Referendum](#), London: Electoral Commission (accessed 14 June 2018).
- Electoral Commission (2016) [The 2016 EU referendum, Report on the 23 June 2016 Referendum on the UK’s Membership of the European Union](#), London: Electoral Commission (accessed 12 June 2018).
- Electoral Commission (2017) [The 2016 EU referendum, Report on the regulation of campaigners at referendum on the UK membership of the European Union held on 23 June 2016](#), London: Electoral Commission (accessed 18 September 2018).
- Electoral Commission (2018) [Digital Campaigning: increasing transparency for voters](#), London: Electoral Commission (accessed 18 September 2018).
- Electoral Commission (2018) [Vote Leave fined and referred to the police for breaking electoral law](#) [press release].

