



Bulletin for the APPG on the Rule of Law

19 July 2016

This bulletin for the [APPG on the Rule of Law](#) has three sections: [Rule of Law News and Events](#), [APPG Meetings](#), and [Current Awareness](#), which provides some background reading on topics that raise rule of law issues.

Rule of Law News and Events

New Publication: Stories of Injustice

Sir Henry Brooke has published [Seven Stories of Injustice](#) and [Seven More Stories of Injustice](#), in which he recounts real-life stories that have been told to Lord Bach's Access to Justice Commission (the Bach Commission). Sir Henry observes that 'The legal aid lawyers who used to operate our front-line services in law centres and advice agencies were never attracted by the lure of large salaries and annual bonuses. They did their work for low pay out of a sense of vocation, and their return to the front line is badly needed.'

Event: Five years as Lord Speaker: reflections on the Lords and its future. A conversation with Baroness D'Souza

UCL Constitution Unit

Baroness D'Souza will reflect on her term of office in discussion with Meg Russell, outlining the Lord Speaker's role, the highs and lows of the last five years, her achievements and hopes for the future.

Wednesday, 20 July 2016 17:30-19:00
Committee Room 3, Houses of Parliament
[More information](#)

Event: Brexit and the UK constitution

Brick Court Chambers

A panel discussion to consider the legal implications of Brexit for the UK constitution. Panel: Dominic Grieve QC MP, Lord Falconer of Thoroton, Professor Jo Shaw, Professor Derrick Wyatt QC, Richard Gordon QC. Chaired by Clive Coleman

Thursday, 21 July 2016 17:30
Inner Temple Hall, London
[More information](#)

Event: London Hamlyn Lecture 2016: The most important of all judicial functions

Institute of Advanced Legal Studies

The Right Honourable Dame Elias is the 12th Chief Justice of New Zealand and the first woman to be appointed to that office.

Wednesday, 25 November 2016
Old Hall, Lincoln's Inn
[More information](#)

APPG Meetings

Next Meeting

The next APPG on the Rule of Law meeting has not yet been scheduled.

Current Awareness

The current awareness topics in this bulletin are:

[Devolution and Brexit](#)

[Article 50](#)

[Possible Further Polls](#)

[Privacy and Surveillance](#)

Devolution and Brexit

[Mark Elliott, 'Can Scotland block Brexit?' *Public Law for Everyone* \(26 June 2016\)](#)

Professor Elliott argues that the Scottish Parliament has no legal power to block the UK's withdrawal from the EU, because (amongst other things) the Sewel Convention is not legally binding.

[Paul Reid, 'Brexit: Some Thoughts on Scotland' *UK Constitutional Law Blog* \(2 July 2016\)](#)

Paul Reid discusses the possibility of a second Scottish independence referendum and the Sewel Convention.

[Lesley Riddoch, 'Will Brexit lead to a united Ireland?' *The Scotsman* \(11 July 2016\)](#)

This article examines the level of support for Irish reunification, integration of Northern Ireland and the Republic of Ireland with an independent Scotland, and a referendum in the Republic of Ireland on EU membership.

[Alan Whysall, 'Brexit and Northern Ireland: key issues and possible consequences' *The Constitution Unit* \(15 July 2016\)](#)

Alan Whysall outlines possible consequences of Brexit for Northern Ireland including impacts on the economy, peace settlement, the Executive, the Assembly, and a possible border poll. He warns that if things do not go well, the political and social progress in Northern Ireland is at risk of unwinding.

See also:

- [Carole Cadwalladr, 'View from Wales: town showered with EU cash votes to leave EU' *The Guardian* \(25 June 2016\)](#)

Article 50

[Nick Barber, Tom Hickman and Jeff King, 'Pulling the Article 50 'Trigger': Parliament's Indispensable Role' *UK Constitutional Law Blog* \(27 June 2016\)](#)

This piece argues that Parliament must consent to the triggering of Article 50, arguing that the Government's prerogative powers do not allow it to render an Act of Parliament (the European Communities Act 1972) a 'dead letter'.

[Alison Young, 'Brexit, Article 50 and the 'Joys' of a Flexible, Evolving, Un-codified Constitution' *UK Constitutional Law Blog* \(1 July 2016\)](#)

Alison Young argues that the view of Barber, Hickman and King is untenable, and argues instead for the birth of constitutional convention that would require parliamentary deliberation before the triggering of Article 50.

See also:

- [Colm O'Kinneide, 'Why Parliamentary Approval for the Triggering of Article 50 TEU Should Be Required as a Matter of Constitutional Principle' *UK Constitutional Law Blog* \(7 July 2016\)](#)
- [Stephen Laws, 'Article 50 and the political constitution' *UK Constitutional Law Blog* \(18 July 2016\)](#)

[Robin De Peyer, 'Brexit: Barristers say law must be passed by MPs over EU before Article 50 process begins' *Evening Standard* \(11 July 2016\)](#)

Over 1,000 barristers have signed a letter to the Prime Minister arguing that Parliament must pass legislation before Art 50 is triggered and describing the referendum advisory.

[Charles Streeten, 'Putting the Toothpaste Back in the Tube: Can an Article 50 Notification Be Revoked?' *UK Constitutional Law Blog* \(13 July 2016\)](#)

This piece suggests that there may be a right to revoke an Article 50 notification under international law.

[Robert Hazell and Jack Sheldon, 'What role will parliament have in triggering Article 50 and shaping the terms of Brexit?' *The Constitution Unit* \(19 July 2016\)](#)

The authors look at how parliament might debate the triggering of Article 50: by legislation or a resolution to authorise the triggering of Art 50. They also consider mechanisms available for Parliament's oversight of the Brexit negotiations.

[Owen Bowcott, 'Theresa May does not intend to trigger article 50 this year, court told' *The Guardian* \(19 July 2016\)](#)

Sir Brian Leveson has told a directions hearing for a legal challenge concerning Parliament's role in the process for triggering Art 50 that the full trial would take place in October. Jason Coppel QC, appearing for the government, told the court that Art 50 would not be triggered before the end of the year.

Possible Further Polls

[Pavlos Eleftheriadis, 'Second referendum probably legally required' *IN facts* \(6 July 2016\)](#)

Pavlos Eleftheriadis argues that a second referendum will be required to confirm the result of UK/EU negotiations. This is because the European Union Act 2011 obligates the Government to hold a referendum on any treaty that 'amends or replaces' the existing EU treaties.

[Mark Elliott, 'Should there, and does there have to, be a second referendum?' *Public Law for Everyone* \(8 July 2016\)](#)

Professor Elliott analyses the arguments for and against a second EU referendum, whilst also arguing that such a referendum is not legally required. He points out that the European Union Act 2011 was aimed at preventing increased integration without the EU (not a UK exit from the EU) and that, regardless, the Act could be repealed.

[Thomas Adams 'Is there a mandate here?' *UK Constitutional Law Blog* \(9 July 2016\)](#)

Thomas Adams argues that the referendum gives no democratic mandate in favour of one particular form of Brexit, and that therefore a general election should be held.

[Jonathan Morgan, 'A Brexit General Election?' UK Constitutional Law Blog](#) (9 July 2016)

Jonathan Morgan puts forward reasons in favour of an early general election, including the UK's constitutional tradition as a representative democracy.

See also:

- [Richard Ekins, 'The legitimacy of the Brexit referendum' UK Constitutional Law Blog](#) (29 June 2016)
- [Robert Hazell, 'Will Theresa May call an early General Election? And would it resolve things if she did?' The Constitution Unit](#) (13 July 2016)
- [Alan Renwick 'Is a second referendum on Brexit feasible?' The Constitution Unit](#) (18 July 2016)

Privacy and Surveillance

[Opinion of Advocate General in Secretary of State for Home Department v Tom Watson and Others](#) (19 July 2016)

Advocate General for the Court of Justice of the EU, Saugmandsgaard Øe, has given an opinion finding that Member State may impose a general obligation to retain data if that general obligation fulfils five conditions. The general obligation must:

1. Have a legal basis in national law;
2. Observe the essence of the rights to respect for private life and to the protection of personal data enshrined in Articles 7 and 8 of the Charter;
3. Have the purpose of combatting serious crime, which is a purpose capable of justifying a general data retention obligation;
4. Be appropriate to fight against serious crime; and
5. Be necessary and proportionate to fight against serious crime.

The Advocate General confirmed the principle previously established by the Court that 'access to the data retained must be made dependent on a prior review carried out by a court or by an independent administrative body whose decision seeks to limit access to the data and their use to what is strictly necessary for the purpose of attaining the objective pursued'.

See also:

- [Steve Peers, 'How would Brexit affect data protection, privacy and surveillance laws in Britain?' The Conversation](#) (5 May 2016)

[Report of the Interception of Communications Commissioner: Review of directions given under section 94 of the Telecommunications Act 1984](#) (July 2016)

The Interception of Communications Commissioner's Office (IOCCO) has published a review of mass surveillance carried out via Section 94 of the Telecommunications Act 1984. It finds that fifteen section 94 directions have been given in order that the Government obtain bulk communications data. It concludes that the 'review and this report highlight clearly the difficulties when statutes are operated in secret and where there is a lack of statutory codified procedures.'

[Glyn Moody, 'UK's secret, ongoing mass surveillance rigorously frisked by watchdog' Ars Technica](#) (8 July 2016)

This Article analyses the findings of the IOCCO review, criticising the extent of Government mass surveillance under Section 94 of the Telecommunications Act 1984.

[David Meyer, 'This Facebook Nemesis Says Businesses Will Shun US-EU Privacy Deal' Fortune](#) (11 July 2016)

This article highlights the possibility of legal challenge to the new deal that allows data to flow between EU and US businesses. The new deal is a replacement to one that was struck down on privacy grounds by the ECJ in February.

About the APPG on the Rule of Law

The All-Party Parliamentary Group on the Rule of Law aims to promote parliamentary and public discussion on the rule of law as a practical concept. It is co-chaired by The Rt Hon Dominic Grieve QC MP and Lord Pannick QC. Secretariat support is provided by the Bingham Centre for the Rule of Law.

Join the APPG mailing list: <http://binghamcentre.biicl.org/appg-rule-of-law/members>

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