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## ABOUT US

The **International Journal of Open Governments / Revue Internationale des Gouvernements ouverts (RIGO)** is an academic journal created and edited by Irène Bouhadana and William Gilles at IMODEV, the Institut du monde et du développement pour la bonne gouvernance publique.

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## BREXIT AND OPEN GOVERNMENT IN THE UK

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**H**ow will Brexit influence the UK's transparency regime and how, in turn, will openness shape the UK's Brexit process? There are three ways of looking at how Brexit may influence open government in the UK: through possible changes to old policies and the pushing of new ones, through the new Prime Minister championing transparency or supporting secrecy, and the openness of the Brexit process itself, which so far has seen a struggle between the executive's secretive prerogative powers and the legislature's rights to know.

How will Brexit influence open government and how will openness influence Brexit? In June 2016, the UK voted 51% to 48% to leave the European Union and in the wake of the vote Britain had a new Prime Minister and a new government. However, despite the promises of the new government the exact process of leaving the EU, as set out in article 50 of the Treaty of Lisbon, remains unclear and has become increasingly contentious. What appeared a relatively clear process has become opaque and contested.

If transparency is now the “dramatically satisfying answer to every crisis and question about the state” (Fenster 2015) what is its place in the UK's Brexit process, perhaps the greatest crisis Britain has faced since the Second World War? There are three ways of looking at how Brexit may influence open government in the UK: through changes to old and new policies, the influence of the new Prime Minister and the openness of the Brexit process itself.

### § 1 – OPEN POLICIES OLD AND NEW?

David Cameron pledged to make the UK the most open government in the world. In common with other countries, the UK already has an emerging transparency “ecosystem” that May inherits (Kreimer 2008; Richards and Smith 2015). A shifting mixture of openness instruments, technology and accountability have together created a flourishing openness ecosystem where FOI laws sit alongside more dynamic, “hybrid” and less controlled instruments, from social media to mass leaks (Birchall 2014, 84; Kreimer 2008). The combination of formal and informal tools, pushed by a range of bodies, is creating a “permanent” and “continuous” oversight of government which can be used by potential “veto wielders” to exercise “counter-democratic control” (Schudson 2015, 237).



However, given the continuous conflict and uncertainty, most openness regimes exist in a constant state of change and flux as legal rulings, political reforms and diverse use re-shape the boundaries of the laws. Taken together, divergent pressures frequently leads to a continuous series of attempts to “dismantle” or “expand” information regimes, sometimes working in parallel (*see* Knill et al. 2012; Worthy 2017). Proposed changes have a “magnetic” effect and cluster together but attempts to either extend or curtail openness regimes frequently run up against the forces of symbolism, complexity and resistance that shaped laws in the first place.

May’s administration has set to continue the UK’s push towards greater openness with a series of policies, stretching from private sector accountability to a data-based audit of the equality of institutions. This fits with a pattern that new governments often promote openness to set a tone. Self-consciously “reforming” administrations in the UK in 1997 and then in 2010, the US in 2009 and Italy in 2013 all made transparency a priority. Openness represents an easy win to a new leader as it “signals” a whole set of messages: that a government is prepared to be open and “democratic” and is prepared to be monitored or overseen by the public (Worthy 2017). This may be especially important for Prime Minister without a mandate facing the complications of Brexit. Change may come from alterations to existing policies or the creation of new ones.

## **§ 2 – THE EXISTING ECOSYSTEM: FREEDOM OF INFORMATION AND OPEN DATA**

Post-Brexit, on the surface, nothing changes to the main legal instruments of Britain’s openness regime. The key piece of openness legislation, the Freedom of Information Act 2000, is enshrined in UK law and very unlikely to be repealed.

Nevertheless, behind the scenes there have been a series of attempts at “dismantling” or chipping away at parts of the law since 2005, with roughly one attempt floated every 18 months to 2 years. They began under Tony Blair with a proposed introduction of fees or change to the cost limits (2006), followed by an attempt via a Private Members’ Bill to remove Parliament from the law (2007) and, under Brown, the proposed removal of Monarch and Heir (2010). The Conservative-Liberal Democrat Coalition then mooted a clampdown on “industrial users” (2012-2013) and the Conservative government suggested amending the veto (2015). Only the removal of the Monarch and Heir, pushed through at the end of the 2010 Labour government with little publicity, was successful. The other attempts were stopped by a powerful barrage of press criticism, opposition with Parliament and sustained campaigns to stop them.

In 2015 the Cameron government announced an Independent inquiry into the FOI Act and gave it a remit to examine the potential effect on decision-making and costs of the law. Despite

fears it would seek to water down the law, the FOI Commission's clear endorsement of the Act in 2016 and the sheer scale of the resistance to change by the media and civil society halted any attempt to limit it (Worthy and Hazell 2016). However, in late 2016 the new government was "carefully considering" a proposed curtailing of the automatic right to the second stage of appeal (MOJ 2016).

Yet the FOI law has also expanded by reforms and legal rulings. There was limited change in 2007-2009 to cover exam bodies and then an inclusion of databases in 2012. In 2015 the strategic rail authority came under FOI, though owing to a change in accounting designation rather than a purposeful change. The Independent Commission in 2016 also proposed greater publication of pay data and some minor improvements that the government endorsed. The new Information Commissioner has also announced she is prepared to champion the inclusion of private sector bodies directly under FOI (rather than simply using contractual clauses on FOI in procurement agreements), something the Independent review also suggested (Denham 2016).

It is less clear what may happen to some of the lesser EU initiated laws on openness. The government has promised a "Great Repeal Bill", a grandfathering law to turn all current EU law into UK law in one go. This appears to mean that any EU initiated laws or transposed regulations, such as the Public Sector Re-use and Environmental Information Regulations, will be kept and somehow be preserved. As Brexit means the end of the supremacy of EU law over UK law, this does, however, make them equally susceptible post-Brexit to repeal or amendment, especially if, as suggested, all the new laws carry a five-year sunset clause. The Great Repeal Bill will contain a so-called Henry VIII clause which "enables government to repeal or amend primary legislation by means of a secondary act with limited or no further parliamentary scrutiny", giving ministers power to alter laws outside of the legislature's oversight (Grogan 2016).

The Open Data agenda, pushed a by a succession of Labour and Conservative governments since 2009, will also continue. As figure 1 shows, the government is locked in to a series of commitments through its OGP Third National Action Plan (NAP) meaning the May administration essentially inherits a series of ongoing reforms. Looking across the UK's 3rd OGP National Action Plan the top three commitments around Beneficial Ownership, extractives transparency and anti-corruption were very much David Cameron's personal agenda but look set to be continued. In addition, a number of reforms from the Cameron administration are still ongoing with, for example, the first Beneficial Ownership data only being released in June 2016.

**Figure 1: UK Government’s Third National Action Plan  
2016-2018**

3rd OGP National Action Plan
Commitment 1: Beneficial ownership
Commitment 2: Natural resource transparency
Commitment 3: Anti-Corruption Strategy
Commitment 4: Anti-Corruption Innovation Hub
Commitment 5: Open contracting
Commitment 6: Grants data
Commitment 7: Elections data
Commitment 8: Enhanced transparency requirements and revised Freedom of Information Act Code of Practice
Commitment 9: Identifying and publishing core data assets
Commitment 10: Involving data users in shaping the future of open data
Commitment 11: Better use of data assets
Commitment 12: GOV.UK
Commitment 13: Ongoing collaborative approach to open government reform

(Cabinet Office 2016)

### § 3 – NEW DEVELOPMENTS

As well as inheriting an ecosystem and ongoing policies, Theresa May’s speeches and actions have indicated a desire to go further. In July 2016 May spoke of how she wished to see “more transparency, including the full disclosure of bonus targets and the publication of ‘pay multiple’ data: that is, the ratio between the CEO’s pay and the average company worker’s pay (May 2016). In terms of concrete policies, so far the government’s policies have consisted of

– A data equality audit of UK political institutions in order to ‘check how their race affects how they are treated on key issues such as health, education and employment, broken down by geographic location, income and gender’ and to ‘shine a light on how our public services treat people from different backgrounds and influence government policy to solve these problems’ (Prime Minister’s Office 2016); A push for greater openness over executive pay in the private sector, perhaps symbolised by greater openness over BBC pay to its senior figures and stars paid over £150,000 (*Telegraph*, 14 September 2016); More action on tax havens (*Times*, 26 July 2016)

The common thread behind such moves is that transparency will trigger a chain of actions: the public or users will be interested, will use the information and data that is published, and they and others can then act upon the data to leverage change. As a result, cultural and behavioural change will occur within institutions e.g. driving down pay.

Research increasingly questions each of these assumptions. There is no ‘general’ ideal user and, while some openness initiatives



generate public interest, others do not. As Roberts (2015) points out this chain from asking or accessing data to actually receiving it and leveraging change is a long and weak one. If or whether it can lever reforms depends on the context in which the information is placed and whether the instruments are available to enforce institutional or behaviour change (de Fine Licht 2014). The hope behind transparency, that information will rationally influence or persuade calculating voters or engaged citizens has not been borne out (Bauhr and Grimes 2014). Users and voters hold ‘deeply engrained’ views about government and other institutions that are hard to dislodge. Any change due to new information appears brief and subject specific (Marvel 2016).

The example of publishing pay is instructive. Evidence from a similar initiatives publishing public sector pay in Canada found that disclosure had no effect (Gomez and Wald 2010). Moreover, evidence from studies of the private sector point to the possibility that disclosure actually increases overall salaries by creating upward pressure from colleagues (Schmidt 2011). Such a narrow emphasis on levels of pay and benchmarks also obscures other important issues around performance (see Jensen and Wald 1990).

A further possibility is that new openness policies may be forced upon the government. In September 2016, the government accepted an amendment to a bill requiring the public reporting of ‘country-by-country reporting of taxes paid by multi-national corporations’. More importantly, in November 2016 the Grand Chamber of the European Court of Human ruled in *Magyar Helsinki Bizottság v. Hungary* that, within limits, there existed a new right to access under the European Convention on Human Rights article 10. This applies where there is a public benefit and where the requester has a ‘public watchdog’ role, a potentially wide definition including ‘the press...NGOs...authors, academics, bloggers and “popular users of social media”’. This could include information held by bodies currently excluded under FOI, such as GCHQ, the security services or election officers, and may also weaken the government’s veto and a number of the absolute exemptions under FOI (CFOI 15/11/2016).

#### § 4 – AN OPEN PRIME MINISTER?

Political leaders set the tone and send out signals about the openness of their governments (Hazell et al 2010). Table 1 summarises how the UK’s last three Prime Ministers did and to what extent they tried to extend or pushback (i.e. limit) openness. Political leaders often declare support for greater openness though their enthusiasm, whether real or feigned, often dims from a mixture of disappointment, cynicism and wish for less exposure and greater control of communications (Berliner 2014). There is a natural, if not wholly inevitable, trajectory towards secrecy as events, scandal and enemies build: “How many leaders have come into office determined to work for more open

government, only to end by fretting over leaks, seeking new ways to classify documents and questioning the loyalty of outspoken subordinates?” (Bok 1986, 177).

### UK Prime Ministers and Openness 2005-2016

PRIME MINISTER	EXTENSION	PUSHBACK
<b>Tony Blair</b>	Passed FOI Act in 2000	Fees mooted (2006), (tacitly) supported attempt to have Parliament excluded (2007)
<b>Gordon Brown</b>	Extension of 30-year rule (2009) and slight extension of FOI to new areas	Cabinet exclusion mooted, Excluded Monarchy from FOI (2010)
<b>David Cameron</b>	OGP especially Open Data agenda (2010 onwards) and Beneficial Ownership transparency (2013)	Mooted changes on “industrial users” 2012-2013) and FOI commission (2015-2016)

While Tony Blair passed the FOI between 1997 and 2000 he later regretted it, describing it as one of his biggest mistakes and claimed FOI was being used as a weapon. His successor Gordon Brown and then David Cameron both made strong speeches in favour of openness and pushed various transparency reforms. Cameron perhaps exemplified the competing desire for openness and wish for secrecy: while in opposition in 2009 David Cameron pledged “true Freedom of Information” through a greater use of Open Data and technology, and again in office in 2010 promised a “transparency revolution” with aim of making “in time...our government one of the most open and transparent in the world” (BBC 2009: Prime Minister’s Office 2010). While Cameron pushed a series of apparently radical open data reforms from 2010 onwards, many of which were aimed at the private sector in 2015 he also set up the FOI Commission described above to restrict the Act and described the law at various points as a “buggeration factor” and something that was “furring up the arteries of government” (Worthy and Hazell 2016).

So how about new Prime Minister May? May spent six years as Home Secretary (i.e. Interior Minister). During that time, she pushed transparency within the UK anti-corruption agenda and was a key supporter of the long running Hillsborough campaign that exposed police corruption in the late 1980s. She has also extended FOI to the Police Federation and opened up police disciplinary hearings, though some complained May was keen only on transparency transparent about her opponents. On a personal level May was quick to publish her own tax details during her campaign to be Conservative leader.

On the minus side, May has been in charge of a department with a long reputation for secrecy. Historically, the Home Office sunk

many plans for greater openness (Worthy 2017). Under May was regularly the third or so in the worst performing departments for FOI across UK government (IFG 2016). This is in part due to the often difficult and sensitive nature of some of the Home Office's work.

May herself also has a less than liberal stance elsewhere: critics could well discern a tendency to information control and secrecy. She sought to hide Border Force cuts from Parliament in 2016 and, more famously, deflected blame onto officials in 2011 during a career threatening crisis (*Guardian*, 18 April 2016; BBC 2011). May's mode of working is also seen as secretive and closed in the Home Office:

“Mrs May's preference for working with a close team of advisers, often not bothering to share information with Number 10 or other ministers... Mrs May's tendency [is] to work with a small team [with a] lack of trust in cabinet colleagues” (*FT*, 12 July 2016).

The same habits appeared to be carried over into the premiership. As one commentator put it:

“Theresa May survived as home secretary for six years partly because she held a tight grip over information flows. Perhaps she believes such a model of command-and-control will translate to the different task of prime minister. Perhaps she thinks that the press and MPs can be kept in the dark over the UK's negotiating position” (Green, 30 November 2016).

A leaked note also confirmed that May wished to “draw in decisions and settle matters herself” over Brexit (*Guardian*, 15 November 2016). In October 2016, the IFG were forced to FOI the government to obtain details of the Brexit Cabinet subcommittee, information that is normally published proactively (IFG 2016). May's refusal, in response to an FOI request, to release her own internet search history over her proposed surveillance law also led to a backlash from MPs (*Guardian*, 30 January 2016).

By far the biggest concern is over the repeated attempts by May to pass wide-ranging investigatory powers legislation (aka “the Snoopers Charter”). This finally became law in November 2016 after repeated attempts. It gives the right for security services to carry out bulk surveillance, essentially legalising the practices exposed by Edward Snowden in 2013, and led to “controversy around encryption, bulk data and hacking and the right of various security services to carry out mass surveillance on the public” (*Computer world*, 2 November 2016). Very serious privacy concerns have been raised by Parliament, civil rights groups and lawyers, as well as Facebook and Google with the UN privacy commissioner also warning it not compliant with international law.

May's tendencies towards secrecy are unlikely to be liberalised by office. The Brexit process, and May herself, will come under unprecedented pressure for openness from the whole variety of

“monitory bodies” or “political observatories” that are increasingly watching government (Schudson 2015; Keane 2009). Whether through FOI requests, Select Committees and Questions in Parliament, and leaks from rivals and opponents, is unlikely that many secrets will be kept for very long (Posen 2013). Already members of the opposition SNP have used FOI to open the government’s promises to car-maker Nissan, select committees have begun a series of detailed inquiries and leaks, accidental or otherwise, from Ministers, consultants and advisors have already broken down some of the strict secrecy May promised around Brexit.

#### § 4 – AN OPEN BREXIT?

The constitutional debate over Brexit has focused on the role of Parliament and government, given the vagueness around article 50’s reference to “constitutional arrangements” in the UK where the constitution is uncodified. The new May government asserted that it was for government to declare and trigger article 50 and conduct the subsequent confidential negotiations. Parliament countered that the legislature must play a role, given the doctrine of Parliamentary sovereignty that underpins the UK’s uncodified constitution, and the process must, necessarily, be open. The story of Brexit, so far, is of a government seeking secrecy being forced to commit to increasing the openness of the process: not just about a “hard” versus “Soft” Brexit but a secret versus a transparent one.

The crux of the tricky debate between openness and closure and the extent to which Parliament (and the public) has a right to know and shape the negotiations. On the one hand, confidentiality is recognised in many areas of life where openness would inhibit genuine expression, from juries to peace negotiations (Chambers 2004; Bok 1986). Academic studies offered equivocal evidence. Stasavage’s study of the European Council of Ministers found openness can be good at regulating behaviour in negotiations but can encourage posturing or unnecessary “signalling” to domestic audiences or the pushing of actual negotiations to the shadows:

“[...] when constituents can better observe decision making, this has the advantage of disciplining representatives, but transparency can also have costs involving increased incentives for representatives to posture and to ignore private beliefs about appropriate policies” (Stasavage 2005, 3).

Others have pointed to the possible counter-productive effects on negotiations of openness in encouraging hidden behaviour (Prat 2006). Yet the right and need to be involved, and the demands of democratic legitimacy through deliberation, offered equally persuasive demands amid so far-reaching a change (Chambers 2004). David Allen Green points out this tension is

made more complex by the fact that the real source of problems and potential audience is not the EU 27 but “her true Brexit opponents are the UK’s media and politicians and, by extension, the public” who must be persuaded (30 November 2016).

The government initially sought to cling to the confidentiality principle, and use its secretive prerogative power, the vestige of Monarchical power that can be used to declare war or authorise treaties:

“The royal prerogative refers to those powers left over from when the monarch was directly involved in government, powers that now include making treaties, declaring war, deploying the armed forces, regulating the civil service, and granting pardons.” (Poole 2010, 146).

The prerogative remains ill-defined with Parliament taking an increasing role in a number of the areas including war-making and treaty assent. Nevertheless, it remains an area of “constitutional exceptionalism”, surrounded with the “mysteries of state, and the cloaking of executive power” which is only “semi-impervious to norms of legality” (Poole 2010, 154-155). The “defining characteristic of the prerogative is that its exercise does not require the approval of Parliament” (Poole 2010, 146). The government’s seeming tight information control was reinforced by constitutional conventions such as collective responsibility that binds Ministers to public unanimity and confidentiality. Prime Minister May promised strict confidentiality and that “there will be ‘no running commentary’ or any substantial disclosure from Downing Street” on the negotiations (Green 30 November 2016). The government offered some access to the process. In September 2016, the new secretary of State for Brexit committed to being “as open as I can. More accurately, the Government will be as open as they can”. He argued there would be “debates, reports by Select Committees and hearings” and he promised:

“We will certainly match and, hopefully, improve on what the European Parliament sees. At given times, that will be tactical, I am afraid. I do not want to be boring about it, but this is likely to be the most complicated negotiation of modern times. It may be the most complicated negotiation of all times. By comparison, Schleswig-Holstein is an O-level question. We will not always be entirely free agents, but we will be as open as we can be.” (House of Lords EU 2016).

He also spoke of impossibility of secrecy:

“[...] I will seek to be as open as is possible...Even were I to decide that I was going to behave like Rasputin and keep it all entirely secret, I would fail. It would not be possible... other Governments would do it. In the Government’s own interest, it is a better idea to be more open than is perhaps traditional, but always subject to the overriding point that we cannot pre-empt the negotiation” (House of Lords EU 2016).



In October, the report from the House of Lords EU select Committee took a rather stronger view of what right Parliament had (2016).

One of the key objectives of parliamentary scrutiny is to ensure transparency – to cast a light on the actions of the executive. It is, we suggest, essential that many elements of the forthcoming negotiations – for instance, negotiations affecting acquired rights, or future cooperation between UK and EU police forces – should be conducted transparently (House of Lords EU 2016a).

It went on to acknowledge the difficulty around complex negotiations and the need to not “show a hand” early: “at the same time, some of the most important and complex aspects of the forthcoming negotiations on a new relationship will be sensitive... and will require a high degree of confidentiality” (House of Lords 2016a).

Some critics were less than convinced by the need for government secrecy, in part because it appeared to them that the government were not shielding a plan but seeking to hide the lack of a plan and possible divisions within government “the government does not want to involve parliament or the courts any more than it can get away with... Perhaps it thinks it will lose votes or that Brexit itself will be delayed. Or perhaps it is seeking to be shielded from embarrassment if its lack of thought and capability about Brexit are exposed” (Green, 10 October 2016). A leading think-tank also warned the government that “silence is not a strategy” (IFG 2016a). In November 2016, a leaked memo by Deloitte revealed that “no common strategy has emerged” for Brexit and that ministers were split on the issue (*Guardian*, 15 November 2016). The government’s justification and card game analogy was also criticized:

“Those who say the government should not reveal its hand are mistaking Brexit negotiations for a backroom game of cards. Obscurity and secrecy are the enemies of a sustainable Brexit. The aim of the negotiations is not to defeat any opponent (and Britain’s ‘opponents’ know the strengths and weaknesses of the country’s ‘hand’ as much as the UK does), but to ensure there are agreements that work in practice, are acceptable to those who have an interest, and have legitimacy in principle. The best way – indeed, the only way – for Brexit to be a success is through openness and accountability” (Green, 10 October 2016).

It was pointed out that “Brussels probably knows the strengths and weaknesses of the UK negotiating position better than the UK itself” (Green, 30 November 2016). Indeed, the EU 27, from Prime Minister and Presidents to ambassadors, have already offered a “flow of information about Brexit” and “a detailed and helpful running commentary” that has exposed the UK’s “lack of a practical plan” (Green, 30 November 2016). As a consequence, the secrecy is for the government’s domestic audience:

“Ministers know that ‘making a success of Brexit’ is a domestic political objective. And so, the lack of communication serves as a way of [...] structuring expectations [and] cloak[ing] the government’s ongoing inability to form a settled view on which of the available outcomes is preferable” (Green, 30 November 2016).

The government’s plan for a “closed”, prerogative based Brexit came unstuck in November 2016 when the High Court ruled in *R (Miller) v Secretary of State for Exiting the European Union [2016]* that, in passing the European Communities Act 1972 and the constitutional rights in entailed, government ceded its prerogative powers and Parliament, not the executive, must have the ultimate say (Elliott 2016). In the wake of the high court ruling, one legal scholar argued that “Parliament must be given clear rights to notice, to comment on key negotiating positions and draft agreement text, and to a response from the Government to its comments” (King 7 Nov 2016). After the November High Court judgement greater openness made inevitable:

“eventually, the government will have to adopt a broader, more collaborative and more open approach to the process, as there is no alternative to making a success of it” (*FT*, 4 November 2016).

In the wake of the judgment, the government also committed to providing the same openness to UK MPs as the EU Parliament—though this carried a twist, as EU MEPs currently have only ‘closed oversight’ through heavily protected reading rooms or meetings that the UK government promised to emulate. This can mean documents are restricted to certain MPs in a certain time and place, with no disclosure, copying or reproduction allowed:

“[...] arrangements lead to parliamentary oversight taking place behind closed doors or more simply stated, to closed oversight. Closed oversight means that both the manner in which oversight is conducted and the results of oversight are not public to the other members of parliament and to the general public.” (Abazi 2016, 12).

As of this moment, much depends on the Supreme Court ruling in early December 2016.

## § 5 – DEVOLUTION AND BREXIT

Looking further into the future, the impact of Brexit could get more complicated. Since the 1990s Northern Ireland, Scotland and Wales have been given representative bodies, a process that reflected but also accelerated the creation of distinct territorial politics across the UK (Jeffery 2009). Cameron and now May have also strongly pushed greater regional government for the English regions, with new city and regional elected mayors and combined ‘super’ local authorities (Blunkett et al 2016). More power to the nation and regions is a solution both to the different

Brexit votes (Scotland and Northern Ireland voted to Remain) and a means of offering citizens greater control following a result seen as a backlash against remote elites (Inglehart and Norris 2016). This may have two effects.

First, devolved bodies can be party to negotiations and involved in accessing details through bodies such as the regular meetings of heads of devolved bodies and promised sub-groups: ‘the devolved governments and legislatures should enjoy formal participation in the consultation process in rough parity with the Westminster Parliament’ (King, 7 November 2016). This will make the process more collaborative but, by including more actors (some of whom are opposed to Brexit) may make it more likely to leak.

Second, in the longer term the new elites and centres may develop their own agendas and policies. The devolved Scottish government and Northern Irish Executive have both drawn up separate Open Data agendas and plans along different time scales (Worthy 2015a). The Scottish government already has its own separate FOI legislation that has been extended further than the UK law to leisure trusts and certain privately run schools. Scotland’s Open Data plan for 2015-2017 aimed for a baseline of re-publishable data and a new rediscovery website, with a promise of an iterative Open Data strategy developed with Scottish civil society (Scottish Government 2015). The Northern Irish Executive has established its own Open Data roadmap covering 2015 and 2018 with an aim of becoming ‘digital by default’ and creating a single Northern Ireland Open Data node (Department of Finance 2015). The civil society networks supporting Open Data also has separate networks covering the devolved institutions. Though it is not clear what divergence will result, the implications are of policy deviance in motion.

Other institutions may also follow suit: The UK Parliament has also drawn its own Digital Democracy agenda including publishing voting details and records as Open Data by 2016 and, more far-reaching, pushing for online voting by 2020 (Digital Democracy 2015). Stronger English local government may also provide a site of greater innovation. Despite the central attempts at control, local authorities have also experimented with a whole host of bottom up initiatives working with a range of groups and other public bodies (LGA 2012; Worthy 2015). Officials in local government also display higher knowledge and awareness of Open Data and greater use of both their and others’ data in their everyday work. A set of devolved “plus” institutions could easily make some very interesting regional variation in openness across the UK. The UK government’s 3<sup>rd</sup> NAP recognises this by promising “ongoing collaborative approach to open government reform” though it is not clear whether policies will be merged or overlap.

## CONCLUSION

There are various scenarios for how Brexit and Open Government can unfold. Perhaps the best-case scenario, from the viewpoint of the government, is that openness policies pushed by government become an identifying mark for the new administration. The new policies could help the Prime Minister establish a distinct reform programme while re-energising the government and, given the emphasis on the private sector, the economy at a precarious time. Greater openness around Brexit itself may help to legitimise, and even democratise, the process and bind some of the national, societal and inter-institutional fractures opened by the referendum.

The worst-case scenario would see openness consumed by Brexit. Policies would stall with only superficial change actually masking inaction or even pushback, as seen with the Regulation of Investigatory Powers legislation. The Brexit process could pitch a secretive “bunker mentality” prime minister and government against a legislature (and perhaps the devolved assemblies and courts) seeking to force them open, with uncertain results for who controls the process of leaving the EU. As an unelected takeover Prime Minister with a small majority, May is likely to face party instability and a relatively short-time in office (Worthy 2016). There may be less time, but more need, for openness than she thinks.

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