



Parliaments and the Pandemic

Study of Parliament Group
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Preface

The Study of Parliament Group (SPG) was formed in 1964. It arose following the publication of Bernard Crick's seminal book, 'The Reform of Parliament'. A senior clerk in the House of Commons, Michael Ryle, impressed by the work, but feeling that the author may have benefited from more informed knowledge of the actual operation of parliament, contacted Crick. Both felt that meetings between academics and clerks may be of mutual benefit and, with Sir Edward Fellowes, former Clerk of the House of Commons, they sent a memorandum to various parliamentary officers and academics with an interest in parliament. A meeting was organised in October 1964 at which it was agreed to form a body to promote understanding of the way parliament worked and how it may be more effective. The Study of Parliament Group was born.

Since its formation, the Group has held conferences and seminars, formed various working groups and been responsible for publishing books and articles. Submissions have also been made to various parliamentary committees, not least those concerned with procedure and reform. The membership has expanded over the years, encompassing clerks from other legislatures in the United Kingdom as well as some with a scholarly interest in parliament without themselves being academics. To encourage frank exchanges of views, MPs and journalists are excluded from membership, though they are regular speakers at Group events.

Publications have included substantial volumes such as 'The House of Commons in the Twentieth Century' (1979), 'The New Select Committees' (revised edn. 1989) and, to mark the Group's fortieth anniversary, 'The Future of Parliament' (2005). The works produced by the Group have been collective enterprises, drawing on members especially qualified to write on the subject. This collection is very much in that mould. It draws on the knowledge and experience of academics and those who serve or have served in different capacities in parliamentary service and who are well placed to analyse and comment on the effect that the COVID-19 crisis has had on the nation's legislatures and how they have adapted to a situation they have never faced before.

Philip 

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Foreword

Wuhan novel coronavirus was first mentioned in the Westminster parliament in a private notice question from the medically-qualified chair of the Lords Science and Technology Committee, Lord Patel, on 22 January 2020. The minister reassured Lord Patel that the risk was low, and that the country was well-prepared for the emergence of novel viruses. The next day, Matt Hancock, the Secretary of State for Health and Social Care, made an oral statement to the Commons. It was moderately reassuring: the House was told that the risk had been assessed as having risen from “very low” to “low”. The subject was also raised that day at First Minister’s question time in Holyrood, and by a written question in the Senedd. Again the answers were reassuring.

That early optimism was a chimera. We all know how events spiralled downwards quickly over the following weeks. The World Health Organisation (WHO) gave the novel coronavirus the name of COVID-19 on 11 February. Scotland made COVID-19 a notifiable disease on 22 February, followed later by Northern Ireland and then by England and Wales. The first Briton died from COVID-19 on 28 February. On 3 March the governments of the UK published a coronavirus action plan, and eight days later a pandemic was declared by the WHO. A tsunami of activity followed over March and subsequent months – primary legislation in the Coronavirus Act 2020 and the Coronavirus (Scotland) Act 2020, cascades of secondary legislation in London, Edinburgh, Cardiff and Belfast, legislation in the Crown Dependencies, regular addresses to the nation by the Prime Minister and the First Ministers, statements and urgent questions, as well as wholesale changes in ways of working for parliamentarians and their staff. There were even changes in how we think of the state: different jurisdictions of the British Isles all had health responsibilities that obtruded on to civil liberties, and the quasi-federal constitution was better illustrated by crisis than it ever had been by academic treatise.

This collection of essays is about how the parliaments of the United Kingdom and the Crown Dependencies reacted to a medical and economic crisis that has dominated everyone’s lives in a way that has not happened in modern times.¹ There are two essential elements to that: how the parliaments have adjusted their own ways of behaving to reflect the duty parliamentarians share with other citizens to curb the spread of the disease together with their special duty to set an example; but also how the functions of legislation, oversight and representation have changed (and become more difficult and more challenging and, often, less effective) because of the pandemic. It would have been remiss of the Study of Parliament Group (SPG) to remain silent when parliaments were changing so fundamentally.

The fact that there are now three unicameral legislatures and one bicameral legislature in the UK means that each institution can learn from the others. That they did so as they reacted to COVID-19 has been valuable, and the essays are an opportunity to compare and contrast practices that each institution adopted. What happened in the UK has, of course, also happened in every other country, and therefore has challenged parliaments, parliamentarians and parliamentary staff across the world, as the Inter-Parliamentary Union (IPU) has chronicled.² This collection contains two essays that look beyond our islands. Their perspective is illuminating: as systems were devised in the hurried months of 2020, it was helpful to know that others throughout the world were grappling with identical issues.

1 Even if there have been national health crises in 1349, 1433, 1625 and 1665 as Paul Seaward’s essay on page 195 reminds us.

2 <https://www.ipu.org/country-compilation-parliamentary-responses-pandemic>

There are two caveats to mention. Most essays go up to 30 September. The fact that the crisis continues means that this collection of essays will certainly not be the last word. Nevertheless, we believe it is worth telling the story to date. We are also conscious that every aspect of public and private life has had to adjust to COVID-19 and that parliaments are not special in having stories to tell about the way they have done so. But because parliaments are central to our system of government, we believe their COVID-19 stories are significant.

The essays contain facts, statistics and sequences, but also opinion, reflection and speculation. They explain voting methods and the protocols for virtual sittings and physical attendance. They ask how successfully the parliaments balanced the need to keep democracy functioning with the need to keep people safe, and therefore how well priorities were set. They demonstrate how parliaments had to learn quickly. The essays consider whether the governments that the parliaments scrutinise were truly held accountable, and whether the balance between legislative speed and adequate scrutiny was achieved. They also ask about the transparency, accessibility and gender diversity of the parliamentary process during the crisis and how these have been affected. And there is speculation about whether some of the measures that might have made sense in the crisis will prove convenient for the future—to the detriment of parliamentary oversight.

In a final postscript, we try to draw together some of those themes. As we write in the autumn of 2020, we are very conscious that the baleful story of COVID-19 is not over. That means that parliaments cannot return to the status quo ante any time soon. But we also speculate about whether they should want to return to the past, or whether COVID-19 has been an opportunity to do things differently and better, and to rid ourselves of some historical baggage: as the outgoing President of the IPU, Gabriela Cuevas Barron, has said, COVID-19 has meant that “we need to both rethink and rethink ourselves”.³

The project of producing this volume of essays was initiated by the SPG Executive, who asked four SPG members to co-curate the collection.⁴ Essays were invited from any SPG member – the membership is comprised roughly equally of academics who study parliament and of serving and retired parliamentary staff from the UK’s legislatures. The response was excellent. Some produced individual essays; others worked in groups. Some non-SPG members were also approached to write essays. We are extremely grateful to all those who contributed – for academics, contributing to a publication outside the REF framework is a labour of love, and for parliamentary staff, who have contributed despite having been hard-pressed as never before during the months of the crisis, we have enormous admiration. We particularly thank non-members of the SPG whose contributions have enriched this volume enormously. The essays in this volume do not cover every issue and are not written with a common approach. But overall a pretty comprehensive picture emerges, and is the more powerful because it is told by different voices.

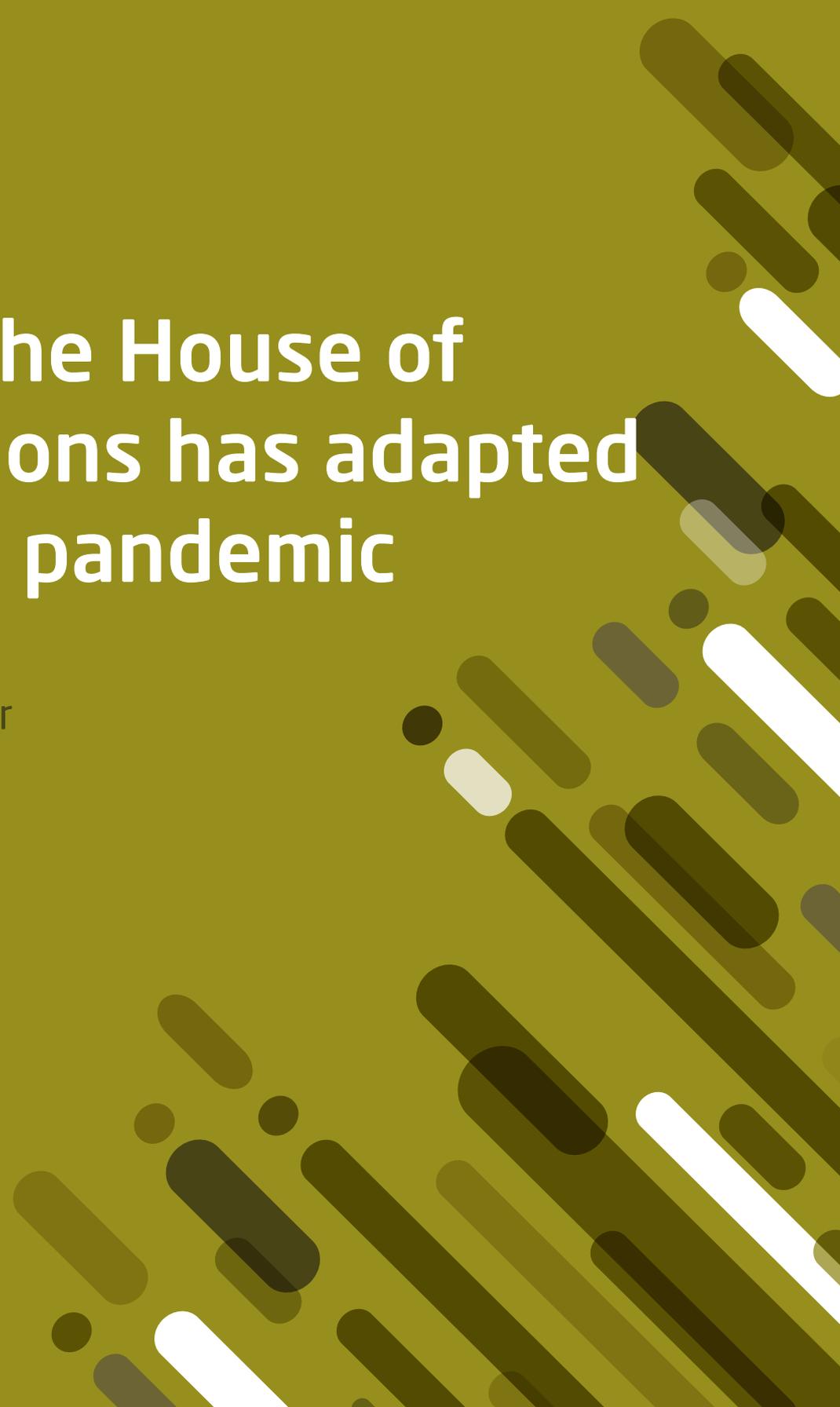
3 <https://www.bgipu.org/activity-reports/outgoing-president-describes-ipu-as-the-most-important-space-for-parliamentary-diplomacy-in-the-world/>

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01

How the House of Commons has adapted to the pandemic

David Natzler



How the House of Commons has adapted to the pandemic

David Natzler¹

Given the extent to which Parliament has been dominated by COVID-19 over the past six months, it may be worth recalling at the outset that after the turmoil of Brexit and the General Election of December 2019 a relatively calm 2020 might have been anticipated. The December 2019 election gave Boris Johnson a sizeable majority of 80. The Cabinet was reshuffled on 13 February, with the departure of Northern Ireland Secretary and former Chief Whip Julian Smith, Andrea Leadsom from BEIS, Theresa Villiers from DEFRA and Geoffrey Cox as Attorney General, and then the dramatic resignation of the Chancellor Sajid Javid in response to the demand from No 10 that he should dismiss his advisers and replace them with No 10's appointees. Voting in the Labour Party leadership contest to replace Jeremy Corbyn finally got underway on 24 February. By the end of February the coronavirus pandemic was causing concern around the world, and its effects were beginning to be felt in Europe and the US and on stock markets. But it was by no means obvious what its consequences would be for politics and Parliament.

The Coronavirus Bill

On 3 March, the government published its Coronavirus Action Plan. On 19 March it published its emergency Coronavirus Bill. On 23 March the Coronavirus Bill passed all stages in the House of Commons and received Royal Assent on 25 March. Parliament then adjourned for its Easter break more than a week earlier than planned, with its return already set for 21 April.

Passage through the Commons

The Coronavirus Bill as presented in the Commons was very long; 87 clauses and 27 Schedules, requiring 321 pages of legislative text. A number of government New Clauses and new Schedules and amendments were published online and soon thereafter added at committee stage in the Commons on 23 March. The most significant change was a revision of the originally proposed regime for the duration of the Act. The Bill, as presented, provided for expiry of the Act after two years, and for a debate after one year on a motion "in neutral terms to the effect that the House of Commons has considered the one-year status report". The "neutral terms" provision reflected the phrase imported by ministers at the final stages of the European Union (Withdrawal) Bill, as a legislative means of trying to provide for a motion to which the Speaker would accept no amendments. In this case, it was presumably intended to ensure that the House could not by amendment seek the repeal of specific provisions: and to provide for a debate which would not be, in the fateful phrase, "meaningful".

1 **David Natzler** was Clerk of the House of Commons from 2014 to 2019 and is now an Honorary Senior Research Associate of the Constitution Unit at UCL (dlnatzler@gmail.com).

It is scarcely credible that ministers thought that such a weak level of parliamentary oversight would survive even the rapid scrutiny which both Houses were able to give the Bill. A raft of amendments tabled in both Houses suggested a number of more demanding approval regimes, including the prospect of requiring regular renewal of individual provisions. The government responded by introducing New Clause 19 in the Commons, now section 98, entitled "Six-month parliamentary review". There is not actually to be a "parliamentary review" but parliamentary consideration of a ministerial review. The section obliges the government to have debated and decided in the Commons every six months a motion "That the temporary provisions of the Coronavirus Act 2020 should not yet expire". If the motion is rejected then ministers must, within 21 days, provide for the expiry of these provisions. This is not of course a motion in neutral terms. But it is a motion under the terms of an Act. Members seeking to amend it by, for example, adding a rider seeking by exception the expiry of a particular provision, or a different approach to gaining parliamentary approval of new regulations, would plainly have their work cut out in getting such an amendment allowed by the Speaker. Given that it had been agreed in both Houses that there would be no votes, the government offer had in practice to be accepted.

Other significant new provisions added at committee stage included a regime for the temporary protection of tenants from eviction, and obliging local authorities to have regard to the wishes and religious beliefs of the deceased in disposing of bodies by cremation rather than burial. This had been the subject of much concern expressed by Muslim and other religious communities who reject cremation, and was a matter raised in debate in both Houses. And there was one notionally non-government New Clause added, on the postponement of General Synod elections, in the name of the Second Church Estates Commissioner.

Passage through the Lords

By the time the Bill reached the Lords it contained 102 clauses, 29 Schedules and was 348 pages long. The Constitution Committee and the Delegated Powers and Regulatory Reform Committee managed to produce reports on the Bill by the start of debate on 24 March. The Lords proceedings over two days were notable as much for which peers did and did not attend as for the actual debates, which covered what might be expected by way of concerns expressed for the most vulnerable groups in society. The Lord Speaker had announced that following government advice to those aged over 70 he would be working from home, advice followed by many older peers. But several peers aged over 70 attended and spoke, earning a stinging rebuke from Baroness Thornton.

One significant result of Lords debate on the Bill was the undertaking procured as a result of an amendment from Lord Anderson of Ipswich seeking to ensure that the two-month reports should be really substantive and not a mere tabulation: Earl Howe promised a "comprehensive report on the workings of the bill, both legislative and practical, and of all the other activities that the Government have seen fit to take". The first such report was made on 29 May. It does contain some helpful commentary, including on the powers not used, but whether it quite meets the promise made is arguable. Given that the six-month debate due at the end of September would be to an extent founded on the third such report due then, it was to be hoped that some greater effort would be made to render a thorough account to Parliament of the powers it bestowed on ministers.

Quality of scrutiny

The three days of debate – one in the Commons, two in the Lords – were in hindsight a useful means for legislators to express their concerns about the likely effects of the pandemic and of lockdown on some of the nation's most vulnerable citizens. But there was no way that in the time available the detailed provisions of the bill – let alone the secondary legislation which was yet to be made under it – could be

properly scrutinised. What Parliament could have been expected to do was to ensure that the parliamentary structures for subsequent ongoing scrutiny were adequate, both in the reporting obligations to be laid on ministers and in the parliamentary structures for examining the use made of delegated powers. There was no realistic prospect in the time available to set up new parliamentary structures such as a further specialised committee, so that reliance has had to be placed on the existing network of committees, notably the departmental committees in the Commons and the technical scrutiny committees in the Lords.

Impact on parliamentary proceedings

“Two-lobby divisions”

The principal focus of initial concern about the impact on parliamentary proceedings was on the health impacts of what became known as “two-lobby divisions”: in other words the conventional voting system in the Commons. On 11 March, the Chair of the Procedure Committee told the Speaker that the Committee had held “intensive discussions on the possible impact on the House of any measures to delay the spread of coronavirus” and called for minimisation of items of business requiring to be pressed to a division. The letter proposed proxies for those who could not be there, while suggesting that this would be impractical if large numbers were absent. At Business Questions the next day, 12 March, the Leader revealed that a representative of Public Health England (PHE) had seen the House of Commons Commission the previous day, and had advised in particular on the conduct of divisions. The PHE representative had visited the lobbies with the Leader and suggested that opening the windows during a division would be sufficient. The Opposition agreed not to divide the House on 17 March on the Budget resolutions, as would have been normal practice. On 23 March, the Speaker made a statement about how divisions would be handled if there were any, involving a plan for dividing Members into their three alphabetical groups with staggered entry to each of the lobbies, lasting 30 or 40 minutes. In fact, the last two-lobby vote was a backbench rebellion about Huawei and 5G on 10 March, on the report stage of the Telecommunications Infrastructure (Leasehold Property) Bill: there would not be another vote until 12 May when the first remote vote was held.

Virtual participation in the Commons and remote voting

The House also moved to virtual select committee meetings following the Clerk’s memorandum for the Procedure Committee on 16 March. On 24 March the Speaker was given powers by the House to set up a system of virtual participation. On 19 March proceedings in Westminster Hall were suspended.

The Easter adjournment saw much activity, some of it reflected in published correspondence and the minutes of the House of Commons Commission, and no doubt many private discussions. These discussions were held against a background of uncertainty as to how and when the House’s assent could be obtained to any new regime envisaged: and well-informed and ill-informed press comment on what the new regime would look like. The prize biscuit for ignorance and malice goes to the Times, whose first leader of 1 April and accompanying article bears some re-reading.

On 21 April, the Commons met under their normal rules. The chamber looked different. There were signs on the benches of the chamber enforcing a two metre personal exclusion zone. Six giant television screens had been installed and tested in the chamber the previous week. Fears that those attending would resist the proposal for remote participation proved groundless. The House agreed on 21 April to a motion moved without technical notice providing for virtual alongside physical participation in “scrutiny” proceedings (that is, questions and statements), and then on 22 April to a similar system for virtual participation in “substantive” proceedings, where the House has to come to a conclusion. Crucially, a

resolution was also agreed on 21 April laying down the principle of parity of treatment between Members present and absent, meaning no interventions in debate and no “bobbing” to catch the Speaker’s eye. The Speaker’s eye had to be obtained well in advance and shown on a chronological call list published on the website. Business items had to be fitted into two-hour tranches, to comply with the limitations of Zoom.

The House agreed to a truly radical system for organising the business each day, whereby a motion signed by the three largest parties had the same effect as if it had been agreed to by the House. The government’s business managers will have found this hard to live with.

So we had a month of so-called “hybrid” proceedings, meaning full participation by a mix of Members there and not there. Backbencher business fell by the wayside. The House sat for only three days a week, but there was little sense of missing business. The House had oral questions on a compressed rota, albeit without topical questions, urgent questions, statements, second readings, a report stage and third reading, government and opposition motions, a personal statement [in person], suspension of a Member, a maiden speech [not in person], even the odd pre-notified point of order. There were backbench rebellions, on no-fault divorce and imported food standards. There were not only lists of speakers, most of whom were reached, but limits on the length of frontbench speeches, feasible in the absence of interventions. Lacklustre it may have been for lovers of parliamentary proceedings, but the House got its plenary business done.

And the full range of business was made possible by remote voting, introduced in the face of initial scepticism from the Procedure Committee and others, and after some delay while that Committee very helpfully carried out an assurance that it was up to standard. The first remote vote was on 11 May. Members had already voted remotely on 6 May in the ballot to fill two select committee chair vacancies caused by the formation of a new Opposition frontbench team.

“Getting back to work”

But on 11 May it also became apparent that hybrid proceedings and remote voting would not last much longer. The government made it clear that it wanted Parliament to show an example by “getting back to work”: which will have come as a surprise to those who had been working hard over the previous month. On 12 May the temporary Orders were renewed but only for a further week, and the Leader of the House stated that he did not expect to renew them again: meaning that on the House’s return from the Whitsun recess on 2 June there would no longer be virtual participation or remote voting. That decision seems to have been taken without reference to the views of the other parties. Many Members considered that their personal circumstances meant that they would be unable to attend sittings at Westminster, even if they were indeed regarded as key workers. It was unclear how voting could be conducted within the rules and guidelines on social distancing.

In the event, the House was recalled a few hours early on 2 June so as to be able to decide on government motions on the new regime it was proposing. Amendments to continue virtual participation were defeated, in the first vote using a long queue snaking back from the chamber into Westminster Hall. There followed 10 days of some confusion, as the government gradually gave way to pressure to re-introduce virtual participation in scrutiny proceedings – but not substantive proceedings – and to bring in first a narrow and then an extended scheme for proxy voting. It also saw the introduction of voting in person in the two lobbies using machines, used for the first time on 17 June. There had been 10 remote votes and six in the queue, sometimes called the conga.

Second COVID regime

So from early June until the House rose on 22 July the House operated under a second COVID regime, marked by a mixture of survival of some of the changes of the first regime, including remote participation in questioning, advance lists of speakers not only in scrutiny proceedings but also for substantive business, and social distancing limiting attendance in the chamber to barely 50. But the previous question rota was restored: business of the House motions reverted to being decided by the House, thus leaving the agenda fully back in the hands of the government: and with votes being cast in both lobbies using voting machines. Perhaps lost in the welter of changes is the answering of written parliamentary questions during long recesses which was a widespread demand in late March and early April. Nor are records of pairs being published, so that it is not possible to tell if a Member not recorded as voting in person or by proxy is paired or abstaining or just not voting.

Normalisation of proxy voting

Perhaps the most significant change was the normalisation of proxy voting for around 150 Members at any one time, mostly cast by a whip of the party concerned. On 20 July, the proxy system was extended to 28 September, by which time the Procedure Committee was expected to have reported on the system introduced in January 2019 for parental leave, on an avowedly temporary basis. In the evidence session the Procedure Committee held on 1 July with the Leader of the House it was apparent that some on the Committee dislike the requirement to give documentary proof to qualify for parental leave: a provision which reflects what ordinary citizens have to abide by. The regime for a COVID proxy is relaxed: a Member need simply assure the Speaker that they are, as the Order of 10 June put it, unable to vote ‘for medical or public health reasons related to the pandemic’. At the back of the Votes and Proceedings each day are recorded changes where Members nominate a proxy for a period, then cancel it and can appear in the chamber and participate, and then again nominate a proxy. Of course individual circumstances change, but there are elements of the pattern emerging which do give rise to reasonable concern that some Members are interpreting the terms of the Order of 10 June rather loosely, and on 16 June the Speaker reminded the House that applying for a proxy meant that a Member was not able to attend because of COVID.

Conclusion

In general, the government view seems to be that all is now well and that the House ‘led the way’ on its return in June.² Voting by machines now takes Members little more time than an old-style two chamber vote. The legislative programme is back on track after the dispute about why there were no public bill committees under the hybrid regime.³ In his 1 July evidence to the Procedure Committee, the Leader of the House was clearly mortified at the advice of PHE that to reduce distancing in the chamber to one metre would require Members to speak seated, with a mask, ensconced in Perspex and probably with a lapel microphone. The chamber is still unnaturally tranquil. On 1 July the House agreed to extend the early June Orders to 2 September, rather than the day of the House’s return of 1 September, so that on its return it would still be sitting under the “second” COVID regime and will be able to decide the next day on how to proceed on the basis of whatever the government tables in the usual way: so long as it does not simply allow the regime to lapse.

² HC Deb, 25 June 2020 col 1471.

³ See Chapter 4 Legislative proceedings.

02

How the House of Lords has adapted to the pandemic

David Beamish



How the House of Lords has adapted to the pandemic

David Beamish¹

The impact of COVID-19 on the manner of operation of the House of Lords has been dramatic. Procedural changes which previously might well have been controversial have been adopted with little or no ceremony. This essay (drawing on a Constitution Unit blog post published in June) recounts the story up to the end of October. A timeline, with hyperlinks, of House of Lords developments from March to October, produced by the House of Lords Library, may be found online.

Beginning of 'lock-down'

In early March it appeared that the two Houses were at one: on 9 March the House of Commons Commission and House of Lords Commission issued a short joint statement following a meeting to discuss 'Parliament's response to Coronavirus'. On 13 and 17 March, the Speakers of the two Houses, Sir Lindsay Hoyle and Lord (Norman) Fowler, sent joint letters to all Members about restrictions on parliamentary travel and on access to the parliamentary estate. But on 19 March Lord Fowler, aged 82, announced that he would be working from home, with his chamber duties performed by deputies. With only four of the 23 deputies aged under 70, on 23 March (the first day of 'lock-down') the House agreed to a motion enabling any Member of the House to deputise, and five additional Members took on the role, being formally appointed on 21 April, and thereby reducing the average age of the panel by some three years.

On 25 March, once Royal Assent had been given to the Coronavirus Act 2020, the House adjourned early for an extended Easter recess. On that day the House agreed to a motion restricting until 21 May (the start of the Whitsun recess) the kinds of business which could be taken. In moving it the Leader of the House (Baroness Evans of Bowes Park) announced that for the first three weeks from the return of the House on 21 April the House would sit only on Tuesdays, Wednesdays and Thursdays, and would meet at 1pm on Tuesdays (instead of 2.30pm) and 11am on Wednesdays (instead of 3pm); Thursday sittings would begin at 11am as usual.

When the House returned at 1pm on Tuesday 21 April, the scene in the chamber was strikingly different from normal, with only about a dozen 'socially distanced' Members in the chamber. The first business was the introduction of two new life peers, Lord Grimstone of Boscobel and Lord Greenhalgh, who had been appointed ministers in March. They did not wear robes and did not have the usual two supporters. (There were no further introductions until September, since when there have been 32 (to 29 October). Supporters have been kept at a distance, and robes seem to have been optional.)

1 **David Beamish** was a clerk in the House of Lords from 1974 to 2017 and Clerk of the Parliaments from 2011 to 2017; he was Joint Secretary of the SPG from 1989 to 1992 (mail@davidbeamish.uk).

Virtual proceedings

The next business on 21 April was a motion to enable Members to participate remotely in virtual proceedings for most types of business, and the first such proceedings began at 3pm the same day. Thereafter, during the 17 subsequent sittings prior to the introduction of 'hybrid proceedings' on 8 June, proceedings were wholly virtual on 11 days, and proceedings in the chamber were usually brief and never longer than 1¾ hours. Monday sittings were resumed on 18 May with a wholly virtual sitting.

Detailed guidance on the operation of virtual proceedings had been issued by the House of Lords Procedure and Privileges Committee on 16 April. That provided for Members to participate remotely by means of Microsoft Teams (changed to Zoom in revised guidance issued on 30 April).

Procedural impact

The impact of the use of virtual proceedings on the conduct of business was dramatic. Whereas previously Members wishing to ask a supplementary question had to stand up and (more often than not) compete with other Members wishing to do so, now Members had to sign up in advance, and the speaking list issued before each sitting by the Government Whips' Office listed them in an order agreed through the usual channels, with a limit of 10 per question. Each questioner was called by the Lord Speaker or deputy, with some likely to be disappointed if not reached within the time allowed. In debates there was no opportunity to interrupt a speaker. The House's tradition of 'self-regulation' was replaced by a much less flexible regime, with significant new power in the hands of the party machines.

The question of how to conduct divisions, the subject of considerable interest in the House of Commons, did not arise because the types of business conducted virtually did not require divisions. On 6 May the House agreed to extend the use of virtual proceedings to committee stages of bills. As it was already the case that there were no divisions in committee stages held in Grand Committee, that was possible without needing a voting mechanism: any amendment not agreed unanimously would not be made.

Select committees

The motions and guidance dealt only with proceedings of the House, but meanwhile the House of Lords Business issued on 17 April indicated that several of the planned select committee meetings would be virtual meetings. By the next issue on 22 April, all planned select committee meetings had become virtual. They have remained so with the exception of the select committee on the High Speed Rail (West Midlands–Crewe) Bill and some joint committees with Members from both Houses.

Financial support for Members

On 27 April, the House of Lords Commission met to discuss how the system of financial support for Members – previously providing a daily allowance of £313 for each day of attendance in the House, due to rise to £323 from 1 April – would apply to virtual proceedings. The minutes of the Commission meeting record that the Leader of the House 'suggested the immediate suspension of the current allowance system and a new much lower allowance for Members who speak during proceedings or participate in the work of a select committee'. Some other Members suggested the suspension of the system of allowances, but the Commission's conclusion was that with effect from 21 April there should be 'a temporary system which recognised the contributions made by Members in the new virtual proceedings and in virtual committee meetings. The Commission agreed that the claimable sum should be the reduced

daily rate of £162, that this should be the amount claimable for those who participate in both virtual proceedings and committee meetings as well as those who participate in physical proceedings and committee meetings’.

On 6 May the House, after some debate, agreed to a motion introducing this temporary arrangement. The motion clarified eligibility for the allowance as follows: ‘In respect of attendance at a physical sitting or virtual proceeding of this House only Members who speak during the sitting or the proceeding, or who are otherwise necessary to the proceedings, should be entitled to an allowance.’ Thus the number of Members able to claim was limited. Some Members who had been regular attenders would have had a substantial reduction of income.

A ‘hybrid House’

The combination of proceedings in the chamber and (for the most part) virtual proceedings continued until 4 June, when the House agreed to a motion introducing a ‘hybrid House’ with effect from 8 June. From then on the House would return to its normal sitting times (but see below), and Members would be able to participate either in the chamber or remotely.

Remote voting

Significantly, soon after the House of Commons had ended the use of remote voting in divisions, the House of Lords motion provided for all such voting to be undertaken remotely, with Members able to vote only ‘through the House of Lords remote voting system, in accordance with guidance to be issued from time to time by the Procedure and Privileges Committee’. Initial guidance on the hybrid House was issued on 5 June, but in relation to divisions it stated only (in paragraph 33): ‘A system to allow remote voting is being developed. The Order of the House of 4 June made provision for this. Separate guidance on voting will be issued in due course.’ A report made on 3 June by the Conduct Committee indicated that it was hoped that remote voting would ‘be rolled out in the week beginning 15 June’ and recommended the addition to the Code of Conduct of a provision as follows: ‘Members may not allow another member or other person to cast a vote on their behalf during any electronic division in proceedings of the House or its committees. Any member who does so commits a breach of this Code which the House would view with the utmost seriousness.’ The report was agreed to on 9 June. On 8 June the House of Lords Commission had agreed that Members taking part in a remote division would be eligible for the £162 allowance.

Fortunately the House had managed to avoid having any divisions since February. But on 15 June there were four divisions, and since then there have been a further 38 (up to 7 October). Of those 42 remote divisions, 28 have been government defeats. The average number of Members voting has been 468, as against 370 in the 35 divisions between June 2019 and February 2020. On 21 occasions the number voting has exceeded 500, as against once between June 2019 and February 2020. This increase is unsurprising given the relative ease of voting using an app (‘Peerhub’) instead of having to be present on the parliamentary estate. Moreover, the requirement of participation in proceedings for members to be eligible for the payment of an allowance doubtless provided an incentive to vote.

The system of conducting remote divisions worked successfully until 30 September, when the technology failed. That incident perhaps produced the most striking example of agility in adapting the House’s procedures: the Government Chief Whip simply announced that there could be “a deferred Division on the amendment at some time in the future”, a procedure previously unknown in the House of

Lords, though in use since 2000 in the House of Commons. Divisions on two further amendments that day also had to be delayed until 5 October. Interestingly the business concerned – amendments to a bill at report stage – was not of a type suitable for a deferred division in the House of Commons.

Proceedings in the hybrid House

The arrangements for proceedings in the hybrid House continue the greater formality introduced for virtual proceedings. Except in relation to business motions and the like, Members may speak only by signing up to do so, including in relation to proceedings on amendments to bills, and in doing so they are required to indicate whether they wish to participate physically or remotely. The deadline for tabling amendments to bills has been brought forward to three working days before consideration; it is not yet clear how that could operate in the event of a bill being ‘fast-tracked’. Special arrangements for the ‘ping-pong’ stage of bill proceedings were introduced in a report from the Procedure and Privileges Committee published on 8 October: ‘No motions or amendments, including manuscript motions or amendments, are accepted after the tabling deadline agreed between the Legislation Office and the usual channels. For the first round of Consideration of Commons Amendments there must be at least a clear working day between the Commons debate and the Lords proceedings. However further rounds on the same Bill may take place on the same day or the next day.’ These arrangements were used on 20 October for the Agriculture Bill and on 21 October for the Immigration and Social Security Co-ordination (EU Withdrawal) Bill.

The number of Members permitted to be in the chamber at any one time has been limited to 30, and short adjournments between items of business are used ‘to enable different groups of members to exit and enter the chamber while observing social distancing, as well as to onboard members remotely for the next item of business’.

On the speaking list issued for 8 June, only nine of those listed, including three ministers, had indicated an intention to be present in the chamber, whereas some 120 were listed as wishing to participate remotely. At the start of proceedings, well under half the permitted maximum of 30 Members were visible in the chamber. They included the Lord Speaker on the Woolsack, returning for the first time from his period ‘working from home’. Thanks to relatively brief questions and answers, only four of the fifty Members wishing to ask supplementary questions were not reached – reading of questions in the chamber is officially frowned upon, but it is clearly much easier to read questions discreetly when working remotely! Subsequent guidance from the Procedure and Privileges Committee (issued on 25 September and taking effect on 2 October) limited supplementary questions to 30 seconds – and prohibited Members from taking part in proceedings from moving vehicles. (On 23 July Lord Robathan was seen asking a question of Liz Truss while a passenger in a moving car. These were however select committee proceedings.)

The sitting times of the House continued to be adjusted until 6 July, since when the normal sitting times – none the same as they were before the pandemic – have been 1pm on Mondays, 12 noon on Tuesdays, Wednesdays and Thursdays, and 11am on Fridays. No formal change has been made to the ‘firm convention’ that proceedings should end by 10pm (7pm on Thursdays, 3pm on Fridays), but the convention appears to have been ignored, with 10 sittings ending after 10.50pm and one after midnight.

New arrangements for financial support for Members

On 22 July the House agreed to new arrangements for financial support for Members, providing (from September) for members attending in person to be entitled to the full daily allowance of £323, with the £162 allowance continuing for Members participating virtually or taking part in a remote division.

'Hybrid Grand Committee'

No committee stages of bills were taken in Grand Committee – a proceeding outside the chamber which any Member may attend – between March and the end of July. But arrangements for 'hybrid Grand Committee' proceedings were approved on 28 July, and a Grand Committee has sat on 22 of the 37 sitting days from 2 September to 29 October. The arrangements are similar to those in the chamber: all those wishing to speak have to have given notice, and members are called on to speak by the chair.

Participation

Perhaps unsurprisingly in view of the reintroduction of a full daily allowance for Members participating in person, the proportion of Members participating remotely has decreased. In the speakers list for 19 October, 20 of 44 speakers at question time, and 45 of 114 speakers on the second reading of the United Kingdom Internal Market Bill, were listed as participating physically.

Suspension of by-elections

On 23 March the House agreed to suspend until 8 September the operation of by-elections to replace elected hereditary peers who died or retired. On 7 September that suspension was extended to the end of 2020. Such by-elections are normally required to be held within three months. Three elected Members have retired since 23 March: the Earl of Selborne (elected by the Conservative hereditary peers) on 26 March, the Countess of Mar (elected by the whole House) on 1 May, and Lord Elton (elected by the whole House) on 29 October. One has died: Lord Rea on 1 June. He was elected by the Labour hereditary peers and thus his successor falls to be elected by the three remaining Labour hereditary peers. Few will regret the delay in the negative media coverage which such by-elections attract.

Conclusion

It still seems impossible to predict for how long the current arrangements will continue, but it does seem clear that there will be a lasting effect on the operation and atmosphere of the House, with the 'self-regulation' of proceedings perhaps a thing of the past. The description which has (unfortunately) sometimes been applied to the House of "the best club in London" may never be warranted again.

On 19 May the Sponsor Body established in April under the Parliamentary Buildings (Restoration and Renewal) Act 2019 announced a review to 'assess whether a recommendation made in a report five years ago that all MPs and Lords should leave the Palace of Westminster while the work was carried out is still the "best and most cost-effective" option'. One aspect of the review is to be 'how ways of working developed in response to COVID-19 affect options or requirements for temporary accommodation'. Perhaps especially in relation to the House of Lords – where the system of financial support is such that few Members are able to employ support staff – the need for temporary accommodation seems likely to be significantly reduced when Members have become used to working from home. Even after the restoration and renewal of the Palace of Westminster, remote working by Members seems likely to become a normal part of the operation of the House, in a way that could hardly have been imagined before the impact of the pandemic began to be felt.

03

The impact in the Commons Chamber

Colin Lee, Clemmie Brown
and Matthew Hamlyn



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Introduction

On 11 March, the Chancellor of the Exchequer, Rishi Sunak, made his Budget Statement to a packed House of Commons. Although the first stage of the government's economic response to the pandemic was outlined, there were few signs of the profound impact that was to come on the chamber of the House of Commons, how it works and how it looks. Within just over a month, the modes of operating plenary proceedings in the House were to be transformed. Although some of the main changes are examined in a sequence, this chapter does not adopt a narrative approach.² Rather, it seeks to analyse the main elements in that transformation, identify the drivers of the changes that helped to shape the form they took and offers some thoughts on the possible enduring effects of those changes.

The first driver: the Speaker and the House of Commons Commission

The first phases of the response to COVID-19 in the plenary proceedings of the House of Commons were shaped by the decisions and influence of Sir Lindsay Hoyle, the Speaker of the House, first elected just before the 2019 dissolution and with the authority inherent in the role arguably enhanced by his popularity and his refreshing style in the chamber and outside. He had helped to broker, and give effect to, the changes introduced before the Easter recess, including informal limits on attendance in the chamber and a safer voting method in the event of a division, a method which remained untested. This was possible due to a consensus approach in the early stages, including agreement by the party managers not to push any questions to a vote, including on the bill which, after a very rapid passage, became the Coronavirus Act 2020.³

The Speaker set the pace when he wrote to the Leader of the House on 31 March, explaining that he was keen that Members 'should be able to participate in key parliamentary proceedings virtually, for example, oral questions, urgent questions, statements and PMQs'. His vision was that of a 'hybrid' chamber, with Members able to participate physically or remotely on broadly equal terms. On the same day, the Speaker wrote to the Clerk of the House requiring steps to be taken to give effect to this.

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 - 2 The main changes are described in sequence in David Natzler's Chapter 1 above. For a helpful timelines, see, S Priddy, "The coronavirus timeline: Measures taken by the House of Commons", 16 September 2020, <https://commonslibrary.parliament.uk/house-of-commons-coronavirus-timeline/>.
 - 3 HC Deb, 23 March 2020, cols 23-24; Letter from the Speaker of the House of Commons, Sir Lindsay Hoyle, to MPs on coronavirus, 27 March 2020, <https://www.parliament.uk/business/news/2020/march/letter-from-the-speaker-of-the-house-of-commons-sir-lindsay-hoyle-to-mps-on-coronavirus/>.

The authority of the Speaker was then supplemented by that of the House of Commons Commission, which effectively authorised and helped to shape the preparations and plans developed during the Easter recess. Although the Commission was not a body with a formal role in the proceedings of the House, it brought together the Speaker, as its Chair, the Leader and Shadow Leader of the House, a former SNP spokesperson on House business, the Chair of the Administration Committee who happened to be a former Chair of the Procedure Committee and one of the Deputy Speakers. As such, it proved a suitable vehicle for undertaking decisions on a consensual model during the initial phase and, to a lesser degree, thereafter.

The role of the government

While the initial offering was shaped by the proposals from the Speaker, which focused on 'scrutiny' proceedings in the form of oral questions, urgent questions and ministerial statements, developments thereafter were shaped principally by the government and its priorities. The initial model was designed to enable virtual participation in scrutiny proceedings as the first priority.⁴ The experience of an initial experimental phase of limited virtual participation was intended to shape proposals for an extension of virtual participation to other proceedings thereafter. However, the influence of the government was evident in the decision to prioritise an almost immediate extension of hybrid proceedings to substantive government business.⁵

Under normal arrangements, the government has a near stranglehold on the business of the House of Commons. With the exception of private Members' Fridays, any non-government time is only available to Opposition parties and backbenchers at the discretion of the government. Although there were some exceptional instances of this near monopoly being challenged and overturned in the course of 2019, the new government's majority heralded a return to traditional levels of control. The initial provisions for limited substantive business during the period of hybrid proceedings, agreed on 22 April, reinforced government control, effectively limiting debatable motions to those moved by a Minister of the Crown. Opposition and backbench business were effectively removed from the agenda. This level of control was used to bring the period of hybrid proceedings to a close without a definite decision by the House to that effect. The government's intention to make the extension up to the Whitsun recess the last was announced after the deadline for amendments to the motion for that extension had passed. There was no opportunity thereafter to extend hybrid substantive proceedings. Thereafter, government control was exercised in a more traditional manner, but to the same effect, serving as an effective barrier for any return of virtual participation in debates.

Technology, social distancing and the limits of procedure

Changes in the way the House of Commons operates have arisen in the past in part from formal decisions of the House and associated changes in procedure and in part from changes in behaviour and attitudes among Members. However, the changes seen in the course of 2020 in response to COVID-19 have largely been changes driven by technology and by the need to limit the number of Members in the chamber at any one time to enable social distancing. The formal procedural change needed to facilitate the

4 For this statement of priority, see House of Commons Commission statement of 6 April, House of Commons Commission thanks staff for virtual Parliament strategy, <https://www.parliament.uk/business/news/2020/april1/commission-thanks-staff-for-virtual-parliament-strategy/>.

5 See Commission statement of 16 April.

technological change has been surprisingly limited, and this has not been in any real sense a procedural transformation. Changes in practice and behaviour have taken place, but they have been the consequence of the need to enable the technology to work and necessitated as part of the adaptation to technological changes.

The technological solution to enable virtual participation was based on blending the output from the Zoom video-conferencing platform into the existing broadcast feed from the chamber. This was also assisted by work to ensure the video feed from Members' homes was of a suitable quality. Eight large TV screens were installed in the chamber so the Speaker and other Members could see the "virtual" Members. New staffing arrangements were put in place to ensure effective liaison between the broadcasting hub, based in a parliamentary outbuilding, the "remote" Members and the Speaker in the chamber. Headphones made their first appearance in the chamber to enable effective links between the support teams and the occupant of the Chair, alerting the Speaker to any problems getting Members "on the call".

The hybrid operating model and the principle of parity

A resolution agreed by the House of Commons on 21 April, at the time that arrangements for virtual participation in proceedings were made, expressed the commitment of the House 'to ensuring that its rules and procedures are adapted to permit as far as possible parity of treatment between Members participating virtually and Members participating in person'. The principle of parity was central to the proposed operating model that was agreed by the House of Commons Commission as the basis for hybrid proceedings. The principle was designed to secure two important objectives: first, to ensure that the system did not deliver incentives for attendance in person in the chamber; second, to respond to the concern that changes should not be made to disadvantage those who were physically participating. The latter objective was perhaps particularly important. At the time, there was concern, evident in the deliberations and Reports of the Procedure Committee, that virtual participation might offer a better experience than physical attendance. Thus, for example, Members participating virtually might have been enabled to use some of the chat functions that were becoming familiar with increasing use of technology for virtual meetings. The extent to which the principle of parity was intended to balance competing interests was perhaps neglected in subsequent discussions when hybrid proceedings were terminated.

In a series of announcements by the Speaker and in published guidance for Members, the aim to ensure parity was reinforced in various ways:

- The Speaker confirmed that 'Parliamentary privilege applies on the same basis to all Members participating, regardless of whether they are contributing virtually or are present in the chamber'.⁶
- It was affirmed that 'The same rules and courtesies apply to Members participating virtually, as far as is practicable, as they do to the Members participating physically', including the dress code.⁷
- The same guidance stated that 'To ensure all Members are treated equally, those joining by Zoom will be expected not to display or draw attention to objects to illustrate their contributions'.⁸

6 HC Deb, 22 April 2020, col 33.

7 Guidance for Hybrid Proceedings.

8 Ibid.

This last injunction has not been considered a great deal, in part because what has been striking about arrangements for virtual participation is that the additional opportunities opened up by it have not been abused. There has been one instance where a Member has been gently rebuked by the Speaker for a political poster in the background during a Zoom shot.⁹ Another Member has been asked by the Speaker to apologise for a gesture visible in the chamber on the screens while a minister was replying to his question.¹⁰

Notice and spontaneity

With Members participating virtually doing little or nothing to jeopardise the fabric of good order in plenary proceedings, the focus soon switched to the perceived effects of virtual participation and the principle of parity on those Members physically present. In essence, because planning was needed to facilitate virtual participation, arrangements were put in place for notice of all contributions, regardless of whether the Member concerned was participating physically or virtually. For debates during hybrid substantive proceedings, rules were introduced which prohibited interventions in speeches. This applied even when the Member speaking and another Member who wished to intervene were both in the chamber. The constraining effect on debate through the loss of intervention was one of the elements of hybrid substantive proceedings that was referred to most frequently by the Leader of the House and by Members supportive of the government's position in justifying the end of such proceedings and in resisting calls for their return.

There can be no doubt that debate during hybrid virtual proceedings was at times stilted and artificial. However, it is arguable that the 'normal' vision and experience of debate referred to by the Leader of the House and others in justifying the end of hybrid substantive proceedings is not the experience of many backbenchers. Interventions and responses to earlier contributions, especially during frontbench speeches, are a feature of the early stages of many debates and of concluding frontbench contributions. They are far less part of the experience for many backbenchers, particularly newer backbenchers, later in debate when strict time limits are in place and when interventions are sometimes actively discouraged by the occupant of the Chair.

When hybrid substantive proceedings came to an end, it soon became very apparent that there would be no return to debates as normal. The Speaker and Deputy Speakers concluded that the system of call lists, initially devised in the context of virtual participation, would continue to be needed to manage the limits on attendance in the chamber. And, of course, the removal of the ability to participate virtually meant that demand to attend in the chamber increased. Call lists for debates, even without virtual participation, have continued to be a source of concern to some Members, particularly those who seem to regularly experience being low down the list of speakers, concern very evident during the evidence sessions of the Procedure Committee.¹¹ The sense of the coherence of each debate has also been weakened by the limits on attendance in another way. The requirements for all Members participating in a debate to be present for the opening speeches and the concluding speeches have had to be temporarily lifted to ensure social distancing. This has reinforced the trend already alluded to, whereby many contributions to debate feel increasingly atomised – unconnected to what has come before and what has come after.

9 HC Deb, 6 May 2020, col 554. The background was a Labour General Election poster from the 1920s.

10 HC Deb, 9 July 2020, col 1137.

11 See in particular the transcript of evidence taken on 5, 7 and 12 October available at <https://committees.parliament.uk/committee/126/procedure-committee/publications/>

These changes and effects are perhaps seen by supporters of the traditional ethos of debate in the House of Commons as a bad thing, but they have been welcomed by many others, and they perhaps accelerate pre-existing trends in Member approaches to the chamber. For some, the transparency of call lists has been welcome. The attempts by the Speaker and Deputy Speakers to balance party, region, gender, seniority, specialism and position on the matter under debate all laid bare in published Call Lists. For many Members, the ability to have a clear idea of when they are likely to be called in debate, and to plan their days accordingly, has been liberating. For Members for whom the chamber and plenary proceedings are not central to their priorities to how they see them carrying out their role most effectively, call lists and the current rules on attendance have enabled them to align their time spent in the chamber with their perception of its place in their role.

The extent to which normal arrangements for debate have not returned since the end of hybrid substantive proceedings also casts new light on the rationale for their end. Arrangements for virtual participation and the associated operating model for the chamber were devised at great speed and in exceptionally testing circumstances. The initial model was both radical in conception and cautious in execution, avoiding excessive demands on technology and working arrangements that were untested in a UK parliamentary context and indeed in most other parliaments in the world. Although the duration of hybrid substantive proceedings was increased gradually during the short period of its existence, the working model was not revisited. An essentially experimental initial offering might have evolved over time. With the original concerns about parity less evident, a system might have emerged over time with constraints applying to virtual participants different to those present physically. Thus, interventions could be allowed for Members participating physically, including all frontbenchers. The notice requirements associated with the technology for virtual participation have fallen as experience grows, and methods could be developed to allow for interventions by or on Members participating virtually.

Scrutiny proceedings with virtual participation

The contention which has surrounded the scope for virtual participation in debates has been less apparent in respect of scrutiny proceedings – question time, urgent questions and ministerial statements. The arrangements for virtual participation, agreed on 21 April and introduced the following day, expired on 20 May, but pressure for their return was evident when the House returned on 2 June. Their absence was perceived by many Members, on all sides, as reducing their ability to take part in proceedings and effectively represent their constituents. As a result of this pressure, the government made some concessions. The House agreed on 4 June to re-start hybrid proceedings, but only for questions (including Urgent Questions) and statements. Members who wished to participate remotely had to inform the Speaker in advance that they were unable to attend on the Estate for reasons relating to the pandemic. Around 150 Members have so registered, and on average, there were about 100 virtual participants each week up to the summer recess.

Virtual participation in scrutiny proceedings has in many ways become normalised. The technological challenges and risk associated with their introduction have almost been forgotten, and by the summer instances of difficulty in supporting virtual participation were rare. For so long as the limits on physical attendance apply, and call lists are produced for participation in scrutiny proceedings regardless of mode of participation, virtual participation in these proceedings seems unlikely to be controversial. There have been some distinct patterns in virtual participation in these proceedings which are evidently linked to COVID-19: Members classified as medically highly vulnerable were consistent in virtual participation, and there were also high levels of virtual participation among Members with longer journeys to Westminster, most notably SNP Members. Although the ostensible link between virtual participation and COVID-19 has

been retained, some patterns of variable participation are less evidently linked to the pandemic, with virtual participation more common on Mondays and Thursdays, when traditionally more Members are based in their constituencies, than on Tuesdays and Wednesdays, for example.¹²

There remains concern that scrutiny of government decisions through interrogative proceedings in plenary is less effective than might be desirable. This is linked to some degree to the constraints on those proceedings arising from COVID-19. Both virtual participation and limits on physical attendance require greater notice of such proceedings than would usually be the case, so that even urgent questions relate to events known well in advance of their taking place. Without normal levels of attendance in the chamber, the mood of the House is notably different and ministers who might otherwise be placed under pressure by sustained questioning and reactions to them do not face that challenge. The drama associated with the appearance of a minister when their decisions have been open to question has visibly and audibly drained from the chamber. Notice requirements have accentuated pre-existing tensions between government priorities in relation to the news cycle on the one hand and the desire of successive Speakers on the other for the most important announcements to be made in the House first. On the other hand, some commentators have argued that the emptier and quieter chamber has suited some of the leading players better than the traditional crowds. This has been remarked in particular with reference to Sir Keir Starmer's exchanges with the Prime Minister at PMQs, where his more forensic "courtroom" style is thought to work more with the grain of the altered debating space.

At the same time, the difficulties of executive scrutiny during the emergency of COVID-19 go well beyond plenary proceedings, and indeed well beyond Westminster. There is anyway a tension between the requirement of the government to communicate directly with the public on fundamental matters of health and well-being and traditional modes of scrutiny. In modern times, the controversies over Brexit in a hung Parliament in 2019 represented a high watermark of the centrality of the chamber, from which a retreat was apparent even before the onset of the pandemic. Limits to the capacity and responsiveness of the executive in respect of other forms of scrutiny have also been apparent: thus, for example, the volume of parliamentary questions has nearly doubled compared with pre-pandemic levels, and the speed and utility of parliamentary answers has arguably struggled to keep pace.

Voting systems

The tradition of voting by division within or close to the chamber in order to deliver a result on the question before the House has survived with only minor modifications for centuries. In recent years, the pace of change has quickened, with the introduction of deferred divisions, arrangements for double or triple majority votes (for the purposes of the Standing Orders relating to English Votes for English Laws¹³) using electronic tablets, an experimental proxy system for parental leave and the use of simultaneous recorded votes in 2019 in the context of Brexit. But the pace of change arising from COVID-19 has been faster still, with at least four different voting systems developed and used in the course of a few months.

As noted above,¹⁴ there was an armistice in place in respect of divisions in the chamber from early in March 2020, with a new system proposed by the Speaker but essentially untested up to the Easter

12 For virtual participation in June, July, September and October, the highest number of individual Members participating virtually each week fell on a Monday or Thursday, with the exceptions of the weeks of 22 June, 6 July and 21 September, when the highest levels of virtual participation were on a Tuesday.

13 On which, see M Hamlyn, "English Votes for English Laws", the Table: The Journal of the Society of Clerks-at-the-Table in Commonwealth Parliaments, Vol 84 (2016), pp 9-19.

14 See Chapter 1.

recess. That armistice continued during the first phase of hybrid substantive proceedings and was intrinsically linked to it. The principle of parity between Members participating virtually and those participating physically could hardly be sustained if the right to vote was withheld from those away from Westminster. As part of the initial package associated with virtual participation, the House agreed to the principle of electronic remote voting – another radical change, arising from the need of government to get its business, including controversial business, through the House, while still allowing Members who were unable to come to Westminster to vote, and also helping ensure only the minimum number of Members needed to attend on the Estate. While the system of remote voting was developed, the government had to confine its business to that which Opposition parties agreed could progress without division.

A system for remote voting was developed with remarkable speed and drawing upon secure electronic systems used to support other procedural transactions.¹⁵ Over 600 Members took part in at least one of several tests, with some of them tweeting enthusiastically about the experience. On 5 May, the Procedure Committee pronounced itself satisfied with the assurances they had been given about the security of the system, while noting that it should only be a temporary solution. On 6 May, under powers given to him at the time of the establishment of hybrid proceedings, the Speaker authorised the new system for remote voting, which he termed a “historic, yet temporary” step.¹⁶ The orders underpinning these arrangements were designed to have a two-stage lock to prevent excessive divisions during the period of hybrid proceedings. First, the motion governing proceedings on a particular day had to designate a particular item as subject to division. Second, the Speaker had to determine that a division was necessary. This system was intended both as a departure from the normal reliance on competing voices in the chamber to trigger a division and to establish a higher threshold for divisions to take place.

The new system essentially operated without controversy, enabling Members to take part in votes wherever they were in the country, and with very few technical problems. However, the arrangements for remote electronic voting lapsed on 20 May alongside the provisions for substantive hybrid proceedings. The government again justified this decision by reference to the aspiration to secure a return to normality, and to physical return to the chamber wherever possible, but the situation was far from normal when the House returned in June.

A recall of the House was agreed earlier on the day planned for the return after Whitsun, 2 June, to enable the House to come to a decision on a voting system. The Speaker established arrangements for physical voting on his own authority for one day only for a vote by Members physically present on a system to be used thereafter. The House rejected a return to remote voting, despite a number of Conservative Members voting for such a return. That vote, and votes for a while thereafter, took place using a form of roll-call voting, in which Members queued up, in theory two metres apart, and took their turn to walk through the chamber, say their name out loud and indicate whether they were voting aye or no, then exit the chamber. With a House of over 600 Members, the queues were very long, stretching back to Westminster Hall, and each vote took at least 30 minutes – twice as long as traditional or indeed electronic voting. The results were recorded manually. This was then succeeded by a new system using pass readers in the division lobbies, with Members again queuing in a socially-distanced manner and then passing through the division lobbies to have their names recorded using their security passes.

Steps were also taken in June to extend eligibility for proxy voting to Members who ‘are at high risk from coronavirus for reasons that they are either ‘clinically extremely vulnerable’ or ‘clinically vulnerable’’. Although this satisfied some Members, there were continuing demands to expand the scheme further,

15 See blog by Matt Stutely, “MPs make history with remote voting – the story of how it happened”, <https://pds.blog.parliament.uk/2020/05/14/mps-make-history-with-remote-voting-the-story/>.

16 HC Deb, 6 May 2020, col 537.

for instance to cover Members who have COVID-19 related caring duties. On 10 June, the House agreed to extend the proxy voting scheme to Members who were unable to attend ‘for medical or public health reasons related to the pandemic’. This is a broad definition, and the Speaker relied on Members to confirm to him that they met the criteria; the reasons are not policed. The total number of proxy votes in operation increased from two or three, related to parental leave, to more than 150 in the space of a few days. In essence, the combination of pass reader voting and extended proxy voting created a sort of ersatz remote voting system, with few of the benefits of electronic voting. The number of registered proxy votes remains high, although the total varies from day to day, reflecting the fact that Members’ circumstances can change at short notice. In the fortnight starting on 28 September, the total number of proxies in operation ranged from 143 to 159. On 5 October, three Members, all party whips, between them cast 132 of the 159 proxy votes in operation. Over the same two-week period one Member changed their proxy voting status six times and two other Members four times each.¹⁷ The Clerk of the House reported in October that the Speaker “remains troubled by congestion during Divisions” and himself thought that divisions were “still a high-risk activity as far as we are concerned”.¹⁸

Conclusions

COVID-19 has required dramatic changes in practice supported by remarkable innovations in the use of technology to be made at great speed. Judged in technological terms, and from the perspective of the risks associated with delivery, this has been a success story. But the outcome of this has arguably been somewhat paradoxical. The technological success story has helped to strengthen a very specific – and to many very dated – characterisation of the nature of debate in the chamber and of the duties of an MP, which has then been deployed to justify the termination of hybrid proceedings without there being an opportunity for those proceedings to evolve in response to concerns. The retreat towards normality in operational terms, even while limits on attendance remain in effect, has been justified by reference to some of these traditional arguments, as Harriet Deane and Chloe Challenger explore elsewhere.¹⁹

The longer-term effects of the changes that have taken place, and the partial retreat from those changes, are hard to predict. For some Members, there is an explicit or unspoken desire to see the genie put back in the bottle. For others, there is a desire to build upon at least some of the changes that have proved necessary and to use them to bring about enduring change in the way plenary proceedings are conducted at Westminster, and the wider fabric of Member activities of which they form a part.

It is also not easy to disentangle the effects of COVID-19 from patterns of behaviour and practice in plenary proceedings that predate the pandemic. The House’s membership has seen rapid change since 2015, due to three General Elections. Each new intake both adapts to the ways of the House of Commons, and changes them. The process of adaptation for the 2019 intake has been quite different due to the COVID-19 outbreak, due to changes in the chamber, in Committees and in the social and political spaces beyond formal meeting areas.

17 Memorandum to the Procedure Committee submitted by the Strategic Director, Chamber Business Team, House of Commons (CVR 115) <https://committees.parliament.uk/writtenevidence/13020/pdf/>.

18 Procedure Committee, Minutes of Evidence, 12 October 2020, Q 402.

19 See Chapter 18.

The House of Commons and the role of its plenary proceedings have been through two successive departures from the norm. The first was the phase in 2019 when the Commons chamber was central to political decision-making and how it was reported in the media during the height of the Brexit storm. The second is the phase of enforced change arising from the pandemic. When those pressures are no longer in place, the chamber and the ways in which Members behave within it, and in relation to it, will not return to a prior state. Pressure to retain some of the perceived benefits of the temporary arrangements, such as published call lists, may prove hard to resist. There is clear evidence that the way in which the plenary activities are supported and enabled can be adapted rapidly, drawing upon technology and human ingenuity. This may find resonance with some MPs and with those who become Members at future elections. There may not be a revolution, but there will not be a restoration either.

04

Legislative proceedings

Liam Laurence Smyth
and Andrew Makower



Legislative proceedings

Liam Laurence Smyth and Andrew Makower¹

“So we beat on, boats against the current, borne back ceaselessly into the past.” — F. Scott Fitzgerald, *The Great Gatsby*.

The legislative programme

Table 1 shows the state of the legislative programme just before the changes wrought by the COVID-19 pandemic. The Queen’s Speech legislative programme for 2019-21 was dominated by the substantial backlog of Brexit bills which had failed to reach the statute book under Theresa May’s premiership.

Table 1: BILLS IN PARLIAMENT 2019-21 as at 18 March 2020

BILLS PASSED	
European Union (Withdrawal Agreement) Act 2018	Fast-track Brexit flagship, Royal Assent 23 January
Direct Payments to Farmers (Legislative Continuity)	Fast-track Brexit transition bill, Royal Assent 30 January
Terrorist Offenders (Restriction on Early Release)	Fast-track bill, Royal Assent 26 February
Supply and Appropriation (Anticipation and Adjustments)	Routine supply bill, Royal Assent 16 March
NHS Funding	Fast-track declaratory bill, Royal Assent 16 March
COMMONS	
Overseas Operations (Service Personnel and Veterans)	Waiting for second reading
Non-Domestic Rating (Public Lavatories)	Waiting for second reading
Finance Bill	Routine tax bill, waiting for second reading
Domestic Abuse	Waiting for second reading
Immigration and Social Security Co-ordination (EU Withdrawal)	Brexit bill, waiting for second reading
Sentencing (Pre-consolidation Amendments) [HL]	Law commission bill, committed to public bill committee
Windrush Compensation Scheme (Expenditure)	Waiting for Committee of the whole House
Medicines and Medical Devices	Brexit bill, waiting for public bill committee (out-date 23 April)
Environment	Brexit bill, in public bill committee (out-date 5 May)
Agriculture	Brexit bill, waiting for report

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COMMONS <i>(Continued)</i>	
Birmingham Commonwealth Games [HL]	Brought from Lords, waiting for report
High Speed Rail (West Midlands–Crewe)	Revived hybrid bill, sent to Lords
Prisoners (Disclosure of Information About Victims)	Sent to Lords
Telecommunications Infrastructure (Leasehold Property) Bill	Sent to Lords
LORDS	
Prisoners (Disclosure of Information About Victims)	Brought from Commons, waiting for second reading, 24 March
Sentencing [HL]	Consolidation bill, waiting for second reading
Telecommunications Infrastructure (Leasehold Property) Bill	Brought from Commons, waiting for second reading
Private International Law (Implementation of Agreements) [HL]	Second Reading 17 March, waiting for Committee
High Speed Rail (West Midlands–Crewe)	Revived hybrid Bill, brought from Commons, committed to a select committee
Air Traffic Management and Unmanned Aircraft [HL]	Waiting for report
Pension Schemes [HL]	Waiting for report
Extradition (Provisional Arrest) [HL]	Waiting for report 23 March
Fisheries [HL]	Brexit bill waiting for report
Divorce, Dissolution and Separation [HL]	Waiting for third reading 24 March
Sentencing (Pre-consolidation Amendments) [HL]	Law commission bill sent to Commons
Birmingham Commonwealth Games [HL]	Sent to Commons

Sources: House of Commons and House of Lords business papers

“Get Brexit Done”

Despite the mounting crisis and the catastrophic economic impact of the COVID-19 pandemic, the Johnson government did not waver in its commitment to maintain 31 December 2020 as the end of the transition period (the IP completion date). The most significant difference between the Withdrawal Agreement bill approved by the House at second reading on 22 October 2019 (before the General Election precipitated partly by the House’s refusal to approve the programme motion for that bill) and the post-election version given a second reading on 20 December 2019 was that clause 33 of the latter bill specifically barred Ministers of the Crown from agreeing to extend the implementation period under Article 132 of the Withdrawal Agreement, which allowed for a single decision to be adopted before 1 July 2020 to extend the transition period for up to one or two years.

For the business managers the strategic imperative of completing the Brexit legislative agenda by the end of the year remained in place; the COVID-19 pandemic was a major complication leading to loss of sitting days, postponement of public bill committees (and private Members’ Fridays) and a raft of COVID-related bills and secondary legislation.

Absence of Commons public bill committees in April and May

The government did not pursue the option of public bill committees (PBCs) meeting virtually in a manner comparable to the proceedings of select committees, which had moved entirely online from April onwards. The progress of government bills was hindered by the complete absence of PBCs between Easter and Whitsun.

Postponement of private Members' bills

The timetable for Friday sittings was pushed back on five occasions (on 25 March, 22 April and 12 May, 3 June and 1 July) so the second and third private Members' bill days eventually took place on 11 and 25 September instead of 27 March and 24 April. The government was not impatient to resume Friday sittings, even though several 'handout' Bills awaited debate, such as the Forensic Science Regulator and Biometrics Strategy Bill, the Botulinum Toxin and Cosmetic Fillers (Children) Bill and the Animal Welfare (Sentencing) Bill heading the lists for the considerably postponed third, fourth and fifth sitting Fridays of the session.

COVID-specific Bills

The COVID pandemic was responsible for several bills being added to the legislative programme, beginning with the omnibus Coronavirus Bill, which was fast-tracked from publication on 19 March to Royal Assent on 25 March. The Contingencies Fund Bill raised the flexibility to exceed departmental spending limits from two per cent of authorised supply expenditure to an eye-watering 50 per cent, but only for the financial year 2020-21.

Insolvency protection

The impact of the COVID-19 pandemic on the economy was exacerbated by the drastic lockdown measures taken to protect the NHS by flattening the projected peak in caseload. To mitigate the effects on businesses of the sudden downturn in demand, on 20 May the government brought forward the Corporate Insolvency and Governance Bill, which combined already-planned (but now very timely) reforms to protect businesses in financial difficulty with temporary deregulatory measures that would not have been out of place in the original Coronavirus Bill, such as allowing companies greater flexibility over the manner in which annual general meetings are held.

No change to Sunday trading

In early June it was reported with some confidence in the media that to support weekend trading by large shops, new legislation would be brought in to allow larger supermarkets to open for more than six hours on Sundays until 2021. Not for the first time, opposition to relaxing Sunday trading laws was voiced both by the Labour Party and trade unions, concerned at the impact of such changes on relatively low-paid shopworkers, and by traditionally-minded members in the Conservative party who for religious or other reasons prefer to keep Sunday "special". Whether or not the media speculation had been well-founded, the government did not bring forward any such proposals.

Pavement cafes, planning permission and road haulage

As the government's attention turned to easing the lockdown and assisting businesses to recover, the Business and Planning Bill was introduced on 25 June to protect 'Bounce Back Loans' from the 'unfair relationships' provisions in the Consumer Credit Act 1974, to make it temporarily easier for cafes, pubs and restaurants to serve customers outdoors, to tweak planning law and to reduce disruption to transport from heavy goods vehicle (HGVs) licensing requirements. More good news for the road haulage industry came with a ways and means motion on 1 July paving the way for a package of coronavirus-

related report stage amendments to the Finance Bill, which included provision for HGV road user levy not to be charged for a temporary period.

Stamp Duty Land Tax

Another temporary measure, directed at reviving the housing market, was unveiled in the Chancellor of Exchequer's summer economic update statement on 8 July. The Stamp Duty Land Tax (Temporary Relief) Bill, a rare example of a wholly relieving tax measure, was fast-tracked through the House of Commons on Monday 13 July and, as a certified money bill, approved proforma by the House of Lords on Friday 17 July.

March to May – COVID-19 “lockdown”

When the House resumed after Easter on 21 April, the planned second reading of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill was displaced by motions moved without notice to facilitate proceedings during the pandemic, with temporary provision until 12 May for hybrid scrutiny proceedings (questions and statements) allowing Members to take part either physically in the chamber or virtually by Microsoft Teams. Without waiting to learn from the experience of hybrid scrutiny proceedings, further temporary provision was made the following day (22 April) for hybrid substantive proceedings (principally, allowing more ministerial statements and providing for bills and delegated legislation). Accompanying provision was made to allow remote voting.

The temporary orders dispensed with Thursday sittings. In the first full week of hybrid sittings, the House gave second readings to the Finance Bill (27 April), the Domestic Abuse Bill (28 April) and the Fire Safety Bill (29 April), all of which were presumably selected by agreement with the Opposition as fortunately no divisions were required while the voting functionality of the MemberHub app was being tested.

Over the three days of the second week of hybrid sittings the House disposed of half a dozen affirmative statutory instruments, of which only the debate on the principal “lockdown” regulations for England (which had already come into force under the Coronavirus Act) attracted a lengthy list of Members wishing to speak. This week also passed without the need for any recorded votes.

In the third week, the first two days were devoted to a general debate on the COVID-19 pandemic, leading up to an extension of the temporary orders on hybrid proceedings up to 20 May. The most ambitious day of hybrid substantive proceedings took place on 13 May, with the first remote divisions taking place on the report stage of the Agriculture Bill.

In what turned out to be the final week of hybrid substantive proceedings, the House gave a contested second reading to the postponed and highly controversial Immigration and Social Security Co-ordination (EU Withdrawal) Bill (18 May), considered two further statutory instruments and a supplementary ways and means motion for the Finance Bill (19 May) and gave another contested second reading, to the Trade Bill (20 May). On that final day, and for the first time since the temporary orders had been adopted, the daily vote approving the timetable for substantive proceedings was the subject of a division.

An incidental impact of the COVID-19 pandemic was that the House suspended the operation of the Standing Order Nos. 83J to 83X dealing with “English Votes for English Laws”. This pragmatic decision removed the requirement to conduct certain votes on an England-only basis, for example, or to require double majorities of both the House as a whole and among Members voting from the certified territory (England, or England and Wales or — in relation to certain financial matters — England and Wales and Northern Ireland).

Return to normalcy

By the time the House returned on 2 June from the Whitsun recess, the government had decided to discontinue remote voting and virtual participation in substantive proceedings. The experience of April and May had demonstrated that legislative debates could accommodate the inevitable restrictions stemming from hybrid proceedings — fixed call lists, speaking time limits determined in advance and no interventions or interruptions. But from June onwards, legislative proceedings were resumed in the Commons on an entirely physical basis, with no possibility of virtual participation, other than by casting a proxy vote in the chamber. Members registered for proxy votes were by default excluded from playing any part in debates on primary and secondary legislation, whether on the floor or in a general committee.

The legislative programme was resumed immediately on 2 June with the second reading of the Parliamentary Constituencies Bill, which was the occasion for the first, slightly awkward, socially-distanced chamber division, to dispose of an Opposition reasoned amendment. Table 3 shows how far the legislative programme had advanced by the end of September.

Public bill committees

The Environment Bill had only recently embarked upon what was intended to be a longer-than-normal series of public bill committee (PBC) sittings stretching from 10 March to 5 May, as the coronavirus lockdown approached. A Deputy Speaker was drafted in to sit as Committee Chair on 19 March, so that the Environment PBC could adjourn itself indefinitely. The House has repeatedly postponed the Bill's "out date", by when its committee stage must be completed, beyond 5 May: on 4 May to 25 June, on 22 June to 29 September, and on 28 September to 1 December.

No PBC meetings at all were held from 19 March to 4 June, covering the lockdown period. While select committees had been authorised to meet online throughout the pandemic, the business managers had not secured agreement through the usual channels on how general committees should meet.

The dichotomy adopted from June onwards between 'scrutiny' and 'substantive' proceedings in the chamber was mirrored in committees, with select committees ('scrutiny') meeting mainly or entirely virtually while general committees ('substantive') were almost completely physical, save for remote participation by some of the witnesses at PBC oral hearings.

A limited general committee programme had been offered to the government whips by the Public Bill Office, based on using only the two largest committee rooms (the ones most suitable for social distancing) for both PBCs and delegated legislation committees (DLCs). The offer was not picked up by the government. A prototype virtual-only general committee was trialled successfully using Microsoft Teams towards the end of April. It became clear that the government was hankering after a return to fully physical general committees to debate both bills and delegated legislation as soon as possible after the House returned on 2 June from its Whitsun recess.

Over the weeks from 4 June to the end of September a total of 11 different socially-distanced PBCs met on 67 occasions in the larger committee rooms, reaching a peak of four PBCs meeting simultaneously on 16, 18 and 25 June. Despite a few PBC sessions being held on a Monday or Wednesday, the traditional pattern of PBCs for government bills meeting four times a week, but only on Tuesdays and Thursdays, was soon re-asserted. No PBCs met in the last fortnight before the summer recess, and only three PBCs met, on 10 occasions, in September. Owing to the haste with which PBCs were resumed, virtual participation by oral witnesses was initially rather limited. Although the technical issues for witnesses

were soon dealt with, there was still not enough space for all the PBC members asking questions to be seated around the customary horseshoe table layout.

Table 2: Public bill committees June-September 2020

	Oral evidence sittings	Debate sittings	Total (hh:mm)
Counter-Terrorism and Sentencing	3	5	13:26
Domestic Abuse	2	10	25:30
Finance	0	10	16:38
Fire Safety	1	1	03:46
Immigration and Social Security Co-ordination (EU Withdrawal)	2	6	14:56
Medicines and Medical Devices	0	3	03:44
Parliamentary Constituencies	5	3	17:41
Trade	3	5	19:01
Fisheries [HL]	0	6	09:29
Education (Guidance about Costs of School Uniforms) (PMB)	0	1	00:43
British Library Board (Power to Borrow) (PMB)	0	1	00:18

Source: House of Commons Hansard

June to September – bills in the chamber

In the chamber, the fast-track COVID bills on Corporate Insolvency and Governance, Business and Planning, and Stamp Duty Land Tax (Temporary Relief) passed through all their stages on the floor of the House. The uncontroversial Law Commission Bill on Sentencing (Pre-consolidation Amendments) was taken in Committee of the whole House, paving the way for the Sentencing Bill [HL] which took no time at all to be passed at the end of September under the fast-track procedure for consolidation bills. The Divorce, Dissolution and Separation Bill [HL] which ran into some opposition in Committee of the whole House from certain Members who had been entirely unrepresented on the PBC appointed to consider the same bill in the 2017-19 Session. The Supply and Appropriation (Main Estimates) Bill was brought in after two days of debates on selected Estimates and as normal approved with no further discussion in either House. The Birmingham Commonwealth Games Bill [HL] completed its Commons stages on a quiet Thursday afternoon. Two Bills introduced before lockdown were given a second reading in the post-lockdown period before the summer recess and completed their committee and remaining stages on the floor of the House in September: Extradition (Provisional Arrest) and Non-Domestic Rating (Public Lavatories).

September's legislative agenda was dominated by the United Kingdom Internal Market Bill, a Brexit measure which took up six days on the floor of the House.

The practice of publishing call lists in advance was retained for hybrid scrutiny proceedings, and persisted for substantive proceedings as well, in order to regulate the flow of Members through the socially-distanced chamber. In addition to relaxing the conventional courtesies, such as Members having to be present for opening speeches if they wanted to be called in the ensuing debate, publishing call lists for substantive proceedings in the chamber enabled Members to turn up before their turn to be called. They are encouraged not to linger on the benches after the first couple of speeches following their own. Not having remote participation enabled a return to the practice of ministers, spokespersons and others accepting interventions during their speeches. Time limits on speeches reverted to the former practice of being announced, and if necessary revised, during the course of the debate.

Table 3 sets out the state of the legislative programme at the end of September, highlighting in bold changes since just before the COVID-19 crisis.

Table 3: BILLS IN PARLIAMENT 2019-21 as at 30 September 2020
(changes since 18 March in **bold**)

BILLS PASSED	
European Union (Withdrawal Agreement)	Fast-track Brexit flagship bill, Royal Assent 23 January
Direct Payments to Farmers (Legislative Continuity)	Fast-track Brexit transition bill, Royal Assent 30 January
Terrorist Offenders (Restriction on Early Release)	Fast-track bill, Royal Assent 26 February
Supply and Appropriation (Anticipation and Adjustments)	Routine Supply bill, Royal Assent 16 March
NHS Funding	Fast-track declaratory bill, Royal Assent 16 March
Coronavirus	Fast-track flagship COVID bill, Royal Assent 25 March
Contingencies Fund	Fast-track COVID bill, Royal Assent 25 March
Sentencing (Pre-consolidation Amendments) [HL]	Law Commission Bill, Royal Assent 8 June
Windrush Compensation Scheme (Expenditure)	Royal Assent 8 June
Corporate Insolvency and Governance	Fast-track COVID bill, Royal Assent 25 June
Divorce, Dissolution and Separation [HL]	Royal Assent 25 June
Birmingham Commonwealth Games [HL]	Royal Assent 25 June
Business and Planning	Fast-track COVID bill, Royal Assent 22 July
Stamp Duty Land Tax (Temporary Relief)	Fast-track COVID bill, Royal Assent 22 July
Finance	Routine tax bill, Royal Assent 22 July
Supply and Appropriation (Main Estimates)	Routine supply bill, Royal Assent 22 July
Sentencing [HL]	Consolidation Bill passed 30 September, waiting for Royal Assent
COMMONS	
Non-Domestic Rating (Lists) (No. 2)	Read a second time 30 September, waiting for Committee of the whole House
Pension Schemes [HL]	Brought from Lords, waiting for 2nd reading
Environment	Brexit Bill, in public bill committee (out-date postponed to 1 December)
Overseas Operations (Service Personnel and Veterans)	Read a second time 23 September, committed to public bill committee

Continue...

COMMONS *(Continued)*

Private International Law (Implementation of Agreements) [HL]	Brexit bill, read a second time 2 September, waiting for Committee of the whole House
Fisheries [HL]	Brexit bill, reported from public bill committee 17 September, waiting for report stage
High Speed Rail (West Midlands–Crewe)	Revived hybrid Bill, sent to Lords
Telecommunications Infrastructure (Leasehold Property) Bill	Sent to Lords
Immigration and Social Security Co-ordination (EU Withdrawal)	Brexit bill sent to Lords
Agriculture	Brexit bill sent to Lords
Medicines and Medical Devices	Brexit bill sent to Lords
Domestic Abuse	Sent to Lords
Counter-Terrorism and Sentencing	Sent to Lords
Parliamentary Constituencies	Sent to Lords
Trade	Brexit bill sent to Lords
Non-Domestic Rating (Public Lavatories)	Sent to Lords
Extradition (Provisional Arrest) [HL]	Sent to Lords
Fire Safety	Sent to Lords
United Kingdom Internal Market Bill	Brexit bill sent to Lords
Prisoners (Disclosure of Information About Victims)	Waiting for consideration of Lords Amendment received 8 September

LORDS

Non-Domestic Rating (Lists) [HL]	Waiting for second reading
United Kingdom Internal Market Bill	Brexit bill waiting for second reading
Fire Safety	Brought from Commons, waiting for second reading
Domestic Abuse	Brought from Commons, waiting for second reading
Counter-Terrorism and Sentencing	Read a second time, 21 September, waiting for Committee
Medicines and Medical Devices	Brexit bill read a second time 2 September, waiting for Committee
Trade	Brexit bill started in Committee 29 September
High Speed Rail (West Midlands–Crewe)	Revived hybrid bill, oral evidence completed 23 September select committee report pending
Parliamentary Constituencies	Reported from Committee 15 September, waiting for report stage
Immigration and Social Security Co-ordination (EU Withdrawal)	Brexit bill reported from Committee 16 September, waiting for report stage
Air Traffic Management and Unmanned Aircraft [HL]	Waiting for report stage

Continue...

LORDS *(Continued)*

Agriculture	Brexit Bill report stage completed 22 September, waiting for third reading
Telecommunications Infrastructure (Leasehold Property)	Waiting for for third reading
Pension Schemes [HL]	Sent to Commons
Extradition (Provisional Arrest) [HL]	Sent to Commons
Fisheries [HL]	Sent to Commons
Private International Law (Implementation of Agreements) [HL]	Sent to Commons

Sources: House of Commons and House of Lords business papers

House of Lords

The COVID-19 crisis played out differently in the Lords and was not over at time of writing (August). Legislative proceedings underwent several transformations between the extended Easter recess and the shortened summer one, and another immediately after that.

Phase 1 Crisis 16-25 March

Physical proceedings continued with social-distancing measures introduced. The Legislation Office moved to remote working from 17 March. A system of “E-Messages” was agreed rapidly, replacing the clerks’ time-honoured walk from one chamber to the other bearing Messages and endorsed House Bills tied up in red or green ribbon with an exchange of emails and attached photographs; it was used for the first time on 24 March.

The Coronavirus Bill was passed by the Commons on 23 March with many government amendments. Staff of both Houses and Parliamentary Counsel, some in Westminster and some at home, worked together through the night to produce the House Bill. The bill was passed, enacted and published on 25 March. On that day the House adjourned to 21 April, having agreed to take no private Members’ or private bills until 21 May.

Phase 2 Physical Proceedings 21 April - 6 May

On 15 April the Leader of the House wrote to the Procedure Committee with proposals for fully virtual proceedings. The first set of rules, agreed on 21 April, made no provision for virtual proceedings to consider bills. The Windrush Compensation Scheme (Expenditure), Telecommunications Infrastructure (Leasehold Property) and Prisoners (Disclosure of Information About Victims) Bills duly received second readings in physical proceedings with very limited participation. For the Windrush Bill, the government arranged a virtual debate on another day; this was not a formal stage of the bill but allowed more members to have their say. For the other bills, the usual channels agreed that Members unable to speak at second reading could make “second reading speeches” at committee stage.

Phase 3 Hybrid Committee 12 May - 4 June

On 6 May the House agreed rules for “virtual committee”, again based on proposals in a letter from the Leader of the House. The Leader said:

We propose to hold the Committee stages of three bills, mentioned above, as “Virtual Committees”, which will follow as closely as possible the normal procedures of a Committee Stage, subject to variations necessitated by the technology. This will mean allowing Virtual Proceedings to make decisions, though only by unanimity. These would be at least the decisions to stand Clauses and Schedules part of the Bill and to agree the Title; and might also include amendments with universal support. Practical arrangements will also need to change in order to accommodate the extra preparation needed to hold these stages virtually. Within the unavoidable constraints, we will seek to preserve as much as possible of the spontaneity and freedom which the House’s scrutiny function requires.

The rules were based on “Grand Committee”, which cannot divide, since at this stage the Lords lacked capability for remote voting. They departed significantly from the House’s normal practice. Lords had to sign up to speak and wait to be called by the Chair; the deadline to table amendments for inclusion in the marshalled list was advanced by a day and amendments after that were prohibited; and the “groupings”, normally an informal agreement among the usual channels as to which amendments would be debated together, became binding.

The new rules also allowed for Messages to be received, and Commons Bills to be read a first time, when the House was not sitting.

Two features of normal proceedings were particularly difficult to replicate with remote participants: enabling Members to speak “after the Minister”, that is, to reproduce the freedom to carry on the debate indefinitely which is a feature of a normal Lords committee stage; and “collecting the voices”, that is, establishing whether there is unanimity on a matter for decision. Solutions were worked out between Members and staff in the course of rehearsals. Members wishing to speak after the minister were asked to email the clerks, who messaged the Chair to call the Member and notified the broadcasters to set the Member up to speak. The best way to collect the voices turned out to be simply to open all microphones at once and invite Members to say “Content” or “Not content” in the usual way.

A further feature, worked out in discussion with the Deputy Chairs whose role would be key to these proceedings, was the “super-brief”, a significantly expanded Chair’s brief / script / dossier. This reduced the number of documents required to manage proceedings; it gave extra help to Chairs and clerks, some of whom were new to the role and all of whom were new to the format; and it would be shared with all participants, to communicate the lists of speakers and also to keep proceedings on track and avoid surprises.

The Private International Law (Implementation of Agreements), Telecommunications Infrastructure (Leasehold Property) and Prisoners (Disclosure of Information About Victims) Bills were successfully considered in virtual committees.

Phase 4 Hybrid House 8 June - 29 July

On 4 June the House agreed rules for hybrid proceedings from 8 June, including all stages of legislation, with remote voting from 15 June.

Key features of virtual committee – early marshalling and no late amendments, binding groupings and lists of speakers, the super-brief and the system for speaking after the minister – were carried over. But collecting the voices by opening all microphones was no longer possible, partly because of having Members both in the chamber and on Zoom, and also because an upgrade to Zoom meant that microphones could no longer be opened centrally. The rules said: “When putting the Question, the Chair will collect voices in the chamber only. If a member taking part remotely intends to trigger a Division, they should make this clear when speaking on the group.” This departed from the general principle of parity between remote Members and the chamber, and put a certain amount on the Chair, but it proved both practical and acceptable.

During the first week of hybrid sittings, when remote voting was not available, the only legislative business was two second readings, on which votes were not expected. Remote voting was launched on 15 June with two votes on third reading amendments to the Extradition (Provisional Arrest) Bill [HL] and two more on the Abortion (Northern Ireland) (No. 2) Regulations 2020.

From then until the summer recess the legislative programme began to flow again, covering all stages save consideration of Commons amendments, and on the whole the procedures worked as intended. The earliest permitted start time for an amending stage was advanced from 2.30pm to 12.30pm; the daily deadline for tabling amendments was advanced from 5pm to 4pm. One or two unforeseen issues emerged: the hard finish times imposed by the broadcasting arrangements led to business being carried over to the following day, requiring rapid adjustments to documentation; and the original rules did not cover a third reading with no amendments. These were addressed in revisions to guidance.

Meanwhile, outside the chamber, the Legislation Office supported meetings of the Joint Committee on Consolidation Bills (a hybrid meeting on the Sentencing Bill [HL], with Parliamentary Counsel in Portcullis House and the Committee on Zoom), the Select Committee on the High Speed Rail (West Midlands – Crewe) Bill (virtual adversarial proceedings, including online administration of oaths) and the Ecclesiastical Committee.

Phase 5 Hybrid House plus hybrid Grand Committee from 2 September

On 28 July the House agreed additional rules for hybrid Grand Committee to meet concurrently with the hybrid House from September.

Conclusion

Even before the COVID-19 pandemic, the legislative programme for 2020 was already a busy one, dominated by Brexit legislation. The need to address the pandemic resulted in additional, mainly fast-tracked, legislation to assist the NHS in dealing with the health emergency. The Coronavirus Act combined restrictions intended to curb the spread of the disease with a slew of deregulatory measures, most aimed at supporting the NHS (relaxing rules on cremating dead bodies or registering health professionals, for example). Other provisions of the Coronavirus Act and later measures including the Finance Act, the Corporate Insolvency and Governance Act, the Business and Planning Act and the Stamp Duty Land Tax (Temporary Relief) Act focused on support for sectors of the economy devastated by the lockdown. The Contingencies Fund Act had conferred on the government exceptional latitude in breaching departmental spending limits.

After an extended Easter break from 25 March to 21 April, the House of Commons moved swiftly to a three-day week comprising hybrid proceedings for both scrutiny (questions and statements) and substantive proceedings: for example, second readings of bills, approval of statutory instruments and even one report stage for a major Brexit bill. A relatively small number of Members in a socially-distanced chamber featured on newly-published call lists with many more Members taking part in chamber proceedings remotely via Microsoft Teams. Select committees had continued to meet virtually using Zoom, but the government preferred not to pursue the option of holding PBCs online. The fully hybrid three-day a week chamber operated for four weeks, from 27 April to 20 May, during which time the COVID-19 crisis reached and passed a peak.

On Parliament's return from the Whitsun recess on 2 June, the government restored the normal four-day sitting week in the Commons, dropped the Commons remote voting app, restricted virtual participation in the chamber to scrutiny proceedings only, and resumed general committee debates on bills and secondary legislation. Call lists were still published in advance for all debates, as the constraints of socially-distancing precluded a complete return to the former practice of catching the Speaker's eye.

Superficially, the legislative programme was fully on track by the time Parliament rose for the summer recess at end of July, with eight bills having completed their public bill committee stage in the seven weeks from 4 June to 7 July, and a half a dozen bills passing through Committee of the whole House in the same period. By the end of September another government bill had completed its public bill committee stage and the Commons had passed three bills taken entirely on the floor of the House including the major (and highly controversial) United Kingdom Internal Market Bill.

The risk-averse approach of the usual channels was well to the fore with the rejection of the successful voting app, the lack of interest in an online solution for general committees, and the reversion to a normal Tuesday/Thursday sitting pattern for PBCs—even though social-distancing constraints allow for hardly more than three general committees to meet at the same time with their full membership present.

In the House of Lords, enabling legislation and scrutiny to carry on in COVID-19 conditions was no mean achievement. But Members had to accept significantly reduced freedoms and spontaneity; it was harder for Members to "see the whites of the minister's eyes" and for ministers to feel the "sense of the House" and there was less scope for negotiation in the course of proceedings. There was reduced access to hard-copy documents; this was not specific to legislation but legislation requires more documents than other business. And the procedures, and the rate of change, placed significantly increased burdens on small teams of staff at what was in any case a difficult time, raising stress and increasing the risk of error.

Again this was not specific to legislation but the consequences of error in legislative proceedings are particularly serious. The Government Chief Whip, Lord Ashton of Hyde, giving evidence to the House of Lords Constitution Committee about the constitutional implications of COVID-19 on 29 July 2020, said, "Some of the process in dealing with legislation has been a bit more difficult ...". He was right.

The government's ostensible motive for the Commons' hasty return to normalcy was that debating legislation could properly be fulfilled only when Members were present in person. But more than 150 Members were effectively excluded from legislative debates, because they had registered for proxy votes for medical or public health reasons related to the pandemic.

As far as legislative proceedings are concerned, in the Commons any special COVID-19 arrangements were rather temporary and were swiftly dismantled in favour of returning to as-normal-as-possible processes in an exceptionally challenging year characterised by a single overarching imperative: to get Brexit done. In the Lords, at the time of writing (August), they continued to evolve.

05

**Abracadabra
law-making and
accountability to
Parliament for
the coronavirus
regulation**

Tom Hickman

Abracadabra law-making and accountability to Parliament for the coronavirus regulation

Tom Hickman¹

Since 26 March, the day-to-day life of every person in the country has been regulated and restricted to an exceptionally high degree by criminal laws that have intruded deeply into the heart of individual liberty, regulating the purposes for which people can leave their homes, their ability to socialise and meet family members and their ability to work. The principal regulations, and all of those with which this paper is concerned, have been made under the Public Health (Control of Disease) Act 1984 (“1984 Act”). Disquiet about the development of a modern form of government by proclamation or ‘diktat’ has gradually built-up in Parliament, so much so that on 30 September the Speaker of House of Commons made an unprecedented statement that “the way in which the government has exercised their powers to make secondary legislation” under the 1984 Act has been “totally unsatisfactory” and, he said, has shown a “total disregard for the House”.²

Parliament’s role in relation to delegated legislation

Brexit had already significantly increased the government’s reliance on delegated legislation as a method of governance before the coronavirus pandemic broke. It was no coincidence that delegated legislation was referred to in the reasoning of the Supreme Court in its momentous judgment in the Case of Prorogation, finding that the Prime Minister’s five-week prorogation of Parliament in the lead up to the then EU exit day of 31 October 2019 was unlawful. One of the reasons given by the Court was the effect on Parliament’s scrutiny of delegated legislation. It identified parliamentary scrutiny of delegated legislation alongside calling ministers to account through questions and select committee appearances as reflecting the ‘constitutional principle’ of ‘parliamentary accountability’. By these means, wrote Baroness Hale and Lord Reed in the Court’s judgment,³ ‘the policies of the executive are subjected to consideration by the representatives of the electorate, the executive is required to report, explain and defend its actions, and citizens are protected from the arbitrary exercise of executive power.’

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- 1 **Tom Hickman** is a practising barrister at Blackstone Chambers and Professor of Public Law at University College London (th@blackstonechambers.com).
 - 2 HC Deb, 30 September 2020, col 331. The statement was prompted by an amendment proposed by Graham Brady MP (Con) to the motion for continuation of the Coronavirus Act 2020 which had sought to require the government to allow debates and votes on delegated legislation applying to the entire country before it comes into effect. The Speaker did not select any amendments because it risked uncertainty as to whether the Act had been validly continued.
 - 3 *R (Miller) v The Prime Minister; Advocate General for Scotland v Cherry* [2019] UKSC 41, para 46. For delegated legislation featuring in the Court’s reasoning on the facts see paras 2 and 60. The impact of the prorogation on scrutiny of delegated legislation was the focus of an intervention in the case by the Public Law Project, which has led the way in focusing attention on the increasing importance of delegated legislation.

But the principle of parliamentary accountability does not encapsulate the entirety of Parliament's function in relation to delegated legislation. Parliament also provides a mechanism for giving public notice of statutory instruments and enhancing transparency. As the Joint Committee on Statutory Instruments ("JCSI") stated in an important report in 2018 on transparency, 'Laying before Parliament is not a meaningless formality, but an important part of access to justice and the rule of law.' The statutory arrangements for laying before Parliament 'are part of the required formal measures by which publicity is assured.' The JCSI emphasised that once a statutory instrument is made it should be laid before Parliament as soon as possible even if it is not due to come into force for months. This is because, 'Parliament and the general public are entitled to as much notice of the prospective law as the government has itself, and the legal and practical effects of an instrument may be felt long before the date on which it comes into force.'⁴ It is also the process of laying before Parliament which triggers the appearance of regulations on the www.legislation.gov.uk webpage, the only official open-access repository of current legislation.⁵

Alongside the functions of parliamentary accountability and transparency it is tempting to add that Parliament's function in relation to delegated legislation is in part the function of law-making. Statutory instruments that are made affirmative or draft affirmative require positive approval from Parliament before they come into – or can remain in – effect (in the case of draft affirmative, before they are made). There is more than a hint in the case law that made affirmative instruments should be considered as parliamentary rather than executive measures and that a distinction should be drawn between made affirmative and made negative measures.⁶ But we should resist the temptation to characterise Parliament's role in relation to made affirmative instruments as one of law-making. Parliament does not make or adopt statutory instruments, it approves them.

The procedure for approval, even when regulations are made affirmative, is very different from the enactment of primary legislation; and whilst Parliament is able to raise objections and require ministers to account, there is rarely any significant prospect of regulations not being approved. Other than in extremely rare cases,⁷ there is no power for Parliament to amend regulations. As a matter of both form and substance, statutory instruments embody the will and policy of the government not of Parliament.⁸ The affirmative procedure is a mechanism by which the executive brings instruments to Parliament's attention and explains and defends them. None of this is to downplay the importance of parliamentary scrutiny, on the contrary, it is simply to emphasise that Parliament's function is the dual function of accountability and transparency.

Parliament's role in relation to the coronavirus regulations should therefore be assessed by reference to two principles: (1) parliamentary accountability, and (2) transparency.

4 JCSI, 2nd Special Report, *Transparency and Accountability in Subordinate Legislation: Government Response to First Special Report* (2017-19, HL 189, HC 1577) para 2.8.

5 See *Statutory Instrument Practice* (5th edn, 2017) p 3. Although the SI practice guide suggests that it is laying before parliament which triggers publishing on legislation.gov.uk, sometimes publication on the website has occurred shortly before they have been laid.

6 In *R v Secretary of State for the Environment, Transport and the Regions, ex parte Spath Holme Limited* [2001] 2 AC 349, 383. Lord Bingham quoted Lord Donaldson, "Subordinate legislation, at any rate when subject to the negative resolution procedure, represents the will of the Executive exercised within limits fixed by primary legislation." The qualification for instruments subject to the affirmative resolution procedure was unnecessary.

7 See e.g. Civil Contingencies Act 2004 s.27(3); Census Act 1920 s 1(2).

8 Cf. *Spath Holme*, above footnote 6.

The Coronavirus Regulations

Between 26 March and 3 July, daily life in England was governed by The Public Health (Coronavirus, Restriction) (England) Regulations (SI 2020/350). These regulations were made under s.45C of the 1984 Act, which empowers the Secretary of State to make provision, including the creation of criminal laws, for preventing or controlling the incidence or spread of infection. Regulations were also made by the devolved governments but the focus here is on the English regulations. The English regulations were amended by four sets of amendment regulations before being replaced on 3 July by The Public Health (Coronavirus, Restrictions) (England) (No. 2) Regulations (SI 2020/684). This essay will refer to these regulations as the Restriction (No. 1) and (No. 2) Regulations respectively.

Various other regulations have also been made under the 1984 Act, in particular concerning obligations to wear face coverings, first on public transport and then in shops and other indoor places,⁹ and to impose a 14-day quarantine on persons entering the country from overseas.¹⁰ Local lockdown regulations were also imposed for towns such as Leicester,¹¹ regions such as Greater Manchester, East Lancashire, Preston and West Yorkshire¹² and in relation to one sandwich making factory.¹³ Each of these regulations was made under s.45C except the travel quarantine regulations which were made under s.45B, which confers power to prevent diseases transmitted by aircraft or vessels arriving in any place. On 12 October the regime was changed and a three-tiered system was introduced allowing different parts of the country to be placed on a different restriction tier. But the tier system did not last long, as the whole of England was plunged back into lockdown, reminiscent of the law in May, from 5 November.¹⁴ At the time of writing (November) the government expresses hope of speedy return to the tiered system.

Let us consider the set of core restriction regulations applicable up to the introduction of the tier system in more detail. Regulations made under the 1984 Act are generally subject to negative resolution procedure, but the draft affirmative procedure is mandated for regulations under s.45C unless the person making it declares that they are of the opinion that they do not contain a 'special restriction or requirement' or 'any other restriction or requirement which has or would have a significant effect on a person's rights.' No such declaration was made in relation to any of the restriction regulations. The draft affirmative procedure was therefore applicable. This requires that a measure cannot be made until a draft has been approved by each House. This is reflective of the serious interference with individual rights that such measures entail.

However, in the case of every one of the Restriction (No. 1) and (No. 2) Regulations the Secretary of State used the urgency provisions contained in s.45R which allow the instrument to be made and come into force before it is laid before each House of Parliament, 'if the instrument contains a declaration that the person making it is of the opinion that, by reason of urgency, it is necessary to make the order without a draft being so laid and approved' (s.45R(2)). The instrument will cease to have effect unless

9 The Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place and on Public Transport) (England) (Amendment) 2020/791, amended by SI 2020/839, SI 2020/882 and SI 2020/906.

10 The Health Protection (Coronavirus, International Travel) (England) Regulations 2020/568 (subject to various amendments).

11 The Health Protection (Coronavirus, Restrictions) (Leicester) Regulations 2020/685.

12 The Health Protection (Coronavirus, Restrictions on Gatherings) (North of England) Regulations 2020/828.

13 The Health Protection (Coronavirus, Restrictions) (Greencore) Regulations 2020/921.

14 The Health Protection (Coronavirus, Local COVID-19 Alert Level) (Very High) (England) Regulations 2020/1105; The Health Protection (Coronavirus, Local COVID-19 Alert Level) (High) (England) Regulations 2020/1104; The Health Protection (Coronavirus, Local COVID-19 Alert Level) (Medium) (England) Regulations 2020/1103 and The Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020/1200.

approved by each House within 28 days or if it is rejected sooner (recess days are not counted). Each of the regulations contained such a declaration.¹⁵

The Restriction (No. 1) Regulations were made at 1pm on 26 March, came into force immediately and were laid before Parliament an hour and a half later. These regulations required people to stay at home save for a number of specified reasons – which were very narrowly drawn – or if they had another ‘reasonable excuse’ to be outside their home. The regulations prevented gatherings of more than two persons from different households outside and they closed non-essential shops and certain other businesses.¹⁶

The Restriction (No. 1) Regulations were amended on 22 April. The amendment regulations were made on 21 April, came into force at 11am the next day and were laid before Parliament an hour and a half later (SI 2020/447) (“Amendment (No. 1) Regulations”). The amendments tightened some of the drafting, making the lockdown somewhat more restrictive,¹⁷ and made other specific changes, such as relating to burial grounds and livestock markets. A second, more substantial, amendment occurred on 13 May (SI 2020/500) (“Amendment (No. 2) Regulations”). The Amendment (No 2) Regulations allowed people to exercise with another person or to leave home for recreation, re-opened household waste facilities, allowed goods to be collected from shops, facilitated house moves, increased the value of fixed penalty notices (“FPN”) and opened garden centres and outdoor sports courts.¹⁸ The 13 May regulations had been made on 12 May and were specified to come into effect the following day. They were laid before Parliament at 9.30am on 13 May having already come into effect at midnight.

The next amendment occurred on 1 June when the stay at home restrictions were converted to a requirement to stay at home overnight. Gatherings of up to six people were permitted outside the home. A mandatory review period, which had been set at 21 days previously, was increased to 28 days. The regulations also made provision for the closure of zoos, aquariums and model villages, apparently because otherwise these would have re-opened. The making and publication of the regulations followed a similar pattern: the instrument was made on 31 May, came into force on 1 June and was laid before Parliament at 11.30am later that day (SI 2020/558) (“Amendment (No. 3) Regulations”).

Retail businesses, churches and certain outdoor attractions were allowed to open, the concept of linked households or ‘support bubbles’ was introduced, and certain gatherings were permitted by regulations that were made on 12 June and laid before Parliament the same day. Some provisions came into effect on 13 June, others on 15 June (SI 2020/588) (“Amendment (No. 4) Regulations”). This was the first occasion that the regulations came into force after being laid before Parliament.

On 3 July, the Restriction (No. 1) Regulations were replaced by the Restriction (No. 2) Regulations. These regulations swept away most of the existing lockdown restriction law and replaced it with a prohibition on gatherings of more than 30 people in private dwellings, vessels or public open spaces (subject to certain exceptions), a requirement to close specified business and a power for the Secretary of State to direct the closure of public spaces. They were made at 10am on 2 July, laid before Parliament at 3pm and came into effect the following day.

15 The same has been true of regulations made for Northern Ireland, Scotland and Wales, but consideration here is limited to England.

16 Restaurants and bars were closed by The Health Protections (Coronavirus, Business Closure) (England) Regulations 2020.

17 As originally drafted the regulations arguably allowed people to be outside for any purpose as long as they left home for a permitted reason. The amendments made clear that it was unlawful for a person to be or remain out of their home other than for a permitted reason.

18 T. Hickman, ‘A Very English lockdown relaxation’ U.K. Const. L. Blog (14 May 2020) (available at <https://ukconstitutionallaw.org/2020/05/14/tom-hickman-a-very-english-lockdown-relaxation/>).

Amendments were made on 9 July and laid before Parliament on 10 July (coming into force on 11 and 13 July). These re-opened outdoor pools, spas, beauty salons and certain other businesses (SI 2020/719). Indoor pools, fitness and dance studios were opened two weeks later (SI 2020/788). Casinos, skating rinks, bowling alleys, conference centres and exhibition halls followed on 15 August (SI 2020/863).

On 26 August, the Secretary of State made The Health Protection (Coronavirus) (Restrictions on Holding of Gatherings and Amendment) (England) Regulations 2020 (SI 2020/907). These amended the Restriction (No. 2) Regulations to add a new offence of holding or being involved in the holding of a relevant gathering, which attracted an FPN of £10,000 – an exceptionally high amount given that FPNs are normally used for minor parking and driving offences. They were laid before Parliament on 27 August and they came into effect on 28 August. There is an exception for a gathering organised by a political body where they have taken all reasonable measures against transmission of coronavirus.

On 9 September, news agencies carried reports that the government would tighten the social distancing laws once again, by introducing a limit on gatherings of six persons inside and outside the home from Monday 14 September. The regulations became available on the www.legislation.gov.uk website on Sunday 13 September at 28 minutes before midnight and therefore 29 minutes before they came into effect.¹⁹

As already mentioned, a three-tier system was introduced on 12 October. Placing large parts of Northern England on the highest tier caused an immediate political rift between politicians of both main parties along geographical lines. This was however relatively quickly superseded by the second lockdown in England which came into effect on 5 November.

This brief overview of the core regulations has provided a framework chronology and provides a sense of the depth with which the regulations have intruded into everyday life. But such an overview fails to give a true sense of the way that such regulations have impacted on individuals, such as through the postponement of health care, dentistry and important surgical operations, the collapse of businesses and personal incomes (where government support has fallen short or not applied) and the grave impact of confinement on mental health and child welfare. Many people died isolated from their families and alone. Even outside the core lockdown periods, children and their parents have been separated from grandparents, family and friends, senior citizens have been isolated and many incomes have been decimated.

Nor should the overview be taken to suggest that the law has ever been simple or straightforward. The various rules and changes to them have been subtle and complex, impacting not only private individuals but businesses and charities and associations and groups of all kinds.

Parliamentary Accountability

Let us turn then to consider the scrutiny that was afforded to these regulations in Parliament. The Restriction (No. 1) Regulations were laid before Parliament the day after Parliament had gone into recess and they were not debated in the Commons until 4 May and in the Lords until 12 May (approved 14 May). This was a considerable delay, particularly at a time when every week felt like a month for those subject to the restrictions. One of the reasons for the delay was the rule in the House of Lords that debates should not take place on delegated legislation until after the JCSI and Secondary Legislation Scrutiny Committee (“SLSC”) have reported, which they did on 29 and 23 April respectively.

19 The Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment) (No 4) Regulations 2020/986.

The Commons debate lasted just under two hours, not a lengthy debate in parliamentary terms although significant for delegated legislation. Standing Order 16 provides for debates for up to 90 minutes on proceedings under an Act. The debate mainly acted as a platform for MPs to raise general issues, rather than those focused on the regulations, such as police enforcement, the impact on mental health and local economies and specific risk groups such as immigration detainees. A similar approach was taken in the Lords, where the debate had been overtaken by the Prime Minister's announcement on 10 May of the changes that were to become the Amendment (No. 2) Regulations. No draft or copy of the Amendment (No. 2) Regulations was however made available to the Lords: they were laid before Parliament the day after the debate. Whilst it might be said that draft regulations were not strictly relevant to the motion in the Lords, the reality was that it was not the motion but the wider issue that was the subject of consideration. A more rational approach, although requiring suspension of standing orders, would have been for the Lords to debate all of the regulations, including a draft of the Amendment (No. 2) Regulations, on 12 May.

In considering whether such exceptional steps might have been taken we should not lose sight of the fact that the Restriction (No. 1) Regulations imposed the most severe restrictions on liberty probably ever imposed in peacetime. Since Parliament had returned from recess on 21 April and was operating with remote technology from that date one would have expected the regulations to be right at the top of the parliamentary agenda. The government was however content to let the parliamentary cogs turn without seeking to speed things along.

Questions have been asked about the repeated subsequent use of urgency procedure to make the regulations, but we should also pause to consider whether it was justified at the very outset of the lockdown. Whilst it might be thought that the enactment of the Restriction (No. 1) Regulations could not have been achieved using the draft affirmative procedure, it is not clear that this was so. The Coronavirus Bill was unveiled on 19 March and received Royal Assent on 25 March. It is not obvious why the regulations could not have been considered and approved at the same time, albeit that, as noted above, some modification to standard procedures would have been required. Whilst draft regulations considered on such a timescale would have been approved without much debate or scrutiny, it would have enhanced the legitimacy of the measures and set a positive precedent for the involvement of Parliament going forward. It would also have been transparent. As will be explained in the following section, the process of imposing the first lockdown was anything but transparent.

Even if it was felt too cumbersome for the Restriction (No. 1) Regulations to have been approved it was at least unfortunate that no set of draft regulations was made available to Parliament before it went into recess and whilst it was considering the Coronavirus Bill, particularly as that Bill contained provisions replicating s.45C for Northern Ireland and Scotland.

The use of the urgency procedure at the outset and for subsequent amendment regulations, coupled with a lack of urgency displayed by the government in scheduling debates, meant that parliamentary scrutiny rapidly became stale and largely academic. By the time the 13 May Amendment (No. 2) Regulations came up for consideration in the Commons, in the Delegated Legislation Committee ("DLC") on 10 June, the lockdown had been lifted and replaced by an overnight residence requirement (on 1 June). By the time they came up for debate in the Commons on 12 June, shops had reopened and support bubbles had been introduced. In the DLC debate, Justin Madders MP (Lab) objected that whilst the delay in debating the original regulations may have been justified, there "should have been sufficient time to ensure that future changes were debated and had democratic consent before they were introduced." Debating them weeks after the event, in the small committee was, he said, "frankly an insult" to

Parliament.²⁰ The degree of scrutiny in the DLC is generally insubstantial and in the normal way the committee proceedings consisted of an opening statement, by the Minister for Care Helen Whately MP, a statement by the Opposition representative, Mr Madders, and a response by Ms Whately. That was all. Given the volume of delegated legislation, the DLC has limited time to devote to each regulation. This is clearly shown in Table 1 annexed to this paper.²¹

There was one particular point of interest arising in the DCL on 10 June. A query was raised by Mr Madders as to what would happen if the Amendment (No. 2) Regulations had not been approved by the House. This was, as it happens, a very good question. No answer was given. The answer was not, as suggested by Mr Madders himself, that fines imposed under the regulations would have to be repaid. The regulations would have ceased to have had effect the day they were rejected but that would not have affected the legality of anything done in reliance on the regulations up to that point (s.45R(7)(a)). The rejection of the regulations would however have given rise to a novel legal issue as to whether the regulations had been 'repealed', in which case provisions of the previous regulations that they had replaced would not be revived.²² That would have left the regulations partly unworkable, for example the amount of FPNs, which had been changed by the amendments, would simply have become a blank space in the regulations. On the other hand, if—and this is the better legal analysis—the refusal to approve the Amendment (No. 2) Regulations did not constitute a repeal then the provisions that they had temporarily repealed would have sprung back into existence, prohibiting outdoor recreation and closing garden centres, amongst other absurdities.

It is a feature of parliamentary accountability over this period that nobody appears to have known, and the government certainly did not explain, what the consequences would have been if one of the Houses of Parliament had rejected one of the amendment regulations given that they had already taken effect and often themselves been subject of amendment. Since there is clearly no prospect of Parliament rejecting regulations where the consequences of it doing so are unforeseeable and may cause administrative and legal chaos, this contributed to the reasons why parliamentary accountability in this period was more apparent than real.

By the 15 June the position to an outsider looked faintly ridiculous. On that day, three days after the Amendment (No. 4) Regulations had reopened shops, places of worship and outdoor attractions, the Commons was debating the Amendment (No. 3) Regulations whilst the House of Lords was still on the Amendment (No. 2) Regulations. In a notably understated euphemism, Lord Bethell, the government minister in the Lords, described the process as being "out of synchronicity".²³ In fact, the process of scrutiny had become entirely dislocated from the political and legal reality and there was growing concern about the fact that the regulations were not getting scrutiny or timely approval in Parliament expressed across both Houses.

The debate in the Commons on 15 June was not well attended – in part perhaps because the virtual parliament procedure had been ended – and lasted an hour and a quarter in line with normal limits on the length of debates on secondary legislation. The debate in the Lords was even shorter, lasting an hour. Whilst many in the Commons did their best to focus on the terms of the Amendment (No. 3) Regulations,

20 HC DLC, 10 June 2020, col 6.

21 The Table shows the use of DLCs during 2020 to debate statutory instruments. Apart from a few outliers such as the Abortion (Northern Ireland) Regulations, which were debated for two and a half hours on 8 June, most statutory instruments 'debates' last about 20 minutes and in practice take the form of a government statement of purposes, an Opposition response and a reply. The increasing number of coronavirus regulations requiring approval within 28 days of being made added to the already considerable number of EU Exit Regulations in the queue for consideration and the time devoted to each was limited.

22 Interpretation Act 1978 ss. 15 and 23. HL Deb, 15 June 2020, col 2006.

23 HL Deb, 15 June 2020, col 2006.

most of their Lordships made no attempt to examine the long-forgotten Amendment (No.2) Regulations and instead used the debate as an opportunity to address more topical issues such as the 14-day travel quarantine (commenced 8 June), a governmental 'review' of the two metre rule, the confusion between law and guidance and the marginalisation of senior citizens.

The Lords debate on the Amendment (No. 3) Regulations, which took place 10 days later on 25 June, had any remaining wind taken from its sails by the Prime Minister's statement to Parliament two days before that all rules relating to social distancing would be repealed on 4 July and the government would revert to an approach based on guidance.²⁴ Lord Scriven (LD) remarked that the House was playing a "game of illusion" to sustain the pretence that the regulations "are enacted with the agreement of Parliament."²⁵ Baroness Jones Moulescoombe (GP) described it as "perhaps the most farcical exercise of parliamentary scrutiny imaginable".²⁶

No attempt will be made to analyse the debates in any detail. Enough has been said to make clear that the restriction regulations that applied to the critical lockdown period between 26 March and 4 July were never given any significant parliamentary scrutiny and Parliament had no option but to waive them through. The chamber debates were stale and poorly attended. In many cases Parliament was being asked to approve law that had long been superseded. The main value of the debates was in allowing MPs and peers to raise concerns on wider issues relating to the coronavirus pandemic and lockdown. Part of the problem was that the Houses were required to work to ordinary protocols applicable to delegated legislation which were not appropriate to an immense national crisis: with initiative and imagination from government, Parliament's role could have been greatly enhanced.

It is a general feature of Parliament's scrutiny of delegated legislation that the focus tends to be either on the broad contours of the legislation or on very specific drafting concerns. This in part reflects the respective jurisdictions of the JCSI and SLSC²⁷ as well as the inability of either House to propose amendments to improve delegated legislation that it considers. In the language of proportionality, Parliament provides a deterrent—albeit not a strong deterrent—against regulations lacking an overall 'fair balance' between competing interests but it does not ensure that they are 'carefully tailored' to their objectives or that they reflect the 'least intrusive means' of achieving the desired goal. This was certainly the case in relation to the coronavirus restriction regulations, with many important aspects of the regulations such as the breadth of the police enforcement powers and the detailed and important exceptions to lockdown rules, receiving very little attention.

Further contributing factors which hampered accountability were the fact that the government supplied little information about the scientific basis on which the measures had been designed and the absence of any parliamentary committee with the expertise to scrutinise the scientific rationale or with a jurisdiction to do so in the context of the passage of delegated legislation. This meant that the various social distancing rules could not be seriously challenged or the government pressed to explain its thinking in detail. The result was that the constitutional principle of accountability was observed in form but it had little impact in substance. I do not mean to suggest that there has been no accountability at all. Parliament had a 'watchdog' role. Its presence no doubt concentrated minds in government. But the limits of the accountability are evident.

24 HC Deb, 23 June 2020, col 1167.

25 Ibid, col 394.

26 Ibid, col 401.

27 The former has a limited jurisdiction to draw the House's attention to relatively formal defects in the regulations. The latter can amongst other things, draw Parliament's attention to regulations that are 'politically and legally important or gives rise to issues of public policy likely to be of interest to the House'.

The fact that Parliament was given insufficient opportunity to scrutinise and debate these important laws is also apparent from the manner in which MPs seized upon the opportunity to debate the extension of provisions in the Coronavirus Act 2020 after six months of operation (as required by s.98 of that Act) as a means of objecting to the lack of parliamentary scrutiny of the quite separate lockdown regulations. The Speaker's criticism quoted at the outset of this paper was prompted by a motion, advanced in opposition to the extension of the Coronavirus Act 2020, which was supported by a number of backbench Conservative MPs that would have required a debate on the restriction regulations. The motion was not selected by the Speaker but it served at least to underscore the frustration of backbenchers and the limited levers at their disposal to put the government under pressure.

The government eventually succumbed and agreed that going forward both Houses could debate national coronavirus measures before they came into effect. Debates on the short-lived three tier system accordingly took place on 13-14 October and the second national lockdown was debated on 4 November in each House. Parliamentary approval was therefore obtained before the measures took effect. This demonstrated what was achievable with government support. Whilst the measures were never at risk of being rejected, the second lockdown measures were met with a mixture of scepticism and resistance from a notable number of MPs: 38 mainly Conservative MPs voted against the measures and 94 cross-party MPs abstained (including former Prime Minister Theresa May MP). The debates were considerably more vigorous and relevant than those that had gone before. Whilst detailed scrutiny was still lacking, Parliament's role was enhanced and along with this the power of MPs and peers to hold the government to account was significantly increased.

Transparency

Let us now turn to the issue of transparency. A pattern rapidly emerged in the way that coronavirus regulations were made and brought into effect. The pattern was this: an announcement was made by a government minister of a policy change, sometimes to Parliament but in many cases at the daily coronavirus press conferences, this sketched a future change to the coronavirus restrictions; further information was provided to Parliament and placed on the government website (www.gov.uk/coronavirus), but this was well short of a complete statement of what the law would be; finally, regulations were unveiled on the www.legislation.gov.uk website without prior warning often only hours or minutes before they came into effect.

The appearance of new criminal laws in this way is reminiscent of a rabbit being pulled from a magician's hat, except the hat here belongs to the minister and the magic words are not "abracadabra" but "the Secretary of State is of the opinion that, by reason of urgency, it is necessary to make the instrument without a draft having been laid before, and approved by, Parliament". With such words the requirement for the regulations to have prior approval of Parliament before being made is wafted away and the regulations can be brought into effect by executive order and published at the same time. The consequence is that individuals, businesses, lawyers and commentators have inadequate time to analyse what are often complex regulations with serious and immediate impacts on day-to-day lives.

The seeds of the problem were sown at the height of the emergency. On 23 March, the Prime Minister announced the national lockdown. But until the Restriction (No. 1) Regulations took effect there was no law to back it up. Until those regulations appeared on the www.legislation.gov.uk website on 26 March, the legal position was extremely unclear and confusing. Individuals were being told to stay at home. Police forces were on the streets 'enforcing' the lockdown. However, lawyers and others were baffled as to what law was being used to enforce it. There was no obvious police power to do so and not even any

applicable provision in the Coronavirus Bill that was before Parliament that week. There was no transparency. As Steve Baker (Con) stated in the debate on the regulations on 4 May:²⁸

The Prime Minister announced these rules on 23 March and police officers quickly set about enforcing them, stopping people on trains and, in one case, overturning a barbecue. People very quickly found themselves subject to what seemed to be enforcement action. On 24 March, the Government sent a text message, saying that new rules were “in force now” and that people “must stay at home”. The problem is that those rules were not in force at that time; they were not in force until 26 March.

Whilst thankfully there was no other example of a coronavirus law coming into effect after measures were purportedly imposed, a lack of transparency reflected in the production of laws at the last minute shortly before they took effect became a stock feature of law-making over the period. Examples have been given in the chronological survey above.

Whilst exigencies may mean that urgent last-minute action is unavoidable this is not always the case. The reimposition of social distancing laws on 13 September illustrates how the government’s tendency to keep the laws up the ministerial sleeve until the ‘big reveal’ was certainly not always justified. The change was announced on 9 September but regulations were not available publicly until less than half an hour before they came into effect. The regulations were, in the words of Professor Mark Elliott, ‘highly technical’,²⁹ setting out almost byzantine rules about lawful ‘participation’ in certain large ‘gatherings’.³⁰ Even the Home Secretary, who for unknown reasons had made the regulations rather than the Health Secretary, was confused about how they worked the day after they came into effect.³¹

Another example is provided by the Greater Manchester lockdown regulations. On the evening of 30 July, the government announced a major reimposition of restrictions in Greater Manchester.³² There was little clarity as to what the measures would involve or the boundaries of the areas covered by them. The regulations only became available on 4 August shortly after being made and contemporaneously with being laid before Parliament. They covered areas in Lancashire and West Yorkshire which had not been apparent beforehand. They resembled the lockdown conditions in place between 12 June to 3 July which allowed groups of six people to meet outside but prohibited visitors to private homes. But there were also important differences such as precluding groups meeting in private gardens and provisions for linked households. There cannot have been many people in the areas subject to them who at the time they were imposed had a proper grasp of the laws that applied to them. These are not small quibbles. Breach of these laws was a criminal offence.

Yet another example of this phenomenon is provided by The Health Protection (Coronavirus, International Travel) (England) Regulations 2020. The intention to impose a 14-day quarantine on persons arriving in the UK was announced by the Prime Minister on 10 May. However, the Secretary of State for Health did not make the regulations until 2 June and they were laid and published on 3 June. This was just two

28 HC Deb, 4 May 2020, col 451.

29 Tweet of Professor Mark Elliott (14 September 2020) (available at <https://twitter.com/ProfMarkElliott/status/1305409785509052416>).

30 The Health Protection (Coronavirus, Restrictions) (No 2) (England) (Amendment) (No 4) Regulations 2020/986, r.2.

31 C. Hymas, ‘Priti Patel: Families will breach “rule of six” if they mingle in the street’, The Telegraph (15 September 2020). The Home Secretary suggested that the legal test for whether two families meeting on the street breach the regulations is whether they are “mingling”, which is incorrect. The only question is whether they constitute a gathering.

32 Previous local restrictions had been imposed in Leicester and in Blackburn, Darwen and Bradford, although the measures were not as strict as in Greater Manchester and associated areas.

working days before they came into effect.³³ Between announcement and publication there had been much uncertainty about scope of the regulations and as to the existence of possible travel corridors. The published regulations when unveiled were draconian, applying to all persons entering the country even from countries with no or low incidence of coronavirus, an absurdity that was reinforced by the fact that their publication coincided with reports that the UK had recorded a higher daily death rate than the entire EU combined.³⁴ British Airways, Easyjet and Ryanair immediately wrote to the government challenging the legality of the regulations once they had been unveiled but the delay in publication also meant that the challenge did not get to court until 3 July. On the same day, the government published an extensive list of travel corridors thus rendering the challenge academic. Had the regulations not been published at the last moment this more rational position would surely have been reached far sooner and before the quarantine regulations had caused extensive damage to the critical July and August travel market due to the collapse in bookings in May and June.³⁵

The government came in for censure for its inadequate notice of changes to regulations. On 4 June, it announced face covering rules that would come into effect on Monday 15 June, but there was no sign of the regulations by Friday night of 12 June. They were made and appeared on the Sunday afternoon. The SLSC asked the Department for Transport why the regulations had not been laid sooner. The government responded that it had wanted to consult stakeholders and 'get the drafting of the regulation right'. After noting dryly that consultations characteristically take place before not after a policy announcement, the SLSC stated:³⁶

... laying the Regulations in this way not only deprived Parliament of the ability to scrutinise them before they came into effect but also prevented those affected being able to prepare after seeing the detailed requirements of the law rather than just the headline announcement. Even a short gap before implementation would have enabled this.

Unfortunately, this fell on deaf ears.

Finally, it is also worth considering the amendment the change to the regulations creating the offence of being involved in the holding of a specified gathering. The guidance published in advance of this change stated that it would apply to persons who organised or facilitated the gathering, but the regulations themselves cover any person whose involvement goes beyond mere attendance.³⁷ The amendments, made again by emergency procedure, coincided with a protest against the Coronavirus Act on 29 August. It was at that protest that Piers Corbyn was arrested, held for 10 hours and issued with an FPN of £10,000, apparently for speaking at the demonstration. Whatever one may think of such a gathering, it is unsatisfactory that such a major change in the law amounting to a substantial interference with freedom of expression should have been made under urgency procedure, without adequate notice or transparency or the approval of Parliament.³⁸

33 Together with accompanying regulations imposed on operators concerning information and documentation requirements: The Health Protection (Coronavirus, Public Health Information for Passengers Travelling to England) Regulations 2020/567.

34 A. Tidey, 'UK records more new COVID-19 deaths than entire EU combined', euronews.com (4 June 2020). The restrictions on persons leaving their home are also draconian, not even permitting people to take exercise outside.

35 Impressively, the Transport Select Committee managed to undertake an inquiry and produce a report on the impact of coronavirus on the aviation industry, which included consideration of the quarantine policy. It called for the government to 'clearly explain the reasons for its current quarantine policy and the evidence base it used to make its decision'. It strongly urged the government to introduce a more flexible risk-based approach: *The Impact of the coronavirus pandemic on the aviation sector* (HC 2019-21, 268) paras 28-29.

36 SLSC, 20th Report (HL 2019-20, 92), para 11.

37 Involvement is not defined other than to state that, 'a person is not involved in the holding of a gathering if that person's only involvement in the gathering is by attendance at the gathering.'

38 See M. Scott, 'The chilling treatment of Piers Corbyn', *The Spectator* (4 September 2020). For the guidance see <https://www.gov.uk/government/news/tougher-fines-ahead-of-bank-holiday-to-crack-down-on-illegal-gatherings>.

The constitutional checks on the government introducing regulations at the last minute without proper notice or transparency are wafer thin. As shown by the SLSC's censure of the Department of Transport, there is very little that Parliament can do to resist the use of the urgency procedure or insist on prior approval. A similar issue arises where regulations are subject to negative resolution procedure. Such regulations are subject to the '21 day rule' by which they must be laid 21 days before they come into effect. But 132 of the 200 coronavirus statutory instruments (across all subject areas) that are subject to negative resolution procedure have not complied with this rule.³⁹ The travel quarantine regulations provide an example. These were subject to negative resolution procedure and, as we have seen, were laid shortly before they came into force. The government stated that compliance with the 21 day rule was not possible as, 'urgent action is needed to limit the number of cases of COVID-19 imported into the UK and ensure these will not have a material impact on the domestic incidence of the virus.'⁴⁰ There were two difficulties with this contention, however. First, it failed to explain why the regulations could not have been produced sooner given the policy announcement almost a month before. Secondly, it failed to explain why international travel posed an immediate and urgent risk of increasing the domestic incidence of coronavirus given that (a) at the time people were not permitted to travel on holiday and all hotels in England were closed to foreign holidaymakers, (b) the regulations themselves contained a number of exemptions including for regular business travellers, and (c) domestic incidence at the time was higher than almost every other country in the world. The scientific evidence – which was provided to the Science and Technology Committee on 5 June 2020 as well as to the High Court in the airline challenge – did not suggest urgency. It stated, rather blandly (and indeed obviously), that as the UK moved to a situation where local incidence and prevalence of the virus was lower relative to some other countries, imported cases from countries with higher prevalence would be expected to increase domestic transmission.⁴¹ Despite the fact that the government's statement justifying the use of the urgency procedure was therefore both illogical and unsubstantiated it was not subject to scrutiny or rebuke in Parliament.

Nor do the courts offer much scope for challenging the procedure by which regulations are introduced. The urgency procedure under s.45R of the 1984 Act does not require any objective urgency actually to exist. It can be used 'if the instrument contains a declaration that the person making it is of the opinion that' urgency prevents prior approval in Parliament (s.45R(2)). Ordinarily, clauses which allow a minister to do an act if they are 'of the opinion' of something will be read to mean that it is a 'reasonable' opinion. That allows the courts to ensure that the power is not being abused by reading in an objective condition. But s.45R requires not that the minister is of the opinion that there is urgency but that the instrument contains a declaration to this effect. As long as the declaration *is present* then the objective condition for the making the instrument before it is laid before Parliament is satisfied. No doubt the reference to 'a declaration' carries with it the implication that it is 'a true declaration' but that only imports a requirement that the minister holds the opinion *bona fide* and not that his opinion is reasonable. They truly are magic words.

39 Hansard Society, 'Coronavirus Statutory Instrument Dashboard' (last updated 12 November 2020) (available at <https://www.hansardsociety.org.uk/publications/data/coronavirus-statutory-instruments-dashboard>).

40 Explanatory Memorandum to The Health Protection (Coronavirus, International Travel) (England) Regulations 2020, para 3.1.

41 Professor John Aston, letter to the Rt Hon. Greg Clark MP, Chair, Science and Technology Committee, 5 June 2020.

Conclusions

In conclusion, the use of ss.45B, 45C and 45R of the 1984 Act as the basis for England's response to the coronavirus pandemic meant that the government's accountability to Parliament in the period between 26 March and 12 October for the extraordinary restrictions on civil liberties that it imposed was extremely limited and the law-making process lacked transparency. Criminal laws that intruded deep into people's everyday lives, criminalising everyday activity, were produced at the last minute, shortly before they came into effect, and parliamentary scrutiny and debate of the measures, if it occurred at all, was belated, restricted and stale.

By contrast, if the government had enacted such measures under the bespoke emergency regime contained under the Civil Contingencies Act 2004 a very different level of parliamentary scrutiny would have been applicable. Under that Act all regulations must be laid before Parliament 'as soon as is reasonably practicable';⁴² the government would have been required to seek Parliament's approval for the renewal of regulations every 30 days and Parliament would have to approve the regulations within seven days. Exceptionally, each House would have been able to amend regulations made under the Act.

The Civil Contingencies Act is by no means a panacea. It contains exceptionally wide powers. And the government maintains that it could not have been used because the 1984 Act was available.⁴³ However, it identifies and addresses several of the problems relating to accountability and transparency that have been exposed by the government's use of the 1984 Act. If nothing else, the Civil Contingencies Act shows that Parliament can have—and indeed expects to have—a far more central and substantial role in situations of national crisis and emergency than it had following the coronavirus outbreak.

The use of the emergency procedure under s.45R to introduce coronavirus regulations was described by the Under-Secretary of State Jo Churchill in one debate as demonstrating "the advantages of our flexible constitution" and she emphasised that it set no precedent for how government would engage with Parliament in "more normal times".⁴⁴ In one sense she was right. The use of s.45R has indeed demonstrated the flexibility of our constitutional arrangements, namely, the ease with which the government can evade the need to produce laws in a timely fashion and subject them to parliamentary scrutiny: the ability to free itself from principles of accountability and transparency by uttering magic words. But such flexibility is a weakness not a strength of our constitutional arrangements.

The lesson of this period is that it has exposed with great clarity just how fragile are the twin principles of parliamentary accountability and transparency and just how easily the government can turn down the accountability dial to something approaching zero. The lessons of this period should not be discounted on the basis that they relate to an exceptional period of national crisis which will not be replicated once the emergency has passed.

42 See s.27(1)(a).

43 HC Deb, 2 November 2020, col 45. This contention is debatable but cannot be debated here. See A. Blick and C. Walker, "Why did the Government not use the Civil Contingencies Act?" 2 April 2020, Law Gazette.

44 HC Deb, 15 June 2020, col 584 (debate on Amendment (No. 3) Regulations SI 2020/558). A similar comment made by Lord Bethell: HL Deb, 15 June 2020, col 2006.

The crisis has simply exposed and illuminated structural weaknesses in our constitutional arrangements that are present in both exceptional and normal times. After all, the powers that the government has resorted to enact — the most severe and intrusive criminal laws in peacetime history — are not derived from an emergency powers regime but are derived from ordinary public health legislation.

It is now hard to think of a constitutional issue that is more pressing and important than a thorough review and overhaul of the regime for making and scrutinising delegated legislation.⁴⁵

I am extremely grateful for comments that I have received from Chris Salmon Percival, Liam Laurence Smyth, Graeme Cowie and Abe Chauhan. They do not bear any responsibility for the contents. I am also very grateful to Liam Laurence Smyth and Zöe Backhouse for providing me with the Table.

45 The last significant examination focused only the role of the House of Lords: Cabinet office, *Strathclyde Review: Secondary Legislation and the primacy of the House of Commons* (Cm 9177, 2015) Appendix A, p 25 (available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486790/53088_Cm_9177_Web_Accessible.pdf); and in response HL Select Committee on the Constitution, *Delegated Legislation and Parliament: A response to the Strathclyde Review* (HL 2015-16,116) (available at (<https://publications.parliament.uk/pa/ld201516/ldselect/ldconst/116/116.pdf>), stating that the Strathclyde review had focused on the wrong questions.

Table 1: Time spent in Session 2019-21 to 30 September 2020 in Delegated Legislation Committees

Sitting Week	No. DLCs	No. SIs	Time h:mm	of which					
				EU Exit			Coronavirus		
				No. DLCs	No. SIs	Time	No. DLCs	No. SIs	Time
<i>No general committees appointed in new Parliament till 29 January</i>									
3 Feb	2	2	1:02	—	—	—	—	—	—
10 Feb	2	2	0:35	—	—	—	—	—	—
24 Feb	6	8	1:30	1	2	0:32	—	—	—
2 Mar	7	7	2:11	1	1	0:22	—	—	—
9 Mar	7	7	1:48	—	—	—	1	1	0:24
16 Mar	5	5	1:40	—	—	—	—	—	—
23 Mar	3	3	0:14	—	—	—	—	—	—
21 April						nil			
28 April						nil			
4 May						nil			
11 May						nil			
18 May						nil			
2 June	2	2	0:51	1	1	0:18	—	—	—
8 June	4	5	3:42	1	1	0:15	1	1	0:38
15 June						nil			
22 June	2	2	0:33	—	—	—	—	—	—
29 June	6	7	1:34	1	2	0:17	2	2	0:37
6 July	5	5	1:47	—	—	—	1	1	0:25
13 July	9	9	3:33	—	—	—	2	2	1:27
20 July	4	4	1:09	—	—	—	1	1	0:25
1 Sept						nil			
7 Sept	11	12	4:35	3	4	1:00	1	1	0:59
14 Sept	10	11	4:35	5	5	1:21	2	2	1:50
21 Sept	10	15	4:42	1	1	0:11	5	10	2:41
28 Sept	4	4	1:34	1	1	0:23	3	3	1:11

Source: House of Commons Ways and Means Office

06

The impact on Select Committee witness diversity and accessibility in the House of Commons

Margaret McKinnon
and Holly Dustin

The impact on Select Committee witness diversity and accessibility in the House of Commons

Margaret McKinnon and Holly Dustin¹

The principle of witness diversity

Witness diversity is usually taken to refer to the characteristics and background of witnesses appearing before select committees to give oral evidence in the inquiry process. In a less narrow sense, it might, and arguably should, also encompass written submissions, as well as private meetings, outreach sessions and the myriad other ways of gathering perspectives and experiences that are not formal committee evidence, but nevertheless help to shape Committee members' thinking (see James Hockaday's chapter below).

Recent data suggest a picture of the UK House of Commons in which there has been some improvement over time, albeit with some stark under-representations. The latest data for 2017-2019 show that there are far fewer women witnesses: only 37% of 'discretionary' witnesses in 2017-19 were women, though this was a rise from 29% in 2015-16. There is also large variation across committees: ranging from the Women and Equalities and Work and Pensions committees having a majority of female 'discretionary' witnesses to under 10% for the Transport Committee.²

While the focus has often been on gender balance, witness diversity should go beyond this and may usefully refer to disability, race/ethnicity, sexual orientation and other protected characteristics, as well as socio-economic status, immigration status or caring responsibilities.

The rationale for diversity amongst witnesses – and beyond that to diverse evidence – lies in core arguments about the quality of democratic representation and parliamentary scrutiny; in short, that in the absence of diverse voices and perspectives, information that comes before select committees will be limited and thus their scrutiny work less effective. Lack of diversity is inimical to the democratic process itself. Geddes et al propose that; "Gender (and other) imbalances among members of select committees and their witnesses probably have consequences for the choices made by those committees about what to investigate, what gets organised into and out of politics and formal governmental arenas and, subsequently, the focus of parliamentary and public debates and policy outcomes."³

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 - ² A 'discretionary' witness is essentially one who is invited to give evidence on their own account or behalf of an organisation rather than as a holder of a specific office or position.
 - ³ "Why can't some parliamentary select committees get female witnesses? : Democratic Audit"
<https://www.democraticaudit.com/2019/01/29/why-cant-some-parliamentary-select-committees-get-a-female-witness/>

Over the last five years witness diversity has begun to become recognised as fundamental to effective scrutiny. Whilst staff in both the Commons' and Lords' Committee Offices have embraced the need for diversity, it remains an uneven practice. In 2016, The Good Parliament Report, warned that the skewing of witnesses to select committees carried a reputational risk for the House as a 'closed institution' which does not hear from witnesses with whom the public identify.⁴ Responding to The Good Parliament report's recommendations, the Commons Liaison Committee, in its report *Witness gender diversity* in 2018, stated that a panel of three or more witnesses should normally include at least one woman; by the end of 2019, at least 40% of discretionary witnesses should be female.⁵ Later that year, the UK Gender Sensitive Parliament Audit report⁶ stated that "female witnesses and those from other diverse groups" should not be prevented from contributing to inquiries, "either by being overlooked in favour of the "usual suspects" or by being put off from putting themselves forward."⁷

Most recently, the UN Women's primer of parliaments' response to the Covid-19 pandemic proposes that taking evidence from a diverse range of sources and perspectives is more important than ever during the pandemic because of the disproportionate impact it is having on different groups.⁸

Even before the pandemic, select committees had some way to go towards meeting their own objectives on witness diversity. Committees should consider whether they incline toward taking evidence from the 'usual suspects' – the think-tanks, larger charities and prominent academics – or how they might proactively seek evidence from grassroots and community organisations, and from witnesses with 'lived experience'? There are then questions of how feasible new approaches might be. The Business, Energy and Industrial Strategy (BEIS) Committee, for example, told the Liaison Committee that, despite their strong encouragement, it was often difficult to secure gender diversity among their witnesses due to the energy sector being male-dominated at senior levels. Some committees have considered the impact of their own representation on witnesses giving evidence. To minimise distress to witnesses with lived experience giving evidence in its inquiry into Universal Credit and survival sex, the Work and Pensions Committee decided that a female member of the Committee should chair the session.

Finally, it should be noted once again that representation on panels does not automatically lead to more diverse evidence. Put simply, a gender or ethnically diverse panel of professional witnesses (those giving evidence in their work capacity) will be more representative of the general population in a descriptive sense, but cannot guarantee evidence on the differential impact of government policy on different groups. This evidence often needs to be actively sought from experts, such as researchers, frontline agencies and those with lived experience. In the same way that government policy-making can still be criticised for being largely modelled on a notional, default, white, able-bodied male, so scrutiny can fall into this trap unless actively challenged. We argue, therefore, that diversity must mean both diversity of witnesses and diversity of evidence.

4 The Good Parliament. <http://www.bristol.ac.uk/media-library/sites/news/2016/july/20%20Jul%20Prof%20Sarah%20Childs%20The%20Good%20Parliament%20report.pdf>

5 Witness gender diversity - Liaison Committee - House of Commons (parliament.uk) <https://publications.parliament.uk/pa/cm201719/cmselect/cmliaisn/1033/103302.htm>

6 UK Gender-Sensitive Parliament Audit report. https://www.parliament.uk/globalassets/documents/lords-information-office/uk-parliament_gender-sensitive-parliament-audit_report_digital.pdf

7 Witness Gender Diversity. <https://publications.parliament.uk/pa/cm201719/cmselect/cmliaisn/1033/103302.htm>

8 UN Women's Primer of parliaments' response to the COVID-19 pandemic. <https://www.unwomen.org/en/news/in-focus/in-focus-gender-equality-in-covid-19-response/un-women-response-to-covid-19-crisis>

A new oral evidence system

In March and April 2020, committees moved, almost overnight, a new virtual system for taking evidence from witnesses. Between the government announcement on 16 March 2020 advising against non-essential travel and the Easter recess there was a sharp drop in the number of committees meeting.

The Easter recess saw a small number of committees continue to take evidence in the new virtual format. Almost all committee members, staff and witnesses took part virtually in sessions supported by the Parliamentary Broadcasting Unit (PBU) using the video conferencing platform Zoom. Due to capacity restraints, public bill committees at first only offered speaker-phone evidence. This moved to Zoom-audio in July.

In the first few weeks of virtual evidence sessions all committees were responding to a new and rapidly changing situation. Evidence sessions were not guaranteed, and staff had to bid for the limited number of slots the PBU was able to support.

In addition, committees were often making decisions on their next evidence session at very short notice, sometimes with only a few days to prepare. Sessions deemed urgent enough to justify bringing staff on site to facilitate were almost all related to Coronavirus. During this initial period, committees wanted to take evidence from expert witnesses. These were often the 'usual suspects', or the great and the good; professionals and experts who are highly esteemed in their field and used to speaking in similar proceedings. This type of witness was more likely to be comfortable with the new format and able to give evidence on the pandemic at short notice.

One generalisation that might be drawn from this period is that where witness diversity was important to committee members before the pandemic, it continued to be important after the move to virtual sessions. At the outset of the virtual system, there were concerns that gender representation of witnesses, which committees had been striving to balance for years, could be affected, with more male witnesses giving evidence. Taking a sample of four committees that took evidence during this period however, (Treasury, Health and Social Care, Science and Technology and Home Affairs) there was an exactly equal balance between male and female witnesses. Whether this sample was representative of the whole committee system would require more research.

Benefits of the new system

There were some clear and immediate gains from the move to using Zoom. Several committees wanted to take evidence from international experts, often at short notice. As all witnesses appeared virtually this was relatively easy to arrange; staff just needed to secure a timeslot that worked for different time zones. Witnesses from Japan, Taiwan, the Republic of Korea, Hong Kong, Germany and Austria were all able to give evidence.

Compared to the old video conferencing system, Zoom offered far better sound and video quality. Under the old system, it could be difficult to hear witnesses and communications dropped in and out. If one witness in a panel was virtual, they were often at a disadvantage compared to those in the room. The House invested in making rooms hybrid-ready, with screens around the horseshoe so that physical and virtual participants could all see each other. There have been limited examples of the new sessions with both physical and virtual witnesses but those that have taken place have shown that witnesses are able to take part on a more equal footing.

Using a virtual format meant that witnesses in the UK were also spared the journey to Westminster. Staff reflected that this made it much easier and more comfortable for many people. For example, the Health and Social Care Committee took evidence on the patient experience, hearing from people affected by the virus. If they had been required to attend in person most of these people would have been unable to give evidence. Several colleagues reflected that virtual evidence was much easier for people to fit around other commitments such as childcare. Virtual evidence also allows people to speak to committees from the comfort of their own space, which for witnesses with lived experience might be less intimidating than a Westminster setting.

The Zoom format was accessible for almost everyone invited to give evidence. There were some technical problems; for example, one witness was giving evidence from their mobile phone which overheated and had to be put in the fridge to cool down. However almost all technical issues have been fixable, and the system has become easier and more familiar over time.

There have also been gains for Member accessibility. Members who have been unable to travel to Westminster due to illness or being on maternity leave have been able to take part in virtual sessions.

Disadvantages to accessibility

There are downsides to the new format. If the system continues to be used there are some groups who may always find a virtual system harder to access. Socio-economically disadvantaged groups with no reliable access to the internet or people with no safe space from which to give evidence are obvious examples. Committees can pay expenses to help witnesses to travel to give evidence but there is no process for paying expenses to facilitate a virtual session.

It can also be harder to support vulnerable witnesses or people who may be wary of giving evidence; for example, if someone has very traumatic lived experience to recount. Thinking back to evidence sessions in the past, one colleague reflected:

I think careful thought would be needed as to whether a witness who is being invited to relate very traumatic experiences would prefer the greater distance of giving evidence remotely, or whether it is actually less painful for them to be in the room so they can feel the response of others to their loss and really know they are being heard.

It has also been noted that the virtual sessions can feel more informal. This can be a positive but also presents risks. There have been cases of people agreeing to give evidence without fully comprehending that it is more than a casual Zoom chat. On at least one occasion a witness has backed out once the nature of the session became clear.

Public bill committees are still only able to offer Zoom-audio. This is an improvement on the speakerphone system under which it was often difficult to hear witnesses. The PBU also manage the Zoom-audio sessions making them much more controlled and organised. Giving evidence audio-only has many drawbacks, however. For example, if witnesses cannot see who's questioning them, and cannot see their body language it can be a difficult experience. It's also harder to reassure witnesses and give them support.

There are other downsides to the new system that have less to do with diversity. With most participants being virtual, questioning seems less organic and free flowing. Members cannot read each other's body language or communicate as quickly with each other or staff. As a result, sessions tend to be more rigidly organised; many committees have a stricter allocation of questions and time-limits for Members in order to make the session run smoothly.

Evidence sessions of the future

The new system clearly offers a degree of ease and flexibility that could be hugely beneficial for many witnesses. Having found an audiovisual medium that far surpasses the old one, it would perhaps be a step back if committees eventually reverted to in-person evidence in all but a handful of cases.

It is clear, however, that the human touch of witness support has been lost. Moving the witness testing from the PBU to committee staff could help here, as has now happened in both Houses. It is often during testing that particular challenges or anxieties for witnesses become apparent. Doing this via staff who know the witnesses and understand their needs is an opportunity to provide more support. Committees could look to make sure testing is done in a flexible and sensitive way and that staff doing testing are fully trained to offer support to a diverse range of witnesses.

Another obvious next step is to expand virtual evidence-taking to bill committees. This may require more resources if the House service is to continue supporting select committees indefinitely. Guidance is being developed for support groups and individuals on giving evidence via Zoom, which should help to support witnesses with lived experience in making a decision over whether to give evidence.

The biggest gain in terms of diversity and accessibility is likely to be retaining Zoom evidence as one of a range of options. As one member of staff noted, flexible working is only truly flexible if it is a choice. Witnesses should perhaps be given the option to request virtual or physical evidence, with the decision on which to grant given by the committee. A mixed panel of virtual and physical could become the norm. Several observers noted that there is still value to committees physically getting out of Westminster and engaging with people in their own spaces. Outreach events could similarly become the norm as either physical or virtual sessions.

Finally, if parliaments are to make the most of virtual sessions then committee staff, members and chairs could all be offered training in how to make the most of virtual sessions. Managing a Zoom meeting is very different to managing one online. So far, committees have adapted in a range of ways, learning by trial and error. This could be pulled together into standard offers for committees in how to make the most of virtual and hybrid meetings.

In conclusion, the new virtual format appears to work well and brings many benefits. It should be retained, improved and exist as one of a range of options in the future.

07

House of Lords investigative and scrutiny committees' response

Philippa Tudor

House of Lords investigative and scrutiny committees' response

Philippa Tudor¹

Background

2020 was never going to be a normal year for House of Lords investigative and scrutiny committees. The 2019 Westminster parliamentary year had been disrupted, with one or two prorogations, an emergency recall and dissolution, followed by the unusual opening of parliament shortly before Christmas. All those events had meant rescheduling committee meetings and visits, which in turn inconvenienced some of the many hundreds of witnesses who give evidence to Lords committees each year. At the start of the new parliament the Committee Office was anticipating a busier than usual 'business as usual' as committees made up for lost time, and many were engaged in fast-paced Brexit-related scrutiny.

As well as delivering business as usual, Lords committees were about to embark on a series of structural changes, all to be delivered by Easter 2020. In October 2019 the House agreed the report of the Liaison Committee's 18-month long review of committees, the first for 25 years. The review had provided an opportunity for members and staff to reflect on the purpose of Lords committees, and the many recommendations included establishing a new Committee Chairs' Forum, moving to a more thematic committee structure and setting up the additional Public Services Committee. The report was also the catalyst for the first stage of adjusting the structure of the European Union Sub-Committees following Brexit, reducing them in number from six to four whilst setting up a new sub-committee to scrutinise international agreements, or treaties.

Against this backdrop it was a relief when on 9 January 2020 government Chief Whip Lord Ashton of Hyde announced recess dates up to October. For the Westminster parliament, this was an exceptionally long period, and proved a popular move. In making the announcement Lord Ashton concluded: "I hope that giving as much notice as possible of the expected sitting pattern for the majority of 2020 will assist all noble Lords." The announcement was at least equally helpful to staff, who were able to start to plan the major programme of change for committees whilst being able to book holidays, which had been disrupted the previous year when several committee staff had needed to cancel annual leave. All concerned were looking forward to a more predictable parliamentary timetable.

After the February half-term short recess COVID-19 was causing increasing concern and Committee Office staff were encouraged to test home-working arrangements at an early stage, aided by the fact that all 70 staff already used laptops. This meant that when on 16 March the Prime Minister announced that people should work from home where possible, most Committee Office staff were already doing so. For a few weeks there was once again a flurry of activity to postpone some meetings and cancel long-planned committee visits.

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Moving to remote working

On 17 March Senior Deputy Speaker and Chair of the Liaison Committee, Lord McFall of Alcluith, agreed proposals for 'streamlining and prioritising services for investigative and scrutiny committees'. These proposals, which were swiftly communicated to committee chairs and staff, included encouraging a greater use of agreement of committee reports and other key documents by correspondence, if necessary moving to paperless 'circulations' of documents, and using video-conferencing facilities when these were available. By the time both Houses of Parliament rose early for the Easter recess on Wednesday 25 March the three floors of Millbank House normally occupied by Committee Office staff were empty apart from EU Committee Chair Lord Kinnoull and one staff member, whose tasks included dealing with the small number of paper post items still arriving and emptying the five fridges in the staff kitchens ahead of the period of complete lockdown.

Until March there had never been a virtual House of Lords committee meeting. Members, and most witnesses, had to attend meetings in person. But committees in both Houses needed to start meeting quickly during lockdown, not least to scrutinise the emergency legislation needed. Those early meetings were held using Skype to agree reports and letters to ministers. Alternatively, these were agreed by email. Putting the arrangements in place to move to a sustainable model of holding virtual evidence sessions preoccupied many staff working intensely from home throughout the Easter recess to ensure a smooth transition when the House returned on 21 April.

One unexpected benefit of the disrupted parliamentary timetable in 2019 was that in the early stages of virtual proceedings several committees, including all four 'special inquiry' (formerly 'ad hoc') committees, had finished taking oral evidence and were preparing and deliberating on their draft reports. Whilst doing so virtually had its own challenges – securing cross-party committee agreement to lengthy documents required skilful handling by committee chairs and additional work by staff – it reduced the pressure on what was at first limited capacity to hold virtual public evidence sessions.

Committee Office staff acquired Microsoft Teams at the very end of the Easter recess, one day before it was rolled out to members, followed in May by Zoom. This meant that staff needed to get to grips with the new platforms whilst providing one-to-one coaching support to members to explain how virtual proceedings would work. Across Parliament private committee meetings operate using Microsoft Teams, whilst public evidence sessions are held on Zoom. Typically most public committee meetings incorporate an element of private deliberation, and this means switching platforms during the meeting, which can be cumbersome and difficult for those members who find the different technologies challenging.

Traditionally committees have chosen the day and time of the week they meet to suit members' convenience, subject to the limitations of the number of committee rooms available. Some sessional committees and sub-committees had met on the same weekday and at roughly the same time for years, decades in at least one case. For virtual committee meetings, however, because of the demands on broadcasting colleagues in supporting the chambers and committees of both Houses, for House of Lords committees only ten two-hour broadcasting 'slots' were available each week for the first few months of virtual public committee meetings, one each morning and afternoon Monday to Friday. This meant that committees were no longer always able to meet on their preferred day and time, and staff had to put in place a weekly 'bidding system' for committees to prioritise the available slots. Until the summer recess only one House of Lords committee room had the necessary technology for broadcasting virtual committee meetings. Over the summer further committee rooms were upgraded, meaning that from mid-September 20 broadcasting slots were available to Lords committees each week, and up to three committees could be broadcast concurrently.

On 8 June the House of Lords began hybrid proceedings, meaning that members were able to participate in chamber business either physically in the chamber or online. From 2 September hybrid proceedings were extended to Grand Committees.

The adaptation of two committee rooms to accommodate the Grand Committee impacted on the schedule for upgrading other committee rooms over the summer recess, and the increased capacity from mid-September involved more staff attending meetings to provide the necessary support for the meetings from the committee room. Hybrid committee meetings would be even more staff intensive than the current model, and would certainly need a staff presence in the actual committee room as well as managing the virtual proceedings. They have not yet been on offer to Lords committees as staff have needed to focus on supporting the chamber and Grand Committee. Hybrid private committee meetings would offer few obvious advantages and are currently outwith the broadcasting contract.

Impact on members

The impact on members of all these changes has been considerable. As BBC Parliamentary correspondent Mark D'Arcy noted in September, "the House of Lords takes its committees seriously". A large number of Members of the House serve on committees, and there is usually competition for committee membership, although in the Lords neither chairs nor members are elected. On 5 May, 269 of 785 Members held at least one committee membership (the 269 members held 343 committee memberships between them).

Committee members have needed to adapt almost overnight to the introduction of paperless working, the vast majority having previously expressed a strong preference for paper 'circulations' of the briefing documents prepared for each committee meeting. The introduction of the time-slot system for committee meetings has meant spreading meetings throughout the week, morning and afternoon, whereas previously meetings had typically bunched together on Tuesdays and Wednesdays, with committee meetings on Mondays and Fridays being rare. The rapid roll out of two different IT platforms has been particularly difficult for some members, but their willingness to embrace these changes has been impressive. Several members have commented privately that they prefer virtual working in committees to the inevitably sometimes stilted atmosphere in the mostly empty hybrid chamber.

Whilst in the hybrid mode of the chambers of both Houses the drama of parliamentary proceedings has been noticeably absent, Lords committees exist to try to help find solutions to crises, not to create a drama out of them. Feedback from committee chairs is that virtual committee proceedings are considered to have been a success. The main challenge in chairing, as with the chambers, can be the difficulty of 'reading the room' in a virtual meeting. Members have been generally impressed by the continuity of committee activity throughout the pandemic. Statistically there was only a slight dip in the number of meetings in the early months of the pandemic, when between 21 April and 12 June 107 committee meetings were held.

Impact on witnesses and outreach

Prior to April 2020, facilities for video-conferencing at Westminster were limited. Now that everything is virtual, many of the previous constraints on using videoconferencing for committees (one witness at a time, limited equipment available, members' preference for in-person sessions) have been resolved. Whilst it is always difficult to measure precisely likely impacts on witness diversity, the International Relations and Defence Committee has found the increased ability to speak to witnesses overseas particularly helpful. For its UK and Afghanistan inquiry the Committee heard in the first two weeks of taking evidence

from four witnesses based in Afghanistan. The following week, on 28 September, three witnesses based in the US gave evidence to the Committee, with another three US-based witnesses for a separate inquiry doing so on 2 October.

Video-conferencing has also made it easier for members to hear evidence from witnesses across time zones. Thus on 8 September the Public Services Committee met at 9 am (an early start for broadcasting and committee staff setting up the meeting) to take evidence from Taiwanese minister Audrey Tang.

Throughout the pandemic, no committee visits have taken place. The public-facing nature of committee work is a particularly important feature for the House of Lords, whose members do not have constituents, and committee chairs and staff were keen to exploit the new opportunities of engaging with more diverse audiences. The chair of the COVID-19 Committee and founder of Lastminute.com, Baroness Lane-Fox of Soho, for example, wanted to hear from as wide a range of people as possible, and to make it as easy as possible for people to share their views. Over 300 people submitted written evidence to the Committee via their website. The Committee also received over 500 social media posts, and nearly 6,000 people shared their views via questionnaires created by the campaign group Organise and by the charity Scope. The Committee held eight online discussion groups with members of the public (including specific sessions with older people, younger people, parents and people with learning disabilities). Discussion packs were used by 37 different groups to gather views from a total of over 3,500 people and 366 academics and researchers responded to a survey run for the Committee by the Parliamentary Office of Science and Technology.

Impact on staff

The adaptability of staff has been extraordinary. The early days of virtual public meetings were very labour intensive, and as staff were constantly reacting to events the guidance was changing week by week. Few other staff needed to come onto the estate until the start of hybrid chamber proceedings, and with Commons committees focused on Portcullis House the usually busy and buzzy committee corridor in the Palace of Westminster was a dark and empty place, occupied only by the two broadcasting and one Committee Office member of staff needed to run each public committee meeting. With the lights literally switched off, one colleague recounted how they used their mobile phone to find their way to committee room 3, which acted as the Lords committee operations centre from April to July. Throughout this intense period, committee and broadcasting staff needed to learn rapidly how to work closely together, and rejoiced together in each success. Despite the stress that people were under, everyone was supportive, which is in itself a remarkable achievement.

Virtual committee proceedings involve considerable additional effort. As is the case in the chamber, in order to run virtual committee proceedings in an orderly manner they have to be far more structured and choreographed than they normally would be. Staff have spent a considerable amount of time reviewing procedures and issuing successive sets of guidance. All have found virtual proceedings very labour-intensive and in many cases have also been juggling work with caring responsibilities and/or supporting the chamber. Much of the Easter recess was spent preparing for virtual meetings, and unusually a few committees met during the Whitsun recess. The small Committee Technology Unit of four staff worked relentlessly to support the changes, which included the electronic-only publication of reports for committees across the House as well as working seamlessly with the Parliamentary Broadcasting Unit and contractors from BowTie television.

Whilst members and witnesses have all attended entirely virtually, and the Hansard support has also been provided remotely, broadcasting colleagues and a member of Committee Office staff have needed to attend a committee room for each public meeting. The working day has lengthened, as the onboarding process for members and witnesses needs to start at least half an hour before the advertised meeting start time. Counter-intuitively, there has been reduced flexibility in working arrangements for many committee staff, linked to the fact that committees no longer have a fixed day and meeting time. For staff needing to come on to the parliamentary estate it has usually been impossible to avoid travelling in one or other rush hour.

All other committee work has been done at home on makeshift workstations, mostly in sub-optimal working conditions. As usual, the Committee Office has experienced staff vacancies, with one committee having a brave staff team of one (rather than the usual three) for much of the period. Parliamentary Broadcasting Unit colleagues have usually been online seven days a week, with Bowtie staff also supporting committees through long hours. To quote one staff member: "I think it's important to recognise that while there have been so many successes, the workload has been utterly punishing ... Committee Assistants have had to learn new ways of working quickly, and Committees haven't always been aware of the burden this has added".

Coordinating virtual committee activity

At the same time as dealing with all these process changes, several Lords committees needed to adjust their focus to scrutinise the impact of the pandemic itself. A key part of the role of the House of Lords Liaison Committee is to consider the resources available to committees, and in avoiding potential overlaps and underlaps of scrutiny it was assisted both by the successful precedent of doing so with Brexit-related scrutiny and by the creation of the new Committee Chairs' Forum. Like the Liaison Committee itself, the Chairs' Forum is chaired by Senior Deputy Speaker Lord McFall, and has for the first time brought together House of Lords Committee chairs in an informal setting to discuss matters of common interest. The Chairs' Forum has provided a means for integrating the work of all the committees which are undertaking work of wider relevance on COVID-19. It has met several times, and provided a platform for knowledge exchange and shared understanding across committee activity as a whole.

In April the Liaison Committee was due to undertake its regular process of shortlisting and, ultimately, choosing four special inquiry topics for the forthcoming year. Several of its members suggested that there should be a re-orientation of scrutiny work to take account of current circumstances. Separately, a number of other Members of the House suggested that some committee resource should be dedicated to scrutiny of the government response to COVID-19, and to understanding the wider and longer-term impacts for the economy, society, technology and international relations. In response, the Liaison Committee proposed the establishment of a committee to scrutinise the long-term implications of the COVID-19 pandemic on the economic and social wellbeing of the United Kingdom. In the COVID-19 Committee's first inquiry, *Life Beyond COVID*, the Committee invited people 'to share their hopes and fears about what the pandemic might mean in the long-term for our home and working lives, and for how we function as a society – what might it mean for social cohesion, for (in)equality, for our environment and for arts and culture?' The Liaison Committee is maintaining oversight of the role and scope of the Committee, and will formally review its activity and continuing remit before the end of 2020. To support this function the new Committee has been given 'leave to report from time to time' – in other words to issue more than one report – rather than one final reporting deadline.

In recommending the establishment of the COVID-19 Committee the Liaison Committee acknowledged the fact that several committees in both Houses had already embarked on inquiries on specific aspects of the government's current response to the emergency. In the Lords, most sessional committees have inevitably focused on different aspects of COVID-19 scrutiny.

One of the first virtual committee meetings to be broadcast from either House was the Chancellor of the Exchequer Rishi Sunak's evidence to the Economic Affairs Committee on 19 May. The Chancellor's assessment then of the sobering economic consequences of the pandemic on the UK economy received widespread media coverage. The Parliamentary Director of Broadcasting John Angeli is rightly proud of the way in which his team worked with Committee Office staff to enable this broadcast meeting to happen. On 3 August, during the summer recess, the Committee launched its new inquiry into employment and COVID-19. The Committee is examining the effects of the COVID-19 pandemic on the labour market and considering what urgent measures should be taken to protect and create jobs. It is also examining how the labour market may change as a result of the pandemic in the longer term.

Shortly before the Chancellor gave his evidence to the Economic Affairs Committee, the Constitution Committee launched its inquiry into the constitutional implications of COVID-19. In so doing on 13 May, it announced:

The Covid-19 pandemic and the government's measures to respond to it have significant constitutional implications, as well as health, social and economic ones. These include:

- *The ability of Parliament to hold the government to account*
- *Scrutiny of emergency powers*
- *The operation of the courts*

The Constitution Committee is considering these issues and exploring questions such as:

- *What can Parliament do to maximise its scrutiny of the emergency regulations and to hold the government to account effectively during lockdown? How are adjustments to procedures and processes working in the House of Lords?*
- *What emergency powers has the government sought during the pandemic and what powers has it used and how? What lessons are there for future uses of emergency powers, their safeguards and the processes for scrutinising them?*
- *How is the court system operating during the pandemic? What has been the impact of virtual proceedings on access to justice, participation in proceedings, transparency and media reporting? What can parliament do to maximise its scrutiny of the emergency regulations and to hold the government to account effectively during lockdown? How are adjustments to procedures and processes working in the House of Lords?*
- *What emergency powers has the government sought during the pandemic and what powers has it used and how? What lessons are there for future uses of emergency powers, their safeguards and the processes for scrutinising them?*
- *How is the court system operating during the pandemic? What has been the impact of virtual proceedings on access to justice, participation in proceedings, transparency and media reporting?*

The Committee has been taking evidence from experts, stakeholders, ministers and others whilst continuing with its regular programme of legislative scrutiny work. The International Relations and Defence Committee held a session with the African Union COVID-19 special envoy on 15 May, as well as conducting a short inquiry into the World Health Organisation.

Following the recommendation of the Liaison Committee review, the Public Services Committee was set up in March. For its first inquiry, the Committee decided to examine what the experience of the coronavirus outbreak can tell us about the future role, priorities and shape of public services. The inquiry is focussing on four key areas—the integration of services; inequalities in access and outcome; the relationship between local and national services; and the role of the private sector, charities, volunteers and community groups—during coronavirus.

The Lords Science and Technology Committee launched an inquiry in May into scientific and technological aspects of the COVID-19 pandemic. The focus of the inquiry has been forward-looking, aiming to help government and society learn from the current pandemic and better prepare for future epidemics caused by this and other viruses. The Committee has sought to identify research opportunities in epidemiology, medical care and basic science. It has not covered the political, economic and social implications of the crisis, which are being addressed by other parliamentary committees. It has experimented with the innovation of ‘rapid summaries’, weekly summary notes of the evidence that the Committee published, designed to help inform the public and media rather than waiting for the formal report. On 24 July the Chair wrote to the Prime Minister recommending that the government undertake significant preparations over the next two months to reduce the likelihood of a winter COVID-19 resurgence.

The Joint Committee on Human Rights launched its inquiry into the government’s response to COVID-19 on 19 March. On the same day, the government introduced its Coronavirus Bill to the House of Commons, and the Committee published a chair’s briefing note on the government’s response to COVID-19 to inform debate on that bill. It published a further chair’s briefing note on the Coronavirus Regulations and lockdown on 9 April. The Committee took oral evidence during the Easter recess from the Lord Chancellor, Robert Buckland MP. It then heard evidence and published reports on:

- Human Rights and the Government’s Response to COVID-19: Digital Contact Tracing;
- Human Rights and the Government’s response to COVID-19: the detention of young people who are autistic and/or have learning disabilities;
- Human Rights and the Government’s response to COVID-19: children whose mothers are in prison

Finally, on 21 September the Committee published its over-arching report entitled *The Government’s response to COVID-19: human rights implications*, having received 256 pieces of written evidence from a wide range of organisations and individuals.

Conclusion

For the whole country, March 2020 seems a very long time ago. At Westminster colleagues have commented time and again that several years of change were achieved in a few weeks. The final word should go to a Committee Office colleague who has supported the changes through thick and thin: “I’m so proud to have been involved in it, and I know that other teams are too. It’s been great to see individuals talking of being ‘the first Committee that...’. There have been many committee ‘firsts’ since March 2020, and doubtless there will be more to come. The pride of that colleague in what they have achieved is amply justified.

08

An alternative to oral evidence hearings

James Hockaday



An alternative to oral evidence hearings

James Hockaday¹

Background

Government advice on 16 March that face-to-face contact should be avoided, and home working encouraged, was a watershed moment for the House of Commons' select committees. The Foreign Affairs Committee's evidence session on 19 March was to be its last wholly 'in-the-room' meeting prior to the nationwide lockdown. By the time the Committee reconvened following the Easter recess, a new system of virtual meetings had become the standard.

Despite initial technological difficulties, the key question addressed by the Foreign Affairs Committee in the early days of virtual meetings concerned the balance of its programme of work. At its peak, the pandemic had an all-consuming effect on government. Policy commitments were temporarily or permanently shelved, and swathes of the civil service redeployed to address the new challenge. The Foreign Affairs Committee identified the need to scrutinise the Foreign and Commonwealth Office's response to the pandemic, but had only one allotted slot to take public evidence every fortnight until additional time became available in June.

Faced with this restriction, the Committee considered postponing some of its work but ultimately decided to take an untested approach to avoid shelving its inquiry into the UK's relationship with Iran. It agreed to invite the witnesses scheduled to give oral evidence to the inquiry to participate in a private, online question-and-answer written forum. The forum ran for two weeks, and a transcript of the discussion was published on its conclusion to place the evidence in the public domain. This allowed the inquiry to be conducted without taking up the valuable virtual evidence slots reserved, initially, for time-critical hearings.

Aims

Aside from a practical solution to restrictions on the Committee's programme, the online forum also sought to take the opportunity to address some of the known problems with traditional oral evidence sessions.

The inquiry into the UK's relationship with Iran had been intended to use three evidence sessions each covering a distinct policy area and each containing a panel of three witnesses examined for up to two hours. This presents a clear restriction for a country-specific inquiry: interconnected policy areas are examined in distinct evidence sessions but with an end goal of threading these three areas back together in a report. Witnesses called to give evidence on one panel are only able to answer the questions put to them at that

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session, regardless of their possible insights or policy suggestions on areas discussed in other sessions. Similarly, a witness with a narrow specialism may only wish to contribute answers to a handful of questions, but in appearing on a panel must sit through the entire examination. The Foreign Affairs Committee considered how the traditional structure of select committee inquiry siloes themes in this way; and whether this traditional approach to questioning is the most efficient use of witness, or committee, time.

The requirement on members and witnesses to be present at an evidence session (whether physically or virtually) also shapes a committee's workload. A committee could theoretically take evidence from as many witnesses as it likes. In reality, two physical constraints are placed upon meetings: the effort of arranging a consistent quorum of members over several sessions, and the effort in arranging evidence sessions around witnesses' diaries. Pressures from each restrict the number of witnesses called to give evidence. They can also dissuade members from engaging in long inquiries with many evidence sessions for fear of sacrificing other work.

Additionally, as discussed in chapter 6 by Margaret McKinnon and Holly Dustin, the diversity of witnesses is impacted by the expectation for them to be physically present on the parliamentary estate. Of particular relevance to the Foreign Affairs Committee, this requirement limits participation by non-UK based witnesses.

The demands of appearing in front of a publicly broadcasted select committee amplify this consideration. The pressure witnesses are under during examination by a select committee has an unknown effect on the quality of responses. Anecdotal evidence suggests that the pressure is not insignificant for even the most experienced witness. Some perform observably well under this pressure while others are noticeably uncomfortable, and the experience is all the more challenging for the visually or audibly impaired.

While it would have been a significant undertaking to address and mitigate all these considerations in the course of the Committee's experiment with its Iran forum, great care was taken to provide alternatives where possible and to analyse the practical results.

Implementation

The Committee invited 11 witnesses to participate in the forum over a two-week period. Eight accepted the invitation. Members posted in the forum all the questions they had planned to ask across the three evidence sessions, to give witnesses the full fortnight to consider and upload their responses. In stark contrast to a public evidence session, witnesses were not required to provide answers to questions immediately, and were free to work flexibly, although they were encouraged where possible to submit answers within a few days of the question being posted. This also allowed time for committee members to consider witnesses' responses and ask supplementary questions.

Given the generous amount of time witnesses had to consider their responses compared with traditional evidence sessions which require on-the-spot answers, witnesses were not provided with any additional briefing or advance indication of the types of questions. However, some guidance was provided on the length, style and format of answers to keep the content similar to traditional oral evidence.

Members were each provided with login details to access the forum. Staff provided the usual briefing on the subject matter with a range of suggested questions. The forum went live to witnesses on 22 June following a lengthy accreditation process to ensure compliance with the House of Commons' data protection and digital security standards. The first responses were posted that same day, with others made throughout the remainder of the two weeks.

Members collectively asked supplementary questions at two points during the fortnight, and every question had at least one response from one witness at the forum's conclusion. The Hansard-style transcript into which the responses were subsequently formatted ran to 59 pages. It was therefore analogous in length to the transcripts of three standard oral evidence sessions, albeit short ones.

Application of parliamentary privilege

Evidence given in public very clearly forms part of 'proceedings in parliament'. It therefore enjoys the protection of parliamentary privilege, reinforced by the guarantee of free speech under Article IX of the Bill of Rights 1688/89.² The words of witnesses (and members) are consequently immune from action for defamation or other civil proceedings and cannot be used as evidence in any court. Whether contributions to an online forum enjoyed the same protection was unclear, but the working assumption was that evidence was not privileged at the point of contribution. The forum was conducted privately and without publicity partly to mitigate any risk. The content of the forum was formulated into a transcript which was ordered to be published by the Committee at its meeting on 7 July, which immediately followed the forum's conclusion. As the transcript was reported as written evidence by the Committee and printed by order of the House it therefore enjoyed the statutory immunity from use in any court proceedings conferred by the Parliamentary Papers Act 1840.

Critical observations

Contribution rates varied. Witnesses were asked to set aside approximately two hours over the course of the two weeks for the forum – a similar commitment to the time before a committee. While some witnesses arguably made contributions in line with that approximation, a minority contributed much less, and others much more. The length of contributions indicated most witnesses exceeded this guidance, and all but one witness made the entirety of their contributions within the two-week timeframe. Similarly, contribution rates varied between members. While some members logged onto the forum and submitted questions, engagement was not universal. Additional factors make an assessment hard to quantify, but clearly the introduction of a new method of taking evidence presented technological challenges.

The forum was free from constraints on the number of participating witnesses. Eleven witnesses were invited to participate, and eight accepted. Suitable replacements for the witnesses who declined could not be found in the time available, but an additional three or four witnesses covering a range of specialisms would likely have mitigated witnesses under-contributing and encouraged discussion of a broader range of ideas. It could also have alleviated issues around late submissions, or submissions made within time but at the later end of what was practical for members to consider. Loose deadlines were used throughout the fortnight to encourage early answers in order to leave plenty of time for members to pursue further lines of inquiry, but these were not met by all witnesses and stricter deadlines may have been more effective.

Most questions in the forum were categorised into three policy areas which the Committee's initial inquiry plan had sought to address: the Iran nuclear deal, human rights, and regional influence. A fourth section, looking more widely at the bilateral relationship, was also included. There had been no time allocated in the Committee's programme prior to the pandemic to consider this in a dedicated session, so its inclusion in the forum was something of a luxury afforded by the format's flexibility.

2 'That the Freedom of Speech and Debates or Proceedings in Parliament ought not to be impeached or questioned in any Court or Place out of Parliament'.

Seven witnesses were selected for their specialism in one of the three policy areas, and an eighth was selected for their thoughts on the fourth section in the hope they would also complement the three policy areas. To boost participation, each witness was encouraged to answer as many questions as they felt comfortable with in any of the four sections but was not obliged to answer a question they would rather avoid. Of the seven witnesses chosen for one of the three policy areas, five also made contributions to the other two policy areas and one contributed to one other policy area. The witness chosen for their thoughts on the fourth section answered those questions and also contributed answers to the three policy areas. Six of the seven witnesses chosen for the three policy areas reciprocated by contributing to questions in the fourth section.

As well as seeming less constrained by the themes of evidence sessions, witnesses also seemed more able to provide detailed answers, as evidenced by the length of some responses. From the evidence received, it is also clear that the forum's structure provided an opportunity to understand witnesses' views across a range of issues and not just specific areas of policy. Witnesses who favoured a certain course of action on nuclear issues, for example, tended to provide similar answers to each other on questions on human rights and regional influence. Those who took contrary views on one of those issues tended also to take contrary views on the other policy areas.

Reactions to the format from witnesses were positive and many understood the need for the Committee to alter its processes in light of the pandemic. Two witnesses noted privately that the online format made their participation possible where personal circumstances would have made contributing to the inquiry through a traditional panel challenging. Most other witnesses noted their appreciation for the flexible format which allowed contributors to consider their contributions and participate at their convenience. Much of the feedback collected by select committees is anonymised and evaluated in bulk, so beyond these informal comments it is difficult to determine exactly the impact the forum had on witness diversity. The comments received by committee staff were positive, but lack comparison with traditional evidence hearings.

Lessons of the experiment

This experiment has indicated that an online forum is a workable format which can produce the quality of evidence required by a select committee. It has also indicated that, to some degree, the flexibility of the structure could boost witness diversity, although more analysis is needed to determine exactly to what extent. The biggest challenge was adapting the process to facilitate maximum member engagement. Logging on to a forum and reading the responses is a pressure on members' time, particularly while they continue to undertake concurrent select committee responsibilities. In part, this could have been addressed by ring-fencing time in the Committee's private meetings to consider evidence and agree additional lines of questioning and overall examination strategy. It would also have allowed the committee chair to allocate questions to each member in the traditional way, itself a boost engagement.

Most importantly, the forum's structure allowed witnesses to make contributions across a fuller complement of policy areas than is supported by traditional oral evidence hearings which deal with policy themes by session. Witnesses were given space to present comprehensive and coherent pictures of their policy suggestions, rather than seeming to comment on one particular policy isolated from other connected themes; and the quality of evidence from witnesses was more enriching as a result. More work needs to be done to identify the implications of the structure of hearings on the evidence a select

committee takes and the policy picture this helps to construct, but there is a clear indication that where witnesses are given freedom to comment more widely, their specific recommendations are contextualised against the backdrop of a wider policy vision.

When it comes to drafting reports, this approach would make inconsistent recommendations easier to identify and aid the committee in the production of a report which is internally coherent and able to prescribe a comprehensive strategy, rather than a series of loosely bundled recommendations which pick and choose from a selection of witnesses and evidence sessions but can appear incoherent when looked at in the broader policy environment.

Absent from the forum was the spontaneity of an oral evidence session. When witnesses are examined in a room, ideas and questions tend to be less scripted and can result in tangential comments which add new dimensions to an inquiry. Witnesses in a forum are easily able to avoid challenging questions or engaging with contrary ideas if so minded, while it is difficult for a witness to escape an uncomfortable line of questioning when sat in a room and addressed directly by members.

Evidence sessions might be considered to take one of two forms: an investigation or a grilling. The forum is undoubtedly more useful for the former than the latter. It can provide a platform for a detailed discussion on policy issues to inform a committee's inquiry but is unable in any practical sense to exert the same pressure as a traditional oral evidence session. A forum could never expose a minister for not being on top of their brief, or for a misjudgment in their analysis. And the public interest which might be attracted to the theatre of a high-profile select committee grilling would be challenging to recreate. Some aspects of a committee's work can never be replicated by an online forum. There will always be a place for oral evidence sessions which use pressure and publicity as tools to achieve a committee's objectives.

Potential for development

Even so, it is worth taking a step back and looking at the bigger picture. Select committee inquiries routinely attract interest, but this can often be from a specialist audience with limited wider appeal. In part this is due to the specialised nature of select committees, and the at times niche subject matter, but establishing a wider audience and increasing the impact of select committee work is always a priority. The model trialled by the Foreign Affairs Committee could be a blueprint for a new way of evidence gathering which could boost impact and engagement.

If the privilege restrictions which required the forum to be conducted privately could be overcome, there would be no barrier to similar conversations happening in the public sphere which could enable members to conduct inquiries through online fora for members of the public to view. The slower pace between questions and answers (sometimes several days) might lend itself to interested parties writing in with suggestions to the committee on lines of questioning and a similar format could even allow direct participation in outreach events.

Additionally, acknowledging that the inevitable limitations of physical public evidence sessions tend to structure a select committee's inquiry into siloed themes, then perhaps it is also useful to consider how the departmental select committee structure also imposes limitations when cross-government policies are scrutinised through the eyes of a single committee. The current logistical challenges of joint committee working might be mitigated by the use of a collaborative online forum designed to bring a range of experts together to discuss cross-government policies addressed to the subject area of more

than one committee with a view to making a coherent set of recommendations for multiple government departments. A forum lends itself to this through its flexibility and capacity and may prove useful for select committees as they increasingly seek to scrutinise complex themes for which no one government department has absolute responsibility.

Conclusion

The online forum format needs further work, fine tuning, and a detailed analysis of the potential benefits to witness diversity. But it does work and the experiment described here delivered the basis for the Foreign Affairs Committee's report on the UK's relationship with Iran. The pandemic stimulated the need for an innovative approach to evidence gathering but far from being a cumbersome temporary workaround, the forum indicated it could deliver some net improvements in the quality of evidence and could be used to enrich the work of other committees. The challenge now is to determine whether the initial difficulties can be adequately addressed, and limitations of the format squared with its benefits, to offer something to post-pandemic scrutiny.

09

The interpersonal dynamics and public drama of virtual select committees

Lucinda Maer

The interpersonal dynamics and public drama of virtual select committees

Lucinda Maer¹

Introduction

Other essays in this volume recognise that arrangements for virtual proceedings have widely been viewed as a success. This chapter does not argue otherwise. At a time when government was moving quickly to introduce restrictions to protect against the spread of the virus and laws to deal with its consequences, select committees responded by working hard and fast to scrutinise government activity, place scientific evidence in the public record, and hold the government to account. Rather, this article considers how select committees have changed given the lack of personal contact and physical closeness of participants, and the lack of a committee room as a stage. It looks at how these changes have had an impact on chairs, members, staff and witnesses. Effective scrutiny, as Marc Geddes has written, is fragile and dependent on the everyday behaviours of MPs and other parliamentary actors.² Those behaviours and interactions are inherently different now participation is online. What might this mean for scrutiny?

Physical operations

Select Committees are, like all gatherings of people, more than the sum of their parts. They draw together a variety of members from different parts of the country and from different sides of the House, to sit around a horseshoe shaped table to hold the government to account. Select committees have been described as places where members come together to discuss issues, and report opinions and observations; rather than agreeing or disagreeing with a list propositions as they do in the chamber.

Much is made of the setting of the horseshoe as opposed to the confrontational rows of benches in the chamber. In select committees, members choose where to sit and regularly sit intermingled with those of different political persuasions. Witnesses sit at a table across the open end of the horseshoe, directly facing the chair of the committee. The clerk tends to sit to the chair's left – visible to all members and any witnesses. Other staff of the committee sit either at the horseshoe, or to the sides of the committee room. Often staff guard over spare paper copies of draft reports and nameplates which they have wheeled over from their office either in Tothill Street (for the Commons) or Millbank House (for the Lords). They are quick to react to what is said – quiet whispers or notes are often passed between them, and between them and the chair.

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2 Marc Geddes, *Dramas at Westminster: Select Committees and the Quest for Accountability*, Manchester University Press, 2019, p117.

The formal powers of the chair as set out in *Erskine May* look on the face of it thin, but much is packed up in the single comment that the chair, ‘in practice, normally exercises a substantial measure of authority in the determination of the conduct of the committee’s affairs.’³ They often have powers delegated to them by their committee over the choice of witnesses, and can report correspondence to the House between meetings. It is their draft report (in practice produced by the committee staff team) that is brought up and considered by the committee and moreover it is their quote which regularly features in committee press notices. The introduction of elections for chairs of many of the Commons select committees in 2010 is by many seen as increasing and codifying to some degree the power that chairs exercise.

Writing about the operation of select committees, Emma Crewe and Nicholas Sarra provide a vivid picture of how the different elements of a select committee come together in the meeting room once or maybe twice a week in Westminster, and how the Committee’s persona is situated in some way in the coming together of these different elements:

In the meetings of members, the chair is clearly in charge, but in between meetings the clerk symbolically holds the committee in a parliamentary outbuilding in Tothill Street, about 10 minutes walk away from the Palace of Westminster. The Committee might symbolically pop into the public domain in the guise of the chair giving an interview to journalists or talking to stakeholders, but mostly the intensive work is carried out by the clerks, committee specialists and other staff—speaking to the chair as and when necessary, so resides in Tothill Street. Just before every meeting of the committee, and after it has been concluded, the chair and the clerk confer—checking arrangements, discussing members or whatever is needed—as the committee is symbolically handed over from one to the other. When the clerk then takes it to or from Tothill Street, with the staff and often huge piles of paperwork, the committee has a nomadic quality to it as it is moved around the parliamentary estate and even, very occasionally, on evidence-gathering trips to others parts of the UK or the world.⁴

Virtual and hybrid operations

The move to select committee virtual and hybrid proceedings happened quickly and without controversy. On 24 March the House ordered that ‘members of any select committee to which this Order applies may participate in select committee proceedings through such electronic means of communication as have been approved by the Speaker.’⁵ Select committees can meet for public broadcast sessions by Zoom, and for private meetings on Microsoft Teams.

All of a sudden and almost without warning, committees scattered across the UK. Whilst some chairs and clerks continue to attend Westminster for meetings, others have chosen not to attend. Whilst some now sit in a “hybrid” form with some in the committee room sitting socially distanced, others have remained fully virtual. And committee staff find they are taking the committee with them not to Tothill Street, as Crewe and Sarra described, but to their lofts and their kitchens where the fingerprints of their children, their housemates’ use of the internet, or the calls of their elderly parents interrupt its continuity and disrupt its neatness. As those on virtual calls are unceremoniously exited at the end of broadcast

3 *Erskine May’s Parliamentary Practice*, 25th edition, 2019, para 39.20

4 Emma Crewe and Nicholas Sarra, “Chairing UK Select Committees: Walking Between Friends and Foes”, *Parliamentary Affairs*, Volume 72, Issue 4, October 2019, p847

5 House of Commons, *Votes and Proceedings*, 24 March 2020

meetings via the “end meeting” function on Zoom, members turn to WhatsApp to give their quick verdicts on the performance of witnesses or their key messages for reports. The informality of quick asides take on a different quality when they are written down – much that would have been said is now internalised. Members may speak in bilateral calls or by text message after the committee but unlike in the committee room where you can watch alliances form or disagreements continue – this is all invisible to those not included in the call or messaging group.

Much of the operation of committees would normally involve a certain degree of non-verbal communication, or at least communication which is inaudible to those watching in person or online. Whispers between clerks and chairs, the passing of notes between members and the stern looks given to witnesses have long been part of the theatre of select committees. As Crewe and Sarra observed the Clerk ‘has to remain silent during the session—only communicating with gestures or notes’.⁶ The clerk is not visible to the committee at all during public virtual proceedings (although they would be in a hybrid meeting to those members present). Note passing has turned into text messages which cannot be tidied away, crossed out or disposed of by committee staff after the meeting quite as easily as the paper form they replaced. Discreet chats between members and clerks on the peripheries of the meeting are less likely to happen, giving less opportunity for both sides to sense-check their understanding or compare notes.

When a committee member or witness talks for too long, gets the wrong end of the stick, or just gets something wrong, the subtle body language of a committee room – the leaning forward of a clerk or a chair – or even a hand on the arm of a neighbourly member – is no longer an option. Now, the chair must interrupt to correct, or to hurry along. Crewe and Sarra quote a Member explaining, of in-person proceedings, “The clerk’s got that face on so I think I’ll shut up now because I’m wrong”.⁷ The mythical instance, much quoted, of a clerk putting his head in his hands in dismay at proceedings can now happen at home, out of sight, rather than in full view of the committee, witness, public and press. Now, for those participating virtually, the clerk is invisible with their camera switched off.

The impact of this might vary between members, chairs and committees. Possible responses to the lack of non-verbal communication might include more rigorous “sticking to the brief” and the reading out of pre-prepared questions. Is this a bad thing? Not necessarily – it can be positive if the key issues of the inquiry are dealt with effectively and efficiently. But a lack of spontaneity and responsiveness that this can cause removes some of the performative element of scrutiny, just as some have written about proceedings in the chambers which can be restricted by call lists and a lack of interventions. The lack of confidence that others in the room are nodding along may mean members hold back, less sure of their ground. The lack of subliminal indications of impatience or disagreement may disinhibit others to become verbose.

The role of the Chair

In his 2020 book *Dramas at Westminster*, Marc Geddes characterised chairs of committees into two main camps: chieftains and catalysts. Whilst catalysts were more likely to allow members to develop their own lines of questioning and input into the agenda, chieftains were more interested in ‘setting the committee’s agenda, leading evidence sessions and ensuring their perspective in reports was central’.⁸ Whilst he acknowledged that these were not fixed, monolithic or ideal types and neither was a “wrong” or

6 Crewe and Sarra, n4, p853

7 *ibid*, p854

8 Geddes, n2, p116

“right” approach, they did have consequences for the style of scrutiny. Moreover, as Crewe and Sarra have noted, ‘Chairs can only be understood if you watch how they relate to others—they are nothing on their own. It is in their relationship with staff, other members, and witnesses that they become both a generic group but also the leaders of committees in their idiosyncratic ways.’⁹ Those relationships with staff, other members and witnesses are now often one step removed – over a screen rather than in person. And that has numerous potential consequences.

The reduction in spontaneity and opportunities for staff to interact informally with all members of the committee has had the potential to increase the power and authority of select committee chairs, encouraging any “chieftain” tendencies that may already have been present. Marc Geddes has commented that ‘Generally, staff work towards their chair, reinforced by the increasingly proactive role that chairs play in committee work compared to members.’¹⁰ The role of select committee chairs had perhaps already begun to change once their confidence was enhanced by a whole-House election behind them rather than election from amongst their peers on the committee. The move away from physical proceedings has the potential to accelerate this trend.

Under virtual proceedings and home working, the chair retains their direct and regular contact with the staff team. For members, the interaction which often takes place at the sidelines of the committee room or when passing in the corridor in Westminster, is harder to come by. It is more difficult for members to take a trusted member of the staff team aside and say something like “Can you do anything about the Chair’s mad scheme to go to Timbuktu? The PPS for the Minister for Africa says the situation there will not be helped at all by a committee visit”. Or “Can you make sure the draft report foregrounds the evidence from Smith? She was the only one talking any sense in that session”.

A procedural change also perhaps has the potential to concentrate power even more in the hands of the chair. Paragraph 3 of the temporary order of 24 March 2020 allows select committee chairs to report to the House a variety of outputs if they are satisfied that all members have been consulted, and that it represents a decision of the majority of the committee:

... the Chair of any select committee to which this Order applies may report to the House an order, resolution or Report as an order, resolution or Report of the Committee which has not been agreed at a meeting of the Committee, if satisfied that all members of the Committee have been consulted about the terms of the order, resolution or Report and that it represents a decision of the majority of the Committee.¹¹

Committees have therefore been able to agree reports through correspondence, and a chair who is certain that they have consulted the committee and that the majority agree, can undertake a much wider range of actions than previously delegated by committees to their chairs. How is that “satisfaction” through consultation achieved? That is likely to vary – perhaps with those with “chieftain” tendencies might err towards the view that they know the view of the Committee, doing a little less to find out if they are right. The order has benefits: it allows committees to respond quickly to events, and agree reports, letters and inquiries by correspondence. However, if committees do not need to meet to act, there can be less opportunities for members to influence, question, or challenge decisions. There is also the risk that without being physically present, listening and watching, they are less likely to fully concentrate on what is being proposed.

9 Crewe and Sarra, n4, p843

10 Geddes, n2, pp154-6

11 House of Commons, Votes and Proceedings, 24 March 2020

The impact on select committee members

Increasing power and decision-making by a chair can be off-set by factors that play against this. As Members may struggle to get their names on call-lists for a chamber, their select committee attendance might become more important in their communications to constituents, their media coverage, and their ability to affect change. Members are guaranteed air-time in committees in a way they might struggle to achieve elsewhere. This may be reinforced by the fact that some of the practicalities of regular attendance at committees have been removed through the ability to join meetings via Zoom or MS Teams. A useful piece of work to complete at the end of this session will be an analysis of attendance figures compared with the first session of the 2017-19 Parliament. Certainly the willingness of committees to meet during the Easter recess, when locked-down with little place else to go, showed the virtual committee corridor to be ever-present in a way the chamber was not.

It is worth noting that committees are largely thought to gain their strength through their coming together and the finding of places of agreement; their conclusions are formed through the collective experience of listening to evidence, discussion of their findings, and a non-partisan evidence-based report. If committee members and the chair are atomised and the committee is less of a collective, there is potential for influence and effectiveness to fall. Alert to this, counter-efforts can be made, through virtual away-days and rigorous discussion for example, or via free flowing WhatsApp messages alongside evidence sessions and email exchanges through the working week.

The change in party balance in the Commons at the 2019 general election may also have an impact on how members behave in these new virtual committees. With a government majority of eighty, many government backbench Members may find that committees offer that elusive “alternative career path” the Modernisation Committee and Wright Committee reforms were hoped by many to achieve. As virtual and hybrid committees move from being a novelty to business as usual, members may become increasingly adept in lobbying of the chair or other members outside the set-piece and more stilted environment of the online meeting.

The theatrics of taking evidence and the witness experience

Select committee meetings have traditionally been viewed as having a strong performative element; a piece of political theatre. There is no doubt that the theatre is somewhat different where members and witnesses are not acting on the same stage. Body language is more difficult to read on screen, and the subtleties of finger tapping or intense eyeballing between questioner and witness is almost impossible to create online. The ritual of witnesses being called into the room, just before the public are admitted and the committee is called to order has been rehearsed week after week for many committees and their staff. This has now been replaced by admitting witnesses to a Zoom call. There is perhaps less potential for drama when ten minutes is spent checking sound quality and picture set-up before the session “goes live”. There is less sense of drama when the audience is entirely invisible: no press in the room taking notes, no public or officials in the room who might laugh, gasp, shake or nod heads as the actors speak.

Crewe and Sarra also note that the performative element is in part influenced by the setting of the meetings:

The rooms in which select committees convene to meet—whether in the Palace of Westminster or the newer outbuilding Portcullis House—communicate a seriousness of purpose through both their architectural gestures and the artefacts displayed within, such as paintings which confirm the historical association of powerful figures or displays of fine art. The arrangement of chairs into the horseshoe in this culturally referenced ‘theatric’, evoke a quasi-legal atmosphere which despite its imposing effects, can still be manipulated as theatre by less scrupulous or compliant witnesses.¹²

The impact of this setting was noted by the Commons Liaison Committee in their report on select committee impact and effectiveness published at the end of the 2017-19 Parliament. They noted that:

Whatever a person’s background, giving evidence is challenging, described variously by our witnesses as “intimidating”, “tough”, “daunting” and “a big deal”. ... All this takes place in a formal and imposing setting, both within the committee room with its ‘horseshoe’ and witness table set-up and beyond. For many, the experience of visiting Parliament—with its armed police and security measures—let alone appearing before a select committee, can be intimidating.¹³

That committees now lack a definite physical place of any kind will have undoubtedly changed how the actors perform. These differences will have positive consequences for witness diversity, and for some the ability to perform will be enhanced, as discussed above by Margaret McKinnon, Holly Dustin, Philippa Tudor and James Hockaday. However, the changes to the performative elements may provide a challenge as the actors adapt. Many will be working out what does and does not work well on this new virtual stage. Perhaps some will seek more immediate confirmation of their performance through social media given the absence of a real-life audience. Are chairs and members, and perhaps committee teams themselves, tweeting more about their evidence sessions in order to hear a response?

Conclusion

Virtual and hybrid select committees have been hugely successful as noted elsewhere in this volume. But the lack of physical presence and contact between the various actors – chairs, members, witnesses and officials – has changed them in many ways. There are opportunities for chairs to take increasing control of committee proceedings. However, doing so depends on how members respond and engage in virtual discussions and exchanges. Their willingness and ability to do so is also tempered by new factors: the ease of participation in virtual proceedings and the guaranteed platform select committee work offers. The performance and rituals of scrutiny are also now different in many ways.

12 Crewe and Sarra, n4, p847

13 Commons Liaison Committee, *The effectiveness and influence of the select committee system*, Fourth Report of Session 2017-19, 9 September 2019, HC 1860

10

The impact on behaviour in the House of Lords

Philip Norton



The impact on behaviour in the House of Lords

Philip Norton¹

The COVID-19 crisis created two challenges in terms of the behaviour of peers. One was technical. The other was procedural. The second has proved more challenging and generated growing disquiet. The public face of the House masks, albeit not wholly, disapproval by peers of the way the House is handling business.

To refer to technical and procedural challenges rather than hides the constitutional import of the challenges. Legislatures in democracies are deliberative bodies, coming together physically – the legislature is normally a chamber – subject to rules that enable to proceed in a predictable manner to fulfil its core function of deliberating on, before assenting to, the demands of the executive for supply and legislation and for scrutinising the actions of ministers.²

The COVID-19 crisis creates a unique challenge, not just to the two Houses of the Westminster Parliament, but to all legislatures in adapting modes of meeting and of rules to govern proceedings.³ If anything, the challenge has been acute in the case of the House of Lords, given that it prides itself on its deliberative capacity and the fact that it is the largest legislative chamber in the world, after the Chinese National People's Congress. Its size renders it impossible to meet in its normal physical form, given not least the number of Members relative to the size of the chamber, when social distancing is required.

The technical challenge

The technical challenge has been getting used to the technology necessary for the House to function, initially virtually and then in hybrid form. In the event, peers have generally mastered contributing virtually, be it in Question Time, plenary debate or Grand Committee. Some required tutoring in how to use the internet, but the extent of contributions – and the turnout in electronic votes – suggests that few have not been able to master the technology. There remain recurring, but not fundamental, problems. The phrase 'The noble Lord is muted' has entered regular parlance. Occasionally, the problem is not that peers cannot be heard, but that they can be heard as they ask "can you hear me?" or call for someone in the household to assist in dealing with the internet connection.

There have been occasional problems with the actual technology, as touched upon by David Beamish, but, overall, the system, facilitating hybrid sittings, has worked and peers have adapted to it. Given the age profile of the House, it is perhaps counter-intuitive that members have adapted quickly. It also may

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2 Professor The Lord Norton of Louth, Written Evidence to the House of Lords Inquiry into the Constitutional Implications of COVID-19. <https://committees.parliament.uk/writtenevidence/8704/pdf/>

3 See, for example, R. Cormacain and I. Bar-Siman-Tov (eds), 'Legislatures in the Time of Covid-19', *The Theory and Practice of Legislation*, Vol. 8 (1/2), 2020.

surprise some observers that the unelected second chamber, associated with tradition, has brought in and mastered electronic voting, peers voting from their laptops or smartphones wherever they are.

The technology represents a success story, one unachievable had the crisis occurred some decades ago. It has enabled the House to function.

The procedural challenge

The procedural changes made by the House may appear to have been adapted to the unique situation, but Members have found themselves frustrated by what they see as unduly restrictive opportunities to speak, to intervene, and to meet informally to discuss what is happening.

The House has always accepted that any peer who wishes to speak in a debate can do so. The only constraint has been to sign up by a specified time. If a debate is time limited, time is allocated among the speakers. On occasion, this has meant each speaker may only have one or two minutes. Despite some frustration at the time limit, debates with one-minute speeches have been rare. When the House moved to virtual proceedings, the number of speakers in a debate was limited. This was frustrating for Members who were not able to speak, and who may have spent hours preparing their contributions, but more importantly undermined the work of the House. The reputation of the House rests in large part on the expertise of its Members and Members with expertise in a subject may have found themselves excluded. The problem was illustrated at second reading of the Agriculture Bill, when 32 peers who wished to speak were not able to do so.

The move to a hybrid House solved part of the problem, but not that of time. Time-limited debates, or debates with an advisory time limit, meant there continued to be a tension between the sheer number of speakers and the time available to each. The frustration was expressed by Baroness Noakes on 22 September: "I am grateful for the fact that at least we have a decent amount of time to speak, which is rare in this ghastly hybrid House".⁴

However, the most enduring problem has been the rigidity of procedures. The House meets and peers speak, but there is no spontaneity and, in essence, no debate. Peers sign up to take part in proceedings, including to put supplementary questions during Question Time. Following a report from the Procedure Committee in June, it was agreed, notwithstanding the usual rules of procedure, 'No member may intervene on other speakers'. The frustration of peers was well summarised by Lord Randall: "... the technical difficulties of the hybrid House... mean that we cannot indulge in what we should be doing, which is having a proper debate. We are making statements in these debates".⁵ Peers sign up in advance, not knowing what a minister is going to say. When a minister, or any Member speaks, there is no opportunity to intervene. This tips the balance in favour of the executive, as ministers can make statements knowing that they are not going to be interrupted. No Member can rise to challenge what they are saying. In the words of Lord Balfe, "I want to put on record that one of the great difficulties I find when dealing with SIs, and with amendments to Bills, is the inability to get up when the Minister is answering and say, "I'm terribly sorry, but I don't think you've understood my point", or intervene at any point when it is absolutely relevant".⁶

There is provision for a Member to indicate that they wish to say something after a minister has spoken, but the process is cumbersome. Any Member wishing to intervene is required to email the clerk

4 HL Deb, 23 September 2020, col. 515GC.

5 HL Deb, 5 October 2020, col. 398.

6 HL Deb, 28 July 2020, col. 123.

who then emails the Lord Chairman sitting on the Woolsack. This, as Lord Adonis observed, applies to peers who are in the chamber, and not just those participating remotely: “If you do not get your email in fast enough, you cannot be called ... even though you are in the chamber and you can catch the eye of the speaker”.⁷

The inability to intervene contrasts sharply with practice before the House moved into its new format and with practice in the Commons, where Members physically present can intervene.⁸ The size of the chamber limits the number of Members that can be present at any one time to 30. However, debates prior to the move to virtual and hybrid proceedings sometimes took place with fewer than 30 members in the chamber and with members free to intervene. Some peers have advocated utilising the Royal Gallery for sittings on the grounds that it is much larger than the chamber and on the basis of precedent: the Royal Gallery was employed briefly for sittings in the 1980s when part of the ceiling in the chamber collapsed and peers had to decant. The proposal was rejected on technical grounds, largely to do with problems of installing an effective sound system.

Not being able to question ministers thoroughly undermines what peers see as a particular strength of the House. Ministers are wary of making a statement if they know that mid-stream they may be interrupted by the nation’s leading expert on the subject. That is no longer possible, even if the expert could email a desire to speak after the minister has spoken. Even the limited opportunities to contribute come up against the pressure of time. Time pressure tends to encourage silence.

The frustration of many peers was summarised by Lord Cormack when he declared: “With these lists all spontaneity has gone. The government cannot be held adequately to account because the Minister ... can get away with whatever he or she wants. There is not the opportunity to question them save in the very artificial form”.⁹

This sense of frustration is exacerbated by the sheer volume of secondary legislation coming before the House and the inability of the House to scrutinise it effectively. As the Hansard Society’s Statutory Instruments Tracker has shown, by 28 September almost 250 coronavirus-related statutory instruments had been laid before Parliament. Subjecting them to timely and effective scrutiny has been a challenge for both Houses, dissatisfaction surfacing not only in the House of Commons on the ‘Brady amendment’ to the motion to renew the temporary provisions of the Coronavirus Act 2020, but also in the Lords on 28 September on a motion moved by a backbench Conservative peer, Lord Robathan. The motion regretted the use of the temporary provisions of the Act ‘and calls on Her Majesty’s Government to ensure that Parliament has an opportunity to debate and approve any national restriction introduced to address the COVID-19 pandemic before any such restrictions come into force’. The motion was rejected by 198 votes to 99, those voting for it including 53 cross-bench peers and 24 Conservatives. The opposition parties abstained.

The lack of spontaneity in the chamber is allied with the inability of peers to mix informally to discuss what is happening. There is no opportunity to talk over a sandwich or drink in the Bishop’s Bar (closed) or to hold a quick conversation with fellow peers just before or during a division. Even the use of social media cannot substitute for the speed of an immediate conversation. Most peers are not physically in the House, so are not able to see others informally and those that are present are subject to social distancing. There is the occasional conversation between two or three members while waiting for the result of a division, but nothing to compare with the usual interaction of members during a normal sitting day prior to mid-March.

7 HL Deb, 28 July 2020, col. 120.

8 See the comments of Lord Dobbs, HL Deb, 9 June 2020, col. 1693.

9 HL Deb, 28 July 2020, col. 121.

This lack of interaction in informal space matters.¹⁰ Members can use such space to exchange information and to lobby; it is also valuable for the socialisation of new members. More especially in this context, such informal interaction helps limit government. Members are not reliant on the information supplied by ministers or the whips. When working remotely, there is far greater reliance on the information sent by the government or the party whips. Interaction by social media, and watching proceedings on the screen, may help offset this, but the party leadership enjoys an hegemony in the supply of information far greater than that which it has when peers are present in the House.

Backbench peers are thus alert to the limitations of the procedures in a way that may not be apparent to the public gaze. The government may feel constrained by the House. Ministers have to be present, physically or virtually, to answer questions and debates. The Lord Speaker, Lord Fowler, regularly accepts Private Notice Questions (PNQs), forcing ministers to respond at short notice. The scale on which they are now accepted lead some on the government benches to see them as constituting the equivalent of a daily fifth question. The government continues to be defeated on a regular basis, primarily when opposition parties combine against it, but on occasion when dissent comes from all parts of the House, most notably on a 'regret' motion to the second reading of the United Kingdom Internal Market Bill, moved by Lord Judge. The motion was carried by a majority of 226, the largest defeat since the Labour government's defeat on the Counter-Terrorism Bill in 2008. The majority for the motion was swelled by the votes of 103 cross-benchers, 39 Conservatives and seven Bishops. The ease of electronic voting also encourages good turnouts, including at what were previously seen as unsocial hours. Committees, by virtue of their size, are able to meet virtually to take evidence and to deliberate, publishing reports that are well argued and attract attention from the media as well as the House.

Other than through the greater use of PNQs, and possibly losing divisions held late in the evening, the government does not face notably more constraints than before. It can get its business, not least on COVID-19-related measures, without the sustained scrutiny it would get if the House was meeting physically. Though some peers can and do attend the chamber, some regularly, the COVID-19 crisis limits the opportunity to be present and for ministers not only to take interventions, but also to get the mood of the House. There is no sense of how members are reacting. A minister, or indeed any peer speaking, cannot get a feel for whether they are carrying the House with them. They do not face a House in which peers are getting to their feet to intervene. No one sits down to a barrage of 'hear, hears' or to silence in a crowded chamber. There is no sense of occasion. This is perhaps the most obvious problem with a near-empty and generally quiet chamber.

Wider frustrations

The frustration with process has been exacerbated by two independent developments affecting the work of the House. One is the decision to decant the Palace of Westminster for the Restoration and Renewal programme. The House voted in support of a full decant in the expectation of moving to the QEII Conference Centre. The position was muddled by the government raising the prospect of the House moving temporarily or even permanently to York. Although viewed as impractical, not to say risible, time was taken up pressing the government on the matter and reinforced a sense of frustration on the part of many peers. There appeared no obvious benefit to separating the two Houses, not least in reducing the opportunity for members of the two Houses to meet informally, or indeed formally and semi-formally through joint committees and all-party groups, and to making it difficult for members of the public and

¹⁰ See P. Norton, 'Power Behind the Scenes: The Importance of Informal Space in Legislatures', *Parliamentary Affairs*, Vol. 72 (2), April 2019, pp. 245-66.

civil society to engage with the House, York not having the accessibility of the capital. Despite these problems, the Cabinet Office undertook a feasibility study of moving a government department or the House of Lords to York.¹¹

The other development has been the extent to which Downing Street appeared unwilling to show the restraint envisaged by Theresa May when Prime Minister in limiting the number of new peerages. The House has acknowledged that it is too large and that the number of Members should be reduced. The Lord Speaker's Committee on the Size of the House (the Burns Committee), set up by the Lord Speaker to consider ways of reducing the size of the House, advocated a '2-out, 1-in' principle.¹² Under Theresa May, this principle was not breached. New creations under Boris Johnson have borne no relation to the principle, the House as a result growing and with the eligible membership now close to 800. After enactment of the House of Lords Act 1999, the House was not much larger in membership than the House of Commons.

Both developments have contributed to a sense of the House being in a state of flux, with the need for Members to have a greater say in the workings of the House, not least in strengthening its capacity to fulfil more effectively the functions that are at the heart of a deliberative chamber.

11 Chloe Laverson, 'Government has completed "feasibility study" on House of Lords move to York', York Press, 14 August 2020.

12 Lord Speaker, *Report of the Lord Speaker's Committee on the Size of the House*, October 2017, <https://www.parliament.uk/globalassets/documents/lords-committees/size-of-house/size-of-house-report.pdf>

11

Representation and the constituency

Ben Lake MP



Representation and the constituency

Ben Lake MP¹

It is difficult to overstate the impact of COVID-19 on the constituency work of a Member of Parliament. Pressures emanating from the health and economic consequences of the pandemic have changed the nature and volume of casework, while public health guidelines necessitated a wholesale change to the normal operation of a constituency office. These factors, among others, have resulted in a fundamental shift in both the expectation and reality of an MP's role in 2020.

The impact is best understood by reflecting on changes to the structure of a typical week. Prior to COVID-19 the diary contained at least 40 engagements relating to constituency work, varying from visits or meetings with local businesses and community groups, to constituency surgeries, school visits, and evening functions. The diary would also include appointments in Westminster, such as APPG meetings and select committee sessions.

The diary empties - and then refills

The first task that the office undertook in response to COVID-19 was to cancel the vast majority of diary commitments. In the space of a few hours, the diary was truncated from an average of 40 constituency appointments to fewer than 10 a week. At a stroke, Friday visits to local businesses and organisations – by far the highlight of a typical week – were prohibited, and the variety of events that previously constituted a typical weekend gave way to hours spent answering emails on the computer.

As the dust settled on the 'new normal' towards the end of March, and in particular the rise of Zoom meetings, the number of engagements steadily increased to an average of 20 a week, remaining at this level until late summer. The diary became busier in September, averaging over 30 constituency engagements prior to the return of restrictions.

The number of diary appointments is of course a crude measure and is far from a qualitative reflection of the work undertaken in a typical week. Indeed, the hours that staff and MP spent on casework increased markedly since March, and engagement with certain groups – particularly businesses and civil authorities – has improved.

1 **Ben Lake** is the Member of Parliament for Ceredigion. He was first elected at the 2017 general election, and was returned for a second time at the 2019 general election. He is a member of the Welsh Affairs Select Committee. (ben.lake.mp@parliament.uk).

Local presence

Indeed, the advent of virtual meetings has allowed for weekly virtual meetings with the local council, police force, and health board, and better lines of direct communication with these authorities, aided by the local resilience forum. Virtual platforms have also allowed for meetings with a range of business and community groups at a regularity unthinkable before COVID-19; from hospitality and tourism businesses, to youth groups and local food banks, virtual meetings have allowed us to discuss live challenges as they develop.

However, the pandemic has put an end to the routine of Friday surgeries, and the weekend wandering of the constituency. These had the benefit of ensuring a better geographic spread to the in-tray's casework. Surgeries have also moved to a virtual setting, inevitably favouring those who are IT savvy, or have sufficient broadband connectivity – placing certain areas in a rural constituency at further disadvantage. It also became apparent that it was no longer possible to pick up the smaller concerns raised as a discreet word during the interval of a village concert or over the shop counter, but which are not deemed important enough to warrant a letter or email.

As a result of this shift to digital engagement, each week the office and MP compile Covid-related 'bulletins' to communicate important information to certain constituency groups – an innovation it is hoped can be maintained once COVID-19 is but a distant memory. The update detailing the government support schemes announced in October and corresponding official advice was sent to over 1,500 small businesses and the self-employed.

The inbox swells - and sometimes bursts

There is no doubt that, in years to come, the hours spent addressing email correspondence will feature heavily in MPs' recollections of their experiences of the pandemic. The amount of emails that an MP received in a typical day prior to COVID-19 was enough to overwhelm the uninitiated, but the wave of concerns and queries that the outbreak introduced was devastating. At its worst, in mid-March to early-April, the inbox was receiving an email a minute, and it is difficult to recall the number of occasions the laptop froze from its inability to process the number of incoming messages.

There was a clear theme to the correspondence: an urgent desire for advice on new rules, or a desperate plea for clarification on the meaning of regulations. The task of answering such a multitude of anxious constituents was further complicated by the speed at which regulations were introduced, changed, and subsequently revised. The UK and Welsh governments, to their credit, produced email bulletins with FAQs and other pieces of useful information, but even the most comprehensive FAQs document would fail to encompass the complexity and range of circumstances encountered by the public.

Understandably, people expected swift answers, but regardless of the hours that staff and the MP worked, it proved impossible to clear the mountain of enquiries. The volume of correspondence was overwhelming: evenings and weekends were dedicated to answering emails in an inbox that seemed to double each time you clicked reply.

Between March and May, staff were sending, on average, twice as many emails a day than in the period between June 2019 and February 2020. Casework followed a similar pattern, with the office opening an unprecedented number of cases between March and August 2020. The increase is incredible: in the period between March and July 2020, the office had opened the same number of cases as the total number undertaken between January 2018 and October 2019.

Conclusion - the constituency and Westminster

The pandemic has therefore had a profound impact on the constituency work of an MP. By requiring MPs to dedicate a greater amount of time to addressing casework, seeking clarity from government, and communicating guidance, we are less able to commit to our traditional parliamentary duties. Indeed, it is clear that the balance of responsibilities has fundamentally changed – with greater emphasis on the MP as an interlocutor between government and citizen, adviser, and caseworker. What remains to be seen is the long-term impact this will have on their ability to fulfil their parliamentary duties, the consequences on their scrutiny of government, and the efficacy of the legislature.

12

Parliament during the pandemic - a staffer's perspective

Emma Salisbury

Parliament during the pandemic - a staffer's perspective

Emma Salisbury¹

The coronavirus pandemic has not irrevocably changed the role of MPs' staff, but it has made our jobs more difficult. Tasks that we have always done have been made harder to achieve, while extra work assisting our employers and their constituents has piled on – all while we tried to adjust to working from home and cope with the stress of a global public health crisis.

The pull of the constituency

The traditional role of an MP is to represent their constituents in the House of Commons and hold the government to account – participating in debates, asking questions, and voting on legislation. If we look back to even a couple of decades ago, MPs were not expected to engage much with their constituents. They didn't have to answer letters, hold local advice surgeries, or assist with complex issues – they just had to turn up at the Commons when it was sitting, make sure they kept their whips happy, and return to their constituencies when there was an election.

Nowadays, the role of an MP has expanded dramatically. Every MP is now expected to do casework – answering queries from constituents and helping to fix their problems. Not doing so is not only viewed as electorally damaging – people are less likely to vote for an MP who doesn't help them – but also as undermining the ethos of public service that forms the basis of the job. Those who run to become an MP know that they are expected to help people as well as perform their democratic duties, and a great many of those who are elected have a true commitment to doing so.

The role of the staffer

The role as it is today is not something that an MP can do by themselves, so they hire staff to help them. Each MP now has two offices, one in Westminster and one in their constituency, and usually around four to five staff. While the specific set-up differs between MPs, the Westminster office normally helps the MP with their Commons role (diary, research, policy, and so on) while the constituency office deals with casework and local issues.

Having worked for MPs in various roles since 2008, I have seen the full gamut of what an MP must deal with. Most cases we get are people who genuinely need help – they have fallen foul of an error in a government department, are being treated unfairly by a local council, or need assistance in dealing with one of the many layers of bureaucracy in our system. Quite often the MP's office is the place of last resort, and we see many people who have exhausted their own resources or knowhow and simply don't know

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where to turn. There are some things we are not allowed to do – we can't intervene directly in legal matters and police investigations, for example. A big part of our jobs is signposting people to the right help – our system can be confusing and hard to navigate, and just having someone experienced who can tell you what the next step is can be a relief.

The rest of the correspondence we receive tends to be people giving their views on policies, decisions, and actions. Our democracy is based on MPs representing their constituencies, and they can't do that unless they know what their constituents think and want. You want your MP to vote for or against a particular piece of legislation? Tell them why. You want the government to enact a specific policy? Ask your MP to raise it. You think the government isn't doing enough on a certain issue? Let your MP know. There's a measure of cynicism in our country about politicians listening to those they represent, but I can genuinely say they do listen – even if they may not always agree!

The pandemic hits

That was my job until the pandemic hit. We moved quickly into the time of the 'virtual parliament', the home office, and the video call, all while facing a serious public health and economic crisis. When the lockdown began, and the scale of the situation started to really hit home, people understandably looked to their MPs for guidance. For the first two weeks of the lockdown we had a flood of requests for help, advice, or information – around five times more correspondence than we usually receive per day.

The problem initially was that for many specific questions, we did not know the answers. Before the government's guidance was fleshed out, we had no more insight than anyone else. Now that comprehensive advice is available, things are much easier – the civil service did an absolutely fantastic job of getting all the information put online for people to access and setting up the portals where people could apply for support, and this helped us to point them in the right direction much more easily.

The way we do things had to change to reflect the new situation. We had to shift almost entirely to email, including for ministerial correspondence that is normally done by post, as well as dealing with longer response times from overwhelmed departments. We were unable to hold meetings in person, so we had to change to video or phone calls. Some people who need our help do not have access to the internet, so it is important to make sure we can always receive letters and speak to people over the phone. MPs could not go and visit businesses or organisations in their constituencies to get a better idea of the problems they were facing, and we had to try our best to help remotely. As with other home working roles, it can be tough for staff and MPs with young children or other caring responsibilities, or those who do not have the space at home to be able to work comfortably; we also have to be careful to make sure we keep confidential conversations secure and uphold the data protection rules.

Extra resources

The parliamentary authorities did their best to help us, but this was poorly reflected in the media headlines, which gave the impression that MPs had been given a £10,000 bonus to work from home. This prompted criticism from political commentators and constituents alike, resulting in a petition signed by over 250,000 people to reverse the decision.

The truth was, as is so often the case, far less exciting. MPs pay for their offices and staff via the expenses system administered by the Independent Parliamentary Standards Authority (IPSA), a body set up after the 2009 expenses scandal. Each MP has budgets for their necessities: accommodation, travel, staffing, and office costs. The latter of these is how we pay for the mundane things we need to run an office, everything from paperclips to envelopes to printer ink.

In order to help support us during the pandemic, IPSA raised the cap on this budget by £10,000 to make sure that every MP's office had the capacity to buy whatever was necessary to make the transition to home working; if an MP or their staff member does not have access to a computer or printer at home, for example, the budget can cover acquiring this equipment. All purchases need to be claimed for with a receipt and an explanation of why it was necessary, and these are no different. If IPSA decide that a claim for an item is not reasonable, then they can refuse to reimburse the MP for that expense, meaning it would have to come out of their own pocket. And the extra amount is a cap, not a target: many MPs will not need to claim for the maximum additional amount. However much of the budget MPs end up spending, this £10,000 was certainly not a lump sum gift to them or their staff.

What was in the inbox?

As we delved through the influx of correspondence as the pandemic set in, there was a whole new set of problems caused by the specific circumstances we found ourselves in, problems we had never had to deal with before: "my son is stranded in Australia and can't get home"; "my elderly mother can't leave the house and has nobody to do her food shopping"; "my employer won't comply with government restrictions and let us work from home". For each of these issues, and more, we had to work out a way to help and give advice, or figure out who to contact to get things sorted. Our office became a hub for local volunteer groups, for example, and we put vulnerable people in touch with those in their community who could bring them their prescription or drop off a box of food.

The pandemic context also made things significantly harder for us given the stakes involved. The advice we give was always important, but now it is much more so – we are dealing with people's health, and with their entire livelihoods. I know from talking to colleagues in other offices that we have all been under increased stress from the pressure; but we know how hard everyone on the frontline has been working, and we are all trying our best to do our bit. Our jobs are hugely rewarding when we are able to help people, and being able to do something, however small, as part of the response to the pandemic made all of us feel proud.

The initial flood eased off at the beginning of the summer, as support began to get through and people worked out how best to deal with their individual circumstances, but we are not complacent – as the restrictions continue to be lifted, and as we know more about the impact on the economy, more people will need our help. As we move further towards reopening our communities, people will have more questions about the health implications for our country and the way we are caring for those who need it.

We also face the enormous task of keeping the spread of the virus under control, meaning that restrictions may need to be tweaked on an ongoing basis in line with the data received – MPs' offices will continue to be a key point of communication about the rules and any changes that need to be made going forward.

The public reaction and response

Something I have always had to deal with during my time in Parliament has been abuse – from constituents and the public more generally, via email, phone, and social media. Sadly, this is becoming part of the job, and new technologies have made it even easier for people to express their displeasure at their politicians.

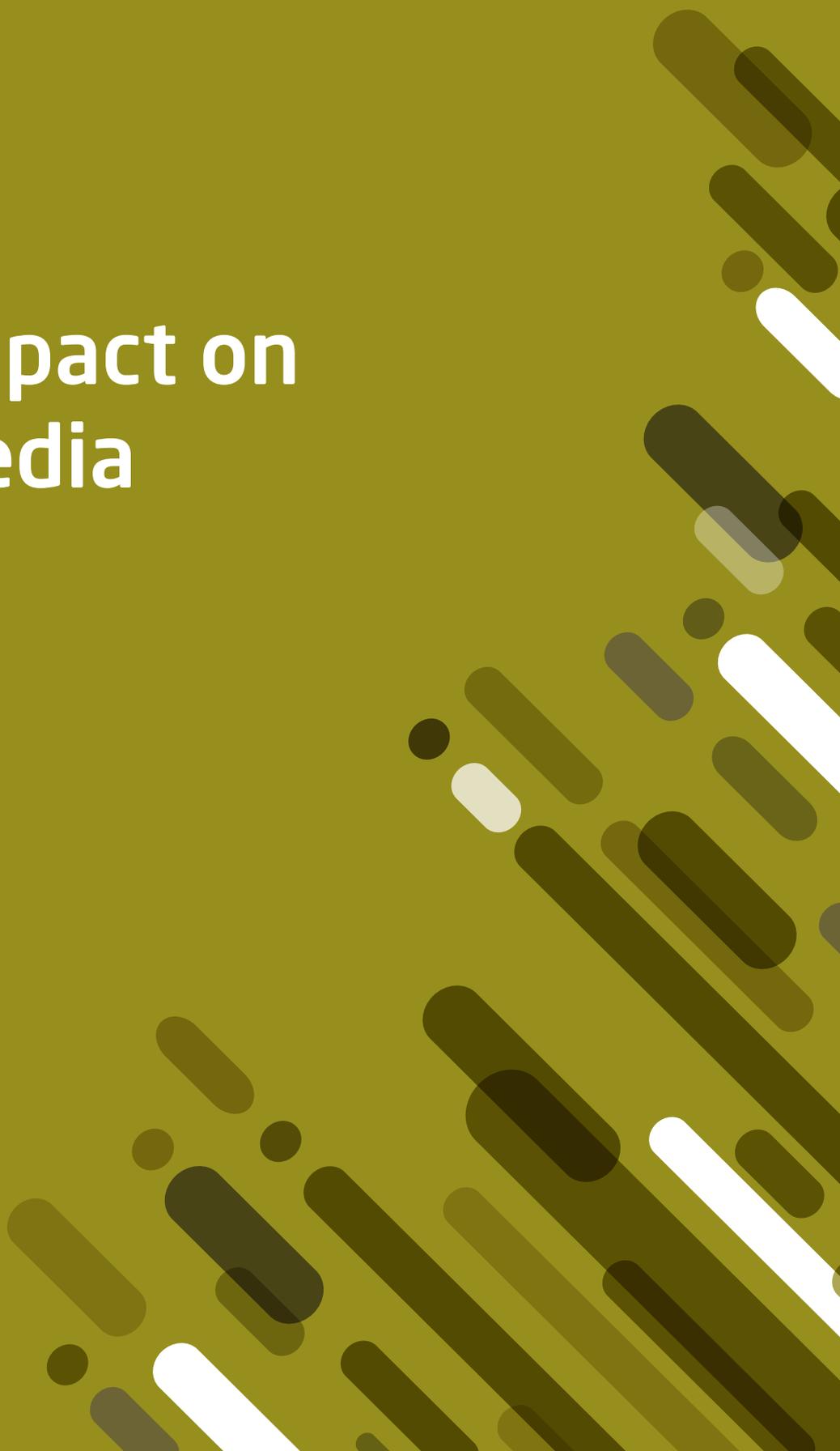
This has been enormously exacerbated by the wider problems of disinformation on social media, as more people become entrenched in bubbles of conspiracy theories; they often vent their paranoia and distress to their MPs, but do not believe our responses and become more enraged. These people can be dangerous to themselves and others, and we are very lucky to have excellent support from the Metropolitan Police and our local forces should someone make threats or look to pose a danger.

The staff tend to bear the brunt of this, although I have been lucky to work for MPs who have always stood up for me and my team. We are in an unprecedented situation, and the additional stress on all of us has caused some to be even more rude and abusive. However, this is always outweighed by the majority of people we talk to; they are kind, understanding, and grateful for what we do. Since the beginning of the pandemic I have been touched by the sheer number of people who have been helping their community, looking out for their neighbours, and working hard in frontline jobs that put them in danger. It is these people who keep us going.

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The impact on the media

Mark D'Arcy



The impact on the media

Mark D’Arcy¹

Where is the mood? When England’s cricketers played test matches in empty grounds this COVID-19 summer, the joke was that they would not be upset by the eerie silence from the empty stands; it would be just like playing county cricket, where there is seldom much of an audience.

The same does not hold true for parliament, and more particularly the Commons. Take away the magics of atmosphere and herd psychology and the dynamics of parliamentary politics are transformed, and a key part of what parliamentary reporters report is suddenly absent, or at least much more elusive. The detection of backbench dissent relies far more on conversations than on the evidence of the reporter’s eyes.

Parliamentary proceedings have been drained of their normal atmosphere

For journalists, the big thing that is missing in the COVID-19 parliament is the ‘mood of the House’ –with the socially distanced chamber, much parliamentary business seems to take place in a vacuum. This in turn means that under-fire ministers do not face the kind of pressure they would have to deal with in normal times; call-lists mean that the questioning is more predictable, and the depopulated chamber means ministers no longer have to brave baying opponents and the cauldron-like atmosphere of the House in a crisis. According to former Deputy Speaker Natascha Engel:

Importantly, Zoom doesn’t allow you to read body language. You can no longer see those small signs of uncertainty in your debating opponents. If a minister shows that he or she is even slightly wrong-footed by a question, everyone (even people on their own side) senses it. This is when, to get out of a corner, they can let something slip, sometimes the very thing they wanted not to say.²

And this phenomenon is not confined to the chamber; other key parts of the parliamentary estate have also been drained of their normal atmosphere. There is a very interesting thesis to be written about the impact of Portcullis House on the conduct of parliamentary business – a space open to MPs, SpAds, staffers and journalists, not to mention visitors, which in normal times is a hotbed of gossip and conspiracy. The pandemic has emptied it. MPs may wander through, but seldom linger, and the requirements of social distancing make it hard to have private conversations from a two metre distance, in which tips can be passed on or rumours exchanged.

Of course it is still possible for journalists to have private conversations with contacts via phone or WhatsApp – but what this takes away is the element of spontaneity, the chance encounter in a queue for coffee, the conversation in a lift, that provide an unexpected steer or insight. My normal working method of hanging out by the coffee bar, waylaying passers-by, is far less effective in these circumstances.

¹ Mark D’Arcy has been a correspondent for the BBC’s Today in Parliament since 2002.

² The Critic, 20 April 2020

All these factors mean that the elusive 'mood of the House' becomes more elusive still – confidence in ministers does not collapse or revive depending on performance and immediate after the match analysis over coffee; speeches in the chamber don't swing opinion, which may mean mistakes are made, because debate in the chamber is less effective as a check on policy. The Conservative veteran David Davis MP says he has watched at least three speeches that would have swung the House in normal times – he cites Jeremy Hunt MP on expanding COVID-19 testing as an example – but which were blunted by the socially distanced chamber. And when the under-fire Education Secretary, Gavin Williamson MP appeared in the Commons to defend his handling of the exam results crisis, he had a far easier ride than would have been the case in normal conditions.

Remote views of the Commons can be more, or less, revealing

The new conditions clearly have an impact on parliamentary reporting; sketchwriting is very different when the action is viewed on a computer monitor, rather than from the press gallery. In the gallery there is wider context – a reporter can watch a preferred section of the chamber, to observe, for example, how a speech is going down on the government backbenches, or to try and identify some new alliance crystallising as like-minded MPs sit together.

When viewed remotely, what the reporter sees is pre-selected by a television director in the control room, constrained by the tight rules on how the Commons can be pictured. In other ways the video of remote participants can be revealing – television pictures from the chamber seldom provide the full frame close-ups supplied by MPs taking part from outside SW1; the result can be the sort of revealing play of expression familiar from drama – every tic or wince or grimace filling the screen. This is even more true, incidentally, of witnesses before select committees.

Virtual proceedings have also revealed a startling lack of professionalism from some of the participants; this is not just about MPs' and peers' individual décor choices. Many address their House through tinny microphones, or disappear out of frame, leaving their viewers to gaze at a sliver of shoulder and a lamp dangling from their ceiling (I'm looking at you, Baroness Macintosh), or appear in silhouette because they are positioned in front of a window through which sunlight blazes. And that is before we get to bad connections and bizarre, distracting backdrops or intrusions by children and pets.³

The key point here is that distractions distract, and that viewers will find their attention drawn away from what the protagonist is trying to say.

This is bearable in individuals who may find the technical requirements a little baffling, but it is striking that many large organisations and even government departments display similar failings – a session of the Northern Ireland Affairs Committee on 16 September, with the Secretary of State Brandon Lewis MP giving evidence on the UK Internal Markets Bill, was marred by atrocious sound quality, to the point where much of what was said was very hard to follow, and sometimes outright inaudible.⁴ Broadcasters were left to play out crucial sections of the meeting, and then paraphrase what was said. There seems little excuse for government departments to have such poor arrangements for giving evidence down the line to parliamentary committees, months into the pandemic.

3 <https://www.bbc.co.uk/news/av/uk-politics-53392371>

4 <https://committees.parliament.uk/event/2028/formal-meeting-oral-evidence-session/>

Interest in parliament has been off the scale

This is the environment in which a great deal of very important news is happening. The gross tonnage of COVID-19 news emanating from parliament has been vast and significant – sweeping restrictions on personal liberty, billions spent in supporting jobs, local lockdowns in numerous communities and announcements about British subjects abroad, workplace safety and transport safety, and sustaining key industries.

Between the advent of the pandemic and 21 September, the Prime Minister delivered three major statements and the Chancellor four (this counts the March budget, which was dominated by COVID-19 measures). The Health Secretary, Matt Hancock MP made 22 statements to the House, the first on 23 January. In addition he responded to eight urgent questions from his Labour shadow, Jon Ashworth MP, and also led for the government at the second reading of the Coronavirus Bill, on 23 March. Other cabinet ministers have chipped in with statements on issues in their particular spheres. Most of these have been substantial news events, announcing new policies or reporting on progress. And alongside the events in the Commons chamber, appearances by major pandemic players before the select committees have frequently generated headlines.

Interest has been off the scale; during the more dramatic moments of Brexit, stories on the BBC website about major developments attracted around five million page views (Boris Johnson's victory in the Conservative leadership race attracted five million hits, for example). The Live Page tracking the Prime Minister's COVID-19 statement of 22 September had 12.5 million page views. COVID-19 'explainers' routinely attract millions of views.

Direct, unmediated coverage of parliament has attracted extra interest—BBC Parliament saw two million viewers a month during the pandemic, although, perhaps because there was less drama or uncertainty, the viewing figures did not attain the heights seen during the previous year's Brexit crises. And, similarly, viewing figures for ParliamentLive.TV have been higher than normal, but have not reached the levels seen over Brexit.

Parliament was the epicentre of the action over Brexit, but not over COVID-19, where daily live televised press conferences competed with the Commons as the venue for big announcements, during the first phase of the lockdown, much to the not entirely private disquiet of the parliamentary authorities. The COVID-19 press conference for 3 May, for example, attracted six and a half million views on the BBC Politics live page.

Reporting on COVID-19 was controversial

One loser in the process has been the parliamentary lobby, with the public eventually reacting against the kind of questioning deployed at the daily news conferences, as inappropriate and point scoring at a moment of national crisis. In the early days, people were riveted to their televisions – with almost everyone tuned in to BBC or Sky news at 5pm. After a couple of weeks, when the media started asking more difficult questions, focus groups began to track a hostile reaction with many people saying the media should be more understanding of a government doing its best in difficult circumstances.

To a degree, this seemed to mirror the Brexit-era attacks on reporters. Just as the same reporters were accused by different people of favouring remain and leave in the same piece of journalism, so those reporters found themselves being attacked for simultaneously being too critical and too favourable toward the government.

As for the events in the chamber, the media focus was mainly on the big set-piece Q&A sessions in the Commons rather than the actual legislation to address the pandemic. The emergency Coronavirus Bill was passed into law in just four sitting days including the date of first reading, and a browse of the Times website finds four stories about the passage of the Coronavirus Bill in March – a fairly typical level of interest. Bill proceedings, and even more, those around statutory instruments are much less accessible for viewers, who need an understanding of legislative process and a sheaf of documents to make sense of what they see on BBC Parliament or ParliamentLive.TV.

It is also worth contrasting the action in parliament during the first phase of the pandemic with that during the Brexit clashes before the 2019 general election. Just weeks earlier the Commons had been the scene of bitter conflict and high drama; the chamber action when COVID-19 struck was solemn and consensual, with very little open dissent, either between parties or within them. Punch and Judy gave place to statesmanship.

When the fate of prime ministers and governments depended on knife-edge votes in the Commons, parliament was easy to cover. The sheer drama of defeats, tied votes and high-stakes manoeuvring pulled in the viewers. But if the hung Brexit parliament saw power relocated to the floor of the Commons, the pandemic parliament has seen that power return to the hands of the Executive – and with it media interest.

Parliament had very little direct power over the course of events

The combination of policy being made by direct ministerial decision, a strong government majority and a cautious (and perhaps now unravelling) consensus between ministers and the opposition, has left parliament with very little direct power over the course of events – just a theoretical ability to repudiate decisions in statutory instruments after the event, via a little understood process in which parliamentary scrutiny, insofar as it takes place at all is usually fairly perfunctory.

In the rush of laws and regulations in March, important points about the way major restrictions were introduced were largely unremarked: as the Public Administration and Constitutional Affairs Committee noted, one aspect of the Coronavirus Act was that it did not include the level of parliamentary scrutiny provided for in the existing Civil Contingencies Act – and such scrutiny would have generated media reporting of the ensuing debates.⁵

The same report noted that key lockdown regulations were made under the urgent procedures of the Public Health (Control of Diseases) Act 1984 – which again meant no prior scrutiny. And it added that the case for operating in this way ‘has not always been justified and the Government should accord greater priority to scheduling debates on such legislation in a timelier manner.’

⁵ Parliamentary Scrutiny of the Government’s handling of Covid-19 – Fourth Report of Session 2019–21, Public Administration and Constitutional Affairs Committee <https://publications.parliament.uk/pa/cm5801/cmselect/cmpubadm/377/37702.htm>

Perhaps even ministers are not entirely clear about the nuances; on 30 July the Health Secretary said that people were “banned” from meeting indoors with people from different households from “midnight”. But this was not actually given legislative effect until 5 August. That opened the government up to criticism that it was misrepresenting the law and undermining its own credibility.

And the evolution of policy seems to have occurred much more outside parliament than in it – Westminster reporters describe a process where there would be murmurings of a change in approach to, for example, mask-wearing, which would be much more to do with scientific advice or international comparisons, than with what was said to ministers in the chamber. There would be a buzz around a possible policy change which would elide into an actual change via briefings, long before being announced to MPs – again, much to the regularly expressed angst of Mr Speaker.

The pandemic has crowded out other policy areas

Another important point is the ‘crowding out’ effect of the pandemic. This does not just apply to small change stories about parliamentary private secretaries apologising for inappropriate tweets, but to mega-policy questions like Brexit, which, having dominated the political agenda for four years, became a second-order story for some months, even as the end of the transitional period approached.

One BBC colleague makes the point that it has been more than five years since politics was not dominated by one central issue; first Brexit, then the pandemic. It has been a long time since it was possible to discuss, say, education policy. And for the same reason, the evolving politics of the opposition parties receive far less scrutiny than would be the case in ‘normal’ times. There is still some appetite for non-COVID-19 or Brexit parliamentary stories. The controversy over the Fire Safety Bill trended on Twitter (because Keir Starmer MP tweeted about it) but such moments are rare.

And the pandemic also influences the tone of news reporting. On Brexit stories a little irony was possible – ‘here we are again,’ ‘another day, another row.’ No-one wants to sound flippant about COVID-19.

14

Parliament's public engagement role

Cristina Leston-Bandeira
and Alex Prior



Parliament's public engagement role

Cristina Leston-Bandeira and Alex Prior¹

Introduction

As the pandemic pushed parliaments to restrict their business and activity, public engagement was the least of officials' priorities. However, as the effects of COVID-19 and policy responses (e.g. restrictions) started to impact publics, citizens turned to their representatives as the most visible face of governance. In this chapter we offer a short reflection of why public engagement is of particular value at times of crisis such as COVID-19, followed by a short overview of some of the challenges faced in this transition and the dilemma posed by digital engagement.

Why public engagement (and parliaments) matter particularly in times of crisis

The term 'public engagement' refers to different processes and activities through which publics can connect to an institution, from education initiatives to informing scrutiny of policy. In some cases, this means providing and gathering information; during COVID-19, for example, parliament has provided clarifications relating to lockdown rules. In other cases, it means reaching out to citizens more proactively, in order to gather diverse perspectives, viewpoints and input on key issues. From an institutional standpoint, public engagement informs how parliamentarians carry out their normal scrutiny work and therefore plays a key role at a time of crisis.

When the pandemic lockdowns started, the core reaction from parliaments across the world was focusing on core business and emergency powers, resulting in a considerable restriction of their activity. One of the key elements side-lined was the role of public engagement. And yet, if there was a time when public engagement mattered particularly, a time of acute crisis – such as the one caused by the pandemic – would seem to be it. The pandemic has had an acute and profound impact on society affecting all citizens one way or another, from economic problems to health, with an impact of harrowing scale. This is reflected in the three to fivefold increase in petitions and MPs' postbags, as seen in Emma Salisbury and Ben Lake's chapters. That linkage between governance and public therefore became particularly crucial with the pandemic, to understand how restrictions and the health crisis were affecting ordinary citizens.

However, and in many ways for perfectly understandable and practical reasons, the priority of parliaments in general focused on maintaining core business in order to ensure a minimum level of functionality, with public engagement becoming even more of an afterthought than usual. This limitation

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to core business took many forms, as other chapters in this publication show, such as reducing the time in plenary or even reducing the opportunities for scrutiny. This is particularly interesting in the UK Parliament, as restrictions had less effect on committees, which is where the most active forms of public engagement took place, as we address below. The level and type of impact on public engagement varied according to the way each parliament chose to restrict their core business.

For instance, the Brazilian Chamber of Deputies was able to remain active, but predominantly through its plenary activity, keeping committees completely inactive for some time. This had considerable impact on its ability to engage publics. The pandemic had less effect on parliamentary practices, simply because this legislature was already operating in a primarily digital capacity in many areas. However, it failed to adapt face-to-face practices such as their interactive sessions with committees, whereby citizens can submit questions live to a committee meeting. Because the committees could no longer meet face-to-face, and were not moved online, activity ceased; and, as a result, one of the legislature's main vehicles for public engagement also ceased. In this context there were no new paths for citizens to provide input and be heard by their representatives.

The Brazilian case study is particularly interesting to understand the impact of crisis on parliamentary public engagement. This is a highly digitalised legislature and often cited as a good example of digital opportunities to engage with parliament, thanks to its very complex digital tools and online transparency. However, the COVID-19 crisis has shown that in general, there was little effort within the Brazilian legislature to reach beyond their existing mechanisms of transparency – which citizens can engage with via smartphones – and, by extension, beyond the citizens who are already knowledgeable about, and/or engaged with, the work of this institution. This inertia is visible despite (or perhaps because of) the Brazilian legislature being more digitally advanced than any other, even utilising artificial intelligence within their website to help automatically identify themes across all of parliamentary business.

'Essential business' in times of crisis is typically associated with scrutiny and legislation. In this context, ongoing public engagement becomes a particularly low priority for parliaments, especially since citizens are still able to participate periodically (through elections, for example). Nevertheless, the global disruption caused by COVID-19 brought an even greater need for engagement between citizens and representatives, in understanding how (and for how long) the pandemic might impact citizens, governance, and the connection between them.

If there was ever a time to engage with citizens – to inform, consult, and work with them – it is during a crisis like COVID-19. Interestingly, though the UK Parliament has struggled much more than legislatures such as Brazil in the take-up of digital platforms, it has demonstrated more innovation in informing, consulting, and working with citizens during COVID-19, building on its already-existing culture of public engagement. Some of these innovations – and associated challenges and opportunities – are discussed below.

Challenges to public engagement in the UK Parliament during COVID-19

Many challenges arose to parliaments in their efforts to engage with the public, but here we focus primarily on two: understanding how and where to listen and respond to the public, and operating in the context of a particularly volatile public image of the institution.

UK parliamentary policy in toto is often granular, incremental, and reactive, defined by events as (i.e. after) they happen rather than pre-emptive strategy. It is difficult in this context to envisage a quick

parliamentary response to COVID-19; however, the pressure to achieve such a response was intensified by citizens' increased demands for information (and assurance) from policymakers. Emma Salisbury, Senior Parliamentary Assistant to MP Paul Holmes, described "an absolute flood of requests for help, advice, or information" during the first fortnight of lockdown, "around five times more correspondence than we usually receive per day".²

Citizens' requests for information from MPs reflects the fact that traditionally, "[r]ather than engaging in direct participation, people have looked to their representatives in parliament".³ Individual representatives are the most commonly recognised denizens of parliament, especially given the media exposure afforded to Prime Minister's Questions. As a result, citizens' perspectives of MPs largely shape their views of parliament in general.

These perceptions about parliament (and parliamentarians) matter even more in times of crisis, where the public may feel particularly aggrieved with decision-makers leading to an amplification of parliament's negative image. There have already been several high-profile media stories about MPs adapting to the 'new normal'. For example, considerable news coverage (and misinformation) surrounded an additional £10,000 being made available to MPs to support their office costs, a decision that attracted outcry from social media and political commentators. This was in fact not a lump sum (as many media outlets suggested) but a raising of the budget cap by the Independent Parliamentary Standards Authority, in order to ensure MPs (and their support staff) could work from home with the necessary equipment. This story could have been presented as a means by which MPs were more able to respond more effectively to citizens' demands; instead, it was portrayed as "yet another" example of politicians as self-seeking (and even corrupt).

After the passing of a government motion to prevent the resumption of virtual voting, there was also widespread media coverage of long queues of MPs outside Westminster Hall, waiting to vote. The government motion provoked considerable backlash from several MPs, with shadow Commons leader Valerie Vaz describing the decision as "peddling the myth that we only work when we are here [in the House of Commons]." MPs' resistance to the myths reflects their emphasis on maintaining an image of parliament (and themselves) as relevant and responsive; an image all the more fragile at times of crisis, and sensitive to changed working practices.

In discussing institutional responses – that is to say, beyond individual MPs – it is important to note that parliament's public engagement mechanisms encompass many different teams and departments, all of whom – in the context of COVID-19 – were tasked with finding solutions quickly in response to immediate problems. In the case of the UK parliament, the teams who had most effectively engaged with publics before the pandemic were the fastest to react.

The Petitions Committee, for example, adapted very quickly to its new situation, even as the number of petitions they received increased threefold. Based on these petitions, the committee found that there was enormous public uncertainty about the crisis, lockdown regulations, and what citizens could and could not do. The committee therefore ran a virtual hearing session on 25 March, focusing on the government's response to the coronavirus pandemic, putting a range of questions from citizens to a panel of ministers and public officials across different departments and policy areas. This represented a very simple form of public engagement – essentially an information-gathering exercise – that was nevertheless pertinent during such widespread uncertainty, as was the case at the start of lockdown in the UK.

² See pages 95-8.

³ Norton, P., 2012. 'Parliament and Citizens in the United Kingdom'. *The Journal of Legislative Studies*, vol.18, no.3-4, p.404.

Given the Petitions Committee's unique mandate – deriving from public input – it is unsurprising that an effective application of public evidence would come from this source. However, committees as a whole moved very quickly, listening to online discussions and reaching out to citizens who could not otherwise engage. This is exemplified in the emergence of increasingly collaborative working practices across the membership of select committees. For example, as part of an oral evidence session on coronavirus preparations, the Health and Social Care Committee Chair, Jeremy Hunt, announced that

Because coronavirus affects every aspect of our national life, we also have some MPs from other Select Committees as guests: Yvette Cooper, Chair of the Home Affairs Committee, Tom Tugendhat, Chair of the Foreign Affairs Committee, Greg Clark, Chair of the Science and Technology Committee, and Clive Betts, Chair of the Housing, Communities and Local Government Committee.

The Health and Social Care Committee moved especially quickly in response to the COVID-19 outbreak, relating public perspectives and anxieties to ministers. The committee's first virtual oral evidence session took place on 26 March, just three days after the Prime Minister's first announcement that citizens should stay at home. The speed of the committee's engagement with the public during COVID-19 can be attributed to the committee's health focus, its Chair's experience as Secretary of State for Health and Social Care, and precedents set by the committee in public engagement initiatives. These include commissioning public participation charity Involve UK to run a citizens' assembly on social care (alongside the Housing, Communities and Local Government Committee).

Another core challenge is how to respond to the complexity of COVID-19's effects on such diverse publics. A situation like COVID-19 presents so many different effects and impacts that it is difficult for policymakers and civil servants to fully anticipate them, especially given the speed of public reaction (and demands for a response). Policies like the furlough scheme, for example, have considerable implications on essential considerations such as maternity leave, as described in a Petitions Committee summary. The text of this summary underlines the importance of committees – and parliament more broadly – in connecting citizens to governance at times of crisis:

The huge support that Jessie and James' petition has received, and the many moving stories we have heard from new and expecting parents about the worries that they have as they face a return to the workplace, made it clear that this was an issue that the Government needs to consider as a matter of urgency.

However, there exists a substantial challenge in reaching out to citizens. Even before COVID-19, this was an area in which parliament struggled (as recognised within the institution). In the context of lockdown, the struggle is even more pronounced. Reaching anyone beyond the 'usual suspects' can be difficult, especially when largely reliant on digital channels to engage with a population that is not wholly online. In the context of COVID-19, reaching numerous and diverse publics is even more challenging, yet even more important.

Adapting to digital as the mode of engagement

One of the consequences of the COVID-19 crisis is that the mode of delivery of public engagement has become digital by default. While the last decade or so has seen an expansion of digital public engagement, its implementation has been relatively limited. COVID-19 has acted as an impetus for expanded experimentation with digital means of engaging with the public.

Considerable steps have been taken by officials (often working within very traditionalist institutional cultures) in adapting to the circumstances and presenting creative solutions in digital format. The UK Parliament's Education Centre, for example, is now running as many as 48 school sessions a day, far more than they were able to run face-to-face. During these sessions, a central theme communicated by staff is that Parliament is perennially relevant, fulfilling a myriad of essential responsibilities and functions.

Parliamentary engagement is now much more digitally oriented, such as in outreach to schools and the provision of evidence for committee inquiries. However, many of these activities – online deliberative spaces, for example – require time and skill to utilise effectively. 'Doing things digitally' is not just about maximising parliament's geographical reach; it is also about the most effective use of time. Digital engagement does not have to be synchronous to be effective. For example, the COVID-19 Committee in the House of Lords are currently running an inquiry about how the pandemic has affected citizens, an inquiry in which a more reflective (asynchronous) approach to evidence would be invaluable.

Reflective engagement is a process that online platforms can facilitate very effectively. It is very difficult to simultaneously organise and manage a group of 10 participants – let alone 50 or 100 – holding a discussion in person. This is often much easier online, with participants providing input asynchronously and reflectively. In 2004, Stephen Coleman, in collaboration with the Hansard Society, studied the use of an online discussion platform to investigate domestic violence. Through having access to an anonymous safe space, participants gave their views and reflected on those of others, facilitating effective discussion. Since then online platforms have developed considerably, with many possible alternatives available today. The advantage of these is that they enable a more reflective approach, as well as being more suited to more diverse publics, than, say, social media would be.

Social media has raised new opportunities in this respect, but also new challenges. It has enabled a greater number of participants (and a greater volume of evidence) but has not enabled accordingly greater facilitation. The more responses to an online survey, webform or hash tag, the more difficult it becomes to manage that discussion. Social media often introduces a great deal of 'noise', eclipsing individual voices. This can undermine the value of social media, both to engagement and to other essential parliamentary functions such as scrutiny.

In order to make the most of digital engagement, which became the default form of public engagement during the pandemic, it is important to nurture aspects of communication that are not 'naturally-occurring' within this space (e.g. spontaneity, subtlety, context, and even identity) by encouraging participants' self-reflection. Digital methods potentialise greater reach and flexibility across time and space; however, it is also crucial to recognise (and address) continued social divides in digital access and literacy.

Some practices – such as the use of Zoom in hearings, and a greater number of online activities with people outside the institution – are likely to become even more commonplace. This is a significant development in itself. Within an institution like parliament, in which rules and rituals are so pervasive, situations like COVID-19 can demonstrate that new techniques and practices can be both practical and beneficial in the long term.

This is clear in the way the UK parliament changed so many of its practices in a short space of time. The Strategic Director for Chamber Business at the UK House of Commons, in discussing the digital transition of parliamentary procedures, concluded that "what we've done in the last four weeks...has probably been the biggest set of changes to how the House of Commons works in the last 700 years." In a very short

time, centuries of traditions and rules were overcome, with many senior officials using this as an opportunity to reflect on institutional processes and procedures more broadly.

Prime Minister's Questions is an especially noteworthy case study in the effects of digital technology on parliamentary process. When using online platforms such as Zoom to take part in parliamentary debates, MPs were speaking from their own homes, often using this format to bring their constituency into the Commons chamber. The symbolism present within MPs' homes – in terms of what was visible on-screen – often juxtaposed with the symbolism of the Commons chamber. Whether incidental or otherwise, it exemplified the significance of MPs as "living symbols of a locality".

This raises interesting questions (and venues for future research) on the capacity of citizens to relate to an MP who is speaking from their own home, rather than the chamber. This can be understood through the aforementioned symbolism of their chosen surroundings, or – more simply – the potentially 'equalising' effect of seeing MPs in typically modest dwellings (as a counter-narrative to the 2009 expenses scandal, for example, and associated assumptions of MPs' wealth). It remains to be seen whether these factors, in the short or long term, exert any influence on citizens' perceptions of MPs, and their ability to relate to them.

Conclusion: public engagement in the UK after COVID-19

COVID-19 has presented substantial challenges to parliamentary functions, including engagement between citizens and the institution. In responding to these challenges, we have seen parliaments reflect on their own working practices and core responsibilities, in order to maintain a minimum level of operability. The diversity of responses across parliaments can be attributed to differences in the impact of COVID-19, the characteristics of institutional infrastructures, and varying institutional 'cultures' of engagement.

These challenges notwithstanding, the circumstances surrounding COVID-19 have also brought opportunities for new and innovative engagement practices. In the case of the UK, this development in practice can be seen in the speed and scale with which engagement services have been brought online, as well as in the levels of co-operation and collaboration across the UK committee system.

Digital interactions are not the same as face to face; they always have to be adapted. This means that some compromise is necessary between those arguing for a wholesale transition to digital, and those who are against digital in principle. Certain concepts and practices are difficult to nurture online; offline spaces, in which synchronous (and spontaneous) face-to-face discussions are held, are important to maintain. In this sense, we need to nurture the kinds of relationships and dynamics that can be lost by going online.

Throughout these discussions, we have also illustrated the importance of continued public engagement during this time of crisis. In this context, there is a tendency for parliaments to focus on scrutiny and legislation as core functions, reflective of the traditional roles of these institutions (with public engagement being a very recent addition). Nevertheless, the importance of engaging the public – at a time of widespread uncertainty, misinformation, and difficulties – could not be more pressing.

15

The response from IPSA

Marcial Boo



The response from IPSA

Marcial Boo¹

The COVID-19 pandemic had an impact on the money paid to MPs by the Independent Parliamentary Standards Authority (IPSA). Spending rules were changed quickly in March to give MPs more flexibility in how they submitted their claims for business costs, with financial controls re-imposed between July and September. More money was also provided for MPs' office costs and later for staffing, resulting in additional expenditure of up to £15-20 million in 2020-21. Some of this cost may continue into future years. IPSA's response to the pandemic improved its reputation among MPs.

IPSA and its remit

IPSA was created by statute in the wake of the 2009 MPs' expenses scandal. It has a staff of 70 and an office about a mile from the Houses of Parliament.

IPSA sets and pays the salaries and pensions of 650 MPs and their 3,300 staff. It also sets the rules for MPs to claim for expenditure necessary to do their jobs, including travelling between their constituency and Westminster, and renting and equipping an office in their constituency. The rules of eligible costs are published in a Scheme of MPs' Business Costs and Expenses which is updated annually. IPSA reimburses MPs for all parliamentary business costs within the rules and publishes all MPs' spending, so that it can assure the public that MPs' use of taxpayers' money is well regulated, while resourcing MPs appropriately.

IPSA's budget is £227 million a year, of which £220 million is spent on MPs. Each MP gets three capped budgets to enable them to do their jobs: £177,500 a year to employ staff; £25,910 a year to rent and equip an office; and £23,010 a year to stay in London so they can attend parliament. London MPs get slightly more in their staffing and office costs budgets, but are not entitled to an accommodation budget. All MPs are allowed unlimited standard-class travel to and from their constituencies.

IPSA is independent of parliament, government and political parties, though its budget is set, and its board appointed, by a committee of senior MPs chaired by the Speaker.

IPSA going into the pandemic

In March, as COVID-19 struck, IPSA's operations were already under pressure. This context is relevant to the decisions taken by IPSA during the pandemic.

A year beforehand, a new IT system had been introduced to pay MPs' salaries and business costs. It replaced the four separate finance, payroll, expenses and HR systems thrown together quickly when IPSA was first set up. The old systems had worked; just about. But they had brought risk, both to IPSA and to MPs. Data about MPs' spending, and personal information including bank account and national

¹ **Marcial Boo** was chief executive of IPSA between June 2014 and September 2020.

insurance numbers, had been stored on multiple systems, with data moved on Excel spreadsheets between them. MPs were required to print off forms, staple receipts to them, and then post them to IPSA. This led to delays and lost claims. MPs complained frequently that IPSA's systems were time-consuming and ineffective.

The new system, in contrast, provided a single source of information, with data stored securely in the UK, enabling IPSA to become GDPR-compliant. MPs could scan or photograph receipts and upload them straight to their account. The new system provided more robust financial controls too, pleasing IPSA's auditors. And the new system would enable IPSA to move overnight to remote working when the pandemic struck, without interrupting payments.

But, despite this improved data quality, security and financial control, the new system was poorly received. MPs and their staff, like many of us, did not want to learn new IT systems, particularly while acrimoniously debating Brexit. They just wanted to submit their costs easily, and get paid. The new system worked from day one, but there were technical issues to be improved; and its user interface was designed for business managers, not Members of Parliament. As a consequence, MPs called IPSA for help. IPSA did not have the staff to cope, and MPs were too often left waiting unhappily on the phone.

MPs' dissatisfaction with IPSA was already high when the December 2019 general election made matters worse. The turnover of 155 MPs increased IPSA's client group by 24 percent overnight, without any increase in capacity. Former MPs were helped to wind up their financial affairs, while new MPs were inducted in managing their budgets within the rules. This stretched IPSA's staff even more. There were delays in replying to MPs, delays in registering new offices, and delays in putting new staff on the payroll. Dissatisfaction with IPSA increased: in early 2020, only 25 percent of MPs surveyed said they were satisfied with IPSA's support, compared to 68 per cent the previous year.

Thus, in March, when COVID-19 hit the UK, IPSA was dealing with 520 emails and phone calls a day and, over the month, registering 70 properties and processing 780 new and departing MPs' staff. There were 1,400 open cases. All these figures were three to four times higher than normal. MPs were putting pressure on IPSA to improve, and the Speaker was passing on complaints to IPSA's Interim Chair on a weekly basis.

IPSA's response - IPSA itself

On Monday 16 March at 5.30pm, the Prime Minister announced from Downing Street that everyone who could work from home should do so. IPSA followed his instructions. From 17 March, IPSA, like many other organisations, was working remotely. Its staff already had laptops and remote access. Additional screens, keyboards, desks and other pieces of office kit were immediately dispatched.

The new digital finance system now paid dividends. Within days, IPSA was making routine reimbursement payments to MPs. And the following week, the salaries of 650 MPs and their 3,300 staff were paid without a hitch, with 100 percent and 99.7 percent accuracy respectively.

But IPSA also turned off its phones and asked MPs to email instead. This was because there was no tested and secure technical system to divert hundreds of calls a day to staff, some of whom were sharing accommodation and at risk of being overheard. IPSA took stock and in April set up a call booking system so MPs could arrange a time to talk to IPSA staff about their claims or salaries. This innovation

was welcomed, but IPSA's perceived lack of availability compounded existing dissatisfaction and went down badly with MPs.

However, without an open phone line, and with MPs rightly focused on supporting their constituents, demand declined: the number of daily calls and emails reduced by two thirds, and the number of new starters and leavers from MPs' office was down 80 per cent from its peak. IPSA got on top of its backlog. By July, the number of open cases had halved.

IPSA's response - supporting MPs

The pandemic and lockdown placed intense pressure on MPs and their offices. MPs reported a quadrupling in their casework as desperate constituents came to them with worries about their health, their families and their jobs. MPs fielded constant questions about lockdown rules, and concerns about personal protective equipment, care homes, children's education, and a certain trip to County Durham. MPs' staff were working long hours dealing with exceptionally distressed people.

IPSA recognised the need to support MPs through the crisis. Its Board met virtually on 18 March and agreed and announced immediate measures to support MPs and their offices:

- There was an increase of £10,000 to each MP's office costs budget to cover additional costs involved in setting up their staff remotely. The extra money would be available until March 2021.
- The monthly limit on each MP's credit card was increased from £4,000 to £10,000 in order to help MPs with cashflow. IPSA also suspended its policy of turning off MPs' cards when they had not supplied the evidence necessary to back up their purchases. This was in case MPs found it difficult to find receipts during lockdown. The normal policy was reinstated on 1 July.
- MPs would also be reimbursed for other expenditure, without evidence of purchase if they could not find the receipts.
- MPs were given extra time to submit claims too – from 90 days after incurring the cost to 120 days.
- The deadline for submission of claims for 2019-20 business costs was moved back from 26 April to 30 June, with a month after that to provide evidence.
- Finally, IPSA gave MPs an assurance that, if any further exceptional costs appeared, applications for extra contingency funding would be processed quickly.

These changes to IPSA's rules legally required consultation and the laying of a new Scheme in Parliament. Thus, from 28 May, IPSA consulted on the changes already announced and implemented. The consultation suggested two further measures: to increase MPs' staffing budgets by £18,270 for London MPs and by £16,480 for MPs outside London, to allow them to recruit an additional full-time member of staff for the remainder of the financial year; and to introduce the automatic payment of the HMRC home-working allowance of £26 per month for all MPs' staff, unless the MP explicitly opted their staff out. All these measures were confirmed by IPSA on 25 June, with the home-working allowance backdated to April.

Finally, on 4 June, IPSA also announced that, in line with similar arrangements in the House of Commons for parliamentary staff, MPs could claim for commuting costs in London, including taxis or the congestion charge, in order to avoid public transport. This further flexibility was removed on 7 September.

The impact on MPs

MPs and their staff welcomed these changes. They recognised that IPSA had acted fast and loosened financial controls at a time of crisis. Many MPs were grateful for the extra £10,000 to help their staff to work from home, particularly as, by mid-March, just two weeks before the end of the financial year, many office costs budgets had already been fully spent.

MPs took advantage of the money, but not immediately. Only £350,000 was spent on COVID-related measures in the final fortnight of 2019-20. All MPs then had unspent money rolled over into their 2020-21 budget. By the end of June, £1.2 million had been spent, though other COVID-related spending may not have been labelled as such and claimed from other budgets. It is likely that over £4 million of the extra £6 million available will be spent by March 2021.

Much of the £9 million additional staffing money will be spent too. Overtime claims from MPs' offices tripled from 3,400 hours a month in February to 10,000 in July, costing an extra £115,000 per month. And staff numbers rose by four per cent to over 3,300, levels rarely seen outside the period after General Elections.

MPs also took advantage of the lower evidence requirements. In the first three months of 2020-21, 201 claim lines worth £34,100 in total were submitted and paid without supporting evidence. An estimated £3,000 was spent on MPs' (normally ineligible) commuting costs in London, including 35 claims for the congestion charge. And no MPs had their credit cards turned off in April, May or June. (In a normal month, 20-30 MPs would be temporarily denied use of their credit card until they submitted evidence for their spending. It was a powerful compliance tool.) From July, the policy was reinstated, resulting in many MPs being told to submit evidence or again risk the suspension of their cards.

IPSA's contingency funding was also drawn on. Some MPs had specific circumstances to be catered for. In one case, two MPs shared a London flat when in Westminster. But they were from different households, so could no longer use the same property. IPSA paid for one of them to stay in a hotel when attending Parliament. In another case, an MP had such poor connectivity from their rural constituency that IPSA agreed to split with them the cost of installing a broadband cable to their home so they could dial in to Parliament remotely and represent their constituents. Another MP with a health condition was given approval to take taxis from their constituency to Parliament when necessary, to avoid public transport.

The impact on IPSA

The measures to support MPs and their offices through the pandemic had an impact on IPSA too. And this cost the taxpayer money. A supplementary budget for an extra £15.3 million was approved by Parliament on 24 June, of which £250,000 paid for additional costs to IPSA itself.

The flexibilities given to MPs imposed new administrative burdens on IPSA. The delay to the year-end deadline was particularly significant. Like all public bodies, IPSA closes its accounts at the end of each financial year so they can be audited by the NAO and laid in parliament. The extended year-end deadline gave MPs an extra two months to submit claims. But it meant IPSA's 2019-20 audit could not be completed till September. Its annual accounts are likely to be published in January 2021.

The delayed deadlines had an impact on MPs' ability to manage their budgets too. They would not know till the end of September, halfway through the financial year, whether they had over-spent their 2019-20 budgets, nor how much of the extra £10,000 would be rolled forward to be available for spending in the 2020-21 financial year.

In addition, IPSA needed to put hundreds of extra MPs' staff on the payroll and implement the home-working allowance for 3,300 staff too. Then, from July, there was the backlog of MPs with their credit cards to reconcile and evidence to provide.

However, despite concerns about its phone line closure and a three-day social media storm over the decision to increase MPs' office costs budgets by £10,000, IPSA's reputation with MPs improved through the pandemic. IPSA had been in MPs' bad books. But IPSA's speed of response, and the flexibilities and money provided, were welcomed. Most MPs liked booking calls with IPSA staff at agreed times. And senior MPs accepted that IPSA had won back goodwill. The volume of complaints went down. IPSA's Board breathed easier, not least as they saw what was happening elsewhere to quangos such as Ofqual.

The longer-term impact

It is too soon to judge the longer-term impact of the pandemic on the way IPSA supports MPs. But here are four early observations.

First, the flexibilities and additional funding that IPSA introduced quickly did improve IPSA's reputation among MPs. The nature of the response was influenced by a desire to show MPs that IPSA could meet their needs, and to counteract the difficulties experienced in the preceding 12 months. MPs were glad that IPSA supported them in the crisis, paying the salaries of their staff and their business costs, and providing extra money where it was judged necessary. Without an independent IPSA, MPs would have had to vote themselves this extra funding. That would have been harder for them to do. Like any regulator, IPSA will never be loved by those it regulates, and it must continue to improve its operations. But its work during the pandemic gave a much-needed boost to its reputation in parliament.

Second, some of the additional costs to the taxpayer incurred during the pandemic, particularly staffing costs, may not reduce in future years. IPSA's Board consulted or surveyed MPs in 2016 and 2019 about the number of staff that MPs should have to support them in their office. Both times, IPSA concluded that the staffing budget should be calculated on having four full-time-equivalent staff per MP. During the pandemic, this in effect increased to 4.5 FTEs. When IPSA appears before the Speaker's Committee in February 2021 to agree its 2021-22 budget, it will thus be faced either with reducing MPs' budgets to pre-pandemic levels, requiring the termination of hundreds of MPs' staff contracts, or baking the extra £15 million into MPs' staffing budgets, giving a permanent 12 percent rise on top of a 14 percent increase in 2020-21.

The flexibilities given to MPs with health conditions, or who were shielding, or who had poor internet connectivity, may also need to continue, perhaps for years until the pandemic is over or longer if MPs retain remote participation. This may permanently add to taxpayers' bills, albeit little compared to the financial impact elsewhere in the economy.

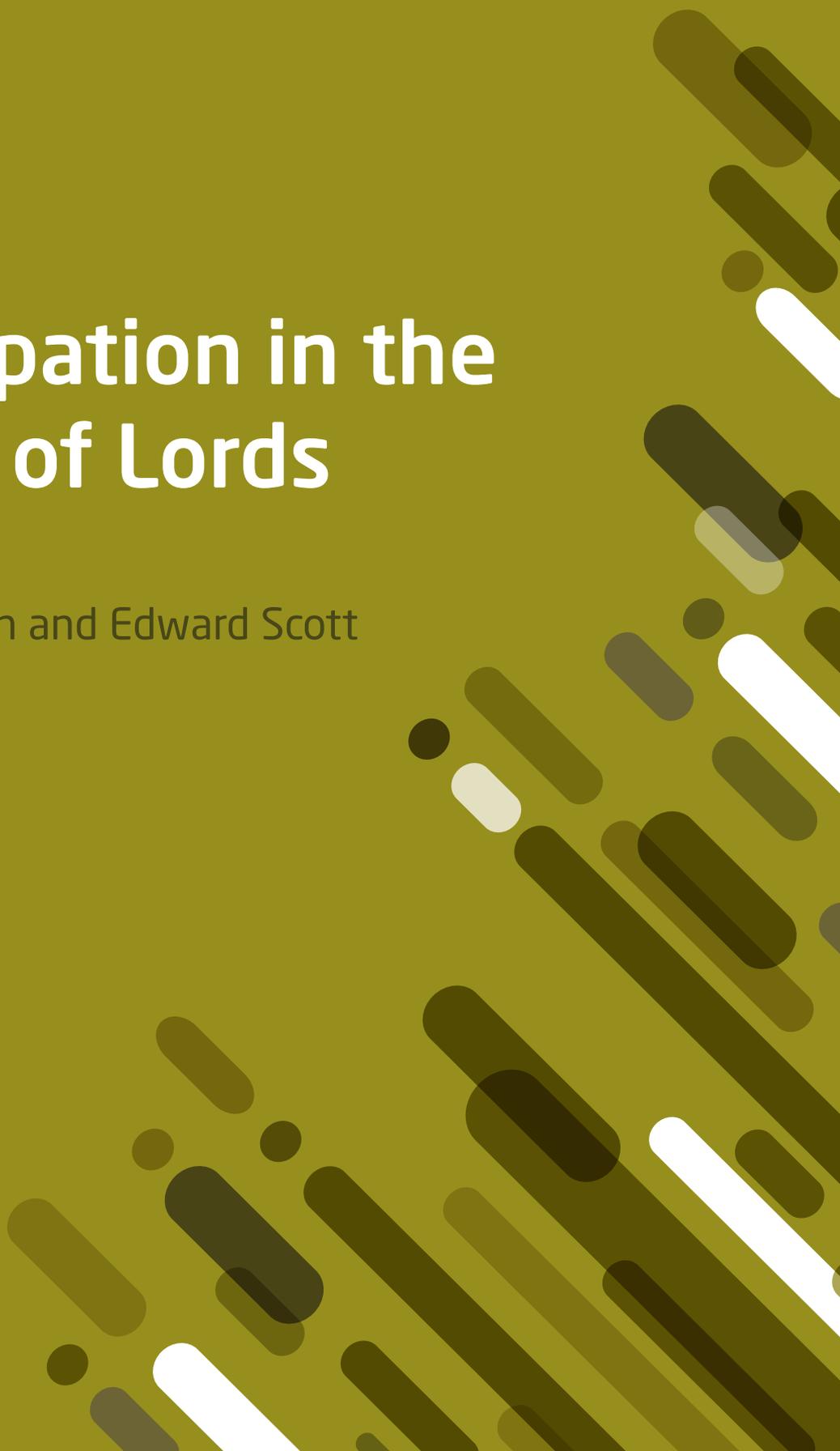
Third, like other employers, IPSA is likely to need less office space in future. It may reduce or eliminate its central London presence, and ask its 70 staff to continue homeworking. Or it may wish to locate staff in the regions and nations of the UK, closer to MPs and their offices. The new IT system will allow that to happen, and potentially bring the taxpayer long-term savings.

And fourth, the experience of MPs and IPSA through the pandemic should contribute to longer-term thinking about the best way to regulate MPs' spending of public money. Each MP is currently asked to run their own office, recruit their own staff and manage their own budgets. This gives MPs the ability to spend money as they like within the rules. But it also brings inefficiencies, with 650 MPs acting as small businesses with no economies of scale. Aggregating their administrative support remotely could make MPs' offices more professional, giving MPs and their constituents better support, while retaining IPSA's ability to provide assurance to the public about the spending of public money. Innovations and improvements such as these may be small silver linings to the misery and disruption brought by the pandemic.

16

Participation in the House of Lords

Thomas Brown and Edward Scott



Participation in the House of Lords

Thomas Brown and Edward Scott¹

The House of Lords has responded to the coronavirus pandemic by adapting its procedures to enable Members to take part in business remotely. This change has taken place in two phases. During the first phase, the House mainly sat virtually using video conferencing tools, with only a limited presence in the chamber for separate, parallel sittings. Members taking part virtually were unable to vote. The House then moved to a hybrid model, in which online and physical proceedings were more integrated. This second period saw online voting introduced.

This piece presents provisional findings, based on Hansard records, on the extent to which the introduction of virtual and hybrid arrangements affected participation levels during selected periods.

Not quite business as usual: virtual sittings, 21 April to 4 June

The House of Lords sat in Westminster as normal up until 25 March, the day on which it passed emergency legislation to manage the effects of the epidemic in the UK. It then paused for Easter.

Over the recess period, staff worked to put in place a system that would allow virtual proceedings to take place when the House returned. The virtual format would allow Members to participate in certain business, including questions, statements and debates, while staying away from central London. It would also operate in parallel with chamber-based sittings, which would continue on a limited basis to facilitate formal decision-making when needed. In total, the virtual and/or chamber-based arrangements took place on 18 dates between 21 April and 4 June inclusive.

Since 8 June, the House has sat in hybrid format. This has allowed members to participate in business virtually or in person in the chamber.

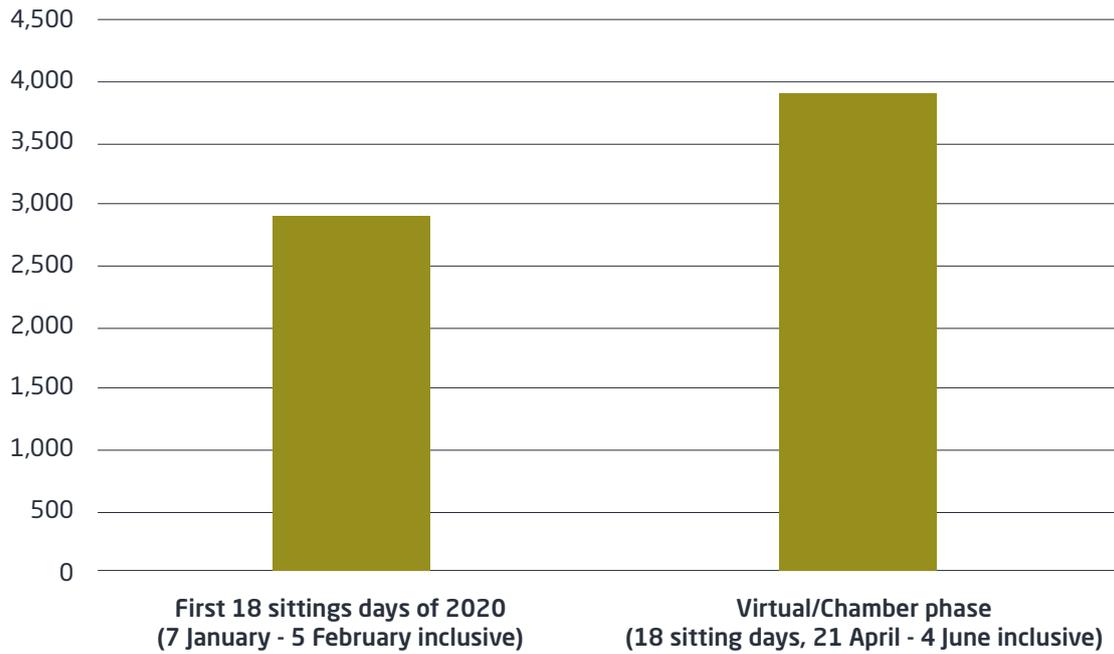
Did virtual arrangements affect participation?

More contributions were made

Almost 1,000 more contributions were made during the interim virtual/chamber phase than during a comparative period at the beginning of the year. According to Hansard records, approximately 3,924 contributions were recorded over the 18 days on which virtual and chamber-based proceedings were held between 21 April and 4 June inclusive. This compares with the approximately 2,932 contributions made between 7 January and 5 February inclusive – the first 18 sitting days of 2020.

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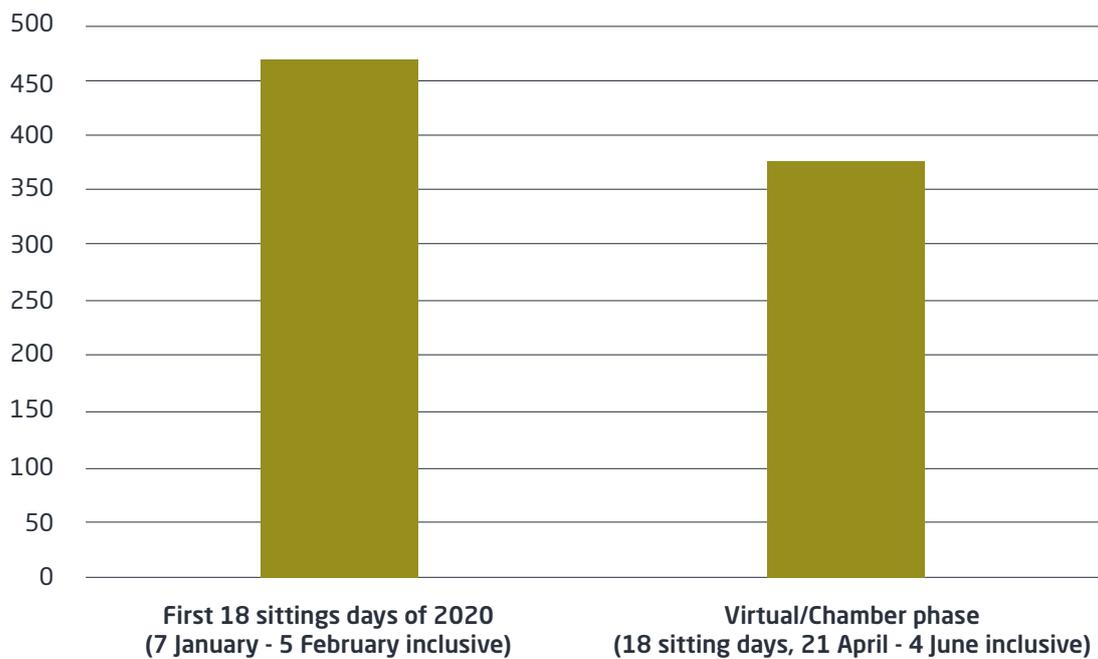
Figure 1: Number of contributions during virtual phase



Fewer Members spoke

However, these were made by fewer Members. The same records suggest 379 different Members made at least one contribution between 21 April and 4 June. This was lower than the number of Members who spoke over the first 18 sitting days of 2020. In that period, 470 different Members made one or more contributions.

Figure 2: Members contributing during virtual phase



More women took part

Women comprised a slightly higher proportion of those participating in the virtual/chamber phase when compared with the sample chamber—only period earlier in the year—35% compared with 31%. Women made up around 28% of those eligible to attend proceedings in June 2020.

No change in age

The (mean) average age of those participating during both periods, as measured on the first day of each date range, was very similar at 69 and 70 respectively.

Other findings about the interim virtual/chamber phase

A total of 787 Members were eligible to attend proceedings as at 21 April; 569 of whom were men (72%) and 218 of whom were women (28%). The (mean) average age of all eligible Members as at that date was 70, breaking down as 71 for male Members and 67 for female Members.

How do the captured participation levels for the 21 April to 4 June period compare with levels at the beginning of the year?

- Of the 379 Members making at least one contribution during the interim virtual/chamber period, 248 were men (65%) and 131 were women (35%). Of the 470 Members contributing earlier in the year, 323 were men (69%) and 147 were women (31%).
- The average age of participating Members at the beginning of the interim period (21 April 2020) was 69; the average age of male and female participants being 70 and 66 respectively. The average age of contributing Members at the start of the earlier period (7 January) was 70—breaking down as 71 for male Members and 67 for female Members.
- The oldest Member who contributed during the virtual/chamber phase was Baroness Gardner of Parkes (Conservative), aged 92 at the beginning of the period. Lord Mackay of Clashfern (Conservative), also 92, took part as well. They were the oldest contributing Members in the comparative January to February period too.
- The youngest Member who contributed during the virtual/chamber phase was Baroness Penn (Conservative), aged 35 on 21 April. Lady Penn was followed by Lord Parkinson of Whitley Bay (Conservative), aged 36 on the same date. These two individuals were also the youngest contributing Members in the comparative period.

Hybrid proceedings replace the parallel virtual/chamber arrangements

Hybrid proceedings began on 8 June in the House of Lords. From this date until the start of the summer recess, a similar pattern of Member behaviour emerged to that seen during the virtual proceedings phase.

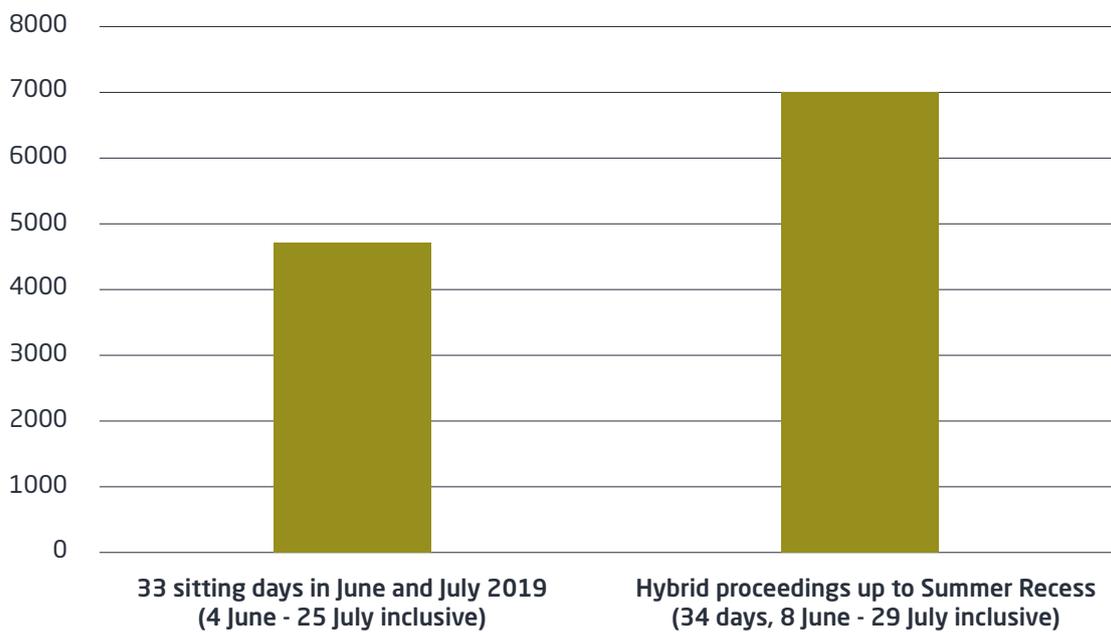
How did hybrid arrangements affect participation levels?

More contributions were made during hybrid proceedings

During the period from the beginning of hybrid proceedings to the House rising for the summer recess on 29 July, Members made approximately 7,026 contributions. This was over the course of 34 sitting days.

During a comparable period in 2019—from the end of the Whitsun recess on 4 June to the beginning of the summer recess on 25 July—4,693 contributions were made. This was over the course of 33 sitting days.

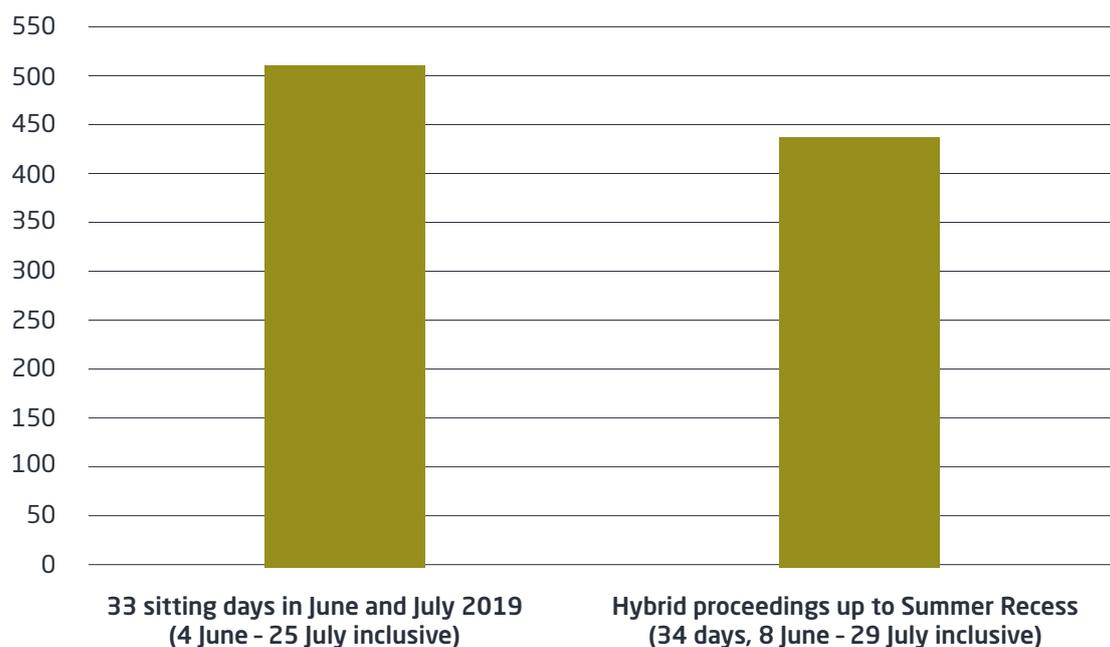
Figure 3: Number of contributions during hybrid phase



Fewer Members spoke

While there was an increase in the number of contributions made during hybrid proceedings when compared with the previous year, fewer Members took part. This is similar to the pattern seen during virtual proceedings. Between 8 June and 29 July, approximately 437 members made at least one contribution. This compares with the period from 4 June to 25 July 2019, when around 510 members made one or more contributions.

Figure 4: Members contributing during hybrid phase



More women took part

Women made up a larger proportion of those taking part in hybrid proceedings compared with the same time during the previous year. Of those Members taking part in hybrid proceedings, 32% were women, compared to 30% during June–July 2019. However, this is smaller than the proportion of women who took part previously during virtual proceedings—35%. Women made up around 28% of those eligible to attend proceedings in September 2020.

No change in age

The (mean) average age of those participating during both periods, as measured on the first day of each date range, remained broadly the same. The average age of Members taking part during hybrid proceedings was 69, compared to 70 during the June–July 2019 period. The average age of Members taking part during virtual proceedings was also 69.

Other findings about hybrid proceedings

- An estimated 73 fewer Members took part during hybrid proceedings—a reduction of 14% compared with the period June–July 2019.
- In both periods, the majority of Members taking part made 50 or fewer contributions—94% during hybrid proceedings and 97% during June–July 2019.
- Lord Bethell, Parliamentary Under Secretary of State at the Department of Health and Social Care, and Lord True, Minister of State at the Cabinet Office, made a greater number of contributions during hybrid proceedings than any other Member during the June–July 2020 period. Both spoke over 200 separate times. During the June–July 2019 period, the Member who spoke most frequently was Baroness Blackwood of North Oxford, who spoke 141 times. Coincidentally, she also held the position of Parliamentary Under Secretary of State at the Department of Health and Social Care at the time.
- The oldest Member to take part in hybrid proceedings was Lord Mackay of Clashfern (Conservative), who was 92 on the first day of hybrid proceedings. The youngest was Baroness Penn (Conservative), who was aged 35 on the first day of hybrid proceedings.

Analysing the data: notes of caution

Any comparison between periods of House of Lords activity is difficult due to the many variables involved. For example, the potentially large differences in the types of business taking place; the length of any sittings involved; and the sitting pattern in any given week. No adjustment has been made to account for the very different business considered over the periods in question, including the frequency of statements and Private Notice Questions; the relative split between very short interventions (such as reminders about arrangements or invitations for the next speaker to begin) and longer contributions (such as substantive speeches); any differences in the length of relevant sittings; or other changes, such as a change in the scope for interventions or how many members may have served in a frontbench role or as a deputy speaker.

The first 18 sitting days of 2020 were chosen as a comparative period for the virtual/chamber phase, as the 18 sitting days to 25 March are likely to have been affected by Members shielding in line with public health advice. The period from 4 June to 25 July 2019 was chosen as the closest comparison available for the hybrid phase considered, given the timing of recesses that year. However, it covers a slightly shorter period in terms of the number of sitting days.

This analysis only considers spoken contributions recorded in Hansard. It does not take into account other activity Members were engaged with during either period, including committee work and/or voting where applicable.

The source data used does not facilitate the accurate assigning of contributions to contributors. This limits the extent to which a gender and age breakdown of the total contribution figures is possible. Due to other limitations with the dataset, the figures cited above should be considered provisional and indicative rather than conclusive.

The content in this article has been taken from two House of Lords Library In Focus articles, published in June and September 2020 respectively:

- House of Lords Library, 'House of Lords: Virtual sittings, participation and COVID-19', 15 June 2020
- House of Lords Library, 'House of Lords: Hybrid sittings, participation and COVID-19', 11 September 2020

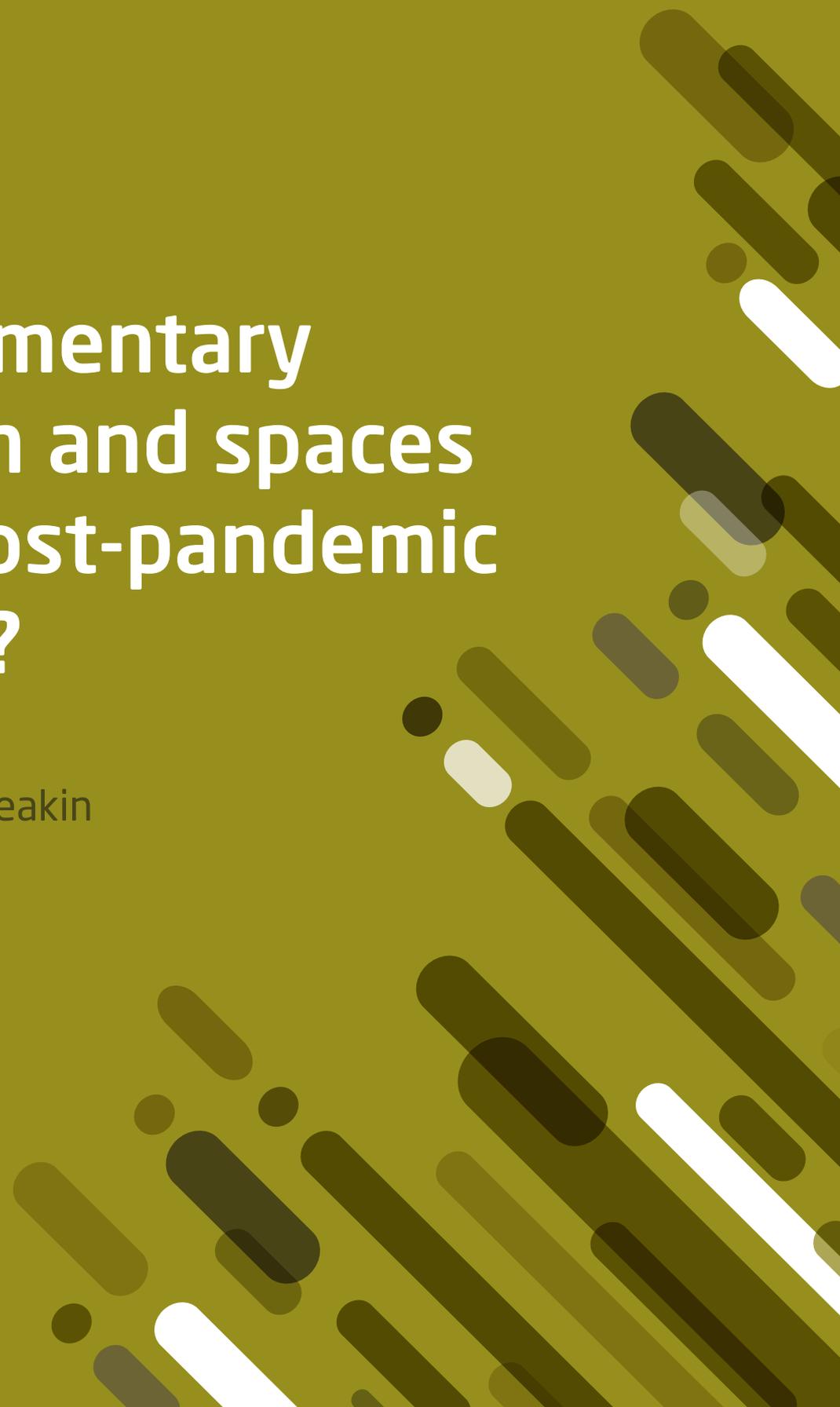
Read more

- House of Lords Library, 'House of Lords: Timeline of response to COVID-19 pandemic', 27 October 2020

17

Parliamentary design and spaces in a post-pandemic world?

Alexandra Meakin



Parliamentary design and spaces in a post-pandemic world?

Alexandra Meakin¹

Just hours after Nadine Dorries became the first parliamentarian to test positive for COVID-19, the sight of hundreds of her colleagues packed into the Commons chamber for the budget prompted concerns from MPs that parliament was acting as a ‘hotbed’ for ‘spreading [the] virus’.² The situation would prove unsustainable, and after an early Easter recess a ‘hybrid’ Commons chamber was established, enabling MPs to contribute remotely. While elements of the new procedures in the Commons would prove to be short-lived, the continued need for social distancing meant that by late 2020, Westminster still looked and felt very different to pre-pandemic days.

This essay considers the long-term implications of these emergency measures and those implemented in the legislatures of the devolved nations and crown dependencies, for parliamentary design. It examines the probability that the requirement to directly replicate MPs’ accommodation during the planned refurbishment of the Palace of Westminster will be reconsidered.

The design of the House of Commons chamber

When the Palace of Westminster suffered extensive damage from a luftwaffe bomb in May 1941, Winston Churchill advocated passionately—and successfully—for the House of Commons chamber to be rebuilt as before “restored in all essentials to its old form, convenience and dignity”.³ Crucially, Churchill argued that the Commons chamber “should not be big enough to contain all its Members at once without overcrowding and that there should be no question of every Member having a separate seat reserved for him”, cautioning that to do so, would be to ensure “nine-tenths of its debates will be conducted in the depressing atmosphere of an almost empty or half-empty chamber”.⁴

In the decades after the Commons was rebuilt to Churchill’s specifications, calls for a larger or reshaped chamber were rare. But while the cramped confines may have served generations of MPs well, the COVID-19 pandemic has forced a rethink of the commitment to a small and intimate debating chamber. When the Commons returned from its Easter recess, the usual red lines on the floor of the chamber were superseded by tape marking out safe distances between the green benches, half of which were blocked off to reduce capacity. A maximum of 50 MPs could attend, as the Commons agreed to allow remote participation in proceedings for the first time, ending what Karen Bradley MP, Chair of the Procedure Committee, described as the principle on which parliament has operated for centuries “that its Members have to be physically present to participate in its work”.⁵

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2 <https://twitter.com/LucyMPowell/status/1244400283477848064>

3 HC Deb, 28 Oct 1943, c403

4 HC Deb, 28 Oct 1943, c404

5 Bradley, K. (2020) ‘Anyone who has tried video calls knows a virtual Commons will have its glitches’ *The Times* 20 April

Bradley expanded on this point in the Commons:

Since the 16th century, this chamber and its predecessors have been the absolute focus of the House's life. Our procedures are founded on the principle that everything is done in the chamber. That is a sound principle. Members rely on face-to-face communication. The word 'parliament' comes from the French 'parler'. The idea that the chamber is now not available to many of us is a massive dislocation.⁶

The need for this "dislocation" is clear. As Mary Kelly Foy MP told the Commons, the purpose of changing the layout and procedures was not simply to protect MPs:

We must remember that it is not just those in parliament who are at risk. These buildings act as a hub – a place people travel to from all over the country. If someone in parliament gets infected, it threatens the health of the communities we serve.⁷

The consequences of COVID-19 for in-person sittings

Legislatures across the country and globe have faced the same dilemma. In response, the House of Lords also moved to hybrid proceedings, as did the Scottish Parliament. Other legislatures went further. In Jersey, as the Greffier of the States Assembly noted, the unicameral legislature "relocated from its cosy 19th century chamber to a giant sports hall", at the start of the pandemic, and then a week later moved to entirely online proceedings (becoming the first legislature in the Commonwealth to hold a virtual plenary session with all members able to participate). In Wales, the Senedd also moved to virtual proceedings, the first UK legislature to do so. The Tynwald, in the Isle of Man, allowed members to participate via audio link, a first for the world's oldest continually-operating legislature. The Northern Ireland Assembly amended its standing orders to allow remote participation in select committees, although plenary sessions have remained in-person only.

As the pandemic has evolved, legislatures have moved from dealing with a short-term crisis to a long-term adjustment to a 'new normal'. The Welsh Senedd has moved to a hybrid system with some Members returning to the Siambr. The Tynwald held its annual open-air sitting, although the public were asked not to attend. In Westminster, the temporary standing orders allowing remote participation in the Commons were allowed to expire without replacement at the end of May. The House was recalled early from the Whitsun recess to debate how it would carry out its business, with anger from many Members who were unable to attend, due to caring responsibilities or because they had been advised to remain shielding. In tense exchanges in the chamber, the Leader of the House, Jacob Rees-Mogg MP, drew on an argument that goes deep into the meaning of parliamentary space and the role of the legislature:

The rationale for returning to physical proceedings is a straightforward one. Parliament is the assembly of the nation. The public expect it to deliver on the mandate provided by last year's general election, and they expect it to conduct the kind of effective scrutiny that puts ministers under real pressure. Neither expectation can be fully realised while we are not sitting physically. That is why we are returning to work safely at the first opportunity in order fully to conduct the essential business not possible from our homes. This assessment is based on the facts. The stopgap of a hybrid parliament was a

6 HC Deb, 2 Jun 2020, c739

7 HC Deb, 8 Jun 2020, c86

*necessary compromise during the peak of the virus, but, by not being here, the House has not worked effectively on behalf of constituents.*⁸

Rees-Mogg noted that Members would not “be returning to the crowded, bustling chamber of old” as social distancing requirements would remain in place.⁹ Even with limited numbers present in the chamber, however, he stressed the importance of interventions—difficult to achieve using remote participation technology—for the quality of debate. Indeed, “the muted hybrid” House of Commons, had forced “depredations” on Members, who had experienced what was described by his Conservative colleague Andrew Griffith MP as the “‘Coke Zero’ Parliament”.¹⁰ Rees-Mogg added that “much of the business under the hybrid proceedings was deliberately arranged to be non-contentious” which had limited the government’s ability to pursue its legislative agenda.¹¹ A slight concession was made to enable MPs unable to attend in person to participate remotely in scrutiny proceedings only—although this continued to cause frustration among Members unable to contribute to substantive debates or vote on legislation.¹²

The consequences of COVID-19 for voting

It was on the issue of voting that Rees-Mogg expressed his greatest commitment to the primacy of physical proceedings:

*Why should divisions be physical? Why is it important for votes to be physical? It is because we are coming here together as a single parliament and voting on things that have a major effect on people’s lives. Every piece of legislation affects people’s lives one way or another. We should not vote quietly and secretly. [...] We should be confident that we are all individually doing the right thing and voting openly under the eyes of others; voting while enjoying a sunny walk or watching television does democracy an injustice. The solemn decisions we take together affect the lives of millions of people in this country. We ask Members to vote in person for a reason: because it is the heart of what parliament is about.*¹³

Rees-Mogg’s commitment to physical voting led to farcical scenes in Westminster. As MPs divided on the very issue of how to cast their votes, they were required to join queues that snaked around the parliamentary estate in a line dubbed “the Mogg Conga”.¹⁴ The Shadow Leader of the House, Valerie Vaz MP, described how “there were 400 in the division queue, queueing for hours”.¹⁵ Alister Carmichael, a Liberal Democrat MP who had travelled for eighteen hours from his constituency of Orkney and Shetland, and secured an emergency debate on the issue, argued that:

*[...] since the House divided, we have seen the practical outcome of the decision that was made to restore physical attendance to this House. We have seen Members queuing round the block, up the stairs, down the stairs, through Speaker’s Court and in just about every imaginable part of the parliamentary estate. It has not done any great service to the reputation of the House. It has, in fact, exposed us to ridicule around the world.*¹⁶

8 HC Deb, 2 Jun 2020, c726.

9 HC Deb, 20 May 2020, c575

10 HC Deb, 8 Jun 2020, c75; 2 Jun 2020, c728.

11 HC Deb, 2 Jun 2020, c726

12 HC Deb, 2 Jun 2020, c726

13 HC Deb, 2 Jun 2020, c729-731

14 HC Deb, 4 Jun 2020, c1050.

15 HC Deb, 8 Jun 2020, c75-76.

16 HC Deb, 8 Jun 2020, c59.

The response of the government was to expand the proxy voting scheme to include Members unable to attend due to the pandemic. Coupled with the introduction of card readers in the division lobbies, the queue—and spectacle—reduced somewhat, but by September the situation remained unsatisfactory, as Karen Bradley described:

[...] no-one who has queued up to vote in a division recently can possibly claim that social distancing is being scrupulously observed. While senior ministers can shoot through at the front of the queue, their backbench colleagues have to maintain single file social distancing as best they can, in a moving line of several hundred yards meandering up the great staircase from Westminster Hall. Once they have passed the tellers into the space behind the Speaker's chair, they must try to disperse safely.

Of all the House's practices, this appears to be the one during which transmission of the virus is most likely to happen. The authorities in both Houses have done sterling work in establishing a COVID-safe working environment for all users of the parliamentary estate. But that status has been achieved through hard work and a rigorous focus on preventing transmission as far as possible. A cluster of cases, spread via the division queue, would put this status at risk and jeopardise support for the House's core functions. In this context, maintaining a simulacrum of the House's division procedures for the sake of a physical presence on the parliamentary estate hardly seems worth the risk.¹⁷

The continuing disagreement on the issue of divisions in the Commons is in stark contrast to its neighbours across central lobby. The Lords had made emergency arrangements for divisions to be held in the Royal Gallery at the start of the pandemic (the Leader of the Lords noted how this would mean peers who wished to register as 'not content' would be by the depiction of the Battle of Waterloo, in contrast to the content lobby, by the Battle of Trafalgar).¹⁸ By mid-June, however, a remote voting system had been established. The Welsh Parliament enabled individual AMs to vote remotely in July, and Scotland followed suit in August. Northern Ireland, while still not allowing remote voting, has enabled proxy voting to reflect the risks of crowded and cramped division lobbies.

Fundamental changes in the use of parliamentary space in Westminster

Even if the issue of divisions is resolved, it is unarguable that the layout and shape of the Commons chamber is incompatible with the social distancing requirements understood to be necessary to reduce the transmission of the coronavirus. With a vaccine or effective treatment not expected until late 2020, at the earliest, it is necessary to consider how the chamber can operate in the short to medium term. By October 2020, while the Leader of the House noted that "most business in this House takes place physically rather than virtually", the restriction to 50 MPs—just eight per cent of the Commons—remained in place.¹⁹

The decision to maintain a reduced capacity in the chamber was subject to criticism from some Members. David Davis MP argued that the Commons "at its best, is far greater than the sum of its parts" but that the restricted arrangements meant "we have a chamber that does not work", adding:

17 <https://constitution-unit.com/2020/09/23/requiring-mps-to-vote-in-person-during-coronavirus-places-the-institution-of-parliament-at-risk-its-time-to-bring-remote-divisions-back-and-to-plan-for-continued-restrictions/> (Accessed 21 November 2020).

18 HL Deb, 23 Mar 2020, c1637

19 HC Deb, 2 Sept, c253.

*I have watched my colleagues in this chamber make incredibly powerful speeches that would have moved the whole House under normal circumstances, and yet they have exactly the same effect as an adjournment debate speech. That is what is missing; that is the problem. We are in the middle of some of the biggest problems this country has faced in peacetime, and we have a House of Commons that is not functioning. Parliament is not working.*²⁰

It was, Sir Edward Leigh MP suggested, a “zombie parliament”.²¹ Ministers missed having visible — and audible — support in large numbers on the green benches behind them at showpiece moments in the chamber. Even some Members in support of hybrid proceedings admitted that they were suboptimal compared to pre-pandemic times. Across the parliamentary estate more broadly, members of both Houses were unable to hold their usual formal and informal meetings, or even to have all their staff present in Westminster. The use of space in Westminster had changed fundamentally in the space of a few months. As Lord Norton of Louth has discussed, how informal space is used in legislatures has far-reaching and important consequences for socialisation into the institution and mobilising political support.²²

The long-term implications for how parliamentary spaces are used

Despite the grumblings, there has been little discussion about the longer-term implications of the pandemic for how legislatures operate—and the space they use. Nadia Whittome MP, elected in December 2019 at the age of 23 and thus designated the ‘Baby of the House’, was an exception, calling on the Commons:

*[...] to move forward, not ditch our learning from this pandemic, so that we can be a more effective parliament—a more inclusive parliament leading by example on better working practices.*²³

The MPs that have returned to Westminster face daily evidence of the need to consider the future of their surroundings, in the crumbling stonework and failing infrastructure of the Palace of Westminster. A major rebuilding programme—Restoration and Renewal—is due to start later this decade. Pre-pandemic, the programme had intended to replicate faithfully the Commons chamber and division lobbies in neighbouring Richmond House, the proposed location for decant accommodation during the refurbishment. This would require the demolition of much of this Grade II* listed building, in the face of significant opposition.²⁴ If the experience of the pandemic shows that the Commons can operate within a smaller footprint, through the use of remote voting for example (thus removing the need for the lobbies), this may offer significant savings for the taxpayer.

While the unprecedented nature of COVID-19 means it is difficult to predict if pandemics will reoccur, requiring such adjustments to physical sittings of legislatures as we have seen, it is clear that certain designs and layouts would offer more resilience against known and unknown threats. The modular seating proposed by Professor Sarah Childs in her 2016 report ‘The Good Parliament’ would enable the Commons to adapt more quickly if social distancing were to be required in the future — in addition to

20 HC Deb, 2 Sept, c246.

21 HC Deb, 23 Sept, c1069.

22 Norton, P. (2019) ‘Power behind the Scenes: The Importance of Informal Space in Legislatures’, *Parliamentary Affairs*, 72(2) pp. 245-266

23 HC Deb, 8 Jun 2020, c91

24 <https://www.savebritainsheritage.org/campaigns/item/550/Richmond-House-a-building-worth-fighting-for> (Accessed 22 November 2020).

having clear benefits for accessibility.²⁵ Individual desks and a larger chamber would also offer potential ways to help enforce space between Members.

The benefits of rethinking spaces could go far beyond cost savings and resilience, however, and change the culture of the institution. The architecture of parliaments affects what happens within: in his speech calling for the Commons chamber to be rebuilt as before, Churchill uttered lines now famous “We shape our buildings and afterwards our buildings shape us”.²⁶ In a lesser-quoted response, Colonel De Chair told the House that:

*The Prime Minister, in a pregnant phrase, said, “We shape our buildings and our buildings shape us.” That is very true, but do they shape us so very well? They shaped the parliaments which twice failed to prevent world wars [...] We may not, therefore, conclude that the type of building we had before will necessarily produce the most sparkling legislatures in the future.*²⁷

Seven decades later and the negative impact of the building of the Palace of Westminster remains a potential source of concern. In 2019, an independent inquiry into bullying and harassment in the House of Lords explicitly linked the design of the building to behaviour within:

*The Palace of Westminster is not designed to accommodate, or inculcate, modern ways of working. Staff work in small rooms (often housing only two individuals) on long corridors and can be physically distant from their managers and other colleagues. Contributors told me that, in particular when doors are closed, the environment can feel threatening and inappropriate behaviour can go unobserved by colleagues.*²⁸

More broadly, the acoustics, lighting, and artwork all contribute to the atmosphere of the building: an atmosphere that in Westminster is not always considered welcoming. Aileen Walker, then Director of Public Engagement in the Commons, noted in 2012 that while “visiting Parliament makes a strong impact [...] the buildings can be intimidating in their splendour”.²⁹ In contrast, the design of the Scottish Parliament building at Holyrood has been considered to be successful in its aim of making the institution more open and accessible.³⁰ Similarly, the Senedd building in Cardiff has been praised for the sense of transparency in its design that has in turn translated into its proceedings.³¹

The pandemic has forced legislatures to think about their physical surroundings. Given the evidence that the layout, design and décor of legislatures influences how those working inside or visiting the building feel about the institution and how they act within it, planning for post-pandemic parliaments should include a broader assessment of how we want our parliamentarians to be shaped by the buildings in which they serve.

25 <https://www.bristol.ac.uk/media-library/sites/news/2016/july/20%20Jul%20Prof%20Sarah%20Childs%20The%20Good%20Parliament%20report.pdf> (Accessed 22 November 2020).

26 HC Deb, 28 Oct 1943, c403

27 HC Deb, 28 October 1943, c463.

28 <https://www.parliament.uk/globalassets/documents/lords-committees/house-of-lords-commission/2017-19/ellenbogen-report.pdf> (Accessed 22 November 2020).

29 Walker, A. (2012) ‘A People’s Parliament?’ Parliamentary Affairs, 65(1) pp. 270-280. p 274

30 Brown, A. (2000) ‘Designing the Scottish Parliament’, Parliamentary Affairs, 53(3) pp. 542-556; Malley, R. (2012b) ‘Feeling at Home: Inclusion at Westminster and the Scottish Parliament’ The Political Quarterly, (83)4 pp. 714-717; Spring, M. (2010) ‘Scottish Parliament: Miralles’ Magnificent Mess Revisited’, Building Magazine. Available at: <http://www.building.co.uk/scottish-parliament-miralles%E2%80%99-magnificentmess-revisited/3156995.article> (Accessed: 1 August 2019).

31 Rogers, R.G. (2015) ‘The Welsh Assembly’ pp 13-14 in Design Commission Designing Democracy. London: Policy Connect.

18

The construction of the 'Good Parliamentarian' within the House of Commons

Chloe Challender
and Harriet Deane

The construction of the ‘Good Parliamentarian’ within the House of Commons

Chloe Challender and Harriet Deane¹

On 16 March 2020, the Prime Minister addressed the nation from 10 Downing Street. The people of the UK were told to stop all non-essential contact with others and “to start working from home where they possibly can”. Overnight, the pandemic prompted some of the most rapid changes in working practices in living memory, with entire businesses, government departments and public bodies shifting to exclusive home working.

The real life experiment begins

Parliament, as we have seen, was not exempt from these changes. New parliamentary procedures and practices implemented between April and July 2020—for example, participation in chamber proceedings via video conferencing technology—radically altered the ways in which MPs made decisions and scrutinised the executive. Collectively, these new practices would transform the work of an MP. New modes of engagement were often driven by need rather than choice, whether due to the requirement to ‘shield’; to act as a carer; to home-educate; or to avoid long-distance travel. This ‘new normal’ generated discursive accounts of how MPs should act, and more specifically how the ‘good’ and ‘bad’ Westminster MP was constituted during this period.

Introduced as a response to public health guidelines, new practices were implemented via House rules and requirements (notably temporary standing orders), but also by unwritten codes, including the ‘tone’ set by key actors. As with any parliamentary reform, the adoption of institutional changes and their attendant discursive representations were also mediated by convention, expectation and political will.²

Approach to analysis

The Good Parliament

Sarah Childs’s *The Good Parliament* (2016) used a feminist institutionalist approach to subject parliamentary rules, practices and norms to a diversity-sensitive critique, and argued that the House should acknowledge its collective responsibility in driving progressive reforms.³ Informed by Professor

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2 See, for example, Emma Crewe’s *Commons and Lords*, Haus Publishing, London, 2015 (pp. 49-60) for discussion of the “riffs, rhythms and rituals” that help MPs make sense of changing parliamentary dynamics.

3 Professor Sarah Childs, *The Good Parliament*, University of Bristol 2015
[http://www.bristol.ac.uk/media-library/sites/news/2016/july/20 Jul Prof Sarah Childs The Good Parliament report.pdf](http://www.bristol.ac.uk/media-library/sites/news/2016/july/20%20Jul%20Prof%20Sarah%20Childs%20The%20Good%20Parliament%20report.pdf)

Childs's approach, this paper investigates how, through pandemic-induced reforms, parliamentary actors have collectively (re)constituted different modes of 'appropriate' and 'inappropriate' behaviour among MPs—and in so doing, created a model of a 'Good Parliamentarian'.⁴

Research method

Discourse analysis is a qualitative research methodology that focuses attention on the role of language and communication in shaping the social world, including the manner in which they influence social action.⁵ In a political context, discourses 'frame and constrain given courses of action, some of which are promoted as sensible, moral and legitimate [...]. The general public and policymakers are thus guided and constrained as to how they should respond to particular events or crises'.⁶ The methodology 'illuminates the dominant ideas and identifies those who legitimate these ideas'.⁷

It struck us that this approach would act as an illuminating lens through which to examine how a social reality—performing as an MP—was constructed through discourse during the first few months of the pandemic. We established a dataset of debates between 19 March, as lockdown began, and 18 June, shortly after the House resumed physical proceedings.⁸ The transcripts were reviewed for initial themes and then coded systematically.

Structure of this paper

As the House of Commons found itself responding to the effects of COVID-19 on its own ways of working, divisions of opinion about the physical versus hybrid Parliament emerged.⁹ The first section of this Chapter will set out a brief chronology of the key events underpinning the development of competing narratives on what constituted appropriate forms of participation by MPs. The core discourse analysis follows in the second section, setting out the data we have gathered on the dominant construct of the "Good Parliamentarian". This is followed by our reflections on these developments, and what their implications might be for inclusive parliamentary reform.

New modes of engagement at Westminster: chronology and background

Early days

Divisions of opinion about the parliamentary response to COVID-19 began on 25 March, when the House rose for a somewhat contested Easter adjournment.¹⁰ Reluctance about leaving Westminster at a time of crisis was expressed, for example, by Labour MP Peter Kyle, who said "normally in times of crisis, parliament is recalled, not closed down".¹¹ The Leader of the House of Commons and the minister with prime responsibility for the government's management of parliamentary business, Jacob Rees-

4 The paper focuses on the House of Commons in this instance; it is hoped this approach could be applied to the Lords in due course. Childs advocated in 'The Good Parliament' for a range of changes to the manner in which Parliament operates, from trialling sittings of the House around 'normal business hours' to prohibiting single-sex select committee membership, and argued that her recommendations had 'the potential to significantly enhance the effectiveness and legitimacy of the House'.

5 Burnham, P., Gilland Lutz, K., Grant, W. and Layton-Henry, Z. *Research Methods in Politics* (Second Edition). Palgrave Macmillan: 2008.

6 *ibid.*

7 *ibid.*

8 Our dataset consisted of: Business Statements on 19 March, 29 April, 13 May, 20 May, 4 June, 11 June and 18 June, and additional debates on proceedings during the pandemic on 21 April, 2 June and 8 June. In a later section, we also refer to a handful of debates in July and September, for a brief analysis of subsequent events.

9 For example, see urgent debate granted under Standing Order No. 24 held on 8 June, and news of Shadow Disabilities Minister Vicky Foxcroft's online abuse for being "lazy" about shielding.

10 The original date was 31 March.

11 Commons Hansard 25 March 2020 c 349

Mogg, reassured the House that while the it would proceed with the recess, it would return as planned on 21 April: the previous week, he had emphasised the importance of “keep[ing] this House open”¹² and said, “The position of HM Government is that parliament will continue to sit [...] It is a point of significance.”¹³ The House departed for the recess in a state of some uncertainty as to what it would do when it returned.

Hybridity assumed

Uncertainty continued for some time over what form the returning parliament might take.¹⁴ On 16 April, plans for a “hybrid parliament” were announced by the House of Commons Commission. Its proposal, if agreed by the House, provided for physical proceedings for up to 50 socially distanced MPs in the chamber, with screens relaying the contributions of their “virtual” colleagues. The Speaker said this would enable members to “stay close to their communities”.¹⁵ However, with media reports that 500 staff were needed to facilitate the return,¹⁶ the Speaker implored Members to stay away, saying that he did not want to put MPs and House staff at risk, and that “there is no benefit to being here physically. [...] MPs in the chamber will have no more advantage”.¹⁷

On 21 April the House duly returned, with around 18 Members present for the opening of business. The Speaker exceptionally allowed the Leader to move two motions about proceedings without formal notice. The ensuing debate arguably set the tone for how appropriate modes of parliamentary engagement would be constituted over the coming months. The Leader emphasised the extraordinary, temporary nature of hybrid proceedings, and underlined that “the chamber works best when it can meet *in person*”.¹⁸ The Leader cited Members’ “right of uninterrupted, unhindered access to Parliament since 1340 [...] one of our most ancient and precious rights”.¹⁹

Both motions were agreed. The next day, Wales questions made history as the first hybrid session. It was perhaps significant that the answering Secretary of State, Simon Hart, took the decision to appear remotely—counter to prevailing wisdom that Ministers would appear in person.²⁰ The numbers in the chamber were small, and well under the maximum of 50. The smooth running of the session, with just one technology outage, was repeated at Prime Minister’s questions at noon.

Strong opinions about the hybrid model were evident from the start. While the BBC’s Mark D’Arcy (see below) was impressed by the potential benefits of virtual appearances (‘We could see the play of emotions across Mr Hart’s face, full screen. Every twitch or semi-grimace was there. You don’t normally see the tensions and emotions of parliamentary questions displayed so raw’),²¹ others raised questions about whether operating remotely diminished the ministerial role. The former Special Adviser Greg Power highlighted that ‘the sheer presence of the place when fully-occupied has a concentrating effect on ministers. And a ministerial ability to read the mood of the place and to hold the floor of the chamber—or not—has been a key factor in determining the outcome of numerous critical debates over recent decades [...] A half-empty chamber is unlikely to carry the same political heft’.²²

12 Commons Hansard 19 March 2020 c 1182

13 Commons Hansard 19 March 2020 c 1172

14 Letter from the Procedure Committee to the Speaker, 6 April 2020

15 Commons press release, 16 April 2020, ‘House of Commons takes historic first step towards virtual proceedings’

16 *The Times*, 17 April 2020 ‘Coronavirus: MPs urged to stay at home next week when parliament meets virtually’

17 *The Sunday Telegraph*, 18 April 2020, ‘Stay away from Parliament, Commons speaker warns MPs’

18 Commons Hansard 21 April 2020 c 8

19 Commons Hansard 21 April 2020 c 22

20 In his *Sunday Telegraph* article, the Speaker said “The cameras will be on me, the minister at the Despatch box and the person asking the question, whether he or she is in the chamber, or sat with their laptop or iPad in their kitchen”. 18 April 2020, ‘Stay away from Parliament, Commons speaker warns MPs’.

21 Mark d’Arcy, Review: Virtual PMQs sort of worked (BBC website, 22 April)

22 <https://constitution-unit.com/2020/04/22/can-analogue-politics-work-in-an-era-of-digital-scrutiny-the-negative-effect-of-covid-19-on-the-informal-politics-of-westminster/>

On 27-28 April, the first substantive (legislative) proceedings were held, with the second readings of the Finance Bill and the Domestic Abuse Bill. Again, both ran smoothly. Substantive and scrutiny proceedings continued in the same way until just over a month later. This period also included the use of remote voting in an experiment that extended over two sitting weeks.²³

In an interview on 1 May, the Leader rebutted practical arguments about the hybrid model and criticised his opponents, saying that “it’s not really that hard to get down even from the furthest parts of the United Kingdom”; asserting: “If people don’t want to be MPs, nobody’s forcing them to stand for Parliament”; and suggesting that members who supported permanent remote working were “basically saying that they don’t want to be involved in Parliament”.²⁴

Hybridity lost and regained

On 2 June, a vote was held on a motion to resume the physical House. The House divided in favour of ending hybrid proceedings, and agreed to end remote voting. Voting arrangements were adapted so that social distancing could be observed: MPs were required to form a queue and file through the chamber.²⁵

The physical return following 2 June was characterised by collective anxiety. The Equality and Human Rights Commission wrote to the Clerk to express concern over MPs who were shielding or had disabilities.²⁶ The Business Secretary, Alok Sharma, was taken ill at the despatch box on the 3 June and tested for COVID-19. While the result was negative, it was preceded by a nerve wracking 24 hours. On top of this, long queues developed as the House trialed a new form of divisions. The Shadow Leader’s assessment on 4 June was highly critical:

*The image of our Parliament is going to live with this Government forever—time wasting, Shambolic, breaking the rules, putting people’s lives at risk [...] This is discriminatory towards hon. Members. The Leader of the House has disenfranchised hon. Members. Quite frankly, it is disgraceful and it has brought Parliament into disrepute.*²⁷

The SNP and Liberal Democrats associated themselves with her concerns.²⁸ The Leader defended the decision, drawing on notions of public duty and of the need for “key workers” to be present, adding that “We should lead by example”.²⁹ In the next section, we will expand on these themes and set out the supporting discourse analysis.

Constituting the “good” and “bad” MP: discourse analysis

In this section, we will set out how the “Good Parliamentarian” was constructed during the first months of the pandemic as proudly traditional, favouring presence in parliament and physical participation over technological innovation and flexible working. Parliamentarians subscribing to the model utilised historical analogies, narratives of tradition and appeals to a sense of “public duty” in order to construct

23 Remote voting was introduced in the House of Commons as temporary arrangements to enable remote participation were extended on 12 May 2020. These temporary arrangements expired on 20 May 2020.

24 Institute for Government podcast

25 On 16 June 2020, in a bid to reduce queuing times, the Speaker announced that the House would implement a pass-reader system for registering MPs’ votes in the division lobbies.

26 Letter published on Twitter, 2 June

27 Commons Hansard 4 June 2020 c 1040

28 Commons Hansard 4 June 2020 c 1044 and Commons Hansard Vol 4 June 2020 c 1047

29 Commons Hansard 4 June 2020 c 1042

MPs' physical presence in parliament as essential. In this model the Good Parliamentarian stands in opposition to a clear counter-narrative promoting the ability of MPs to undertake their duties remotely, with proponents of the dominant model denigrating such approaches as "work-shy".

Public duty and leading by example

A number of discursive themes were drawn upon to construct the narrative of "The Good Parliamentarian". The first of these, concerning the language of public duty, responsible citizenry and responsibility, was deployed frequently to assert that MPs' physical presence in parliament was not only the preferred option, but essential to the functioning of UK democracy. The Leader urged Members to:

[...] get the balance right between what can be done by shielding MPs and what allows Parliament to carry on doing its job. [...] it is our responsibility to consider Parliament's work as a whole—not just the duties of individual MPs, but the duties of our Parliament to the British people. [Leader of the House, 8 June]

He also spoke regularly of what he considered to be the public's expectations:

Parliament is the assembly of the nation. The public expect it to deliver on the mandate provided by last year's general election, and they expect it to conduct the kind of effective scrutiny that puts Ministers under real pressure. Neither expectation can be fully realised while we are not sitting physically. [Leader of the House, 2 June]

Responding to criticism of the abandonment of remote voting on 4 June, the Leader again spoke to these notions of duty, suggesting that Members had a binary choice between serving the public through their physical presence and staying away:

I think it is fairly obvious why we were queuing [to vote]: we were queuing because we have our democratic duty to do [...] We made commitments to the British people in December to get Bills through Parliament. [Leader of the House, 4 June]

Similarly, hybrid opponents spoke frequently of the importance of "leading by example", drawing comparisons between MPs' presence and that of key workers:

The burden is on us as Members of Parliament [...] we are like the rest of the country in these circumstances. [Leader of the House, 20 May]

We should lead by example. Across the country, people are going back to work. [...] How can we look teachers in our constituencies in the eye when we are asking them to go back to work and saying that we are not willing to? [Leader of the House, 4 June]

Narratives of tradition

Another narrative tool sought to position the pandemic in the context of centuries of disruptive events, throughout which the House has continued to meet—challenging any notion that the extraordinary events of the pandemic should require a different approach. The Leader of the House referred repeatedly to the "ancient" and "unhindered" right of access to Parliament since 1340, drawing on the language of heritage and tradition to argue against more modern working practices, which he tended to elide with remote working:

[...] we have all had a right of uninterrupted, unhindered access to Parliament since 1340. It is one of our most ancient and precious rights. [Leader of the House, 21 April]

It is of great antiquity that we have a right to attend Parliament; it goes back to 1340. [Leader of the House, 29 April]

The ancient right to attend Parliament goes back to 1340, [...] It is a most important and long-standing right. There must always be an exemption for Members to attend Parliament. [Leader of the House, 2 June]

[...] there is an absolute right of Members to attend Parliament. It is a most antique right. It predates the Stuarts and, as I keep on saying, it goes back to 1340. [Leader of the House, 2 June]

Supportive MPs also drew on historical analogies, even using etymological arguments to construct members' physical presence in parliament as essential:

Since the 16th century, this chamber and its predecessors have been the absolute focus of the House's life. Our procedures are founded on the principle that everything is done in the chamber. That is a sound principle. Members rely on face-to-face communication. The word "parliament" comes from the French "parler". [Karen Bradley MP, 2 June]

I do not pretend to be a historian ... but I am sure that during the blitz of 1940, Parliament would sit in the morning [...] So in this fight with coronavirus, is it not right that we come and sit in this House and do our duty? [Jonathan Gullis MP, 8 June]

A second-rate parliament

In contrast to the normal cut-and-thrust of debate, intervention and division, the hybrid Parliament was variously described as inadequate, falling short, providing ineffective scrutiny, and failing to deliver for Members' constituents. In this way, it was constructed as thoroughly "second-rate":

Does my right hon. Friend [...] understand my incomprehension that Opposition Members want to continue with this "Coke Zero" Parliament for one more day, when we could resume our job of holding the Government to account? [Andrew Griffith MP, 2 June]

The hybrid Parliament is a great achievement, but I am sure that the Leader of the House agrees that it does not come close to replicating the true cut and thrust of proper Commons debate, with interventions and so on. [Kevin Brennan MP, 29 April]

On 21 April, the choice was a Zoom Parliament, or no Parliament. [...] However, we also recognised its inadequacy. Hybridity was not sufficient. [Leader of the House, 8 June]

The otherwise implied links between the second-rate parliament and the second-rate parliamentarian were made more explicit on 13 May, when the Leader responded to calls for hybrid proceedings to be extended:

We have heard it from the Scottish shadow spokesman, when he says that a virtual parliament is a second-rate parliament. He wants us all to be second-rate, whereas I want us all to be first-rate—to get back to being a proper parliament because democracy is essential. What we do is essential. [Leader of the House, 13 May]

On 2 June, Graham Stringer MP drew on the arguably masculinised language of “full-blooded” virility to call for normal business to resume and allow the House to ‘do its job properly’:

At the present time, we have, in this country, some of the most authoritarian legislation that we have ever had for reasons that are both understandable and credible. That means that, as a House, we have not been having that thorough full-blooded debate where people can change their mind and vote at the end of the debate. [Graham Stringer MP, 2 June]

On 8 June, the Leader used similarly dynamic language to condemn the hybrid proceedings:

Rather than suffering the depredations of the muted hybrid parliament, we are once again talking to each other in ways that were impossible when we were scattered to the four winds. Rather than wading through the treacle of the hybrid proceedings, which even the right hon. Member for Orkney and Shetland said were far from perfect, we are once again fleet of foot and dancing a legislative quickstep. [Leader of the House, 8 June]

Corridor conversations

Linked to the construction of the second-rate Parliament was the value placed on “corridor conversations”—the informal interactions through which unofficial scrutiny and debate is conducted:

I have enjoyed the formalised interventions in this speech just as much as I enjoy the informal interventions of Members putting their socially distanced heads around my door. [Leader of the House, 8 June]

The Chair of the Procedure Committee went as far as suggesting that it was through these exchanges that Members could best deliver for their constituents:

I know how much easier it would have been at times to have been in this place, not just in the chamber, questioning Ministers and getting answers on the record, but seeing colleagues in the corridors, meeting them in the Tea Room or outside our offices while making a cup of tea—or whatever it is we are doing. That is the best way that parliamentarians, elected by their constituents to represent them in Westminster, can deliver. The next few days, weeks, and possibly months, will be a substitute for that, but it will in no way compensate for the lack of spontaneity or ability to feed off each other. [Karen Bradley MP, 21 April]

Denigrating reformers

Another narrative tool identifiable from our discourse analysis, used extensively by those constructing the dominant model of presenteeism, was the denigration of reform. For advocates of physical presenteeism, those favouring the hybrid model were using the pandemic to avoid a return to proper parliamentary scrutiny:

... Many in the civil service and Government would be quite happy if parliament was less effective in holding them to account. Some Members, I would say, perhaps get the balance wrong between working for their constituents, which is a hugely important and essential part of the job, and running the country and actually asking questions here in parliament. [John Spellar MP, 21 April]

The idea that our democratic system is not an essential one—is not the lifeblood of our nation and is not how the government are held to account at a time of crisis—is one that is surprising. It is extraordinary that it should be held by opposition members; that they should not wish to be here, challenging the government and holding them to account; and that they wish to hide behind a veneer of virtual parliament, so that legislation is not progressed with. [Leader of the House, 13 May]

We need a clearer idea of the necessary conditions that will enable us to come out of these measures, because otherwise there will always be a tendency for some of the groups I have described to find reasons for just continuing with the status quo, rather than getting this House back to its position at the heart of the debate and political life of this nation. [John Spellar MP, 21 April]

The undertone was one of implied avoidance on the part of those pushing for a continuation of hybrid proceedings. Their representations were constructed as actively favouring a second-rate approach—characterised on Twitter by Henry Smith MP as ‘work-shy’³⁰—to democratic engagement and scrutiny, obstructing the government’s legislative agenda and failing properly to represent their constituents. At the point of decision on 2 June, the Leader argued against hybrid proceedings on the basis that “voting while enjoying a sunny walk or watching television does democracy an injustice”.³¹

An enduring model of presenteeism?

At the time of writing, physical presenteeism appears to be enduring, rather than subsiding. The House’s return on 2 September saw a further extension to hybrid proceedings (until 3 November), but the tone of the debate tended towards reluctance rather than embracing the new way of working. Karen Bradley MP characterised hybridity as “sub-optimal”; David Davis MP went further, using historical comparison to categorise it as damaging: “I have been in the House for 33 years [...] This is the weakest House of Commons that I have ever seen. It does not do its job”.³² Desmond Swayne MP took the possibly symbolic step of participating from the SNP benches, physically demonstrating the frustrations of lack of space.³³

30 Tweet by Henry Smith MP, 21 May 2020

31 Commons Hansard 2 June 2020 c 731

32 Commons Hansard, 2 September 2020 c 246

33 The lack of space on the Conservative benches was disputed by some Twitter sources.

In the same debate, independent MP Dr Julian Lewis said that “spontaneity has gone [...] and if a Member is unlucky in a ballot, their voice is silenced”. At PMQs on 2 September, when asked about fully restoring virtual proceedings by Labour MP Geraint Davies, the Prime Minister replied that he should “return from New York, Shanghai or wherever he is and join us in this House as fast as he can. Actually, what the people of this country want to see is their representatives back on their seats as fast as possible in the Palace of Westminster”.³⁴

Implications for parliamentary reform: discussion and conclusions

Like other chambers described in this volume, the House of Commons responded to the pandemic with innovative and inclusive working practices and rapid adaptations to centuries-old processes and infrastructure.³⁵ Parliamentary staff drew regular praise from members for their operational support for these developments, including from those who opposed the hybrid parliament. Nevertheless, the emergence of the dominant construct of the “Good Parliamentarian” as being physically present has profound implications for the cultural acceptability of inclusive practices. Moreover, it should be noted that, not only did the benefits of hybridity fail to emerge as a prevailing theme, but reforms to new ways of working were openly denigrated. The ability of the House to adopt progressive reforms in the near future is further constrained by a gap in the institutional architecture; without the House “bureau” referred to elsewhere in this collection, or the Speaker’s Reference Group that grew out of The Good Parliament report, but that wound up in 2019, there is no existing structure to co-ordinate thinking about reform, or to press for action.

That said, presenteeism did not go unchallenged. Right from the outset, it was clear that MPs found advantages in the hybrid model. Conservative MP Laura Trott said it “could bring benefits for those who have caring responsibilities, health conditions and other access requirements”.³⁶ The SNP’s Ian Blackford MP argued that it enabled MPs to deal with the “thousands of emails” they had received from constituents, and to fulfil the “need and desire” to be able to assist them, while retaining “the ability to do our jobs of challenging the government remotely and effectively”.³⁷ Perhaps the most vivid depiction of the problems with presenteeism was articulated by Robert Halfon MP, ahead of the ending of hybrid measures on 2 June. Unable to attend parliament due to shielding, he declared himself a “parliamentary eunuch”—that is, literally emasculated—as a result.³⁸ The tweeted image of Conservative MP Jonathan Gullis rocking his new baby while questioning Ofqual, via remote participation in the Education Committee hearing, was another evocative image of the benefits of remote participation.³⁹

Indeed, an increasingly impassioned counter-narrative emerged—at times from high-profile sources. For example, just four days after the Prime Minister’s critical comment, noted above, the Speaker stated unequivocally on a radio programme that if MPs could work from home, they should.⁴⁰ On 8 June, the Shadow Leader employed a myth-busting approach to challenging the dominant narrative, including the suggestion that “the House does not work effectively on behalf of our constituents”:

34 Commons Hansard, 2 September 2020 c 162

35 The changes were usefully summarised on 16 September 2020 by the House of Commons Library.

36 Commons Hansard 29 April 2020 c 344

37 Commons Hansard 2 June 2020 c 742

38 29 May 2020, ‘Britain is in a national emergency. So why are ill and disabled MPs being prevented from doing their jobs?’, <https://www.politicshome.com/thehouse/article/mps-must-not-be-denied-the-right-to-do-their-job>

39 <https://twitter.com/SophiaSleigh/status/130108513595834776?s=20>

40 <https://twitter.com/nickardleybbc/status/1302558333157679106?s=20>

[...] we do, and we are. Whether it concerns constituents stranded abroad, furloughing or businesses, we have been working here, and we have debated and voted like we always do.

Our discourse analysis incorporated this counter-narrative, although we were unable to do it justice here, focusing instead on the dominant narrative. We found that the language of fairness and equality was employed to challenge the notion of presenteeism, highlighting the disproportionate impact of this approach on those with healthcare and childcare needs. Curiously, in the transcripts we examined, there was little mention of the benefits of hybridity outlined elsewhere in this collection, most notably by Ben Lake MP in chapter 11. While noting the profound challenges generated by remote working, such as the difficulty of reaching constituents who are not 'IT-savvy', Ben Lake also notes the improvements to his communication with local civic and public sector leaders, such as the health board and the police. Indeed, the debates examined featured little mention of the benefits of remote working for constituents or constituency work more broadly. The focus on core parliamentary duties (namely the scrutiny of national government) is perhaps typical of Westminster debates, but the levels of denigration against those who favoured hybridity was stronger than expected.

Why did this remain a secondary, subordinate counter-narrative, and why was the specific construction of physical presence as essential foregrounded? Further, why were reforms actively denigrated? And why was physical presence given such prominence given that parliament's physical setting was so changed, with communal areas such as Portcullis House hollowed-out due to social distancing, and the ability to confer in corridors, bars and meeting rooms constrained? Alex Meakin's chapter 17 in this collection helps probe this last question. Further work on the critical geography of the Covid Parliament would be fascinating. Why was such an emphasis placed on being physically present when little in-person collaboration was possible in the building?

All these questions are complex in nature and take us back to our earlier statement: that parliamentary change is always mediated by convention, expectation and political will. The answer no doubt lies in the complex web of inequalities, behaviours and facts of history interrogated by Childs, Crewe and other analysts of parliamentary change.⁴¹ It is beyond the remit of this paper to examine these factors in more detail, or the question of who drives change, and whether this change should be on a collective/institutional basis (via the Commission and/or the House Service) or an individual one (via the actions of MPs themselves).⁴²

A fascinating follow-up piece of work to this paper could explore these issues in further detail, and posit a more detailed explanation of why this counter-narrative remained a secondary theme. It could also assess early indications that the House is becoming an outlier, even among traditional institutions, in its resistance to remote working—and whether challenges to flexible working within the political sphere will affect the working culture within the administrative sphere of the House of Commons. A recent email from the Chief Executive of Goldman Sachs to employees highlighted the importance of juggling a rotational return to the office with other considerations, including 'planning around adjusted school schedules, managing personal and family health conditions, and not being comfortable commuting to the office during peak hours'.⁴³ Magic Circle law firms have begun permitting staff to come into offices if they

41 See Childs, n3.

42 See Childs, n3 and Crewe, n2.

43 <https://www.theguardian.com/business/2020/sep/09/goldman-sachs-return-to-work-coronavirus-office#:~:text=Goldman%20Sachs%20announces%20return%20to%20work%20after%20coronavirus%20office%20closures,-CEO%20David%20Solomon&text=Goldman%20Sachs%20is%20going%20back,March%20amid%20the%20coronavirus%20pandemic.>

find it challenging to work from home, but are reportedly prioritising social distancing and responding to staff surveys.⁴⁴ In contrast, the emphasis in the House has been on physical return of MPs as a priority that trumps all others. Of course, the working practices of elected officials cannot be equated to bankers or lawyers, but there may be useful comparisons to be drawn nevertheless.

The narrative of presenteeism within parliament did not stem from a deliberate motive of anti-inclusion. Indeed, the limitations of hybridity cannot easily be dismissed, and many have openly acknowledged the downsides of remote working. But the emphasis on traditionalism and “small-c” conservatism, and the denigration of reform, have had the cumulative effect of narrowing, or even closing, a possible window of progressive reform around remote working. It remains to be seen whether this window will re-open—though the current lack of an appropriate institutional vehicle for the governance of the House of Commons may constrain this. The fact that remote voting has been successfully trialled, for example, may take on a future significance. Perhaps then the “Good Parliamentarian” will then be constructed rather differently, with flexible, modern working practices the dominant theme, and an abiding physical presence in parliament no longer constructed as essential.

44 Remote and virtual working has created challenges across institutions and professions. Reported data from multiple surveys suggests that about half of all respondents miss the social interaction they gain from office work, and the majority plan to return to offices (at least part-time) when possible (<https://www.law.com/2020/06/17/magic-circle-firms-prepare-to-reappear-in-london-bases-292-69256/?slreturn=20200814132006>). The impact of covid-19 on the world of work has been fundamental, but the trend is likely to be towards greater flexibility, rather than ‘remote by default’.

19

The Crown Dependencies

Mark Egan, Simon Ross
and Jonathan King



The Crown Dependencies

Mark Egan, Simon Ross and Jonathan King¹

Introduction

This chapter deals with how the parliamentary systems in the three Crown Dependencies – Guernsey, Jersey and the Isle of Man – responded to the challenges posed by COVID-19. The Crown Dependencies are largely autonomous territories in the British Isles, with ancient ties to the Crown. The first part of the chapter briefly describes the constitutional position and parliamentary systems in each Crown Dependency, after which the effect of COVID-19 on parliamentary politics in the various islands is discussed. Jersey took a different approach to managing COVID-19 compared to Guernsey and the Isle of Man, which continues to affect the Island’s legislature. Finally, the potential long-term effects of COVID-19 on the legislatures are considered.

The Crown Dependencies

Guernsey

Guernsey’s relationship with the British Crown derives from its origins as part of the Duchy of Normandy. When King John lost continental Normandy to the French King Philippe Auguste, who absorbed the Duchy back into the realm of France in 1204, the Channel Islands retained their links with the English Crown. In order to keep their loyalty, the Islands were confirmed in their ability to try their own criminals, develop their own laws (derived from the customary laws of Normandy) and to raise their own taxes. The States Assembly has provided the government and the legislature of Guernsey since the early middle ages. For most of that time it was a periodic gathering of the three estates of law, clergy and land. This body, which had a wide range of legislative powers and was closely entwined with the Island’s court, emerged as an identifiable parliament in the modern sense in the 1890s.

Owing to its historic links with the Island’s legal system, the Presiding Officer of the States of Guernsey is the Bailiff of Guernsey, who is the Island’s Chief Justice. The parliament meets in the Island’s courthouse and, until earlier this year when a full time clerk was appointed, was clerked by the registrar of the Island’s courts.

The States is made up of 38 Members, who from October 2020, are all elected to represent a single, Island-wide constituency. In addition, two Members of the States of Alderney, an entirely separate legislature, sit in the States of Guernsey to represent the interests of their island. There is a convention that they only vote on matters relating to Alderney. In reality they vote on most issues before the States and are the Channel Islands’ own version of the West Lothian question. Since the October general

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election two political parties have been represented in the Assembly, the Guernsey Party and the Guernsey Partnership of Independents. It is not yet clear what effect the existence of these two parties will have on the Assembly.

The States are both the legislature and the government, sitting simultaneously as a parliament and as a large committee of government. Matters are delegated to committees made up of Members and staffed by departments of civil servants. The senior committee is the Policy & Resources Committee which oversees financial and budgetary matters and whose president is effectively the Chief Minister. The majority of time in the States is taken up by consideration of policy letters and propositions put forward by executive committees. Primary legislation must be approved by the Privy Council before it comes into effect: in terms of secondary legislation the Bailiwick is entirely autonomous. The States usually sits for 28 days each year; by 30 September it had sat for 41 days.

Jersey

Like Guernsey, Jersey is British by virtue of King John losing Normandy to the French and the islanders siding with the English Crown in return for keeping control of their own legal and political systems. The States of Jersey was in existence by the early sixteenth century but for a long period both the States and the Royal Court could make law. This situation changed in 1771 when, after a period of civil unrest, the States was acknowledged as the only body in Jersey capable of passing legislation. As with Guernsey, primary legislation must be approved by the Privy Council before it takes effect, but in other respects the Island is autonomous.

There are 49 Members of the States: eight Senators, elected by the whole Island, twelve parish constables, and 29 deputies, representing parishes or districts within parishes. Since 2005 Jersey has been governed by a ministerial system. The number of ministers and assistant ministers is set by standing orders not to exceed 21 so that Jersey has an entrenched minority government. There is one political party represented in the States: most members are elected as independents.

Jersey has a scrutiny system based on Westminster's select committee model. Ministers and assistant ministers are prohibited from serving on scrutiny committees. Around one half of the time spent debating legislation and propositions is taken up by ministerial policy and legislation, with the rest being matters raised backbenchers, which are easier to bring forward for debate than in Guernsey

The Bailiff of Jersey is the President of the States, a situation which is frequently challenged by proponents of an elected speakership. The States has had its own Greffier, separate from the court service, since the 1930s, and the States Greffe now includes research and public engagement teams.

Isle of Man

While the Manx parliament traces its antecedents to the tenth century during the period of Norse rule, the Isle of Man's status as a Crown Dependency is a more recent development. When Norse influence declined, rights over the Island passed in the thirteenth century to Scotland and in the fourteenth century to England. The lordship of Man was given to the Stanley family in 1405 and was revested in the Crown in 1765.

The Isle of Man has a uniquely tricameral system. The House of Keys is made up of 24 constituency representatives; the Legislative Council has eight members elected by the House of Keys, sitting together with the Bishop of Sodor and Man, HM Attorney General for the Isle of Man, and the President of Tynwald. Primary legislation normally passes through four stages in each of these two branches. When

the two bodies sit together they make up Tynwald Court, which is responsible for policy, finance and secondary legislation. As with the other Crown Dependencies, primary legislation must be approved by the Privy Council before it comes into force, although in the Isle of Man approval can be given by the Lieutenant Governor under delegated powers.

Most Members are political independents. The Chief Minister and eight Ministers (together constituting the Council of Ministers) are Tynwald Members. Most other Tynwald Members are by convention appointed as “Members of Departments” but are nevertheless known as backbenchers. They are bound by collective responsibility within their Department but remain entitled to speak and vote against parliamentary motions moved on behalf of other Departments. Backbenchers sit on the five permanent scrutiny committees as well as on ad hoc select committees.

The Manx legislature has two presiding officers. The President of Tynwald is elected from among the existing Members of Tynwald and serves a personal five-year term ending just before the general election to the Keys. The Speaker of the House of Keys is elected from among the 24 Members of the House of Keys immediately after the general election. The Clerk of Tynwald’s Office was formally separated from the Isle of Man civil service in 1990 and provides the full range of services expected in a modern parliament.

Going remote

From the start of the crisis caused by the pandemic, Jersey differed in its approach compared to the other Crown Dependencies. Guernsey and the Isle of Man invoked emergency powers, on 12 and 16 March respectively. This gave ministers in both jurisdictions access to extensive powers to legislate in response to rapidly changing circumstances. In Jersey, no state of emergency was declared and although its Emergencies Council met frequently it did not exercise decision-making powers.

Consequently, the legislatures in both Guernsey and the Isle of Man were called upon to debate and approve regulations which had already come into effect. However, in Jersey, legislation to tackle COVID-19 had to be tabled and debated in the normal way, putting considerable additional strain on the States.

The immediate challenge in all three Crown Dependencies was to address the high quorum requirements which risked putting the legislature out of action, especially if any of the islands were badly affected by infection. In Jersey, over one half of the 49 members must be present in order for the States to meet. This requirement was set out in primary legislation and could not be varied quickly, given the need for Privy Council approval. Instead, Jersey’s Privileges and Procedures Committee proposed a new Standing Order which enabled the roll call of Members “present” at the start of each sitting to include Members “participating by means of electronic communication”, although it was not clear at that stage how this would work. Crucially, Members participating remotely had to be able to speak and vote on the same basis as those physically present. The new Standing Order was adopted on 18 March at the last ‘normal’ sitting in the States Chamber.

In the Isle of Man, similar quorum rules require more than half of the Members to be present for a sitting to take place; but these rules are in Standing Orders and not in primary legislation. The Manx approach to the problem of achieving a quorum was pragmatic: at the beginning of every virtual sitting a resolution was made “That Standing Orders be suspended to the extent necessary to take this sitting virtually”. A motion was tabled in late March which would have enabled a presiding officer to reduce the quorum in the

event of a shortage of available Members. This could have run alongside the virtual chamber or as an alternative to it; however, it did not find favour and was defeated on a division during the first virtual sitting. In Jersey and Guernsey, no such proposal was ever made.

In contrast, Guernsey introduced more relaxed rules on proxy voting. The ability of a member with responsibilities in respect of childbirth, care of an infant or a recent adoption to apply for a proxy vote was extended to those who, following advice, were taking precautionary self-isolating measures and subsequently to those whose IT equipment was not working properly. The States moved out of the Royal Court to sit in a nearby concert venue on 18 March, with two metres' physical distancing applied. The move was successful and the States of Guernsey sat physically in this location on one occasion.

In the Isle of Man the presiding officers closed the Legislative Buildings to the public on 23 March, encouraged parliamentary committees to work remotely, and arranged for Tynwald Court to sit with new seating plans which allowed for social distancing at two metres. This seating plan was used on three occasions but proved unpopular with Members. The States of Jersey moved to a sports hall in Fort Regent for two sittings, where the handful of Members already shielding from COVID-19 began to pilot arrangements for them to participate remotely. However, the venue was unheated and meetings were costly to set up because of the need to hire broadcasting equipment.

On 23 March, there was no immediate prospect of any of the Crown Dependency legislatures holding fully virtual sittings and no agreed way of making it happen. However, at the end of the sitting on 27 March, Deputy Russell Labey, chair of Jersey's Privileges and Procedures Committee, announced that the next sitting, just six days later, would take place entirely online. Similarly, as late as 30 March, the presiding officers in the Isle of Man were emphasising in a media release circulated to Members the importance of maintaining physical sittings; but the next day the President announced an intention to operate virtually on 3 April. Some tentative preparation had been undertaken by staff in anticipation of such a move; but the decision to change course, when it came, was made by the President personally taking into account advice from both inside and outside Tynwald.

The technical basis for the virtual chamber in the Isle of Man was a Microsoft Teams audio call. It was operated from the Legislative Council Chamber, which enabled sound to be fed to Manx Radio for broadcast, streamed via the Tynwald website, and recorded for Hansard – in all three cases using the existing audio installation. Voting was done via the chat function. Although it had been set up extremely quickly – and was described by Mr Speaker Watterson in a blog post for the Electoral Reform Society as “a bit Heath Robinson” – the system performed well and required very little alteration as the weeks progressed.

Certain public proceedings of the Manx legislature have been broadcast by Manx Radio since the 1980s, and all have been audio webcast since 2014; but they have never been televised or comprehensively video-streamed. For this reason the “audio only” virtual chamber was sufficient to replicate the normal, “audio-only” output of the legislature's three physical chambers.

In Jersey, by contrast, the Teams Live functionality was used to enable the meetings to be broadcast live (or almost live) online. Teams Live enables a ‘producer’ – one of the Greffe staff – to control the image shown on the broadcast. Members can choose to turn on their webcams to be shown speaking. The audio output was broadcast on BBC radio as normal. At the first meeting, on 3 April, unfamiliarity with the software and slow-running because too many Members turned on their webcams simultaneously, led to an image of the presiding officer being shown for the entire meeting. At later meetings, photographs of those Members not using webcams were broadcast.

The first remote meeting of the States of Guernsey took place on 14 April. During the virtual sittings of the States, as well as the traditional BBC Guernsey radio broadcast, an audio live stream was transmitted on the internet via Teams Live. When normal sittings were resumed it was decided to keep the internet livestream running alongside the radio broadcast. Not only did this development enhance the outreach of the States but the internet broadcast could be accompanied by live display information about the debate and the items under consideration. Internet debates are now stored on the States website together with the accompanying meeting information.

How was it for us?

The main advantage of the move to remote sittings was that it permitted participation by all Members on an equal footing at a time when restrictions were in place on movement around the three jurisdictions and on the holding of events and gatherings. Although exemptions which would have allowed Tynwald to sit physically were built into the statutory framework at all times, some Members had genuine concerns about the safety of socially distanced physical sittings; and at a political level it was important to Members to show leadership by adapting to the new circumstances faced by the whole Island. States Members in Jersey were classed as essential workers and could have continued with physical meetings but did not do so for the same reasons as in the Isle of Man. Guernsey's States Members were not treated as essential workers and were not legally permitted to meet together.

The significance of permitting continued participation by all Members must be understood in the context of parliamentary traditions in which every Member must be present at every sitting; every Member has the right to question every statement, ask supplementaries to every question, and speak in every debate; and every Member is obliged to vote on every motion.

Remote sittings worked remarkably well in terms of technology. After some rehearsals and one to one sessions with Members who struggled with the technology, most of the virtual sessions had a 100% attendance record. Procedure needed adapting less than was anticipated and although some rules, such as ones requiring Members to stand in their place, had to be abandoned, meetings largely followed the order and shape of a normal meeting. In Guernsey, the tradition of voting either by voice or by roll call was easily adapted to the technology of a virtual meeting. A vote on the voices was indicated by Members typing *pour* or *contre* into the chat function and a roll call vote was taken in the normal way. Only on one occasion when an individual Member's technology failed at the point of casting a vote was the vote challenged and, upon the technology being restored, a repeat vote held. Jersey has an electronic voting system and, after some experimenting with the use of the chat function, was replicated by the use of Microsoft Forms. In the Isle of Man the equivalent of a vote on the voices was taken by the presiding officer assuming a vote was carried unless a Member typed "dissent" in the chat function. If and only if dissent was notified, Members voted by typing "yes" or "no"; this system lacked the simultaneity of the electronic voting system normally used in Tynwald but the risk of a Member tactically delaying their vote was not thought to be significant.

The practical disadvantages of operating remotely are well understood by anyone who has participated in a remote meeting. Even on a video call between two individuals it can be difficult to read body language and to pick up on non-verbal cues. These problems were exacerbated in the case of the Manx virtual chamber, which was an audio-only call with 35 participants.

In terms of parliamentary practice the outcome was a more stilted style of debate, very different from the conversational style which Tynwald Members are used to. Interventions, in particular, were difficult to

handle. Although Members could at any time write “intervene” in the chat box on Teams, the Member speaking did not necessarily see this. The presiding officer had to wait until the speaker paused for breath in order to interrupt and ask if the speaker would give way. However, in Jersey, the presiding officers became adept at managing the chat, including enabling points of order and points of clarification to be heard at any time. Many Members commented that debate in virtual meetings seemed little different to debate in the chamber.

It was noticeable in Guernsey that debates lasted longer than when Members met physically, although whether this was a strength or weakness of the new arrangements is perhaps for debate. Members’ tendency to read out pre-prepared speeches was aggravated by the move to virtual sittings. Without any ability to read other Members in terms of body language or to note absences from the chamber, Members literally stuck to the script and made fewer attempts either to adapt or edit their contributions to debate.

In all three jurisdictions it was difficult for the presiding officer to judge the “mood of the room”, an essential skill in a parliamentary tradition with no formal limits on the lengths of speeches or on the time allowed for questions on a statement. Above all, Members missed the opportunity for the informal dialogue with colleagues which would normally happen in the margins of formal sittings and other parliamentary gatherings (for example, private government briefings to all Members; these too had gone online). Removed from each other in sheds and sitting rooms, Members could not gather in the margins of a debate to resolve differences, agree compromises and do the business of politics. On two separate occasions in the Isle of Man, a set of emergency regulations was lost on a division. This outcome is seldom seen in the physical Tynwald Chamber. More typically, where a motion for the approval of secondary legislation is found to be contentious after it has appeared on the Order Paper, it is simply not moved pending the outcome of behind-the-scenes negotiations.

Back in the room?

When, on 5 June, there had been no new COVID-19 cases in the Isle of Man for two weeks, Tynwald’s Environment and Infrastructure Policy Review Committee held the first physical meeting to have taken place in the Legislative Buildings in Douglas since mid-March. Then, on Thursday 11 June, the Chief Minister announced that from the following Monday social distancing would no longer be a legal requirement in the Isle of Man. The President of Tynwald responded by announcing on Monday 15 June a resumption of physical sittings with effect from the sitting of Tynwald Court on Tuesday 16 June.

The principal practical challenges with the move back to the Legislative Buildings arose from the speed with which it was done. A small number of Members notified the President that they might have difficulty attending the chamber on 16 June in the light of the short notice given, citing caring responsibilities. Mr President responded by offering leave of absence if needed; he did not offer to facilitate remote participation for that sitting, and such participation was not requested for any subsequent sitting of Tynwald Court or the Legislative Council. Mr Speaker took a different approach. For the sitting of the House of Keys on Tuesday 23 June he allowed remote participation by the one Member who was unable to come to the chamber.

Guernsey had no reported COVID-19 cases by mid-May and came out of lockdown on 30 May. Social distancing measures remained in place until 20 June. Rather than return to socially distanced sittings in St James’s Concert Hall, the Presiding Officer continued in May and early June to convene virtual sittings of the States. On 24 June the States Assembly returned to the chamber after four months absence for the resumption of normal business. Full virtual sittings were continued for a short period after lockdown was

lifted for two reasons. Some elderly and vulnerable Members were unwilling to attend sittings even in a socially distanced setting. Learning from the experience of the one previous socially distanced sitting in the concert hall, it was acknowledged that there were major difficulties in maintaining proper social distancing at entrances and in the social areas. The idea of holding hybrid meetings was rejected. Consideration of this aspect was influenced by discussions with colleagues in the other Crown Dependencies and staff at the House of Lords. The logistical difficulties of maintaining large screens in the chamber to allow isolating Members to attend a live sitting was judged an over-elaborate and expensive solution to the problem. There was at the same time an expectation that social distancing measures would soon be repealed and that in all the circumstances it would be better to continue with remote sittings until full normality was restored.

The situation in Jersey was strikingly different. Whereas Guernsey and the Isle of Man have continued with significant restrictions on who can come in and out of their jurisdictions, Jersey opened its borders to normal travel from early July, accepting that cases of COVID-19 would increase. Not only has one metre physical distancing continued in Jersey, but gatherings of more than 40 people (other than at funerals) are unlawful. Jersey continued with fully remote sittings until September, but with increasing pressure from some Members for the return of physical sittings in some form. The States Greffe developed a hybrid system which was tried for the first time on 22 September. Members were split into three teams, with each team invited into the chamber on successive sitting days. The meeting was held using Teams but Members in the chamber spoke into the chamber microphones which were connected to Teams and there was one audio feed into the chamber by which those Members contributing remotely could be heard. The system worked well and is likely to be in use for several months. A significant number of Members have chosen not to return to the chamber, some for health reasons but many because they prefer the convenience of working from home. The 22 September sitting also featured a Member attending and voting when out of the Island, which the Bailiff subsequently ruled was disorderly.

Lessons for the new normal

The two and a half months of virtual sittings exhausted the appetite of many Members and officials in the Crown Dependencies for further virtual sittings of the States. That said, it is possible that in the future some Members may wish to see an increased use of hybrid sittings in which some Members are in the chamber and others are not, particularly given experience in Jersey. On the one hand some Members may see advantage in enabling participation by a Member who is undertaking business off the Island (or self-isolating on return); or of a Member with caring responsibilities; or of a Member with a mobility impairment making access to one of the chambers very difficult. On the other, Members participating remotely in a hybrid sitting will not be participating on an equal footing with their colleagues. Their contribution may have less impact; they may suffer distraction from their immediate physical environment wherever that may be; and they will inevitably miss out on the informal communication which is so highly valued. In any case the genie is out of the bottle and it seems likely that every new generation of Members will wish to explore the pros and cons of these options, whose technical possibility is no longer in any doubt.

Meanwhile increased use will certainly be made of videoconferencing technology by committees. Before the pandemic, such technology was used to hear evidence from off-Island expert witnesses but this happened rarely and was seen as something of a special event when it did happen. In the future, because Members and staff are so much more familiar with videoconferencing platforms, the practice of hearing from off-Island witnesses will grow. Similarly, parliamentary staff have become used to using videoconferencing to communicate with counterparts in other jurisdictions and this will remain a feature of parliamentary life.

In its final session before entering the general election period, the Guernsey Assembly passed an amendment to the rules governing the meeting of States committees. This amendment allowed remote attendance at meetings of committees of the States. This amendment, although strongly opposed by some senior Members of the Assembly, whose objections centred on the potentially uneven nature of hybrid committee meetings, was passed with a comfortable majority. The ability of individual Members to attend committee meetings remotely in future will be the most important legacy of the virtual sittings of the States of Guernsey in 2020.

If it is too early to tell what the long-term procedural implications may be of the COVID experience, all three jurisdictions can reflect on the maintenance of robust parliamentary processes throughout these challenging times. Not only did the legislatures respond fully to the immediate challenges posed by COVID-19, they were able to resume consideration of ordinary business from May, and committee work was also continued successfully.

Although in Guernsey and the Isle of Man some legislators may have been uneasy about the extent of powers which could be wielded by ministers without prior reference to the legislatures, the general feeling was that the legislative frameworks in those islands struck an appropriate balance between allowing ministers to act quickly in response to a fast-moving situation and an appropriate oversight function.

However, as the weeks wore on, an air of discontent began to grow in Tynwald. This was fuelled on the one hand by a sense that the virus had in fact been successfully brought under control within the Island, and on the other by a sense that the Council of Ministers might have begun to over-use emergency powers in areas where this was not really needed. This was the background to a vote in June on a call for no further emergency regulations to be made, and to the Chief Minister's announcement, the day before that vote, that he would shortly revoke the state of emergency. If this represented a victory of the legislature over the executive, however, that victory was a hollow one. In practice new powers added to the Emergency Powers Act earlier in the year enabled the Council of Ministers to continue the emergency regulations in force, and to amend them throughout the summer, without the need to reconvene Tynwald and without Tynwald being able to make its own amendments. The most significant remaining powers are those relating to border restrictions which saw several returning residents and visiting key workers jailed in the summer and early autumn. In October 2020 Tynwald resumed for the fifth and final parliamentary year before the next Manx General Election. It will be interesting to see the extent to which Tynwald seeks to reassert its authority.

In Jersey, all of the emergency regulations required to tackle COVID-19 had to be tabled for debate in the normal way. The Assembly's usual rules of notice – six weeks for government legislation – had to be disapplied with legislation often being passed only a few days after publication. The Assembly's scrutiny committees rose to the challenge of reporting on the more contentious items and improved capacity for legislative scrutiny may be one legacy of the pandemic in Jersey. The Assembly also became the focus of debate on the Island's strategy for tackling COVID-19, including a lengthy and passionate debate in July on reopening the Island's borders to non-essential travel, which in part was triggered by e-petitions on the issue. This debate attracted the highest viewership recorded since Assembly debates were first webcast in 2016. Similar debates have not yet taken place in Guernsey or the Isle of Man but may yet arise.

Finally, another important outcome of the pandemic was the intensification of contacts between parliamentary officials in the three jurisdictions, particularly to discuss the technical challenges of remote sittings. At a political level, Commonwealth Parliamentary Association events have proceeded online, although whether they can remain in this format indefinitely is open to question.

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A citizen's account of Stormont's response

Jenny McCullough



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Jenny McCullough¹

Introduction

When the Secretary of State for Northern Ireland and the Minister for Foreign Affairs and Trade and Tánaiste of the Irish government walked together down the long drive from Parliament Buildings towards a bank of reporters waiting in the dark, the document they presented on behalf of the UK and Irish governments was designed to restore Northern Ireland's political institutions and rescue its public services. *New Decade, New Approach* set a full agenda that included not only the need to meet current challenges, among them a crisis in healthcare, and the critical requirements of Brexit preparation, and to address the legacy issues particular to Northern Ireland's troubled past, but also a programme of reform in response to the failures in governance that had triggered the collapse of power-sharing government in 2017. The agreement did not include an item on how a newly reconvened Assembly should operate in a global pandemic. But as the ultimate in Any Other Business, COVID-19 has overtaken all other concerns, with one effect being the premature fading of memories of the uniquely challenging circumstances in which the Northern Ireland Assembly had resumed its work only weeks before the virus took hold.

Whilst the staff of the Assembly had anticipated its return under the pressure of the political environment after the 2019 General Election, their capacity to prepare for the practicalities was limited because many of those who had not moved on or retired while the institutions were suspended had been redeployed. Once the deal was made, staff returned overnight and from 'day one' engaged in setting up the Assembly's mechanisms for legislative and policy scrutiny. As the Assembly Commission – responsible for the property, staff and services required for the Assembly to carry out its work – noted at its meeting on 19 February, the return to normal business had been achieved at 'extremely short notice and with almost 50 vacancies.' The Clerk and Chief Executive advised the Commission that a review of the Assembly's corporate risk register would include, 'for example, the loss of institutional knowledge following the departure of experienced staff during the period when the Assembly was not conducting normal business and contingency planning for emerging issues, such as the coronavirus outbreak'.

The first case of COVID-19 in Northern Ireland was confirmed on 27 February. A response group of officials had been established and was working on scenarios and in discussion with the Northern Ireland Executive by the time the Speaker addressed the Assembly ahead of meetings of the Commission and the Business Committee on 16 March:

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There is a need for us in this building to ensure that the Assembly can continue to take whatever decisions are required on legislation and other matters, and, indeed, to scrutinise and reflect the views of the community on how these matters are dealt with. However, I also know that the advice being given to the community is that it is not going to be business as usual, and the Assembly will have to reflect that as well.

Imbued with an acute awareness of the role of the Speaker in communicating with the public of Northern Ireland on behalf of the still-new Assembly, this initial statement set the tone for remarks from the chair throughout the pandemic, whether expressing the Assembly's support for front-line workers or its sympathy with the bereaved.

The Speaker emphasised that it was for the Commission to take decisions about the building, and for the Business Committee to determine arrangements for sittings. Having chaired meetings of both bodies, the Speaker wrote to Members of the Legislative Assembly on 18 March with an agreed approach that began, and continues, to set the direction of the Assembly's response to the pandemic. Three principles were developed:

1. That the priority of Assembly business will be on ensuring that Executive business can be considered and that the ability for ministers to provide updates and be subject to Assembly scrutiny continues;
2. That non-essential Assembly business will be avoided in order not to distract from the delivery of public services to deal with the impact of COVID-19; and
3. That the welfare of Members and staff should be protected by only conducting essential business.

The Speaker's press statement recognised the departure from normal parliamentary practice (even of only two months in the case of the Assembly) that this approach represented:

I am conscious that it is highly unusual for any Speaker to seek to reduce the ability of elected representatives to scrutinise ministers but these are extraordinary times and they require extraordinary measures...In these circumstances, I know you will understand that the formalities of parliamentary procedure must give way to providing leadership and protecting the health and well-being of our community.

Prioritising essential Executive business to focus on delivery of public services

The initial effect of prioritising essential Executive business and protecting focus on the delivery of public services was the scaling back of private members' business. Party whips agreed that debate on private members' motions would be postponed and a motion was tabled to suspend the normal routine of oral questions. The Speaker appealed to Members to refrain from tabling written questions, noting the high volume of questions that had been tabled to the Minister for Health in the short period since the Assembly's return.

Revised procedures for the plenary sittings at which the Executive obtained approval for its essential business were the result of proposals formulated by Assembly staff, agreed by the Business and Procedures Committees and approved as temporary standing orders on 31 March. Acute concern and uncertainty about the public health situation inspired consensus for rapid change and Members had already been asked to adhere to a social distancing protocol in the form of a seating plan that

accommodates 23 of the Assembly's 90 MLAs at one time. Seating in the chamber is broadly proportional to party representation, with the six Members of smaller parties and independent Members asked to agree among themselves about occupancy of their four-seat allocation. The Speaker, now seated at one end of the table with a clerk at the other, rather than in the middle between two clerks, has relaxed the ruling that Members must be in the chamber when a minister makes a statement in order to be entitled to ask that minister a question.

The sort of changes that might have been controversial had they been mooted in other times were accepted as part of the package of temporary standing orders. Notable among these was a new system extending provision for proxy voting, which may endure in some form to be used in circumstances such as a Member's maternity leave or illness. Under the proxy system, a Member may authorise a whip or deputy whip, or another Member, to cast a vote – including to register an abstention. Notice of nomination of proxies is given by email, specifying whether the arrangement is to be in place for one or more items of business, one or more sitting days, or until further notice, with the effect that fewer Members need pass through the division lobbies and social distancing can better be maintained. The proposal met some opposition in debate, but dissenting Members undertook to “seek confirmation that the proposals are agile enough to embed improvements and a robust mechanism to protect an individual's mandate vote”, through the Committee on Procedures rather than by forcing a division in the chamber. On 29 September the Assembly agreed to extend these temporary provisions until 31 January 2021, this time without objection.

Sittings in the Assembly chamber have enabled the Executive to secure, and to be seen to secure, the progress of business through the restoration of devolved, power-sharing government in Northern Ireland. The Executive has focused on action to mitigate the effect of COVID-19 in Northern Ireland, through bringing forward the regulations implementing emergency restrictions, and by making statements of policy. The Executive has also taken through primary legislation (with amendments tabled and documents circulated by authenticated email) including a Budget Act. More controversially, the Executive Committee (Functions) Bill on the extent of ministers' powers to make decisions without recourse to the Executive Committee, was brought forward and passed over the summer under the Assembly's accelerated passage procedure. On 12 May the First and Deputy First Ministers jointly presented the Executive's approach to decision-making on coronavirus. Whilst the statement did not provide certainty or quell anxiety inside or beyond the Assembly chamber in every area, questions and answers on the policy saw the Executive acknowledging that its recovery plan was iterative, and in need of scrutiny and challenge from Members representing their constituents' interests and concerns. By the end of September, however, after a summer during which divisions between (and in some cases within) the Executive's main governing parties re-emerged along lines all too familiar to the public, whilst the Assembly stood ready to scrutinise regulations implementing new COVID-19 measures, Members were stymied by delays in bringing the legislation to the chamber.

Maintaining Executive accountability to the Assembly through public scrutiny

The main mechanism for Members to exercise this scrutiny function in the early months of the pandemic has been the Assembly's Ad Hoc Committee on the COVID-19 Response. Devised by officials as the Executive and Speaker were discussing the need for the Executive's efforts to focus on the pandemic and delivery of public services, the Committee has operated under a procedure adapted from an existing provision into a framework flexible enough for effective scrutiny of Executive action in fast-changing conditions. The Committee, which counts the whole Assembly in its membership, may sit in the chamber

to receive ministerial statements and question ministers on days on which the Assembly itself is not sitting. The Committee can be convened at shorter notice than the Assembly, although the Executive is asked to provide a weekly schedule of statements. Proceedings are broadcast in the same way as plenary sittings, with no remote participation and parties managing attendance for social distancing – but the Committee layout allows for two more Members to attend and for the minister to be accompanied by an official, who may also answer questions. The Ad Hoc Committee procedure has not curtailed ministers' ability to make statements in plenary sittings, or the Speaker's discretion to accept Urgent Questions for answer by ministers.

Whilst – it is to be hoped – the Ad Hoc Committee on the COVID-19 Response will run its useful course, at least some of the revised arrangements for other committees to meet may continue to provide flexibility for Members in their scrutiny of the Executive in the longer term. The Assembly's statutory committees, which scrutinise Executive departments, have been operating during the crisis in line with the principles informing the Assembly's approach and taking into account public health guidance on social distancing. Under guidance agreed by a liaison group of all Chairpersons, committees have had discretion to "meet to carry out essential and other business... to meet occasionally or...not...to meet at all" and they have been encouraged to make use of provisions in temporary standing orders, such as those for decisions to be taken by correspondence, to limit numbers of meetings. Assembly committees had already moved from being reliant on printed papers to using an electronic system for managing them, and Members were already equipped with upgraded tablets for that purpose.

Videoconferencing was always an option at Stormont but in the current circumstances committees have taken advantage of the flexibility afforded first by the use of Microsoft Teams as an interim solution and then by the Starleaf platform (which integrates with the Assembly's broadcasting system), to hold both hybrid and fully virtual meetings. In practice most meetings have been hybrid. Underlying a responsive and pragmatic approach to the circumstances, it seems, there is commitment among Members for some physical presence at Parliament Buildings for plenary and committee sittings, and whilst instant messaging can connect committee chairs and clerks in different places, in most cases they sit together. Under temporary standing orders, there is a quorum requirement of five only for decisions, and voting may be in person, by videoconference or by telephone, or by proxy.

The Senate chamber at Stormont provides the most accommodating setting for socially distanced meetings, but broadcast limitations have meant that it cannot be used for meetings when the Assembly is sitting in plenary or in the Ad Hoc Committee. In other meeting rooms, the onus is on chairs and clerks to consider participant numbers and satisfy themselves that social distancing can be achieved. Meeting schedules are finely balanced and committees have been asked to accept that limitations on meeting days, times and settings may be imposed for reasons relating to the number and range of staff required to be present in Parliament Buildings, and to broadcasting requirements. Under the Northern Ireland Act 1998, Stormont's proceedings must take place in public (unless a meeting is to be held in closed session). That requirement can be satisfied either by meetings being broadcast or by them being open to the public and whilst meetings have usually been held in public and broadcast, owing to the limitations of one committee room, some meetings have been broadcast in audio only. Part of the Assembly's COVID-19 response has been to seek to ensure that while the public cannot attend in person, they can at least see committee proceedings on screen.

Safety of Members and staff

In the time that the Assembly was suspended before January 2020, Parliament Buildings continued to be

animated, not only by Members who continued to work privately in their offices, but also by staff who maintained Stormont as a public space, its marble halls open for tours, talks and entertaining. To protect all users of the fully revived building, the Assembly Commission took the decision, ahead of the Prime Minister's statement of 23 March that announced the UK's 'lockdown', to close Parliament Buildings to the public. Staff who had self-identified as being in 'at-risk' groups were strongly advised not to come to work and immediately after the Prime Minister's statement, the Assembly's Secretariat Management Group decided that, where possible, all staff should work from home. Previous investment in technology to support the implementation of the Assembly's move to electronic management of committee papers paid off as the system and equipment put staff on a strong footing to work productively and deliver services without undue disruption.

Whilst the Assembly's essential business of course required staff to provide support at Stormont, business was organised with the aim of minimising exposure to and spread of COVID-19. Regardless of their individual circumstances, through family and other connections, Members – including the First and Deputy First Ministers – and staff alike have themselves been deeply affected by the human cost of the virus. Although the public have had no access to the building, through their stories as told by their representatives in the Assembly, they have brought Members on all sides together in moments of empathy and unity of purpose only rarely seen in previous crises – and collective memory of this aspect of Stormont's response to the pandemic should endure beyond this time.

Recovery plan and persistent challenges

As the Assembly seeks to return to full business, reflecting the easing of the initial restrictions on wider society, it will have to reckon with challenges that never receded far from Stormont. The three principles were readily revised to look to recovery, an incremental approach has been taken to restoring full use of the system for Oral and Written Questions, and Private Members' business has resumed. The Library has reopened, with precautions in place. After a gruelling summer when the Assembly was recalled to discuss exam results during that part of the adjournment it had not already forgone, staff and Members may be fatigued, but the basis on which they have kept the Assembly running – procedures formulated, authorised and implemented in a matter of hours across a few days – has proved to be sustaining, and sustainable.

When the temporary standing orders were approved on 31 March, the Speaker and other Members thanked staff for the "significant time and effort" they had devoted to "developing creative ways to manage our business in these times" – indeed, for working "night and day". But recognition of the short time it took to effect significant procedural change goes against the grain of some Members' perceptions of parliamentary services as slow or even resistant to change, and that may raise expectations about how far and how fast such agility of approach and administration can be deployed in future. Depending on how it is framed, however, the challenge to change or justify established custom and practice could provide a healthy stretch for an Assembly that, along with the Executive, has to be fit for reform.

New Decade, New Approach based the restoration of Northern Ireland's political institutions on the commitment of all parties to rebuilding public trust through a package of measures to strengthen governance and transparency. Central to these measures was making the Executive more accountable to the Assembly. Meeting minutes from the last six months record the necessary postponement of discussions and decisions on these measures. The periodic entrenchment of divisions in the Executive over new problems but along old lines has threatened progress on the most pressing issues of public health, as well as on longer-term planning of the legislative programme. How avoidable these barriers

to reform were in the context of the pandemic is arguable but what is not now avoidable is the end of the Brexit transition period, when Executive Ministers must take responsibility for the (as yet not wholly determined) legislation to reconcile the statute book as Northern Ireland's exit from the EU takes effect. As part of the institutional sustainability element of the New Decade, New Approach deal, on Brexit the Executive was – 'as a minimum' – to establish a Brexit sub-committee for urgent work that would be scrutinised by an Assembly committee. The sub-committee itself was short-lived, replaced by single agenda item meetings of the whole Executive, and whilst the Chairpersons' Liaison Group did not agree proposals for a cross-cutting EU Exit Committee when they were brought forward by officials on 2 June, the Ad Hoc Committee on the COVID-19 response surely provides a model approach as well as a template procedure.

Conclusion

In or out of action, open to the public or closed to visitors, at the top of that long drive outside Belfast, Stormont is an imposingly solid setting for institutions that, despite the political imperatives that lock the parties into continued power-sharing, remain fragile. But during the pandemic the Assembly has provided more than just a semblance of stability for the public, even as Members have pressed the Executive to reveal and confront the extent of its own uncertainty about the hold the virus has on Northern Ireland's public services, economy and society. Much of that stability is attributable to the balance struck by the principles and procedures swiftly developed in March and skilfully adapted in the months that have followed. A debt of gratitude is owed for that nimble but thoughtful service and the contribution it must have made to the spirit of co-operation that saw the new procedures embedded in Assembly practice. The pandemic threatened to weaken Northern Ireland's political bodies just as they had been restored and were facing the need for reform, but the Assembly has shown its potential to work through crisis and emerge stronger – as, in a fraught future, it will need to be.

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The Scottish Parliament's Response

Stephen Imrie, Jim Johnston,
Katy Orr and Hugh Williams



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Introduction

The purpose of this paper is to consider the response of the Scottish Parliament to the COVID-19 pandemic. The response is discussed in relation to three areas of parliamentary business: corporate, chamber and committee.

The Corporate Body Response

The Parliament's "House Commission" is the Scottish Parliamentary Corporate Body (SPCB). Its membership consists of the Presiding Officer (who is the chair) and one Member from each of the five political parties. The SPCB led on the response for the Parliament in respect of non-business matters. Supporting the SPCB, at official level, an Incident Management Team (IMT) and an Incident Communications Team (ICT) were set up. Both were pivotal to the Parliament's response.

Public safety measures, including lockdown, were introduced on 23 March by the UK government and adopted by the Scottish government. The SPCB and its officials were of course aware before that of the enormity of what lay ahead. It was fortunate that, as with other Parliaments and organisations, there were business continuity plans in place, although no-one imagined that they would have to be implemented on the scale that they subsequently were.

Prior to lockdown the SPCB had taken some mitigating decisions such as ceasing all parliamentary events, tours and access to the public. With lockdown in place, the decision was taken to close the building to all but essential maintenance staff on non-sitting days. This included those Members who use the Parliament as their constituency office. Early advice was given to Members about closing their local offices and on how to engage with constituents remotely.

To co-ordinate this work and to ensure Members and staff received consistent messages, a helpdesk (which could be contacted by email) and an online hub providing detailed information were established. Early messages that were essential to be communicated included a homeworking policy, including an assessment checklist for equipment to support safe home working. An IT refresh had recently been completed, and a large number of Members and staff had the necessary IT equipment. In respect of Members and their staff who required additional IT equipment or office furniture to support their own homeworking, this was provided through the Members' Expenses Scheme.

¹ All four contributors are Scottish Parliament officials.

With regard to SPCB staff, decisions were taken early on about revised leave arrangements to avoid having unmanageable leave balances being carried over to what was expected to be a busy year ahead. A no detriment policy was agreed on a number of HR issues. This included extending any fixed term contracts for staff whose contract was about to expire.

Towards the end of April, the Clerk/Chief Executive addressed around 400 members of staff who had dialled in for a live video message with an opportunity to ask questions. As with most of the Parliament's virtual communications, this was conducted using MS Teams. It was recognised early on that, as well as the challenges staff were facing in adapting to remote working, there were also significant personal challenges: these included balancing commitments like caring responsibilities, sharing workspaces with family members, and trying to stay active and healthy. As an organisation, and with a strong steer from the SPCB, above anything else the health and wellbeing of staff was the priority. The Parliament had already established a Mental Health Network and this group put in a great effort sending out newsletters with advice on looking after mental health.

A confidential, anonymous survey to ask how staff about their working lives was carried out and received a 70% response rate. Key findings were:

- 90% of staff felt confident the organisation had taken and would continue to take the right decisions
- 84% felt the organisation cared about their health and wellbeing and was helping them maintain this
- 93% felt fully informed about the SPCB's response to the COVID crisis

In the Parliament itself, considerable work was undertaken to ensure social distancing, with access restricted to only those who were essential to parliamentary business. Signage and hygiene measures throughout the building were in place and there were restrictions on desk capacity in each room. When the chamber sat, the messenger service provided by security staff was suspended. The media gallery was closed with the recommendation for journalists based in the Parliament to work from home wherever possible. Media offices were however open on sitting days.

It was clear that a number of business areas, such as the Chamber Office and broadcasting were under intense pressure and staff were redeployed to work in these areas.

By the middle of June, while working from home remained the default position, the SPCB was assured that it could offer Members support to undertake the necessary preparatory work in advance of re-opening of constituency offices in accordance with the Scottish Government's route map for easing the lock down restrictions. Guidance was prepared (supported by a helpdesk) for questions from Members or their staff. As ever with guidance, the legal responsibility as an employer and as a leaseholder rested ultimately with the Member. The guidance covered issues such as carrying out a risk assessment of the constituency office, engagement with staff, practical considerations in applying physical distancing measures and managing visitors and holding surgeries.

Following the summer recess, on 10 August, the building was opened up more widely to Members (and one member of their staff each) – this accorded with the limits on desk capacity and the risk assessment. Opening was limited to business days only and the building remained closed on Mondays and Fridays. To support Members and staff returning to the building, facilitated group sessions around the return to offices were set up for people to share experiences, discuss anxieties and any practical concerns about either the return to Holyrood or local offices.

At this stage, Holyrood remained closed to the general public. However, arrangements were made for committee witnesses to be able to come into the building. This was consistent with the phased approach of gradually increasing the number of people onsite at Holyrood, while ensuring the physical distancing measures were proportionate and workable. Cross Party Groups continued to meet online. Members' sponsored events were cancelled until after the October recess.

On 20 August the First Minister announced that from 24 August Members could undertake face-to-face advice services which allowed the reopening of constituency offices if it was deemed to be essential. In doing so, Members were asked to undertake all the necessary risk assessments, discuss operation of their offices with their staff, and implement appropriate mitigating measures.

Chamber Business

With regards to core business, the strategy was to continue parliamentary proceedings to the greatest extent possible to ensure that the government was held to account and that the Scottish Parliament fulfilled its democratic functions. Progressively, since April, the Scottish Parliament adapted its practices and procedures to reach a point in early September where the chamber had returned to its core pre-lockdown sitting pattern of three afternoons a week, with committees meeting in their former slots on Tuesday, Wednesday and Thursday mornings.

As the Scottish Parliament is in the last year of the current parliamentary session, there are considerable demands on it in relation to legislation as well as the Scottish government's response to COVID-19 and the increased legislative burden presented by Brexit.

The approach to parliamentary business has been led by the Parliamentary Bureau, with sitting arrangements agreed by the Parliament. In mid-March, the Parliamentary Bureau proposed that "the priorities for parliamentary business in the coming weeks should be the response to COVID-19 and other time-bound legislation." The Parliament agreed a number of temporary procedural changes to allow it to focus on these priorities, including:

- Removing the obligation to schedule a minimum number of afternoons for opposition and committee debates and to schedule Members' business;
- Enabling the election of an additional Deputy Presiding Officer by electronic voting (while maintaining a secret ballot);
- Variation of committee substitutes and Temporary Convener rules.

A significant challenge early on in lockdown was to consider the Scottish Government's Coronavirus (Scotland) Bill. As this was emergency legislation, all three stages were completed in one day on 1 April in the chamber. With the agreement of the political parties, the number of seats in the chamber for Members was reduced from 129 seats to 79 seats, which were proportionally allocated to the parties. The Presiding Officer was reluctant to effectively "bar" any elected Member from attending proceedings, but in the event no more than 79 Members sought to participate in the proceedings.

The model of a reduced chamber was the operating norm in April, supplemented by virtual question times. During the Easter recess, three virtual question times were held to provide opportunities for opposition leaders to question the First Minister and for Members to hold the Scottish government to

account on its response to COVID-19. Following early discussions with other legislatures in Europe, the Scottish Parliament decided to use Bluejeans as a video conferencing facility. All of the virtual and hybrid meetings were livestreamed on Scottish Parliament TV.

At the end of April in a letter to Members the Presiding Officer outlined a range of developments, including:

- extending First Minister's Questions to one hour providing the opportunity for more Members to participate;
- increasing the Parliament's capacity for chamber and remote committee business so that by early May up to 16 meetings could be supported over four days;
- virtual meetings of the Parliament could be held, again by early May, involving all MSPs;
- creating a 'hybrid' style Parliament by mid-May where all Members could ask their questions, speak in debates, and vote remotely in all business that took place at Holyrood.

The hybrid meetings provided Members with the option to participate from the chamber or remotely. Members could speak in debates, participate in the consideration of legislation and take part in question times. The general pattern for the remainder of May and June was for hybrid meetings to be used on Tuesday and Wednesday afternoons, with virtual meetings of the Parliament taking place on Thursday afternoons.

In order to ensure that Members were scrutinising the Scottish Government within the bounds of formal proceedings, a number of rule changes have been agreed since lockdown. The Scottish Parliament's Standing Orders allow only for the variation and suspension of Standing Orders so, within these constraints, changes to the rules were agreed by the Parliament on proposals agreed by the Parliamentary Bureau. The rule changes were agreed "for the duration of the public response to the Novel Coronavirus COVID-19" with an initial period from 17 March up to and including 26 June, and then further periods "determined by the Presiding Officer from time to time following consultation with the Bureau." Key early changes including allowing meetings of the Parliament to "be held either in the Debating Chamber of the Parliament, Holyrood, or remotely by video conference in a virtual Debating Chamber hosted on such platform as may be provided by the Parliamentary corporation" and to change the reference from "the electronic voting system" to "an electronic voting system".

The length of the Scottish Parliament's summer recess was reduced to allow parliamentary business to continue. There were four meetings of the Parliament (two hybrid and two virtual) held over the summer recess to allow consideration of matters relating to COVID-19, but also a range of other issues including education and the economy. The COVID-19 Committee also met during recess to consider secondary legislation related to the easing of lockdown restrictions.

By the end of June, a digital voting system had been developed and work continued over the summer to ensure that this was reliable and operational. The Presiding Officer, in a letter to MSPs confirmed to Members that remote voting would be possible in the chamber after the summer recess to allow all Members taking part in chamber business to vote:

Over these past few months, our priority has been to ensure you are in a position to continue to undertake parliamentary scrutiny and feel supported in carrying out all your duties. What has become clear is that many of the restrictions which have affected not only our day to day lives, but also how we work, are here for the longer term and so it is important that as a Parliament we continue to provide new opportunities to support you in that work.

From early September, the Scottish Parliament moved to holding three hybrid meetings a week with a remote voting system, thus returning to its pre-lockdown sitting pattern with all Members able to vote, notwithstanding whether they were physically present in the Parliament or not. In addition, business in the chamber largely returned to its pre-lockdown pattern, including time being provided for opposition and Members' business.

Due to concerns for the health and safety of those who work at Holyrood and who visit the Parliament, the decision was taken by the SPCB to suspend access to the public galleries in the chamber and committee rooms in March. Given the Parliament's founding principles of openness and accessibility, this was a difficult decision. But it was recognised that all proceedings could still be watched on the Parliament's webcasting service.

The decision to suspend access to the public galleries has provided greater flexibility in relation to the use of the chamber. The Parliament's hemicycle has been extended to provide additional seating and voting consoles for Members at the back of the chamber, and seats in the public gallery have been prepared so that they could also be used for voting if required.

The Committees

As a unicameral parliament, the Scottish Parliament's committees have a key role to play in the continuation of essential business during the pandemic. Whether that is scrutiny of emergency legislation or holding decision-makers to account, committees continued to function during the pandemic just as the chamber did.

Our journey

In some senses, the journey undertaken by the Scottish Parliament's currently 19 committees lies somewhere between the lines in Yeats's famous poem, "All changed, changed utterly: A terrible beauty is born" and the epigram attributed to Jean-Baptiste Karr, "plus ça change, plus c'est la même chose". Some aspects of committee work have changed completely in terms of the use of technology and the virtual and remote nature of meetings. Other aspects, such as questioning of a government minister or witness about a bill, remain as before, albeit sometimes through the medium of a PC screen at home rather than at the other end of a committee table.

In the very initial stages (mid-March), all committee business halted prior to Easter recess. After the recess, committee meetings then moved to a more informal basis, in the online world, via Microsoft Teams, where some pressing business was conducted, but without some of the usual certainties of a transcript from the Official Report or the cover of parliamentary privilege. Section 41 of the Scotland Act 1998 provides that for the purposes of the law of defamation any statement made in "proceedings of the Parliament" and the publication under the authority of the Parliament of any statement is absolutely privileged. As informal meetings of MSPs were not proceedings of the Parliament, it was considered that

section 41 did not apply. Informal meetings were, however, held in private in any case and no transcript of the discussions were available.

On 23 April, the first, formal, remote meeting of a parliamentary committee was held, with Members, staff and witnesses attending remotely from their homes. This was followed over the coming weeks by more and more committees following suit. By May and June, most committees were back to their usual schedule of weekly or fortnightly meetings, with around 12 to 15 committee meetings taking place in a given week.

As lockdown eased in part over the summer recess, the desire from Members to return to some form of face-to-face scrutiny, especially of government ministers and on other high-profile matters, meant that the SPCB was keen to move to what have become known as hybrid committee meetings, where some Members/staff/witnesses attend in person in the building, and some attend remotely online. The suggestion that some forms of scrutiny are more effective face-to-face, coupled with more Members being physically present in the building for plenary, were the key drivers to move away from a completely virtual set of committee meetings. By September, of the approximately 15-18 committees held in any given week, around one-third were hybrid and a little under two-thirds virtual (there were a few instances of fully in-person meetings if the committee's membership was small enough to adhere to the tight social distancing guidance in committee rooms – room occupancy had been cut in half in most rooms).

Procedural changes

Alongside changes to standing orders for the chamber, several rules relating to committees were changed to accommodate the new reality of meeting in the pandemic. Care was taken at the time as to whether these changes should be time-limited or otherwise temporary in nature, and whether making a change would set a precedent for the future. Additionally, such changes needed to be clear as to what was permissible, but flexible enough to allow for changes in practice and process as the nature of how business was conducted evolved.

Standing order changes were agreed therefore to enable committees to meet in a wholly virtual manner via a video-streaming application and then again to accommodate the range of options (fully virtual, hybrid or in-person meetings). Questions about whether the 'seat of a meeting' was where the chair (a committee convener) was present or where the streaming platform was being hosted all needed to be addressed, as did the rules to enable voting to be done electronically. Changes have also been made to allow for more flexibility on other Members substituting for a member of a particular committee due a reason relating to the pandemic.

COVID-19 Committee

A key decision taken early in the pandemic was the creation of a new nine-member COVID-19 Committee, with a remit to consider and report on the Scottish government's response to COVID-19, including the operation of powers under the Coronavirus (Scotland) Act, the Coronavirus Act and any other legislation in relation to the response to COVID-19 and any secondary legislation arising from the Coronavirus (Scotland) Act and any other legislation in relation to the response to COVID-19.

By the end of October it had met 19 times since lockdown in mid-March, including as noted above during the summer recess when parliamentary committees do not ordinarily meet. The remit of the Committee was drafted deliberately narrowly to avoid duplication with the work of subject committees who have responsibility for scrutinising the impact of the pandemic in their own areas. Indeed, many of the subject committees have been carrying out inquiries on the impact of COVID-19.

Consequently, early fears that the new Committee would cut across the legitimate interest of other subject committees proved unfounded and, as emergency legislation continues to be passed (e.g. on travel quarantines and policing powers), what was thought to be a fairly short-lived committee does not show any signs of slowing down or being superfluous. Provision of staff resource, membership clashes with other committees and access to meeting slots in an otherwise tight committee schedule remain a weekly challenge.

Human impacts

The impact of the pandemic on the daily life of the public at large has been immense. Similarly, the impact on the working environment for Members, staff and those that engage with the parliament and its committees has been extraordinary. What was once a relatively niche pattern of working for some – full-time working from home – has become the norm for almost all, with many Members, most staff and almost all witnesses conducting committee business remotely and virtually.

The inadequacies of the working environment (equipment, broadband speeds etc), at least initially, were extremely challenging. The loss of social contact with work colleagues has made collaboration and coordination more difficult. The sheer scale of the challenge – with virtually every norm changing overnight – has required a huge amount of learning and adapting to be done almost instantaneously as all have become more expert in different digital technologies.

After a brief hiatus when the workload for staff and Members on committee business initially dried up, the misconception that working from home meant fewer hours at a desk has been comprehensively scotched with many previously simple tasks such as booking a committee room and inviting panels of witnesses now taking twice or three times longer due to physical disconnect, extra time required for technological setup and testing etc.

Major challenges

Many obstacles have been overcome along the way since mid-March, but some challenges remain. Questions about how feasible it will be to try to agree a controversial draft committee report with up to 11 Members all competing to be heard in the virtual space will have to be addressed.

Voting has been, and will still be, a challenge. Committees in the Scottish Parliament seek consensus where possible, but it is not always possible to do so and rarely when it comes to the consideration of a controversial inquiry report or bill.

A particular challenge has been carrying out the Committee amending stage of Bills (Stage 2) remotely. In particular, in ensuring that Members have the opportunity to vote on each amendment if required. Consideration was required in situations where a Member's broadband connection was lost either just before or during a division on amendments – in particular, if the connection was lost for more than a few minutes. The COVID-19 Committee, for example, agreed a number of informal arrangements to address this scenario. The Committee agreed in advance of a Stage 2 that it was for each Member to decide in the event of their broadband connection failing whether they were content for the vote to proceed without their participation. If not, then essentially proceedings on the Bill would have needed to be halted until the connection was restored. A Member's broadband connection did fail once during the Stage 2 and she indicated to the clerks via mobile phone that she was happy for the vote to proceed without her – essentially because the result was not affected.

Where there is a will, there is a way however, and committee clerks are currently managing the novel experience of counting votes via a show of hands for those Members present in the building, and adding those typing Yes, No and Abstain in the chat function of the online video-streaming platform.

These challenges – managing contention and votes – may become more acute in the run up to the Scottish election of May 2021 when the political temperature always heats up in the closing stages of a session.

Wider questions

Some wider questions need to be given more thought when time allows. Is it actually the case that face-to-face scrutiny of a minister or a witness is more effective, or can this be the same in the virtual world? Do Members need or want to be present in the room or do their whips just want them close by? If we can demonstrate virtual or hybrid meetings work, what scope is there then this becoming the norm in our next parliamentary session and what changes to the rules and process would be needed?

Are virtual meetings just as open, transparent and accessible? What about members of the public who do not have access to the technology to watch these whereas in previous times they could have attended in person?

On the other hand, meeting virtually has allowed scope for a greater diversity of witness in terms of their geographic location to emerge: witnesses that may previously have been difficult to get due to travel are more willing to give evidence by video-link which, although used in the past, was used sparingly. Members are now more accommodating to this alternative to an appearance in person.

Conclusion

COVID-19 has raised enormous challenges for the Parliament. Members and their staff have had to deal with significant pressures both in terms of adapting to new ways of working as constituency representatives and parliamentarians while at the same time dealing with their constituents' concerns about the pandemic. SPCB staff have also had to work extremely hard and to very tight deadlines. There has been a real emphasis on the need to find innovative solutions to complex problems quickly under stressful and challenging conditions. But the Parliament as a whole has largely risen to this challenge. Many questions have been solved and challenges overcome during the pandemic, but more undoubtedly remain.

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The Senedd comes of age

On 6 May 2020, the Llywydd (Speaker), Elin Jones,² made this statement at the start of plenary:

We are meeting for the first time as Members of the Senedd in the Welsh Parliament, our name now reflecting our role as the nation's democratic Parliament. Whilst our name may have formally changed today, our priority remains the same as it has done over the past weeks - responding to the coronavirus crisis. Now more than ever, our citizens expect a strong national Parliament working in the interests of the people of Wales³

In the meticulous planning for the change of name,⁴ no-one predicted that the Welsh Parliament/Senedd Cymru would be meeting virtually, with the Llywydd chairing proceedings from her sofa and all Members and staff working from home. But that was before COVID-19 transformed the working practices of the Senedd.

Where there is political will, there is a way; this has been at the heart of the Senedd's response to the COVID-19 pandemic. The Senedd is young (21 years old), small (60 Members) and unicameral and operates in an electronic chamber. Together with the 'can do' attitude of Members and officials, this ensured continuity of Senedd proceedings: initially an 'Emergency Senedd' of reduced numbers observing physical distancing; as a virtual Senedd during lockdown; and latterly as a hybrid model. Emergency standing orders for continuity of parliament during the public health emergency (turned around in two days; agreed and tested at a physical meeting on 24 March) later facilitated virtual sittings. On Friday 27 March, officials were tasked with setting up a virtual Senedd; the following Wednesday it happened. In July, came a tentative emergence into a 'new normal': the Senedd meeting in hybrid format with remote electronic voting, and committees meeting virtually.

This chapter outlines how the Senedd kept meeting, its committees adapted to virtual working, legislation was scrutinised, and the Senedd Commission⁵ rose to the occasion.

1 Officials of the Senedd Commission. Contact **Siwan Davies**, Director of Senedd Business at siwan.davies@senedd.wales

2 Elin Jones MS has represented the constituency of Ceredigion since the first Senedd.

3 Plenary, Record of Proceedings, 6 May 2020.

4 The Senedd and Elections (Wales) Act 2020, which came into force on 6 May 2020, changed the name of the institution to Senedd Cymru or Welsh Parliament; the institution is commonly known as the Senedd. The legislation also extended the franchise for Senedd elections to 16 and 17-year olds and qualifying foreign citizens, the biggest change to the electoral franchise in Wales since the voting age was reduced from 21 to 18 in 1969.

5 In accordance with s27 of the Government of Wales Act 2006, the Senedd Commission is the corporate body responsible for ensuring that property, staff and services are provided for the Senedd.

Chamber: physical, virtual then hybrid

Unlike many other parliaments, statute and standing orders do not require the Senedd to meet in a particular place. Members are required to 'participate' rather than be 'present'. There are no constitutional or procedural barriers to meeting remotely, provided that proceedings can be bilingual (Welsh-English).⁶

As the UK entered lockdown, the Llywydd and First Minister were determined that the Senedd should continue to meet, particularly given the unprecedented executive powers granted to Welsh ministers. There was cross-party support for making this happen. Emergency standing orders were drafted in two days providing for new recall provisions, a reduced quorum, flexibility around public access, and weighted voting.⁷ The new standing orders were agreed, and the first 'Emergency Senedd' took place on 24 March: a physical meeting with reduced numbers of Members attending. This was to be the last time Members met physically in the chamber for almost four months.

The Senedd held its first virtual plenary via Zoom on 1 April, the first parliamentary session to be held by video-conferencing in the UK. Groups agreed to limit their attendance to twenty Members, while the four independent Members were all able to attend. Uniquely, unlike all plenary meetings before and since, this first virtual meeting was not broadcast live. A full recording was instead made available immediately after the meeting.⁸ Welsh-English simultaneous interpretation (a statutory requirement) was provided as usual.

The Easter recess was initially cancelled, then reintroduced (shortened to one week). A weekly plenary was scheduled for every Tuesday, with Business Committee⁹ deciding whether each session would go ahead on the preceding Friday.

A pattern was established of one virtual plenary meeting each week. Core business comprised government statements on COVID-19, with questions without notice from party leaders and other Members, and consideration of made-affirmative COVID-19 regulations (usually on a three-weekly basis). This led to disquiet among some Members that by the time the regulations came to be voted on, they had been superseded by a new set of regulations.

Very few backbenchers tabled their own motions to initiate debates during this time. An independent Member tabled a motion on 27 April seeking the resumption of normal business in the chamber. However, as the Business Committee and Llywydd were already in the process of reviewing arrangements and looking at ways in which the Senedd could return to usual plenary agenda items, the motion was not scheduled for debate.

April and May saw a period of incremental change in the operation of virtual plenary as Members and officials learned from experience and adapted accordingly. Business Committee agreed a gradual increase

6 s35 of the Government of Wales Act 2006 provides that the official languages of the Senedd are English and Welsh and that, in the conduct of its proceedings, the languages must be treated on a basis of equality.

7 Emergency Standing Order 34 includes a provision for one member from each political group to carry the votes of their group, with non-aligned members voting individually. The Business Committee deemed an extension of the proxy voting procedure already in place to accommodate parental leave to be too complex and impractical in such an unpredictable context. It decided instead to adapt and apply its own weighted voting method, modified to enable the votes of the two Independent Members who are members of the government to be carried by the Labour group representative. Standing Order 34 was later amended to add a provision for Members to vote individually from any location by electronic means.

8 Emergency Standing Order 34 provides that the public may be excluded from proceedings where this is required to protect public health and that, where impractical, broadcast access not be required.

9 The Business Committee is responsible for the organisation of Senedd Business. Its role is to "facilitate the effective organisation of Senedd proceedings". The Llywydd chairs the meetings, which are attended by the Trefnydd (equivalent to the Leader of the House) and a Business Manager (equivalent to chief whips) from each of the other political groups represented in the Senedd.

in the number of Members able to attend virtual plenary meetings, and from 1 June, any Member who wished to attend could do so.

The only item of backbench business considered by the Senedd between April and September was a motion to annul the Local Government (Coronavirus) (Postponement of Elections) (Wales) Regulations 2020, which was debated on 10 June.

Other developments included:

- Topical Questions, enabling Members to question ministers on matters not otherwise on the agenda, were reintroduced on 4 May;
- from 18 May, a window for one-minute ‘interventions’ was introduced before the last speaker in a debate: ‘real’ interventions were deemed impractical in a virtual meeting;
- one hour of non-government time per week – usually opposition debates – was scheduled from 3 June, with the stipulation by Business Committee initially that debates must be COVID-19 related; and
- most significantly, the Llywydd decided – having consulted with Business Committee as required by the emergency standing orders – to reintroduce oral questions from 24 June after a three-month absence. The government no longer made weekly statements on COVID-19 matters, which were covered in questions on notice, with statements reserved for the announcement of significant developments. This change triggered a return to a wider range of issues, beyond COVID-19, being considered in plenary.

While weighted voting was a stopgap measure, there was early recognition among the Business Committee and Members that it was not sustainable, as it deprived backbenchers of the ability to vote (or not vote) as they wished. Officials started working on a new browser-based system to enable Members to vote individually and remotely. By mid-June, progress was advanced enough for the Business Committee to agree in principle to its introduction and to propose further temporary standing order changes to allow Members to ‘vote electronically from any location’.

By the end of June, the government was scheduling more non-COVID-19 business, including a supplementary budget, and Business Committee was scheduling debates on Senedd committee reports relating to COVID-19. Virtual plenary meetings were considered unsustainable as business expanded beyond an emergency programme, and the Llywydd was keen that the Senedd trial hybrid meetings before summer recess, so that the Senedd had the option of moving to hybrid meetings as the lockdown restrictions eased. By this time, the Senedd was the only UK legislature still meeting entirely virtually.

Business Committee agreed that the last two scheduled plenary meetings before recess, 8 and 15 July, should be held in a hybrid format.¹⁰ Groups again agreed to a proportional share of the 20 Members who could be physically present in the chamber; one seat was allocated to independent Members.¹¹ All other Members would be able to participate virtually via Zoom, displayed via the large screens already present in the chamber, with the chamber showing as a ‘tile’ on Zoom. Remote electronic voting was used for the first time on 8 July.

On 13 July, the Business Committee decided that as of September, the Senedd would return to its usual pattern of two plenary meetings per week and a ‘normal’ schedule of business, and anticipated that

10 Business Committee’s decision was informed by advice from the Senedd Commission, which included a risk assessment, an equalities impact assessment, and the views of trade unions representing staff.

11 Business Committee agreed that, should independent Members be unable to agree attendance, a ballot would be held. At the time of writing, this procedure had not been required.

plenary meetings would be in a hybrid format for the foreseeable future. Business Committee endorsed principles that the Llywydd would use in deciding the format of plenary meetings during periods of local and national restrictions, ranging from physical, through various models of hybrid, to fully virtual meetings. The Senedd was recalled¹² twice during August recess, and Business Committee agreed that these meetings would be conducted wholly virtually. The Senedd also met virtually during the ‘firebreak’ restrictions in November, before returning to hybrid meetings.

Committees: working from home

As in other unicameral legislatures, committees are the engine room of the Senedd. Before the pandemic, Senedd committees had, from time to time, met in a hybrid format. Members and witnesses had participated via video or teleconference, and on one occasion a meeting had been chaired remotely via video conference with other committee members physically present. However, the radical relocation of all committee proceedings into the virtual space during the pandemic expanded the formal parliamentary space into the homes of Members, witnesses and clerks.

Senedd committees have a dual function, undertaking both policy and legislative scrutiny, and decisions relating to committee business during the pandemic affected both types of business. On 17 March, the Business Committee took the view that ‘for the foreseeable future committees should focus on essential business’.

While committees are autonomous entities that decide their own work programmes, the view of the Business Committee, coupled with an awareness among committee chairs, Members and officials that Wales’ public services immediate focus would be on managing the pandemic, led the vast majority of committees to pause all non-COVID-19 related work. Furthermore, Senedd committees are only able to meet in windows allocated to them by the Business Committee in the Senedd timetable,¹³ and, shortly after the beginning of lockdown, this timetable had been revised in response to the closure of the estate and need to prioritise technical resources to supporting plenary business.

The Chairs’ Forum¹⁴ provided an opportunity for committee chairs to be consulted about Business Committee and Senedd Commission decisions impacting on committee business. Unusually, on 21 April, Business Managers attended a Chairs’ Forum meeting, which enabled the views of committee chairs to influence decisions regarding the Senedd timetable and resources, and to provide a steer on prioritising the limited number of meetings that could be broadcast.

The Forum was a useful mechanism for coordinating scrutiny across committees, in particular agreeing an approach to overarching scrutiny by the Committee for the Scrutiny of the First Minister¹⁵ of COVID-19 recovery plans, and the coordination of committee meetings held during the summer recess. The Forum was also a means for obtaining feedback from chairs on their experience of remote working.

12 Emergency Standing Order 34 provides that the Llywydd may, with the agreement of the Business Committee, summon the Senedd to consider a matter of urgent public importance related to public health matters. The two recalls during August were planned to coincide with the review of COVID-19 regulations.

13 Standing Order 11.9 requires the Business Committee to publish a timetable which must include: outline timetables of plenary meetings; times available for committee meetings; times available for meetings of political groups; recesses; and dates for questions for oral answer by the First Minister, Welsh ministers, the Counsel General and the Senedd Commission. Committees can make requests to the Business Committee for additional slots.

14 The Chairs’ Forum is an informal committee comprising the Llywydd, the Deputy Presiding Officer, and the chairs of Senedd committees. The Forum is chaired by the Llywydd.

15 The remit of the committee is to scrutinise the First Minister on any matter relevant to the exercise of the functions of the Welsh government. The Committee is chaired by the Deputy Presiding Officer; all committee chairs are members.

There were a number of challenges. With more limited time available for committees to meet, it was difficult to co-ordinate and balance the needs and expectations of all committees. Greater use began to be made of Monday mornings and Fridays for committee business, and committees prioritised their workload carefully. With staff and stakeholders juggling home and work life, support for committee members had to be adapted. Examples include streamlined written briefings, and witnesses summarising key points from their evidence at the start of meetings.

Each committee adopted its own approach to scrutiny to reflect its portfolio responsibilities. Whilst some adapted to the changed circumstances, both in terms of the prioritisation of work and how they operated, others maintained the volume of work (and approach) more akin to operations prior to the pandemic.

The majority of committees launched overarching COVID-19 inquiries to cover all issues in their remit, including rolling calls for written evidence and oral evidence from ministers and relevant stakeholders. However, until mid-June, technological and capacity constraints of remote working prevented more than one public meeting taking place at a time. This reduced the meeting time available to most committees from 0.5-1 day per week to 0.5-1 day per fortnight, necessitating difficult choices about evidence taking and the balance between 'mandatory' witnesses (e.g. ministers) and 'discretionary' witnesses (e.g. academics or interest groups).¹⁶

There was also a diversity in outputs across committees. Some opted to write letters instead of conventional reports to encourage swift responses and dynamic communication with the government. Others produced reports in order to request that Business Committee schedule committee debates in plenary.

Outreach and engagement activities were also adapted. For example, the Children, Young People and Education Committee included worksheets with free school meal packs for children and young people (to return by prepaid envelopes), in order for them to draw pictures or write short stories about their experiences. An upgraded online petitions system went live on 30 April and provided an enhanced platform for engagement. The number of admissible petitions in 2020 is on course to exceed the total number during the first four years of the fifth Senedd, with a COVID-19 petition breaking the record for the number of signatories.

Scrutiny of legislation

When Wales (along with the rest of the UK) went into its initial lockdown, there were just over 12 months remaining until the end of the parliamentary session. At the time there were four Welsh government bills before the Senedd, and several more expected to be introduced before summer recess as part of the legislative programme.

On 1 April, the government issued a written statement on its approach to legislation in the context of the pandemic, identifying two bills as priorities – the Local Government and Elections (Wales) Bill and the Curriculum and Assessment (Wales) Bill – and stated that the remaining bills were under review.

¹⁶ As the Senedd does not routinely monitor witness diversity, it is difficult to assess how the focus on COVID-19 matters or virtual proceedings impacted on the diversity of perspectives heard by Senedd committees. However, anecdotal evidence suggests virtual working has increased the geographic diversity of witnesses.

The government scheduled debates on the general principles and financial resolution of the Local Government and Elections (Wales) Bill for the second virtual plenary meeting on 8 April.¹⁷ This was criticised by the opposition political groups, who argued that the focus should be on responding to the pandemic. The government contended that progressing the bill would enable it to “include future work on the Bill in our planning for matters that we will want to be ready to progress once the crisis that we now face has passed”.

All opposition political groups (and the one independent Member who voted) opposed the motion, which was agreed on the basis of the 30 votes cast on behalf of the Labour group and Welsh Government;¹⁸ the Bill progressed to Stage 2 (committee amending stage).

However, in April the government wrote to the relevant scrutiny committee to request that it ‘temporarily suspend Stage 2 scrutiny’ of the bill. Business Committee subsequently decided that the tabling of amendments should be suspended. In May, the government set out its intention to remove several policy issues from the bill to reflect changing priorities due to the pandemic. Business Committee set a new October deadline for the completion of Stage 2.

In July, the final amending stage of the Wild Animals and Circuses (Wales) Act 2020 was completed, and the bill was passed by the Senedd.¹⁹ While not an obvious priority, the bill was already well-advanced and the government had faced criticisms for being the last in the UK to address these matters.

The Senedd’s legislative workload was also heavily shaped by the UK government’s legislative programme. The Sewel Convention, reflected in section 107(6) of the Government of Wales Act 2006, provides that the UK Parliament will not normally legislate with regard to devolved matters without the consent of the Senedd. The Senedd’s consent is tested through consideration of Legislative Consent Memoranda (LCMs), usually laid by the Welsh government and referred for scrutiny by a Senedd committee, or committees, before being debated in plenary. Between March and August, twelve LCMs were laid before the Senedd, including the LCM for the UK government’s then Coronavirus Bill, which received consent at the last physical plenary meeting on 24 March.

During this period the government laid a supplementary LCM for the Agriculture Bill, a supplementary LCM for the Fisheries Bill, and an LCM for the Trade Bill – all contentious Brexit-related bills – which had been considered/reported on by the Legislation, Justice and Constitution Committee (LJC), the Climate Change, Environment and Rural Affairs Committee (CCERA) and the External Affairs and Additional Legislation Committee (EAAL). In July, the UK government also brought forward its white paper on its internal market proposals (again considered by the LJC and EAAL Committees) ahead of the introduction of the bill in September and the government’s subsequent LCM.

With responses to the pandemic diverging across the countries of the United Kingdom, Welsh subordinate legislation – and with it devolution – gained greater prominence. Welsh ministers mainly used powers contained in the Public Health (Control of Disease) Act 1984 in order to make statutory instruments (SIs) to respond to COVID-19; powers available to the Welsh ministers by virtue of the Coronavirus Act 2020²⁰ have been used infrequently.

17 Plenary, Record of Proceedings, 8 April 2020

18 The vote was conducted on the basis of weighted voting.

19 Votes on amendments during Stage 3 and on the passage of the Bill at Stage 4 were conducted via the newly-introduced remote voting app.

20 The Senedd consented to the 2020 Act on 24 March 2020.

In the Senedd, scrutiny of subordinate legislation is undertaken by the LJC Committee. On SIs, it must report on technical points and may report on merits points in accordance with standing orders. A temporary process for the handling of SIs was put in place from 25 March until virtual committees began on 17 April.²¹

Up until 12 October, the LJC Committee had scrutinised COVID-related SIs as follows:

- 76 SIs reported upon (44 subject to the negative procedure, 30 to the made affirmative and 2 to the draft affirmative);
- 68 SIs had reporting points (35 technical and 139 merits);
- the Welsh government has provided a response to 60 of the reporting points in line with requests made by the committee.

In particular, merits scrutiny has drawn attention to the accessibility of the legislation, the use and accuracy of government guidance and matters relating to compatibility with human rights. On this latter point, LJC reported on the government's assessment of the extent to which any interference with human rights is justified and proportionate in pursuit of the legitimate aim of protecting public health. In June, LJC also took evidence from the Health Minister, Vaughan Gething, about the government's legislative approach to COVID-19, questioning him on matters relating to the rule of law, human rights and the effectiveness and accessibility of legislation.²²

LJC also considered other COVID-19 related subordinate legislation, for example, subordinate legislation not laid before the Senedd in the form of a notice made under the Coronavirus Act 2020.

All SIs subject to the affirmative and made affirmative procedures were debated and voted on in plenary. Although the realities of the virtual/hybrid plenary sessions meant fewer dynamic exchanges and interventions, the majority of debates were thorough and robust.

The Senedd Commission: business as (un)usual

During the pandemic, Senedd Commission officials have been far apart, but never closer together. Investment in technology, coupled with a 'digital by default' approach to business since 1999, enabled the Commission to adapt quickly and effectively to new ways of working. The focus was on timely and effective decision-making, clear communication, efficient use of digital capabilities, and the safety, health and well-being of all.

Commission business continuity planning quickly kicked in at the start of the pandemic. The initial phase required fluid internal decision-making to facilitate a managed lockdown and transition to virtual working. The decision-making processes involved the Executive Board²³ having operational responsibility, with escalation to the Llywydd for political or significant decisions, particularly those needing to be made by the full Commission or Business Committee in respect of Senedd business. Guiding principles and working assumptions were agreed in relation to the continuity of Senedd business and attendance on the Senedd estate. In addition to the continuation of formal meetings, thrice weekly Executive Board catch-ups and

21 Temporary process: Handling of statutory instruments under Standing Order 21.2 and Standing Order 21.3

22 LJC Committee, RoP, 8 June 2020

23 The Executive Board is the decision making body in relation to matters delegated by the Senedd Commission to the Chief Executive and also advises the Commission. It comprises the Chief Executive, Directors and the heads of finance, legal and human resource services.

bi-weekly Leadership Team²⁴ sessions were introduced. Regular 'pulse' surveys of staff indicated that they were well connected to their teams, managers were communicating well, and that the organisation cared about their wellbeing. At time of writing, the default position is work from home, with physical distancing on the estate for those who cannot reasonably practicably undertake duties from home.

The Senedd estate was (and remains) closed to the public and face-to-face public engagement, such as school tours and Member-sponsored events, ceased. A new emphasis was put on digital engagement. Social media initially concentrated on key messages about the Senedd's role during the pandemic, primarily focusing on scrutinising emergency legislation and Welsh government decisions. This coincided with a short campaign to establish the Senedd as a trusted source of information relating to COVID-19, a priority because of Wales' comparatively limited media coverage. Plans for virtual engagement were accelerated, with 360 degree virtual tours, and online events and exhibitions launched. The Welsh Youth Parliament thrived in an online environment.

Daw eto haul ar fryn²⁵

The Senedd has taken the lead in showing that parliaments can, and should, meet during these extraordinary times. Looking ahead to the sixth Senedd, due to be elected in May 2021, the Llywydd has committed the Senedd Commission and Business Committee to identifying lessons from the changes adopted during the pandemic to inform future ways of working. The Senedd Commission will also explore the positive changes that can be introduced or sustained to contribute towards its sustainability, diversity and well-being objectives, and to maintain its reputation as an exemplar employer in Wales and the UK.

In the words of the Llywydd:

*We'll learn the lessons from this and, I've no doubt, like many other aspects of life, our Senedd and Commission will be working in different ways in the years to come because of the experiences of this time of pandemic. And there will be good that comes from this in terms of designing our future working lives.*²⁶

24 The Leadership Team comprises the Executive Board and all heads of service and ensures the effective delivery of operational plans and priorities.

25 Welsh equivalent of 'things will get better'; literal translation 'the sun will again shine on the hill'.

26 Plenary, Record of Proceedings, 1 July 2020

23

Overview of international practice

Sue Griffiths
and Emily Death



Overview of international practice

Sue Griffiths and Emily Death¹

Supporters of democracy whose faith has been shaken by recent global trends might draw some comfort from the ability and determination of parliaments internationally to continue their work during the Covid-19 pandemic. In most countries, logistical solutions (no matter how imperfect) have enabled parliamentary business to continue in some form and there has been public pressure for parliamentarians to be seen to be getting on with the job at a time of crisis. Responses have been shaped by a range of factors from the system of government, political balance and requirements of the constitution, to more mundane issues such as the strength of the local wi-fi signal and the number of people who can fit in the chamber while social distancing. This chapter provides an overview of practice internationally, drawing out some common themes around the prioritisation of functions considered politically important, ways of delegating functions to a smaller representative group, and emerging consequences for the political culture both within parliament and between the institution and the public. The themes are illustrated with case studies from parliaments in the Maldives and Bahrain.

Deciding what (not) to do

Parliaments perform a wide range of functions across the spectrum of legislation, oversight and representation. It soon became clear that rapid prioritisation was required to determine which of these functions were the most important to maintain during a crisis. As lockdown began, it is perhaps surprising that only a few (e.g. Hungary, Australia) came to the view that doing nothing was an option and decided to entirely suspend proceedings. Faced with the challenge of moving to reduced or virtual proceedings, however, most institutions began remote operations with only what they considered the most critical aspects of parliamentary business.

Identifying which aspects of business should be maintained requires a simultaneous procedural, practical and political judgement. While individual parliaments have different priorities, some common principles emerged. Parliaments perceived a real risk of leaving a legislative and oversight vacuum at a vital time. Ensuring ongoing scrutiny and accountability of the government was thought to be important, particularly at a time when many administrations were passing emergency legislation which significantly restricted personal freedoms, and many individuals were struggling to deal with sickness or economic hardship. This was often achieved without the need for formal decision-making processes to be put in place – for example, the United Kingdom parliament prioritised maintaining scrutiny of government by means of questions to ministers and statements before implementing proceedings on legislation and voting arrangements at a later stage; and in Canada, virtual meetings facilitated the questioning of ministers and general debate, with legislative review, debate, and other formal decision-making continuing to take place in person once a week.

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At the same time, parliaments were eager to demonstrate a shared experience with people whose work and lives had unexpectedly moved online. As institutions that are often perceived as slow-moving and unsuited to the modern age, the crisis provided the opportunity for parliaments to show that they could adapt to changing needs and make a connection with people's lived experience. A successful response to the crisis could be seen as an opportunity for parliaments which are under challenge around the world to reassert their relevance more broadly, using the attention attracted by innovative virtual proceedings for positive benefit. The Czech Parliament launched a new Google-based educational portal including livestreams, tours, online classes, workshop materials, and a virtual tour, tailored for students who were learning at home during the pandemic. Many others have integrated broadcasts with widely-used channels like Facebook, Instagram and YouTube.

Going remote

Three broad options emerged for parliaments continuing their business during the pandemic: (i) moving to wholly virtual proceedings; (ii) continuation of in-person meetings with restrictions involving adaptations to the chamber or moving to a new venue; and (iii) a 'hybrid' model combining the two, with some form of core representative attendance and others joining remotely.

Distinct challenges emerge from each approach. The wholesale transfer of sittings to remote platforms presents obvious technological demands, but also carries a host of related human consequences in adopting and disseminating the skills necessary to operate online, at a time when MPs and staff are dispersed across the country. Some countries have legal or constitutional requirements for their parliament to meet in a certain place or for a certain number of members to 'be present' in order for decisions to be taken which have legal force (e.g. Ireland). Others were wary of potential security flaws in commercial software and took time to develop alternative solutions.

Remote voting proved a particular challenge, given the need to ensure identification of the member voting, security checks to prevent interference, accuracy of results, and voting transparency. Politically, the chance of a vote being incorrectly recorded would at the least be highly embarrassing and could potentially undermine parliamentary decisions. Most existing electronic voting systems require push-button operation, so rapid innovation was required to devise systems for virtual voting. In many cases, this accelerated changes that had been proceeding relatively slowly despite long-standing calls for greater flexibility or led to the dropping of restrictions on remote/proxy voting which had previously been carefully enforced. Spain, for example, extended its existing provisions which allow remote voting in special circumstances such as maternity leave, to all members. In Poland online voting was made available to quarantined MPs via a new app-based voting system, although the system suffered some initial glitches. The European Parliament opted to use voting by email by sending voting forms to MEPs' secure accounts. This low-tech option required several hours to produce results, but offered a secure and verifiable solution.

In contrast, the shift to remote working was made relatively easily by parliamentary committees, whose smaller size and less formal proceedings presented less of a barrier to online operation. Many parliaments, including Germany, Lithuania, and Norway, rapidly implemented arrangements for committees to keep working remotely via video conferencing, often using well-known commercial platforms, and this innovation in approach has been welcomed as a step forward towards more flexible engagement with hard-to-reach communities, which looks set to continue even as parliaments return to a primarily in-person mode of work.

Understandably, the shift online was an easier logistical endeavour for smaller parliaments. The Maldives and the Welsh Parliament both operated entirely remotely by video conferencing using commercially available platforms. It was not exclusively the case that only small parliaments could do this – the Brazilian parliament operated entirely remote plenary sessions for both of its chambers, accommodating 500 participants using its own bespoke system.

Case Study: Maldives²

On 30 March 2020, the Parliament of the Maldives – the People’s Majlis – was the first legislative body in the world to go virtual.³ The session was also broadcast on TV in real time. Determined not to allow the pandemic to impede parliamentary proceedings, the 87 members of the Parliament and its staff, adapted rapidly to using Office 365 for all of its virtual and remote work. Parliamentary sessions were held via Teams, with support provided to Members in using the platform. The Maldives were early adopters of the technologies, and had already rolled out their use from January 2019 as a tool for collaboration.⁴

One of the clear factors enabling this rapid adaptation, was the fact that there were no constitutional impediments to conducting parliamentary sessions online, and no amendments needed to the Rules of Procedure. In addition to Teams, the Parliament worked with an additional provider for online voting, Polly.⁵ In rare cases where Polly failed, MPs were asked to provide their vote by typing yes/no/abstain in the Chat function of Teams, a solution which obviously would not be possible in various other legislatures and could raise concerns about voter identity and privacy. Although the adaptations to virtual parliamentary work for the People’s Majlis of the Maldives were rapid and broadly successful, some challenges did persist, for example connectivity or streaming challenges, and the lack of a complete solution for muting participants.

Who can represent parliament?

For parliaments choosing a hybrid model or reduced attendance, the key question has been who has the right to attend in person and whether this constitutes an unfair advantage over those who cannot be physically present – the emergence of a ‘two-tier’ system. Within the constraints of parliamentary architecture, a range of options were tested to enable the widest possible representation of Members, with Members or political groups physically attending in several different rooms within the parliament building and communicating through internal tv systems (Mongolia, Latvia). Switzerland, Cyprus, and Singapore all moved parliamentary sittings to larger premises such as conference centres, to implement distancing measures. Elsewhere, a core group of the Speaker and a small number of MPs attending in the chamber was combined with others joining virtually displayed on newly installed television screens (UK, Poland).

Where physical numbers had to be reduced, the need to ensure ‘fair’ representation was in many cases thought to be met by enabling parties to designate representatives proportionally according to their strength. Placing control on attendance solely in the hands of party managers, however, provides obvious opportunities to select loyal members and exclude ‘troublemakers’. Without an adequate virtual form of attendance, members who are isolating, are in vulnerable groups or are simply unable to reach parliament due to travel disruption, are immediately at a disadvantage.

2 <https://twitter.com/mvpeoplesmajlis/status/1245383236282232832?s=20>

3 <https://www.dnaindia.com/world/report-maldives-parliament-goes-online-first-legislative-body-in-the-world-to-go-virtual-2818870>

4 <https://news.microsoft.com/apac/2020/04/14/keeping-legislative-wheels-turning-during-covid-19/>

5 <https://www.ipu.org/innovation-tracker/story/how-parliament-maldives-built-virtual-chamber>

Some parliaments took the decision to delegate powers to a smaller number of Members during the crisis, by establishing some kind of 'Covid committee' to continue the parliament's work. The considerations in selecting this group relate not only to party balance, but also the rights of minorities, gender balance, geographic spread, and the representation of groups who might be disproportionately affected by the effects of the pandemic. Given that in most cases parliament's usual committees were continuing to meet actively, ensuring the remit of such committees did not duplicate or interfere with other work was also a consideration.

Performing politics at a distance

Remote or semi-remote parliaments impact the way in which politics is done and communicated, both within parliaments (where political negotiation and deal-making may need to move to WhatsApp rather than dark corners) but also externally in public engagement and communication. A virtual parliament potentially offers more transparency where citizens are regularly online and using social media – virtual parliaments have attracted public attention and can use this as an opportunity to explain parliament's scrutiny and legislative roles through work on emergency legislation or questioning of ministers on measures to combat the pandemic.

The inevitable mistakes in operating virtual parliaments under significant time and logistical pressure have also been very visible. These range from small disruptions due to connectivity or interruptions by children at home (generally treated as minor and understandable effects of dealing with an unexpected situation) to parliamentarians who have been caught making offensive remarks when they believed their microphones were muted or accidentally voted the wrong way using the new online voting system. In New Zealand, the wrong version of a law was passed during a very short, emergency legislative session. The error was quickly identified and rectified. In the United States and South Africa so-called 'Zoom-bombing' disrupted some online meetings.

As parliaments made the shift online, technology and digital resources may have been the immediate priority. However, human resources are likely to be just as important to enabling a virtual parliament to function effectively. Working effectively is not only a question of providing a new technological platform, but of ensuring that the new platform can be used to deliver the business intended when people are physically separated.

Case Study: Bahrain

Bahrain has a relatively small Parliament, with just 40 Members of its Lower House, the Majlis al Nuwab. Although its small scale may have allowed the Nuwab to implement adaptations more rapidly, various complicating factors existed in the pre-Covid Bahraini Parliament: in common with other Bahraini institutions, an overwhelming majority of procedures needed to be carried out in person, with, for example, suggestions for urgent discussions during parliamentary sittings needing to be physically signed by five Members. Additionally, there was a highly variable level of technological literacy and competence amongst Members and staff. Most significantly, pre-Covid there was a near complete lack of a culture of 'work from home' throughout Bahrain and neighbouring countries. This meant that alongside rapid physical and technological adaptations, the parliament's secretariat had to manage and lead a significant cultural shift. The secretariat were able to achieve several very significant developments in a short space of time, as well as enabling Members and staff to adapt working mindsets and practices, which will feed into longer-term change.

Under the leadership of the Speaker and the Secretary General, the secretariat moved quickly to implement government Covid regulations and advice, rapidly reducing presence of Members and staff in the Parliament building by 70%. To facilitate this, the Nuwab's Directorate of Information and Technology had to increase both systems and personnel capacity for virtual working – technological infrastructure and internet connectivity had to be upgraded, and new platforms such as Microsoft Office 365, Microsoft Teams, and Zoom had to be implemented with secure remote access possibility and e-government authority needing to be granted to Members and staff. Alongside this, the skill level of Members and staff needed to be developed – the Directorate of Information Technology prepared a series of 'How To' videos on use of the new electronic systems, delivered remote training workshops, to provided ongoing support throughout virtual parliamentary sessions and build Members' confidence in the new technologies.

The first-ever remote parliamentary sitting in Bahrain took place on 14 April and represented a very significant step in this relatively new parliament, allowing for virtual participation of Members and voting. The Majlis al Nuwab also prioritised the need for parliamentary communications to citizens and to maintain a visible presence throughout the crisis. The new technologies in place to allow for virtual sittings meant that from 14 April onwards, weekly plenary sittings were able to be broadcast live on YouTube and AM Radio.

Parliamentary meetings increased in number and length – where committees of the Nuwab had been meeting on a once a week basis pre-Covid, during the pandemic, committees met at least twice a week, and in some cases more frequently still. The average length of plenary sittings also increased to five hours, representing the MPs' and staff's commitment to rapidly pushing through emergency covid-related Legislation.

One of the most interesting achievements of the secretariat of the Majlis al Nuwab during this time, and particularly of its Parliamentary Training and Studies Centre, has been in the emphasis it has placed on, and success it has seen with, its programme of parliamentary training for MPs and staff. Twelve training programmes were held for MPs during the lockdown, as well as more than 97 training sessions for staff of the secretariat and in MPs' offices. The opportunity was also taken to involve a wider pool of trainers, including international experts, in these remote training sessions. These training programmes were received very positively by Members and staff and saw much greater levels of participation than at pre-Covid training sessions. This has paved the way for broader participation in training across the board.

A further significant development during the pandemic has been the emphasis the Bahraini Parliament placed on community outreach and engagement. The parliament has an extremely active social media presence at all times, most notably through its instagram account. This was intensified during the pandemic and enabled the parliament to maintain communication to its citizens in a range of new and innovative ways. Firstly, it was able to share a 'behind the scenes' look into Bahraini parliamentarians and MPs working from home, at their desks, on zoom calls. Such content does start to push for a culture change in which flexible and remote working becomes more widely accepted across the country. Secondly, the parliament advertised a variety of different interactive surveys and competitions offering a range of incentives for Bahraini citizens to participate.⁶

6 https://www.instagram.com/p/B_x0dgWpJnY/?igshid=1xrwljksj85m

Given the near total lack of prior experience of working from home, the relatively low diffusion of remote working technologies amongst Members and staff, a low skill base in using these technologies, the Majlis al Nuwab adapted with impressive speed and success to the realities imposed on parliamentary life by Covid and can serve as a best practice example for parliaments of a similar size and scope.⁷

The new normal?

As in the wider world, the shift to remote working is likely to have cultural and behavioural effects which long outlast the immediate crisis of the pandemic. Some of these will challenge accepted ways of working and conventional wisdom. The diversity of different approaches in parliaments around the world provides a natural experiment in innovative working methods, which would have been difficult to envisage in normal times, particularly given the very cautious attitude to risk that is normally inherent in parliamentary institutions. For both staff and parliamentarians there has been considerable amount of formal and informal experience sharing through organisations such as the Inter Parliamentary Union (IPU) as well as regional networks and bilateral links. It remains to be seen whether the experience of the pandemic will spur a wave of innovations in parliamentary methods, or result in a retreat to the comfort zone of business as usual, but as what was initially perceived as a short term crisis runs into months and potentially years, the potential for habits and expectations to undergo a fundamental shift grows ever greater.

⁷ GPG would like to note their sincere thanks to Husamuddin Jaber Salem, Director of Parliamentary Studies and Training Centre of the Majlis al Nuwab for his kind assistance in compiling this case study.

24

How the New Zealand Parliament responded

David Wilson



How the New Zealand Parliament responded

David Wilson¹

The COVID-19 outbreak in New Zealand

The first case of COVID-19 was reported in New Zealand on 28 February. A four-level alert level system was introduced on 21 March to manage the outbreak within New Zealand. The alert level was initially set at level 2, but was subsequently raised to level 3 on the afternoon of 23 March. Beginning at 11:59 pm on 25 March, the alert level was moved to level 4, putting the country into a nationwide lockdown. From 27 April, the alert levels began to be reduced. On 8 June, after a long period without any cases of the disease, all remaining restrictions except border controls were removed. Members of parliament generally observed all of the restrictions that applied to other New Zealanders, including physical distancing, staying at home and travel restrictions. The House of Representatives made temporary changes to its procedures to enable it to function under these restrictions. Many of these changes were found to be beneficial and were retained as permanent rules.

Preparations for parliament under lockdown

In the time leading up to the lockdown, the House of Representatives made preparations to continue its work, as appropriate. The main forum for decision-making on the parliamentary response was the all-party Business Committee, which arranges House business and discusses temporary changes to rules and practices of the House. The committee is chaired by the Speaker, is attended by senior members and operates on a basis of near-unanimity. The Clerk of the House is the advisor to the committee.

The Business Committee met on 17 and 18 March to consider advice from the Clerk on options for limiting the number of Members required to be on the precinct, in response to the spread of the COVID-19 virus.² The committee agreed to support a range of measures to enable the House to sit and committees to meet when travel restrictions and physical distancing measures were in place. It did not initially support the creation of a special select committee to focus on the government's management of the epidemic.³ On 19 March, the House unanimously supported a series of sessional orders (temporary standing orders) to give effect to the arrangements agreed by parties at the Business Committee.

The House was in a planned, one-week adjournment when it was recalled by the Speaker, at the request of the Prime Minister, to put in place measures ahead of a nationwide lockdown.⁴ The parties at the Business Committee agreed to support resolutions to better enable the parliament to function

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- 2 Advice from the Clerk of the House to the Business Committee. Options for House proceedings during epidemic, 17 March 2020.
- 3 Minutes of the Business Committee, 18 March 2020.
- 4 Standing Orders permit an early recall of the House where it is "desirable in the public interest" and after consultation with all party leaders.

during a period when it could not meet physically, including the establishment of an Epidemic Response Committee.⁵ It was agreed by parties that the House would not sit during the lockdown period. On 25 March, the sessional orders were agreed, the House passed an Imprest Supply Bill to fund the epidemic response and emergency legislation to manage the outbreak of the virus. The House adjourned, on motion, until 28 April. The lockdown period incorporated a planned two-week adjournment for the school holidays. The significance of the decisions taken by the House was remarked on by the Leader of the House:

I'm pretty passionate about this place. I have to say, I didn't imagine ... that one of the acts I would do is move a motion—as I will do shortly—to shut the place down. I don't do so lightly. I passionately believe in the role of Parliament in scrutinising the actions of the executive and running a very fine ruler over any law changes that take place in this country.⁶

Epidemic Response Committee

Perhaps the most significant change made in preparation for the lockdown and four-week adjournment of the House was the establishment of an Epidemic Response Committee, chaired by the Leader of the Opposition and with a majority of members from parties not in government. Unusually, it was given the power to send for persons, papers and records. The general power to do so had been removed from select committees, except for the Privileges Committee, in 1999 and, instead, committees were able apply to the Speaker for a summons. There was general support for the establishment of the committee and wide agreement about its importance. The Shadow Leader of the House commented that:

These are quite uncharted times. This select committee fills a void that would normally be occupied by question time or, perhaps, written questions or something else. It will, in my opinion, be a little stronger than both of those provisions, but with a great deal of cooperation, that's been talked about by everybody across the House today, it should work in the best interests of all New Zealanders.⁷

The committee met virtually, under the new sessional orders permitting such arrangements, usually three times each week on the days that the House would normally sit. It initially focussed on questioning ministers and senior public servants about the epidemic response. Later sessions included hearings with business and community leaders. The committee invited independent experts to give it advice and to comment on the evidence from ministers and officials. The questioning of ministers was notable for the exchanges being significantly longer and more informative than what usually occurred during oral questions in the House. Most New Zealanders were at home during the lockdown and the hearings were seen as usefully providing information on developments as well as holding the executive to account.⁸ The committee considered two bills related to the response to COVID-19⁹ and several petitions on the same subject.

5 Minutes of the Business Committee, 24 March 2020.

6 Hon Chris Hipkins, New Zealand Parliamentary Debates, 25 March 2020, Vol 745, p. 17316.

7 Hon Gerry Brownlee, New Zealand Parliamentary Debates, 25 March 2020, Vol 745, p. 17318.

8 Daniela Maoate-Cox, Powerful or powerless? What can the Epidemic Response Committee do? RNZ, 19 April 2020.

9 The COVID-19 Response (Further Management Measures) Legislation Bill and the Immigration (COVID-19 Response) Amendment Bill.

Support for the committee began to wane once the House was able to sit again. Some Members had viewed it as a substitute for the House during the lockdown and thought it was not necessary for it to continue. The Minister of Tourism declined an invitation to appear before it.¹⁰ The government instructed ministers and senior officials to decline invitations to appear before the Epidemic Response Committee and, instead, to discuss portfolio matters with established subject select committees during the scrutiny of Estimates.¹¹

One of the issues that concerned some members of the committee was the legal basis for the restrictions applied to the public during the lockdown. When requests for copies of the legal advice on which the lockdown was based were refused, the committee used its power to call for persons, papers and records to issue summonses to the Solicitor-General, Police Commissioner and Director-General of Health to provide the information.¹² The Attorney-General did not waive Crown legal professional privilege in the legal opinions sought in the summons, a necessary condition of their release.¹³ The question of whether the committee had the power to require the production of Crown legal advice arose, based on an 1875 Speaker's ruling, which indicated that the House and its committees did not possess such a power.¹⁴ However, that position had been modified by the Standing Orders Committee, in its 2003 report, which stated that it is in order for committees to request the provision of legal advice that already exists, but that a committee can only expect the advice to be provided with the consent of the person who commissioned it.¹⁵ Consideration of the matter was informed by a resolution of the British House of Commons, in similar terms, in 2018, requiring the Attorney General to lay before Parliament legal advice on the withdrawal from the European Union.¹⁶

The Solicitor-General replied to the Epidemic Response Committee that the three Crown office holders were placed in an "unprecedented and irreconcilable position" and provided a copy of the legal advice with all legally privileged material redacted. She invited the committee to confirm that this was an acceptable response or to set aside the summonses.¹⁷ The committee did not pursue the matter any further.

On 26 May, the Leader of the House moved a motion to disestablish the Epidemic Response Committee, explaining that:

*Parliament is now back, more or less, as normal. Members are able to attend the House. The legislative programme has been resumed. Question time is happening every day. Select committees can meet again, and Ministers will all be appearing before select committee in the coming weeks to discuss the Budget Estimates. So the regular function of parliamentary scrutiny that is so vital has now resumed, and, therefore, the Epidemic Response Committee has concluded the job that it was set up to do, which was to fill the void created when Parliament was no longer meeting.*¹⁸

10 Thomas Coughlan. Kelvin Davis cancels on Epidemic Response Committee after Treasury no-show. Stuff. 19 May 2020.

11 Zane Small. Jacinda Ardern defends letter telling ministers to avoid COVID-19 Epidemic Response Committee. Newshub. 20 May 2020.

12 Minutes of the Epidemic Response Committee, 6 May 2020.

13 Cabinet Manual 2017, para 4.69.

14 New Zealand Parliamentary Debates, Vol 19, p. 94.

15 Report of the Standing Orders Committee, 2003, I. 18B, p. 31.

16 House of Commons Hansard, 13 November 2018, Vol. 649.

17 Letter from the Solicitor-General to the Epidemic Response Committee, 13 May 2020.

18 New Zealand Parliamentary Debates, 26 May 2020, Vol 746, pp. 17963 – 17964.

The motion was opposed by the parties not in government, arguing that the work of the committee was not yet done. There was general agreement that the committee had been successful. The motion to disestablish the committee was agreed by majority and it ceased to be. It did not have the opportunity to report to the House on its work. The petitions it had been considering were allocated to other committees.

Other committee rules

Changes were made to permit select committees to continue meeting during the lockdown. These applied to the Epidemic Response Committee and all other committees. The Speaker was empowered to approve special arrangements for select committees to meet and conduct business. This broad power was intended to be flexible and enable committees to respond to changing circumstances. The Speaker immediately approved committees meeting by electronic means, including by videoconference or phone call. He made two other arrangements during the lockdown, requiring Members to not display political party branded items during electronic meetings and to provide that voting in committees would be deferred if a Member was unable to participate because of a technical fault. Except where necessary to adapt to meeting electronically, all normal procedures and practices apply to committee meetings during the lockdown.¹⁹ Most committees met electronically, though some Members raised concerns about progressing business that was not related to the COVID-19 response.

Changes to House procedures

Other temporary arrangements were introduced to allow the House to sit in conditions where physical distancing applied or where not all Members were able to attend. Most important were the changes to party voting, to ensure Members did not have to be present in the precinct to vote. Ordinarily, almost all votes in the House are conducted by way of party vote, rather than on a division.²⁰ Parties may cast votes for their entire party provided 75 per cent of its members are present in the House, in the precinct or on parliamentary business elsewhere.²¹ A sessional order gave the Business Committee the power to adjust this proxy-voting limit and the committee determined that proxy votes may be exercised for the entirety of a party's membership in the House. This enabled a small number of Members to attend the House in person without distorting overall proportionality and was used when the House sat with limited numbers of Members after the lockdown ended but before all restrictions were removed.

The new sessional orders included changes to previously paper-based procedures, such as the lodging of oral questions, urgent questions, and notices of motion, to reduce the need for Members and staff to physically meet at Parliament. Permission for Members to electronically sign questions and notices of motion replaced the previous requirement for a physical signature. The Epidemic Preparedness Act 2006 essentially enabled the government to modify the application of laws by Order in Council but also empowered the House to disallow these orders. The electronic receipt of notices of motion was designed to facilitate this mechanism, though such a motion was not lodged. Declarations of a state of national emergency and extensions of the declarations must be advised to the House as soon as practicable,²² normally by a ministerial statement. When the House was not sitting during lockdown, the Minister of Civil Defence signed the declaration document, photographed it and sent it to the Clerk for circulation. The documents were also provided electronically to the Epidemic Response Committee.

19 Arrangements approved by the Speaker 17 April 2020.

20 For more information on party voting see D. Wilson (2018). *Party Voting in the New Zealand House of Representatives*. The Table, Vol 86.

21 Standing Order 146(2).

22 Section 66(2) Civil Defence and Emergency Management Act 2002.

In 2017, the Business Committee had been given authority to adjust the House sitting programme, which is usually determined a year in advance. This provision gave the House significant flexibility to adjust its sitting programme, while protecting the rights of non-government parties through the near-unanimity requirement for Business Committee determinations. The power was used to arrange sittings of the House when it, unexpectedly, sat again following the postponement of the general election because of the virus.²³

Sittings of the House

The House returned to sitting on 28 April, the day after the country returned to alert level 3 (which permitted most workplaces to open if they could operate safely). Members observed two metre physical distancing by having reduced numbers in the House. Generally, no more than 31 Members sat in the debating chamber and staff did not return to the chamber, except for the Clerk and Serjeant-at-Arms. The House sat for reduced hours and focussed its attention entirely on COVID-19.

The Business Committee made two determinations to better facilitate the rapid progress of emergency legislation, which the House preferred to advance through mutual agreement rather than under urgency. It suspended debate on instructions to select committees when considering bills and temporarily removed the two-day 'stand-down' period between a bill being reported by a select committee and its second reading debate, to enable bills to progress more quickly.

Another temporary change was made to Standing Orders by a sessional order intended to encourage better questioning of Ministers. Normally, the committee of the whole House stage of a bill has limited Members to taking four calls on any provision. This had led to Members making set-piece speeches rather than engaging with the minister in charge of a bill on its detail. Proposals to remove the limit on calls to promote a greater interchange between Members and ministers had not been successful previously.²⁴ With the greater focus on dialogue with ministers during the COVID-19 outbreak, parties agreed to temporarily suspend the limit on calls in committee of the whole House. The new sessional order was first applied to the committee stage of the annual review debate,²⁵ which was notable for being more interactive and more closely resembling the questioning by the Epidemic Response Committee. The new approach was regarded as a successful innovation and continued to be used for the remainder of the parliament.

The House cooperated to facilitate the rapid passage of COVID-19 related legislation and parties operated with a high degree of mutual trust. Speedy legislation that bypasses the normal select committee consideration is not without risk, though.²⁶ The COVID-19 Response (Taxation and Other Regulatory Urgent Measures) Bill was passed through all stages in the House on 30 April. The bill passed by the House established a small business loan scheme that was not contained in the version that the Minister of Revenue had circulated to all parties ahead of the debate. One Member made reference to the loan scheme in debate but it does not appear that anyone else noticed it until the bill had completed its third reading.²⁷ The error arose from a miscommunication between the law drafters and the printers leading to a version of the bill, with the loan scheme, being tabled in the House.²⁸ It appears that Members, for the most part, did not refer it in debate and, instead, relied on the earlier drafts they had

23 Determinations of the Business Committee, 17 August 2020.

24 Report of the Standing Orders Committee, 2017, l. 18A, p. 30.

25 The committee of the whole stage of the Appropriation (2018/19 Confirmation and Validation) Bill.

26 Almost all bills are considered by a select committee, usually for six months.

27 Jenée Tibshraeny. Passing the wrong bill wasn't even the worst thing parliament did last week. *The Spinoff*. 4 May, 2020.

28 Thomas Coughlan, Parliament passes the wrong law in an afternoon of urgent lawmaking. *Stuff*. 1 May 2020.

been provided. The bill on the Table, being the authoritative version, was the one certified by the Clerk and presented for Royal assent.

Public engagement

Promoting public engagement with parliament is a key focus for the agencies supporting parliament. The Speaker and other Members support this approach and were particularly eager to ensure that New Zealanders could continue to engage during the lockdown. As a result, the Epidemic Response Committee's public sessions were broadcast on Parliament Television, a free-to-air channel operated by the Clerk that normally broadcasts sittings of the House only. This was the first time a committee had been broadcast on the channel and it received a much larger viewing audience than the normal livestreams of committee hearings. This was likely a result of the large potential audience at home during lockdown, the fact the Parliament Television is broadcast throughout the country and because the committee hearings usually occurred in the time leading to the daily Covid-19 media conference with the Prime Minister and Director-General of Health. Each meeting of the committee had an average of 200,000 views on channels operated on behalf of parliament but the footage was also cross-posted to political parties' social media accounts and used by media organisations.

Transcripts of the hearings of the Epidemic Response Committee were produced by Hansard each day and were published to the Parliament website.²⁹ Select committee hearings are not routinely transcribed and published but there was a high level of public interest in the information during the lockdown. The Clerk agreed to the government's request that Hansard transcribe all of the Prime Minister's media conferences during the pandemic. The transcripts are published by the government on its website.³⁰

In addition to supporting the work of the Epidemic Response Committee, the parliamentary engagement team³¹ launched a series of webinars during the lockdown on topics of general interest such as how laws are made, oral questions and how to make a submission to a select committee. Members and staff presented during the webinars, which were made available on demand. The parliamentary engagement team published resources on parliament for teachers who were teaching virtually during lockdown. Work with international partners also continued online. A development programme for clerks from Pacific Island parliaments, scheduled to be run in Wellington during lockdown, was redeveloped as an online programme with a much broader reach than the original in-person programme.

Lasting changes to practices of the House

Restrictions to combat COVID-19 limited the sittings of the House but also enabled it to experiment with more flexible procedures. The lockdown occurred in the middle of the triennial review of Standing Orders and informed the consideration of changes. The Standing Orders Committee reported that:

The pandemic has strengthened the case for democratic institutions to continuously improve and become more effective, responsive, and accountable. Parliaments and Governments must attentively foster their legitimacy in the eyes of the public, so these institutions can appropriately contribute to a national response in times of crisis.³²

29 See <https://www.parliament.nz/en/pb/sc/scl/epidemic-response/news-archive/watch-public-meetings-of-the-epidemic-response-committee/>

30 See <https://www.beehive.govt.nz/feature/postcab>

31 The team is jointly operated by the Office of the Clerk and the Parliamentary Service, with staff from both organisations.

32 Report of the Standing Orders Committee, 2020, I. 18A, p. 4.

All of the temporary rule changes made to enable parliament to function under COVID-19 restrictions were retained as permanent changes to standing orders. This reflected not just the need for parliament to retain its ability to respond swiftly to any further COVID-19 related restrictions, but that the changes worked well in and of themselves, and improved parliament’s scrutiny and engagement functions. In addition, the success of the Epidemic Response Committee in conducting “more conversational scrutiny” of ministers led to recommendations to encourage greater engagement with ministers. The report encouraged ministers to meet with committees to discuss their bills and to answer questions.³³ It also recommended that debates on the financial scrutiny of the government be structured with a greater focus on engagement with ministers, as a result of the experiences of the debate under COVID-19 restrictions.³⁴ In 2020, there was greater use of ministerial statements to inform the House about issues related to the virus. The Standing Orders Committee recommended that the responses to such statements be made more flexible to enable questions to be put to ministers.

Conclusions

Two factors were key to the successful operation of parliament during the COVID-19 emergency. First, the Business Committee is now well-established as a forum for cross-party cooperation and for trialling new parliamentary procedure. Its members have been willing to consider and recommend significant change when it is warranted. Senior members of each party attend and, generally, have the authority to make decisions on behalf of their parties. This enabled new arrangements for House sittings and committee meetings were able to be considered and put in place rapidly. Second, the restrictions that were put in place to combat the spread of COVID-19 were clearly explained and widely understood. New Zealanders, in general, supported the government’s approach to the virus.³⁵ This assisted Members in understanding the nature of the challenges faced by parliament and taking a consensus-based approach to addressing them. COVID-19 is still present in New Zealand and parliament is well-placed to function under any necessary public health restrictions.

33 Ibid., p. 24.

34 Ibid., p. 42.

35 Janine Hayward, Government Authority and the Covid-19 Lockdown. Policy Quarterly 16:3, p. 7.

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EMERGENCY
POWERS IN
PARLIAMENT: A
SHORT HISTORY

Paul Seaward

EMERGENCY POWERS IN PARLIAMENT: A SHORT HISTORY -

Paul Seaward¹

There is no real precedent for the situation in which parliament has found itself over the last year. Major epidemics requiring significant curbs on individual freedom of movement and association have of course happened – primary legislation from the Quarantine Act of 1710 onwards has been passed to deal with individual outbreaks. Sometimes such epidemics have had a major impact on parliament itself (major outbreaks of the plague could result in moving parliament away from the main source of infection (as in 1439 to Reading and in 1625 and 1665 to Oxford), its postponement (as, for example, in 1433) or the cancellation of meetings of parliament altogether (as in 1349). Since the plague ceased to be a significant threat there have been plenty of major outbreaks of communicable disease, some of them resulting in specific pieces of legislation. But none have had the impact on the political system itself that COVID-19 has had.

One has to go, remarkably, to wartime to find debates and dilemmas similar to those we have recently had. It has been only in wartime that government has demanded quite such draconian curbs on freedom of association and movement, and only in wartime that parliamentary activity itself has been curbed to quite such an extent as it has in 2020 (though then, in rather different ways, by the incorporation of opposition into a coalition, rather than by the physical distancing of Members).² But these debates and dilemmas have at least been the catalyst for recognition of the weakness of the system, and have resulted in some – even if still feeble and incremental – improvements to processes of accountability.

The debates about emergency powers and about delegated legislation merge into one in the course of this process; but they start from different places, since emergency powers were traditionally acknowledged to be a reserve capacity belonging inherently in the royal prerogative, rather than derived from statute. But as soon as emergency powers are defined in an Act, the exercise of them by order becomes delegated legislation, if not quite ordinary delegated legislation.

The story of statutory emergency legislation in Great Britain largely (though not entirely) begins in 1914 with the Defence of the Realm Act,³ or DORA, as it became unfondly known. The Home Secretary, Reginald McKenna, not only moved for leave to introduce the Defence of the Realm Bill on 7 August 1914, but had it introduced, read twice, committed, read a third time and passed with barely a word said beyond McKenna's outline of its provisions, and sent to the Lords, where it went through on the nod the following day (a Saturday). It conferred on the King in Council power to "issue regulations as to the powers and duties of the Admiralty and Army Council, and of the members of His Majesty's forces, and other persons acting in His behalf, for securing the public safety and the defence of the realm; and may, by such

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2 Though, it should be said, this remark does not apply to Ireland: the coercive powers taken for the authorities in Ireland during the nineteenth century would have to be another story.

3 4 & 5 Geo. V c. 29, helpfully available at https://www.legislation.gov.uk/ukpga/1914/29/pdfs/ukpga_19140029_en.pdf

regulations, authorise the trial by courts martial and punishment of persons contravening any of the provisions of such regulations designed (a) to prevent persons communicating with the enemy or obtaining information for that purpose or any purpose calculated to jeopardise the success of the operations of any of His Majesty's forces or to assist the enemy; or (b) to secure the safety of any means of communication, or of railways, docks or harbours'.

In some ways DORA was a considerable advance on the previous situation, in which there was no general statutory provision for emergencies of any kind, and an assumption that they could be dealt with through the royal prerogative and specific legislation when required.⁴ Indeed, the government's first instinct in August 1914 seems to have been to work through proclamation, rather than statute.⁵ But DORA allowed for no parliamentary control over regulations made under it; and the duration of the powers was defined no more precisely than 'during the continuance of the present war'. It aroused no major disquiet until a few months later, when the government brought forward a consolidation bill bringing its provisions together with those of other Acts passed in the interim: the explicit power given to courts martial to impose the death penalty moved grandees to protest vigorously at the extension of martial law to civilians. Members asked questions from time to time, and specific regulations were discussed.⁶ But there was no mechanism for bringing them to the attention of the Commons; indeed not only was there no obligation for the regulations to be laid before parliament, copies of them were not even made available in parliament before May 1916. And while parliamentary annoyance with the disregard shown to any form of accountability during the war did produce some significant change in 1917,⁷ it was directed at the failure to produce more than 'dummy' estimates of expenditure rather than legislative procedure. It resulted in the establishment of a Select Committee on National Expenditure in July 1917, together with six sub-committees.⁸

The feebleness of the parliamentary reaction to DORA was no doubt partly because the idea of running a war effectively under statutory authority was itself rather unfamiliar. But DORA helped to ignite the debate about delegated legislation which had only been smouldering before the war, for though its relationship to the royal prerogative made it *sui generis*, it could be seen as simply the most egregious example of statute conferring extensive powers on ministers. The debate was stoked by, on the one side, impatient modernisers, often on the left; and on the other libertarians, constitutionalists, and judges. The climax of that debate was Lord Hewart's book *The New Despotism* of 1929 and the Committee on Ministerial Powers (the Donoughmore Committee) which reported in 1932. The Donoughmore Committee largely cleared the process of delegation from the charge that it was a sinister encroachment of executive power, but made a number of recommendations supposed to pull the sharpest fangs of the ministerial mouth. Among them was a standing committee of each House to scrutinise all bills in which powers were delegated to ministers.⁹

4 See Clinton Rossiter, *Constitutional Dictatorship: Crisis Government in the Modern Democracies* (New York: Routledge, 2002) 135-50. For the efforts of the War Office to persuade civil servants and ministers before 1914 (including Ilbert) of the need for some sort of general legislation to deal with powers in the period immediately before the outbreak of war and during the war itself, see G.R. Rubin, 'The War Office and Contingency Legal Planning, 1885-1914', in *The Political Context of Law: Proceedings of the Seventh British Legal History Conference* ed. Richard Eales and David Sullivan (London, Hambledon Press 1987), 145-58. Ilbert (as first parliamentary counsel) had in fact resisted the idea of legislation as potentially throwing doubt on the prerogative powers of the crown.

5 For the Proclamation of 4 August 1914, see Cornelius P. Cotter, 'Constitutionalizing Emergency Powers: the British Experience', *Stanford Law Review*, 5, 3 (1953), 383.

6 See Cotter, 'Constitutionalizing Emergency Powers', 389 n. 42.

7 See Cotter, 'Constitutionalizing Emergency Powers', 389 and n. 39.

8 John Turner, 'The House of Commons and the Executive in the First World War', *Parliamentary History* 10, 2 (1991), 297-316.

9 W.H. Greenleaf, *The British Political Tradition: Volume three: A much governed nation*, part 2 (London: Methuen, 1987), 540-72 is a helpful summary of the debate.

One improvement had already been made, with the creation of a more vigorous parliamentary approval procedure. The basis for this had existed for some time: certain Acts had incorporated provisions allowing for a prayer requesting annulment of such instruments as they authorised at least since the 1870s – the negative procedure.¹⁰ But after the war the government seems to have accepted the need for something rather more onerous. An affirmative procedure seems first to have been introduced into the Ministry of Health Act 1919.¹¹ A similar provision was inserted into the Census Bill in 1920 in committee.¹² One was also included in the Emergency Powers Act of 1920. The Emergency Powers Act was introduced as an out-of-wartime replacement for DORA and its associated regulations, though it was precipitated by the miners' strike of that autumn. The Act required that in an emergency parliament be summoned immediately (if it was not already meeting) to sit within five days, and included a specific provision that any regulations made under the Act should be 'laid before parliament as soon as may be after they are made, and shall not continue in force after the expiration of seven days from the time when they are so laid unless a resolution is passed by both Houses providing for the continuance thereof'. Bonar Law, in introducing the bill, told the House that

*the Government have come definitely to the conclusion that in an emergency of that kind we should rest our powers not upon an Act framed to deal with the common enemy, but on an Act which is passed by the constitutional authority of this country to deal with the situation as it arises. ... Any of these powers taken under the Defence of the Realm Regulations are not open to examination by Parliament. In the whole framing of this Bill our aim has been to put the power in the hands of recognised constitutional authority of this country. In the Bill these Regulations cannot have effect for any considerable length of time until they have been submitted to the House of Commons and have received approval.*¹³

The introduction of the affirmative procedure was supplemented in 1925 by the House of Lords, which set up its own committee to look at all delegated legislation subject to it.

The Donoughmore Committee's proposals were sat on, though, throughout the 1920s. None of them had been acted upon before the advent of the Second World War brought a new frenzy of emergency regulating. The Emergency Powers (Defence) Act 1939 (2 & 3 George VI, c. 62) went through both Houses in a day on 24 August 1939. In introducing it Samuel Hoare went back to the day DORA was brought in almost exactly quarter of a century before:

I am one of the comparatively small number of Members who remember the introduction of the first Defence of the Realm Bill in August, 1914. I remember very well Mr. McKenna, my predecessor in office, coming to the House without a draft of the Bill, with only half a sheet of notes in his hand, and asking the House of Commons to give the Government the full powers required to meet the dangers with which the country was then faced. The House accepted the Home Secretary's undertaking, but little did they know in 1914 how many, various and different kinds of protection would be needed in

10 The first I have found is the Appellate Jurisdiction Act 1876 c. 59 s. 14. <https://www.legislation.gov.uk/ukpga/Vict/39-40/59>

11 Ministry of Health Act 1919 c. 21, s. 8(3).

12 See HC Deb. 9 Aug. 1920, col. 96 (Dr Addison). The discussion reflects the unfamiliarity with the procedure (and interestingly envisages amendments to be made to an order).

13 Emergency Powers Act 1920, 10 & 11 Geo. 5 c. 55, s. 2(2). See Bonar Law's speech on the second reading debate at HC Deb. 25 Oct. 1920, col. 1399-1404 (quotation at 1401); and Asquith (at 1419ff) and Joynson-Hicks (at 1421ff) complaining about the extent of the powers given to government by the bill, and the weakness of the affirmative resolution procedure. The bill was amended to reduce the time within which parliament had to be called.

the course of that long struggle. My mind naturally goes back over those 25 years and I feel many regrets that once again the Home Secretary has to come to the House and ask for powers that trench on many of the most cherished liberties and practices of his fellow-citizens.¹⁴

Hoare assured the House that 'whilst on the one hand the powers asked for are wide, flexible and indefinite we will apply them with moderation, tolerance and common sense', and gave an undertaking that 'we do not intend to deal with labour questions under defence of the realm regulations at all'. The 1939 Act was a considerable advance on its predecessor. Its life for a start was limited to 12 months, unless extended by resolution of both Houses. Hoare referred to a proposal that regulations made under it should be subject to affirmative resolution as had been the case under the 1920 Act:

I assure hon. Members that I considered that proposal with no prejudice and with every anxiety to give hon. Members as many safeguards as one legitimately could, but the more I went into the proposal the more I found it to be impracticable. I do not think hon. Members who were attracted by it realised the fact that if there were a war there might be hundreds of these regulations in the course of a year. The regulations under the Defence of the Realm Act between 1914 and 1918 literally went into volumes of regulations. I do suggest to the House that in a time of great emergency, still more in a time of war, it would be quite impracticable that for every one of these hundreds of regulations there should need to be an affirmative resolution of this House. From the point of view of the executive and setting aside one's own personal interest in the matter— it does not matter who is the minister of the day— a plan of that kind could not be worked. I am equally sure that the House of Commons, faced with the innumerable urgent problems of war, would resent the necessity of having to spend day after day and hour after hour in giving affirmative resolutions to these almost innumerable regulations.

The Act did, though, contain the negative procedure for any Order in Council made under it (s. 8(2)).

There was, at first, little complaint about the extent of the powers given to the government nor how they were exercised. Only a handful of orders in council were prayed against up to the end of 1942, and only one, on which the government allowed a free vote, was annulled (it was Regulation 42BA, which permitted the opening of theatres and music halls on Sunday; many may have thought that all parliament had done with its annulment power was to make the war even more drab and miserable than it already was). But the Hansard Society's post-war study of parliament's performance during the war noticed a significant quickening after 1943, as defeat, at least, came to seem unlikely. Conservative backbenchers, especially, became more vocal in their objections to new regulations. A group calling itself the 'Active backbenchers', under the informal chairmanship of the very active backbencher Sir Herbert Williams, took to harassing the government on the subject. Some Labour Members, particularly Nye Bevan, joined in from time to time or mounted their own revolts. Members prayed against more orders than in the earlier part of the war, often objecting to them on procedural grounds. As a result, one order – which extended the existing powers of the Minister of War Transport to allow him to 'remove, modify or lift the application of any prohibitions or restrictions imposed by or under any Act' – was annulled (although the government's defeat was as much by accident as anything else). The government eventually caved in to increasing pressure for a permanent scrutiny committee in the Commons to review statutory rules and orders. The statutory instruments committee was set up

14 HC Deb. 24 Aug. 1939, c. 63.

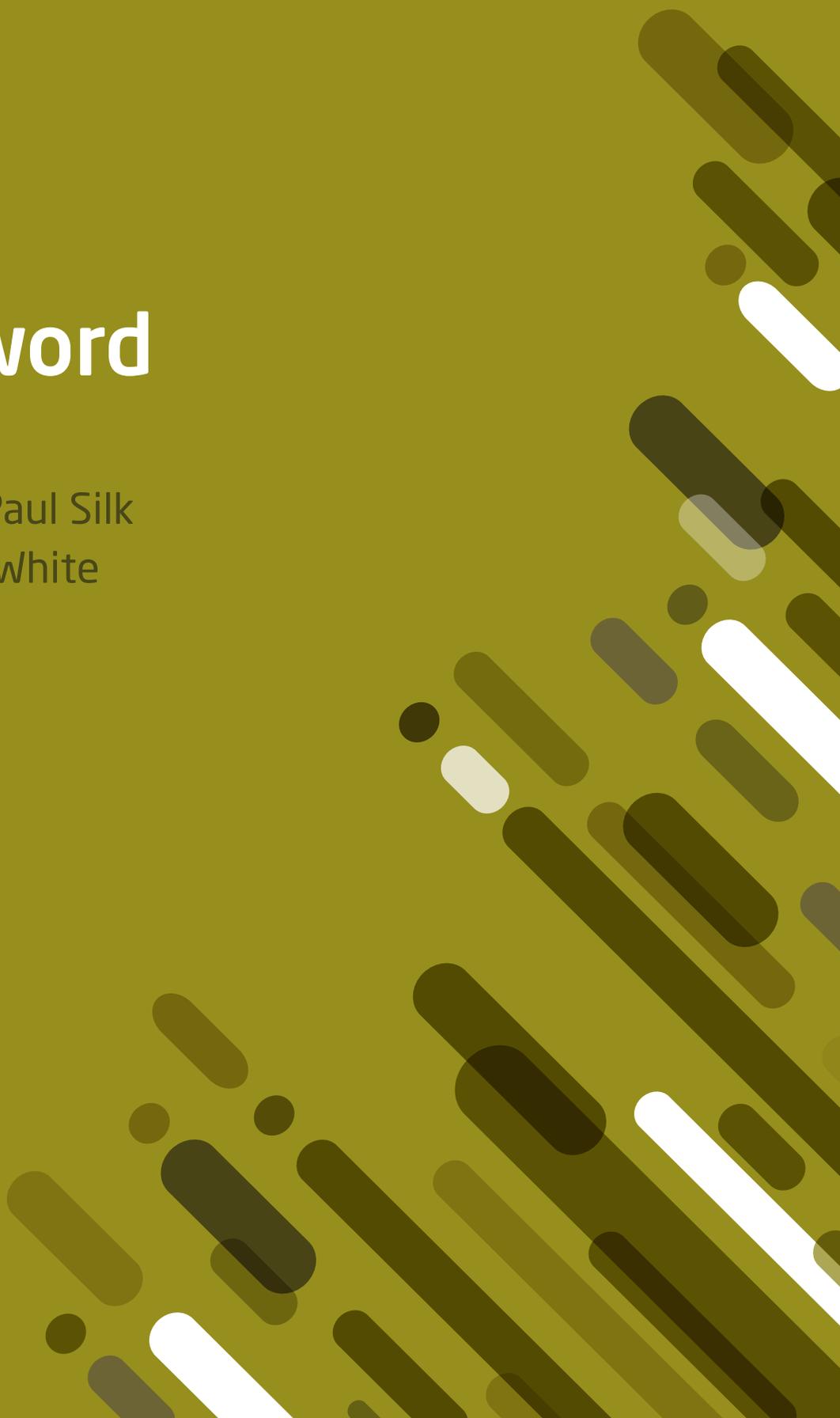
in June 1944. It was the committee whose reports finally resulted in 1946 in the bringing forward of a bill – the Statutory Instruments Act 1946 – which enacted some of the standardising reforms originally proposed by the Donoughmore Committee.¹⁵

The end of the war and the expiry of the Emergency Powers (Defence) Act was not, by a long chalk, the end of the debates on emergency powers – various statutes extended them, for purposes of defence and economic regulation, to the end of the 1950s, and then some of the defence regulations were domesticated and made permanent under the Emergency Laws (Repeal) Act 1959 and the Emergency Powers Act 1964. The debates on, and use of, the wartime emergency powers acts were, of course, very different to the ways in which the Public Order (Health) Act 1984 and the Coronavirus Act 2020 have been debated and used. Every emergency is different. Yet the history of the development of emergency powers does find some echo in the present debates; and perhaps also suggest that discontent over the use of draconian emergency powers may create the circumstances for some, at least incremental, improvements in parliamentary scrutiny of delegated legislation.

15 John Eaves jr. *Emergency Powers and the Parliamentary Watchdog: Parliament and the Executive in Great Britain, 1939-1951* (London: the Hansard Society, 1957).

Afterword

Paul Evans, Paul Silk
and Hannah White





Afterword

Paul Evans, Paul Silk and Hannah White

Many of these essays have focused on the UK parliament at Westminster. But the COVID-19 pandemic was not, of course, local to London SW1. Its worldwide nature meant that the contrasting responses of different governments and legislatures were available for a unique, real-time, study in comparative politics. At one extreme, authoritarian governments are using the crisis to bolster their claim to best meet their citizens' needs. So it is a comfort for those, like SPG members, who believe in parliamentarianism that the country that seems, so far, to have most successfully dealt with the threat is New Zealand, where Jacinda Ardern and her Labour Party were rewarded with a landslide victory in October's general election. In one of the worst performing developed nations, the USA, Donald Trump was not swept from office in November on a blue tide, as most polls had predicted, but he will go down in history as only the third incumbent President to lose an election since World War 2.¹

Executive assertion and parliamentary compliance

For Westminster, however, the arrival of the pandemic so soon after the 2019 general election sharpened dramatically a parliamentary contrast. For twelve unusual months before that election the House of Commons had had the upper hand in its relations with the executive for the first time for at least a century – an experience from which, there is no doubt, a wide variety of lessons can be drawn. The arrival of a substantial Conservative majority in the House of Commons just before Christmas changed all that. By Easter the contrast was complete. If 2019 had been the year of parliamentary dominance, 2020 was to become the year of executive dominance. A public health emergency had, in effect, put the UK's constitution on a war footing.

Even within the confines of the UK, devolution has meant that there has been a diversity of approaches to the pandemic in the four different legislatures and, indeed, between the two Houses of Westminster. The wide spectrum of size, from the 800 or so members of the House of Lords to the 60 members of the Senedd² has meant that they have all had to adapt in different ways. And the contrasting responses of the four UK governments both in general approach and in detail has meant that citizens of the devolved nations (and certainly Wales) have become more conscious than ever before of the difference between the UK government and parliament and their own.

However, as all the examples, domestic and international, demonstrate, there is an eternal conflict in the procedures underpinning democratic systems between a diversity of voices and a unity of purpose, between efficiency and accountability, between deliberation and decisiveness and between consent and control.³ The pandemic, like any national emergency tends to, dramatically highlighted these tensions.

1 If Gerald Ford, who never won a presidential election, is not counted.

2 And indeed even smaller numbers in the Crown Dependencies.

3 See, for example, 'Introduction: The Growth of Many Centuries' in *Essays on the History of Parliamentary Procedure in Honour of Thomas Erskine May*, ed Paul Evans, Hart, Oxford, 2017.

Governments wanted to take powers and to begin with parliaments for the most part were willing to cede them with little protest when the normal procedures were abrogated. In most cases the legislatures, initially at least, willingly handed over very extensive powers to their governments to make emergency legislation and, as a number of the essays describe, this was generally done with unusual expedition and, as a result, scant scrutiny. The prevailing parliamentary attitude in March was well summed-up in the words of the Speaker of the only recently re-formed Northern Ireland Assembly:

In these circumstances I know you will understand that the formalities of parliamentary procedure must give way to providing leadership and protecting the health and well-being of our community.⁴

It was not just in the making of emergency legislation that the business of scrutiny was set aside. At the start of the crisis, the House of Commons effectively abandoned all business other than government business, though it rowed back from that fairly quickly. But few would have predicted in March that the emergency would be as intense again eight months later. Nor would many have anticipated that the need for urgent legislation would still be surprisingly urgent in the autumn as, contrary to the optimistic promises of some politicians, the pandemic appeared to be following the path predicted by the more pessimistic epidemiologists, and governments' policies continued to be reactive, driven by events and often short-lived. As the Joint Committee on Human Rights had wisely warned in the wake of 9/11 nearly twenty years previously:

[...] Parliament should take a long view, and resist the temptation to grant powers to governments which compromise the rights and liberties of individuals. The situations which may appear to justify the granting of such powers are temporary—the loss of freedom is often permanent.⁵

By the autumn of 2020 many in the different parliaments discussed here were trying to retake the long view. Repossessing territory that has been ceded is, however, always difficult.

The problem was perhaps most acute in the area of delegated legislation – government more or less by decree. At the best of times, the scrutiny of this at Westminster – particularly in the Commons – is open to, and regularly receives, criticism. With the pace of change in government policy during the pandemic, its deficiencies grew dramatically clearer. By relying on powers given in legislation which had never really been intended for the purpose, particularly the Public Health (Control of Disease) Act 1984 rather than the Civil Contingencies Act 2004, it was widely suspected that the UK government was deliberately reducing the level of potential parliamentary scrutiny. This suspicion applied to a lesser extent to other executives which introduced a large number of instruments which took effect in advance of being approved by the legislature ('made affirmative' SIs). By the summer, MPs and other legislators were trying to row back – and the generally discreet Speaker of the House of Commons finally lost patience on 30 September when he told the House:

The way in which the Government have exercised their powers to make secondary legislation during this crisis has been totally unsatisfactory. All too often, important statutory instruments have been published a matter of hours before they come into

4 Letter from the Speaker of the Northern Ireland Assembly to all Assembly Members, 18 March 2020.

5 Joint Committee on Human Rights, Second Report of Session 2001-02, Anti-terrorism, Crime and Security Bill, HL37/HC372, para 76.

*force, and some explanations why important measures have come into effect before they can be laid before this House have been unconvincing; this shows a total disregard for the House.*⁶

In all the legislatures described in these essays there has been an understandable willingness to give their governments a long leash. But there were warning voices. The former President of the Supreme Court, in a collection of essays published in September, described Parliament as having surrendered 'control to the government at a crucial time ... My plea is that we get back to a properly functioning constitution as soon as we possibly can.'⁷ Another former Justice of the Supreme Court proclaimed in a lecture given in October that:

*[...] what holds us together as a society is precisely the means by which we do things. It is a common respect for a way of making collective decisions, even if we disagree with the decisions themselves. It is difficult to respect the way in which this government's decisions have been made. It marks a move to a more authoritarian model of politics which will outlast the present crisis. There is little doubt that for some ministers and their advisers this is a desirable outcome ... The government has discovered the power of public fear to let it get its way. It will not forget.*⁸

Some might consider Lord Sumption's language as tending to the apocalyptic in places, but much of the lecture can be read as a plea for more deliberation about such matters. But deliberation is a scarce resource in the face of the expectation of urgent action. By the autumn the debate was already descending into a dreary rehearsal of predictable binary banalities. This steep decline in civility and a sense of any common purpose was most clearly marked in early November when Nigel Farage proposed to reinvigorate his Brexit "party" around the new single issue of opposition to the lockdowns and other restrictive measures.

It is probably too soon to say whether the right balance was struck – even with the benefit of hindsight it will be contested whether legislatures discharged effectively their obligation to hold governments to account. But they were, of course, faced with formidable difficulties in doing so.

It's a digital world

Those difficulties included, centrally, the requirement to adapt to a digital world. Legislators clearly felt an obligation to set an example and to apply to themselves the kind of restrictions they were voting to impose on citizens. Many of the essays describe the challenges of trying to operate a non-physical parliament. The technological impediments were generally overcome with remarkable success – and several essays pay due tribute to the agility and imagination of parliamentary staff. There may have been occasional mishaps – the approval of revoked SIs or dropped connections forcing vote re-runs – but what was so speedily and successfully achieved by parliaments ought indeed to be celebrated.

Different parliaments experimented with different iterations of restricted 'in real life' proceedings, virtual proceedings and hybrid models combining the two. In terms of allowing essential business to continue,

6 Commons Hansard, 30 September 2020, c 331.

7 Baroness Hale of Richmond 'The pandemic and the Constitution' in *Justice Matters: Essays from the pandemic*, published by the Legal Action Group, London September 2020.

8 'Government by decree: Covid-19 and the Constitution', Cambridge Freshfields Annual Law Lecture 27 October 2020.

these were generally successful. The clearest point of friction was voting. Some (for example in Wales), in effect handed block votes to party managers to begin with. Other legislatures came up remarkably quickly with entirely remote forms of electronic voting.

The main philosophical basis for opposition to remote voting, most vocally expressed by Leader of the House of Commons Jacob Rees-Mogg, seems to be a mixture of a mystical and practical commitment to the real presence of legislators in their usual places of work. Most parliamentary staff were classified as key workers (though many were told to work from home, with the concomitant challenges) as were Members of the legislatures themselves (except, curiously, in Guernsey) but they were, at the same time, generally encouraged to stay away from their places of work where possible.

A number of the essays in this volume discuss different aspects of presence in a socially-distanced world. Voting was the most acute, but oddly in a way the easiest to resolve through technology, so the remarkably heavy weather made of it by the House of Commons seems particularly inexplicable. The contrast with the Lords is striking – that House (self-regulating and less at the mercy of the executive) continued with remote voting throughout the crisis and, as a result, voting participation numbers in the Lords have reached record levels. The experiment with ‘block voting’ in the Senedd was quickly abandoned in recognition of the fact that it deprived Members of discretion to vote against the party line. In the Commons meanwhile, the abandonment of remote voting meant that around 200 or more MPs had to vote by proxy – an idea that had been resisted for centuries.⁹ Even though proxies were theoretically able to give instructions to vote against the party line, this system of proxy votes handed considerable powers to the Whips, leading at least one commentator to refer to a potential scandal (an emotive word in view of what had happened with expenses a decade before).¹⁰

Technological adaptations also provided a surprisingly workable solution for the most part to participation in plenary debates – with the Senedd going ‘all virtual’ for a while. Others decamped to premises where a socially-distanced plenary was feasible (though the use of an unheated sports hall in Jersey did not last long) but most opted for some form of hybridity between proceedings in real life and virtual participation. Several essays reflect the many complaints there have been about the cumbersome inflexibility of such proceedings. The necessity of pre-planning the complex choreography required, especially where physical and virtual participation are intermingled, is felt to have drained many proceedings of spontaneity and immediacy. On the whole this has been seen as having handed the advantage to executives, whose representatives are much more easily able to duck challenges and to avoid being forced to go off-script.

However, there are also clear advantages to home-working, as many citizens have discovered in recent months. It has become easier to participate for elected Members who are geographically distant from their parliaments, for those who have health issues, those who have caring responsibilities, and all of those who have to juggle life between their constituency and their place of legislative work. Local relationships have, it seems, often flourished as a result. The pandemic itself has almost universally vastly increased the engagement between electors and the elected, with the numbers of electors contacting constituency offices rising massively, although it may also mean that the digitally excluded are even more disadvantaged than before.

9 And only trialled for new parents following an embarrassing failure of the informal pairing system in the midst of 2019’s Brexit furore.

10 A situation dramatised in the debate on a government motion which effectively declined to accept the recommendation of a recruitment board and the House of Commons Commission on the appointment of lay members of the Commons Standards Committee (see Commons Hansard, 10 November 2020, cc 843-64). James Forsyth <https://www.spectator.co.uk/article/the-next-parliamentary-scandal-waiting-to-happen>

Despite these positives, there was fierce resistance from the government to extending the right of virtual participation beyond the “scrutiny” proceedings of the House of Commons to its substantive debates. This position came under sharp attack again when Tracey Crouch MP expressed her anger at being prevented, because she was “shielding” during treatment for breast cancer, from taking part in a debate on the very topic of that disease. A couple of days later the Commons Procedure Committee published yet another report on the matter.¹¹ Introducing her committee’s report in a select committee statement on 19 November, Karen Bradley MP, the chair, described the Leader of the House’s failure to schedule a debate and vote on the question as “indefensible”, and went on to say:

The Procedure Committee was unanimous in its view that virtual participation in debates should be extended to all Members who cannot, for whatever reason, participate in person due to the pandemic. There should not be different tests for those who can participate virtually in debates, those who can enjoy virtual participation in our scrutiny proceedings and those who decide to use a proxy vote. It should not take the image of [Tracey Crouch] being denied the right to participate in a debate on the very disease that is keeping her from Parliament to make the Government move. The Leader of the House was right to say that nobody could fail to be moved by that image. It is my view that he should have seen the possibility of that image, demonstrating the complete contradiction in his position on this matter, and never have let it happen. The public will be baffled by a situation in which the Prime Minister can answer Prime Minister’s questions virtually yesterday and make a statement to the House virtually today but cannot take part in a debate until he has finished self-isolating. This is an utterly farcical situation.¹²

At the time of writing, this controversy had not been resolved.

Virtual committees

It is in the world of committees that the benefits of a digital world seem to have been most positive. Almost universally, the essays report significant benefits to wider participation by the public in committee inquiries as the barriers of geography and time have been dissolved. It may even have enabled greater participation by members of committees and certainly more meetings during recesses. But even here, the absence of direct human interaction may have its downsides in inhibiting the subtle processes by which team chemistry is synthesised (a particular factor for Commons committees only just established following the 2019 election) and consensus enabled (as well as causing real practical difficulties for parliamentary staff). On the other hand, an escape from the constraints of the theatricality, and sometimes shallowness, of public evidence sessions may pave the way to a more reflective and thoughtful approach to evidence-gathering by committees, as an experiment by the Commons Foreign Affairs Committee described here may indicate. New Zealand has already agreed to changes to standing orders to make most of its adaptations of committee procedures permanent.

Co-ordination between committees has been an issue. In Scotland and New Zealand special committees on the pandemic response were established, and the Northern Ireland Assembly adopted a variation with a committee comprised of all its members. The Lords appointed a special committee on the pandemic as

11 House of Commons Procedure Committee, Sixth Report of Session 2019-21, Procedure under coronavirus restrictions: virtual participation in debate, HC 905.

12 Commons Hansard, 19 November 2020, cc 521-2.

well, though its remit was to look at the long-term consequences rather than the short term responses. These committees were perhaps more effective in focussing accountability than the multilateral approaches of other chambers. Whether they point the way to a more rapid-response flexibility in the future we will have to see – there are unlikely to be many similar cross-cutting crises we hope, but there will always be cross-cutting policy challenges. The question of how the inevitable post-mortem inquiry into pandemic preparedness and response is undertaken in the various jurisdictions will test the committee systems once again – Westminster’s bicameral Parliamentary Commission on Banking Standards, set up quite some while after the 2008 financial crisis, may offer some pointers, though there will be pressure to move faster this time.¹³

However, there may be so far unquantified downsides to all this apparently frictionless communication. Although the escape from the raucous hurly-burly of crowded chambers, and the relief from the inaccessible and sometimes intimidating committee rooms, may have amplified some voices it may also have muted others. There is a vocabulary of presence and engagement which tends to discount the remoter media of participation – a phenomenon as common in other workplaces as in parliaments – and there is a clear hankering amongst some for the sweaty and noisy spaces of the old days. Politics has, after all, often been characterised (in a rather gendered way some might consider) as a contact sport. But it will be the present members of legislatures, accustomed and accommodated to traditional patterns of working, who will decide which innovations will stay and which will be discarded. Those outside, who might see some of the pandemic-induced reforms as making politics more accessible to a wider range of people, will not have a say.

Tensions between two kinds of presence

The tension, which long predates the pandemic, between the work of elected Members in their local communities and in the legislature has only been sharpened, not created, by the pandemic restrictions. A sometimes under-appreciated element of the legislative workplace though, has been lost. The physical space in which politics takes place is also a psychological space. Many people have felt the loss of the support and learning networks which grow spontaneously in the physical workplace. Politicians are not an exception to this rule. A lot of politics takes place informally, in ad hoc conversations and in chance meetings. Being surrounded by others who face the same challenges in doing their work as you do is an important benefit of workplaces. This applies as much to parliamentary staff as to parliamentarians.

But workplaces are also the spaces in which conformity and groupthink grow, and where subtle forms of coercion and socialisation into normative behaviour and opinions can be practised. The built environment can help to conjure up an imagined constitutional environment which adds colour to the daily grind of politics – it can also overpower the capacity to imagine different ways of doing things. New parliamentary buildings in Edinburgh and Cardiff were physical manifestations of the ambition to do things differently. If Westminster ever finally gets around to the wholesale ‘restoration and renewal’ of the Palace of Westminster it is to be hoped that it can incorporate some of the lessons of the new ways of working provoked by the events of 2020 – and that the ‘renewal’ will not always take second place to the ‘restoration’.

¹³ <https://old.parliament.uk/business/committees/committees-a-z/joint-select/professional-standards-in-the-banking-industry/> (Accessed 21 November 2020)

Parliamentary governance

One of the problems confronted by all the parliaments described here – to a greater or lesser extent – was establishing who was in control. Change generally proceeds very slowly in these places, where there is no classic chain of command structure and where every Member is, at least in theory, equal. The absence of any 'bureau' type of structure in the House of Commons probably exacerbated the clash over voting systems, and the House's first collective response was to cede almost complete agenda control to the government. It was the usual story of executive control moderated by negotiations in the murky waters of the 'usual channels'.

Elsewhere, legislatures which have a business committee or bureau to provide a degree of transparent cross-party and backbench participation in such decisions seem to have been more successful in pulling together. Although the House of Commons Commission made a good fist of providing a leadership role that it does not really possess, the crisis did highlight once again the extent to which the Commons is at the mercy of executive whim. Perhaps if there had been a bureau, examples of which elsewhere are discussed in these essays, some kind of temporary pandemic committee could have been up and running quickly, when it was needed, and decisions about procedure would not have been at the mercy of the prejudices of ministers.

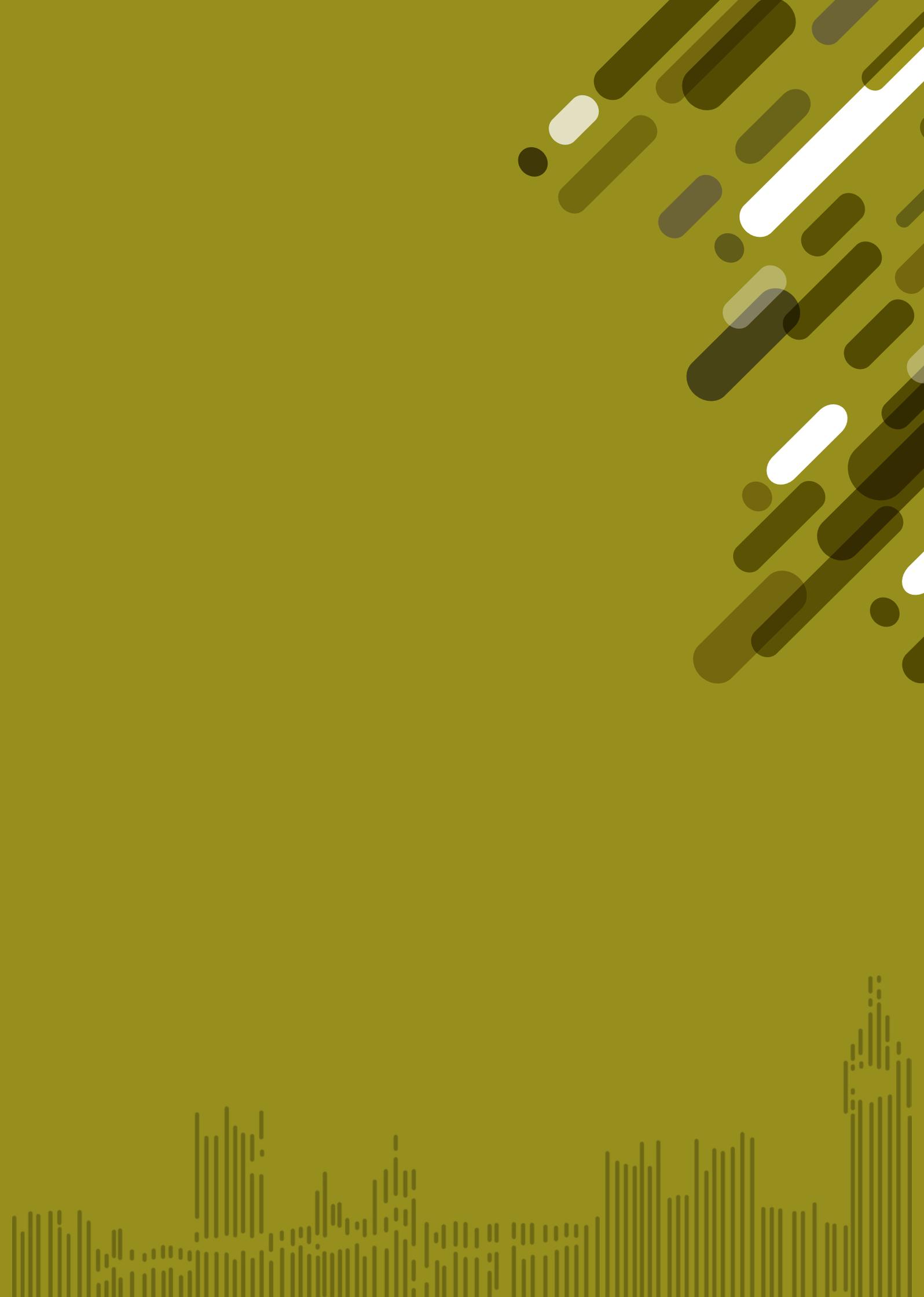
Lessons for the post-pandemic parliament

So, what looks likely to survive from the pandemic adaptations, what should be abandoned, and what should grow out of them?

- Virtual, or at least hybrid, committees are here to stay. We need to think about how to harvest the advantages they have shown – including especially more open, real-time collection of diverse voices and geographically distant opinions. Committees could spend less time performing and more time thinking. But we need to consider how to recover or replace what is lost through being in the same room – including the opportunity to compel the physical attendance of key witnesses such as ministers when appropriate.
- Technology might have the potential to enable a different balance to be struck between presence in the constituency and presence in the legislature and, in doing so, change who is able to participate in politics. Even if the presence in the legislature remains important and sometimes necessary, remote participation should be facilitated. However, procedural innovation needs to ensure that effective scrutiny is not compromised by less physical presence and that there is equality of opportunity and esteem between remote and physical participation.
- If there is to be that equality of access and opportunity, and if they are to be able to respond effectively to the increase in digital engagement by constituents, support in both financial terms and technological know-how needs to be commensurate with the challenge to Members of handling the complexities of their contemporary jobs.
- Remote voting makes a lot of sense in enabling normal people to be politicians and retain a semblance of normal life. In legislatures with in-person voting it would represent a considerable efficiency for time-poor members and allow those who are indisposed to continue to cast their votes in person. And when we have it, why not allow abstentions to be recorded in all the UK's legislatures? Although the use of proxies is a well-intentioned alternative, its adoption on a large scale risks handing too much power to party managers.

- We need to do better at scrutinising delegated powers before they are handed to ministers, and to redouble efforts to make scrutiny of delegated legislation once made fast, forensic and effective.
- We do not necessarily need ever-expanding estates to accommodate our legislators in one place. Parliaments could become more pervasively present throughout the jurisdictions they represent. Reductions in capital expenditure on more and bigger buildings could be used to fund better buildings.
- Parliaments have shown that they can be agile and adaptable in a crisis, and have the flexibility to make temporary changes to the rules of procedure. But they need effective governance arrangements to enable this to be done without the permission of executives, and to ensure such changes cannot be imposed by executives without their consent.
- Debate is not deliberation. Virtual proceedings have highlighted how much of what goes on in plenary sessions is only very marginal in holding executives to account. But press conferences are not scrutiny – parliaments must assert their centrality in holding governments to account. Can the opportunities of the digital world be used to increase, rather than stifle, effective oversight?

Overall, parliaments must be both watchful and assertive: the impact of the COVID-19 pandemic has again demonstrated the ever-present risk that executives will use a crisis to rebalance power even further in their favour. Parliaments need control over their own resources, proceedings and practices: they can be agile, enterprising and adaptable if given the means. If they have not been given them, they must secure them.





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Parliaments and the Pandemic

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