



Parliament's role in the coronavirus crisis

Holding the government to account

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Summary

By questioning and challenging the government, parliament can help to refine and improve policies and their implementation. Parliamentarians can use the lived experience of their constituents, as well as their own, to inform the government's decision making. The parliamentary scrutiny process itself lends legitimacy to the government's actions, in proving that they have been thoroughly considered and debated.

Parliamentary scrutiny is as such a cornerstone of the Westminster system of governance. At a time of national crisis such as the coronavirus pandemic – during which the government is making unprecedented decisions at speed and implementing policies that would have been unthinkable just weeks ago – effective parliamentary scrutiny is more critical still.

But it is also harder.

Like most other legislatures, the UK parliament's procedures rely on members being physically present in Westminster. But social distancing guidelines adopted due to coronavirus forced parliament to, temporarily, adapt its ways of working. Since mid-April, parliamentary questions, ministerial statements, select committee hearings and legislative proceedings have been conducted either wholly or partly in 'virtual' form, for both the Commons and Lords.

Though some general easing of lockdown measures is being brought in, parliament, like many workplaces, will struggle to return to usual ways of working soon. On 20 May, the government allowed the temporary changes to the Commons' ways of working to lapse, meaning that when MPs return from recess on 2 June, they will be attempting to do so as normal. But continued social distancing requirements mean that this will not be straightforward. In trying to overcome some of the shortcomings of the virtual parliament by seeking an impossible normality, there is a risk that the government's plans will actually reduce parliament's ability to conduct effective scrutiny.

It is vital that parliament learns from its experience of virtual proceedings so far, understanding both its benefits and its challenges, so that it can adapt to changing restrictions in ways that facilitate effective scrutiny of government by all members.

This short paper explores how the recent changes have affected parliament's ability effectively to scrutinise the government's approach to the coronavirus. We focus particularly on parliament's ability to hold the government to account for its:

- health and economic policy, including specific decisions made in relation to lockdown
- legislation, including the government's use of the broad secondary legislation-making powers granted to it under the Coronavirus Act 2020.

It is not surprising that some aspects of parliament's work have been adversely affected by the response to the coronavirus crisis, and that rapidly developed, new systems proved to be less than perfect.

Nonetheless, we find that, compared with many other legislatures, the UK parliament adapted quickly to allow ministers to be held to account for the government's response to the pandemic.

Specific decisions made by the government – for example, on the lockdown – as well as its broader approach to health and economic policy were still being scrutinised through questions, statements and select committee hearings. But with virtual proceedings requiring the introduction of speaker lists, and preventing MPs from intervening on one another, the spontaneity and quality of debates was reduced. This was particularly significant for the scrutiny of legislation. Members also SAW limitations put on their opportunities to raise issues from their constituents, with Westminster Hall, backbench and adjournment debates not taking place under virtual proceedings – and without the opportunity to speak to ministers normally afforded by their physical presence in the division lobbies.

The virtual proceedings adopted by parliament undoubtedly had some shortcomings. But the government's move to return the Commons to its usual ways of working on 2 June, when it returns from recess, is deeply concerning.

The government has indicated that social distancing will continue to be enforced when parliament returns, as in any workplace. But this will likely limit the numbers of MPs and peers able to participate in parliamentary proceedings. It also runs the risk of excluding those who are shielding because they, or members of their household, are particularly vulnerable, or those with caring responsibilities who will find it difficult to travel long distances to Westminster. While ministers have suggested they are seeking solutions for MPs who are shielding, there is no detail forthcoming – though it does appear that arrangement will be made for MPs with caring responsibilities or travel issues

Imperfect but inclusive virtual proceedings are preferable to returning to some form of business as usual – or attempting to – and in so doing restricting the ability of some parliamentarians to participate in the virtual work of parliament.

Background

As the coronavirus pandemic reached Britain and began to spread among the population – including to several MPs – parliament faced a balancing act between continuing its work and ensuring the health of more than 1,000 members and 3,000 parliamentary staff, as well as hundreds of staff employed by individual members.

The UK parliament is not usually associated with speedy reform. Yet within the space of around six weeks, it made – temporarily – some of the most far-reaching changes to its ways of working in its history.

The initial response

Initial steps taken by the parliamentary authorities in mid-March to allow for social distancing included restricting access to the parliamentary estate and lengthening the process of formal votes, or divisions, so that members did not have to crowd into the division lobbies (though political agreement meant that no divisions took place in the run-up to the Easter recess). Prime Minister's Question Time was extended so that two groups of MPs could rotate through the chamber, allowing them to remain further apart. MPs agreed a motion to allow Commons select committees to meet and take evidence via videoconference.

Other informal steps to allow for social distancing guidelines were agreed among the political parties in the Commons. The [Coronavirus Act 2020](#), which gave the government emergency powers to respond to the pandemic, was fast-tracked through parliament in just four days, with no divisions, thanks to an agreement between the parties.

The government asked parliamentarians to begin their Easter recess several days earlier than expected, on 25 March, to which they agreed. Sir Lindsay Hoyle, the Commons Speaker, made clear that work on parliament's technological capabilities would continue during recess.¹

The move to a virtual parliament

Many Commons select committees made use of their new power to meet virtually during the recess: departmental and cross-cutting committees held nine oral evidence sessions during the four-week break. But some MPs and peers expressed disquiet at being absent from Westminster, being unable to receive formal statements from government on its pandemic response strategy or test the government's policies and decisions through parliamentary questions.²

There was consensus that parliament needed to return from recess on 21 April as planned, so that it could continue to fulfil its vital constitutional functions. Fearing that their ability to scrutinise the government might be seriously impaired by the constraints imposed by social distancing, many MPs called for the establishment of a 'virtual Commons'.³ The Speaker wrote to the Leader of the House, Jacob Rees-Mogg, asking him to "make representations to Government" to allow the Commons to undertake some of its business remotely on its return from recess.⁴

Detailed plans for remote participation in parliamentary proceedings – developed in consultation with the government and main opposition parties – were put forward by the Speaker in a letter to MPs on 14 April and agreed by the House of Commons Commission, the governing body of the Commons, two days later.⁵ MPs agreed a package of changes to scrutiny and substantive proceedings on 21 and 22 April, including enshrining the principle that remote and in-person participation by MPs should be treated equally.

Meanwhile, on 7 April, in the House of Lords, the Lord Speaker, Lord Fowler, set out plans for the Upper House to conduct some of its business remotely. In a letter to peers shortly before their return from the Easter recess, confirming plans for some virtual business, the Lord Speaker emphasised the importance of parliamentary business continuing, but with peers staying away from parliament.⁶ Peers agreed to the plans when the House returned from recess.

Following parliament's return, the Parliamentary Digital Service (PDS) successfully developed a system that enabled MPs to vote remotely, using an online portal. Following comments from the Commons Procedure Committee (Procedure Committee), the Speaker approved the system for use on 6 May.⁷

Notably, the Commons and Lords adopted different approaches to their proceedings. The Commons chose a 'hybrid' model, in which certain forms of business were conducted both in the chamber and online; whereas in the Lords, each type of business is conducted either wholly virtually or wholly in person, as set out on the next page.

Type of business	House of Commons	House of Lords
Oral questions	Hybrid (up to 50 MPs in chamber; up to 120 MPs virtually)	Virtual only
Urgent questions (private notice questions in the Lords)	Hybrid (chamber and virtual)	Virtual only
Ministerial statements	Hybrid (chamber and virtual)	Virtual only
Primary legislation	Hybrid (chamber and virtual: voting to take place remotely)	Chamber only (observing social distancing rules)
Secondary legislation	Hybrid (chamber and virtual: voting to take place remotely)	Chamber only if making a decision on the legislation; if just debating it, then done virtually
Emergency debates	Chamber only (observing social distancing rules)*	N/A
General debates	Hybrid (chamber and virtual: voting to take place remotely)	Virtual only
Select committees	Mostly virtual	Mostly virtual

* There is some debate over whether some emergency, or Standing Order No.24, debates could theoretically have been included as part of hybrid proceedings.

These adaptations were not intended to be permanent. The Leader of the House has said that – in his view – MPs would have struggled to reach consensus on the need for changes if there had been any doubt that they were temporary.⁸ The Procedure Committee has emphasised the importance of keeping virtual procedures “in place for no longer than is strictly necessary”. Following the committee’s recommendations, the Commons’ procedures were subject to review every six weeks.⁹

On 12 May, MPs agreed to extend the temporary orders allowing remote proceedings in the Commons until 20 May – the date on which the House rose for a short recess. On 20 May, the government chose not to table a motion extending the virtual parliament. This means that when MPs return on 2 June, the Commons will revert to its usual ways of working. The Leader of the House emphasised that “it is clear that soon parliament must set an example for how we move back, gradually, to a fully functioning country again”.¹⁰ It is not clear how this will work in practice, and there are major concerns over whether this may exclude members and staff who are unable to attend the chamber as they are still shielding or have caring responsibilities, or are reliant on public transport.

Prioritisation has driven choices about ways of working

In developing its new ways of working, decision makers within parliament have had to prioritise between different aspects of parliamentary activity. At the same time, the intention has been to ensure that all MPs are treated equally, regardless of whether they are participating remotely or in person.¹¹

Prioritisation is necessary because the UK parliament has restricted resources; those resources may be further reduced by the effects of the coronavirus, and parliamentary time is restricted. Staff capacity is limited. For example, staff responsible for ensuring parliamentary broadcasting work closely together in small teams and are particularly vulnerable to absence caused by illness. Technological resources are also finite, both in terms of the hardware members and staff have access to and in terms of the staff of the PDS, which are shared across the two Houses. And, as ever, there are also limits to parliament's time and the amount of business that it can conduct.

All this has meant that parliamentary decision makers have had to prioritise between the two Houses, and make judgments about the importance of different kinds of business in the current circumstances.

Initially, the Commons and Lords took different approaches, reflecting their different priorities. The Lords initially began its virtual proceedings on Microsoft Teams, as it was less concerned with being able to immediately broadcast its proceedings. By contrast, the Commons' hybrid proceedings were broadcast from the outset, meaning that they opted for Zoom, a different videoconferencing platform.

Decisions have also been made about prioritising between certain types of business. Initially, the focus was on enabling policy scrutiny to go ahead: allowing committees to meet and take evidence remotely, and enabling virtual parliamentary questions and ministerial statements. In part, this was because some of these issues – particularly the remote working of committees – were relatively easier to resolve. But it was also because the Speaker had emphasised the particular importance of getting scrutiny procedures up and running in his letter to the Leader of the House on 1 April.¹²

Following the Easter recess, once the fundamental systems for online participation had been shown to work, attention shifted to the final development of a secure remote voting system. This was needed to enable the Commons to scrutinise legislation without having to proceed on the basis of informal consensus. On 29 April, the Leader of the House stated in the chamber that “the government have a legislative agenda that they must get through, so, no, I will give no guarantees that there will not be contested business. That is why we need to have votes: so that members may express their views.”¹³

However, there are other forms of Commons business that did not taking place in any form during the virtual proceedings. There have been no Opposition Days held since 25 March. And no debates took place in Westminster Hall, or through the Backbench Business Committee. Although these kinds of debates do not require the House to reach

substantive decisions, they are still important means through which MPs can proactively raise issues with the government. The same is true of end-of-day adjournment debates, which also did not take place, which offer an important space for MPs to discuss issues of relevance to their constituents. It is understandable that other forms of parliamentary business have been prioritised for virtual proceedings, but this limits the ability of members to point out issues and problems that may help the government to formulate its policies.

Constraints imposed by the technology have had procedural consequences for the virtual parliament. For example, capacity issues meant that the Commons needed to pause its proceedings for half an hour, every two hours, to allow a broadcasting reset (subsequently reduced to 15 minutes) – limiting the amount of time available to MPs, and meaning that the Speaker has had to ask members to limit the length of their remarks. Even the prime minister, giving his first statement on coronavirus to the House, was chided for speaking longer than his allotted 10 minutes.¹⁴ The number of slots available to select committees to livestream their virtual evidence sessions similarly was limited, although there are still 20 virtual meetings facilitated a week, all of which are recorded for broadcast or webcast. The time available for departmental questions in the Commons was also reduced – two departments a day answered MPs’ questions, though for less time, as the government has reduced the number of slots available.

The international perspective

Almost all parliaments around the world have faced the same tension between ensuring scrutiny and maintaining public health, and the resultant need to prioritise their business. But they have made different choices. Some have prioritised legislation before other forms of business: the Welsh parliament – one of the first to meet entirely virtually in plenary – debated a bill relating to elections some time before select committees got up and running.

Other legislatures, such as the Irish Dáil, are continuing to sit in person, while maintaining social distancing.* Yet other parliaments, such as Australia, have opted to focus on conducting committee scrutiny through specific coronavirus committees, with their parliaments not sitting in plenary and non-essential legislation largely abandoned. In the case of Australia, controversy around this decision has been growing; a group of former public servants recently wrote to the prime minister requesting that the Australian parliament continue to meet, highlighting the example of the UK parliament’s hybrid proceedings.¹⁵ The Canadian parliament has also formed a committee to scrutinise the government’s coronavirus response, comprised of all members of the House of Commons.

Each parliament’s response has depended on the legal and constitutional advice it has received, as well as scientific and public health advice, their resources and usual ways of working. The UK parliament was quick to adapt, and through its virtual proceedings was able to maintain much of its usual business – even if the circumstances were less than ideal.

* The Dáil is considering alternative locations for Teachta Dálas (TDs, members of the Dáil) to safely meet and vote on occasions where all TDs must be present, such as the election of a Taoiseach.

How effectively is policy scrutiny working?

It is clear that both the parliamentary authorities and government initially prioritised parliamentary scrutiny of policy – in certain forms – when agreeing on plans to move proceedings online. In part, this was because select committee meetings were one of the easiest types of proceedings to conduct virtually – with previous precedents for virtual meetings to draw upon. But it was also because of concerns about an absence of parliamentary scrutiny during the Easter recess, which came at a critical time in the course of the pandemic in the UK.*

The government is having to make a large number of policy decisions in response to the pandemic. These relate to almost every area of policy, from how school pupils are examined to the postponement of the COP26 climate change conference (planned to take place in Glasgow in November). The most acute decisions being made by the government are in relation to health and economic policy.

Some decisions, such as those on lockdown measures, are only intended to apply in the immediate future and not mark long-term shifts in policy (though may have far-reaching implications). Decisions are being made at unusual speed and with imperfect information – as scientific understanding of the coronavirus is still developing. This means that the scope for the government to get things wrong, or to make decisions with unintended consequences, is greater than usual. Parliament's role in testing and challenging government policy is therefore critical.

Virtual committees are playing a key role in scrutiny

The existing select committee system is the main mechanism through which parliament has conducted policy scrutiny during this crisis to date.

In March, at the instigation of the Procedure Committee, MPs agreed to a temporary order allowing committees to meet and take evidence virtually.¹⁶ Throughout the Easter recess, as the UK-wide lockdown came into force (on 23 March), multiple committees held evidence sessions on coronavirus. Nine oral evidence sessions were held across all Commons departmental and cross-cutting committees, with witnesses including the health secretary, the deputy chief medical officer and the chief executive of HMRC. As well as allowing MPs to scrutinise the government's changes to health and economic policy, this also enabled them to understand the information that the government was using to inform its decision making.

Working virtually did little to diminish the ability of committees to hold the government to account on its coronavirus response. The virtual format may even have helped enhance their work. Remote meetings are easier for MPs to attend during a recess, when they are back in their constituencies across the country. Holding virtual oral evidence sessions also makes it easier to reach a broader range of witnesses, with no requirements to travel to London. Some potential witnesses may feel more comfortable giving evidence from their own homes, rather than sitting directly in front of committee members.

* The highest daily death rates from coronavirus came in the second week of April (during recess), assumed to be the 'peak' for the UK; on 30 April the prime minister announced that the UK was "past the peak of this disease".

While the UK parliament is using its existing committee system to scrutinise the government's coronavirus response, other legislatures have opted to adapt their committee systems.

- In **Scotland**, a nine-member committee has been established on the government's coronavirus response, with a remit to consider and report on the Scottish government's response to the pandemic, including the operation of powers under the Coronavirus (Scotland) Act 2020.
- In **Ireland**, a 19-member Special Committee on Covid-19 Response began meeting in May, with a remit to consider and take evidence on the government's response to the pandemic.
- In **New Zealand**, an Epidemic Response Committee was set up to examine the government's coronavirus response, chaired by the leader of the opposition, and with a majority of opposition members. The committee has met via videoconference several times a week since the country went into lockdown and has been supported by expert staff to ask questions of ministers about the breadth of the government's response.
- In **Australia**, a new coronavirus committee has been established, in the senate, chaired by the opposition's business manager.
- In **Canada's** House of Commons, a new Special Committee on the Covid-19 Pandemic has been set up, of which all MPs are members. It will meet several times a week, holding a mixture of virtual and in-person evidence sessions.

In some cases, these new coronavirus-focused committees were established at least in part because their respective legislatures were not sitting in plenary. Unusually, the Australian parliament is not due to return until August – other than for a handful of days – and its new committee is therefore effectively acting as the senate in miniature.¹⁷ New Zealand's Epidemic Response Committee has also been holding hearings while parliament has been in recess (although it has now resumed sitting). And in Canada, the Commons is adjourned until 25 May, though the new special committee will hold meetings in the meantime.

These models allow parliamentarians to focus directly on coronavirus, without the need to inquire into a broader policy agenda. But UK policy specialist committees are able to bring into use their existing expertise on different areas of policy – such as health or education – that apply to the coronavirus response. This may make their scrutiny more effective. And the scrutiny conducted was in addition to proceedings in the two chambers, rather than in some countries, where coronavirus-focused committees are effectively sitting in place of the whole legislature.

The risk of scrutiny being conducted by multiple committees in the UK parliament is of duplication – of effort and overlap. Faced with a similar cross-cutting issue in the form of Brexit, the Commons appointed a member of House staff as a liaison manager to help ensure that Brexit work was joined up; the creation of a similar role to co-ordinate coronavirus scrutiny may be necessary.

Committees are beginning to co-ordinate using a new procedure that allows members of one committee to participate as a 'guest' in the evidence sessions held by another. The chairs of the Home Affairs, Foreign Affairs, Science and Technology, and Housing, Communities and Local Government committees have all participated in an evidence session with the health secretary on coronavirus, organised by the Health and Social Care Committee. This has facilitated more joined-up scrutiny of the government.

The use of 'guesting' was particularly important in [the absence of the Liaison Committee](#), which draws together the chairs of Commons committees. It was not until 20 May that the committee chair, Sir Bernard Jenkin, was appointed, due to a political row over the government's attempt to install Jenkin rather than allow the committee to choose its own chair.

The Liaison Committee is unique in that it is the only committee with the ability to take evidence from the prime minister. This allows it to combine the expertise of all Commons committee chairs to question the prime minister on all areas of government policy. It is particularly useful for conducting joined-up scrutiny of issues, such as coronavirus, that cut across all of the government's work.

It is five months since parliament returned following the 2019 general election, meaning that it has taken longer – in calendar days – to set up the Liaison Committee than in any election year since 2010.¹⁸ The longer that the Committee is unable to meet, the more the opportunity for valuable scrutiny is reduced.¹⁹

And it means that Boris Johnson, despite becoming prime minister in July 2019, is still yet to appear before the Liaison Committee. Jenkin has indicated that he will seek to have the prime minister appear as a matter of priority.

Chamber-based scrutiny became 'hybrid'

While select committees moved online rapidly and continued their work, there was a four-week hiatus in scrutiny in the two chambers due to the Easter recess, with parliamentarians agreeing to begin the recess a few days earlier than planned because of concerns about social distancing in the chambers. The four-week temporary adjournment meant that no parliamentary questions could be asked, and no emergency debates or urgent questions took place, during the early weeks of the pandemic response. Daily government press conferences provided limited scrutiny, but questions from journalists could not replace the policy expertise and lived experience which informs the questions asked by MPs and peers.

Both the Commons and Lords prioritised getting chamber-based scrutiny up and running during the Easter recess. On its return on 21 April, the Commons passed temporary changes to its standing orders to allow for “hybrid scrutiny proceedings”, including questions to ministers, ministerial statements and urgent questions.²⁰ Since 22 April, statements and oral questions have been conducted with most MPs (up to 120 at any time) online and a limited number – no more than 50 – in the chamber. Although the chamber is usually, in theory, home to 650 MPs, in practice it is rare that anywhere near this number are present in person. The six urgent questions that have been granted since the Easter recess have taken place using the same hybrid model.

The Lords has moved some of its proceedings entirely online. It has held oral questions, statements and private notice questions entirely virtually, “to ensure the House can fulfil its important constitutional role, and members of the House can continue to hold the government to account, while respecting current social distancing guidelines”.²¹

This approach is different to what has happened elsewhere, including in the three other legislatures of the UK. In Scotland, Leader’s Questions have shifted to a virtual format – as in Westminster – but a further question time has been set up that allows 19 members of the Scottish parliament (MSPs) to ask questions of four ministers about the coronavirus response. In Northern Ireland, the volume of questions facing the executive was so overwhelming that it led to the creation of an ad hoc committee, comprising all members of the legislative assembly (MLAs) to which ministers give statements about the coronavirus before being questioned by members.

The Welsh parliament has introduced Standing Order No. 34.18 which gives the presiding officer the power to ‘disapply’ the requirement that time be made available each week for oral questions to the first minister. Topical questions, which relate to a matter of national importance where an answer is required quickly, still take place virtually. As outlined earlier, in places where parliaments are not sitting, such as Australia, it is the new coronavirus-specific committees that are the primary site for questions to the government.

Jacob Rees-Mogg said that any specific decisions made in response to coronavirus, for example on the easing of lockdown restrictions, would be communicated to parliament first through ministerial statements.²² However, this commitment was broken by the prime minister, who announced changes to the lockdown in a televised address on Sunday 10 May, a day prior to his statement in the Commons. Given this inconsistency, it was all the more important that MPs were able to ask urgent questions and peers to ask private notice questions virtually, so that appropriate parliamentary scrutiny of government plans could still occur.

Changes to proceedings affected policy scrutiny

The changes to the two Houses' procedures were designed to balance the need to facilitate scrutiny, with a number of other, sometimes conflicting, factors: to avoid overburdening ministers and officials who are busy responding to the pandemic; to protect the health of parliamentarians and staff; and to allow for the capabilities of the technology and available time.

The government was also keen to ensure that parliament has the time to pass its legislative programme, including (but by no means limited to) any legislation required to deal with the pandemic.

This balancing act resulted in some changes that had an impact on parliament's ability to hold the government to account.

- There was **less time available** for certain proceedings than would usually be the case. Previously, on a normal sitting day in the Commons chamber, any ministerial statement could be expected to last up to an hour, as could any urgent question. Daily departmental questions would usually last for an hour, with one department answering each sitting day according to a rota. Under the virtual proceedings, all statements and questions in the Commons had to be completed within a two-hour slot each day, although the Speaker may extend that "for a short additional period" if he chooses.²³ Statements have also been allowed during the time allocated to substantive proceedings.
- The **procedure for oral questions** changed. Usually, a different government department is scheduled to answer MPs' questions for an hour each sitting day. Under the hybrid model, the government amended the rota so that two departments answered questions each day, for 30 minutes each. This meant that MPs have the opportunity to question departments more regularly than they usually would – but there was also less time on any given day for them to raise questions. MPs were able to ask supplementary questions on the back of another member's question, though some backbenchers expressed concern about this system.
- The **flow of debate** was affected, by some members participating in scrutiny proceedings in person, and others only virtually. MPs had to register their wish to speak in advance and cannot intervene at will. This is more of a concern for legislation, but even when members are undertaking what the Leader of the Commons refers to as "point scrutiny", it is important that questions and answers flow.²⁴ This allows questions to be refined in response to answers, and issues clarified, as MPs and ministers get into the details.
- MPs are being encouraged to table **fewer questions**. MPs and peers were also still able to ask questions of ministers in the form of written parliamentary questions, but they have been asked to do so less, given the considerable workload that most departments are experiencing in response to the pandemic.²⁵ The Speaker advised colleagues that "multiple questions will block not only staff members in this House but government departments that need to be carrying on with their duties, so

please think twice. When a member puts 60 questions down, that is not helpful to anybody or to this country.”²⁶ On 11 May, the Speaker indicated that he had heard “widespread concerns” from MPs about delays in responses to parliamentary questions from departments including the Department of Health and Social Care. Though he acknowledged the challenges facing the department, he called for “improvements” – as well as reminding MPs to be “targeted and considered” in their tabling of written questions.²⁷

Parliament had limited opportunity to shape the government’s policy

Parliamentary scrutiny of government policy is important because it can help the government to recognise problems and make improvements. But it is also vital that parliamentarians can help to shape the government’s policy, particularly at a time of crisis, by bringing their own expertise and experience to bear. MPs, in particular, can draw on knowledge drawn from their constituency work – which many MPs have reported to be particularly busy during the pandemic – to raise issues with ministers.

At the best of times, opportunities for individual MPs to initiate changes to government policy are limited. They may be able to progress a private members’ bill if they are high enough in the ballot to secure parliamentary time and are able to persuade the government of their bill’s merits.* Otherwise, they must resort to indirect means – using backbench business debates or adjournment debates to raise issues and seek to build pressure on the government to act. These forms of business did not take place during the Commons’ use of virtual proceedings. This further limited the ability of MPs to raise problems on their own initiative.

Scrutiny of legislation

The coronavirus pandemic has already required the government to pass emergency legislation in the form of the Coronavirus Act 2020, as well as to make regulations under public health legislation to [implement the lockdown](#). The Coronavirus Act was taken through both Houses rapidly – in just four days – and without any divisions being pressed, as no decision on a remote form of voting had at that point been reached. MPs were willing to work together to ensure they did not need to go through the division lobbies, and the opposition accepted that the government needed legislative authority urgently for its actions.

This did not prevent scrutiny. Speaking in the Commons, the health secretary acknowledged that issues raised by the opposition had led the government to make changes to the bill relating to statutory sick pay, and the government also made changes in response to an amendment tabled by the Labour MP Naz Shah relating to religious burials. As Matt Hancock stated, this was “an example of how accountability helps to get the response right”.²⁸

* Backbench MPs are able to introduce bills to the Commons in the form of private members’ bills (PMB). There are three different types of PMB, including ballot bills. A ballot is held at the start of a new parliamentary session, determining which backbenchers get the opportunity to bring forward a PMB. Crucially, only 13 sitting days per session are given over to consideration of PMBs, during which ballot bills are prioritised. This means that ballot bills are the type of PMB most likely to make it into law – though only a handful per session do so.

The approach taken by the UK parliament was more transparent than that taken to emergency legislation in some other legislatures. In Canada, for example, usual parliamentary procedures were twice suspended to pass two bills. The first bill, C-12, was passed under an omnibus motion in the Commons that allowed the bill and other urgent legislation to be passed in one go using an 'unanimous consent' measure. There was no debate on the motion, and it passed before legislators had even seen the text of the C-12 bill.

Days later, the Canadian parliament was recalled by the government to pass a further bill, C-13. To reduce numbers in the Commons, parties sent only 30 members who negotiated over the bill through the night – in private – until they reached agreement. This meant that party leaders had more influence in the decisions than backbenchers, who mostly stayed away.²⁹ There were then a few hours of debate in the Commons and Senate before the bill passed, which did allow for some scrutiny: opposition MPs successfully sought concessions from the government to enable greater parliamentary oversight of the powers contained in the bill.

The UK government made clear that it intended to press ahead with its full legislative agenda – and not just legislation needed in response to coronavirus or for any legal reason. Some of this legislation, particularly bills related to Brexit, was likely to be contentious. In this its approach contrasts with that of other executives which have suspended their law-making ambitions during the crisis period: for example, non-urgent legislative business has largely been suspended in New Zealand, Canada and Australia. In Wales, there was criticism of the government's initial attempt to progress the Local Government and Elections Bill, leading ministers to drop the move "as part of the Welsh Government's wider consideration of its legislative programme".³⁰ As a result of its approach, the UK government prioritised the development of new procedures which will allow for legislative scrutiny, including remote voting.

In the fortnight before the UK-wide lockdown was announced, MPs began to avoid pressing matters to a formal division, relying instead on reaching informal consensus. The last formal division was on the budget on 10 March, and all budget resolutions – except one, which the government did not move – went through 'on the nod'. In the first weeks after the Easter recess the government proceeded with the preliminary legislative stages of uncontroversial bills – the Finance, Domestic Abuse, and Fire Safety bills received a second reading in the Commons, having been debated by members physically present in the chamber and those participating remotely. None of the questions on second reading were pressed to a division.

In order that the House of Commons could move on to consider 'contested' legislation – on which it is unlikely to be possible to reach an informal agreement – the parliamentary authorities developed an alternative to the usual division system. MPs were required to vote remotely using the MemberHub – an existing online platform that has previously been used to enable members to table written questions. On 5 May, the House authorities and PDS advised the Procedure Committee, and the Speaker, that the new voting system was ready for use.

The following day the Speaker authorised the use of the new system, under the temporary order agreed on 22 April for changes to parliamentary business due to coronavirus. On 12 May, the House voted in a virtual division for the first time ever – and the first virtual votes on legislation were held on 13 May.

The introduction of remote voting marked a major shift in the way that the Commons conducts its business, and the Procedure Committee has firmly expressed the view that it should be regarded as a temporary “sub-optimal substitute during the global pandemic”.³¹ The Leader of the House has also stated his belief that remote voting should only be temporary, suggesting that attending the Commons to vote is a core element of the role of an MP.³² With the expiry of the Commons’ virtual proceedings on 20 May, remote voting was brought to an end.

Changes to proceedings reduced the quality of legislative scrutiny

Under the changes to proceedings in the Commons, MPs could debate primary and secondary legislation, and make decisions on that legislation using the new remote voting system.

However, the hybrid model and virtual and in-person debate means that interventions during debates were not allowed, reducing flow and spontaneity, and reducing the quality of debate. The introduction of speakers lists in the Commons (already used in the Lords) setting out which MPs will speak and in what order, risked making debate more stilted and fragmentary. Generally, parliamentarians agree that fluid debate is a better way of uncovering issues with legislation, testing ministers’ response, and revealing the mood of the House. The chair of the Procedure Committee, Karen Bradley, has expressed her concern about how the virtual proceedings affected detailed scrutiny of legislation: “We need to have spontaneity, we need to have the ability to ask questions, to intervene.”³³

The temporary move to remote voting may also have effected the ways that parliamentarians approached votes. This again marks a difference in approach to that of many other legislatures around the world.

- Some legislatures, such as the **US congress**, are proceeding with votes as normal – though this clearly raises major concerns about the health of staff and legislators.
- Other legislatures are proceeding with votes that involve fewer members. In the **Welsh parliament (Senedd Cymru)**, for example, voting is done remotely but through only a small number of members of the Senedd (MSs), who act as proxies for their parties.
- The **Northern Ireland assembly** has amended its standing orders to allow MLAs to nominate a proxy who votes in person, with the likely proxies being parties’ whips.
- In the **Canadian House of Commons**, votes on urgent legislation have taken place with only a few members actually present to cast their votes. This runs the risk of greatly increasing the power of whips.

As one Australian think-tank considering different voting options has written, “relying on diminished attendance of MPs in person via pairing or proxy could limit the engagement of backbenchers, minor parties and the crossbench”.³⁴ Allowing all MPs to cast their vote on legislation, as the UK chose to do, is the best way of ensuring that individual members can have their say, and can therefore be held accountable by their constituents.

When remote voting was adopted in the Commons, it was unclear how it would affect the likelihood of backbenchers rebelling against their whips. On the one hand, not being in the division lobbies – or even in the Palace of Westminster – theoretically gives MPs less chance to informally meet and discuss any shared concerns that they have over legislation. If they are unsure of how widespread their views are, they may be less likely to go out on a limb and vote against their own party.

But the opposite is also possible. MPs may feel emboldened when they are further away from the whips and be *more* willing to rebel; Jacob Rees-Mogg reported that there was “some nervousness in the Whips’ Office” about this.³⁵ Similarly, one former whip has suggested that the risk of remote voting is much greater for the government than for other parties – and expressed concern that MPs may vote the wrong way, particularly during any series of votes on complicated amendments to legislation, if they do not have whips physically present to remind MPs how to vote.³⁶ During the first remote vote on legislation, the chancellor of the exchequer accidentally voted against the government, and the deputy Speaker acknowledged that several members had inadvertently voted the wrong way.³⁷

It was also harder for ministers to determine the mood of the House, in the way that they might when present in and around the chamber and the division lobbies. Informal debate among members and ministers in the corridors of the Palace of Westminster can be as important in determining the progress of legislation as the debates recorded in *Hansard*. As Karen Bradley again has commented, “we get things done by interacting with other MPs and ministers and others” – and the move to remote proceedings made it harder for the government’s whips and ministers to know what their backbenchers are thinking, and therefore whether to accept amendments or make other concessions on bills.

The quality of legislative scrutiny was also limited by practical considerations. Technological issues meant that the House could not sit for as long as usual each sitting day, meaning its overall capacity to pass legislation was limited. It is unclear how the return to usual in-person legislative proceedings, including divisions, while maintaining social distancing, will affect the time available for legislative scrutiny.

Scrutiny of how the government uses its coronavirus powers is vital

Parliament has agreed to give the government extensive powers as it combats the coronavirus. This is to be expected: when the country faces an emergency and there is a need for urgency, decision making tends to be placed in the hands of the executive. The Coronavirus Act gave the government “wide and robust powers” to address the coronavirus, including the ability to restrict the movements of people suspected to be infected with the virus.³⁸

The scale of these powers – and the speed with which the Act was passed – mean that effective parliamentary scrutiny of their use is vital. The government is required to report to parliament on certain aspects of the Act every two months, and to review the operation of the Act every six months, providing an important scrutiny mechanism. But the time limits on virtual proceedings imposed by the technology, as well as the limits to interventions, meant that the quality of debate will have been lessened, as it was harder for MPs to test ministers' thinking.

The Coronavirus Act is not the only source of the government's powers in dealing with the coronavirus. On the same day that MPs considered the Coronavirus Bill, the prime minister announced a UK-wide lockdown, passing the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 to implement it. These regulations were passed without being put before MPs, using powers contained in the Public Health Act 1984.

As has been pointed out, there are potential legal issues with the regulations.³⁹ Scrutiny from MPs may help to iron these out, as well as give them greater democratic legitimacy – and this will start to become more important as aspects of the lockdown are eased, creating a potentially more complicated legal picture. For this reason, as the Institute for Government has previously argued, the government should prospectively, rather than retrospectively, seek approval of any further regulations needed in relation to the lockdown.⁴⁰ Returning to in-person debating and voting, while maintaining social distancing, may mean that not all MPs are able to participate equally in this scrutiny.

Conclusion: the virtual parliament was imperfect but inclusive

In the space of just weeks, the UK parliament – temporarily – made some of the most wide-ranging changes to its ways of working in its history. Getting a virtual parliament up and running, as well as taking practical measures to enforce social distancing in the Palace of Westminster, has been no small task. The fact it has been achieved – through the hard work of parliamentary staff – indicates the willingness of politicians to reach consensus in extreme circumstances such as these.

However, that consensus has faded. The government extended the measures to 20 May, and declined to take them beyond that date, meaning that the Commons will be back to its usual ways of working when MPs return from recess on 2 June. The government's position is that "it is vital that when we are asking other people to work and to go to their places of work if they cannot do so from home, we should not be the ones who are exempt from that".⁴¹

Beyond this, ministers also believe that MPs are not able to do their jobs as effectively remotely as they can in the chamber. The Leader of the House again told MPs that "it is my belief that this House cannot be as effective in carrying out its constitutional duties without members being present".⁴² Other members have also expressed their frustrations with the virtual proceedings: the fact that some forms of business did not happen, that debate was curtailed, and that there were fewer opportunities for MPs and ministers to informally discuss issues and get a sense of what colleagues were thinking.

Some have even gone so far as to suggest that the virtual proceedings were “absolutely hopeless” and “in comparison with normal times, virtually nothing”.⁴³

There are a number of practical questions the government will need to answer before parliament returns in early June, and there has been a lack of detail in its plans as announced so far. Discontinuing virtual proceedings in the Commons will place strict limits on the numbers of MPs able to participate in person in parliamentary proceedings and, in particular, exclude those who are shielding because they, or members of their household, are deemed clinically vulnerable, or who would currently find it difficult to travel long distances to Westminster. The idea that ‘pairing’ MPs who cannot be in Westminster for votes might be an adequate solution represents an extremely narrow view of the role of an MP, and of parliament.

While Jacob Rees-Mogg has indicated that some kind of technological solution might be found to enable shielding MPs to participate in the Commons’ proceedings, any detailed plans are yet to be made public. This runs the risk of abandoning the principle of parity of treatment for all MPs, which underpinned the hybrid proceedings in the Commons.

Responding to the government’s intention to end the virtual parliament, the Speaker reminded ministers of the importance of following guidance from Public Health England. He has expressed his intention to maintain social distancing – even if this means suspending Commons business to facilitate the safe movement of MPs and staff, or allowing divisions to take up to an hour at a time.⁴⁴

Clearly, virtual proceedings were an imperfect solution to the challenges posed by the coronavirus. The quality of debate – especially on legislation – as constrained, and there was less opportunity for free-flowing, back-and-forth discussion that challenges ministers and tests their thinking. And there are some types of parliamentary business that were simply not taking place, making it harder for MPs to raise issues that might improve the government’s response to coronavirus – although plans were under way in the Commons to hold four days of virtual sittings per week, which would have provided the opportunity for opposition or backbench debates, if the government were willing to schedule them. Outside the chamber, it is harder for members – and whips – to speak to each other informally and determine the mood of the House.

But the perfect should not be the enemy of the good. There was still much that members were able to do to hold the government to account under the hybrid proceedings. They could ask questions, and urgent questions, of ministers, respond to ministerial statements, and debate and vote on legislation. Committees were still able to meet and take evidence from witnesses. Crucially, no MP was disadvantaged by participating remotely rather than in person.

In these ways, the UK parliament had more opportunity to scrutinise the government’s response to coronavirus than many other legislatures around the world. The planned return to a new kind of normal risks the Commons being caught between a rock and a hard place: without the full advantages of its usual ways of working due to continued social distancing, while also dispensing with the equal treatment of all MPs regardless of their ability to attend the chamber.

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