
The Parliament in the time of coronavirus

United Kingdom

The British Parliament and the Pandemic: between continuity and innovation, the question of the effectiveness of distance democracy

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Like the other Parliaments of the countries affected by the Covid-19 pandemic, particularly in Europe, the British Parliament has faced the enormous challenge of adapting its procedures to make them compatible with the new health requirements.

The originality of the British Parliament lies in the configuration of the parliamentary building, as it comprises in one place the House of Commons (650 MPs - Members of Parliament) and the House of Lords (more than 800 peers), as well as more than 3,000 civil servants, plus parliamentary staff and assistants. The circulation of the virus or the acceleration of its spread is therefore highly probable, as in any enclosed area with a large number of people, it being understood that among them, as among the general population, some suffer from conditions that can be considered "at risk". This is particularly true of members of the House of Lords, whose average age is 70 (the oldest being born in 1925).

The other problem specific to the British Houses is the scarcity of remote or proxy procedures. Debates, of course, but also most of the means of oversight provided for in parliamentary law thus require the presence of MPs and peers. The procedures, some of which are centuries old, sometimes seem anachronistic, outdated or ill-suited to the modern age of new technologies.

For example, since 1836 in the House of Commons, voting has been done "by ear". The Speaker asks the question, puts it to a vote, and asks each side voting yes or no to say "aye" or "no". The Speaker then judges by ear which side has won the most votes. He then announces: "*I think the 'ayes' (or 'nos') have it*". The House must then confirm the Speaker's conclusion, but if some MPs challenge his judgment, they must continue their exclamations in favour of the "yes" or "no". In this case the Speaker gives the order to "clear the lobbies"¹ in view of proceeding to a "division", which is a more precise count of the votes between opponents and supporters of the question by way of physical

¹ There are two *lobbies*, to be able to count the votes in support (aye) and against (no).

separation. The division is announced by an audible signal in *Westminster* and in other places frequented by the MPs. In this way, they can join the lobby of their choice. The Speaker then waits for two minutes and can again give his assessment, which is sometimes accepted at this stage. The Speaker has the discretionary power to continue the procedure or to stop it if he considers that the division has been unnecessarily requested. If the Speaker's opinion is criticised, each MP must leave the lobby registering his or her name as they leave. A *teller* of the two sides present in each lobby counts out loud, for no more than six minutes. At the end of eight minutes, the Speaker orders the lobbies to close. The two tellers from each side must face the Presidency, with those representing the majority votes to the left of the Speaker. They must stand five steps from the House table², bow before the president, advance to the table and bow again. One of the tellers from the majority announces the result. A clerk transfers the document containing the number of votes to the Speaker, who confirms the announcement.

A new procedure, introduced during the 2001/2002 session, provides for the postponement of the vote when the Speaker's conclusion is criticised during a vote after the moment of interruption. The division does not take place at that time but is automatically moved to the following Wednesday of the next sitting ("deferred division"). On that day, a voting paper is published together with the "vote bundle" (working documents sent daily to the MPs). It lists all the questions to which the postponement procedure was applied the previous week. For each question there is a box in which MPs must write "aye" or "no". They must then table the ballot between 11:30 and 14:00 on Wednesday. The count is made by the clerks and sent to the Presidency, which announces it immediately. Some questions are nevertheless exempted from this procedure. These include all those relating to bills and proposals and the division of time for their examination (programme motions). Amendments are also exempted. The possibility of remote legislative voting has existed for a short time now however: a resolution dated 28th January 2019³ allows MPs who are on parental holiday to appoint a colleague who establishes a proxy. However, this proxy is not allowed in other circumstances or for other reasons.

Likewise, most parliamentary oversight procedures demand the physical presence of MPs and peers. Notably several types of oral questions⁴ which were introduced as of 1721, when the first question was documented in the House of Lords, even though these became more frequent and took their present shape as of 1832⁵. Also, all daily question sessions, notably the Prime Minister's Questions on Wednesdays are held in person.

Prime Minister's Questions that were introduced in 1961 take place on Wednesdays from midday to 12:30pm (since 2003). In addition to this, Question Time takes place for an hour from

² Table positioned between the government and the opposition benches, in front of the Speaker's chair. Historically it was used to place motions, questions, reports, which are now transferred to the offices (*Table Office, Journal Office, Public Bills Office*).

³ *Hansard* HC Deb. vol. 653, col. 596. See the guide on the use of proxys : *Scheme on proxy voting for use under para (4) of Resolution of 28 January 2019*.

⁴ As an exception to the oral nature of parliamentary questions, there are three types of "questions for written answer". They may be questions intended to be answered orally, but which have not been considered in the sitting due to lack of time. They may be simple written questions, which are published two (sitting) days after their receipt by the Table Office and are usually dealt with within a week. Finally, there are priority questions, or "questions for a written answer on a named day", which impose a date on the competent minister to reply between three and ten sitting days later. Questions may be sent to the Table Office, or, unlike oral questions, directly to the ministry concerned.

⁵ On 9 February 1721 (*Parliamentary History of England*, vol. 7 (1714-1722), col. 1709).

Monday to Thursday before the start of work by the House. The ordinary procedure for the submission and allocation of questions is very formal. The question is received by the Table Office, which establishes a random order between all the questions by means of a computerised procedure. Each MP may ask two questions per day, to two different ministries. The order of appearance of the ministries is determined at the beginning of the session, with each ministry being allocated a specific day with other ministries. A rotation ("rota") is instituted, with four main ministries alternating in first place at each session. The MP can then ask his or her question on the following day, as well as a supplementary question. Other supplementary questions may be asked in an order determined by the Speaker, alternating between majority and opposition, but according to a rather random custom of members of the House standing up to attract the attention of the Speaker ("catching the Speaker's eye"). When he considers that the number of supplementary questions is sufficient, the Speaker calls the next question. The organisation of Question Time is therefore up to the Speaker. Fifteen to twenty questions are asked each day.

A second procedure is called "urgent questions". Before the 2002/2003 session, the procedure was known as "private notice questions". The MP must send the question before 11.30 a.m. on Monday, 10 a.m. on Tuesday and Wednesday and 8.15 a.m. on Thursday (Standing Order No. 21). The Speaker must determine whether the question is indeed of an urgent nature and whether the matter is of public interest. The Minister is informed immediately, and the urgent question session takes place after Question Time.

Subsequently, "topical questions" were introduced in the 2007/2008 session following a proposal by the House of Commons Modernization Committee⁶, so as to allow the government to respond directly to the events of the day or very recent events. The procedure was first introduced on 12 November 2007⁷. These questions may be put to the ministers without being tabled in advance ("without notice"), during the last fifteen minutes of Question Time.

Moreover, since 23 January 2003⁸ in *Westminster Hall*⁹, the cross-cutting questions procedure provides for the questioning of several ministries that are competent on an issue. Four meetings per session must be devoted to them¹⁰. In the House of Lords, an important question procedure exists in the form of "unstarred questions"¹¹ (before the 2006/2007 session) then "questions for short debate". This is a question to a member of the government that gives rise to a debate. It differs from a motion because there is no right of reply. This type of debate takes place last during a sitting.¹²

⁶ *Select Committee on the Modernisation of the House of Commons, Revitalising the Chamber, The role of the backbench Member, First report session 2006/2007*, 20 juin 2007, HC 337, page 28.

⁷ *Hansard* HC Deb. vol. 467, col. 392.

⁸ *Hansard* HC Deb. vol. 398, col. 143 WH.

⁹ It is a kind of second House of Commons, set up as a hemicycle to mitigate political confrontation. Even if the turnout is fairly low (10 to 12 MPs, with a quorum of 4), the debates organised in this annex allow MPs to discuss certain subjects away from government and media pressure.

¹⁰ The procedure is as follows: several members of the government are present. A first question is asked and the competent minister answers. The member who asked the question may ask a supplementary question and the minister who initially answered, or another minister, may answer. The Speaker of the House then calls other members to ask questions, including members of the opposition. The author of the initial question may also ask a supplementary question. This new procedure is not a series of mini debates, and each intervention must be short and to the point.

¹¹ Issues not marked with a star on the agenda. Questions marked with a star are intended to request information, without debate.

¹² The debate lasts 1h30.

Finally, oral questions are a highlight of British democracy and require the physical presence of members of the Houses and the Government. The same applies to the work of the Select Committees, which meet and conduct hearings only in person.

The health crisis therefore has presented a particular challenge with regard to the continuity of the committees' oversight mission or legislative work. But beyond these practical aspects, important theoretical questions are also raised by the modification and adaptation of parliamentary procedures.

1. The suspension of the Houses and the work of the Select Committees

On 23 March 2020, Prime Minister Boris Johnson announced the main lock-down measures (closure of non-essential shops, restriction of public events in particular). The subsequent bill was examined and adopted by the House of Commons on March 23rd¹³, by the House of Lords on 24 and 25 March¹⁴, and subsequently it received royal assent¹⁵. During these three days, the Houses adapted their procedures to respect the physical distance between their members: physical presence was reduced within the Houses and voting was carried out in small groups. In addition, the proceedings in Westminster Hall were suspended until further notice. On 25 March the Houses also decided to suspend their work (*recess*¹⁶) for the Easter holidays, instead of 31 March as previously planned. The Houses did not meet again until 21st April.

During this period, only the Select Committees continued their work remotely ([letter](#) from the Speaker of the House of Commons dated 27 March 2020). The members of the *Select Committees* can continue their work via e-mail, calls, or videoconference using Zoom, on condition that the Committee Clerk is copied on each written communication and that the communication system is approved by the *Parliamentary Digital Service*.

On 8th June 2020, [the decision](#) was taken to continue work remotely until 17th September.

2. Legislative Work

With regard to legislative work, following the Easter recess, two motions were debated in the House of Commons, regarding the hybridization of procedure and distance voting, and were adopted

¹³ *Hansard* HC Deb. vol. 674, col. 176.

¹⁴ *Hansard* HL Deb. vol. 802, col. 1794.

¹⁵ *Hansard* HL Deb. vol. 802, col. 1794.

¹⁶ Each Parliament (i.e. the period between two parliamentary elections) is divided into sessions. Until 2010, a session began in November and ended at the end of October of the following year, and the end date was set for the spring (April or May) after this date. During these periods, a number of 'holidays' are determined, during which sessions of Parliament are adjourned, i.e. it does not sit. These "vacancies" are commonly referred to as "recess", although the term strictly applies to periods when the session of Parliament is prorogued. After each session, the Queen's speech marks the beginning of the new session. Recess in the strict sense refers to the time between sessions, between prorogation, which marks the end of the session, and the delivery of the Queen's speech. Prorogation may also be pronounced before a dissolution of the House of Commons.

on 22 April¹⁷. Hybridization means that the maximum number of MPs physically present may not exceed 50. Up to 120 other MPs can attend the debate or ask questions via the Zoom platform, and remote voting can be organised. A list of 'substantial' or 'essential' business subject to hybridization was adopted (these are debates on bills and their adoption, questions to ministers and ministerial statements, as opposed to 'non-essential business', which can be postponed).

In application of these new rules, a historic remote vote was held on 12 May¹⁸. While the motion being debated was limited in scope (it follows a general debate on Covid-19), it was the first form of distance voting in the House of Commons. This hybridization was in effect until June 2 (with the Houses suspended again between May 20 and June 2).

On 2 June 2020¹⁹, hybridization was dropped in the House of Commons in favour of a physical return of MPs subject to the rules of distancing, from which some with medical risks may be exempted. They can designate a colleague who will then vote by proxy, thanks to an extension of the cases provided for in the resolution of 28 January 2019. These new rules were adopted precisely by applying physical distancing: a long line of MPs, at a distance of two metres from each other, extended several hundred metres across the garden to the outside of the building in order to vote on motions. The abandonment of the Virtual Parliament has been strongly criticised by the opposition, who denounce it as a hasty and risky measure, but also as a discriminatory one against MPs suffering from medical conditions. There are quite a number of these MPs, because on 21 July²⁰, the list of MPs affected comprised nearly 200 names, i.e. nearly a third of those present in the House. Those opposed to the scrapping of the virtual parliament also objected to the presence of Minister Alok Sharma, who showed signs of fever and physical malaise during the second reading of the Corporate Insolvency and Governance Bill on 3 June 2020. He finally tested negative at Covid-19, but the image of the visibly tired, sweaty Minister at the desk made a lasting impression.

As far as the House of Lords is concerned, virtual procedures were applied from the very beginning of the lock-down, via the platform Teams. Since 8 June²¹, the House used a hybrid procedure. This means that a minimum of three and a maximum of thirty peers may be physically present in the House, as opposed to 50 members present virtually if they have previously registered for the agenda item concerned. Distance voting continues to apply, unlike in the House of Commons. A [guide](#) to hybrid procedures was issued by the House Procedure and Privileges Committee on 5 June 2020.

3. Theoretical questions raised by the modification of parliamentary procedures

Beyond the practical problems posed by the hybridisation of procedures during the period of

¹⁷ *Hansard* HC Deb. vol. 675, cols. 80 et 88.

¹⁸ *Hansard* HC Deb. vol. 676, col. 218.

¹⁹ *Hansard* HC Deb. vol. 676, col. 757.

²⁰ *Hansard* HC Deb. vol. 678, col. 2129.

²¹ Motion approved on 4 June 2020, *Hansard* HL Deb. vol. 803, col. 1449.

the health crisis, many theoretical questions were raised in connection with these changes in parliamentary law.

Firstly, the procedure for amending parliamentary law itself is worthy of interest. Some aspects of parliamentary procedure do not require formal amendments to the Standing Orders of the Houses²²: This concerns, for example, the reduction of the number of MPs attending the House. In this case, a simple informal agreement between the parties would suffice. In other cases, however, a formal amendment of the Standing Orders would be necessary, i.e. an amendment by a majority of the House itself. To simplify the procedure for the required changes, the motion on 22 April²³ regarding the organisation of the hybrid Parliament provides the Speaker with unprecedented powers, the so-called “*Henry VIII powers*” in reference to the king’s authoritarianism, allowing him to adopt *Temporary Orders* requiring the simple agreement of the *Leader of the House*²⁴. Moreover, the motion creates a new form of parliamentary organization, similar to that of a “Bureau”: the leaders of the three main parties²⁵ can decide on the agenda of the House instead of the House itself.

Secondly, this confirms that the rights of MPs who are neither part of the majority nor of the main opposition parties²⁶ (*backbenchers*) are significantly reduced. This is particularly the case with regard to the inclusion of proposed legislation on the agenda: this procedure is very restrictive in normal times and has been deemed to be “non-essential parliamentary business” during the crisis, which makes the situation of the isolated member of parliament even more complex.

It is important to remember that Standing Order No. 14 provides that Government business takes precedence at each sitting. Standing Order No. 27 also provides for the right for ministers to organize the agenda of government business at their discretion.

Standing Order No. 14 reserves twenty days for opposition leaders (“opposition days”), and thirteen others for proposals by members of parliament, during which the subjects chosen by the latter have priority over the government agenda. Thus, thirteen Fridays per session are reserved for the examination of these texts (from 9:30 am to 2:30 pm). In practice, the first seven Fridays are devoted to the second reading of proposals, the last six to the other stages of the procedure and to the examination of the Lords’ amendments. The text of an MP in a position below the seventh place is therefore in an unfavourable situation. Two possibilities then exist.

If the text called first is not particularly controversial, the proposal can be examined in the remaining time.

In other cases, the MP can have his proposal examined on second reading without debate at 2.30 pm. The procedure is then as follows: the clerk announces the proposals, and if an MP shouts “objection” when announcing a text, it cannot be examined on second reading. The author of the proposal must then determine another Friday, and during the time available to him, convince the

²² These are written standards adopted without any particular procedure by the House concerning the procedure laid before it, in particular the conduct of debates, but also the discipline of its members.

²³ *Hansard* HC Deb. vol. 675, col. 75.

²⁴ Minister responsible for relations with Parliament

²⁵ Conservative Party, Labour Party and the Scottish National Party.

²⁶ Under Standing Order No. 14, 20 sitting days are reserved for the opposition, which sets the agenda as a matter of priority. Although only the official opposition (Her Majesty’s Most Loyal Opposition) is theoretically concerned, it often graciously allocates some time to one or more other parties not belonging to the majority.

members of the House of the interest of his text. The objection is often made by a majority MP, and if the government does not support the text, the chances of the proposal being considered are slim. Finally, the government may allocate additional time on a day other than Friday for the consideration of a proposal by an MP when it considers it necessary. In practice, this opportunity is rarely given to members of the House.

Hence, three procedures are available to MPs wishing to introduce a private member's bill.

The first is that of the ballot, governed by Standing Order No. 14. Among 400 competitors, twenty MPs designated by the ballot queue up to present their bill and have an advantage over the other MPs who introduce a text autonomously. On that day a draw is organised for the twenty proposals that will be discussed on the Fridays provided for that purpose. The MP in charge of the first text of each session must ask for a closing vote ("closure") during the second reading before 2.30 pm, to prevent his/her opponents from dismantling it during the debates. If the opponents control the debate until that time without the question being voted on, the examination of the text is then adjourned. The Speaker only checks that there has been sufficient debate on the text before putting it to the vote. This ensures that the proposal is referred to a standing committee. Once this stage has been completed, proposals have no special right of priority over other texts.

Most of the other proposals are presented according to the procedures of *Standing Orders* n°57²⁷ and 50 (according to the ordinary procedure, any member of the House may present a bill as long as its main purpose is not the creation of a public office) and n°23 ("Ten minute rule")²⁸ after the draw. On the Fridays designated to this effect priority is given to the texts whose examination is the most advanced²⁹, whether this involves texts that were part of the draw or other draft bills³⁰. Finally, it should be noted that a proposal by a Lord that has passed all the stages in the Upper House must be endorsed by an MP before it can be considered by the Commons, but in general, it will only be considered after proposals from members of the Lower House. Thus, proposals from the Lords are rarely successful.

Already unenviable, the plight of backbenchers has not improved during the health crisis: the timetable for the presentation of bills, initially running from 13 March to 10 July, has been postponed several times, and is now set from September onwards, as the presentation of these texts was not considered to be part of "essential business". The question of guaranteeing the rights of backbenchers is now being raised.

Thirdly, the effectiveness of parliamentary oversight is under challenge. In particular, certain

²⁷ Standing Order No. 57 provides for an ordinary presentation of texts after examination of the proposals admitted to the ballot, which means that these texts are almost never debated for lack of time. They generally deal with subjects that are not very controversial.

²⁸ The "Ten Minute Rule" is provided for in Standing Order No. 23, for texts with a lesser impact on legislation than proposals submitted to the ballot. The aim is to draw attention to a subject or the need to revise legislation. The author of the proposal can then defend it in a short speech to which an opponent can respond, during the Tuesday and Wednesday sessions after questions. When the House votes in favour of the text, it is allowed to proceed to the first reading. The text may not be tabled before the 5th Wednesday of the session, and not before 10.15 a.m. 15 sitting days before the day on which it is due to be presented (which in practice generally represents 3 weeks). Members of parliament compete to present their texts, and the rule is that the first to arrive is the first to register, even if certain tacit rules of priority are observed.

²⁹ In order: consideration of the Lords' amendments, 3rd reading, report stage, committee stage and 2nd reading.

³⁰ Sometimes, the government "offers" texts to some of its MPs, when it has not found the time to put them on the agenda, for example.

opposition rights had to be set aside for practical reasons, such as the holding of "opposition days", which did not take place between 4 March³¹ and 15 July 2020³², whilst their normal pace is one session per month. The same applies to the procedure for "topical questions", which has been totally interrupted because it has not been possible to guarantee the presence of the minister to whom the question is addressed on that particular day. Similarly, the work of Westminster Hall has been suspended until further notice, despite the fact that this assembly is supposed to be a less passionate place of debate than the House of Commons itself, which is subject to strong political pressure. The House of Lords, despite its undemocratic character, represents a strong check on the power of the majority, and has been greatly constrained by the hybridisation of procedures that allows only a small number of peers to participate.

Finally, the effectiveness of party discipline is also problematic. Regarded as a 'nightmare' for the whips, the dispersal of MPs throughout the country enabled by proxy voting makes their work much more difficult. Whips are responsible for discipline within their parties, especially for ensuring discipline during important votes, such as three-line whips (votes designated as important by the parliamentary group leader). When the whips can no longer meet MPs in the corridors of Westminster, it is more complicated to personally ensure their vote. The lack of party discipline does not currently pose a drastic problem because the texts under discussion are not first-rate, but one thinks of the difficulties that it could cause during more important votes, relating to Brexit for example.

In addition, the whips are involved in setting the agenda during informal negotiations ("usual channels"³³) requiring a physical meeting. The virtual *usual channels* may not be as flexible or efficient when organised remotely.

Ultimately, the British Parliament was able to respond to the health requirements and adapt its procedures to ensure a minimum continuity in its work. Nevertheless, some of the intricacies of procedure and many of the modalities of parliamentary scrutiny in the UK were set aside during the pandemic. While modern parliamentary law has been forged over several centuries, a long-term crisis could also call into question traditions and customs because of the imperative need for it. The effectiveness of democratic control is nevertheless at stake, and in the absence of a formal constitution, the standards of parliamentary law allowing the Houses to act as a counterweight to the government could easily be called into question.

³¹ *Hansard* HC Deb. vol. 672, col. 903.

³² *Hansard* HC Deb. vol. 678, col. 1523.

³³ Expression referring to the informal relationship between the whips of the different parties and the leaders of the majority and opposition. It refers to arrangements and compromises regarding the conduct of parliamentary procedure. Often denounced by backbenchers, this cooperation avoids confrontation to some extent and speeds up the legislative process.