



WESTMINSTER PARLIAMENT'S RESPONSE TO COVID-19

and a comparison with New Zealand, Australia and Canada

Louis Flood

About the author

Louis Flood, is the current Lyell Scholar of the Society Of Conservative Lawyers. After reading law at the London School of Economics, where he was awarded the John Griffith Prize for the highest mark in the Public Law examination, he has worked for the last two years in the House of Commons. From September 2018–19, he worked as Administrative Assistant to Maggie Throup MP. Since September 2019 he has been Parliamentary Assistant to Chris Heaton-Harris MP, current Minister of State for Transport. He hopes in due course to read for the Bar.

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FOREWORD

The author of this paper, Louis Flood, has worked in Parliament for the last two years, first as an administrative assistant to Maggie Throup MP and since September 2019 as Parliamentary Assistant to Chris Heaton-Harris MP, Minister of State for Transport. He has been well placed to observe the workings of the United Kingdom Parliament and how it has functioned under the constraints imposed by the Coronavirus emergency.

In this interesting and informative paper, Louis Flood explains the steps which the House of Commons and House of Lords respectively have taken to cope with the need on the one hand to ensure social distancing and the minimising of risk to the health of members, and on the other hand to ensure so far as practical that Parliament continues to operate under the critical eye of its members and that they can continue to scrutinise the Executive and hold it to account.

As the paper demonstrates this has been a steep learning curve for all involved. The two Houses have different roles and this has been reflected in the ways in which they have chosen to function. Technology has enabled participation remotely

which just a few years ago would have been unimaginable. Not everything has worked perfectly and all concerned continue to learn how to make things work even better.

What Louis Flood has done is not only to explain the workings of the Westminster Parliament during this crisis, but to examine the working during the same time scale of three major Commonwealth Parliaments – New Zealand, Canada and Australia. They have all faced similar practical difficulties. They have reacted in different ways. Interestingly, Louis concludes that, whatever shortcomings there may have been in the functioning of the Westminster Parliament, it has nonetheless been generally more imaginative and effective in the steps it has taken to maximise participation and scrutiny on the part of members.

This paper provides a concise and up-to-date overview. I commend it to members and indeed to anyone who is interested in the working of the Westminster Parliamentary model whether in the United Kingdom or elsewhere in the Commonwealth.

Sir Bob Neill MP

*Chair of the Justice Committee of the House of Commons
Chair of the Executive Committee, Society of Conservative Lawyers*

EXECUTIVE SUMMARY

COVID-19 has had a profound effect on the United Kingdom Parliament. As social distancing and restrictions on movement have hindered the ability of parliamentarians to meet in person, Westminster has modified its ways of working so that proceedings can be held online. This short paper examines the implementation of remote participation in the House of Commons and House of Lords, discussing the key differences between their approaches in the period from mid-April to end-July 2020. It argues that virtual proceedings can never replace in-person meetings but judges them to be a useful innovation that enabled absent members to scrutinise the Government and its legislative agenda. For this reason, the Government's decision to discontinue remote participation for substantive business in the House of Commons was an unwelcome development but was certainly better than no participation.

Nonetheless, this paper observes that UK Parliamentarians have had more opportunity to participate in proceedings than their Commonwealth counterparts, as although remote participation has been trialled in the Parliaments of Australia, Canada and New Zealand, none have yet endorsed plans for full virtual plenary sessions.

This paper does not address the issue whether Parliament has surrendered too much to the Executive the scrutiny of the Coronavirus legislation, viz. the review of regulations by which major restrictions on everyday life are affected.

I – INTRODUCTION

Parliament is no stranger to crisis. Conflict, fire and epidemics have all disrupted proceedings over the course of its 800-year history. In times gone by, Parliament would sit in another location or adjourn until any immediate danger has passed; however, neither such response is an appropriate solution to the present challenge of COVID-19. Relocating from Westminster would not protect parliamentarians from the highly infectious disease, and a prolonged adjournment would prevent Parliament from exercising its core functions of holding the Government to account, authorising public expenditure and enacting legislation. Fortunately, modern technology has facilitated remote participation, which has enabled Westminster to continue functioning as an effective legislature.

As an institution that is often criticised as slow to reform, Parliament has made impressive progress in implementing measures that radically alter its traditional ways of working. By the time COVID-19 reached the precincts of the Palace of Westminster in early March 2020, parliamentary authorities had drawn up plans for social distancing and were considering how absent Members could perform their duties. When Parliament returned from the Easter recess, virtual proceedings were operational that allowed parliamentarians to participate without having to attend in person. The categories of business that could be held online were gradually extended, which guaranteed that no MP or Peer was too disadvantaged by their absence.

Remote participation for all Members would not be a long-lasting innovation in the House of Commons. After the United Kingdom passed the

peak of its epidemic, and the country gradually began returning to work in mid-June, the Government took the decision to discontinue remote participation in the lower House. This was an unwelcome development. Virtual proceedings will never be a replacement for in-person interactions, but at the very least they guaranteed each Member an equal opportunity to participate in the scrutiny of the Government and its legislative agenda. The revised arrangements in the Commons only permit Members to participate in substantive proceedings when they are physically present. In addition, Members may no longer take part in divisions electronically and instead have to apply for a proxy to vote on their behalf. The House of Lords has continued to meet online, but the protracted dispute regarding the return of the Commons was widely reported in the media, causing Parliament to receive negative attention at a time when the country was looking to its elected representatives for leadership.

Nonetheless, when compared with other Commonwealth legislatures, Westminster has adapted remarkably well. Remote participation has been facilitated in the New Zealand, Australian and Canadian Parliaments, but only for committees. While this has allowed for oversight of the executive branch, Members have not been able to vote on or debate legislation without attending in person. Despite the criticisms of Westminster's response to COVID-19, parliamentarians in the United Kingdom have had more opportunity to fulfil their duties than their Commonwealth counterparts.

II – THE INITIAL RESPONSE

Parliamentary authorities were conscious of the fact that COVID-19 would pose a significant challenge to Westminster’s established ways of working. The Speakers of both Houses resolved that Parliament should, insofar as possible, continue to fulfil its constitutional duties.¹ As Robin Cook, a former Leader of the House of Commons, once wrote, “good scrutiny makes for good government”, and there will never be a more pressing need for effective administration than at a time when the lives of thousands of people are at risk.² It was clear that close oversight of the executive branch would be vital over the forthcoming weeks and months.

Following an agreement reached between the ‘Usual Channels’, attendances were reduced in the House of Commons Chamber on 18 March.³ So that Members could abide by the advice given to the public, only those intending to speak and listed on the Order Paper were asked to be present. The sparsely populated green benches were to be the first sign to the public that it was not ‘business as usual’. Westminster Hall sittings were suspended the next day.⁴ The short debates held in this Chamber are an effective scrutiny mechanism, allowing backbench Members to discuss an issue of topical importance and receive a response from a Government minister. However, staffing shortages prevented the House from running two Chambers. Similarly, Members were discouraged from tabling large numbers of written questions, as House staff did not have capacity to deal with the usual demand.⁵ Trade-offs had to be made to guarantee that the Commons could fulfil its scrutinising role to the best of its ability.

The disruption during the first few weeks of the pandemic was perhaps more noticeable in the House of Lords. Although social distancing measures were implemented in its Chamber, with an average age of 70, it was clear the many Peers would not be able to attend in person for some time. Indeed, on 19 March, the Lord Speaker announced his intention to withdraw from Parliament and stressed to colleagues that “no one should consider it their duty to be here in present circumstances”.⁶ The House agreed that any Peer could deputise in the Lord’s Speaker’s absence to ensure that the Chamber could continue to sit, but it was clear that innovations in procedure were necessary in order for the Lords to function effectively.⁷

Notwithstanding the effect that COVID-19 was having on Parliament, it was vital that Ministers were equipped with powers to deal with the crisis. A legislative framework for responding to a pandemic had been drafted following a Government exercise in 2016 that tested its capability of handling an influenza outbreak.⁸ This draft legislation formed the basis of the 329-page Coronavirus Act that received Royal Assent on 25 March. Its provisions are broad ranging, including temporary measures to disperse gatherings, close educational facilities and postpone elections.⁹ The Government could have instead used its powers under the Civil Contingencies Act to make emergency regulations.¹⁰ However, regulations under the Civil Contingencies Act are limited in duration to 30 days, unless Parliament votes to extend this period before it expires.¹¹ While the requirement for regular parliamentary approval is an effective safeguard, there is a danger that the regulations could lapse if Parliament was

¹ Joint Letter by The Speaker and The Lord Speaker, Friday 13 March 2020

² Memorandum submitted by the Leader of the House of Commons: Modernisation of the House of Commons: A Reform Programme for Consultation, 12 December 2001, HC 440

³ HC Deb 18 March 2020 vol 673 c993

⁴ HC Deb 19 March 2020 vol 673 c1246

⁵ HC Deb 23 March 2020 vol 674 c24

⁶ HL Deb 19 March 2020 vol 802 c1531

⁷ HL Deb 23 March 2020 vol 802 c1638

⁸ Jo Churchill, Response to written parliamentary question, 12 May 2020, <https://questions-statements.parliament.uk/written-questions/detail/2020-04-20/37420#>

⁹ Coronavirus Act 2020

¹⁰ Civil Contingencies Act 2004, s20

¹¹ Civil Contingencies Act 2004, s26

prevented from sitting during the pandemic.

Because of the urgency of the situation, the Coronavirus Act was fast tracked through both Houses in just four days. Bypassing the ordinary legislative process restricts parliamentary scrutiny and concentrates power in the hands of the executive. It is therefore welcome that the Government adopted a conciliatory approach by accepting substantive changes proposed by parliamentarians. For example, after a cross-party group of MPs raised concerns that the emergency powers might have consequences for conducting religious burials, the Government amended the bill to ensure that local authorities have regard to the deceased person's wishes when disposing of a body.¹² MPs and Peers also expressed the view that the legislation's two-year sunset

¹² Raphael Hogarth, Parliament's role in the Coronavirus crisis: Ensuring the government's response is effective, legitimate and lawful, Institute for Government, April 2020 p3

clause conferred powers for a longer period than necessary. In response, the Government accepted an amendment that requires a parliamentary review of the Act every six months.¹³ But although some parliamentarians were able to influence the content of the Coronavirus Act, many could not be present due to the fact they were shielding on public health advice. Parliament had to adapt so that all MPs and Peers could participate in proceedings equally. Both Houses agreed to rise early for the Easter recess, allowing parliamentary authorities time to examine proposals for remote working.

¹³ Graeme Cowie, Coronavirus Bill: Amended time limits and post-legislative review, House of Commons Library, 25 March 2020, <https://commonslibrary.parliament.uk/coronavirus-bill-amended-time-limits-and-post-legislative-review/>

III – REMOTE PROCEEDINGS

Arrangements for remote participation were finalised in time for Parliament's return from the Easter recess. In the Commons, proceedings followed a 'hybrid' format, in which MPs could take part in business both in the Chamber and online. The House of Lords adopted a different approach. As the majority of Peers were unable to travel to Westminster, most of its business was held online. Once the technology in the Commons had been trialled, the Lords also moved to a hybrid format.

The House of Commons

Meeting remotely

Before it rose for the recess, the Commons passed a Temporary Order that authorised select committees to meet remotely.¹⁴ Select committees are one of the most powerful tools that the Commons has in its armoury for holding governments to account. The structure of having a committee to examine each Government department provides for systematic scrutiny of the executive. Over the course of the Easter recess, twelve oral evidence sessions were held by select committees on inquiries ranging from the economic aspects of the COVID19 response, to the human rights implications of contact tracing apps.¹⁵ Virtual participation provided a mechanism for holding ministers directly accountable to Parliament, and by extension, the wider public. This was a useful innovation, which ensured the Government's handling of the crisis did not go unchecked over the course of the extended break.

Hybrid proceedings

The House of Commons Commission sought to extend virtual participation to plenary sessions. On 16 April, it endorsed plans for 120 MPs to take part via videoconference, with a further 50 in the

Chamber.^{16 17} This hybrid arrangement, 'hybrid proceedings', was initially to apply to a limited category of business – oral questions, urgent questions and ministerial statements – which would ensure that the House had scrutiny mechanisms at its disposal to hold the Government to account during the emergency. In its review of these proposals, the Procedure Committee made the case for extending the category of business that could be dealt with in hybrid proceedings, so that the House could attend to other urgent matters, such as the consideration of primary legislation, and secondary legislation made during the adjournment.¹⁸

On 21 April, the Government moved a motion for the approval of hybrid scrutiny proceedings.¹⁹ This was followed by another motion the next day, extending hybrid proceedings to the substantive business that had been recommended in the Procedure Committee's report.²⁰ Authorisation was also given for remote divisions to take place through arrangements agreed by the Speaker. These measures were arguably the most radical changes to the House's procedures over the course of its history.

For the first time, Members would be able to contribute to proceedings whilst not being physically present on the parliamentary estate. They were a democratising innovation, providing parity of treatment between Members, regardless of whether they were shielding from COVID-19.

¹⁴ HC Deb 24 March 2020 vol 674 c319

¹⁵ Dr Brigid Fowler, Remote select committee evidence-taking is a Coronavirus change that should be kept, Hansard Society, 7 May 2020, www.hansardsociety.org.uk/blog/remote-select-committee-evidence-taking-is-a-coronavirus-change-that-should

¹⁶ House of Commons takes historic first step towards virtual proceedings, UK Parliament, 16 April 2020, www.parliament.uk/business/news/2020/april1/hybrid-house-of-commons/

¹⁷ Members had to apply to speak in proceedings. If successful, the Speaker's Office would notify them and they ask whether it was their intention to participate in-person or online.

¹⁸ Procedure Committee, Procedure under coronavirus restrictions: proposals for remote participation, 21 April 2020, HC 300 2019–21, para 59

¹⁹ HC Deb 21 April 2020 vol 675 c2

²⁰ HC Deb 22 April 2020 vol 675 c74

This is not to suggest that the hybrid proceedings were without any deficiencies. To maintain parity of treatment, restrictions were imposed on Members in the Chamber. Spontaneous supplementary questions and interventions during debates were not permitted, and all requests to speak had to be submitted in advance – a departure from the usual practice of rising to catch the Speaker’s eye.²¹

The Procedure Committee observed that these had a negative effect on the quality of proceedings: ‘assertions made during debate and in response to questions have been allowed to pass unchallenged; Members have been unable to follow up swiftly on matters of concern to them; and debates have become recitals of prepared texts rather than lively exchanges of view’.²² Furthermore, technological and staffing constraints meant the House had to prioritise what substantive business took place. The motions establishing hybrid proceedings did not accommodate non-Government business, such as debates on the adjournment, opposition motions or subjects chosen by the Backbench Business Committee. This limited the ability of MPs to raise concerns about policy or constituency-specific issues directly with the Government.

Hybrid proceedings also affected the informal workings of Parliament. The division lobby system is often criticised as archaic and in need of reform. But it has its defenders, across the House, who see it as an effective means to lobby ministers.²³ During votes, there are opportunities for the lowest ranking backbencher to approach ministers for a discussion without having to navigate bureaucratic channels to arrange a formal meeting. This unique benefit cannot be replicated through remote voting.

The effect on Whipping

Likewise, fewer in person interactions present a challenge for effective whipping. The parliamentary

estate is a social arena, with its facilities encouraging meetings between parliamentarians and other inhabitants of the Westminster village. Information is exchanged freely and it is the role of the whips to survey backbench opinion and reassure Members uneasy with their party’s course of action.

If parliamentarians are not present this role is difficult to fulfil, with one former whip describing the virtual arrangements as a ‘whip’s worst nightmare’.²⁴ For instance, the report stage of the Agriculture Bill was the first vote on legislation held remotely. 22 Conservative Members voted against the Government on an amendment that sought to prevent future trade deals allowing imports of food not produced to UK standards.²⁵ ²⁶ More independent minded Members may not necessarily be at a disadvantage in an executive dominated political system, but it clearly poses a problem for Government, which is why it is unsurprising the Leader of the House emphasised that the Temporary Orders would be subject to continuous review.²⁷

The House of Lords

Virtual/remote proceedings

The political leadership of the House of Lords sought to ensure that as many peers as possible could contribute to proceedings over the course of the pandemic.²⁸ Given the age demographic of the House, it was considered that the best option was to move the majority of its business online. On 21 April, a motion was passed that established virtual proceedings for a limited category of business, comprising oral questions, private notice questions (urgent questions), ministerial statements and

²¹ Procedure Committee, Procedure under coronavirus restrictions: the Government’s proposal to discontinue remote participation, 29 May 2020, HC 392 2019–21 para 31

²² *ibid* para 32

²³ *ibid* para 47

²⁴ Sebastian Whale, The unusual channels: how to whip MPs in the age of coronavirus, The House, 30 June 2020, www.politicshome.com/thehouse/article/the-unusual-channels-how-to-whip-mps-in-the-age-of-coronavirus

²⁵ HC Deb 13 May 2020 vol 676 cc340–343

²⁶ A small number of the rebels, including Rishi Sunak MP, later clarified they had voted for the amendment by mistake.

²⁷ HC Deb 21 April 2020 vol 675 c25

²⁸ Select Committee on the Constitution, Oral Evidence: Constitutional Implications of COVID-19, 29 July 2020, <https://committees.parliament.uk/oralevidence/785/pdf>

debates.²⁹ Select committees were also authorised to meet remotely. This provided Peers with a number of mechanisms to hold the Government to account for its actions.

Not sittings of the House

Unlike in the Commons, the virtual proceedings were not sittings of the House; there was no Mace present as a symbol of royal authority and, as such, its attendees were not empowered to take decisions.³⁰ The consequence of this was that decisions as part of the legislative process had to be taken physically in the Chamber. While this restricted the number of Peers that could participate, it did not pose a significant problem as little contentious business was taken and, by convention, it is only in exceptional circumstances that the House divides on Government bills.³¹

The initial focus in the House of Lords was on scrutinising the Government's handling of the

pandemic. As more bills passed their legislative stages in the House of Commons, it was necessary for the upper Chamber to once again function as an effective scrutinising and revising body. Although the House had passed a motion enabling the committee stage of public bills to take place virtually, Peers could not contribute to debates or participate in votes unless they were present at Westminster.³²

Introduction of Hybrid Proceedings

That changed on 4 June when the House agreed to adopt hybrid proceedings for all future sittings.³³ From this point onwards, Peers have been able to take part in every item of business, either virtually or in-person. Remote voting was later rolled out on 15 June, with Peers casting their first online votes on the Third Reading of the Extradition (Provisional of Arrest) Bill.³⁴ These hybrid arrangements have remained in place following the House's return from the summer recess. This will allow the most vulnerable of its membership to continue participating in proceedings over the coming weeks and months.

²⁹ Guidance on virtual proceedings from the Procedure Committee: Issue 1, 16 April 2020, para 2

³⁰ *ibid* para 6

³¹ David Beamish, How has the House of Lords adapted to the Coronavirus Crisis? The Constitution Unit, June 12 2020 <https://constitution-unit.com/2020/06/12/how-has-the-house-of-lords-adapted-to-the-coronavirus-crisis>

³² HL Deb 6 May 2020 vol 803 c473

³³ HL Deb 4 June 2020 vol 803 c1449

³⁴ HL Deb 15 June 2020 vol 803 cc1960–1963

IV – THE HOUSE OF COMMONS: DISCONTINUATION OF REMOTE PROCEEDINGS AND FURTHER CHANGES

Parliamentary scrutiny benefited from virtual proceedings. Even if remote participation could not fully replicate physical sittings, it provided MPs and Peers with a number of opportunities to hold the Government to account. On 12 May, the Commons successfully held its first remote vote, confirming that it would be possible for the House to divide without Members having to attend in person.³⁵ Clearly, this was not an aspiration of the Government. The same day, the House agreed to an extension of the Temporary Orders governing remote participation, but the Leader of the House stressed that Parliament should ‘set a national example’ by returning to physical proceedings as soon as possible.³⁶ Responding to an Urgent Question a week later, he confirmed that the Government did not intend to extend the hybrid proceedings beyond the Whitsun recess³⁷

The unilateral declaration by the Government was disconcerting to many. At a time when deaths were in excess of 500 each day, and many members were understandably concerned about their own health, there should have been meaningful consultation with the House on this matter.

Pros and Cons: discussion

Part of the rationale offered by the Government was that hybrid proceedings had hindered scrutiny of the Government’s legislative programme.³⁸ Since the Easter recess, several bills had received second reading and a backlog was building up at committee stage.³⁹ However, it is unclear why public bill committees were not authorised to meet

virtually. While there may have been capacity issues on Parliament’s computer servers during the embryonic stages of virtual proceedings, in evidence to the Procedure Committee, the Clerk of the House confirmed that trials had taken place for online meetings.⁴⁰ Alternatively, it could have been possible for public bill committees to meet physically. There are sufficient committee rooms of size that can accommodate the needs of social distancing and membership could have been drawn from the Members that were not shielding and able to attend Parliament in person.⁴¹ As David Natzler, a former Clerk of the House, has said, ‘the absence of public bill committees looks like an alibi’.⁴² In reality, the continuation of hybrid proceedings would not have fed into the Government’s messaging that it was safe to return to work.

The Division Lobby: the change to Chamber Voting

Towards the end of the Easter recess, the Speaker had written to Members, explaining the position the House found itself in.⁴³ Division lobbies had been condemned by Public Health England due to the existence of a number of pinch points that prevented social distancing. As the Temporary Orders for remote voting had lapsed, there was no other method for divisions sanctioned by the

³⁵ HC Deb 12 May 2020 vol 676 c218

³⁶ HC Deb 12 May 2020 vol 676 c213

³⁷ HC Deb 20 May 2020 vol 676 c575

³⁸ *ibid*

³⁹ David Natzler, Coronavirus and the hybrid parliament: how the government moved the Commons backwards on remote participation, The Constitution Unit, 23 June 2020, <https://constitution-unit.com/2020/06/23/coronavirus-and-the-hybrid-parliament-how-the-government-moved-the-commons-backwards-on-remote-participation>

⁴⁰ Procedure Committee, Oral evidence: Procedure under coronavirus restrictions, HC 300 2019-21, 1 June 2020, <https://committees.parliament.uk/oralevidence/435/html>

⁴¹ Hannah White, A virtual parliament was well equipped to make progress on the government’s legislative agenda, Institute for Government, 10 June 2020, www.instituteforgovernment.org.uk/blog/virtual-parliament-was-well-equipped-make-progress-government-legislative-agenda

⁴² David Natzler, Coronavirus and the hybrid parliament: how the government moved the Commons backwards on remote participation, The Constitution Unit, 23 June 2020, <https://constitution-unit.com/2020/06/23/coronavirus-and-the-hybrid-parliament-how-the-government-moved-the-commons-backwards-on-remote-participation>

⁴³ Procedure Committee, Procedure under coronavirus restrictions: the Government’s proposal to discontinue remote participation, 29 May 2020, HC 392 2019–21, p24

House. The Leader of the House gave a commitment that the division lobbies would be replaced by a more appropriate alternative, and along with the Speaker and parliamentary authorities, devised a new system of Chamber voting.⁴⁴ Under this model, frontbenchers present in the Chamber would form a queue stretching back from the Table of the House and the remainder of members would join the end from Westminster Hall. To cast their votes members would file past the table; left hand side for Aye and right hand side for No.⁴⁵

On the House's return, it was asked to rescind the earlier motion that established virtual participation and enshrined the principle of parity in the House's proceedings. During debate, Members from all sides criticised the Government's proposal; these included the Conservative Chair of the Procedure Committee, Karen Bradley, who tabled an amendment to preserve remote voting.⁴⁶ When the House divided, the new model of Chamber voting was used for the first time.

Although comprehensive instructions on the new system had been sent to Members, there was significant confusion about the new system. Many appeared to be unaware of the requirement to announce their vote to the clerk at the Table, and confusion on queuing saw MPs congregating together, in clear breach of public health guidance on social distancing. Rehearsals suggested the new system would take half an hour, but the first division in fact took three quarters of an hour to complete.⁴⁷ To make matters worse, the Chamber voting system was broadcast live on Parliament's television channel and was greeted with derision by the media. It was not constructive for our elected representatives to receive such unwelcome attention at a time when the country was looking to them for leadership.

⁴⁴ *ibid*, p25

⁴⁵ Final guidance for Members on Chamber divisions, UK Parliament, 1 June 2020, www.parliament.uk/documents/commons/Guidance_for_Members_on_Chamber_divisions.pdf

⁴⁶ HC Deb 2 June 2020 vol676 c739

⁴⁷ Mark D'Arcy, The Mogg Conga, BBC News, 2 June 2020 <https://www.bbc.co.uk/news/uk-politics-52897865>

The end of Hybrid Proceedings: exclusionary effects

The decision to end the hybrid House of Commons also attracted criticism from a number of senior democracy specialists.⁴⁸ An open letter was sent to the Leader of the House, claiming the move had breached the fundamental democratic principle of equality in decision-making, because MPs most benefitting from remote participation were excluded from the vote.⁴⁹ As the Government did not extend the procedures providing for remote participation, over 200 MPs were unable to debate or vote on the motion that has been described as leading to their own 'disenfranchisement'.⁵⁰ The Government won comfortably on the business motion; a majority of 57 against the Bradley amendment and a majority of 90 in favour of the main question.⁵¹ Had all MPs been able to vote, it is questionable whether the same outcome would have been reached.

Proxy voting and virtual participation enabled

To the Government's credit, it did respond to some of the House's concerns relating to the return of physical proceedings. At Prime Minister's Questions on 3 June, the Prime Minister apologised to absent Members who had been unable to participate in the previous day's proceedings and gave an assurance that in future they would be able to vote by proxy.⁵² This practice allows absent Members to nominate a colleague to vote on their behalf. It is a recent innovation at Westminster that was already on trial for those on maternity or paternity leave. The House agreed to a motion that extended proxy voting to 'clinically extremely vulnerable' or 'clinically vulnerable' Members.⁵³ In addition, Members who had self-

⁴⁸ Ending of the hybrid House of Commons breached fundamental democratic principles, The Constitution Unit, 8 June 2020, <https://constitution-unit.com/2020/06/08/ending-of-the-hybrid-house-of-commons-breached-fundamental-democratic-principles>

⁴⁹ *ibid*

⁵⁰ *ibid*

⁵¹ HC Deb 2 June 2020 vol676 cc754–760

⁵² HC Deb 3 June 2020 vol 676 c 839

⁵³ HC Deb 4 June 2020 vol 676 c1103

certified that they were unable to attend due to medical or public health reasons were permitted to participate virtually in proceedings on Questions, Urgent Questions and Statements.⁵⁴ Critics considered that any Member unable to attend should be entitled to a proxy vote and on 8 June an emergency debate was held in which an extension was sought for the proxy scheme so that those taking part remotely in scrutiny proceedings would also be eligible.⁵⁵ The Government agreed to bring forward changes and the eligibility criteria for proxy votes were duly amended.⁵⁶

Extending remote participation for absent Members was a popular decision. There has been some understandable concern that extensive use of proxies concentrates power in the hands of the whips. Both Government and Labour whips currently have near to 50 proxies each, which means that a significant number of Members will be unable to express dissent by voting against the party line. However, the Temporary Orders do not regulate who can act as a proxy and some have nominated backbenchers to vote on their behalf.⁵⁷

⁵⁴ *ibid* c1102

⁵⁵ HC Deb 8 June 2020 vol 677 cc59–94

⁵⁶ HC Deb 10 June 2020 vol 677 c361

⁵⁷ David Natzler, Coronavirus and the hybrid parliament: how the government moved the Commons backwards on remote participation, The Constitution Unit, 23 June 2020, <https://constitution-unit.com/2020/06/23/coronavirus-and-the-hybrid-parliament-how-the-government-moved-the-commons-backwards-on-remote-participation>

The debate over the issue of proxy voting could have been avoided altogether if the Government had allowed absent Members to continue voting electronically, although it may have then been difficult to explain to other Members why they would be expected to vote in person.

Hybrid proceedings were discontinued for no apparent reason other than to present an image that Parliament was returning to normal. Fortunately, the partial resumption of remote participation and extension of proxy voting has levelled the playing field for absent Members.

Chamber voting replaced with queues and card readers

Chamber voting has also been replaced with a more efficient system, whereby Members form socially distanced queues and swipe their security passes on card readers in division lobbies that register votes.⁵⁸ The current arrangements will remain in place for the foreseeable future; on 2 September, the House agreed to extend the arrangements for virtual participation until 3 November, and on 23 September a similar extension was granted to proxy voting for those shielding on medical or public health advice.^{59 60}

⁵⁸ Speaker outlines new division system, UK Parliament, 16 June 2020, www.parliament.uk/business/news/2020/june/speaker-outlines-new-division-system

⁵⁹ HC Deb 2 September 2020 vol 679 c254

⁶⁰ HC Deb 23 September 2020 vol 680 c1057

V – COMMONWEALTH PARLIAMENTS

COVID-19 poses a challenge for legislatures across the globe. A significant number is adapting practices and procedures in order to continue functioning. Before reaching a judgement on the success of our own Parliament's response, it is important to gain a sense of perspective by examining innovations in other legislatures that are based on the Westminster model. The Parliaments of New Zealand, Australia and Canada have endorsed remote participation for committees but not for full plenary sessions. This has provided for scrutiny over policy, but limited opportunities for debates and votes on legislation.

New Zealand

New Zealand's Parliament moved rapidly to ensure it could still function during the pandemic. As early as 19 March, the House of Representatives made a number of temporary changes to its procedures, including a waiver on the limit on proxy votes; allowing oral questions to be tabled electronically; and permitting select committees to meet virtually.⁶¹ The Government also gave an undertaking that if numbers in the House became severely depleted, it would not continue with a full legislative programme.⁶² Instead, the House would be left to focus upon scrutiny of the executive and passing any legislation that was necessary to deal with COVID-19.

Following the announcement on 25 March that New Zealand would move to its highest level of alert, the Speaker recalled Parliament. As in other countries, the Government required extraordinary powers to respond to the crisis and a fast-tracked Coronavirus Omnibus Bill was passed in a single-day sitting without a party vote.⁶³ The Government had made it clear that Parliament was not expected to meet again in person while the

country remained on its highest level of alert.⁶⁴ This meant innovations in procedure were necessary beyond what was initially agreed to on 19 March. Parliament would need to establish a form of remote participation to allow democratic oversight to continue.

The Epidemic Response Committee established

The House established a special select committee – the Epidemic Response Committee – to meet via videoconference during the adjournment and examine all aspects of the COVID-19 response.⁶⁵ This innovation was unique among Commonwealth legislatures. Although select committees were authorised to operate remotely in the British, Canadian and Australian Parliaments, their purpose was to supplement, as opposed to substitute, existing scrutiny mechanisms. The Epidemic Response Committee was to act as a 'Parliament in miniature', filling the void normally occupied by question time and debates.⁶⁶ To guarantee rigorous examination of the Government, it was agreed that the Committee would have an opposition majority. The Leader of the Opposition accepted the new committee was not a 'silver bullet'.⁶⁷ Its membership of eleven necessarily restricted parliamentary representation. However, it allowed for a form of scrutiny that might otherwise not have been possible due to the speed with which New Zealand entered a national lockdown.

⁶¹ HR Deb [New Zealand] 19 March 2020 vol 745 pp17235–17236

⁶² *ibid* 17237

⁶³ Westminster Parliaments Compared: Four approaches to emergency lawmaking and scrutiny, The Samara Centre for Democracy, 21 April 2020, www.samaracanada.com/democracy-monitor/westminster-parliaments

⁶⁴ Richard Kelly, John Curtis, Stefano Fella, Claire Mills and Ben Smith, Coronavirus: changes to practice and procedure in the UK and other Parliaments, HC Briefing Paper 8874, 19 May 2020, p23

⁶⁵ HR Deb [New Zealand] 25 March 2020 vol 745 p17316

⁶⁶ Dean Knight, Lockdown bubbles through layers of law, discretion and nudges, *Verfassungsblog*, 7 April 2020, <https://verfassungsblog.de/covid-19-in-new-zealand-lockdown-bubbles-through-layers-of-law-discretion-and-nudges/>

⁶⁷ Simon Bridges, In the absence of Parliament we must ensure New Zealand's response to Covid-19 is the best it can be, *The Guardian*, 3 April 2020, www.theguardian.com/commentisfree/2020/apr/03/in-the-absence-of-parliament-we-must-ensure-new-zealands-response-to-covid-19-is-the-best-it-can-be

The nature of the COVID-19 outbreak in New Zealand meant that the country remained on its highest level of alert for a relatively short period of time. Hence, arrangements were not made for the legislative process to be held online. When the alert level was lowered on 28 April, physical sittings resumed in the House of Representatives.⁶⁸ Social distancing measures remained in place, but the House otherwise functioned as normal. As a consequence, the Epidemic Response Committee was able to shift its focus. Rather than questioning ministers on the Government's COVID-19 response, as it had done during the adjournment, it began hearing from members of the community about the effects of the lockdown and needs for recovery.⁶⁹ On 26 May, with Parliament's usual scrutiny mechanisms fully operational, the Epidemic Response Committee was disestablished.⁷⁰ The temporary measure had served its purpose.

Australia

The Parliament of Australia is a late convert to the concept of virtual proceedings. While remote participation is an established practice of its select committee system, up until August, the preference was for plenary sessions to be held in-person. It is only recently that parliamentarians unable to travel to Canberra have been granted the opportunity to take part in debates or Question Time.

Virtual proceedings and remote participation for plenary session

On 23 March, the Australian Parliament met to pass legislation that enabled the Government to implement an economic stimulus package.⁷¹

⁶⁸ Richard Kelly, John Curtis, Stefano Fella, Claire Mills and Ben Smith, *Coronavirus: changes to practice and procedure in the UK and other Parliaments*, HC Briefing Paper 8874, 19 May 2020, p23

⁶⁹ Daniela Maote-Cox, *Looking back at the Epidemic Response Committee*, 24 May 2020, www.rnz.co.nz/national/programmes/the-house/audio/2018747680/looking-back-at-the-epidemic-response-committee

⁷⁰ HR Deb [New Zealand] 26 May 2020 vol 746 p17977

⁷¹ *Westminster Parliaments Compared: Four approaches to emergency lawmaking and scrutiny*, The Samara Centre for Democracy, 21 April 2020, www.samaracanada.com/democracy-monitor/westminster-parliaments

Although this was a formal sitting of Parliament, nearly half of representatives had been advised not to attend, in order to prevent the potential spread of COVID-19 across the country.⁷² Unlike at Westminster, there was not cross-party support for the emergency legislation and both Houses divided on the bill.⁷³ So that the large number of absences did not affect the outcome of any votes in the House of Representatives, extensive pairing arrangements were agreed between the main parties. As the practice of pairing is not reflected in the Standing Orders of the House, the Speaker gave party whips dispensation to read the names of pairs, which meant the voting intentions of absent Members were recorded in Hansard.⁷⁴ In the Senate, divisions were avoided altogether by allowing senators to be recognised in Hansard and the Journals as adopting a position on the bill in lieu of casting votes.⁷⁵

Despite the efforts to observe social distancing, the Government considered that physical meetings should be avoided at the peak of the pandemic.⁷⁶ A revised sitting calendar was agreed, with Parliament adjourning until August.⁷⁷ Before Parliament rose for the adjournment, both Houses agreed to motions that allowed them to meet in a manner and form not otherwise provided in the standing orders.⁷⁸ ⁷⁹ These motions appeared to pave the way for virtual sittings. However, on the several occasions that Parliament was recalled, no

⁷² Anna Henderson, *Why are politicians returning to Canberra amid a coronavirus crackdown?* ABC News, 22 March 2020, www.abc.net.au/news/2020-03-23/social-distancing-parliament-returns-coronavirus-stimulus/12079024

⁷³ *Westminster Parliaments Compared: Four approaches to emergency lawmaking and scrutiny*, The Samara Centre for Democracy, 21 April 2020, www.samaracanada.com/democracy-monitor/westminster-parliaments

⁷⁴ HR Deb [Australia], 23 March 2020, p2898

⁷⁵ S Deb [Australia], 23 March 2020, p1767

⁷⁶ HR Deb [Australia], 23 March 2020, p2893

⁷⁷ *Westminster Parliaments Compared: Four approaches to emergency lawmaking and scrutiny*, The Samara Centre for Democracy, 21 April 2020, www.samaracanada.com/democracy-monitor/westminster-parliaments

⁷⁸ HR Deb [Australia], 23 March 2020 pp2900–2902 □

⁷⁹ S Deb [Australia], 23 March 2020, p1860

alternative ways of working were approved. Although the Senate did consider the possibility of remote participation, there was no formal inquiry into the matter by its Procedure Committee.⁸⁰ This was a missed opportunity to put in place mechanisms for representatives to hold ministers to account over the course of the lengthy adjournment.

Committees meet virtually

During this time, there was a limited form of parliamentary scrutiny. The Standing Orders of both the Houses authorise committees to hold meetings electronically. This allowed several of Parliament's committees to meet virtually, including the Senate's Committee on COVID-19 that was set up with terms of reference to inquire into the Government's response to the pandemic.⁸¹ As technology was available for select committees to function online, it is unclear why remote participation was not extended to other parliamentary proceedings. Some have suggested that there may be a constitutional barrier to Parliament meeting virtually.⁸² The Constitution of Australia outlines a number of requirements for parliamentary sittings, including that Parliament must meet 'in the seat of government'.⁸³ But according to Professor Ann Twomey, this barrier is easily surmountable. A small number of parliamentarians could meet at Parliament House and the remainder could log into the session from elsewhere.⁸⁴ This arrangement would be similar to the hybrid meetings that have taken place at Westminster.

⁸⁰ Richard Kelly, John Curtis, Stefano Fella, Claire Mills and Ben Smith, Coronavirus: changes to practice and procedure in the UK and other Parliaments, HC Briefing Paper 8874, 19 May 2020, p20

⁸¹ *ibid*

⁸² Felix Anselm Van Lier, Towards Virtual Parliaments? Open Democracy, 12 May 2020, www.opendemocracy.net/en/can-europe-make-it/towards-virtual-parliaments

⁸³ Professor Ann Twomey, A virtual Australian parliament is possible – and may be needed – during the coronavirus pandemic, *The Conversation*, 24 March 2020, <https://theconversation.com/a-virtual-australian-parliament-is-possible-and-may-be-needed-during-the-coronavirus-pandemic-134540>

⁸⁴ *ibid*

The Australian Parliament was due to reconvene for a fortnight in early August. In July, after the country's two most populous states recorded an increase in COVID-19 cases, the Chief Medical Officer advised against MPs and Senators returning to Canberra. Acting on this advice, the Government requested that the Speaker of the House of Representatives and President of the Senate cancel the upcoming sittings.⁸⁵ While the Opposition supported this decision, it also believed that parliamentary scrutiny should resume and called for the establishment of a working group to consider how Parliament could meet safely in time for its next scheduled meeting.⁸⁶

A working group was formed, but it failed to devise an acceptable model for physical sittings. Both Houses instead agreed on trialling remote participation for the sitting fortnight beginning on 24 August. In the House of Representatives, any MP unable to attend in person was able to contribute to debates and ask questions during Question Time via videoconference. However, absent MPs would not be able to take part in divisions or move amendments to legislation.⁸⁷ Senators participating remotely were able to participate in any matter before the chair, but could only move amendments and request for amendments to legislation in Committee of the Whole, and could not take part in divisions.⁸⁸

The Australian Parliament is set to meet again on 6 October. It is now at a juncture where it must decide whether to continue with virtual participation. While there are clear advantages to holding plenary sessions in-person, if only a select few Members can participate scrutiny will be substandard. Allowing absent Members to attend via videoconference should therefore be considered a positive development. Yet, the

⁸⁵ Prime Minister of Australia Media Statement, 18 July 2020, www.pm.gov.au/media/sitting-parliament

⁸⁶ Katherine Murphy, Labor calls for working group so parliament can sit 'in a safe manner', as scheduled, *The Guardian*, 19 July 2020, www.theguardian.com/australia-news/2020/jul/20/labor-calls-for-working-group-so-parliament-can-sit-in-a-safe-manner-as-scheduled

⁸⁷ HR Deb [Australia], 24 August 2020, p1

⁸⁸ S Deb [Australia], 24 August 2020, p2

arrangements fall short of what is in place in Westminster, as MPs and Senators cannot participate in divisions remotely or, alternatively, nominate proxies to cast votes on their behalf. To demonstrate their commitment to parliamentary scrutiny, Australia's political leaders may wish to consider facilitating online voting, which would allow all parliamentarians to express their views on contentious propositions.

Canada

Parliament adjourned initially

On 13 March, the federal political parties of Canada unanimously agreed to adjourn until 20 April.⁸⁹ This was the first time since the Spanish Flu that Parliament had altered its sittings in response to domestic or global events.⁹⁰ Parliament's adjournment was a proportionate response to prevent legislators from carrying COVID-19 across the country during their weekly travels to and from Ottawa. But it also presented a challenge for the Government, as when Parliament adjourned, no emergency legislation had been passed to assist with the response to the crisis.

Emergency legislation: backroom manoeuvres

Party business managers agreed that a select number of MPs and Senators located near the capital would attend for an emergency legislative session.⁹¹ To allow the measures to pass in a single day, the Government adopted a conciliatory approach and negotiated the contents of the bills with senior parliamentarians before presenting them to both Houses for approval.⁹² While cross-party cooperation is a laudable achievement, the backroom nature of these negotiations raises serious questions about the transparency of the lawmaking process. Debates did take place on the

floors of both chambers, but the decision to pass the bills with 'unanimous consent' meant that they were enacted unamended.⁹³ This is in striking contrast to Westminster where the Coronavirus Act received its first reading four days before being discussed in the Commons, which provided Members with time to scrutinise its contents and bring forward amendments.⁹⁴

Special Committees established: Select Committees meet remotely

When Parliament returned from the adjournment, the Leader of the House tabled a motion to establish a Special Committee on COVID-19.⁹⁵ From 28 April, all MPs were to meet in person on a Wednesday and via videoconference on Tuesday and Thursdays. Only a limited set of business could be conducted during these sittings. Members could present petitions and question Government Ministers, but it would not be possible to debate and vote on legislation.⁹⁶ In effect, the proceedings would be similar to the scrutiny proceedings that are held at Westminster. Select Committees also began working remotely, with seven regular House committees and two Senate committees meeting via videoconference to scrutinise the Government's response to the pandemic.⁹⁷ In the absence of plenary sessions, this greatly improved Parliament's ability to hold the executive to account.

Adverse impact of variable internet speeds

A major challenge for virtual participation in Canada is the accessibility of proceedings. Internet speeds vary significantly across the country. While participants in urban areas may have little difficulty joining online proceedings, those in rural communities may struggle with connectivity.

⁸⁹ Richard Kelly, John Curtis, Stefano Fella, Claire Mills and Ben Smith, Coronavirus: changes to practice and procedure in the UK and other Parliaments, HC Briefing Paper 8874, 19 May 2020, p21

⁹⁰ Towards a virtual Parliament: Design choices and democratic values, The Samara Centre for Democracy, 1 May 2020, www.samaracanada.com/democracy-monitor/towards-a-virtual-parliament

⁹¹ *ibid*

⁹² *ibid*

⁹³ *ibid*

⁹⁴ Bill Stages – Coronavirus Act 2020, UK Parliament, <https://services.parliament.uk/Bills/2019-21/coronavirus/stages.html>

⁹⁵ HC [Canada] Deb Vol 149 No.034 pp2161–2162

⁹⁶ *ibid*

⁹⁷ Towards a virtual Parliament: Design choices and democratic values, The Samara Centre for Democracy, 1 May 2020, www.samaracanada.com/democracy-monitor/towards-a-virtual-parliament

Several Members living in or representing the more remote areas of the country have expressed their concerns that inadequate Internet connectivity impedes their ability to participate.⁹⁸ This is an issue that must be addressed. Parliament has been encouraged to tackle the problem of unequal access by providing MPs or Senators in remote areas with the resources to connect to virtual proceedings elsewhere within their provinces.⁹⁹ If a solution cannot be found, virtual proceedings will not be seen as an innovation that provides for parity of treatment between Members.

Future expansion of remote sittings?

A secondary issue is whether the Canadian Parliament can follow the approach taken by Westminster and expand the category of business that is held remotely. In May, The House of Commons Standing Committee on Procedure and House Affairs conducted an inquiry into this matter and concluded that steps should be taken to establish a fully virtual Parliament.¹⁰⁰ The Committee was unclear on how this virtual Parliament would function. Like the Australian Constitution, the Constitution of Canada regulates parliamentary sittings, requiring the 'presence' of at least fifteen senators in the Senate and twenty Members in the Commons to reach a quorum.¹⁰¹

⁹⁸ *ibid* p13

⁹⁹ Towards a virtual Parliament: Design choices and democratic values, The Samara Centre for Democracy, 1 May 2020, www.samaracanada.com/democracy-monitor/towards-a-virtual-parliament

¹⁰⁰ Parliamentary duties and the COVID-19 pandemic, Report of the Standing Committee on Procedure and House Affairs, 43rd Parl, 1st sess, May 2020 p29

¹⁰¹ Constitution Act 1867, s48

Experts suggested that the courts would likely interpret the constitution in light of modern circumstances and so a 'virtual meeting of the minds' may suffice.¹⁰² On this basis, a subsequent report produced by the Committee recommended the adoption of a hybrid model.¹⁰³ This would mirror the arrangements that had been in place at Westminster, whereby a small number of parliamentarians meet physically in Parliament and the remainder ask questions of ministers, contribute to debates and participate in divisions remotely.

Parliament prorogued to enable a 'reset'

The Committee was due to meet in early September to review its recommendations in light of updated public health advice. However, on 18 August, the Canadian Prime Minister asked the Governor General to prorogue Parliament until 23 September so that the Government could 'reset' its approach for dealing with the pandemic.¹⁰⁴ As committees are unable to meet whilst Parliament stands prorogued, preparations for hybrid proceedings have ground to a halt. Parliamentarians unable to attend Ottawa will likely have to wait until at least October before they can participate in proceedings remotely.

¹⁰² Parliamentary duties and the COVID-19 pandemic, Report of the Standing Committee on Procedure and House Affairs, 43rd Parl, 1st sess, May 2020 p9

¹⁰³ Carrying out members' parliamentary duties: The challenges of voting during the COVID-19 Pandemic, 43rd Parl, 1st sess, July 2020

¹⁰⁴ Amanda Connolly, Trudeau proroguing Parliament ahead of new throne speech this fall, Global News, 18 August 2020, <https://globalnews.ca/news/7283553/justin-trudeau-prorogation-coronavirus>

VI – CONCLUSION

The Westminster Parliament has not experienced a crisis on the same scale as COVID-19 since the Second World War. Over the course of just a few weeks, parliamentary authorities had to come up rapidly with alternative arrangements that allowed MPs and Peers to continue performing their duties. The outcome was largely successful. Remote participation reconciled the tension between maintaining social distancing and facilitating scrutiny of the Government and its legislative agenda. While other Commonwealth Parliaments also embraced online proceedings, Westminster stands out in its response and to advantage. That is because a wider range of business has been conducted remotely. Parliamentarians have not just questioned ministers and scrutinised policy in virtual committees, they have debated and voted on legislation in online plenary sessions.

Crucial to Westminster's response has been cross-party support across both Houses of Parliament. MPs and Peers view virtual sittings as an imperfect solution but have broadly approved of measures guaranteeing equal access to Parliament's proceedings. It is regrettable that the Government lost sight of the need to consult the Commons over the return of physical sittings and excluded absent Members from the critical vote on 3 June. Since then, the Government has been receptive to concerns of Members, working with opposition parties and its own backbenchers to extend proxy voting. It remains to be seen if the Government will continue with this approach in November, or if it will once again exert control over the House's procedures.



For further information on the Society of Conservative Lawyers contact:
The Administrative Secretary, The Lodge, Deaks Lane, Cuckfield RH17 5JB
administrator@conservativelawyers.com
[www:conservativelawyers.com](http://www.conservativelawyers.com)

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