

Submission of evidence to the Independent Commission on UK Public Health Emergency Powers.

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Summary

Emergency situations require rapid decision making by government. They also require the ongoing support, involvement and scrutiny of all political parties with representation in parliament. The pandemic of March 2020 saw an initial shift in typical decision making and scrutiny arrangements by the government, bringing all opposition parties into informal discussions on coronavirus legislation and policy issues at an unprecedented level. In contrast, however, the smaller opposition parties, especially those with no formal speaking rights in the chamber, found themselves to be muted and, at times, locked out of formal parliamentary scrutiny. This was especially true with regards to the adaptations made to procedure and practice within the House of Commons. It resulted in decisions being made around parliamentary business which were overwhelming London-centric and which paid scant attention to the needs of MPs and party groups based in Northern Ireland, Scotland and Wales. We suggest that during any future public health emergencies, the Speaker of the House of Commons should work with the Leader of the House to find guaranteed space for all opposition parties to scrutinise government and to ensure decisions around parliamentary business are carried out with all MPs (covering all four nations of the UK) in mind. This should be done concurrently with informal ministerial briefing sessions for all parties, reflecting the need for government to be both effectively and visibly held to account, in order to maintain public confidence during times of crisis

Introduction

Our evidence submission draws on research carried out for the ESRC funded project Rethinking the role of small parties in the UK's Parliaments [ES/R005915/1]. The latter half of this project focused on the experience of small opposition parties¹ during the covid-19 pandemic. It draws on interviews with MPs at Westminster undertaken across autumn 2020 and spring 2021 as well as analysis of MP attendance and participation in scrutiny proceedings in the House of Commons between March 2019 and March 2021. We address here topic 5 of the call for evidence on parliamentary scrutiny processes and whether appropriate scrutiny was enabled during the pandemic, as well as topic 6 relating to the adaptation of parliamentary procedures.

We would like to raise three key issues:

- i. The government's approach to scrutiny during the initial stage of the pandemic was unprecedented, accommodating all opposition parties at an informal level and providing unparalleled access to ministers.
- ii. These greater opportunities for involvement in extra-parliamentary decision making and briefing forums came at the same time as a reduction in opportunities for participation in formal scrutiny in the House of Commons.
- iii. Consultation with opposition parties on changes to parliamentary proceedings were poor and this meant that the adaptations made were a) very London-centric and b)

¹ All opposition parties with the exception of the Official Opposition.

disproportionately affected members of the smaller opposition parties, especially those with constituencies in Northern Ireland, Scotland and Wales.

1. *The government reached out to all political parties to bring them into decision making in an unprecedented manner, but much of this was informal and all was out of public view*

We start from the basis that crisis situations require the ongoing support and involvement of ***all*** political parties and that this requires a different approach to decision making and scrutiny by the government as well as by parliamentary groups. Parliamentary scrutiny is usually dominated by the Official Opposition, which fails to reflect the fact that smaller political parties constitute 11% of the House of Commons. The primacy offered to the official opposition also fails to reflect the fact that constituency representation in Northern Ireland, Scotland and Wales is dominated by smaller opposition parties: 89% of these MPs represent constituencies in the devolved nations. Their guaranteed input into scrutiny during emergency situations should be non-negotiable and they should be able to represent their constituencies at times of emergency to the same extent as MPs from England.

The way in which the government reached out to all political parties represented in Westminster during the first few weeks of the pandemic was unprecedented. In a contrast to standard executive-legislative relations, contact from the government extended to the small opposition parties as well as to the Official Opposition and the SNP. Most importantly, rather than opposition parties having to be proactive in their communications with government ministers, they reported that it was the government who reached out to them. One MP described this as 'extremely unusual' behaviour; something which had not happened before, 'even at the height of the Brexit crisis' (Interview, Plaid Cymru MP). The resulting meetings provided safe spaces for political parties to probe and test the government's coronavirus legislation and led to Matt Hancock announcing that the bill had incorporated ideas 'from ***all*** parties' (HC Debates, 23 March 2020, c40, emphasis added) rather than just the Official Opposition.

As the pandemic progressed, informal spaces were opened up by the government in which MPs from all parties were invited to listed to briefings by government ministers online on issues such as PPE and the vaccine roll out. This was a markedly different level of access to ministers for party groups and MPs outside the Official Opposition/ SNP and brought 'a level of scrutiny that is just impossible in the chamber' (Interview, 9, PC) and they understandably had high attendance from MPs. Opposition party groups welcomed this level of inclusion.

2. *Greater opportunities for involvement in extra-parliamentary decision making and briefing forums came at the same time as a reduction in opportunities for participation in formal scrutiny in the Commons chamber*

The then Leader of the House Jacob Rees-Mogg had acknowledged himself in March 2020 that the inclusion of opposition parties in coronavirus decision making was happening away from public view, telling the House that: "*when Opposition parties co-operate with the Government, it is not always seen because what they achieve is done behind the scenes, but the Opposition parties have contributed considerably to the Coronavirus Bill and to ensuring its passage through the House*" (HC Debates, 25 March 2020).

This is necessary and welcome. But it is important that policy decisions are also seen to be being actively scrutinised by Parliament. Yet opposition parties found themselves essentially muted in the House of Commons from March 2020. This was due to a combination of factors,

including the Easter recess, the impracticality of bringing all MPs to the chamber to vote on the Coronavirus Bill when hybrid debating arrangements had not yet been made.

Smaller party groups were particularly hard hit by the limits applied to the submission of Written Questions. This policy was applied at the level of the individual MP rather than the parliamentary group level, thus presenting challenges for opposition spokespeople who typically cover a multitude of policy portfolios on behalf of their party group. This was exacerbated by the longstanding exclusion of all but the three largest parties from relevant select committees. Smaller opposition parties had no representation on relevant policy select committees such as the Health and Social Care committee. They also lacked any representatives on the Procedure Committee. This had something of a double-whammy effect on their participation in formal parliamentary scrutiny during the pandemic as they were excluded from the select committees covering both covid policy changes and those covering changes to parliamentary proceedings. The creation of a coronavirus select committee, modelled along similar lines to the Exiting the European Union select committee would have provided more opportunities for opposition parties to engage in scrutiny of government and to have this scrutiny formally recorded on the parliamentary record, but calls from opposition parties to do this were unsuccessful².

3. Consultation with opposition parties on changes to parliamentary proceedings were poor and this meant that the adaptations made were a) very London-centric and b) disproportionately affected members of the smaller opposition parties, especially those with constituencies in Northern Ireland, Scotland and Wales.

MPs representing the smaller opposition parties in the devolved nations were the first to press the government for adaptations to parliament's operation in early March 2020 to negate the need to travel to Westminster to participate in business (Carol Monaghan MP, HC Deb, 4 Mar 2020, c834). It was Alistair Carmichael, a Liberal Democrat MP with an exhausting commute to a constituency in the north of Scotland, who secured an emergency debate on the Government's changes to the hybrid Parliament after the 2020 Whitsun recess.

Small party MPs felt they had been excluded from the decision-making process around virtual and hybrid proceedings. This contrasts markedly from their experience of inclusion by government in decisions and information sharing around other coronavirus measures. None of the MPs we interviewed across 2020 and 2021 felt that the specific issues affecting their travel to Parliament had been taken into consideration by the government. Despite regular pleas from these party groups for 'better consultation' (Alistair Carmichael, HC Debates, 12 May 2020 c924) they found themselves 'virtually cut off' from the conversations around adaptations to parliamentary business (Interview, Liberal Democrat MP).

The lack of formal input from MPs in the devolved nations has caused difficulties and unnecessary anxiety, particularly around the different public health restrictions in place in Northern Ireland, Scotland and Wales. There was no recognition of how this would affect MPs from these areas in carrying out their parliamentary duties. Plaid Cymru have already raised this issue in their own written evidence to the Procedure Committee's 2020 inquiry into the territorial constitution (TTC0004, 16 November 2020, para 46), but this concern has also been echoed by MPs from other small opposition parties during the course of our research.

MPs representing constituencies in Northern Ireland, Scotland and Wales experienced far greater difficulties travelling to and from Parliament than the vast majority of MPs representing

² See for instance written evidence submitted to the Procedure Committee inquiry into coronavirus restrictions and procedural changes by Wendy Chamberlain MP on behalf of the Liberal Democrat parliamentary group (CVR13).

constituencies in England. We found that this prevented them from taking part in proceedings on a regular basis, particularly in the first few months of the pandemic. At this time for example, MPs flying to Westminster from Northern Ireland saw travel options reduce from twelve flights to London each day to just one. Attending the House of Commons on Mondays meant that they missed the first few hours of business. It also prevented them from attending on Thursdays because of the new flight schedule. Those who did remain in Westminster on Thursdays would find themselves stuck in London for the weekend. In one case, Northern Ireland Alliance MP Stephen Farry had to ask Liberal Democrat MP Wendy Chamberlain to represent him in an Urgent Question in the chamber, as he was unable to travel to London at short notice (See HC Deb, 4 Jun 2020, c1024).

The removal of remote voting possibilities in May 2020 and the subsequent extension of proxy voting required at least one member of each political party to travel to Westminster in order to cast proxy votes on behalf of their party group (see, for example, Patrick Grady MP's comments HC Deb, 30 Dec 2020, c504). This placed a disproportionate burden on parties with a smaller number of MPs and was exacerbated further where parties had no MPs with constituencies in the London area. Not only did this bring significant challenges for travel, it placed the MP and their family at increased risk as a result of their journey to and from Westminster. Some MPs from Northern Ireland described the harsh criticism they received from the press for undertaking this travel to cast proxy votes. Another MP explained how even their own partner could not understand why they were having to make the journey to cast their group's proxy votes when MPs were supposed to be staying home. This lack of understanding from constituents, the press and the wider public was summed up well by one Northern Ireland MP who told us 'if I didn't attend I'd be accused of not doing my job, if I do attend I'm accused of putting people at risk' (Interview, DUP MP).

The Commons Procedure Committee has since recognised that some of the changes made to parliamentary proceedings during the pandemic, such as pairing arrangements and proxy voting would disproportionately affect the smaller parties. They have highlighted the particular travel difficulties for some MPs (HC 300, page 65) and encouraged future decisions on the basis of public health concerns 'to take into account guidance and statutory restrictions in effect in all four nations of the UK' (HC 10, page 23). To date no changes have been made to effect these recommendations, however.

Conclusion

During future public health emergencies we would recommend the following:

R1: The inclusion of all political party groups into informal online discussions and briefing forums with government ministers which we saw throughout the coronavirus pandemic should be continued.

R2: Formal opportunities for all parties to participate in scrutiny should be maximised. This should include a temporary select committee in which all parliamentary parties can participate should they wish to do so.

R3: The Speaker and Leader of the House of Commons should make additional efforts to take into account the needs of MPs from Northern Ireland, Scotland and Wales when making adaptations to parliamentary business.

R4: Consideration should be given to the impact of procedural changes on both individual MPs and parliamentary party groups.