



TAKING BACK CONTROL

WHY THE HOUSE OF COMMONS SHOULD GOVERN ITS OWN TIME

MEG RUSSELL AND DANIEL GOVER

The Constitution Unit

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Meg Russell and Daniel Gover

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University College London

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Foreword by Sir David Natzler

Before serving as the Clerk of the House of Commons from 2014 to 2019, it was a highlight of my professional life to have been clerk to the 2009-10 Select Committee on the Reform of the House of Commons (more often referred to as the ‘Wright committee’). Now, as a Senior Associate Research Fellow of the Constitution Unit, I am honoured to have been asked to write a foreword to this important and timely report. It is a worthy successor to the 2007 report by the Unit which was the origin of the Wright committee proposal of a backbench business committee.¹

In the summer of 2009 the House of Commons was in meltdown over the publication day by day of stories about the abuse by members of the expenses system. The public’s view of the Commons had reached an all-time low. An unexpected result of this internal parliamentary crisis was the establishment of the Select Committee on the Reform of the House of Commons, with a remit to report rapidly on several specified issues. That story has been told elsewhere.² The committee’s report of November 2009 was not properly debated on a substantive motion, as it had itself recommended, but some of its principal recommendations were accepted over the next six months.

The Wright committee recommendation that the Commons should take control of its own agenda through the agency of a House Business Committee and a votable agenda did not at the time command general assent. There were and still are forces in government who resist this vigorously, as a recipe for chaos. Indeed, it took weeks in the summer of 2009 before it could be agreed that the Wright committee’s terms of reference should include the timetabling of Government business, and months of pushing boulders uphill after it reported to see its other recommendations through to implementation. And the coalition government’s promise in 2010 of a House Business Committee within three years was not fulfilled.

The Wright committee did not foresee the challenges of minority (or coalition) government. The scene has shifted in the 10 years since it reported in other ways as well, of course, but the principles that it enunciated retain their validity. The political turbulence of the last few years is not unique, but it is difficult to think of a period in recent decades where political conflicts have had such dramatic consequences – both within the House of Commons and in the wider world. Parliamentary practice and procedure has been exposed and argued over; decisions taken by the Speaker have been unusually controversial; the Supreme Court has overturned a prorogation; and MPs have clashed repeatedly with ministers over how – and how much – the government’s response to the COVID-19 pandemic should be scrutinised by parliament.

The House of Commons itself and the political commentariat were ill-prepared in late 2018 and early 2019 for a government which had in effect lost control of the Commons over the Brexit deal. Pejorative phrases about ‘seizing the order paper’ were widely used. But the idea that a popularly-elected and sovereign assembly should be able to control its own agenda is not really that astounding – this applies in many other countries. Nor is the idea that a Speaker confronted with such a situation should have to cross existing boundaries into unfamiliar territory. It also wasn’t surprising that the government used agenda control to prevent the opposition using its time to put a spanner in the works. This was all unfinished business from 2009–10 coming home to roost.

And now COVID-19 has presented another set of challenges and exposed the stark principle of government agenda control: that at the end of the day ministers determine what the House of Commons is to be asked to debate and decide. That's equally true whether it's about how the Commons conducts its own business or over seeking MPs' consent to crucial secondary legislation.

One thing which has not changed since the Wright report is the challenge to an author of setting out clearly and candidly the current situation on agenda control. I did not find that easy in 2009. So I admire all the more how thoroughly and painstakingly the status quo is set out in this report. The establishment of the Backbench Business Committee and the debates it promotes, and indeed the Petitions Committee with its own clutch of debating opportunities in Westminster Hall, have added to the complexity of the arrangements. We have experienced minority government, and the effects of a large and well-organised third party. Speaker Bercow's activist decade has changed the role of the chair.

This report goes beyond critical description and analysis to offer a number of options and solutions. That is not easy. People of course may not agree with all of them. But the proposals are founded on a demonstrably solid basis of factual analysis of recent events, not on theory, and on the experience of other legislatures. They deserve to be properly considered by the House of Commons and by political observers, and offer a really substantial set of recommendations to take forward.

Ultimately, the House of Commons will have to reform things itself. I believe there is a real desire for reform which could be tapped, whether through an existing select committee, or a new one, or some informal body assembled for the purpose by, for example, the Speaker. The timing may be right, as the successive crises of Brexit and COVID-19 recede.

It really is time that the Commons took back control of its agenda and its sitting programme. The analysis and proposals in this report should mark the start of that process.

Executive summary

- In the UK constitution, parliament is formally sovereign. Within parliament, the House of Commons enjoys seniority in most matters over the House of Lords. Yet the Commons itself, in important ways, lacks control over its own business. In international comparative terms, the government has very significant power over what MPs get to discuss, and when.
- This high degree of government control was a key theme in the report more than 10 years ago of the Select Committee on the Reform of the House of Commons (colloquially, ‘the Wright committee’). Some of that committee’s key recommendations – such as for the election of select committee members and chairs – were implemented, but others were not. In particular, some of its central concerns about the management of time in the House of Commons went unheeded.
- As a matter of principle, the Wright committee argued that time in the House of Commons should be under the control of the parliamentary majority, rather than the government. These two may usually be the same thing, but that is not always so. Where ministers exercise control, but lack the explicit support of a majority, significant tensions can occur. This can apply both during times of majority and minority government.
- In the last two years or so there have been several controversies triggered by this degree of government control. Most recently, the government’s handling of the COVID-19 crisis – both in terms of the Commons’ own procedure, and the extent to which MPs have a say over policy – has raised significant concerns, including among government backbenchers and key select committees. In the immediately preceding period, there were many tensions over Brexit, prompted by similar concerns. These included the government’s cancellation of key votes, the battles by MPs to ‘seize control’ of the Commons agenda, and parliament’s inability to prevent its own prorogation in September 2019 (which the Supreme Court ultimately overturned). While these episodes are diverse, and have involved different groups of parliamentarians, they share common themes: disquiet about the level of government control over the functioning of the House of Commons, coupled with fierce public disputes that risk damaging parliament’s reputation.
- This report explores two sets of key questions with respect to government control of the House of Commons: first, regarding the chamber’s day-to-day agenda, and second, regarding when it can sit. On both, it reviews current practice, recent controversies, possible solutions, and arrangements in some other parliaments from which Westminster might usefully learn.
- Part 1 of the report focuses on control of the day-to-day agenda. Its first section reviews the effects of the ‘default’ setting whereby the government controls House of Commons agenda time, particularly under Standing Order No. 14. This results in MPs being presented with a predetermined weekly timetable by the government. The second section reviews the time set aside for non-government business, primarily in the explicit exceptions to Standing Order No. 14 for opposition days and backbench business. These allow MPs to bring issues to a decision point, but ironically their timing is quite strongly controlled by the government. Combined with other factors, this makes it difficult for MPs to get key topics of concern debated in the Commons, and in particular to make binding decisions on them, in the face of

government resistance – even where a majority of members would support this. Both government control and its flipside of lack of available non-government time played a significant role in the recent controversies mentioned above.

- Part 2 of the report focuses on when the House of Commons sits, and the extent to which this too is controlled by the government. Various problems are identified here. Most obviously, in terms of deciding when the Commons should cease sitting, the government controls prorogation. But MPs also more routinely lack adequate influence over the timing of periodic adjournments (e.g. for the summer recess). Meanwhile, in terms of initiating new sittings, MPs have no formal means to bring about a recall of parliament during recess unless this is supported by the government.
- Altogether, the picture is one of strong government control of the business of the House of Commons, whereby MPs – as the Wright committee pointed out – have inadequate say over the running of their own institution. The report seeks to engage with these matters constructively, by setting out a series of recommendations for change. It suggests some specific measures that could be implemented fairly straightforwardly. For example, Standing Order No. 14 should set out allocations of opposition and backbench business days on a fortnightly or monthly (rather than sessional) basis, to ensure that these are fair in longer parliamentary sessions. Prorogation should be subject to approval by parliament, with the government’s promised bill amending the Fixed-term Parliaments Act providing a potential vehicle. MPs should have greater control over the timing of Commons recesses, including through removal of the ‘forthwith’ rule from Standing Order No. 15. The Speaker should be able to trigger a Commons recall during recess if requested by a substantial number of MPs.
- More fundamentally, however, the report also suggests that there should be a wide-ranging formal review of the extent of government control of House of Commons business: to be conducted by the Procedure Committee, or by a new ad hoc body similar to the Wright committee – perhaps under the auspices of the Commons Speaker. This should revisit some of the Wright committee’s original proposals which, if implemented, might have averted key recent conflicts. The most important change would be for the House of Commons’ weekly agenda to be put to members in an amendable form for decision. Such arrangements operate effectively in other parliaments, and would make ministers more responsive to the Commons majority (particularly their own backbench MPs). Backbench business – introduced following the Wright committee’s proposals – could be used more boldly, including to schedule ‘House business’ such as decisions on procedural change. A review should consider whether the current balance between government, backbench and opposition time is fair.
- As the Wright committee pointed out more than a decade ago, the extent of government control of the House of Commons is both unusual in international terms, and problematic for the functioning of Westminster. This was already true under periods of single party majority government, but it became even more obvious under minority government, as applied between May 2017 and November 2019. At present, House of Commons rules too often explicitly privilege the government rather than privileging the parliamentary majority. But these two will not always be the same thing. The core principle guiding House of Commons functioning should be majority decision-making, not government control.

Introduction

Westminster is, famously, a sovereign parliament. Not only are ministers accountable to parliament, as in many other democracies, but parliament also has lawmaking power unconstrained by a written constitution, which is far more unusual. Parliament is hence the institution that sits at the apex of the UK's constitutional arrangements. In practice, given the relationship between the two chambers, this authority ultimately rests with the House of Commons. MPs can (unlike peers) potentially remove a government from office via a vote of no confidence, and can overrule the Lords if necessary on most legislation.³

But how much freedom does the House of Commons actually have over its own affairs? This has been a controversial question for some time. As the Select Committee on the Reform of the House of Commons (generally known as the 'Wright committee') indicated in 2009:

There is a well-established concern (dating back many decades) that Government in general is too dominant over parliamentary proceedings. The House is notionally in charge but, partly because of difficulties of collective decision-making, partly due to imbalance of resources, and partly as a result of its own Standing Orders, the coordination of decisions often rests with the executive. There is a feeling that the House of Commons, as a representative and democratic institution, needs to wrest control back over its own decisions rather than delegating so much (as it does now) to Ministers and frontbenchers (Reform of the House of Commons Select Committee 2009: 12).

The Wright committee described this concern as its 'most important common theme', and laid emphasis on the importance of the Commons majority, rather than necessarily the government, having decision-making power. It made various recommendations for change – some of which were implemented and others not (as touched upon later in this report). Meanwhile, the question of government control of the House of Commons has remained contentious. In particular, it has underpinned two very major recent parliamentary controversies.

The most recent has concerned responses to the COVID-19 crisis. The first problems to reach prominence related to decision-making over parliament's own procedures. The House of Commons was initially seen as an international leader in terms of allowing parliamentary business to continue, by switching many key activities to an online environment. These new virtual mechanisms were agreed on a cross-party basis. Soon, however, matters became more acrimonious, when the government unilaterally chose to end the virtual arrangements in May 2020, raising significant complaints from MPs and from the chamber's own Procedure Committee. This soured the parliamentary atmosphere on what was a fundamentally non-party-political issue, at a time of national crisis when MPs should ideally have been working together far more constructively. Such tensions if anything worsened as the crisis continued. In addition, new disagreements developed over the government's lack of consultation with parliament over the emergency measures applied to the wider public in tackling the virus, and MPs' inability to debate and vote on them. This was most visibly witnessed through the 'Brady amendment', proposed by the chair of the Conservative backbench 1922 Committee and signed by over 50 Conservative MPs, in September 2020.

Shortly before the pandemic struck, in 2019, parliament had been frequently in the headlines due to bitter disputes over Brexit. These extended not only to the substance of the policy, but to the application and interpretation of House of Commons rules. On several occasions after the heavy defeat of Theresa May's withdrawal agreement in January 2019, MPs' attempts to 'seize the agenda' of the House of Commons over Brexit attracted high-profile news coverage. May's own decision to cancel a scheduled vote on the deal at short notice in December 2018 had generated considerable anger among MPs, which helped to spark these moves. Subsequently under Boris Johnson's premiership, in autumn 2019, the attempted five-week prorogation of parliament also made headlines around the world, and ended with the government's decision being overturned in the Supreme Court.

For parliamentary procedural questions to become the high-profile battleground that they did on both of these topics was very unusual, and was clearly connected to unusual circumstances: in one case, handling an international pandemic, and in the other, navigating minority government alongside the highly divisive issue of Brexit. But in both cases, tensions were aggravated to a significant extent by the operation of the Commons' procedural rules. Both episodes fuelled significant division, controversy, and public criticism of parliament.

In different ways, these two controversies have both centred on a single key question: the extent to which it should be the government, or the House of Commons majority, that decides what MPs discuss and when. In other words, they return to the central tension highlighted by the Wright committee in its 2009 report. Some of the specific ideas for reform in that report (as it acknowledged) were drawn from a prior Constitution Unit report entitled *The House Rules?* published two years earlier (Russell and Paun 2007). Given the emergence of these new controversies, based on the same fundamental questions of principle about parliamentary versus government control, it seems appropriate for a new Constitution Unit report to revisit the problems that persist and to assess the possible solutions. That is what this report seeks to do.

The report is in two parts. Part 1 focuses on the question of control of the House of Commons agenda (day-to-day and week-to-week). It first considers the default setting (most famously articulated in Standing Order No. 14) of government control over the agenda, and then considers the exceptions to that rule, where standing orders explicitly allow for periods of non-government control. Part 2 then turns to the question of who controls when the House of Commons actually sits. It considers the mechanisms for ending periods of parliamentary sitting – via adjournment, prorogation and dissolution – and the mechanisms for resuming sittings of the House of Commons once these have occurred. Throughout the report, each section begins by describing the basics of the present arrangements, before turning to recent controversies, followed by possible solutions. Where appropriate, we draw on experience from other legislatures to illustrate what some of these alternatives might be. We end each section with conclusions and recommendations for future consideration by policymakers and interested observers. These are drawn together in an overall conclusion at the end of the report.

It is impossible within a relatively short report to be fully comprehensive. These are complex and interrelated questions, which also touch upon other aspects of Commons procedure. For example, while the report briefly discusses the rights of backbench MPs to bring forward their own bills (i.e. private members' bills, or 'PMBs') the frustrations with this process and possible reforms have been discussed extensively by others for years (e.g. Brazier and Fox 2011; Procedure Committee

2013; 2016), and we do not seek to replicate that analysis. Similarly, questions of government control extend to the ‘power of the purse’, and whether MPs should be able to authorise spending without executive approval. These issues were discussed in another recent Constitution Unit report (Evans 2020), and are not further explored here. It is also worth emphasising that the comparative examples cited in the report are intended to be illustrative, not exhaustive, and they are not based on the same kind of in-depth research that informed *The House Rules?*. If considering options for the future, there may therefore be other legislative examples beyond Westminster from which reformers could usefully learn.

This report is written in a constructive spirit, to explore what has gone wrong with some of the rules governing the House of Commons, and importantly how these might be put right. We hope that the report will help to stimulate a well-informed debate, among MPs, parliamentary officials, key House of Commons committees and the wider public. Some reforms could be achieved relatively easily and quickly, while others raise bigger issues of principle. We suggest that these bigger questions would merit a wholesale review of the House of Commons’ control over its own affairs. More than 10 years on from the Wright committee such an exercise seems overdue.

The agenda: who decides what the Commons can discuss

One of the most central questions about government control of the House of Commons concerns who should decide what MPs can discuss and when. In comparative terms, the Commons agenda has long been seen as strongly executive-controlled (Döring 2001). This feature was one of the core concerns of the 2009–10 Wright committee, and it is very clearly connected to some of the sharpest recent controversies about the role of the House of Commons.

This first main part of the report reviews the roots of government agenda control and what it means in practice. It also explores the exceptions to government agenda control and how these work. In a stable system, it would be expected that a truly burning political question which was unable to reach the parliamentary agenda via the default mechanism (in this case, government control) could do so via some alternative mechanism. In other words, the arrangements for managing government and non-government business in the House of Commons are closely connected. Recent events suggest that this balance is not currently working well.

The two sections that follow first explore the mechanisms of government agenda control, the problems which flow from this and how they might be resolved, and then move on to discuss the same questions with respect to time set aside for non-government business. In both cases we suggest some possible solutions, drawing in part on international experience, and end with a set of conclusions and recommendations.

The default of government agenda control

It is frequently noted that the default for decisions about which topics reach the House of Commons agenda lies with the government. This is a slight simplification, but broadly true. Importantly, while the government may often enjoy a majority in the House of Commons, standing orders (and frequently culture and practice) tend explicitly to privilege the government, rather than privileging the majority.

Current arrangements

The key starting point for understanding the logic of House of Commons agenda control is Standing Order No. 14, which is reproduced in full in the Appendix to this report. Its opening words are that, ‘Save as provided in this order, government business shall have precedence at every sitting’. As further described in the next section, Standing Order No. 14 then goes on to specify three exceptions: for opposition days, backbench business, and time set aside for private members’ bills.

In truth, matters are a bit more complicated than this suggests, for various reasons.⁴ First, other parts of the standing orders do set aside time which is not obviously controlled by the government. For example, Standing Order No. 21(1) specifies that ‘Questions shall be taken on Mondays, Tuesdays, Wednesdays and Thursdays’, which in practice facilitates a rota of departmental questions that operate on most sitting days, and the well-known Prime Minister’s Questions on Wednesdays. Likewise, Standing Order No. 21(2) provides for ‘urgent questions’ which may be

granted by the Speaker on request, requiring a minister to be called to the House to answer a series of spontaneous questions around a specified topic. Although ministers play a central role in these occasions, and are always present, they could not be said to be in ‘control’. In addition, even during government business, ministers can be on the back foot. This most obviously applies to debates on legislation, when the great majority of amendments proposed to government bills come from the opposition frontbench, and it is these amendments which are used to structure debate (Russell and Gover 2017). Hence discussion may well focus on detailed questions which ministers would prefer to avoid. In other words, while the majority of House of Commons business centres around what the government is doing, non-government MPs do have some opportunities to ‘set the agenda’ within any given day.

Nonetheless, as the Wright committee put it, ‘Leaving aside the [explicit exceptions in Standing Order No. 14, and some other limited matters], it is Ministers who decide whether a particular debate is held in the House; if so, when; and on what terms’ (Reform of the House of Commons Select Committee 2009: 45). It is hence the government that determines the shape of the ‘main business’ on the House of Commons agenda most days. Crucially, this is particularly the case with respect to business on which MPs can make decisions via a vote.

Due to this default control over the agenda, it is the Leader of the House of Commons (a senior minister) who makes a statement to the House each week (usually on a Thursday) about the business scheduled for the period ahead, typically framed formally as a response to a question from their opposition counterpart. At this ‘Business of the House’ session the Leader reports orally on the proposed business for each day of the following week or so, and answers questions. However, while members present may sometimes criticise what has been proposed, they have no formal means to alter it. Occasionally there will be a subsequent business statement from the Leader of the House setting out a change to what has been proposed, again on the basis of an oral report with no opportunity for amendment. In practice, before being publicly presented, the agenda for the week will have been discussed inside government (primarily between the Leader and the Chief Whip, in consultation with ministers who will lead on particular business), and have been subject to some limited consultation with the whips of other parties through the so-called ‘usual channels’ (Rush and Ettinghausen 2002). But this consultation operates informally, and it does not extend to backbench MPs.

The extent of government control set out in Standing Order No. 14 developed gradually, with the first iteration of the standing order being agreed in 1902.⁵ This codified and regularised arrangements whereby temporary ‘sessional orders’ had increasingly set aside certain days for government business, as opposed to business proposed by individual members (Seaward 2019a). As a result of the 1902 reform, ministers no longer needed to ask MPs to grant them time on a regular basis; instead, this was guaranteed in standing orders.

While in some senses, as indicated above, a naive reading of Standing Order No. 14 could be seen as overstating government control, in other ways this also understates it. Such control is also codified in certain other standing orders. Most significantly, in relation to legislation, only ministers can bring forward ‘guillotine motions’ with certainty that these will be decided (Standing Order No. 83) or ‘programme motions’ to timetable bills after second reading (Standing Order No. 83A). Likewise, only ministers can introduce motions under Standing Order No. 15 to extend the time available for debate of specific items on any day, while (as discussed in Part 2 of this report) under

Standing Order No. 13 only ministers can trigger a recall of the Commons. In principle the House of Commons controls its own standing orders; but in practice a generalised culture of ministerial control often prevails.

The control of time most obviously means that there is very limited opportunity for non-government bills or motions on policy to be agreed. In addition, however, there is a well-established expectation that proposals for procedural change, including changes to the standing orders themselves, will be brought forward in government time. If a change to the rules is proposed by the chamber's own Procedure Committee, or Liaison Committee (made up of select committee chairs), it therefore usually awaits ministers to table a proposed amendment and give it time for debate. Hence if the government dislikes a proposal from one of these key committees it may effectively be blocked, simply through ministers failing to provide debating time. This problem has, for example, been an obstacle to repeated proposals from the Procedure Committee for rationalisation and reform of the private members' bill process.⁶ In principle, such matters could sometimes be brought forward in non-government time, but – as discussed in the next section of this report – this tends not to happen, for various reasons. Thus the extent to which ministerial control is ingrained in House of Commons culture, as well as formal rules, is considerable, and it played a part in the recent controversies discussed below.

Recent controversies

The most recent high-profile controversy about the operation of the House of Commons – regarding the handling of COVID-19 – rests on some of these cultural elements as well as the formal application of Commons rules.

Problems began with respect to the ending of the 'hybrid' House of Commons in May 2020, following the initial adoption of virtual proceedings to allow MPs to continue their crucial work during the crisis. This caused considerable ill-feeling. Additional problems emerged further into the crisis, as MPs became increasingly frustrated at their lack of involvement in scrutiny of the government's policy direction.

As has been well documented, the move to virtual proceedings in the House of Commons happened gradually from just before Easter 2020 (Priddy 2020; Natzler 2020). This coincided with the time that the first lockdown arrangements were being imposed on the population in order to limit the spread of the pandemic, with a general government instruction to 'work at home if you can'. Virtual select committee meetings were authorised first, via a motion agreed to on 24 March, shortly before the start of the Easter recess. Parliamentary staff worked hard to prepare for new arrangements, and immediately following that recess, on 21 and 22 April, the Commons agreed motions to facilitate virtual proceedings in the chamber and remote voting on substantive matters. These initial moves put the UK parliament ahead of many others around the world. Decision-making was inclusive, involving not only the Leader of the House and senior officials, but the Shadow Leader and the Speaker, partly working through the mechanism of the House of Commons Commission (which usually focuses on fairly administrative matters). The cross-party Procedure Committee was also consulted, and indicated support for the post-recess changes to be introduced without the usually-required notice period, allowing new arrangements to start straight away (Procedure Committee 2020a). Following further consideration by the Procedure Committee (2020b), and careful work by staff behind the scenes to set up a whole new voting system, the first remote (i.e. online) division took place on 12 May – and various others followed. On that same

day, the temporary orders to facilitate remote proceedings were renewed until 20 May, when the House would rise for the Whitsun recess. At all stages through this process decisions were broadly consensual, with acceptance that while the virtual arrangements fell short of the ‘normal’ arrangements, they were essential to keep Commons proceedings going in unprecedented times.

But the consensus very publicly broke down on 12 May, when the Leader of the House Jacob Rees-Mogg stated that he was not minded to facilitate any further renewals of the temporary orders beyond 20 May. Despite demands that virtual proceedings should continue – even for a short time – after the Whitsun recess, Rees-Mogg declined to bring forward a motion to this effect. On 20 May an urgent question was granted regarding the future of the virtual arrangements, in response to which Rees-Mogg confirmed that he was now ‘asking Members to return to their place of work after Whitsun’.⁷ This met with protests from the Labour and SNP Shadow Leaders, while Conservative chair of the Procedure Committee Karen Bradley commented that ‘I firmly believe... that the House should be allowed to have its say on these changes. It is important that an opportunity is provided for the House to do that’.⁸ Yet MPs were given no formal chance to make a decision at this point, and the temporary orders lapsed.

On 30 May, before the chamber reconvened after the recess, the Procedure Committee issued a further ‘emergency’ report, noting that:

The lapsing of the hybrid procedures, in effect from 22 April to 20 May, have caused considerable concern among Members and the general public. An unprecedented number of Members have made their views known to the Committee by submitting written evidence to its ongoing inquiry into Procedure under coronavirus restrictions, by correspondence and by direct representations to Committee members (Procedure Committee 2020c: 3).

The committee expressed particular concern about members classified as ‘clinically vulnerable’ or ‘clinically extremely vulnerable’ who would consider themselves unable to travel to Westminster due to the threat of coronavirus, and therefore would be excluded from physical proceedings. After the recess, the temporary order allowing virtual participation had expired, and the Leader of the House proposed a new motion which meant that those absent due to coronavirus would remain excluded from participating or voting remotely. Among the many MPs protesting was Karen Bradley, who proposed amendments to restore online participation rights. But, despite a rebellion by 31 Conservatives, her key amendment was defeated – in a vote in which only 427 MPs participated. It seemed very likely that a (virtual) division allowing participation by all MPs would have supported continuation of the hybrid arrangements (Russell et al. 2020). Shortly afterwards, the Leader of the House responded to pressure by bringing forward proposals that members unable to attend physically could vote by proxy and participate remotely in questions and statements (but not debates), which were agreed to. However, no opportunity was provided for members to vote on reversion to the previous virtual arrangements. By the end of 2020, hundreds of proxy votes had been agreed, including to members who may be present on the parliamentary estate, ostensibly to allay concerns about the safety of queuing to vote. Nearly all such proxy votes were awarded to party whips.

These problems related essentially to the government’s control of time, with MPs themselves having no clear route to get a proposition – here, a proposition to renew the temporary orders before Whitsun recess – onto the Commons agenda for decision at the essential moment. Initially,

this problem was exacerbated not only by the need for urgent decision-making, but by the fact that key forms of non-government time (as discussed in the next section) had been temporarily suspended due to the crisis. But the problems re-emerged later, due to fears about the surge in coronavirus cases in the autumn, combined with the length of time for which some members had already been excluded from key proceedings – generating long-running and increasingly bitter arguments.

On 23 September, when the House of Commons debated a government motion on the extension of proxy voting during the pandemic, Karen Bradley expressed concerns that the system of proxy votes combined with in-person voting was ‘substandard... and is possibly open to abuse’. Particularly in the context of rising infections and concerns expressed around the safety of MPs queuing to vote, she urged the Leader of the House Jacob Rees-Mogg to ‘consider giving this House a chance to have another say on whether we want to return to remote voting’, suggesting that a majority wished to do so.⁹ However, no such vote was facilitated by the government. In October, Rees-Mogg came under fierce criticism from senior Conservative backbencher Dame Cheryl Gillan, chair of the Parliamentary Assembly of the Council of Europe’s Committee on Political Affairs and Democracy and vice-chair of the Conservative backbench 1922 Committee – herself dependent on virtual participation (and therefore restricted to voting by proxy, and excluded from debates on legislation). She suggested that, by denying many MPs the opportunity to fully participate via virtual means, he was presiding over the ‘death of democracy’ at Westminster, through ‘the discriminatory silencing of the voices of so many of his colleagues, leaving them unable to perform their scrutiny function’.¹⁰ The following day Sir Bernard Jenkin (2020), chair of the Commons Liaison Committee, wrote to the Leader of the House on behalf of his members proposing that remote voting should be reinstated. In mid-November, criticism re-emerged when Conservative backbencher Tracey Crouch protested that, at the same time as undergoing treatment for breast cancer, she was excluded from contributing to a debate on the topic of breast cancer due to her ‘clinically extremely vulnerable’ status.¹¹ This provoked a partial rethinking by the government (Langford and Proctor 2020) – discussed below. But the rules were not changed to allow such members to participate in debates until 30 December, after London had entered ‘tier 4’ COVID-19 restrictions. By early January remote voting had still not been reinstated.

Tensions have however not been confined to remote participation in Westminster proceedings; as the COVID-19 crisis wore on they increasingly also extended to parliament’s scrutiny of policies directly affecting the public. At the start of the crisis, one of the earliest decisions taken by MPs was to allow the fast tracking of the government’s Coronavirus Bill – which granted ministers extensive emergency powers to deal with the pandemic response. Far-reaching decisions were thereafter taken by secondary legislation (statutory instrument), often without further reference to parliament, while the extent to which new measures were announced outside parliament caused growing consternation by the House of Commons Speaker.¹² In the subsequent six months, over 200 coronavirus-related statutory instruments were brought into effect, not only under the powers in the Coronavirus Act, but also under many other pieces of legislation such as the Public Health (Control of Disease) Act 1984 (Hansard Society 2020). They covered a wide range of measures, including quarantine for those returning from overseas, restrictions on individuals’ movements, the wearing of face masks, and restrictions on businesses and other workplaces. Very often these were introduced at extremely short notice, and with limited opportunity for debate. Deployment

by the government of the normally little-used ‘made affirmative’ procedure, on grounds of urgency, was particularly problematic – meaning restrictions were brought into force immediately, but often not debated by MPs for weeks afterwards. On occasion, significant measures came into force before copies of the legislation had even been laid before parliament. MPs, including many Conservative backbenchers, became increasingly alarmed by the lack of parliamentary oversight being allowed by ministers over policies which would often have far-reaching societal and economic effects.

But there was little opportunity for MPs to force these issues onto the agenda. The Speaker did indicate his increasing willingness to grant urgent questions to members.¹³ However, this mechanism facilitates only fairly brief exchanges and no ability to take decisions. In late September 2020 matters came to a head when the provisions in the Coronavirus Act came up for formal six-monthly review. An amendment sponsored by Sir Graham Brady, the chair of the Conservative backbench 1922 Committee, demanded that parliamentary votes should in future be held before the introduction of new UK- or England-wide measures. While the amendment was not selected for debate by the Speaker, for technical legal reasons, it attracted over 50 Conservative signatories – meaning that had it been voted upon the government could well have been defeated.¹⁴ When announcing his decision, the Speaker condemned the government in strong terms for a ‘totally unsatisfactory’ exclusion of parliament from decision-making, and a ‘total disregard for the House’.¹⁵

The biggest and longest-running controversy in recent times over Commons procedure occurred prior to this, particularly during 2019, and concerned the troubled Brexit debates following the referendum. This period attracted especially intense newspaper focus on disputes over parliamentary procedure, with headlines about MPs ‘seizing control’ of the House of Commons agenda, in order to discuss alternative Brexit outcomes (Stewart, Elgot and Mason 2019) – some even suggesting that this represented the ‘end of politics as we know it’ (Perring 2019). These arguments emerged particularly after Prime Minister Theresa May’s decision to postpone a vote on her Brexit deal in December 2018, three days into the five originally scheduled for debate. The Prime Minister’s action was clearly influenced by listening to the speeches of her backbenchers, where opposition to the deal was expressed by MPs with a wide variety of views on Brexit. Ultimately, following the resumption of the debate, the deal was very heavily defeated on 15 January. The initial question of control here concerned the problematic nature of the government’s use of agenda power unilaterally to interrupt the scheduled debate and thereby cancel the December vote.¹⁶ This resulted in a delay of over a month, at a time when the scheduled exit day of 29 March 2019 was fast approaching. But attention soon shifted to the rights and wrongs of non-government MPs gaining agenda control in order to debate propositions about alternative Brexit approaches.

The nature of the government’s default agenda control meant that MPs needed to pursue unusual tactics to achieve this goal. In particular, on several occasions amendments were proposed to set aside Standing Order No. 14(1), to provide debating time for propositions from groups other than the government (Cowie and Samra 2019). MPs clearly felt compelled to take such actions for two reasons. First, while the government enjoyed default agenda control as set out in the standing order, it was resistant to bringing forward alternative measures. Second, standard forms of non-government agenda time were not made available – as discussed further in the next section of this report.

The time which MPs ‘seized’ through these unusual steps was initially used to schedule ‘indicative votes’ on the various Brexit options. The government itself had been under pressure to do this over a period of months, and particularly once it became clear that the Withdrawal Agreement lacked Commons support. After the cancellation of the December vote, there were reports that members of the Cabinet backed this approach (Maidment 2018), and it was pressed on the government by various Conservative backbenchers.¹⁷ In January, indicative votes were proposed by the House of Commons Exiting the European Union Committee (2019), and subsequently ministers appeared to suggest that these would be scheduled in government time.¹⁸ Only after they failed to materialise did MPs defeat the government in order to facilitate such votes – though the results proved inconclusive. Later on, agenda time ‘seized’ from the government was instead used to debate private members’ bills requiring that the Prime Minister request extensions to the Brexit process in order to avoid a ‘no deal’. The two rebel bills (colloquially known as the Cooper-Letwin and Benn-Burt bills) played an important role in ‘exit day’ being delayed.

This was a highly unusual period for various reasons (Russell 2020). Brexit was a very divisive policy, which split both main political parties, making the usual voting blocs in the House of Commons unstable. Yet clearly there was an imperative to deliver on the referendum result. Crucially, the 2017 general election had resulted in a hung parliament and a minority government, meaning that even if all Conservative members voted together there was no guarantee that the government could get its policy through. However, on the key Brexit votes, the number of Conservative rebels was also exceptionally high.¹⁹ These circumstances raised very big questions about parliamentary agenda control in both a practical and a principled sense. The perceived ‘normal’ state of affairs in the House of Commons is that the government enjoys a single party majority. Hence government control will tend to coincide with the will of the majority of MPs. In a time of minority government, that becomes far less likely. This gave an added urgency to the important question of principle raised by the Wright committee in 2009, regarding whether the Commons agenda should be controlled by the government, or by the parliamentary majority. As shown more recently with respect to COVID-19, even at times of majority government, there is no guarantee that the government speaks for the Commons majority on every matter. Both of these cases therefore illustrate clearly how the problems highlighted by the Wright committee have not yet been adequately resolved. Meanwhile, the continuance of these problems has fuelled acrimony inside the House of Commons, and controversy outside – particularly in the media – regarding the proper role of parliament.

Possible solutions

One starting point in thinking through solutions for Westminster is to ask to what extent the Wright committee foresaw the kinds of controversies which we have recently experienced, and hence whether these might (as David Natzler suggests in the Foreword) simply be evidence of ‘unfinished business’ due to the incomplete implementation of its report. The committee recommended a number of key changes to reduce government control over House of Commons proceedings. One of these was the removal of party whips’ dominant role in picking the members and chairs of select committees – which was implemented, and has generally been seen as a success, but sits outside the scope of this report. Another proposal – also implemented, and discussed in the next section of the report – was the introduction of backbench business and a Backbench Business Committee. But the key area where the committee’s recommendations were not acted upon concerned the management of government agenda time.

The Wright committee's two core recommendations on the management of government time interlock. It is the first of them which is most often remembered, but the second was always the more important. The more memorable recommendation was that there should be a cross-party 'House Business Committee', parallel to the Backbench Business Committee, which would be responsible for drawing up the schedule of business for the week ahead presented in the standard Thursday business statement. This proposal was based on the model followed in many other parliaments, which have a 'Business Committee', 'Bureau', 'Conference of Presidents' or similar, which performs such a role (see boxed examples). The Wright committee's recommendation on this was reluctantly assented to by the major parties (Russell 2011), and the 2010 coalition agreement between the Conservatives and Liberal Democrats stated that a 'House Business Committee, to consider government business, will be established by the third year of the Parliament' (HM Government 2010: 27). However, it was never put into effect.

Box 1: Agenda management in the German Bundestag

Time in the German Bundestag is allocated by the Council of Elders – a group comprising the Bundestag's President, Vice Presidents, and 23 members appointed by the parliamentary parties. Seats on the Council are shared out proportionately between the parties, and whilst a junior government minister attends meetings, the government (as distinct from the governing party) does not have a formal say in decision-making.

The agenda is negotiated in preliminary discussions between a smaller group of party whips, before being discussed and endorsed by the full Council. There is an unwritten but strict convention that time is distributed proportionately between the parties, and each party can use its agenda time as it chooses. The government therefore has to use its party's (or parties', given the frequency of coalition government in Germany) allocation of time to bring forward its business. That said, the government does retain some privileges over the agenda: namely, the right to make statements about policy or present reports at any time.

There is usually no formal vote on the agenda in the Bundestag; instead, it is deemed to be approved so long as there are no objections raised before the first item of business is called. Any member of the Bundestag can raise an objection by moving an amendment to the agenda prior to the first item of business, and any such amendments are voted on.

Sources: interviews with Bundestag officials; Schick and Schreiner (2004).

The Wright committee's second, and more important, recommendation in this area was that the weekly statement made to the House about the forthcoming programme of business should be published in written form, with notice, so that MPs could submit amendments to it and it could be voted upon. This again was based on experience in other legislatures, including the Scottish Parliament (see box 2), as the committee's report pointed out:

The [weekly] agenda should therefore fall to be decided by the House, if need be by a majority. The straightforward way of doing that is by putting a motion to the House on a set day and time each week. That is standard practice in many parliaments around the world and has operated in the Scottish Parliament without problems for the last decade (Reform of the House of Commons Select Committee 2009: 51).

In thinking through this proposal, the Wright committee recognised that there was a need for restraint in proposing amendments, so that these were not purely mischievous and time wasting, suggesting that the Speaker's power of selection would be important. But it also recognised that the discipline imposed on ministers by needing to consult on the preparation of the agenda, and to think through possible objections in advance before it was published and debated, would drive more consensual decision-making overall. It would, most importantly, encourage the government to ensure that the agenda for the week met the key concerns of its backbenchers.

So did these proposals foresee the kinds of problems discussed above, and could those problems have been ameliorated if the Wright committee's proposals had been in place? The answer would appear to be both yes and no.

Box 2: Agenda management in the Scottish Parliament

In the Scottish Parliament a similar decision-making body exists to that in the German Bundestag (and parliaments in many other European states). There is a Bureau with responsibility for setting out the agenda for the chamber, which consists of the Presiding Officer, a representative of each political party with five or more members (nominated by the party's parliamentary leader), and a representative of any group of five or more members formed by smaller parties and independent MSPs. Any disagreements within the Bureau itself are resolved through a vote, in which each member's vote is weighted in proportion to their party's number of seats, with the Presiding Officer having the casting vote if needed. Thus a majority government will also have a majority in the Bureau: a minority government will not.

The Scottish Parliament's standing orders set aside minimum amounts of time for particular purposes: 12 half days per session for committee business, 16 half days for opposition time, 45 minutes in each parliamentary sitting for members' business, and an unspecified amount of time for committee announcements.

The Bureau agrees a business programme, which it notifies to the Parliament. The Parliament then votes on whether to adopt it: each week a votable business motion is moved in the Parliament, covering the following two weeks' business. Members can propose amendments to the motion, and any amendment with at least 10 signatories (of the total 129 MSPs) is debated. Debate on the motion is limited to 30 minutes.

Sources: Standing Orders of the Scottish Parliament (SOs 5.2(1-2), 5.6(1) and 8.11)

With respect to the House Business Committee, as the Wright committee recognised, the devil of its operation would always be in the detail – including of its composition. The Wright committee acknowledged that equivalent bodies in other parliaments often comprised only frontbenchers, and could become a kind of rubberstamping exercise which is essentially a fairly superficial formalisation of the 'usual channels'. In practice, the government party or parties often have a majority on such bodies in other parliaments and (depending how members are chosen) may thus be able to impose a government line (Russell and Paun 2007). Where committees include party frontbenchers, deals are often done in advance, with little opportunity for discussion. One of the Wright committee's suggestions to counteract this was the inclusion of backbench members on the House Business Committee; but there would always be questions about who these members were, and the extent to which they were representative of the whole chamber. The Wright

committee's specific suggestion on this point was that they should be made up of the members of the Backbench Business Committee.

Box 3: Decision-making on procedures under coronavirus in other legislatures

The pandemic forced parliaments around the world to grapple with a similar set of issues to those faced in the House of Commons – namely, how to maintain their democratic functions without putting their members, staff, and the public at unnecessary risk. The responses were generally similar: a major reduction in the number of members physically present (often, though not always, backed up by virtual participation); and a focus on 'essential' business. A key difference to the UK has often concerned who makes the decisions about which members may attend and which business they can discuss.

In many parliaments, such decisions have been taken through existing parliamentary leadership structures which operate on a cross-party basis. Echoing the arrangements in Germany and Scotland (see boxes 1 and 2) these mostly take the form of a 'Bureau', 'Conference of Presidents' or the like, with such bodies typically comprising the presiding officer and deputy presiding officers of the chamber, along with party representatives. The minister in charge of relations with parliament may either be a full member, or have the right to attend but not to participate in decision-making. In some countries other members, such as committee chairs and the presiding officers from the previous parliament, are also included.

Thus, for example, in **Greece** the parliament's Conference of Presidents met in March 2020 and unanimously agreed that parliament should continue to meet, with time-limited plenary sessions and a far smaller group of MPs given speaking time. In **France** the Conference of Presidents in the National Assembly took the decision to limit the chamber's meetings, to hold them remotely, and to limit parliamentary committee meetings to coronavirus-related business.

In **Switzerland**, the Bureau of the National Council, comprising the presiding officer and deputies, as well as party representatives, decided that the National Council should only meet to discuss urgent matters, and scheduled an emergency physical session during May 2020, in the Bern Expo exhibition centre. Both the government and the parliament's committees were invited to identify which business should be denoted as 'urgent'.

The Business Committee of the **New Zealand** parliament was, likewise, instrumental in developing the parliament's procedural response to the epidemic. Between 25 March and 26 May 2020 a cross-party Epidemic Response Committee, chaired by the Leader of the Opposition, took centre-stage in scrutinising the government's pandemic response. The committee, first suggested by the Clerk of the House, was negotiated and agreed in the Business Committee before being put to the parliament for approval via a government motion.

Sources: Harris (2020); Hellenic Parliament (2020a, 2020b); Inter-Parliamentary Union (2020); New Zealand Parliament (2020).

Thinking through the examples above, it is not clear that a House Business Committee would on its own have resolved the difficulties. It is notable with respect to the hybrid parliament that David Natzler has commented on how during the early stages of the pandemic the relatively consensual consultations between the main parties over the Commons agenda were operating something like a business committee. Writing in May 2020 he observed that 'In essence the House has adopted a

Bureau-like organisation of business, similar to that in the Scottish and many other parliaments, but involving only the three largest parties and no backbench voice, with the government still left to fix the agenda, without requiring even the formal assent of the House' (Natzler 2020). But when it came to the ending of the hybrid parliament, the government simply overrode the concerns of others involved. More recently, the extent to which a House Business Committee might have avoided the sidelining of the Commons over coronavirus regulations is similarly uncertain; this would have depended heavily on the nature and extent of government backbench representation on such a committee. Likewise, there is no certainty that a House Business Committee alone would have resolved the controversies about agenda time over Brexit. As both main party leaders were struggling to hold their parliamentary groups together, the committee's decisions would have been very dependent on its precise membership. Even if the government lacked control on such a committee, there would have been no guarantee that a small group of committee members could have convincingly represented the views in such a divided House.

The changes to political dynamics that would have flowed from the kind of amendable and 'votable' business statement that the Wright committee proposed could have been far greater, and more effective in the face of recent controversies. This is because under this model – even if the government maintained initial responsibility for drawing up the agenda – the whole backbench of all parties would have some role in the final decisions. This would greatly increase the likelihood that the agenda approved by the plenary reflected the majority view. In particular it would strengthen the power of government backbenchers. So in the case of the ending of the hybrid parliament, demands from opposition party leaders to give MPs a say on the renewal of the temporary orders before the Whitsun recess might well have been outvoted on a House Business Committee, but an amendment to the business statement could well have succeeded on the floor of the House with the support of backbench Conservative MPs (especially given the Procedure Committee's concerns). Likewise, a requirement for the weekly agenda to be approved by the chamber would have given significant leverage to Conservative backbenchers later on to force debates on the government's handling of the pandemic. In practice, therefore, the primary result of introducing a requirement for the agenda to be formally approved by MPs would almost certainly be greater government responsiveness to backbench concerns. Often in parliament influence operates through 'anticipated reactions' (Russell and Gover 2017), meaning that – if fearing possible defeat of its preferred agenda – the government would normally prefer to bring amended proposals forward itself. In other words, the principal effect of a votable agenda would be to encourage the government to propose plans more responsive to the wishes of MPs, and its own backbenchers in particular.

The same dynamic applies to the controversies over Brexit. A routine opportunity to vote on the business for the week ahead would have allowed backbenchers and opposition parties to propose alternative business such as days given over to indicative votes, which again in practice would have strongly encouraged ministers to facilitate such debates themselves. Whether offered by ministers or imposed through defeat, this would have been a far less acrimonious means of deciding what the Commons wanted to discuss than MPs 'hijacking' or 'seizing' the agenda by setting aside Standing Order No. 14. There is no reason to think that proceeding in this manner would have made the indicative votes themselves any more decisive; however that conclusion could have been reached far more quickly, and with considerably less public acrimony over the use and 'abuse' of Commons procedures.

Returning to the fundamental principle above, the key question is whether the logic underpinning Standing Order No. 14 should be to uphold the will of the majority, or of the government. A historical reading of its roots suggests that at the time of its agreement full consideration may not have actually been given to whether these two were in fact different things. Reporting on the debates of 1902, Paul Seaward (Director of the History of Parliament) notes that Joseph Chamberlain welcomed the proposed reform that effectively created Standing Order No. 14, commenting that ‘I believe that the people who elect the majority of the House have a right to see that that majority has power to carry out what is *ex hypothesi* the will of the majority of the nation’ (Seaward 2019b). This statement clearly implies that empowering the government is synonymous with empowering the Commons majority. But that is certainly not the case at a time of minority government, and not necessarily the case at other times. Hence a logic of majority control would better fit today’s politics, where the government’s support from its own backbenchers is never wholly assured.

The Wright committee, perhaps surprisingly, gave little to no consideration to how arrangements might need to differ under minority government: the term does not appear even once in its report. Consequently, if anything, the committee understated the extent to which government control is currently entrenched in Commons rules. For example, it noted that:

The default position is therefore that time ‘belongs’ to the Government, subject to a number of exceptions and practices which allow others to influence and even determine the agenda. Put crudely, and subject to maintaining a majority, the Government enjoys not merely precedence but exclusive domination of much of the House’s agenda, and can stop others seeking similar control (Reform of the House of Commons Select Committee 2009: 40).

In fact, under the terms of Standing Order No. 14 the government does not even need to ‘maintain a majority’ to preserve this level of control. Especially given the Wright committee’s conclusion that government control of the agenda was inappropriately high even at times of single party majority government, this control at times of minority government seems particularly problematic. Thus from the perspective of 2020, the difficulties that the Wright committee identified look more urgent than before. The 2010 general election took place shortly after its report was produced, and in the subsequent decade the UK had single party majority government for just three years. To maintain a stable system, our parliamentary arrangements thus need to do more to be robust to different possibilities. But the recent difficulties over COVID-19 illustrate the Wright committee’s central point, that the extent of government control can cause significant problems even at times of single party majority government.

The options proposed by the Wright committee are not the only ones available, and the alternatives deserve some consideration. We have seen that it is commonplace for parliaments in countries more frequently governed by coalitions to have a House Business Committee and/or a requirement that the forward agenda receives explicit plenary approval. But in some parliaments (such as the German Bundestag), agenda time is also allocated proportionally between different parliamentary groups. Hence the government gets only as much time on the parliamentary agenda as it qualifies for on the basis of its party strength. This is a very different model to that which applies at Westminster, and uses a different logic – based primarily on party blocs, rather than recognition for individual members and cross-party groups, which seems problematic.

Nonetheless, it is an interesting model to bear in mind, particularly with respect to the allocation of non-government agenda time – as discussed in the next section of this report.

Conclusions and recommendations

1. As the Wright committee pointed out in 2009, the level of government dominance of the House of Commons agenda is problematic. Recent events – including minority government, and significant clashes between ministers and their backbenchers over COVID-19, even under times of majority government – have made that increasingly clear. These clashes have fed undesirable levels of acrimony at Westminster, and numerous negative headlines about parliament.
2. The current guiding principle, as set out in Standing Order No. 14, is that Commons agenda time should by default belong to the government. The more appropriate principle is that it should belong to the parliamentary majority.
3. One solution proposed by the Wright committee to gain greater parliamentary control was that the Commons should establish some kind of House Business Committee or Bureau to draw up the weekly agenda, in line with many other parliaments. This change alone would be unlikely to resolve matters satisfactorily, and its effectiveness would greatly depend on the makeup of any such committee.
4. The more effective solution, which could be introduced either with or without a House Business Committee, would be to give the chamber itself control over its agenda (as also applies in many other parliaments) – through the weekly agenda being presented as an amendable motion, rather than a fait accompli simply decided by the government. As the Wright committee suggested, this arrangement would have significant benefits – and safeguards could be built in to avoid time wasting and mischievous amendments. As seen later in the report, this change could be central to unlocking many of the current problems at Westminster.
5. These are major questions, engaging with fundamental principles and requiring careful thought to the detail of their implementation. More than a decade on from the Wright committee, it would be appropriate for them to be subjected to formal review. This could take place via the Procedure Committee, or through a new one-off body – perhaps facilitated by the Speaker of the House of Commons.

Time for non-government business

The previous section of the report established that, with specified exceptions, time on the House of Commons agenda is routinely controlled by the government. This can lead to significant frustrations, particularly where there is a potential alternative majority of MPs that wish to debate and decide a matter. The current arrangements hence diverge from the basic democratic principle of majority control, instead handing that control by default to the government. Under majority government such a situation particularly disempowers government backbenchers, whilst it becomes even more problematic at other times.

A second important democratic principle is that parliamentary time should not simply privilege the majority, but also allow some protection for minorities. In part, this is about parliamentary accountability and the scrutiny of majority decisions; but it also protects the majority principle, by enabling different parliamentary groupings to test whether their proposals could command majority support. In the House of Commons the government's control is not absolute, and smaller pockets of time do exist through which other MPs can choose topics for debate and decision; however such allocations did little to resolve the tensions around Brexit and COVID-19 identified in the previous section of the report. This section introduces the standard arrangements for the timetabling of non-government business in the House of Commons, then explores how these relate to recent controversies and problems, before considering possible solutions.

Current arrangements

The key place to look for details of non-government time in the House of Commons is, again, Standing Order No. 14. As already indicated, this sets out three explicit exceptions to government control – for opposition days, backbench business days and private members' bills. Crucially, each of these types of business allows MPs to bring policy to a decision point, including as necessary through a 'division' (i.e. recorded vote).

We have already seen that there is a somewhat blurry line between government and non-government business, with some other allowances within standing orders for explicitly non-government time. As well as the examples given in the previous section of the report (e.g. parliamentary questions), these include Standing Order No. 9, which allows for 30-minute 'adjournment debates' led by backbenchers at the end of each sitting day. However, none of these allow matters to be brought to a decision point. A further important mechanism is the ability for MPs to request emergency debates, under Standing Order No. 24. Controversially, during the arguments over Brexit in September 2019, this was used to allow an issue to be brought to a decision point, which amended the House's agenda; hence we consider emergency debates in this section of the report, alongside the three exceptions in Standing Order No. 14.

A well-established exception to government control is for opposition day debates. These were established in their current form in 1982 and replaced an earlier similar practice (Erskine May: para 18.13). Standing Order No. 14(2) provides for 20 such days per session, when the topics for debate are selected by opposition parties rather than the government. Of these, 17 are allocated to the official opposition, while the remaining three are formally handed to the second largest opposition party, which may in practice share these with smaller parties. Decisions on the use of opposition days are in practice taken by the party frontbench. Parties have tended to use such time to hold debates which draw attention to their own policy priorities, and/or to embarrass the government, with a largely symbolic vote held at the end of the debate which ministers almost invariably win.

One of the main achievements of the Wright committee was a recommendation to set aside time for 'backbench business', which is not controlled by party leaders. This was implemented in 2010 through creating a new exception in Standing Order No. 14, on a similar model to that used for opposition days. Standing Order No. 14(4) specifies that 'the equivalent of' 35 days per session will be set aside for backbench business, of which at least 27 must be taken in the Commons chamber (with the remainder taken in Westminster Hall, where there is no opportunity for matters to be voted upon). There are more explicit limits placed upon what kinds of business can be taken

in backbench time, as compared to opposition time. Most notably, such time cannot be used to amend Standing Order No. 14 itself.

The original intention of backbench business debates was to allow matters to reach the agenda – including for decision – when they had strong cross-party support, but had not been prioritised for debate by party leaders. Although informed to an extent by international experience, backbench business is a specifically Westminster innovation, which gets away from the pattern of carving up the agenda according to party blocs so common in other parliaments (Russell and Paun 2007). In order to secure a debate, MPs must apply to the cross-party Backbench Business Committee, which then selects topics on the basis of criteria that include the extent of cross-party support.

The final exception written into Standing Order No. 14 is again long-standing, and sets aside time to consider private members' bills (PMBs).²⁰ Under Standing Order No. 14(8) these are given precedence on 13 Fridays per session – in practice dominated by highly-placed 'ballot bills'. Priority is given to second reading stages on the first seven of these days, and to later legislative stages on the remaining six. PMBs can in principle relate to any topic, but the potential for them to be used to compel the government is severely limited by several factors. These most obviously include (usually) the government's majority, but also the fact that unlike government bills PMBs are not 'programmed' (i.e. subject to a mandatory timetable which ensures that votes to conclude specific stages must be taken at specified times).²¹ This means that they can easily be 'talked out'. Many PMBs will also require explicit government support in order to be able to progress, for example through provision of a 'money resolution' to authorise any associated spending.²²

The structure of exceptions under Standing Order No. 14. means that there are important similarities between these three types of non-government business. Not only may they all be used to bring the House to a decision point, but they can all suffer difficulties regarding their scheduling, which hands significant control to the government.

The first notable shortcoming is that, although Standing Order No. 14 specifies the number of days due for each of these three types of business, this comes in the form of a fixed number for each parliamentary session – while sessions in practice can vary considerably in terms of length. The majority of sessions last for around a year, but those immediately before a general election are often somewhat shorter, and those immediately afterwards somewhat longer. More significantly, there have recently been some very long sessions. The first session of the 2010 parliament lasted two years. More recently the 2017–19 session (which spanned almost the entire period between two general elections) lasted 28 months – from June 2017 to October 2019.

As explored in Part 2 of this report, the timing of sessions – like so much else – lies in the hands of the government. Yet there is currently no automatic system for uprating the amount of non-government time in longer sessions. Again, reflecting the generalised culture of government agenda control, it remains at ministerial discretion whether to grant further 'unallotted days' in addition to the fixed numbers of 'allotted' days set out in Standing Order No. 14. As recently identified by the Clerk of the House, informally there is a 'practice for the Government to allocate' additional days in longer sessions (Benger 2019). Yet, as Table 1 shows, the extent to which this is granted in longer sessions is distinctly patchy, particularly with regard to opposition days. During sessions lasting a standard period of roughly a year (in white), at least 20 such days have routinely been allocated, typically resulting in an average of 1.7 to 1.9 per month. During short pre-election sessions (pale shading), and long post-election sessions (darker shading), this monthly allocation

has usually been lower. In the long 2010–12 session, an additional 15 opposition days were allocated – but this brought the monthly average to just 1.5. Then in 2017–19 the allocation fell dramatically, with opposition parties granted only an additional 6.5 days in total, taking their monthly average of time to just 0.9. Opposition parties raised regular objections to this throughout the period.²³

Table 1: Length of sessions and number of days allocated to non-government business

Session	Months of session*	Opposition days held	Opposition days/month	Backbench days held**	Backbench days/month	PMB days held	PMB days/month
1997–98	18	23	1.3	-	-	13	0.7
1998–99	12	21	1.8	-	-	13	1.1
1999–00	12	20	1.7	-	-	13	1.1
2000–01	5	7	1.4	-	-	8	1.6
2001–02	17	22	1.3	-	-	13	0.8
2002–03	12	21	1.8	-	-	13	1.1
2003–04	12	22	1.8	-	-	13	1.1
2004–05	4	5	1.3	-	-	4	1.0
2005–06	18	20	1.1	-	-	13	0.7
2006–07	11	20	1.8	-	-	13	1.2
2007–08	13	20.5	1.6	-	-	13	1.0
2008–09	11	20.5	1.9	-	-	13	1.2
2009–10	5	6	1.2	-	-	5	1.0
2010–12	23	35	1.5	41	1.8	17	0.7
2012–13	12	20.5	1.7	27.5	2.3	13	1.1
2013–14	12	26	2.2	36.5	3.0	13	1.1
2014–15	10	19	1.9	28	2.8	13	1.3
2015–16	12	23	1.9	30.5	2.5	13	1.1
2016–17	12	20	1.7	27.5	2.3	13	1.1
2017–19	28	26.5	0.9	55.5	2.0	17	0.6

* Rounded to nearest month.

** Backbench days were introduced in their current form in 2010-12, following the Wright committee reforms. Figures include those in the chamber only (i.e. excluding Westminster Hall) and are rounded to the nearest 0.5 days.

Sources: Length of session calculated from Sessional Returns. Figures for opposition days and private members' bill Fridays are from Bengier (2019), supplemented post-June 2019 by Fessey and Priddy (2020) and Hansard. Figures for backbench days were calculated from Backbench Business Committee debate lists (where available), supplemented where necessary by an online search of parliamentary material.

Note: Different sources and counting methods mean that slightly different figures to the above are available elsewhere.

Second, government control does not only affect the allocation of non-government time in atypical sessions. Here the treatment of PMBs and the other two forms of non-government business differ slightly. PMB time is specified under Standing Order No. 14(8) as taking place on Fridays, which are generally otherwise non-sitting days. While attendance on Fridays may be low, there is considerable certainty about these arrangements. The dates of allocated PMB days are normally all

announced early in the parliamentary session, which greatly enhances MPs' ability to plan. But there is far less certainty regarding days for opposition and backbench business. Despite the required minimum allocation being set out formally, the precise timing of individual days for both of these types of business is entirely at the discretion of the government. This was again very visible in the 2017–19 session. For example, no opposition days at all were granted between mid-November 2018 and late April 2019 – a period during which Theresa May secured a Brexit deal, saw it defeated three times in the Commons, and approved an extension to the Article 50 deadline.²⁴ Likewise, no backbench days were allocated in the chamber for the two months between mid-October and to mid-December 2018. Later, there was another gap in opposition days, with none provided between late June 2019 and the dissolution of parliament that November – during which time Boris Johnson became Prime Minister, had his request for a five-week prorogation ruled unlawful by the Supreme Court, negotiated a revised Brexit deal, and again delayed the UK's departure from the EU. As further explored below, these lengthy gaps in the provision of time for non-government business helped to fuel the difficulties during that period.

In addition to these three exceptions within Standing Order No. 14, a further important mechanism for securing non-government time is the emergency debate, under Standing Order No. 24. This allows MPs to apply to the Speaker for a debate on 'a specific and important matter that should have urgent consideration'. If the Speaker grants the request, and MPs assent, there will be a debate of up to three hours in the Commons chamber, usually on the next sitting day. Emergency debates became much more common during John Bercow's Speakership: there were only 16 over the 30-year period 1979–2009, but during the subsequent decade Bercow granted 35 (Priddy 2019). This included 10 emergency debates in 2018 alone, and two on a single day in September 2019. Emergency debates take place on a motion that the House has 'considered' the relevant matter, and until recently the general expectation was that this would be expressed in 'neutral terms' (meaning that the motion does not support one or other side of an argument). Recent events have however demonstrated that such debates can in practice be used to approve substantive motions, as discussed below.

Recent controversies

As already indicated, the mechanisms for securing non-government time on the floor of the House of Commons significantly contributed to controversies discussed earlier in this report. The dominance of government agenda control and inabilities of MPs themselves to resolve problems through non-government time can essentially be seen as flipsides of each other. This is particularly visible with respect to Brexit, but more recent flashpoints also help to illustrate the problems.

The controversies of 2020 over COVID-19 clearly took place in extraordinary circumstances. At the time of initial decision-making on the hybrid parliament, access to the Commons agenda was even more limited than usual, and indeed during this period non-government business of all three kinds set out in Standing Order No. 14 had been temporarily suspended.²⁵ In principle, a refusal by the government to bring forward a motion that was demanded by MPs (such as to extend hybrid proceedings beyond the Whitsun recess) could normally have been overcome through use of opposition or backbench time. However, this time was not available.

Such a strategy would have been more viable later in the year, when the government faced mounting pressure to reinstate greater use of virtual proceedings. This was not initially pursued, but by November – even after the anger over the treatment of Tracey Crouch (see above) – the

government had offered only a very limited concession, that those ‘clinically extremely vulnerable’ should be able to participate virtually in substantive debates. The Procedure Committee (2020d) issued a report demanding more significant concessions, to widen eligibility and bring it into line with that for virtual scrutiny proceedings. Committee chair Karen Bradley secured backbench time on 19 November to make a statement launching the report, and took questions from MPs which were almost universally hostile to the government’s position. Nevertheless, the government pressed on with a debate on its proposals unchanged, on 24 November, which ended in acrimony after ministers used a series of procedural tricks to wrongfoot MPs’ amendments.²⁶ Even those who were clinically extremely vulnerable thus remained barred from debates. The matter was only resolved (for debate participation, but with no return to remote voting) on 30 December. This occurred via a rule change presented by the Leader of the House at the start of the day-long recall to facilitate MPs’ vote on the Brexit deal legislation. Throughout the whole period, MPs lacked agenda time to debate and decide on the Procedure Committee’s alternative proposals on virtual participation, or on the resurrection of online voting.

The other COVID-19 controversy – over the government’s lack of consultation regarding national restrictions, which led to the Brady amendment in September 2020 – could also have been addressed using non-government time, although the options here were more limited. Following the Speaker’s ruling that the Brady amendment could not be debated in the immediate context of extending the powers in the Coronavirus Act, MPs could potentially have used other agenda time to debate a similar motion. However, this would – as always – have been subject to the government choosing to make such time available. Had ministers been resistant, and MPs wanted to press their case, the government’s control of the timetabling of opposition and backbench business could have been used to avoid a backbench rebellion and possible defeat.

In fact, ministers’ response to the Brady amendment was relatively emollient, with a pledge to facilitate debate in good time ‘wherever possible’ on future coronavirus statutory instruments with significant UK- or England-wide effect. In line with this, subsequent ‘lockdown’ regulations were debated and voted upon on 4 November and 1 December (though notably the creation of ‘tier 4’ later in December was not put to MPs – as discussed later in the report). Had ministers’ promises instead proved hollow, MPs’ ability to press matters further would have been very limited indeed. Motions to approve instruments subject to the affirmative procedure (including ‘made affirmatives’) can only be moved by a minister, so they are entirely under government control.²⁷ There would be no realistic prospect of non-government MPs securing debate on such a motion against the government’s wishes. In the case of negative procedure instruments, non-government members can propose a motion to annul the instrument (generally called a ‘prayer’), but there is no expectation that this will be debated in government time unless tabled by the Leader of the Opposition (and even then timely debates are not guaranteed). It is possible for prayers to be debated in non-government time – this has very occasionally occurred on opposition days, and in theory could also do so on backbench days, though there are no existing examples.²⁸ But while these options are theoretically possible as a route to debate prayers, ministers could potentially block this by refusing to make non-government time available.

These are all hypothetical arguments, and complicated by the circumstances of COVID-19; but during the Brexit controversies the effect of government control over non-government agenda access was very real. As already indicated, for a period of more than five months between November 2018 and April 2019 no opposition days whatsoever were made available. As the

analysis above shows, the usual average is approximately 1.8 opposition days per month – meaning that around 10 such days might reasonably have been expected over this period. Representatives of the government argued that the withholding of opposition day debates was a product of a different kind of extraordinary times. In a submission to the Procedure Committee, Leader of the House of Commons Jacob Rees-Mogg suggested that ‘any statistical anomalies’ about the allocation of non-government time needed to be interpreted ‘in the context of the unique and unprecedented challenges’ over Brexit (Rees-Mogg 2019a: 2).

The dearth of backbench days over this period was not quite so serious, but nonetheless there was a crucial two-month gap between mid-October and mid-December 2018. During this period, chair of the Backbench Business Committee Ian Mearns repeatedly used the weekly business statement to complain about the government withholding time, and how this was falling short of the committee’s expected allocation.²⁹ Subsequently, however, backbench business debates resumed in the chamber with some regularity. The overall allocation in the 2017–19 session fell short of the average (see Table 1), but not to the extent of the shortfall in opposition days. However, backbench days steered away from the most controversial aspects of Brexit, tending to be devoted to lower-profile topics.³⁰ This may in part have indicated caution on behalf of the Backbench Business Committee, for fear of having further days withheld. It also was at least partially linked to the Grieve amendment passed in early December (described below), which opened up new avenues for key Brexit topics to be debated.

There are various obvious reasons why ministers may have been particularly reluctant to allocate opposition days during 2017–19. The first was the minority government situation which, coupled with growing government backbench dissent, made it potentially far easier than usual for the opposition to win votes against the government. Rather than face defeat on awkward policy matters put on the agenda by opposition parties, ministers almost certainly preferred to use the government’s agenda control to block these matters from being debated. Early in the session, when opposition days did take place, significant controversy had arisen over the government’s decision to whip Conservative MPs to abstain in the associated divisions. This was seen as a tactic to avoid clear defeat, and hence to defuse the effect of critical opposition motions. Concerns were raised about this practice on all sides of the House, including in a report published in January 2019 by the Commons Public Administration and Constitutional Affairs Committee (PACAC), then chaired by Sir Bernard Jenkin, which was critical of the practice. The committee commented that:

The status of resolutions of the House has been eroded by the Government’s decision to abstain from Opposition Day votes and has been interpreted as a lack of respect for the House. It is for the House, not the Government, to determine what is legitimate scrutiny and the Government is expected to engage in good faith with resolutions of the House. As such the Government’s decision to abstain from voting because they deem the motion ‘political point scoring’ risks devaluing the status of resolutions (Public Administration and Constitutional Affairs Committee 2019a: 3).

But this government action merely seemed to compound the situation, leading to opposition days being used in a way more dangerous for ministers, and therefore increasing government resistance to their scheduling. In response to ministers’ attempts to dismiss decisions taken in such debates, the opposition began using new tactics which would be more effective in generating responses from the government. A key innovation was the use of opposition days to pass a ‘motion for a

return' (a 'humble address' to the Crown requesting the release documents) – a process that has usually been considered binding on the government. Opposition debates were deployed to pass such motions five times between November 2017 and November 2018.³¹ A further 'motion for a return' was then passed later, through an emergency debate, on 9 September 2019. These tactics may have angered and frustrated ministers, but they were clearly linked to the government's earlier decisions to abstain on, and as far as possible ignore, decisions taken on opposition days. In written evidence to a Procedure Committee inquiry on the House's powers to call for papers, the then Clerk of the House Sir David Natzler (2019) commented that 'It is worth noting that the use by the Opposition of motions for papers in the current parliament was in no small part a reaction to the decision of the Government not to oppose Opposition day motions in the division lobbies'. PACAC's report expressed some concerns about the frequency with which this previously rare tactic had been used by the opposition, but likewise linked this to earlier government behaviour:

The credibility of the unlimited powers of the House of Commons depends on their responsible exercise. If they cease to be exercised responsibly, they will lose respect and, lacking statutory force, could be ignored. Equally, the effective balance between Government and Parliament is dependent on the Government demonstrating reasonable respect towards the will of the House of Commons as, while it may not be under a statutory obligation to do so, lack of such respect could impel the House of Commons to seek to exercise its powers in new ways (Public Administration and Constitutional Affairs Committee 2019a: 22).

The first five-month period during which no opposition days were granted was, as already noted, highly turbulent. In December 2018 Theresa May's Withdrawal Agreement was finally debated in the House of Commons, but the negative tone of MPs' speeches prompted the Prime Minister to use government agenda control to cancel the promised vote after three of the five scheduled days of debate. This led to angry scenes, with criticism from MPs on all sides of the Brexit divide, and a comment from the Speaker that 'Halting the debate, after no fewer than 164 colleagues have taken the trouble to contribute, will be thought by many Members of this House to be deeply discourteous'.³² This decision led to a delay of a month, and ultimately a heavy government defeat on the deal on 15 January.

As already noted, it was after this – and particularly after ministers had failed to make time available for 'indicative votes' on various Brexit options – that attempts began by MPs to 'take control of the order paper', to provide such debate ahead of the planned exit day of 29 March 2019 (Cowie and Samra 2019). In effect, MPs sought to wrest control from ministers, and create additional non-government days, by setting aside the requirements of Standing Order No. 14(1). Most such attempts (e.g. on 29 January, 14 March and 25 March 2019) were made through amendments to government motions, which were necessitated by the unusual circumstances of the EU (Withdrawal) Act. Section 13 of the Act required a motion on Brexit 'next steps' in the event that the government's proposed withdrawal agreement was voted down; a rebel amendment to a government Business of the House motion on 4 December 2018, from government backbencher Dominic Grieve, ensured that such 'next steps' motions would be amendable. Without this facility, and with non-government time being denied, it would have been very difficult indeed for MPs to gain temporary control of the agenda.

The first successful challenge came through an amendment to a government ‘next steps’ motion, on 25 March. This disapplied the government precedence in Standing Order No. 14(1) for 27 March, allowing that day to be used for an initial series of indicative votes. A motion on 27 March then allowed this exercise to be repeated on 1 April. Subsequently time was taken on 3 April, which was used to pass the Commons stages of the European Union (Withdrawal) (No. 5) Bill. The latter was a private member’s bill, sponsored by backbenchers Yvette Cooper and Oliver Letwin, requiring the Prime Minister to seek an extension to the Article 50 period. The rebel Business of the House motion passed on 3 April provided for this to be timetabled, guaranteeing that all of its stages would be debated.

These moves were highly controversial, attracting the – often hostile – headlines about MPs ‘seizing control’ of the House of Commons referred to above. The moves were certainly highly unusual. Arguably, however, much of this tension (over procedure, if not Brexit itself) could have been defused had ministers either made government time available for indicative votes as they had previously suggested they would, or, having failed to do so, if they had at least made opposition day debates available in the usual way. Later on, on 12 June 2019, it was demonstrated that an opposition day could be used to debate a Business of the House motion. However, this particular motion to ‘take control’ was voted down by MPs – partly because the urgency of the situation had somewhat abated by that time, but also probably with the traditional reluctance of government backbenchers to actively support opposition motions playing a part.

The procedural correctness of using an opposition day to attempt to ‘take control’ was, notably, controversial among some government supporters. In response to the 12 June debate, Nikki da Costa – a former Director of Legislative Affairs to Theresa May, who subsequently returned to this role under Boris Johnson – accused Labour of acting inappropriately, arguing that such time was granted by the government ‘on understanding of honourable behaviour’ (da Costa 2019). But for many this attitude would be seen as problematic. First, it implies that the government’s granting of opposition days is conditional on how they are to be used, even if that use falls within what is allowed by standing orders. Second, many would argue that non-government MPs had been forced into these measures because of government behaviour that was itself not entirely ‘honourable’: having cancelled key votes, pursued abstention on opposition motions, and denied opposition days at earlier stages.

The failure of the opposition day route raises the question of why backbench business committee debates were not used for a similar purpose – i.e. to facilitate votes on alternative Brexit options, or to make time for non-government bills. There appear to be various interrelated reasons for this. Despite clearly arising from cross-party backbench demands – which the Backbench Business Committee was created to cater for – the use of backbench time for highly-controversial Brexit debates faced both cultural and procedural obstacles. Procedurally, Standing Order No. 14(6), as indicated above, places limits on the use of backbench time – including for private members’ bills and specifically for the amendment of Standing Order No. 14 itself. These need not have been an impediment to Business of the House motions of the kind used by the Brexit rebels, but may have created wariness on the part of members. In addition, use of this time requires approval by the small number of members who sit on the Backbench Business Committee. They act as important gatekeepers, with very considerable decision-making power, and the ability to keep backbench matters off the agenda even if a majority of members would prefer to see such matters debated. Plus, of course, backbench time could have been withheld by ministers if the government feared

that it would be used to facilitate rebel tactics. These three factors, alongside cultural expectations that backbench time has (at least in recent years) come to be used largely for non-controversial matters, clearly discourage certain disputed matters reaching the agenda via this route. Ultimately, on Brexit, the Grieve amendment of December 2018 (approved during the period when backbench business was still being withheld), provided alternative avenues for the rebels to pursue.

The final significant Brexit flashpoint over ‘taking control’ and the use of non-government time came on 3 September 2019, in the context of a Standing Order No. 24 emergency debate. This was again used to agree a rebel Business of the House motion, whose purpose was to facilitate passage of the European Union (Withdrawal) (No. 6) Bill, a further private member’s bill sponsored by backbenchers Hilary Benn and Alistair Burt. This bill required the Prime Minister to seek a further extension to the Article 50 period. By this point there were no amendable government motions, and the government’s proposed prorogation of parliament (later overturned in the Supreme Court, as discussed further in Part 2 of this report), was looming. As already indicated, the government made no further opposition days available after June 2019 – and there was certainly no likelihood of non-government time being made available before the prorogation. Hence a substantive motion was tabled for debate on 3 September, which was accepted by the Speaker. His ruling was one of those judged most controversial during the Brexit period, and led to lively discussion about the proper use of emergency debates. As Lee and Berry (2020) point out, a revision to Standing Order No. 24 in 2007 left ambiguity over whether such debates could take place on substantive motions, and prior examples did exist of debates on motions not strictly in ‘neutral terms’. One of these occurred in the context of Brexit, on 11 December 2018, in condemnation of the government’s decision to cancel the vote on the Withdrawal Agreement, and is listed in Erskine May; but another had also taken place earlier, on 18 March 2013, welcoming Prime Minister David Cameron’s response to the Levenson inquiry on media standards.

As with the previous attempts to ‘take control’ by amending government motions, the events of 3 September 2019 were clearly exceptional; but the use of the emergency debate could be seen as a last resort by MPs who lacked any other access to agenda time, particularly in the context of the government’s planned prorogation. Again, MPs’ frustration, fuelled by the non-availability of routine non-government time in a House of Commons where the government lacked a reliable majority, found a safety valve in an unexpected and unusual place. As Lee and Berry (2020) conclude:

Standing Order No. 14 allocates 20 Opposition days in a Session, assumed to be around 12 months in duration. In the whole of 2019, only 8 Opposition days were provided. None took place between November 2018 and late April 2019. The Official Opposition did not have any Opposition days after 12 June for the remainder of 2019. Broader understandings have generally begun to be established in respect of Backbench Business days. These informal arrangements did not function in a normal way in the course of 2019, and that failure formed part of the context both for the amendments and motions to disapply Standing Order No. 14(1) and for the Speaker’s interpretation of Standing Order No. 24 in September.

Possible solutions

The democratic principle of protecting minority rights is formally reflected in the House of Commons standing orders in various ways. But, notwithstanding the exceptions in Standing Order

No. 14, the government retains significant control over the timing even of non-government business. This is problematic at any time; it is potentially far more so in the circumstances of minority government. As seen above, despite lacking a majority in the House of Commons during the 2017–19 session, the government consistently used its power of agenda control to block non-government business, fuelling significant tensions that emerged elsewhere.

Box 4: Non-government time in the Welsh Parliament

The Standing Orders of the Welsh Parliament explicitly prescribe a 3:2 split between government time and ‘Senedd business’. The government is responsible for the scheduling of its own business, while the scheduling of Senedd business is managed by the Business Committee, which has a similar structure and membership to the Bundestag’s Council of Elders and the Scottish Parliament’s Bureau (see boxes 1 and 2 above). When deciding on the allocation of Senedd business, the balance of votes on the Business Committee gives a majority to non-government members.

The 60% of time allocated to the government is used for questions to ministers, and for statements, motions or legislation led by government members. The remaining 40% of agenda time covers everything else, including opposition party motions, debates on committee reports and backbench legislation. Plenary debate time for opposition motions is allocated between the opposition parties in proportion to the number of Senedd seats they hold; committees and individual members can also propose debates. Crucially, non-government legislation can be considered in Senedd time; legislation in the Senedd can be proposed by Senedd committees and the Senedd Commission, as well as by the government or by members through a ballot system.

Sources: Standing Orders of the Welsh Parliament (SOs 11.3, 11.5.ii, 11.17-19); Welsh Parliament (2020).

The fact that these difficulties are not unique to minority government, and have been recognised for some time, is demonstrated by the 2009 report of the Wright committee. It concluded that:

It is... right in a democratic Chamber that the Government is free to deploy its majority to pass its business. But the procedures and practices which have grown up over the past two centuries have delegated to Government too much power to fix the agenda, and to take too many decisions without reference to its notional majority in the Chamber. We consider it for example unacceptable that Ministers can determine the scheduling of Opposition Days without reference to others (Reform of the House of Commons Select Committee 2009: 49).

The primary achievement of the Wright committee in this area, as already noted, was the establishment of backbench business as a new category, protected via an exemption in Standing Order No. 14. In practice this business replaced many non-controversial government debates, acknowledging that backbenchers should have more control over the topics for discussion on these occasions. In making this recommendation the Wright committee suggested that:

It will largely be up to the Backbench Business Committee to determine how to fulfil its task of organising non-Ministerial business, but the report gives some indications of the sort of new or refreshed opportunities which might be offered, including readier access to the agenda of the House for select committees and better opportunities for

backbenchers to raise matters of current concern (Reform of the House of Commons Select Committee 2009: 6).

Backbench business has been successful in putting various key issues on the agenda (Foster 2015), and definitely provides a useful outlet for members to get issues heard – particularly on a cross-party basis. However, it has in practice tended to be used quite cautiously. Those associated with the original Wright committee might have expected a greater boldness, and more robust challenges to existing boundaries. Why this has not occurred is further explored below.

The earlier discussion demonstrates that there are three separate, but interlinked, problems concerning the availability of non-government time in the House of Commons. These relate respectively to the quantity of days made available, their precise timing, and how they may be used.

Box 5: Non-government time in the French National Assembly

France's Constitution explicitly recognises that parliament's procedural rules determine the rights enjoyed by different parliamentary groups. And, as such, it requires that the procedural rules should recognise and take into account the rights of opposition and minority parties.

The Constitution also prescribes particular amounts of time for different types of business. Two out of every four weeks are dedicated to government business (although the government can ask for certain types of bills, such as finance bills, to be included as a priority on the agenda at other times). The agenda of the two other weeks is decided by parliament. 'The monitoring of Government action and ... the assessment of public policies' is allocated one week in four, with each non-government parliamentary group invited to put forward an item for the agenda; further time is reserved for ministerial questions and committee business. In addition to this dedicated scrutiny time, one day every month is reserved for business put forward by parties other than the main governing party.

Thus, unlike in the UK, opposition time is scheduled on a fairly regular pattern. The precise timing of opposition days is decided – as in most of the other non-UK parliaments in this report – by the Conference of Presidents, within which the majority dominates. Opposition days are themselves divided between the different groups depending on their number of seats, including small parties on the government side. Each party can use this time as it chooses, with most of this spent on proposing bills. Although such bills are generally defeated, they often raise salient issues and may cause embarrassment to the government.

Sources: Constitution of France (Articles 48, 51-1); National Assembly Rules of Procedure (Articles 48, 50).

The first of these problems is the lack of an automatic mechanism to provide additional non-government time in longer parliamentary sessions. This is very straightforward, and concerns all three forms of non-government business set out in the exceptions to Standing Order No. 14. The problem was given some attention by the Procedure Committee during the long 2017–19 session,³³ and it could seemingly be easily solved. One option would be for the relevant sections of Standing Order No. 14 simply to require that the entitlements are automatically increased pro-rata in unusually long sessions – for example providing that the allocation is adjusted once the session length passes 12–13 months, with further days automatically due on a fortnightly or monthly basis. But the simpler alternative, which would also have other advantages, would be to express these

allocations entirely as fortnightly or monthly, rather than basing them on sessions at all. A reform along one of these lines seems essential – unless a more radical system of moving to rigid annual sessions is to be adopted.³⁴

The second problem is the de facto ministerial control over the precise timing of non-government debates, and solving this is slightly more complex. One solution could be to bring the timetabling of these types of business into line with current practice for private members' bills, with dates set far in advance at the start of the session and agreed by the House. This would however be very rigid, leaving little opportunity for either government or opposition to be responsive to evolving events.³⁵ An alternative would be simply to allocate regular slots – so that, for example, opposition parties controlled business on each alternate Tuesday. This would also be quite rigid, and take no account of the fluctuation of business (e.g. major bills, the Budget and Queen's speech) throughout the year. It could also create risks that (depending which slots were allocated), this became time which was routinely ill-attended – as is currently the case for private members' bill Fridays. Again the preferable alternative would be for there to be – as outlined above – a decoupling of the allocation of non-government days from sessions, with this instead set out as a regular fortnightly or monthly entitlement. This would ensure a maximum period between each allocated day (e.g. at least one opposition day every two weeks when the House is sitting). Such a solution seems the most appropriate and workable.

A system such as this could operate under current conditions, where the government draws up the agenda and presents it on an unamendable basis. Ideally, however, it would operate alongside a votable Commons agenda as recommended by the Wright committee and discussed earlier in the report. This would bring the system more into line with those operating in many other parliaments, and allow MPs themselves some say over the allocation of non-government time. But a shift to a votable agenda would make the continued provision of minimum allocations even more essential, in order to protect minority rights. Without this, government MPs could simply perpetually vote to postpone the timing of opposition (or indeed backbench) days.

Box 6: Non-government time in the German Bundestag

As explained in box 1, time in the German Bundestag is allocated proportionately between the parties, and each party can use its agenda time as it chooses. Opposition or minority parties can therefore deploy their time for a variety of purposes. These include proposing legislation, or debating business coming out of a parliamentary committee.

Cross-party groups can also in principle access the agenda via a rule which allows any group constituting at least 5% of members (currently 31 out of 709) to submit an item for the agenda and have it debated within three weeks. In practice, however, such cross-party action is very rare.

Sources: interviews with Bundestag officials; Rules of Procedure of the German Bundestag (Rule 20(4)).

Changes such as these would build on existing practice, and on the Wright committee's proposals which sought incrementally to improve upon that practice. It is again worth noting, however, the quite radically different models that exist in many other parliaments. For example, as already discussed, in Germany agenda time is not explicitly divided into 'government' and 'non-government' time, but is instead proportionately shared between the political parties. The

proportion of time within the government's control therefore depends on the seat share of the governing party or parties, and will vary over time. This means that a minority government would control only a minority of agenda time, with the amount allotted to opposition parties depending on their relative strengths in a given parliament. This would have created a very different environment to that which operated in the UK House of Commons 2017–19, perhaps helping to illustrate why the UK's arrangements became so unstable under minority government.

There are definite downsides to this kind of allocation of parliamentary agenda time based on a logic of strict party proportionality. As was noted in the 2007 report *The House Rules?*, Westminster standing orders differ from those in many other parliaments by giving relatively few privileges explicitly to political parties, instead privileging individual members (for example in the allocation of adjournment debates, private members' bills, and questions) (Russell and Paun 2007). This traditional focus on members rather than parties is something to celebrate, and was reflected in the Wright committee's proposal to establish the new category of backbench business. It would be ill-advised, therefore, to move wholly to a system of proportionality at Westminster: such a radical change would have significant disadvantages. But these systems do raise some interesting questions – in particular, whether the allocation of non-government time at Westminster should vary in any way based on the government's strength in the House of Commons. Using that logic, of course, the monthly average of opposition days during 2017–19 would have been higher than in a typical session under majority government; instead, in practice, it was substantially lower.

The third problem relates to the ways in which non-government time can be used. Here the difficulties appear to be cultural, as well as structural.

The appropriate use of opposition time has clearly been questioned in recent years – as indicated above with respect to the use of the 'humble address', and the attempted Business of the House motion in June 2019. The Public Administration and Constitutional Affairs Committee (2019a) pointed out the difficulties of government choosing to ignore, and simply call for abstention on, opposition motions – which risks undermining the status of parliamentary decisions. It is therefore not just the timing, but the content and scope of non-government business – and how it is treated – which may be deserving of review. Here experience from other parliaments could once again be instructive, and makes Westminster practice look quite restrictive. For example, in many other parliaments time allotted to non-government parties can often be used to bring forward bills. Rather than restrictions coming through what can be put on the agenda, the expectation in these parliaments is that (as with opposition day debates in the UK prior to 2017) the government can normally block initiatives from opposition parties by using its majority, not simply its agenda control. There may thus be some merit in considering whether the opposition should be able to use its time to bring forward a wider range of business, as is the case in other parliaments.

While opposition time was withheld by the government during the 2017–19 session, and backbench business time was also denied at key moments, the availability of backbench business at other times during this period did little to ease the difficulties, as those backbench debates which were held tended largely to focus on less controversial matters. This raises the question of whether such time could usefully be deployed (at least sometimes) in a more ambitious manner. Under the original conception of backbench time, upon which the Wright committee built, such time would include:

Debates on select committee reports... on select committee bills... on private members'

motions... on establishment of select committees... on procedural changes proposed by the Procedure Committee... debates on matters of interest to members... [and] debates on (selected) private members' bills (Russell and Paun 2007: 71).

As the Wright committee itself acknowledged when proposing the new system, there is a somewhat blurry line between what should count as government and backbench business (Reform of the House of Commons Select Committee 2010). There could be risks in too much business which should, rightfully, be scheduled by the government getting pushed into backbench time. However, if this results in certain key matters never being debated, that becomes a missed opportunity. As the Backbench Business Committee (2012: 13) itself noted in reviewing its first period of operation:

One of our tasks is to provide time for so-called 'House Business' to be debated and decided—for example on implementation of proposals from the Procedure Committee... We have scheduled a number of such debates. We have recognised that it is important to provide time for these matters, since the ability of backbenchers to decide upon changes to the House's own procedures is an important new freedom given by the creation of backbench business. We think there remains room for some give and take between this Committee and the Leader of the House about finding time for such matters.

In practice, backbench time has only rarely been used in recent years to debate substantive motions on select committee reports dealing with such 'House business', though when such tactics have been used they can prove quite effective.³⁶ In one of the very few recent examples, Harriet Harman secured a backbench business debate in early 2018 in order to pressure ministers on introduction of Commons proxy voting for parental absence. The Procedure Committee (2018) subsequently issued a report on the matter, proposing changes to standing orders. A further proposed backbench debate sponsored by Harman and Maria Miller, Conservative chair of the Women and Equalities Committee, then helped persuade the government to make time available to debate the report.

Returning to the difficulties over COVID-19, backbench business was eventually used for discussion of the Procedure Committee's concerns about virtual working, but not until six months after the government's initial decision to abandon the 'hybrid' House of Commons. On earlier occasions, such time might fruitfully have been used to force decisions on other Procedure Committee reports – for example with respect to the long-delayed reforms to the private members' bill process, on which the government was unresponsive. Likewise on Brexit, during the 2017–19 session, backbench time might potentially have been used to make decisions on the Exiting the EU Committee's recommendation to hold indicative votes.

Notably, the Backbench Business Committee did play a crucial role in the earlier stages of the Brexit debates, when it was used by Conservative backbenchers to force the government's hand on agreeing to hold a referendum (D'Arcy 2016). It is therefore somewhat curious that it did not play more of a role at the later stages. Some of the reasons for this were discussed above. Most obviously, the government's control of the allocation of non-government time acts as a clear disincentive for the committee to schedule business that ministers actively want to prevent from being debated. Meanwhile, the small group of members who sit on the committee serve as gatekeepers. Hence, on highly controversial matters where committee members support the government's position, their blocking power can prevent a matter from reaching the agenda. But

on matters where committee members might prefer to facilitate a debate that conflicts with the government's wishes, ministers have an alternative blocking power. Crucially, the environment in which the Backbench Business Committee operates is very different to that originally envisaged by the Wright committee, where the weekly Commons agenda would have been put to MPs for formal approval and potential amendment. The failure to implement this change made it far more difficult for members to use the Backbench Business Committee to get 'awkward' matters onto the agenda. Without this change it is also impossible for MPs to use the oversight by the chamber to secure debates on topics other than those supported by the committee.

Conclusions and recommendations

6. Just as it is an important democratic principle that the parliamentary majority, rather than the government, should generally control Commons time, a second such principle is that there should be some protection for minorities. The exceptions within Standing Order No. 14 reflect this principle to some extent, by granting time for opposition days, backbench business, and private members' bills. But the operation of these allocations in practice falls short, leaving too much at the discretion of the government.
7. The first, most obvious, change needed is an automatic mechanism for increased allocations of non-government business in longer parliamentary sessions. The simplest way of achieving this would be to express the allocation in Standing Order No. 14 as a regular (e.g. fortnightly or monthly) entitlement, rather than on a sessional basis.
8. The degree of government control over the precise timing of individual non-government days is also problematic, and fed significant tensions during the 2017–19 parliament. This problem would be significantly alleviated through moving to a fortnightly or monthly allocation. Such a change should ideally be coupled with a requirement for the weekly Commons agenda to be approved by MPs (as discussed in the earlier section of this report), but could potentially be introduced independently of that reform.
9. Although the proportional allocation of agenda time between government and non-government groupings that exists in other parliaments could be seen as more equitable than the arrangements at Westminster, it has significant disadvantages in privileging parties over individual members and cross-party groups. Nonetheless, consideration could usefully be given to whether the entitlement to opposition days should be stable over time, or whether more such days should be available in parliaments when the opposition is stronger. In parliaments that use a principle of proportionality, a minority government controls only a minority of agenda time.
10. There have recently been some significant disagreements about the nature of business taken on opposition days. As noted by the Public Administration and Constitutional Affairs Committee (2019a), the government's pattern of asking its members to abstain in votes on opposition days in 2017–19 eroded the status of parliamentary motions in a regrettable way, and in turn helped drive opposition parties towards the greater use of the 'humble address' procedure. In fact, if anything, the uses of opposition days are limited compared to other legislatures – where opposition parties can for example use such time for proposing bills. The government should seek to win votes on opposition business on merit, rather than deploying procedural tactics.

11. Some recent controversies might have been alleviated had backbench business been used in a more ambitious manner. However, there are currently various obstacles which discourage such use. Removing the government's ability to block backbench business (as proposed above) would be one means to ensure that it could be used more boldly and effectively. Crucially, however, the Wright Committee envisaged that the Backbench Business Committee would exist in an environment where the House of Commons voted on its own weekly agenda. Introducing such a reform would avoid the risk of members of the committee acting as a blocking minority, and make both the Backbench Business Committee and the government more responsive to the wishes of the chamber as a whole.
12. MPs could also be more ambitious in using the Backbench Business Committee route if time is withheld by the government for key debates. This would be particularly appropriate, for example, for debating recommendations from select committees, such as Procedure and Liaison, which are concerned with how the House itself operates. Currently, MPs often default to demanding that the government makes time available, and clearly using backbench time for 'House business' would leave less time available for other matters. This suggests a need to review the principles of what belongs in government time and what more appropriately belongs in backbench time – potentially with more agenda time allocated to the latter. This and other matters merit a fuller review of how backbench business operates – more than a decade on from its introduction in 2010.

Meetings: who decides when the Commons can sit

Government control of the House of Commons is not limited to the day-to-day agenda, but also extends to important decisions about when and whether the chamber sits at all. Periods when the Commons is not sitting take three distinct forms – adjournment, prorogation and dissolution – over which government ministers exercise varying degrees of control. Notably, whenever the Commons is not sitting, it is only ministers who have the power to initiate a ‘recall’.

In many respects, these issues are a natural extension of those considered in Part 1 of the report. For one thing, the same fundamental principle applies – that surely it should be the parliamentary majority, not the government, that decides when the House of Commons sits. In addition, however, the issues of agenda control and sitting time are closely linked. For the Commons to have meaningful control over its own time, it is clearly necessary that MPs have a significant role in setting the day-to-day agenda of the chamber. Yet this would count for nothing if the government were simply to prevent the chamber from sitting. This was highlighted most starkly during recent debates over Brexit, when, faced with the threat that MPs might ‘take control’ of the Commons agenda – and thereby impose their will on ministers – the government attempted to prorogue parliament for five weeks.

The two sections that follow explore these issues in greater detail, starting with the processes for authorising breaks in Commons sittings, before turning to the mechanisms through which the chamber may be recalled. In both cases, the structure echoes that in Part 1 of the report – proceeding in turn with a summary of current arrangements, followed by recent controversies, then possible solutions, and ending with conclusions and recommendations.

Adjournment, prorogation and dissolution

The obvious place to begin is with the three mechanisms for ending periods of parliamentary sitting: adjournment, prorogation and dissolution. Although these appear superficially similar at first glance, the three processes are in fact very different – both in terms of the relative powers of government and MPs in bringing them about, and with respect to their wider implications for Commons (and in some cases Lords) business.

Current arrangements

The parliamentary timetable at Westminster is structured into various units of time. The most expansive is a ‘parliament’, which covers the period between two general elections – for example the 2010–15 and 2015–17 parliaments. A parliament is then broken down into ‘sessions’, each of which is initiated by a Queen’s speech. Sessions have already been referred to in the section on non-government time, which noted that the main exceptions to Standing Order No. 14 (for opposition days, backbench business days and private members’ bills) are allocated on a per-session basis. As was also noted, sessions usually last for around one year, but those immediately before or after a general election have typically been shorter or longer respectively, while there have been some recent instances of very long sessions. Within any particular session, parliamentary

time is then composed of periods of ‘sittings’. Whereas parliaments and sessions relate to Westminster as a whole, sittings are determined autonomously by the two chambers, meaning that the Commons may sit on days when the Lords does not, and vice versa.

Table 2: Summary of arrangements for adjournment, prorogation and dissolution

	Adjournment*	Prorogation	Dissolution
Purpose	Between Commons sittings (creating a ‘recess’).	Between sessions.	Between parliaments (to allow for a general election campaign).
Approval	Date and length authorised through a motion approved by MPs.	Date and length appointed by the Queen, on advice of the Prime Minister.	Default date by operation of primary legislation. Otherwise, triggered by MPs agreeing to: (a) no confidence motion; (b) motion for an early election (in either case with date on recommendation of Prime Minister under FTPA); or (c) new primary legislation.
Maximum length	No fixed maximum.	No fixed maximum.	Length fixed in primary legislation at 25 working days.
Effect on Commons proceedings	Few parliamentary proceedings possible, but select committees may usually continue to meet. Parliamentary business does not lapse.	No parliamentary proceedings possible. Most parliamentary business lapses.	No parliamentary proceedings possible. All Commons business lapses.
Early recall	By the Speaker, following government representations.	New end date appointed by the Queen, on advice of the Prime Minister.	Not possible.

* Refers to ‘periodic’ adjournment only; formally, there are also shorter adjournments between each sitting day.
Note: Some exceptions to the information in this table are discussed below.

Parliaments, sessions and sittings provide the basis for the three breaks in Commons proceedings discussed here: dissolution, prorogation and adjournment. Their key characteristics are summarised in Table 2. This section examines in more detail the arrangements outlined in the earlier rows of the table – for the approval and effects of these breaks – while the section that follows will focus on the final row, on the possibilities for recall.

The commonest form of breaks are adjournments, which mark the conclusion of regular Commons sittings. Adjournment formally takes place every day when the Commons sits; however, our interest in this report is confined to ‘periodic’ adjournments, which authorise longer breaks for what are often referred to as Commons ‘recesses’.³⁷ This kind of lengthy adjournment enables the Commons to take a break from its standard weekly timetable. Although the pattern of Commons recesses is not fixed, in recent years the main breaks have typically included Easter, summer, Christmas, plus ‘half term’ recesses between these, and usually the autumn party conference season. Although most Commons proceedings cease when the House is adjourned, some functions may continue – in particular the work of select committees – while Commons business remains live and can be returned to after the break.

MPs must approve an ad hoc motion to agree the terms of a periodic adjournment – effectively giving them the power to veto its timing and length. Nonetheless, the government retains significant control over the process. Under Standing Order No. 25, a motion for a periodic adjournment moved by a minister must be taken ‘forthwith’ – which Erskine May (2019: para 20.45) defines as ‘without debate and usually without the possibility of amendment’. This means that dates are in effect presented to MPs by the government on a ‘take it or leave it’ basis. Periodic adjournment dates are also often approved far in advance, and MPs have no guaranteed mechanism to enable them to revisit or revoke this approval subsequently if circumstances change. Between 2000 and 2018, for example, the number of days between the approval of the summer recess motion and the start of this recess ranged from nine (in 2000) to 232 (in 2014).³⁸ The wording of the relevant standing order is somewhat ambiguous, but would allow a motion to set or change the dates of a periodic adjournment to be proposed by an MP other than a minister, at which point it would become debatable and amendable. But, as discussed in the previous sections, the government’s agenda control means that it would be difficult to find the time for this debate to take place if ministers were resistant.

Most recent attention has (as further described below) focused on prorogation. A prorogation marks the end of a parliamentary session and is most commonly followed by a Queen’s speech and the start of a new session. In order to fit in with the statutory timetable for elections, there is also often a short prorogation preceding the dissolution of parliament for a general election, though this is not formally required. The power to prorogue parliament is a ‘prerogative’ power, meaning that its exercise rests formally with the Queen, through issuing a proclamation, acting in practice on the advice of the Prime Minister. This gives the government substantial power over the timing, and in principle also the length, of a prorogation. In recent decades, prorogations have almost always lasted only a small number of days. According to analysis by the two parliamentary libraries, the average length of prorogations between 1930 and 2017 was just five calendar days, and from the 1980s most lasted ‘only a week or less’ (Cowie 2019: 7; Purvis 2019). Although there is no firm legal limit on the length of a prorogation, the 2019 decision of the Supreme Court – discussed below – established that some (unspecified) limits do exist.

A key difference between prorogation and adjournment is that MPs have no formal procedural mechanisms to block or even object to this kind of suspension. Nonetheless, when parliament is prorogued this has a far greater effect on parliamentary activity: all proceedings must cease, and the majority of live Commons and Lords business falls (including motions and most legislation).

The final kind of break is known as a dissolution, which occurs at the end of each parliament and marks the start of a general election campaign period. Until 2011, dissolution operated in a similar way to prorogation, with the monarch empowered to dissolve parliament (again, in practice on the Prime Minister's advice) without any role for parliament.³⁹ This prerogative power was however removed by the Fixed-term Parliaments Act 2011 (FTPA). The date of each election (and by extension of dissolution, which takes place 25 days earlier) is now fixed in law and can only be changed in three ways, all of which depend on action by MPs. Either MPs can vote explicitly for an election (by a two-thirds majority) or vote no confidence in the government (by simple majority)⁴⁰ – or, as happened in 2019, parliament can pass new primary legislation to bring about an early election and override the FTPA. Once parliament is dissolved all Commons constituencies become vacant, with the consequence that all Commons activities cease and all Commons business lapses. The Conservatives pledged at the 2019 general election to 'get rid of' the FTPA, and the options for change have recently been reported on by two parliamentary committees (Public Administration and Constitutional Affairs Committee 2020a; Constitution Committee 2020) – as further discussed below. In November 2020 a joint parliamentary committee was established to consider this matter further, while in December the government published a draft Fixed-term Parliaments Act 2011 (Repeal) Bill.

Recent controversies

Agreeing the suspension of periods of Commons sittings has usually been handled consensually between the parties. The relatively predictable timetable of adjournments and prorogations, and the normally limited length of the latter, has meant that both processes have generally been regarded more or less as administrative formalities. In March 2020, when the COVID-19 crisis took hold, the main parties reached agreement to begin Easter recess earlier than planned in order to support social distancing practices. On Brexit, by contrast, the government's control over suspension of the Commons sparked major political controversy – principally around prorogation, but also to a lesser extent on periodic adjournments.

As we have seen, although adjournment raises some of the same issues as prorogation in terms of limiting opportunities for scrutiny, the fact that MPs must explicitly approve periodic adjournments means that government control is weaker. Nonetheless, there are problems around the authorisation of periodic adjournments, as was illustrated in the context of Brexit. Prior to the 2019 summer recess, there was an attempt – led by Sarah Wollaston, then chair of the Liaison Committee – to block the motion approving the summer adjournment. Wollaston objected to the proposed six-week adjournment starting on 25 July, in the same week that the Conservative leadership contest was set to end, on the basis that 'I don't think that the newly elected prime minister should have free rein over the summer without the policies of the new government being examined by parliament' (Singh 2019). But when the government's adjournment motion was up for decision – on 24 June – it was impossible for this to be debated or amended, due to the 'forthwith' rule. Consequently the motion was simply approved by 223 votes to 25.⁴¹ Both the process for this decision and the timing – with no automatic opportunity for MPs to revisit the question before the Commons adjourned for its summer break – seemed distinctly suboptimal. But had MPs been determined (and the non-government time been available), an alternative proposal could potentially have been debated in opposition or backbench time.

Later on, however, MPs looked more certain to use their power over adjournment – in a way that was unwelcome to the government. Ministers supported the Commons taking a break for the usual ‘conference recess’ in the autumn, to allow for the party conferences. However, it was reported that some MPs were planning to vote against this, given the proximity of the Brexit deadline at the end of October and fears about a ‘no deal’ Brexit (Rea 2019). These protests occurred before the government’s attempt to prorogue parliament for five weeks – but nonetheless, when subsequently arguing for a lengthy prorogation, Jacob Rees-Mogg (2019b) suggested that this represented nothing unusual, as it incorporated ‘the three and a half weeks of conference recess’. Yet the Commons had not had an opportunity to approve such a recess, and after the prorogation had been overturned by the Supreme Court, the government’s attempt to pass a motion authorising a conference recess was rejected by MPs.⁴² This demonstrated the power of MPs over adjournment (albeit constrained), and also how prorogation would have enabled the government to force a suspension on MPs that they themselves clearly did not want.

The attempted prorogation itself followed the growing assertiveness of the House of Commons in opposition to a ‘no deal’ Brexit, as touched upon earlier in this report – including MPs taking control of the Commons agenda to pass the so-called Cooper-Letwin Bill, to require the May government to seek an Article 50 extension. Suggestions that the government could counteract the Commons’ assertiveness by suspending parliament altogether appear to have emerged as far back as January 2019. Responding to early reports of a cross-party bill to require an extension in certain circumstances, Jacob Rees-Mogg (then a backbencher) commented that ‘the executive is entitled to use other... constitutional means to stop it – by which I basically mean prorogation’ (Casalicchio 2019). Prorogation would potentially offer the government two defences against such a bill: it would limit the time available to pass the bill through its legislative stages, and could also if necessary be used more directly to kill the legislation – since all bills that have not yet completed their passage automatically fall at the end of a session. At this moment, however, using prorogation to undermine the Commons’ powers seemed to be a fringe proposal, and the tool was not deployed by Theresa May against the Cooper-Letwin Bill.

The prorogation idea emerged again during the Conservative Party leadership election of summer 2019, when candidate Dominic Raab implied that it might be a legitimate way of resolving the Brexit impasse (Gayle 2019). By then ministers realised that MPs might repeat the Cooper-Letwin exercise ahead of the new October deadline. Even so, the suggestion of proroguing was criticised by numerous senior Conservative figures, including other leadership candidates, on the basis that it was inconsistent with parliamentary democracy. Matt Hancock (2019) warned that ‘[a] policy on Brexit to prorogue Parliament would mean the end of the Conservative Party as a serious party of government’; Jeremy Hunt suggested that ‘I don’t think most people in the Conservative party would do it’ (Schofield 2019); and Michael Gove commented that ‘it would not be true to the best traditions of British democracy’ (Mairs 2019). Boris Johnson declared himself ‘not attracted’ to the suggestion, though he did not explicitly rule it out (Honeycombe-Foster 2019). Former Leader of the House of Commons Andrea Leadsom suggested that she ‘would not approve of [prorogation] at all’ as ‘we live in a parliamentary democracy [...] and actually trying to do something that shuts down our parliamentary democracy would be entirely wrong’ (Leadsom 2019).

Even so, MPs quickly mounted opposition to the possibility that the government might attempt to prorogue parliament, and took preventive measures. During the passage of the Northern Ireland (Executive Formation) Bill in July – a government bill needed to deal with the continued absence

of power-sharing in Northern Ireland – ministers were defeated in the Commons on an amendment requiring that parliament should meet at various points in the autumn even in the event that it had been prorogued. Despite the bill’s focus, the amendment was clearly designed with Brexit in mind. Later, in August, a cross-party declaration – reportedly signed by over 200 MPs – warned that ‘[s]hutting down Parliament would be an undemocratic outrage at such a crucial moment for our country, and a historic constitutional crisis’ (Osborne 2019). But the following day the Prime Minister formally advised the Queen to suspend parliament for a five-week period between 9 September and 14 October – which fell between the dates specified for parliamentary sittings in the rebel amendment to the Northern Ireland bill.⁴³ This represented the longest prorogation since 1930 (Purvis 2019). The decision was subsequently overturned by the Supreme Court, in the *Miller-Cherry* case.⁴⁴

The court decision, which has been widely debated and analysed (e.g. Elliott 2019), focused on the fundamental constitutional principles of government accountability to parliament. As the Supreme Court pointed out, the prorogation served to restrict parliament’s central constitutional function of scrutinising and overseeing government actions. That the planned suspension was against the will of the Commons majority is illustrated not only by MPs’ prior attempted preventative action, but by the fact that they responded to the initial news of the prorogation request by proceeding at great speed to pass the Benn-Burt Bill before the attempted prorogation began. The episode also raised some questions about the operation of the confidence relationship between parliament and government, since immediately before the attempted prorogation there was widespread reporting of plans by opposition parties to agree a common strategy on a ‘no confidence’ vote (e.g. BBC 2019). While the judgment of the Supreme Court that the prorogation was unlawful may have restricted the freedom of ministers to use this mechanism to avoid scrutiny in future, the continued absence of clear-cut rules means that disputes could easily recur.

Various other problems arise out of the government’s unilateral control over prorogation decisions, some of which were highlighted over Brexit.⁴⁵ For example, as discussed earlier in the report, some Commons procedures and processes depend on parliamentary ‘sessions’ for their operation, including the entitlements in standing orders to non-government time. The government’s decision to extend the length of the 2017–19 session (by *not* proroguing parliament on an annual basis) thus significantly reduced the amount of time due to non-government MPs. Likewise, the longstanding Commons rule that matters on which MPs have already reached a decision cannot be returned to in the same parliamentary session (Erskine May 2019: para 20.12) is vulnerable to manipulation when the government alone controls the timing of sessions. To get around this rule with respect to MPs’ rejection of Theresa May’s Brexit deal, ministers clearly considered a short prorogation in order to create a new parliamentary session and bring the issue back, though this did not in the end occur.⁴⁶ In such a case prorogation would very clearly be being used by government to challenge a decision of the House of Commons.

Possible solutions

As the above discussion has illustrated, the Commons’ control over its day-to-day agenda is inextricably linked to the question of when the House can sit. Giving MPs greater power to determine their order paper – as suggested in the first part of this report – is only a partial solution if the government can override this by suspending parliamentary sittings altogether. Meanwhile, the inability of MPs to determine what they debate, and how, extends to key decisions about their

own sitting dates. The most serious problems identified above relate to prorogation, and to a lesser extent to periodic adjournment, which are the focus here. As already indicated, arrangements for dissolution have recently been considered by the Constitution Committee and Public Administration and Constitutional Affairs Committee (PACAC) in the context of the Fixed-term Parliaments Act 2011 – and this is now under consideration by a parliamentary joint committee. These arrangements themselves are not discussed here, but we draw on the principles considered by the two committees that have reported, and also their evidence and conclusions on prorogation.

Box 7: Parliamentary breaks in other countries in Europe

Many parliaments throughout Europe do not have a direct equivalent to the UK practice of prorogation.

First, not all have movable session dates in the same way as the UK, instead having fixed sessions, with or without a break between them, prescribed in their constitutional documents. **Denmark** is one example: the Constitution prescribes that legislative sessions last from the first Tuesday of October until the same day in the following year. This means that, whilst the legislative agenda is refreshed every year, the precise dates are fixed rather than being politically determined. **Finland**, likewise, has no break between parliamentary sessions, with each yearly session ending only when the next begins; the parliament's Rules of Procedure set the presumptive date for a new session at 1 February, though under Article 28 of the Constitution the parliament can vary this if it wishes.

In **France**, similarly, the Constitution sets the dates of legislative sessions, fixing them between the first working day of October and last working day of June, whilst the parliament of **Croatia** sits in two regular yearly sessions between 15 January and 15 July, and 15 September and 15 December.

Where dates of sessions are more flexible, it is commonplace for the parliament to have a vote on them. In **Austria**, for example, Article 28 of the Constitution provides that the Federal President can declare sessions of the country's lower house, the National Council, closed only after the National Council itself has voted in favour of ending the session. In **Germany**, Article 39(3) of the Basic Law (i.e. constitution), similarly, gives the Bundestag the right to decide when its sessions are convened and adjourned.

In multiple European countries, the time between sessions operates more like the UK's adjournments, in the sense that bills do not automatically fall. And in some, the parliament may sit for a single session which lasts the entire length of the parliamentary term between elections. Notably, this is the case in **Scotland**.

For further analysis of these and related issues see Fleming and Schleiter (2020), Van Schagen (1997).

Other sources: Basic Law of the Federal Republic of Germany (Article 39(3)); Constitution of Austria (Article 28); Constitution of Croatia (Article 78); Constitution of Denmark (Articles 36(1) and 41(4)); Constitution of Finland (Article 28); Constitution of France (Article 28); Parliament's Rules of Procedure [Finland] (Rule 1); Standing Orders of the Scottish Parliament (SO 2.1).

Box 8: Prorogation in New Zealand

In New Zealand, prorogation remains on the books under the Constitution Act 1986, but has generally fallen into disuse. Parliament, instead, effectively sits for a single three-year session.

The New Zealand Parliament was last prorogued in 1991. In this case, prorogation was used to end an adjournment early so that parliament could return for a debate on the Gulf War, rather than to keep parliament from sitting. Even prior to this, there was a key difference between prorogation in New Zealand and in the UK: namely, that it did not lead to bills falling. Statutory measures to allow unfinished business to continue between New Zealand's parliamentary sessions were passed in 1977, making this version of prorogation, again, more similar in some ways to the UK's adjournment (although the parliament still did not have a vote on the prorogation itself).

Source: McGee (2017).

Various small changes could in principle be made to restrict the government's power over prorogation, although none are perfect solutions. Thomas Fleming and Petra Schleiter (2020: 11) suggest that one possible set of options would be to place 'explicit limits... on the purpose, length and timing of prorogations'. Restricting the *length* of prorogation to a short period, of say one week, would clearly significantly reduce a government's ability to use this mechanism to weaken the Commons. But this would not have entirely ruled out controversy in 2019, for example still potentially allowing the use of prorogation to block the passage of a private member's bill. Restrictions on the *purpose* of prorogation might offer some benefits, but would risk increasing the role of the courts in parliament's affairs.

In terms of the *timing* of prorogation, a more robust mechanism could be to place annual parliamentary sessions on a fixed timetable, thus reducing or removing ministerial discretion. As expert in the prerogative Professor Anne Twomey suggested in evidence to the Public Administration and Constitutional Affairs Committee (2019b: Q4), such a change might have some advantages (including for administrative purposes), but would also reduce flexibility in responding to events. A more radical possibility would be to abolish prorogation and sessions altogether. Notably, some other parliaments influenced by Westminster – such as in Scotland and New Zealand (see boxes 7 and 8) – do not operate routine prorogations. Sessions are not strictly necessary for the operation of the UK parliament. However, several procedures – some of which have already been mentioned – do currently depend on them. Most notably, this applies to the statutory rules in the Parliament Acts that restrict the powers of the House of Lords, requiring a bill to have passed the Commons in 'two successive sessions' before the Lords can be overridden. This means that abandoning sessions would be a far from simple change to make, and would require legislation with broader effects. Overall, therefore, while some of these changes may be worth considering, they all bring problems of their own.

Instead, the simplest and most important change would be to require that any extended ending of Commons sittings – including through prorogation – must have parliamentary authorisation. In practice this would need to be authorisation by the Commons only, to avoid the Lords being able to use such a power to frustrate the Parliament Acts. Various expert contributors to recent parliamentary inquiries have argued that there are principled reasons to remove the power to prorogue from the executive and put this under parliamentary control, and that this would be in line both with recent UK trends in gradually restricting prerogative powers, and with modern

international practice.⁴⁷ As shown in box 7, it is commonplace for other parliaments throughout Europe – if sessions are not totally fixed – to control the timing of their own sittings. Both of the recent committee inquiries into the future of the Fixed-term Parliaments Act have proposed that careful consideration should be given to the possibility of bringing the power to prorogue under parliamentary control (Public Administration and Constitutional Affairs Committee 2020a; Constitution Committee 2020). The legislation planned by the government to amend the FTPA could provide a ready vehicle for such reform.

This change, if implemented, would bring prorogation into closer line with the current process for authorising periodic adjournments. To replicate that process, a government minister would propose a motion for a prorogation, specifying the proposed dates, which MPs would be invited to endorse. It would then be for the House to make a decision on the motion.

But, as illustrated by recent experience above, reproducing the process for periodic adjournments would not be enough – and there are arguments in favour of changing the mechanism for adjournments as well. As described above, MPs are currently asked to endorse such adjournments on a ‘take it or leave it’ basis, potentially some time in advance of the planned break. To ensure that the Commons’ control over these arrangements is meaningful, two further requirements should therefore be applied. First, motions to approve a periodic adjournment or prorogation should not be taken ‘forthwith’, but instead allow debate and the possibility of amendment. Second, there should be a guaranteed mechanism for MPs to revisit their decision if a break has been approved far in advance. Again, there is a clear connection between the issues discussed here and in the earlier part of the report. Greater control by MPs over what they can discuss, and when, would allow debates on these matters to be timetabled when MPs want them – either via a votable weekly agenda or, if necessary, during guaranteed non-government time that ministers cannot withhold. It is therefore important to consider the issues raised by this report in the round.

Conclusions and recommendations

13. Control over the House of Commons day-to-day agenda is umbilically linked to questions of when it sits. Reforms to give MPs control of what is discussed could ultimately be circumvented if the government retained the power, via prorogation, to shut parliament down.
14. The Supreme Court judgment of autumn 2019 has established that there are some legal limits on the government’s power to prorogue parliament, but these limits remain unclear. To avoid risks of future litigation, and to comply with the principle of parliament’s control over its own affairs, prorogation should now be made subject to authorisation by the House of Commons. The obvious vehicle for this would be the government’s planned legislation to amend the Fixed-term Parliaments Act.
15. There are inadequacies in the current system to allow MPs to authorise periodic adjournment, as government motions are not currently debatable or amendable. As a minimal stand-alone measure Standing Order No. 25, which sets this out, should be amended to remove the ‘forthwith’ rule. Adopting some of the measures outlined in Part 1 of the report should also help alleviate this situation – giving MPs greater control over the weekly agenda, and guaranteeing that non-government time would be available to move their own motions on periodic adjournment if necessary.

16. Where MPs authorise a prorogation or a periodic adjournment, it should be possible for them to revisit this decision if circumstances change before it has begun. Again, this would be most easily achieved by adopting measures outlined in Part 1 of this report, most notably guaranteed non-government time and a ‘votable’ agenda, which would allow MPs to secure such a debate if not provided by the government.

Recall of the Commons

The previous section considered the question of who gets to determine when the Commons does not sit. It can be argued on principle that the Commons itself should authorise prorogation and periodic adjournment, and that to be a meaningful power MPs should also have the opportunity to fully debate their decisions (including the possibility of amending the motion), and to revisit them if circumstances subsequently change. These principles of parliamentary control logically apply not only in advance of such a suspension occurring, but also during parliamentary breaks. Over recent years there have been repeated demands from the Commons to be ‘recalled’ from adjournments so that MPs could respond to pressing political developments. As things stand, however, the government effectively holds a veto over the granting of such requests, and it may sometimes have an incentive to block them. The inability of the Commons to reconvene itself therefore represents a further important limitation on its ability to control its own affairs.

Current arrangements

When the Commons is not sitting, it is normally only possible for MPs to be recalled if the House has been adjourned (rather than prorogued or dissolved) (Erskine May 2019: para 8.13). This will usually be from a longer periodic adjournment, such as an Easter or summer recess. But in principle it is also possible for the Commons to be recalled from a more routine adjournment, for example to allow for a meeting at the weekend.⁴⁸

The procedure for recalling the Commons from an adjournment is set out in Commons Standing Order No. 13(1):

Whenever the House stands adjourned and it is represented to the Speaker by Her Majesty’s Ministers that the public interest requires that the House should meet at a time earlier than that to which the House stands adjourned, the Speaker, if he is satisfied that the public interest does so require, may give notice that, being so satisfied, he appoints a time for the House to meet, and the House shall accordingly meet at the time stated in such notice.

As this shows, recall can only be initiated by a minister making representations to the Commons Speaker – giving the government a high degree of control over the process. The Speaker can then grant the request if satisfied that it would be in the ‘public interest’, and set the date and time of the recall. Standing Order No. 13(2) also gives ministers control over what can be discussed during the recall, specifying that the ‘government business’ to be taken shall be ‘such as the government may appoint’. Other MPs play no formal part in the process, and cannot formally initiate a recall.

While recall is not routine, neither is it entirely uncommon. According to the House of Commons Library, between 1948 and 2020 the Commons was recalled 31 times (Kelly 2020) – an average of roughly once every 2.5 years.⁴⁹ Most of these instances can be placed into three main categories.

Around half responded to pressing international events, including potential military conflict – for example the September 11 terrorist attacks (14 September, and 4 and 8 October 2001), escalating tensions in the run-up to the invasion of Iraq (24 September 2002), and anticipated military action in Syria and Iraq (29 August 2013 and 26 September 2014). A second category comprises domestic matters – in recent decades including recalls to pass legislation following the Omagh bombing (2–3 September 1998), and to debate issues around phone hacking (20 July 2011) and the London riots (11 August 2011). Third, on a small number of occasions MPs have returned to offer tributes following high-profile deaths, including of the Queen Mother (3 April 2002), Margaret Thatcher (10 April 2013), and the murder of the MP Jo Cox (20 June 2016).

Despite the government’s existing control over recall, this has not always been the case. As explained in Erskine May (2019: para 8.13), Standing Order No. 13 dates from 1947, prior to which recall was governed through ad hoc resolutions. During the early twentieth century these sometimes incorporated specific powers enabling the Speaker to initiate recall in the public interest, requiring only advance ‘consultation’ with the government.⁵⁰ By the 1930s, the wording of these motions was amended to give the power of initiation to ministers, and it was this formulation that was subsequently converted into the Commons standing orders.⁵¹ In the Lords, by contrast, the earlier formulation has survived, meaning that the Lord Speaker is required only to consult ministers before authorising the chamber’s recall (a situation traceable to the fact that the Lords presiding officer was until 2006 the Lord Chancellor – i.e. a government minister).⁵²

This recall process does not apply when the Commons has been either prorogued or dissolved. During a prorogation, MPs can still in principle be recalled early, but this typically requires the Queen to issue a new proclamation with revised prorogation dates. There are also provisions in various pieces of legislation that either enable or require the Commons to reconvene early from a prorogation, usually in exceptional circumstances such as national emergencies or the death of the monarch.⁵³ During a dissolution, by contrast, every Commons seat becomes vacant and MPs cease to exist, with the logical consequence that they cannot simply reconvene.

Recent controversies

There have been repeated demands for recall of the House of Commons over recent years, many of which have gone unanswered. Most recently, these have occurred in response to public health restrictions to deal with the COVID-19 pandemic, as well as during the battles over Brexit. We review these first, before focusing on some other more high-profile calls over preceding years.

Early on in the COVID-19 crisis, although there was some pressure for recall it remained relatively muted. As the previous section explained, MPs agreed in late March 2020 to begin their Easter recess slightly earlier than planned in response to the intensifying situation – resulting in an adjournment from 25 March (rather than 31 March) until 21 April 2020. As the crisis unfolded, however, there were calls from MPs for the Commons to be recalled early in ‘virtual’ form in order to scrutinise ministers’ pandemic response. Early in April, acting co-leader of the Liberal Democrats Ed Davey (2020) called for the creation of a new coronavirus select committee – modelled on the committee established in New Zealand (see box 3 above) – to provide this scrutiny. A cross-party group of MPs including the Westminster leaders of several opposition parties subsequently wrote to First Secretary of State Dominic Raab (then standing in for the Prime Minister, who was in hospital) demanding ‘an immediate (virtual) recall of parliament’ (Lucas 2020). Leader of the Opposition Keir Starmer wrote to the Leader of the House of Commons

with a similar request, arguing that government decisions should be ‘challenged and subject to scrutiny’ (Honeycombe-Foster 2020). The government did not accede to the calls, with the Commons returning as scheduled later in April. In this case, there were clearly atypical challenges at play: without an existing process for virtual working in place, any initial recall would by default have been physical, while there were undoubted technological challenges in convening the Commons online at such short notice. Even so, the arbiter of these decisions was the government, rather than, for example, the House of Commons Commission or the Speaker.

There were then some subsequent demands for Commons recall during the August 2020 summer recess, though these found more limited traction among MPs. They included an editorial in the *Guardian* (2020) which pointed to the growing challenges from the virus. SNP frontbenchers likewise made representations to the Speaker for a recall in response to the government’s handling of A-Level results (e.g. Wishart 2020). But support remained relatively limited, and ministers were never under serious pressure to respond to the demands.

Such demands became much more widespread in late December 2020, after the Prime Minister’s announcement that a planned relaxation of public health restrictions in England over Christmas – which MPs had approved earlier that month – was to be curtailed, while social mixing was to be banned altogether in large parts of the country which would enter a new ‘tier 4’. This news came on the Saturday immediately after the Commons had entered recess, sparking widespread calls by both Conservative backbenchers and opposition MPs for the Commons to be recalled (BBC 2020). Under the ‘made affirmative’ procedure, the legislation did require MPs’ approval – yet this did not formally need to be sought until well after Christmas, and in the meantime even basic parliamentary scrutiny and accountability was suspended. MPs finally debated the policy on 30 December – when the Commons was recalled principally to approve the European Union (Future Relationship) Bill implementing the government’s Brexit deal. During this debate, Charles Walker – a vice-chair of the Conservative backbench 1922 Committee, and former Procedure Committee chair – expressed disappointment ‘that the House was not recalled [earlier] to scrutinise the new regulations’, while former Conservative Chief Whip Mark Harper warned of further protest if the House were not recalled to consider any new restrictions in January.⁵⁴ This did subsequently occur, on 6 January, at the government’s request, following the closure of schools and colleges and extension of tier 4 – though the restrictions had already come into legal force the night before. This period illustrated once again the extent to which existing rules privilege the executive, rather than other MPs, regarding what the House should be recalled to discuss.

Pressure around recall was if anything even more pronounced in summer 2019, when MPs were in the midst of fraught battles over Brexit. As indicated above, the summer recess began just one day after Boris Johnson became Prime Minister, which raised some initial concerns about the timing of the adjournment. During the subsequent weeks, Johnson appeared visibly to step up preparations for a ‘no deal’ exit from the EU – which clearly conflicted with recent decisions by the House of Commons, but which MPs were unable to scrutinise. As Sarah Wollaston had predicted (see previous section), many MPs became troubled about their lack of ability to hold the government to account. On 17 August, before the similar protest over the attempted prorogation, over 100 signed a letter to the Prime Minister demanding that ‘Parliament must be recalled now in August and sit permanently until 31 October, so that the voices of the People can be heard, and that there can be proper scrutiny of your government’ (Rahim 2019). This move was subsequently

backed by the Labour opposition frontbench (Tolhurst 2019). Again, however, the government did not give in to these demands.⁵⁵

When MPs returned at the end of this summer recess, the prorogation had already been announced. This raised the stakes considerably – forcing MPs to back overturning the prorogation through the courts, as they could not do so themselves, and hence arguably contributing towards greater judicialisation. Joanna Cherry successfully led a cross-party group of over 70 MPs in challenging the ruling before the Scottish courts, with her claim ultimately being upheld in the Supreme Court.

In earlier periods there have been frequent disputes over Commons recall in response to various political developments, directed at Labour, Conservative and coalition governments. One high-profile example occurred early in Tony Blair's premiership, when the emergence of disruptive 'fuel protests' during the summer recess provoked pressure from the official opposition for MPs to return to Westminster (Wintour and Wilson 2000; Jones 2006). More recently, the official opposition demanded that the Commons be recalled from its Easter recess in 2016 to discuss the planned closure of Tata Steel's UK steelworks (Farrell, Asthana and Ruddick 2016). In many of these cases ministers refused the requests, and this sometimes provoked claims of impropriety. In the aftermath of the fuel protests, for example, *Daily Mail* columnist Simon Heffer (2000) complained that the inability to force a recall had meant that the government had 'not been held properly to account where it really matters – in the Commons itself'. In response to Prime Minister Tony Blair's policy regarding Lebanon, Labour MP Jon Trickett (2006) led a group of over 100 government backbenchers demanding a summer parliamentary recall, and argued in the press that the inability to force this was 'highly undemocratic'.

Controversy over recall has been especially pronounced in the case of UK military action, given the gravity of such policy decisions. Following the September 2001 terrorist attacks, there was disquiet about recall around military action against Afghanistan (Daily Mail 2001; Guardian 2001). But it was in relation to action against Iraq that pressure became particularly intense. During the 2002 summer recess there were repeated demands for recall from MPs – initially resisted by the government – with an article in the *Express* arguing that reconvening the Commons was necessary because 'it is constitutionally the correct place for the debate to be heard' (O'Flynn 2002). Subsequently, the Commons was recalled to approve action in Syria (2013) and Iraq (2014) – in the former case with MPs refusing to endorse the government's position. Indeed, many have noted that the UK has been gradually edging towards a convention that military action should require parliamentary authorisation in at least some circumstances (e.g. Strong 2018; Lagassé 2017; Public Administration and Constitutional Affairs Committee 2019c). Yet MPs have no way of enforcing such a convention, and this is especially the case when the chamber is not sitting, as illustrated when Theresa May authorised military action in Syria during the Easter 2018 recess, sparking some protest from opposition parties.⁵⁶

In the past, MPs have occasionally used more informal political mechanisms to force ministers into a recall. In 2002, when Blair's government resisted such demands over Iraq, Labour backbencher Graham Allen drew up detailed plans to hold what he later described in debate as a 'rebel, unofficial Parliament'. As he set out, once the government had resisted pressure for recall, Allen consulted other MPs and, finding demand to be high, booked Church House in Westminster for the sitting to take place. He also gained agreement from former Commons Speaker Bernard

Weatherill to preside over the debate, and from the BBC to broadcast the proceedings live.⁵⁷ Recognising the risk of major embarrassment, the government relented and recalled the Commons for a formal sitting. Such a strategy could be repeated in future, but has clear limitations: it would not hold any formal power (in particular over key matters such as passing legislation or a no confidence vote), and there is no guarantee that ministers would attend to respond to questioning. Indeed, when faced with similar complaints in 2019, Boris Johnson not only failed to request a recall but authorised an extended prorogation in the face of intense parliamentary and public criticism. All of this evidence suggests a clear need for a more formal arrangement now to be put in place.

Possible solutions

In each of the previous sections, this report has suggested that key decisions about the Commons agenda should be handed to MPs rather than being left to government control. In the case of recall, this is not so straightforward, since MPs are not sitting at the time. Nonetheless, there have long been demands for reform of the recall process to remove the government's veto power, and various ways around MPs' absence have been suggested. Three main models have been proposed.

The first and simplest would be for recall powers to be vested entirely in the Speaker, possibly with an inbuilt requirement to consult ministers first. In the aftermath of the 2000 fuel protests, veteran Labour MP Tony Benn (2000) proposed such a reform. Subsequently, during the run-up to the invasion of Iraq, Graham Allen pursued a cross-party motion to implement it in Commons standing orders.⁵⁸ The Procedure Committee (2003) made a similar recommendation. As outlined above, the Speaker has held responsibility for recall in the past, and returning to this position would also bring the Commons back into line with procedure in the Lords. Adopting such a change would of course not preclude ministers from requesting a recall as at present, but ministerial initiation would no longer be necessary for the Speaker to act. Versions of this model already operate in several comparable legislatures (see box 9).

This kind of arrangement would put considerable power in the hands of the Speaker. Hence, a second proposed model has been for the Speaker to be empowered only on the request of MPs. One variant, proposed two decades ago by the Hansard Society Commission on Parliamentary Scrutiny (2001), would be for any MP to have the right to request a recall, and the Speaker to decide following consultation with party leaders. Yet this might risk the Speaker adjudicating between a large number of party-political representations. Others have therefore suggested that requests should only be considered where a higher threshold of support is achieved. Gordon Brown's government proposed a version of this model in 2007, which was never implemented, with the necessary threshold being half of all MPs (Ministry of Justice 2007). Yet given the challenges of coordinating MPs when the Commons is not sitting, it might be argued that the threshold should be lower, particularly if combined with some discretion for the Speaker. Hence John Bercow (2017), when Speaker, suggested a threshold of a quarter of all MPs, of whom at least a quarter should be drawn from the government side. As box 9 shows, a threshold of 20% of MPs is fairly commonplace in other countries; but such a low threshold could be subject to political manipulation without some requirements as to the partisan composition. At the same time, an explicit requirement for governing party support could prevent a Commons majority from securing recall during periods of minority government. Hence a more all-purpose requirement could be for any request to require support from MPs representing parties that comprise at least

50% of the Commons membership. A further consideration would be whether ministers should continue to be entitled to initiate the process without the need to achieve this threshold.

Box 9: Arrangements for recall elsewhere in Europe

One recent study of 26 European democracies found that there were only two – the **UK** and **Greece** – which neither gave their parliaments a vote on ending a sitting, nor allowed parliamentary actors to recall the parliament.

The majority of countries allow parliamentary actors – whether the presiding officer or a certain proportion of members – to trigger recall. For example, in **France** the National Assembly (lower chamber of parliament) can be recalled for an extraordinary session either by a majority of its members, or by the Prime Minister. The Assembly must be recalled on a particular agenda, and – in the case of a recall initiated by members – the session lapses when that agenda has been completed, or after 12 days, whichever comes first. The session can be automatically extended to enable a vote of no confidence to take place.

Recall can be triggered in some other countries by a far smaller proportion of members. For example in the **Netherlands** the President of the House of Representatives has the power to call a sitting when they consider it necessary, but must also do so if asked either by the government, or by 30 of its 150 members. The same 20% threshold applies in **Bulgaria**, the **Czech Republic**, **Estonia**, **Hungary** and **Slovakia**. Recall of the **Northern Ireland** Assembly, meanwhile, can be initiated either at the joint request of the First Minister and Deputy First Minister, or at the request of 30 of the Assembly's 90 members.

Sources: Fleming and Schleiter (2020), supplemented by Constitution of France (Articles 29, 31); House of Representatives of the Netherlands Rules of Procedure (Section 46); Standing Orders of the Northern Ireland Assembly (SO 11).

A third model would be for a specific group of MPs to be empowered to trigger recall directly. In the past, Conservative backbencher Peter Bone has argued for a new Business of the House Commission to be handed responsibility for recall⁵⁹ – a proposal reminiscent of that for a cross-party House Business Committee, as discussed earlier in this report. However, the same problems as already identified – around the potential for government control and the absence of an independent backbench voice on such a body – could make this less effective than the two preceding solutions.

Under any of these three models, a further important consideration would be how to determine the Commons agenda during a recall. As indicated above, the existing procedures give the government control over what is discussed on such occasions. When advocating reform of the recall procedures in 2007, Gordon Brown's government argued that there was 'no reason' to change this practice in cases where recall had occurred without government initiation (Leader of the House of Commons 2008). Nonetheless, this could potentially enable ministers to limit the scope of Commons proceedings inappropriately. One option would be for the Speaker to determine the agenda of business, although the Procedure Committee (2003: 21) concluded that this 'could draw him [or her] into matters of party controversy'.⁶⁰

All of the above solutions were originally designed with adjournments in mind. Yet there is little logical reason why they should not also apply to prorogation. Had such a provision been in place,

MPs would have been able to reverse the autumn 2019 prorogation through political means rather than by launching legal proceedings. Reform of this kind was recently advocated in evidence to the Public Administration and Constitutional Affairs Committee (2019b: Q5) by constitutional expert Anne Twomey, who argued for ‘a mechanism for the House to bring itself back into operation early from a Prorogation if it sees the need to do so’. However, if the mechanism for initiating a prorogation is reformed and put into the hands of parliament and if (as a result) future prorogations are very limited in length, the necessity for such a procedure may be much reduced.

Conclusions and recommendations

17. As a matter of principle, the Commons should have the power to recall itself independently of the government. There are various means by which this could be achieved. The three most plausible models are for the Speaker to authorise; for MPs to initiate and the Speaker to approve; or for a House Business Committee or similar body (if established) to authorise.
18. Of the three options, a system allowing the Speaker to approve recall based on a request from MPs is probably the most desirable. If this approach were adopted, some kind of threshold of MP support would be sensible before the Speaker would consider the request – encompassing requirements both on the number of MPs and their partisan composition. For example, a requirement that the request should come from at least 25% of members, drawn from parties representing at least 50% of the total Commons membership, would operate well during times of both minority and majority government. Requiring an actual majority of MPs to request a recall (as the Brown government proposed) would be an alternative, but could prove unduly onerous during recess. Notably, many overseas legislatures set the threshold at 20%.
19. A related question is who should determine Commons business during any recall. The answer will be influenced by how business is set more generally, as discussed earlier in this report, but plausible options include: the government; the Speaker; a House Business Committee (if established); or, in some way, the chamber itself. One possible system could be for the Speaker to set the business, based on a proposition supported by MPs demanding recall, but for the chamber to have an opportunity to change this via an amendable motion. This would be consistent with moves to a votable Commons agenda, as proposed by the Wright committee and discussed earlier in the report.
20. A final question is whether a safeguard is necessary to allow MPs to recall parliament from a prorogation on similar terms. If – as recommended above – the triggering of prorogation is brought under the control of parliament, and such breaks remain short, this seems unlikely to be needed. However, if MPs do not gain a say in the initial prorogation decision, allowing them to bring an unwanted prorogation to an end seems essential.

Conclusion

This report has reviewed a series of key tensions concerning how the House of Commons' time is organised, all of which have come strongly to the fore in recent years. The consistent theme in these disputes has been the extent to which the government should be able to decide what the House of Commons can discuss and when, versus the extent that MPs themselves should be responsible for taking these decisions.

While debate on such questions has been particularly fierce in the last two to three years, these tensions between the rights of government and the rights of parliament are nothing new. Indeed, centuries of tussles between the executive and parliament have gradually shaped the UK constitution. Speaking about the principle of government agenda control enshrined in Standing Order No. 14, Director of the History of Parliament Professor Paul Seaward (2019b) has commented that:

Some have seen it as a basic principle of the British constitution; others have seen it as an abuse of fundamental parliamentary rights. Both views have something to support them, for the British parliamentary tradition has tended to be fiercely defensive of Parliament's rights in principle, but often deferential to the executive in practice.

As demonstrated in this report, the same culture and tradition that gave ministers such advantage over the Commons' day-to-day business continues to infuse the mechanisms for deciding when the House of Commons sits – with MPs unable to control prorogation, limited in their powers over breaks for recess, and formally powerless to instigate a recall if this is resisted by the government.

But while traditions of this kind have developed over centuries, the government's accountability to the House of Commons is now a core principle – arguably even *the* core principle – of our constitution. The government holds office only on the basis that it enjoys the confidence of the House of Commons. While MPs are elected by the voters, the government has no independent electoral mandate of its own. The question, therefore, is how much decision-making power the House of Commons should choose to delegate to the executive. This incremental delegation of power is set out clearly in Erskine May (2019: para. 18.10):

In principle, the control of the distribution of the time available to the House rests with the House itself. In practice, the House has by standing orders delegated this control, with some exceptions for opposition, backbench and other private Members' business and other minor reservations, to the Government. This control was the result of a process which continued over nearly two centuries, whereby an increasing proportion of the time of each session was placed at the disposal of the Government.

The difficulty is that, while at the initial stages such delegation to the executive was temporary, and regularly renewed, it is now enshrined in standing orders – in particular, through Standing Order No. 14. In theory, the standing orders of the House of Commons belong to MPs, not to the government, and it remains at MPs' discretion to change them. However, the degree of government control already enshrined can in practice make this very difficult.

These problems have been highlighted by recent examples. During the COVID-19 crisis, MPs have been unhappy about the lack of consultation by ministers over both parliamentary procedure and public policy – and yet they have struggled to challenge this, due to ministers’ control over House of Commons time. Over Brexit, some considered MPs’ assertiveness in trying to gain control over the timetable to be inappropriate.⁶¹ In truth, in a hung parliament situation, MPs on all sides of the argument sought to use their powers to the full in order to achieve their policy aims. Firm proponents as well as opponents of Brexit voted to block the May government’s Withdrawal Agreement, and at times roundly condemned the government’s tactics. As this report illustrates, those ministerial tactics played a considerable part in fuelling discontent, backbench assertiveness, angry arguments, and consequent negative headlines about parliament. Returning to the words of the Public Administration and Constitutional Affairs Committee (2019a: 22), ‘the effective balance between Government and Parliament is dependent on the Government demonstrating reasonable respect towards the will of the House of Commons’. During this period the government cancelled key votes, withheld backbench business and opposition day debates, encouraged its MPs to boycott votes when opposition debates occurred, and ultimately used its prorogation power to shut down parliament. Yet frequently in the words of ministers, and much of the media, parliament got the brunt of the blame (Russell 2020).

Looking back, the disagreements of 2018–19 fed a significant assertion of executive power over the House of Commons. Lacking a majority, and facing unprecedented backbench dissent, the government reached for every tool in the box in order to fend off unwanted action by MPs. But the concerns raised during this period echoed those heard many times before during periods of majority government, as most obviously articulated a decade earlier in the report of the Wright committee (Reform of the House of Commons Select Committee 2009). Minority government gave new impetus to questions about whether it should be the government by right, or the parliamentary majority, that has decision-making power over much of what the House of Commons does. But those concerns remain ever-present, especially in an environment where government backbench MPs are increasingly independent, and their blind loyalty to ministers cannot be assumed on every issue.

Following the 2019 general election the government has a very comfortable partisan majority in the House of Commons. Yet concerns have frequently been expressed about its ability to keep matters off the agenda that its own MPs would prefer to see discussed. Had the House of Commons enjoyed greater control over its own agenda, MPs’ working arrangements under COVID-19 might have been more consistent with the recommendations of the chamber’s Procedure Committee. The government’s policies to manage the pandemic would also have been more vigorously debated.

Had MPs had more control of their own institution, policy outcomes on all of these matters, including Brexit, might well have remained unchanged; but the levels of acrimony over procedural questions, and the potential reputational damage to parliament, would likely have been significantly reduced. Today, even with the Johnson government’s sizeable Commons majority, it seems unlikely that MPs would support a strategic prorogation to avoid difficult questions. But the only way to be sure that the government is acting with MPs’ support is to guarantee that the House of Commons has the final say.

The questions raised in this report are therefore fundamental. To what extent, in the 21st-century, should the government be able to determine what MPs discuss and when? Should existing levels of government control perhaps be seen as better suited to a bygone age? To remain consistent with the fundamental principles of government accountability to parliament, this report suggests – echoing the words of the Wright committee – that it is now time for members of the House of Commons to take back control.

List of conclusions and recommendations

The default of government agenda control

1. As the Wright committee pointed out in 2009, the level of government dominance of the House of Commons agenda is problematic. Recent events – including minority government, and significant clashes between ministers and their backbenchers over COVID-19, even under times of majority government – have made that increasingly clear. These clashes have fed undesirable levels of acrimony at Westminster, and numerous negative headlines about parliament.
2. The current guiding principle, as set out in Standing Order No. 14, is that Commons agenda time should by default belong to the government. The more appropriate principle is that it should belong to the parliamentary majority.
3. One solution proposed by the Wright committee to gain greater parliamentary control was that the Commons should establish some kind of House Business Committee or Bureau to draw up the weekly agenda, in line with many other parliaments. This change alone would be unlikely to resolve matters satisfactorily, and its effectiveness would greatly depend on the makeup of any such committee.
4. The more effective solution, which could be introduced either with or without a House Business Committee, would be to give the chamber itself control over its agenda (as also applies in many other parliaments) – through the weekly agenda being presented as an amendable motion, rather than a *fait accompli* simply decided by the government. As the Wright committee suggested, this arrangement would have significant benefits – and safeguards could be built in to avoid time wasting and mischievous amendments. As seen later in the report, this change could be central to unlocking many of the current problems at Westminster.
5. These are major questions, engaging with fundamental principles and requiring careful thought to the detail of their implementation. More than a decade on from the Wright committee, it would be appropriate for them to be subjected to formal review. This could take place via the Procedure Committee, or through a new one-off body – perhaps facilitated by the Speaker of the House of Commons.

Time for non-government business

6. Just as it is an important democratic principle that the parliamentary majority, rather than the government, should generally control Commons time, a second such principle is that there should be some protection for minorities. The exceptions within Standing Order No. 14 reflect

this principle to some extent, by granting time for opposition days, backbench business, and private members' bills. But the operation of these allocations in practice falls short, leaving too much at the discretion of the government.

7. The first, most obvious, change needed is an automatic mechanism for increased allocations of non-government business in longer parliamentary sessions. The simplest way of achieving this would be to express the allocation in Standing Order No. 14 as a regular (e.g. fortnightly or monthly) entitlement, rather than on a sessional basis.
8. The degree of government control over the precise timing of individual non-government days is also problematic, and fed significant tensions during the 2017–19 parliament. This problem would be significantly alleviated through moving to a fortnightly or monthly allocation. Such a change should ideally be coupled with a requirement for the weekly Commons agenda to be approved by MPs (as discussed in the earlier section of this report), but could potentially be introduced independently of that reform.
9. Although the proportional allocation of agenda time between government and non-government groupings that exists in other parliaments could be seen as more equitable than the arrangements at Westminster, it has significant disadvantages in privileging parties over individual members and cross-party groups. Nonetheless, consideration could usefully be given to whether the entitlement to opposition days should be stable over time, or whether more such days should be available in parliaments when the opposition is stronger. In parliaments that use a principle of proportionality, a minority government controls only a minority of agenda time.
10. There have recently been some significant disagreements about the nature of business taken on opposition days. As noted by the Public Administration and Constitutional Affairs Committee (2019a), the government's pattern of asking its members to abstain in votes on opposition days in 2017–19 eroded the status of parliamentary motions in a regrettable way, and in turn helped drive opposition parties towards the greater use of the 'humble address' procedure. In fact, if anything, the uses of opposition days are limited compared to other legislatures – where opposition parties can for example use such time for proposing bills. The government should seek to win votes on opposition business on merit, rather than deploying procedural tactics.
11. Some recent controversies might have been alleviated had backbench business been used in a more ambitious manner. However, there are currently various obstacles which discourage such use. Removing the government's ability to block backbench business (as proposed above) would be one means to ensure that it could be used more boldly and effectively. Crucially, however, the Wright Committee envisaged that the Backbench Business Committee would exist in an environment where the House of Commons voted on its own weekly agenda. Introducing such a reform would avoid the risk of members of the committee acting as a blocking minority, and make both the Backbench Business Committee and the government more responsive to the wishes of the chamber as a whole.
12. MPs could also be more ambitious in using the Backbench Business Committee route if time is withheld by the government for key debates. This would be particularly appropriate, for example, for debating recommendations from select committees, such as Procedure and

Liaison, which are concerned with how the House itself operates. Currently, MPs often default to demanding that the government make time available, and clearly using backbench time for ‘House business’ would leave less time available for other matters. This suggests a need to review the principles of what belongs in government time and what more appropriately belongs in backbench time – potentially with more agenda time allocated to the latter. This and other matters merit a fuller review of how backbench business operates – more than a decade on from its introduction in 2010.

Adjournment, prorogation and dissolution

13. Control over the House of Commons day-to-day agenda is umbilically linked to questions of when it sits. Reforms to give MPs control of what is discussed could ultimately be circumvented if the government retained the power, via prorogation, to shut parliament down.
14. The Supreme Court judgment of autumn 2019 has established that there are some legal limits on the government’s power to prorogue parliament, but these limits remain unclear. To avoid risks of future litigation, and to comply with the principle of parliament’s control over its own affairs, prorogation should now be made subject to authorisation by the House of Commons. The obvious vehicle for this would be the government’s planned legislation to amend the Fixed-term Parliaments Act.
15. There are inadequacies in the current system to allow MPs to authorise periodic adjournment, as government motions are not currently debatable or amendable. As a minimal stand-alone measure Standing Order No. 25, which sets this out, should be amended to remove the ‘forthwith’ rule. Adopting some of the measures outlined in Part 1 of the report should also help alleviate this situation – giving MPs greater control over the weekly agenda, and guaranteeing that non-government time would be available to move their own motions on periodic adjournment if necessary.
16. Where MPs authorise a prorogation or a periodic adjournment, it should be possible for them to revisit this decision if circumstances change before it has begun. Again, this would be most easily achieved by adopting measures outlined in Part 1 of this report, most notably guaranteed non-government time and a ‘votable’ agenda, which would allow MPs to secure such a debate if not provided by the government.

Recall of the Commons

17. As a matter of principle, the Commons should have the power to recall itself independently of the government. There are various means by which this could be achieved. The three most plausible models are for the Speaker to authorise; for MPs to initiate and the Speaker to approve; or for a House Business Committee or similar body (if established) to authorise.
18. Of the three options, a system allowing the Speaker to approve recall based on a request from MPs is probably the most desirable. If this approach were adopted, some kind of threshold of MP support would be sensible before the Speaker would consider the request – encompassing requirements both on the number of MPs and their partisan composition. For example, a requirement that the request should come from at least 25% of members, drawn from parties representing at least 50% of the total Commons membership, would operate well during times of both minority and majority government. Requiring an actual majority of MPs to request a

recall (as the Brown government proposed) would be an alternative, but could prove unduly onerous during recess. Notably, many overseas legislatures set the threshold at 20%.

19. A related question is who should determine Commons business during any recall. The answer will be influenced by how business is set more generally, as discussed earlier in this report, but plausible options include: the government; the Speaker; a House Business Committee (if established); or, in some way, the chamber itself. One possible system could be for the Speaker to set the business, based on a proposition supported by MPs demanding recall, but for the chamber to have an opportunity to change this via an amendable motion. This would be consistent with moves to a votable Commons agenda, as proposed by the Wright committee and discussed earlier in the report.
20. A final question is whether a safeguard is necessary to allow MPs to recall parliament from a prorogation on similar terms. If – as recommended above – the triggering of prorogation is brought under the control of parliament, and such breaks remain short, this seems unlikely to be needed. However, if MPs do not gain a say in the initial prorogation decision, allowing them to bring an unwanted prorogation to an end seems essential.

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Appendix: Standing Order No. 14

Arrangement of public business

(1) Save as provided in this order, government business shall have precedence at every sitting.

(2) Twenty days shall be allotted in each session for proceedings on opposition business, seventeen of which shall be at the disposal of the Leader of the Opposition and three of which shall be at the disposal of the leader of the second largest opposition party; and matters selected on those days shall have precedence over government business provided that—

(a) two Friday sittings shall be deemed equivalent to a single sitting on any other day;

(b) on any day other than a Friday, not more than two of the days at the disposal of the Leader of the Opposition may be taken in the form of four half days, and one of the days at the disposal of the leader of the second largest opposition party may be taken in the form of two half days; and

(c) on any such half day, proceedings under this paragraph shall either—

(i) lapse at seven o'clock on Monday, four o'clock on Tuesday or Wednesday or two o'clock on Thursday if not previously concluded, or

(ii) be set down for consideration at the hour specified in sub-paragraph (i) above and, except on days on which private business has been set down for consideration under the provisions of paragraph (5) of Standing Order No. 20 (Time for taking private business), shall be entered upon at that time:

Provided that on days on which business stands over until seven o'clock, four o'clock or two o'clock under the provisions of Standing Order No. 24 (Emergency debates) proceedings under this sub-paragraph shall not be entered upon until such business has been disposed of, and may then be proceeded with for three hours, notwithstanding the provisions of Standing Order No. 9 (Sittings of the House).

(3) For the purposes of this order 'the second largest opposition party' shall be that party, of those not represented in Her Majesty's Government, which has the second largest number of Members elected to the House as members of that party.

(4) Thirty-five days or its equivalent shall be allotted in each session for proceedings in the House and in Westminster Hall on backbench business of which at least twenty-seven shall be allotted for proceedings in the House; the business determined by the Backbench Business Committee shall have precedence over government business (other than any order of the day or notice of motion on which the question is to be put forthwith) on those days; and the provisions of paragraph (2)(c) of this Standing Order shall apply to any of those days taken in the House in the form of half-days.

(5) For the purposes of paragraph (4) above, a Thursday sitting in Westminster Hall at which the business is appointed by the Backbench Business Committee shall count as one half-day and a topical debate shall count as one quarter-day.

(6) Backbench business comprises all proceedings in the Chamber relating to any motion or order of the day except:

(a) government business, that is proceedings relating to government bills, financial business, proceedings under any Act of Parliament, or relating to European Union Documents, or any other motion in the name of a Minister of the Crown;

(b) opposition business under paragraph (2) above;

(c) motions for the adjournment of the House under paragraph (7) of Standing Order No. 9 (Sittings of the House), private Members' motions for leave to bring in bills under Standing Order No. 23 (Motions for leave to bring in bills and nomination of select committees at commencement of public business) and private Members' bills under paragraphs (8) to (13) below;

(d) proceedings relating to private business;

(e) any motion to amend this order or Standing Order No. 152J (Backbench Business Committee);

(f) business set down at the direction of, or given precedence by, the Speaker.

(7) The proceedings to be taken as backbench business shall be determined by the Backbench Business Committee, as set out in Standing Order No. 152J (Backbench Business Committee).

(8) Private Members' bills shall have precedence over government business on thirteen Fridays in each session to be appointed by the House.

(9) On and after the eighth Friday on which private Members' bills have precedence, such bills shall be arranged on the order paper in the following order—

consideration of Lords amendments, third readings, consideration of reports not already entered upon, adjourned proceedings on consideration, bills in progress in committee, bills appointed for committee, and second readings.

(10) The ballot for private Members' bills shall be held on the second Thursday on which the House shall sit during the session under arrangements to be made by the Speaker, and each bill shall be presented by the Member who has given notice of presentation or by another Member named by him in writing to the Clerks at the Table, at the commencement of public business on the fifth Wednesday on which the House shall sit during the session.

(11) Until after the fifth Wednesday on which the House shall sit during the session, no private Member shall—

(a) give notice of a motion for leave to bring in a bill under Standing Order No. 23 (Motions for leave to bring in bills and nomination of select committees at commencement of public business); or

(b) give notice for presenting a bill under Standing Order No. 57 (Presentation and first reading); or

(c) inform the Clerks at the Table of his intention to take charge of a bill which has been brought from the Lords.

(12) A private Member's bill to which the provisions of paragraphs (2) to (6) of Standing Order No. 97 (Scottish Grand Committee (bills in relation to their principle)) have applied, and which has been considered by a Scottish public bill committee, shall not be set down for consideration on report so as to have precedence over any private Member's bill so set down which was read a second time on a day preceding that on which the bill was reported from the Scottish Grand Committee under paragraph (3) of that Standing Order.

(13) An order appointing a day for the second reading of a private Member's bill shall lapse at the rising of the House on the preceding sitting day if at that time the bill has not been printed and delivered to the Vote Office, and the House shall make no further order appointing a day for the second reading of the bill until it has been printed.

¹ That report was *The House Rules?* (Russell and Paun 2007).

² See for example Russell (2011).

³ The exception is bills which begin in the House of Lords, which do not fall under the terms of the Parliament Acts 1911 and 1949 (the statutes that otherwise allow the Commons to overrule the Lords after a period of delay). In practice these kinds of clashes rarely apply and most disagreements are resolved via negotiation.

⁴ For a more detailed discussion of the different kinds of House of Commons business and the complexities of determining what might most appropriately be classified as ‘government business’ see Reform of the House of Commons Select Committee (2009: 39–43).

⁵ For a brief summary, see paragraph 120 of the Wright committee report.

⁶ Another dramatic example of such delay came when the government suddenly proposed debate on a change proposed by the Procedure Committee at the very end of the 2010–15 parliament, two and a half years after it had been made, and without the knowledge (or support) of the committee’s then chair, Charles Walker (Russell 2015).

⁷ HC Deb 20 May 2020 c575.

⁸ Ibid c581.

⁹ HC Deb 23 September 2020 c1067–69.

¹⁰ HC Deb 15 October 2020 c528. Rees-Mogg (as in September) did not directly engage with the demand for a debate, simply suggesting that he was ‘obviously sympathetic to the position that my right hon. Friend finds herself in – she is a much respected Member of this House – but the truth is that democracy has not died; it is thriving, because we are holding our debates properly’.

¹¹ HC Deb 12 November 2020 cc1070–71.

¹² For example on 9 September 2020, Lindsay Hoyle accused the government of ‘mak[ing] decisions of this kind in a way that shows insufficient regard to the importance of major policy announcements being made first to this House and to Members of this House wherever possible’ (HC Deb c619).

¹³ HC Deb 9 September 2020 c619; 30 September 2020 c331.

¹⁴ The vote was on a statutory motion, whose words were set out in the Coronavirus Act, which needed passing in that form in order to renew the provisions. The Act did not contemplate the possibility of the motion being amended, and the reason given by the Speaker for not allowing the amendment to be voted upon was that its approval could have led to legal ambiguity regarding whether the Commons had met the requirements for the renewal of the Act or not.

¹⁵ HC Deb 30 September 2020 c331.

¹⁶ Such a cancellation was possible because the Business of the House order made on 4 December, allotting five specified days for the debate, provided that an order to resume the adjourned debate should be the first item of government business on each allotted day. This left the decision on whether to proceed with the debate each day with the government, so that it could be interrupted by the duty whip simply declining to move the order of the day. The means by which the government had achieved this, and the rights and wrongs of such government control, were debated at some length in the House of Commons on 10 December 2018, including during points of order. See for example the comments by Chris Bryant (c110), and the Speaker’s response.

¹⁷ E.g. Jonathan Djanogly, HC Deb 17 December 2018 c541.

¹⁸ E.g. David Lidington, HC Deb 14 March 2019 c563–65.

¹⁹ In the vote on 15 January 2019, 118 Conservative MPs voted against the government; in the subsequent vote on 12 March, this number remained at 75.

²⁰ As already indicated, options for reform of the private members’ bill process have been considered frequently by other bodies, and are not covered in detail in this report. For discussion see Brazier and Fox (2011), Procedure Committee (2013; 2016).

²¹ The Cooper-Letwin and Benn-Burt bills which were part of the Brexit controversy were subject to strict timetable motions, but these were very atypical circumstances, and this was not ‘programming’ in the usual sense.

²² Similarly, some bills will require a ‘ways and means resolution’ (to authorise taxation), or ‘Queen’s consent’ (for legislation that affects the monarch’s interests, including through affecting the royal prerogative). As discussed by Evans (2020), financial resolutions depend entirely on action by the government, and current arrangements also give ministers a key role in Queen’s consent.

²³ In 2017 Shadow Leader of the House of Commons Valerie Vaz warned that ‘we would not expect one year’s worth of Opposition days to be allocated over the two years’ (HC Deb 13 July 2017 c462) and in 2019 Labour MP Angela Eagle claimed that ministers had ‘redefined a Session as two years long and given the Opposition less time’ (ibid 3 April 2019 c1073).

²⁴ These gaps were widely noted by opposition parties. For example in March 2019 Valerie Vaz observed that ministers had ‘refused to grant Opposition days for 150 days’ (HC Deb 18 March 2019 c788), and there were similar complaints later in the year (e.g. 16 May 2019 c386 and 3 October 2019 c1365).

²⁵ On 16 October 2020, chair of the Liaison Committee Sir Bernard Jenkin (2020) wrote to the Leader of the House on behalf of select committee chairs to urge that this kind of curtailing of non-government business would not be repeated in the event of a return to virtual proceedings resulting from the rise in coronavirus cases.

²⁶ See Procedure Committee (2020e: 16–17).

²⁷ Standing Order No. 14(6)(a) specifically defines such approval motions as government business and therefore excludes them from being taken in backbench time. Application of the same logic would suggest that they cannot be taken in opposition time.

²⁸ For an example of a prayer being debated on an opposition day, see HC Deb 13 September 2017 c905–46.

²⁹ For example on 25 October 2018 (c455), Mearns complained that ‘by the week beginning 12 November, it will have been four parliamentary weeks since the Committee has had any time in the Chamber’; on 1 November (c1073) he noted that ‘By the calculations of the officers of the Backbench Business Committee, we have had 24 Chamber days in the last 16 months, when the Standing Orders suggest that we would get 27 days in a normal 12-month sitting period’; by 6 December (c1065) he was noting that ‘by next Thursday it will have been eight weeks since we had any Backbench Business in the House, and I am pretty sure that when the Committee was established, the Standing Orders were written with the intention that the 27 days of parliamentary time would be over a one-year Session, not over two years’.

³⁰ For example mental health first aid in the workplace, maintained nursery schools, the 20th anniversary of the Macpherson report, St David’s Day, net zero carbon emissions, beer taxation and pubs, and shale gas exploration (Backbench Business Committee 2019). Brexit-related debates were far more limited, but did include a debate on the impact of Brexit on the NHS, on 26 February 2019.

³¹ These were on Brexit impact assessments (1 November 2017), Universal Credit project assessment reviews (5 December 2017), Carillion risk assessments and improvement plans (24 January 2018), EU exit analysis (31 January 2018), and legal advice on the Brexit withdrawal agreement (13 November 2018). See Desai (2019).

³² HC Deb 10 December 2018 c27. The Speaker went on to say that ‘Indeed, in the hours since news of this intention emerged, many colleagues from across the House have registered that view to me in the most forceful terms’.

³³ In November 2019, shortly before parliament was dissolved, the Procedure Committee published correspondence from the Clerk of the House (Benger 2019), the Leader of the House (Rees-Mogg 2019a), and the Shadow Leader of the House (Vaz 2019) on the allocation of business in long sessions.

³⁴ This would be harder to implement for private members’ bill Fridays, given the need for these bills to complete a series of stages to become law. The current practice is for second reading debates to be prioritised in the early days each session, with the later days then being used for the remaining legislative stages – thus potentially allowing bills to complete the entire process. As explained by the Clerk of the House, ‘Where the decision to elongate a session is taken late it may not be straightforward to devise how best to use additional Fridays which may be given, whether to advantage Bills reported from Committee or give new Bills a chance to get second reading and thus progress’ (Benger 2019: 6).

³⁵ Perhaps unsurprisingly, there has been resistance from the government to the introduction of a more rigid system. In a letter to the Procedure Committee, Leader of the House Jacob Rees-Mogg (2019a) suggested that ‘devising a rules-based system could create significant challenges to maintaining the Government’s flexibility over the management of business’, preferring instead to maintain the allocation of opposition days through the ‘usual channels’.

³⁶ Such debates were significantly more common in the Backbench Business Committee’s early years. For example, it sponsored debates on the process of investigations into MPs’ conduct, lay membership of the Committee on Standards and allowing the Public Accounts Committee to appoint specialist advisers (2 December 2010); on the operation of the IPSA allowances scheme (11 May and 15 December 2011); on the use of mobile electronic devices in the chamber and other matters raised by the Procedure Committee (13 October 2011); and on sitting hours (11 July 2012). Subsequently, such examples have been rare.

³⁷ Technically, a ‘recess’ refers to a prorogation, but the term is now more widely used to refer to periodic adjournments (Erskine May 2019: para 8.2). Under the Commons standing orders, there is a standard pattern of daily sittings (generally Monday to Thursday) – so when the House is adjourned at the end of one sitting day, it will by default automatically resume on the next standard sitting day.

³⁸ Figures provided by the House of Commons.

³⁹ However, a parliament could not exceed five years under the Septennial Act 1715 (as amended by the Parliament Act 1911).

⁴⁰ Under the terms of the Act a vote of no confidence does not automatically trigger a general election, but a 14-day period during which a government may seek to re-secure the confidence of the House of Commons before this occurs.

⁴¹ HC Deb 24 June 2019 c532–33.

⁴² HC Deb 26 September 2019 c916–20.

⁴³ This appears to have been a loophole left by the rebels, on the basis that the House of Commons might normally have been expected to adjourn for a party conference recess.

⁴⁴ *R (on the application of Miller) v. the Prime Minister; Cherry and others v. Advocate General for Scotland* 2019.

⁴⁵ Claims have also been made on other occasions that prorogation has been used by governments for (often seemingly inappropriate) political purposes – both in the UK and elsewhere. For a summary, see Cowie (2019) and Twomey (2018).

⁴⁶ Solicitor General Robert Buckland was reported to have told BBC News that the government was considering how to deal with this ‘same question’ rule, suggesting that ‘there are ways around this – a prorogation of parliament and a new session’ (Elgot 2019).

⁴⁷ See oral evidence to PACAC by Professors Alison Young, Gavin Phillipson and Petra Schleiter (Public Administration and Constitutional Affairs Committee 2020b); oral evidence to PACAC by Lord Sumption (Public Administration and Constitutional Affairs Committee 2019b); written evidence to the Constitution Committee by Professor Robert Blackburn (2019) and Professor Robert Hazell (2019).

⁴⁸ On 2 June 2020, recall was used to enable the Commons to meet three hours earlier than planned – on the first day back after a periodic adjournment – to agree new procedures for Commons business during the COVID-19 pandemic.

⁴⁹ The Commons Library briefing lists 30 occasions, but there was a subsequent Commons recall on 30 December 2020, the primary aim of which was to pass the European Union (Future Relationship) Bill.

⁵⁰ E.g. HC Debs 16 August 1920 c663, 4 August 1922 c1929, and 11 December 1931 cc2305–07.

⁵¹ E.g. HC Deb 22 December 1932.

⁵² Standing Order 17(1) of the House of Lords Standing Orders Relating to Public Business states that ‘If, during any adjournment of the House, the Lord Speaker, after consultation with Her Majesty’s Government, is satisfied that the public interest requires that the House should meet at a time earlier than that appointed, he may signify that he is so satisfied and notice shall be given and thereupon the House shall meet at the time stated in the notice, as if it had been duly adjourned to that time’. However, the Lord Speaker is likely to exercise discretion to recall the Lords only if the Commons itself has been recalled.

⁵³ Succession to the Crown Act 1707, Meeting of Parliament Act 1797, Reserve Forces Act 1996, Civil Contingencies Act 2004.

⁵⁴ HC Deb 30 December 2020 cc664–65, 673.

⁵⁵ There were some isolated demands recall earlier in the Brexit process. When the negotiations reached a critical stage in 2018, Conservative backbencher Anne Main suggested that parliament should be recalled in the event that the EU demanded further concessions (HC Deb 9 July 2018 c723). Later that year the Leader of the Opposition proposed that MPs should return early after Christmas to vote on the Prime Minister’s negotiated withdrawal agreement (Cowburn 2018).

⁵⁶ E.g. Ian Blackford and Jo Swinson (HC Deb 16 April 2018 cc48–49, 63).

⁵⁷ HC Deb 2 April 2009 cc1094–99.

⁵⁸ This motion, listed on the House of Commons Future Business paper for 10 June 2003, was signed by 90 members across all parties. Conservative signatories included Peter Bottomley, Kenneth Clarke, Michael Fallon, Andrew Mitchell, John Redwood and George Young; Liberal Democrat signatories included Malcolm Bruce, Vince Cable and Ed Davey; Labour signatories included Frank Field, Martin Salter and Jon Trickett; others included Adam Price and Angus Robertson of the SNP.

⁵⁹ HC Deb 2 September 2014 c194.

⁶⁰ A further solution could be for the Commons agenda in such circumstances to be agreed by a new House Business Committee, if such a body were established.

⁶¹ Leader of the House of Commons Jacob Rees-Mogg described such moves as ‘constitutionally irregular’ for having ‘subver[ted] Parliament’s proper role in scrutinising and the Executive’s in initiating’ (HC Deb 3 September 2019 cc90–91).

The House of Commons is the senior chamber in the UK's sovereign parliament, to which the executive is accountable. Yet MPs have surprisingly little control over what the Commons can discuss, and when. Instead, this by default tends to rest with the government.

Control of the House of Commons' time has frequently been a topic of controversy in recent years. The parliamentary battles over Brexit in 2019 saw MPs seeking to 'seize the agenda' from the government to debate alternative Brexit options, and the government attempting to prorogue parliament against the wishes of MPs. In 2020 there were major tensions over parliamentary scrutiny of the government's pandemic response, and MPs' rights to participate in parliament virtually. But such controversies are nothing new. In 2009 the 'Wright committee' urged that the House of Commons should 'wrest control back over its own decisions' – yet key recommendations to tackle this were never implemented.

This report asks why MPs lack control of their own institution, examines the problems that this causes, and, crucially, suggests what should be done to resolve them. It argues that a core principle guiding House of Commons functioning should be majority decision-making, not government control.

About the Constitution Unit

The Constitution Unit is a research centre based in the UCL Department of Political Science. We conduct timely, rigorous, independent research into constitutional change and the reform of political institutions. Since our foundation in 1995, the Unit's research has had significant real-world impact, informing policy-makers engaged in such changes – both in the United Kingdom and around the world.

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