

Further written evidence submitted by Dr John Benger, Clerk of the House of Commons (CVR 119)

Introduction

1. The Chair of the Procedure Committee, in her letter to the Speaker of 18 December, asked for the Speaker's initial thoughts, informed by the expertise of the House authorities, about whether, when and to what extent the House might return to practice prior to March 2020. The Speaker has asked the House Service to prepare a memorandum to assist in discussion of these matters, and to supplement his own views.

The public health context

2. Before turning to the specific questions raised by the Committee, it may be helpful to make a few remarks about the public health context. The main ways in which public health requirements have affected the business of the House and its Committees since the onset of the pandemic have been as follows:
 - a. A requirement to limit the number of Members and staff who can be present in the Chamber at any one time;
 - b. A requirement to limit the number of Members and others who are present in the Grand Committee Room (where Westminster Hall sittings are held) and in other Committee rooms (where select and general committees meet) at any one time;
 - c. A requirement to limit the numbers who can be present in certain spaces within the precincts where parliamentary business is transacted or supporting services are provided, including the division lobbies, Vote Office outlets, the Library and offices where procedural services are provided;
 - d. Limitations on the attendance of Members, their staff, Parliamentary staff and others (including select committee witnesses) at Westminster due to public health advice or other factors.
3. It seems likely that these requirements will not be removed suddenly and all at once. If continuing public health requirements lead to a managed and gradual withdrawal of some restrictions, it might make sense for there to be a managed transition from the arrangements put in place to address them.
4. The Committee's request suggests that it is considering the procedural and practical implications of a future state in which exceptional public health requirements no longer affect parliamentary business. This memorandum seeks to address such a future state to aid discussion, but should not be read as making any assumptions about the timescale for, or indeed the likelihood of, reaching such a future state.

Attendance as basis for participation

5. Broadly speaking, physical attendance at Westminster has been the usual basis for participation in parliamentary proceedings in the Chamber and in most formal activities in committees. There are, of course, ways to participate in proceedings remotely of long standing—such as tabling amendments and questions—but until the recent changes physical attendance has been required for almost all Chamber activities, except in very limited circumstances.
6. An example of the formal arrangements that can be made to avoid the requirement for physical attendance is in relation to private Members’ ballot bills, where success in the ballot and the consequential benefits in terms of priority are personal. On the day of formal presentation of the bills, a nominated Member can stand in for the successful Member to protect their priority in the running order. Other informal arrangements occur from time to time when an absent Member asks another Member to act on their behalf in certain types of business, in which case the replacement Member takes responsibility for the proceeding, and the role of the absent Member can only be acknowledged informally.
7. It is important to note that some exceptions to physical attendance being the basis for participation existed prior to March 2020. For instance:
 - It has long been possible for witnesses to select committees to give evidence by video link
 - Exceptional arrangements have occasionally been made for select committee chairs to exercise formal powers following meetings at which some members have not been physically present¹
 - Proxy voting in respect of Members was introduced on a temporary basis in and has now been made permanent in respect of parental leave and certain types of care.²
 - There is a longstanding informal practice of “nodding through”, which has allowed the votes of Members on the Estate, but not present in the division lobbies, to be recorded.
8. Perhaps the most fundamental decision the Committee will need to consider in this inquiry is whether it is appropriate to revert to the pre-2020 assumptions about the requirement for physical attendance at Westminster as the basis for direct participation in proceedings in the Chamber, and in formal proceedings in committee, except in the case of the pre-existing exceptions noted above.

Call lists

9. Call lists were first introduced during the period of “hybrid” proceedings (that is, proceedings in which Members can participate remotely by video link, as well as in person) in late April and May 2020. They have remained in use since then, even in respect of debates where virtual participation was not possible between June and December 2020. They remain

¹ CJ (2012-13) 181, 16 July 2012 (Parliamentary Commission on Banking Standards).

² Votes and Proceedings, 1 February 2018; Standing Order 39A.

an important tool for managing physical limits on attendance in the Chamber to enable social distancing, as well as being essential to the smooth operation of arrangements for virtual participation.

10. Call lists have been prepared under the authority of the Speaker. They are not reliant on any of the temporary orders considered in this memorandum.
11. It is not for the House of Commons Service to comment on the merits or otherwise of call lists being retained when social distancing is no longer considered necessary in the Chamber, but it is important to note that the authority for call lists rests with the Speaker, not the orders passed by the House, and the decision on their retention is properly one for the Speaker and Deputy Speakers.
12. I now turn to the four questions posed by the Committee.

Question 1: Whether and how far distinctions can be drawn between procedural and practical considerations

13. The procedural and practical considerations are interlinked. For the purposes of preparing this answer, “procedural” considerations are taken to include:
 - a. Formal decisions of the House, for example, the passage of specific orders of temporary duration, including temporary amendments to Standing Orders;
 - b. Changes made under the authority of the Speaker, the Chairman of Ways and Means (in respect of Westminster Hall) or the Chairs of general and select committees;
 - c. Changes in Member behaviour and conduct, including on matters covered by the courtesies and conventions of the House which are not strictly procedural.
14. Practical considerations are taken to include:
 - a. Technological requirements, including those relating to broadcasting and to virtual participation, and
 - b. The staffing impacts associated with the pandemic and with the procedural changes arising from it.
15. The procedural considerations are addressed in the answers to the subsequent questions, so it may be helpful at this point to provide an overview of the practical considerations.
16. The changes to the practice of the House in response to the pandemic have required very rapid adaptations and extensions to the use of technology by the House Service, including in particular the Parliamentary Broadcasting Unit and the contractors with which it works, as

well as the Parliamentary Digital Service. This has enabled the introduction of a range of changes, of which the following list is illustrative rather than comprehensive:

- a. Virtual participation in Chamber proceedings drawing on the use of Zoom, a method subsequently adopted by the House of Lords, and involving significant changes within the Chamber, including the provision of large screens;
 - b. Virtual and subsequently hybrid public and private meetings of select committees and joint committees, alongside similar developments in the House of Lords;
 - c. Remote voting using secure technology based on an existing platform previously developed by the Parliamentary Digital Service and the House Service (“MemberHub”), an approach subsequently successfully adopted by the House of Lords;
 - d. The use of pass readers to record the names of Members voting in divisions;
 - e. The electronic laying of official papers before the House (and the House of Lords);
 - f. The extended use of MemberHub for the submission of names for statements and urgent questions, alongside its pre-existing use for questions and Early Day Motions.
17. These technological changes have generally not involved creating new technological solutions from scratch. To some degree, the House Service and the Parliamentary Digital Service have benefitted from the progress made in developing technology-based procedural solutions, and sustained investment in technology to support broadcasting and reporting of the House, prior to the pandemic. Where new technology has been deployed, it has generally built on well-developed proprietary systems, such as Zoom.
18. The staffing impact has been considerable, and it is not easy to see how it will be radically reduced. The impact has been twofold. First, staff in the House of Commons Service, alongside Members and their staff, and workers in many other workplaces, had to adapt rapidly to provide a range of services from home and/or remotely. Many procedural services that were provided wholly or partly face-to-face or using paper are now provided electronically or by phone. This underlying process goes well beyond procedural services, of course, and, in that sense, is not directly relevant to the subject matter of this memorandum. But this process has necessarily added to the pressures and demands on staff associated with the procedural changes required by the House and its committees.
19. Second, technological innovation has been and will remain very labour-intensive. It has involved sustained commitment from existing staff in the House Service and Parliamentary Digital Service, a substantial extension of the use of contractors, most notably our established broadcast partners, and the reassigning of staff. All those concerned have proved immensely adaptable, enabling the House of Commons Chamber to be the first in the world to introduce a hybrid system in response to the pandemic in April and also

enabling a rapid response to changing requirements, such as the introduction of virtual participation in debate on a new basis from the recall of the House on 30 December 2020 and with immediate effect.

20. In setting out these practical considerations, I don't intend to suggest that they should act as a determining factor in the decisions the House makes about its proceedings and those of its committees in the future. The main effect of these considerations is that reasonable notice should be given wherever possible for changes, and for any features of the current temporary adaptations that might become permanent. The Committee should also be aware that prolonged use of such innovations and such technologies will have budgetary implications – in terms of both technology and staffing resource. It should also be borne in mind that most of the overhead costs associated with supporting virtual participation in the Chamber would apply even in a scenario where virtual participation was only open to a limited number of Members.
21. The practicalities of the methods used to enable virtual proceedings do have an impact on the proceedings themselves. The need to make sure those Members participating virtually are on line and audible means that proceedings have to be more choreographed than before. While it has long been good practice to give notice of points of order, it is not unknown for other Members to respond or make further points once a matter has been raised. It is not currently possible for those participating virtually to intervene or be intervened upon.
22. In theory, it is technologically possible that there could be a system whereby those Members participating virtually could indicate they wished to speak and be brought in by the Chair, but it would require resources to develop, both financial and in staff time. Any such system would, however, increase the pressure on the Chair and those assisting the Chair. It is easy to see who wishes to intervene when Members are physically present; anyone who has handled a large online call will know the difficulty of identifying those who are waiting to speak. The number of potential participants in the Chamber are far higher than on most such calls.
23. It is a matter for Members as to whether these changes are beneficial or not, but they do impact on the principle that Members have to be present to participate, and have to pay attention to the progress of proceedings in the Chamber

Question 2: Where procedural changes made since March are governed by temporary orders, what the practical implications of those orders lapsing would be?

24. The procedural changes governed by temporary orders can be considered under five separate headings, relating to select committees, voting in divisions, including on business governed by the “English Votes for English Laws” Standing Orders, voting in Select Committee Chair by-elections, social distancing requirements in the Chamber and virtual participation in proceedings in the Chamber.

Select Committees (participation and reporting)

25. This order was first introduced on 24 March 2020. Unlike the other temporary orders, the power to extend the operation of the order lies within the discretion of the Speaker, subject, of course, to the power of the House itself to amend or rescind the order.
26. The order permits Members to participate in Committee meetings, including evidence-taking, remotely. It also facilitates remote agreement of reports and other decisions. Without these powers Members would have to revert to being together physically in order for formal meetings to be held and reports to be agreed.

Voting in divisions

27. A remote electronic voting system was developed during the Easter recess, at the request of the Leader of the House. On 22 April 2020, the House agreed a motion to introduce remote voting. The order on remote voting was due to lapse on 12 May 2020, but was extended until 20 May. After large-scale testing with Members, remote voting was used for the first time on 12 May 2020. Members used MemberHub to cast votes electronically, whether they were on or off the Estate. Members had 15 minutes to vote. They were notified about a division by text and email. There was a back-up system for any Member who experienced technical difficulties, which was typically used by one or two Members each time there was a division. The division result could be published online as soon as it had been announced in the Chamber. Electronic voting could theoretically have been used for double majority or Legislative Grand divisions under the “English Votes for English Laws” (EVEL) standing orders, but it never was as the EVEL Standing Orders had been temporarily disapplied. On 20 May 2020, the order on remote voting lapsed and was not renewed.
28. When the House returned after the Whitsun recess, on 2 June 2020, it agreed a motion stating that divisions would be conducted under arrangements made by the Speaker. The motion specified that Members could participate in divisions only if they were physically present on the Parliamentary Estate and that the Speaker’s arrangements had to conform to Public Health England guidance. The motion was itself subject to a division and, because the order on remote voting had lapsed without being replaced, and because the House’s previous method of voting by walking through the division lobbies was regarded as not sufficiently safe on public health grounds, the House was left with no agreed way of dividing. In this situation, the Speaker specified the method that would apply: Members walking through the Chamber and stating their name and vote at the Despatch Box.³
29. After the motion had been agreed on 2 June 2020, this “roll-call” voting continued to be used until 11 June (and is still in use as a back-up if pass reader voting fails). Each division took between 30 and 45 minutes and there were long queues to get to the Chamber. The queue in the Chamber itself moved too quickly for Members’ names to be recorded in real time, so they were recorded afterwards by divisions staff watching a broadcast of the division (this necessitated a live broadcast feed of the division). This meant the results

³ This voting method has been widely referred to as “roll-call” voting, although it would more accurately be described as an “open declaration of votes”.

usually took more than an hour to produce and EVEL votes would not have been possible even if those standing orders had not been temporarily disapplied.

30. Pass reader voting has been used since 15 June 2020, under the authority conferred on the Speaker by the order of 2 June. Members vote by walking through the appropriate Lobby and tapping their pass against one of two pass readers. Members who are nominated proxies tap their pass against the reader to record their own name, and then as they leave inform the Tellers how many proxy votes they are casting and email the Public Bill Office so that the names of their proxies can be recorded. Originally, 12 minutes were allowed before the doors were locked. As the number of Members voting in person decreased, this interval was reduced to 10 minutes and then to the normal minimum of eight minutes.
31. When pass reader voting was first used, the names from the pass readers had to be printed and entered into the divisions system manually. The names can now be extracted from the pass reader computer using an encrypted memory stick. This has reduced the time involved in processing divisions. However, proxy votes still need to be entered manually into the divisions system from emails. The time taken from the end of a division to the publication of the names online is usually about 15 to 20 minutes and EVEL votes are not currently possible. The pass readers in the Lobbies are a temporary installation and were installed very quickly.
32. The formal effect of the order of 2 June 2020 ceasing to have effect would be to require voting to take place in the division lobbies in accordance with the requirements of Standing Order No. 38 and to remove the requirement to adhere to guidance issued by Public Health England. It would also require the use of a system to enable Members representing different constituent parts of the United Kingdom to be counted separately or not counted at all during certain divisions for the purposes of the Standing Orders relating to territorial application of certain legislation (“the EVEL Standing Orders”, Standing Orders Nos. 83J to 83X). Re-instating the application of the EVEL Standing Orders would require the adoption of a robust voting system capable of swiftly recording the outcome of any division in terms of both the House as a whole and the relevant territorial subset(s) of Members (England, England and Wales, England and Wales and Northern Ireland). The existing pass reader system, when combined with extensive proxy voting, cannot deliver a system which meets this requirement. It’s possible that a future pass reader system could deliver EVEL votes, subject to the necessary development work and security accreditation.
33. Re-instating the application of the “English Votes for English Laws” provisions of Standing Orders would require some transitional provision to dispense or otherwise deal with Bills which were still before the House but which had been read a second time while those Standing Orders were suspended.
34. The Speaker’s authority might prove sufficient to enable some continuing adaptations, although the removal of reference to public health requirements before pandemic-specific public health guidance ceased to all Members of the House and staff of the House working in and around the Chamber would arguably be sub-optimal.

35. Arrangements for deferred divisions would be unaffected by the order of 2 June ceasing to have effect. Although that allowed for the period for deferred divisions to be extended, this extension is no longer required due to the large number of proxy votes in operation. The venue for deferred divisions—currently moved from the division lobbies to Members’ Library on public health grounds—is determined under the Speaker’s authority rather than an order of the House.
36. The most recent changes to the proxy voting system were those agreed on 23 September and 3 November 2020. On 23 September the House agreed a new Standing Order (No. 39A) which makes permanent provision for a proxy vote by reason of absence from the precincts of the House for childbirth or care of an infant or newly adopted child. The background to this will be familiar to the Committee from its work, and that of its predecessors, on the pilot arrangements. On that date, proxy voting was also extended on a temporary basis to Members absent from the precincts for medical or public health reasons related to the pandemic. This temporary additional system was modified on 3 November 2020 to remove the requirement on Members who have registered another Member to act as their proxy to be absent from the precincts.
37. If the temporary modifications of the proxy voting Standing Order were to cease to have effect, all Members other than those qualifying for a proxy vote under the permanent Standing Order would be required to attend within the precincts to vote. Except in the case of Members who are “nodded through”, Members would also be required to pass through the division lobbies to vote.

Voting in Select Committee Chair by-elections

38. A temporary order was passed on 22 April to allow a remote by-election for the Chairs of the Business, Energy and Industrial Strategy Committee and the Committee on Standards. The by-election was held on 6 May 2020. What would be the effect of not passing a similar temporary order for any subsequent Select Committee Chair by-election? Broadly speaking, the effect would be very similar to that applying to divisions and deferred divisions: all Members would be required to be present in the precincts of the House to vote in such an election. Exceptions have occasionally been made to allow votes to be cast by Members who are unable to vote in person. If a Member is present on the Estate, but unable to go to the Committee Room where the ballot is being held, they can ask for a clerk to collect their ballot paper and put it in the ballot box for them – a version of “nodding through”).

Virtual participation in proceedings

39. The order of the House of 30 December 2020 allows Members to participate in most proceedings of the House by electronic means. There are some limited exceptions in the order of 30 December, and some further exceptions set out in the scheme which was issued by the Speaker on 8 January 2021.

40. This new scheme differs in some respects from the hybrid proceedings that took place in April and May 2020. At that time, a resolution of the House of 21 April was in force (subsequently rescinded by the order of 2 June) which established a principle of parity between Members participating physically and Members participating virtually. In compliance with that principle, Members present in the Chamber were essentially subject to some of the same restrictions that applied to Members participating virtually, and which arose from practical considerations. That “parity principle” no longer applies.
41. The current scheme imposes a number of new limitations on virtual participation arising from practical considerations. Almost all of these arise from the absence of provision for spontaneity. Members participating physically are not affected by the same restrictions and can thus intervene and be intervened upon, move certain motions without notice and raise points of order without notice.
42. If the order of 30 December 2020 were to cease to have effect, all Members would be subject to the same requirements for physical attendance in the Chamber to participate in its proceedings that were in place prior to the pandemic. Members who were unable to be present in the Chamber would thus be unable to participate in such proceedings.

Limits on attendance in the Chamber

43. The order of the House of 2 June 2020, and an earlier order of 21 April which it replaced, disapplies Standing Order Nos. 7 and 8. Essentially, these Standing Orders provide the formal authority for the system of “prayer cards” and embody to some degree the broader right of Members to attend in the Chamber at a time of their choosing. Without such an order, the right of attendance would essentially be restored. It should be noted, however, that informal limits on attendance to secure social distancing operated in the second half of March without formal sanction of an order of the House.

Question 3: Whether there are any matters which in your view, being essentially practical rather than strictly procedural, ought to be considered for retention

44. As noted earlier, the pandemic has necessitated a number of changes to the way procedural and other services are provided. Some of these changes offer benefits and may become permanent. One example would be the system of e-laying of Government papers. However, the systems which have been put in place at speed with tremendous staff goodwill may not be suitable for long term use. E-laying is currently done by email, which increases burdens on Journal Office staff, and extra resources will be needed to ensure its continuation, either for development work, or from increasing the staff complement slightly. It should be noted that some staff working to support hybrid proceedings are only available for this task because the pandemic has curtailed how much they can do in their usual roles. Obviously this would not be the case in more normal circumstances.
45. Retaining the use of pass readers for divisions – assuming the technical challenges outlined in paragraphs 31 and 32 above can be resolved – would have the benefit of freeing up the

teams of staff who have to be on call close to the division lobbies whenever the House is sitting (this could also result in a modest financial saving).

46. In relation to select committee, making committees' current remote working provisions would have resource implications, principally relating to broadcasting capacity, but potentially also for Committee Office staffing. However, the arguments about whether the arrangements should be made permanent are primarily for select committee chairs and members, and the Liaison Committee will no doubt wish to express a view.
47. It would not be appropriate for the House of Commons Service to express a view on the wider merits of retaining, possibly in modified form, some of the changes to the way business is conducted in the Chamber.

Question 4 (unnumbered in the Committee's letter but numbered here for ease of reference):
Whether the nature of proceedings has changed materially under COVID restrictions

48. It is not easy for the House of Commons Service to offer an answer to this question. The extent and nature of changes to proceedings is only likely to be evident when the pandemic-related restrictions are no longer in place.
49. It is in the nature of a large legislature such as the House of Commons that Members will have different views on the merits of changes. Some changes will be very welcome to some Members, who may wish to see those changes become permanent, while others may believe it is appropriate for pre-pandemic practice to be restored. Many Members will see great benefit from greater predictability in the conduct of proceedings. Others may sense a loss of spontaneity and flexibility.
50. While it would not be appropriate for the House Service to express views on the merits or otherwise of retaining on an enduring basis any of the innovations introduced in response to the pandemic, I and my colleagues would be happy to provide further evidence on the procedural and practical implications of retaining certain innovations at a later point in the Committee's inquiry, and I look forward to discussing these issues with the Committee.

15 January 2021