



# COVID-19

## UK Political Analysis

By Tim Hames, Senior Adviser | 4<sup>th</sup> September 2020



### Full House. An unusual and potentially pivotal session of Parliament.

In ordinary circumstances, the return of Parliament in September does not make that much of a splash outside of the Westminster Village itself. This is in part because it is not in session for long before returning to recess once again. In the typical year, the House of Commons resumes business in the second week of September for at most ten whole sitting days before it adjourns for three weeks to allow for the party conference season. It would thus come back again around the second week in October but often shut up shop once more to allow for a “half term” break to occur. It would then return once again only for there often to be a mini-break of five days or so in November. This was an historical anomaly relating to the fact that traditionally the Queen’s Speech has been held in November and it was helpful to shut the Palace of Westminster down for a few days in order to prepare the place for the occasion. Since the passage of the Fixed-Term Parliament Act in 2011, however, there has been no Queen’s Speech in November but the short holiday remained stubbornly in the schedule. Only after that would the House sit continuously until shortly before Christmas. This was not the sort of performance that was likely to assist in the national productivity challenge. Last year, of course, even this level of activity was not witnessed because an election was called and Parliament did not sit from early November until the middle of December (and then but for a few days).

This year is very different on multiple fronts. The House of Commons returned on September 1, a week earlier than is the norm. There will be no party conference recess because those events will be shorter and virtual in 2020 (at some considerable cost to the party funds of all concerned). It is not clear whether or not there will be a Half Term (although most insiders assume that one is likely). The curious mid-November break has finally been removed from the calendar. The House will thus largely sit from now until the Christmas holidays, albeit still attempting to abide by the rules of social distancing. For the UK Parliament this is an extremely long session indeed. This has knock-on effects in Whitehall as ministers will need to devote more time to parliamentary duties this year. All in all, the next four months promise to be intense and potentially very contentious.

## **EXECUTIVE SUMMARY**

- The House of Commons is likely to be in session largely continuously between now and late December with at most one break of a week or so anticipated.
- Much of September will be taken up with issues relating to COVID-19 and the politics of the extension of the Coronavirus Act, 2020.
- After that, a very considerable series of bills relating to Brexit take centre stage. There may also be a UK-EU Treaty of an uncertain form to consider as well.
- At some point there will a Budget (of what size and scale is less certain) and a Comprehensive Spending Review set out by the Chancellor to Parliament.
- There are some non-virus, non-Brexit, non-finance legislative issues that might also capture media and public attention as well.
- There are three other issues operating slightly below the surface that may well emerge in this session as well. These include the relationship between London and Edinburgh as the May 2021 elections to the Scottish Parliament approach, the reshaping of the State as the Government starts to reveal its strategy for the overhaul of the Whitehall apparatus and architecture and the vexed matter of the relative authority of the executive, legislature and the judiciary will return.
- Although the majority enjoyed by the Government in the House of Commons will make outright defeat on legislation unlikely, there will be internal party tensions. Some further concessions – or ‘U-Turns’ can be anticipated before the recess.

The House of Commons may have an atypically large number of sitting days ahead of it but it also has an abnormally large agenda in front of it, in part because it spent three months after the virus crisis started operating off fewer hours than would be normal. The issues ahead of it can be divided between the obvious “blockbuster” matters (the virus crisis, Brexit-related legislation and a Budget and Comprehensive Spending Review, then a set of high-profile legislation that is not related to the above territory and finally a far more subtle series of themes that are less legislative than constitutional in character.

## Coronavirus legislation

Between March and July five bills relating to the coronavirus crisis were introduced. Of these, by far the most significant was what became the Coronavirus Act, 2020 which awarded the Government sweeping emergency powers. This was driven through the two chambers of Parliament in barely four days on the proviso that it had to be explicitly renewed every six months in order to retain its legitimacy. The first such occasion when it must be re-endorsed falls on September 25th. Within seven sitting days of that date, ministers will set out a statutory motion to the effect “That the temporary provisions of the Coronavirus Act, 2020 should not yet expire” for the House to debate and vote on.

The Act has actually been utilised in a sparing manner so far. A comparatively small set of 12 statutory instruments have flowed from it. Most of the more contentious steps that the Government has taken over the past six months – local lockdowns, quarantine after travel and the increasingly extensive and obligatory use of face masks – have been on the basis of the Public Health Act (Control of Disease) Act, 1984 and not the new law.

It is still the case, nevertheless, that the Act has to have fresh authorisation and that there are 21 statutory instruments relating to the virus crisis that also have to acquire the approval of Parliament before September 28th if they are to remain valid devices.

There is not much doubt that this will happen but the politics of the process will be quite different this time than was the case in March. Back then, the sense of imminent but unknown urgency was such that there was little serious scrutiny of what was in the Bill. The atmosphere is different now that the numbers of new cases and deaths is far lower. A series of issues around the crisis have also emerged since March that those who are

concerned by them will want to seek a parliamentary opportunity to articulate their views. Finally, in March ministers were dealing with the last days of Jeremy Corbyn as the Leader of the Opposition and his team had little incentive to be especially difficult or to seek any partisan advantage in the cross-party negotiations around the legislation. Sir Keir Starmer, by contrast, will undoubtedly be looking to score some political points now.

This means that while the legislation will be renewed, there will be more heat about it. The Government might try to take the parliamentary opening that it involves to move a further series of amendments of its own to the legislation. The crucial aspect to watch for here is any indication that the law is being altered to facilitate a mass vaccination campaign (some changes to past legislation on this front were made in the March Act). The civil libertarian section among Conservative MPs might press for amendments that allow Parliament more control over the Government than under the original Act and if their threat to align with Labour on these matters is considered credible then it is not impossible that concessions could be extracted. Labour will take the moment of renewal to make a very loud case that the furlough scheme, which is due to taper out by the end of next month, should be extended until at least the end of 2020. While one could argue this is not strictly speaking anything to do with the powers in the Act that have to be reauthorised or not, the Opposition will still consider this to be their strongest card.

Ministers privately suspect that they are right in that assessment. While an outright reversal of position on the furlough scheme is unlikely, it is conceivable that certain sectors of the economy could receive support in some form or another for longer, or that something akin to the “eat out to help out” initiative could be revived before Christmas, or some entirely new innovation could be unveiled by the Chancellor. The Cabinet will not want the impression to be left that it wound down the furlough payments with no other plan in place if (as is possible) unemployment were to start increasing sharply.

A further twist in the parliamentary tale over the renewal of the Coronavirus Act is that it offers the opportunity for the Opposition to press for a full public inquiry into the crisis and the manner in which it was managed. This will have to be conceded at some point. Some additional interesting material may also emerge from the new House of Lords

COVID-19 Committee (chaired by Baroness Martha Lane-Fox) which has been formed to “consider the long-term implications of the pandemic for the UK’s economy and society”.

## **Brexit**

The transition period is set to end on December 31st, 2020. It is difficult to envisage the circumstances in which it might be extended. Irrespective of whether or not there is a deal between the UK and the EU (or a deal on how to handle there not being a deal), there is a lot of legislation which it is imperative is enacted before the UK is fully out.

This is likely to dominate Parliament once the Coronavirus Act has been renewed. There are no less than seven pieces of legislation (some of them very substantial indeed) that have to make their way through one or other chamber before becoming law. The chief laggard is the Environment Bill which is not yet through the committee stage of the House of Commons, let alone within sight of the House of Lords. The Commons also needs to start work on the Fisheries Bill (a vexed subject) and the Private International Law (Implications of Agreement) Bill, both of which cleared the Lords before the recess.

Their Lordships have, if anything, an even more demanding workload as they need to take on the Agriculture Bill, the Immigration Bill, the Trade Bill and the Medicines and Medical Devices Bill, all of which have been endorsed by the House of Commons. Both Houses are on alert for the arrival of the Internal Market Bill which absolutely must clear Parliament before January 1st, 2021 and where the Opposition are already complaining that the consultation period after the publication of the White Paper was too short and that the time needed to engage in adequate consideration of it will not be offered. This might serve as a pretext for the staunchly pro-Remain House of Lords to be rather more awkward than it might choose to be otherwise in passing amendments that are plainly unacceptable to ministers. This would lead to a round of parliamentary “ping-pong” which while there can only be one outcome (HMG wins) also eats up valuable time.

There is then the question of what happens if a UK-EU deal (probably a pretty thin one) surfaces before the end of the year (on balance still more likely than not). Provided that the Conservative Party in Parliament is broadly content with it, then this is not a huge headache in legislative terms. Under the Constitutional Reform and Governance Act,

2010, a government may ratify a treaty of its own accord 21 days after it has been laid before Parliament provided that MPs do not vote against it. It can even expedite or “disapply” such a measure and move faster in “exceptional cases”. All this means is that a minister would make a statement before Parliament explaining why this was needed. If a Government has a reliable parliamentary majority behind it (which Theresa May never had on EU policy at any time so she could not exploit these “fast track” provisions), then it holds all the cards in terms of ratification. This means that much of the manic media speculation that October represents a hard deadline for a deal is largely misplaced. If necessary, an accord could be reached later than that and still be there by 31/12/2020.

The same cannot be said, however, for the many changes to statutory instruments (or secondary legislation) that are also needed before the transition period expires. The best estimate is that there will be another 250-300 of these placed before Parliament over the remaining four months of the year and that in at least half of these instances, the active assent of the House of Commons (and, with a few exceptions, the House of Lords) will be required, rather than the instruments being approved unless a majority in one or other House can be mobilised to block the proposal. This could mean that around 175 of these instruments (many of which are far from incremental in character) could have to come to a formal vote. There will be some long (and dull) days ahead for many MPs.

## **Budget and Comprehensive Spending Review**

Some four years ago, the UK reverted, in theory, to the notion of only one major fiscal statement a year – the Budget – which would occur in the Autumn or early Winter. For multiple reasons this has proved a dictum that has been hard to realise in practice. The calling of the election meant that the Autumn Budget last year was deferred. There will be a Budget this time, but how extensive it is depends enormously on the circumstances of the virus crisis and in particular whether ministers believe a vaccine is imminent.

If it is, then it becomes less complicated to anticipate what the costs of the crisis will be this year and next. If the vaccine is delayed into 2021, that insight is postponed as well. This could also mean that the UK will have to deal with the standard winter flu issue and

a potential second spike of the virus with the symptoms of the two hard to distinguish from one another. This would surely mean another surge in spending on the NHS.

Even in the best circumstances, the Treasury has to decide whether now is the right moment to set out what changes in taxation might be needed to put the public finances somewhere close to in order. Despite a flurry of reports of officials bombarding the Chancellor with proposed tax increases, in reality he is likely to be cautious on this.

There does, though, have to be a comprehensive spending review and as far as possible this will be framed as if the virus crisis does not exist (bar the very direct effect on health expenditure which is certain to be much higher than initially planned for 2020-2024). In theory, there should also be the interim results of the Net Zero Review explaining how the UK can maximise the opportunities arising from the transformation to a green economy and the findings of a host of reviews relating to the rules surrounding public investment and value-for-money within the public sector. Whether it is realistic to expect all of these to see the light of day on the original timetable is debateable. It is still likely to be a substantial exercise with extensive implications for business in this country. It will demand a sizeable Finance Bill which will have to be squeezed into the schedule.

## **Other non-virus, non-Brexit, non-Budget legislation.**

There are a significant number of Bills which were signalled in the Queen's Speech but have made little, if any, progress so far towards the statute book, in fairness because the unexpected measures that the coronavirus crisis has triggered has sidelined them.

Most will not capture headlines or the national imagination. There are a few that might. One is the Fire Safety Bill, which deals with a number of shortcomings that the first stage of the Grenfell Tower Public Inquiry raised in its initial recommendations. Another is the Counter-Terrorism and Sentencing Bill, which increases the period of imprisonment for terrorism-related activities and makes it harder to release those convicted early. It will be interesting to see how the new Labour leadership responds to this legislation.

The final piece in this part of the parliamentary jigsaw is a Bill to address hostile state activity (including cyber-attacks) and espionage. This is the sort of material that the British media would find extremely appealing territory to cover in any circumstance but

with the allegations that have been widely made about Russian activity in the UK, this has become an even more enticing question and the delicate state of the UK-China relationship might also be strained further by this legislation. It is also the classic type of Bill where the House of Lords – which contains multiple experts in these fields – will feel little restriction in telling the Government and the House of Commons where it deems the clauses of the Bill before it to be inadequately thought through. This, once again, makes the lives of those who have to organise the House of Commons more complex.

## **Constitutional clashes.**

The final sphere of predictable contention (doubtless other new areas of conflict will visit us) relates less to specific legislation than broader clashes over the mysterious entity that is the uncodified constitution. These will involve Scotland, Whitehall and the judiciary.

There has been considerable unease in the relationship between London and Edinburgh during the virus crisis. Downing Street believes that the First Minister of Scotland has consistently sought to seem tougher on suppression measures than the Prime Minister and has been motivated by the desire to raise support for the SNP and independence. There are elections to the Scottish Parliament due in May 2021 and Nicola Sturgeon will be making the case that if the SNP wins an outright majority on its own (as it did in 2011) then it has an undeniable mandate for another independence referendum by 2023. Boris Johnson will be doing his best to deny that undeniable mandate irrespective of the seats won at Holyrood. A clear SNP victory (which currently looks very possible) would put him on the defensive. There would even be some in his own party who would be quite keen to allow Scotland a second chance to detach itself from the UK. A high-stakes game of political cat-and-mouse which will run until May will begin in earnest from now on.

The second aspect is Whitehall itself and the determination of the Government to reshape the state and ensure more effective policy delivery as a consequence. Although Dominic Cummings serves as the poster child for this crusade, it should not be thought to be a personal or private project which the Prime Minister had been dragged along with. The appointment of Simon Chase (at the age of 41) as the Head of the Civil Service this week is bold (and controversial). It follows a period when a number of Permanent Secretaries across Whitehall have discovered that their title is not entirely accurate.



Simply reshuffling people at the top is unlikely to satisfy ministerial aspirations. The next few months are likely to see the first moves towards a more fundamental restructuring exercise and it will be no surprise if there is not fierce resistance to what is proposed. The history of Government's attempting major civil service reform is not a happy one.

Finally, it is expected that before Christmas, the Constitution, Democracy and Rights Commission will be established fully. This entity, which sounds innocuous enough, was a pledge made in the Conservative Manifesto at the last election. Its role will include updating the Human Rights Act, the reform of judicial review, the functioning of the Royal Prerogative, the role of the House of Lords and the relationship between the government, parliament and the courts and their respective remits and authority.

This is quite a large number of cans of worms to open simultaneously. It would be no shock at all if the legal profession dug in to defend the expansive mission that it has claimed for itself over the past three decades. Much of the Conservative Party is equally determined that the prior supremacy of Parliament should be restored forthwith. This may seem an obscure subject compared with the virus and Brexit but the extent to which it could become politically explosive should not be underestimated. It will catch fire.

So, even by recent standards a long and probably far-reaching session of Parliament lies ahead between now and late December. The implications for business as a whole and certain sectors especially will be immense. Whether the whole corporate community has appreciated this and prepared for it is another matter entirely. There will be winners and losers as the virus crisis and this vast legislative and political package moves forwards.

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