

Chapter 6

Parliament: how effective was parliamentary scrutiny of the executive in 2018?

Exam success

The examination specifications focus on the relationship between Parliament and the executive, requiring analysis of how effectively the executive is held to account. The best candidates will focus not just on the prime minister, but also look at the cabinet, evaluating a range of methods that Parliament can employ to scrutinise the executive as a whole, as well as remembering that Parliament consists both of the House of Commons and House of Lords. Top answers will analytically deploy unique examples from 2018 to demonstrate the evolution and flexibility that Parliament demonstrates in exercising scrutiny.

Edexcel	UK Government 2.4	The ways in which Parliament interacts with the executive
	UK Government 4.2	The influence and effectiveness of Parliament in holding the executive to account The extent to which the balance of power between Parliament and the executive has changed.
AQA	3.1.1.2	Scrutiny of the executive and how effective scrutiny of the executive is in practice

Context

From Montesquieu's 1748 pivotal text, *De l'esprit des lois*, comes the argument for a government of three separate branches. This should ensure that no one branch can gain too much power and influence over either of the others or over the political liberty of their citizens. The UK government does not fit this model. The executive and legislation branches are 'fused' with the prime minister and cabinet drawn mostly from the elected representatives of the majority party in the House of Commons. Historically, it has been argued that this has allowed for the possibility of an 'elective dictatorship', with parliamentary scrutiny being largely ineffective.

For most of the last decade however, the number of backbench rebellions has notably increased, the House of Lords has become more aggressive and the role and power of select committees has garnered much greater press attention. Significant reforms of Parliament have also taken place, in part to develop its influence over the executive. Notably, the Wright Reforms made select committees electable by secret ballot, going some way to relieving

them of the influence of the party whip, and created a Backbench Business Committee to give backbenchers greater control over the agenda and debates of the House of Commons.

In 2018, this continued to develop, with archaic parliamentary laws being used to scrutinise the government in new and novel ways. Despite this, concerns remain over how truly effective Parliament is at scrutiny, and whether this role will continue to develop, or is simply a result of electoral results of the last decade.

Did scrutiny of the executive develop and change in 2018?

The issue of Brexit continued to dominate parliamentary proceedings in 2018, and it was this issue that gave rise to a number of new and surprisingly innovative ways in which the opposition tried to scrutinise the executive.

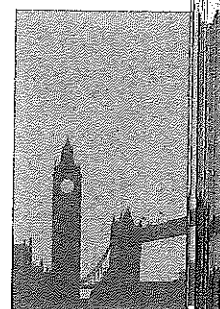
The humble address

The humble address is formally known as 'a motion for return'. This archaic principle can be found in *Parliamentary Practice* by Thomas Erskine May, one of the fundamental authoritative works of the UK constitution. It has been rarely used in recent decades but made an astonishing return in 2018 opposition days. Under Standing Order 14, 20 days are allocated to the opposition each year – on 17 of those days, the leader of the opposition determines the agenda, and the remaining 3 days are given to the second largest party. On these days, members of the opposition can schedule a humble address, a request made to the monarch for a release of government documents. As Her Majesty's government, this address effectively requests documents of the current government. Crucially, votes on humble addresses are accepted as binding on the government.

Table 6.1 Humble addresses in parliament, 1997–2018

Parliament	Number of humble addresses
1997–2010: Labour government	0
2010–15: Coalition government	0
2015–17: Conservative government	0
2017–: Conservative minority government	6 <ul style="list-style-type: none"> • exiting the EU • Universal Credit • Carillion • EU exit analysis • Windrush • NHS outsourcing and privatisation

The humble address has only been rarely used in any Parliament in the last 200 years. However, at the end of 2017 it made headlines when the Shadow Brexit secretary Sir Keir Starmer (Labour) used it to petition for the release of 58 government studies reviewing the possible economic impact of Brexit on the UK.



Box 6.1 Case study: Sir Keir Starmer and the Brexit humble address

On 1 November 2017, the Shadow Brexit Secretary Sir Keir Starmer tabled a humble address to petition her majesty, and by extension her majesty's government, to release 58 studies conducted into the potential economic impact of Brexit on the UK. He wanted these given over to the Brexit select committee to allow it to carry out appropriate scrutiny of the government Brexit policy, whilst ministers argued that they should not be released as they could create difficulties in the continuing negotiations with the EU. In keeping with May's policy not to contest opposition day motions, this humble address passed Parliament without a division. The humble address was effectively supported by the Speaker of the House of Commons John Bercow, who advised the government that such addresses were binding on them.

Starmer's timetabled motion was 'That an humble Address be presented to Her Majesty, That she will be graciously pleased to give directions that the list of sectors analysed under the instruction of Her Majesty's Ministers, and referred to in the Answer of 26 June 2017 to Question 239, be laid before this House and that the impact assessments arising from those analyses be provided to the Committee on Exiting the European Union'.

Following Starmer's address, the humble address has been used a further five times in this Parliament, a notable increase. Of the six humble addresses that have been put on the opposition agenda since November 2017, the government did not contest four of them, allowing them to pass without division, whilst two (NHS privatisation and Windrush) were voted upon and both were won by the government.

This suggests that in the face of government intransigence over Brexit, Parliament has looked for new ways in which it can shore up its power and mount suitable challenges against the government. The success of this, however, is debatable. Humble addresses are only binding if they pass, and therefore a government with a majority should be able to defeat them. In the case of Brexit, whilst the papers have been released to parliamentarians, only 6% of them have requested access to the papers, questioning the depth of scrutiny going on beyond the headlines.

Opposition days

Opposition days are 20 days in the annual parliamentary calendar on which the second and third biggest parties in the House of Commons decide on the agenda for the day. They are not a new addition to the powers of parliamentary scrutiny, but the government's reaction to them in 2017 and 2018 was a change from the norm. Motions put forward on opposition days often have little chance of success as whilst the opposition controls the agenda, the government maintains its majority so the chances of anything passing are slim. Most commonly they are used instead to raise the profile of an issue.

The current government has taken the unusual step of choosing not to contest votes on opposition day motions. This is due to the fact that the Conservative Party does not have a majority and therefore could face embarrassing defeats in

these motions. Unlike humble addresses, opposition day motions are not binding. If the government were defeated in these votes therefore, it would not have to honour any vote, but it would make it look exceptionally weak. The Speaker John Bercow nonetheless criticised the government for taking this action.

Table 6.2 Opposition day motions in parliament, 1997–2018

Parliament	Number of opposition day motions	Number of government defeats in division	Government defeats in division (%)	Number of government defeats without division	Government defeats without division (%)
1997–2010 Labour	413	1	0	7	2
2010–15 Coalition	168	2	1	21	13
2015–17 Conservative	73	2	3	6	8
2017–* Conservative minority	20	4	20	14	70

* Data to 24 May 2018

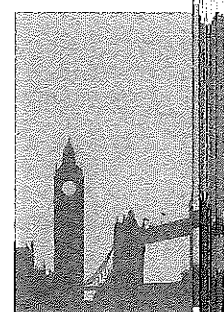
This has served to undermine the power that Parliament has to scrutinise government in this way. Traditionally opposition days have been a way to raise issues governments have chosen to avoid, such as the 2014 motion regarding the crisis in the Passport Office which attracted such media attention that the government was forced to re-take control of this office. However, with the government effectively opting out of participating in these debates, the extent to which Parliament can effectively scrutinise the government becomes limited. On the rare occasions that the current government has taken part in votes on opposition day motions, they have been victorious:

- Motion that government should release the Brexit customs plans – government defeated the motion 301–269.
- Motion regarding the government handing of the East Coast Rail franchise – government defeated the motion 304–271.

The ability of the government to secure victories in these votes at a time when it has no outright majority serves to outline the limitations of opposition days as an effective method of scrutiny.

Box 6.2 John Bercow responds to the government opting out of opposition day votes, October 2017

If you choose not to take part and vote you can't say, 'well, we didn't lose'. A minister from the government should come to the House and show respect to the institution and say what it intends to do. This institution is bigger than any one party and is bigger than any government.



The rise and rise of select committees

Under the Wright Committee reforms, select committees in Parliament were strengthened. In 2018, they were able to use their investigatory powers to highlight a number of government shortcomings with notable success, for example:

- **Home Affairs Select Committee and Amber Rudd, April 2018:** the Windrush scandal surrounded the potential deportation of people who had come to Britain from Commonwealth countries as children but lacked British citizenship paperwork. As the scandal mounted, Amber Rudd faced questions from this committee regarding the setting of targets of deportation. Whilst she denied such targets existed, a leaked memo suggested that a memo had been prepared for Rudd outlining the targets; just 2 days later she resigned.
- **David Davis and the Exiting the European Union Select Committee, October 2017:** in giving evidence to this select committee, David Davis, as the secretary of state for exiting the European Union, was asked by Semma Malhotra (Labour) to outline the timeline for Brexit. His answer suggested that Parliament might not get a vote until after the UK had exited the European Union. By midday, this matter was a question at PMQs. By mid-afternoon, Davis' department had had to issue a statement reassuring Parliament it should expect to have a vote before the UK left the EU. By the following morning, Davis was summoned to Parliament to answer an urgent question.

There has also been a growing number of select committees working together on investigations to give more weight to their recommendations. In an unprecedented move in March 2018, four select committees came together to issue a report demanding an end to the UK's 'poisonous air', the first time four committees had come together and collaborated on such a report. The four committees involved – Environment, Health, Transport and the Environmental Audit Committee – complained that air pollution caused early deaths and annually cost the UK £20bn. Their report was also notable coming after the government had lost a number of court cases, including one as recently as February 2018, requiring the government to take more action to tackle air pollution.

The weakness remains that the government is under no obligation to accept the recommendations of select committees. However, the increasing profile that the reports of these committees have in the press, in addition to high profile witnesses, make their recommendations more difficult to ignore. Even witnesses refusing to attend can make headlines – Mark Zuckerberg's refusal to give evidence to the Digital, Culture, Media and Sport Select Committee was described as 'absolutely astonishing' by the committee's chair in the wake of the Analytica scandal. All of this can add considerable pressure for the government to act, even if the committees themselves do not have the pressure to force such action.

Box 6.3 Amber Rudd giving evidence to the Home Affairs Select Committee which ultimately led to her resignation, April 2018

Amber Rudd: If you're asking me are there numbers of people that we expect to be removed, that's not how we operate. I do think it is right — I know we are talking about Windrush here, who are legal migrants — but where there are people here that are here illegally, it is right that we do try to remove them.

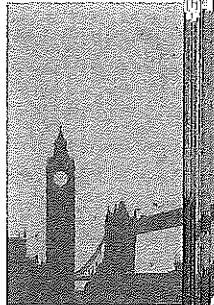
Yvette Cooper (committee chair): OK, so we've just had very clear evidence, so I think we need to clear this up very quickly because if there are removals targets in the Home Office and the two people who are supposedly in charge don't know about them then that feels pretty serious and feels like a lack of grip anywhere in the system.

Comparison: the role of Parliament and Congress in executive oversight

Parliament and Congress do have similar roles in maintaining oversight of the executive branch. However, in 2018, Congress made President Trump's time in office considerably more challenging than Parliament made Prime Minister May's:

- Whilst May faced humiliating defeats in the Lords over the Brexit Bill, many of these were reversed in the House of Commons despite her lack of a majority. Trump by comparison failed to achieve his 'repeal and replace' of Obamacare, despite holding a Republican majority in both houses of Congress.
- Despite lacking a majority, party divisions and cabinet resignations, May's government continued relatively intact. The investigations by four congressional committees into Russian hacking, and subsequent investigation from the Justice Department headed by Robert Mueller, led to damning indictments of staff close to Trump, and posed considerable problems for Trump's reputation and polling numbers, the lowest of any president at 100 days and 1 year in office.
- Investigations by UK committees have proved to be a thorn in May's side, but their achievements are relatively minor and government has continued. The antagonism between President Trump and Congress reached a head in January 2018 when the USA suffered two (short) government shutdowns.

Edexcel	Comparative Politics 6.2.3	Comparison of the US and UK legislative branches and their resulting impact on politics and government powers; strengths and weaknesses of each of the Houses
AQA	3.2.2.1	The legislatures: their relative strengths and weaknesses and the extent to which their roles are similar and their powers equal



Summary

The challenges of Parliament's ability to hold the government to account clearly remain present. Its ability to devise new ways of trying to make this an effective power suggest it has yet to find a way that is truly and consistently effective. In a system with fused powers and in which the government usually maintains a majority in Parliament, it is likely that this will remain a problem. However, in a decade when the electoral system has consistently returned small, or no, majorities in Parliament, and with the addition of parliamentary reforms, it is evident that this power is one that Parliament values and is working to constantly evolve. Further debates include:

- whether there needs to be further reforms to strengthen the powers of parliamentary scrutiny including whether the Wright Committee reforms went far enough
- whether party political scrutiny can be considered effective, or merely for political gain
- how strong the powers of Parliament actually are if it is relying on media reporting to put pressure upon the government, and the appropriateness of this
- the legitimacy of the House of Lords in scrutinising an elected government
- the success of both liberal and representative democracy in the UK given the current level of parliamentary scrutiny

Further reading and research

- Read the UCL Constitution Unit's, 'Labour's "motion for a return": what and why?', 10 November 2017 on www.constitution-unit.com.
- Go to www.revolts.co.uk to research the trends of backbench rebellions.
- Find out more about different types of parliamentary scrutiny by visiting www.parliament.uk.
- Aiming for an A? Compare the LSE and Democratic Audit's assessment of parliamentary effectiveness:
 - 'How effective is Parliament in controlling UK government and representing citizens?' — click on 'LSE Comment' on <http://blogs.lse.ac.uk>
 - 'Audit 2017: How effective is the Westminster Parliament in scrutinising central government policy-making?', 31 August 2017, www.democraticaudit.com