Parliament

UK
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agreement on the future relationship, while committing government to providing Parliament with regular updates. All were stripped out of the second, post-election version of the bill.

However, as Ewa Zelazna argues, this does not necessarily make effective scrutiny of the EU trade negotiations impossible. Not only will select committees play a crucial role, but Parliament may need to adopt further legislation to give effect to the provisions of any trade deal. Equally, as Jill Barrett points out,

including increasingly (as explored in John Curtice's contribution) on how the crucial next decisions should be taken. As a representative body, Parliament largely reflected that polarisation. The House of Commons, by design, includes many diverse voices – and policy agreement requires building a majority amongst them. This usually happens relatively easily: when the governing party has a majority, and can largely iron out policy disagreements behind the scenes, it can present a united front. But these standard operating procedures broke down completely over Brexit.

Catherine Barnard and Alison Young

The Westminster Parliament is sovereign. As a result, the UK is almost unique in not having a codifed consttuton with entrenched provisions. Parliament can enact legislaton on any subject mater it likes, but it cannot bind its successors. Hence the ease with which the failed atempts to achieve a two-thirds majority requirement for an early parliamentary general electon under the Fixed-term Parliaments Act 2011 could be overridden by the Early Parliamentary General Electon Act 2019 when a simple majority of MPs agreed to pass it in October 2019.

The two Miller cases make it clear that courts can be used to protect the powers of Parliament. The second of these also clarifed that parliamentary sovereignty means Parliament is more consttutonally important than the government.

In Miller I, the Supreme Court was asked whether the 'prerogatve power' – the power of the prime minister, in this case over foreign relatons maters – included a power to notfy the EU of the UK's intenton to withdraw. The court concluded that the prerogatve power did not include an ability to modify domestc law – notably the European Communites Act (ECA) 1972, which took the UK into the EU at a domestc level. Nor did it include a power to frustrate legislaton, or to remove domestc rights. The court's decision thus reinforced Parliament's role in the consttuton. Its frst immediate result was that primary legislaton was needed to empower ministers to trigger the Artcle 50 process. This provided Parliament with the opportunity, should it have wished to do so, to set conditons on the exercise of this power.

Second, Miller I implied that Parliament was more important than the executve. The government's use of prerogatve powers could not frustrate the will of Parliament as expressed in legislaton, and this raises important issues as to the nature of a sovereign Parliament. The Westminster Parliament ('the legislature') consists of the Commons, the Lords and the monarch. Most government ministers sit in the Commons, usually supported by their backbench MPs, as do oppositon MPs. Ministers may also be selected from the House of Lords. The problem the Miller I judgment brought up was this: when we refer to the sovereignty of the Westminster Parliament, should this mean the sovereignty of the legislature, more partcularly the Commons, or of the government?

David Howarth refers to this as a contrast between the Whitehall and the Westminster visions of UK democracy. The Whitehall vision places the Crown (whose powers are in practce ex

within and across parties and is so important that MPs are willing to risk their careers, the legislature can wrestle control of time from the government.

In September 2019, in the shadow of a proposed prorogation of Parliament, a combination of opposition and backbench MPs was able to initiate legislation that progressed through the Commons in one day. This legislation required the Prime Minister to do something to which, at the time, he was adamantly opposed – ask for an extension to the Article 50 negotiation period (unless the Commons quickly voted in favour either of the Withdrawal Agreement, or of leaving the EU with no deal – which it failed to do).

The attempted five-week prorogation of Parliament led to the second Miller case – the combined appeal from Gina Miller's legal action in the English courts and Joanna Cherry MP's legal action in the Scottish courts. The Supreme Court unanimously quashed the prorogation order, concluding that the common law placed limits on the scope of the prerogative (and thus the government's) power of prorogation, and that these limits had been transgressed.

The Supreme Court relied on the constitutional principles of parliamentary sovereignty and parliamentary accountability. Both support a Westminster vision of democracy. The Court indicated that parliamentary sovereignty implies that, in a partnership involving the legislature and the executive, the legislature is the senior and the executive the junior partner. Parliament is supreme, not the executive. Parliamentary accountability means that the government is accountable to Parliament; Parliament, in turn, is accountable to the people.

This judgment was a strong assertion of the Court's role in protecting the UK constitution – but, importantly, through upholding the powers of Parliament. The Court's view was that any use of the prerogative power of prorogation potentially undermines parliamentary sovereignty and parliamentary accountability. But the courts will intervene only when the breach of these principles is sufficiently serious; and if they do so, the government can set out its justification. In Miller II, no reasons were provided for proroguing Parliament for five of the then eight remaining weeks to exit day, and the prorogation was found unlawful.

Nevertheless, the Prime Minister, while complying with the judgment, asserted that the courts had gone too far. Prorogation, he said, was purely a political matter. But without Parliament having enacted legislation to limit prorogation it remains an act of the executive alone. Moreover, it is hard to see how the Commons can hold the executive to account for its decision to prorogue Parliament. Any prorogation is merely communicated to Parliament, and it then cannot hold the government to account if it is no longer sitting.

What will happen to parliamentary sovereignty in the aftermath of the December general election? A prime minister with a strong Commons majority seems to favour a Whitehall vision of democracy. The EU(Withdrawal Agreement) Act 2020 demonstrated a move in that direction, removing parliamentary oversight over the future trade deal. The promised repeal of the Fixed-term Parliaments Act might see a return to an unlimited governmental discretion to dissolve Parliament. Other constitutional reforms may further limit the powers of the courts to protect key constitutional principles – possibly including parliamentary sovereignty itself.

John Curtice

Though they have been used various times on constitutional matters in the UK, referendums are often thought to challenge traditional notions of representative parliamentary democracy. In the UK's version of such a democracy, MPs are sent to Westminster to deliberate and exercise their judgement on their constituents' behalf. Referendums seemingly usurp this traditional role, in an attempt to ascertain 'the will of the people'.

Nonetheless, survey research has long suggested that referendums are popular with voters – as indeed was the June 2016 EU referendum. A fortnight beforehand, 52% told YouGov that David Cameron was right to hold a referendum on Britain's EU membership, and only 32% said he was wrong. On the very eve of polling, Ipsos MORI reported that 66% of voters felt the Prime Minister was right to hold a ballot, while only 24% reckoned he was wrong.

Yet, underneath the surface there were already important differences of opinion. As the first chart shows, Leave and Remain backers had rather different views. According to YouGov, 83% of Leave supporters supported Cameron's decision, and only 9% thought it wrong. In contrast, 60% of likely Remain voters disliked the decision and only 26% approved. Of course, in calling the referendum Cameron had opened up the possibility that the UK might indeed leave the EU, a prospect that Leave voters were more likely to embrace.

However, if we move our focus forward a couple of years to the end of 2018, things look rather different. By then, Theresa May had negotiated a draft withdrawal treaty with the EU. However, many anti-Brexit campaigners were arguing that a second referendum should be held, pitting the terms of this draft treaty

Overall, voters were more or less evenly divided on this issue. But again, as the third chart shows, Remain and Leave voters took very different stances – the former now appeared to be Parliament's defenders once more, in contrast to the majority of Leave supporters.

True, public opinion appeared to swing against the long prorogation after the Supreme Court issued its adverse judgment. At this point, 47% of voters said that they agreed with the Court's ruling, while only 31% disagreed. But 62% of Leave voters disagreed with the Court and just 18% agreed, whereas 76% of Remain voters supported the judgment and only 9% disagreed.

There was then a final twist. As autumn set in, the government looked to hold a general election, hoping this would produce a Parliament more supportive of its plans. The opposition parties, in contrast, all argued that there should be another referendum. With opinion polls suggesting that the Conservatives might win a general election, but that a second referendum might produce a Remain majority, there was good reason for Leave voters to prefer the former route to resolving the Brexit impasse.

And that is indeed what the polls suggested, as shown in the final chart. By now, many Leave voters preferred a parliamentary route to Brexit, rather than the path of direct democracy that had made Brexit possible in the first place.

The moral of this tale is clear. Few voters have held a consistent view on the role that Parliament should play throughout the Brexit process. Rather, their views about how political decisions should be made have tended to depend on which answer seemed more likely to favour their side of the Brexit debate.

Having backed the 2016 referendum, whose outcome paved the way to Britain leaving the EU, Leave voters became keener on Parliament rather than the people making decisions – except when Parliament

Majority government in any case arguably offers fewer opportunities for game-changing dissent on core Brexit questions, not least because clauses relating to parliamentary scrutiny were removed from the post-election version of the Bill (such as on approval of the government's negotiating objectives), and – as Jill Barrett discusses in her contribution to the report – Parliament has a limited role in overseeing new treaties.

That said, Conservative dissent may well return – albeit in less dramatic fashion, and with a majority government better equipped to absorb it – when final decisions about the future UK-EU relationship are eventually taken.

Should no free trade agreement be in the pipeline as the transition period nears its end in December 2020, for example, we can expect a return to conflict between ERG stalwarts and 'soft' Brexiteers over leaving without a deal. In contrast to 2017-19, however, Parliament's limited role in approving the future relationship means that the two sides would have little more than heated debate at their disposal – though this could still prove embarrassing for the government. Tensions may also arise over specific issues such as tariffs, fisheries and financial services. As discussed in Jill Rutter and Joe Owen's contribution, there is still more detailed Brexit legislation to come – to which concerned MPs could choose to table amendments.

Conservative divisions over Brexit-related issues are also likely to develop a more pronounced constituency dimension. The diversity of seats represented by Conservative MPs is even more apparent since the general election, and MPs will come under pressure from local employers across different economic sectors who experience Brexit in different ways. Notably, the economic costs of a harder Brexit are most likely to be felt in those regions where the Conservatives made gains in 2019.

Hence steering a course between constituency and party demands could prove difficult for some Conservative MPs. Smooth sailing from here on in, then, is by no means guaranteed.

Richard Whitaker

The tensions between nat onal sovereignty and the desire to open up markets in Europe that follow from European integra t on have not plagued Labour to anything like the same degree as they have the Conserva t ve Party. Indeed, since the late 1980s most Labour MPs have supported integra t on as a means of regula t ng markets and working condi t ons.

Yet divisions have persisted within the Parliamentary Labour Party (PLP) – most obviously since June 2016 on whether a second referendum should havt' as a mea' ma ma ma é Ma t e' sec

The tensions between constituents' views and those of MPs, along with different opinions about what a future UK-EU relationship should look like, led to resignations from the Shadow Cabinet and 128 Labour MPs rebelling at least once on Brexit-related votes.

Three votes during the passage of the EU (Withdrawal) Act 2018 highlighted the scale of Labour divisions. In all three cases, Labour MPs had been whipped to abstain – perhaps in itself an indication of the difficulties that the party was facing in reaching a unified approach. In a vote on staying in the customs union in December 2017, 63 Labour MPs voted in favour and four against. A month later, in January 2018, 48 Labour MPs voted in favour of keeping the UK permanently in the single market and customs union (with four voting against) while later on, in June 2018, some 73 supported membership of the European Economic Area.

The PLP also suffered divisions in the March 2019 indicative votes on different options for a UK-EU relationship. The proposal to hold a second referendum saw 198 Labour MPs vote in favour and 27 against – a significant split, given the option's similarity to Labour's 2019 election promise.

But what of the future? After the 2019 general election, only two of the Leavers who had been present in the 2015-17 Parliament were still on the Labour benches. That left them vastly outnumbered by the 79 MPs (including nine of Labour's 26 new MPs) who had signed the Remain Labour campaign pledge – committing themselves to campaigning for Remain if a second referendum were secured. When the EU (Withdrawal Agreement) Bill reached second reading in late December 2019, only six Labour MPs voted in favour, although more than 30 opted not to vote.

Louise Thompson

The 2017 Parliament was characterised by intra-party splits and factions within the two main political parties over the UK's withdrawal from the EU. In contrast, the Scottish National Party and Plaid Cymru were both remarkably united on the issue.

Both parties were clear in their 2017 election manifestos that they needed to give their countries a stronger voice at Westminster, to 'protect' Scotland' and 'defend' Wales from the Brexit fallout.

The SNP not only reaffirmed this as its flagship policy pledge in the 2019 manifesto, but also outlined its ambitions to e ɛ art e Ĭ o ʻ cou

which lacked a firm hold over its MPs. The majority government context of the 2019 Parliament presents a far greater challenge.

BBC presenter Gordon Brewer highlighted this when he asked Ian Blackford to explain precisely how the SNP would push the government into allowing a second independence referendum. Blackford's failure to give any substantial suggestions was telling.

Taken together, the size of the two parties is not insignificant, accounting for 13% of MPs in the Commons. But this is unlikely to be sufficient to cause any real headaches for the government as it pushes forwards with its post-Brexit transition legislation. The Agriculture Bill represented one early test. The SNP's reasoned amendment objecting to the bill made no progress and the bi ĭ iŎ

Katy Hayward

In both the present Parliament and the one that preceded it, seven of the 18 constituencies in Northern Ireland have not had an MP sit in the Commons or participate in committees or legislative processes. Why? Because they have returned a Sinn Féin representative.

Sinn Féin's policy of abstentionism arises from the principle that the parliamentary oath of allegiance to the Crown is incompatible with its view that, not only should there be no Westminster rule over Northern Ireland, Northern Ireland itself should not exist as a region of the UK. This commitment held firm in the 2017-19 Parliament despite arguments from outside the party (not least from commentators and politicians in the Republic of Ireland) that, as a pro-Remain party, Sinn Féin's seven votes in a fractured Parliament could have made a significant difference to the course of Brexit. Instead, compromise, when it came, focused on Stormont and the New Decade, New Approach agreement which saw enough softening of the red lines of both the Democratic Unionist Party (DUP) and Sinn Féin to have them recommence power-sharing.

The influence of Sinn Féin in Westminster has come instead from the use of 'coffee cup diplomacy' (using informal networking for influence) and canny use of the parliamentary privileges that the party enjoys regardless of its MPs not taking their seats. The party is experienced in making best use of the access it has to Commons resources and evidence, and makes sure that its MPs and advisers are well-briefed, clear and consistent in presenting the party line.

Sinn Féin, we should not forget, is managing representation – and managing to coordinate its party position very effectively – in no fewer than four legislatures: Westminster, Stormont, the Oireachtas and the European Parliament. Indeed, the leverage that it wishes to use on the issues it values most will be greatest outside Westminster rather than within it. The Commons has long been less of a priority for the party than Dáil Éireann and this was in part reflected in its contrasting fortunes in the UK general election of December 2019 and the Irish general election a month or so later.

Much depends on how relations between the parties are managed within the Northern Ireland Executive and, more broadly, on the tone and tenor of the British-Irish intergovernmental relationship which underpins the peace process. Ultimately, what the DUP decides to do will follow from what it sees as best securing Northern Ireland's position in the union, and this is likely to depend on the machinations of the Conservative government rather than a premeditated party line from the DUP itself.

The option – if not the imperative – of collaboration between Northern Ireland's 18 MPs is made a feasible proposition following the 2019 general election, which saw the re-emergence of a centre ground in the region.

When the Good Friday (Belfast) Agreement was originally concluded, it was presumed that the moderate middle ground would continue to grow and form a solid basis for future reconciliation in Northern Ireland. Instead, we saw a polarisation of discourse and an incentive to pursue confictual (albeit non-violent) politics. At the 2019 general election, however, both the DUP and Sinn Féin were punished for their three-year long refusal to share power as public services fell into crisis. On the other hand, the pro-Remain and pro-cooperative stances of the moderate parties (the SDLP and Alliance) resulted in strong performances from them and sent three new 'centre ground' MPs to the Commons.

Whilst those parties are inevitably hindered by lack of numbers – by the way Commons procedures are arguably biased against smaller (especially regional) parties, and by the sheer size of Boris Johnson's majority – those three MPs are widely respected as among the most effective political actors in Northern Ireland. Their mettle will, of course, be tested. But perhaps the biggest difference they can make is in forming the cartilage between the two grinding bones of the DUP and Sinn Féin.

Although the impact of Northern Ireland's MPs is unlikely to be as high-profile or as disproportionate as it was felt to be in the previous parliament, their role may in fact prove more critical now than it has been for a generation.

At its heart, peace in Northern Ireland depends on people of all political views believing that democratic representation works and is worthwhile – including at UK level. If the Johnson government responds favourably to what may turn out to be an unprecedented willingness of the part of Northern Ireland's parties in Westminster to work together and speak in common cause, it will be an important means of welding together the pillars of peace and stability amid what looks set to be a period of extraordinary political turbulence across these islands.

Tim Bale

In the autumn of 2019, parliamentary parties opposed to Boris Johnson's government were able to cooperate, with the help of Conservative backbenchers, to prevent a 'no deal' Brexit and force the Prime Minister to ask for a second extension to Article 50. But the idea that, in this Parliament, they might be able to build on such cooperation to effectively oppose what is now a majority government is a chimera – at least when it comes to the House of Commons, if not the House of Lords.

Biologically-speaking, a chimera is a single organism composed of cells with more than one distinct genotype. Mythically-speaking, it's a fire-breathing monster composed of a number of different animals. Metaphorically-speaking, it's a dream that's often chased but unlikely ever to come true. In this case, all of these definitions apply.

In practice, the putative 'Remain majority' in the previous House of Commons was always rather weaker than many supposed. This was in part because many of the MPs who had originally campaigned to stay in the EU back in 2016 (see the contributions by Philip Lynch and Richard Whitaker) decided – either from a principled commitment to honour the results of the referendum or from an understandable desire to save their seats – to support a government determined to leave.

Nevertheless, by the late autumn of 2019, there was at least an outside chance that said majority, which managed to come together sufficiently to prevent a 'no deal' departure and force an extension, might have gone even further. It could perhaps have forced the government into a second referendum, or even toppled the Johnson government and replaced it with a 'government of national unity'. Instead, the coalition fell apart over the determination of most of the parties involved that Jeremy Corbyn should never be allowed anywhere near Number 10. And anyway, two of them – the Liberal Democrats and the Scottish National Party – had, whether owing to hubris or to higher priorities, set their sights on a general election.

All of which is a salutary reminder that the incentives for opposition cooperation in the UK, at least beyond the very short term, often prove weaker than the temptation to abandon cooperation and seek partisan advantage. That will very likely remain the case unless and until parties are prepared to put together pre-electoral pacts to mitigate the disadvantages that they face under first past the post – or until a government genuinely committed to replacing that system with a more proportional one finally comes to power.

That's not to deny that there are reasons for the opposition parties to cooperate at Westminster or that we will see examples of this in the coming months and years – and not just in the House of Lords where such cross-party cooperation is commonplace. After all, recent research suggests that, even under majority governments, the UK Parliament is not as toothless as is often assumed. This is true even when it comes to amending legislation – let alone ensuring scrutiny and accountability through the select committee system.

If only to boost their personal profiles, or to send a signal to the electorate that 'it doesn't have to be this way', opposition MPs from different parts of the Commons are sometimes willing to work together. Cross-party cooperation is also worthwhile if they can make the Prime Minister publicly squirm and even (maybe with help from disgruntled government backbenchers) perform a full-blown u-turn.

opposi ton par tes' voters, and indeed, poten tal future voters. So it's easy to see Labour, Liberal Democrats, SNP, Greens, and the various regional par tes (even, as Katy Hayward's contribu ton points out, the DUP) coordina tng their e forts. This will serve, at the very least, to distance those par tes from an outcome which they are convinced will prove deeply damaging.

Even there, however, doubts may soon creep in. For instance, many Labour MPs are clearly desperate to follow Keir Starmer's lead and insist that, now the UK has le f the EU, the main task is to move on and make the best of it. Do they really want to be too closely associated with par tes that voters (or at least the newspapers they read) may well write o f as, at best, fringe ou tits or, at worst 'Remoaners' or separa tsts bent on the UK's destruc ton?

On other issues – including those which on the face of it might lend themselves to such coopera ton – things could turn out to be trickier s ll.

Take the environment. The kinds of cri tcism and solu tons pro fered by the UK's sole Green MP Caroline

Hilary Benn

Now that the Withdrawal Agreement has entered into force and the UK has le f the EU, it is a good moment to pause and re fect on the experience of the House of Commons Commi tee on Exi tng the European Union'

laid the ground for further procedural innovation which resulted, ultimately, in Parliament legislating against the government's will (as discussed in Daniel Gover's contribution). And this was not the only area in which Parliament asserted itself in the EUWA: it also, unusually, put negotiating objectives (on a customs arrangement and unaccompanied child refugees) into statute, as well as establishing new scrutiny mechanisms for delegated legislation (for which, see Brigid Fowler and Ruth Fox's contribution).

The first version of the WAB, published under minority government, afforded Parliament a similarly central formal role. It included a parliamentary vote on both the negotiating mandate and the final treaty on the future relationship, and committed the government to give Parliament regular progress updates during the negotiating period. Indeed, in key respects it actually gave Parliament a more significant role than had the EUWA – building in ongoing parliamentary oversight presumably to reduce the risk of Parliament ultimately rejecting the deal, as had happened with May's Withdrawal Agreement. The second, post-election version of the WAB, however, stripped out these provisions – and none appear in the final Act.

In formal terms, then, the difference between the two Acts is stark. The negotiation has been taken back into executive hands. Parliament will have little formal say in shaping the mandate or monitoring the negotiations – though select committees will certainly play a role – and there will be no meaningful vote on the future relationship.

Such a conclusion, though, would be too simplistic – even accounting for the very different circumstances in which the Acts were passed. By the time the EUWB was making its way through Parliament, trust between May and her backbenchers was at such a low ebb that Conservative backbenchers forced the meaningful vote into statute – bringing their disagreements with May, at the time and thereafter, into the public arena of the Commons chamber. The WAB's smooth passage may, by contrast, appear to herald a return to a 'normal' state of affairs in which the government inevitably gets its way. But the reality of backbench influence has always been more complex.

Much parliamentary influence takes place behind closed doors, not least through the crucial negotiations between a government and its own backbenches. Public dissent over the Huawei and HS2 decisions has shown that the parliamentary Conservative Party, notwithstanding Johnson's large Commons majority, has more diverse views than might have been assumed. And, as Philip Lynch's contribution notes, decisions about the future relationship could have a major economic impact upon some Conservative constituencies – meaning that government backbenchers will almost certainly want to have their say. The WAA may not give Parliament a formal role in shaping or approving the future relationship. But behind closed doors backbenchers will, as always, no doubt be keen to exert pressure – and may have more opportunity for influence over ministers than some external observers might assume.

Daniel Gover

Normally a distinctly niche interest, parliamentary procedure became headline news during the 2017-19 Parliament. In their efforts to influence the Brexit process, MPs adapted various procedural mechanisms to demand information, take control of the Commons agenda, attempt to forge a consensus, and ultimately to impose their will on reluctant ministers. These initiatives captured significant media attention, though they encountered varying degrees of success.

An early focus of procedural innovation was on securing the release of information. Under 'Standing Order No. 14', most time in the Commons chamber is by default controlled by the government, potentially enabling ministers to restrict the topics that other MPs can debate and vote on – but one exception is for 'opposition day' debates. In late 2017 Labour began using these opportunities to deploy the ancient parliamentary mechanism of 'motions for return' (or 'humble addresses'), including to force the publication of internal government Brexit analyses. Yet the amount of opposition time available is limited, and its timing depends

Securing legislaton against tght deadlines and government resistance required signifcant procedural

Alan Wager

There are some reasons to think that committees might rise to the occasion. Partly as a function of the personnel changes that Johnson made upon becoming Prime Minister, many select committee chairs in areas highly relevant to Brexit are independent-minded Conservative MPs who did not support him in the leadership contest: Tom Tugendhat in Foreign Affairs, Tobias Ellwood in Defence, Greg Clark at Science and Technology, Huw Merriman at Transport. Notably, just one of the 28 select committee chairs elected

Maddy Thimont Jack and Hannah White

Brexit means that the UK government will take on new responsibilities. In some instances existing scrutiny bodies within the UK's legislatures will be able to assume the role of scrutinising how the government discharges these responsibilities; in others new parliamentary structures may be required.

The government has already begun to negotiate trade deals – so far it has focused on 'rolling over' trade agreements to which the UK was party as an EU member. But the government will also be free to negotiate treaties that cover areas beyond trade, such as security cooperation. This is not entirely new – the UK has always been able to negotiate treaties in areas of national competence – but it will have much greater freedom to do so now.

The UK government will also be required to manage certain areas of domestic policy for the first time in over 40 years, with knock on implications for Parliament's scrutiny structures. The government's new policy responsibilities will also put pressure on intergovernmental cooperation. As discussed in more detail by Sheldon and Phylip, the governments of the UK have agreed to work together on new 'common frameworks' in some devolved policy areas, including agriculture, the environment and fisheries – either through legislation or intergovernmental agreements.

Some existing public bodies will take on new functions after Brexit. For example the Competition and Markets Authority will be required to oversee the government's subsidy regime. In other instances the government is forming new bodies to take on roles previously exercised by the EU institutions; thus the Office for Environmental Protection establishe l' l' ou ò ò e

Jack Sheldon and Hedydd Phylip

The existing devolution arrangements developed within the framework of EU membership, and many devolved policy areas have a European dimension. Agriculture and environmental standards are good examples, and as the UK leaves the EU's regulatory regimes powers should – at least in principle – return to the devolved level as well as Westminster. The next phase of the Brexit process will therefore be of considerable interest not only to members of the UK Parliament, but also to members of the devolved parliaments in Northern Ireland, Scotland and Wales.

The UK's future trading relationships with the EU and with non-EU countries will be of crucial importance to key industries in the devolved territories, will require implementation by the devolved governments, and will play a part in determining the future scope of devolved powers. Given this, parliamentary committees in Scotland and Wales

While IPFB participants are positive about its role to date, the new phase is an opportunity to consider whether there is now a case for developing a scrutiny dimension to Brexit-related interparliamentary relations. Common frameworks are likely to be particularly suitable for this. It is envisaged that some frameworks will be legislative (requiring primary legislation at Westminster, and subject to legislative consent motions in the devolved parliaments), but the majority will take non-legislative forms and so not be subject to any formal scrutiny process. As these will apply across the UK (or in some cases Great Britain), consideration might be given to establishing an interparliamentary dialogue to coordinate scru tö l' si

Nicola McEwen

There are four legislatures in the UK, but only one of these is sovereign. The sovereignty of the Westminster Parliament, as discussed in this report by Catherine Barnard and Alison Young, remains one of the most important principles of the UK constitution. Each of the devolution statutes made clear that conferral of law-making powers on the devolved institutions 'does not affect the power of the Parliament of the United Kingdom to make laws' for Scotland, Northern Ireland and Wales – including in areas of devolved competence. But Westminster's parliamentary sovereignty is offset by the constitutional [illegible]

Jill Rutter and Joe Owen

On 23 January the EU (Withdrawal Agreement) Bill (WAB) became an Act. Just shy of three years after Parliament legislated to give Theresa May powers to notify the EU that the UK intended to leave, Parliament agreed to the terms of the UK's departure. In the meantime, Parliament has transferred the EU statute book into UK law (see Adam Cygan's contribution), with tweaks made through secondary legislation to ensure a functioning statute book.

But there is still a lot more Brexit legislation to come – and in substance, at least, it could prove controversial. Most of it is not new (Theresa May's government introduced a raft of Brexit bills) but the major ones got stuck, as her precarious parliamentary position left them vulnerable to amendment.

Apart from the WAB, the Queen's Speech listed another si8B s8 BT10.5 B032 24 Tm[(((((((((425 s8 BMC 189 BDC BT0.19 0.18 0

Ministers have said that they will not do deals that reduce standards – but they may be reluctant to tie their own hands in a way that makes a deal with the US harder to secure.

The Fisheries Bill is designed to give government the powers it needs to 'take back control' of UK fishing waters. The powers themselves are not a big deal: what matters is what deal the UK negotiates with the EU. The EU is looking for an early agreement on continued access to UK waters after Brexit for EU fishing fleets, perhaps as a precondition of a wider trade deal. We don't yet know how the UK government plans to play this, but Parliament may try to influence the negotiations through the bill. Again the government is likely to resist, unless it sees advantage in being able to cite parliamentary pressure in the negotiations.

The Immigration Bill is needed to end free movement. But the real detail of the new migration system will – as always – be enacted through regulations, which will implement the government's new points-based system. But Parliament might try to revive some of the amendments tabled and defeated during the passage of the EU (Withdrawal Agreement) Bill – to give EU citizens already here rights to apply if they miss the settled status deadline and some physical proof. The government was unconvinced then, and is unlikely to be convinced in the future.

The final big bill is the blockbuster Environment Bill which puts the targets in the government's 25-year plan into law, and sets up a new Office for Environmental Protection (OEP) with oversight and enforcement powers, designed to fill what environmental groups call the 'governance gap'. This is a key part of the post-Brexit supervision machinery – and may be important in reassuring the EU of the UK's commitments to maintain standards. Expect a battle, especially in the Lords, about how to make the OEP as independent of government as possible.

One common theme of all of this legislation is the broad powers that the government plans to take in order to carry out policy changes. These are framework bills, which leave a lot of the detail out – to be filled in by secondary legislation. This will likely be a big feature of the debate – particularly in the Lords.

There is one final area of controversy. These are all UK bills, but they all impinge on the powers of the devolved administrations. The UK government enacted the WAB despite all the devolved legislatures refusing legislative consent – the first time that has ever happened. The same may happen with these bills as a further test of strength between Whitehall and Westminster and Holyrood, Cardiff and Belfast – as Nicola McEwen discusses in her contribution to the report.

On all of these issues, dissenting MPs, peers, and the devolved governments will struggle to assert their will against the Johnson juggernaut. Majority government seems likely to be back with a vengeance.

Brigid Fowler and Ruth Fox

Brexit has posed a legislative challenge unique in nature and scale. The combination of the exit deadline and protracted uncertainty over the negotiations made it unavoidable that many of the legislative changes required to prepare the statute book for the UK's departure from the EU would be made not through Acts of Parliament but through Statutory Instruments (SIs), a form of delegated or secondary legislation. These included SIs made using notably broad delegated powers.

The next stage of the Brexit process is unlikely to be much different.

Although the flow of future Brexit-related SIs may not be as heavy as it was prior to the UK's departure from the EU, their content is likely to be just as politically contentious.

For example, EU citizens' rights enshrined in the withdrawal agreement will be implemented in the UK largely through SIs. The same will apply to the complex provisions in the agreement's Northern Ireland Protocol, and to 'common framework' policies affecting the devolved nations.

As discussed in the contribution by Jill Rutter and Joe Owen, new bills for agriculture and fisheries are also replete with broad delegaveg - M Ł Ł ' àt M ŏ ѕ y t an

In the Brexit context, the combination of broad delegated powers and inadequate scrutiny procedures has limited, and will continue to limit, parliamentarians' ability both to influence some of the UK's post-Brexit policy choices and to hold the government to account.

The prospect of MPs having little effective say on an SI implementing the Northern Ireland Protocol or a trade agreement could heighten the pressure for procedural reform ð te η M ð'ϒ

In contrast, a Canada-style free trade agreement may not formally require more than minimal regulatory alignment with EU laws and would therefore maximise regulatory sovereignty, but regulatory divergence would almost certainly come at the expense of single market access. The imperative for single market access – for example, in the form of just-in-time supply chains – suggests that even under a Canada-style agreement Parliament would have good reasons not to depart rapidly from the regulatory framework and standards within retained EU law. But, as Lisa James' contribution emphasises, Parliament will have little formal influence over the executive in the future relationship negotiations.

Legally, 'taking back control' suggests that only laws passed by the UK Parliament and enforced solely by UK courts will be applicable in the UK. The trade-offs entailed in the various options for the future relationship show that a diverse range of economic and political factors will influence regulatory choices for both government and Parliament. As Philip Lynch argues in his contribution, Conservative MPs, elected in so-called 'Red Wall' seats in 2019, may yet face difficult decisions between constituency and party demands when it comes to the future relationship.

Because the government has refused to extend the transition period, these choices will also need to be confronted soon: the UK avoided a regulatory cliff-edge no-deal Brexit on exit day, but a regulatory cliff-edge caused by the failure to agree a future trade relationship by the end of the transition period would not be much different in its effects. Hence, Parliament should take this prospect equally seriously.

Despite the difficulty of determining the depth and scope of the future relationship, the challenges of passing Brexit-related legislation will be minimal compared to in the 2017-19 Parliament: as discussed in the contribution by Jill Rutter and Joe Owen, given the government's large parliamentary majority, it is likely to secure its aims. Yet, in taking back regulatory sovereignty, Parliament must also be conscious that

Ewa Zelazna

While Parliament played a prominent role in the ratfcaton of the Withdrawal Agreement, its positon with regards the future UK-EU relatonship is considerably weaker. As discussed by Lisa James, the EU (Withdrawal Agreement) Act (WAA) does not require a meaningful vote by Parliament on the future relatonship agreement. Furthermore, Jill Barret's contributon highlights how existng procedures for approval of treates under the Consttutonal Reform and Governance Act 2010 (CRAG) provide insu f cient mechanisms for efectve parliamentary accountability of the government. Nonetheless, this should not make efectve scrutny impossible and opportunites for this stll exist with respect to the future relatonship negotatons. In this context, the engaged and proactve positon of the European Parliament in internatonal treaty negotatons provides an interestng comparison.

In the relatonship with the non-binding framework agreement governs Commonicatons between the European Parliament and the Commission in treaty negotatons. It promotes a positve working environment between the instttutons and fosters a spirit of cooperaton whereby Commission o f cials regularly atend plenary debates and committee meetngs. During negotatons, Parliament's chief negotator [illegible]

[illegible] date is [illegible] available to the Parliament

[illegible]

No longer shadowing a department, the committee will prioritise oversight of the future relationship negotiations and is likely to produce regular reports on the progress of the negotiations – as Hilary Benn's contribution describes took place during the withdrawal agreement negotiations. But to maximise future scrutiny, the committee could, for example, consider how it could take into account other inquiries that may concern the negotiations and draw upon the expertise of other select committees.

During the 2017-19 Parliament there were 66 Brexit-related inquiries conducted by various departmental committees, which highlights the level of capability and capacity within Parliament which could be turned to conducting scrutiny of international treaty negotiations. Coordinating a response within Parliament across select committees that engage in scrutiny of the negotiations would be one means of improving the coherence of Parliament's response and strengthening its voice. In the European Parliament, the committee responsible for scrutinising an international agreement will request opinions on specific issues from other committees with relevant expertise, which, in turn, are incorporated in a report provided to MEPs before the Parliament approves a treaty.

Although there will be no meaningful vote by Parliament on the final UK-EU agreement, Parliament may need to adopt further legislation to give effect to its provisions. This could give it power to indirectly veto the agreement by refusing to enact implementing legislation. However, such a decision would need to be considered carefully, as it could result in the UK breaking its international commitments. Moreover, with a large Conservative majority in the Commons, it is unlikely that Parliament would jeopardise the government's negotiating efforts.

centre on the need to establish a new treaty committee, preferably a joint committee of both chambers. In its April 2019 report the House of Lords Constitution Committee stated that in order '[t]o address the shortcomings in Parliament's scrutiny of treaties, we recommend that a new treaty scrutiny select committee be established. This committee should sift all treaties, to identify which require further scrutiny and draw them to the attention of both Houses'.

A Treaty Committee could develop institutional improvements in treaty scrutiny across all committees, for example by establishing requirements for the government to provide timely access to accurate information. It could also be given the power to call or request a debate. Its role need not be confined to treaties laid under CRAG prior to ratification. It could also establish, in dialogue with government, new standards for the provision of information about treaties under negotiation, and opportunities for Parliament to consider the government's negotiating aims and priorities. A Treaty Committee could improve dialogue between Parliament and treaty-makers in the government, increase the body of parliamentarians with experience of treaty scrutiny, and develop good practice – without preventing other committees from scrutinising treaty actions. A Treaty Committee could also provide a useful focal point for dialogue with devolved legislatures about trade treaties, to help remedy the lack of interparliamentary mechanisms outlined by the contribution of Jack Sheldon and Hedydd Phylip.

The process of making new trade treaties will need much more intense scrutiny than most treaties have received in the past. Trade treaties can take various forms, such as free trade agreements or trade provisions contained within association agreements that cover cooperation on other matters such as security, immigration, human rights or labour standards. These are subjects of intense concern to parliamentarians, businesses, pressure groups and the general public, to a greater degree than many other treaties that function only at the inter-governmental level. They will concern a range of select committees – not only those dealing with trade – and so central coordination of parliamentary scrutiny will be essential, as also highlighted by the contribution of Maddy Thimont Jack and Hannah White.

The UK has not negotiated its own trade treaties for 50 years. The government therefore lacks experience and expertise in this area. The risks of poor or suboptimal outcomes are high. Public expectations and concerns will be difficult to manage, as experience of other countries in trade negotiations has shown. Early and proactive engagement by Parliament in interrogating the government's approach could strengthen the government's position in negotiations and help to achieve outcomes that will be acceptable not only to Parliament, but also to the wider public.

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