



House of Commons
Public Administration
and Constitutional Affairs
Committee

**Status of Resolutions of
the House of Commons**

Fifteenth Report of Session 2017–19

*Report, together with formal minutes
relating to the report*

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Public Administration and Constitutional Affairs Committee

The Public Administration and Constitutional Affairs Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith; to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service; and to consider constitutional affairs.

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Evidence relating to this report is published on the [inquiry publications page](#) of the Committee's website.

Committee staff

The current staff of the Committee are Libby Kurien (Clerk), Dr Sarah Thatcher (Clerk), Ian Bradshaw (Second Clerk), Dr Patrick Thomas (Committee Specialist), Dr Philip Larkin (Committee Specialist), James Comer (Committee Specialist), Moonisah Iqbal (Committee Specialist), Gabrielle Hill (Senior Committee Assistant), Iwona Hankin (Committee Assistant), Ben Shave (Media Officer) and Nina Foster (Media Officer).

Contacts

All correspondence should be addressed to the Clerk of the Public Administration and Constitutional Affairs Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 3268; the Committee's email address is pacac@parliament.uk.

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Summary

Resolutions of the House of Commons are expressions of the will of the elected representatives of the United Kingdom. Concern over the status of resolutions of the House and the Government's treatment of those resolutions has grown during this Parliament in reaction to the Government's decision to whip its members to abstain from some votes on Opposition Day motions.

The concern was that Government members were speaking against the motion, but then allowing motions to be passed without division. It was reported that this signified that, because the motions were "non-binding", the Government took the view that they could effectively be ignored. The Leader of the House indicated that the Government had chosen not to vote against the motions as they were "political point scoring". Concern was expressed across the House about the Government choosing not to take action on the will of the House expressed through a substantive motion and consequent resolutions.

In response to these concerns the Leader of the House gave a commitment that all resolutions passed on Opposition Days would be responded to within 12 weeks.

Resolutions may not by themselves have legal effect. Resolutions cannot change the law, the only way to change the law is by the law. However, they can have political effect and as such we conclude that they should be treated seriously by the Government acknowledging that the Government must retain the confidence of the House of Commons to remain in office. The status of resolutions of the House has been eroded by the Government's decision to abstain from Opposition Day votes and has been interpreted as a lack of respect for the House. It is for the House, not the Government, to determine what is legitimate scrutiny and the Government is expected to engage in good faith with resolutions of the House. As such the Government's decision to abstain from voting because they deem the motion "political point scoring" risks devaluing the status of resolutions.

We welcome the Leader of the House commitment to respond within 12 weeks, however it is clear to us that many resolutions should be responded to within a much shorter timescale especially if the Government intends to act in ways contrary to the expressed will of the House. We have invited the Procedure Committee to consider whether any changes to the practice and procedures of the House are merited in the light of the practice the Government has adopted in responding to resolutions of the House which seek to direct Ministers.

The Opposition in an attempt to find an Opposition Day motion that would be binding if the Government abstained or lost a division, used a motion for return through a Humble Address, a procedure not used in this way since the 19th century, but regularly exercised by the Government through the process of an "unopposed return".

There are limits to the use of this power: the evidence said that motions for return are effective when made within the House's "existing and recognised jurisdiction".

There is no motion of the House that can be used to compel the Government to act, compel a Minister to legislate in some way or lay a regulation, or tell a Minister how to perform their statutory functions.

An established limit for the motion for return within the House's existing recognised powers is the convention that the advice of law officers to Government is not usually laid before Parliament, though it remains within the House's power to ask for it. This enables Government to obtain frank and full legal advice in confidence.

The Government's decision not to test the opinion of the House in a division on the motion calling for the Attorney General's legal advice on 13 November 2018 added to confusion about the sincerity of the Government's intentions and undermined the Government's subsequent refusal to provide that legal advice. The actions of the House in finding the Government in contempt has asserted the House's right for resolutions to be taken seriously. The Government's eventual publication of the Attorney General's legal advice breaching the usual convention that such advice remains confidential, has demonstrated the importance of, and need to take seriously, resolutions of the House of Commons.

The credibility of the use of the House's powers depends on their responsible exercise. The House should be both assertive and sensitive in the exercise of its powers. Where the limits on these powers lie is a matter for negotiation between Parliament and Government and both should be careful about setting any precedent with long-term effects in reaction to short-term political pressures.

1 Introduction

1. The Public Administration and Constitutional Affairs Committee launched an inquiry into the Status of Resolutions of the House of Commons on 13 September,¹ as part of its wider inquiry into the Role of Parliament in the UK Constitution.² The purpose of the inquiry was to look into the decision by the Government to whip its Members not to vote on motions critical of the Government put before the House on Opposition Days.³

2. The inquiry also examined the ongoing debate on the implications of the Fixed-term Parliaments Act 2011 for the traditional conventions on confidence motions. In order to inform the House in a timely manner on that issue, on 11 December 2018 the Committee published an interim report entitled *The Status and Effect of Confidence Motions and the Fixed-term Parliaments Act 2011*.⁴ Due to the timing of the evidence sessions for the inquiry, the Committee also questioned some witnesses about the motion required under Section 13 of the European Union (Withdrawal) Act 2018, otherwise known as the meaningful vote. As the Procedure Committee has already reported its comprehensive findings on this topic in its report, *Motions under section 13(1) of the European Union (Withdrawal) Act 2018* this report does not consider the meaningful vote.⁵

3. The Committee received 8 written submissions and heard oral evidence from Sir David Natzler, Clerk of the House of Commons, and Mark Hutton, Clerk of the Journals, Professor Petra Schleiter, Professor of Comparative Politics, University of Oxford, Professor Robert Blackburn QC, Professor of Constitutional Law, King's College London, and Dr Andrew Blick, Director, Centre for British Politics and Government, King's College London, Rt Hon Dame Margaret Beckett MP, Former Leader of the House of Commons, Rt Hon Mark Harper MP, former Government Chief Whip and Rt Hon. Andrea Leadsom MP, Leader of the House of Commons. We are grateful to all of those who contributed to this inquiry.

1 PACAC, "[Call for submissions on the status of resolutions in the House of Commons](#)", 13 September 2018.

2 PACAC, "[The Role of Parliament in the UK Constitution](#)", 13 September 2018.

3 Heather Stewart, "[Labour accuses Theresa May of 'stitch-up' over response to defeats](#)", Guardian, 26 October 2017

4 Public Administration and Constitutional Affairs Committee, Fourteenth Report of the of session 2017–19, "[The Role of Parliament in the UK Constitution Interim Report The Status and Effect of Confidence Motions and the Fixed-term Parliaments Act 2011](#)", HC 1813

5 Procedure Committee, Eighth Report of session 2017–19, *Motions under section 13(1) of the European Union(Withdrawal) Act 2018*, HC 1664

2 Resolutions of the House

Opposition Day Motions in the 2017 Parliament

4. Concern over the status of resolutions of the House and the Government's treatment of those resolutions has developed during this Parliament in reaction to the Government's decision to whip its members to abstain from some votes on Opposition Day motions. In the past, it has generally been the convention that where the Government declines to whip its Members to vote one way or another on a motion it is a signal either of genuine open-mindedness about, or reluctant acquiescence in, the proposition before the House. On the first Opposition Day of the current Parliament, on 13 September 2017, motions on NHS pay and Higher Education (England) regulations were agreed to without division following Government abstention. On 10 October 2017 an emergency debate on Government Policy on the Proceedings of the House was held, initiated by the Liberal Democrat Chief Whip, Rt Hon Alistair Carmichael MP.⁶ In applying for the emergency debate, Mr Carmichael said that in both debates on 13 September, "the Government argued against the motions before the House" but then "remained silent, and each motion was passed without Division". He continued:

It was widely reported that because the motions were non-binding, the Government took the view that they could effectively be ignored, as has ultimately been shown to be the case. It was further suggested in some quarters that the approach taken by the Government last month is one that we should expect to become routine ...the Government are seeking to treat this House as a talking shop, rather than the place in our nation's life where decisions of note are made.

5. During the debate, others also expressed concern about a Government policy to abstain from votes on Opposition Days which the Government considered it was unlikely to win. Peter Bone MP said this was an issue of "Parliament versus Government" and that "there is no point having a substantive motion and having the will of the House expressed on a particular issue if the Government then choose not to take action".⁷ Chris Bryant MP also raised concern about the balance between Parliament and Government when he said:

The golden thread that runs through our parliamentary system is government by consent. It is not about the Government deciding everything because they have managed to take it all by winning, but about government by consent and the sovereignty of Parliament.⁸

6. In closing the debate Mr Carmichael said the Leader of the House:

could have denied that it was Government policy to avoid Divisions that they would lose and then to ignore the decision of the House on non-binding motions. She chose on 14 September not to do so. She was given the opportunity again today to deny that this was the Government's policy. She chose again not to do so.⁹

6 HC Deb, 10 October 2017, [col 208–252](#) [Commons Chamber]

7 HC Deb, 10 October 2017, [col 248–9](#) [Commons Chamber]

8 HC Deb, 10 October 2017, [col 234](#) [Commons Chamber]

9 HC Deb, 10 October 2017, [col 251–2](#) [Commons Chamber]

7. Reflecting many of the views expressed in the debate, he said “what I want is an assurance that where the House reaches a decision... [it] will be acted on and respected by Government.”¹⁰

8. In her contribution to the debate the Leader of the House, Rt Hon Andrea Leadsom MP, stated that the Government had chosen not to vote because the motions put down by the Opposition were “political point scoring”.¹¹ We note that the use of Opposition Day motions to score political points is neither novel nor unique to the party that presently holds the status of the Official Opposition. The Leader of the House continued:

This House expressed a view; what she and other Opposition Members want to do is to force the Government to oppose. The reason why they want the Government to oppose is so that they can then put out a press release that the Government oppose fair pay for public sector workers ... This House expressed a view and the Government are listening, but we will not necessarily always choose to take part in party political games.¹²

9. Members on both sides of the House continued to express concern about the Government policy to abstain from votes during following the next Opposition Day debate on 18 October 2017 when the motion being considered was “That this House calls on the Government to pause the rollout of Universal Credit full service”. Government Members, under a three-line whip, again abstained from the vote, but the Opposition took the relatively unusual step of providing tellers for the Noes in order that a division could take place. The Question was accordingly agreed to, 299 to 0.

10. In a point of order following the debate, Debbie Abrahams MP, Shadow Secretary of State for Work and Pensions, asked when the Government would come to the House to explain how it would implement the “clearly expressed will of the House”. Pete Wishart MP, Shadow Scottish National Party Leader of the House, said “the Government’s behaviour is bringing the working arrangements of the House into disrepute”.¹³ Sir Edward Leigh MP expressed concern that the Government’s actions were setting a precedent which might reduce the House of Commons to a “university debating society” and that future governments would view resolutions of the House as “only an expression of opinion” and, as such, Parliament could be ignored. “Frankly,” he continued “the road to tyranny is paved with executives ignoring Parliament”.¹⁴

11. The Leader of the House stated in response that “[t]here is no precedent being set” by the Government, and that it “would look on a case-by-case basis at whether they will vote on specific motions or not.”¹⁵ On 26 October 2017, she issued a written statement setting out a commitment that:

Where a motion tabled by an Opposition party has been approved by the House, the relevant Minister will respond to the resolution of the House by making a statement no more than 12 weeks after the debate.¹⁶

10 HC Deb, 10 October 2017, [col 251–2](#) [Commons Chamber]

11 HC Deb, 10 October 2017, [col 223](#) [Commons Chamber]

12 HC Deb, 10 October 2017, [col 225](#) [Commons Chamber]

13 HC Deb, 18 October 2017, [col 957](#) [Commons Chamber]

14 HC Deb, 18 October 2017, [col 957](#) [Commons Chamber]; HC Deb, 19 October 2017, [col 1009](#) [Commons Chamber]

15 HC Deb, 19 October 2017, [col 1009](#) [Commons Chamber]

16 HC Deb, 26 October 2017, [col 199WS](#) [Commons written ministerial statement]

12. In response to this proposal John Trickett MP, the Shadow Minister for the Cabinet Office said:

The Government’s contempt for parliament and democracy is disgraceful... After failing to win a majority at the general election, the Tories have engaged in one stitch-up after another. They’ve fixed standing committees in their favour, are attempting to grant themselves sweeping powers with the EU withdrawal bill, and now seem to have confirmed they will ignore the decisions of parliament on opposition day debates¹⁷

13. On 1 November, in answer to a written question, the Leader of the House described the Government approach as a “new convention”.¹⁸

Effect of a resolution of the House

14. As Erskine May sets out a motion is “a proposal made for the purpose of eliciting a decision of the House”, and a substantive motion is defined as “a self-contained proposal submitted for the approval of the House and drafted in such a way as to be capable of expressing a decision of the House”.¹⁹ This is different from other motions used in the House, the Clerk of the House told us:

The way Westminster Hall is currently run, the motions are not in themselves significant. The debates are often, obviously, very significant, but it is effectively on a general debate that the House has considered a certain matter. That itself replaced an antique system, as I suppose it is now, where the House kept on debating things on the motion, “That this House do now adjourn”. Indeed, at the end of each day we still debate that the House do now adjourn, although otherwise it is very similar to a half-hour debate in Westminster Hall. That is the only remainder of the older system.²⁰

15. When a motion is agreed to, it becomes either an order or a resolution of the House. As the Clerk of the House, explained:

Very simply, an order is when the House orders one of its officers or sometimes—I think I am right in saying—itself to do certain things that are within its ambit of power. You have to judge what are the House’s powers to do things. If the House does not have the power to do it, it is not an order—it is called a resolution. You might call it anything else. A resolution is an expression of the House’s views, however strongly held, but it has no immediate effect.²¹

16. The Clerk of the House continued that resolutions are:

... effective and binding in law when the statute law provides that they are. The obvious example is affirmative instruments. When we resolve to

17 Heather Stewart, [‘Labour accuses Theresa May of ‘stitch-up’ over response to defeats’](#), Guardian, 26 October 2017

18 [WQ110093](#)

19 Erskine May, 24th Edition (London, 2011), p 330

20 [Q8](#)

21 [Q5](#)

approve a draft instrument, that is then a binding resolution, owing to the text of the Statutory Instruments Act. There is no doubt about it. We are not ordering anyone to do it, but we have resolved under statute.²²

17. Similarly, a resolution which conformed to Section 2(1) of the Fixed-term Parliaments Act 2011 and was passed by the House would have the effect of bringing about an early election, as occurred in 2017.²³ The motion required by section 13(1) of the European Union (Withdrawal) Act 2018, known as the meaningful vote, is another example of a resolution which has effect through legislation, because without it, the UK could not ratify the specified Withdrawal Agreement. However, it is important to note that amending the motion would not have legal effect, other than to potentially negative the motion, and could not provide the necessary authorisation to ratify the agreement. When asked if the resolution required under section 13(1) was amended, for example to call for a second referendum on EU membership, whether that would have any binding effect of the Government, the Clerk of the House said: “No; it is an expression of the House’s opinion. It does not, of itself, create a second referendum. Its political impact I leave to you.”²⁴

18. The Clerk of the House told us that “a mere resolution cannot change the law. The only way we can change the law is by law.”²⁵ He explained that Parliament does not have the power to “bind the Executive by mere resolution” nor can it “instruct Ministers”.²⁶ This doctrine was also expressed by the Speaker on 18 October 2017 when he stated that, while a resolution is an “expression of the view of the nation’s elected representatives in the House of Commons,” it cannot direct Ministers and “it is for Ministers in the Government to decide how to respond to the clearly expressed view of the House”.²⁷

19. Commenting on the constitutional force and the status of resolutions of the House, the Clerk of the House said:

I hope there is a shared understanding that they should be treated for what they are, which means treated with respect as the expression of the will of the elected representatives of the United Kingdom, and that even if what the resolutions call for does not always happen, it is a matter of real significance that Members of the House of Commons have come to this conclusion. Even if it is without a vote or even if, as you say, the Government Members have abstained, or indeed Opposition Members have abstained, this is what the House of Commons has said. And anything, including anything that we do here carelessly, that diminishes the standing that resolutions should have is really regrettable.²⁸

20. The Clerk of the House said that the decision to abstain from a vote on a motion, whether by an individual MP, an opposition party or the Government does not affect the status of the resolution in any way.²⁹ Professor Robert Blackburn, Professor of Constitutional Law at King’s College London, concurred that the abstention makes “no difference to the status

22 [Q12](#)

23 [Q12](#)

24 [Q21](#)

25 [Q12](#)

26 [Q14](#) [Sir David Natzler]

27 HC Deb, 18 October 2017, [col 956](#) [Commons Chamber]

28 [Q45](#)

29 [Qq26–27](#), [Q45](#)

of resolutions of the House”.³⁰ He described the decision on the part of the Government to abstain from votes on opposition days as “the stuff of politics”, intended to “weaken Opposition pressures on Ministers and help protect a fragile governing majority”.³¹

21. The Leader of the House, when asked about the Government’s decision to abstain from votes on Opposition Day motions, told us:

there is no obligation on Members of Parliament to vote. It is clearly set out in Standing Orders that Members of Parliament do not have to vote and the Government will take a view on a case-by-case basis and individual MPs will do likewise. There is no rule about when votes take place or do not take place but what is very important is that, when the House expresses a view, Ministers are listening to it and are coming back with how they intend to respond to it.³²

22. When asked about her comments that the Government had not voted in the first Opposition Day motion because the motion was only a tool for “political point scoring”, and how she determined the difference between legitimate scrutiny and political point scoring, the Leader of the House said:

I think there is always legitimate scrutiny. There is always the capacity for legitimate scrutiny, whether it is an Opposition Day debate or indeed a Backbench debate. In Adjournment debates, Westminster Hall debates, Parliament has many opportunities to hold Government to account. Parliament takes full advantage of all of those opportunities and it is right that it does so.

... Government always respond with Ministers coming to explain and answer questions raised by the House. It is always appropriate to hold Government to account and to scrutinise Government, and the Government will always respond in a proactive and positive way.³³

23. When we asked the Rt Hon Dame Margaret Beckett MP, former Leader of the House, about the Government’s decision to whip its Members to abstain from votes on Opposition Day motions, she said “I disapprove totally”.³⁴ She added:

I think we are moving in a very bizarre direction, because it appears to me from recent events that it is not that the Government do[es] not vote, but that the Government do[es] not vote unless they think they can win. When they think they can win, they do vote. That seems to me to be a very weird new convention to be being developed, and I am not sure I approve of it at all... I think there is a real danger of it looking as if Parliament is being held in contempt, because if the opinion of Parliament only matters when it agrees with the opinion of the Government, where are we going?³⁵

30 [Q82](#)

31 [Q82](#)

32 [Q237](#)

33 [Q236](#)

34 [Q154](#)

35 [Q154](#)

24. Dame Margaret said that, during her time in Government, when Government chose not to vote on a motion and the motion was carried, then that Government accepted the will of the House.³⁶ For example in 2009 when defeated on an Opposition Day motion calling on the Government to change its policy on right of Gurkhas soldiers who had served in the British armed forces to reside in the UK,³⁷ the Government listened and changed its position, responding later the same day, saying it would “respect the will of the House of Commons.”³⁸ However, Dame Margaret did make the point that, at the time she was Leader of the House, she never had to deal with the likelihood of defeat on Opposition Day motions as the Government at the time had a majority of about 100.

25. Rt Hon Mark Harper MP, former Chief Whip and former Minister for Political and Constitutional Reform, told us that there were occasions when he was Chief Whip when he thought the terms of a motion “were not so objectionable”, and the Whips would not automatically advise Government Members to vote against such motions. He said that the decision to whip or not on opposition motions was made on a case by case basis, depending on the terms of the motion, and that he did “not think there should be a blanket rule”.³⁹ When asked what the potential consequences were for future governments of the current Government disregarding resolutions, Mr Harper said he had observed that:

Oppositions have found increasingly creative ways of coming up with wording of motions that have the desired effect... Parliament has a way of holding Governments to account. Even if Governments do not always like being held to account, Members of Parliament, funnily enough, have a very good way of doing so.⁴⁰

26. When asked about the Government’s decision to abstaining from opposition day votes Professor Blackburn said:

The principal effect of the change in governing party conduct is purely political, designed, no doubt, to weaken Opposition pressures on Ministers and help protect a fragile governing majority from embarrassing defeats in the House of Commons. I think it is the fragile nature of the governing majority that has produced the practice. As I say, this is the stuff of politics and if the House of Commons objects to this, collectively—I know the Speaker has strong views on the matter—then it must assert itself.⁴¹

27. He continued on to say that if the House of Commons wanted to hold the Government to account “[t]he procedures exist, if the political will is there to use them.”⁴² Professor Petra Schleiter, Professor of Comparative Politics, University of Oxford, said that it was “entirely in the hands of Parliament just how many mechanisms it wishes to create to hold Government to account.”⁴³ She pointed out that, if the House chose to, it could introduce a range of procedures to constrain government, for example by strengthening the Committee system or constraining the Government’s ability to allocate Parliamentary

36 [Q147](#)

37 HC Deb, 29 April 2009, [col 928–31](#) [Commons Chamber]

38 [Q147](#); HC Deb, 29 April 2009, [col 928–31](#) [Commons Chamber]; HC Deb, 29 April 2009, [col 988](#) [Commons Chamber]

39 [Q224](#)

40 [Q227](#)

41 [Q82](#)

42 [Q99](#) [Blackburn]

43 [Q99](#) [Schleiter]

time.⁴⁴ The Clerk of the House told us that one of the effective motions that could be put down by the Backbench Business Committee or on an Opposition Day was a change to the Standing Orders of the House.⁴⁵

How resolutions of the House are considered and responded to, and who should determine timescales for responses.

28. The Leader of the House reiterated to us that when an Opposition Day resolution was passed, the Government’s commitment was to “come forward with a full response to that within 12 weeks of that date”.⁴⁶ The Leader also reported that all departments had agreed to respond to Parliament with the 12-week period following the passing of a resolution; and said that her office keeps a record of the responses.⁴⁷

29. When asked how the 12-week period had been determined, the Leader of the House said that it was not a “magical figure” but allowed time for the opinions of the House to be considered by departments and to come back with “very specific responses”.⁴⁸ We challenged the Leader on her description of the 12-week response time as a “new convention”,⁴⁹ and she accepted “that wording was misleading”, stating that it was better described as “a sensible and suitable response”.⁵⁰

30. Dame Margaret Beckett noted that the Government may have looked for a precedent for this length of time in public consultations and “other things”.⁵¹ However, she said it did not feel to her adequate and instead felt like “a bit of an excuse for not accepting an opinion in the House that the Government do[es] not like”.⁵² She said that while it was better to have a commitment for something than nothing, she raised a concern that the commitment was:

part of an atmosphere in which the Government say, “Yes, Parliament may express its opinion or Parliament may have a view, but never mind, we are too busy to bother about that, and we are just going to carry on anyway.”

31. Resolutions of the House of Commons are the expression of the will of the elected representatives of the United Kingdom. Resolutions by themselves may not have legal effect, but they can have political effect. As such, resolutions should be treated seriously by the Government acknowledging that the Government must retain the confidence of the House of Commons to remain in office. It is evident that a shared understanding of the status of resolutions of the House of Commons has been eroded in this Parliament, reflecting the inability of the Government always to defeat Opposition Day motions, or a reluctance to be seen to be opposing them.

32. We note that it is not mandatory for Members to vote in any division. However, the Government’s actions in whipping its Members to abstain from votes on Opposition

44 [Q99](#) [Schleiter]

45 [Q6](#)

46 [Qq230–231](#)

47 [Q243](#)

48 [Q233](#)

49 [WQ110093](#)

50 [Q234](#), [Q241](#);

51 [Qq159–161](#)

52 [Q159](#)

Day motions have been interpreted as showing a lack of respect for the House of Commons and its chosen methods of debate. In some cases, this has proved counter-productive for the Government.

33. The Government's decision to abstain from votes because the proposers' motion is deemed by the Government to be mere "political point scoring" has devalued the status of resolutions of the House of Commons. It is for the House of Commons, not the Government, to determine what is legitimate scrutiny, and the Government is expected to engage in good faith with resolutions of the House of Commons, even if it cannot implement their terms as expressed, or chooses to disagree with it.

34. We accept that the Government may decide on a particular motion not to vote, and that in doing so it may be seeking to save itself from political embarrassment. However, in such instances the Government must still respect the will of the House of Commons as expressed. This does not necessarily mean that the Government should be required to change its policy in the relevant area; and the precise means by which the Government should properly demonstrate it is treating resolutions of the House of Commons seriously may be different from case to case.

35. We welcome the fact that the Leader of the House has recognised the importance of the Government responding to resolutions of the House of Commons, setting a deadline of 12 weeks for departmental responses. It is for the Government to decide what response it wishes to make to resolutions of the House of Commons. However, it is for the House of Commons to decide whether it feels the Government has responded appropriately to its resolution, both in terms of length of time and quality of the response. It is clear to us that many resolutions can and should receive a response within a much shorter timescale than 12 weeks, especially if it is the Government's intention to act in any way contrary to the views expressed by the House. *We invite the Procedure Committee to consider whether any changes to the practice and procedures of the House of Commons are merited in the light of the practice the Government has adopted in responding to resolutions of the House which seek to direct Ministers.*

3 Motions for return

36. After the second Opposition Day motion had been agreed to without Government Members voting, the Opposition again anticipated that the Government would ignore the resolution of the House.⁵³ Chris Bryant MP asked the Speaker, “If we were to craft a motion cleverly, which, for instance, docked a Minister’s pay by, say, £10,000, that would have an effect, would it not?”⁵⁴ The procedure the Opposition turned to was, in fact, a motion for return.

37. On the next Opposition Day on 1 November 2017, a motion was tabled by the Opposition:

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.⁵⁵

38. A motion for a return, the Clerk of the House explained, invokes Parliament’s “historical and never challenged”, power to call for papers.⁵⁶ The Clerk of the Journals told us:

It is clear that the House has an understanding of the appropriate use of an Address. The form of the motion is only an Address when it is directed to a Department headed by a Secretary of State, otherwise it would be an order without being an Address—it would simply be an order for papers and would be equally effective. It is worth noting that the distinction between a resolution and an order is sometimes more one of form rather than substance. It is a resolution if it is an Address, and an order if it is simply an order for papers.⁵⁷

39. The Clerk of the House said that Ministers regularly use the process of an “unopposed return” to publish papers that cannot be command or act papers, often independent inquiry reports, thereby engaging the protection of parliamentary privilege and the Parliamentary Papers Act 1840.⁵⁸

40. Proposing the motion on 1 November 2017, the Shadow Secretary of State for Exiting the European Union, Rt Hon Sir Keir Starmer MP, made it clear that the intention of the Opposition was to put forward a motion that is “binding” and make it “impossible for the Government to pull their usual Wednesday afternoon trick of not voting on Opposition Day motions or not taking notice of them”.⁵⁹

41. In response, the Parliamentary Under-Secretary of State for Exiting the European Union, Robin Walker MP, described the motion as an “obscure parliamentary rule that

53 HC Deb, 18 October 2017, [col 955–9](#) [Commons Chamber]

54 HC Deb, 18 October 2017, [col 958](#) [Commons Chamber]

55 HC Deb, 1 November 2017, [col 878](#) [Commons Chamber]

56 [Q28](#)

57 [Q28](#) [Mark Hutton]

58 [Q28](#) [Sir David Natzler]

59 HC Deb, 1 November 2017, [col 884](#) [Commons Chamber]

has not been in general use for these purposes since the 19th century”.⁶⁰ He raised concern that “Ministers have a clear obligation not to disclose information when to do so would not be in the public interest.”⁶¹

42. At the end of the debate, the Question on the motion was agreed to without division. The Speaker, in response to a point of order, stated that:

... motions of this kind have traditionally been regarded as binding or effective. Consistent with that established pattern, I would expect the Vice-Chamberlain of the Household to present the Humble Address in the usual way.⁶²

43. Clerk of the House told us:

“In the case of the motions for an Address that we have had so far in recent Opposition days, the Government claimed in one case that the papers did not exist, but at no time have they suggested that if they had existed they would not have made them in some way available.”⁶³

44. Following the initial use of the motion for return, the Opposition has continued to use this type of motion:

- A second Opposition motion for a return, which called for the Work and Pensions Committee to be provided with information on Universal Credit project assessment reviews, was agreed to without division on 5 December 2017.⁶⁴
- A third, which called for the Public Accounts Committee to be provided with assessments of risk of Government strategic suppliers following the collapse of Carillion, was agreed without division on 24 January 2018.⁶⁵
- The fourth, which called for the Government’s EU exit analysis to be provided to the Exiting the European Union Committee was, again, agreed to without division.⁶⁶

60 HC Deb, 1 November 2017, [col 887](#) [Commons Chamber]

61 HC Deb, 1 November 2017, [col 887](#) [Commons Chamber]

62 HC Deb, 1 November 2017, [col 891](#) [Commons Chamber]

63 [Q31](#)

64 HC Deb, 5 December 2017, [col 930–1003](#) [Commons Chamber]; That an humble Address be presented to Her Majesty, That she will be graciously pleased to give directions that the five project assessment reviews, carried out into universal credit between 2012 and 2015 by the Government’s Major Projects Authority now known as the Infrastructure and Projects Authority, and any subsequent project assessment reviews carried out into universal credit by the Infrastructure and Projects Authority between 1 January 2016 and 30 November 2017 that have been provided to Her Majesty’s Ministers at the Department for Work and Pensions, be provided by the Secretary of State for Work and Pensions to the Work and Pensions Committee.

65 HC Deb, 24 January 2018, [col 335–375](#) [Commons Chamber]; That an humble Address be presented to Her Majesty, That she will be graciously pleased to give directions to the Chancellor of the Duchy of Lancaster that the assessments of risks of Government Strategic Suppliers by Her Majesty’s Ministers referred to in the Answer of 19 December 2017 to Question 114546 and any improvement plans which Crown Representatives have agreed with such strategic suppliers since 2014 be provided to the Public Accounts Committee.

66 HC Deb, 31 January 2018, [col 827–877](#) [Commons Chamber]; That an humble Address be presented to Her Majesty, That she will be graciously pleased to give directions that the EU exit analysis which was referred to in his response to an Urgent Question in the House on 30 January by the Parliamentary Under-Secretary of State for Exiting the European Union be provided to the Exiting the European Union Committee and made available to all Members on a confidential basis as a matter of urgency.

- The fifth motion for return, calling for “all papers, correspondence and advice including emails and text messages” relating to the Windrush generation to be provided to the Home Affairs Committee, was defeated by 316 votes to 221.⁶⁷
- The sixth motion for return called for the Government to lay before the House all papers prepared for the Cabinet sub-committee on customs arrangements after the UK leaves the EU, and this motion was defeated by 301 votes to 269.⁶⁸
- The seventh motion, which called for the Health and Social Care Committee to be provided with any written submission proposals to reform of the Health and Social Care Act 2012, was defeated by 295 votes to 230.⁶⁹
- The eighth motion for return, which called for briefing and analysis of the impact of Universal Credit to be laid before Parliament, was defeated by 299 votes to 279.⁷⁰
- The ninth motion for return, discussed in more detail below, called for the Attorney General’s legal advice on the EU Withdrawal Agreement, and was passed without division, Government Members having been whipped to abstain.⁷¹

45. Motions for return are effective when they are made, for example, to a Government department, which is what the Clerk of the House described as the “House’s existing

67 HC Deb, 2 May 2018, [col 340](#) [Commons Chamber]; That an humble Address be presented to Her Majesty, that she will be graciously pleased to give directions that the following papers be provided to the Home Affairs Committee: all papers, correspondence and advice including emails and text messages, from 11 May 2010 up to and including 1 May 2018, to and between Ministers, senior officials and Special Advisers relating to policy decisions including on the Immigration Acts 2014 and 2016 with regard the Windrush generation cases, including deportations, detentions and refusal of re-entry, the setting of deportation and removal targets and their effect on the Windrush generation, and action taken within Government following the concerns raised by Caribbean Governments with the Foreign and Commonwealth Office including the original decision by the Prime Minister not to meet Caribbean Heads of Government and officials, and all copies of minutes and papers relating to the Cabinet’s Immigration Implementation Taskforce.

68 HC Deb, 16 May 2018, [col 341–395](#) [Commons Chamber]; That an humble Address be presented to Her Majesty, that she will be graciously pleased to give directions that the following papers be laid before the House: all papers, presentations and economic analyses from 1 January 2018 up to and including 16 May 2018 prepared for the European Union Exit and Trade (Strategy and Negotiations) Cabinet sub-committee, and its sub-committees, on the Government’s preferred post-Brexit customs arrangements including a Customs Partnership and Maximum Facilitation.

69 HC Deb, 23 May 2018, [col 904–956](#) [Commons Chamber]; That an humble Address be presented to Her Majesty, that she will be graciously pleased to give directions that the following papers be provided to the Health and Social Care Committee: written submissions received by Ministers since 8 June 2017 on proposals for reform of the Health and Social Care Act 2012, on the creation of accountable care organisations in the NHS, and on the effect of outsourcing and privatisation in the NHS including the creation of wholly-owned subsidiary companies; and minutes of all discussions on those subjects between Ministers, civil servants and special advisers at the Department of Health and Social Care, HM Treasury and the Prime Minister’s Office.

70 HC Deb, 17 October 2018, [col 649–720](#) [Commons Chamber]; That an humble Address be presented to Her Majesty, That she will be graciously pleased to give directions that the following papers be laid before Parliament: any briefing papers or analysis provided to the Secretary of State for Work and Pensions since 8 January 2018 on the impact of the roll-out of universal credit on recipients’ and household income and on benefits debts

71 HC Deb 13 November 2018 [Col 189](#) [Commons Chamber]; That an humble Address be presented to Her Majesty, That she will be graciously pleased to give directions that the following papers be laid before Parliament: any legal advice in full, including that provided by the Attorney General, on the proposed withdrawal agreement on the terms of the UK’s departure from the European Union including the Northern Ireland backstop and framework for a future relationship between the UK and the European Union

and recognised jurisdiction”. If a motion for return was made for papers, or some other action, that was not within the House’s powers, the Clerk of the House said this “would be unsuccessful because it would be resisted by ... whomever it were directed [to]”.⁷²

46. When asked if the Humble Address or another motion of the House could be used to compel the Government or a Minister to legislate in some way or lay a regulation, the Clerk of the House said it could not do this, and added “I know of no precedent for the House of Commons, by resolution or order, being able to tell a Minister how to perform his statutory functions.”⁷³

47. The Clerk of the Journals explained that:

Historically, if we go back and look at when these procedures were used regularly in the 19th century, we see that when the House discovered that an Address had been made incorrectly, either for a class of papers—for example, someone’s private papers—or to the wrong organisation, the Address was normally withdrawn and not persisted with.⁷⁴

48. He also told us that “historically, one of the limits has been perceived to be that the House may not use the power to call for legal advice given to Ministers by the Law Officers.”⁷⁵

49. Furthermore, as the powers of the House are not set out in statute, the Clerk of the House said the Government could “resist and claim they are under no obligation to release papers”.⁷⁶ If the Government were to do this, it would, Professor Blackburn told us:

You [Members of the House of Commons] have the unlimited power of Parliament to demand the information and you have the prerogative defence of Ministers to claim that it would be contrary to the public interest to declare it. If the House of Commons wanted to take this further, it could attempt contempt proceedings, but the Government majority would probably stop any contempt finally being had. In the old days, you could have resorted to impeachment, but that does not really exist any longer—it is an archaic and anachronistic procedure. If you want to involve the courts, you can legislate on the matter. But this is us—we resolve the stuff of politics through the political process.⁷⁷

50. The Clerk of the House described the debate around what could and could not be asked for through a Humble Address as “the rubbing points between Parliament and the Executive”.⁷⁸ A description that has subsequently proved accurate following the Opposition Day motion of 13 November 2018.

That an humble Address be presented to Her Majesty, That she will be graciously pleased to give directions that the following papers be laid before Parliament: any legal advice in full, including that provided by the Attorney

72 [Q28](#) [Sir David Natzler]

73 [Q34](#)

74 [Q28](#) [Mark Hutton]

75 [Q30](#)

76 [Q41](#); [Q43](#)

77 [Q94](#); [Qq41–42](#);

78 [Q31](#)

General, on the proposed withdrawal agreement on the terms of the UK's departure from the European Union including the Northern Ireland backstop and framework for a future relationship between the UK and the European Union.⁷⁹

51. The motion was agreed without division, and in response to Points of Order at the end of the debate the Speaker said:

The ruling I give is simply that the motion is effective—I have been advised thus. It is not just an expression of the opinion of the House; it is an expression of the will of the House that certain documents should be provided to it. It is then for the Government to respond, and we await that response, which it is to be expected will be swift. I hope that that is helpful to colleagues.⁸⁰

Contempt of Parliament

52. Following the motion for return calling for the release of the full legal advice of the Attorney General on the EU Withdrawal Agreement, the Government published the “legal commentary” paper *EU Exit: Legal Position on the Withdrawal Agreement*.⁸¹ In addition to this the Attorney General came to the House to make an oral statement to supplement the legal commentary.⁸²

53. Nick Thomas-Symonds, the Shadow Solicitor General, said “Members who are asking questions are at a major disadvantage, because they have not read the legal advice on which the statement is based”.⁸³ He then added that what was called for in the debate on the motion for return was the:

final, full advice provided by the Attorney General to the Cabinet on any completed withdrawal agreement should be made available to all MPs in good time for the vote on the deal. Offers short of that, including of the Attorney General's statement today and of a summary made by the Government, were rejected, and the House unanimously passed a motion to that effect.⁸⁴

54. The legal position paper and Attorney General statement was not viewed by the opposition parties as complying with the motion for return and the expressed will of the House that the full advice be provided to members of the House. On 3 December, representatives of six opposition parties jointly wrote to the Speaker requesting “that you

79 HC Deb 13 November 2018 [Col 189](#) [Commons Chamber]; That an humble Address be presented to Her Majesty, That she will be graciously pleased to give directions that the following papers be laid before Parliament: any legal advice in full, including that provided by the Attorney General, on the proposed withdrawal agreement on the terms of the UK's departure from the European Union including the Northern Ireland backstop and framework for a future relationship between the UK and the European Union.

80 HC Deb 13 November 2018 [Col 236](#) [Commons Chamber]

81 Office of Attorney General, [EU Exit Legal position on the Withdrawal Agreement](#), Cm 9747, December 2018

82 HC Deb, 3 December 2018, [Col 546](#) [Commons Chamber]

83 HC Deb, 3 December 2018, [Col 549](#) [Commons Chamber]

84 HC Deb, 3 December 2018, [Col 549](#) [Commons Chamber]

consider giving precedence to a motion being placed before the house of Parliament that the Government has held Parliament in Contempt”.⁸⁵ Rt Hon Sir Keir Starmer MP, shadow Secretary of State for Exiting the European Union, moved the motion the next day:

That this House finds Ministers in contempt for their failure to comply with the requirements of the motion for return passed on 13 November 2018, to publish the final and full legal advice provided by the Attorney General to the Cabinet concerning the EU Withdrawal Agreement and the framework for the future relationship, and orders its immediate publication.⁸⁶

55. Sir Kier questioned whether the Government had complied with the motion for return. He said that what the Government had published in response to the motion for return “was a long way from legal advice”, instead he described it as a reasoned position paper that was essentially an explainer, similar to the one that was published with the deal. This, he was clear, was not what the House had called for, and so said “[t]he Government are wilfully refusing to comply with a binding order of this House, and that is contempt.”⁸⁷ Sir Kier drew attention to the fact that the Government had continued the tactic of not opposing the motion and said the Government could not now come to the House and say

“We took a political decision not to oppose the making of the order to publish the full and final legal advice by the Attorney General and then we took a decision not to comply with that order, but somehow we are not in contempt of Parliament.”⁸⁸

56. Several Members expressed the view that, while the Government may have had very good arguments against the motion for return of the Attorney General’s advice, these arguments had not been made and the Government did not vote against that motion. For example Jacob Rees Mogg MP said:

We heard from the Treasury Bench and from other right hon. Members a very good argument for why the Humble Address should not have been passed in the first place, but today is the wrong day for that debate. That debate should have been held on 13 November and voted on, or not, according to whether or not it were the will of this House for the Humble Address to go through. The tradition of Humble Addresses is very clear—that the Humble Address is followed. Now, that does not mean that this House is irresponsible in passing Humble Addresses. We have heard suggestions that we might seek information from the security services. This House has never passed a Humble Address of such an unwise kind.⁸⁹

85 [Letter to Mr Speaker from Keir Starmer MP, Stephen Gethins MP, Tom Brake MP, Nigel Dodds MP, Hywel Williams MP, Caroline Lucas MP, 3 December 2018](#)

86 HC Deb, 4 December 2018, [Col 667](#) [Commons Chamber]

87 HC Deb 4 December 2018, [Col 667](#) [Commons Chamber]

88 HC Deb 4 December 2018, [Col 667](#) [Commons Chamber]

89 HC Deb 4 December 2018, [Col 688–689](#) [Commons Chamber]

57. Sir Keir also drew attention to what Mr Rees-Mogg had said the previous day:

“[w]hen the Government lose a vote, they must follow the will of this House under an Humble Address, according to all precedent. It is no longer a matter for the Government to judge; it has been decided by this House, which is a higher authority.”⁹⁰

58. The Leader of the House said that the Government had provided a “48-page legal commentary that sets out the legal effect of each part of the withdrawal agreement”⁹¹ and the Attorney General had put himself at the “disposal of the House” for over two hours. She described the use of the return the Leader of the House as a “blunt instrument” and “an arcane procedure” that was last used in the 19th century. She then said:

there is real doubt about the ambit of the procedure: as I said earlier, it contains no mechanism by which information can be reviewed to ensure that its disclosure would not seriously harm the public interest. In considering today’s motion, hon. Members must reflect carefully on this—and on the potential consequences not just for this Government, but for all future Governments.⁹²

59. The Leader of the House further raised concern that the House could request information by means of a return that “could compromise national security”. This, she said, would mean releasing information “that could compromise national security” into the public domain as there is no procedure under the Humble Address to weigh up “any potential consequences of such a disclosure”.⁹³

60. The Leader of the House also said that there are “very long standing conventions which are enshrined in the ministerial code and recognised in Erskine May”.⁹⁴ She set these out:

First, without the authorisation of the Law Officers, the fact that—or indeed whether—their advice has been provided to Government should not be disclosed. Secondly, such advice must not be provided to those outside of Government without the Law Officers’ express authorisation.⁹⁵

... The issue we are debating today is the Government’s duty to protect Law Officers’ advice in the national interest. The House has previously recognised the importance of the principle that information cannot always be disclosed. This is always guided by the need to protect the broader public interest.⁹⁶

61. Erskine May states that:

By long-standing convention, observed by successive Governments, the fact of, and substance of advice from, the law officers of the Crown is not disclosed outside government. This convention is referred to in paragraph

90 HC Deb 4 December 2018, [Col 667](#) [Commons Chamber]; HC Deb, 3 December 2018, [Col 563](#) [Commons Chamber]

91 HC Deb 4 December 2018, [Col 669–673](#) [Commons Chamber]

92 HC Deb 4 December 2018, [Col 669–673](#) [Commons Chamber]

93 HC Deb 4 December 2018, [Col 669–673](#) [Commons Chamber]

94 HC Deb 4 December 2018, [Col 669–673](#) [Commons Chamber]

95 HC Deb 4 December 2018, [Col 669–673](#) [Commons Chamber]

96 HC Deb 4 December 2018, [Col 669–673](#) [Commons Chamber]

2.13 of the Ministerial Code. The purpose of this convention is to enable the Government to obtain frank and full legal advice in confidence. Therefore, the opinions of the law officers of the Crown, being confidential, are not usually laid before Parliament, cited in debate or provided in evidence before a select committee, and their production has frequently been refused

...⁹⁷

62. The point raised by the Father of the House, Rt Hon Kenneth Clarke QC MP, as well as other Members, was that there was an extremely difficult dilemma to be tackled. He said:

... there are two very important constitutional principles involved here that are important to people on both sides of the House... The first is the sovereignty of Parliament and its ability to instruct the Government to do things that the Government do not want to do. [The second is] the convention that Governments are entitled to confidentiality when they get legal advice from the Attorney General. It is quite ridiculous to throw out either of these principles, because there are occasions when they are both extremely important.⁹⁸

63. Mr Clarke continued by setting out his concern regarding the Government's decision not to vote on the motion for return and other Opposition Day motions "because they knew they were going to be defeated". He said

I disapprove of refusing to vote on Opposition motions and other motions. It may well be that constitutionally they are not legally binding, but we have never previously had a Government that just said, "Well, the House of Commons can express opinions if it wants, but as they're not legally binding, we won't bother to attend, and not many of us will listen to it." That is a very unpleasant step.⁹⁹

64. In closing the debate for the Opposition, Sir Keir Starmer said the Opposition were well aware of the two constitutional principles set out by Mr Clarke. He then said:

The first is that only in exceptional circumstances will privilege be overridden, and the second is that orders of this House should be complied with; 13 November was about the first principle and the Government did not oppose the order, and today is about the second... The Father of the House said that there surely must be some way that this can be agreed and the order can be complied with, and lots of Members indicated that as well. In the three weeks since the debate about the first principle to today, the Government have put no suggestion to me of any sort of mechanism to enable them to comply with this order, and the House will make of that what it will. For that reason, I must push the motion to a vote.¹⁰⁰

97 Erskine May, 24th Edition (London, 2011), p 447

98 HC Deb 4 December 2018, [Col 693–694](#) [Commons Chamber]

99 HC Deb 4 December 2018, [Col 693](#) [Commons Chamber]

100 HC Deb 4 December 2018, [Col 722](#) [Commons Chamber]

65. The Motion for return using an Humble Address had fallen into disuse, but it draws upon powers still used by the Government itself - in the form of motions for unopposed returns. While these powers are not set out in statute, they are within the House of Commons' existing and recognised powers and, as such, should be complied with.

66. The Government's decision not to test the opinion of the House of Commons in a division on the motion calling for the Attorney General's legal advice added to confusion about the sincerity of the Government's intentions and undermined the Government's subsequent refusal to provide the legal advice.

67. The actions of the House of Commons since, including questioning the Attorney General on his advice and subsequently finding that the Government was in contempt of the House of Commons' previous resolution, have asserted the House of Commons' right for those resolutions to be taken seriously. The Government's eventual publication of the Attorney General's legal advice, although we note that breached the usual convention that such advice remains confidential, has demonstrated the importance of, and need to take seriously, resolutions of the House of Commons.

68. There are limits to the use of motions for return. If the House of Commons were to call for papers outside its existing and recognised powers, for example calling for private papers, this would likely be resisted. The House of Commons should respect this limit and would be expected to withdraw its call for such papers. Nor could motions of return direct a minister to bring forward legislation or how he or she should carry out their statutory functions.

69. An established limit to the motion for return within the House of Commons' recognised powers is the advice to Government from the Law Officers. The House of Commons would not usually ask for, and the Government would not usually provide, this advice or even confirmation of the fact that such advice has been given, because it would have a chilling effect on the advice being given if there is a risk of it being made public. Nevertheless, as matters stand, it is for the House of Commons to decide what it calls for and if circumstances are not usual, legal advice may be sought regardless of this convention.

70. The motion for return using an Humble Address is a power of the House of Commons has not hitherto been employed as part of the usual to-and-fro of party politics. This is not a device that should be overused or used irresponsibly, particularly if there is a minority. The credibility of the unlimited powers of the House of Commons depends on their responsible exercise. If they cease to be exercised responsibly, they will lose respect and, lacking statutory force, could be ignored. Equally, the effective balance between Government and Parliament is dependent on the Government demonstrating reasonable respect towards the will of the House of Commons as, while it may not be under a statutory obligation to do so, lack of such respect could impel the House of Commons to seek to exercise its powers in new ways.

71. **The House of Commons should be both assertive and sensitive in the exercise of its powers. Where the limits on these essentially unlimited powers lie is a matter for negotiation between Parliament and Government and both should be careful about setting any precedent with long-term effects in reaction to short-term political pressures.**

72. We invite the Procedure Committee to consider how procedures relating to the motion for return using an Humble Address might be updated. In particular, we invite the Procedure Committee to consider whether a process could be established for the House of Commons to consider if and how contentious or confidential government papers might be made available to the House via motions of return, without compromising the generally accepted principles of what should remain protected from public disclosure.

Conclusions and recommendations

1. Resolutions of the House of Commons are the expression of the will of the elected representatives of the United Kingdom. Resolutions by themselves may not have legal effect, but they can have political effect. As such, resolutions should be treated seriously by the Government acknowledging that the Government must retain the confidence of the House of Commons to remain in office. It is evident that a shared understanding of the status of resolutions of the House of Commons has been eroded in this Parliament, reflecting the inability of the Government always to defeat Opposition Day motions, or a reluctance to be seen to be opposing them. (Paragraph 31)
2. We note that it is not mandatory for Members to vote in any division. However, the Government's actions in whipping its Members to abstain from votes on Opposition Day motions have been interpreted as showing a lack of respect for the House of Commons and its chosen methods of debate. In some cases, this has proved counter-productive for the Government. (Paragraph 32)
3. The Government's decision to abstain from votes because the proposers' motion is deemed by the Government to be mere "political point scoring" has devalued the status of resolutions of the House of Commons. It is for the House of Commons, not the Government, to determine what is legitimate scrutiny, and the Government is expected to engage in good faith with resolutions of the House of Commons, even if it cannot implement their terms as expressed, or chooses to disagree with it. (Paragraph 33)
4. We accept that the Government may decide on a particular motion not to vote, and that in doing so it may be seeking to save itself from political embarrassment. However, in such instances the Government must still respect the will of the House of Commons as expressed. This does not necessarily mean that the Government should be required to change its policy in the relevant area; and the precise means by which the Government should properly demonstrate it is treating resolutions of the House of Commons seriously may be different from case to case. (Paragraph 34)
5. We welcome the fact that the Leader of the House has recognised the importance of the Government responding to resolutions of the House of Commons, setting a deadline of 12 weeks for departmental responses. It is for the Government to decide what response it wishes to make to resolutions of the House of Commons. However, it is for the House of Commons to decide whether it feels the Government has responded appropriately to its resolution, both in terms of length of time and quality of the response. It is clear to us that many resolutions can and should receive a response within a much shorter timescale than 12 weeks, especially if it is the Government's intention to act in any way contrary to the views expressed by the House. (Paragraph 35)
6. *We invite the Procedure Committee to consider whether any changes to the practice and procedures of the House of Commons are merited in the light of the practice the Government has adopted in responding to resolutions of the House which seek to direct Ministers.* (Paragraph 35)

7. The Motion for return using an Humble Address had fallen into disuse, but it draws upon powers still used by the Government itself - in the form of motions for unopposed returns. While these powers are not set out in statute, they are within the House of Commons' existing and recognised powers and, as such, should be complied with. (Paragraph 65)
8. The Government's decision not to test the opinion of the House of Commons in a division on the motion calling for the Attorney General's legal advice added to confusion about the sincerity of the Government's intentions and undermined the Government's subsequent refusal to provide the legal advice. (Paragraph 66)
9. The actions of the House of Commons since, including questioning the Attorney General on his advice and subsequently finding that the Government was in contempt of the House of Commons' previous resolution, have asserted the House of Commons' right for those resolutions to be taken seriously. The Government's eventual publication of the Attorney General's legal advice, although we note that breached the usual convention that such advice remains confidential, has demonstrated the importance of, and need to take seriously, resolutions of the House of Commons. (Paragraph 67)
10. There are limits to the use of motions for return. If the House of Commons were to call for papers outside its existing and recognised powers, for example calling for private papers, this would likely be resisted. The House of Commons should respect this limit and would be expected to withdraw its call for such papers. Nor could motions of return direct a minister to bring forward legislation or how he or she should carry out their statutory functions. (Paragraph 68)
11. An established limit to the motion for return within the House of Commons' recognised powers is the advice to Government from the Law Officers. The House of Commons would not usually ask for, and the Government would not usually provide, this advice or even confirmation of the fact that such advice has been given, because it would have a chilling effect on the advice being given if there is a risk of it being made public. Nevertheless, as matters stand, it is for the House of Commons to decide what it calls for and if circumstances are not usual, legal advice may be sought regardless of this convention. (Paragraph 69)
12. The motion for return using an Humble Address is a power of the House of Commons has not hitherto been employed as part of the usual to-and-fro of party politics. This is not a device that should be overused or used irresponsibly, particularly if there is a minority. The credibility of the unlimited powers of the House of Commons depends on their responsible exercise. If they cease to be exercised responsibly, they will lose respect and, lacking statutory force, could be ignored. Equally, the effective balance between Government and Parliament is dependent on the Government demonstrating reasonable respect towards the will of the House of Commons as, while it may not be under a statutory obligation to do so, lack of such respect could impel the House of Commons to seek to exercise its powers in new ways. (Paragraph 70)
13. The House of Commons should be both assertive and sensitive in the exercise of its powers. Where the limits on these essentially unlimited powers lie is a matter for

negotiation between Parliament and Government and both should be careful about setting any precedent with long-term effects in reaction to short-term political pressures. (Paragraph 71)

14. *We invite the Procedure Committee to consider how procedures relating to the motion for return using an Humble Address might be updated. In particular, we invite the Procedure Committee to consider whether a process could be established for the House of Commons to consider if and how contentious or confidential government papers might be made available to the House via motions of return, without compromising the generally accepted principles of what should remain protected from public disclosure. (Paragraph 72)*

Formal minutes

Tuesday 18 December 2018

Members Present

Sir Bernard Jenkin, in the Chair

Ronnie Cowan

Dr Rupa Huq

Dame Cheryl Gillian

Mr David Jones

Kelvin Hopkins

Draft Report (*Status of Resolutions of the House of Commons*) proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 72 agreed to.

Summary agreed to.

Resolved, That the Report be the Fifteenth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report may be provided [Standing Order 134]

[Adjourned till 8 January 2019]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Tuesday 23 October 2018

Sir David Natzler, Clerk of the House of Commons, **Mark Hutton**, Clerk of the Journals, House of Commons, **Professor Petra Schleiter**, Professor of Comparative Politics, University of Oxford, **Professor Robert Blackburn QC**, Professor of Constitutional Law, Kings College London, **Dr Andrew Blick**, Director, Centre for British Politics and Government, Kings College London

[Q1–135](#)

Tuesday 30 October 2018

Rt Hon Dame Margaret Beckett MP, Former Leader of the House of Commons 1998–2001

[Q136–192](#)

Monday 5 November 2018

Rt Hon Mark Harper MP, former Government Chief Whip

[Q193–228](#)

Monday 19 November 2018

Rt Hon Andrea Leadsom MP, Leader of the House of Commons

[Q229–296](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

SRH numbers are generated by the evidence processing system and so may not be complete.

- 1 Blackburn, Professor Robert ([SRH0005](#))
- 2 Blick, Dr Andrew ([SRH0008](#))
- 3 Craig, Robert ([SRH0002](#))
- 4 Davis, Dr Fergal F ([SRH0006](#))
- 5 Defty, Dr Andrew ([SRH0003](#))
- 6 Howe, Martin ([SRH0007](#))
- 7 Prescott, Dr Craig ([SRH0001](#))
- 8 Schleiter, Professor Petra ([SRH0004](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website.

Session 2017–19

First Report	Devolution and Exiting the EU and Clause 11 of the European Union (Withdrawal) Bill: Issues for Consideration	HC 484
Second Report	Parliamentary Boundary Reviews: What Next?	HC 559 (HC 1072)
Third Report	PHSO Annual Scrutiny 2016–17	HC 492 (HC 1479)
Fourth Report	Ensuring Proper Process for Key Government Decisions: Lessons Still to be Learned from the Chilcot Report	HC 854 (HC 1555)
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