

How has Parliament engaged non-legislatively with the Northern Ireland Protocol?

This research report analyses how Parliament has engaged non-legislatively with the Northern Ireland Protocol. It does this by firstly focusing on the report by the Northern Ireland Affairs Committee, before moving onto the use of Parliamentary Oral Questions during an urgent questions session. It then looks at different types of representation in the House of Lords, lastly it presents the final conclusion.

Select Committees:

Select committees are comprised of MPs from all parties who collectively “scrutinise the expenditure, administration and policy” of Government departments (HC Deb 25 June 1979, c251). When MPs pool their resources together in the committee, they are able to produce authoritative, evidence-based reports that can challenge the Government (Kelso, 2018). These reports serve a persuasive function that can pressure the Government to make policy changes, especially when recommendations are agreed by all committee members. Moreover, committee evidence sessions enable the public to feed directly into parliamentary proceedings, since testimony given by experts can be used to provide a strong evidential foundation to committee reports (Geddes, 2018). These reports can also be referenced by different actors from Peers, opposition parties and the media when they need to scrutinise the Government (Norton, 2019). All of this has culminated in a strong parliamentary infrastructure that has provided a more robust system of oversight on the Government.

Therefore, to show how the Northern Ireland Affairs Committee engaged non-legislatively with the Protocol, this essay uses a modified version of Benton and Russell’s (2013) framework to qualitatively analyse the committee’s Unfettered Access (2020) report. The first modification to the framework is the merging of the ‘small change’ and ‘medium change’ categories, this was because only a few recommendations fell into these categories individually. The second modification was the creation of a new category called ‘clarification or the publication of documents.’ Many recommendations did not ask for any change, but instead requested the Government to clarify its position or to publish relevant documents. Thus, the results of the analysis are presented below.

	Fully Accepted:	Partially or Implicitly Accepted:	Neither Accepted nor Rejected:	Partially or Implicitly Rejected:	Fully Rejected:	Total:
Clarification or the publication of documents:	1 (3.85%)	3 (11.54%)	4 (15.38%)	2 (7.69%)	1 (3.85%)	11 (42.31%)
Small or Medium change:	2 (7.69%)	3 (11.54%)	3 (11.54%)	0 (0%)	0 (0%)	8 (30.77%)
Large Change:	0 (0%)	0 (0%)	7 (26.92%)	0 (0%)	0 (0%)	7 (26.92%)
Total:	3 (11.54%)	6 (23.08%)	14 (53.84%)	2 (7.69%)	1 (3.85%)	26 (100%)

Figure 1

Firstly, in Figure 1 the column furthest to the right shows us that 42.31% of all recommendations were in the ‘clarification or the publication of documents’ category. This suggests that the committee did not have all the relevant information, and it shows us how reliant the committee is on the Government being transparent in order for it to scrutinise the policy properly. For example, recommendation nine calls on the Government to “routinely share the relevant agendas, summary minutes and minutes of the Joint Committee and the specialised committees” (Unfettered Access, 2020: 4). This exemplifies one of the

problems committees have to deal with, committees are “unable to force the Government to publish documents, so they actively rely on the Government to willingly hand them over” (Labour MP to the Author). Select committees are highly praised in Parliament especially after the Wright Reforms, so committees use recommendations to outline to the Government the necessary information it needs (Marsh, 2016), as shown with recommendation nine. So, whilst committees have balanced out the asymmetric relationship Parliament has with the Government, it still relies on the Government to hand over information. This is why so many recommendations were in the ‘clarification or the publication of documents’ category.

Secondly, the middle part of the bottom row shows how 53.84% of all recommendations were ‘neither accepted nor rejected.’ This may be the case because the Protocol is a sensitive policy issue in regards to the troubled past of Northern Ireland. The Government would want to avoid being seen as rejecting any proposals, particularly since it was still involved with ongoing EU negotiations. The Government’s ambiguous approach is deliberate since it gives it the space to adopt the recommendations later, without looking like it has conceded to pressure from critics. Furthermore, these results corroborate Lynch and Whitaker’s (2019) findings that the level of policy change correlates to the how likely the Government is in adopting recommendations. The 5 recommendations that were accepted were of small or medium change, whereas none of the large changes were fully or partially accepted. Even though these results could be more representative by analysing more reports, the report chosen was the most important since it solely focuses on how the Protocol is affecting Northern Ireland. Further analysis on other reports would inform us on whether the Government is also acting ambiguous on other aspects of Northern Irish policy. Therefore, these results have shown how Parliament has engaged non-legislatively with the Protocol through the use of a committee report. The results tell us how committees use recommendations to ask Government to provide it with missing information, and how the Government responds ambiguously because of the precariousness of Northern Ireland and the continuation of UK-EU negotiations.

Parliamentary Oral Questions:

As outlined by Erskine May, the established goal of parliamentary questions is to “obtain information or to press for action” from the Government (Jack et al, 2011: 344). MPs are elected representatives of the people, so it is vital for them to scrutinise all ministerial decisions, actions and policies on behalf of the people (Woodhouse, 2014). But most importantly, parliamentary oral questions can be useful in shining and maintaining a spotlight on key hot topics. Given the lack of institutional power that opposition parties have in the Westminster system, opposition parties instead use the televised nature of oral questions as a way of focusing media attention on failures in Government policy (Salmond, 2014). This not only applies external pressure on the Government, but it can also help shape the political agenda for foreseeable parliamentary sessions. This is particularly significant given that Britain’s rapid-fire question-and-answer sessions have meant that its politics are televised more than other democracies (Negrine, 1998). Urgent questions are useful in this context, as the spontaneity of them forces the Government to answer a plethora of questions on an uncomfortable topic.

Therefore, to showcase how parliamentary oral questions engaged non-legislatively with the Protocol, this essay analysed the urgent question session on the 8th of September 2020 through a modified version of Bates et al’s (2014) framework. It then watched the subsequent Prime Ministers Questions (PMQs) on the 9th to see if the urgent questions had an impact on the political agenda. This essay added a new question to the framework called “hostile questions.” These questions are answerable like standard questions, but the difference is hostile questions always contain a scathing criticism about the Government’s handling of an issue. This category’s inclusion helps take into account the substance of the speech before the question itself is asked. So, whilst both Conservative and Labour MPs ask answerable questions, many Labourites usually criticise the Government before asking their question. As the results show below, this new category has better outlined the partisanship in Parliament.

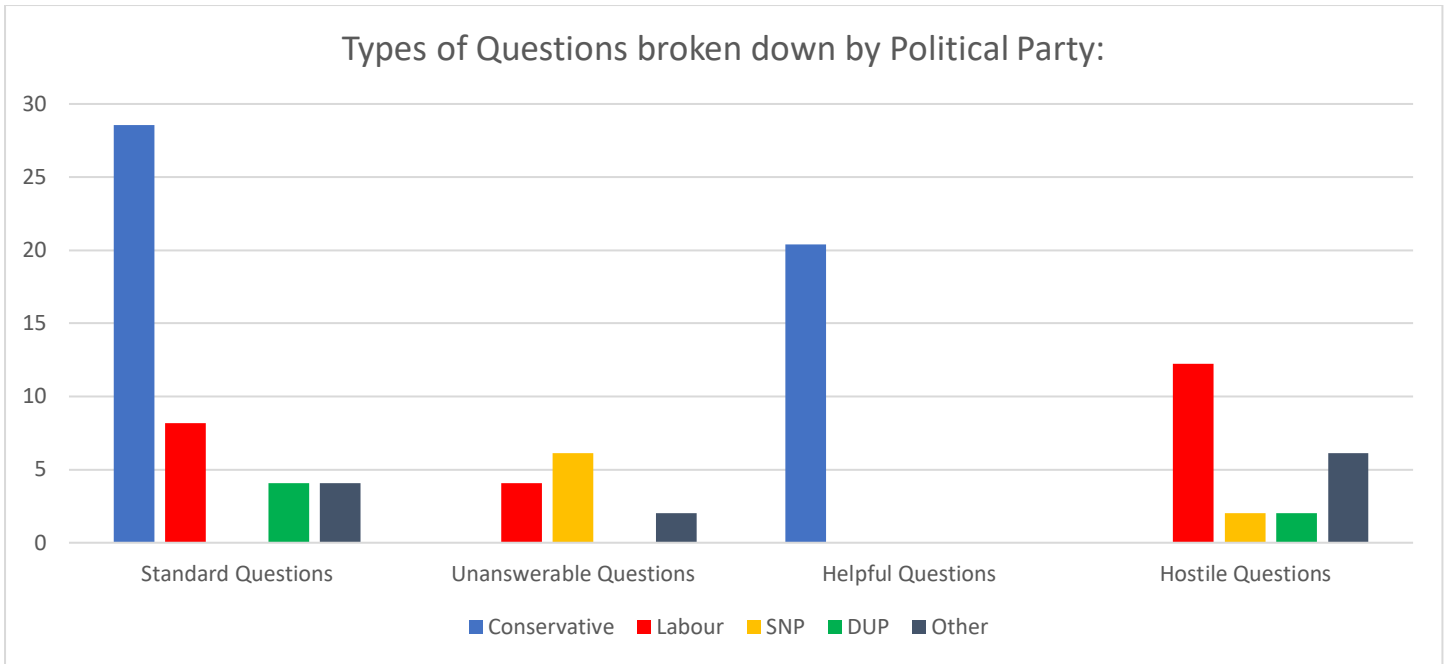


Figure 2

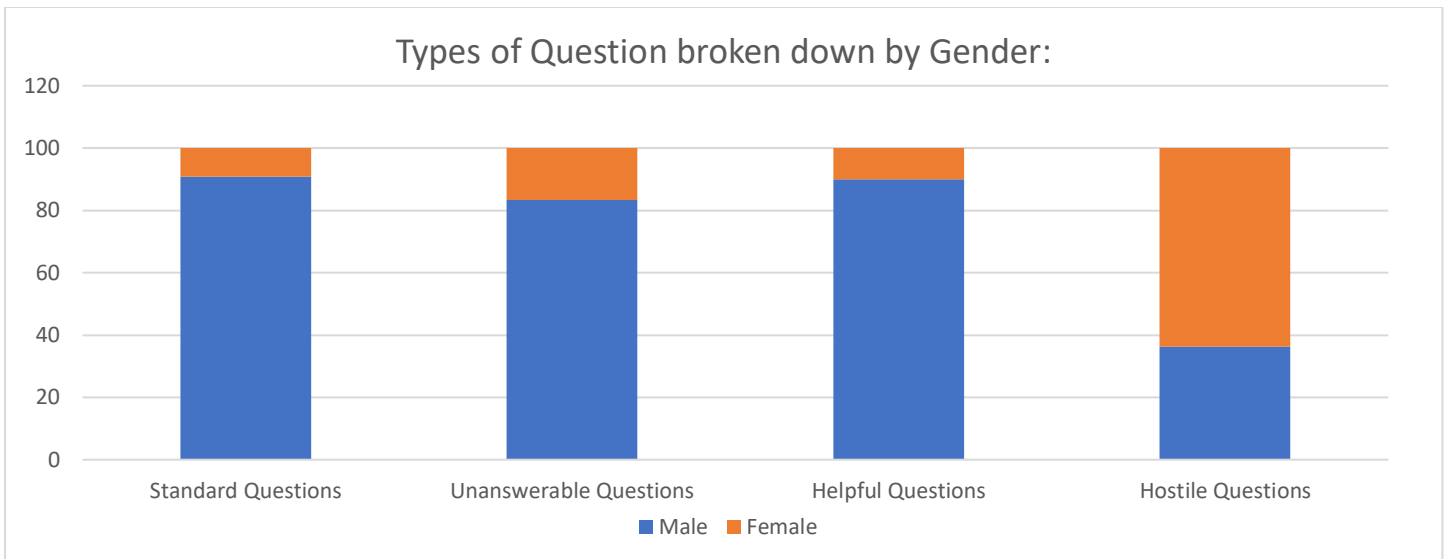


Figure 3

Figure 2 shows us that Conservative backbenchers only asked standard or helpful questions. This was expected since backbenchers speak for constituents of the governing party, so asking questions that allow the Government to set out policy or answer a concern is mutually beneficial to backbenchers and the relevant minister (King, 1976). As a Conservative MP stated “parliamentary questions are a good chance for backbenchers to force the Government to listen and reply, as the Government knows it’s voters will be listening intently” (Conservative MP to Author). Contrastingly, opposition parties asked questions based on their relationship to the Conservative Government. For example, the DUP always asked answerable questions, but they differed on whether they would criticise the Government before it. The SNP were always antagonistic in their questions, whereas Labour MPs were the most varied since they either asked a standard, unanswerable or hostile question. Additionally, Figure 3 confirms Bates et al’s (2014) findings that female opposition MPs were less than half as likely to ask unanswerable questions. However, female opposition MPs were nearly twice as likely to ask hostile questions than their male counterparts. This might be explained by the fact that urgent questions are noticeably more civilised and less ‘macho’ than PMQs. Not all MPs attend urgent questions, urgent questions do not contain the political theatrics of

PMQs, and urgent questions are only granted when the topic is of immediate public importance, so because of this there is usually a more serious tone to these sessions (Bates et al, 2018). All of this may have conducted a more comfortable environment for women which is why there were more of them asking hostile questions.

This urgent question session was also used to set the subsequent political agenda. This was because the Northern Ireland Secretary admitted during the session that the Protocol “does break international law in a very specific and limited way” (HC Deb 8 September 2020, c509). This admission was used against Prime Minister Johnson during PMQs, where the SNP Leader and a Liberal Democrat made reference to minister’s comment. Thus, this quote enabled MPs to create and maintain a spotlight on the Protocol during PMQs, consequently keeping it on the political agenda. Whilst these results could be more representative through an analysis of more debates with this modified framework, it still provides us with preliminary data that shows the significance of urgent questions in the engagement of the Protocol. Therefore, Parliament engaged non-legislatively with the Protocol through the use of parliamentary oral questions. The use of urgent questions encouraged female opposition MPs to ask more hostile questions, and enabled opposition parties to maintain a spotlight for the following session’s political agenda.

House of Lords:

The post-1999 House of Lords is a multi-party chamber where no party holds a majority. Consequently, this enhanced pluralism has made the chamber more assertive when challenging the Government (Russell and Sciara, 2007). The Lords are not ‘political’ in the same way that the House of Commons is, instead “the House of Lords are ‘political’ with a lower-case p, they are more of constitutional chamber than anything else” (Member of the Lords to Author). The lower levels of partisanship, the lack of constituency responsibilities and the greater expertise has meant that Peers offer more authoritative and nuanced insights into debates and scrutiny (Dorey and Purvis, 2018). Governments now need to negotiate and build alliances with disparate voting blocs if they want to gain the approval of the upper chamber (Russell and Cowley, 2016). This updated chamber’s enhanced role has been facilitated by the different types of representation that are present, this will now be the focus.

Therefore, to show how the House of Lords engaged non-legislatively with the Protocol, this essay uses the framework developed by Bochel and Defty (2012) to analyse different types of representation. This has been done by identifying 45 Lords that were involved in three debates on the Protocol, the debates were watched and their transcripts read. I then went onto Hansard and the Peers’ official websites to better determine what type of representation they were trying to fulfil. There are five types of representation, they are: *formalistic representation* (Peers who do not represent people, but represent what they believe is the best interest), *representing unattached interests* (Peers who represent general abstract interests), *symbolic representation* (Peers who symbolise a constituency even if they do not descriptively represent them), *descriptive representation* (Peers that are from the same demographic as those they claim to represent), and *substantive representation* (Peers who directly act for people with interests similar to their own). It is also important to highlight that Peers were only assigned to one type of representation, but it is possible for Peers to come under multiple representations. The results are presented below.

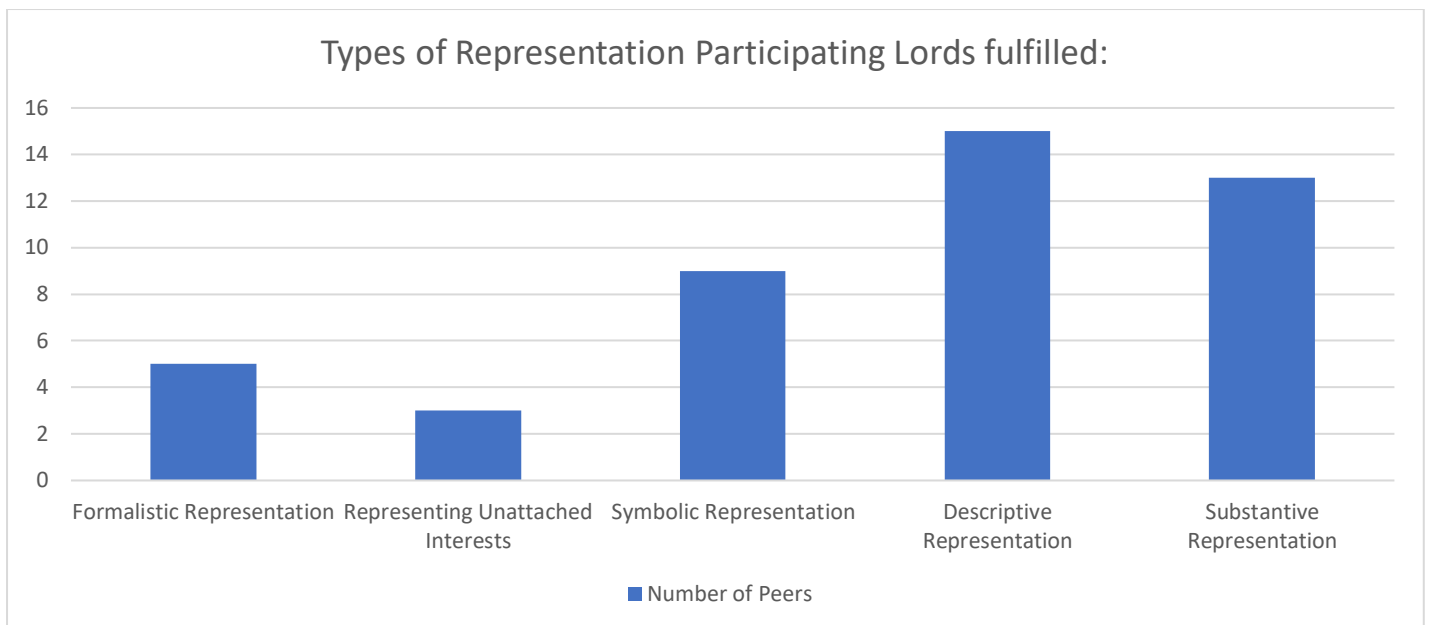


Figure 4

Figure 4 showcases that all types of representation are present in the chamber, this is a very important finding. Some Peers feel they have been delegated authority which consequently gives them the discretion to represent what they believe is best, whilst other more direct forms of representation are based on some Peers actively trying to mirror the views of constituents they seek to represent (Pitkin, 1967). All this diversity in representation means that debates are filled with valuable and informative democratic exchange for not only the Lords, but also the Government and the wider public (Milner, 2018). In this way, the House of Lords' non-legislative engagement is dissimilar to the previous two engagements, since the variation of representation in the upper chamber is comparatively very different to the lower chamber. The largest number of Peers fulfilled *descriptive* and *substantive representation* roles, since many of those engaged in the debates were from Northern Ireland or have worked and lived there. This was expected because regardless of whether Peers have expertise in this area, their intimate connection and personal contribution to the policy issue still plays a vital representative function. For example, Baroness Ritchie of Downpatrick spoke in all three of the debates and is herself from Northern Ireland (*descriptive representation*), whilst Lord Lexden is not Northern Irish but has lived and taught history at Queen's University Belfast (*substantive representation*).

Symbolic representation was less prominent and was mostly fulfilled by Bishops. This is because despite them not representing (or claiming to represent) all sects and religions in Northern Ireland, they still felt they played a symbolic role as a religious figure to ensure the maintenance of peace and stability. Lastly *formalistic representation* and *representing unattached interests* occurred less frequently. However, admittedly its occurrence is very difficult to identify because Peers never assert that they are acting in their best interest or the interest of an abstract idea. So, whilst this essay used three debates to make the results more representative, the methodology used here does not draw out these forms of representation as well as the interviews used by Bochel and Defty (2012). Therefore, the House of Lords have engaged non-legislatively with the Protocol through the different types of representation they bring to debates. These forms of representation are integral in ensuring this sensitive policy is being understood through all angles, and the Peers embodying all of these representative roles help to facilitate democratic deliberative exchange inside of Parliament.

In conclusion, this research report has shown how Parliament engages non-legislatively with the policy issue of the Northern Ireland Protocol. It has done this by analysing a report by the Northern Ireland Affairs Committee, by examining parliamentary urgent questions and by investigating different types of representation in the House of Lords. This research report has showcased the impressive number of ways

that Parliament can engage non-legislatively with this policy, and the many disparate perspectives Parliament can offer the Government as it devises policy on Northern Ireland.

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