

FACTFILE: GCE GOVERNMENT & POLITICS

EXECUTIVE DOMINANCE OF THE LEGISLATURE



Executive dominance of the legislature

It is a widely held view that the UK executive dominates the legislature. The Parliamentary majority that UK governments usually enjoy and the party loyalty generated by the system of party whips mean that the government is able to push through its legislative programme and avoid being too heavily scrutinised by Parliament. This Factfile will explore the extent to which this actually occurs and consider if executive dominance of the legislature is a fact in the UK political system.

The relationship between Parliament and the Executive

From a purely constitutional point of view Parliament is said to be sovereign and therefore it should be the case that the executive is not able to dominate Parliament. A. V. Dicey argued that the two pillars of the British political system were parliamentary sovereignty and the rule of law. This implies that the executive is ultimately subservient to Parliament, yet any observer of the operation of politics in the UK would know that this is not the case. Lord Hailsham described the British system as being an 'elected dictatorship' but in conflict with this oft-quoted remark is the reality that ultimately Parliament can remove an overbearing executive through powers such as the 'vote of no confidence'. In this section the various perspectives will be evaluated and the evidence for each assessed.



A picture of David Cameron's New Cabinet following the 2015 election which gave the Conservatives an overall majority.

The case for and against executive dominance

The executive undoubtedly has a number of distinct advantages when it comes to asserting its power over the rest of the political system. The ability to set the parliamentary timetable means that the executive can prioritise key policies and matters which are most important to the government at the expense of issues which the opposition may want to see dealt with. The biggest single advantage that the government enjoys is their majority in Parliament. This allows the government to push through legislation in the vast majority of cases as a well-developed whip system and the rise in 'career politicians' means that individual backbenchers are reluctant to challenge their respective parties. In order to make accurate comparisons it is crucial to consider the case for and against the idea of executive dominance in both legislation and scrutiny.



Does the executive dominate the legislative process?

YES – The majority of legislative proposals which are discussed in the Commons and the Lords have originated in the executive. This is part of the government's role of running the country. Having succeeded at election the government is given a mandate to enact the legislative proposals included in its election manifesto. This mandate is a significant advantage and statistics show that between 90% and 95% of all legislation passed has originated in the executive.

As the government sets the parliamentary timetable this gives them an advantage in getting their legislation through the legislative process given that they can prioritise the proposals they are most keen to see enacted. However, the biggest advantage the government has in getting its legislation through Parliament is having a majority, either secured through election or by forming a coalition. The larger the majority, the less the government needs to worry about backbenchers who won't support their legislation.

The rise in career politicians and the use of party whips means that politicians will vote the way their party leaders want them to on the majority of occasions. Moreover, if the government really want a piece of legislation to go through they will issue a three-line whip which will make it clear to MPs that they must support their party on that matter or face the consequences. The ultimate threat from the Whips Office is withdrawal of the whip which would mean the MP would be deselected from the party and would have to stand as an independent candidate. Since independents tend to do badly in the British system this is a significant threat although one that is infrequently used.

In addition to the overall majority that the government enjoys in Parliament, the government also has a majority of seats on Public Bill Committees which is where the detailed examination of bills takes place. This means the bill that the Commons and the Lords will eventually vote on is likely to be very similar to the bill that the executive drafted in the first place. The government also has the additional use of procedures such as the guillotine motion which allows them to stop debates if they are taking too long. The powers of the House of Lords have been curtailed since the introduction of the Parliament Act of 1911. This Act took away the House of Lords' ability to veto legislation and

its influence was limited to delaying a bill for up to two years. The Parliament Act of 1949 reduced this delaying power to one year and removed the Lords' ability to amend or reject finance measures. The Salisbury Convention also emerged during the Labour government of 1945 – 1951 and means that the House of Lords cannot interfere with a measure that has been included in the government's manifesto.

NO – Parliament is still sovereign and the government has to subject all of its legislative proposals to Parliament to be ratified. If the government thinks a measure is going to be very unpopular, it will consider withdrawing it from the parliamentary schedule rather than face a large and potentially embarrassing defeat in the Commons. This situation is clearly more pronounced if there is a coalition government or a government with a small majority. MPs can also introduce their own legislation through the mechanism of a Private Members' Bill. Although there is less chance of a Private Members' Bill passing and very little chance if it isn't able to get the support of MPs, it does give MPs a method for introducing legislation which is important to them and either reflects a long-standing interest or reflects a matter which has been raised by a constituent. Approximately 10 Private Members' Bills get passed each year although some are on high-profile controversial matters which the government does not want to be associated with directly but may like to see introduced by others, for example, the 1967 Abortion Act. Other Private Members' Bills are on seemingly more mundane topics but are nonetheless an important way for MPs to play a key role in legislative development.



This picture shows the Lords voting to reject the governments reform of the tax credit system.

There has been an increase in backbench rebellions in the last twenty years, which demonstrates that even though there has been a rise in the number of career politicians, MPs are still prepared to vote against their party if they feel strongly enough about an issue. These backbench rebellions often reflect factions within parties and will occur during the consideration of contentious bills when parties often find it more difficult to maintain party unity.

Public Bill Committees often make a considerable contribution to the redrafting of bills. Although it is true that the government will have a majority on these committees this does not mean that this will affect their legislative scrutiny of a bill. Most of the work they do is to make sure the bill is legally sound and does not conflict with other departments or with EU or Human Rights legislation. Public Bill Committees will take expert advice and will sometimes recommend major amendments which can significantly change the bill from what the government originally intended. The House of Lords, although its powers have been significantly reduced following the 1911 and 1949 Parliament

Acts, can and does still challenge the government and force them to either rethink legislation or drop it if it is particularly unpopular.

The House of Lords has experienced a resurgence in legitimacy since the 1999 reforms which saw the removal of the majority of hereditary peers, with only 92 of them remaining. The Lords has come to be seen as more effective than the official opposition at opposing the government and has raised some very good debates about a surprising range of bills. The Lords has stood up to the government over a range of issues such as the 90 Day Detention Bill and more recently the cuts in Disability Living Allowance. Although the House of Lords can technically only delay a bill for up to a year, it is the case that 40% of all bills the Lords tries to stop will not become law. Furthermore, the amendments that the Lords makes to bills are usually taken on board by the government due to the expertise of the members of the House of Lords and the lack of tight party allegiances. In other words, the Lord's views are trusted.



Is Parliamentary scrutiny of the executive effective?

YES – Select Committees are specifically designed to allow Parliament to hold the government to account. They are small and specialised; in other words, MPs stay on these committees unlike Public Bill Committees which only last for the duration of a bill and therefore prevent the development of expertise.

Membership of a Select Committee is much sought after and MPs take their job on Select Committees very seriously. They can call for expert witnesses and can ask for documents and people to appear before them and give testimony. A Select Committee shadows each government department and they are designed to make sure that the executive branch is working effectively, spending public money wisely and not breaking the law or doing anything beyond their powers. Select Committees write reports which are taken very seriously. Although the government can try to wriggle out of the report recommendations, they can only do so occasionally as a government which is seen to be doing this on numerous occasions will be seen as untrustworthy by the public. Some of these committees are extremely powerful such as the Public Accounts Committee or the Estimates Committee, both of which have a big part to play in keeping an eye on public finances.

Question Time in both the Commons and the Lords is another significant way for Parliament to hold the executive to account. There are two types of Question Time; Prime Minister's Question Time and Minister's Question Time. The most significant of these is Prime Minister's Questions in the House of Commons which is held on a Wednesday at noon for half an hour every week. Prior to Tony Blair's tenure as Prime Minister, Question Time would take place twice a week for a duration of fifteen minutes. Blair argued that one half hour slot would make it more effective and reduce the pressure on his nerves. Blair reportedly said that he dreaded Question Time every week and other Prime Ministers have said the same, suggesting that this is a good way to keep the government on its toes. During Question Time the Prime Minister will be asked questions about major policy initiatives or about matters which are a concern for individual MPs in their constituencies. If there is a big crisis that week, either national or international, then they will expect to be asked about that. Whilst the Prime Minister will have advance notice of the first question, the MP asking the question can also ask a supplementary question which the Prime Minister will not have notice of and it is this question which may catch them out. The other type of Question Time sees

government ministers questioned at length (this can be for two or three hours once a month) about what is happening in their department.

Debates can give MPs an opportunity to question government policy and to draw attention to aspects of policy which are unfair or need to be changed. Televised coverage of Parliament means that a good point raised in a debate may well be taken up by the public and may result in pressure on the government to change that policy or approach. Adjournment debates give opposition MPs an opportunity to raise any matter that is of concern to them and happens at the end of each day that Parliament is sitting. Likewise with Early Day Motions.

Written questions are also used frequently by MPs, particularly when dealing with a constituency matter. These are an effective way to get something addressed as they require a written response and it is much harder for a minister to wriggle out of something if they have already committed to it on paper.

NO – The government can use its majority on Select Committees to try to influence reports in their favour. Failing that, the government can use the team of lawyers and other experts who work in the Prime Minister's Office and the Cabinet Office to try to wriggle out of Select Committee findings. The government won't reject or ignore Select Committee reports all the time, but they can reject them some of the time and there is very little the Select Committees can do if the government doesn't follow up on their recommendations.

The Prime Minister is, moreover, well prepared for Question Time. They will have their answers drafted by a team of civil servants and other junior ministers. The individual style of the Prime Minister makes some Prime Ministers more successful at this than others; for example, David Cameron had a media background and was adept at handling even the trickiest of Question Times. A Prime Minister who performs well at Question Time looks stronger

and is more likely to be kept on as party leader and to be supported by the public in general. The Prime Minister should be able to dodge any potentially difficult questions either by avoiding answering the question or by turning it to their advantage. There are 'planted' or pro-government questions which are designed to support the Prime Minister and the governing party by drawing attention to a policy or initiative which the MP asking the question will claim is working well. These give the Prime Minister an opportunity to try to show the public the government is working. Ministers' Questions are not as big a spectacle and are not as well attended as the Prime Minister's Questions, however, the ministers for significant departments such as the Department for Health will get a full turnout whereas ministers for smaller departments such as Wales and Northern Ireland are unlikely to have many MPs interested in what they have to say.

Debates can be curtailed by the government using, for example, a guillotine motion. The government's in-built majority and better resources are also a help in making sure that debates in Parliament rarely catch the government out totally. Written questions are rarely on big picture issues but are more likely to be on a specific constituency matter and, although they may force a minister to address a particular issue, they are not really holding the whole government to account.



Treasury Select Committee



Recent research

Meg Russell, Daniel Gover and Kristina Wolfer attempted to test the accuracy of the widely held belief that the executive dominates the legislative process in their research for University College London. Their work considered the amendments made to twelve parliamentary bills which included the Welfare Reform Bill and the Identity Documents Bill.

The conclusions reached were that the appearance of executive dominance distorts the reality of how complex the process actually is. By examining amendments to the bills listed above,

the researchers demonstrated that through the amendment process, Parliament still has a significant degree of influence over legislation. Furthermore they discovered that Parliament has a greater degree of pre-legislative influence than is often assumed so that the executive will react to what they anticipate Parliament's response to be. The government will not risk alienating their own backbenches nor will they court defeat in the Lords. In this respect we can see that both members of the House of Lords and backbenchers have some influence over government legislation.



Conclusion

The research carried out by this team is a reminder that it shouldn't be automatically assumed that the accepted view of the relationship between the executive and the legislature is the correct one. As with all relationships, the reality is often more complex than it at first seems. The size of the government's majority has a significant impact on the extent to which the executive can dominate the legislature, similarly the external political and economic environment. These factors will have

a huge impact on the relationship between the executive and Parliament. The more substantial the majority, the more the government can ignore backbench rebellions as was often seen during the Blair government's first term in office. Similarly, a coalition government or a government with a small majority needs to be more careful about backbench discontent and is more likely to avoid putting forward unpopular legislation in the first place.

Further Reading

[Andrew Lansley, MP talking about the relationship between the executive and legislature post 2010](#)

[Clip of the debate on the Assisted Dying Bill which was defeated by the Commons in Sept 2015](#)

[News report from BBC News which explores the parliamentary ping pong between the Commons and Lords on the issue of Welfare Reform.](#)

Russell, Meg; Gover, Daniel and Wolfer, Kristina, (2015), *Does the Executive dominate the Westminster legislative process?: Six reasons for doubt*, University College London

Magee, Eric; Fairclough, Paul and Lynch, Philip (2013) *AS UK Government and Politics 4th edition*, Hodder Education

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